



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
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, December 13, 2021

7:30 PM

Betty J. Glick Assembly Chambers

Zoom Meeting 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**2. Planning Commission Resolutions****3. Plats Granted Administrative Approval**

- a. [KPB-3745](#) Baleen Cove Subdivision; KPB File 2021-045

Attachments: [Baleen Cove Subdivision 2021-045](#)

- b. [KPB-3744](#) Alaska State Land Survey No. 2020-10 Captain Cook North Subdivision
KPB File 2021-052

Attachments: [Alaska State Land Survey No. 2020-10 KPB 2021-052](#)

- c. [KPB-3777](#) Bodnar Subdivision 2021 Replat; KPB File 2021-114

Attachments: [Bodnar Subdivision 2021 Replat 2021-114](#)

- d. [KPB-3778](#) Cliff House Acres Subdivision; KPB File 2021-041

Attachments: [Cliff House Acres Subdivision 2021-041](#)

- e. [KPB-3779](#) Emery Subdivision; KPB File 2021-100

Attachments: [Emery Subdivision 2021-100](#)

- f. [KPB-3780](#) Kings Creek 2021 Replat; KPB File 2021-081

Attachments: [Kings Creek 2021 Replat 2021-081](#)

- g. [KPB-3782](#) McReed Subdivision 2021 Replat; KPB File 2021-093

Attachments: [McReed Subdivision 2021 Replat 2021-093](#)

- h. [KPB-3783](#) Moose Range Ridge Estates Oehler Replat; KPB File 2020-155

Attachments: [Moose Range Ridge Estates Oehler Replat 2020-155](#)

- i. [KPB-3784](#) Poage Subdivision Chaloux Replat; KPB File 2021-059

Attachments: [Poage Subdivision Chaloux Replat 2021-059](#)

- j. [KPB-3786](#) Self Subdivision Bilben Replat; KPB File 2021-092

Attachments: [Self Subdivision Bilben Replat 2021-092](#)

4. Plats Granted Final Approval (KPB 20.10.040)

- a. [KPB-3787](#) Jeffery Park Subdivision No. 4; KPB File 2021-139

Attachments: [Jeffery Park Subdivision No 4 2021-139](#)

5. Plat Amendment Request

6. Commissioner Excused Absences

7. Minutes

- a. [KPB-3788](#) November 29, 2021 Plat Committee Meeting Minutes

Attachments: [Plat Minutes 112921_Draft](#)

- b. [KPB-3789](#) November 29, 2021 Planning Commission Meeting Minutes

Attachments: [PC Minutes 112921_Draft](#)

D. OLD BUSINESS

1. [KPB-3790](#) Conditional Land Use Permit Modification; PC Resolution 2021-10
Applicant: River Resources LLC

Attachments: [1.River Resources PC Hearing Decision 101821](#)

[2.Staff Memo 120221](#)

[3.PC Submission Applicant Legal Reps 120321](#)

[4.PC Submission McBride 2021-12-03_R](#)

[5.Comment Nolden 112321](#)

[6.Comment Gravier 120221](#)

[7.Comment Ferguson 120321](#)

[8.Comment Hardy 120321](#)

[9.Appeal Record River Resources LLC_R](#)

[Desk Coble Report Signature Page](#)

E. NEW BUSINESS

1. [KPB-3791](#) Porcupine Lake Subdivision No. 6; KPB File 2021-152

Attachments:

- [1. MAP Vicinity with inset](#)
- [2. MAP Aerial Map](#)
- [3. Plat Prelim KPB 2021-152 Reduced](#)
- [4. Staff Report Porcupine Lake Subd No 6 KPB 2021-152](#)
- [5. MAP Aerial 2021](#)
- [6. MAP Aerial Swan Lake Road](#)
- [7. MAP Block](#)
- [8. MAP Contours & Wetlands](#)
- [9. Plat Parent KN 2002-98](#)
- [10. Comment KPB 2021-152 HEA](#)

2. [KPB-3792](#) Towle Subdivision 2021 Replat; KPB File 2021-153

Attachments:

- [1. MAP Vicinity with inset](#)
- [2. MAP Aerial Map](#)
- [3. Plat Prelim KPB 2021-153 Reduced](#)
- [4. Staff Report Towle Subdivision 2021 Replat KPB 2021-153](#)
- [5. MAP Aerial Flood Zone & Contours](#)
- [6. Plat Parent ROS SW 2012-01](#)
- [7. Plat Parent ROS SW 2009-13](#)
- [8. Plat Parent ROS SW 89-14](#)
- [9. Comment KPB 2021-153 CEA](#)
- [Desk BIH Comments](#)
- [Desk Minutes CLAPC 120821](#)

3. [KPB-3793](#) Vacation: Fauerbach Ct. ROW & Associated Utility & Anchor Easements
KPB File 2021-150V

Attachments:

- [1. MAP Vicinity with inset](#)
- [2. MAP Aerial Map](#)
- [3. Plat Prelim KPB 2021-150 Reduced](#)
- [4. Staff Report Clam Gulch Heights 2021 Addn Fauerbach Ct ROWV KPB 2021](#)
- [5. Plat Parent KN 81-135](#)
- [6. Plat Parent KN 1972-61](#)

4. [KPB-3794](#) Clam Gulch Heights 2021 Addition; KPB File 2021-150

Attachments:

- [1. MAP Vicinity with inset](#)
- [2. MAP Aerial Map](#)
- [3. Plat Prelim KPB 2021-150 Reduced](#)
- [4. Staff Report Clam Gulch Heights 2021 Addn KPB 2021-150](#)
- [5. MAP Contours](#)
- [6. Plat Parent KN 81-135](#)
- [7. Plat Parent KN 1972-61](#)

5. [KPB-3795](#) Endicot Drive Cul-de-sac ROW Vacation; KPB File 2021-151V

Attachments:

- [1. MAP Vicinity with inset](#)
- [2. MAP Aerial Map](#)
- [3. Plat Prelim KPB 2021-151V Reduced](#)
- [4. Staff Report Slikok Creek 2021 Replat Lot 1 Block 1 Endicott ROWV KPB 20](#)
- [5. MAP Aerial 2021](#)
- [6. MAP Aerial 2021_2](#)
- [7. MAP Wetlands](#)
- [8. MAP Section Line Esmt.](#)
- [9. MAP Contours](#)
- [10. Plat Parent KN 1979-21](#)
- [11. Plat Parent KN 1361](#)

6. [KPB-3796](#) Koto Court ROW Vacation & Associated Utility Easements
KPB File 2021-154V

Attachments:

- [1. MAP Vicinity with inset](#)
- [2. MAP Aerial Map](#)
- [3. Plat Prelim KPB 2021-154V Reduced](#)
- [4. Staff Report Murray Sub 2022 Replat Koto Ct ROWV KPB 2021-154V](#)
- [5. Plat Parent KN 2017-59](#)
- [6. Plat Parent KN 2013-124](#)
- [7. Plat Parent KN 2007-85](#)
- [8. Plat Parent KN 86-246](#)

7. [KPB-3797](#) Shady Acres Lot 14 Plat Waiver

Attachments:

- [1. MAP Vicinity with inset](#)
- [2. MAP Aerial Map](#)
- [3. Plat Prelim KPB 2021-149 Reduced](#)
- [4. Staff Report Shady Acres Lot 14 Plat Waiver KPB 2021-149](#)
- [5. Resolution 2021-36 Shady Acres Lot 14 Plat Waiver KPB 2021-149](#)
- [6. Plat Parent KN 2003-100](#)

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

KPB-3799 12-10-21 Director's Report

Attachments:

Director's Report_121021

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.

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.



Planning Department

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Charlie Pierce
Borough Mayor

ADMINISTRATIVE APPROVAL

Subdivision: Baleen Cove Subdivision
KPB File 2021-045
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 November 29, 2021.

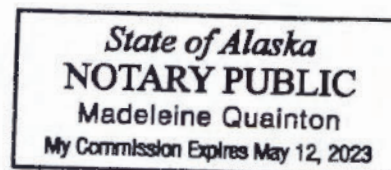
Scott A. Huff
Platting Manager

State of Alaska
Kenai Peninsula Borough

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

Notary Public for the State of Alaska

My commission expires: 5/12/23



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

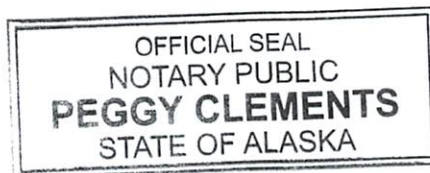
ADMINISTRATIVE APPROVAL

Subdivision: Alaska State Land Survey No. 2020-10 Captain Cook North Subdivision
KPB File 2021-052
Kenai Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on May 10, 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 December 1, 2021.

Scott A. Huff
Platting Manager



State of Alaska
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 1st day of December 2021
by Scott A. Huff.

Notary Public for the State of Alaska

My commission expires: 7-31-2022

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: Bodnar Subdivision 2021 Replat
KPB File 2021-114
Kenai Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on September 13, 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 November 29, 2021.

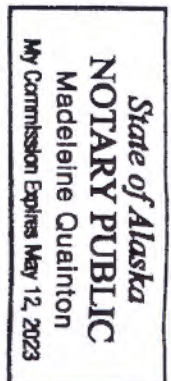
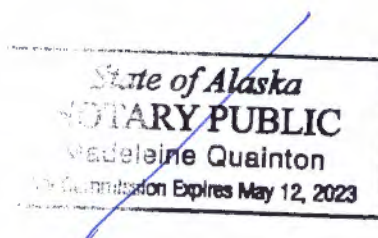
Scott A. Huff
Platting Manager

State of Alaska
Kenai Peninsula Borough

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

Notary Public for the State of Alaska

My commission expires: 5/12/23



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: Cliff House Acres Subdivision
KPB File 2021-041
Seward Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on April 26, 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 November 19, 2021.

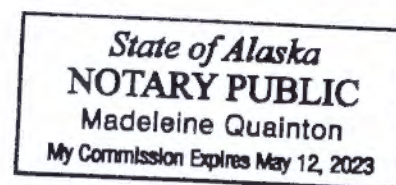
Melanie Aeschliman
Planning Director

State of Alaska
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 17th day of August 2021 by Melanie Aeschliman.

Notary Public for the State of Alaska

My commission expires: 5/12/23



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: Emery Subdivision
KPB File 2021-100
Kenai Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on August 9, 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 November 30, 2021.

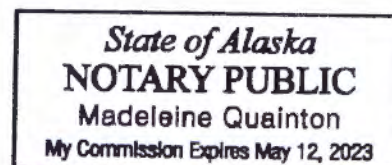
Scott A. Huff
Platting Manager

State of Alaska
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 30 day of November 2021
by Scott A. Huff.

Notary Public for the State of Alaska

My commission expires: 5/12/23



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: Kings Creek 2021 Replat
KPB File 2021-081
Homer Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on June 28, 2021. Approval for the plat is valid for two years from the date of approval.

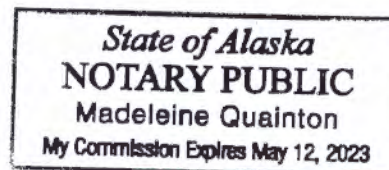
The final plat complied with conditions of preliminary approval and KPB Title 20 (Subdivisions); therefore, per KPB 20.60.220, administrative approval has been granted by the undersigned on November 24, 2021.

Scott A. Huff
Platting Manager

State of Alaska
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 24 day of November 2021
by Scott A. Huff.

Notary Public for the State of Alaska



My commission expires: 5/12/23

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: McReed Subdivision 2021 Replat
KPB File 2021-093
Kenai Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on August 9, 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 November 24, 2021.

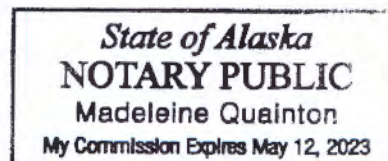
Scott A. Huff
Platting Manager

State of Alaska
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 24 day of November 2021
by Scott A. Huff.

Notary Public for the State of Alaska

My commission expires: 5/12/23



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: Moose Range Ridge Estates Oehler Replat
KPB File 2020-155
Kenai Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on January 25, 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 November 24, 2021.

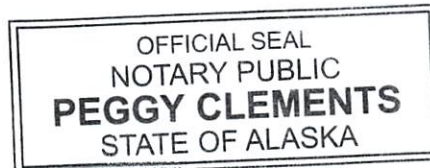
Scott A. Huff
Platting Manager

State of Alaska
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 24th day of November 2021
by Scott A. Huff.

Notary Public for the State of Alaska

My commission expires: 7.31.2022



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: Poage Subdivision Chaloux Replat
KPB File 2021-059
Kenai Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on May 24, 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 November 24, 2021.

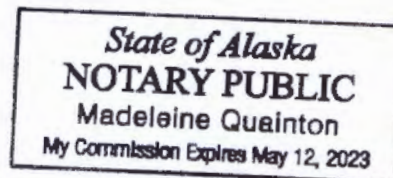
Scott A. Huff
Platting Manager

State of Alaska
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 24 day of November 2021
by Scott A. Huff.

Notary Public for the State of Alaska

My commission expires: 5/12/23



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: Self Subdivision Bilben Replat
KPB File 2021-092
Kenai Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on August 9, 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 November 24, 2021.

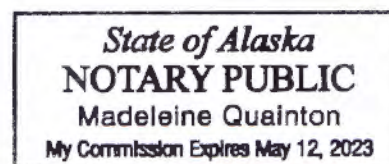
Scott A. Huff
Platting Manager

State of Alaska
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 24 day of November 2021
by Scott A. Huff.

Notary Public for the State of Alaska

My commission expires: 5/12/23



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Planning Department

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Charlie Pierce
Borough Mayor

FINAL APPROVAL OF PLAT SUBMITTED UNDER 20.10.040

Subdivision: Jeffery Park Subdivision No 4
KPB File 2021-139
Kenai Recording District

The Kenai Peninsula Borough Planning Department has reviewed the above referenced subdivision plat in accordance with 20.10.040 Borough Code of Ordinances. The final plat meets the conditions of the preliminary approval and complies with KPB Title 20; therefore, final approval has been granted by the undersigned on November 19, 2021.

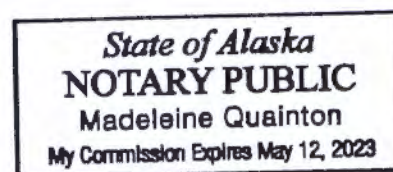
Melanie Aeschliman
Planning Director

State of Alaska
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 19 day of November 2021
by Melanie Aeschliman.

Notary Public for the State of Alaska

My commission expires: 5/12/23



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

Plat Committee

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

November 29, 2021
6:00 p.m.
UNAPPROVED MINUTES

A. CALL TO ORDER

Commissioner Ruffner called the meeting to order at 6:30 p.m.

B. ROLL CALL

Plat Committee Members/Alternates

Jeremy Brantley, Sterling
Pamela Gillham, Ridgeway
Virginia Morgan, East Peninsula
Robert Ruffner, Kasilof/Clam Gulch
Franco Venuti, City of Homer

Staff Present

Melanie Aeschliman, Planning Director
Scott Huff, Platting Manager
Julie Hindman, Platting Specialist
Ann Shirnberg, Planning Administrative Assistant

C. APPROVAL OF AGENDA, EXCUSED ABSENCES, AND MINUTES

***4. Grouped Plats**

Staff report by Scott Huff.

2. West Hill Subdivision Harness Addition; KPB File 2021-021R1
Fineline Surveys, Inc. / Palser-Harness LLC & Kallevig
Location: Jeffery Avenue & West Hill Road
City of Homer
7. Mountain Vista Estates 2022 Replat; KPB File 2021-147
Segesser Surveys / Churney, Zahacefski & Link
Location: Chip Court, Missing Link Road & Ludy Avenue
Kalifornsky Area
Kalifornsky APC
8. Skyview Heights Subdivision Spellman Addition; KPB File 2021-146
McLane Consulting Group/ Barbara H. Burke Revocable Trust, O'Connor & Spellman
Location: Torwick Circle & Roosevelt Avenue
Kalifornsky Area
Kalifornsky APC
9. Steven Oberts Subdivision No. 1; KPB File 2021-141
McLane Consulting Group/ LTO Limited Partnership, Oberts, Estate of Leo Thomas
Oberts
Location: Kenai Spur Hwy. & Silver Salmon Drive
City of Kenai

Chair Ruffner noted that there was a member of the public that wished to speak to Kustatan Estates TKC Addition and requested that it be removed from the grouped plats. He then asked if anyone else wished to speak to any of the items on the consent agenda. Seeing and hearing no comment he brought it back to the committee for a motion.

MOTION: Commissioner Brantley moved, seconded by Commission Gillham to approve the agenda and grouped plates based on staff recommendations and compliance to borough code.

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

MOTION PASSED BY UNANIMOUS VOTE

Yes	5	No	0
Yes	Brantley, Gillham, Morgan, Ruffner, Venuti		

ITEM E2 - WEST HILL SUBDIVISION HARNESS ADDITION

KPB File No.	2021-021R1
Plat Committee Meeting:	November 29, 2021
Applicant / Owner:	Palser-Harness LLC, and Josef and Heather Kallevig
Surveyor:	Dmitri Kimbrell / Fineline Surveys
General Location:	City of Homer

Parent Parcel No.:	173-480-10, 173-480-12, 173-480-13
Legal Description:	Lots 2, 3, & 4, Block 1, West Hill Subdivision, HM 75-11
Assessing Use:	Residential
Zoning:	Rural Residential District
Water / Wastewater	On-Site

STAFF REPORT

Specific Request / Scope of Subdivision: The proposed plat will reconfigure three lots into two lots. The new lots will be 4.3 and 7.5 acres. This is a revised preliminary plat that is adding an additional lot to comply with the 3:1 depth to width ratio subdivision design standard. Due to the submittal of this revision after April 1, 2021, this is being reviewed under the current code adopted by Ordinance 2020-45.

Location and Legal Access (existing and proposed): The subdivision is located on the corner of West Hill Road and Jeffery Avenue. West Hill Road is a 100 foot wide right of way (and section line easement) maintained by the State of Alaska DOT and Jeffery Avenue is a 60 foot wide dedicated right of way that is maintained by the City of Homer.

The existing block is irregular in shape but is a closed block. Jeffery Avenue, West Hill Road, Highland Drive, and Emerald Road define the block. Due to the terrain and lot configurations in the area, this subdivision cannot provide any additional right of way to help with block length. **Staff recommends the plat committee concur that an exceptions is not needed, as any dedication required will be affected by steep terrain with a drainage and will not improve the block length requirements.**

KPB Roads Dept. comments	Out of Jurisdiction: Yes
	Roads Director: Uhlin, Dil Comments: No comments
SOA DOT comments	The ROW for West Hill Road is shown on DOT Right of Way Map X-14625 West Hill Road (Plat 94-48, HRD), sheet 4 of 4, and appears to be shown correctly.

Site Investigation: The southern and western areas of the subdivision contains steep slopes with a drainage. The top of the steep slopes are depicted and labeled. Per KPB GIS data, there are riverine wetlands along the southern and western portions of the property. Per the City of Homer Planning Commission Staff Report prepared for their September 1, 2021 meeting, a branch of Bidarki Creek runs along the southern lot line, within a steep riverine. Another branch of Bidarki Creek runs along the western lot line, also within a riverine.

30 foot drainage easements are shown to be granted per this plat as requested by the City of Homer. These easements are along the riverine areas along the western and southern boundaries. Plat note 7 states that

the drainage easements contain wetlands. A depiction of the low wet areas are not required as long as plat note 7 remains. **Staff recommends** that the drainage easement be extended across all of the southern boundary, including Lot 4A.

KPB River Center review	<p>A. Floodplain Reviewer: Carver, Nancy Floodplain Status: IS in flood hazard area Comments: Flood Zone: D Map Panel: 02122C-2015E In Floodway: False Floodway Panel:</p> <p>B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments</p> <p>C. State Parks Reviewer: Russell, Pam Comments: No Comments</p>
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Staff Analysis The KPB Plat Committee heard a preliminary design for this subdivision on April 26, 2021. The original design was a reconfiguration of parent lots 2 and 3 that resulted in proposed Lot 2A having 61.13 feet of right of way frontage and a request for an exception to KPB 20.30.190 – Lots Dimensions – 3:1 Depth to Width Ratio for Lot 2A. The commissioners discussed and felt that that the subdivision could be designed to comply or provide more frontage for Lot 2A. The exception failed by a tied vote. This submittal is a redesigned preliminary plat that incorporates Lot 4 located to the west. Lot 2A has the same configuration as the original submittal but proposed lot 4A will now comply with KPB Code for the 3:1 depth to width ratio.

Per the City of Homer Planning Commission staff report, city water and sewer are not available at this time. An email was received by the City of Homer Public Works on August 5, 2021 stating an installation agreement would not be required.

A soils report has been received and will be reviewed by staff. Lot 4A is more than 200,000 square feet and a soils report is not required. If soils analysis is not performed for propose Lot 4A, an additional wastewater disposal note will be required and the existing note on the plat will need to specify it is for Lot 2A only.

Notice of the proposed plat was mailed to the beneficial interest holder on October 28, 2021. The beneficial interest holder will be given 30 days from the date of the mailing of the notification to respond. They are given the opportunity to notify staff if their beneficial interest prohibits or restricts subdivision or requires their signature on the final plat. If no response is received within 30 days, staff will assume they have no requirements regarding the subdivision and it may be finalized.

The City of Homer Planning Commission reviewed the revised preliminary plat at their August 5, 2021. They revised their staff recommendations to the following.

1. Include a plat note stating, "Property owner should contact the Army Corps of Engineers prior to any on-site development or construction activity to obtain the most current wetland designation (if any). Property owners are responsible for obtaining all required local, state, and federal permits."
2. Comply with HCC 21.10.051(a) and grant a 15 foot utility easement along all rights of way.
3. Update the vicinity map to show the correct municipal boundaries.
4. Show approximate locations of slopes over 20 percent in grade.
5. Dedicate a 30 foot drainage easement along the southern lot line.

Plat note 3 resolves requested item 1. The plat depicts a 15 foot utility easement along the right of way as requested in item 2. The utility easement depictions does need to be continued to the west within proposed Lot 4A. The city limits are depicted but adjusting the label located in section 8 would make the boundary

clearer as the label is within the portion outside the city limits. The tops of the steep slopes have been depicted as requested in item 4. The plat does depict 30 foot drainage easements along the south and west.

Per the Certificate to Plat, a sauna located on Lot 2 Block 1 of Emerald Highland Estates Sub Unit 2, HM 76-29, encroaches into the southern portion of Lot 4. An easement has been granted to the owners of Lot 2 Block 1 and their heirs or successors. The easement does not run with the lot and any conveyance of the lot will terminate the current easement agreement. **Staff recommends** a plat note be added to disclose the encroachment easement including the recording information.

Utility Easements The City of Homer requested the utility easements along the right of way be increased to 15 feet from the previously granted 10 feet. The plat depicts and notes the 15 foot utility easements. A 20 foot utility easement was also granted by the parent plat centered on the shared lot line between Lot 4 and Lots 3 and 2. A 30' radius anchor easement was also granted. These easements are depicted but the labeling should be revised to make the depiction easier to understand. **Staff recommends** the anchor easement be labeled and noted either in the label or plat note that it was granted by HM 75-11. The former lot line labels should clearly point to the line or add the line style to the legend. The depiction of the 15 foot utility easement should be continued west within Lot 4A.

An additional easement was granted by document and is noted in plat note 5. **Staff recommends** update the date in the note to 1968.

The affected utility providers were emailed the subdivision plat public hearing notice as part of the routine notification process. **Staff recommends** to grant utility easements requested by the utility providers or work with the utility providers to obtain approval.

Utility provider review:

HEA	
ENSTAR	No comments or recommendations
ACS	
GCI	Approved as shown

KPB department / agency review:

Addressing	<p>Reviewer: Haws, Derek Affected Addresses: 1131 JEFFERY AVE 1045 JEFFERY AVE 4575 WEST HILL RD</p> <p>Existing Street Names are Correct: Yes List of Correct Street Names: JEFFERY AVE WEST HILL RD</p> <p>Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied:</p> <p>Comments: City of Homer will advise on affected addresses.</p>
Code Compliance	<p>Reviewer: Ogren, Eric Comments: No comments</p>
Planner	<p>Reviewer: Taylor, Bryan There are not any Local Option Zoning District issues with this proposed plat.</p> <p>Material Site Comments: There are not any material site issues with this proposed plat. Review Not Required</p>

Assessing	Reviewer: Bruns, Matthew Comments: No concerns from Assessing Dept.
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The subdivision plat has been reviewed and generally complies with the 2019 Kenai Peninsula Borough Comprehensive plan.

STAFF RECOMMENDATIONS

CORRECTIONS / EDITS

Staff recommends a signed copy of the Operation Agreement for Palser-Harness, LLC be included with the final plat submittal.

KPB 20.25.070 – Form and contents required

Staff recommendation: *final plat submittals must comply with 20.25.070. Additional information, revisions, and/or corrections are required as noted below.*

A. Within the Title Block

1. Name of the subdivision which shall not be the same as an existing city, town, tract, or subdivision of land in the borough, of which a plat has been previously recorded, or so nearly the same as to mislead the public or cause confusion. The parent plat's name shall be the primary name of the preliminary plat.
2. Legal description, location, date, and total area in acres of the proposed subdivision;
3. Name and address of owner(s), as shown on the KPB records and the certificate to plat, and registered land surveyor.

Staff recommendation:

- Add "R1" to the KPB File number.
- Add a space between "Meridian," and "within".

D. A vicinity map, drawn to scale showing location of proposed subdivision, north arrow if different from plat orientation, township and range, section lines, roads, political boundaries, and prominent natural and manmade features, such as shorelines or streams;

Staff recommendation:

- The scale for the vicinity map appears to be slightly off.
- Fix the overstrikes that occur on the section labels, street names, and City Limits label.
- Adjust the placement of the Homer City Limits label currently found in section 8. It is currently placed outside the city limits. Move to within the boundary or center atop the boundary like the other label.

KPB 20.30 – Subdivision Design Requirements

Staff recommendation: *final plat submittals must comply with 20.30. Additional information, revisions, and/or corrections are required as noted below.*

20.30.250. Building setbacks-Within cities. The building setback requirements for subdivisions located within cities shall be governed by the provisions of municipal zoning districts. Building setbacks as depicted, or noted, on recorded plats shall not be carried forward on a new subdivision plat located within a municipal zoning district. Provide a plat note stating, "Per KPB 20.30.250 the building setback of record has been removed. All development must comply with the municipal zoning requirements."

Staff recommendation: *The parent plat depicted a building setback. Provide a plat note stating, "Per KPB 20.30.250 the building setback of record has been removed. All development must comply with the municipal zoning requirements."*

20.30.270. Different standards in cities. Where cities have enacted by ordinance different subdivision design standards than those set forth in this chapter, the planning commission shall apply the city standards in lieu of those set forth in this chapter. Any appeal of a city design standard is subject to KPB 21.01.020(E).

Staff recommendation: *The City of Homer does not meet the specified requirements for the application and consideration of different standards.*

KPB 20.40 – Wastewater Disposal

Staff recommendation: final plat submittals must comply with 20.40. Additional information, revisions, and/or corrections are required as noted below.

20.40.010 Wastewater disposal.

Platting Staff Comments: Proposed Lot 2A will be increasing in size and the number of developable lots will be decreasing. The plat complies with 20.40.020(A)(2). A soils analysis report has been submitted and staff will review the report. If the report applies to Lot 2A then the corresponding wastewater disposal note as identified in the soils report will be on the plat, otherwise the wastewater disposal note under 20.40.020(B)(2) will suffice.

Staff recommendation: comply with 20.40.

KPB 20.60 – Final Plat

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

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

Staff recommendation: An acceptance for the drainage easements is present. Make “easement” plural and correct the spelling of “Governing”.

20.60.070. Plat specifications. The final subdivision plat shall be clearly and legibly drawn to a scale of 1 inch equal to 10, 20, 30, 40, 50, 60, 150 feet or a multiple of 100 feet. The drawing shall be plotted on good quality polyester film at least 3 mm in thickness. All lines, letters, figures, certifications, acknowledgements and signatures shall be clear, legible, and in black ink. The minimum text size should be 10 point (0.1”) font or the equivalent. Where necessary, 8 point (0.08”) capitalized font or the equivalent can be used to label features. The plat shall be so made, and shall be in such condition when filed, that legible prints and negatives can be made therefrom. Colors, grayscale or shading is not acceptable as it does not show when the drawing is reproduced. Sheets shall be one of these sizes: 11" x 17"; 18" x 24"; and 24" or 30" x 36". When more than one sheet is required, an index map shall be provided on the first sheet showing the entire subdivision and indicating the portion contained on each sheet. Each sheet shall show the total number (e.g. sheet 1 of 3). When more than one sheet is submitted, all sheets shall be the same size. Indelible ink or sealant shall be used to insure permanency.

Staff recommendation: Various text does not appear to comply with the minimum font requirement. Increase text size to 10 point. Comply with 20.60.070.

20.60.180. Plat notes.

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

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

Staff recommendation: Place the following notes on the plat.

- Per KPB 20.30.250, the building setback of record has been removed. All development must comply with the municipal zoning requirements.
- Lot 4A is subject to an encroachment easement as described in Serial No. 2015-001754-0, HRD, recorded on June 16, 2015.

Correct the spelling of “drainage” within plat note 8.
Update the wastewater notes as required to comply.

RECOMMENDATION:**SUBJECT TO EXCEPTION(S) GRANTED, STAFF RECOMMENDS:**

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

NOTE: 20.25.120. - REVIEW AND APPEAL.

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

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

END OF STAFF REPORT

*Passed by Consent Agenda

ITEM E7 – MOUNTAIN VISTA ESTATES 2022 REPLAT

KPB File No.	2021-147
Plat Committee Meeting:	November 29, 2021
Applicant / Owner:	Richard A. and Lourdes L. Link of Soldotna, AK Ronald Zahacefski Jr and Elizabeth Churney of Kasilof, AK
Surveyor:	John Segesser / Segesser Surveys, Inc.
General Location:	Chip Court, Missing Link Road and Ludy Avenue / Kalifornsky

Parent Parcel No.:	131-420-04, 131-420-31
Legal Description:	Lot 2 Block 4 Mountain Vista Estates Block 4, Plat KN 77-15 and Lot 3A Mountain Vista Estates Link Replat, Plat KN 2008-37
Assessing Use:	Residential
Zoning:	Rural Unrestricted
Water / Wastewater	On Site

STAFF REPORT

Specific Request / Scope of Subdivision: The proposed plat reconfigures the shared lot line between two lots. Lot 2A Block 4 will increase from 2.05 acres to 2.140 acres. Lot 3B will decrease from 41.51 acres to 41.42 acres.

Location and Legal Access (existing and proposed): The subdivision is in the Kalifornsky census area near mile 101 of the Sterling Highway. Legal access to the subdivision is from state maintained right of way Sterling Highway to Arc Loop Road to Tobacco Avenue to Missing Link Road. Tobacco Avenue and Missing Link Road are both improved and maintained by the Kenai Peninsula Borough. Lot 2A Block 4 has direct access to Missing Link Road. Chip Court, Swamp Street, Ludy Avenue, and Missing Link Road all provide legal access to Lot 3B with Missing Link Road being the only developed right of way.

Swamp Street is an unconstructed 33 foot right of way dedication that coincides with a 33 foot section line easement. A 50 foot section line easement abuts to the east on State of Alaska DNR land. Any subdivision of the State lands will require a right of way dedication atop the section line easement.

Ludy Avenue is an unconstructed 33 foot wide right of way dedication that coincides with a section line easement. A 50 foot section line easement abuts the dedication and is located within unsubdivided land owned by the Salamatof Native Association. Any future dedication of right of way may be obtained if the lot is subdivided in the future. The eastern portion contains low wet areas and Slikok Creek crosses the right of way. Steep slopes are also present within the right of way.

Chip Court is a 60 foot wide right of way cul-de-sac at the northwest corner of Lot 3B. Per KPB GIS data, it does not appear Chip Court is constructed.

Additional right of way dedications are not being requested at this time. Missing Link Road and Chip Court are full dedications that do not currently require additional width. There are some areas with steep terrain but no slope easements are being requested at this time. Ludy Avenue and Swamp Street have additional widths due to the section line easements. The lot is large enough to be further subdivided to provide additional easements or dedications as needed for future developments.

Brigantine Avenue, Swamp Street, Ludy Avenue, and Missing Link Road provide a closed block. The block lengths do not comply with KPB Code. **Staff recommends** the plat committee concur that an exception is not needed for block length as all lots front on dedicated right of way, any further subdivision can provide right of way dedications, and dedications to improve the block are not needed at this time.

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

Site Investigation: There are steep slopes within the subdivision and the top of the steep slopes is depicted. Per KPB GIS contour data, the steep slope continues into Lot 2A Block 4. **Staff recommends** the steep slope within Lot 2A Block 4 be verified during the field survey and if existing be depicted on the final plat.

The eastern portion of Lot 3B is marked as area subject to inundation. Per KPB GIS data, the wetlands may be present further to the west than what is depicted on the preliminary plat. A small pond also appears to be present within Lot 3B. The water body and wetlands should be verified and depicted. **Staff recommends** that the wetlands information be verified and an accurate depiction be shown and label the small open body of water located on Lot 3B.

Slikok Creek is an anadromous stream that has its approximate location depicted and labeled. **Staff recommends** the required Anadromous Waters note be added to the plat as well as a note stating a wetland determination may be required for development of the property.

KPB River Center review	<p>A. Floodplain</p> <p>Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments</p> <p>B. Habitat Protection</p> <p>Reviewer: Aldridge, Morgan Habitat Protection District Status: IS totally or partially within HPD Comments: KPB\MAldridge</p> <p>C. State Parks</p> <p>Reviewer: Russell, Pam Comments: No Comments</p>
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Staff Analysis This plat will reconfigure a portion of a shared lot line between two lots. KPB GIS imagery shows that there may be improvements near the lot line. Based on that information and the unusual reconfiguration it appears this platting action may be to resolve an encroachment issues or provide additional area around the residence on Lot 2A Block 4.

Current Lot 2 was originally created with the Mountain Vista Estates Block 4 Subdivision, Plat KN 77-15. Lot 3A is a combination of lots from that same plat as well as Tract C from Mountain View Estates Plat KN 78-163. Those plats granted the right of ways for Ludy Avenue, originally named Vista Avenue, and Swamp Street, originally named Woody's Road.

Per KPB Code 20.40.020(A)(2), a wastewater system review is not required as the lot size for Lot 2A is increasing by more than 1,000 square feet and Lot 3B is larger than 200,000 sq. ft. **Staff recommends** that the wastewater disposal note be removed and the appropriate wastewater disposal note per KPB 20.40.020.B.2 be added to the final plat.

Notice of the proposed plat was mailed to the beneficial interest holder on November 8, 2021. The beneficial interest holder will be given 30 days from the date of the mailing of the notification to respond. They are given the opportunity to notify staff if their beneficial interest prohibits or restricts subdivision or requires their signature on the final plat. If no response is received within 30 days, staff will assume they have no requirements regarding the subdivision and it may be finalized.

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

Utility Easements Plat KN 77-15 depicted the 100 foot Homer Electric Association easement for a transmission line. The depiction is being carried forward. The origins of that easement are not disclosed.

An additional easement was granted to Homer Electric Association by a separate recorded document with the location of the easement undefined. The utility easement of record is identified in plat note 4.

Plat KN 77-15 granted a 10 foot utility easement adjoining Ludy Avenue in the southwest portion of proposed Lot 3B in what was formerly Lot 5. Plat 78-163 granted 5 foot utility easements along Ludy Avenue in the eastern portion of proposed Lot 3B and a 5 foot utility easement along the eastern boundary along Swamp Street in what was known as Tract C. Plat KN 2008-37 carried over the 5 foot utility easement along Swamp Street and provided a 10 foot utility easement along the entire length of Ludy Avenue. Plat KN 2008.37 also granted by plat note a 10 foot utility easement within the building setback that increase to 20 feet within 5 feet of the side lot lines. This provided 10 foot utility easements along the bulb of Chip Court, Swamp Street, and along Missing Link Road within Lot 3-A. With plat note 5, additional 10 foot utility easements will be granted along Missing Link Road within proposed Lot 2A. **Staff recommends to depict and label the utility easements along Missing Link Road and Chip Court and increase the easement along Swamp Street to 10 foot per KN 2008-37.**

The affected utility providers were emailed the subdivision plat public hearing notice as part of the routine notification process. **Staff recommends** to grant utility easements requested by the utility providers or work with the utility providers to obtain approval.

Utility provider review:

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

KPB department / agency review:

Addressing	Reviewer: Haws, Derek Affected Addresses: 30040 MISSING LINK RD 30078 MISSING LINK RD
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Addressing	<p>30170 MISSING LINK RD</p> <p>Existing Street Names are Correct: Yes List of Correct Street Names: MISSING LINK RD HOOK LN CHIP CT LUDY AVE</p> <p>Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied:</p> <p>Comments: 30040 MISSING LINK RD will remain with LOT 3B 30078 MISSING LINK RD will remain with LOT 3B 30170 MISSING LINK RD will remain with LOT 2A</p>
Code Compliance	<p>Reviewer: Ogren, Eric Comments: No comments</p>
Planner	<p>Reviewer: Taylor, Bryan There are not any Local Option Zoning District issues with this proposed plat.</p> <p>Material Site Comments: There are not any material site issues with this proposed plat.</p>
Assessing	<p>Reviewer: Bruns, Matthew Comments: No concerns from Assessing Dept.</p>
Advisory Planning Commission	Comments not received when staff report was prepared.

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

STAFF RECOMMENDATIONS

CORRECTIONS / EDITS

KPB 20.25.070 – Form and contents required

Staff recommendation: final plat submittals must comply with 20.25.070. Additional information, revisions, and/or corrections are required as noted below.

- C. The location, width, and name of existing or platted streets and public ways, railroad rights-of-way, and other important features such as section lines or political subdivisions or municipal corporation boundaries abutting the subdivision;
Staff recommendation: Ludy Avenue is only dedicated as a 33 foot right of way. KPB information shows a 50 foot section line easement abutting to the south on the Salamatof Native Association lands. Verify the status of the section line easement to the south and depict and label the section line easement on the plat.
- D. A vicinity map, drawn to scale showing location of proposed subdivision, north arrow if different from plat orientation, township and range, section lines, roads, political boundaries, and prominent natural and manmade features, such as shorelines or streams;
Staff recommendation:
- Add "Road" to the Arc Loop Road label.
 - The Kenai National Wildlife Refuge is within sections 25 and 36. Depict the boundary and provide a label. KNWR may be used.
 - The subdivision must be depicted with a label such as "This Plat" or "Subject Plat".
- G. The status of adjacent lands within 100 feet of the proposed subdivision boundary or the land status across from any dedicated rights-of-way that adjoin the proposed subdivision boundary, including

names of subdivisions, lot lines, block numbers, lot numbers, rights-of-way; or an indication that the adjacent land is not subdivided;

Staff recommendation:

- The lot on the corner of Missing Link Road and Hook Lane is Lot 14 not 149.
- The recording number for Lot 1 Block 4, adjacent to the subdivision, has a recording number of 77-15.

- H. Approximate locations of low wet areas, areas subject to inundation, areas subject to flooding or storm water overflow, and the line of ordinary high water. This information may be provided on an additional sheet if showing these areas causes the preliminary plat to appear cluttered and/or difficult to read;

Staff recommendation:

- The depiction of the low wet areas do not match KPB GIS data. It does appear to match previous plats. Verify the wetlands and provide an accurate depiction.
- Per KPB GIS imagery, a small pond or lake appears to be present near Ludy Avenue within proposed Lot 3B. An approximate boundary of the water body should be depicted. A label should be included to note if it is a seasonal waterbody, small pond, lake, etc.

KPB 20.30 – Subdivision Design Requirements

Staff recommendation: final plat submittals must comply with 20.30. Additional information, revisions, and/or corrections are required as noted below.

- 20.30.290. Anadromous Waters Habitat Protection District. If any portion of a subdivision or replat is located within an anadromous waters habitat protection district, the plat shall contain the following note:

ANADROMOUS WATERS HABITAT PROTECTION DISTRICT NOTE:

Portions of this subdivision are within the Kenai Peninsula Borough Anadromous Waters Habitat Protection District. See KPB Chapter 21.18, as may be amended, for restrictions that affect development in this subdivision. Width of the habitat protection district shall be in accordance with KPB 21.18.040.

Platting Staff Comments: Slikok Creek is an anadromous stream.

Staff recommendation: Provide the above note. Comply with 20.30.290.

KPB 20.40 – Wastewater Disposal

Staff recommendation: final plat submittals must comply with 20.40. Additional information, revisions, and/or corrections are required as noted below.

- 20.40.010 Wastewater disposal.

Platting Staff Comments: Wastewater review not required as Lot 3B is larger than 200,000 square feet and per 20.40.020(A)(2), Lot 2A is adding more than 1,000 square feet, approximately 4,300 square feet.

Staff recommendation: Provide the correct wastewater disposal note per KPB 20.40.020.B.2 comply with 20.40.

KPB 20.60 – Final Plat

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

- 20.60.180. Plat notes.

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

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

Staff recommendation:

Add the following plat note "Any person developing the property is responsible for obtaining all required local, state, and federal permits, including a U.S. Army Corps of Engineers wetland determination if applicable."

Add the required Anadromous Waters Habitat Protection District plat note.

Update the following plat notes.

- Note 3 needs the code reference updated to 20.60.170.
- Wastewater disposal note currently in place may be removed and the following placed.
 - o WASTEWATER DISPOSAL Any wastewater treatment or disposal system must meet the regulatory requirements of the Alaska Department of Environmental Conservation.

20.60.190. Certificates, statements, and signatures required.

Staff recommendation: The Certificate to Plat indicates the Link's signature lines should include "AKA Richard Link" and "AKA Lourdes Link" comply with 20.60.190.

RECOMMENDATION:

SUBJECT TO EXCEPTION(S) GRANTED, STAFF RECOMMENDS:

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

NOTE: 20.25.120. - REVIEW AND APPEAL.

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

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

END OF STAFF REPORT

**Passed by Consent Agenda*

ITEM E8 – SKYVIEW HEIGHTS SUBDIVISION SPELLMAN ADDITION

KPB File No.	2021-146
Plat Committee Meeting:	November 29, 2021
Applicant / Owner:	Rory T. Spellman of Verdi, NV Barbara H Burke Revocable Trust of Portsmouth, OH Edwin and Josselyn O'Connor of Soldotna, AK
Surveyor:	James Hall / McLane Consulting, Inc.
General Location:	Torwick Circle and Roosevelt Avenue / Kalifornsky area
Parent Parcel No.:	131-560-22, 131-560-23 and 131-560-24
Legal Description:	Lots 2, 3 and 4, Block 2 Skyview Heights Subdivision, Addition No 1 Plat KN 79-29
Assessing Use:	Residential
Zoning:	Rural Unrestricted
Water / Wastewater	On Site

STAFF REPORT

Specific Request / Scope of Subdivision: The proposed plat reconfigures the lots lines between three lots to create two lots. The parent lots were slightly larger than 1 acre and the new lots will be 1.8 acres and 2 acres.

Location and Legal Access (existing and proposed): The subdivision is in the Kalifornsky area on Torwick Circle. Torwick Circle is a 60 foot wide right of way that is approximately 600 feet long and ends in a partial cul-de-sac. Torwick Circle is located off Roosevelt Avenue, a 60 foot wide right of way. The Kenai Peninsula Borough maintains Torwick Circle and Roosevelt Avenue. Roosevelt Avenue is access from Skyline Drive, a 100 foot wide dedicated State maintained right of way that connects near mile 21 of Kalifornsky Beach Road.

The parent subdivision dedicated the southern portion of the cul-de-sac bulb. The lot to the north is 5 acres in size and will be required to complete the cul-de-sac when it is subdivided.

The subdivision is not within a closed block due to multiple right of ways ending in cul-de-sacs in the area and steep terrain to the north. The subdivision is within a block defined by Roosevelt Avenue, Skyline Drive, Base Road, and Washington Drive. Washington Drive is only partially dedicated and does not connect to Roosevelt Avenue to provide a closed block. Torwick Circle was designed to be a cul-de-sac. Per KPB Code definitions, cul-de-sacs are to be permanently closed. The only way for Torwick Circle to improve the block would require a subdivision to the north and all property owners fronting Torwick Circle agree to the extension of right of way. **Staff recommends** that the Plat Committee concur that an exception is not required nor dedications required for the purpose of trying to improve the block due to the design within the block with multiple cul-de-sacs, steep terrain to the north, and the inability for this subdivision to provide a dedication to improve the block length.

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

Site Investigation: The land within the subdivision does not contain any low wet areas. Steep slopes are shown on the plat as shaded areas. The dedicated right of way does not appear to be affected by steep slopes and additional right of way is not required for the roadway.

KPB River Center review	A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments
KPB River Center review	B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments
	C. State Parks Reviewer: Russell, Pam Comments: No Comments

Staff Analysis The parent parcels were created in 1979 with the recording of Skyview Heights Subdivision Addition No. 1, Plat KN 79-29. The proposed plat will reconfigure lots 2, 3, and 4 into two parcels.

A soils report will not be required as outlined per KPB Code 20.40.020(A)(2), the plat is increasing lot sizes by 1,000 square feet or more of area suitable for conventional development. The new lots will increase from 1.386 acres to 1.998 acres and 1.161 acres to 1.791 acres. Looking at the areas being added to the lots and removing the areas with steep slopes, the plat does not require the soils analysis report.

Looking at KPB GIS imagery, there does not appear any encroachment issues and this new lot line will not create any encroachments.

Notice of the proposed plat was mailed to the beneficial interest holder on November 5, 2021. The beneficial interest holder will be given 30 days from the date of the mailing of the notification to respond. They are given the opportunity to notify staff if their beneficial interest prohibits or restricts subdivision or requires their signature on the final plat. If no response is received within 30 days, staff will assume they have no requirements regarding the subdivision and it may be finalized.

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

Utility Easements The parent plat, Skyview Heights Subdivision Addition No. 1, granted a 10 foot utility easement on the north boundary and a 20 foot utility easement centered on a portion of the common boundary between Lot 2 and Lot 3. The easements of record are correctly depicted and labeled on this plat.

The Planning Commission granted a utility easement vacation around a well within the easement located on Lot 2. The vacation portion has been depicted and PC Resolution 93-16 is noted on the face of the plat.

This plat is proposing to grant a 10 foot utility easement along Torwick Circle, excluding an area where a well is located. **Staff recommends** that plat note 3 be revised to exclude the location around the existing well and the area is dimensioned on the face of the plat. **Staff recommends** that plat note 3 is reworded to state that the easement is adjoining the dedicated right of way to follow KPB 20.30.060.D.

The affected utility providers were emailed the subdivision plat public hearing notice as part of the routine notification process. **Staff recommends** to grant utility easements requested by the utility providers or work with the utility providers to obtain approval.

Utility provider review:

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

KPB department / agency review:

Addressing	<p>Reviewer: Haws, Derek Affected Addresses: 33490 TORWICK CIR 33468 TORWICK CIR 33420 TORWICK CIR</p> <p>Existing Street Names are Correct: Yes</p> <p>List of Correct Street Names: TORWICK CIR</p> <p>Existing Street Name Corrections Needed:</p> <p>All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied:</p> <p>Comments: 33490 TORWICK CIR WILL REMAIN WITH LOT 4B 33468 TORWICK CIR WILL BE DELETED 33420 TORWICK CIR WILL REMAIN WITH LOT 2B</p>
Code Compliance	<p>Reviewer: Ogren, Eric Comments: No comments</p>

Planner	Reviewer: Taylor, Bryan There are not any Local Option Zoning District issues with this proposed plat. Material Site Comments: There are not any material site issues with this proposed plat.
Assessing	Reviewer: Bruns, Matthew Comments: No concerns from Assessing Dept.
Advisory Planning Commission	Comments not received when the staff report was prepared

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

STAFF RECOMMENDATIONS

CORRECTIONS / EDITS

KPB 20.25.070 – Form and contents required

Staff recommendation: final plat submittals must comply with 20.25.070. Additional information, revisions, and/or corrections are required as noted below.

A. Within the Title Block

1. Name of the subdivision which shall not be the same as an existing city, town, tract, or subdivision of land in the borough, of which a plat has been previously recorded, or so nearly the same as to mislead the public or cause confusion. The parent plat's name shall be the primary name of the preliminary plat.
2. Legal description, location, date, and total area in acres of the proposed subdivision;
3. Name and address of owner(s), as shown on the KPB records and the certificate to plat, and registered land surveyor.

Staff recommendation: Verify and update the O'Connor's mailing address. Update the KPB File number to 2021-146.

D. A vicinity map, drawn to scale showing location of proposed subdivision, north arrow if different from plat orientation, township and range, section lines, roads, political boundaries, and prominent natural and manmade features, such as shorelines or streams;

Staff recommendation: The Kenai National Wildlife Refuge is located within Sections 6, 7, and 18. Provide a boundary and label for KNWR.

KPB 20.40 – Wastewater Disposal

Staff recommendation: final plat submittals must comply with 20.40. Additional information, revisions, and/or corrections are required as noted below.

20.40.010 Wastewater disposal.

Platting Staff Comments: A soils analysis report is not required. Lots are decreasing in number and increasing in acreage.

Staff recommendation: comply with 20.40.

KPB 20.60 – Final Plat

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

20.60.180. Plat notes.

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

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

the revision or removal of the record plat note shall be finalized by recording a planning commission resolution or subdivision plat.

Staff recommendation: *Revise plat note 3, "The front 10 feet adjacent to dedicated right of ways is a utility easement." Revise plat note 5.2 to state code 20.60.170*

20.60.190. Certificates, statements, and signatures required.

Staff recommendation: *Verify and update the mailing address for the O'Connor's. Comply with 20.60.190.*

RECOMMENDATION:

SUBJECT TO EXCEPTION(S) GRANTED, STAFF RECOMMENDS:

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

NOTE: 20.25.120. - REVIEW AND APPEAL.

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

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

END OF STAFF REPORT

**Passed by Consent Agenda*

ITEM E9 - Steven Oberts Subdivision No 1

KPB File No.	2021-141
Plat Committee Meeting:	November 29, 2021
Applicant / Owner:	LTO Limited Partnership PO Box 458 Kenai, AK 99611
Surveyor:	James Hall/ McLane Consulting, Inc.
General Location:	Kenai Spur Highway and Silver Salmon Drive, City of Kenai

Parent Parcel No.:	049-370-12
Legal Description:	Portion SE1/4 NE1/4 Section 7 and NW1/4 SW1/4 Section 8 lying West of the Kenai Spur Hwy and lying South and East of Silver Salmon Drive Township 5 North, Range 10 West, Excepting Therefrom any portions lying within Leo T. Oberts Sub and Replat, according to Plat KN 74-4 and further Excepting Therefrom any portion deed to State of Alaska DOT and PF at Serial No 2019-004445-0.
Assessing Use:	Residential
Zoning:	City of Kenai Zoning – Rural Residential
Water / Wastewater	On Site

STAFF REPORT

Specific Request / Scope of Subdivision: The proposed plat will subdivide a 45 acre parcel into two tracts ranging in size from 7.6 to 37.6 acres.

Location and Legal Access (existing and proposed): This subdivision is located within the City of Kenai. Legal access is from the Kenai Spur Highway and Silver Salmon Drive. The Kenai Spur Highway is maintained by the State of Alaska (SOA) DOT and Silver Salmon Drive is maintained by the City of Kenai. A 66 foot wide section line easement bisects the eastern portion of the subdivision in a north-south direction. No additional right of way dedication is proposed with this plat.

A 60 foot wide public access easement, granted per KN 2002-91, adjoins the south boundary and provides legal access to the south boundary of Tract B and Tract A, as well as the two parcels to the south.

Per document KN 2019-004445-0 SOA DOT acquired by warranty deed an approximate 100 foot strip of land on the eastern boundary for the Kenai Spur Highway improvement project. **Staff recommends** the portion of land acquired by SOA DOT be shown as the boundary with the Kenai Spur Highway and the acreage be updated accordingly.

A road easement granted to the SOA coincides with Silver Salmon Drive and has been noted on the plat.

Staff recommends a reference to the DOT Right of Way map be provided within a plat note or within a label within the right of way depiction for the Kenai Spur Highway.

The subdivision is located in an open block that is longer then subdivision code standards. **Staff recommends** that the plat committee concur that an exception to KPB 20.30.030 Proposed Street Layout and KPB 20.30.170 Block length is not required as the section line easement, the 60 foot public access easement to the south, and dedicated right of ways provide legal and practical access to all tracts. The owner is put on notice that any further subdivision of the large tracts may require additional right of way dedication to comply with KPB subdivision standards.

KPB Roads Dept. comments	Out of Jurisdiction: Yes Roads Director: Uhlin, Dil Comments: No comments
SOA DOT comments	The ROW for Kenai Spur Hwy is as shown on DOT Right of Way Map F-22-1(6) Kenai Spur Highway Mile 2.8 to 10.6 (Plat 2007-7, KRd) and appears to be shown correctly. No direct access Kenai Spur. All access to Silver Salmon. Suggest internal circulation be planned early.

Site Investigation: Per the Kenai Watershed Forum wetland mapping, the subdivision is affected by riverine and depression ecosystems.

The subdivision is generally flat with steep terrain located on the east side and the ground gently sloping to the west.

An anadromous waters drainage bisects the subdivision in an east-west direction. **Staff recommends** that the anadromous water drainage be depicted and labeled on the drawing and the Anadromous Waters Habitat Protection District note be added to the plat.

The subdivision is affected by flood zones but the City of Kenai does not participate in the FEMA floodplain program. No note or

KPB satellite imagery indicates this property may contain wet areas. The correct plat note is on the plat that indicates any person developing the property is responsible for obtaining all required local, state, and federal permits, including a U.S. Army Corps of Engineers wetland determination if applicable.

KPB River Center Review	A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Within City of Soldotna/Kenai Comments: No comments
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KPB River Center Review	<p>B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: IS totally or partially within HPD Comments: KPB\maldrige</p> <p>C. State Parks Reviewer: Russell, Pam Comments: No Comments</p>
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Staff Analysis The parent parcel is a remnant parcel that has not been approved by the platting authority. This platting action will define the boundary of the parent parcel as well as subdivide it into two large tracts. Both tracts are larger than 200,000 sq. ft. and a soils analysis report is not required.

The City of Kenai reviewed the plat at their October 27th, 2021 Planning and Zoning Commission meeting. The staff report states that water and sewer lines are not available on the area and an installation agreement is not required. A resolution was adopted that recommended approval of the preliminary plat subject to

1. Further development of the property shall conform to all federal, State of Alaska, and local regulations.

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

Utility Easements Several utility easements of record, with no definite location, affect this subdivision. The utility easements of record have been correctly noted on the plat.

Per KN 2019-004446-0, The SOA DOT acquired utility easements that adjoin the new Kenai Spur Highway right of way. The utility easements have been correctly depicted and labeled.

Staff recommends the 10 foot utility easement that is being granted which adjoins the Kenai Spur Highway be depicted and labeled on the plat.

The affected utility providers were emailed the subdivision plat public hearing notice as part of the routine notification process. **Staff recommends** to grant utility easements requested by the utility providers or work with the utility providers to obtain approval.

Utility provider review:

HEA	
ENSTAR	No comments or recommendations
ACS	
GCI	Approved as shown

KPB department / agency review:

Addressing	<p>Reviewer: Haws, Derek Affected Addresses: 3823 KENAI SPUR HWY</p> <p>Existing Street Names are Correct: Yes List of Correct Street Names: KENAI SPUR HWY SILVER SALMON DR CHINOOK CT</p> <p>Existing Street Name Corrections Needed:</p> <p>All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied:</p> <p>Comments: City of Kenai will advise on affected address.</p>
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Code Compliance	Reviewer: Ogren, Eric Comments: No comments
Planner	Reviewer: Taylor, Bryan There are not any Local Option Zoning District issues with this proposed plat. Material Site Comments: There are not any material site issues with this proposed plat. Review Not Required
Assessing	Reviewer: Bruns, Matthew Comments: No concerns from Assessing Dept.

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

STAFF RECOMMENDATIONS

CORRECTIONS / EDITS

KPB 20.25.070 – Form and contents required

Staff recommendation: final plat submittals must comply with 20.25.070. Additional information, revisions, and/or corrections are required as noted below.

A. Within the Title Block

1. Name of the subdivision which shall not be the same as an existing city, town, tract, or subdivision of land in the borough, of which a plat has been previously recorded, or so nearly the same as to mislead the public or cause confusion. The parent plat's name shall be the primary name of the preliminary plat.
2. Legal description, location, date, and total area in acres of the proposed subdivision;
3. Name and address of owner(s), as shown on the KPB records and the certificate to plat, and registered land surveyor.

Staff recommendation: Update the total acreage after the boundary is updated to reflect the current Kenai Spur Highway boundary.

KPB 20.30 – Subdivision Design Requirements

Staff recommendation: final plat submittals must comply with 20.30. Additional information, revisions, and/or corrections are required as noted below.

20.30.290. Anadromous Waters Habitat Protection District. If any portion of a subdivision or replat is located within an anadromous waters habitat protection district, the plat shall contain the following note:

ANADROMOUS WATERS HABITAT PROTECTION DISTRICT NOTE:

Portions of this subdivision are within the Kenai Peninsula Borough Anadromous Waters Habitat Protection District. See KPB Chapter 21.18, as may be amended, for restrictions that affect development in this subdivision. Width of the habitat protection district shall be in accordance with KPB 21.18.040.

Staff recommendation: Provide the Anadromous Waters Habitat Protection District note on the final plat. Comply with 20.30.290.

KPB 20.40 – Wastewater Disposal

Staff recommendation: final plat submittals must comply with 20.40. Additional information, revisions, and/or corrections are required as noted below.

20.40.010 Wastewater disposal.

Platting Staff Comments: Both tracts are larger than 200,000 sq. ft. and a soils analysis report is not required.

Staff recommendation: comply with 20.40.

KPB 20.60 – Final Plat

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

20.60.190. Certificates, statements, and signatures required.

Staff recommendation: Update the Certificate of Ownership and Dedication owner information to read,

Steven T. Oberts
Member Manager

Steven T. Oberts for
The Estate of Leo T. Oberts
Member manager

LTO Limited Partnership
By its general partner,
LTO Kenai Management LLC.

Comply with 20.60.190.

RECOMMENDATION:

SUBJECT TO EXCEPTION(S) GRANTED, STAFF RECOMMENDS:

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

NOTE: 20.25.120. - REVIEW AND APPEAL.

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

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

END OF STAFF REPORT

**Passed by Consent Agenda*

D. OLD BUSINESS - None

E. NEW BUSINESS

Chair Ruffner asked Ms. Shirnberg to read aloud the Planning Commission rules for public hearings.

ITEM E1 – CATKIN SUBDIVISION 2021 REPLAT

KPB File No.	2021-144
Plat Committee Meeting:	November 29, 2021
Applicant / Owner:	Edwin Otto Kilcher of Homer, AK
Surveyor:	Stephen C. Smith / Geovera, LLC
General Location:	Bobby Rufus Road and Guffers Road / Fritz Creek

Parent Parcel No.:	172-380-35
Legal Description:	Tract B, Catkin Subdivision HM 2009-50
Assessing Use:	Residential

Zoning:	Rural Unrestricted
Water / Wastewater	On Site

Staff report given by Scott Huff.

Specific Request / Scope of Subdivision: The proposed plat will subdivide a 25 acre parcel into three tracts that will be 1.215, 3.873, and 19.671 acres. The plat will also dedicate a 30 foot wide right of way along the western boundary.

Location and Legal Access (existing and proposed): Access to this subdivision is near mile 10 of East End Road, a state maintained right of way. Kilcher Road is a varying width, borough maintained, right of way that connects Guffers Road to East End Road. Guffers Road is a varying width right of way that is not currently maintained by the borough or other government entity. Approximately 130 feet of Guffers Road is not dedicated as it crosses through the deed parcel located northwest of the subdivision. Guffers Road is constructed and provides physical access to the large tract to the east of the subdivision and some additional non-platted roads used for access appear to connect off Guffers Road. Guffers Road is a unique dedication to allow a roadway to be constructed across steep terrain. To allow the roadway to be constructed to cross the ravine, the parent plat was issued an exception for minimum curve radii. Additionally a larger width right of way and back slope maintenance easements were granted so that the road can be maintained.

The existing right of way is outside the proposed plat boundary and due to the prior granted exception, staff is not requesting any exceptions for the road dedication or dedications to improve the design.

Within the subdivision, a private travel way is depicted. This private travel way has been named for 9-1-1 Addressing purposes. The travel way continues south of the subdivision and provides physical access to multiple structures located in the unsubdivided parcel located to the south.

This plat is proposing to dedicate a 30 foot wide right of way along the western boundary. The lot to the west, Tract D-2, is 23 acres and could be further subdivided and provide a matching dedication. The southern portion of the proposed dedication appears to encompass a portion of the private travel way. As the private road goes north, it veers to the east and outside the proposed dedication. The private travel way is not required to be shown on the final plat but if it is chosen to be shown, **Staff recommends** that a plat note be added clarifying the type and intended use.

The block is not compliant. The lots in this area are large and steep slopes are found throughout the area. The dedication on the west boundary will improve the block length and provide legal access to the large parcel to the south. To the east is a 613 acre parcel. Parts of that parcel are located to the south of the unsubdivided parcel located south of this preliminary plat. This 613 acre parcel is along the coast and affected by a conservation easement. If any future subdivisions are created from that 613 acre parcel, additional right of ways will be acquired to help improve the blocks in the area.

There are currently section line easement that provide legal access but may not be practical access. Using those section line easements, the block is improved but still not compliant. Proposed Tract B-1 will be a large acreage lot that is divided by steep terrain. Future subdivision of Tract B-1 will be required to provide right of way that fits the design and terrain. **Staff recommends the plat committee concur that an exception to block length is not required, as any additional dedications will not improve the block at this time.**

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

Site Investigation: The subdivision is affected by sloping terrain with the steepest slopes located near the riverine area at the center of the subdivision. The slopes greater than 20 percent are depicted and labeled on the preliminary plat. **Staff recommends the contour lines be removed from the final plat but the steep slopes remain depicted and labeled.**

The parent plat, Catkin Subdivision Plat HM 2009-50, depicted a drainage corridor with a label that the area is subject to inundation and storm runoff. **Staff recommends** the drainage way be updated and carry over the label from the parent plat. This may be done on the face of the plat or within a plat note.

Due to the steep terrain in the area and near the dedication of Guffers Road, a slope easement was granted on the parent plat. **Staff recommends** that this easement be carried forward and depicted on the plat. Additionally a plat note should be added explaining the uses of the slope easement.

KPB River Center review	<p>A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments</p> <p>B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments</p> <p>C. State Parks Reviewer: Russell, Pam Comments: No Comments</p>
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Staff Analysis The parent parcel is a 25 acre tract that was created on Catkin Subdivision plat KN 2009-50. The proposed plat will divide the large acreage parcel into three tracts. Tracts B-2 and B-3 will be smaller in size, 3.873 and 1.215 acres respectively. Tract B-3 will have access via Guffers Road, the new right of way dedication, and by the private travel way. Guffers Road will provide frontage to two sides of Tract B-2. A portion of the private travel way goes through the tract and provides access. Tract B-1 is the parcel with the remaining acreage of 19.671. Steep terrain and low wet areas divide Tract B-1. The western portion will have access from the new dedication and the private travel way, the eastern portion will have access from Guffers Road.

A soils report will be required for Tracts B-2 and B-3 and an engineer will sign the final plat. Tract B-1 is larger than 200,000 sq. ft. and a soils analysis report is not required. **Staff recommends** the wastewater disposal note for Tract B-1 be revised by removing "or nominal 5 acres."

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

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

Utility Easements The parent plat granted 10 foot utility easements, increasing to 20 feet within 5 feet of side lot lines, adjoining Guffers Road. This plat has carried over the same note and will thus be creating utility easements along the newly dedicated right of way. **Staff recommends** the utility easements be depicted and labeled along with the 20 foot building setback. If necessary for clarity, the typical utility easement can be depicted and labeled along with the building setback in the detail drawing.

The parent plat granted 20 foot wide utility easements centered on existing power lines. The overhead power lines shown on the eastern portion of this plat were not depicted on the parent plat and easements were not created over them. **Staff recommends** plat note 7 be updated to state the easements are being granted by this plat.

This plat is also depicting the approximate location of an underground electric utility on the west side and states it is centered on a 10 foot utility easement. **Staff recommends** the manner in which that easement came into existence be noted, if being granted by this plat then state such.

A 10' by 20' easement was granted by recorded document and is depicted and the recording information noted on the plat.

One of the overhead lines shown is within the proposed right of way dedication. The reference to plat note 7 stating the overhead power line is also a utility easement is not required as utilities are a permitted use within dedicated right of ways. It would be the utility companies' responsibility to work with Kenai Peninsula Borough Land Management staff to determine if a permit will be required. **Staff recommends** the reference to plat note 7 be removed from the powerline depiction within the proposed right of way dedication.

Staff recommends plat note 3 be reworded to closer match current code. "The front 10 feet adjoining dedicated rights-of-way, and increasing to 20 feet within 5 feet of the side lot lines, shall be designated as a utility easement."

The affected utility providers were emailed the subdivision plat public hearing notice as part of the routine notification process. **Staff recommends** to grant utility easements requested by the utility providers or work with the utility providers to obtain approval.

Utility provider review:

HEA	
ENSTAR	No comments or recommendations
ACS	
GCI	Approved as shown

KPB department / agency review:

Addressing	<p>Reviewer: Haws, Derek Affected Addresses: 38126 BOBBY RUFUS RD will remain with TRACT B-2 53413 GUFFERS RD will remain with TRACT B-1</p> <p>Existing Street Names are Correct: No</p> <p>List of Correct Street Names: GUFFERS RD</p> <p>Existing Street Name Corrections Needed: Private traveled way should be BOBBY RUFUS RD as named via SN 2012-06.</p> <p>All New Street Names are Approved: Yes</p> <p>List of Approved Street Names: HORIZON ST</p> <p>List of Street Names Denied:</p> <p>Comments: As the Addressing Officer, I am concerned with the parallel and overlapping sections of BOBBY RUFUS RD and HORIZON ST. BOBBY RUFUS RD (private) continues south and provides access to four addresses.</p>
Code Compliance	<p>Reviewer: Ogren, Eric Comments: No comments</p>
Planner	<p>Reviewer: Taylor, Bryan There are not any Local Option Zoning District issues with this proposed plat.</p> <p>Material Site Comments: There are not any material site issues with this proposed plat.</p>
Assessing	<p>Reviewer: Bruns, Matthew Comments: No concerns from Assessing Dept.</p>
Advisory Planning Commission	<p>Comments not received when staff report was prepared.</p>

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

STAFF RECOMMENDATIONS

CORRECTIONS / EDITS

KPB 20.25.070 – Form and contents required

Staff recommendation: final plat submittals must comply with 20.25.070. Additional information, revisions, and/or corrections are required as noted below.

A. Within the Title Block

1. Name of the subdivision which shall not be the same as an existing city, town, tract, or subdivision of land in the borough, of which a plat has been previously recorded, or so nearly the same as to mislead the public or cause confusion. The parent plat's name shall be the primary name of the preliminary plat.
2. Legal description, location, date, and total area in acres of the proposed subdivision;
3. Name and address of owner(s), as shown on the KPB records and the certificate to plat, and registered land surveyor.

Staff recommendation: Update the owner's name to match the certificate to plat, Edwin Otto Kilcher.

C. The location, width, and name of existing or platted streets and public ways, railroad rights-of-way, and other important features such as section lines or political subdivisions or municipal corporation boundaries abutting the subdivision;

Staff recommendation: Due to the unique design of Guffers Road, an additional label on the western portion would be a good addition but not required.

D. A vicinity map, drawn to scale showing location of proposed subdivision, north arrow if different from plat orientation, township and range, section lines, roads, political boundaries, and prominent natural and manmade features, such as shorelines or streams;

Staff recommendation: Some additional lines appear to represent streams and right of ways with no labels present. Not all lines need a label but please provide a label for what appears to be a road through sections 16, 15, 22, and 23.

KPB 20.40 – Wastewater Disposal

Staff recommendation: final plat submittals must comply with 20.40. Additional information, revisions, and/or corrections are required as noted below.

20.40.010 Wastewater disposal.

Platting Staff Comments: A soils analysis report will be required for Tract B-2 and Tract B-3. An engineer will need to sign the plat. A soils analysis report is not required for Tract B-1. The wastewater note for Tract B-1 needs to be revised by removing "or nominal 5 acres".

Staff recommendation: comply with 20.40.

KPB 20.60 – Final Plat

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

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

Staff recommendation: An acceptance for the proposed right of way will be required to be signed by an authorized official of the Kenai Peninsula Borough.

20.60.180. Plat notes.

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

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

Staff recommendation: Place the following notes on the plat.

- Slope easement means an easement for construction, maintenance and lateral support of road slopes. Slope easement was granted by Plat HM 2009-50.
- Add a plat note for any exceptions granted.

If the travel way shown on the preliminary plat remains on the final, **staff suggests** the following note be placed on the final plat to avoid confusion about public use in the future: Private road shown is for use of owners only and is not dedicated to public use.

20.60.190. Certificates, statements, and signatures required.

Staff recommendation: Update the owner's name to Edwin Otto Kilcher on the signature line and within the notary's acknowledgment. Comply with 20.60.190.

EXCEPTIONS REQUESTED:

A. KPB 20.60.200 Survey and Monumentation

Surveyor's Discussion: I would like to request an exception to KPB 20.60.200 Survey and Monumentation for nine corners that fall in the extremely steep slope along the south edge of Guffers Road. The nine corners that were set for the original Catkin Subdivision (HM 2009-50) on the steep slope were found to have sluffed down the slope, and were found to be out of record position by nearly a foot. The slope adjacent to the existing road is part of a fill that is steeper than 1:1. It is not a place where monuments can be expected to remain in their original place. I have used the record position of the south edge of the right-of-way through that area for this plat.

Staff Discussion: Per KPB Code, all monuments of record essential to the subdivision should be remonumented if found missing, disturbed or destroyed. Per the surveyor's request, the monuments previously set have shifted due to steep slopes. The surveyor is requesting to not monument a portion of Tract B-2's boundary along Guffers Road due to the terrain. It is not uncommon to set witness monuments in areas when the actual location cannot be set due to terrain. The use of witness monuments will not benefit this subdivision as the areas to place a witness survey marker are within the steep slope areas or within the roadway.

If the exception is denied all monuments along Guffers Road will be required to be set and correctly depicted on the plat.

Findings:

- a. Nine monuments previously set as part of Catkin Subdivision, Plat HM 2009-50, were found disturbed due to sloughing of the steep slopes.
- b. The terrain around that portion of Guffers Road is slopes greater than 20 percent.
- c. A drainage way is located within the steep sloped area and along a portion of the right of way.
- d. Previous monuments shifted from their true location as much as a foot.
- e. Shifting monuments may cause issues related to the correct location of the right of way, the slope easement, utility easements, and property boundaries.
- f. Placing monuments in a location that is shifting or sloughing may cause confusion for land owners and will not be a benefit.

Staff reviewed the exception request and recommends granting approval.

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

Unless prohibited under this title, the commission (committee) may authorize exceptions to any of the requirements set forth in this title. Application for an exception shall present the commission (committee) with substantial evidence, justifying the requested waiver or exception stating fully the grounds for the application and the facts relied upon. All exceptions must be requested and granted at the time of preliminary plat approval. Exceptions may not be requested with a final plat submittal.

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

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

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

RECOMMENDATION:

SUBJECT TO EXCEPTION(S) GRANTED, STAFF RECOMMENDS:

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

NOTE: 20.25.120. - REVIEW AND APPEAL.

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

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

END OF STAFF REPORT

Chair Ruffner 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 Brantley moved, seconded by Commissioner Gillham to grant preliminary approval to Catkin Subdivision 2021 Replat based on staff recommendations and compliance with borough code.

AMENDMENT: Commissioner Brantley moved, seconded by Commissioner Gillham to grant exception request to 20.30.200 Survey & Monumentation citing findings 1-6 in support of standards one, two & three.

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

AMENDMENT PASSED BY UNANIMOUS VOTE

Yes	5	No	0
Yes	Brantley, Gillham, Morgan, Ruffner, Venuti		

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

MOTION PASSED BY UNANIMOUS VOTE

Yes	5	No	0
Yes	Brantley, Gillham, Morgan, Ruffner, Venuti		

ITEM 3 - SELDOVIA TOWNSITE EAST ADDN WATSON 2021 REPLAT

KPB File No.	2021-148
Plat Committee Meeting:	November 29, 2021
Applicant / Owner:	Jennifer E. Watson of Anchorage, AK
Surveyor:	Kenton Bloom / Seabright Surveying
General Location:	Augustine North Avenue and D Street / City of Seldovia

Parent Parcel No.:	192-091-10, 192-091-11
Legal Description:	Lots 2A-1 and 2B-1, Block 39, Seldovia Townsite East Addition 2006 Replat Plat SL 2007-3
Assessing Use:	Residential
Zoning:	Waterfront Commercial Residential
Water / Wastewater	City Water and Sewer

Staff report given by Scott Huff.

Specific Request / Scope of Subdivision: The proposed plat reconfigures the shared lot line between two lots.

Location and Legal Access (existing and proposed): The subdivision is within the City of Seldovia. Access is available by water as the Seldovia Slough borders the subdivision along the north. The lots are landlocked. Ingress and egress easements have been granted for access. A 14 foot wide driveway exists through Lot 2C Block 39 located to the east of the subdivision. That driveway provides a connection to D Street and Augustine North Avenue. D Street along Lot 2C Block 39 is 40 feet wide but widens as it approaches the intersection with Augustine North Avenue. D Street is not constructed except for the small portion of the driveway that crosses through to connect to Augustine North Avenue. Augustine North Avenue is a 40 foot wide right of way. The right of ways fall under the City of Seldovia jurisdiction.

The block is not complete due to Seldovia Slough. D Street, Augustine North Avenue, and C Street define the block. The distances are all compliant except for along D Street. It is slightly short of minimum lengths. Due to Seldovia Slough, D Street cannot be lengthened to become compliant. ***Staff recommends the plat committee concur that an exception is not required due to the location along Seldovia Slough; any dedications will not improve the block and would create non-compliant lengths.***

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

Site Investigation: KPB GIS does not have contour information available for Seldovia. The plat does have the top of a bluff and the top of a cliff depicted and labeled. The house located on proposed Lot 2B-2 is below the bluff and appears to have a staircase that provides access from the top of the bluff.

Portions of the subdivision are within Flood Zone A. ***Staff recommends the flood line be depicted and the appropriate notes be added to the plat.***

Seldovia Slough is exempt from the Anadromous Waters per KPB GIS data. The mean high water line from 2007 is depicted. ***Staff recommends a plat note be required or label on the plat that states the source of the mean high water line.***

KPB River Center review	<p>A. Floodplain Reviewer: Carver, Nancy Floodplain Status: IS in flood hazard area Comments: Flood Zone: A Map Panel: 020012-5065A In Floodway: False Floodway Panel:</p> <p>B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments</p> <p>C. State Parks Reviewer: Russell, Pam Comments: No Comments</p>
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Staff Analysis The lots within this subdivision were originally included in the original U.S. Survey 1771 that was surveyed in 1927. In 1964 a plat, Seldovia Townsite East Addition SL 66-28, was done that further subdivided lots and tracts created by the U.S. Survey. Neither of those plats granted any easements. The U.S. Survey left an area unsubdivided that abutted the property within this subdivision. That landlocked some of the properties. Plat 66-28 subdivided that unsubdivided portion in addition to subdividing existing lots. It left the lots landlocked but did depict an existing road that is now where the ingress/egress easements are in place. The current lot configuration was created by Seldovia Townsite East Addition 2006 Replat, SL 2007-3. An exception to KPB 20.20.200 (old code), for frontage on a dedicated street was granted by the Planning Commission on November 27, 2006.

This plat will reconfigure the lot line between two lots. Per the memo from the City of Seldovia, the surveyor stated the intent is for the owner to sell the lower house located on the waterfront of proposed Lot 2B-2. That lot will be going from 18,320.4 square feet (.42 acres) to 8,328.4 square feet (.19 acres). The other lot, Lot 2A-2, will increase in size from 23,973.4 square feet (.55 acres) to 33,980.8 square feet (.78 acres). If both lots are, or will be, connected to municipal water and sewer, the lots will meet minimum lot size. The new lot line will be within the ingress and egress easement allowing to both lots to utilize the easement.

The plat depicts sewerline easements as well as a waterline easement. An installation agreement or documentation from the City of Seldovia that one is not required will need to be submitted. **Staff recommendations** the page number needs to be updated per the certificate to plat to Book 25 Page 621 for the easement within Lot 2B-2.

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

The subdivision plat is within the boundary of the City of Seldovia. The City of Seldovia Planning Commission heard the proposed plat at their October 6, 2021 regular meeting. The Planning Commission unanimously approved it and they approved that their staff memo be presented to the Kenai Peninsula Borough. The memo address the zoning district and the requirements for that zoning. It was found that the proposed subdivision plat met their requirements and code. No additional recommendations or requests were forwarded to the Kenai Peninsula Borough.

Staff recommends the structures, and parking areas be removed from the final plat to allow required information to be more legible.

Utility Easements The original plats that created the lots within this subdivision did not grant any utility easements. Seldovia Townsite East Addition 2006 Replat, SL 2007-3, stated 10 foot utility easements were granted within the front of the building setback. As this does not front on any dedicated right of ways, no easements were granted by that note.

A powerline was depicted within Lot 2A-1. Plat note 6 states it was center of a 20 foot utility easement. There is no record of how that easement was granted or if the intent was to grant by that plat. The new plat depicts an overhead powerline and contains the same note. This powerline depicted is not in the same location as the parent plat. If it is determined the overhead powerline was removed the easement would still be in place and should be noted "as per SL 2007-3". If a new easement is being created over the overhead powerline depiction, the plat note should state it is being granted by this plat. **Staff recommends** the location of the powerlines be verified and work with the power company to determine the correct locations, provide correct depiction and provide a plat note that states how the easement was granted or if it is being granted by this plat.

The certificate to plat indicates an additional easement was granted to HEA by document. **Staff recommends** the easement location be determined and depict the easement with reference to the recording document. If the easement location cannot be depicted, provide a plat note with the information.

The affected utility providers were emailed the subdivision plat public hearing notice as part of the routine notification process. **Staff recommends** to grant utility easements requested by the utility providers or work with the utility providers to obtain approval.

Utility provider review:

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

KPB department / agency review:

Addressing	<p>Reviewer: Haws, Derek Affected Addresses: 356 SELDOVIA SLOUGH REM SW 366 SELDOVIA SLOUGH REM SW</p> <p>Existing Street Names are Correct: Yes List of Correct Street Names: D ST</p> <p>Existing Street Name Corrections Needed:</p> <p>All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied:</p> <p>Comments: 356 SELDOVIA SLOUGH REM SW will be deleted and new D ST address assigned. 366 SELDOVIA SLOUGH REM SW will be deleted and new D ST address assigned.</p>
Code Compliance	<p>Reviewer: Ogren, Eric Comments: No comments</p>
Planner	<p>Reviewer: Taylor, Bryan There are not any Local Option Zoning District issues with this proposed plat.</p> <p>Material Site Comments: There are not any material site issues with this proposed plat. Review Not Required</p>
Assessing	<p>Reviewer: Bruns, Matthew Comments: No concerns from Assessing Dept.</p>

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

STAFF RECOMMENDATIONS

CORRECTIONS / EDITS

KPB 20.25.070 – Form and contents required

Staff recommendation: final plat submittals must comply with 20.25.070. Additional information, revisions, and/or corrections are required as noted below.

A. Within the Title Block

1. Name of the subdivision which shall not be the same as an existing city, town, tract, or subdivision of land in the borough, of which a plat has been previously recorded, or so nearly the same as to mislead the public or cause confusion. The parent plat's name shall be the primary name of the preliminary plat.
2. Legal description, location, date, and total area in acres of the proposed subdivision;
3. Name and address of owner(s), as shown on the KPB records and the certificate to plat, and registered land surveyor.

Staff recommendation: Per KPB records the lots within this subdivision are .97 acres. The square footage can be listed but include the acreage. Verify the square footage as the acreage shown in KPB records would result in the square footage being 42,253.2 square feet.

C. The location, width, and name of existing or platted streets and public ways, railroad rights-of-way, and other important features such as section lines or political subdivisions or municipal corporation boundaries abutting the subdivision;

Staff recommendation: Provide a label for Seldovia Slough that borders the subdivision along the northern boundary.

G. The status of adjacent lands within 100 feet of the proposed subdivision boundary or the land status across from any dedicated rights-of-way that adjoin the proposed subdivision boundary, including names of subdivisions, lot lines, block numbers, lot numbers, rights-of-way; or an indication that the adjacent land is not subdivided;

Staff recommendation: D Street should contain a label that states the width varies and a dimension can should be shown that the width in that area is 40 feet.

KPB 20.30 – Subdivision Design Requirements

Staff recommendation: final plat submittals must comply with 20.30. Additional information, revisions, and/or corrections are required as noted below.

20.30.250. Building setbacks-Within cities. The building setback requirements for subdivisions located within cities shall be governed by the provisions of municipal zoning districts. Building setbacks as depicted, or noted, on recorded plats shall not be carried forward on a new subdivision plat located within a municipal zoning district. Provide a plat note stating, "Per KPB 20.30.250 the building setback of record has been removed. All development must comply with the municipal zoning requirements."

Staff recommendation: Remove specific setback requirements from plat note 1. The lots will fall under the zoning of the City of Seldovia. If changes occur to their code, it could result in changes to the setbacks. Leaving the first sentence of note 1 is sufficient but if elected can add, "Contact the City of Seldovia for current building setback requirements prior to development."

20.30.270. Different standards in cities. Where cities have enacted by ordinance different subdivision design standards than those set forth in this chapter, the planning commission shall apply the city standards in lieu of those set forth in this chapter. Any appeal of a city design standard is subject to KPB 21.01.020(E).

Staff recommendation: The City of Seldovia does not meet the specified requirements for the application and consideration of different standards.

KPB 20.40 – Wastewater Disposal

Staff recommendation: final plat submittals must comply with 20.40. Additional information, revisions, and/or corrections are required as noted below.

20.40.010 Wastewater disposal.

Platting Staff Comments: Municipal water and sewer available. Correct plat note is present.

Staff recommendation: comply with 20.40.

KPB 20.60 – Final Plat

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

20.60.080. Improvements-Installation agreement required. A final plat of a subdivision located within city limits shall not be recorded with the district recorder prior to compliance with any city ordinances concerning the installation of improvements. Evidence of compliance shall be provided by the subdivider in the form of a written statement from the appropriate city official that improvements required by city ordinance are or will be installed. Evidence of compliance shall be a part of the final plat submission and the time for action required by KPB 20.60.210 shall not commence until evidence of compliance is submitted.

Staff recommendation: Provide an installation agreement or documentation from the City of Seldovia that one is not required.

20.60.180. Plat notes.

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

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

Staff recommendation: Place the following notes on the plat.

- Add a plat note for any exceptions granted.
- The natural meanders of mean high water line is for area computations only, the true corners being on the extension of the sidelines and the intersection with the natural meanders.
- Subject to easements for right to flight granted to State of Alaska, Department of Transportation and Public Facilities recorded in Book 27 Page 431 Seldovia Recording District on March 11, 1985 and Book 28 Page 132 Seldovia Recording District on October 29, 1985.
- Right of Way Easement granted to Homer Electric Association, Inc. to construct, operate and maintain an electric transmission and/or telephone distribution line or system by Book 13 Page 83 Seldovia Recording District recorded on February 25, 1965.
- FLOOD HAZARD NOTICE:
Some or all of the property shown on this plat has been designated by FEMA as a flood hazard area district as of the date this plat is recorded with the district recorder's office. Prior to development, the Kenai Peninsula Borough floodplain administrator should be contacted for current information and regulations. Development must comply with Chapter 21.06 of the Kenai Peninsula Borough Code. Map Panel 020012-5065A
- 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.

20.60.190. Certificates, statements, and signatures required.

Staff recommendation: Update the owner's name for the signature line to match the Certificate to Plat. "Jennifer E. Watson, a.k.a. J.E. Watson". Comply with 20.60.190.

EXCEPTIONS REQUESTED:**A. KPB 20.30.210 – Lots-Access to Street**

Surveyor's Discussion: An exception to former KPB 20.20.200 (Frontage of a dedicated street) was granted by the KPB Planning Commission for the parent plat, SL 2006-329. There are existing easements for ingress and egress (as shown on the plat) that provide legal access to these lots. This replat adjust the interior property line between Lots 2A-1 & 2B-1, in order to make the usable area of Lot 2A-1 more cohesive. Existing physical and legal access will remain unchanged.

Staff Discussion: Per KPB 20.30.10, each lot shall abut on a fee simple dedicated street unless it is classified as agricultural. The property involved with this subdivision was part of the original U.S. Survey that created the Seldovia Townsite. Right of ways were not dedicated to provide access to this property nor did the replat performed in 1964.

Findings:

1. U.S. Survey 1771, surveyed in 1927, subdivided the lands within this subdivision but did not provide dedicated access.
2. Seldovia Townsite East Addition, Plat SL 66-28, was surveyed in 1964 and further subdivided the property within this subdivision and lands surrounding it but did not grant dedicated access.
3. Seldovia Townsite East Addition depicted an existing road that is still being used for ingress and egress.
4. Easements were recorded in 1982 and 1996 to provide ingress and egress.
5. Seldovia Townsite East Addition 2006 Replat, Plat SL 2007-3, depicted the ingress and egress easements.
6. Seldovia Townsite East Addition 2006 Replat was granted an exception by the KPB Planning Commission to KPB Code 20.20.200 for frontage on a dedicated street.
7. The City of Seldovia Planning Commission reviewed the plat at their October 6, 2021 meeting and approved the proposed plan.
8. The City of Seldovia Planning Commission did not provide recommendations or requests for additional items.
9. The Kenai Peninsula Borough owns Lot 2C Block 39 located to the east of the subdivision.
10. The easement recorded in Book 35 Page 313 crosses KPB land to provide access.
11. Water access is available from Seldovia Slough.

Staff reviewed the exception request and recommends granting approval.

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

Unless prohibited under this title, the commission (committee) may authorize exceptions to any of the requirements set forth in this title. Application for an exception shall present the commission (committee) with substantial evidence, justifying the requested waiver or exception stating fully the grounds for the application and the facts relied upon. All exceptions must be requested and granted at the time of preliminary plat approval. Exceptions may not be requested with a final plat submittal.

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

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

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

RECOMMENDATION:

SUBJECT TO EXCEPTION(S) GRANTED, STAFF RECOMMENDS:

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

NOTE: 20.25.120. - REVIEW AND APPEAL.

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

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

END OF STAFF REPORT

Chair Ruffner 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 Gillham to grant preliminary approval to Seldovia Townsite East Addn. Watson 2021 Replat based on staff recommendations and compliance with borough code.

AMENDMENT: Commissioner Venuti moved, seconded by Commissioner Gillham to grant exception request to KPB 20.30.210 – Lots Access to Street citing findings 1-11 in support of standards one, two & three.

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

AMENDMENT PASSED BY UNANIMOUS VOTE

Yes	5	No	0
Yes	Brantley, Gillham, Morgan, Ruffner, Venuti		

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

MOTION PASSED BY UNANIMOUS VOTE

Yes	5	No	0
Yes	Brantley, Gillham, Morgan, Ruffner, Venuti		

ITEM 4 - DUNCAN SUBDIVISION #5

KPB File No.	2021-142
Plat Committee Meeting:	November 29, 2021
Applicant / Owner:	Kelly R. Duncan of Kasilof, AK
Surveyor:	Jerry Johnson / Johnson Surveying
General Location:	Ariels Lane and Constellation Road N, Kalifornsky/Kalifornsky APC

Parent Parcel No.:	133-031-37
Legal Description:	The SE1/4 SW1/4 Section 7 and the NE1/4 NW1/4 of Section 18 Township 3 North Range 11 West Seward Meridian, Kenai Recording District lying North of Grannie Road aka Ariels Lane and East of Kalifornsky Beach Road; Excepting Therefrom; Duncan Subdivision, Plat KN 75-65 Duncan Subdivision Addition No 1, Plat KN 90-35 Duncan Subdivision Addition No 2, Plat KN 91-30 Duncan Subdivision K and L Addition, Plat KN 2002-28
Assessing Use:	Residential
Zoning:	Rural Unrestricted
Water / Wastewater	On Site

Staff report given by Scott Huff.

Specific Request / Scope of Subdivision: The proposed plat will subdivide a 46-acre parcel into two tracts that will be 3 acres and 37.3 acres.

Location and Legal Access (existing and proposed): The subdivision is located in the Kalifornsky area near mile 3 of Kalifornsky Beach Road. Access along the south is provided by 60 foot wide dedicated Ariels Lane, formerly known as Grannies Road. An approximate 200 foot segment of Ariels Lane within Tract A of the original Duncan Subdivision has not been dedicated. Ariels Lane is constructed and continues east to provide physical access to several large acreage tracts. If Tract A is ever subdivided, a full 60 foot wide right of way dedication will be required to be dedicated on the existing roadway to provide a continuous right of way.

A section line, with a corresponding 66 foot section line easement, crosses through proposed Tract E. The section line easement provides legal access but is affected by low wet areas and is unlikely to be constructed. **Staff recommends** an exception not be required to dedicate right of way within the section line easements the section line easement is affected by wetlands, and the lot is large enough to be further subdivided and provide dedications in the future where a roadway can be constructed.

Constellation Road N is a 30 foot wide dedication located off Ariels Lane. The current dedication is only 600 feet in length from the intersection with Ariels Lane extending north to the section line easement. An exception to not dedicate the matching 30 feet, and the extension of Constellation Road N. on the east boundary, has been requested.

Adjoining the north boundary is ADL 223097, a 60 foot wide public access easement. This ADL has been named Ogre Avenue for 9-1-1 addressing purposes. This 60 foot wide ADL is entirely within the state owned land to the north but provides legal access to the lands on the south. The length of the ADL ends about 100 feet east of the subdivision. As the ADL is 60 feet wide and entirely within state lands, this subdivision plat will not be required to dedicate any portion of Ogre Avenue. Future dedications will be granted from the State land. As this is not a dedicated right of way, the building setback depiction should be removed. **Staff recommends** the depiction of the ADL should be revised to show that it is an easement for a public right of way within the State parcel. A dashed or broken line will show that it is not a boundary line.

Ogre Avenue (ADL 223097), Kalifornsky Beach Road, Ariels Lane, and Constellation Road N. define the block. The block is not closed due to the portions of right of way not dedicated and Ogre Avenue not continuing to the east to connect to other existing right of ways. The 66 foot section line easement does provide a closed southern block. Portions of the blocks exceed allowable lengths and an exception has been requested.

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

Site Investigation: The land within this subdivision is relatively flat and it is noted in plat note 4 that there are no grades greater than 3 percent. Wetlands are located on a large portion of the property. The plat does show low wet areas. KPB GIS data indicates there are more wetlands present than what is being shown on the plat. **Staff recommends** the wetland depiction be confirmed during the field survey or provide staff source data for the wetlands shown.

KPB River Center review	<p>A. Floodplain</p> <p>Reviewer: Carver, Nancy Floodplain Status: IS in flood hazard area Comments: Flood Zone: D Map Panel: 02122C-0860E In Floodway: False Floodway Panel:</p>
	<p>B. Habitat Protection</p> <p>Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments</p>
	<p>C. State Parks</p> <p>Reviewer: Russell, Pam Comments: No Comments</p>

Staff Analysis This is a subdivision of a 40 acre parcel that is a remainder from previous subdivisions. Two tracts will be created one being 37.3 acres and the other 3 acres. The larger tract will have access via ADL 223097, section line easements, Ariels Lane, and Constellation Road N. The smaller tract will have access from Ariels Lane and Constellation Road N.

A soils analysis report will be required for Tract D and an engineer will need to sign the final plat.

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

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

Utility Easements Plat note 1 states 10 foot utility easements will be granted along dedicated right of ways. The note also states the front 15 feet along Ariels Lane was granted as utility easements on plat KN 2019-75. The property within this subdivision was not within the boundary of KN 2019-75 and thus the utility easements were not granted with that past platting action. **Staff recommends** removal of the reference to the 15 foot utility easement granted by 2019-75 and note that the 10 foot utility easements adjoining all right of ways (dedications and easements) are being granted with this platting action., and include a depiction and label for the utility easements within the drawing.

The certificate to plat indicates a utility easement has been granted to Homer Electric Association by recorded document. **Staff recommends** a plat note be added that provides the document information for the easement of record.

The affected utility providers were emailed the subdivision plat public hearing notice as part of the routine notification process. **Staff recommends** to grant utility easements requested by the utility providers or work with the utility providers to obtain approval.

Utility provider review:

HEA	
ENSTAR	No comments or recommendations
ACS	
GCI	Approved as shown

KPB department / agency review:

Addressing	<p>Reviewer: Haws, Derek Affected Addresses: 51638 ARIELS LN</p> <p>Existing Street Names are Correct: Yes</p> <p>List of Correct Street Names: OGRE AVE ARIELS LN KALIFORNSKY BEACH RD CONSTELLATION RD N</p> <p>Existing Street Name Corrections Needed:</p> <p>All New Street Names are Approved: No</p> <p>List of Approved Street Names:</p> <p>List of Street Names Denied:</p> <p>Comments: 51638 ARIELS LN will be deleted and new addresses assigned upon request.</p>
Code Compliance	<p>Reviewer: Ogren, Eric Comments: No comments</p>
Planner	<p>Reviewer: Taylor, Bryan There are not any Local Option Zoning District issues with this proposed plat.</p> <p>Material Site Comments: There are not any material site issues with this proposed plat.</p>
Assessing	<p>Reviewer: Bruns, Matthew Comments: No concerns from Assessing Dept.</p>
Advisory Planning Commission	Comments not available when staff report was prepared.

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

STAFF RECOMMENDATIONS**CORRECTIONS / EDITS****KPB 20.25.070 – Form and contents required**

Staff recommendation: final plat submittals must comply with 20.25.070. Additional information, revisions, and/or corrections are required as noted below.

A. Within the Title Block

1. Name of the subdivision which shall not be the same as an existing city, town, tract, or subdivision of land in the borough, of which a plat has been previously recorded, or so nearly the same as to mislead the public or cause confusion. The parent plat's name shall be the primary name of the preliminary plat.

2. Legal description, location, date, and total area in acres of the proposed subdivision;
3. Name and address of owner(s), as shown on the KPB records and the certificate to plat, and registered land surveyor.

Staff recommendation: *Update the owner to Kelly R. Duncan as shown on the certificate to plat.*

- C. The location, width, and name of existing or platted streets and public ways, railroad rights-of-way, and other important features such as section lines or political subdivisions or municipal corporation boundaries abutting the subdivision;

Staff recommendation:

- *ADL 223097 is a 60 foot wide public right of way that lays atop the unsubdivided DNR lands located to the north. The ADL is granted for a length of 1719.18 that extends slightly past the northeast corner of the subject subdivision. Correct the depiction of the ADL with a dashed line as it is not a dedicated right of way. It should be shown atop the unsubdivided parcel to the north, which needs to be labeled.*
- *Provide a broken line or centerline style for the depiction of the centerline for Constellation Road N where located south of the subdivision.*
- *Provide a "Varying Width" label for the Kalifornsky Beach Road right of way. .*
- *Update the Section 11 labels on face of plat to 18.*

- D. A vicinity map, drawn to scale showing location of proposed subdivision, north arrow if different from plat orientation, township and range, section lines, roads, political boundaries, and prominent natural and manmade features, such as shorelines or streams;

- **Staff recommendation:** *There are a few overstrikes on labels. Make sure all labels are easy to read and legible.*

- G. The status of adjacent lands within 100 feet of the proposed subdivision boundary or the land status across from any dedicated rights-of-way that adjoin the propose subdivision boundary, including names of subdivisions, lot lines, block numbers, lot numbers, rights-of-way; or an indication that the adjacent land is not subdivided;

Staff recommendation: *Add the 'unsubdivided' status label for the DNR lands to the north and update the depiction of the ADL. Adjust the label for Duncan Sub Addn No. 2 Block 2 so it is clear it applies to both Lot 1 and Lot 2.*

KPB 20.30 – Subdivision Design Requirements

Staff recommendation: *final plat submittals must comply with 20.30. Additional information, revisions, and/or corrections are required as noted below.*

20.30.240. Building setbacks.

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

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

- B. The setback shall be noted on the plat in the following format:

Building setback- A setback of 20 feet is required from all dedicated street right-of-ways unless a lesser standard is approved by resolution of the appropriate planning commission.

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

Staff recommendation: As Ogre Avenue is not currently a dedicated right of way but an ADL easement; the building setback may be removed along Ogre Avenue. Depict and label the 20 foot building setbacks adjoining Constellation Road N.

KPB 20.40 – Wastewater Disposal

Staff recommendation: final plat submittals must comply with 20.40. Additional information, revisions, and/or corrections are required as noted below.

20.40.010 Wastewater disposal.

Platting Staff Comments: Tract D is less than 200,000 sq. ft. and will require a soils analysis report. Tract E is larger than 200,000 sq. ft. and a soils analysis report is not required. Add the appropriate wastewater disposal notes and provide for an engineer's signature.

Staff recommendation: comply with 20.40.

KPB 20.60 – Final Plat

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

20.60.180. Plat notes.

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

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

Staff recommendation: Place the following notes on the plat.

- If a right of way dedication is required add a plat note that states, "Roads must meet the design and construction standards established by the borough in order to be considered for certification and inclusion in the road maintenance program (KPB 14.06)."
- An easement for electric lines or system and/or telephone lines together with right to enter, maintain, repair and clear shrubbery as recorded in the Kenai Recording District in Book 33 Page 162 granted to Homer Electric Association, Inc. No definite location disclosed.
- This subdivision is subject to covenants, conditions, and restrictions as recorded on August 6, 1990 in the Kenai Recording District Book 369 Page 296.
- The borough will not enforce private covenants, easements, or deed restrictions per KPB 20.60.170.
- Add a plat note for any exceptions granted.

EXCEPTIONS REQUESTED:

KPB 20.30.030 – Proposed street layout-requirements

KPB 20.30.120 – Street-Width requirements

KPB 20.30.170 – Blocks-Length Requirements

Surveyor's Discussion: Exception requested for matching dedication of Constellation Road N along east boundary. Road enters swamp to the north and descends a steep hill into Coal Creek to the south, not providing access to any property.

Staff Discussion: Loon Lake Subdivision, Plat KN 1686, is a paper plat that dedicated a 30 foot width of Constellation Road N. (originally named Otter Lane in 1970). Constellation Road N. runs north and south of Ariels Lane. Duncan Subdivision, Plat KN 75-65, dedicated an additional width of 30 feet for the portion of Constellation Road south of Ariels Lane.

Street Name Resolution 2006-09 changed Otter Lane to Kenaitze Avenue, which was later changed to Constellation Road N by Street Name Resolution 2015-13.

Per KPB Code, a matching 30 foot dedication is required for Constellation Road to provide a 60 foot wide right of way, as well as providing a 30 foot wide dedication to extend the right of way to the north.

Using the section line easements, the southern block would be defined by the section line easements, Kalifornsky Beach Road, Ariels Lane, and Constellation Rd N. The block lengths along Constellation Road N and Kalifornsky Beach Road are compliant. The length along the section line easements and along Ariels Lane exceed allowable lengths. Ogre Avenue (ADL 223097), Kalifornsky Beach Road, and the section line easements define the northern block. The block is not closed. To connect to another right of way or section line easement is not possible at this time due to some vacated section line easements located to the east. A continuation of Constellation Road N would provide a closed block. The block along Ogre Avenue and the section line easements would still exceed allowable lengths even with the dedication.

Staff has grouped these exceptions but the plat committee may determine the exceptions should be acted on separately. The plat committee may also determine to grant the exceptions but require partial dedications.

The property included in this subdivision contains large areas of wetlands. Tract E is proposed to be 37 acres in size and could be subdivided in the future and provide right of way dedications that will work with the terrain and comply with subdivision design.

Denial of the requested exceptions will require a 30 foot dedication of Constellation Road N all along the entire length of the eastern boundary. An additional north-south dedication would be required to be compliant with block length requirements.

Findings:

1. A 60 foot wide ADL borders the northern boundary of the subdivision.
2. A 66 foot wide section line easement crosses proposed Tract E.
3. It appears the northern portion of proposed Tract E been developed.
4. Tract E is proposed to be 37.3 acres and is large enough to be subdivided in the future.
5. Constellation Road N is currently providing a 30 foot wide access connection to the east-west section line easements.
6. The section line easements may be accessed from Kalifornsky Beach Road.
7. Per KPB GIS data, all but the southern 100 feet of the Constellation Road N dedication north of Ariels Lane is within wetland areas.
8. Tract D is proposed to be 3 acres, the majority of which contains low wet areas.
9. A dedication will further reduce the useable area for Tract D unless a redesign is proposed.
10. The block length along Ariels Lane is approximately 1,480 feet.
11. The block length along the section line easements is approximately 1,530 feet.
12. The block length along Ogre Avenue is approximately 1,720 feet to the northeast corner of the subdivision.
13. A full 60 foot dedication of Constellation Road N is located south of Ariels Lane.
14. Constellation Road N crosses an anadromous stream approximately 330 feet south of the intersection with Ariels Lane.
15. Constellation Road has not been improved and is not currently being used for access.
16. All lots in the surrounding area have legal access.
17. Tract 5, located to the east, is 36 acres in size and has legal and physical access from Ariels Lane.
18. The unsubdivided 40 acre parcel to the east is owned by KPB and has legal access from Ogre Ave, a 60 foot wide ADL easement.

Staff reviewed the exception request and recommends granting approval.

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

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

plat approval. Exceptions may not be requested with a final plat submittal.

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

1. That special circumstances or conditions affecting the property have been shown by application;
Findings 1, 2, 4, 5, 7, 14-18 appear to support this standard.
2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this title;
Findings 1, 2, 4, 5, 7, 14-18 appear to support this standard.
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area in which said property is situated.
Findings 1, 2, 4, 5, 7, 14-18 appear to support this standard.

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

RECOMMENDATION:

SUBJECT TO EXCEPTION(S) GRANTED, STAFF RECOMMENDS:

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

NOTE: 20.25.120. - REVIEW AND APPEAL.

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

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

END OF STAFF REPORT

Chair Ruffner opened the meeting for public comment.

Gerald Johnson, Surveyor; P.O. Box 27, Clam Gulch, AK 99568: Mr. Johnson was the surveyor on this project and made himself available for questions.

Chris Peterson; 51627 Ariels Lane, Kasilof, AK 99610: Ms. Peterson wanted to know what would be the process if this landowner wanted to build within a wetland area. She noted this area has a lot of wetlands and she is concerned if this landowner builds within the wetlands it might affect drainage. Commissioner Ruffner replied the Planning Commission does not oversee any building permit processes only the subdivision of land. The Army Corps of Engineers are the permitting agency for building within wetlands. If she has concerns regarding building within wetlands she should contact the Army Corps of Engineers.

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

MOTION: Commissioner Gillham moved, seconded by Commissioner Brantley to grant preliminary approval

to Duncan Subdivision No. 5 based on staff recommendations and compliance with borough code.

AMENDMENT: Commissioner Gillham moved, seconded by Commissioner Venuti to grant exception request to KPB 20.30.030-Proposed street layout requirements, KPB 20.30.120-Street width requirements & KPB 20.30.170-Block length requirements, citing findings 1, 2, 4, 5, 7 & 14-18 in support of standards one, two & three.

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

AMENDMENT PASSED BY UNANIMOUS VOTE

Yes	5	No	0
Yes	Brantley, Gillham, Morgan, Ruffner, Venuti		

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

MOTION PASSED BY UNANIMOUS VOTE

Yes	5	No	0
Yes	Brantley, Gillham, Morgan, Ruffner, Venuti		

ITEM 5 – MAHAN SUBDIVISION BIRCH RIDGE ESTATES ADDITION NO. 3

KPB File No.	2021-143
Plat Committee Meeting:	November 29, 2021
Applicant / Owner:	Jake Denbrock of Soldotna, AK
Surveyor:	Jerry Johnson / Johnson Surveying
General Location:	West of Soldotna near MP 91.5 of the Sterling Highway

Parent Parcel No.:	058-260-55
Legal Description:	Tract A1 Mahan Subdivision Birch Ridge Estates Addition No 2 KN 2007-130
Assessing Use:	Residential Accessory Bldg
Zoning:	Rural Unrestricted
Water / Wastewater	On Site

Staff report given by Scott Huff.

Specific Request / Scope of Subdivision: The proposed plat will subdivide a 39-acre parcel into 31 lots ranging in size from 0.91 acres to 3 acres.

Location and Legal Access (existing and proposed): This plat is located to the east of Soldotna and north of the Sterling Highway near mile post 91.5. The subdivision has legal access from Mayoni Street, Denbrock Street, Padfoot Avenue West, and Burgess Ave.

This platting action will provide the following right of way dedications.

- An extension of Denbrock Street through the subdivision to the northeast corner.
- Two cul-de-sacs will be dedicated on the east side of Denbrock Street.
- A portion of Padfoot Avenue in the southeast corner.
 - o The land to the south of Padfoot Avenue has been developed with an unattached garage that was constructed in 2007. The last platting action in 2007 discussed the 30 foot width of Padfoot Avenue. As that platting action was 14 years ago it appears unlikely that the land to the south will be further subdivided to provide the full width of Padfoot Avenue. **Staff recommends** this platting action dedicate a full 60 foot width for Padfoot Avenue.

The westerly block will be defined by Burgess Avenue, Denbrock Street, Padfoot Avenue, and Mayone Street. The easterly block will be defined by Burgess Avenue, Pine Street, Padfoot Avenue, and Denbrock Street. Both blocks measure +/- 1,600 feet in the north-south length and are longer than allowed per KPB standards. The right of ways are not affected by steep slopes or low wet areas and can be constructed when the needed for physical access. **Staff recommends** that the plat committee concur that an exception is not

required as both blocks are closed blocks that generally comply with subdivision standards, and all lots have legal access to platted right of ways.

Staff recommends that labels be added to the plat to show that the right of ways are being dedicated at this time.

Staff recommends to work with the KPB Addressing officer to obtain approved street names for the two cul-de-sacs that are being dedicated this plat.

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

Site Investigation: An area with steep slopes affects the subdivision from the west boundary to the northeast corner. The plat has been designed so that the lot configuration and right of way layout is not affected by the steep slopes.

Wetland ecosystems do not affect this subdivision.

KPB River Center review	A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments
	B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments
	C. State Parks Reviewer: Russell, Pam Comments: No Comments

Staff Analysis The parent parcel was created with Mahan Subdivision Birch Ridge Estates Addition #2 (KN 2007-130). All new lots will be less than 200,000 sq. ft. and a soils analysis report will be required for final plat approval.

Notice of the proposed plat was mailed to the beneficial interest holder on November 3, 2021. The beneficial interest holder will be given 30 days from the date of the mailing of the notification to respond. They are given the opportunity to notify staff if their beneficial interest prohibits or restricts subdivision or requires their signature on the final plat. If no response is received within 30 days, staff will assume they have no requirements regarding the subdivision and it may be finalized.

The property is not within an advisory planning commission.

Covenants, conditions and restrictions, as recorded on August 3, 1990 in BK. 369 PG. 277 Kenai Recording District, affect this subdivision. **Staff recommends** the covenants of record be noted on the plat and include that per KPB 20.60.170.B, KPB will not enforce private covenants.

An active material site is located in the northwest corner. The land owner can contact Brian Taylor with KPB planning with any questions regarding the material site.

Utility Easements Parent plat KN 2004-58 granted 10 foot utility easements adjoining the dedicated right of ways. Plat KN 2006-78 carried forward the utility easement and granted a 20 foot utility easement adjoining the dedicated right of way when within 5 feet of side lot lines. **Staff recommends** the utility easements of record be depicted and labeled as well as the utility easements that are being granted by this plat.

A general location utility easement granted to HEA on September 4, 1976 in Bk. 79 Pg. 546 KRD affects this subdivision. **Staff recommends** a plat note be added for this easement of record.

The affected utility providers were emailed the subdivision plat public hearing notice as part of the routine notification process. **Staff recommends** to grant utility easements requested by the utility providers or work with the utility providers to obtain approval.

Utility provider review:

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

KPB department / agency review:

Addressing	<p>Reviewer: Haws, Derek Affected Addresses: 36378 MAYONI ST</p> <p>Existing Street Names are Correct: No</p> <p>List of Correct Street Names: MAYONI ST DENBROCK ST PADFOOT AVE W</p> <p>Existing Street Name Corrections Needed: BURGESS AVE should be BURGESS AVE E and BURGESS AVE W slit at RABBIT ST. Newly dedicated 60' ROWs should be named and use the street suffix CT.</p> <p>All New Street Names are Approved: No</p> <p>List of Approved Street Names:</p> <p>List of Street Names Denied:</p> <p>Comments: 36378 MAYONI ST will be deleted and new addresses assigned upon request. Please contact dhaws@kpb.us for new street name approval.</p>
Code Compliance	<p>Reviewer: Ogren, Eric Comments: No comments</p>
Planner	<p>Reviewer: Taylor, Bryan There are not any Local Option Zoning District issues with this proposed plat.</p> <p>Material Site Comments: The property being subdivided is listed as a PEU (prior existing use) in KPB records. A letter warning of presumed abandonment of PEU has been sent to the current property owner (attached). See attachments</p>
Assessing	<p>Reviewer: Bruns, Matthew Comments: No concerns from Assessing Dept.</p>

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

STAFF RECOMMENDATIONS

CORRECTIONS / EDITS

KPB 20.25.070 – Form and contents required

Staff recommendation: final plat submittals must comply with 20.25.070. Additional information, revisions, and/or corrections are required as noted below.

- C. The location, width, and name of existing or platted streets and public ways, railroad rights-of-way, and other important features such as section lines or political subdivisions or municipal corporation boundaries abutting the subdivision;
Staff recommendation: Provide a street name for Raspberry Street located to the northeast of the subdivision.
- F. The location, width and name of existing and platted streets and public ways, railroad rights-of-way, easements, and travel ways existing and proposed, within the subdivision;
Staff recommendation: Work with the addressing officer to obtain approved street names for the two cul-de-sacs that are being dedicated.

KPB 20.30 – Subdivision Design Requirements

Staff recommendation: final plat submittals must comply with 20.30. Additional information, revisions, and/or corrections are required as noted below.

20.30.120. Streets-Width requirements.

- D. The minimum right-of-way width of streets shall be 60 feet.
1. Half streets shall generally not be allowed except to provide the logical extension of a right-of-way where the remaining half street can reasonably be expected to be dedicated in the future.
 2. When a design change required as a condition of preliminary approval results in a half right-of-way that was not shown on the original preliminary plat, adjoiners to the new half right-of-way will be sent a copy of the plat committee minutes and a sketch showing the new half right-of-way and per KPB 2.40.080 can request a review of the plat committee decision by the full Planning Commission.
- B. Additional right-of-way or easement width may be required to provide for the construction of side slopes or to otherwise accommodate right-of-way construction standards set forth in KPB Title 14.
Staff recommendation: Provide a full right of way dedication for Padfoot Avenue.

20.30.130. Streets-Curve requirements.

- A. Where a deflection angle of more than 10 degrees in the alignment of a right-of-way occurs, a curve of minimum radius is required. On streets 100 feet or more in width, the centerline radius of curvature shall be not less than 300 feet; on other streets not less than 200 feet. If it is not possible to design a curve to be radial or tangential, that curve shall be clearly labeled non-radial or non-tangential.
- B. A minimum 100-foot tangent is required between curves.
Staff recommendation: Comply with 20.30.130.

20.30.150. Streets-Intersection requirements.

- A. Street intersections shall be as nearly at right angles as possible, and no intersection shall be at an angle of less than 60 degrees. Where acute street intersections are designed, a minimum 50-foot radius corner at the right-of-way line of the acute angle shall be provided.
- B. Offset intersections are not allowed. The distance between intersection centerline shall be no less than 150 feet.

C. Intersections of access streets with arterial streets or state maintained roads shall be limited to those intersections required for safe access consistent with KPB Title 14.

D. Intersections of access streets with arterial streets or state maintained roads must be designed to the American Association of State Highway and Transportation Officials (AASHTO) standards.

Staff Comments: Denbrock Street will form an intersection with Raspberry Street in the northeast corner. Raspberry Street is a half width right of way. The corresponding 30 foot width will be dedicated on the west side and more nearly line up with Denbrock Street. The alignment generally complies as it is only offset by 30 feet.

20.30.160. Streets-Name requirements. Streets shall be named to conform to KPB Chapter 14.10

Staff recommendation: *Work with the KPB addressing officer to obtain approved street names for the two cul-de-sacs that are being dedicated with this plat.*

20.30.240. Building setbacks.

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

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

F. The setback shall be noted on the plat in the following format:

Building setback- A setback of 20 feet is required from all dedicated street right-of-ways unless a lesser standard is approved by resolution of the appropriate planning commission.

G. When a subdivision is affected by a Local Option Zoning District (LOZD), an approved by the assembly, all building setbacks shall be graphically depicted and labeled on the lots. A local option zoning setback shall be noted on the plat in the following format:

Building setback – This subdivision is located within (name of LOZD) Local Option Zoning District as contained in KPB Chapters 21.44 and 21.46 and adopted by KPB Ordinance (number), recorded under (serial no. and recording district). Information regarding the zoning restrictions and copies of the ordinance are available from the KPB Planning Department.

Staff recommendation: *Depict and label the 20 foot building setback adjoining all dedicated right of ways within the subdivision.*

KPB 20.40 – Wastewater Disposal

Staff recommendation: *final plat submittals must comply with 20.40. Additional information, revisions, and/or corrections are required as noted below.*

20.40.010 Wastewater disposal.

Platting Staff Comments: A soils analysis, prepared by a licensed engineer, will be required.

Staff recommendation: *comply with 20.40.*

KPB 20.60 – Final Plat

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

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

Staff recommendation: *Provide a certificate of acceptance for KPB to sign for the new dedicated right of ways.*

20.60.180. Plat notes.

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

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

Staff recommendation: Place the following notes on the plat.

- Roads must meet the design and construction standards established by the borough in order to be considered for certification and inclusion in the road maintenance program (KPB 14.06).
- The borough will not enforce private covenants, easements, or deed restrictions per KPB 20.60.170.

20.60.190. Certificates, statements, and signatures required.

Staff recommendation: comply with 20.60.190.

20.60.200. Survey and monumentation.

Staff recommendation: comply with 20.60.200

RECOMMENDATION:

SUBJECT TO EXCEPTION(S) GRANTED, STAFF RECOMMENDS:

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

NOTE: 20.25.120. - REVIEW AND APPEAL.

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

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

END OF STAFF REPORT

Mr. Huff noted he had received a call from the surveyor Gerald Johnson requested staff recommendation that required the plat to dedicate a full 60' width for Padfoot Avenue be removed from the staff report. The surveyor requests a 30' wide dedication be required instead.

Chair Ruffner opened the meeting for public comment.

Gerald Johnson, Surveyor; P.O. Box 27, Clam Gulch, AK 99568: Mr. Johnson requested that the landowner not be required to dedicate the additional 30' along Padfoot Avenue. If the owner is required to dedicate the whole 60' he would lose one of the lots he is trying to create with this plat. It could also potentially create issues with the street alignment going to the west. Mr. Johnson noted the lot to the south of this plat is a large lot and should it ever be subdivided it could dedicate the other 30' for Padfoot make it a full 60' wide right-of-way.

Commissioner Brantley asked Mr. Johnson if the landowner would consider dedicating some area on Lot 27 to help better align Padfoot Avenue. Mr. Johnson replied that he would talk to the landowner and believed that could be possible.

Jake Denbrock, Landowner; 36350 Mayoni Street, Soldotna, AK 99669: Mr. Denbrock stated that he would be willing to give more land on Lot 27 to help better align Padfoot Avenue. He noted at one time he approached his neighbor to the south regarding a dedication for Padfoot Ave. and the neighbor was not interested in giving a 30' match. He did believe that if his neighbor ever does subdivide his land he should be required to dedicate the additional 30' needed to make Padfoot a 60' wide right-of-way.

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

MOTION: Commissioner Gillham moved, seconded by Commissioner Brantley to grant preliminary approval to Mahan Subdivision Birch Ridge Estates Addition No. 3 based on staff recommendations and compliance with borough code.

Commissioner Brantley stated that he supports not requiring the full 60' dedication and not taking any additional land from Lot 23. He noted that there is no real way of making Padfoot align without having to do funny jog. He is not sure how that could be corrected. Mr. Huff agreed that there would be no way of getting around aligning Padfoot without having a jog. He also noted that Lot 23 already exists and so you cannot take right-of-way from them, nor can we force the neighbor to the south to give up land for the right-of-way. Mr. Huff said initially staff's thinking was this was a way for the borough to get a full dedication for the majority of Padfoot right-of-way. He noted that the 5-acre lot to the south was last subdivided in 1992 and it does not appear that it would be subdivided any further. Commissioner Brantley then stated that he is in favor of giving up land for the street transition on Lot 27 and not requiring a full 60' dedication on Lots 25 & 26. Mr. Huff stated that on the preliminary plat staff did interpret that Lot 27 was giving a little land for the Padfoot right-of-way transition.

Commissioner Ruffner then verified with the surveyor and landowner that the transition to Padfoot on Lot 27 as shown on the preliminary plat is acceptable. Both landowner and surveyor agreed.

AMENDMENT MOTION: Commissioner Brantley moved, seconded by Commissioner Gillham to remove staff recommendation that this platting action dedicate a full 60' right-of-way dedication for Padfoot Avenue.

Commissioner Gillham asked if the turnaround for emergency vehicles would still be included on the plat. Mr. Huff replied that the turnaround was not submitted on the preliminary plat and would not be required.

Commissioner Ruffner stated that he understands that it is general practice to have 60' right-of-way dedications to be shared by the landowners. He also understands that in this situation that while it is unlikely that the landowner to the south will further subdivide in the future, that parcel of land could still be further subdivided. Mr. Huff replied he was correct, there is nothing that would prevent the lot to the south from further subdividing. Should the land owners subdivide in the future they would be required to provide a right-of-way dedication for Padfoot Avenue. Commissioner Ruffner wanted the landowner to understand that not having a full dedication on Padfoot Avenue could possibly make it difficult for it to get included into the road maintenance system.

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

AMENDMENT PASSED BY UNANIMOUS VOTE

Yes	5	No	0
Yes	Brantley, Gillham, Morgan, Ruffner, Venuti		

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

MOTION PASSED BY UNANIMOUS VOTE

Yes	5	No	0
Yes	Brantley, Gillham, Morgan, Ruffner, Venuti		

ITEM E6 - KUSTATAN ESTATES TKC ADDITION

KPB File No.	2021-140
Plat Committee Meeting:	Nov. 29, 2021
Applicant / Owner:	TKC LLC, PO Box 10658, Bakersfield, CA 93389
Surveyor:	Segesser Surveys
General Location:	W. Poppy / Kalifornsky Beach APC

Parent Parcel No.:	055-320-66
Legal Description:	Lot 1-A Block 1, Kustatan Estates – Smithy Resubdivision
Assessing Use:	General Commercial
Zoning:	Unrestricted
Water / Wastewater	On site

Staff report given by Scott Huff.

Specific Request / Scope of Subdivision: The proposed plat will subdivide a 3.1 acre parcel into two lots with Lot 1D being 1.3 acres and Lot 1C being 1.8 acres.

Location and Legal Access (existing and proposed): This subdivision is located in the Kalifornsky Beach Road area within the Kalifornsky Beach APC. Legal access is from W. Poppy Lane and Kustatan Street. W. Poppy Lane is a 100 foot wide dedicated right of way maintained by the State of Alaska DOT. Kustatan Street is a 60 foot wide dedicated right of way maintained by KPB.

The block is defined by Kustatan Street, W. Poppy Lane, Lori Jo St. and Scott Ave. The subdivision is located within an open block. Existing development and low wet areas limit the extension of Kustatan Street to create a closed block. Farr Street is a dedicated right of way located to the east of Kustatan Street that creates a closed block that nearly complies with the block length requirements. **Staff recommends** that the plat committee concur that an exception to block length is not required due to the existing development trends, low wet areas, and the existence of an alternative right of way.

KPB Roads Dept. comments	Out of Jurisdiction: No Roads Director: Uhlin, Dil Comments: No comments
SOA DOT comments	We do not have any current mapping for West Poppy Lane, however the ROW for West Poppy Lane appears to be shown correctly as 100'.

Site Investigation: The area is generally flat and not affected by wetlands or drainage issues. A majority of the parent has been cleared with vegetation remaining on the west and north areas. Aerial imagery shows a building is located at the south end of proposed Lot 1C.

KPB River Center review	A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments
KPB River Center review	B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments
	C. State Parks

	Reviewer: Russell, Pam Comments: No Comments
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Staff Analysis The parent parcel is a 3.12 acre parcel that was created by Kustatan Estates – Smith Resubdivision, plat KN 85-52. Both new parcels will be less than 200,000 sq. ft., a soils report will be required, and an engineer will sign the final plat.

Lot 1B, located to the southeast, contains improvements and is under common ownership as this plat.

Lot 1D will have a depth to width ratio of 2.99:1 and complies with KPB subdivision standards.

Notice of the proposed plat was mailed to the beneficial interest holder on October 26, 2021. The beneficial interest holder will be given 30 days from the date of the mailing of the notification to respond. They are given the opportunity to notify staff if their beneficial interest prohibits or restricts subdivision or requires their signature on the final plat. If no response is received within 30 days, staff will assume they have no requirements regarding the subdivision and it may be finalized.

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

Utility Easements Parent plat KN 85-52 granted 10 foot utility easements on the north, east, and south boundaries. Parent Plat KN 77-132 granted a 10 foot utility easement on the west boundary. The preliminary plat correctly depicts the platted utility easements of record. **Staff recommends** the first sentence of plat note 4 be removed as it is incorrect and all the utility easements of record have been depicted and labeled on the drawing.

The affected utility providers were emailed the subdivision plat public hearing notice as part of the routine notification process. **Staff recommends** to grant utility easements requested by the utility providers or work with the utility providers to obtain approval.

Utility provider review:

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

KPB department / agency review:

Addressing	Reviewer: Haws, Derek Affected Addresses: None Existing Street Names are Correct: Yes List of Correct Street Names: W POPPY LN KUSTATAN ST Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied: Comments: No addresses affected by this subdivision.
Code Compliance	Reviewer: Ogren, Eric Comments: No comments
Planner	Reviewer: Taylor, Bryan There are not any Local Option Zoning District issues with this proposed plat. Material Site Comments: There are not any material site issues with this proposed plat.

Assessing	Reviewer: Bruns, Matthew Comments: No concerns from Assessing Dept.
Advisory Planning Commission	Not available at the time the staff report was prepared.

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

STAFF RECOMMENDATIONS

CORRECTIONS / EDITS

KPB 20.25.070 – Form and contents required

Staff recommendation: final plat submittals must comply with 20.25.070. Additional information, revisions, and/or corrections are required as noted below.

- D. A vicinity map, drawn to scale showing location of proposed subdivision, north arrow if different from plat orientation, township and range, section lines, roads, political boundaries, and prominent natural and manmade features, such as shorelines or streams;

Staff recommendation: Correct the shape of the subdivision within the vicinity map.

KPB 20.40 – Wastewater Disposal

Staff recommendation: final plat submittals must comply with 20.40. Additional information, revisions, and/or corrections are required as noted below.

20.40.010 Wastewater disposal.

Platting Staff Comments: A soils analysis, prepared by a licensed engineer, will be required before final plat approval.

Staff recommendation: comply with 20.40.

KPB 20.60 – Final Plat

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

20.60.190. Certificates, statements, and signatures required.

Staff recommendation: Within the Certificate of Ownership, correct the certificate to read, 'I hereby certify that TKC LLC is the owner of the real property shown and described hereon and on behalf of TKC LLC here by adopt this plat of subdivision ...' Comply with 20.60.190.

20.60.200. Survey and monumentation.

Staff recommendation: Determine the property boundary location and set survey markers at all property corners. Comply with 20.60.200

RECOMMENDATION:

SUBJECT TO EXCEPTION(S) GRANTED, STAFF RECOMMENDS:

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

NOTE: 20.25.120. - REVIEW AND APPEAL.

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

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

END OF STAFF REPORT

Chair Ruffner opened the meeting for public comment.

Nancy Henning; 34890 Lori Jo St., Soldotna, AK 99669: Ms. Henning lives in the neighborhood and shared concerns about how this lot is used. She stated at times there are unusual odors coming from the lot. There has also been activities going on that she does not believe should be allowed in a residential area. She has tried to contact the landowners to discuss the development plans for the lot but she has been unsuccessful. She does not support this proposed subdivision.

Commissioner Ruffner stated that the Planning Commission only has the authority to oversee issues related to subdividing lands, they do not have the authority to address the other issues she has raised. He encouraged her to contact the State Troopers if she believes that there are illegal activities going on.

MOTION: Commissioner Brantley moved, seconded by Commissioner Gillham to grant preliminary approval to Kustatan Estate TKC Addition based on staff recommendations and compliance with borough code.

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

MOTION PASSED BY UNANIMOUS VOTE

Yes	5	No	0
Yes	Brantley, Gillham, Morgan, Ruffner, Venuti		

F. PUBLIC COMMENT - None

G. ADJOURNMENT

Commissioner Gillham moved to adjourn the meeting 6:55 P.M.

Ann E. Shirnberg
Administrative Assistant

Kenai Peninsula Borough Planning Commission

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

**November 29, 2021
7:30 P.M.
UNAPPROVED MINUTES
Zoom Only Meeting**

CALL TO ORDER

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

ROLL CALL

Commissioners Present

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

With 7 members of an 11-member commission in attendance, a quorum was present.

Staff Present

Melanie Aeschliman, Planning Director
Scott Huff, Platting Manager
Julie Hindman, Platting Specialist
Bryan Taylor, Planner
Ann Shirnberg, Planning Administrative Assistant

AGENDA ITEM C. CONSENT & REGULAR AGENDAS

***3. Plats Granted Administrative Approval**

- a. Browns Acres Subdivision 2021; KPB File 2021-072
- b. Causeway Subdivision 2021 Replat; KPB 2021-138
- c. East Cohoe Subdivision Hedger Replat; KPB File 2021-120
- d. Goodrich Acres Sanchis Replat; KPB File 2021-008
- e. Green Forest Subdivision Black Addition; KPB File 2021-010
- f. Hollywood Park Koch Addition; KPB File 2020-033
- g. Kenai Landing Subdivision 2021 Addition; KPB File 2021-089
- h. Kuchta Estates Hansen Addition; KPB File 2021-119
- i. Melickian Subdivision 2021 Addition; KPB File 2021-094
- j. Ninilchik Airport Heights 2021 Replat; KPB File 2021-103
- k. Ninilchik River Estates Subdivision Addn. 1 McLean Addn.; KPB File 2021-108
- l. Quandt Subdivision Newton-Segura Addition; KPB File 2020-056
- m. Razdolna Subdivision 2020 Addition; KPB File 2020-104
- n. Skyline Drive Subdivision 2020 Replat; KPB 2020-062
- o. Willard Point; KPB File 2021-056

***4. Plats Granted Final Approval (20.10.040)**

- a. Corea Bend Subdivision 2021 Replat; KPB 2021-128

***6. Commissioner Excused Absences**

- a. Blair Martin, Kalifornsky Beach
- b. City of Soldotna, Vacant
- c. City of Seward, Vacant
- d. Northwest Borough, Vacant

7. Minutes*a. November 8, 2021 Planning Commission Meeting Minutes**

Vice Chair Ruffner asked Ms. Shirnberg to read the consent agenda items into the record. He then asked if anyone wished to speak to any of the items on the consent agenda. Seeing and hearing no comment he brought it back to the commission for a motion.

MOTION: Commissioner Gillham 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	8	Absent	1	Vacant	3
Yes	Bentz, Brantley, Fikes, Gillham, Morgan, Ruffner, Venuti				
Absent	Martin				

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

AGENDA ITEM E. NEW BUSINESS**ITEM E1. – BUILDING SETBACK ENCROACHMENT PERMIT
LOT 2 BLOCK 1 NAFF SUBDIVISION PART 2**

KPB File No.	2021-145
Planning Commission Meeting:	November 29, 2021
Applicant / Owner:	Ramona C. and Alexander N. Connors
Surveyor:	Mike Swan
General Location:	Tuffy Lane and Scout Lake Loop Road / Sterling
Parent Parcel No.:	063-880-02
Legal Description:	Lot 2 Block 1 Naff Subdivision Part Two (KN 84-275)
Assessing Use:	Residential
Zoning:	Rural Unrestricted

Staff report given by Scott Huff.

Specific Request / Purpose as stated in the petition:

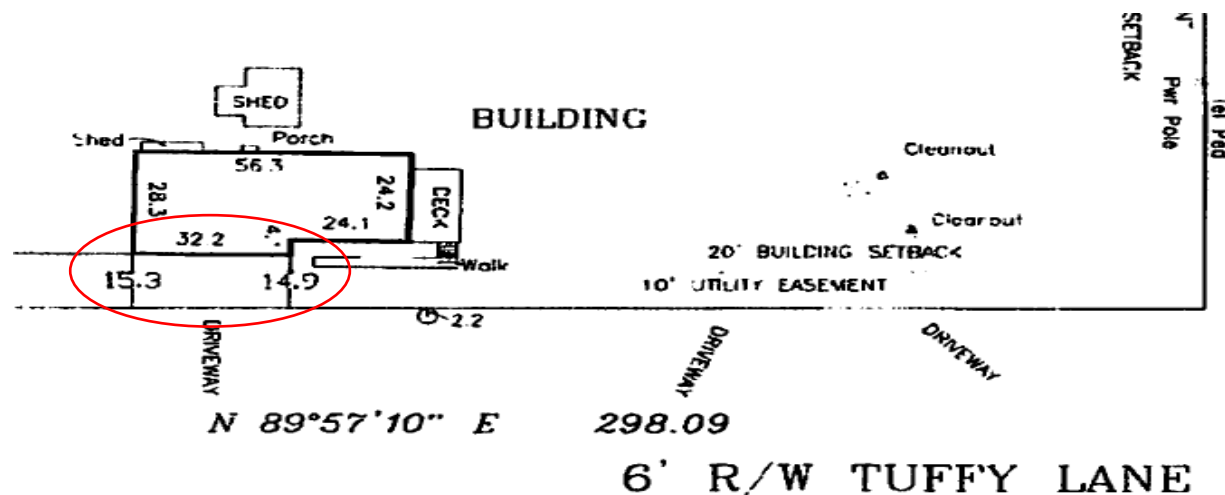
Marvin Shrock Builders built garage approximately 6 years ago. Garage was and is more than 30 feet from the driving or existing road and we never realized we were that close to the right of way.

Site Investigation: Per the as-built, a portion of the garage is within the 20-foot building setback adjoining Tuffy Lane. The structure encroachment varies from 4.7 feet to 5.1 feet into the 20-foot building setback.

The lot is within the Naff Subdivision Part Two, Plat KN 84-275.

Lot 2 Block 1 is located on the corner of Scout Lake Loop Road and Tuffy Lane. Scout Lake Loop Road is a state maintained right of way. Tuffy Lane is constructed but not currently maintained.

The encroachment is within the 20-foot building setback along Tuffy Lane as established by Plat KN 84-275. No improvements are located within the 20-foot building setback adjoining Scout Lake Loop Road. The structure appears to be approximately 186 feet from the intersection of Scout Lake Loop Road and Tuffy Lane.



Staff Analysis: The lot is within Naff Subdivision Part Two, Plat KN 84-275 and is located in the Sterling area. The lot is not within an Advisory Planning Commission boundary.

The building setback was in effect with the recording of Naff Subdivision Part Two in 1984. Per KPB Assessing information, a dwelling was constructed in 2010. Per the application, a garage was added on about six years ago. The garage portion is within the 20-foot building setback. The application states the owners were using the constructed roadway to determine the location for the building addition.

The area is relatively flat and low wet areas are not present on the property. The encroachment is nearly parallel to the right of way and does not appear to affect the line of sight on Tuffy Lane roadway. Tuffy Lane is not currently maintained.

The intersection with Scout Lake Loop Road is approximately 186 feet from the structure and does not affect any setback, line of sight, or maintenance with Scout Lake Loop Road.

Notice was mailed to 36 landowners within 600 feet of the subject lot.

Findings:

1. The garage is located from 4.7 feet to 5.1 feet within the platted 20-foot building setback.
2. Tuffy Lane is a 60-foot wide right of way.
3. Tuffy Lane is partially constructed.
4. Tuffy Lane is not maintained.
5. The portion of Tuffy Lane adjoining Lot 2 Block 1 is straight and slightly curves to the south as the right of way extends to the west.
6. Scout Lake Loop Road is approximately 186 feet east from the building encroachment.
7. The location of the building encroachment does not appear to affect the line of sight on Tuffy Lane.
8. Utilities have been installed in the area.
9. The structure is not within the 10-foot utility easements.
10. KPB Roads Department has no objection to the granting of a building setback encroachment permit.
11. Recent aerial imagery shows room for vehicles to park between the building and roadway.
12. A portion of the building would need to be removed to comply with the 20-foot building setback.

20.10.110. – Building setback encroachment permits.

E. The following standards shall be considered for all building setback encroachment permit applications:

1. The building setback encroachment may not interfere with road maintenance.

Findings 4, 5, 7, 8, 9, 10, 11 appear to support this standard.

2. The building setback encroachment may not interfere with sight lines or distances.

Findings 4, 5, 7, 8, 9, 10, 11 appear to support this standard.

3. The building setback encroachment may not create a safety hazard.

Findings 4, 5, 7, 8, 9, 10, 11 appear to support this standard.

- F. The granting of a building setback encroachment permit will only be for the portion of the improvement or building that is located within the building setback and the permit will be valid for the life of the structure or for a period of time set by the Planning Commission. The granting of a building setback permit will not remove any portion of the 20-foot building setback from the parcel.
- G. The Planning Commission shall approve or deny a building setback encroachment permit. If approved, a resolution will be adopted by the planning commission and recorded by the planning department within the time frame set out in the resolution to complete the permit. The resolution will require an exhibit drawing showing, and dimensioning, the building setback encroachment permit area. The exhibit drawing shall be prepared, signed and sealed, by a licensed land surveyor.

KPB department / agency review:

KPB Roads Dept. comments	No objection at this time.
SOA DOT comments	No comment
Code Compliance – Eric Ogren	No comment

RECOMMENDATION:

Based on the standards to grant a building setback encroachment permit, **staff recommends** to adopt Resolution 2021-35, subject to compliance with KPB 20.10.110 sections F and G.

NOTE:

20.10.110.(H) A decision of the planning commission may be appealed to the hearing officer by a party of record, as defined by KPB 20.90, within 15 days of the date of notice of decision in accordance with KPB 21.20.250.

END OF STAFF REPORT

Vice Chair Ruffner opened the meeting for public comment.

Alex Conner, Applicant; 1640 E. Frank Smith Way, #204, Wasilla, AK 99654: Mr. Conner stated when they had the garage built several years ago they were not aware that the road was that far away from the edge of the developed right-of-way. They became aware of the encroachment when they went to sell the house. The house sell did go through and it was recently sold to Carla Salzmänn.

Vice Chair Ruffner asked the applicant who did he feel was responsible for this encroachment. Mr. Conner replied that while he had trusted in his contractor to make sure that everything was correct, in the end he believed that the final responsibly lies with him. Vice Chair Ruffner replied that he appreciated Mr. Conner's honesty.

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

MOTION: Commissioner Gillham moved, seconded by Commissioner Fikes to adopt PC Resolution 2021-35 granting a building setback encroachment permit to Lot 2, Block 1, Naff Subdivision Part Two (Plat KN 84-275)

Commissioner Venuti asked if it was appropriate for Mr. Conner to be applying for the permit since he no longer owns this property. Mr. Huff replied when the application was submitted Mr. Conner was the

landowner but has since sold the property. He said that the permit was associated with the lot and not the landowner, so he saw no problem with Mr. Connor moving forward with the application.

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

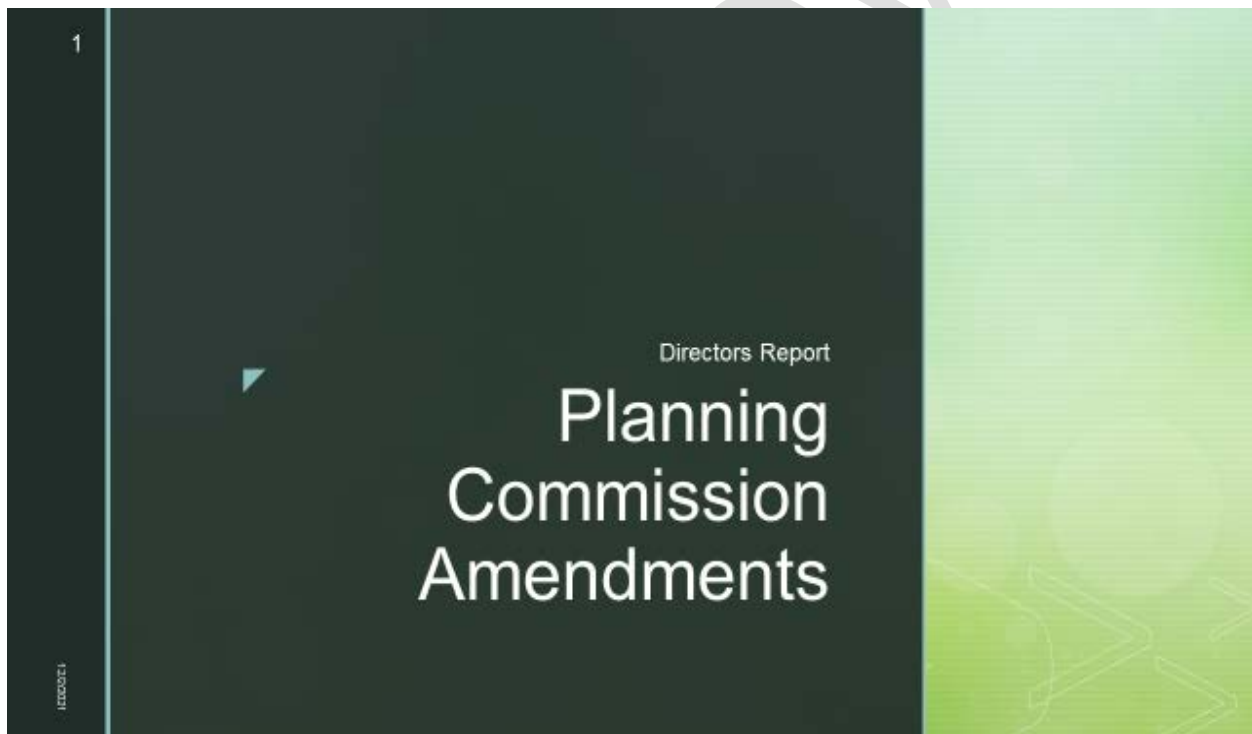
MOTION PASSED BY UNANIMOUS VOTE:

Yes	8	Absent	1	Vacant	3
Yes	Bentz, Brantley, Fikes, Gillham, Morgan, Ruffner, Venuti				
Absent	Martin				

ITEM E2. – Ordinance 2021-40

An Ordinance Amending KPB 2.40.015 Regarding Planning Commission Membership & Apportionment

Report given by Melanie Aeschliman:



2

2.40.015. - Membership—Apportionment.

A. The planning commission shall consist of a maximum of eleven members. Commission membership shall be apportioned so that the number of members from home rule and first class cities reflects the proportion of borough population residing in home rule and first class cities located in the borough. No more than one member of the commission may be from any single home rule or first class city in the borough unless more are required to satisfy the statutory apportionment requirement. A city member shall be selected by the mayor from a list of recommendations submitted by the council of any cities from which no member will be on the commission when the vacancy is effective, unless apportionment requires more than one member from a city. In that event all eligible city councils may submit a list of recommendations for the additional seat provided that no city may have greater than one member more than any other home rule or first class city. Appointments shall be subject to confirmation by the assembly.

B. Planning commissioners from outside of first class and home rule cities shall be appointed at-large by the mayor and confirmed by the assembly and may be as representative of the following geographic areas as practical:

- 1) East Peninsula;
- 2) Southwest Borough;
- 3) Anchor Point/Ninilchik/Clam Gulch/Kasilof;
- 4) Kalifornsky Beach
- 5) Ridgeway;
- 6) Sterling;
- 7) Northwest Borough.

12/02/21

3

Amend Item # 1 KPB Code 2.40.015

- How Many City Seats Should be on the Planning Commission?

- The proposed amendment points out:

KPB currently has an eleven-member planning commission. There are four city seats, which are subject to an informal rotation between five home rule/first class cities and seven at-large seats. This aligns with apportionment rules, but is difficult, if not, impossible to accomplish with five cities rotating four, 3-year term seats. It is mathematically impossible to create an equitable rotation. This is most likely why Ordinance 2016-25 did not specify how city seats would be distributed.

- **Proposed amendment is to go back to 13**

12/02/21

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Points of Consideration for 13 Seats

- Stops issues with any rotation of city seats
- Alternative views from the Cities vs. citizens serving in the seats/ Is it a city government seat or a resident seat?
- Will this create permanent ZOOM Seats?
- Costs to KPB taxpayers?
- Where do we put the additional seats and will this allow for a remodel to accommodate the meeting space/needs?
- Is it an administrative function to allow for a rotation of commissioners utilizing a Zoom meeting format (no remodel necessary)?
- Support for a budget increase to cover additional seats?

11/08/21

5

2019/2020/2021

Planning Commission Original Budgets

2019 \$90,685
2020 \$86,000
2021 \$76,400

These costs include: meeting allowance,
transport/subsistence,
car allowance, &
training

11/08/21

6

2019 Cost for Distance Seats

City of Seldovia	City of Seward	City of Homer	Cooper Landing
\$ 10,329.50	\$ 6,706.25	\$ 6,212.30	\$ 5,310.00
(Flights, Mileage, Hotel, Meals, iPad, Meeting Pay)			

12/02/21

7

State Statute 29.40.020

- (a) Each first and second class borough shall establish a planning commission consisting of five residents unless a greater number is required by ordinance. Commission membership shall be apportioned so that the number of members from home rule and first class cities reflects the proportion of borough population residing in home rule and first class cities located in the borough. A member shall be appointed by the borough mayor for a term of three years subject to confirmation by the assembly, except that a member from a home rule or first class city shall be selected from a list of recommendations submitted by the council. Members first appointed shall draw lots for one, two, and three year terms. Appointments to fill vacancies are for the unexpired term. The compensation and expenses of the planning commission and its staff are paid as directed by the assembly.

12/02/21

8

What Does a Thirteen Member Planning Commission look like

City/Borough	Population	Rural Seats	Population
City Seat Kenai	7424	Northwest Borough <small>Nikiski/Gray Cliff/Moose Point/Tyonek/Beluga</small>	4,456/228/ 152/34
City Seat Soldotna	4342	Sterling	5918
City Seat Seward	2717	Ridgeway	2136
City Seat Homer	5522	Kalifornsky Beach	8487
City Seat Seldovia	255	East Peninsula	344/161/228
		Kasilof/Clam Gulch/Anchor Point/Ninilchik	525/207/ 2105/845
		SW Borough <small>Kachemak/Port Graham/Nanwalek/Fox River/Voznesenka and Halibut Cove/Diamond</small>	162/247/576/ 644/60/1,330
Apportionment =	5/7 + 1?	Youth Seat? non-specified at large seat?	

12/02/21

9

What Does a Five Member Planning Commission look like

City/Borough	Population (2020 Census)
Kenai	7424
Soldotna	4342
Seward	2717
Homer	5522
Seldovia	235
Total City	20,240 City Population
KPB Rural	38,559 Rural Population
Apportionment could be 5 Districts or 2 City Seats, 3 Rural	

12/02/21

10

Amend Item # 2 KPB Code 2.40.015

Should cities be required to submit more than one applicant to the KPB Mayor for selection to the planning commission?

State Statute 29.40.020:

(a) Each first and second class borough shall establish a planning commission consisting of **five residents** unless a greater number is required by ordinance. Commission **membership shall be apportioned** so that the number of members from home rule and first class cities reflects the proportion of borough population residing in home rule and first class cities located in the borough. **A member shall be appointed by the borough mayor** for a term of three years subject to confirmation by the assembly, except **that a member from a home rule or first class city shall be selected from a list of recommendations submitted by the council.** Members first appointed shall draw lots for one, two, and three year terms. Appointments to fill vacancies are for the unexpired term. The compensation and expenses of the planning commission and its staff are paid as directed by the assembly.

12/03/21

11

Amend Item # 3 KPB Code 2.40.015

Should any eligible resident of the borough be allowed to apply for planning commission city seat or should the applicant be required to be a resident of that city?

- Recently the KPB Mayor and legal department made it clear that they believe state law allows for any eligible KPB resident to apply for a planning commission city seat. The city representatives and constituents that we have spoken with do not feel the same. Many of them disagree with this interpretation of the law. This ordinance would specify that an applicant for a city seat on the planning commission would be required to be a resident of the respective city. Defining who can be seated in a city seat on the planning commission would eliminate any argument that the apportionment to the unincorporated borough could be too high to comply with State of Alaska requirements. If city seats were to be filled with residents from outside the cities, the cities would be inequitably served on the commission.

12/03/21

12	Borough	Class	2020 Population	Square Miles	Incorporated Cities?	PC Seats by Borough	Additional Information/ How the PC is composed
	City & Borough of Sitka	Unified Home Rule	8,458	2,882	1	5	5 members; roster states "from public"
	City & Borough of Yakutat	Home Rule	662	7,650	1	5	5 non-specified
	City and Borough of Wrangell	Unified Home Rule	2,127	2,570	1	5	5 non-specified seats
	Denali Borough	Home Rule	1,619	12,750	2	5	5 Districts with 9 seats; 1 districts has 4 seats, 1 districts has 2 seats the rest are 1 seat
	Municipality of Skagway	First Class	464	464	1	6	6 undefined seats
	Petersburg Borough	Home Rule	3,398	119.2	1	6	6 undefined seats
	Aleutians East Borough	2nd Class Borough	3,420	6,985	5	7	Seats are by area: False Pass, Sand Point (2), King Cove (2), Nelson Lagoon, Akutan
	Anchorage Borough	Unified Home Rule	291,247	1,698	1	7	defined by seat 1,2,3 etc
	Bristol Bay Borough	2nd Class Borough	844	519	0	7	7 non-specified seats
	Haines Borough	Home Rule	2,080	2,357	1	7	7 Seats A-G
	Ketchikan Gateway Borough	2nd Class Borough	13,948	1,220	2	7	4 city and 3 at large seats
	Kodiak Island Borough	2nd Class Borough	13,101	6,463	1	7	4 at large and 3 city seats
	Lake and Peninsula Borough	Home Rule	1,476	23,632	1	7	7 undefined seats
	Matanuska-Susitna Borough	2nd Class Borough	107,081	24,694	3	7	7 seats-by district
	North Slope Borough	Home Rule	11,031	87,860	7	8	8 non-specified
	City & Borough of Juneau	Unified Home Rule		2,594	1	9	9 non-specified seats
	Northwest Arctic Borough	Home Rule	7,793	35,862	8	9	9 seats-undefined but 2 are specifically not voting seats advisory only
	Fairbanks North Star Borough	2nd Class Borough	95,655	7,362	2	11	11 Seats A-K ; 3 seats for city of Fairbanks, 1 city seat for North Pole rest are at large
	Kenai Peninsula Borough	2nd Class Borough	58,799	16,079	6	11	4 City Seats and 7 at large the city seats are on a rotation

End of Presentation

Vice Chair Ruffner opened the meeting for public comment.

Tyson Cox, Assembly Member from District 4 – Soldotna: Assemblyman Cox reviewed with the commission the memo to the assembly accompanying Ordinance 2021-40.

The Assembly will have three questions to contemplate:

How many city seats should be on the planning commission?

The KPB currently has an eleven-member planning commission. There are four city seats, which are subject to an informal rotation between five home rule/first class cities and seven at-large seats. This aligns with apportionment rules, but is difficult, if not, impossible to accomplish with five cities rotating four, 3-year term seats. It is mathematically impossible to create an equitable rotation. This is most likely why Ordinance 2016-25 did not specify how city seats would be distributed.

This ordinance would change the number of planning commissioners from eleven back to thirteen with each of the five home rule or first class cities within the borough having a seat and eight at-large seats. This change would solve the rotation dilemma the borough currently has. It would solve any argument between the cities and the borough as to which cities are to be left on the commission and which cities will be required to sit out.

Should cities be required to submit more than one applicant to the KPB Mayor for selection to the planning commission?

This year the KPB Mayor and legal department have made it known that they interpret state statutes and borough code to say that the city-approved list of recommendations submitted to the mayor should be more than one person. The city of Soldotna understands the same statutes and code to allow for a list to consist of only one applicant. Over the past several years, most cities have only submitted one applicant for their designated planning commission seat, as neither borough code nor state statutes designate the specific number of applicants required to be considered a list. Several KPB Mayors have accepted lists with only one city seat applicant, including our current KPB Mayor.

This ordinance would specify that the list of recommendations given to the borough mayor as approved by the city council would consist of at least one applicant from the respective city. In this case, one applicant seems the best definition for a list because we often have very few people who choose to apply to serve as a commissioner. If two or more applicants were required, a process would need to be defined to deal with the situation of a city with only one applicant willing to serve on the commission.

Should any eligible resident of the borough be allowed to apply for planning commission city seat or should the applicant be required to be a resident of that city?

Recently the KPB Mayor and legal department made it clear that they believe state law allows for any eligible KPB resident to apply for a planning commission city seat. The city representatives and constituents that we have spoken with do not feel the same. Many of them disagree with this interpretation of the law.

This ordinance would specify that an applicant for a city seat on the planning commission would be required to be a resident of the respective city. Defining who can be seated in a city seat on the planning commission would eliminate any argument that the apportionment to the unincorporated borough could be too high to comply with State of Alaska requirements. If city seats were to be filled with residents from outside the cities, the cities would be inequitably served on the commission. Mr. Cox then noted that recently, a series of applications were sent to the City of Soldotna for review, one applicant was from Hope, another was from Kasilof and the other had an Anchorage address. He then stated that as a resident of the City of Soldotna he believes it is important that their commission member be a resident of the city.

Mr. Cox then stated while he supports amending code to go back to a 13-seat commission, which it was for 17 years, he does not necessarily think that a 13-seat commission is the best. Going back to 13 seats will address the current issues; it will also allow time for a rewrite of code. It will allow time for a workgroup to come together to review this issue and determine if a rewrite of code would be in the best interest of the borough residents. The code rewrite back in 2016 reduced number of seats but did not address the process on how the city seats would be allocated. If a workgroup determined that eleven seats was a good number then the code rewrite could address how those seats would be allocated.

Mr. Cox then noted the director's presentation stated that no other borough in the State of Alaska has a 13-seat commission. While that statement is correct, he would point out that other boroughs similar in size to the KPB, such as the Fairbanks and the Mat-Su Boroughs, have fewer cities than the KPB. He would argue that instead of comparing our borough with the other boroughs we should compare what works better for the KPB. He would argue that the 13-seat commission has worked better than the 11-seat commission.

Mr. Cox also believed that while the dais in the assembly chambers only seats twelve, there are workable solutions to seating issues. He also did not believe that going back to a 13-seat commission would not significantly increase costs.

Vice Chair Ruffner stated, he thought the reason behind the decision to go to an 11-seat commission was because the rural areas were growing faster than the cities and to maintain the required apportionment, the commission would have either to add more seats or reduce the number of seats. Mr. Cox replied he has spoken with Borough Attorney Sean Kelley and Mr. Kelley stated that thirteen seats would be within what he would consider a fair balance and within state statute. Vice Chair Ruffner then stated rural areas are growing faster than the cities. He also noted that today Seldovia would not have the population needed to incorporate. Mr. Cox replied he believes one of the issues cities face is that they may not have the area to allow for more growth. This leads to more growth in the areas just outside of the city limits. Vice Chair Ruffner replied he understood that each city wanted to have representation on the commission and that was driving the desire to increase the number of seats on the commission back to 13.

Commissioner Bentz spoke the statement that representatives from either the city's planning commission or city councils filling city seats on the borough planning commission. She asked Mr. Cox if knowing that these individuals bring with them a platting & planning knowledge base, did he see value in having the city seats filled by representatives from the city's governments. Mr. Cox replied that he did see the value of the knowledge base those individuals bring to the commission. He also sees the value of opening up opportunities for individuals who are not in government to serve. The knowledge base is what is important. He could see someone who had a background in planning issues who may have been in government at

one time being a great representative on the commission.

James Glendening; 694 Sycamore Circle, Kenai, AK 99669: Mr. Glendening spoke in support of Ordinance 2021-41. He noted that he had served on both the KPB & City of Kenai Planning Commissions. He then stated the City of Kenai submitted a memo & resolution fully supporting Ordinance 2021-40. He stated that historically the City of Kenai has always selected for their seat on the commission individuals from either their Planning Commission or City Council. He understands that while a commissioner may not vote on any items that come before the KPB Planning Commission if they have voted on the matter at a city level, it does not preclude them from participating in the discussion. He also noted that the city does not discourage any city resident from applying for the city seat. The city is just concerned that the individual being recommended is qualified. As for the application process, the city has always followed the borough's lead and advertises the same deadlines etc... He noted that when he applied he submitted his application to the city and to the borough. The city supports the borough being the ones responsible for advertising and gathering the applications for the seat. They understand the borough is the one who bears the responsibility for maintaining the records for the Planning Commission. He then read into the record the memo that the city sent with their resolution, which was contained in the meeting materials for the commissioners.

Lane Chesley, Assembly Member from District 8 – Homer: Mr. Chesley wanted to respond to Commissioner Bentz's question regarding city planning commissioners sitting on the borough planning commission. Mr. Chesley believes that having a member of a city planning commission serving on the borough planning commission is a good thing. He also agrees that increasing participation in local government is also a good thing. What is important is that the candidates have the knowledge base to fill this important role. Regarding the question of the definition of what is a list. Mr. Chesley noted that Borough Clerk Johni Blakenship brought forth the comment to the assembly if a list is defined as being two or more names what happens if the city can produce only one name. He noted that the City of Homer has had difficulty in the past finding individuals to serve on the planning commission. That is why he supports the definition of a list to be a minimum of one name. Making two or more names a requirement for the list will require additional administrative procedures to be developed. He also stated that he supports the Borough overseeing the advertising and application process for planning commission seats.

Donna Aderhold; 353 Grubstake Avenue, Homer, AK 99669: Ms. Aderhold is a Homer city council member and mayor pro tem. She is speaking on behalf of Mayor Ken Castner who is unable to attend the meeting tonight. She informed the commission that the City of Homer supports the adoption of Ordinance 2021-40 and believes that they should have a permanent seat on the KPB planning commission. They also believe that the representative should be a city resident who understands the planning and zoning processes of the city. They also believe that the city should choose their representative by the codified process which is mayoral appointment approved by the city council. She noted that it can be difficult finding willing individuals who have the required experience and time required to serve on the commission. The city believes that it is appropriate to consider a list as one name.

Vice Chair Ruffner 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 Morgan to forward to the assembly a recommendation to adopt Ordinance 2021-40, an ordinance amending KPB 2.40.015 regarding Planning Commission membership and apportionment.

Commissioner Brantley asked why it was decided that the proposed merger of Homer and Seldovia would not work. Ms. Aeschliman replied the initially she and Borough Attorney Sean Kelley met with the city managers of Seldovia and Homer to discuss this option. The same group met again later with the addition of Assemblymen Chesley and Dunn to discuss the matter further. In the end, it each city decided that they wanted to remain separate and have their own representation.

Commissioner Venuti noted that each area within the borough has their own unique needs, cultures and priorities. Each area should have a representative who can speak to those. In addition, as an individual who sits on both the City of Homer and KPB Planning Commissions he would find it difficult to take on the additional representation of Seldovia. He noted it takes a lot of time and effort to serve on these commissions and he is not sure that he could fit Seldovia into his schedule. He believed that Commissioner Carluccio was a very successful representative from Seldovia and believes that Seldovia should produce

a representative to sit on the commission.

Commissioner Fikes supported several of the comments that had been made. She agreed going back to what was successful in the past such as the 13-member commission was a good thing. She also agreed that a city representative should have to reside within the city limits of the city they are representing and that a list could consist of one name. She also noted that it could be difficult for a city to find individuals with the required skill set to sit on the commission, so she supports the cities being able to recommend an individual who currently sits on the city planning commission or city council. She then noted that as a sitting commissioner she appreciates hearing the perspectives of the other area representatives when hearing agenda items from their areas. She see a real benefit to going back to a 13-member commission. She also believes that it would not require any major changes to the assembly chambers to sit a 13-member commission.

Commissioner Bentz stated she supports going back to a 13-seat commission and the geographical areas they represented. She supported the language in the ordinance regarding at-large seat being representative of the geographical areas as practical. She believes representation by diverse geographies within the borough is important because the commission is not only dealing with planning and platting issues but also a lot of land management topics and decisions. Strengthening diverse representation in the at-large seats is very important. She is happy to see that in the ordinance the Anchor Point/Ninilchik seat once again being separated from the Clam Gulch/Kasilof seat.

Commissioner Morgan supports what her fellow commissioners have said. She believes that going back to a 13-seat commission will provide better area representation for our large and diverse borough. She believes that as much as possible area representative should come from those who reside with the specific at-large areas or cities. She supports Ordinance 2021-40, as she believes that it will better serve the borough moving forward.

Commissioner Gillham supports fair representation for each community and believes that Ordinance 2021-40 will better achieve that. She supports each city having a representative on the commission and at-large members coming from within the established geographical areas.

Vice-Chair Ruffner noted when the change to an 11-seat commission was brought forward to the planning commission back in 2016 the reason given for the change was that it was thought they were going to have either increase or decrease the number of seats on the commission to meet state statute apportionment requirements for incorporated vs. unincorporated areas. They did not want to increase the number of seats so the decision was to decrease the number. Now we have a different interpretation of the statute. He believed that if there was no need to increase the number of seats this whole discussion would not have been necessary. He did note at the time the discussion regarding the need to scale back would be a cost saving for the borough but would come at the cost of area representation. He does agree that there are significant differences between the various communities in the borough. For instance, Seldovia has a long history; they have been there for a very long time and have unique access issues. There are many exception requests granted in the Seldovia area that would not be granted anywhere else in the borough. He does see the value of have representation for all the various areas. He then noted pretty much all of the commissioners well as the cities have spoken in favor of the ordinance. He definitely believes that it is important to clear this issue up. He will be supporting Ordinance 2021-40. He appreciates the having some of the other decision makers from around the peninsula testifying on this matter. To him it demonstrates that people really do care about what the commission does.

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes	8	Absent	1	Vacant	3
Yes	Bentz, Brantley, Fikes, Gillham, Martin Morgan, Ruffner, Venuti				
Absent	Martin				

AGENDA ITEM F.

PLAT COMMITTEE REPORT – Plat Committee did not meet.

AGENDA ITEM I. **DIRECTOR'S COMMENTS** - None

AGENDA ITEM J. **COMMISSIONER COMMENTS** - None

AGENDA ITEM M. **ADJOURNMENT** – Commissioner Venuti moved to adjourn the meeting at 8:51 p.m.

Ann E. Shirnberg
Administrative Assistant

DECISION OF THE KENAI PENINSULA BOROUGH PLANNING COMMISSION

A. CASE INFORMATION

Appeal Number:	2021-01-PCA; REMAND HEARING
Hearing Date:	October 18, 2021
Place of Hearing:	KPB, Betty J. Glick Assembly Chambers
Parcel Identification Number:	13524313 & 13524329
Applicable Code:	KPB 21.29.040 and KPB 21.29.050
Name of Appellants:	River Resources LLC – Owner/Applicant; and Numerous nearby landowners
Reason for remand	<ul style="list-style-type: none"> • Make factual findings supporting the Planning Commission's decision based on substantial evidence in the record regarding the: <ul style="list-style-type: none"> a. Bonding requirements; b. Well monitoring timeline; c. Qualifications and independence of McLane Consulting, Inc; and d. Specific criterion contained in KPB Code §§ 21.29.040 and 21.29.050 • To the extent that factual information does not presently exist in the record the Commission shall augment the record by conducting an additional hearing.

PLANNING COMMISSIONERS	PRESENT	ABSENT
Blair Martin, Chair	√	
Robert Ruffner, Vice chair	√	
Syverine Abrahamson-Bentz	√	
Diane Fikes		x
Jeremy Brantley	√	
Pamela Gillham	√	
Virginia Morgan	√	
Franco Venuti	√	

B. COMPLIANCE WITH PROCEDURAL REQUIREMENTS

	YES	NO
1. A quorum was present.	√	
2. The Certified Record on appeal to the Hearing Officer was provided to the Planning Commission	√	
3. The Motion to Remand and applicable Hearing Officer remand orders were provided to the Planning Commission	√	

C. DECISION SETTING A PUBLIC HEARING ON REMAND

PURSUANT TO THE CERTIFIED RECORD, MOTION TO REMAND, AND ORDERS ENTERED BY THE HEARING OFFICER REMANDING THIS MATTER, THE PLANNING COMMISSION ENTERS THE FOLLOWING DECISION ON REMAND:

1. A remand hearing was held on October 18, 2021. Public testimony and evidence was not reopened for the October 18, 2021 remand hearing. Pursuant to the certified record and in accordance with the orders entered by the Hearing Officer, the Planning Commission determined during deliberations that it needed more information from the parties involved and therefore will reopen public testimony and evidence in this matter.

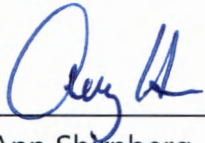
2. The public hearing on remand shall be set for December 13, 2021 and shall only be continued in the event the Applicant provides a good cause basis for not being able to timely comply with the below requested information.
3. By December 3, 2021, the Applicant, River Resources LLC, and the Applicant's engineer, Gina DeBardelaben/McLane Consulting, Inc., should provide responses pertaining to the following questions raised by the Hearing Officer's orders:
 - a. A best effort to identify known wells within 300', 500' and 1000' of the proposed dewatering;
 - b. Anticipated impacts, if any, to nearby wells;
 - c. Potential impacts to nearby wells in a worst-case scenario and the possible remedial costs of those impacts on a per-well basis;
 - d. The dates of measurements for the monitor wells done pursuant to KPB 21.29.050(A)(5);
 - e. The amount of the bond proposed by River Resources, LLC; and
 - f. Any other information or documentation that River Resources, LLC would like to provide for consideration in support of its applications and requests.
4. By December 3, 2021, interested parties/nearby landowners may provide information regarding:
 - a. Well tests performed to-date;
 - b. Professional opinions, if any, regarding potential impacts that may occur as a result of the Applicant's (i) request to allow for excavation in the water table; and (ii) localized dewatering exemption request during excavation below groundwater elevation; and
 - c. Any other expert opinions or information that nearby landowners or interested parties would like to provide for consideration in this matter.
5. By December 3, 2021, the Planning Department should provide an updated staff report that, to the best of staff's ability, answers the questions under paragraph 3 and 4 above, with recommendations that includes a proposed resolution, findings of fact, conclusions of law, and conditions, if applicable.
6. The Applicant, including its agents, counsel, and/or engineer, shall have 15 minutes to provide public testimony at the public hearing scheduled for December 13, 2021.

7. Nearby owners and other interested parties shall have 3 minutes per person to provide public testimony that is relevant to the information requested under paragraph 3 and 4 above; however, the total allotted time for nearby owners and interested parties' testimony shall be capped at a maximum of 45 minutes.

Dated this 18th day of October, 2021.


Blair Martin, Chair, KPB Planning Commission

ATTEST:


for Ann Shirnberg AA
Ann Shirnberg, Administrative Assistant

MEMORANDUM

TO: Blair Martin, Planning Commission Chair
Members, Kenai Peninsula Borough Planning Commission

THRU: Melanie Aeschliman, Planning Director
Samantha Lopez, River Center Manager

FROM: Bryan Taylor, Planner *bt*

DATE: December 2, 2021

RE: Additional Information for Remand of PC Resolution 2021-10

At its October 18, 2021, remand hearing (2021-01-PCA), the Planning Commission requested that staff update the commission regarding new information, if any, on several matters. The matters are excerpted below from the Planning Commission's decision from that meeting. My response for each matter follows and is based on available information.

"A best effort to identify known wells within 300', 500' and 1000' of the proposed dewatering."

I have enclosed a map to assist you in identifying wells or parcels on which a water well is expected within the requested buffer distances. The map includes data from the Alaska Department of Natural Resources' Well Log Tracking System (WELTS). Because the WELTS database does not include all water wells, I have also indicated parcels with residential structures. Information regarding structures is based upon KPB assessing records, aerial photography from May 2021, and my own observations of recent development along Patson Road and Patson Circle north of the permit area.

"Anticipated impacts, if any, to nearby wells" ... "Potential impacts to nearby wells in a worst-case scenario and the possible remedial costs of those impacts on a per-well basis."

Based upon the letter submitted by the applicant from a qualified independent civil engineer pursuant to KPB 21.29.050(A)(5)(a), there are no anticipated impacts to the quantity of water in the aquifer serving nearby wells. Staff have no means of anticipating other impacts from existing information.

Date: December 2, 2021

To: Blair Martin, Planning Commission Chair

Members, Kenai Peninsula Borough Planning Commission

RE: Additional Information for Remand of PC Resolution 2021-10

“The dates of measurements for the monitor wells done pursuant to KPB 21.29.050(A)(5).”

Below is a timeline of the monitor well data collection (for the 5 wells installed) with respect to the River Resources modification application and Planning Commission review:

- September 17, 2019: Data collected on location of 4 installed monitor wells (water elevation data not collected)
- May 4, 2020: First monitor well data collection (2nd quarter 2020)
- July 15, 2020: Second monitor well data collection (3rd quarter 2020)
- October 15, 2020: Third monitor well data collection (4th quarter 2020)
- January 18, 2021: Fourth monitor well data collection (1st quarter 2021)
- March 3, 2021: Modification application submitted with additional information requested by staff
- April 12, 2021: First Planning Commission public hearing for application (PC decision postponed after closing public hearing)
- April 23, 2021: Fifth monitor well data collection (date of collection provided by McLane but not data)
- May 24, 2021: Second Planning Commission public hearing for application

“The amount of the bond proposed by River Resources, LLC.”

No bond amount was proposed by the applicant and code does not indicate a bond amount, how it should be calculated, or what potential damages it should cover. Staff previously recommended a bond of \$30,000. This was an estimated total replacement cost for the three wells shown on the original site plan in the event the wells would need to be replaced for any reason.

“Well tests performed to-date.”

To date, staff have not received any well test data from adjacent property owners.

“Professional opinions, if any, regarding potential impacts that may occur as a result of the Applicant’s (i) request to allow for excavation in the water table; and (ii) localized dewatering exemption request during excavation below groundwater elevation.”

To date, staff have not received any professional opinions except the letter provided by the applicant from a qualified independent civil engineer pursuant to KPB 21.29.050(A)(5)(a).

Date: December 2, 2021

To: Blair Martin, Planning Commission Chair

Members, Kenai Peninsula Borough Planning Commission

RE: Additional Information for Remand of PC Resolution 2021-10

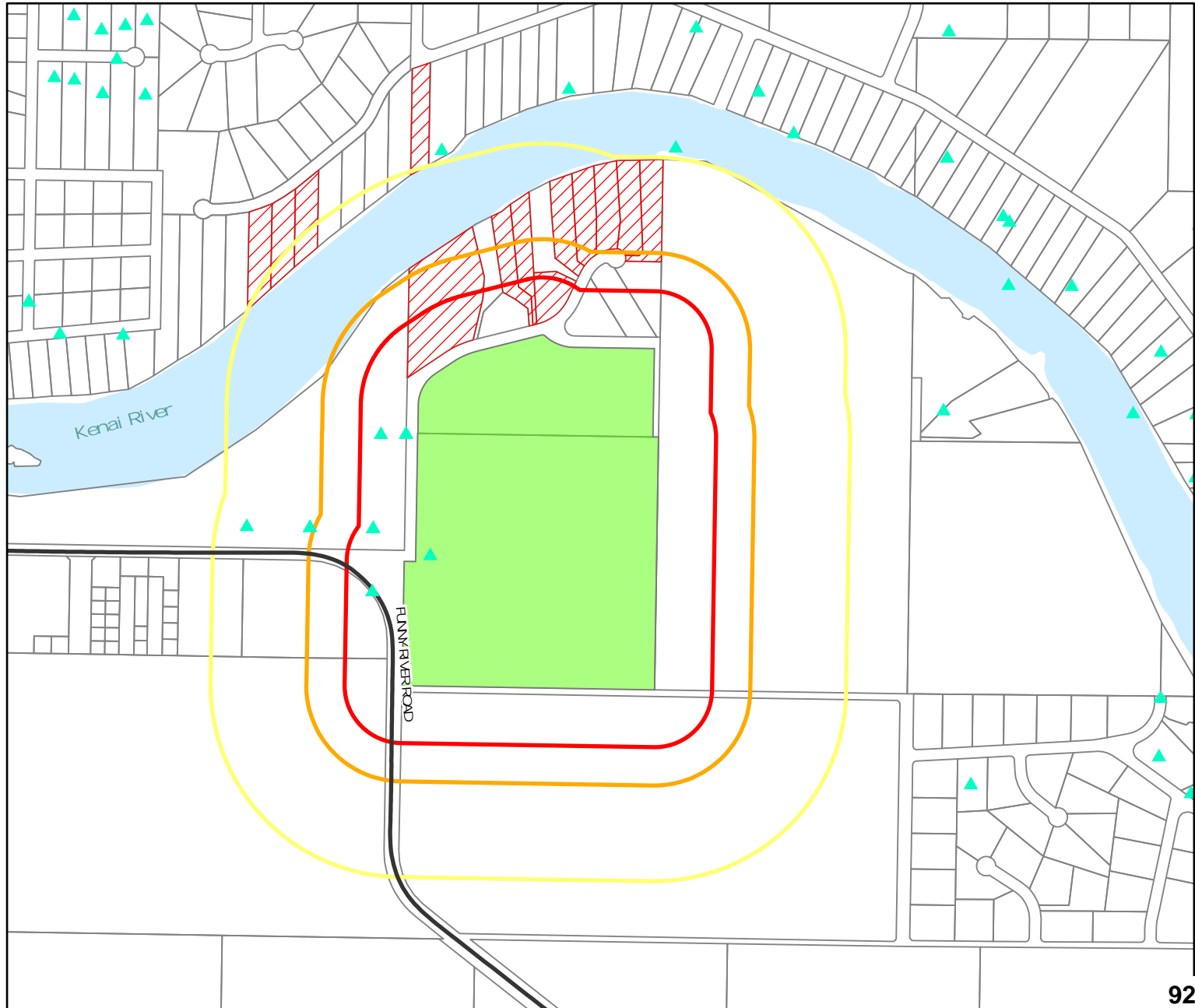
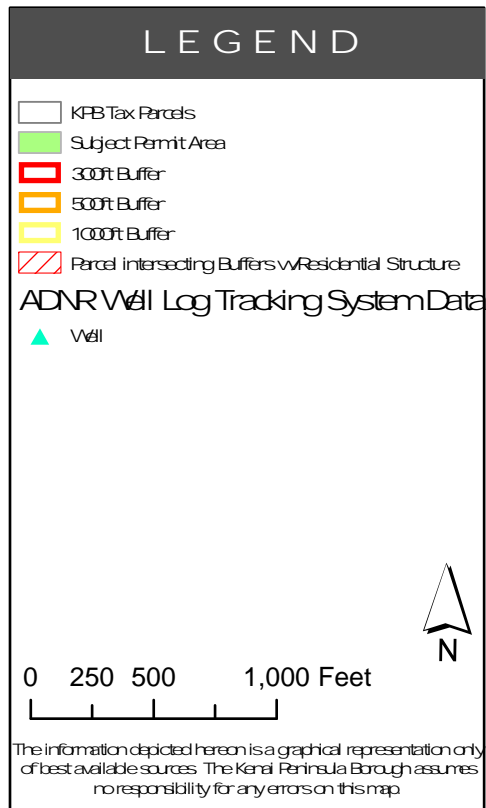
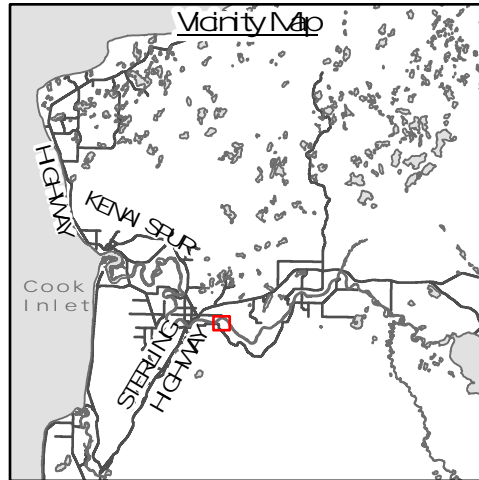
“Any other expert opinions or information that nearby landowners or interested parties would like to provide for consideration in this matter.”

To date, staff have not received any other expert opinions or information from nearby landowners or interested parties.

encl.

Kenai Peninsula Borough Planning Commission
Remand of PC Resolution 2021-10

Parcels 135-243-13 & 29
Applicant: River Resources LLC



EHRHARDT | ELSNER | COOLEY

Attorneys at Law

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Kenai, Alaska 99611
Phone: (907) 283-2876
Fax: (907) 283-2896
907Legal.com

December 3, 2021

Kenai Peninsula Borough Planning Commission
144 North Binkley Street
Soldotna AK 99669

Re: River Resources LLC Conditional Land Use Permit Modification

Planning Commission,

In response to the Commission decision dated October 18, 2021, on remand from the Hearing Officer relating to 2021-01-PCA, the applicant, River Resources, submits the additional requested information.

INFORMATION REQUESTED BY THE PLANNING COMMISSION

In addressing the Commission's requests, the additional information sought is located at:

1. A best effort to identify known wells within 300', 500', and 1000' of the proposed dewatering [McLane Consulting Report dated November 23, 2021, page 1]
2. Anticipated impacts, if any, to nearby wells [McLane Consulting Report dated November 23, 2021, pages 1-3]
3. Potential impacts to nearby wells in a worst-case scenario and the possible remedial costs to those impacts on a per-well basis [McLane Consulting Report dated November 23, 2021, pages 3-4]
4. The dates of measurements for the monitor wells done pursuant to KPB 21.29.0450(A)(5) [McLane Consulting Report dated November 23, 2021, page 4, and Attachment E]
5. The amount of bond proposed by River Resources [following in this statement]
6. Any other information or documentation that River Resources, LLC would like to provide for consideration in support of its application [See present statement, and McLane Consulting Report dated November 23, 2021, especially pages 4-5 and Attachment F detailing McLane Consulting's]

Peter R. Ehrhardt
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Katie A. Elsner
katie@907legal.com

Joshua B. Cooley
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EHRHARDT | ELSNER | COOLEY

Attorneys at Law

independence and impartiality in conducting the studies, reports and certifications required by the KPB Code.

ADDITIONAL INFORMATION SUBMITTED BY RIVER RESOURCES

The River Resources application seeks two distinct modifications to its current CLUP:

1. A modification allowing for excavation in the water table as provided for in KPB 21.29.050(A)(5);
2. An exemption allowing for dewatering as provided for in KPB 21.29.050(A)(4)(d)

River Resources submits that these requests are separate and distinct and requests that they be treated as such.

EXCAVATION WITHIN WATER TABLE UNDER KPB 21.29.050(A)(5)

As to the modification seeking to excavate in the water table, KPB 21.29.050(A)(5) explicitly allows for this, provided that the following requirements are met – all of which have been met by River Resources as detailed:

- a. Certification by a qualified independent civil engineer or professional hydrogeologist that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources [McLane Consulting Reports, especially McLane Consulting Report dated March 2, 2021, and the Certification contained therein (located at R-5)]
- b. The installation of a minimum of three water monitoring tubes or well casings as recommended by a qualified independent civil engineer or professional hydrogeologist adequate to determine flow direction, flow rate and water elevation [McLane Consulting Report dated November 23, 2021, especially Attachment E and also, McLane Consulting Report March 2, 2021 (located at R-4 – 7) and McLane Consulting Report dated May 21, 2021 (located at R-119 – 126)]
- c. Groundwater elevation, flow direction, and flow rate for the subject parcel, measured in three-month intervals by a qualified independent civil engineer or professional hydrogeologist, for at least one year prior to application. Monitoring tubes or wells must be kept in place, and measurements taken, for the duration of any excavation in the water table [McLane Consulting Report dated November 23, 2021, confirming installation of monitoring in September 2019 and 7 subsequent measurements, and Attachment E, and McLane Consulting Report dated March 2, 2021, detailing monitoring wells, and McLane Consulting Report dated May 21, 2021 (located at R-119 – 126) correcting prior scrivener’s error and confirming five groundwater monitor wells were installed on September 17, 2019 and also testimony of Gina DeBardelaben, P.E., dated April 12, 2021 confirming quarterly monitoring of the wells (located at T-6, p 17)]

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d. Operations shall not breach an aquifer-confining layer [McLane Consulting Reports, Modification Application and also KPB 21.29.110 disallowing violations of CLUP conditions]

Applicant has met the requirements of KPB 21.29.050(A)(5) and has established that the excavation plan will not negatively impact the quantity of water serving existing water sources. As bonding is not a condition that the Code places on excavation within the water table, no bond may be applied to this requested modification. KPB 21.29.040 “Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards.”

LOCALIZED DEWATERING DURING EXCAVATION AND PROPOSED BOND

As to the requested exemption allowing for dewatering, KPB 21.29.050(A)(4)(d) allows for this:

There shall be no dewatering either by pumping, ditching or some other form of draining unless an exemption is granted by the planning commission. The exemption for dewatering may be granted if the operator provides a statement under seal and supporting data from a duly licensed and qualified impartial civil engineer, that dewatering will not lower any of the surrounding property’s water systems and the contractor posts a bond for liability for potential accrued damages.

As the McLane Consulting Report dated November 23, 2021, makes clear, there “are no potential impacts to nearby wells” even in a worst-case scenario. As such, the potential liability for which applicant could potentially be responsible is \$0.00. This is especially true considering that the recent surveying shows that there are no wells located within 300’ of the proposed dewatering site. However, as it appears that a bond is required by the Code, River Resources proposes a bond of \$15,000 as the replacement cost of 2 wells, at an estimated replacement cost of \$7,500 per well—even though the McLane Consulting Report confirms that no wells will experience any drawdown that would impact the surrounding property water systems.

/s/ Katie Elsner

Katherine Elsner

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December 2, 2021

Kenai Peninsula Borough Planning Commission
144 North Binkley
Soldotna, Alaska 99669

SUBJECT: PC Resolution 2019-39
KPB Tax Parcel No. 135-243-13 & 135-243-29

RE: Conditional Land Use Permit Modification Application

Planning Commission:

Kindly find included in this document the technical information requested by the Kenai Peninsula Borough Planning Commission regarding River Resources' Conditional Land Use Permit Modification Application.

Item a. A best effort to identify known wells within 300', 500' and 1000' of the proposed dewatering.

Attachment A (1 page) is an exhibit composed of proposed CLUP dewatering area, 300', 500' and 1000' radius offsets to the dewatering area, and the wells located on subject properties. The dewatering boundary offset exhibit was utilized to cross reference well logs and build Table 1.

TABLE 1. Well Data within 300', 500', and 1000' of River Resources CLUP Dewatering.

	300' Radius	500' Radius	1000' Radius
Properties within Offset Radius	13	14	20
Wells within Offset Radius	0	2	10
information below is supplemental of the above-mentioned wells			
Wells >90' Depth	0	2	9*
Confined Aquifer Wells	0	2	9*
Unconfined Aquifer Wells	0	0	0
Wells with ADNR Water Rights	0	2	2

*Log for 1 known well was not obtained.

Well logs were obtained from the ADNR Well Log Tracking System (WELTS), Kraxberger Drilling, and Smith Well Drilling (Attachment B, 10 pages). River Resources' well and ADNR Water Rights are not included in Table 1. Exact well locations were collected by McLane survey crews.

It was discovered during ADEC research that the well previously shown in the Funny River right-of-way is not a water well and was removed from attached exhibit. It was soil boring location conducted by the City of Soldotna in 1983 as a potential sludge injection site that has not utilized. This record not included in Table 1.

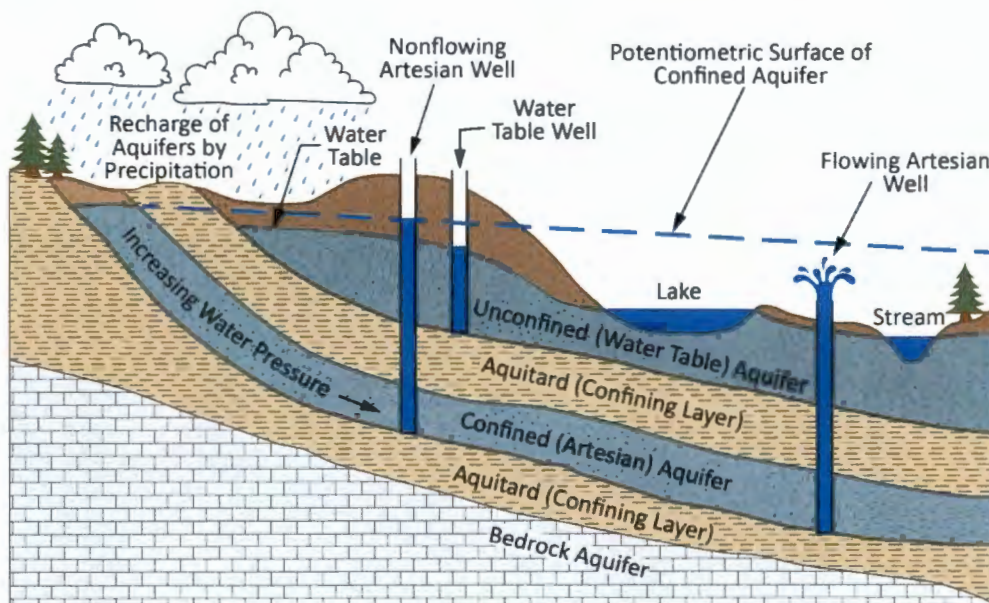
Item b. Anticipated impacts, if any, to nearby wells.

There are no anticipated impacts to the nearby wells. Per KPB 29.10.050.A.4.d, the groundwater data and excavation dewatering has been evaluated by a licensed, qualified civil engineer. The excavation

and dewatering plan included in the CLUP Modification Application will not lower any of the surrounding property's water systems.

Water wells in this area are drilled into an aquifer. At any locations, there may be different groundwater aquifers. An aquifer is a body of rock and/or sediment that holds groundwater. There are two types of aquifers: confined and unconfined. Confined aquifers have a layer of impermeable rock or clay above them (confining layer) and create a flowing or non-flowing artesian well. Unconfined aquifers are above the confining layer and below a permeable layer of soil. Graphic A is a visual explanation of unconfined aquifers, aquitards, and confined aquifers along with how water table and wells work in each.

Graphic A. Aquifers.
from Utah Geological Survey (geology.utah.gov)



Per KPB 21.29050.A.5.d, excavation shall not breach a confining layer (aquitard). Excavation is only proposed within the upper unconfined aquifer, not to exceed approximately 32' below original ground. On May 7, 2021, Smith Well Drilling installed a water well on the permit property. According to the well log (Attachment C, Log ID 836), the aquitard (confining layer) is 35' below existing ground, deeper than the proposed depth of excavation.

This aquitard ranges in 40' to 60' thick according to the area well logs. All of the well logs in Table 1 show that the wells in the adjacent areas are in the confined aquifer (below the aquitard).

River Resources has proposed to utilize dewatering during the lower limits of excavation within the groundwater table. Dewatering will be conducted on an as-needed, temporary basis while extracting below the groundwater table. Attachment D (2 pages) is a dewatering plan as presented to the Planning Commission in May 2021. It includes a representative dewatering layout, dewatering equipment sizing, drawdown, and recharge calculations.

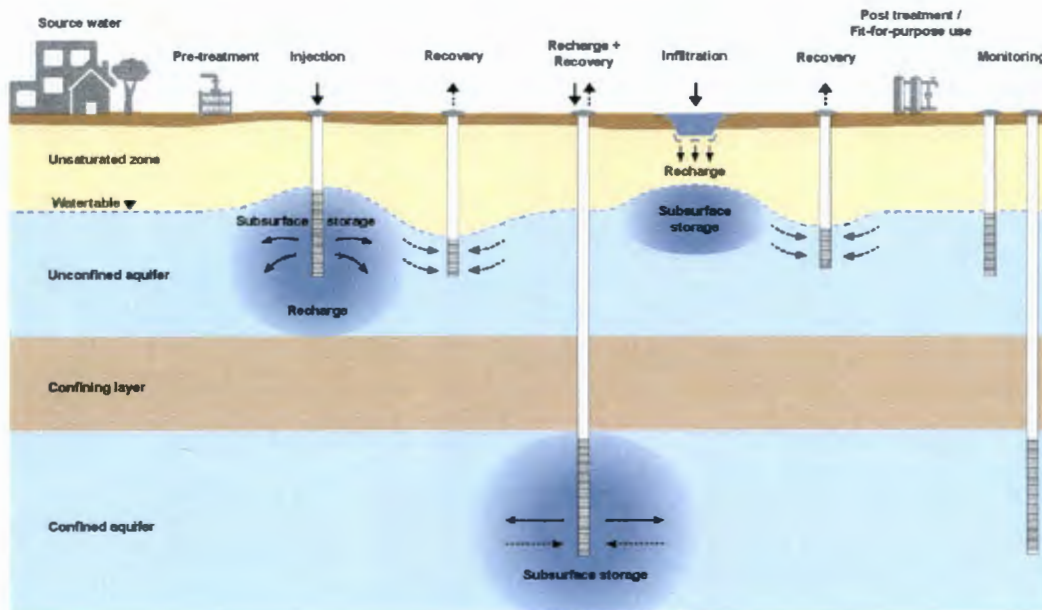
Anticipated impacts will only be within the unconfined aquifer, as that is the aquifer where the dewatering and recharge will take place. Per Table 1, there are zero (0) wells within 1000' of the property that harvest water within the unconfined aquifer. There is no anticipated impacts to any of these nearby wells.

Item c. Potential impacts to nearby wells in a worst-case scenario and the possible remedial costs of those impacts on a per-well basis.

Ongoing uncontrolled and unmonitored dewatering can deplete an area's groundwater. Dewatering large amounts over an extended period requires evaluation to avoid drawdown reducing local water resources. This is not a potential at this site.

River Resources is not proposing to dewater large amounts or over an extended period. River Resources' Excavation Dewatering Plan, states that dewatering will be limited to 10 days maximum. Along with that time consideration, the waters from the dewatering process will be discharged within the permit property to re-enter the groundwater table, therefore rapidly recharging the aquifer which negates the effects on surrounding groundwater elevations. Graphic B shows how within an unconfined aquifer, recovery wells (or dewatering pumping) create a cone of depression and how infiltration basins recharge the groundwater table.

Graphic B. Schematic examples of Aquifer Drawdown and Recharge.
from Western Australia Government Information Services (WA.gov.au)



This is the same process that River Resources will be utilizing when dewatering and discharging the dewatered to infiltrate into the groundwater. Calculations in this process are included in the Excavation Dewatering Plan (Attachment D).

**TABLE 2. Well Drawdown with Immediate Adjacent Discharge
from River Resources Excavation Dewatering Plan**

Distance from Dewatering Point	Length of Dewatering		
	1-day	7-day	10-day
300 feet	0.0 ft	0.04 ft	0.10 ft
0.25 mile	0.0 ft	0.0 ft	0.0 ft
0.50 mile	0.0 ft	0.0 ft	0.0 ft
1.0 mile	0.0 ft	0.0 ft	0.0 ft

There are many material sites on the Kenai Peninsula that excavate within the groundwater table. A quick visual inspection of the GIS material site database shows approximately 15 material sites within a half mile of the Kenai River and/or Beaver Creek alone. This is not an uncommon practice in our Borough. ADEC does not have record of any groundwater issues related to gravel excavation in the groundwater or dewatering during excavation.

There are no potential impacts to nearby wells in a worst-case scenario for this minimal dewatering as the dewatering is not within the same aquifer as the adjacent wells, and drawdown from dewatering is minimal over the maximum 10-day period within the 300' radius. There are no wells within 300' of the dewatering area.

Item d. The dates of measurements for the monitor wells done pursuant to KPB 21.29.050(A)(5).

Attachment E (1 page) is the tabulated monitor well readings for the site. Monitor wells measurements began in September 2019 and have been measured seven (7) times since installation.

Item e. Amount of bond proposed be River Resources, LLC.

To be provided be others.

Item f. Other Information.

McLane Consulting monitors and reviews sets of monitor wells at other materials sites. Not all sites will meet hydrologic requirements to apply for excavation within the groundwater table or petition for a dewatering exemption. At some sites excavation and dewatering may impact anadromous stream temperatures, dewater wetlands, or negatively impact water wells. The Planning Commission never sees applications for these sites because they are properly vetted by an engineer or hydrogeologist. MCI is currently monitoring two (2) other sites for related potential CLUP modifications.

McLane Consulting has been providing surveying since 1960 and engineering and material testing since 1983 on the Kenai Peninsula with an impeccable reputation. A quick review of McLane Consulting's 3-year revenue reports shows that MCI's three (3) biggest clients are Hilcorp Alaska, Kenai Peninsula Borough, and Marathon/Tesoro Alaska. River Resources and Foster Construction are less than 2% of McLane's annual revenue over the last 3-years.

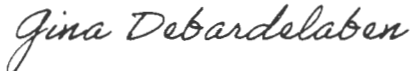
McLANE

CONSULTING, INC.

An abbreviated firm resume for McLane Consulting, Inc. and for Gina M. DeBardelaben, PE are included as Attachment F.

If you have questions, please contact me.

Sincerely,

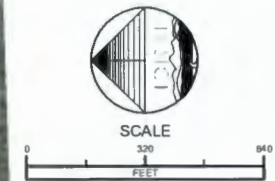


Gina DeBardelaben, PE
McLane Consulting, Inc.

Attachments:

- A. 300', 500', and 1000' Dewatering Area Offset Exhibit (1 page)
- B. Well Logs for properties within 300', 500' and 1000' (10 pages)
- C. Smith Well Drilling Material Site Water Well Log Well ID 836 5-7-2021 (1 page)
- D. River Resources, LLC. Site Specific Excavation Dewatering Plan 5-19-2021 (2 pages)
- E. Monitor Well Measurements and Dates (1 page)
- F. McLane Consulting, Inc. and Gina DeBardelaben, PE Abbreviated Resumes (2 pages)

Attachment A
300', 500' and 1000' Dewatering Area Offset Exhibit
(1 page)



APPLICANT / OWNER:
ATTN: KYLE FOSTER
RIVER RESOURCES, LLC
P.O. BOX 3036
SOLDOTNA, ALASKA 99669

 Consulting Inc		ENGINEERING - TESTING SURVEYING - MAPPING P.O. BOX 488 SOLDOTHA, AL 36888 VOICE: (907) 333-0218 FAX: (907) 245-3262 WWW.MCLANECGS.COM	
DRAWN BY: BGB/GMD CHECKED BY: GMD HORIZ. SCALE: 1" = 300' VERT. SCALE: N/A SHEET: P1	FIELD WORK DATE: 01/17/18, 02/05/18 FIELD BOOK: 18-01 JOB NO.: 180514 DATE: 11-22-2024 DATE OF EXPIRATION: 11/22/2026		
RIVER RESOURCES, LLC FUNNY RIVER - PATSON CLUP MODIFICATION		DESCRIPTION:	BY:

Attachment B
Well Logs for properties within 300', 500' and 1000'
(10 pages)

**WATER WELL LOG** Revised 02/15/2012

Drilling Started: ___/___/___ Completed: 3 / 9 / 1981 Pump Install: ___/___/___

City/Borough Soldotna	Subdivision	Block	Lot	Property Owner Name & Address SOLDOTNA, CITY OF
Well location: Latitude _____ Longitude _____				
Meridian S Township 005N Range 010W Section 34 NE 1/4 of NE 1/4 of NE 1/4 of SW 1/4				
BOREHOLE DATA: (from ground surface)		Drilling method: <input type="checkbox"/> Air rotary, <input type="checkbox"/> Cable tool, <input type="checkbox"/> Other _____		
Suggest T.M. Hanna's hydrogeologic classification system*		Well use: <input type="checkbox"/> Public supply, <input type="checkbox"/> Domestic, <input type="checkbox"/> Reinjection, <input type="checkbox"/> Hydrofracking		
https://my.ngwa.org/NC_Product?id=a185000000BYub3AAD		<input type="checkbox"/> Commercial, <input type="checkbox"/> Observation/Monitoring, <input type="checkbox"/> Test/Exploratory, <input type="checkbox"/> Cooling,		
		<input type="checkbox"/> Irrigation/Agriculture, <input type="checkbox"/> Grounding, <input type="checkbox"/> Recharge/Aquifer Storage,		
		<input type="checkbox"/> Heating, <input type="checkbox"/> Geothermal Exploration, <input type="checkbox"/> Other _____		
Depth From To		Fluids used: _____		
		Depth of hole: 97 ft Casing stickup: _____ ft		
		Casing type: _____ Casing thickness: _____ inches		
		Casing diameter: _____ inches Casing depth: _____ ft		
		Liner type: _____ Depth: _____ ft Diameter: _____ inches		
		Note: _____		
		Well intake opening type: <input type="checkbox"/> Open end, <input type="checkbox"/> Open hole, <input type="checkbox"/> Other _____		
		Screen type: _____, Screen mesh size: _____		
		Screen start: _____ ft, Screen stop: _____ ft, Perforated <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
		Perforation description: _____ Perf from: _____ ft, Perf to: _____ ft, Perf from: _____ ft, Perf to: _____ ft		
		Gravel packed <input type="checkbox"/> Yes <input type="checkbox"/> No Gravel start: _____ ft, Gravel stop: _____ ft		
		Note: _____		
		Static water (from top of casing): 0 ft on ____ / ____ / ____ Artesian well <input type="checkbox"/>		
		Pumping level & yield: _____ feet after _____ hours at 200 gpm		
		Method of testing: _____		
		Development method: _____ Duration: _____		
		Recovery rate: _____ gpm		
		Grout type: _____ Volume _____		
		Depth: From _____ ft, To _____ ft		
Include description or sketch of well location (include road names, buildings, etc.):		Final pump intake depth: _____ ft Model: _____		
		Pump size: _____ hp Brand name: _____		
		Was well disinfected upon completion? <input type="checkbox"/> Yes <input type="checkbox"/> No		
		Method of disinfection: _____		
		Was water quality tested? <input type="checkbox"/> Yes <input type="checkbox"/> No		
		Water quality parameters tested: _____		
		Well driller name: _____		
		Company name: KRAXBERGER DRILLING		
		Mailing address: 48230 GAS WELL ROAD		
		City: SOLDOTNA State: AK Zip: 99669		
		Phone number: (____) ____ - ____		
		Driller's signature: _____		
		Date: ____ / ____ / ____		
		Anchorage Municipal Code 15.55.060(I) and North Pole Ordinance 13.32.030(D) require that a copy of this well log be submitted to the Development Services Department/City within 30 days of well completion.		
		City Permit Number: _____		
		Date of Issue: ____ / ____ / ____		
		Parcel Identification Number: ____ - ____ - ____		

AS 41.08.020(b)(4) and AAC 11 AAC 93.140(a) require that a copy of the well log be submitted to the Department of Natural Resources within **45 days of well completion**. Well logs may be submitted using the online well log reporting system available at:
<https://dnr.alaska.gov/welts/>

OR email electronic well logs to
dnr.water.reports@alaska.gov

*Guide for Using the Hydrogeologic Classification System for Logging Water Well Boreholes by Thomas M. Hanna NGWA Press

210079

Smith Well Drilling

35876 Isbell St.
Soldotna, Ak 99669
Ph(907)-262-3970

Water Well Construction Log

Log ID 834

Well Owner: Halls Quality Builders

Date Completed: 05/4/2021

Nearest Community: Soldotna

Driller: Tyler Smith

Well Location: job site #1148 Patson Rd. Funny River

Use of Well:	Domestic	Depth of Well:	120ft	Static Water Level:	Above Ground Level
Depth of Casing:	115ft	Casing Stickup:	2ft	Pumping Level:	0ft Duration: 4hr(s)
Casing Type:	Steel	Casing Dia:	6in.	Flow Rate:	25GPM Testing Method: Air
Casing Thickness:	0.250in.	Finish of Well:	Screen	Development Method:	Air Drilling Method: Air Rotary
Intervals and Size:	10 Slot Stainless Steel Screen			Drilling Fluid:	Water
From:	115ft	To:	120ft		

Drillers Material Log

(Description of strata penetrated)

Depth Below Top
Of Casing In Feet

From	To	Material
0	— 1	Top Soil
1	— 22	Brown Gravel
22	— 80	Blue Clay
80	— 102	Blue Clay and Gravel
102	— 114	Blue Clay
114	— 120	Blue Sand and Gravel

Smith Well Drilling

35876 Isbell St.
Soldotna, Ak 99669
Ph(907)-262-3970

Water Well Construction Log

Log ID 835

Well Owner: Halls Quality Builders

Date Completed: 05/06/2021

Nearest Community: Soldotna

Driller: Tyler Smith

Well Location: Job site #1145 Patson Rd. Funny River

Use of Well:	Domestic	Depth of Well:	120ft	Static Water Level:	Above Ground Level
Depth of Casing:	120ft	Casing Stickup:	2ft	Pumping Level:	0ft Duration: 4hr(s)
Casing Type:	Steel	Casing Dia:	6in.	Flow Rate:	150GPM Testing Method: Air
Casing Thickness:	0.250in.	Finish of Well:	Open-End	Development Method:	Air Drilling Method: Air Rotary
Intervals and Size:				Drilling Fluid:	Water
From:	To:				

Drillers Material Log

(Description of strata penetrated)

Depth Below Top
Of Casing In Feet

From	To	Material
0	— 1	Top Soil
1	— 22	Brown Gravel
22	— 80	Blue Clay
80	— 102	Blue Clay and Gravel
102	— 114	Blue Clay
114	— 120	Blue Sand and Gravel

Well Drilling Log ---- Kraxberger Drilling Inc. ----- (907) 262-4720

35055 Gas Well Road
Soldotna, AK 99669

CLIENTNAME: BYLER

LOGID: 7378

PID 13524328 Patson Lot 10
Lockwood / Byler

LEGAL1: PATSON PROPERTIES

PUMPINFO:

LEGAL2: 2019 REPLAT LOT 10

PARCEL#:

ROADAREA: FUNNY RIVER RD PATSON DR
34741 PATSON CR

DIAMETER: 6 "

RIGTYPE: AR

CASINGTYPE: STEEL

CITY: SOLDOTNA

GROUT: BENTONITE

BUILDERNAME: BYLER CONSTRUCTION

WELLCOMPLETION: OPEN END FLOWED 10 GPM
8 " SURFACE CASING TO 30 FT 31 FT
TOTAL LENGTH

DEPTH: 93

DATE: 5/19/21

DRILLER: RRK

IRON PPM: 0.5 - 1.0 PPM

YIELDGPM: 40

SCREEN:

STATICLEVEL: -10

CLASS:

CASINGLENGTH: 95

LATITUDE:

CASINGSTICKUP: 2 FT

LONGITUDE:

DRILLING REPORT:

0 - 2 TOPSOIL AND CLAY
2 - 14 SAND AND GRAVEL
14 - 17 SAND GRAVEL AND COBBLES
17 - 25 GRAY CLAY AND GRAVEL
25 - 79 STICKY GRAY CLAY
79 - 90 GRAY CLAY GRAVEL SAND
90 - 93 GRAVEL SAND AND WATER

Well Drilling Log ---- Kraxberger Drilling Inc. ----- (907) 262-4720

35055 Gas Well Road

Soldotna, AK 99669

CLIENTNAME: MCBRIDE, DALE

LOGID: 4973

PID 13524330 Patson

LEGAL1: TRACK A

PUMPINFO:

McBride Addn Tr A2

LEGAL2:

Baroness LLC

PARCEL#:

DIAMETER: 6

ROADAREA: FUNNY RIVER PATSON ROAD

RIGTYPE: AR

CITY: SOLDOTNA

CASINGTYPE:

GROUT:

BUILDERNAME: CHENY EX HOLT BUILDER

WELLCOMPLETION: 30 FT 8 IN CASING FLOWED 50 GPM

DEPTH: 107

DATE: 6/22/2011

DRILLER: RRK

IRON PPM:

YIELDGPM: 100

SCREEN:

STATICLEVEL: -10

CLASS:

CASINGLENGTH: 109

LATITUDE: 0

CASINGSTICKUP: 2

LONGITUDE: 0

DRILLING REPORT:

0-2 TOP SOIL+CLAY

8" CASING 29'

2-17 SAND + GRAVEL

17-25 SAND, GRAVEL, COBBLES

25-92 GRAY CLAY

92-104 GRAVEL+CLAY

104-107 GRAVEL, SAND+ WATER

Well Drilling Log ---- Kraxberger Drilling Inc. ----- (907) 262-4720

35055 Gas Well Road
Soldotna, AK 99669

PID 13524326 Patson Lot 8
Lockwood

CLIENTNAME: WEAVER DOUG

LOGID: 7243

LEGAL1: LOT 5 ***not correct

PUMPINFO: NO PUMP-THEY ARE USING SHALLOW

LEGAL2: PATSON PROPERTIES

PARCEL#: 13524323 ***not correct

DIAMETER: 6

ROADAREA: PATSON ROAD, FUNNY RIVER

RIGTYPE: AR

CITY: SOLDOTNA

CASINGTYPE: STEEL

GROUT: ARTESIAN GROUT

BUILDERNAME:

WELLCOMPLETION: FLOWED 100GPM FROM 6"
FLOWED 30GPM FROM 8"

DEPTH: 104 Per Kraxberger - same as Lot 4 & Lot 6

DATE: 4/16/20

DRILLER: RRK

IRON PPM:

YIELDGPM: 200

SCREEN:

STATICLEVEL: -10 FLOW 100 FROM 6"

CLASS:

CASINGLENGTH: 107

LATITUDE:

CASINGSTICKUP: 3

LONGITUDE:

DRILLING REPORT:

0-4 GRAVEL FILL

4-6 TOP SOIL AND CLAY

6-14 GRAVEL SAND COBBLES

14-23 GRAY CLAY AND GRAVEL

23-55 STICKY GRAY CLAY

55-101 STICKY GRAY CLAY WITH

LAYERS OF GRAVEL AND CLAY

101-103 CEMENTED GRAVEL

103-104 GRAVEL SAND AND WATER

Well Drilling Log ---- Kraxberger Drilling Inc. ----- (907) 262-4720

35055 Gas Well Road
Soldotna, AK 99669

CLIENTNAME: BOWEN STEVE

LOGID: 7239

LEGAL1: LOT 7 (not correct)

PUMPINFO:

PID 13524322 Patson Lot 4
Norden

LEGAL2: PATSON PROPERTIES 2019

PARCEL#: 13524325

ROADAREA: 34799 PATSON/FUNNY RIVER

DIAMETER: 6

RIGTYPE: AR

CASINGTYPE: STEEL

CITY: FUNNY RIVER

GROUT: BENTONITE BETWEEN 6-8"

BUILDERNAME: LITTLEKNIFE ***

WELLCOMPLETION: 102' 6"
30" 8"

DEPTH: 100

DATE: 5/12/20

DRILLER: RRK

IRON PPM:

YIELDGPM: FLOW 30 PUMPED 75

SCREEN:

STATICLEVEL: -10

CLASS:

CASINGLENGTH: 102

LATITUDE:

CASINGSTICKUP: 2

LONGITUDE:

DRILLING REPORT:

0-11 SAND AND GRAVEL

11-14 SAND GRAVEL COBBLES

14-16 WET SAND AND GRAVEL

16-20 GRAVEL AND CLAY

20-69 STICKY GRAY CLAY

69-98 STICKY GRAY CLAY WITH LAYERS OF CLAY

AND GRAVEL

98-100 CEMENTED GRAVEL

100 SANDSTONE AND WATER

Smith Well Drilling

35876 Isbell St.
Soldotna, Ak 99669
Ph(907)-262-3970

Water Well Construction Log

Log ID 837

Well Owner: Robert Wolfe

Date Completed: 05/11/2021

Nearest Community: Soldotna

Driller: Tyler Smith

Well Location: 34819 Patson Cir. (Funny River)

Use of Well:	Domestic	Depth of Well:	124ft	Static Water Level:	0ft	Above Ground Level
Depth of Casing:	124ft	Casing Stickup:	2ft	Pumping Level:	0ft	Duration: 4hr(s)
Casing Type:	Steel	Casing Dia:	6in.	Flow Rate:	20GPM	Testing Method: Air
Casing Thickness:	2	Finish of Well:	Open-End	Development Method:	Air	Drilling Method: Air Rotary
Intervals and Size:				Drilling Fluid:	Water	
From:	To:					

Drillers Material Log

(Description of strata penetrated)

Depth Below Top
Of Casing In Feet

From	To	Material
0	— 6	Fill
6	— 19	Brown Gravel
19	— 92	Blue Clay and Gravel
92	— 118	Blue Clay
118	— 122	Blue Clay and Gravel
122	— 124	Blue Gravel

Well Drilling Log ---- Kraxberger Drilling Inc. ---- (907) 262-4720

35055 Gas Well Road
Soldotna, AK 99669

CLIENTNAME: WEAVER DOUG

LOGID: 7233

LEGAL1: LOT 5 *** not correct

PUMPINFO:

LEGAL2: PATSON PROPERTIES 2019

PARCEL#: 13524323 ***not correct

ROADAREA: PATSON RD/FUNNY RIVER

DIAMETER: 6"

RIGTYPE: AR

CASINGTYPE: STEEL

CITY: SOLDOTNA

GROUT: ARTESION BENTONITE

BUILDERNAME: DOUG WEAVER

WELLCOMPLETION: PUMPED 200

DEPTH: 104

FLOWED 100GPM FROM 6"

DATE: 4/16/20

FLOWED 30GPM FROM 8"

DRILLER: RRK

IRON PPM:

YIELDGPM: PUMPED 200/FLOW 100GPM

SCREEN:

STATICLEVEL: -10

CLASS:

CASINGLENGTH: 107 OF 6" AND 30' OF 8"

LATITUDE:

CASINGSTICKUP: 3

LONGITUDE:

DRILLING REPORT:

0-4 GRAVEL FILL

4-6 TOPSOIL AND CLAY

6-14 GRAVEL SAND COBBLES

14-23 GRAY CLAY AND GRAVEL

23-55 STICKY GRAY CLAY

55-101 STICKY GRAY CLAY WITH LAYERS OF

GRAVEL AND CLAY

101-103 CEMENTED GRAVEL

103-104 GRAVEL AND WATER

Attachment C
Smith Well Drilling Material Site Water Well Log Well ID 836 5-7-2021
(1 page)

Attachment D
River Resources, LLC. Site Specific Excavation Dewatering Plan 5-19-2021
(2 pages)

Attachment E
Monitor Well Measurements and Dates
(1 page)

River Resources, LLC
 Funny River Patson Material Site
 Monitor Well Data

Monitor Well	Ground Elevation	Top of MW	GW Elev. 9/17/2019	GW Elev. 5/4/2020	GW Elev. 7/15/2020	GW Elev. 10/15/2020	GW Elev. 1/18/2021	GW Elev. 4/23/2021	GW Elev. 9/28/2021	AVG
1	101.53	102.27	79.77	82.47	83.97	83.17	82.77	84.47	83.57	82.88
2	97.40	104.89	83.89	83.69	84.79	83.49	83.59	85.69	85.59	84.39
3	100.67	103.53	83.03	84.03	85.23	84.63	83.73	81.53	82.13	83.48
4	101.61	102.96	82.46	85.16	84.16	84.26	83.56	84.76	83.96	84.05
5	100.03	104.92	83.92	87.32	84.22	84.22	83.52	85.02	84.22	84.63

Attachment F
McLane Consulting, Inc. and Gina DeBardelaben, PE Abbreviated Resumes
(2 pages)



McLane Consulting Inc. herein after referred to as **McLane** located Mile 38240 Kenai Spur Highway in Soldotna, AK is a corporation licensed to perform surveying and engineering in Alaska and Arizona. We provide conventional surveying and GNSS surveying services, digital mapping, hydrographic surveying, civil engineering, inspection and materials testing services throughout Alaska primarily for the oil and gas industry and governmental clientele. Our professional staff includes three (3) licensed professional civil engineers, one (1) of whom is also a professional land surveyor and one (1) additional professional land surveyor. MCI's office consists of 6000 square feet of space that is centrally located on the Kenai Peninsula.

McLane, a locally run organization since 1960, is extremely unique in its capability to offer professional services. McLane has developed a well-qualified organization by blending together education, years of field experience and a dedication to professionalism. McLane has provided survey and engineering support services for some of the largest civil projects ever constructed in southcentral Alaska including the Harvest Pipeline Tyonek System, Alaska LNG Terminal Site and Pipeline Project, Kenai-Kachemak Natural Gas Line, Bradley Lake Hydroelectric Project and Transmission Line near Homer, the Steelhead Oil and Gas Platform in Cook Inlet, the Agrium Chemical and Ammonia Nikiski Plant, the Andeavor (Tesoro) Nikiski Refinery, the Andeavor (ConocoPhillips) LNG Nikiski Plant, the AEEC (HEA) Nikiski Cogeneration Project and the BP Nikiski Gas to Liquids Plant.

Presently we are engaged in providing construction management, surveying, civil engineering and permitting support for Hilcorp Alaska, Kenai Peninsula Borough, and other commercial and private developers.

McLane has years of expertise in the creation of building site environments for both public and private clients. McLane specializes in working with other professional disciplines to meet the owner's needs in a cost-effective manner. Our experience working with these professional enables us to anticipate their needs and to produce projects on time and within budget. This expertise includes engineering design packages for site development, from schematic through construction administration.

McLane performs specialized surveys including gravity surveys, topographical surveys, environmental surveys, and utility surveys for both electrical and communication lines. McLane utilize GNSS RTK, robotic total stations and drone technology data collection techniques to capture site features. McLane employs AutoCAD Civil 3D Civil 2020 software to develop DTM's, plan and profile route sheets and estimate earthwork volumes.

Please visit McLane Consulting, Inc.'s website for more information at www.mclanecg.com.

P.O. Box 468; Soldotna, Alaska 99669
Office 907-283-4218

Gina M. DeBardelaben, P.E.

MCLANE CONSULTING, INC.

P.O. Box 468
Soldotna, AK 99669
Phone (907) 283-4218
Email ginadebar@mclanecg.com

EDUCATION: B.S. Civil Engineering *cum laude*, 1999
University of Alaska
Fairbanks, Alaska

REGISTRATION: Registered Professional Engineer (Civil)
CE 11043 Alaska 2004

TRAINING: Alaska Certified Erosion & Sediment Control Lead CC-20-7660
Beacon Occupational Health and Safety Service
Hazardous Site Operations
Cook Inlet Health & Safety
Troxler Radiation Safety Short Course
Transportation Worker Identification Credential
IECA NPDES Phase II Course

EXPERIENCE:

McLANE Consulting, Inc.

Seasonal 1997-98, Full time 1999 to present

Design civil projects including roads, oil field drill pads, commercial building sites, containment areas, and storm drainage systems. Civil site design including access, parking, drainage, water and sewer utilities. Compute earthwork quantities, prepare contract specifications, and bidding documents.

Planning and project management for DA Wetlands and APDES Storm Water Pollution Prevention Plans. Project management and inspection of Kenai Peninsula Borough Road Service Area Capital Improvement Projects. Maintain cost control records, prepare change orders, prepare and review pay estimates. Approach design and permitting through ADOT&PF. Quality control testing, inspection, and management activities (earthwork, asphalt, and concrete materials).

Field surveying and grade checking for roads and pads. Quality control testing, inspection, and management activities (earthwork, asphalt, and concrete materials). Nuclear gauge certified. Computer efficient in word, excel, project management, database, and ACAD Civil 3D operations.

ArcTech Services, Inc.

Seasonal 1992-97

Administrative assistant working with material pit operations, job cost accounting, payroll and billing. Gravel extraction planning and organization. Equipment and parts expediting.

PROJECTS:

- KPB Kenai Spur Highway Extension: Project design, permitting, inspection and management.
- KPB RSA Capital Improvement Projects 2000-2021: Project design, inspection, and project management.
- Apache Kenai Spur Extension Road and Exploration Pad: Project design and permitting.
- Shadura North Road Extension 2013. Project design, inspection, and management.
- Kenai Watershed Forum Bridge Design for Seven Egg Creek, Otter Creek, Unnamed Creek.
- Buccaneer Kenai Pipeline APDES Storm Water Pollution Prevention Plan design, management and inspection.
- Marathon/Tesoro Secondary Containment Annual Inspection 2005 - 2021.
- KPB Moose Pass Transfer Site civil design, inspection and administration.
- KPB Spruce Creek Bridge civil design, inspection and administration.
- Chevron East Forelands Beach Access Road
- Soldotna Urban Phase II Kenai River Bridge Water and Sewer Design

PC RESOLUTION 2021-10

**REMAND AFTER APPEAL OF THE KENAI
PENINSULA BOROUGH PLANNING COMMISSION**

**DENIAL OF A MODIFICATION TO
CONDITIONAL LAND USE PERMIT IN
THE SOLDOTNA**

KPB Tax Parcel ID#s: 13524313 & 13524329

Legal Description:

**T 5N R 10W SEC 34 SEWARD MERIDIAN KN NW1/4
SE1/4 EXCLUDING PATSON PROPERTIES PART 1
&
T 05N R 10W SEC 34 SEWARD MERIDIAN KN 2019068
PATSON PROPERTIES 2019 REPLAT TRACT C1**

**Applicant
River Resources, LLC**

**Landowner
River Resources, LLC**

**HOMEOWNER DALE
MCBRIDE'S WRITTEN
SUBMISSION WITH
ATTACHMENTS**

Directly affected homeowner Dale McBride objects to the grant of the proposed modification to the River Resources conditional land use permit requesting a permit to excavate gravel as much as 12 feet or more below the water table. McBride urges the planning commission to continue in force and uphold its current rejection of the proposed modification.

The attached geophysical report of Coble Geophysical Services (CGS), including its attachments, is incorporated as part of McBride's submission. Mr. Coble is a professional geophysicist focusing upon water issues for more than 20 years on the Kenai Peninsula. He is quite familiar scientifically with this immediate area, having in fact done extensive groundwater investigation and consulting work with the City of Soldotna as it developed the aquifers in this area as part of the City of Soldotna's arsenic mitigation and city water supply improvement project. McBride also attaches and incorporates by attachment the Superior Court's decision in Bilben, which we believe was previously circulated to the Planning Commission.

HIGHLY NEGATIVE POTENTIAL IMPACTS OF PROPOSED MCLUP

The CGS report makes a number of fundamental points regarding the negative potential impacts and effects of the proposed operation which would mine gravel below the water table to the extent that it would largely remove the aquifer to at least 12 feet below the "current" water table as depicted by the Applicant's submitted modification request. To quote from the CGS summary:

1. "In addition to its more-obvious effects upon the pre-existing residences down-gradient from the gravel pit, and because the confining layer has not been investigated and defined in the area of the proposed excavation and removal of the aquifer, the proposed below-water table operation has significant potential negative impacts upon an important portion of the City of Soldotna water system, specifically the wellhead for Soldotna's Well E. The city wells on the other side of the Kenai River at and near Swiftwater Campground are also part of the same aquifer system.

2. By excavating the aquifer gravel to at least 12 feet below the ill-defined “current water table”, as shown in its initial modification application, and then backfilling with less porous material, the proposed gravel pit operation will seriously disturb the remaining aquifer over a physically large area.
3. The aquifer flow submitted by the applicant is clearly wrong relative to the down-gradient residential wells at issue here and relative to the lower elevation Kenai River. The application purports that the ground water in the unconfined aquifer is flowing up-gradient away from the lower elevation Kenai River and up the nearby hill. This incorrect result may be due in part to the inadequate monitoring well design and inadequate information gathered and disclosed.
4. The continued integrity of the aquifer confining layer is important for the numerous users of any confined aquifers here. The confining layer has not been tested and evaluated in the vicinity of the Patson-River Resources materials site and, and because the proposed below-water table gravel mining has the significantly negative potential impact of unsafely increasing the arsenic content of the unconfined aquifer, it also poses an additional risk to municipal water supply wells which by law have maximum allowable arsenic levels.
5. The applicant has failed to document the varying strata and aquifers in the area of below-water table excavation and nearby. The proposed below-water table excavation must be denied at this time because the applicant cannot show with an adequate level of certainty that its below-water table gravel excavation will not damage not only the surrounding properties but also the City of Soldotna municipal water supply. This potential impact is much too great a risk to take at this time without a high level of prior knowledge and certainty, and we do not have that here.
6. The proposed excavation and on-site water discharge, not to mention the presence of nearby contaminated sites and municipal water supplies, will necessarily require State of Alaska permits. We did not see evidence of these permits or permit applications.
7. The proposed gravel pit excavation and aquifer removal below the water table will seriously disturb the up-gradient portion of the unconfined aquifer upon which the neighboring residences, including McBride, depend for their household water.

8. The proposed removal of the aquifer in this large gravel pit is substantially likely to negatively impact the water quality of any down-gradient residences and the Kenai River.
9. The water flow is down-gradient toward the Kenai River when the nearby Kenai River is included and the aquifer in question is part of the Kenai River recharge buffer. Disturbing the aquifer damages Kenai River habitat. Aquifer discharge into the Kenai River is evident on the Gravier property wetlands bordering the Kenai River. See attached Gravier submission.
10. Addressing monitoring wells, the application is deficient in several regards: The monitoring well logs were not provided, and therefore we do not know where the screening has been done and hence where the water levels originate from. The groundwater levels are not represented, for example by a time stamp. The exercise of monitoring groundwater levels with time should include many groundwater maps, not one.
11. Protection of the City of Soldotna municipal water supply wellhead must be taken into account and evaluating that important potential impact cannot be done at this time due to a near-complete lack of pertinent investigation and data.”

The potential impacts upon both the public interest, upon pre-existing residences, and upon the property rights of neighboring properties is very severe and probable. These are severe red flags and any one of the above is in itself sufficient to deny the requested MCLUP. In combination, there are overwhelming factual reasons why the requested below-water table excavation MCLUP must be denied and the current decision of the Planning Commission to deny the MCLUP remain in full force and effect.

BONDING REQUIREMENTS

The negative potential impacts upon the down-gradient homeowners, the Kenai River, and potentially the City of Soldotna water supply are potentially very large. Bonding in the amount of several millions of dollars at a minimum is necessary in the event that below-water excavation creates long term adverse effects, particularly any increase in soluble arsenic, a long-term continuing concern for the City of Soldotna municipal water system, not to mention the

increased potential for hazardous man-made contamination to the aquifers from fuels, solvents, and the like that are common problems with even materials sites above the water table..

Damage to the Kenai River habitat from any pollution is similarly a public interest concern that would require remediation.

The proposed up-gradient aquifer disturbance will very likely render the very valuable Kenai River properties greatly reduced in value.

McBride accordingly recommends that a TEN MILLION Dollar (\$10,000,000) bonding amount be set.

LACK OF ADEQUATE AND INDEPENDENT MONITORING AND HYDROLOGY EVALUATION

One the questions upon remand includes the determination of what constitutes an “independent” water monitoring professional. In the instant case, the engineering office hired by petitioner River Resources designed and submitted the original Conditional Land Use Permit application as well as the proposed modification petition to allow also purported to be the independent water monitoring agency.

As the designer of the proposed below-water table gravel mining operation as well as the entity that submitted the MCLUP application on behalf of River Resources, McLane cannot be plausibly deemed “independent” here in any sense of the word. Indeed, that engineering office was listed as the agent of petitioner by the Borough and similarly described in the remand order. In an email which homeowner McBride believes to be already on the record, the engineering office declined to discuss anything with one of the homeowners, citing a conflict of interest.

It is self-evident that any entity that submits a petition on behalf of its paying client and which then declines to discuss anything citing a conflict of interest cannot be plausibly deemed to be “independent”, certainly not in an intensely disputed matter such as this one. Given the serious potential impacts, the Planning Commission should have much better and more complete information. Further, as the CGS report notes, the information supplied to date is both greatly

insufficient and in some instances inaccurately showing water flowing uphill away from the much lower nearby Kenai River.

Accordingly, homeowner McBride strongly urges the Planning Commission to require petitioner River Resources, prior to any further action, to secure new and truly independent hydrology and water monitoring services entirely separate from its engineering office and to undertake a detailed investigation and description of all aquifers in the area and how they inter-relate, particularly anything that plausibly affects the City of Soldotna municipal water supply.

PROTECTION OF PROPERTY RIGHTS

McBride urges this commission to truly protect the property rights of all parties, not just that of the commercial entity. As this area gradually grows, as it has since its founding, inevitably there are increased conflicts between long-established, often valuable, properties, such as the long-standing municipal water supply in the area, the adjoining and nearby Kenai River residences, and the proposed large gravel excavation and aquifer removal operation arriving later.

Equal protection of property rights includes strongly protecting the valuation and the quiet use and enjoyment of the many previously built properties surrounding this and similar materials sites “gravel pits”. It is unreasonable to define the protection of “property rights” as pertaining solely to a late-coming industrial operation that damages the aquifer and the value and quiet use and enjoyment of existing properties and to exclude the impact upon homeowners from the balance.

The Planning Commission’s prior hearing records in this and other similar MCLUP matters reflects that at least some planning commission members believed this commission did not have the legal power to deny a modification despite misgivings. The Superior Court’s decision in the Bilben Anchor Point matter, attached and incorporated by attachment, makes it clear that this Commission does have the power to deny a permit or modification in order to protect surrounding landowners when the damage to surrounding properties is so significant that mitigation measures are ineffective. Such is the case here and the modification should be denied.

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MISUSE OF THE MCLUP PROCESS

Homeowner McBride observes that there seems to be a tendency toward misuse of the modification process. Here, the petitioner submitted an initial plan which provided for monitoring and restoration including, apparently, later construction of a housing development and an access road across the property to be fully reclaimed and received approval. Within a short time after beginning gravel removal, a modification is requested to remove the underlying aquifer by gravel mining below the water table. The protections and reclamations upon which the initial CLUP was approved are completely overthrown and negated. Now, the petitioner seeks to immediately mine gravel beneath the water table, removing the aquifer upon which the down-gradient homeowners rely, and leaving behind a highly disturbed, if not destroyed up-gradient aquifer subject to increasing the arsenic content..

When the original conditional land use permit was submitted, Applicant River Resources stated that the intended excavation would not disturb the underlying unconfined aquifer and that the reclamation plan would include restoration and the development of housing. At an earlier hearing, the Planning Commission staff recommended a cross street through the proposed materials site due to block length requirements and public safety concerns. Despite changes to the wording of the initial staff recommendation, the CLUP still requires a cross street for public safety and access concerns. The proposed modification request completely ignores all of the prior representations and for all practical purposes is a fundamentally new, much more extensive operation that bears little resemblance to the original CLUP approved only shortly before this modification was first proposed.

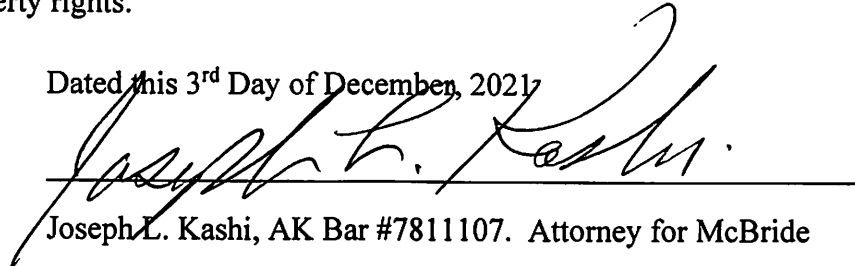
Mining within the water table will leave a pool of water that will prevent a cross street as required by previous decisions from being constructed post reclamation which will endanger the public safety of the surrounding residents and property owners. It will disturb the up-gradient aquifer to a very great extent.

Given the prior circumstances where at least some members of this Planning Commission stated their misapprehended belief that this Commission was required to grant modification petitions, it seems evident that the MCLUP process is being abused, with an initial conditional land use

permit providing reclamation, etc., shortly to be followed with a highly expanded “modification” that essentially removes a critical aquifer and takes away any protections for the homeowners.

The proposed modification should be denied. It is neither in the public interest and it destroys many private property rights.

Dated this 3rd Day of December, 2021

A handwritten signature in black ink, appearing to read "Joseph L. Kashi", is written over a horizontal line. The signature is fluid and cursive.

Joseph L. Kashi, AK Bar #7811107. Attorney for McBride

DECISION OF THE KENAI PENINSULA BOROUGH PLANNING COMMISSION

A. CASE INFORMATION

Appeal Number:	2021-01-PCA; REMAND HEARING
Hearing Date:	October 18, 2021
Place of Hearing:	KPB, Betty J. Glick Assembly Chambers
Parcel Identification Number:	13524313 & 13524329
Applicable Code:	KPB 21.29.040 and KPB 21.29.050
Name of Appellants:	River Resources LLC – Owner/Applicant; and Numerous nearby landowners
Reason for remand	<ul style="list-style-type: none"> • Make factual findings supporting the Planning Commission’s decision based on substantial evidence in the record regarding the: <ul style="list-style-type: none"> a. Bonding requirements; b. Well monitoring timeline; c. Qualifications and independence of McLane Consulting, Inc; and d. Specific criterion contained in KPB Code §§ 21.29.040 and 21.29.050 • To the extent that factual information does not presently exist in the record the Commission shall augment the record by conducting an additional hearing.

PLANNING COMMISSIONERS	PRESENT	ABSENT
Blair Martin, Chair	√	
Robert Ruffner, Vice chair	√	
Syverine Abrahamson-Bentz	√	
Diane Fikes		x
Jeremy Brantley	√	
Pamela Gillham	√	
Virginia Morgan	√	
Franco Venuti	√	

B. COMPLIANCE WITH PROCEDURAL REQUIREMENTS

	YES	NO
1. A quorum was present.	√	
2. The Certified Record on appeal to the Hearing Officer was provided to the Planning Commission	√	
3. The Motion to Remand and applicable Hearing Officer remand orders were provided to the Planning Commission	√	

C. DECISION SETTING A PUBLIC HEARING ON REMAND

PURSUANT TO THE CERTIFIED RECORD, MOTION TO REMAND, AND ORDERS ENTERED BY THE HEARING OFFICER REMANDING THIS MATTER, THE PLANNING COMMISSION ENTERS THE FOLLOWING DECISION ON REMAND:

1. A remand hearing was held on October 18, 2021. Public testimony and evidence was not reopened for the October 18, 2021 remand hearing. Pursuant to the certified record and in accordance with the orders entered by the Hearing Officer, the Planning Commission determined during deliberations that it needed more information from the parties involved and therefore will reopen public testimony and evidence in this matter.


2. The public hearing on remand shall be set for December 13, 2021 and shall only be continued in the event the Applicant provides a good cause basis for not being able to timely comply with the below requested information.
3. By December 3, 2021, the Applicant, River Resources LLC, and the Applicant's engineer, Gina DeBardelaben/McLane Consulting, Inc., should provide responses pertaining to the following questions raised by the Hearing Officer's orders:
 - a. A best effort to identify known wells within 300', 500' and 1000' of the proposed dewatering;
 - b. Anticipated impacts, if any, to nearby wells;
 - c. Potential impacts to nearby wells in a worst-case scenario and the possible remedial costs of those impacts on a per-well basis;
 - d. The dates of measurements for the monitor wells done pursuant to KPB 21.29.050(A)(5);
 - e. The amount of the bond proposed by River Resources, LLC; and
 - f. Any other information or documentation that River Resources, LLC would like to provide for consideration in support of its applications and requests.
4. By December 3, 2021, interested parties/nearby landowners may provide information regarding:
 - a. Well tests performed to-date;
 - b. Professional opinions, if any, regarding potential impacts that may occur as a result of the Applicant's (i) request to allow for excavation in the water table; and (ii) localized dewatering exemption request during excavation below groundwater elevation; and
 - c. Any other expert opinions or information that nearby landowners or interested parties would like to provide for consideration in this matter.
5. By December 3, 2021, the Planning Department should provide an updated staff report that, to the best of staff's ability, answers the questions under paragraph 3 and 4 above, with recommendations that includes a proposed resolution, findings of fact, conclusions of law, and conditions, if applicable.
6. The Applicant, including its agents, counsel, and/or engineer, shall have 15 minutes to provide public testimony at the public hearing scheduled for December 13, 2021.

7. Nearby owners and other interested parties shall have 3 minutes per person to provide public testimony that is relevant to the information requested under paragraph 3 and 4 above; however, the total allotted time for nearby owners and interested parties' testimony shall be capped at a maximum of 45 minutes.

Dated this 18th day of October, 2021.


Blair Martin, Chair, KPB Planning Commission

ATTEST:


for Ann Shirnberg AA
Ann Shirnberg, Administrative Assistant

COBLE GEOPHYSICAL SERVICES

GEOPHYSICAL CONSULTING

P.O. Box 1637

Homer, Alaska

99603-1637

(907) 399-6366

Groundwater/Surface Water
Geophysics

CGS MEMO 12/3/21

Joe Kashi, Atty at Law

206 E Beluga Ave.

Soldotna, Alaska 99669

Phone: (907) 398-0480

kashi@alaska.net

RE: River Resources, LLC Conditional Land Use Permit – Modification Application

RE: Excavation within Patson Properties on Replat, KPB Parcel #13524313 and #13524329

Groundwater and Surface Water Impacts – East Soldotna

NON-TECHNICAL SYNOPSIS

1. In addition to its more-obvious effects upon the pre-existing residences down-gradient from the gravel pit, and because the confining layer has not been investigated and defined in the area of the proposed excavation and removal of the aquifer, the proposed below-water table operation has significant potential negative impacts upon an important portion of the City of Soldotna water system, specifically the wellhead for Soldotna's Well E. The city wells on the other side of the Kenai River at and near Swiftwater Campground are also part of the same aquifer system.
2. By excavating the aquifer gravel to at least 12 feet below the ill-defined "current water table", as shown in its initial modification application, and then backfilling with less porous material, the proposed gravel pit operation will seriously disturb the remaining aquifer over a physically large area.
3. The aquifer flow submitted by the applicant is clearly wrong relative to the down-gradient residential wells at issue here and relative to the lower elevation Kenai River. The application purports that the ground water in the unconfined aquifer is flowing up-gradient away from the lower elevation Kenai River and up the nearby hill. This incorrect result may be due in part to the inadequate monitoring well design and inadequate information gathered and disclosed.
4. The continued integrity of the aquifer confining layer is important for the numerous users of any confined aquifers here. The confining layer has not been tested and evaluated in the vicinity of the Patson-River Resources materials site and, and because the proposed below-water table gravel mining has the significantly negative potential impact of unsafely increasing the arsenic content of the unconfined aquifer, it also poses an additional risk to municipal water supply wells which by law have maximum allowable arsenic levels.

5. The applicant has failed to document the varying strata and aquifers in the area of below-water table excavation and nearby. The proposed below-water table excavation must be denied at this time because the applicant cannot show with an adequate level of certainty that its below-water table gravel excavation will not damage not only the surrounding properties but also the City of Soldotna municipal water supply. This potential impact is much too great a risk to take at this time without a high level of prior knowledge and certainty, and we do not have that here.
6. The proposed excavation and on-site water discharge, not to mention the presence of nearby contaminated sites and municipal water supplies, will necessarily require State of Alaska permits. We did not see evidence of these permits or permit applications.
7. The proposed gravel pit excavation and aquifer removal below the water table will seriously disturb the up-gradient portion of the unconfined aquifer upon which the neighboring residences, including McBride, depend for their household water.
8. The proposed removal of the aquifer in this large gravel pit is substantially likely to negatively impact the water quality of any down-gradient residences and the Kenai River.
9. The water flow is down-gradient toward the Kenai River when the nearby Kenai River is included and the aquifer in question is part of the Kenai River recharge buffer. Disturbing the aquifer damages Kenai River habitat. Aquifer discharge into the Kenai River is evident on the Gravier property wetlands bordering the Kenai River. See attached Gravier submission.
10. Addressing monitoring wells, the application is deficient in several regards: The monitoring well logs were not provided, and therefore we do not know where the screening has been done and hence where the water levels originate from. The groundwater levels are not represented, for example by a time stamp. The exercise of monitoring groundwater levels with time should include many groundwater maps, not one.
11. Protection of the City of Soldotna municipal water supply wellhead must be taken into account and evaluating that important potential impact cannot be done at this time due to a near-complete lack of pertinent investigation and data.

BACKGROUND CONTEXT

- >There are many different resource users in this area, causing a growing list of resource conflicts.
- >This materials site is applying for a Modified Conditional Use Permit to allow for gravel excavation into the water table. This has the potential to affect other water users in the area, including the Kenai River, which are also matters of the public interest. This means per Appendix D, they will be required to obtain a Temporary Water Use Authorization (TWUA) Permit from State of Alaska ADNR. We also verified this was the case with the State of Alaska.
- >This materials site is problematic located in the unconfined aquifer and one of the future areas denoted for future Soldotna water supply (Coble, 2006). Arsenic in drinking water has been a well-known concern in Soldotna for at least two decades. Coble Geophysical identified the area of this materials site as a potential safe drinking water supply should rising groundwater temperatures cause increases in arsenic concentration (Coble, 2006).
- >That makes this materials site problematic, since excavation into an aquifer that feeds water to the Kenai River from storage would be removed. The Kenai River elevation near this materials site is ~60 feet above MSL, while the onsite groundwater levels are 20 feet higher than this (McLane Consulting, 2020/2021). Water flows downhill. The Gravier seepage face information also shows water moving towards the river from this aquifer providing sustaining water during low discharge periods. This fact means the proposed removal of this aquifer will be reviewed by ADF&G Habitat.
- >Coble Geophysical was professionally involved for many years to help reduce the concentration of arsenic in the Soldotna public water supply. Well E is one of the wells used to achieve the current acceptable levels. Well E gets water under a confining layer that has not been defined at the materials site where Well E drawdown exists. Changes in the dynamics within the Well E wellhead could therefore have serious effects on the City public water supply, and this is also subject to review by the ADEC Drinking Water program. Note that the nearby Swiftwater Campground wells are also in this confined aquifer system.
- >Figure 3 shows they are planning to excavate deeply into the aquifer through unidentified and undefined strata. The KPB would need elevation control of the existing groundwater table and active monitoring during all excavation activity in order to implement a program of monitoring acceptable excavation depths with this plan. Also, the KPB does not test for many of the parameters such as arsenic which would be of concern in this type of activity in an area where groundwater is being used in both confined and unconfined aquifers.
- >The monitoring well data is insufficient to explain water flow that might affect the neighboring properties. We have no information about water quality, well depths, well logs, well construction data which would validate this data. This data is grossly inadequate to determine effects on neighboring properties.

>Well E has produced up to 1,000 gpm for the City public water supply, and caused over 9 feet of drawdown on the other side of the Kenai River and measurable drawdown at wells over 7,000 feet away. It is incongruous to require such detailed information on water supply parameters at the same time gravel is being extracted in this same wellhead area with no effort to address the system in which it is operating.

>Excavation of this aquifer with an open pit having currently not excavated below the water table has still caused a significant swale, such that the surrounding aquifer can expect rapid recharge during heavy precipitation which could potentially increase groundwater levels in surrounding wells and wetlands. If the aquifer is excavated below the water table, it will not be replaced in reclamation; groundwater will have to potential to flow into any swale left, and under many circumstances groundwater levels will be lowered. Suffice it to say: there will always remain permanent and negative changes to the aquifer surrounding this material site over a large area, and more so if the aquifer itself is removed.

INTRODUCTION:

This report was prepared by Coble Geophysical Services (CGS) and consists of a review of the planning, compliance and execution of the materials site referenced above located in Soldotna, Alaska. CGS has many years of experience working with groundwater resources in the Soldotna area.

Materials sites must follow the relevant KPB Ordinances, which have evolved during the time we have practiced in the State of Alaska to include 'water table' protection measures.

CURRENT PATSON PROPERTIES MATERIALS SITE

The Patson Properties materials sites are located in Soldotna, Alaska as shown along the Kenai River in Figure 1. River Resources, LLC is the property owner of the denoted land in Figure 1, which are also the materials sites which have been operating on these premises as shown in Photo 1 and Photo 2 provided by your legal team.

These recent photos show a gravel pit operation, with overburden removed to berms on the side, and with a constructed water ponds at the bottom. The water ponds are most likely to be either from excavation into the water table, or from a gravel washing operation or both. Equipment is seen to have been operating out of the base of the pit with materials piles from gravel removal and screening spread out on the available surface area of development. No KPB elevation information to verify elevations at this site were available for compliance review.

Soldotna



Alaska



Kenai Peninsula



Soldotna Alaska / Area of Interest

CLIENT

Joe Kashi, Atty at Law
206 E Beluga Ave.
Soldotna, Alaska 99669

PROJECT

River Resources, LLC Conditional Land
Use Permit (CLUP) Application

Excavation within Patson Properties on
Replat, KPB Parcel #13524313 and
#13524329 Groundwater and Surface
Water Impacts – East Soldotna

DRAWN BY



DESCRIPTION

Location Maps

FIGURE
1



Photo 1. Approach or Takeoff Photo from Soldotna Airfield, Subject Materials Site on 8/17/21, courtesy of client



*Photo 2. Approach or Takeoff Photo from Soldotna Airfield (Jeremy Pechtel),
Subject Materials Site, 11/03/21*

COMPLIANCE

The compliance of this gravel pit to KPB Ordinances is examined in Appendix C.

PLANNING:

FUTURE PATSON PROPERTIES MATERIALS SITE

It seems that River Resources contracted with McLane Consulting, Inc. to help manage an effort to excavate below the water table per KPB 21.29 (this would have been in 2020 or before). The record states that McLane Consulting then recommended to River Resources to install five monitor wells on their property to collect the data necessary to support such an application.

Foster Construction was then contracted to install these monitoring wells, which were installed in April 2020 and labeled as 'Monitor Wells 1, 2, 3, 4, and 5'. These wells were monitored on four separate occasions (according to the record) in order to make the 'water table' or groundwater potential determinations as shown in Table 1.

In 2021 River Resources LLC then hired McLane Consulting to file for a modification (a Modified Conditional Land Use Permit or MCLUP) with the KPB to be able to excavate below the water table at their materials site.

Table 1. McLane Consulting Monitoring Well Groundwater Potentials (total record of 8 ½ months)

Monitor Well	Ground Elevation	Top of MW	GW Elev. 5/4/2020	GW Elev. 7/14/2020	GW Elev. 10/15/2020	GW Elev. 1/18/2021
1	101.53	102.27	82.47	83.97	83.17	82.77
2	97.40	104.89	83.69	84.79	83.49	83.59
3	100.67	103.53	84.03	85.23	84.63	83.73
4	101.61	102.96	85.16	84.16	84.26	83.56
5	100.03	104.92	--	84.22	84.22	83.52

We could not find well logs or pumping test data attached to the MCLUP application – although the KPB does not require this. However well characterization *is* referenced by McLane, with the hydraulic conductivity (K) of these wells listed as ranging from approximately 3×10^{-6} to 1×10^{-1} ft/s. This range of K can represent a geologic range of silt to gravel as unconsolidated deposits (Freeze, 1979), and making it unlikely that all the wells were screened in gravel deposits.

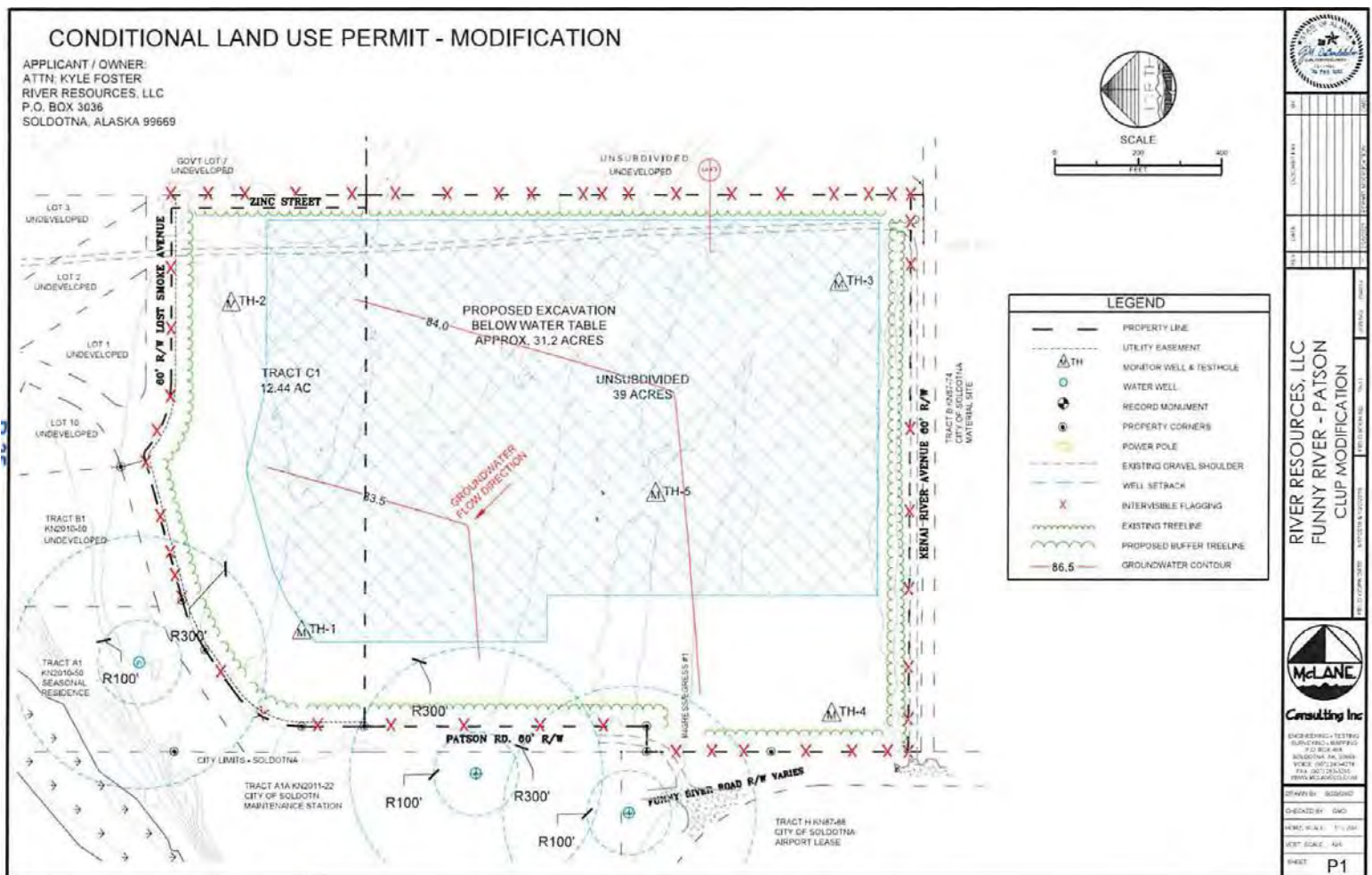


Figure 2. McLane MCLUP Permit Graphic Showing Groundwater Potentials

We cannot be sure from the information provided, but it seems that the test hole designations TH-1 through TH-5 would make sense as the monitor wells used in Table 1 (noting that Figure 2 also references three unlabeled ‘water wells’ on the boundaries). The Figure 2 groundwater potentials are undated though, noting that Table 1 shows that in May Well 4 has the potential to flow towards Well 3, yet in July Well 3 just as strong a potential to flow in the opposite direction towards Well 4.

Therefore, if the point was to ‘show groundwater flow direction’, in order to ‘protect nearby wells’, then this exercise needs to be done to basic hydrogeologic standards: submit the well logs.

The proposed excavation will be a major disturbance to this aquifer. Materials are not characterized as they are in well logs of the area in Figure 3.

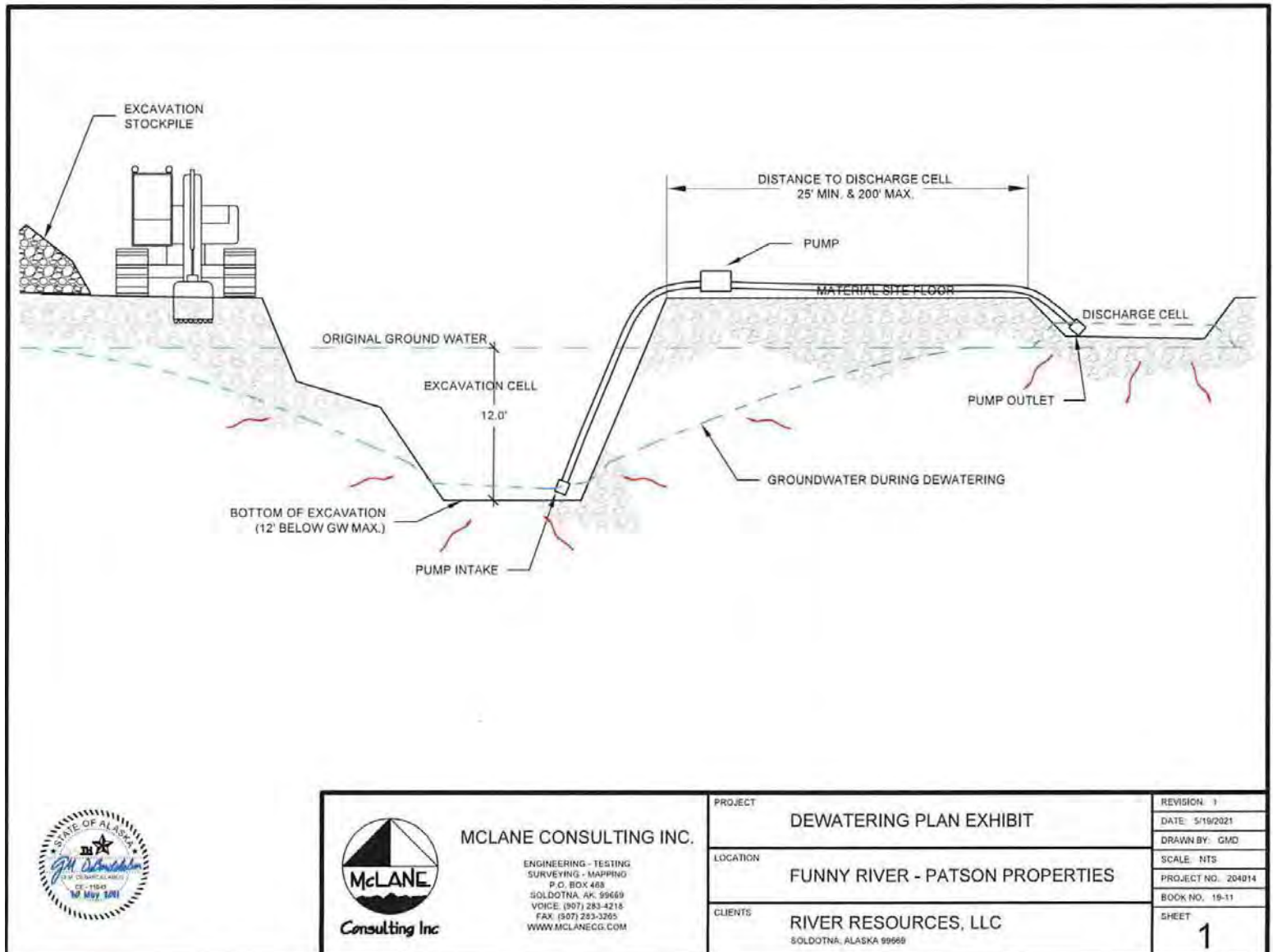


Figure 3. Dewatering Plan for River Resources, LLC filed with the MCLUP Application

Ponding is mentioned as a reclamation method within the newly created low areas, which could become part of a Patson Materials Site Reclamation Plan; but given the elimination of groundwater storage, fundamental change in surrounding aquifer behavior including aquifer damming, a changed unsaturated zone and a new near-surface confining layer located in a large artificial pit swale will all be conditions that contribute to a new *pond environment*. Such a profound change in landscape would seem to require an expert on ponding when the ordinance code for these case-by-case situations KPB requires *beneficial reclamation*.

WATER QUANTITY: **SHALLOW WELLS & KENAI RIVER**

There are two end-members to aquifers, shallow unconfined aquifers, and deeper confined aquifers, so called because they are bounded by low-permeable layers called aquicludes.

Both aquifer types are present and spoken of in this report, since they are both well represented by the subject area.

Unconfined aquifers release far more water from storage per unit volume than confined aquifers. Water produced from ideal unconfined aquifers is replaced by air.

Water from confined aquifers is produced through the expansion of water from being under pressure and the compression of the aquifer, and very little from storage – which causes water to be drawn from a much wider area than in an unconfined aquifer situation.

In fact, confined aquifers can have drawdown that extends for miles in its surrounding aquifer; whereas unconfined aquifer drawdown is more limited to the dynamics of its immediate area.

Since unconfined aquifers are near-surface, they are often directly connected to streams and rivers through seepage faces or directly in gaining reaches of a river. This is why in areas where unconfined aquifers are used, rivers can be heavily impacted as a result of drawdown (e.g. Sophocleous, 1988). In areas where confined aquifers are heavily used, land subsidence from aquifer compression can cause drastic drops in land surface elevation; a well-publicized fact in Mexico City, but which occurs everywhere confined aquifers are heavily used.

Unconfined Aquifer

As we know, groundwater has the potential to flow downhill like surface water does, so using the available water level information it gets mapped to flow towards the Kenai River as shown in Figure 4, since the Kenai River sits 20 feet lower in elevation from the water levels provided in Figure 2. This different flow direction could have a more profound affect on the water quality of wells along this flow pathway, noting the turbidity generated in the water of Photos 1 and 2.

The KPB ordinance may not require any more work than had been presented in Figure 2; but this level of groundwater mapping does not show how aquifer extraction would affect nearby wells and Kenai River water resources with these potentials divorced from the map.

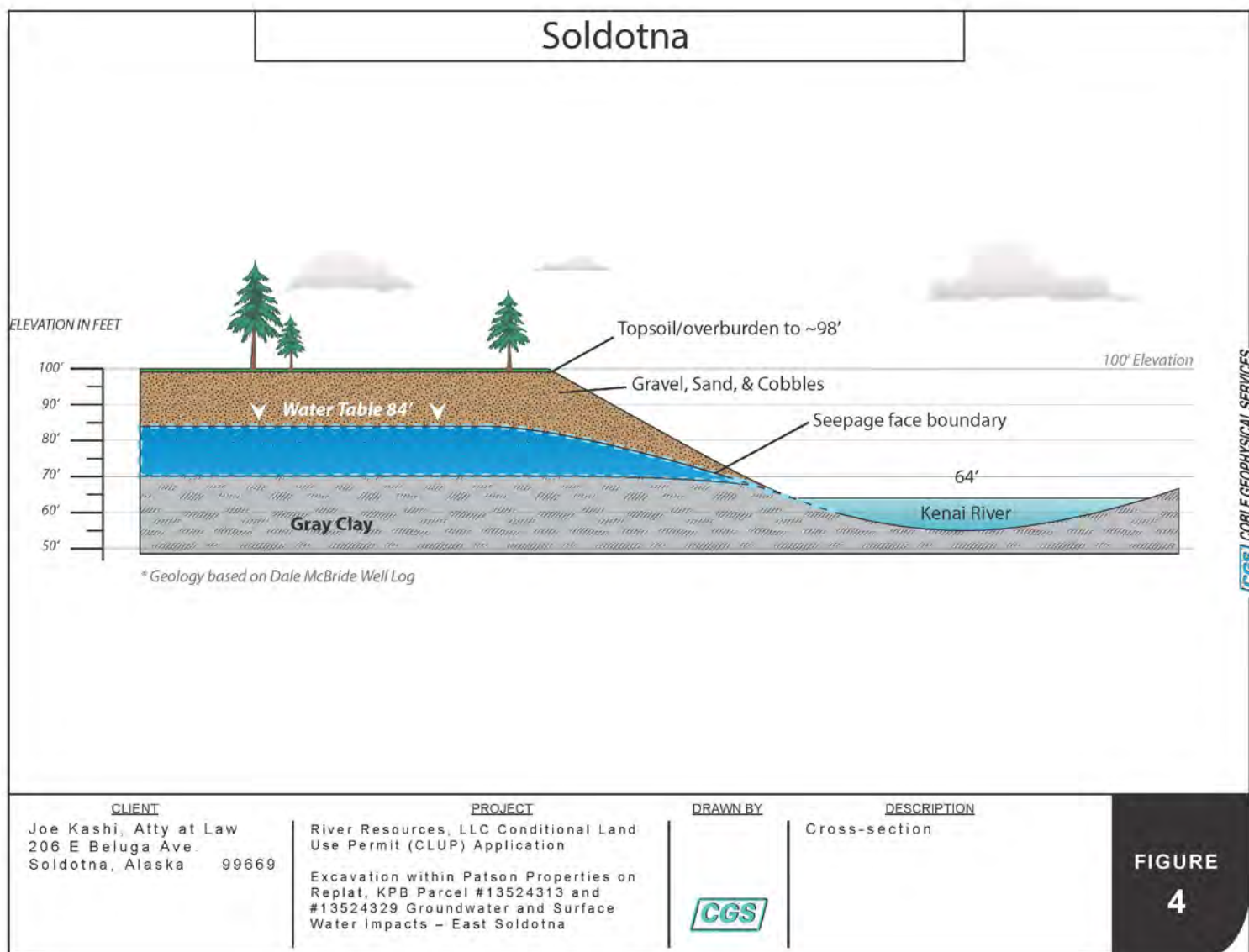


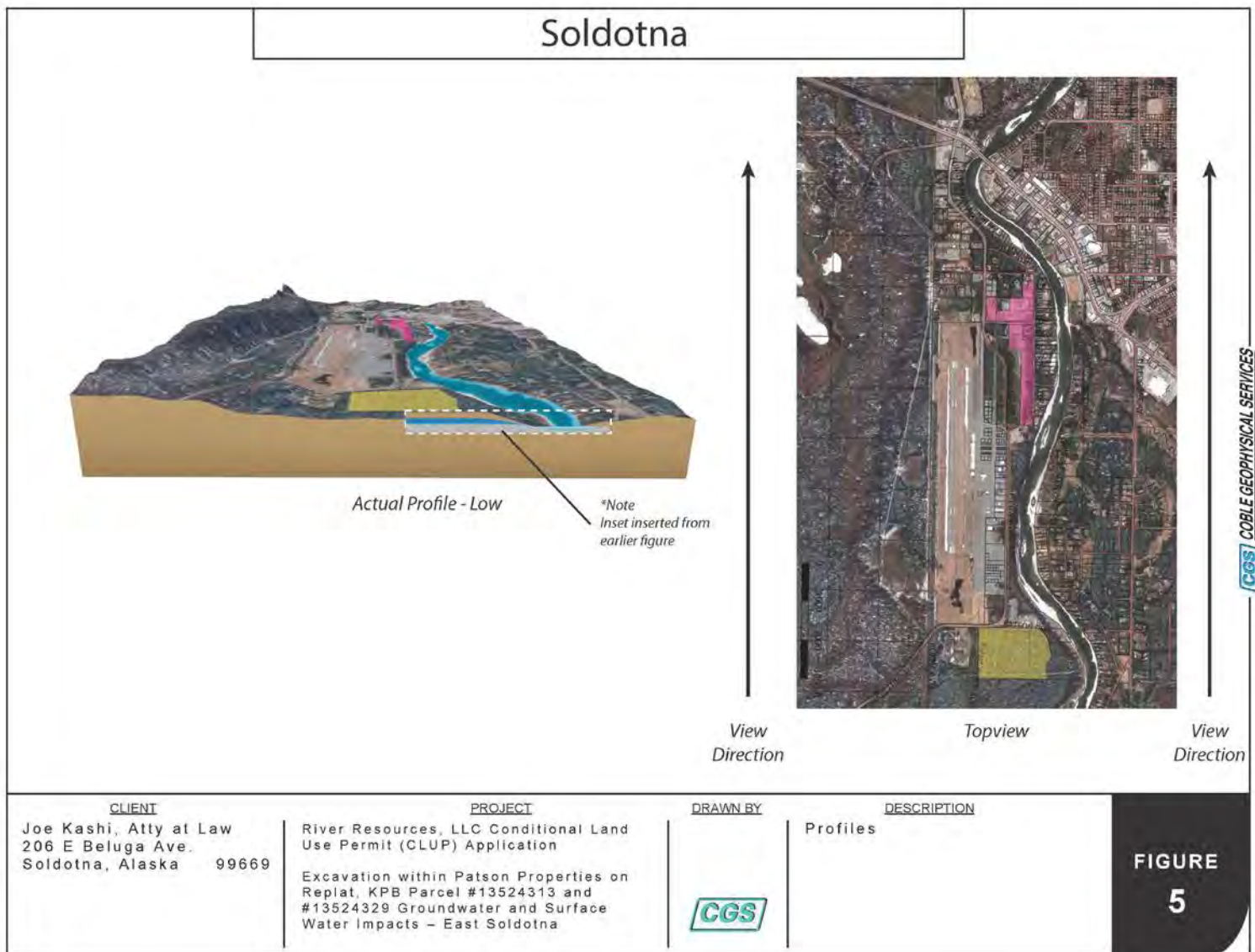
Figure 4 was created based on the well log of Dale McBride shown in Appendix A, the Gravier wetlands information from USACE partly referenced in Appendix A, elevations from the KPB parcel viewer, and the groundwater elevation information provided by McLane Consulting. We could not use the well logs from the materials site since they were not in the MCLUP application.

As can be seen in the cross section of Figure 4, the unconfined aquifer plays an extremely important role in preserving the flow of the Kenai River, as seepage faces are one of the ‘buffers’ which rivers and streams use to handle drought conditions. Permanently removing these structures damages the Kenai River, which is of concern to ADF&G Habitat Division.

In researching the impacts of long term gravel extraction on the Anchor River (Coble, 2002), it was shown that the primary regional effects on rivers caused by materials sites development practices are from:

- 1) Reduction in groundwater storage;
- 2) Reduction in groundwater recharge;
- 3) Increase in runoff from water diverted from groundwater recharge and evapotranspiration;
- 4) A lowering of the regional aquifer transmissivity where aquifer material is being removed.

Figure 5 shows the a true scale block diagram of the reality of this finite Kenai River buffer resource, that has apparently been permitted for gravel extraction in other areas as well adjacent to the Kenai River.



CGS COBLE GEOPHYSICAL SERVICES

There have been many known cases of groundwater impacts from gravel extraction within the KPB, and quite a few in the Anchor Point/North Fork Road area. The amount of information collected in this case is inadequate at this point to rule out impacts.

The Gravier Well in Table 2 was drilled on the upland part of a property which is substantially wetlands bordering the Kenai River. Their wetlands were determined by USACE and are shown in Appendix A. The USACE determination includes looking at shallow onsite test pits, in which standing water was visible (this is the seepage face boundary that provides water to the Kenai River shown in Figure 4, which sits above river level). Gravier had started to notice a change in his wetland levels – and this can happen when an aquifer is backfilled with less permeable material causing a change in the overall ability for an aquifer to pass water.

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WATER QUALITY AND WELLHEAD PROTECTION

As mentioned, there are two end-members to aquifers, shallow unconfined aquifers, and deeper confined aquifers; both are present in the Patson material site and surrounding area.

Unconfined aquifers are more susceptible to pollution since they have a very direct connection to the surface, and some of the neighboring wells are located in this aquifer as shown in Table 2.

Table 2. Selected Shallow Wells in the Vicinity of Patson Materials Site (Summary from Appendix A)

Well Name	Well Location	KPB Parcel #	Well Depth
Hardy Well (now Jeremy Pechtel)	Lot 10 Block 3 River Park Estates	13524106	35 feet
McBride Well	Patson Road Tract A	13524330	107 feet
Gravier Well	Lot L1 Triangle J Subdivision	13524306	64 feet
Ferguson Well	Lot L2 Triangle J Subdivision	13524317	42 feet

While the McBride well location is 200 feet from the boundary of the materials site, there are many other lots which are also close to the materials site boundary and on the south bank of the Kenai River. Several of these lots already have residences on them.

Unconfined Aquifer

The shallow unconfined aquifer is where gravel extraction is taking place. It is within this aquifer where we would see any direct impacts from gravel extraction on water quality. The usual concerns might include fuel spills and turbidity. Neighboring properties understand that an industrial activity is occurring *in* their water supply zone, already less protected from surface contamination than would be the local confined aquifer. That is, this materials site is operating within the recharge and aquifer zone used by existing shallow wells within 2,000 feet as shown in Table 2. This operation of aquifer removal will change the hydrogeology of the area: so using pre-existing groundwater potentials to predict future groundwater flow direction as a way of water quality assurance to neighboring properties in any development for permitting is a flawed concept.

However there is a much larger water quality concern here from the planning of community water supplies. As the public is aware, the City of Soldotna has spent considerable resources in groundwater exploration to reduce the amount of arsenic in its public water supply. This is partly why Well E (~ 1,500 feet from the Patson Materials Site) is a substantial water well, as opposed to its Reservoir Well.

Studies had shown that the shallow unconfined aquifer surrounding Well E had potential for groundwater supply as a future viable option for reducing the Arsenic in the overall public water supply. This location is important because it is already within the City water supply infrastructure.

In addition, water quality was expected to improve in the upgradient direction from Well E, into areas where the confining layer is less defined. The reasoning here is that Arsenic must come from the dissolution of minerals in

the aquifer matrix, and a shorter aquifer contact time over a large area has been shown to lower overall arsenic concentration along the Kenai River basin in this area (Coble, 2006).

This is just one public benefit resource conflict that needs to be addressed, noting that the City of Soldotna drinking water interests involve the whole community – and as community populations can increase, the demand for materials sites increases just as these areas for groundwater exploration had been cited as wise to set aside from a water quality perspective (Coble, 2006).

Confined Aquifer

Wellhead protection seeks to reduce the incidence of groundwater pollution by activities ‘within a wellhead’ which can be loosely defined as the area where a well is extracting water.

The City of Soldotna Well E is a relevant well in this memorandum, as it has a large wellhead encompassing the Patson Materials Site and produces a significant amount of the water for the City. During a single pumping test in 2003 it produced over 9 feet of drawdown in a well *across the river in Swiftwater Park* (Coble, 2003), and measurable at three wells between 7,000 and 9,000 feet away. This is why we say the wellhead of Well E likely *does* impact confined aquifer levels under the Patson Material Site (e.g. the confined Foster Construction well of Appendix A) which is about 3,500 feet away.

This means we really rely on this confining layer. But what if contaminants did breach the confining layer...in other words, should a discussion be had about a potential fuel spill on top of a confining layer regarding public water supply? Confining layers are far from perfect; flow has been shown in KPB pumping tests between the unconfined and confined aquifers, especially close to the pumped well – and no such test was performed on Well E.

Given the long and expensive efforts by the City of Soldotna to reduce arsenic in its water supplies, we would benefit from looking at Soldotna’s wellhead protection. This would include subjects such as *Roles and Responsibilities*, or the individuals responsible for the development, implementation of the local public water supply (a resource that concerns everyone), basic *Wellhead Protection Area Delineation*, in order to identify and limit potential sources of contamination within the wellhead protection area, *Wellhead Protection Area Management* which would provide ways to prevent potential sources of contamination from reaching the public water supply wellfield, a *Contingency Plan* in case of a water supply emergency related to use of conflicting resources, *New Wells* to provide information on existing groundwater availability and future demands, and the vulnerability of the existing wells to contamination, as well as *Public Education and Outreach* to generate community awareness in wellhead protection.

So from a regulatory standpoint, there is at least some effort to determine how large the important public wellhead areas are, where future groundwater exploration may be in conflict with material sites, and how robust the confining layer is within the wellhead etc.

REFERENCES

Coble, 2002. *Groundwater Contributions to the Lower Anchor River Watershed: An analysis of the relationships between communities and their watersheds*, by Coble Geophysical Services for Community Rivers Planning Coalition and Homer Soil and Water Conservation District, August, 2002, ~ 77pp.

Coble, 2003. *Final Report: Well E and Surrounding Aquifer Evaluation for the City of Soldotna*, prepared for City of Soldotna by Coble Geophysical Services, 3/05/03, 115 pp.

Coble, 2006. *Final Report: Mapping Aquifer Geometry For Groundwater Exploration for the City of Soldotna*, prepared for City of Soldotna by Coble Geophysical Services, July 2006, ~ 250 pp.

Freeze, R. Allan; Cherry, John A., 1979. *Groundwater*, by Prentice-Hall, Inc., Englewood Cliffs, N.J. 604 pp.

Sophocleous, M; Townsend, M.A.; Vogler, V.D.; McClain, T.J.; Marks, E.T.; and Coble, G.R., 1988. *Experimental studies in stream-aquifer interaction along the Arkansas River in Central Kansas - Field testing and analysis*, Journal of Hydrology V98, Issue 3-4, pp 249-273.

>*The State of Alaska reclamation requirement would be impossible to meet given the removal of the entire aquifer while using the standard of returning the property to a state that is 'as contemporaneously as possible' (Appendix E)*

>*The author's resume has been included in Appendix B at your request.*

APPENDIX A

WELL LOGS



STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND & WATER
Alaska Hydrologic Survey

21186

WATER WELL LOG

Drilling Started: / /		Completed: 1 / 1 / 1970		Pump Install: / /	
City/Borough	Subdivision	Block	Lot	Property Owner Name & Address	
Soldotna	TRIANGLE J		L2	BILL FERGUSON ,	
Well location: Latitude		Longitude			
Tendian S		Township 005N Range 010W Section 35 SW 1/4 of SW 1/4 of SW 1/4 of NW 1/4			
BOREHOLE DATA: (from ground surface) Suggest T.M. Hanna's hydrogeologic classification system* https://miv.nwra.org/NC/Product?id=a185000000BYub3AAD					
Depth		Drilling method: <input type="checkbox"/> Air rotary, <input type="checkbox"/> Cable tool, <input type="checkbox"/> Other			
From To		Well use: <input type="checkbox"/> Public supply, <input type="checkbox"/> Domestic, <input type="checkbox"/> ReInjection, <input type="checkbox"/> Hydrofracking			
		<input type="checkbox"/> Commercial, <input type="checkbox"/> Observation/Monitoring, <input type="checkbox"/> Test/Exploratory, <input type="checkbox"/> Cooling,			
		<input type="checkbox"/> Irrigation/Agriculture, <input type="checkbox"/> Grounding, <input type="checkbox"/> Recharge/Aquifer Storage,			
		<input type="checkbox"/> Heating, <input type="checkbox"/> Geothermal Exploration, <input type="checkbox"/> Other			
		Fluids used: _____			
		Depth of hole: 42 ft Casing stickup: _____ ft			
		Casing type: _____ Casing thickness: _____ inches			
		Casing diameter: _____ inches Casing depth: _____ ft			
		Liner type: _____ Depth: _____ ft Diameter: _____ inches			
		Note: _____			
		Well intake opening type: <input type="checkbox"/> Open end, <input type="checkbox"/> Open hole, <input type="checkbox"/> Other			
		Screen type: _____ Screen mesh size: _____			
		Screen start: _____ ft, Screen stop: _____ ft, Perforated <input type="checkbox"/> Yes <input type="checkbox"/> No			
		Perforation description: _____ Perf from: _____ ft, Perf to: _____ ft, Perf from: _____ ft, Perf to: _____ ft			
		Gravel packed <input type="checkbox"/> Yes <input type="checkbox"/> No Gravel start: _____ ft, Gravel stop: _____ ft			
		Note: _____			
		Static water (from top of casing): 33 ft on / / Artesian well <input type="checkbox"/>			
		Pumping level & yield: _____ feet after _____ hours at _____ gpm			
		Method of testing: _____ Duration: _____			
		Development method: _____ Recovery rate: _____ gpm			
		Grout type: _____ Volume _____			
		Depth: From _____ ft, To _____ ft			
		Final pump intake depth: _____ ft Model: _____			
		Pump size: _____ hp Brand name: _____			
		Was well disinfected upon completion? <input type="checkbox"/> Yes <input type="checkbox"/> No			
		Method of disinfection: _____			
		Was water quality tested? <input type="checkbox"/> Yes <input type="checkbox"/> No			
		Water quality parameters tested: _____			
		Well driller name: WAYNE WESTREB			
		Company name: M-W DRILLING INC			
		Mailing address: PO BOX 110378			
		City: Anchorage State: AK Zip: 99511			
		Phone number: (907) 345 - 4000			
		Driller's signature: _____			

Include description or sketch of well location (include road names, buildings, etc.):

AS 41.08.020(b)(4) and AAC 11 AAC 93.140(a) require that a copy of the well log be submitted to the Department of Natural Resources.



Laboratory Analysis Report

Justin Nelson

2021.04.08

14:33:43

-08'00'

Kay Tauriainen
Tauriainen Engineering & Testing
35186 Spur Highway
Soldotna, AK 99669

Results via Engage

Work Order: 1211389
Ferguson Well
Client: Tauriainen Engineering & Testing
Report Date: April 08, 2021

EMAILED
APR 08 2021

Enclosed are the analytical results associated with the above work order. The results apply to the samples as received. All results are intended to be used in their entirety and SGS is not responsible for use of less than the complete report. If you have any questions regarding this report, or if we can be of any other assistance, please contact your SGS Project Manager at 907-562-2343. This document is issued by the Company under its General Conditions of Service accessible at <http://www.sgs.com/en/Terms-and-Conditions.aspx>. Attention is drawn to the limitation of liability, indemnification and jurisdiction issues defined therein. Any holder of this document is advised that information contained hereon reflects the Company's findings at the time of its intervention only and within the limits of Client's instructions, if any. The Company's sole responsibility is to its Client and this document does not exonerate parties to a transaction from exercising all their rights and obligations under the transaction documents. Any unauthorized alteration, forgery or falsification of the content or appearance of this document is unlawful and offenders may be prosecuted to the fullest extent of the law.

SGS maintains a formal Quality Assurance/Quality Control (QA/QC) program. A copy of our Quality Assurance Plan (QAP), which outlines this program, is available at your request. The laboratory certification numbers are AK00971 (DW Chemistry & Microbiology) & 17-021 (CS) for ADEC and 2944.01 for DOD ELAP/ISO 17025 (RCRA methods: 1020B, 1311, 3010A, 3050B, 3520C, 3550C, 5030B, 5035A, 6020B, 7470A, 7471B, 8015C, 8021B, 8082A, 8260D, 8270D, 8270D-SIM, 9040C, 9045D, 9056A, 9060A, AK101 and AK102/103). SGS is only certified for the analytes listed on our Drinking Water Certification (DW methods: 200.8, 2130B, 2320B, 2510B, 300.0, 4500-CN-C-E, 4500-H-B, 4500-NO3-F, 4500-P-E and 524.2) and only those analytes will be reported to the State of Alaska for compliance. Except as specifically noted, all statements and data in this report are in conformance to the provisions set forth by the SGS QAP and, when applicable, other regulatory authorities.

*	The analyte has exceeded allowable regulatory or control limits.
!	Surrogate out of control limits.
B	Indicates the analyte is found in a blank associated with the sample.
CCV/CVA/CVB	Continuing Calibration Verification
CCCV/CVC/CVCA/CVCB	Closing Continuing Calibration Verification
CL	Control Limit
DF	Analytical Dilution Factor
DL	Detection Limit (i.e., maximum method detection limit)
E	The analyte result is above the calibrated range.
GT	Greater Than
ICV	Initial Calibration Verification
J	The quantitation is an estimation.
LCS(D)	Laboratory Control Spike (Duplicate)
LLQC/LLIQ	Low Level Quantitation Check
LOD	Limit of Detection (i.e., 1/2 of the LOQ)
LOQ	Limit of Quantitation (i.e., reporting or practical quantitation limit)
LT	Less Than
MB	Method Blank
MS(D)	Matrix Spike (Duplicate)
ND	Indicates the analyte is not detected.
RPD	Relative Percent Difference
TNTC	Too Numerous To Count
U	Indicates the analyte was analyzed for but not detected.

Note: Sample summaries which include a result for "Total Solids" have already been adjusted for moisture content.



SGS Ref.# 1211389001
Client Name Tauriainen Engineering & Testing
Project Name/# Ferguson Well
Client Sample ID Arctic Room Sink
Matrix Drinking Water

Printed Date/Time 04/08/2021 10:21
Collected Date/Time 03/30/2021 7:15
Received Date/Time 03/31/2021 9:18
Technical Director Stephen C. Ede

Sample Remarks:

Parameter	Results	LOQ	Units	Method	Container ID	Allowable Limits	Prep Date	Analysis Date	Init
Metals by ICP/MS									
Aluminum	ND	20.0	ug/L	EP200.8	A		04/01/21	04/01/21	ACF
Antimony	ND	1.00	ug/L	EP200.8	A		04/01/21	04/01/21	ACF
Arsenic	ND	5.00	ug/L	EP200.8	A	(<10)	04/01/21	04/01/21	ACF
Barium	2.23J	3.00	ug/L	EP200.8	A	(<2000)	04/01/21	04/01/21	ACF
Beryllium	ND	0.400	ug/L	EP200.8	A		04/01/21	04/01/21	ACF
Cadmium	ND	0.500	ug/L	EP200.8	A	(<5)	04/01/21	04/01/21	ACF
Calcium	8140	500	ug/L	EP200.8	A		04/01/21	04/01/21	ACF
Chromium	ND	2.00	ug/L	EP200.8	A	(<100)	04/01/21	04/01/21	ACF
Cobalt	ND	4.00	ug/L	EP200.8	A		04/01/21	04/01/21	ACF
Copper	245	1.00	ug/L	EP200.8	A	(<1000)	04/01/21	04/01/21	ACF
Iron	ND	250	ug/L	EP200.8	A		04/01/21	04/01/21	ACF
Lead	0.562	0.200	ug/L	EP200.8	A	(<15)	04/01/21	04/01/21	ACF
Magnesium	2250	50.0	ug/L	EP200.8	A		04/01/21	04/01/21	ACF
Manganese	2.42	1.00	ug/L	EP200.8	A		04/01/21	04/01/21	ACF
Mercury	ND	0.200	ug/L	EP200.8 M	B		03/31/21	04/01/21	ACF
Molybdenum	ND	2.00	ug/L	EP200.8	A		04/01/21	04/01/21	ACF
Nickel	1.09J	2.00	ug/L	EP200.8	A	(<100)	04/01/21	04/01/21	ACF
Phosphorus	ND	200	ug/L	EP200.8	A		04/01/21	04/01/21	ACF
Potassium	1100	500	ug/L	EP200.8	A		04/01/21	04/01/21	ACF
Selenium	ND	5.00	ug/L	EP200.8	A	(<50)	04/01/21	04/01/21	ACF
Silicon	9190	1000	ug/L	EP200.8	A		04/01/21	04/01/21	ACF
Silver	ND	1.00	ug/L	EP200.8	A		04/01/21	04/01/21	ACF
Sodium	6790	500	ug/L	EP200.8	A		04/01/21	04/01/21	ACF
Thallium	ND	1.00	ug/L	EP200.8	A		04/01/21	04/01/21	ACF
Tin	ND	1.00	ug/L	EP200.8	A		04/01/21	04/01/21	ACF
Titanium	ND	25.0	ug/L	EP200.8	A		04/01/21	04/01/21	ACF
Vanadium	ND	20.0	ug/L	EP200.8	A		04/01/21	04/01/21	ACF
Zinc	8.91J	10.0	ug/L	EP200.8	A	(<5000)	04/01/21	04/01/21	ACF



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Natural Resources

DIVISION OF MINING, LAND & WATER
Water Resources Section

550 West 7th Avenue, Suite 1020
Anchorage, AK 99501-3579
Main: 907.269.8600
TTY: 711 or 800.770.8973
Fax: 907.269.8904

April 22, 2021

William & Karen Ferguson
PO Box 261
Soldotna, AK 99669

RE: Application for Water Right: Case File - LAS 33630

Dear Mr. & Mrs. Ferguson:

The Department of Natural Resources (DNR), Water Resources Section, received your "Application for Water Right" on April 19, 2021 and initiated case file LAS 33630. The provisional priority date of any eventual water right resulting from this application, when it is adjudicated and if a permit to appropriate water or a certificate of appropriation is granted, will be April 19, 2021.

It has been determined that your "Application for Water Right" is complete per 11 AAC 93.040. However, this does not prevent the DNR from requesting additional information in the future, before or while your case file is being adjudicated. Applications are generally adjudicated based on date of receipt.

Please be aware that this office has a backlog of applications and it cannot be determined at this time when a staff member will be able to begin adjudication of your application. If you have any questions concerning your application, please feel free to contact this office at 907.269.8600 and refer to the LAS number referenced above. Thank you for participating in securing water rights under the Alaska Water Use Act.

Sincerely,

Christine Ballard
Natural Resource Specialist II

Kranberger Drilling Co. Well Drilling Log

Well owner: Gravier, Mike Driller: RRK Completion: 5/31/00
 Builder: _____ City: Soldotna
 Road/Area: Funny River/Troys Rd
 Legal 1: _____ Legal2: _____

Depth: <u>64</u>	Casing length: <u>66</u>	Diameter: <u>6</u>	Rig type: <u>RR</u>
Static level: <u>5</u>	Yield/GPM <u>15.0</u>	Finish of well: <u>open end</u>	

0-1 topsoil

23-27 wet gravel & sand

32-58 sticky gray clay

60-62 gray rocky clay

67-70 silty sand,gru,clay water

(8" to 36')

1-23 gravel & sand

27-32 wet silt,sand,gravel

58-60 brown clay,gru,rocks

62-667 sand,gravel,water

70-brown clay

POA-2016-439

Wetland delineation for planning purposes only.

Legend
Delineation
Reviewed area
Wetland





Darc Enterprises

WELL DRILLING

Licensed • Bonded • Insured

Rex Bennett, Owner
Caren Bennett, Bookkeeper

(907) 283-4745

404 Baker Street
Kenai, Alaska 99611-8239

August 16, 2004

Joe & Billie Hardy
Hardy's Alaskan Adventures
PO Box 3391
Soldotna, AK 99669

Dear Mr. & Mrs. Hardy:

The following is the well log for the well drilled August 11-16, 2004, at Lot 10 Block 3 River Park Estates:

0	-	4	clay soil and silty sand
4	-	26	silty gravel
26	-	35	water in clean gravel, 13' head

water static: 22'

pull down: negligible

set ¾ hp Gould pump at 23'; pumped @ 15 gpm for 10 minutes to check pull down,
which was negligible

reset ¾ hp Gould pump at 34'; pumped @ 15 gpm for four hours until clean

Thank you for this opportunity to be of service.

Yours truly,

Darc Enterprises

Caren Ann Bennett

RDB/cab
lg081104.ltr_Hardy_Lot10

Dale McBride

From:
Sent:
To:
Subject:

Well Drilling Log --- Kraxberger Drilling Inc. ---- (907) 262 - 4720

48230 Gas Well Road
Soldotna, Alaska 99669

Owner:	MCBRIDE, DALE	Road / Area:	FUNNY RIVER PATSON ROAD	Well log #	4973
Legal description	TRACK A				
		Builder:	CHENY EX HOLT BULDE		
City:	SOLDOTNA				

Depth:	107	Date completed	6/22/2011	Driller	RRK	Water sys. class:	
Yield (gpm)	100	Static level:	-10	Casing length:	109	Above ground:	2
Well completion:	30 FT 8 IN CASING FLOWED 50 GPM			Diameter(in)	6	Prim. casing typ	steel
				Rig type	AR	Grout:	none

0-2 TOP SOIL+CLAY	8" CASING 29'
2-17 SAND + GRAVEL	
17-25 SAND, GRAVEL, COBBLES	
25-92 GRAY CLAY	
92-104 GRAVEL+CLAY	
104-107 GRAVEL, SAND+ WATER	

Attachment B

Smith Well Drilling

35876 Isbell St.
Soldotna, Ak 99669
Ph(907)-262-3970

Water Well Construction Log

Log ID 836

Well Owner: Foster Construcion

Date Completed: 05/07/2021

NearestCommunity: Soldotna

Driller: Tyler Smith

Well Location: Patson Rd.-Funny River

Use of Well:	Commercial	Depth of Well:	180ft	Static Water Level:	Above Ground Level
Depth of Casing:	165ft	Casing Stickup:	2ft	Pumping Level:	160ft Duration: 4hr(s)
Casing Type:	Steel	Casing Dia:	6in.	Flow Rate:	300GPM Testing Method: Air
Casing Thickness:	0.250in.	Finish of Well:	Screen	Development Method:	Air Drilling Method: Air Rotary
Intervals and Size:	12 Slot Stainless Steel Screen			Drilling Fluid:	Water
From:	165ft	To:	180ft		

Drillers Material Log

(Description of strata penetrated)

Depth Below Top
Of Casing In Feet

From	To	Material
0	— 35	Brown Gravel
35	— 116	Blue Clay and Gravel
116	— 128	Blue Clay
128	— 140	Blue Silt and Sand
140	— 165	Blue Sand and Gravel
165	— 170	Blue Sandstone
170	— 180	Blue Sand

APPENDIX B

RESUME *for*

Geoffrey R. Coble, MS PG

GEOFFREY R. COBLE
MANAGER, COBLE GEOPHYSICAL SERVICES

ADDRESS

Homer Professional Building
910 East End, Suite #1
Homer, Alaska 99603
Work Phone: (907) 399-6366
Email: coblegeophysics@gmail.com

EDUCATION

M.S. with Honors (1989)	Water Resources Science Department of Civil Engineering University of Kansas
B.S. (1989)	Geophysics Department of Geology University of Kansas
B.S. (1985)	Geology Department of Geology University of Kansas

PROFESSIONAL EMPLOYMENT

1994-2021	Manager, COBLE GEOPHYSICAL SERVICES . Projects have included solving groundwater, unsaturated zone and surface water problems, as well as shallow geophysics and groundwater-surface water interaction. Projects include environmental projects, pumping tests to obtain parameters and well characteristics, groundwater modeling and evaluation of shallow and deep aquifers, solving unsaturated zone and aquifer remediation design problems, implementing enhanced remediation techniques, and hydrogeologic assistance for engineering firms in Alaska.
1989-1994	Senior Water Resource Scientist, Environmental Science and Engineering, Inc. Projects completed as a professional consultant include: remediation design and implementation for numerous environmental projects, the development of a model to determine groundwater-surface water interactions altered by diversion for a major power utility, numerous (over 100) water resources related modeling projects for private sector and government projects, management of aspects of large water resources projects, field team leader for groundwater well installation and geophysical data collection, routine report writing and computer programming, verbal presentation of models to clients (such as other

PROFESSIONAL EMPLOYMENT (continued)

consulting firms and private industry), and professional development including technical seminars and conferences.

- 1985-1989 Graduate Research Assistant, University of Kansas, Kansas Geological Survey, Geohydrology Section. Projects included research and field work for a large scale pumping test and for a groundwater recharge project, analyses and computer modeling of unsaturated flow data, computer modeling of pumping test data and numerous smaller projects.
- 1986 Computer programmer, University of Kansas, Kansas Geological Survey, Geohydrology Section. Computer programming for staff scientist Alan MacFarlane on a project-to-project basis. Duties included data management and computer graphics.
- 1984-1985 Student Research Assistant, University of Kansas, Kansas Center for Research Incorporated, Petrology Laboratory. Work involved using heavy liquids and a magnetic separator to obtain the mineral zircon for dating igneous rock. Duties included maintenance of detailed logs of laboratory work and frequent progress reports.
- 1983 Field Research Assistant. Duties were to assist in the analysis of the stratigraphy of the House Range complex near Delta, Utah. Field tasks included outcrop sketches, orientation measurements of the stratigraphy, sampling and photography.

PROFESSIONAL AFFILIATIONS

American Geophysical Union (AGU)
American Water Resources Association, Alaska Section (President, 2000)
International Association of Hydrological Scientists
AIPG Certified Professional Geologist # 9088
Alaska Registered Professional Geologist # 376
Hazardous Materials/Site Operations Training (OSHA 1910.120(e)(8))

APPENDIX C

COMPLIANCE *of*

KPB Materials Site Ordinances

COMPLIANCE

Material sites are subject to a whole host of regulations, although most of the regulatory duties are assumed by the KPB, which is the principal regulatory body responsible for guiding materials sites activity in the KPB through its ordinances.

KPB ordinances provide regulation of materials sites which includes the gravel extraction at the Patson Properties referenced in this memorandum, and this ordinance code is found in **KPB 21.29 Material Site Permits** summarized as follows:

Chapter 21.29. – Material Site Permits.

The regulations for materials sites are located in this chapter of the KPB Ordinances, which categorize materials sites as follows:

- >If a material site is less than 1 acre, and does not enter the water table, there is no permit required;
- >If a material site is no more than 2.5 acres in size, and does not enter the water table, a *counter permit* is required; these are approved by the planning director, and are not subject to the notice requirements or planning commission approval;
- >If a material site is over 2.5 acres then a *conditional land use permit* (CLUP) is required for material extraction which disturbs more than 2.5 cumulative acres. A CLUP is also required for material extraction of any size that enters the water table, and required for materials processing.

The CLUP application requires:

- A buffer plan;
- Reclamation plan;
- The proposed depth of excavation;
- Type of material to be extracted and type of equipment to be used;
- A site plan and field verification prepared by a professional surveyor licensed and registered in the State of Alaska, including the following information:
 - Location and depth of test holes, and depth of groundwater, if encountered;
 - Location of wells of adjacent property owners within 300 feet of the proposed parcel boundary;
 - Location of any water body on the parcel, including the location of any riparian wetland as determined by "Wetland Mapping and Classification of the Kenai Lowland, Alaska" maps created by the Kenai Watershed Forum;
 - Surface water protection measures for adjacent properties, including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence; provide designs for substantial structures; indicate which structures will remain as permanent features at the conclusion of operations, if any;

21.29.040. - Standards for sand, gravel or material sites maintains that these material site regulations are intended to:

- > protect against aquifer disturbance;
- > Protect against the lowering of water sources serving other properties;
- > Protect against physical damage to other properties.

21.29.050. - Permit conditions are mandatory conditions which apply to counter permits and CLUPs issued for sand, gravel or material sites which include:

> *Buffer.* A minimum six-foot earthen berm with at least a 2:1 slope (or a minimum six-foot fence), although this buffer shall not cause surface water diversion which negatively impacts adjacent properties or water bodies, where surface water diversion is defined as erosion, flooding, dehydration or draining, or channeling;

> *Water source separation.*

- »No material extraction within 100 horizontal feet of any water source existing prior to original permit issuance.
- »counter permits require a four-foot vertical separation from the seasonal high water table be maintained.
- »CLUPS shall be issued with a condition which requires that a two-foot vertical separation from the seasonal high water table be maintained.
- »no dewatering either by pumping, ditching or some other form of draining unless an exemption is granted by the planning commission (exemption for dewatering may be granted if the operator provides a statement under seal and supporting data from a duly licensed and qualified impartial civil engineer, that the dewatering will not lower any of the surrounding property's water systems and the contractor posts a bond for liability for potential accrued damages).
- »*Excavation in the water table.* Excavation in the water table greater than 300 horizontal feet of a water source may be permitted with the approval of the planning commission based on the following:
 - Certification by a qualified independent civil engineer or professional hydrogeologist that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources.
 - The installation of a minimum of three water monitoring tubes or well casings as recommended by a qualified independent civil engineer or professional hydrogeologist adequate to determine flow direction, flow rate, and water elevation.
 - Groundwater elevation, flow direction, and flow rate for the subject parcel, measured in three-month intervals by a qualified independent civil engineer or professional hydrogeologist, for at least one year prior to application. Monitoring tubes or wells must be kept in place, and measurements taken, for the duration of any excavation in the water table.
 - Operations shall not breach an aquifer-confining layer.

> *Waterbodies.* No earth material extraction within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains as defined in KPB [21.06](#). *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.*

> *Fuel storage.* A common source of groundwater contamination. 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.

> *Other permits.* 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. Any violation of these regulations or permits reported to or observed by borough personnel will be forwarded to the appropriate agency for enforcement.

21.29.060. - Reclamation plan.

This part of the regulation *does not reclaim the function of the removed aquifer.*

The stated emphasis throughout this section is to create a vegetated area on the surface using overburden as backfill, graded and re-contoured using overburden and topsoil in such a way that allows for the 'reestablishment of renewable resources'. If this is the goal, then it needs to be more specific, and involve specialists who are aware of what those renewable resources require *and then planting them.*

Ponding is also mentioned as a reclamation method, but in a typical case where all the gravel has been extracted then it should be mentioned that there is *no equivalency among ponds*. Groundwater storage, surrounding aquifer behavior including aquifer damming, a shortened unsaturated zone and near-surface confining layer located in a large artificial pit swale all contribute conditions to ponds. A fundamental change in landscape is often what is being permitted – so an expert on ponding would be required in the ordinance code since these are case-by-case situations if the KPB is to get the most out of this type of reclamation.

APPENDIX D

Alaska Department of Natural Resources
Division of Mining, Land and Water

TEMPORARY WATER USE AUTHORIZATION

State of Alaska

Title 11 of the State of Alaska Administrative Code specifies State of Alaska Regulations having to do with Natural Resources.

Chapter 11 is the part of the part of the code is where the State of Alaska has interests in natural resources and resource conflicts relating to mining and water.

A Temporary Water Use Authorization (TWUA) is issued by the State of Alaska ADNR for the temporary use of unappropriated water. A TWUA can be issued for any length of time up to 5 consecutive years. Water use includes water withdrawals (including dewatering activities), diversions, impoundments, and in source uses. One TWUA application can be used to request up to 5 separate water sources.

Per [11 AAC 93.035 \(a\) \(b\)](#) and [11 AAC 93.220](#), a temporary water use authorization must be received from DNR prior to:

- (1) the consumptive use of more than 5,000 gallons of water from a single source in a single day; or
- (2) the regular daily or recurring consumptive use of more than 500 gallons per day (gpd) from a single source for more than 10 days per calendar year; or
- (3) the non-consumptive use of more than 30,000 gpd (0.05 cubic feet per second) from a single source; or
- (4) any water use that may adversely affect the water rights of other appropriators or the public interest.

Authorized temporary water use is subject to amendment, modification or revocation by the department. A water right or priority is not established by a temporary water use authorization.

Please note the definition of non-consumptive use per [11 AAC 93.970 \(33\)](#): "non-consumptive water use" means the instream use of water, or the diversion of water where the quantity of water diverted is not diminished except by evaporation or transpiration and the water is returned to its original source at the original point of diversion immediately after its use;

If a proposed water use does not come within the definition of non-consumptive water use, then it will be a consumptive use of water relative to the requested water source. Consequently, water uses such as diversions of water for culvert installations, (including pump arounds), excavation dewatering, and other activities where the water itself is not being put to some specific use will still require an authorization from DNR if the quantities involved exceed the significant amount of water threshold of [11 AAC 93.035\(a\) \(b\)](#). Also, the term original point of diversion is interpreted to mean the initial point of water withdrawal, not simply the same water source, (i.e. taking water from a stream and putting the water back into the stream, but not at the same point the water was initially withdrawn from, does not satisfy the original point of diversion aspect).

To obtain a temporary water use authorization in Alaska, you need to submit an Application for Temporary Use of Water to DNR. The application *must* include (per [11 AAC 93.220](#)):

- The application fee prescribed by [11 AAC 05.010](#) (see below).
- A map identifying the section, township, range, and meridian, and indicating the location, of the property, the point of use and the point of withdrawal, diversion, dewatering and/or impoundment.
- A signed application form that includes:
 1. The legal description of the point of water withdrawal, impoundment or diversion
 2. The quantity of water to be used, with documentation and calculations justifying the request.
 3. The nature of the water use and project description.
 4. The daily duration and months of use (with an expiration date).
 5. The type and size of equipment used to withdraw, divert or impound the water.

Please consider applying for a multi-year TWUA in order to ensure the full scope of a project is covered. Once a complete application is received, an agency notice (to the Alaska Department of Fish and Game and Alaska Department of Environmental Conservation) is required prior to a decision to issue or deny an authorization. Please apply for a TWUA 60 days prior to the date the TWUA is needed to allow for the application review time and decision documentation. If a TWUA expires and a new one is required for an additional period of time, a new application will have to be submitted with a new application fee.

Authorization Costs

An application/request regarding temporary water use must be accompanied by the appropriate filing fee of \$450 per application (which includes up to 18 hours of staff time).

Amendments

An amendment to a TWUA may be required for a variety of reasons such as:

- Change in water source or addition of new sources
- Change in withdrawal volume per day or per season
- Change in water use or location of use
- Change in season of use

An amendment request goes through the same adjudication process as a new application, and should be submitted **prior** to the expiration of a TWUA. Please allow 60 days for adjudication.

There is not a form for amendments. Simply send an email or letter with the requested change to the office that issued your TWUA.

Amendment Costs

An amendment to a temporary water use authorization must be accompanied by the appropriate filing fee of \$350 (which includes up to 14 hours of staff time).

Extensions

[Download a Request for Extension of Permit or Authorization Form](#)

- A TWUA may be extended one time only.
- It may be extended so that the TWUA covers up to 5 consecutive years total duration when combined with the initial issuance period.
- It may only be extended when it is still active. If it has already expired, it cannot be extended. If a TWUA has already expired, a new application and application fee will need to be submitted.

As with an amendment, an extension also requires an agency notice.

Extension Costs

An extension to a temporary water use authorization must be accompanied by the appropriate filing fee of \$350 (which includes up to 14 hours of staff time).

Information

For temporary water use application instructions or questions, please contact the following:

For temporary uses of water, contact the Anchorage office at (907) 269-7495 or DNR.TWUA@alaska.gov

APPENDIX E

Alaska Department of Natural Resources
Division of Mining, Land and Water

MINING RECLAMATION

State of Alaska Statutes

For the State of Alaska mining reclamation, including non-state land, the Reclamation Standard can be found in Alaska Statutes (AS 27.19.020):

*A mining operation shall be conducted in a manner that prevents unnecessary and undue degradation of land and water resources, and the mining operation shall be reclaimed as **contemporaneously as practicable** with the mining operation to leave the site in a stable condition.*

And the Reclamation Plan is outlined in AS 27.19.030. Here is a link to the on-line application for a Reclamation Plan or Letter of Intent. The bonding for a Reclamation Plan is if it is over 50,000 cubic yards of material in a year being removed and over 5 acres of disturbed land. The bonding is at \$750.00 per acre:

<https://dnr.alaska.gov/mlw/cdn/pdf/forms/Material-Sales-Reclamation-Plan.pdf>

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

HANS BILBEN, et al.,)
)
Appellants,)
)
v.)
)
KENAI PENINSULA BOROUGH,)
PLANNING COMMISSION, and)
BEACHCOMBER LLC, et al.)
)
Appellees.)

Appeal Case No. 3KN-20-00034CI

AGENCY CASE NO. 2019-01-PCA

MEMORANDUM DECISION AND ORDER

On January 10, 2020, Appellants, Hans Bilben et al.¹ (herein referred to solely as “Bilben”), filed a *Notice of Appeal* of a Hearing Officer Decision and Order in Kenai Peninsula Borough Planning Commission (“Commission”) Case 2019-01-PCA, which ultimately granted a conditional land use permit (“CLUP”) in favor of Beachcomber, LLC, for materials extraction on certain Beachcomber property.

I. BACKGROUND

On June 4, 2018, Beachcomber applied for a CLUP under Kenai Peninsula Borough Code (“KPB”) 21.29.30 to excavate and process materials on 27.7 acres of its 41.72-acre property in Anchor Point.² The proposed development would occur in phases over a 15-year period, two to five acres at a time. The proposed material site is surrounded by residential and recreational properties. The site is also topographically depressed, meaning that the surrounding properties look down over any activities occurring at the proposed gravel mine.

¹ The Appellants in this case consist of 29 owners of real properties that adjoin or surround the proposed 27.7-acre gravel pit situated in an area presently used for residential and recreational purposes.

² Excerpt of Record (“Exc.”), pp.1-21.

Beachcomber's CLUP application contained information required by the KPB Code, including a reclamation plan and proposed buffers to minimize impact on the surrounding community.³

Notice of the CLUP was posted and public comment was invited at a meeting set for July 16, 2018. Prior to the meeting, the Commission received nearly 200 documents for consideration. At the meeting, the Commission heard hours of public testimony from over 30 people affected by the CLUP. Due to the volume of testimony, the meeting continued beyond the Commission's ordinary adjournment time. Following the meeting, the Commission deliberated on the proposed gravel mine and voted to disapprove the application by a vote of 6-3.⁴ The Commission identified two primary reasons under KPB Code 21.29.040 for disapproving the CLUP application: (1) the noise disturbance will not be sufficiently reduced with any buffer or berm that could be added, and (2) the visual impact to the neighboring properties will not be sufficiently reduced.⁵

On August 2, 2018, Beachcomber appealed the Commission's denial of the CLUP. In advance of the appeal proceeding, the Planning Director submitted a brief in which he described the Commission's decision to deny the CLUP as "hasty and reactionary [...] made to accommodate the fears and concerns of the crowd."⁶ The Planning Director requested that the Hearing Officer either approve the CLUP or remand the decision back to the Commission for further analysis.⁷

On December 6, 2018, Hearing Officer Holly Wells was assigned to preside over the administrative appeal. In her decision, Officer Wells discussed KPB Code 21.29.050, and held that the Commission exceeded the scope of its authority in denying the CLUP application.⁸, Officer Wells found that:

³ Exc. 1-4.

⁴ Exc. 36.

⁵ Exc. 36.

⁶ Exc. 227.

⁷ The Planning Director stated that the Commission did not make sufficient findings to support its denial. Specifically, "[p]ursuant to KPB 21.29.050(A)(2) the planning commission determines the appropriate height and density of the buffers for a material site within the confines of the code section. However, no exploration or effort was made to determine whether the buffers proposed by staff, or different or additional buffers, could be fashioned to screen the material site. If the planning commission believed that buffers were not feasible it should have made findings to support that position and then waived the buffers under KPB 21.29.050(e). Further, the decision lacked any reference as to whether the other 14 conditions set forth in KPB 21.29.050 were also useless to afford any protection to the surrounding property owners." See Exc. 224.

⁸ Exc. 60.

“the Code does not provide the Commission discretion to deny such a permit when the application has been properly submitted [...] The Code does not afford the Commission discretion to judge the effectiveness of the conditions identified in the Code [...] the [Kenai Peninsula Borough] Assembly, in adopting the Code, only granted the Commission authority to impose these conditions and ensure that any application complied with these application requirements [...] the Commission may only apply the conditions under KPB 21.29.050 when issuing a material site conditional use permit.”⁹

Officer Wells remanded the CLUP application back to the Commission for further findings. In ruling on a *Motion for Reconsideration* by Bilben, Hearing Officer Wells reiterated that “the Commission’s findings were not sufficient to determine whether the denial was properly within the Commission’s authority.”¹⁰ Bilben did not appeal Officer Wells’ decision. On remand, the Planning Department issued a staff report and provided background information to the Commission with excerpts from the hearing with Officer Wells.¹¹

Beginning in March, 2019, the Commission again considered Beachcomber’s CLUP application at a series of hearings and deliberations held over five days.¹² Commissioners expressed ongoing concerns about the CLUP application, including that Beachcomber’s proposed buffer would not adequately reduce the noise disturbance and visual impact on the surrounding properties.¹³

Beachcomber voluntarily added conditions to mitigate the visual and noise impacts, including (1) using roaming (rather than stationary) berms to be moved as the extraction area expanded, (2) operating onsite equipment with multi-frequency (white noise) back-up alarms instead of traditional (beep-beep) back-up alarms, and (3) restricting operating hours for rock crushing on holiday weekends during the summer.¹⁴ Following deliberations, the Commission voted to approve the application by a vote of 8-2.¹⁵ The Commission adopted Resolution 2018-23, which included 30 findings of fact and outlined 22 permit conditions.¹⁶ The

⁹ *Id.*

¹⁰ Exc. 56.

¹¹ *Id.*

¹² March 25, April 8, April 22, June 10, June 24, 2019, with public comments heard only on June 10, 2019.

¹³ Exc. 94-96.

¹⁴ Exc. 115, 117-119.

¹⁵ Exc. 113.

¹⁶ Exc. 114-119.

Resolution adhered to the instructions provided on remand that “[c]ompliance with the mandatory conditions in KPB [Code] 21.29.050, as detailed in the following findings, necessarily means that the application meets the standards contained in KPB 21.29.040.”¹⁷

Bilben appealed the Commission’s approval of the CLUP. On October 30, 2019, Hearing Officer Goldsmith presided over the appeal. Officer Goldsmith gave deference to the Commission’s interpretation of the Code, and found that the “Commission’s interpretation that these two provisions must be read together, and that compliance with KPB 21.29.050 necessarily means compliance with KPB 21.29.040, is reasonable.”¹⁸ Hearing Officer Goldsmith upheld the Commission’s decision, finding that the “Commission acted within the scope of its authority in approving the Application, and finding that “the additional facts presented at the Commission’s 2019 public meetings on this Application provide the evidence to support the Commission’s findings of fact.”¹⁹

II. PARTIES’ ARGUMENTS

a. Standard of Review

The parties agree on which standards of review are appropriate for administrative decisions, but disagree as to which should be applied in this case. Bilben argues that the court should apply the independent judgment standard, arguing that deference to agency decisions are not warranted where the matter is one of purely statutory interpretation for which no agency expertise or questions of fundamental policy are involved.²⁰ Bilben argues that the question of whether the Commission has authority to disapprove a completed permit application is one of purely statutory interpretation. Bilben notes that courts have accorded deliberative weight to “what the agency has done, especially where the agency interpretation is longstanding.”²¹ However, Bilben asserts that the Commission’s final interpretation of the Code in this case (that compliance with KPB Code 21.29.050 necessarily means compliance with KPB Code

¹⁷ Exc. 115.

¹⁸ Exc. 182.

¹⁹ Exc. 177.

²⁰ *Balough v. Fairbanks North Star Borough*, 995 P.2d 245 (Alaska 2000).

²¹ *State, Dep’t of Health and Human Services, Div. of Public Assistance v. Gross*, 347 P.3d 116 (Alaska 2015).

21.29.040) is due little deference based on longevity because (1) the final interpretation of the Code did not originate from the agency, but rather from Hearing Officer Wells, and (2) the Commission has not previously been required to approve a CLUP application in a residential area with overlooking surrounding properties where the standards in KPB Code 21.29.040 could not feasibly be met.

Bilben argues that if the court applies deference to agency interpretation, it should defer to the Commission's 2018 interpretation rather than the 2019 interpretation. Bilben argues that when the Commission voted to disapprove the CLUP application in 2018, the majority of the Commission understood that the Commission was authorized to determine whether the standards in KPB Code 21.29.040 had been met prior to approving the permit.

Conversely, Appellees argue that the court should apply the reasonable basis standard of review because (1) the Commission has expertise in approving or denying CLUPs pursuant to the KPB Code and should be afforded deference; (2) one of the Commission's core statutory functions is to consider and approve properly-submitted CLUPs; (3) the Commission has maintained a longstanding and continuous policy of approving CLUPs that comply with KPB Code; and (4) the Alaska Supreme Court has specifically directed courts to be deferential when considering a zoning board's determination.²²

b. Discretion of the Planning Commission

Bilben argues that the instruction provided to the Commission on remand – that it lacked the discretion to judge whether the CLUP application met the KPB Code 21.29.040 standards and that it lacked the authority to disapprove a completed permit application – was incorrect. Bilben argues that KPB Code 21.25.050(b) explicitly provides the Commission with discretion to “either approve, modify, or disapprove the permit application.”²³ Bilben asserts that the purpose of Chapter 21.25 is to “require advance notice, to provide an opportunity for public

²² *South Anchorage Concerned Coalition, Inc. v. Coffey*, 862 P.2d 168, 173 n.12 (“When a planning agency does, in fact, provide its interpretation of an ordinance within its area of expertise, we will give that interpretation considerable deference.”); See also, *Griswold v. Homer Advisory Planning Commission et al.*, No. S-17669, Op. No. 7515 (Alaska Apr. 9, 2021).

²³ KPB Code 21.25.050(b).

comment, and *impose minimum standards*” for certain land uses, including CLUPs.²⁴ Bilben further asserts that “before granting the permit, the Commission must find *at a minimum* that the proposed activity complies with the requirements” of Chapter 21.25.²⁵ Therefore, Bilben argues that the standards outlined in the Code represent the floor of the Commission’s discretionary authority, not the ceiling.

Bilben contends that statutory construction indicates that the Commission does indeed have authority to disapprove a CLUP application that does not meet the KPB 21.29.040 standards. Bilben asserts that if the Commission were prohibited from denying a completed application, various portions of the Code would be rendered obsolete, including (1) the responsibility of the Planning Director to assess the completeness of an application provided in KPB 21.25.050(A); (2) the Commission’s authority to “either approve, modify or disapprove the permit application” provided in KPB 21.25.050(B); and (3) the utility and meaning of the standards in KPB 21.25.050(B),²⁶ 21.25.020,²⁷ and 21.29.040.²⁸

A more straightforward interpretation, Bilben argues, is that the Legislature imposed minimum standards that must be met prior to granting permission to engage in activities on a parcel of land. To that end, Bilben asserts that the Legislature divided responsibility between the Planning Director, who is responsible for assessing completeness of an application, and the Commission, which is responsible for assessing whether the standards have been met.

Moreover, Bilben asserts that the Code’s stated purpose is to “provide advance public notice, to provide an opportunity for public comment, and impose minimum standards for certain land uses which may be potentially damaging to the public health, safety and welfare, in a manner that recognizes private property rights.”²⁹ As such, Bilben argues that it would be unreasonable to adopt an interpretation of the Code that prohibits the Commission from

²⁴ KPB Code 21.25.020 (emphasis added).

²⁵ KPB 21.25.050(B) (emphasis added).

²⁶ KPB Code 21.25.050(B) (“Before granting the permit, the commission must find at a minimum that the proposed activity complies with the requirements of this chapter.”).

²⁷ KPB Code 21.25.020 (“It is the purpose of this chapter... to impose minimum standards for certain land uses which may be potentially damaging to the public health, safety and welfare...”).

²⁸ Setting forth the list of six standards applicable to Material Site Permits.

²⁹ KPB 21.25.020.

disallowing a CLUP, regardless of the outcome of public comment, public health, safety and welfare, or whether or not the application satisfies standards imposed by KPB 21.29.040.

Bilben concedes that the Commission's authority to impose standards on material site permits is limited by KPB Code 21.29. Specifically, KPB Code 21.29.050 provides sixteen permit conditions which the Commission may impose to meet the six specific standards outlined in KPB 21.29.040. However, Bilben argues that while KPB Code 21.29.040 states that "[o]nly the conditions set forth in KPB 21.29.050 may be imposed to meet the standards," it does not otherwise restrict or define the Commission's authority to deny an application in the event that the standards are, nevertheless, not met by the applicant. Bilben argues that the word "only" in KPB Code 21.29.040 serves to limit the universe of allowable conditions that the Commission could impose on a gravel mine operator, not eviscerate the Commission's discretion to deny an application altogether.³⁰ Therefore, Bilben argues that the Commission was not in error when it disapproved the CLUP in 2018 for failure to sufficiently reduce noise or visual impacts.

In opposition, Appellees argue that the word "only" in KPB Code 21.29.040 limits the Commission's discretion to deny a completed CLUP application. Namely, that the Commission may *only* impose conditions listed in KPB Code 21.29.050 to meet the standards outlined in KPB Code 21.29.040. Appellees note that KPB Code 21.29.040 provides a list of six goals, including minimizing noise disturbances and visual impacts. However, Appellees argue that KPB Code 21.29.040 illustrates the Legislative Assembly's aspirational intent; it does not seek to eliminate *all* noise disturbances or visual impacts - instead it only aspires to *minimize* them. Appellees argue that KPB 21.29.050(A)(2)(e) explicitly gives the Commission the ability to "waive buffer requirements" entirely "where the topography of the property [...] makes screening not feasible or necessary." Appellees contend that the Commission must view a CLUP application through the lens of KPB 21.29.050 while keeping the six aspirational goals of KPB 21.29.040 in mind. Appellees argue that because the six standards of KPB 21.29.040 are aspirational, it would be improper for the Commission to deny a CLUP based only on those standards if the applicant otherwise meets the sixteen mandatory conditions outlined in KPB 21.29.050.

³⁰ KPB 21.29.040 ("Only the conditions set forth in KPB 21.29.050 may be imposed to meet these [six] standards").

Appellees argue that the Assembly crafted legislation that favors minimal restrictions on landowners to use and control their land. In support, they assert that in 1999 the Assembly removed a Code provision that required the Commission to deny a permit application if it was either detrimental to the public welfare or injurious to other property in the area.³¹ Instead, the Assembly adopted Code provisions that limit the Commission's discretion to deny a CLUP solely to situations in which the application fails to meet the mandatory conditions of KPB Code 21.29.050.

Both parties agree that when various Code chapters conflict, the more specific chapter controls. Appellees argue that KPB 21.29, which outlines mandatory permit conditions, is more specific than the provisions in KPB 21.25. Therefore, Appellees argue, the discretion afforded to the Commission in chapter 21.25 to "either approve, modify or disapprove" a permit application gives way to the limited discretion provided to the Commission in KPB 21.29 to deny a permit application if and only if it fails to meet the mandatory conditions of KPB 21.29.050. Appellees assert that the Commission does not have authority to impose additional conditions or requirements beyond those listed in KPB 21.29.050.³² Appellees argue that in 2019, the Commission found that Beachcomber's application met all of the mandatory conditions and that approval of the CLUP was, therefore, proper.

In reply, Bilben asserts that he is not seeking to impose *additional* conditions to the CLUP, but rather only aim to apply the standards already listed in the Code.³³ Bilben asserts that mapped depictions of the proposed CLUP area that were created using the Borough's mapping technology demonstrates that the visual and noise impacts will not be minimized.³⁴ He further insists that conditions listed in the CLUP may be ineffective at minimizing the visual and aural impact. For example, he argues, a condition that requires a screen or buffer to be placed near the material excavation site would do nothing to minimize the impacts for the transportation routes or processing sites. For those reasons, he argues that the Commission had authority to deny the CLUP.

³¹ See former KPB Code 21.13.

³² See Warrington, Memorandum Decision and Order, 3KN-05-00206CI, at 8.

³³ *Id.* Bilben argues that Warrington is distinguishable because in that case the agency found that the proposed gravel mining pit would not affect the neighboring water sources.

³⁴ Exc. 12-13.

c. Substantial Evidence

Bilben argues that substantial evidence does not support the Commission's findings in Resolution 2018-23 and that Hearing Officer Goldsmith's decision upholding the Resolution must be reversed. Bilben asserts that Officer Goldsmith reasoned that substantial evidence existed for the Resolution approving the CLUP because "due consideration must be given to the Commission's interpretation of the Code."³⁵ However, Bilben asserts that it cannot be discerned whether the Commission determined that the standards had been met in 2019 because the only finding relating to standards states that the standards in KPB 21.29.040 are "necessarily met" when the mandatory conditions in KPB 21.29.050 are imposed.³⁶ Bilben contends that the evidence presented in 2019 was not sufficiently different from the evidence presented in 2018 when the Commission denied the CLUP due to visual and noise impacts.

In opposition, Appellees argue that the Commission made factual findings concerning the topography of the properties, as well as the ability of buffers to minimize noise and visual impacts. Specifically, the Commission discussed how Beachcomber's CLUP could "mar the view," and recognized that the "material site cannot be conditioned so that all adjacent parcels are equally screened by the buffers."³⁷ Appellees argue that after reviewing the evidence and detailing the findings, the Commission "deemed appropriate" the conditions imposed on Beachcomber's CLUP application.³⁸

III. DISCUSSION

A. Standard of Review

When the superior court sits as a court of appeal from an administrative decision, there are four principle standards of review. The court applies the "substantial evidence test to

³⁵ Appellant's Brief at p.35-36; Exc. 184-85.

³⁶ Exc. 115.

³⁷ Exc. 116.

³⁸ Appellee's Brief at p.24.

questions of fact,”³⁹ the “reasonable basis test to questions of law involving agency expertise,”⁴⁰ the “substitution of judgment test” for questions of law that do not involve agency expertise, and the “reasonable and not arbitrary standard applies to review of administrative regulations.”⁴¹ The Alaska Supreme Court has recognized that planning commissions “receive deference equal to that accorded to an administrative agency,” and that “their interpretations of zoning ordinances should be given great weight and...accepted whenever there is a reasonable basis for the meaning given by the board.”⁴²

B. Authority of the Planning Commission to Deny a CLUP

A significant dispute between the parties concerns the scope of the Commission’s authority in reviewing a CLUP application. Appellants argue that the Commission initially interpreted the Borough Code to allow them to deny an application that did not sufficiently satisfy the requirements of KPB 21.29.040 even after imposing conditions contained in KPB 21.29.050. As such, Appellants urge this court to defer to the Commission’s interpretation of the Borough Code at that time. Appellee’s urge the court to adopt the Commission’s interpretation of the Borough Code as it was during the 2019 hearings. Appellant’s respond that the Commission did not interpret the Borough Code in 2019, but rather, adopted the required interpretation as ordered by Hearing Officer Wells.

At the July 16, 2018, hearing before the Commission, the commissioners discussed whether they had the authority to deny the CLUP. Commissioner Ecklund believed that the Commission had “sufficient findings to deny this permit based on...the borough code as it is written now.”⁴³ Commissioner Ruffner felt otherwise, stating that “as commissioners, our hands are tied.”⁴⁴ Commissioner Carluccio questioned whether the intent of the law was to

³⁹ *Frank Griswold v. Homer Advisory Planning Comm’n, et.al.*, 484 P.3d 120, 127 (Alaska 2021) (internal citations and quotations omitted).

⁴⁰ *Id.*

⁴¹ *State, Dep’t of Nat. Res. V. Alaska Crude Corp.*, 441 P.3d 3939, 398 (Alaska 2018).

⁴² *Griswold*, 484 P.3d at 127 (citing *Griswold v. City of Homer*, 55 P.3d 64, 67-68 (Alaska 2002) (quoting *S. Anchorage Concerned Coal, Inc. v. Coffey*, 862 P.2d 168, 173 (Alaska 1993))).

⁴³ Exc. 34.

⁴⁴ *Id.* at 35.

protect surrounding landowners, giving the Commission authority to deny the CLUP.⁴⁵ As evidence by the vote of 6-3 to deny the CLUP, Other Commissioners also interpreted the Borough Code in such a way that gave the Commission the authority to deny the CLUP due to their findings that any conditions imposed would fail to sufficiently minimize noise or visual impacts.⁴⁶

On appeal, Hearing Officer Wells found that the Commission exceeded the scope of its authority in denying the permit based upon its determination that the conditions would not afford adequate protection from noise and visual blight.”⁴⁷ She further held that “the Code does not afford the Commission discretion to judge the effectiveness of the conditions identified in the Code.”⁴⁸ On remand at the June 10, 2019, hearing, some commissioners continued to recognize that they did not believe the conditions in KPB 21.29.050 would sufficiently minimize the noise and visual impacts of the material site.⁴⁹ At the July 24, 2019, hearing, Commissioner Ruffner, however, expressed his long-held belief that “if a permit application comes in and it’s complete and it meets the conditions that have been set forth in 21.29, then those....if those conditions are met, then we don’t have the ability to deny the permit.”⁵⁰

As noted above, this court is to apply its own independent judgment to questions of law that do not involve agency expertise, but is to give deference to planning commissions in interpreting their zoning ordinances involving agency expertise “whenever there is a reasonable basis for the meaning given by the board.”⁵¹ Appellants argue that this court should apply its

⁴⁵ *Id.* Commissioner Carluccio eventually voted to deny the CLUP. *Id.* at 36.

⁴⁶ *Id.* at 36 (Commissioner Bentz noting that “I don’t think these conditions will minimize noise disturbance...and the conditions won’t minimize visual impacts either; Commissioner Morgan stated that she did not “see how the 50-foot buffer or berms are going to minimize visual impact or sound impact because of the unique topography.”; Exc. 96 (Commissioner Whitney expressed concern that “I just don’t think the berms that proposed and anything that’s going on here is adequate to control the visual impact...”)).

⁴⁷ Exc. 46.

⁴⁸ Exc. 50.

⁴⁹ Exc. 90 (Commissioner Ernst expressed concern that “in this unique situation...[i]s there any possible buffer that could be reasonably used to protect the, you know, the noise levels and visual impact of this pit...?; Exc. 95, Commissioner Ecklund worried that while KPB 21.29.050(14) required consideration of the “best interest of the borough and the surrounding property owners,” the limit of the Commission’s authority gave them “no meat to help [surrounding property owners] in this ordinance.”)

⁵⁰ Exc. 103.

⁵¹ *Griswold*, 484 P.3d at 127 (citing *Griswold v. City of Homer*, 55 P.3d 64, 67-68 (Alaska 2002) (quoting *S. Anchorage Concerned Coal, Inc. v. Coffey*, 862 P.2d 168, 173 (Alaska 1993))).

independent judgment in interpreting the Borough Code in this instance, as the scope of the Commission's authority does not involve agency expertise. Appellees argue that the Commission's interpretation of the Borough Code is entitled to deference, as it does in fact involve agency expertise.

While both arguments have merit, this court finds that under either standard of review, the Commission has authority to deny a CLUP if it determines that the requirements of KPB 21.29.040 cannot be met. It is clear that the Commission interpreted the Borough Code in 2018 in such a way that provided it with the authority to deny the CLUP, as it voted 6-3 to deny the CLUP. While the Commission voted 8-2 in favor of the CLUP in June 2019, the record is not entirely clear as to whether this decision hinged on the commissioners' belief that they were obliged to do so per Hearing Officer Wells' decision, or whether they actually found that the visual impacts and noise levels were sufficiently minimized. Thus, if this court were to apply a deferential standard of review, it would defer to the agency's interpretation as it was in June 2018.

Applying the independent judgment standard, the court finds that the Commission had the authority to deny the CLUP if the standards in KPB 21.29.040 cannot not be satisfied. KPB 21.25 details the procedure for obtaining a CLUP. KPB 21.25.040 requires a permit for "material site pursuant to KPB 21.29."⁵² Under KPB 21.25.050, there must be a public hearing where those wishing to contest the permit can be heard. Following the hearing, the Commission "*shall either approve, modify, or disapprove the permit application.*"⁵³ KPB 21.25 contains general provisions, while KPB 21.29 are more specific provisions. While this court recognizes that "where the provisions of [KPB 21.25] and a CLUP chapter regulating a specific use conflict, the more specific chapter shall control,"⁵⁴ the court does not find a conflict between KPB 21.25.050's requirement that the Commission "approve, modify, or disapprove" and any provision in KPB 21.29. Simply put, there is no specific provision in KPB 21.29 that precludes

⁵² The parties agree that the proposed gravel pit in this case falls within the definition of a "material site," and that it is of sufficient magnitude to require a CLUP rather than a "Counter Permit" under 21.29.020.

⁵³ KPB 21.25.050(B).

⁵⁴ KPB 21.25.010.

the Commission from denying a CLUP when it finds that the conditions in KPB 21.29.050 will not satisfy the standards in KPB 21.29.040.

KPB 21.29.040 states that the material site regulations are “intended to protect against...noise and visual impacts,” listing six standards that include “minimiz[ing] noise disturbances to other properties,” and “minimiz[ing] visual impacts.” That section also states that “*Only* the conditions set forth in KPB 21.29.050 may be imposed to meet these standards.”⁵⁵ Appellees assert that this language requires the Commission to grant a CLUP application so long as the conditions in KPB 21.29.050 are met. This argument is supported by Hearing Officer Wells’ finding that “the Code does not afford the Commission discretion to judge the effectiveness of the conditions identified in the Code.”⁵⁶

The language in KPB 21.29.040(A) that “*Only* the conditions set forth in KPB 21.29.050 may be imposed to meet these standards” undoubtedly limits the Commission’s authority. If the Commission believes that certain steps must be taken to meet the standards set forth in KPB 21.29.040, the only tools at its disposal to meet such standards are those conditions listed in KPB 21.29.050. Planning authorities are “bound by the terms and standards of the applicable zoning ordinance, and are not at liberty to either grant or deny [permits] in derogation of legislative standards.”⁵⁷ CLUP applicants may voluntarily agree to additional types of conditions that are not contained in KPB 21.29.050, but the authority of the Commission to impose such conditions is legislatively restricted.⁵⁸ Indeed, Appellees agreed to a number of voluntary conditions in this case.⁵⁹

While KPB 21.29.040 limits the types of conditions the Commission can impose, KPB 21.29.050 provides the Commission with some latitude as to those specific conditions. For example, material sites must maintain a “buffer zone” of at least “50 feet of undisturbed natural vegetation, *or* ... a minimum six-foot earthen berm, *or*... a minimum six-foot fence.”⁶⁰

⁵⁵ KPB 21.29.040(A) (emphasis added).

⁵⁶ Exc. 50.

⁵⁷ *So. Anch. Concerned Coalition, Inc. v. Coffey*, 862 P.2d 168, 174-75 (Alaska 1993).

⁵⁸ KPB 21.29.050(A)(14).

⁵⁹ Exc. 117-18.

⁶⁰ KPB 21.29.050(A)(2)(i)-(iii) (emphasis added).

However, while only one type of these conditions is required, the Commission has the authority to designate “a combination of the above *as it deems appropriate*.”⁶¹ While Hearing Officer Wells found that “the Code does not afford the Commission discretion to judge the effectiveness of the conditions identified in the Code,”⁶² this finding appears to be in direct conflict with KPB 21.29.050’s requirement that “[t]he vegetation and fence *shall* be of sufficient height and density to provide visual and noise screening of the proposed use *as deemed appropriate by the planning commission*.”⁶³ In other words, the Commission is specifically tasked with determining the effectiveness of the conditions that are to be imposed and whether they will meet the standards set forth in KPB 21.29.040. If after judging the effectiveness of the potential conditions in its toolbox under KPB 21.29.050(A)(2) the Commission finds that no combination of buffers could be “deem[ed] appropriate” to satisfy the standards set forth in KPB 21.29.040, the Commission is not required to approve the CLUP nonetheless. Nothing in KPB 21.29 suggests otherwise, nor do any of KPB 21.29’s provision conflict with KPB 21.25.050(B) grant of authority to “approve, modify, or deny” a CLUP.⁶⁴

Appellees argue that the conclusion that the Commission is required to approve the CLUP is “consistent with the unzoned rural area at issue in this appeal, along with the general approval-oriented framework adopted by the Assembly.”⁶⁵ Appellees cite to *Warrington v. Kenai Peninsular Borough Board of Adjustments, Cecil Jones and In Jones*, where Judge Huguelet found that “[t]he Assembly has specifically adopted ordinances that are protective of material site operators,” and “could have chose a policy that favors residential property owners, but instead it chose to adopt a policy that favors material site operators.”⁶⁶

⁶¹ KPB 21.29.050(A)(2)(c).

⁶² Exc. 50.

⁶³ *Id.* (emphasis added).

⁶⁴ The court is not persuaded by Appellee’s argument that an “application cannot be denied based on inadequate buffers, when under KPB Code either enhancing the buffers or waiving the buffers are the authorized resolution to a situation where buffers are not feasible.” See Appellee Brief, p.10, n.18. KPB 21.29.050(e) states that “*At its discretion*, the planning commission *may* waive buffer requirements where the topography of the property or the placement of natural barriers makes screening not feasible or not necessary.” Waiving the buffer requirements are clearly within the discretion of the Commission. Moreover, it seems to this court that the Commission would be derelict in its duties to waive the requirements in this instance given that under that Code section, “[b]uffer requirements *shall* be made in consideration of and in accordance with existing uses of adjacent property at the time of the approval of the permit.”

⁶⁵ Appellee’s Brief, p.18.

⁶⁶ Memorandum Decision and Order, 3KN-05-00206C1, at 9-10 (May 31, 2006) (Appendix A to Appellee’s Brief).

Indeed, the Borough Code significantly favors material site operators. The Commission recognized as much in its June 10, 2019, hearing.⁶⁷ That favoritism is not unlimited, however. Nothing in the Borough Code requires the Commission to approve a CLUP even where it finds that the conditions imposed cannot possibly minimize the visual and noise impacts to surrounding neighbors. In fact, Judge Huguelet even recognized the interplay between KPB 21.25.050's grant of authority to "approve, modify, or disapprove" permit applications where certain conditions cannot be sufficiently satisfied.⁶⁸

For these reasons, the court finds that the Commission does have the authority under KPB 21.25.050(B) to deny a CLUP if it finds that the standards set forth in KPB 21.29.040 cannot be sufficiently satisfied, even after implementing the tools at its disposal listed in KPB 21.29.050.

C. Why Remand to the Planning Commission is Necessary

As noted above, this court finds that the Commission does have the authority under KPB 21.25.050(B) to deny a CLUP if it finds that the standards set forth in KPB 21.29.040 cannot be sufficiently satisfied by conditions in KPB 21.29.050. Under KPB 21.25.050(B)-(C), the Commission must detail their findings in writing by way of a resolution, which they did in this case in Resolution 2018-23. The court will uphold the Commission's factual findings if they are supported by substantial evidence.⁶⁹

Having reviewed the record in this case, this court agrees that the findings of fact in Resolution 2018-23 are supported by substantial evidence. However, the court finds that the findings of fact related to the Buffer Zone in Section 17 of the Resolution are legally insufficient under KPB 21.29.050(A)(2). Under that Code section, "[t]he vegetation and fence shall be of sufficient height and density to provide visual and noise screening of the proposed use as

⁶⁷ Exc. 095 (Commissioner Ecklund noted that the Planning Commission had only denied two gravel pits in the ten years he had been on the commission, noting that both of those denials had been overturned).

⁶⁸ *Warrington* Memorandum Decision and Order, 3KN-05-00206C1, at 6, 8 (recognizing the authority of the Planning Commission to deny a permit under KPB 21.25.050, and recognizing the authority of the Planning Commission to "consider the evidence, as they did in the case at hand, to determine whether gravel mining will negatively impact the quality and quantity of water" in a nearby aquifer.).

⁶⁹ *State, Dep't of Nat. Res. V. Alaska Crude Corp.*, 441 P.3d at 398.

deemed appropriate by the planning commission...” The findings of fact in Section 17 of the Resolution detail what conditions are imposed on the CLUP, and those findings repeatedly indicate that some of the proposed conditions will “increase visual and noise screening.”⁷⁰

However, the findings in Section 17 do not detail whether the Commission found those conditions to in fact be *deemed appropriate* or sufficient to satisfy the standards set forth in KPB 21.29.040. Rather, the Resolution concedes that “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.”⁷¹ This concession is well-founded only if the Commission did in fact deem the buffer zone appropriate and sufficient to satisfy the standards set forth in KPB 21.29.040.

Throughout the hearings in both 2018 and 2019, multiple commissioners questioned whether any buffers could adequately provide visual and noise screening of the material site. In 2018, a majority of the commissioners found that the neighboring properties could not be adequately screened, with similar conditions imposed. Commissioners Bentz, Morgan and Carluccio were adamant that they did not believe the buffer or berms would minimize the noise and sound impacts because of the “unique topography.”⁷² As a result, the Commission denied the CLUP.

In 2019, commissioners again questioned whether buffers could adequately satisfy the noise and visual standards set forth in KPB 21.29.040. Commissioner Ecklund expressed great concern that the conditions imposed would not minimize the visual and noise impacts. While he recognized that the Commission would never ask an applicant “to put a 53 [foot] high earthen berm” into place (calling the proposal “ridiculous”), he also asked whether it was in their authority to do so if necessary, to which the Borough Planner replied “Yes, and staff did...propose a 12-foot berm in most locations.”⁷³ Despite these expressed concerns,

⁷⁰ Resolution 2018-21, Sec 17, ¶¶H, I, J, M, N.

⁷¹ *Id.*, ¶15.

⁷² Exc. 35-36.

⁷³ Exc. 95.

Commissioner Ecklund voted to grant the CLUP. Commissioner Carluccio questioned “but is a 12-foot berm enough to minimize visual and noise impacts?”⁷⁴

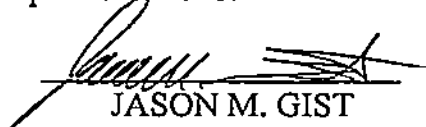
The Commission did not specifically find whether the conditions imposed on the CLUP were *deemed appropriate* to satisfy the standards set forth in KPB 21.29.040. By all accounts from the record, it appears that the Commission operated under the incorrect assumption that KPB 21.29.040 was “necessarily satisfied” so long as the CLUP contained conditions in KPB 21.29.050. It is unclear from the record whether the Commission deemed the conditions appropriate to satisfy those standards. For these reasons, the case is REMANDED back to the Commission for further review and/or clarification. If the Commission does in fact deem the conditions set forth in Resolution 2018-23 appropriate to satisfy the standards set forth in KPB 21.29.040, then it shall grant the CLUP. If, however, the Commission finds that no conditions in KPB 21.29.050 could adequately minimize visual and noise impacts to the standards set forth in KPB 21.29.040, then it may deny the CLUP.

IV. CONCLUSION

For the reasons stated herein, this case is REMANDED back to the Commission for further consideration consistent with this *Order*.

Dated at Kenai, Alaska, this 2nd day of September, 2021.

I certify that a copy of the foregoing was
✓ mailed to KPB
_____ place in court box to _____
_____ faxed to _____
✓ scanned to Elmer/Gottstein/Stone
AK 9-3-21
Clerk Date


JASON M. GIST
SUPERIOR COURT JUDGE

⁷⁴ *Id.*

From: Patrick Nolden
To: [Planning Dept.](#)
Subject: <EXTERNAL-SENDER>Additional hearing documents 2021-01-PCA; REMAND HEARING
Date: Saturday, November 20, 2021 1:23:12 PM

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Planning Commision
2021-01-PCA; REMAND HEARING - Foster permit

21.29.050. - Permit conditions.

- Data collected by McLane was for 8.5 months, not **mandatory** 12 months. (Attachment 4338)
- Foster Construction applied for permit 2/26/2021, less than **mandated** year of testing before permitting. (Signature found in Planning Commision meeting notes, pg 181, 02/14/2021)

Testing started 05/04/2020(Attachment 4338)

Fosters/McLane did not follow our Kenai Peninsula Borough permit **mandate** conditions, therefore the permit needs to be denied.

Regards, Pat Nolden
UAA Adjunct
NAEP Assessment Coordinator
907.252.7288

McLANE

CONSULTING, INC.

March 2, 2021

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

SUBJECT: PC Resolution 2019-39
KPB Tax Parcel No. 135-243-13 & 135-243-29

RE: Conditional Land Use Permit Modification Application

Dear Mr. Taylor:

River Resources, LLC, the property owner of KPB 135-243-13 & 135-243-29, is applying for modification of CLUP approved by PC Resolution 2019-39. The modification would allow for excavation in the water table on approximately 31.2 acres of the permitted property.

River Resources, LLC contracted McLane Consulting, Inc. to measure groundwater monitor wells and analyze the measurements in accordance with KPB 21.29. Five monitor wells were installed in April 2020. Foster Construction in accordance with recommendations by McLane Consulting. McLane Consulting has measured the monitor wells using standard surveying and engineering practices on the dates as shown below. Measurements to date are as follows:

Monitor Well	Ground Elevation	Top of MW	GW Elev. 5/4/2020	GW Elev. 7/15/2020	GW Elev. 10/15/2020	GW Elev. 1/18/2021
1	101.53	102.27	82.47	83.97	83.17	82.77
2	97.40	104.89	83.69	84.79	83.49	83.59
3	100.67	103.53	84.03	85.23	84.63	83.73
4	101.61	102.96	85.16	84.16	84.26	83.56
5	100.03	104.92	-	84.22	84.22	83.52

From these measurements it has been determined that flow direction is northwesterly, as shown on the exhibits attached to the CLUP Modification Application. The hydraulic conductivity is typical of dense gravel and coarse sand ranging from 2.95×10^{-6} to 9.8×10^{-2} ft/s.

Excavation is only proposed within the upper unconfined aquifer, not to exceed approximately 32' below original ground (approximate elevation 68.0). Local confining layer is estimated by reviewing well driller logs within the CLUP vicinity on the ADNR WELTS website. The confining layer consists of dense blue-gray silt (a non-marketable material) and is greater than 30' thick in this area. It is estimated at approximate elevation 65.0. Proposed excavation within the groundwater table at this site will not breach the confining layer.

Dewatering will be conducted on a temporary and intermittent basis while extracting below the groundwater table. Excavation dewatering temporarily depresses shallow groundwater within the

P.O. BOX 468; SOLDOTNA, ALASKA 99669
PHONE (907) 283-4218 FAX (907) 907-283-3265

December 2, 2021

TO: Planning Commission Chairman
KPB PLANNING DEPARTMENT
144 NORTH BINKLEY STREET
SOLDOTNA, ALASKA 99669

FROM: Michael and Ann Gravier
34540 Marcus Street
Soldotna, AK 99669

RE: Condition Land Use Permit Application Modification, River Resources, KPB Tax Parcel ID# 135-243-13
& 135-243-29T

I have previously stated some of my concerns in a letter to the KPB Planning Commission dated April 7, 2021.

In addition to those concerns I would add the following and request this project be stopped or a significant increase in the bond be set for my property for the reasons below – especially the possible destruction of my property due to aquifer and ground water changes caused by this project.

1. Air Pollution. As the activity increases at the gravel pit there will be an increase in the possibility of air pollution on my property due to PM10 dust particulate and PM2.5 from diesel vehicles. .
2. Noise. Noise pollution has already been a problem. This summer (2021) there were days of almost constant beeping from the backup warning system on equipment. There were also days when noise from either heavy equipment, generators, pumps, or some type of motor was constant from early morning to late at night. 12 – 14 hours of constant noise. The noise was loud enough that to talk to a person outdoors you had to raise your voice. I raised this concern in my letter to the borough in 2019 when River Resources first sought an application for this gravel pit.
3. Destruction of wetlands on my property as well as the publicly owned wetlands due to increased water levels. State owned wetlands property is adjacent to my land on the downriver side. The increase water table does not stop at my property line but continues into that State owned wetland. See property description below.

Description of my property and water level change.

Currently a large portion of wetlands (approx. 2 acres) of my property at 34540 Marcus Street has an elevated water table to a point that there is standing water. This has happened gradually throughout the late spring and summer of 2021. This has not previously occurred in the 20 years we have owned it.



Fig 1. Above: Purple outline is 34540 Marcus St boundary; Red is approx. gravel pit.
State owned land is between the two outlined properties.

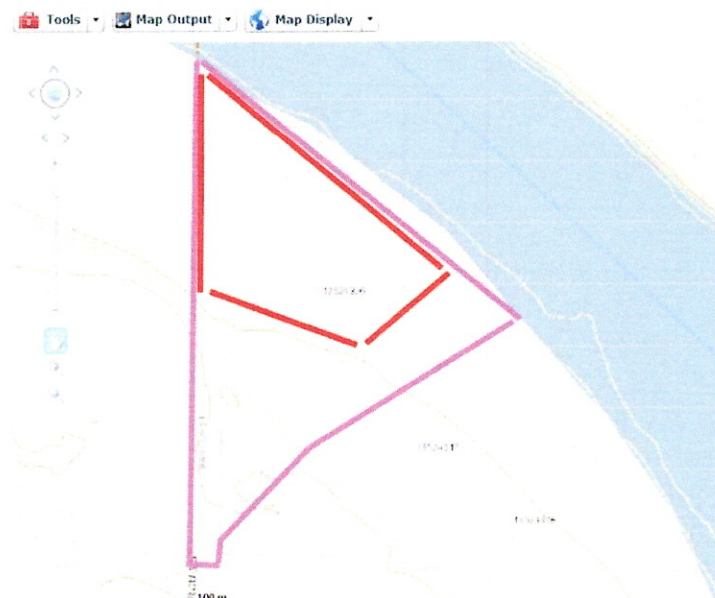


Fig 2. Above: Purple outline is 34540 Marcus St boundary
Red is area with increased water on the wetland portion of my property but that water level also extends downriver (left) in the State wetland.

There are three situations that could cause the increased water table. Greater than normal precipitation, high water flow in the Kenai River, or change to the ground water flow. Each discussed below.

First. Above normal precipitation. Data were analyzed at Kenai Airport from the National Weather Service. NOTE: Soldotna Airport data were not used for two reasons. First. The observation record for this summer is incomplete due to runway construction. Second. Climatological average precipitation data for Soldotna is unavailable. The Kenai Airport data is used as the closest representative meteorological proxy to the Soldotna Airport. Data used can be found at the link below.

<https://www.weather.gov/arh/climate?wfo=afc>

	2020	2021	Normal
May	0.5	0.5	0.79
June	0.76	0.47	1.2
July	1.69	0.83	1.98
August	2.11	1.29	2.68
September	1.88	0.86	3.57
October	1.3	0.72	2.56

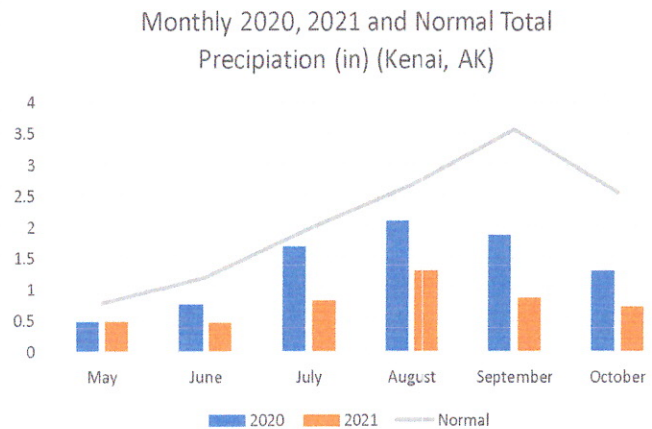


Figure 3. Kenai Airport precipitation data for summer 2020, 2021 and historical average (1991 to 2020)

The data above indicate precipitation was below average so an increase in precipitation was not the cause of the elevated water table.

Second. An increase in the water table could be caused by a large increase in the flow in the Kenai River. However, this was NOT the condition in the summer of 2021.

Flow in the Kenai River is measured at the water gauge located near the Soldotna Bridge. The official site is USGS 15266300 KENAI R AT SOLDOTNA AK. All data referenced are available at

[USGS Current Conditions for USGS 15266300 KENAI R AT SOLDOTNA AK](#)

As shown in the chart below, the flow in the river was slightly elevated until the beginning of July. After that the flow was 15% to 20% below the 55-year average. Despite this the water level in my wetlands continued to increase. The large spike in October was the Skilak Glacier Lake dam release that peaked on Oct 7, 2021.

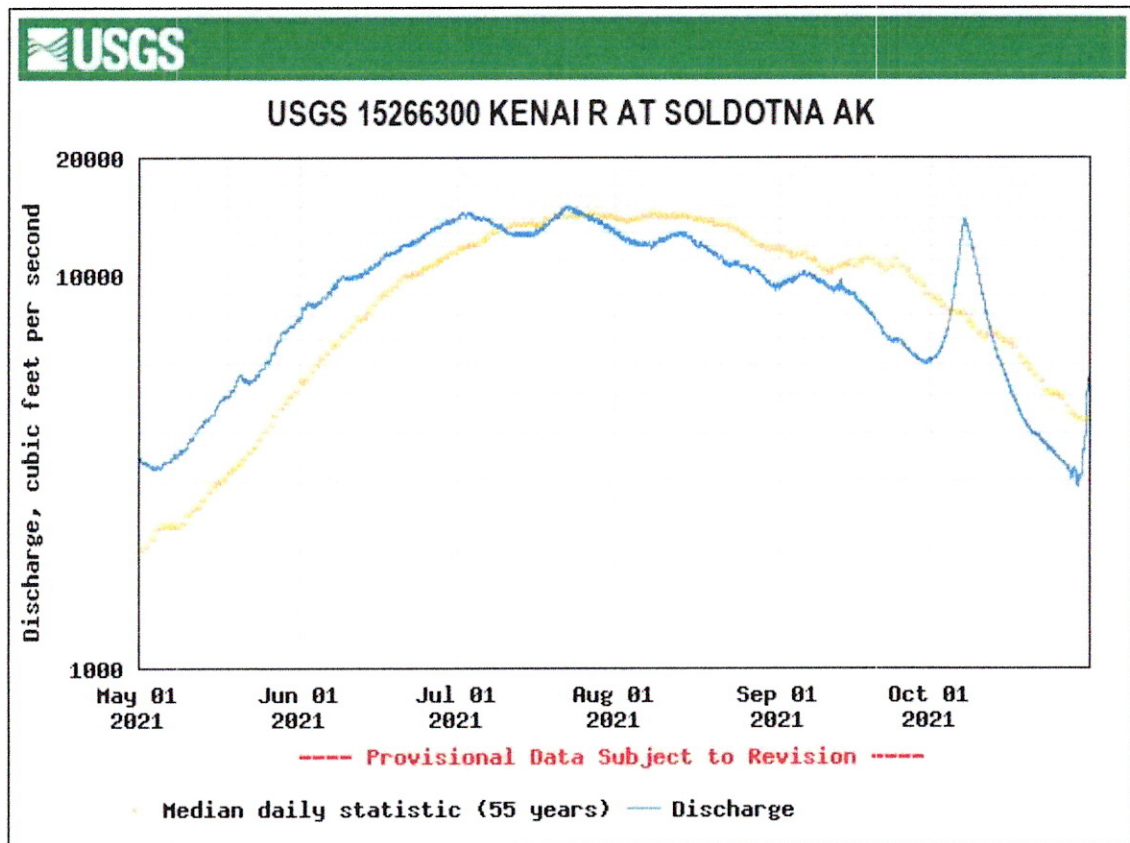


Figure 4. Summer 2021 and 55-year average Kenai River discharge

The third possible situation must be the answer to why the increase in the water table is occurring. That is a change in the ground water flow. Obviously, this suggests the one thing that is there now that was not there for the last 20 years – the River Resources gravel pit.

Throughout the spring and summer of 2021, I noticed increased water levels in the wetlands of my property. On 5 September 2021 I noted that the water was even deeper than before. In fact, the water now covers all the roots of the vegetation in the previous wet land and is standing water above the ground surface 1 to 2 inches deep. If the water level does not drop, all that vegetation will soon be dead. Without the vegetation the soil could washed down the river. If this happens, I could lose 2 acres and over 200ft of riverfront. This will also cause an increase of silt in the Kenai River.

I believe the gravel pit operators have taken action that has changed the hydrological gradient so either the water cannot drain from my property, or water can no longer flow freely away from my property. Previous borough documents for this project indicate ground water flows from my property toward the State land and gravel pit area. If the porous gravel is removed and replaced by less porous material or the water is blocked from entering the gravel pit it will back up into the wetland area. This is very different than it has been for the last 20+ years.

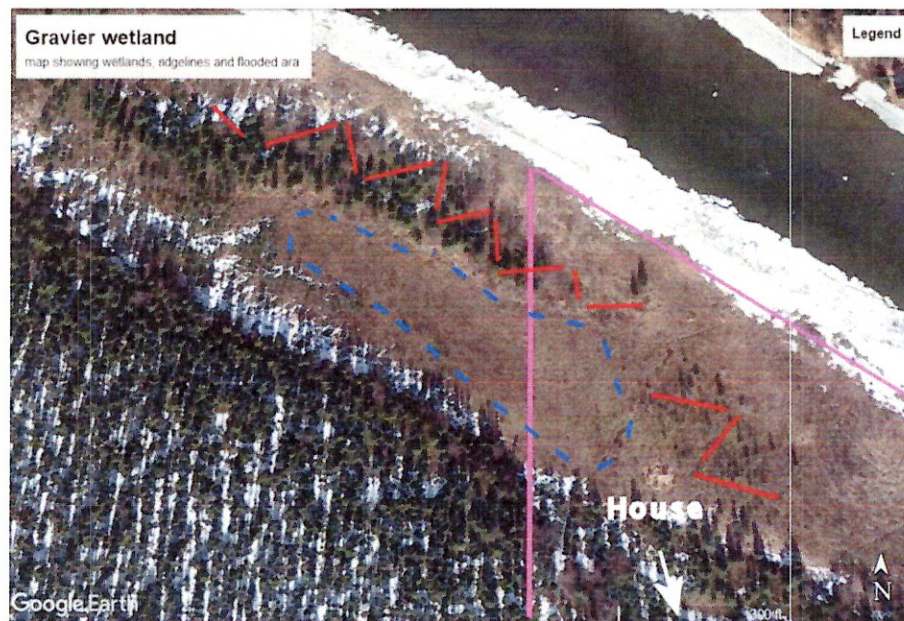


Figure 5. Purple line is the 34540 Marcus Street and State property boundary. Upstream of purple line is Gravier property. Downstream of purple line is State property. Blue hatched area is area of greatest water increase. Red line is small ridge

A further reason to believe that the change in ground water flow is caused by the gravel pit is because the greatest increase in the water level is 150 to 200 feet away from the river, as outlined in blue hatched area in Figure 5.

I have an established water table. The Corps of Engineers completed a wetlands survey of my property in 2016 and established a water table. See Corp of Engineers emails at the end of this document. The dig logs were not in the data they sent me so I submitted a FOIA request to the Corp for all data pertaining

to the wetlands delineation. I have not received this data at this time. The location of the holes the Corp dug as part of this project are known and can be relocated for changes in water level next spring or summer.

I believe the gravel pit developed by River Resources is responsible for significant damage to our wetlands and possible future destruction of 2+ acres and 200-250 feet of river front loss at my property at 34540 Marcus St, Soldotna Alaska. The gravel pit should cease operations immediately and be held responsible for current and future damage caused by them.

If the Borough allows River Resources to continue operations a significantly higher bond should be set for my property. Since increased water table damage will continue in the future, a bond value equal to 2+ acres and 200+ feet of Kenai River front should be established for my property.



Michael E Gravier



Ann Y. Gravier

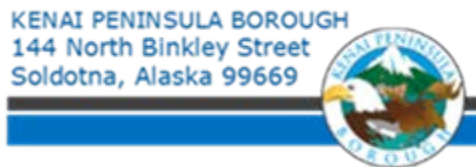
From: [Taylor, Bryan](#)
To: [Shirnberg, Ann](#)
Cc: [Ogren, Eric](#)
Subject: FW: <EXTERNAL-SENDER>Ferguson response to remand hearing 12-13-21
Date: Friday, December 3, 2021 8:18:57 AM
Attachments: [image002.png](#)

Ann,

Please provide the comment below and attachment to the Planning Commission for its December 13 meeting.

Thank you,

Bryan Taylor, AICP
Planner
(907) 714-2206
btaylor@kpb.us



From: William Ferguson <bkakdream@yahoo.com>
Sent: Thursday, December 2, 2021 8:56 PM
To: Taylor, Bryan <BTaylor@kpb.us>
Cc: Dale McBride <dale.mcbride@nstar-tech.com>; Michael Gravier <michael.gravier@yahoo.com>; Mike Pomplin <j3cubpilot@yahoo.com>; Patrick Nolden <pnolden@alaska.edu>
Subject: <EXTERNAL-SENDER>Ferguson response to remand hearing 12-13-21

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

To Bryan Taylor and other planning board members:

I am anxious to hear the commissions responses as addressed by the Administrative law judge, Z. Kent Sullivan in regards to **FACTUAL FINDINGS**: decisions based on substantial evidence in the record regarding

- a. bonding requirements
- b. well monitoring timeline:
- c. qualifications and independence of McLane consulting, Inc. and specific criterion contained in KPB Code 21.29.040 and 21.29.050

Also I'm presenting at this time evidence that River Resources has without proper permitting this past Summer/Fall 2021 penetrated the existing water-table at the mine site, by aerial photo. I've filed recently a complaint with AK DEC; through James Rypkema Program manager, Storm Water & Wetlands Wastewater Discharge Authorization Program, Div of water, Alaska Dept of Environmental Conservation. I have asked for a full investigation of this misuse of authority without proper permits. This penetration of the water table and I'm assuming this explains the constant engine noise that was horrendous this past Summer/Fall as they were pumping water as per their prescribed method stated by; River Resources LLC, described from pit to pit. I will send the aerial photo by attachment.

The commission should be mindful of modifying the current permit and allowing mining in the water-table as to the mental state of River Resources to break the rules of operation, and current permit. As a near by neighbor this is not the type of operation I have any faith in mining operations, following constraints of rules, but for their own profit driven motive that will adversely effect the Quality of my life and other surrounding residences.

I plan to address the noise issue as a separate agenda: My wife and I bought our property in 1996 making us the nearest-long-term neighbor to the mine site. Our peace and serenity has now been replaced with the constant daily droning of diesel engines, back up alarms, crashing of dump boxes. Had I known this in 1996 I would never purchased this property at 34484 Marcus St. And this is only the beginning, if awarded the modification and allowed to mine in the water-table more noise constantly by de-watering. And rumor of a possible rock crusher! When will the noise end!

Regards, William and Karen Ferguson

P.S. please send a reply to acknowledge receipt of this email to bkakdream@yahoo.com as some have been sent to an outlook address which is not valid, thank you.



From: Joe n Billie Hardy
To: [Planning Dept.](#)
Subject: <EXTERNAL-SENDER>Planning Commission Hearing on River Resources
Date: Friday, December 3, 2021 6:04:18 PM

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

To: Blair Martin, Chairman and Planning Commissioners

RE: River Resources Permit

Hardys strongly request the Planning Commission stand by their original decision to deny River Resources permit to excavate gravel below the water table.

We have provided our plat map, well log, and location of well in River Park Estates to a geophysicist who will represent our interests.

We need the Planning Commission to continue to back the interests of our whole neighborhood.

Thank you,

Joe & Billie Hardy
41937 River Park Drive
Soldotna, AK 99669

PC RESOLUTION 2021-10

**APPEAL OF THE KENAI PENINSULA BOROUGH
PLANNING COMMISSION
DENIAL OF A MODIFICATION TO
CONDITIONAL LAND USE PERMIT
IN THE SOLDOTNA**

KPB Tax Parcel ID#s: 13524313 & 13524329

Legal Description:

**T 5N R 10W SEC 34 SEWARD MERIDIAN KN NW1/4
SE1/4 EXCLUDING PATSON PROPERTIES PART 1**

&

**T 05N R 10W SEC 34 SEWARD MERIDIAN KN 2019068
PATSON PROPERTIES 2019 REPLAT TRACT C1**

**Applicant
River Resources, LLC**

**Landowner
River Resources, LLC**



Planning Department

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

Charlie Pierce
Borough Mayor

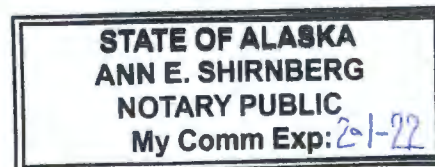
"I, Melanie Aeschliman, the Kenai Peninsula Borough Planning Director, do hereby certify that to the best of my knowledge the attached record contains true and correct copies of all documents required by KPB 21.20.270 to be included in the record on appeal in the matter of a denial of conditional land use permit modification application to extract gravel below the groundwater elevation in the Soldotna area at the Kenai Peninsula Borough Planning Commission meeting of May 24, 2021."

Melanie Aeschliman
Planning Director
Kenai Peninsula Borough

STATE OF ALASKA

THIRD JUDICIAL DISTRICT

)
)ss.
)



The foregoing instrument was acknowledged before me this 12th day of July by Melanie Aeschliman of the Kenai Peninsula Borough, a municipal corporation, on behalf of the corporation.

Notary Public for the State of Alaska

My commission expires: 2-1-22

INDEX

Record Page #	Document Name
R-1 to R-7	Conditional Land Use Permit Modification Application
R-8 to R-13	KPB Planning Commission Resolution 2021-10
R-14 to R-16	Notice of Decision
R-17 to R-78	4-12-21 Planning Commission Meeting Packet & Desk Packet Materials
R-79 to R-126	5-24-21 Planning Commission Meeting Desk Packet Materials
R-127 to R-138	Miscellaneous / Additional Information
R-139 to R-150	4-12-21 Planning Commission Minutes
R-151 to R-163	5-12-21 Planning Commission Minutes

VERBATIM TRANSCRIPT

T-1 to T-29	Verbatim Transcript / Index April 12, 2021
T-30 to T-48	Verbatim Transcript / Index May 24, 2021

CONDITIONAL LAND USE PERMIT MODIFICATION APPLICATION

Return to: KPB PLANNING DEPARTMENT
144 NORTH BINKLEY STREET
SOLDOTNA, ALASKA 99669

For information call: (907) 714-2200, or (800) 478-4441,
within the borough.

PC Resolution # _____

App. Complete _____

21.29 Conditional Land Use Permit Modification Application

Sand, Gravel or Material Site

I. APPLICANT INFORMATION

Applicant River Resources, LLC Landowner same
Address PO Box 3036 Address _____
City, State, Zip Soldotna, AK 99669 City, State, Zip _____
Telephone 907-394-1915 Fax _____ Telephone _____ Fax _____
Cell Phone 907-394-1915 Cell Phone _____
Email kyle@fosterco.biz Email _____

II. CURRENT PERMITTED PARCEL INFORMATION

KPB Tax Parcel ID# 135-243-13 & 135-243-29 Township 5N Range 10W Section 34
Subdivision _____ Lot _____ Block _____ Parcel acreage 51.4
Legal description Patson Properties Replat Tr C1 & T5N R10W Sec 34 SM NW1/4 SE1/4 Excluding Patson Properties Part 1

III. INFORMATION/ DOCUMENTATION – ☒ "Check" boxes to confirm all items are included.

☒ \$300.00 processing fee payable to: Kenai Peninsula Borough. (Include Parcel # on check comment line.)

☒ Site Plan Diagram, to scale, showing:

- | | |
|---|--|
| <input checked="" type="checkbox"/> parcel boundaries | <input checked="" type="checkbox"/> existing and/or proposed processing area(s) |
| <input checked="" type="checkbox"/> existing required buffers | <input checked="" type="checkbox"/> all encumbrances on parcel, <u>including</u> easements |
| <input checked="" type="checkbox"/> existing permitted extraction area(s) | <input checked="" type="checkbox"/> site ingress and egress |
| <input checked="" type="checkbox"/> proposed additional extraction area(s)
and/or other requested permit modification(s) | <input checked="" type="checkbox"/> a north arrow and diagram scale |
| | <input checked="" type="checkbox"/> the preparer's name and date |

☐ Permit Modification Worksheet (attached)

IV. CERTIFICATION STATEMENT

The information contained on this form and the attachments are true and complete to the best of my knowledge. I grant permission for borough staff to enter onto the property for the purpose of processing the permit modification request.

[Signature] 2/26/21 _____
Applicant Signature Date Property Owner Signature (if not applicant) Date

Permit Modification Worksheet

Applicant River Resources LLC Owner River Resources LLC

CURRENT PERMITTED KPB Tax Parcel ID # 135-243-13 & 135-243-29 Parcel Acreage 51.4

1. Reason(s) for requesting permit modification:

Requesting modification to allow for excavation in the water table and for temporary, localized dewatering during excavation below groundwater elevation. Dewatering will be outlet within the same property.

2. Additional cumulative acres to be disturbed (excavation plus stockpiles, berms, etc.) 0 acres

3. Additional type(s) of material to be mined (circle all that apply): N/A gravel sand peat other _____

4. Additional equipment to be used (circle all that apply): N/A excavation processing other _____

5. Modification(s) is requested on current permit buffers: _____yes Xno

CURRENT PERMIT REQUIRED BUFFERS – ☒ “check” all types, and circle all directions that apply:

- | | | | | |
|---|---|---|---|---|
| <input type="checkbox"/> 50 ft. of natural or improved vegetation | N | S | E | W |
| <input type="checkbox"/> minimum 6 ft. earthen berm | N | S | E | W |
| <input type="checkbox"/> minimum 6 ft. fence | N | S | E | W |
| <input type="checkbox"/> other _____ | N | S | E | W |

MODIFIED BUFFER REQUEST, if applicable – ☒ “check” all types, and circle all directions that apply:

- | | | | | |
|---|---|---|---|---|
| <input type="checkbox"/> 50 ft. of natural or improved vegetation | N | S | E | W |
| <input type="checkbox"/> minimum 6 ft. earthen berm | N | S | E | W |
| <input type="checkbox"/> minimum 6 ft. fence | N | S | E | W |
| <input type="checkbox"/> other _____ | N | S | E | W |

6. Permit modification is requested due to subdivision of originally permitted parcel? _____yes Xno

7. Permit modification to enter the water table is requested: Xyes _____no (check “yes” if excavation in water table is desired on property not permitted under KPB 21.26)

8. Additional annual quantity of material, including overburden, to be extracted: _____ cubic yards

9. Additional excavation depth beyond permitted depth: 10 ft. Depth to groundwater: 19-21 ft.

10. Voluntary permit conditions proposed (additional buffers, dust control, limited hours of operation, etc.):

- A. _____
- B. _____
- C. _____

McLANE

CONSULTING, INC.

March 2, 2021

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

SUBJECT: PC Resolution 2019-39
KPB Tax Parcel No. 135-243-13 & 135-243-29

RE: Conditional Land Use Permit Modification Application

Dear Mr. Taylor:

River Resources, LLC, the property owner of KPB 135-243-13 & 135-243-29, is applying for modification of CLUP approved by PC Resolution 2019-39. The modification would allow for excavation in the water table on approximately 31.2 acres of the permitted property.

River Resources, LLC contracted McLane Consulting, Inc. to measure groundwater monitor wells and analyze the measurements in accordance with KPB 21.29. Five monitor wells were installed in April 2020 Foster Construction in accordance with recommendations by McLane Consulting. McLane Consulting has measured the monitor wells using standard surveying and engineering practices on the dates as shown below. Measurements to date are as follows:

Monitor Well	Ground Elevation	Top of MW	GW Elev. 5/4/2020	GW Elev. 7/15/2020	GW Elev. 10/15/2020	GW Elev. 1/18/2021
1	101.53	102.27	82.47	83.97	83.17	82.77
2	97.40	104.89	83.69	84.79	83.49	83.59
3	100.67	103.53	84.03	85.23	84.63	83.73
4	101.61	102.96	85.16	84.16	84.26	83.56
5	100.03	104.92	-	84.22	84.22	83.52

From these measurements it has been determined that flow direction is northwesterly, as shown on the exhibits attached to the CLUP Modification Application. The hydraulic conductivity is typical of dense gravel and coarse sand ranging from 2.95×10^{-6} to 9.8×10^{-2} ft/s.

Excavation is only proposed within the upper unconfined aquifer, not to exceed approximately 32' below original ground (approximate elevation 68.0). Local confining layer is estimated by reviewing well driller logs within the CLUP vicinity on the ADNRS WELTS website. The confining layer consists of dense blue-gray silt (a non-marketable material) and is greater than 30' thick in this area. It is estimated at approximate elevation 65.0. Proposed excavation within the groundwater table at this site will not breach the confining layer.

Dewatering will be conducted on a temporary and intermittent basis while extracting below the groundwater table. Excavation dewatering temporarily depresses shallow groundwater within the

P.O. BOX 468; SOLDOTNA, ALASKA 99669
PHONE (907) 283-4218 FAX (907) 907-283-3265

MCLANE

CONSULTING, INC.

immediate area of the dewatering but groundwater level will recover to pre-dewatering elevations upon termination of dewatering. Waters from the dewatering process will be outlet within the permit property to re-enter the groundwater table.

This letter is to certify that the excavation plan included in the CLUP Modification Application will not negatively impact the quantity of the aquifer serving the existing water sources.

If you have questions, please contact me.

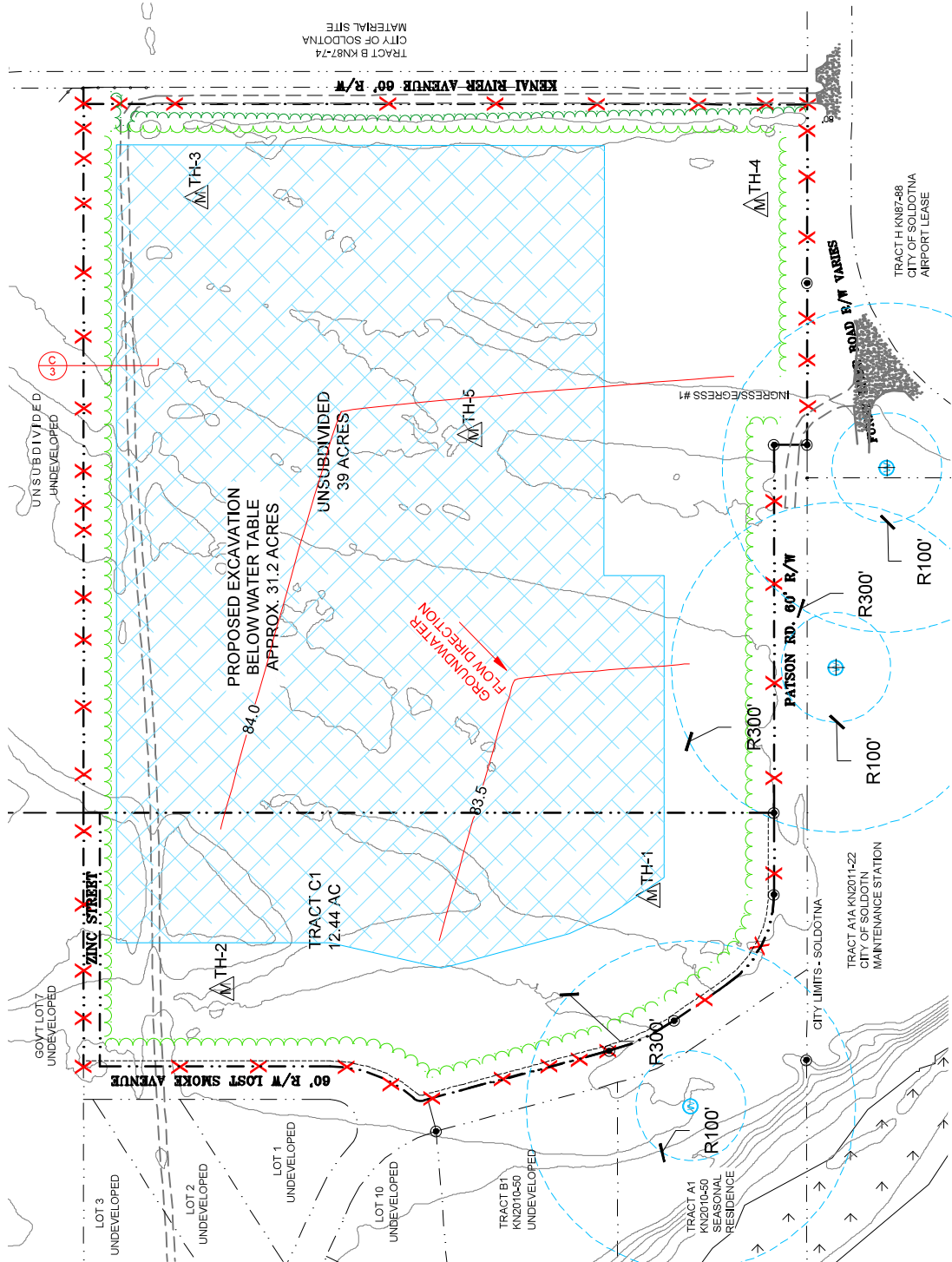
Sincerely,



Gina DeBardelaben, PE
McLane Consulting, Inc.

CONDITIONAL LAND USE PERMIT - MODIFICATION

APPLICANT / OWNER:
ATTN: KYLE FOSTER
RIVER RESOURCES, LLC
P.O. BOX 3036
SOLDOTNA, ALASKA 99669

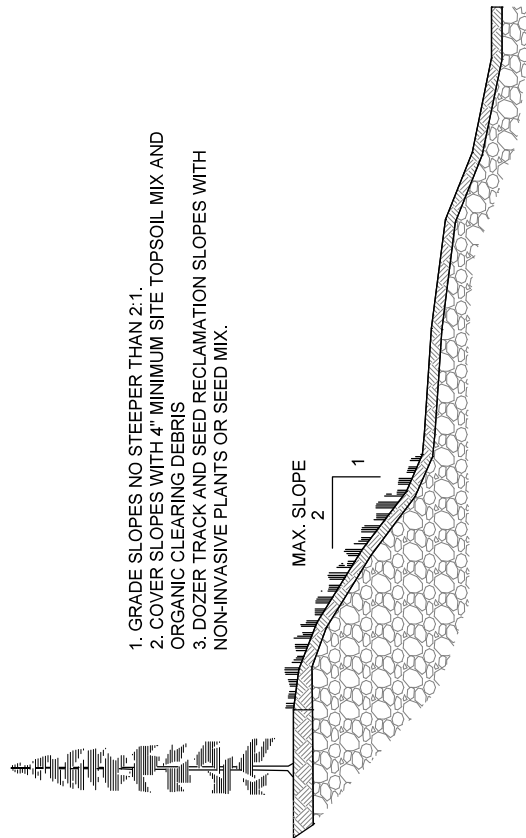


LEGEND	
—	PROPERTY LINE
- - -	UTILITY EASEMENT
Δ TH	MONITOR WELL & TESTHOLE
⊕	WATER WELL
⊙	RECORD MONUMENT
⊙	PROPERTY CORNERS
⊙	POWER POLE
- - -	EXISTING GRAVEL SHOULDER
- - -	WELL SETBACK
X	INTERVISIBLE FLAGGING
~	EXISTING TREELINE
~	PROPOSED BUFFER TREELINE
— 86.5	GROUNDWATER CONTOUR

CONDITIONAL LAND AND USE PERMIT FOR MATERIAL SITE

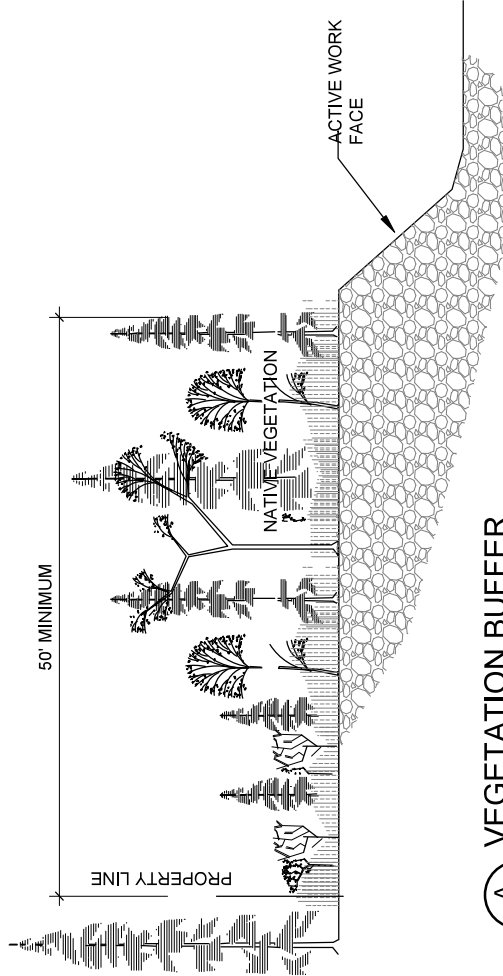
CLUP DEVELOPMENT NOTES

1. THIS PERMIT APPLICATION MODIFICATION IS FOR KPB PARCEL 13524313 AND 13524329, TOWNSHIP 5N, RANGE 10W, SECTION 34 SEWARD MERIDIAN.
2. A KENAI PENINSULA BOROUGH CONDITIONAL LAND AND USE PERMIT FOR MATERIAL SITE EXTRACTION ABOVE THE WATER TABLE WAS ISSUED BY PC RESOLUTION 2019-39. REFERENCE ORIGINAL CLUP APPLICATION FOR EXCAVATION PLAN, PROCESS AREA AND PHASING.
3. MONITOR WELLS WERE INSTALLED IN APRIL 2020 AT FIVE LOCATIONS AS SHOWN AND GROUNDWATER ELEVATION MEASURED IN EACH OF THESE MONITOR WELLS AT THREE MONTH INTERVALS.
4. GROUNDWATER ELEVATIONS IN THE MONITOR WELLS WERE UTILIZED TO COMPUTE THE AVERAGE GROUNDWATER ELEVATIONS, FLOW DIRECTION AND FLOW RATE.
5. EXCAVATION IN THE WATER TABLE WILL BEGIN IN THE SOUTHERN PORTION OF THE PROPERTY AND PROCEED NORTHERLY WITH THE NORTH PROCESS AREA BEING THE LAST AREA EXCAVATED BELOW THE WATER TABLE.
6. MONITOR WELLS WILL BE MAINTAINED, OR RE-SET AS NEEDED, AND MEASUREMENTS OF A MINIMUM OF THREE MONITOR WELLS RECORDED FOR THE LIFE OF THE MATERIAL SITE.
7. DEWATERING WILL BE USED IN LOCALIZED EXCAVATION AREAS DURING EXTRACTION ACTIVITIES BELOW THE GROUNDWATER ELEVATION. DEWATERING WILL BE OUTLET WITHIN THE SAME PROPERTY TO RE-ENTER THE GROUNDWATER TABLE.



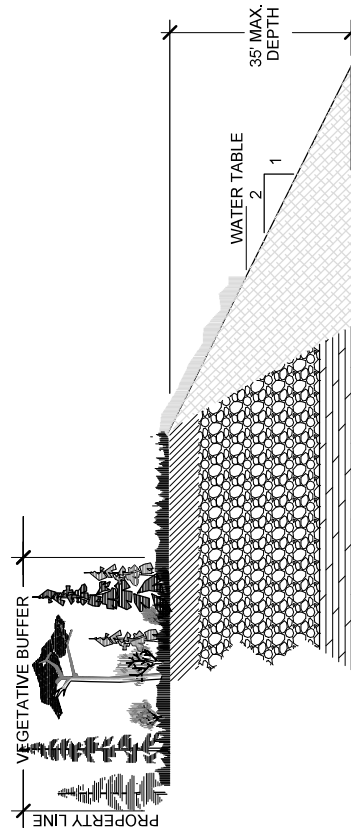
B RECLAMATION SLOPE

3 SCALE: 1" = 10 FT.



A VEGETATION BUFFER

3 SCALE: 1" = 10 FT.



1. GRADE SLOPES NO STEEPER THAN 2:1.
2. DO NOT EXCAVATE INTO THE AQUIFER CONFINING LAYER.
3. ORGANICS AND SILT STRIPPED FROM PIT MAY BE STOCKPILED AND USED FOR RECLAMATION SLOPE FLATTENING.
4. COVER SLOPES WITH 4" MINIMUM SITE TOPSOIL MIX AND ORGANIC CLEARING DEBRIS.
5. DOZER TRACK AND SEED ALL RECLAMATION SLOPES ABOVE GROUNDWATER LEVEL WITH NON-INVASIVE PLANTS OR SEED MIX.

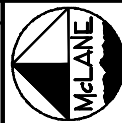
C RECLAMATION SLOPE WITH WATER TABLE

3 NOT TO SCALE



REV	DATE	DESCRIPTION
1	2/28/2021	PERMIT MODIFICATION
2		
3		
4		
5		
6		
7		
8		
9		
10		

FIELD WORK DATE: 9/17/2019 & 10/22/2019	FIELD BOOK NO. 15-11	JOB NO. 200414
RIVER RESOURCES, LLC FUNNY RIVER - PATSON CLUP MODIFICATION		



ENGINEERING - TESTING
SURVEYING - DRAINAGE
P.O. BOX 455
SOLDOTNA AK 99669
PHONE: (907) 283-3251
FAX: (907) 283-3255
WWW.MCLANECO.COM

DRAWN BY: BSG/AND	CHECKED BY: GMD
HORIZ. SCALE: 1" = 300'	VERT. SCALE: N/A
SHEET: P2	

PLANNING COMMISSION RESOLUTION 2021-10

**KENAI PENINSULA BOROUGH PLANNING COMMISSION
RESOLUTION 2021-10
KENAI RECORDING DISTRICT**

A resolution granting modification to a conditional land use permit for a material site to allow for excavation within the water table on properties described as Tract C1, Patson Properties 2019 Replat, according to Plat 2019-68, and the Northwest ¼ Southeast ¼, Section 34, Township 5 North, Range 10 West, Seward Meridian, excluding Patson Road right-of-way, Kenai Recording District.

- WHEREAS,** the KPB Planning Commission approved PC Resolution 2019-39 on December 16, 2019, which established a conditional land use permit for material extraction on KPB tax parcel ID#s 135-243-13 and 135-243-29; and
- WHEREAS,** on February 26, 2021, the applicant, River Resources, LLC, submitted an application to modify the existing conditional land use permit by allowing for excavation within the water table within KPB Parcels 135-243-13 and 135-243-129; 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,** KPB Chapter 21.29.050(A)(5) provides that the Planning Commission may approve excavation in the water table upon certification by a qualified independent civil engineer, completion of certain water monitoring requirements, and submission of the monitoring data to the planning commission; and
- WHEREAS,** on March 3, 2021, the permittee submitted the certification letter and water monitoring data to the Planning Department; and
- WHEREAS,** notice of the application was mailed on March 19, 2021, to the 233 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 April 1, 2021, & April 8, 2021, issues of the Peninsula Clarion; and
- WHEREAS,** a public hearing of the Planning Commission was held on April 12, 2021; and

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

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 December 16, 2019, the planning commission passed resolution 2019-39, which approved a conditional land use permit to River Resources, LLC, for material extraction on KPB tax parcels #135-243-13 & 135-243-29.
 - D. On February 26, 2021, River Resources, LLC, submitted to the KPB Planning Department an application to modify its existing conditional land use permit for parcels #135-243-13 & 135-243-29 to allow for excavation below groundwater elevation. After a request from staff, additional information was provided on March 3, 2021.
 - E. KPB 21.29.050(A)(5) provides the conditions upon which the planning commission may permit excavation within the water table greater than a 300-foot distance from a water source. Conditions include installation of at least three monitoring wells, completion of monitoring requirements, certification by a qualified independent civil engineer or professional hydrogeologist that the excavation will not negatively impact the quantity of an aquifer serving existing sources, and a prohibition on operations breaching an aquifer confining layer.
 - F. The applicant contracted McLane Consulting to measure groundwater monitor wells and

- analyze the data in accordance with KPB 21.29.050(A)(5).
- G. McLane Consulting collected groundwater elevation measurements in three month intervals from five monitor wells over the course of one year.
 - H. From the measurements and data from the Alaska Department of Natural Resources, McLane Consulting determined the flow direction at the site to be northwesterly, and the flow rate, or hydraulic conductivity, to be typical of dense gravel and coarse sand.
 - I. As required by KPB 21.29.050(A)(5)(a), McLane Consulting has certified that the excavation plan proposed by the applicant will not negatively impact the quantity of the aquifer serving the existing water sources.
 - J. The excavation and reclamation site plan states that at least three monitor wells will be maintained and measurements recorded for the life of the material site.
 - K. A staff site visit was conducted on March 25, 2021.
 - L. In accordance with KPB 21.29.050(A)(4-5), all excavation between 300 and 100 horizontal feet of existing wells must remain at least two feet above groundwater.
 - M. In accordance with KPB 21.29.050(A)(4), material extraction is prohibited within 100 horizontal feet of wells existing prior to the original permit issuance.
 - N. A public hearing of the planning commission was held on April 12, 2021, and notice of the application was mailed on March 19, 2021, to the 233 landowners or leaseholders of the parcels within one-half mile of the subject parcels. Public notice was sent to the postmaster in Soldotna requesting that it be posted at the Post Office. Public notice of the application was scheduled for publication in the April 1, 2021, & April 8, 2021, issues of the Peninsula Clarion.
 - O. 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 and has verified that stakes have been placed along the permit boundaries.
 3. **Buffer zone.** KPB 21.29.050(A)(2) provides that a buffer zone shall be maintained around the excavation perimeter or parcel boundaries.
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50 feet of undisturbed natural vegetation to be replaced by a sight limiting minimum six-foot high fence when excavation is within 50 feet of the permit boundary and its associated utility easement, if applicable. The fence will be replaced with a minimum six-foot high berm with 2:1 slopes when excavation in that area is exhausted.
 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 17.9-acre processing area that is located 300 feet from the permit 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 three wells with 300 feet of permit area but none of them is within 100 feet of the proposed excavation.
 - b. An exemption has been requested for dewatering within the permitted area. If granted, borough staff will regularly monitor the site to ensure that dewatering takes place only within the permitted material site.
 - c. Borough staff will regularly monitor the material site to ensure compliance with the two-foot vertical separation from the water table requirement between 100 and 300 feet of a water source.
 - d. The requirement that the permittee post a bond of \$30,000 for liability to potential accrued damages for dewatering activities will be met by permit condition number 8.
 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 seeks permission to excavate within the water table.
 - b. Five monitoring tubes have been installed to monitor ground water within the permitted site. At least three wells will be maintained and measurements taken for the life of the material site.
 - c. Data and interpretation for groundwater elevation, flow direction, and flow rate for the subject parcel, measured in three month intervals by a qualified independent civil engineer at least one year prior to the modification application has been provided.
 - d. Certification by a qualified, independent engineer that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources has been

- provided.
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. The Kenai River and its associated floodplain and riparian wetland is approximately 350 feet north of the proposed material site at its closest point.
 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 submitted site plan indicates that the haul route will be directly to Funny River Road, a state maintained road. Two alternate access points are proposed to Kenai River Avenue, a Soldotna City maintained road, then to Funny River Road.
 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. Updated drawings for the original reclamation plan were submitted with the modification application. The reclamation plan indicates that reclamation will be completed annually before the growing season ends (September), that seeding will be applied as necessary each season to areas that achieve final grade in order to minimize erosion and dust, and that the southwesterly portions of the site will be utilized for future buildings.
 - b. The site plan indicates that the reclamation will include recontouring using strippings, overburden, waste import and topsoil to a condition that allows for reestablishment of natural vegetation, slopes no steeper than 2:1, with slopes covered with a minimum of 4 inches of topsoil mix and seeded. Reclamation slopes within water table will be the same where above the water table, with unseeded slopes no steeper than 2:1 below the water table.
 - c. Borough staff will inspect the material site once the reclamation has been completed to ensure compliance with the reclamation plan.
 - d. The permittee is exempt from the state bond requirements until he exceeds a disturbed area of 5 acres or he extracts more than 50,000 cubic yards per year.
 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. No additional conditions have been volunteered.
 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. Operations under the permit have already commenced.

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

- A. KPB tax parcel ID#: 135-243-13 & 135-243-29, containing approximately 51.4 acres.
- B. Legal description: Tract C1, Patson Properties 2019 Replat, according to Plat 2019-68, and the Northwest ¼ Southeast ¼, Section 34, Township 5 North, Range 10 West, Seward

- Meridian, excluding Patson Road right-of-way, Kenai Recording District.
- C. The permittee, River Resources, LLC, proposes to: 1) Extract and process gravel and sand in three phases from the subject parcels; 2) Excavate within the water table, maintaining the required 2-foot vertical separation from the seasonal high water table when excavating between 300 and 100 feet from any water source existing prior to issuance of the original permit; 3) Reclaim excavated areas as outlined in the reclamation plan provided as part of the original permit application and the modification application.

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, eastern, and western boundaries - 50 feet of undisturbed natural vegetation to be replaced by a sight limiting minimum six-foot high fence when excavation is within 50 feet of the permit boundary and its associated utility easement, if applicable. The fence will be replaced with a minimum six-foot high berm with 2:1 slopes when excavation in that area is exhausted.
Southern boundary - 50 feet of undisturbed natural vegetation.
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 between 100 and 300 horizontal feet of any water source existing prior to the issuance of this permit.
8. Prior to dewatering, the permittee shall post a bond for liability for potential accrued damages pursuant to KPB 21.29.050(A)(4)(d) in the amount of \$30,000.
9. 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.
10. 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.
11. 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.
12. 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.
13. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
14. The permittee shall reclaim the site as described in the reclamation plan for this parcel and as approved by the planning commission.
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 COMMISSION OF THE KENAI PENINSULA BOROUGH ON
THIS _____ DAY OF _____, 2021.

Blair J. Martin, Chairperson
Planning Commission

ATTEST:

Ann Shirnberg
Administrative Assistant

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

**NOTICE OF DECISION
JUNE 2, 2021**

NOTICE OF DECISION

At its May 24, 2021, meeting, the Kenai Peninsula Borough Planning Commission rejected a resolution granting a modification to a conditional land use permit to allow excavation below groundwater that was requested for KPB Parcels 135-243-13 and 135-243-29, Tract C1, Patson Properties 2019 Replat, according to Plat 2019-68, and the Northwest ¼ Southeast ¼, Section 34, Township 5 North, Range 10 West, Seward Meridian, excluding Patson Road right-of-way, Kenai Recording District.

This decision was based on the following findings of fact:

1. The bond was not high enough based on the number of surrounding wells.
2. KPB Code needs to define impartial and independent more clearly.
3. The well monitoring timeline is in question as to whether or not it meets borough code.

Per KPB 21.20.250, any party of record may file an appeal of a decision of the planning commission within 15 days of the date of this notice of decision. The appeal must be filed with the borough clerk on the forms provided, and by paying the filing and records preparation fee in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. An appeal may be filed by personal delivery or mail as long as it is complete and received in the clerk's office by 5:00 p.m. on the day the notice of appeal is due.

Please contact the Kenai Peninsula Borough Clerk's Office at 907-714-2160 for questions regarding filing an appeal.

Sincerely,



Bryan Taylor
Planner

(907) 714-2206

btaylor@kpb.us

June 2, 2021

Date

NOD CONTACT LIST

Contact	Address	City, State ZIP	Email	Telephone
Kyle Foster	PO BOX 3036	Soldotna, AK 99669	kyle@fosterco.biz	
Kyle Foster	34717 Sentinel St.	Soldotna, AK 99669		
Billie & Joseph Hardy	41937 River Park Dr.	Soldotna, AK 99669	jnbhardy@yahoo.com	
Michael and Ann Gravier	34540 Marcus St.	Soldotna, AK 99669	michael.gravier@yahoo.com	
Gina Debardeleben	PO Box 468	Soldotna, AK 99669	ginadebar@mclanecg.com	907-283-4218
Rick & Lillian Weed	34054 Snow Lane	Soldotna, AK 99669	lilw58@gmail.com	
Richard & Michele McCartan	1085 Keystone Dr.	Soldotna, AK 99669	rmccartan109@gmail.com	
William & Karen Ferguson	PO BOX 261	Soldotna, AK 99669	bkakdearn@outlook.com	
William Ferguson	34484 Marcus St.	Soldotna, AK 99669	bkakdearn@outlook.com	
Michael Hassemer	960 Keystone Dr.	Soldotna, AK 99669	mikehski85@gmail.com	
Lindsey & Nathan Holland	41750 River Park Dr.	Soldotna, AK 99669	holandsey@gmail.com	
Mike & Karol Pomplin	41918 River Park Dr.	Soldotna, AK 99669	j3cubpilot@yahoo.com	
Patrick Nolden	PO BOX 414	Soldotna, AK 99669	pnolden@alaska.edu	907-252-7288
Dale McBride			dmcbride@fmwrrubber.com	
Bill Elam	47320 Jefferson Ave.	Soldotna, AK 99669	belam@kpb.us	690-4339

MEETING & DESK PACKETS

APRIL 12, 2021



Planning Commission

Meeting Packet

**April 12, 2021
7:30 p.m.**

**KENAI PENINSULA BOROUGH
ASSEMBLY CHAMBERS
144 NORTH BINKLEY ST.
SOLDOTNA, ALASKA 99669**

E. NEW BUSINESS

8. Conditional Land Use Permit - Modification of an approved CLUP for material extraction

Applicant: River Resources, LLC

Location: 34386 Patson Rd., Soldotna, AK 99669

PINs: 135-243-13 & 135-243-29

Conditional Land Use Permit for a Material Site STAFF REPORT

PC MEETING: April 12, 2021

Applicant: River Resources, LLC

Landowner: River Resources, LLC

Parcel Numbers: 135-243-13 &-29

Legal Description: T 5N R 10W SEC 34 SEWARD MERIDIAN KN NW1/4 SE1/4 EXCLUDING PATSON PROPERTIES PART 1

T 05N R 10W SEC 34 SEWARD MERIDIAN KN 2019068 PATSON PROPERTIES 2019 REPLAT TRACT C1

Location: 34386 Patson Road

GENERAL OVERVIEW: The applicant wishes to modify the existing conditional land use permit for material extraction on the above property, approved by the planning commission on December 16, 2019, to allow for gravel extraction below the groundwater elevation. A copy of the application, including the required water monitoring information, is included as **Attachment A**. The applicant is also requesting an exemption for dewatering as part of the extraction activities. Dewatering will only be conducted within the permitted material site and water will not leave the property.

KPB 21.29.050(A)(5) provides that the planning commission may approve excavation in the water table provided the applicant completes certain water monitoring requirements carried out by an independent civil engineer or professional hydrogeologist, submits the monitoring data, and has certification by the engineer or hydrogeologist that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources.

As required by KPB 21.29.050(A)(5), McLane Consulting has certified that the excavation plan proposed by the applicant will not negatively impact the quantity of the aquifer serving the existing water sources. The excavation and reclamation site plan submitted with the application states that monitor wells will be maintained and measurements recorded for the life of the material site. Vicinity, aerial, topography, land use and ownership maps are included here as **Attachments B – F**.

According to the modification application received on March 3, 2021, the applicant seeks to excavate and area of approximately 31.2 acres to a maximum depth of 32' below original ground. The groundwater elevation data provided indicates that groundwater elevation is approximately 17' below original ground. The aquifer-confining layer of dense blue-gray silt is estimated to be approximately 35' below original ground and approximately 30' thick.

As in the original application, primary ingress and egress to the site is directly onto Funny River Road, a state maintained road, with alternate access proposed to Kenai River Avenue, a City of Soldotna maintained road, and then to Funny River Road. The groundwater excavation plan for the site is the same as the phased development originally approved, with material being excavated in the southern portion of the parcel and working northerly. Dewatering will be localized and will remain within the same property to re-enter the groundwater table. The required buffers will remain the same. As originally permitted, the impacted area remains at approximately 52 acres, with excavation within the water table on approximately 31.2 acres; the annual quantity of material expected to be removed is 45,000cy; and, the site has an expected lifespan of 40 years.

PUBLIC NOTICE: Public notice of the application was mailed on March 19, 2021 to the 233 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**. Public comments received prior to the packet deadline are included as **Attachment H**. Any public comments received by the

Planning Department prior to the hearing will be included as desk packet items at the April 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.
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 - A. There are no water bodies within 100 feet of the proposed extraction. The Kenai River and its associated floodplain and riparian wetland is approximately 350 feet north of the proposed material site at its closest point.
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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.

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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. Updated drawings for the original reclamation plan were submitted with the modification application. The reclamation plan indicates that reclamation will be completed annually before the growing season ends (September), that seeding will be applied as necessary each season to areas that achieve final grade in order to minimize erosion and dust, and that the southwesterly portions of the site will be utilized for future buildings.
 - B. The site plan indicates that the reclamation will include recontouring using strippings, overburden, waste import and topsoil to a condition that allows for reestablishment of natural vegetation, slopes no steeper than 2:1, with slopes covered with a minimum of 4 inches of topsoil mix and seeded. Reclamation slopes within water table will be the same where above the water table, with unseeded slopes no steeper than 2:1 below the water table.
 - C. Borough staff will inspect the material site once the reclamation has been completed to ensure compliance with the reclamation plan.
 - D. The permittee is exempt from the state bond requirements until he exceeds a disturbed area of 5 acres or he extracts more than 50,000 cubic yards per year.
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. No additional conditions have been volunteered.

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. Operations under the permit have already commenced.

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, eastern, and western boundaries - 50 feet of undisturbed natural vegetation to be replaced by a sight limiting minimum six-foot high fence when excavation is within 50 feet of the permit boundary and its associated utility easement, if applicable. The fence will be replaced with a minimum six-foot high berm with 2:1 slopes when excavation in that area is exhausted.
 - Southern boundary - 50 feet of undisturbed natural vegetation.
 - 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 between 100 and 300 horizontal feet of any water source existing prior to the issuance of this permit.
8. Prior to dewatering, the permittee shall post a bond for liability for potential accrued damages pursuant to KPB 21.29.050(A)(4)(d) in the amount of \$30,000.
9. 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.

10. 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.
11. 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.
12. 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.
13. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
14. The permittee shall reclaim the site as described in the reclamation plan for this parcel and as approved by the planning commission.
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

**KENAI PENINSULA BOROUGH PLANNING COMMISSION
RESOLUTION 2021-10
KENAI RECORDING DISTRICT**

A resolution granting modification to a conditional land use permit for a material site to allow for excavation within the water table on properties described as Tract C1, Patson Properties 2019 Replat, according to Plat 2019-68, and the Northwest ¼ Southeast ¼, Section 34, Township 5 North, Range 10 West, Seward Meridian, excluding Patson Road right-of-way, Kenai Recording District.

- WHEREAS,** the KPB Planning Commission approved PC Resolution 2019-39 on December 16, 2019, which established a conditional land use permit for material extraction on KPB tax parcel ID#s 135-243-13 and 135-243-29; and
- WHEREAS,** on February 26, 2021, the applicant, River Resources, LLC, submitted an application to modify the existing conditional land use permit by allowing for excavation within the water table within KPB Parcels 135-243-13 and 135-243-29; 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,** KPB Chapter 21.29.050(A)(5) provides that the Planning Commission may approve excavation in the water table upon certification by a qualified independent civil engineer, completion of certain water monitoring requirements, and submission of the monitoring data to the planning commission; and
- WHEREAS,** on March 3, 2021, the permittee submitted the certification letter and water monitoring data to the Planning Department; and
- WHEREAS,** notice of the application was mailed on March 19, 2021, to the 233 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 April 1, 2021, & April 8, 2021, issues of the Peninsula Clarion; and
- WHEREAS,** a public hearing of the Planning Commission was held on April 12, 2021; and

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

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 December 16, 2019, the planning commission passed resolution 2019-39, which approved a conditional land use permit to River Resources, LLC, for material extraction on KPB tax parcels #135-243-13 & 135-243-29.
 - D. On February 26, 2021, River Resources, LLC, submitted to the KPB Planning Department an application to modify its existing conditional land use permit for parcels #135-243-13 & 135-243-29 to allow for excavation below groundwater elevation. After a request from staff, additional information was provided on March 3, 2021.
 - E. KPB 21.29.050(A)(5) provides the conditions upon which the planning commission may permit excavation within the water table greater than a 300-foot distance from a water source. Conditions include installation of at least three monitoring wells, completion of monitoring requirements, certification by a qualified independent civil engineer or professional hydrogeologist that the excavation will not negatively impact the quantity of an aquifer serving existing sources, and a prohibition on operations breaching an aquifer confining layer.
 - F. The applicant contracted McLane Consulting to measure groundwater monitor wells and

- analyze the data in accordance with KPB 21.29.050(A)(5).
- G. McLane Consulting collected groundwater elevation measurements in three month intervals from five monitor wells over the course of one year.
 - H. From the measurements and data from the Alaska Department of Natural Resources, McLane Consulting determined the flow direction at the site to be northwesterly, and the flow rate, or hydraulic conductivity, to be typical of dense gravel and coarse sand.
 - I. As required by KPB 21.29.050(A)(5)(a), McLane Consulting has certified that the excavation plan proposed by the applicant will not negatively impact the quantity of the aquifer serving the existing water sources.
 - J. The excavation and reclamation site plan states that at least three monitor wells will be maintained and measurements recorded for the life of the material site.
 - K. A staff site visit was conducted on March 25, 2021.
 - L. In accordance with KPB 21.29.050(A)(4-5), all excavation between 300 and 100 horizontal feet of existing wells must remain at least two feet above groundwater.
 - M. In accordance with KPB 21.29.050(A)(4), material extraction is prohibited within 100 horizontal feet of wells existing prior to the original permit issuance.
 - N. A public hearing of the planning commission was held on April 12, 2021, and notice of the application was mailed on March 19, 2021, to the 233 landowners or leaseholders of the parcels within one-half mile of the subject parcels. Public notice was sent to the postmaster in Soldotna requesting that it be posted at the Post Office. Public notice of the application was scheduled for publication in the April 1, 2021, & April 8, 2021, issues of the Peninsula Clarion.
 - O. 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 and has verified that stakes have been placed along the permit boundaries.
 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 property boundary that will provide visual and noise screening to adjacent properties:
50 feet of undisturbed natural vegetation to be replaced by a sight limiting minimum six-foot high fence when excavation is within 50 feet of the permit boundary and its associated utility easement, if applicable. The fence will be replaced with a minimum six-foot high berm with 2:1 slopes when excavation in that area is exhausted.
 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 17.9-acre processing area that is located 300 feet from the permit 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 three wells with 300 feet of permit area but none of them is within 100 feet of the proposed excavation.
 - b. An exemption has been requested for dewatering within the permitted area. If granted, borough staff will regularly monitor the site to ensure that dewatering takes place only within the permitted material site.
 - c. Borough staff will regularly monitor the material site to ensure compliance with the two-foot vertical separation from the water table requirement between 100 and 300 feet of a water source.
 - d. The requirement that the permittee post a bond of \$30,000 for liability to potential accrued damages for dewatering activities will be met by permit condition number 8.
 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 seeks permission to excavate within the water table.
 - b. Five monitoring tubes have been installed to monitor ground water within the permitted site. At least three wells will be maintained and measurements taken for the life of the material site.
 - c. Data and interpretation for groundwater elevation, flow direction, and flow rate for the subject parcel, measured in three month intervals by a qualified independent civil engineer at least one year prior to the modification application has been provided.
 - d. Certification by a qualified, independent engineer that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources has been

- provided.
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. The Kenai River and its associated floodplain and riparian wetland is approximately 350 feet north of the proposed material site at its closest point.
 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 submitted site plan indicates that the haul route will be directly to Funny River Road, a state maintained road. Two alternate access points are proposed to Kenai River Avenue, a Soldotna City maintained road, then to Funny River Road.
 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. Updated drawings for the original reclamation plan were submitted with the modification application. The reclamation plan indicates that reclamation will be completed annually before the growing season ends (September), that seeding will be applied as necessary each season to areas that achieve final grade in order to minimize erosion and dust, and that the southwesterly portions of the site will be utilized for future buildings.
 - b. The site plan indicates that the reclamation will include recontouring using strippings, overburden, waste import and topsoil to a condition that allows for reestablishment of natural vegetation, slopes no steeper than 2:1, with slopes covered with a minimum of 4 inches of topsoil mix and seeded. Reclamation slopes within water table will be the same where above the water table, with unseeded slopes no steeper than 2:1 below the water table.
 - c. Borough staff will inspect the material site once the reclamation has been completed to ensure compliance with the reclamation plan.
 - d. The permittee is exempt from the state bond requirements until he exceeds a disturbed area of 5 acres or he extracts more than 50,000 cubic yards per year.
 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. No additional conditions have been volunteered.
 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. Operations under the permit have already commenced.

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

- A. KPB tax parcel ID#: 135-243-13 & 135-243-29, containing approximately 51.4 acres.
- B. Legal description: Tract C1, Patson Properties 2019 Replat, according to Plat 2019-68, and the Northwest ¼ Southeast ¼, Section 34, Township 5 North, Range 10 West, Seward

- Meridian, excluding Patson Road right-of-way, Kenai Recording District.
- C. The permittee, River Resources, LLC, proposes to: 1) Extract and process gravel and sand in three phases from the subject parcels; 2) Excavate within the water table, maintaining the required 2-foot vertical separation from the seasonal high water table when excavating between 300 and 100 feet from any water source existing prior to issuance of the original permit; 3) Reclaim excavated areas as outlined in the reclamation plan provided as part of the original permit application and the modification application.

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, eastern, and western boundaries - 50 feet of undisturbed natural vegetation to be replaced by a sight limiting minimum six-foot high fence when excavation is within 50 feet of the permit boundary and its associated utility easement, if applicable. The fence will be replaced with a minimum six-foot high berm with 2:1 slopes when excavation in that area is exhausted.
Southern boundary - 50 feet of undisturbed natural vegetation.
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 between 100 and 300 horizontal feet of any water source existing prior to the issuance of this permit.
8. Prior to dewatering, the permittee shall post a bond for liability for potential accrued damages pursuant to KPB 21.29.050(A)(4)(d) in the amount of \$30,000.
9. 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.
10. 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.
11. 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.
12. 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.
13. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
14. The permittee shall reclaim the site as described in the reclamation plan for this parcel and as approved by the planning commission.
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 COMMISSION OF THE KENAI PENINSULA BOROUGH ON
THIS _____ DAY OF _____, 2021.

Blair J. Martin, Chairperson
Planning Commission

ATTEST:

Ann Shirnberg
Administrative Assistant

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

Return to: KPB PLANNING DEPARTMENT
144 NORTH BINKLEY STREET
SOLDOTNA, ALASKA 99669

For information call: (907) 714-2200, or (800) 478-4441,
within the borough.

PC Resolution # _____

App. Complete _____

21.29 Conditional Land Use Permit Modification Application

Sand, Gravel or Material Site

I. APPLICANT INFORMATION

Applicant River Resources, LLC Landowner same
Address PO Box 3036 Address _____
City, State, Zip Soldotna, AK 99669 City, State, Zip _____
Telephone 907-394-1915 Fax _____ Telephone _____ Fax _____
Cell Phone 907-394-1915 Cell Phone _____
Email kyle@fosterco.biz Email _____

II. CURRENT PERMITTED PARCEL INFORMATION

KPB Tax Parcel ID# 135-243-13 & 135-243-29 Township 5N Range 10W Section 34
Subdivision _____ Lot _____ Block _____ Parcel acreage 51.4
Legal description Patson Properties Replat Tr C1 & T5N R10W Sec 34 SM NW1/4 SE1/4 Excluding Patson Properties Part 1

III. INFORMATION/ DOCUMENTATION – ☒ "Check" boxes to confirm all items are included.

☒ \$300.00 processing fee payable to: Kenai Peninsula Borough. (Include Parcel # on check comment line.)

☒ Site Plan Diagram, to scale, showing:

- | | |
|---|--|
| <input checked="" type="checkbox"/> parcel boundaries | <input checked="" type="checkbox"/> existing and/or proposed processing area(s) |
| <input checked="" type="checkbox"/> existing required buffers | <input checked="" type="checkbox"/> all encumbrances on parcel, <u>including</u> easements |
| <input checked="" type="checkbox"/> existing permitted extraction area(s) | <input checked="" type="checkbox"/> site ingress and egress |
| <input checked="" type="checkbox"/> proposed additional extraction area(s)
and/or other requested permit modification(s) | <input checked="" type="checkbox"/> a north arrow and diagram scale |
| | <input checked="" type="checkbox"/> the preparer's name and date |

☐ Permit Modification Worksheet (attached)

IV. CERTIFICATION STATEMENT

The information contained on this form and the attachments are true and complete to the best of my knowledge. I grant permission for borough staff to enter onto the property for the purpose of processing the permit modification request.

[Signature] 2/26/21 _____
Applicant Signature Date Property Owner Signature (if not applicant) Date

Permit Modification Worksheet

Applicant River Resources LLC Owner River Resources LLC

CURRENT PERMITTED KPB Tax Parcel ID # 135-243-13 & 135-243-29 Parcel Acreage 51.4

1. Reason(s) for requesting permit modification:

Requesting modification to allow for excavation in the water table and for temporary, localized dewatering during excavation below groundwater elevation. Dewatering will be outlet within the same property.

2. Additional cumulative acres to be disturbed (excavation plus stockpiles, berms, etc.) 0 acres

3. Additional type(s) of material to be mined (circle all that apply): N/A gravel sand peat other _____

4. Additional equipment to be used (circle all that apply): N/A excavation processing other _____

5. Modification(s) is requested on current permit buffers: _____yes Xno

CURRENT PERMIT REQUIRED BUFFERS – ☒ “check” all types, and circle all directions that apply:

- | | | | | |
|---|---|---|---|---|
| <input type="checkbox"/> 50 ft. of natural or improved vegetation | N | S | E | W |
| <input type="checkbox"/> minimum 6 ft. earthen berm | N | S | E | W |
| <input type="checkbox"/> minimum 6 ft. fence | N | S | E | W |
| <input type="checkbox"/> other _____ | N | S | E | W |

MODIFIED BUFFER REQUEST, if applicable – ☒ “check” all types, and circle all directions that apply:

- | | | | | |
|---|---|---|---|---|
| <input type="checkbox"/> 50 ft. of natural or improved vegetation | N | S | E | W |
| <input type="checkbox"/> minimum 6 ft. earthen berm | N | S | E | W |
| <input type="checkbox"/> minimum 6 ft. fence | N | S | E | W |
| <input type="checkbox"/> other _____ | N | S | E | W |

6. Permit modification is requested due to subdivision of originally permitted parcel? _____yes Xno

7. Permit modification to enter the water table is requested: Xyes _____no (check “yes” if excavation in water table is desired on property not permitted under KPB 21.26)

8. Additional annual quantity of material, including overburden, to be extracted: _____ cubic yards

9. Additional excavation depth beyond permitted depth: 10 ft. Depth to groundwater: 19-21 ft.

10. Voluntary permit conditions proposed (additional buffers, dust control, limited hours of operation, etc.):

- A. _____
- B. _____
- C. _____

McLANE

CONSULTING, INC.

March 2, 2021

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

SUBJECT: PC Resolution 2019-39
KPB Tax Parcel No. 135-243-13 & 135-243-29

RE: Conditional Land Use Permit Modification Application

Dear Mr. Taylor:

River Resources, LLC, the property owner of KPB 135-243-13 & 135-243-29, is applying for modification of CLUP approved by PC Resolution 2019-39. The modification would allow for excavation in the water table on approximately 31.2 acres of the permitted property.

River Resources, LLC contracted McLane Consulting, Inc. to measure groundwater monitor wells and analyze the measurements in accordance with KPB 21.29. Five monitor wells were installed in April 2020 Foster Construction in accordance with recommendations by McLane Consulting. McLane Consulting has measured the monitor wells using standard surveying and engineering practices on the dates as shown below. Measurements to date are as follows:

Monitor Well	Ground Elevation	Top of MW	GW Elev. 5/4/2020	GW Elev. 7/15/2020	GW Elev. 10/15/2020	GW Elev. 1/18/2021
1	101.53	102.27	82.47	83.97	83.17	82.77
2	97.40	104.89	83.69	84.79	83.49	83.59
3	100.67	103.53	84.03	85.23	84.63	83.73
4	101.61	102.96	85.16	84.16	84.26	83.56
5	100.03	104.92	-	84.22	84.22	83.52

From these measurements it has been determined that flow direction is northwesterly, as shown on the exhibits attached to the CLUP Modification Application. The hydraulic conductivity is typical of dense gravel and coarse sand ranging from 2.95×10^{-6} to 9.8×10^{-2} ft/s.

Excavation is only proposed within the upper unconfined aquifer, not to exceed approximately 32' below original ground (approximate elevation 68.0). Local confining layer is estimated by reviewing well driller logs within the CLUP vicinity on the ADNR WELTS website. The confining layer consists of dense blue-gray silt (a non-marketable material) and is greater than 30' thick in this area. It is estimated at approximate elevation 65.0. Proposed excavation within the groundwater table at this site will not breach the confining layer.

Dewatering will be conducted on a temporary and intermittent basis while extracting below the groundwater table. Excavation dewatering temporarily depresses shallow groundwater within the

P.O. BOX 468; SOLDOTNA, ALASKA 99669
PHONE (907) 283-4218 FAX (907) 907-283-3265

MCLANE

CONSULTING, INC.

immediate area of the dewatering but groundwater level will recover to pre-dewatering elevations upon termination of dewatering. Waters from the dewatering process will be outlet within the permit property to re-enter the groundwater table.

This letter is to certify that the excavation plan included in the CLUP Modification Application will not negatively impact the quantity of the aquifer serving the existing water sources.

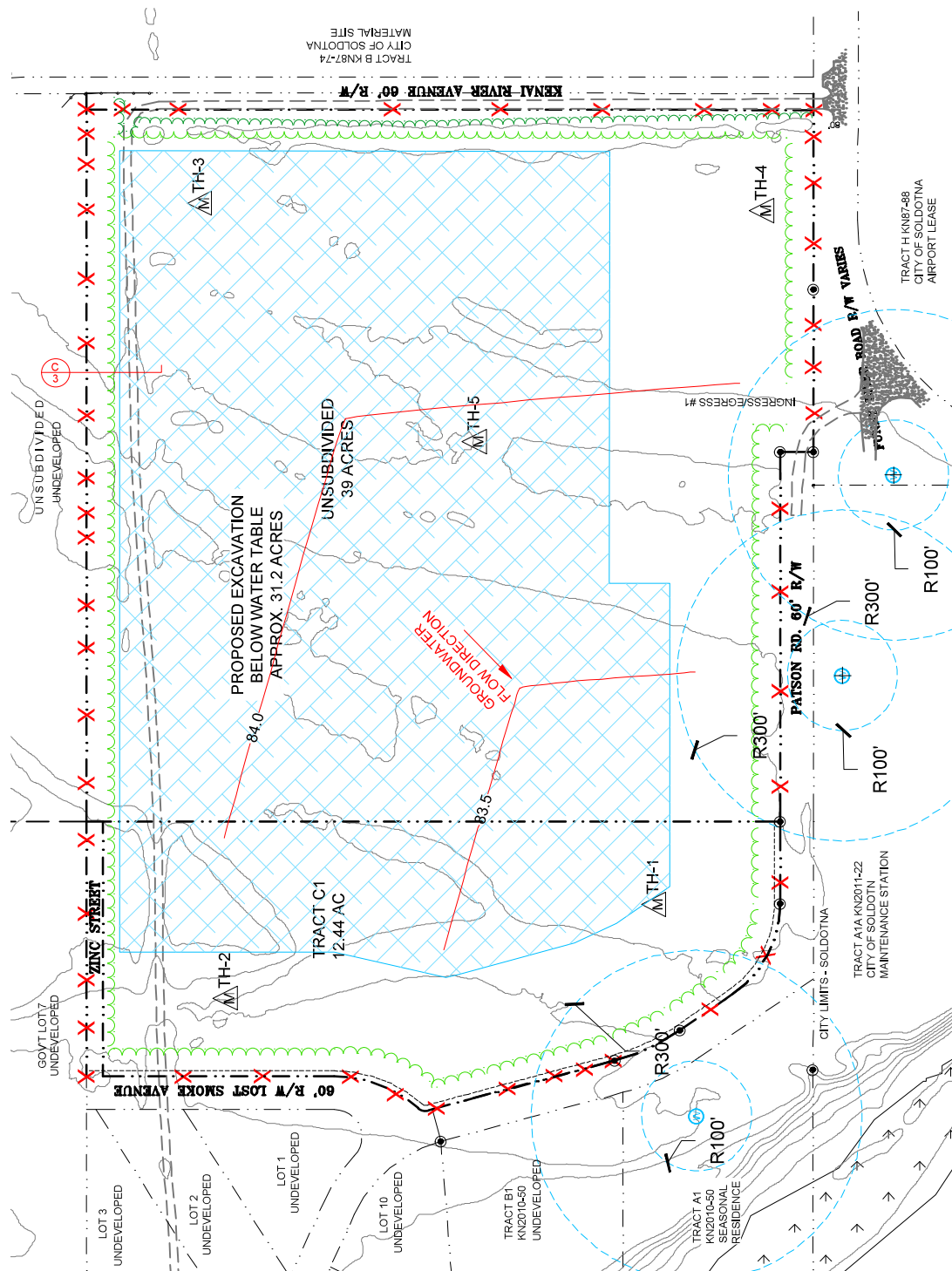
If you have questions, please contact me.

Sincerely,



Gina DeBardelaben, PE
McLane Consulting, Inc.

APPLICANT / OWNER:
ATTN: KYLE FOSTER
RIVER RESOURCES, LLC
P.O. BOX 3036
SOLDOTNA, ALASKA 99669



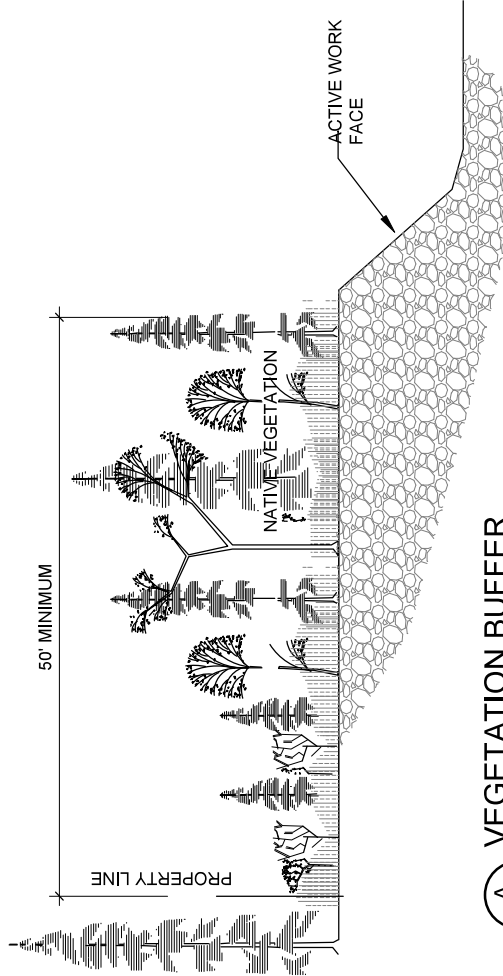
			FIELD WORK DATE: 04/27/2018 & 10/22/2019		FIELD BOOK NO.: 194-1		JOB NO.: 204014				
	ENGINEERING - TESTING SURVEYING - DRAINAGE P.O. BOX 458 SOLIDOTTA, NC 28589 PHONE: (919) 383-0265 FAX: (919) 383-0265 WWW.MCLANE.COM		DRAWN BY: BERGARD		CHECKED BY: GMD		ORDER SCALE: 1" = 200'		SHEET: P1		
REVISIONS		DESCRIPTION		REV		DATE		BY		GMD	
1 2/26/2021		PERMIT MODIFICATION									

R-35

CONDITIONAL LAND USE PERMIT FOR MATERIAL SITE

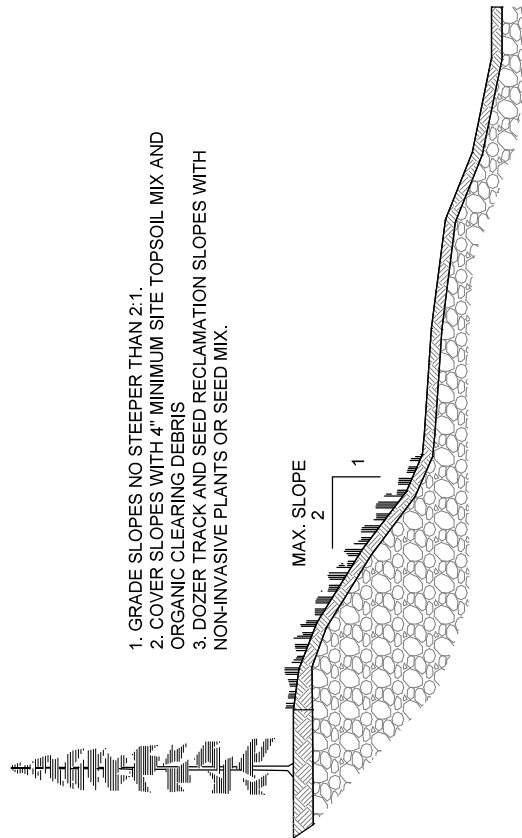
CLUP DEVELOPMENT NOTES

1. THIS PERMIT APPLICATION MODIFICATION IS FOR KPB PARCEL 13524313 AND 13524329, TOWNSHIP 5N, RANGE 10W, SECTION 34 SEWARD MERIDIAN.
2. A KENAI PENINSULA BOROUGH CONDITIONAL LAND USE PERMIT FOR MATERIAL SITE EXTRACTION ABOVE THE WATER TABLE WAS ISSUED BY PC RESOLUTION 2019-39. REFERENCE ORIGINAL CLUP APPLICATION FOR EXCAVATION PLAN, PROCESS AREA AND PHASING.
3. MONITOR WELLS WERE INSTALLED IN APRIL 2020 AT FIVE LOCATIONS AS SHOWN AND GROUNDWATER ELEVATION MEASURED IN EACH OF THESE MONITOR WELLS AT THREE MONTH INTERVALS.
4. GROUNDWATER ELEVATIONS IN THE MONITOR WELLS WERE UTILIZED TO COMPUTE THE AVERAGE GROUNDWATER ELEVATIONS, FLOW DIRECTION AND FLOW RATE.
5. EXCAVATION IN THE WATER TABLE WILL BEGIN IN THE SOUTHERN PORTION OF THE PROPERTY AND PROCEED NORTHERLY WITH THE NORTH PROCESS AREA BEING THE LAST AREA EXCAVATED BELOW THE WATER TABLE.
6. MONITOR WELLS WILL BE MAINTAINED, OR RE-SET AS NEEDED, AND MEASUREMENTS OF A MINIMUM OF THREE MONITOR WELLS RECORDED FOR THE LIFE OF THE MATERIAL SITE.
7. DEWATERING WILL BE USED IN LOCALIZED EXCAVATION AREAS DURING EXTRACTION ACTIVITIES BELOW THE GROUNDWATER ELEVATION. DEWATERING WILL BE OUTLET WITHIN THE SAME PROPERTY TO RE-ENTER THE GROUNDWATER TABLE.



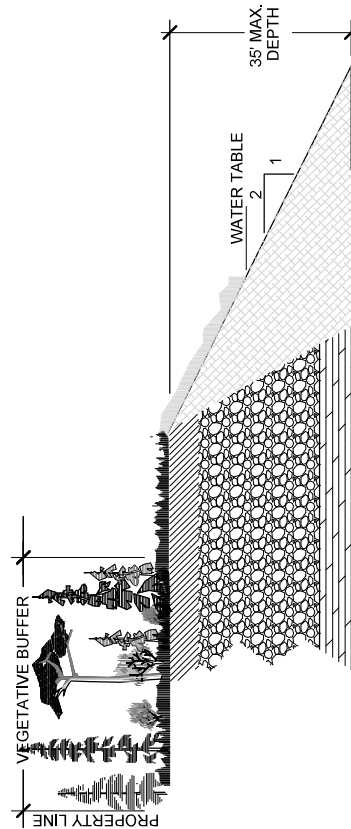
A VEGETATION BUFFER

3 SCALE: 1" = 10 FT.



B RECLAMATION SLOPE

3 SCALE: 1" = 10 FT.



1. GRADE SLOPES NO STEEPER THAN 2:1.
2. DO NOT EXCAVATE INTO THE AQUIFER CONFINING LAYER.
3. ORGANICS AND SILT STRIPPED FROM PIT MAY BE STOCKPILED AND USED FOR RECLAMATION SLOPE FLATTENING.
4. COVER SLOPES WITH 4" MINIMUM SITE TOPSOIL MIX AND ORGANIC CLEARING DEBRIS.
5. DOZER TRACK AND SEED ALL RECLAMATION SLOPES ABOVE GROUNDWATER LEVEL WITH NON-INVASIVE PLANTS OR SEED MIX.

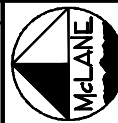
C RECLAMATION SLOPE WITH WATER TABLE

3 NOT TO SCALE



REV	DATE	DESCRIPTION
1	2/28/2021	PERMIT MODIFICATION
2		
3		
4		
5		
6		
7		
8		
9		
10		

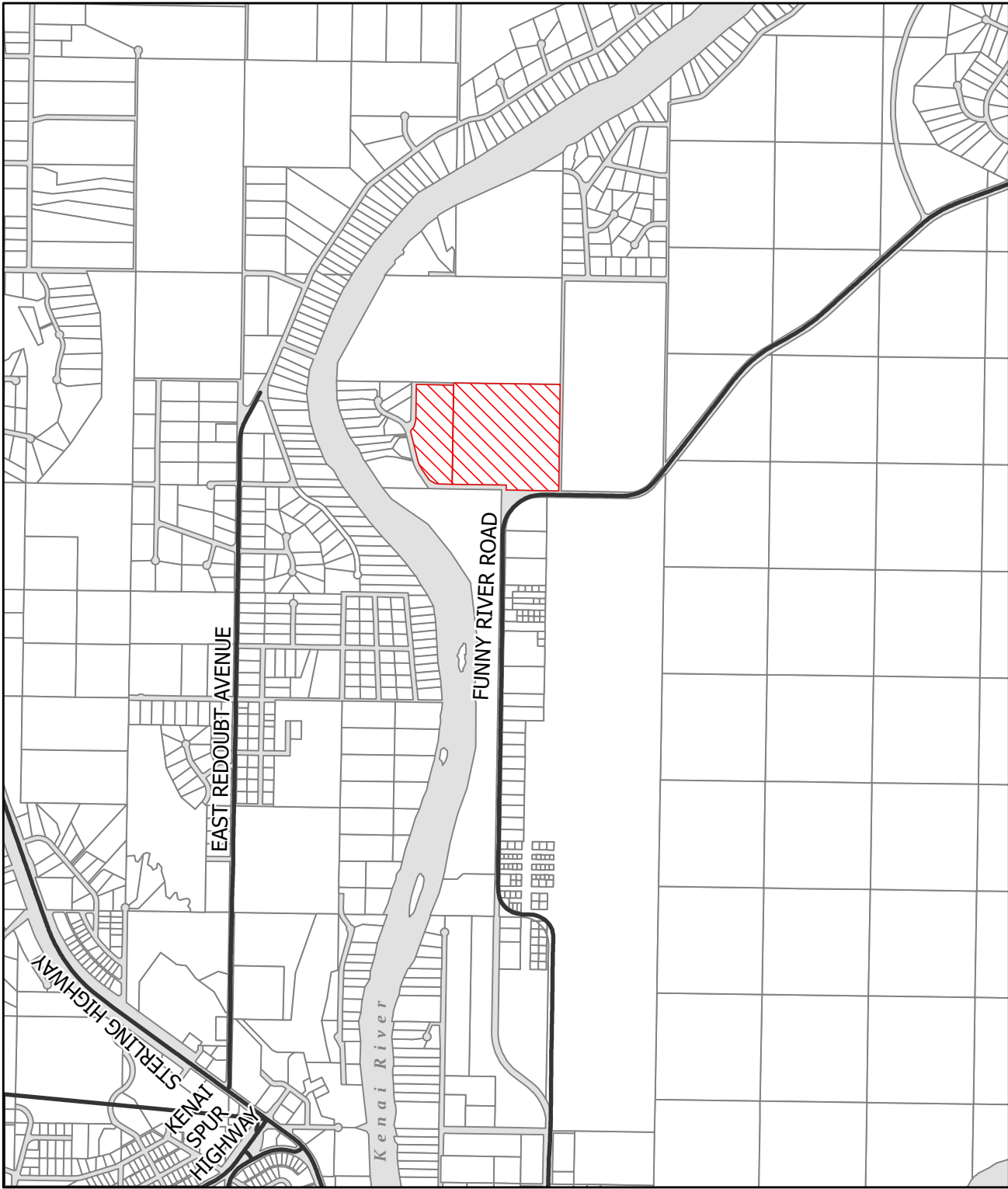
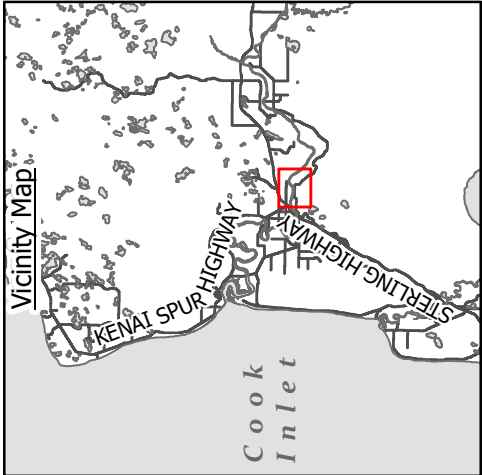
JOB NO.	204014
FIELD BOOK NO.	15-11
FIELD WORK DATE	9/17/2019 & 10/2/2019
CLUP MODIFICATION	FUNNY RIVER - PATSON
RIVER RESOURCES, LLC	



ENGINEERING - TESTING
SURVEYING - MAPPING
P.O. BOX 455
SOLDOTNA, AK 99669
PHONE: (907) 283-3251
FAX: (907) 283-3255
WWW.MCLANECO.COM

DRAWN BY	BSB/AND
CHECKED BY	GMD
HORIZ. SCALE	1" = 300'
VERT. SCALE	N/A
SHEET	P2

Parcels: 135-243-13 & -29
Applicant: River Resources LLC



LEGEND

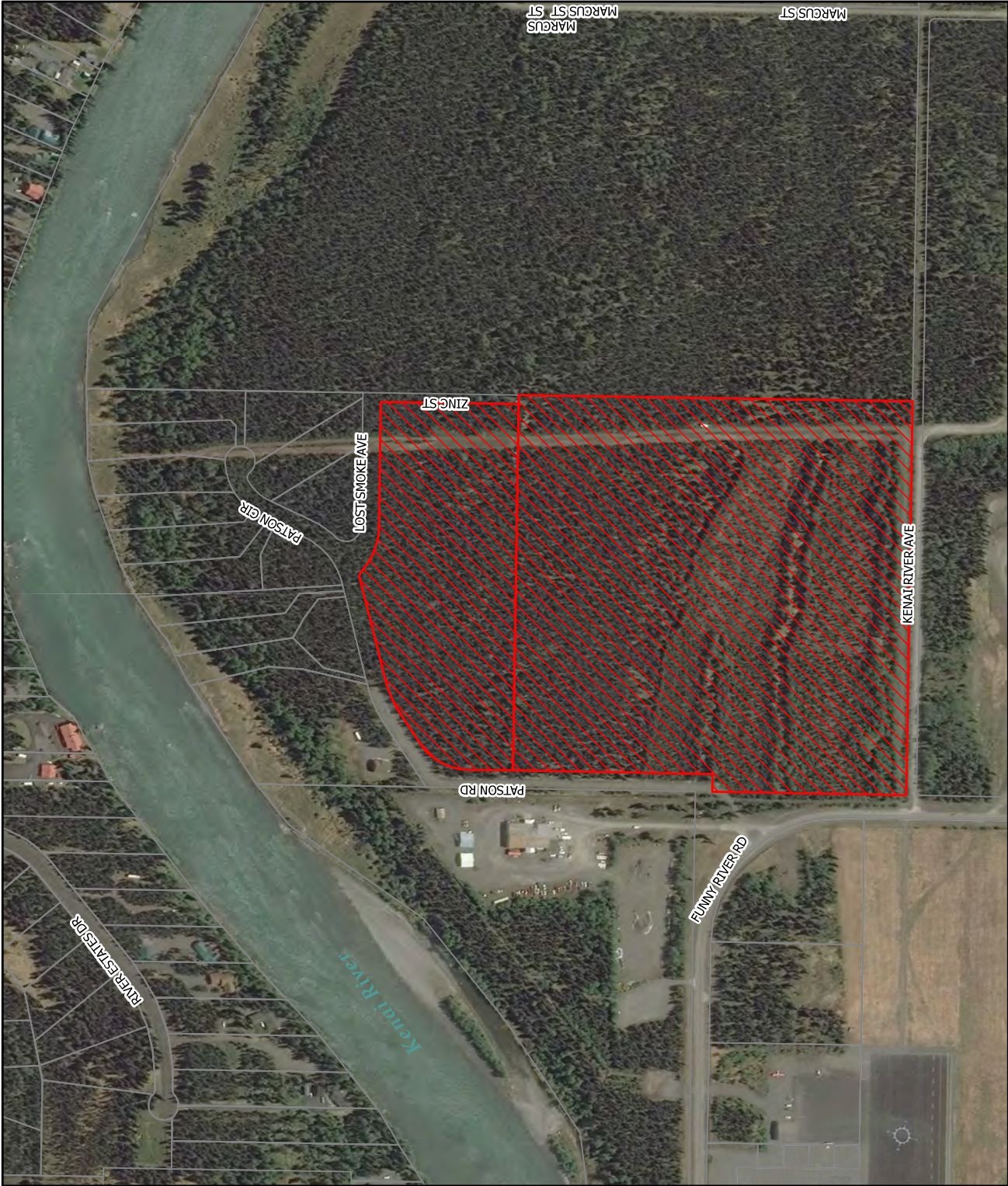
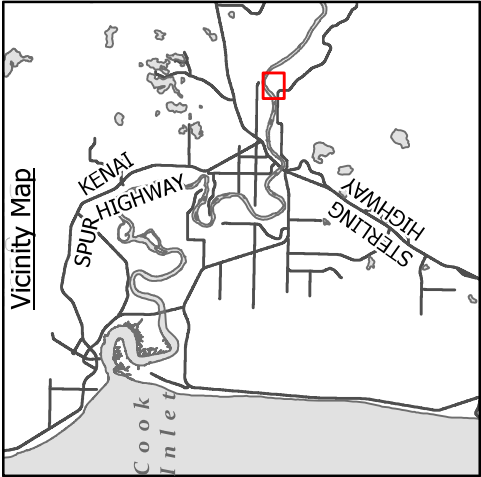
	KPB Tax Parcels
	Subject Parcels

0 0.13 0.25 0.5 Miles

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

244

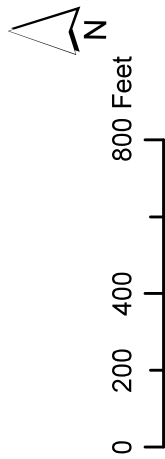
Parcels: 135-243-13 & -29
Applicant: River Resources LLC



LEGEND

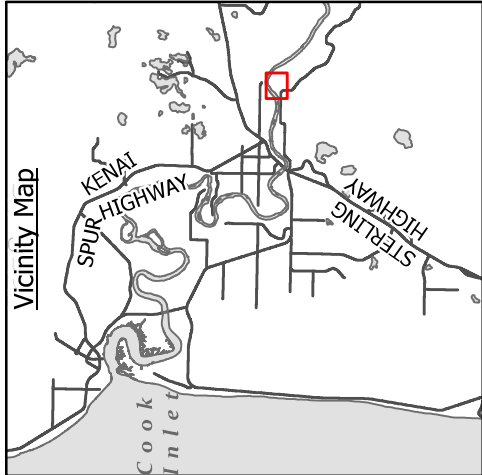
- KPB Tax Parcels
- Subject Parcels

Aerial Imagery:
June 2018



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based on the best available sources. The Kenai Peninsula Borough assumes
no responsibility for any errors on this map.

Parcels: 135-243-13 & -29
Applicant: River Resources LLC



LEGEND

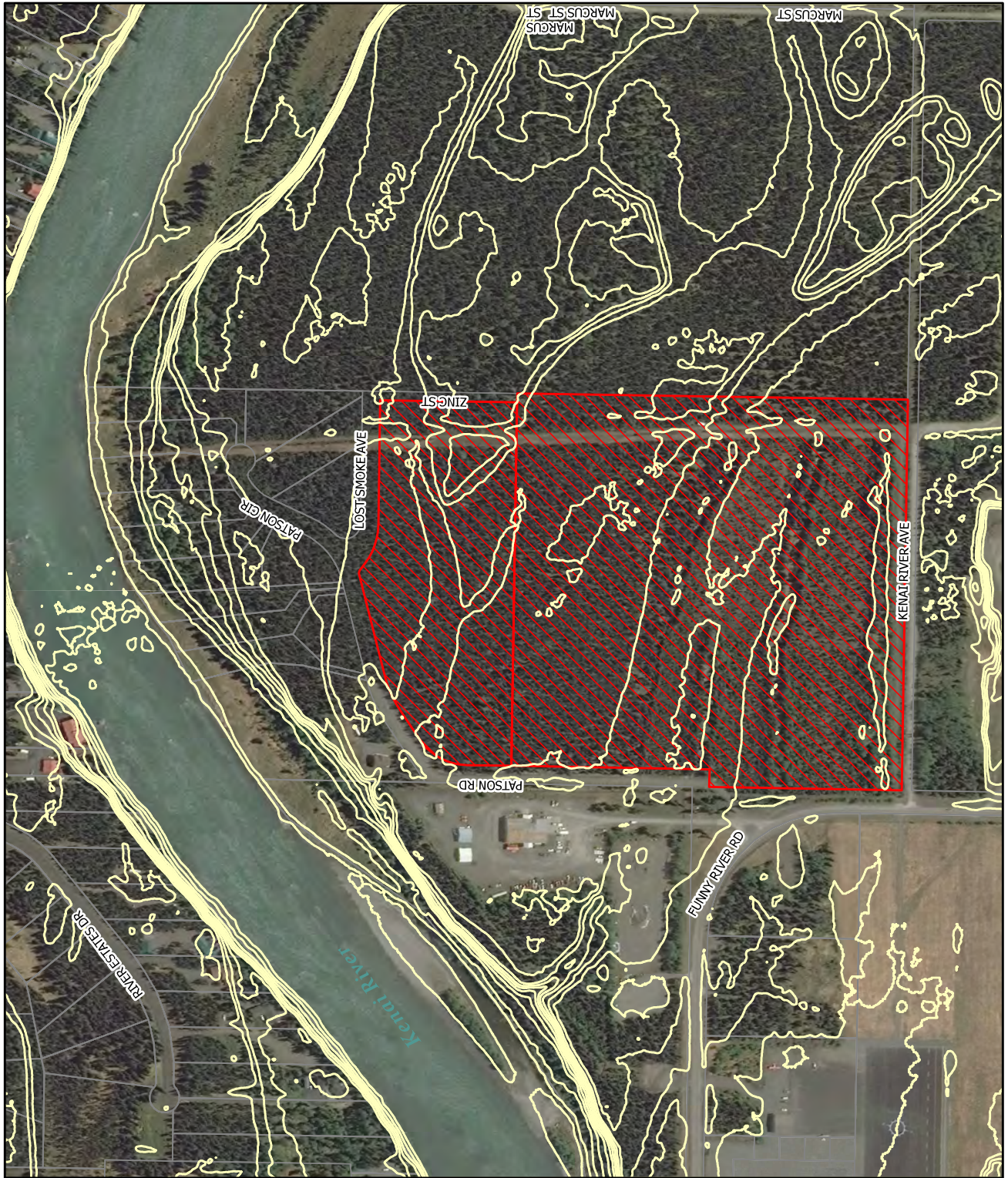
- KPB Tax Parcels
- Contours 4 ft
- Subject Parcels

Aerial Imagery:
June 2018

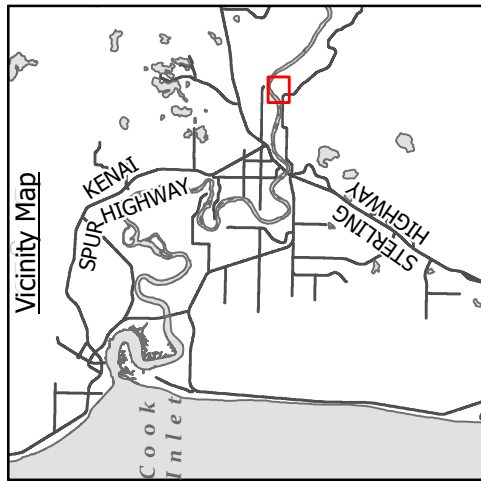
0 200 400 800 Feet

246

The information depicted hereon is a graphical representation only
based on the best available sources. The Kenai Peninsula Borough assumes
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Parcels: 135-243-13 & -29
Applicant: River Resources LLC



LEGEND

- KPB Tax Parcels
- Subject Parcels

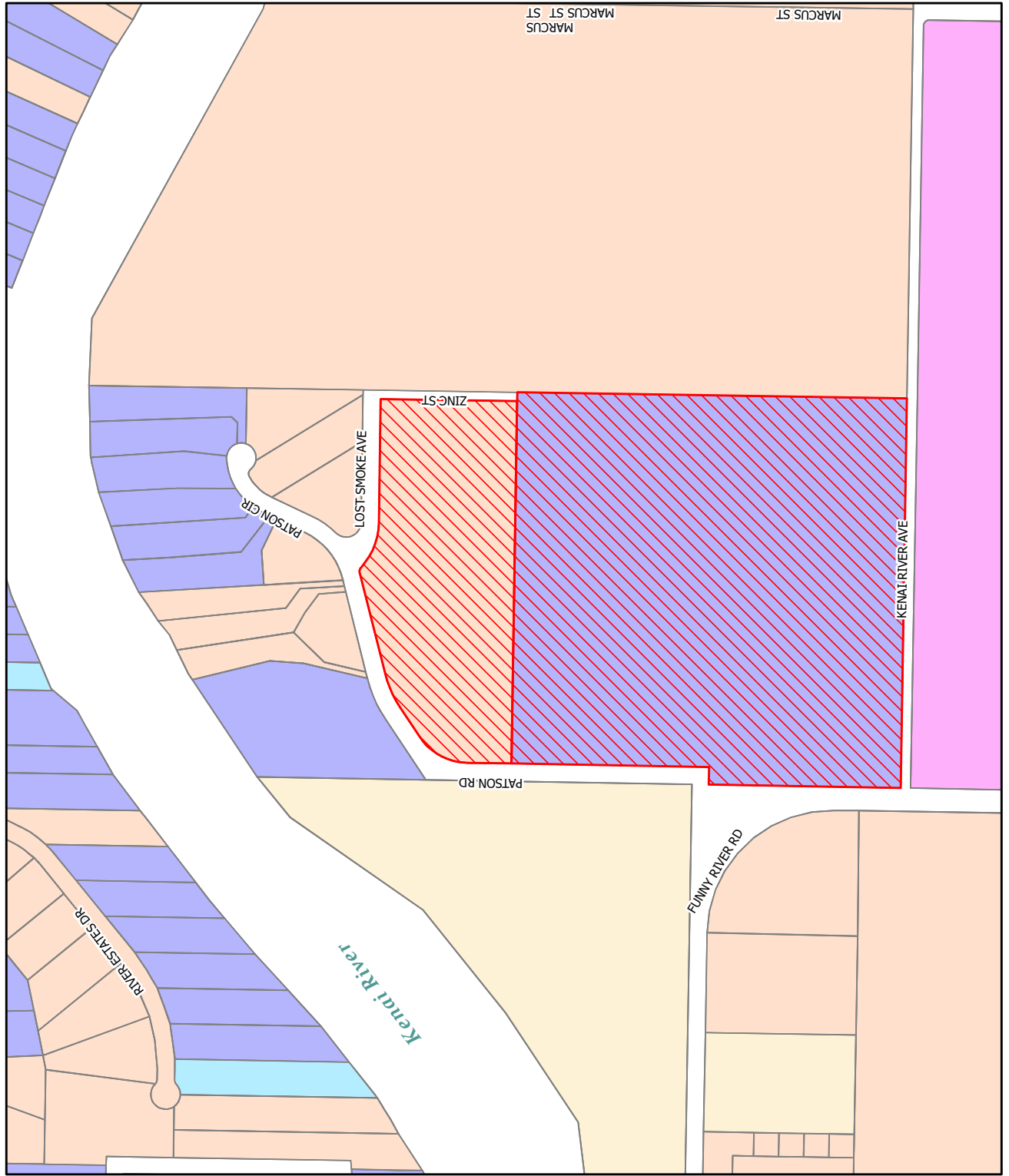
Grouped Assessor's Usage Records

- Vacant
- Residential
- Multiple-Dwelling Residential
- Industrial
- Institutional

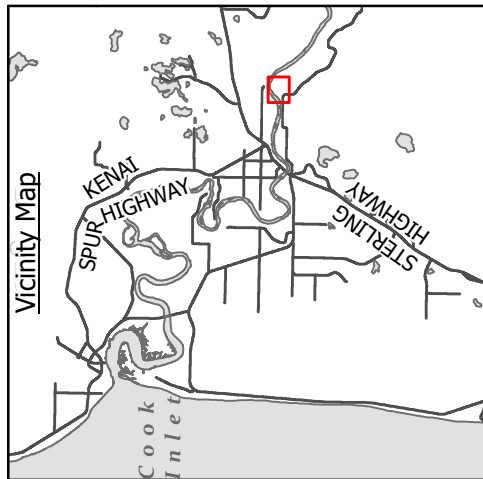


0 200 400 800 Feet

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Parcels: 135-243-13 & -29
Applicant: River Resources LLC



LEGEND

KPB Tax Parcels

Subject Parcels

Ownership

Municipal

Native Allotment

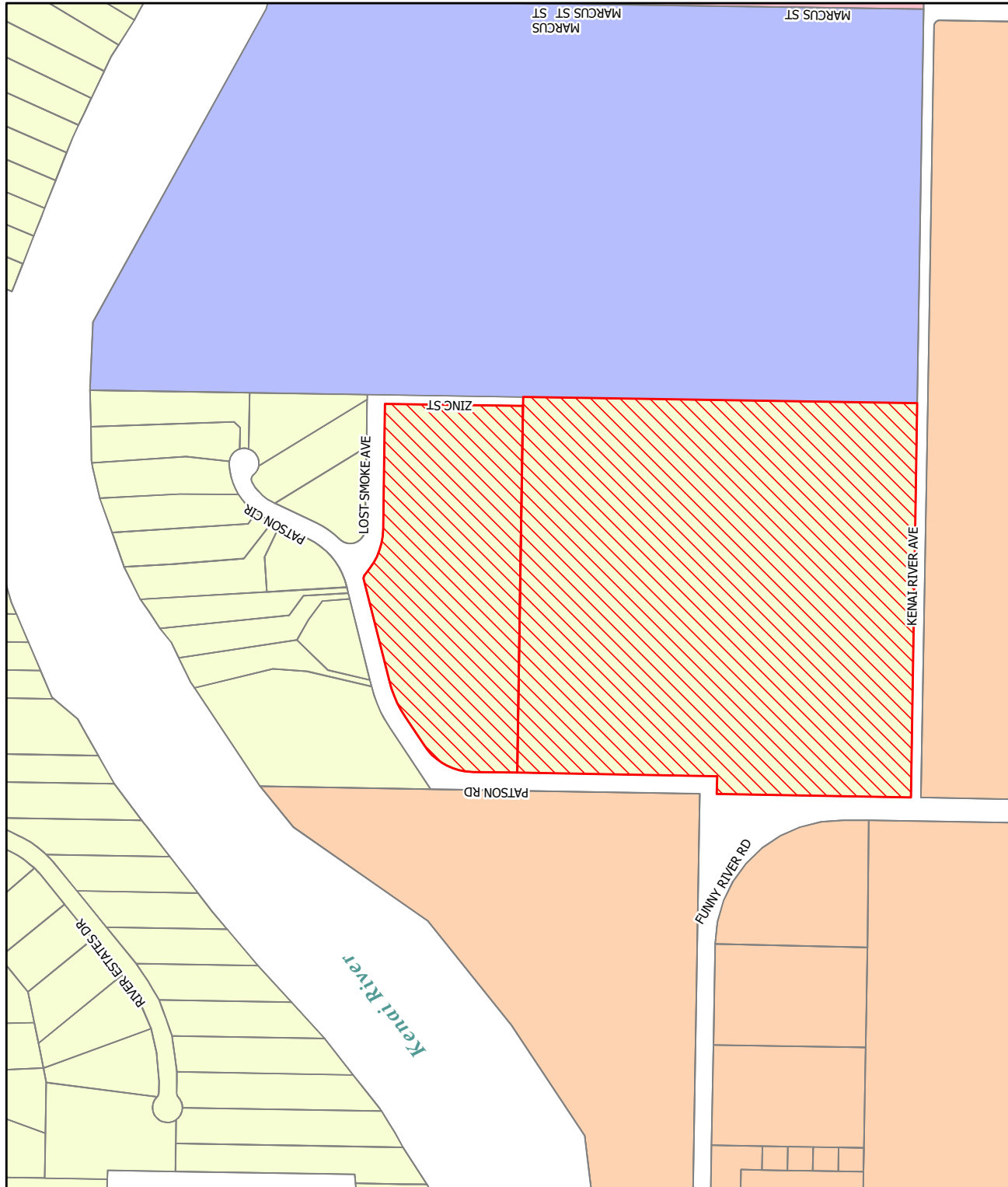
Private

State



0 200 400 800 Feet

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no responsibility for any errors on this map.





Planning Department

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

Charlie Pierce
Borough Mayor

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: River Resources, LLC

Landowner: River Resources, LLC

Parcel Numbers: 135-243-13 & 135-243-29

Legal Description: **T 5N R 10W SEC 34 SEWARD MERIDIAN KN NW1/4 SE1/4 EXCLUDING PATSON PROPERTIES PART 1**

T 05N R 10W SEC 34 SEWARD MERIDIAN KN 2019068 PATSON PROPERTIES 2019 REPLAT TRACT C1

Location: 34386 PATSON RD

Proposed Land Use: The applicant wishes to modify an existing material site permit to allow for sand and gravel extraction in the water table.

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, April 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, April 8, 2021.

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

Bryan Taylor

Planner

Ph: (907) 714-2206

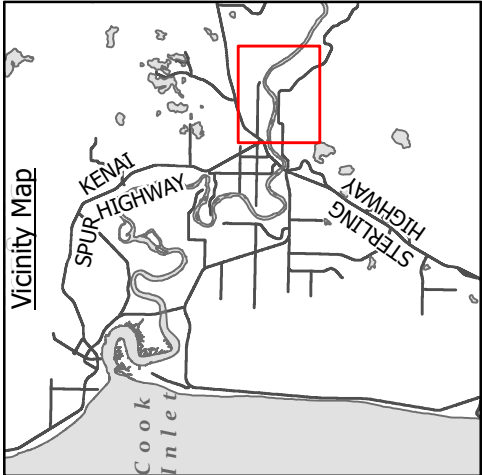
Fx: (907) 714-2378

KENAI PENINSULA BOROUGH
144 North Binkley Street
Soldotna, Alaska 99669



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

Parcels: 135-243-13 & -29
Applicant: River Resources LLC



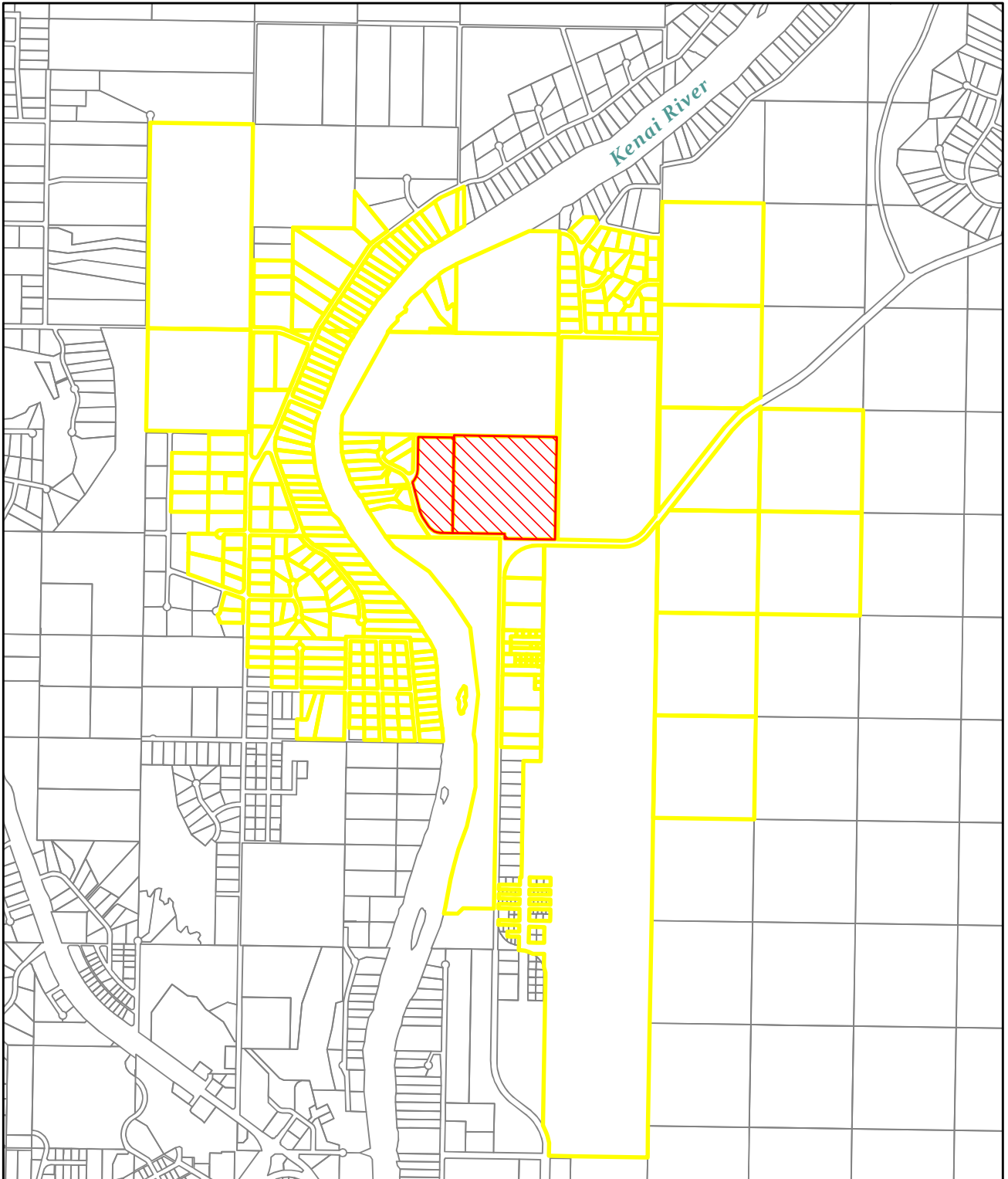
LEGEND

- KPB Tax Parcels (1006)
- Subject Parcels (2)
- Properties 1/2-Mile Radius (285)

0 500 1,000 2,000 Feet

251

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Attachment H

Taylor, Bryan

From: Richard McCartan <rmccartan109@gmail.com>
Sent: Monday, March 29, 2021 5:45 PM
To: Taylor, Bryan
Subject: <EXTERNAL-SENDER>Opposition to conditional land use permit for parcels 135-243-13 & 135-243-29
Attachments: Conditional Use Permit Application, Notice of.pdf

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

We are writing to express our opposition to the granting of the conditional land use permit described in the attached letter from your department..We are landowners within a half mile of the described property. We feel that the proposed gravel pit will degrade both the Kenai River and our property value.

Thank you.

Richard and Michele McCartan
1085 Keystone Drive
Soldotna, AK 99669

Kenai Peninsula Borough

PLANNING COMMISSION DESK PACKET

**April 12, 2021
7:30 p.m.**

Taylor, Bryan

From: Richard McCartan <rmccartan109@gmail.com>
Sent: Monday, March 29, 2021 5:45 PM
To: Taylor, Bryan
Subject: <EXTERNAL-SENDER>Opposition to conditional land use permit for parcels 135-243-13 & 135-243-29
Attachments: Conditional Use Permit Application, Notice of.pdf

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Thank you.

Richard and Michele McCartan
1085 Keystone Drive
Soldotna, AK 99669

From: [William Ferguson](#)
To: [Taylor, Bryan](#)
Subject: <EXTERNAL-SENDER>conditional use permit for River Resources LLC
Date: Thursday, April 8, 2021 4:18:49 PM

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Hello Mr. Taylor, KPB planner

We have previously discussed the gravel pit mining in the water table and the de-watering of the pit area on borough parcels 135-243-13 & 29; I currently request a postponement of a final decision of the requested permit for a time period of 30 and not more than 60 days to acquire (the effected parties in close proximity to the mine site) and independent environmental and hydrological study to insure that our properties and the Kenai river will not be adversely effected. We just recently today have an expert that is ready to assist us in providing an expert and independent opinion, but we need more time to accomplish this!

Please request this request for postponement so that our environmental expert will proceed to provide us a factual study. Please acknowledge the receipt of this email

Respectfully, William J Ferguson & Karen T Ferguson

April 7, 2021

TO: Planning Commission Chairman
KPB PLANNING DEPARTMENT
144 NORTH BINKLEY STREET
SOLDOTNA, ALASKA 99669

FROM: Michael Gravier
34540 Marcus Street
Soldotna, AK 99669

RE: Condition Land Use Permit Application Modification, River Resources, KPB Tax Parcel ID# 135-243-13 & 135-243-29T

My concerns. First, impact to my property, Second, undefined terms in the application, Third, Water quality and possible impact to Kenai River are not addressed in this application

First, impact to my property.

My well is about 0.29 miles from the edge of the gravel pit and the area planned for de-watering. Everyone knows water flows both downhill and from areas of high water content to areas of low water content. This means that water will flow from surrounding areas of higher water content (my well area) to the dewatered area. The McLane Consulting, Inc. letter submitted along with the permit application indicates that there is a “The confining layer consists of dense blue-gray silt (a non-marketable material) and is greater than 30’ thick in this area. It is estimated at approximate elevation 65.0.” My well is a shallow, artesian well 65 feet deep so my water comes from above the clay layer as described and thus could be impacted by the de-watering.



Fig 1. Distance from my well to gravel pit

McLane Consulting, Inc. letter, last paragraph states: “This letter is to certify that the excavation plan included in the CLUP Modification Application will not negatively impact the quantity of the aquifer serving the existing water sources.” Sometimes plans fail. Whether engineer failure, construction site operator’s failure to adhere to the engineered specifications, or just unknown phenomena, plans sometimes fail.

Should something go wrong, has the contractor posted a bond to cover the cost of replacing my water supply as required by:

Borough Code, CHAPTER 21.29. - MATERIAL SITE PERMITS,

21.29.050. - Permit conditions.

4.4. Water source separation.

d. There shall be no dewatering either by pumping, ditching or some other form of draining unless an exemption is granted by the planning commission. The exemption for dewatering may be granted if the operator provides a statement under seal and supporting data from a duly licensed and qualified impartial civil engineer, that the dewatering will not lower any of the surrounding property's water systems and the contractor posts a bond for liability for potential accrued damages.

Second, undefined terms in the application.

The length of time that the de-water is in progress is pertinent to whether my well will be impacted.

McLane Consulting, Inc. document states: "Dewatering will be conducted on a temporary and intermittent basis while extracting below the groundwater table. Excavation dewatering temporarily depresses shallow groundwater within the immediate area of the dewatering but groundwater level will recover to pre-dewatering elevations upon termination of dewatering. Waters from the dewatering process will be outlet within the permit property to re-enter the groundwater table."

The following terms are vague and need further definition. Temporarily, intermittent, immediate area and length of time before water levels recover. The application states water will be "temporarily and intermittent" moved from the pit area and then later returned. How long is temporarily? Intermittent? Impact to surrounding area will vary depending on length of these terms. The difference between water moving away from my well for one week versus one decade would be very different. One day versus, one week or one year, or one decade? This length of time could make a major difference to whether my well would be impacted

The document also states: "dewatering temporarily depresses shallow groundwater within the immediate area of the dewatering...". Does the immediate area include the water table that provides my drinking water? Immediate area needs to be defined.

Request 2. How long before the "groundwater level will recover to pre-dewatering elevations upon termination of dewatering" as stated in the application. Again, a week versus a decade is quite a difference.

Define the terms temporarily, intermittent, immediate area, and recovery time and state the impact to the water table in that area for those times.

Third, Impact to Kenai River Quantity versus Quality

McLane Consulting, Inc. letter, last paragraph states: "This letter is to certify that the excavation plan included in the CLUP Modification Application will not negatively impact the quantity of the aquifer serving the existing water sources." P1 of McLane Consulting, Inc. document in the permit application indicates the flow across the gravel pit/dewatering area is towards the Kenai River. Why doesn't this application indicate the impact on the quality of the groundwater and its flow towards the Kenai River?

Request 3. Please provide the study that shows the silt and other pollutants in the pit area will not reach the Kenai River. Also, any future monitoring of wells and the Kenai River.

Request 4. Monitoring of the Kenai River. As stated above, plans sometimes fail. To detect any impact to the Kenai River, what monitoring will be in place for the length of this gravel pit operation to ensure the Kenai River is not impacted by silt or other pollutants from the pit? For example, Kenai River water testing upstream from the site and then below the site to see what is entering the River from the gravel pit area.



Fig. 2. Approximate ground water flow

Is there a public well in the Borough Maintenance area? Is this well monitored to an extent that would cover any changes from the gravel pit? Is this data available to the public?

From: [Joe n Billie Hardy](#)
To: [Taylor, Bryan](#)
Subject: <EXTERNAL-SENDER>Statement Re: 34386 Patson Road
Date: Thursday, April 8, 2021 4:54:31 PM

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Planning Commission Chairman Blair J. Martin:

Re: application to modify an approved conditional land use permit to allow for sand and gravel extraction in the water table at 34386 Patson Road.

We are requesting a postponement of this hearing for 30-60 days to seek out a professional hydrologist to render an expert opinion on this issue.

We have major concerns, including our water quality, property values, and potential pollution of the nearby Kenai River by hydrocarbon contaminants.

Furthermore, as far as we can discern, the applicant has not requested nor received a required dewatering permit from the State of Alaska DEC.

Thank you for considering this request.

Joseph E. Hardy
Billie Hardy

From: [Michael Hassemer](#)
To: [Taylor, Bryan](#)
Subject: <EXTERNAL-SENDER>Planning Commission hearing regarding 34386 Patson RD
Date: Thursday, April 8, 2021 12:23:02 PM

CAUTION: This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

I wish to formally inform you that our household does not want to see the gravel pit at 34386 Patson Road expanded into the water table.

We appreciate quality well water. After our home's construction at 960 Keystone Drive was complete, our well water tested free from contaminants, and the arsenic level tested as acceptable. Our well is at a minimum depth as many are in our area. Deeper wells in our neighborhood draw different water but are often artesian and thus much more costly to set up.

Our concern regarding the expansion of the gravel pit is the water table's exposure to possible contamination with pollutants and the introduction of higher levels of arsenic. High water arsenic levels already plague many wells in our community.

Mining and mining-related activities are a common source of elevated levels of arsenic in groundwater (see article: <https://pubmed.ncbi.nlm.nih.gov/18982996/>). Because the gravel pit in question has been opened in a residential area already endangers the groundwater. Further exposure of the groundwater only creates a greater risk of contamination of the aquifer. We ask that you deny the request to expand the gravel mining at this location. Gravel is available from many other sites that might not put residential wells at risk of contamination.

Sincerely,

Michael Hassemer

*960 Keystone Dr
Soldotna, AK 99669
907-394-8465*

From: [Lindsey Holland](#)
To: [Taylor, Bryan](#)
Subject: <EXTERNAL-SENDER>Regarding Patson Rd. Gravel Pit
Date: Thursday, April 8, 2021 1:42:04 PM

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

April 8, 2021

To Whom It May Concern,

Regarding 34386 Patson Road, Soldotna, Alaska 99669.

As a homeowner in the vicinity of 34386 Patson Road, I have to put on record how opposed I am to the proposed modifications to the existing material site permit to allow for sand and gravel extraction in the water table. Better yet, how opposed I am to the gravel pit that was allowed to proceed in the first place.

Looking through the minutes of the last meeting to address River Resources, LLC, held on 12/16/2019, which I was unable to attend, the wording and stipulations set forth in the minutes, seems to put the feelings and the opinions of the homeowners in the area on the backburners. It seems we have no room to contest the decisions of the Kenai Peninsula Borough Planning Committee or River Resources, LLC. Is having these meetings a formality of decisions already made? I know how much opposition there was to the gravel pit in the first place and I wish I had been able to be there to speak up.

I would like to address the water table issue. I hope I am understanding this right, there are at least three wells within 300 feet of the permit area, but none are within 100 feet of the excavation area. So how far away are these wells? 101 feet from the excavation site? Big machinery is messy, it leaks, it stinks, it is loud, and having this mess even 300 feet from my water source would make me leery of what I could potentially have in my water due to this site so close to my well. That isn't even touching on how close the Kenai River is in proximity to the gravel pit. What kind of damage will be done in the 40 years of excavation this close to one of the most pristine waters in the State of Alaska? According to the minutes, River Resources, LLC would be monitored and testing would be done regularly, but what is regularly? Weekly, monthly, yearly? How long could a problem go undetected? Digging away nature's defenses and natural protections should never have been an option in this area. A distance of 350 feet from the proposed material site is nothing in the grand scheme of things. That is actually a little too close for comfort if you ask me. I believe the KPB failed here. There are plenty of places where a gravel pit could have gone, but in a neighborhood on the banks of the Kenai River should not have ever been one of them. These are some of the questions that need to be addressed before moving forward with such an invasive situation. We, as citizens and taxpayers of Soldotna, and homeowners affected by this, should be given all of the answers to our questions. We should have a certain amount of time to thoroughly investigate. This is not a situation that should be taken lightly, and certainly not a decision that should be made on April 12 until we are adequately informed with all of the facts. Please grant us a continuance on this

matter. This is something that would potentially affect the property values, the health of people, and the River and it's fishery. It is funny how you can't get approved to put non-invasive removable docks in the river, or how permits have to be issued to cut spruce kill on the banks, but how easy it is to get approved for a gravel pit 100-300 ft. from people's drinking water and one of the most important fisheries and most beautiful places in Alaska.

ThankYou,

Lindsey and Nathan Holland
41750 River Park Dr.
Soldotna, AK 99669

From: [Rick](#)
To: [Taylor, Bryan](#)
Subject: <EXTERNAL-SENDER>SUBJECT: Modification request for 34386 PATSON ROAD
Date: Thursday, April 8, 2021 7:54:35 PM

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Planning Commission Chairman
Blair J Martin:

RE: Application to modify land use permit to allow sand and gravel extraction in the water table.

We believe further information is needed on the impact this may have in our subdivision water supply and the impact it may have on the Kenai River and it's habitat. What safety nets will be in place should an incident occur?

We are requesting a 30-60 day postponement of the scheduled meeting set for 4/12/2021.

Thank You,
Rick and Lillian Weed

Sent from [Mail](#) for Windows 10

It has come to our attention that River Resources LLC, wishes to modify an existing material site to allow sand and gravel extraction in the water table.

This cannot be allowed; we have a shallow well that was drilled within the last 4 years to a depth of approx. 31 foot. Any modifications in this aquifer opens this to numerous potential issues including but not limited to:

- 1) Spills and leakage from trucks and equipment in the vicinity. There is no containment to prevent this to my knowledge
 - 2) Draining the water table
 - 3) Contamination due to exposure
-
- 1) Water table/aquifer survey and or study is inaccurate and does not contain current data. How deep is the upper table, where does it start and where does it lay? How deep is this aquifer?
 - a. The "Generalized Map of Water – Table Contour" I have from DEC is from the 70's
 - b. The ADNRC WELTs well data does not accurately show River Park estates including my well. My well is drilled to 31 feet – the depth they wish to excavate.
 - i. My well was drilled by Rick with Kraxberger Drilling Inc, he said he drilled four wells in this subdivision to the depth of 30 foot, and he does not enter in the WELT program There are also four others wells drilled by other local drillers that are not entered into WELTs.
 - c. In the Planning commission minutes from Dec 16, 2019 – it states, "An undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet from lake, river, stream or other water body" Please define water body. According to the document "RIVER RESOURCES, LLC FUNNY RIVER – PATSON CLUP MODIFICATION" they have penetrated this barrier vertically.
 - d. It also states "The applicant has not proposed to excavate in the water table" what changed that now they want to?
 - 2) Have water rights been addressed?
 - a. I have applied for my Water Rights and Beneficial use of Water applications in compliance with **AS 46.15** and was received by Alaska DNR on April 1
 - i. **AS 46.15.010** The Department of Natural Resources shall determine and adjudicate rights in water of the state and its appropriation and distribution
 - ii. **AS 46.15.030** Wherever occurring in a natural state, the water is reserved to the people for common use and is subjected to appropriation and beneficial use and to reservation of instream flows and levels of water
 - 3) In the document from Mclane consulting – the five test wells were all in the 100-foot range and monitored – there is no documentation for the shallow aquifer. It states the "excavation is only proposed in the upper unconfined aquifer". Again, it mentions well drilling logs, that are not accurate nor complete as I mentioned earlier.
 - 4) Kenai Peninsula Borough KPB Code 21.25-.29 states "Does not enter the water table"

I am requesting River Resource LLC cover a thorough water testing including gas/deisel/organic testing bi-annually for a period of 36 months

Mike and Karol Pomplin
41918 River Park Drive
Soldotna Alaska 99669

Well Drilling Log — Kraxberger Drilling Inc. — (907) 262-4720

35055 Gas Well Road

Soldotna, AK 99669

CLIENTNAME: ZWACK JAMES

LOGID: 5851

LEGAL1: LOT 3 BLK 2

PUMPINFO:

LEGAL2: RIVER PARK ESTATES

PARCEL#: 13524139

ROADAREA: 41750 RIVER PARK DR

DIAMETER: 8

RIGTYPE: AR

CASINGTYPE: STEEL

GROUT:

CITY: FUNNY RIVER

BUILDERNAME:

WELLCOMPLETION:

DEPTH: 30

DATE: 4/12/17

DRILLER: LB

IRON PPM: 4.5PPM

YIELDGPM: 16

SCREEN:

STATICLEVEL: 21

CLASS:

CASINGLENGTH: 31

LATITUDE:

CASINGSTICKUP: 3

LONGITUDE:

DRILLING REPORT:

0-1 TOPSOIL

1-3 CLAY SILT AND SAND

3-6 TAN CLAY AND SILT

6-7 SAND SOME ROCK

7-8 SAND AND SMALL GRAVEL

8-24 COURSE SAND AND GRAVEL

24-27 WET GRAVEL AND SAND

27-28 WATER GRAVEL

28-30 GRAVEL WITH CLAY



ADNR wells

Shows current wells in
River park Estates

3 - wells noted in WELTs

Kraxberger has drilled 4 wells that
are around 30 ft depth.

There are 4 other wells drilled by other
drillers for a total of 8 wells at
30 ft.

267

place in the material site.

Excavation in the water table. 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. The applicant has not proposed to excavate in the water table.

Waterbodies. 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. The Kenai River and its associated floodplain and riparian wetland is approximately 350 north of the proposed material site at its closest point.

8. Fuel storage. 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. Operations shall be conducted in a manner so as not to damage borough roads.

A. The submitted site plan indicates that the haul route will be directly to Funny River Road, a state maintained road. Two alternate access points are proposed to Kenai River Avenue, a Soldotna City maintained road, then to Funny River Road.

10. Subdivision. 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. On November 12, 2019, the KPB Plat Committee approved a preliminary plat for these parcels.

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
SUPPORT SERVICES DIVISION
FINANCIAL SERVICES SECTION
550 W 7TH AVE SUITE 1410
ANCHORAGE AK 99501-3561
(907) 269-8500

REC DATE - AGREEMENT NUMBER -- CUST NO RECEIPT DESCRIPTION
04/05/2021 LAS 33609 64937 4751892 FILING FEE - WATER

MICHAEL W POMPLIN
41918 RIVER PARK DRIVE
SOLDOTNA AK 99669

	CASH AMOUNT	\$0.00
CHECK NUMBER 2087	RECEIPTED AMOUNT	\$50.00

REMITTER: MICHAEL W POMPLIN
41918 RIVER PARK DRIVE
SOLDOTNA AK 99669

COMMENTS: JK WATER RIGHT SBU FEE

RECEIPT - DO NOT PAY

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
SUPPORT SERVICES DIVISION
FINANCIAL SERVICES SECTION
550 W 7TH AVE SUITE 1410
ANCHORAGE AK 99501-3561
(907) 269-8500

REC DATE - AGREEMENT NUMBER -- CUST NO RECEIPT DESCRIPTION
04/05/2021 LAS 33609 64937 4751890 FILING FEE - WATER

MICHAEL W POMPLIN
41918 RIVER PARK DRIVE
SOLDOTNA AK 99669

	CASH AMOUNT	\$0.00
CHECK NUMBER 2086	RECEIPTED AMOUNT	\$100.00

REMITTER: MICHAEL POMPLIN
41918 RIVER PARK DRIVE
SOLDOTNA AK 99669

COMMENTS: JK WATER RIGHT APP FEE

RECEIPT - DO NOT PAY



Case Law Alaska Supreme Court Opinions	Statutes, Rules & Regulations	Constitutions	Miscellaneous	Search
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Alaska Statutes.

Title 46. Water, Air, Energy, and Environmental Conservation

Chapter 15. Water Use Act

Section 10. Determination of Water Rights.

previous: Chapter 15. Water Use Act

next: Section 20. Authority and Duties of the Commissioner.

AS 46.15.010. Determination of Water Rights.

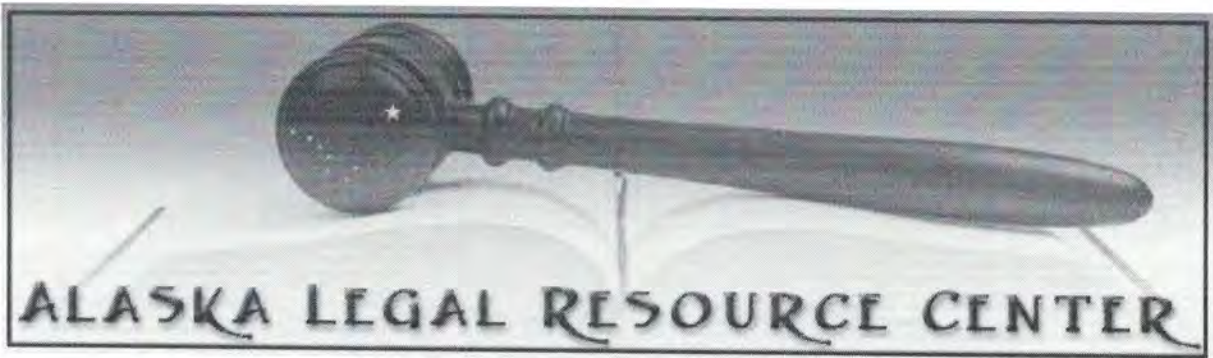
The Department of Natural Resources shall determine and adjudicate rights in the water of the state, and in its appropriation and distribution.

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Note to HTML Version:

This version of the Alaska Statutes is current through December, 2007. The Alaska Statutes were automatically converted to HTML from a plain text format. Every effort has been made to ensure their accuracy, but this can not be guaranteed. *If it is critical that the precise terms of the Alaska Statutes be known, it is recommended that more formal sources be consulted.* For statutes adopted after the effective date of these statutes, see, Alaska State Legislature If any errors are found, please e-mail Touch N' Go systems at E-mail. We hope you find this information useful.

This page has been updated: 04/23/2015 13:27:45



Case Law	Statutes, Rules & Regulations	Constitutions	Miscellaneous	Search
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[Alaska Statutes.](#)

[Title 46.](#) Water, Air, Energy, and Environmental Conservation

[Chapter 15.](#) Water Use Act

[Section 30.](#) Water Reserved to the People.

previous: [Section 20.](#) Authority and Duties of the Commissioner.

next: [Section 35.](#) Appropriation or Removal of Water Out of Hydrologic Units to Other Hydrologic Units; Water Conservation Fee; Reservation of Water For Fish.

[AS 46.15.030. Water Reserved to the People.](#)

[Wherever occurring in a natural state, the water is reserved to](#) the people for common use and is subject to appropriation and beneficial use and to reservation of instream flows and levels of water, as provided in this chapter.

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Note to HTML Version:

This version of the Alaska Statutes is current through December, 2007. The Alaska Statutes were automatically converted to HTML from a plain text format. Every effort has been made to ensure their accuracy, but this can not be guaranteed. *If it is critical that the precise terms of the Alaska Statutes be known, it is recommended that more formal sources be consulted.* For statutes adopted after the effective date of these statutes, see, [Alaska State Legislature](#) If any errors are found, please e-mail Touch N' Go systems at [E-mail](#). We hope you find this information useful.

This page has been updated: 04/23/2015 13:27:45

A Water Right *State Law Provisions*

- Water is property of the State:

Alaska Statute 46.15.010 – Determination of Water Rights

The Department of Natural Resources shall determine and adjudicate rights in the water of the state, and in its appropriation and distribution.

Alaska Statute 46.15.030 – Water Reserved to the People

Wherever occurring in a natural state, the water is reserved to the people for common use and is subject to appropriation and beneficial use and to reservation of instream flows and levels of water...

Water Right Right to Use Water

- Specific quantity (rate and amount)
- Available and unappropriated water
- From an identified source
- Diverted from a specific location
- Used at a specific place
- In priority
- For a beneficial use recognized by law
- During an identified period of time
- Without waste

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WATER

PERMIT
TO
APPROPRIATE WATER
LAS. 15757

THE STATE OF ALASKA UNDER AS 44.15, THE ALASKA WATER USE ACT,
AND THE REGULATIONS ADOPTED UNDER IT, GRANTS TO:

SIA (ANCHORAGE DISTRICT), UNIT:
1881 ABBOTT LOOP RD
ANCHORAGE, AK. 99507

THE RIGHT TO DEVELOP THE FOLLOWING USE OF WATER:

SOURCE: DRILLED WELL	PRIORITY DATE: 01/26/1994
QUANTITY: 8000.0 GAL/DAY	
USE: REC SERVICES	TRNG JAN 01 THRU DEC 31

THE LOCATION OF THIS WATER SOURCE IS:

A DRILLED WELL, TO BE DEVELOPED, LOCATED WITHIN THE BELOW-DESCRIBED
PARCEL OF PROPERTY.

THE LOCATION TO WHICH THIS WATER RIGHT ADVERTAINS IS:

A PORTION OF CANSWELL TRACT NEAR THE SE END OF CANSWELL AIRSTRIP
WITHIN E/4E/1/4E/1/4E/1/4 SECTION 3, TOWNSHIP 12 NORTH, RANGE 3
WEST, EWARD MERIDIAN, ANCHORAGE RECORDING DISTRICT, THIRD JUDICIAL
DISTRICT, STATE OF ALASKA.

CHANGES IN THE NATURAL STATE OF WATER ARE TO BE MADE IN THE MANNER AND
ONLY FOR THE PURPOSES STATED IN THIS PERMIT. THIS PERMIT IS SUBJECT
TO THE PERTINENT STATUTORY PROVISIONS IN AS 44.15, ADMINISTRATIVE
REGULATIONS IN 11 AAC 95, AND THE FOLLOWING CONDITIONS:

THE HOLDER OF THIS PERMIT SHALL:

FOLLOW ACCEPTABLE ENGINEERING STANDARDS IN EXERCISING THE PRIVILEGE
GRANTED BY THIS PERMIT.

DEFEND AND INDEMNIFY THE STATE AGAINST AND HOLD IT HARMLESS FROM
ANY AND ALL CLAIMS, DAMAGES, LITIGATION, LOSS, LIABILITY AND
EXPENSE FOR INJURY TO OR DEATH OF PERSONS AND DAMAGES TO OR LOSS
OF PROPERTY ARISING OUT OF OR CONNECTED WITH THE EXERCISE OF THE
PRIVILEGE GRANTED BY THIS PERMIT.

COMPLY WITH ALL APPLICABLE LAWS, REGULATIONS, AND CONDITIONS AND KEEP

PAGE 1

10-74-1b
5

•Quantity of water: *gallons per minute (GPM); gallons per day (GPD), acre-feet per annum (AFA); cubic feet per second (CFS); miner's inches* (old standard varied by state – in AZ, 1 mi = 11.22 GPM; in NV, 40 mi = 1 CFS; in CO, 1 mi = .026 CFS); **the GPD quantification is used in Alaska**

•Source: The water right will specify whether the diversion is from a surface stream, a lake/pond, a spring, or groundwater from a specific aquifer.

•Location: The water right will provide a legal description for the point of diversion (POD) and place(s) of use (POU).

•Priority date: A priority date is assigned to a water right, based upon when the beneficial use began (vested water right) or when the water right application was filed (new water rights).

•Recognized beneficial uses are usually listed in state water statutes.

•Period of use: The water right defines the annual dates of use; for example, year-round use (domestic) or seasonal use (irrigation).

•**Water is to be used for a beneficial use, without waste.** “Waste” is the amount of water in excess of the minimum needed to support the beneficial use authorized on the water right. Waste is not well-defined by statute or rule, is often overlooked and is rarely enforced.

DIVISION OF MINING, LAND AND WATER
WATER RESOURCES SECTION

dnr.alaska.gov/mlw/water/



Anchorage Office 550 West 7 th Avenue, Suite 1020 Anchorage, AK 99501-3562 (907) 269-8600 Fax: (907) 269-8904	Juneau Office PO Box 111020 Juneau, AK 99811-1020 400 Willoughby, #400 (907) 465-3400 Fax: (907) 586-2954	Fairbanks Office 3700 Airport Way Fairbanks, AK 99709 (907) 451-2705 Fax: (907) 451-2703	For ADNR Use Only Date/Time Stamp
ADL / LAS # _____			

For ADNR Use Only
Receipt Type WR

STATEMENT OF BENEFICIAL USE OF WATER

Check box that applies:

- ☐ Construction of structures authorized under the above-numbered Permit to Appropriate Water, of which I am the lawful holder, is complete and beneficial use of water is established. I hereby request that a Certificate of Appropriation be issued to me. I certify that I have complied with all conditions on the permit.
- ☒ I have completed structures for, and have been beneficially using, less than a significant amount of water as defined in 11 AAC 93.035(a) and (b). I have completed the attached Application for Water Right and request issuance of a Permit and Certificate of Appropriation.

ESTABLISHED WATER USE		
Amount(s) of Water Use	Type(s) of Water Use	Water Use Period(s)
500	Domestic	Jan to Dec - Annually

If locations or structures for withdrawing, conveying, and using water are not as described in your Permit to Appropriate Water, complete the next 3 blocks and attach a sketch or plans of the water system.


Location of Water Use Area(s) 41918 River Park Drive Soldotna, Alaska 99669	
Point(s) of Water Withdrawal 41918 River Park Drive Soldotna, Alaska 99669	T 5N R 10W Sec 35 Seward Meridian KN0840210 River Park Estates Sub lot 3 blk 1
Description of Structures 30 ft wel drilled for residential use	

AS 38.05.035(a) authorizes the director to decide what information is needed to process an application for the sale or use of state land and resources. This information is made a part of the state public land records and becomes public information under AS 40.25.110 and 40.25.120 (unless the information qualifies for confidentiality under AS 38.05.035(a)(8) and confidentiality is requested, AS 43.05.230, or AS 45.48). Public information is open to inspection by you or any member of the public. A person who is the subject of the information may challenge its accuracy or completeness under AS 44.99.310, by giving a written description of the challenged information, the changes needed to correct it, and a name and address where the person can be reached. False statements made in an application for a benefit are punishable under AS 11.56.210. In submitting this form, the applicant agrees with the Department to use "electronic" means to conduct "transactions" (as those terms are used in the Uniform Electronic Transactions Act, AS 09.80.010 – AS 09.80.195) that relate to this form and that the Department need not retain the original paper form of this record: the department may retain this record as an electronic record and destroy the original.

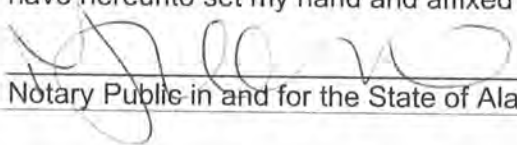
SIGNATURE

I certify under penalty of perjury that the foregoing is a true and accurate statement of the extent to which the above water use has been developed.

United States of America
State of Alaska
3rd Judicial District


Signature

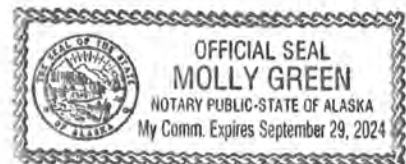
This is to certify that on 31 day of March, 2021 before me personally appeared Michael Pomplin known to be the person described in and who executed this document and acknowledged voluntarily signing the same. In testimony whereof, I have hereunto set my hand and affixed my official seal, on the day and year shown above.


Notary Public in and for the State of Alaska

9-29-24
Date commission expires

Fee required by regulation 11 AAC 05.260

- **\$50** including recordation of the certificate of appropriation by the department
- Make checks payable to "Department of Natural Resources."





Planning Department

 HOME	 EMERGENCY SERVICES	 SERVICES	 COMMUNITY	 OPPORTUNITIES	 RESEARCH
---	---	---	--	--	---

You are here: [Home](#) ▶ [Planning](#) ▶ [Material Site Information](#)

Material Site Information

KPB Code of Ordinances Chapter 21.29 (Adopted as Ordinance 2006-01, August 1, 2006) regulates material extraction, materials processing, and excavation in the water table.

If you are planning to dig on your property, please read the information below to determine if a borough permit is required.

The following types of material extraction activities does not require a borough permit:

Material extraction which disturbs a **cumulative area of less than one acre**, that is not in a mapped flood plain, or subject to 21.29.010(B), **does not enter the water table**, and does not cross property boundaries. There will be no excavation within 20 feet of a right-of-way, or within 10 feet of a lot line.

Material extraction taking place on dewatered bars within the confines of the Snow River and the streams within the Seward-Bear Creek Flood Service Area. However, operators subject to this exemption shall provide the planning department with the information required by KPB 21.29.030(A)(1), (2), (6), (7) and a current flood plain development permit prior to beginning operations.

Extraction on a prior existing use or "grandfathered" parcel pursuant to KPB 21.29.120.

The following types of material extraction activities requires a borough permit:

A **counter permit** is required for material extraction which disturbs no more than 2.5 cumulative acres and **does not enter the water table**. Counter permits are approved by the planning director, and are not subject to the notice requirements or planning commission approval of KPB 21.25.060. A counter permit is valid for a period of 12 months, with a possible 12-month extension.

Counter Permit application - Application Fee: \$50.00

A **conditional land use permit** (CLUP) is required for material extraction which disturbs **more than 2.5 cumulative acres**, or material extraction of **any size that enters the water table**. A CLUP is required for materials processing. A CLUP is valid for a period of five years.

Conditional Land Use Permit application - Application Fee: \$300.00

For more information regarding material site permits,
please contact Planning Department

WATER USE ACT

ALASKA STATUTE 46.15

Sec. 46.15.140.

Abandonment, Forfeiture, and Reversion of Appropriation.

(a) The commissioner may declare an appropriation to be wholly or partially abandoned and revoke or amend the certificate of appropriation as to the unused quantity of water if an appropriator, with intention to abandon, does not make beneficial use of all or a part of the appropriated water.

(b) The commissioner may declare that an appropriator has wholly or partially forfeited an appropriation, and shall revoke the certificate of appropriation in whole or in part if the appropriator voluntarily fails or neglects, without sufficient cause, to make use of all or a part of the appropriated water for a period of five successive years. A person who has a permit to develop a use of water including but not limited to residential, agricultural, industrial, or mining use, but has not developed that property to the point of water use before permit expiration, may file a request for permit extension with the commissioner.

(c) Failure to use beneficially for five successive years all or part of the water granted in a certificate of appropriation raises a rebuttable presumption that the appropriator has abandoned or forfeited the right to use the unused quantity of water and shifts to the appropriator the burden to prove otherwise to the satisfaction of the commissioner.

(d) If the commissioner revokes a certificate in whole or in part, the portion of the certificate covered by the revocation reverts to the state and the water becomes unappropriated water.

Sec. 46.15.160.

Transfer and Change of Appropriations.

(a) The right to use water under an appropriation or permit shall be appurtenant to the land or place where it has been or is to be beneficially used, provided, that water supplied by one person to another person's property is not appurtenant to the property unless the parties so intend. An appurtenant water right shall pass with a conveyance of the land, or transfer, or by operation of law unless specifically exempted from the conveyance.

(b) With the permission of the commissioner, all or any part of an appropriation may be severed from the land to which it is appurtenant, may be sold, leased or transferred for other purposes or to other land and be made appurtenant to other land. A permit or certificate or a deed, lease, contract, assignment of permit or other instrument transferring an appropriation must be filed in the office of the commissioner and a certified copy of the instrument must be recorded in the recorder's office of the recording district in which the appropriation is located.

Revised (3/02)

addressed in the permit. Mine sites that affect levee-protected areas may require a U.S. Army Corps of Engineers Section 404 permit.

4.1.3 Groundwater and Working Below the Water Table

In general, it is recommended that mines maintain a minimum of four (4) feet of vertical separation distance between extraction operations and the seasonal high water table, and that they restrict activities that could significantly change the natural groundwater gradient.

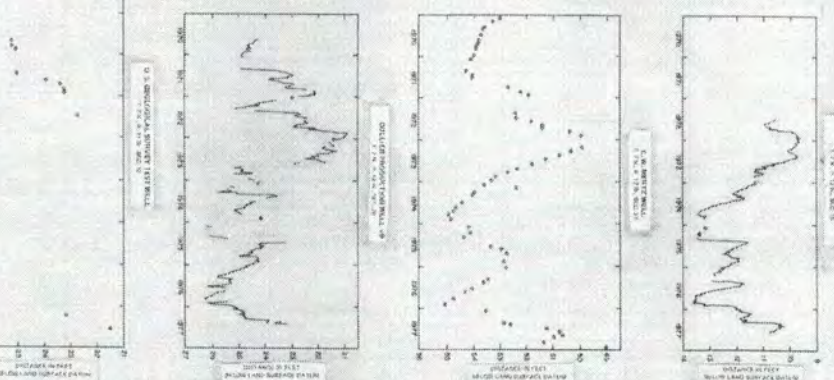
If mining must be done below the water table, groundwater may become exposed. Upon issuance of a local government conditional use permit, if available, allowing extraction of materials from below the seasonal high water table, no extraction should be performed below the first aquitard encountered within the saturated zone. During the active operation phase of a gravel pit, the top portion of the groundwater is considered treatment works, as authorized under 18 AAC 60 or 18 AAC 72, as long as it does not come in contact with hazardous contaminants. When operation at the gravel pit ceases, the exposed groundwater will once again become a water of the state. At that time, the water will need to comply with water quality standards based on the applicable designed use.

Notice to discharge is required under the Excavation Dewatering General Permit (EDGP) for discharges to land of equal to or greater than 250,000 gallons, or discharges to land at a rate equal to or greater than 40 gallons per minute. For discharges less than this volume and rate, notice under the Excavation Dewatering General Permit is not required; however, the discharge requirements in the permit must be followed. The Multi-Sector General Permit (MSGP) covers excavation pit dewatering discharges to surface waters. However, if an operation is within 1 mile from a contaminated site, the MSGP does not apply and authorization under the EDGP may be required. The DEC will provide more information on conditions and best management practices for a specific site in its permit. If excavation dewatering is needed, BMPs will be required to minimize adverse impacts to the receiving waters resulting from dewatering activities. Some general BMPs for dewatering are presented in Chapter 8.

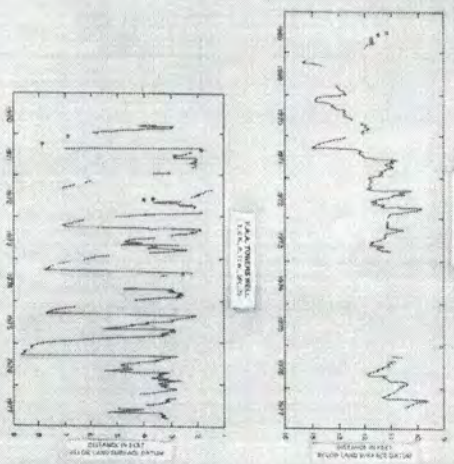
4.2 Monitoring

Monitoring is the best way to measure the impact of a mining operation on surface water or groundwater quality, and is often required by permit. If required by permit, parameters to be monitored will be specified. Monitored parameters often include:

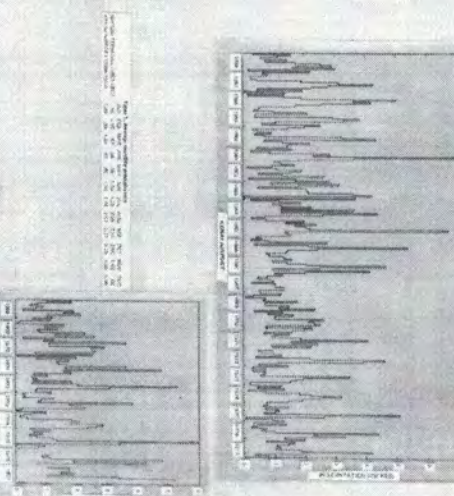
- surface water and groundwater elevation,
- surface water and groundwater flow,
- surface water and groundwater temperature,
- turbidity,
- pH,
- specific conductance, and
- likely contaminants.



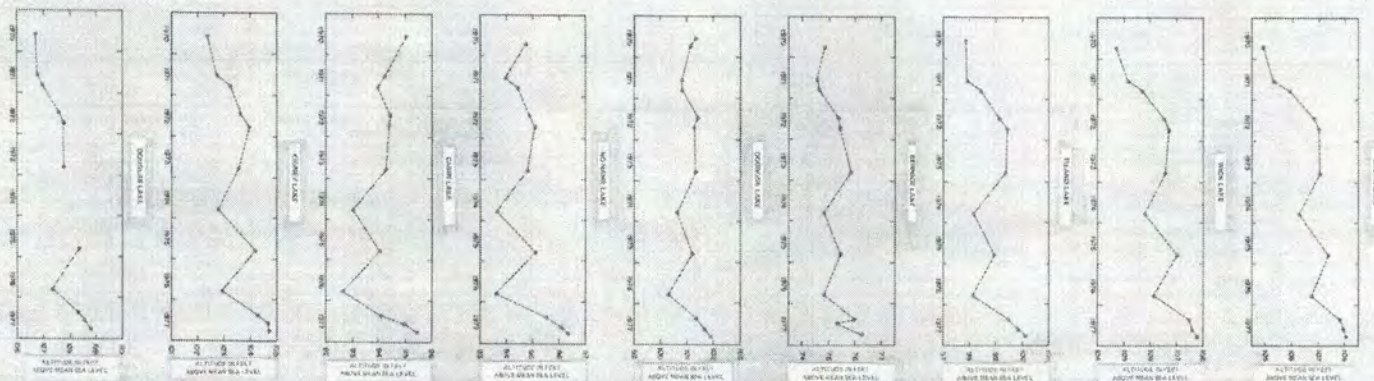
GENERALIZED MAP OF WATER-TABLE CONTOURS



WELL HYDROGRAPHS



LAKE HYDROGRAPHS



SELECTED HYDROLOGIC DATA RELATED TO THE WATER-TABLE AQUIFER OF THE NORTH KENAI AREA, ALASKA

BY MARK D. HOWLAND & GEOFFREY W. FREETHY

U.S. GEOLOGICAL SURVEY



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Natural Resources

DIVISION OF MINING, LAND & WATER
Water Resources Section

550 West 7th Avenue, Suite 1020
Anchorage, AK 99501-3579
Main: 907.269.8600
TTY: 711 or 800.770.8973
Fax: 907.269.8904

April 6, 2021

Michael & Karol Pomplin
41918 River Park Drive
Soldotna, AK 99669

RE: Application for Water Right: Case File - LAS 33609

Dear Mr. & Mrs. Pomplin:

The Department of Natural Resources (DNR), Water Resources Section, received your "Application for Water Right" on April 1, 2021 and initiated case file LAS 33609. The provisional priority date of any eventual water right resulting from this application, when it is adjudicated and if a permit to appropriate water or a certificate of appropriation is granted, will be April 1, 2021.

It has been determined that your "Application for Water Right" is complete per 11 AAC 93.040. However, this does not prevent the DNR from requesting additional information in the future, before or while your case file is being adjudicated. Applications are generally adjudicated based on date of receipt.

Please be aware that this office has a backlog of applications and it cannot be determined at this time when a staff member will be able to begin adjudication of your application. If you have any questions concerning your application, please feel free to contact this office at 907.269.8600 and refer to the LAS number referenced above. Thank you for participating in securing water rights under the Alaska Water Use Act.

Sincerely,


Christine Ballard
Natural Resource Specialist II

From: [Mike Pomplin](#)
To: [Taylor, Bryan](#)
Subject: Re: <EXTERNAL-SENDER>Planning meeting - Proposed land use - Sand and Gravel extraction
Date: Thursday, April 8, 2021 3:21:23 PM

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Bryan,

One other thing my wife and I would like is a 30-60 day continuance for McClane or someone to do a survey of up the upper table and look into wells it will affect within the 1/2 radius

Mike

On Apr 8, 2021, at 8:40 AM, Mike Pomplin <j3cubpilot@yahoo.com> wrote:

Thank you for the confirmation

Mike

On Apr 8, 2021, at 8:36 AM, Taylor, Bryan <BTaylor@kpb.us> wrote:

Mike and Karol,

Your comment has been received and will be provided to the Planning Commission for review.

Thank you,

Bryan Taylor
Planner
(907) 714-2206
btaylor@kpb.us

<image002.png>

From: Mike Pomplin <j3cubpilot@yahoo.com>

Sent: Wednesday, April 7, 2021 8:02 PM

To: Taylor, Bryan <BTaylor@kpb.us>

Subject: <EXTERNAL-SENDER>Planning meeting - Proposed land use - Sand and Gravel extraction

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Attached are documents I want submitted for the April 12 Planning meeting in regards to the Proposed Land Use modification.

This is the cover letter I have written up and is saved as a PDF along with supporting documents

It has come to our attention that River Resources LLC, wishes to modify an existing material site to allow sand and gravel extraction in the water table.

This cannot be allowed; we have a shallow well that was drilled within the last 4 years to a depth of approx. 31 foot. Any modifications in this aquifer opens this to numerous potential issues including but not limited to:

1) Spills and leakage from trucks and equipment in the vicinity. There is no containment to prevent this to my knowledge

2) Draining the water table

3) Contamination due to exposure

1) Water table/aquifer survey and or study is inaccurate and does not contain current data. How deep is the upper table, where does it start and where does it lay? How deep is this aquifer?

a. The "Generalized Map of Water – Table Contour" I have from DEC is from the 70's

b. The ADNR WELTs well data does not accurately show River Park estates including my well. My well is drilled to 31 feet – the depth they wish to excavate.

i. My well was drilled by Rick with Kraxberger Drilling Inc, he said he

drilled four wells in this subdivision to the depth of 30 foot, and he does not enter in the WELT program There are also four others wells drilled by other local drillers that are not entered into WELTs.

c. In the Planning commission minutes from Dec 16, 2019 – it states, “An undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet from lake, river, stream or other water body” Please define water body. According to the document “RIVER RESOURCES, LLC FUNNY RIVER – PATSON CLUP MODIFICATION” they have penetrated this barrier vertically.

d. It also states “The applicant has not proposed to excavate in the water table” what changed that now they want to?

2) Have water rights been addressed?

*a. I have applied for my Water Rights and Beneficial use of Water applications in compliance with **AS 46.15** and was received by Alaska DNR on April 1*

*i. **AS 46.15.010** The Department of Natural Resources shall determine and adjudicate rights in water of the state and its appropriation and distribution*

*ii. **AS 46.15.030** Wherever occurring in a natural state, the water is reserved to the people for common use and is subjected to appropriation and beneficial use and to reservation of instream flows and levels of water*

3) In the document from Mclane consulting – the five test wells were all in the 100-foot range and monitored – there is no documentation for the shallow aquifer. It states the “excavation is only proposed in the upper unconfined aquifer”. Again, it mentions well drilling logs, that are not accurate nor complete as I mentioned earlier.

*4) Kenai Peninsula Borough **KPB Code 21.25-.29** states “Does not enter the water table”*

I am requesting River Resource LLC cover a thorough water testing including gas/deisel/organic testing bi-annually for a period of 36 months

Mike and Karol Pomplin

41918 River Park Drive

Soldotna Alaska 99669

MEETING & DESK PACKETS

MAY 24, 2021



Planning Commission

Meeting Packet

**May 24, 2021
7:30 p.m.**

**KENAI PENINSULA BOROUGH
ASSEMBLY CHAMBERS
144 NORTH BINKLEY ST.
SOLDOTNA, ALASKA 99669**

Please Note: Meeting packet materials for this meeting were copies of packet materials from the 4/12/21 Planning Commission meeting.

Kenai Peninsula Borough

PLANNING COMMISSION DESK PACKET

**May 24, 2021
7:30 p.m.**

D. OLD BUSINESS

May 24, 2021 Desk Packet Materials

- 1. Conditional Land Use Permit (CLUP)
Modification of CLUP for Material Extraction
PC Resolution 2021-10
Applicant: River Resources, LLC
Location: 34386 Patson Rd., Soldotna, AK
99669**

Kenai Peninsula Borough

Planning Department

MEMORANDUM

TO: Blair Martin, Planning Commission Chair
Kenai Peninsula Borough Planning Commissioners

THRU: Melanie Aeschliman, Planning Director

FROM: Bryan Taylor, Planner

DATE: May 24, 2021

RE: Resolution 2021-10 Modification of CLUP for Material Extraction

During consideration of the above resolution at the Planning Commission's April 12, 2021, meeting, I was asked by the commission to review ADNR's data to see if there were any wells within the vicinity of the Rivers Resources LLC approved material site along Kenai River Avenue that were not represented within the Well Log Tracking System (WELTS).

I conducted a site visit to inspect lands in the vicinity of the material site along Kenai Avenue, Marcus Street, and Patson Road/Circle. I did not find evidence of any water wells along Kenai River Avenue south of the material site. At the end of Marcus Street (approximately ¼ mile east of the material site) there are two residences on parcels 135-243-17, belonging to Michael and Ann Gravier, and 135-243-06, belonging to William and Karen Ferguson. Only one well is shown in the WELTS inventory in this area, located on the Gravier property.

Along Patson Road/Circle to the north of the material site there is new construction, which appears to have begun this season. Since the field surveys represented on the site plan for the River Resources LLC modification application, there have been two resubdivisions of Tracts of land along the river. I have enclosed copies of the new plats. Several of the parcels have new homes under construction. In addition to the seasonal residence shown on the site plan, there appears to be nine other homes newly constructed or under construction along Patson Road/Patson Circle. Any new wells installed along with construction are not yet represented within the WELTS inventory or shown the applicant's site plan. However, as shown within the site plan, the proposed excavation below the water table will not be within 300 feet of these properties.

encl.



From: [Planning Dept.](#)
To: [Taylor, Bryan](#)
Cc: [Aeschliman, Melanie](#)
Subject: FW: Foster permit to extract below water table
Date: Wednesday, May 5, 2021 2:13:02 PM
Attachments: [IMG_4338.jpg](#)
[IMG_4339.jpg](#)
[Taylor.jpg](#)
[McLane.pdf](#)
[image001.png](#)

Julie Hindman

Platting Specialist
Ph: (907) 714-2210
Fx: (907) 714-2378

Email Sig



From: Patrick Nolden <pnolden@alaska.edu>

Sent: Wednesday, May 5, 2021 12:27 PM

To: Planning Dept, <planning@kpb.us>; Pierce, Charlie <CPierce@kpb.us>; bhinnert@kpb.us; Derkevorkian, Richard <rderkevorkian@kpb.us>; Bjorkman, Jesse <JBjorkman@kpb.us>; Cox, Tyson <tysoncox@kpb.us>; Elam, Bill <belam@kpb.us>; Carpenter, Kenn <KCarpenter@kpb.us>; njohnson@kpb.us; Chesley, Lane <lchesley@kpb.us>; Dunne, Willy <WDunne@kpb.us>; Dale McBride <dale.mcbride@nstar-tech.com>; Mike Pomplin <j3cubpilot@yahoo.com>

Subject: Foster permit to extract below water table

Planning Commision,

All we are asking, comply with your own ordinances and mandates.

21.29.050. - Permit conditions.

1. 21.29.050 C States groundwater elevation, flow direction, and flow rate for the parcel be measured in 3 month intervals for **at least one year** prior to application.

- Data collected by McLane was for 8.5 months, not **mandatory** 12 months. (Attachment 4338)

-Foster Construction applied for permit 2/26/2021, less than **mandated** year of testing before permitting. (Signature found in Planning Commision meeting notes, pg 181, 02/14/2021) Testing started 05/04/2020(Attachment 4338)

2. 21.29.050 A, B, C and D All work done by
a qualified **independent** civil engineer or professional hydrologist
- Water Source Separation - Exemption of dewatering may be granted if the
operator provides a statement under seal and supporting data from a duly licensed
and qualified and **impartial** civil engineer

-**McLane** is not an **impartial** independent civil engineer group with regards to Foster
Excavation.(Attachment McLane)

3. (Attachment 4338) McLane states monitoring wells were initially installed April
2020.(Attachment Taylor) Brian Taylor wrote in an email monitoring of test wells
were taking place September, 2019. Foster Construction did not have control of the
property at that date. A call from Taylor today, 05/04/2021 has changed the scenario
again. I feel new data may appear as we move forward, hmm.

Got wind of Brian Taylor's plight listening to him rationalize the low bond
amount for this event, \$30,000. Foster's will be pushing 1,000 gallons a
minute and may affect over a 100 wells and septic tanks. I personally feel
he is being persuaded(bullied) by entities to make it all look good, do what
they want, and pass muster so the entity can make money. So sad.

All we are asking, comply with your own ordinances and mandates. The
whole permitting process has to start again.

Regards, Pat Nolden
UAA Adjunct
NAEP Assessment Coordinator
907.252.7288

From: [Taylor, Bryan](#)
To: [Shirnberg, Ann](#)
Subject: FW: <EXTERNAL-SENDER>River Resource LLC Gravel Pit and water table - dewatering
Date: Monday, May 24, 2021 9:05:50 AM
Attachments: [Working group addresses Kenai residents' gravel pit quarrels _The Seattle Times.pdf](#)
[McLane and Patson properties.pdf](#)
[Well distance.pdf](#)
[After deliberating with the many neighbors in the.pdf](#)

Ann here is the email from Mike Pomplin.

From: Mike Pomplin <j3cubpilot@yahoo.com>
Sent: Sunday, May 9, 2021 10:18 AM
To: Planning Dept, <planning@kpb.us>; Taylor, Bryan <BTaylor@kpb.us>
Subject: <EXTERNAL-SENDER>River Resource LLC Gravel Pit and water table - dewatering

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I would like this document presented to the planning meeting May 24th against the River Resources LLC dewatering and enetering water tables along with the attached supporting documents

I have attached a PDF Of this document - a map showing the distance of my well to the gravel pt - An article from the Seattle times in regards to residents addressing the gravel pits and McLane saying they are committed to River Resources LLC in this manor

After deliberating with the many neighbors in the ½ mile radius of River Resources LLC gravel pit, it has come to our attention that some of the Kenai Peninsula Borough mandates have not been adhered to.

21.29.050. Permit conditions

(5) (A) groundwater elevation, flow direction, and flow rate for the subject parcel, measured in three-month intervals by a qualified independent civil engineer or professional hydrogeologist, for at least one year prior to application. Monitoring tubes or wells must be kept in place, and measurements taken, for the duration of any excavation in the water table.

1. First monitoring test May 4, 2020 as stated by McLane
2. February 26,2021 River Resource LLC applied for Application

The monitoring began:

- May 4, 2020 to July 15, 2020 = 75 days
- July 15, 2020 to October 15 2020 = approx. 90 days
- October 15, 2020 to January 18, 2021 = approx. 90 days

KPB 21.29.050 (A)(4)(d) bond for potential and accrued damages

4. Water Source Separation.

d. There shall be no dewatering either by pumping, ditching or some other form of draining unless an exemption is granted by the planning commission. The exemption for dewatering may be granted if the operator provides a statement under seal and supporting data from a duly licensed and **qualified impartial civil engineer**, that the dewatering will not lower any of the surrounding property's water systems and the **contractor posts a bond for liability for potential accrued damages**.

The wording that gets my attention is “**potential**” in the Staff Report, general overview item #3 “As required by KPB 21.29.050(A)(5) McLane Consulting has certified that the excavation plan proposed by the applicant will not negatively impact the quantity of the aquifer serving the existing water sources”

My well is located 1,831.58 feet from the gravel pit, that is approx. 1/3 mile and my well is 30 feet deep

Can McLane or River Resources guarantee – we will not lose water pressure, volume or quality?? If not, then it falls under “potential” as worded in KPB 21.29.050 (A)(4)(D) and the bond must be such that it covers all wells in the area current and future cost – This is a 40+ year project. A simple google search, the dollar has tripled in the last 40 years, \$10,000 in 1981 = \$30,000 in today's dollar. With that in mind, in 40 years you will get one average depth well drilled.

The other words that get my attention is “**qualified impartial civil engineer**” ***supplied by the “operator”*** McLane is anything but impartial.

Two Examples of wells due to excavating:

- Mike Leslie – who lives on Ciechanski Rd was told the same thing when the gravel pit went in, in his area, his well has never been the same.
- In Ester Alaska 1999 – they mined in the area of Canary Lane – Short story – the state sued the company and 12 homes got new wells and the remaining got water storage tanks (lack of pressure). This is on file with the DNR to verify.

With that said:

- It is necessary to have the well testing repeated as per borough code and mandate
- It is necessary to increase the bond to cover all wells and septic systems within the ½ mile radius to future cost.
- It is necessary that River Resources pay for an impartial civil engineer as noted in **KPB 21.29.050 (A)(4)(d)** to either repeat or review that data. McLane is not impartial, as they would not offer input from a residential view. The party was told by McLane it would be “conflict of interest”.

It is the consensus of all neighbors, we are not against development, we just wish to protect what is ours and following the rules.

In closing,
I see two paths

- 1) Well monitoring be done per KPB mandate, data reviewed by independent impartial civil engineer and bond set to cover current and future cost of all potential wells as determined by the impartial civil engineer.
- 2) De-watering permit denied

Working group addresses Kenai residents' gravel pit quarrels

Originally published May 29, 2018 at 11:07 pm | Updated May 30, 2018 at 9:20 am

By [The Associated Press](#)

The Associated Press

KENAI, Alaska (AP) — The Kenai Peninsula Borough's Material Site Working Group is addressing complaints by residents who say gravel pits languish after operators are finished; gathering trash, flooding and possibly lowering property values as an eyesore in the neighborhood.

Neighbors have weighed in throughout the process on issues of noise, dust, traffic, property values and quality of life. Operators have responded that further restrictions would raise the cost of gravel and inhibit private property rights as many operators work their own land.

The Kenai Peninsula Borough Planning Department has targeted a code rewrite that would clarify the process for reclamation and bonding on the site, the Peninsula Clarion reported Monday.

"It is in the code, about the bonds, but that has not been our practice," Bruce Wall said, the borough planner, at the work group's meeting Wednesday. "We've been interpreting that pretty loosely. The state exemption (from bonding) is if you have less than five acres disturbed and if you excavate less than 50,000 cubic yards a year. Really, that's very few material sites in the borough that fall under that exemption, because most of them are over five acres of disturbed area. We just haven't been administering that bonding program."

The planning department's original drafted code rewrite included a suggestion of \$2,000 per acre for reclamation bonding, with a five-year reclamation plan required each time the permit renews. Planning Director Max Best said that \$2,000 number is up for discussion. Current code does not specify a dollar amount.

The Alaska Department of Natural Resources Division of Mining, Land and Water requires a bond for material mining sites — \$750 per acre disturbed. However, the borough working group had some concern that the state did not enforce the bond, nor was it scaled for inflation.

Working group member Larry Smith pointed out that people complaining about the gravel pits now may not see those existing ones fixed, but it could help in the future.

“We’re not going to take care of the scars,” he said. “We’re going to take care of the scars from this point forward.”

Information from: (Kenai, Alaska) Peninsula Clarion, <http://www.peninsulaclarion.com>

The Associated Press

The Seattle Times does not append comment threads to stories from wire services such as the Associated Press, The New York Times, The Washington Post or Bloomberg News. Rather, we focus on discussions related to local stories by our own staff. You can read more about our [community policies here](#).

Fw: Patson properties

From: Dale McBride (dale.mcbride@nstar-tech.com)

To: pnolden@alaska.edu; j3cubpilot@yahoo.com

Date: Tuesday, May 4, 2021, 07:29 AM AKDT

FYI

From: Gina Debardelaben <ginadebar@mclanecg.com>

Sent: Friday, April 23, 2021 1:32 PM

To: James Hall <jhall@mclanecg.com>; Dale McBride <dale.mcbride@nstar-tech.com>

Cc: Cody McLane <crmclane@mclanecg.com>

Subject: RE: Patson properties

Dale,

While I'd be happy to discuss the hydrology in the Patson property location with you and your concerns, it is a conflict of interest for McLane to represent you.

We have been working with the Fosters on their permit applications.

Thanks

Gina

Gina DeBardelaben, PE
Vice President
McLane Consulting, Inc.
907-283-4218 office
907-398-8143 mobile

From: James Hall <jhall@mclanecg.com>

Sent: Friday, April 23, 2021 8:05 AM

To: Dale McBride <dale.mcbride@nstar-tech.com>

Cc: Gina Debardelaben <ginadebar@mclanecg.com>; Cody McLane <crmclane@mclanecg.com>

Subject: RE: Patson properties

We have engineering and you can contact them with any questions you might have. They will assist or point you in the right direction. I've CC'd them on this email and contact info is listed below. Call the office or email them.

Gina Debardelaben <ginadebar@mclanecg.com>

Cody McLane <crmclane@mclanecg.com>

James Hall, PLS
McLane Consulting, Inc.
907-283-4218 office
907-953-5886 cell

From: Dale McBride <dale.mcbride@nstar-tech.com>

Sent: Friday, April 23, 2021 7:41 AM

To: James Hall <jhall@mclanecg.com>

Subject: Re: Patson proper es

James--

He may contact me directly. Thank you.

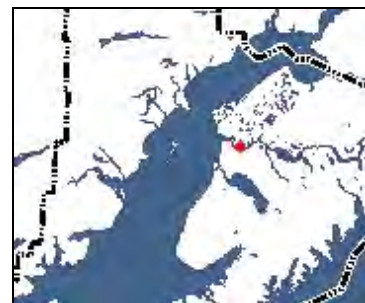
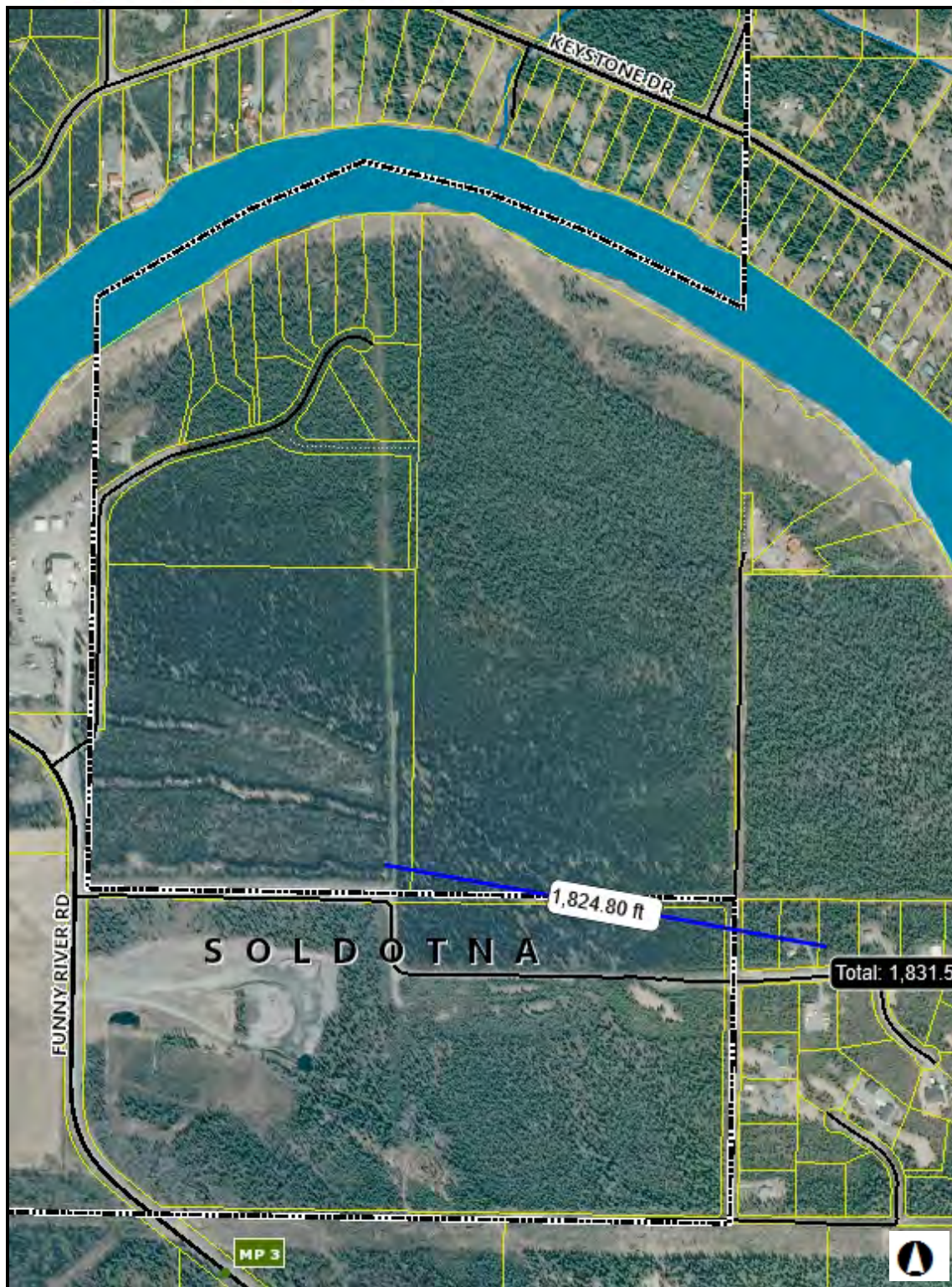
Does McLane Consulting Group have a hydrologist or engineer on staff that I can employ to provide some guidance on a potential hydrology issue?

Thanks.

Dale



Michael Pomplin Residence to gravel pit



Legend

- Mileposts
- City Limits
- Highways
- Major Roads
- Roads
 - Town Medium Volume
 - Town Low/Seasonal; Other
 - Proposed

Parcels

Image

- Red: Band_1
- Green: Band_2
- Blue: Band_3

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

Type any notes here.

DATE PRINTED: 5/9/2021

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To: [Planning Dept.;](#) [Taylor, Bryan](#)
Subject: <EXTERNAL-SENDER>River Resource LLC Gravel Pit and water table - dewatering
Date: Sunday, May 9, 2021 10:19:05 AM
Attachments: [Working group addresses Kenai residents' gravel pit quarrels](#) [The Seattle Times.pdf](#)
[McLane and Patson properties.pdf](#)
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[After deliberating with the many neighbors in the.pdf](#)

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<!--[if !supportLists]-->2. <!--[endif]-->February 26, 2021 River Resource LLC applied for Application

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- <!--[endif]-->It is necessary to have the well testing repeated as per borough code and mandate
- It is necessary to increase the bond to cover all wells and septic systems within the ½ mile radius to future cost.
- It is necessary that River Resources pay for an impartial civil engineer as noted in **KPB 21.29.050 (A)(4)(d)** to either repeat or review that data. McLane is not impartial, as they would not offer input from a residential view. The party was told by McLane it would be “conflict of interest”.

It is the consensus of all neighbors, we are not against development, we just wish to protect what is ours and following the rules.

In closing,

I see two paths

- 1) Well monitoring be done per KPB mandate, data reviewed by independent impartial civil engineer and bond set to cover current and future cost of all potential wells as determined by the impartial civil engineer.
- 2) De-watering permit denied

From: [William Ferguson](#)
To: [Pierce, Charlie](#); [Taylor, Bryan](#)
Cc: [Michael Gravier](#); [Patrick Nolden](#)
Subject: <EXTERNAL-SENDER>Ferguson response to expert findings of data at 34386Patson Rd.
Date: Tuesday, May 11, 2021 4:40:28 PM

CAUTION: This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

----- Forwarded Message -----

From: William Ferguson <bkakdream@yahoo.com>
Subject: findings of experts concerning mining in the water table

Gentlemen:

It is my duty to respond to our findings during the request for postponement of the approval for River Resources LLC modification permit on April 12, 2021, zoom planning meeting of the Kenai Peninsula Borough.

I was able to counsel with two separate Engineering firms and they analyzed the data that was provided from the KPB staff meeting notes. As they read through the data they came to the section whereby the planning commission was recommending approval of the modification of the permit to mine in the water table at the material site 34386 Patson Rd. Soldotna, AK 99669. After reading that section which essentially says your approving the permit regardless of what actual independent engineers might say or citizen rebuttals of said permit. They refused to continue to involve themselves in rendering their opinion as the recommendation was made before any citizen or professional opinion was proffered the week prior to the meeting being held!

Dale McBride, a resident of the actual subdivision in very near proximity of the gravel pit area, has found several discrepancies made by the Borough. In the accepting the permit out of order and many other items which will be detailed in a letter being sent to the planning commission by affected citizen's. Recommending protest of this process; due to the unfairness and non compliance by the KPB with their own codes. So I will not repeat them but refer to them and that I have signed my agreement with this document.

So far as I'm and others concerned in this process it has been a sham from the start going back to 2019. I have lived at this location (34484 Marcus St.) for 25 years and now since the mining of gravel has begun I hear the constant drone of machinery and back up alarms Monday to Friday to say that is offensive would be a gross understatement. This is not what I had in mind for my peaceful retirement turning out this way. As a planner to allow this to happen you should be ashamed, but I assume you're not affected as it was evidence at the zoom meeting that a postponement was not going to change things (your words) your attitude is apparent that the whole process of putting up with affected citizens is just an annoyance to you; making recommendations to approve modification of original permit without any consideration of citizen input.

It will be one thing to put up with the noise, now that this pit is here; however, let me state for

the record that I now have my Alaska water rights in hand and have ran a complete base line of my water quality. Should my water be affected by quantity or quality due to the mining in the water table (if it is approved) I will seek immediate remedy from KPB and River Resources LLC by any legal means necessary since the mining in the water table activity is the only process that could effect my water system.

Regards,

William J. and Karen T. Ferguson

We are Michael and Ann Gravier, 34540 Marcus St, Soldotna, AK 99669

May 10, 2021

At the last Planning Meeting held via Zoom, on April 12, 2021 when I was voicing my concerns of any impact to my well, Kyle Foster, said "It was a stretch" as to whether my well could be impacted. He did not indicate if that statement was derived from modeling or just his experience.

Either way, his statement indicates that there is some, perhaps small, chance my well will be impacted by the planned dewatering project.

Since River Resources (Kyle Foster) has stated that there is at least a chance my well could be impacted I request modelling for the project that includes all wells in the area be completed and made public. Since the gravel pit (mine) is benefiting from the project, they should be required to provide, through the borough, enough funds for citizens to hire needed experts.

One of the reasons given by the Planning Commission for the delay was for citizens to consult with or hire an engineer/hydrologist. Attempts to find a local consultant were unsuccessful due to conflicts of interest or reluctance on the part of the consultants.

While Mike worked for DEC, he processed mining permits for Pebble, Red Dog, Donlin, Ft Knox Gold Mine, Wishbone Hills, and Bokan Mountain Rare Earth Elements (SE AK, SW of Ketchikan).

The permitting procedures always follow the same process. The mining corporation and the regulatory agency (Borough, State or Federal) officials get together and plan the mine. At some point they notify the people who live in the area what they are doing.

After the regulatory agency and the miners meet all the technical engineering requirements of the current regulations, in their minds, the project will go forward no matter what. This was obvious at the last borough meeting when Mr. Taylor opposed the delay vote because, according to him, "it would make no difference" the mine would go forward no matter what the public found. Notifying the public is just a courtesy as the public have limited involvement in the planning process.


This process leads to confusion and anger from the public as they are not given enough details to know exactly what is proposed. Seldom do the miner or the permitting agency model the impact to all adjacent property owners.

Example:

1. In this case McLane Consulting modeled impacts to only three wells and no wells in the direction of our private wells. The wells modeled are in the direction of water table rises due to water being stored upflow of those wells. No modeling was done for wells upflow of the gravel pit where lowering of the water table would be most likely.
2. After we expressed our concerns about the impact of dewatering on our wells, we were not provided any additional information to address those concerns until at the last Borough meeting about 30 minutes before the pending vote. Because of this lack of information from the borough and the miners, we were led to believe that the entire 33 acres would be dewatered at the same time.

Entering the meeting, I was concerned that my \$648,100.00 (KPB appraisal) property would be significantly reduced in real value if I lost my well and it could not be replaced. This could be most of my life savings as I spent 20 years building up my home on the river. It seems inappropriate to have a vote on the gravel pit mine 30 minutes after we are given the data on how the process will work. While I was pleased the borough passed the delay, I feel the delay may have been avoided if the local citizens had been provided enough information up front with enough time to evaluate the information and/or been provided an engineer or hydrologist to represent citizens instead of the gravel pit.

While I see the need to limit the back and forth between participants during the formal meeting where a vote will be taken, it is a difficult format to have questions answered. Perhaps a better process would be meetings with participants (citizens, mine, borough) prior to the formal Borough meeting where a vote will be taken? This would save the time of all the voting members while providing more information in a timely fashion to citizens. This might also avoid unexpected delays.


Michael E. Gravier


Ann Y. Gravier

From: [Taylor, Bryan](#)
To: [Shirnberg, Ann](#)
Subject: FW: <EXTERNAL-SENDER>Fwd: River Resources LLC Permit Modification
Date: Monday, May 24, 2021 9:10:25 AM
Attachments: [Signature pg 1.png](#)
[Signature pg 2.png](#)
[Foster permit modification response-.doc](#)
[Signature pg 45.pdf](#)
[Signatures pg 6.pdf](#)

Here is the email from Nolden with attachments. The signature page 3 appears to have been a corrupted file and will not open.

From: Taylor, Bryan <BTaylor@kpb.us>
Sent: Friday, May 14, 2021 9:02 AM
To: Taylor, Bryan <BTaylor@kpb.us>
Subject: FW: <EXTERNAL-SENDER>Fwd: River Resources LLC Permit Modification

From: Patrick Nolden <pnolden@alaska.edu>
Sent: Friday, May 14, 2021 8:22 AM
To: Fletcher, Sandra <sfletcher@kpb.us>
Subject: <EXTERNAL-SENDER>Fwd: River Resources LLC Permit Modification

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----- Forwarded message -----

From: Patrick Nolden <pnolden@alaska.edu>
Date: Fri, May 14, 2021 at 5:00 AM
Subject: River Resources LLC Permit Modification
To: <planning@kpb.us>, <bhibbert@kpb.us>, <wdunne@kpb.us>, <tysoncox@kpb.us>, <rderkevorkian@kpb.us>, <kcarpenter@kpb.us>, <jbjorkman@kpb.us>, <belam@kpb.us>, <lchesley@kpb.us>, Mike Pomplin <j3cubpilot@yahoo.com>, Dale McBride <dale.mcbride@nstar-tech.com>, <cpierce@kpb.us>, Aeschliman, Melanie <maeschliman@kpb.us>

- River Resource LLC Permit Modification Response - Attached
- Signatures opposing River Resource LLC Permit Modification - Attached

--

Regards, Pat Nolden
UAA Adjunct
NAEP Assessment Coordinator
907.252.7288

Re: River Resources LLC Permit Modification

Members of the Planning Commission:

Upon review of the document package on the above referenced Permit Modification, which was provided to the KPB Planning Commission for its 12 April 2021 meetings as it pertains to the Staff Report dated 12 April 2021, and which was online and available for public use about a week beforehand, we provide our comments.

The Staff Report, probably written by Brian Taylor, starts with the General Overview.

Paragraph one references the history and the Application attached thereto.

Paragraph two generally outlines the provisions of KPB 21.29.050 but ignores some of the requirements, i.e. well monitoring period and frequency, as well as qualification of engineer/hydrologist, as well as the requirement of submitting the monitoring data. The monitoring data submitted with the application includes data from May, July, October of 2020 and January 2021. The application and McLane state the well was drilled in APR 2020. The email from Brian Taylor on 5.3.21 states the monitoring requirement was met (one year at 3 month intervals). When Dale McBride spoke with Brian around 4 pm that day, he stated the wells were drilled in SEP 2019. Dale advised him that River Resources did not obtain title for the property until FEB 2020. (We cannot believe that Fosters drilled wells in SEP 2019 and began monitoring, because their permit application in DEC 2019 stated that they had no intentions to mine in the aquifer.)

Paragraph three states that McLane certified there will be no negative impact on water quality in the aquifer.

Paragraph four states the current application was filed on 3 MAR 2021. Code requires one year of monitoring before an application can be filed. Monitoring on a three month basis did not begin until JUL 2020, and even if you include the May 2020 data, monitoring lasted only 8 months, not a year. Foster needs to start the one year monitoring process over and then file the application. The current application needs to be thrown out.

The last paragraph in that section is superfluous.

Moving on to the "Findings of Fact."

1.C. Again, the original permit stated no intention to mine in the aquifer, ergo, no need to pay for well monitoring.

1.D. This states that the permit mod application was submitted on 26 FEB 2021, but Brian stated in prior section the application was received on 3 MAR 2021. Which date applies?

1.E. This section states some, but not all, of the conditions necessary for a permit. Omitted is the one year monitoring at three month intervals as a condition precedent to making application.

1.F. Staff stated McLane was contracted to monitor the wells. McLane is not independent or unbiased. We will send you the email from McLane wherein they stated that they could not represent Dale McBride because of a conflict of interest.

1.G. Staff states that McLane collected data as required "in three month intervals...over the course of a year." The data provided does not show that. It shows collection of data over an eight month period, not a year, and not at three month intervals. Furthermore, the application states that the wells were not drilled until APR 2020; therefore, Foster could not apply for a mod until after a year of monitoring.

1.H. & I. McLane is not independent and unbiased.

1.O. Makes references to the "mandatory" requirements but staff ignores them.

5.D. Makes reference to the bond of \$30,000 for liability "to potential accrued damages for dewatering activities." The dewatering will affect upstream people's wells before those downstream. Is this bond available for destroyed wells or septic systems impacted by mining within the aquifer and the attendant residual lake?

\$30,000 bond in 2021 dollars is woefully inadequate going out 40 years with all of the potential impacts. \$3,000,000 is probably closer.

6.C. Staff repeats that data shows one year of monitoring at three month intervals. More BS.

6.D. Independent engineer again. More BS.

13. Reclamation requires a bond. How much?

The staff goes on with its recommendations and findings of fact. Then they attach their resolution 2021-10 granting the Permit Mod. The resolution references the 12 APR 2021 meeting as if it had already occurred.

In light of the above stated facts, we respectfully request that the River Resources permit modification be denied.

We additionally request that any commission members engaged in quarrying, either currently or in the past, recuse themselves from voting on any River Resources permit modifications.

Regards,

Signatures attached

cc: Kenai Peninsula Borough Assembly members

KENAI PENINSULA BOROUGH PLANNING COMMISSION

RIVER RESOURCES LLC GRAVEL PERMIT MODIFICATION APPLICATION

SIGNATURES AND CONTACT INFORMATION OR PARTIES PROTESTING APPROVAL OF PERMIT

NAME	ADDRESS	PHONE NO.
James J. Bunge	34135 Quince Circle	907-398-1644
Robert Bunge	34135 Quince Circle	907-394-2248
John C. Bunge	41650 River Park Dr.	847-877-4635
Barbara Bunge	41650 River Park Dr.	847-877-5740
Lindsey Van Hook	34120 Snow Lane	480-433-3924
Jeremy Lechtel	34120 Snow Lane	509-823-0218
Cy Rein	41580 River Park Dr.	907-252-6613
Carol Bunge	41560 River Park Dr.	907-262-4162
Michael E. Bunge	34540 Marcus St	907-903-6574
David Bunge	34540 Marcus St	907-538-7078

KENAI PENINSULA BOROUGH PLANNING COMMISSION

RIVER RESOURCES LLC GRAVEL PERMIT MODIFICATION APPLICATION

SIGNATURES AND CONTACT INFORMATION OF PARTIES PROTESTING APPROVAL OF PERMIT

NAME	ADDRESS	PHONE NO.
Je Hardy	41937 River Park Drive	907-398-4868
Billie Hardy	"	907-398-9224
M/L	41918 River Park Dr.	907-953-3301
Kathleen Wagle	41876 River Park Dr.	907 741-0830
Dyan Weed	34054 Snowlane	(907) 262-2760
Rich Weed	34054 Snowlane	953-1585
Lindsey Herland	41750 River Park Dr	(907) 317-2605
Nate Herland	41750 River Park Dr	(907) 317 2605
Bob Slippin	34045 Snow Ln	(907) 953-2464
Don Ho	34085 Snow Ln	907-252-5562
Debra Roy	34228 Troy Ln	907-252 4065

KENAI PENINSULA BOROUGH PLANNING COMMISSION

RIVER RESOURCES LLC GRAVEL PERMIT MODIFICATION APPLICATION

SIGNATURES AND CONTACT INFORMATION OR PARTIES PROTESTING APPROVAL OF PERMIT

NAME	ADDRESS	PHONE NO.
Shannon McCloud	34809 Patson	690-2399
Tod McGillivray	34809 Patson	398-6054
Casey DeSiena	PO Box 2614 Kenai	776-8010
Joanne Wise	PO Box 504 Kenai	354-3449
Pat Harris	P.O. Box 215 Kodiak	741-9325
Joe Doshier	405 HALLER	982-4572
Star McCloud	405 Haller	283-7565
Kodi McGillivray	34809 Patson	598-6056
Kalyn McGillivray	34809 Patson	598-6055
Tyler McGillivray	902 Ank St. Kenai	953-3221
Kenney Yamada	1105 1st St Unit A	398-4180

KENAI PENINSULA BOROUGH PLANNING COMMISSION

RIVER RESOURCES LLC GRAVEL PERMIT MODIFICATION APPLICATION

SIGNATURES AND CONTACT INFORMATION OF PARTIES PROTESTING APPROVAL OF PERMIT

NAME	ADDRESS	PHONE NO.
James Milburn	60 Box 2675 Kenai	282-0706
John KLM	560 Worthen St	262-9698
Shulbaker	53580 Gehen Ct	417 531-3671
Grisane Backe	204 Norman St.	394-2686
Jennifer Thomsen	190 Standard Dr.	360-8109
Alea Perhovich	35180 Tara Circle	252-6741
Kimberly Carol	4420 K Beach Rd	398-0417
Travis Perhovich	35180 Tara Circle	394-1890
Sam Ambrosia	204 Norman St.	953-9421
LUKE CHAPMAN	PO Box 1155 Kasilof	907-260-7265
Tony Smith	PO box 997 Kenai AK	690-2294

KENAI PENINSULA BOROUGH PLANNING COMMISSION
RIVER RESOURCES LLC GRAVEL PERMIT MODIFICATION APPLICATION

SIGNATURES AND CONTACT INFORMATION PROTESTING APPROVAL OF PERMIT

NAME	ADDRESS	PHONE
<u>Paul Nolden</u>	<u>34827 Patson Circle</u>	<u>907-252-7288</u>
<u>Carole Nolden</u>	<u>34827 Patson Circle</u>	<u>907-252-3365</u>
<u>Molly Davis</u>	<u>37041 RAFFLE ST. SOLDOTNA</u>	<u>907-741-1483</u>
<u>Brian Hankins</u>	<u>37041 Raffle St Soldotna</u>	<u>907-963-1515</u>
<u>Dale McBride</u>	<u>34581 PATSON ROAD</u>	<u>304-677-8303</u>
_____	_____	_____
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_____	_____	_____

May 17, 2021

Re: River Resources dewatering permit opposition

Kenai Peninsula Borough Planning Commission:

I am presenting more information before you vote on River Resources dewatering permit application.

Kyle Foster email to me, Patrick Nolden: I wish you would have contacted me with your concerns prior to letters to the Mayor. Can you tell me what your concerns are? Dozens of material sites on the peninsula are doing the same thing I am requesting. I will be granted permission to dig below water table no matter the planning commission decision on dewatering. I am requesting permission to dewater on-site to make gravel extraction easier. There is about 12 feet of gravel below water table that I am trying to extract. If I lower the water in the immediate area, then my excavator bucket and arm won't have to be submerged in water. By relocating the water I will be able to see what I am mining, I would think that the least amount of exposure the equipment has to the water the better.....

Pat Nolden replied to the above email: If you pump for a day, pumping 1000 gal/minute, that is 1.2 million gallons in a 20 hour **day**. The problem with a concentrated dewatering outlet will be septic systems flooded. Groundwater flow may also change. What will happen to my septic if the water table is raised 1 foot, how about 2, 3? This is a very real possibility. \$30,000 bond, and it is earmarked for 3 wells west of me. Is that how bonds work?

Commission Members, let's focus on septic issues. I have one neighbor who brought in over 200 loads of fill to avoid using a lift system for their septic. I'm relatively sure both of our septic tank elevations are below the gravel pit.

Kyle Foster also said in his email above, "I will be granted permission to dig below water table no matter the planning commission decision on dewatering." **Who is the person who can grant this permission?** "Dozens of materials sites are doing it." Yet another head on this monster that needs to be addressed. I wonder how many other applicants have been granted dewatering permits that were incomplete, unopposed, and a danger to neighboring septic/well systems.

Agenda item 6A reads on River Resources initial permitting, "The applicant has not proposed to excavate in the water table." True at the time, but every intention was to excavate under the water table after one year(8 ½ months). I bet this is standard practice for this industry. This needs to be addressed by the Planning Commission and Borough Assembly to know long term intentions.

I signed up for a property near a gravel pit, yes. River Resources also signed up for the gravel pit knowing they would be in close proximity to housing. We were all in the same LLC as we purchased our properties. River Resources has a responsibility to stick to their representation when the deal was made and not seek permitting that will endanger housing in the vicinity and that were part of their LLC. Regardless, River Resources should not be granted a dewatering permit at this site.

I also did not know this industry has carte blanche on the Kenai Peninsula.

Regards, Pat Nolden

cc: Mayor Charlie Pierce
Kenai Peninsula Borough Assembly

19 May 2021

Kenai Peninsula Planning Borough Department

144 North Binkley

Soldotna, AK 99669

RE: PC Resolution 2019-39

River Resources Conditional Land Use Permit Modification

Dear Mr. Taylor:

River Resources LLC has applied for a modification to its permit to operate a gravel quarry on property adjacent to property that I own on Patson Road at the Northwest corner of the proposed site. Applicant is seeking to mine gravel within the water table of the upper aquifer that exists under the proposed site and the surrounding area which is owned by several parties, many of whom utilize the water from that aquifer as their primary domestic water source. Most of the households in that category are on the South and East side of the proposed mining site and upgradient within the aquifer (based upon the limited data provided by the applicant and their long-time engineering consultants). Breaching the water table for mining activities will jeopardize the water source for those residents.

In addition, the applicant is seeking permission to “de-water” its mining pits by pumping as much as 15 feet of water from its pits in volumes approaching 1.5 million gallons in a 24 hour period. (These figures are derived from statements and “data” provided by applicant and its consultants.) That aquifer is in the range of 15 to 25 feet in thickness. (The log for my well shows 25 feet below ground level to the clay substrate.) Applicant’s consultant, McLane Consulting, Inc., states in their letter in support of the application that mining will not exceed 32 feet, that “dewatering temporarily depresses shallow groundwater, but will recover upon cessation of de-watering operations”. This de-watering activity, in conjunction with the breaching of the water table, will result in the permanent reduction of the water table by approximately two feet on the up-gradient side (Southeast) side of the aquifer, the temporary (and quite possibly permanent) loss of water in the wells in that area, the permanent increase of approximately two feet in the height of the water level on the north and west side of the proposed mining site. With the capillary rise on the North and West sides of the site caused by breaching the water table and creating a higher pool of water, and then repeatedly inundating the surface with more than a million gallons of water over a few hours, all of the septic systems, including mine, will be flooded, causing much cost and inconvenience to the owners thereof and potentially causing environmental damage to the fragile Kenai River. Several of the septic systems are already marginal and have been in place for less than a year. Any increase in the water table will cause damage.

I am requesting that the Planning Commission dismiss this application by River Resources for a modification to its existing mining permit for the following reasons:

1. As evidenced by the application and the letter from McLane attached thereto, as well as other available information and data as set forth herein, River Resources has not met the statutory requirement mandating a minimum of at least one year of well monitoring and data collection prior to filing an application for the mining of gravel below the water table.
2. As evidenced by the letter from McLane in support of the application, the well monitoring and data collection does not meet the mandatory requirement of data collection and measurement in three month intervals. The supporting data shows collection periods ranging from 2 months 11 days to three months over a period of 8.5 months, not 12 months.
3. The staff has not qualified McLane as a “qualified independent civil engineer or professional hydrogeologist” to certify that excavation within the water table “will not negatively impact the quantity of water serving existing water sources”. While McLane’s qualifications are not being questioned, the independent status is not present as required. Furthermore, their letter of 2 MAR 2021 in support of this application clearly states that dewatering will impact the groundwater, but tempered that with “waffle words” of “temporarily”, “depresses”, “shallow groundwater”, etc.
4. The staff has not qualified McLane as “a duly licensed and qualified impartial civil engineer” as required by 21.29.050.A.4.d in support of an exemption for dewatering. In this case and in their support of this application, McLane is anything but independent and unbiased. McLane is a longtime consultant for the Fosters and their various companies.
5. The staff has not adequately or accurately calculated the bond as set forth and mandated in the code “for liability for potential accrued damages”. The amount was determined by wrongfully assuming that the proposed mining and dewatering activities will only affect the two wells at the city maintenance building and the well on my property, calculated at three wells replaced at a cost of \$10,000 each in 2021 dollars. (The amount of \$10,000 is also the approximate cost of replacing a septic system, assuming that one can do so without the recurring cost of a tank and regular pumping. These mining and dewatering activities have the possibility of “potential accrued damages” to approximately 20 well sites on the southeast side of the proposed mine site, 2 wells on the west and 9 on the north side of the mine site. In addition, the 9 septic systems on the north side of the site has the real potential of being destroyed by the proposed mining and dewatering activities. These 40 wells and septic systems, in 2021 dollars of \$10,000 each, have the potential accrued cost of replacement of \$400,000 in today’s dollars, if in fact they can be replaced for that amount. The applicant has documented statements that these mining activities will occur for 40 years. Taking the historical and prospective inflation rate of 2.37%, the cumulative cost of the “potential accrued damages” in 40 years will be \$1,228,160. To meet code requirements, the bond required to be posted should be in the range of \$600,000 (20 year life) and \$1.25M (40 year life).
6. Lastly, the Alaska Department of Environmental Conservation includes within its list of “Best Mining Practices” the advocacy of mining or gravel quarries to NOT be conducted within the water table. Alaska has enough scars from gravel mines scattered throughout the state that need to be reclaimed by someone other than time and Mother Nature.

This Planning Commission should terminate consideration of this application for failure to meet the mandatory requirements set forth above and have River Resources retain the services of a truly independent and unbiased civil engineer or hydrogeologist to monitor the wells and provide data for at least a year and then begin the application process according to the statutes. The initial permit as approved by this body in DEC 2019 stated that there was no intention to mine gravel within the water table. River Resources has already commenced mining activities and has apparently been selling product from this site. Denying this application will cause no unnecessary harm to River Resources and its operations because they will be generating revenue utilizing operations above the water table as they initially requested in 2019. No harm, no foul. KPB 21.29 uses the word “mandatory” for the compliance with this section. The staff should strictly follow the code for the benefit of all of its citizens.

I have been spending time in Alaska since coming here more than 20 years ago. I purchased the property located on the Northwest corner of the proposed mining site more than 10 years ago and built a house thereon. I have met many wonderful people here in Alaska, all of whom cherish the beauty and resources that the Alaska experience has to offer. I have introduced many friends and family to the unique opportunities for recreation and enjoyment that are available. And, I have spent enough time here to meet the residency on site requirements to be a permanent resident, but have not yet made that leap. I have not had issues with either my well or septic system during that period of time, and I am hopeful that the same continues.

Following is the detail and explanation for the positions asserted by me. I am not questioning the acumen and capabilities of McLane, but their independence and lack of bias is not present based upon their current and historical relationship with the applicant. Rest assured that I am a vested party in the outcome of this application, and while I do have a bias, I am willing to look at the data, facts and perceptions with an open mind. While I am not a hydrogeologist or civil engineer by training, my work experiences since my youth have exposed me to and have caused me to have an understanding of those fields of expertise. I worked my way through college working for the USDA on flood control dam projects, starting on the survey crew and quickly becoming the project manager for two dam projects. I spent more than 20 years in the coal industry which included managing projects from the permitting stage through processing and shipping of the coal. I spent several years as General Manager for an international company whose first surface mine employed over 200 employees and contractors, covered more than 650 acres, removed over 300 feet of mountaintop, and moved 1.5 million tons of earth together with 150,000 tons of coal each month. All of the water in, on and within that strata was controlled and managed. Both state and federal awards for reclamation and environmental impacts were received for that mine. I do understand hydrogeology and civil engineering.

Reviewing the application filed on this matter, the McLane letter states that the monitor wells were drilled in April 2020 and the monitoring began on 5 MAY 2020, with subsequent data acquired midmonth in JUL and OCT of 2020. The date of the last data set was JAN 2021. Monitoring of wells occurred for 8.5 months, not the mandated 12 months before application. The record shows that the application was filed on 26 FEB 2021 and received by the staff on 3 MAR 2021. Clearly, the one year of well monitoring before filing an application, as mandated by the code, was not followed. When the staff was questioned by Mike Pomplin regarding that issue, the staff sent him an email stating that the wells were drilled in SEP 2019. An inquiry by me elicited a response that the wells were drilled in SEP 2019

and that the data in the application was “not exclusive” of all of the data acquired. I was further advised that McLane made a mistake in its letter regarding the date the wells were drilled . Was there an issue with the undisclosed data? If McLane got the date wrong, what else were they wrong about? Where are the drill logs showing the data and date? The staff then called Pat Nolden and apologized stating that they were wrong on the SEP 2019 drilling date. And in a subsequent telephone call with the staff, I was advised that the actual drilling date was SEP 2019. Their story keeps changing, but I know that on 1 OCT 2019, with respect to monitor well 1, it was not drilled. Furthermore, River Resources did not obtain title to their property until FEB 2020, and was barred by their partners and the partnership attorney from conducting any activities on the property until title passed.

The initial permit for this operation was granted in DEC 2019 and during the public hearing for that permit, statements were made by the applicant that post mining reclamation would include a housing development. There was discussion regarding the reservation of one half of a street running east and west along the section line to provide access for the proposed housing development. An email from Becky Foster on 21 OCT 2019 stated that there would be “no building planned for several years”. The reason that I know that with respect to monitor well 1, the closest to my property, that well was not drilled in SEP 2019 because I have seen the site of well 1 both before and after the it was installed. Immediately after preliminary approval of the Patson Properties subdivision on Patson circle was granted, equipment owned by the Fosters moved in to clear the extension of Patson Road through to Patson Circle. On 21 SEP 2019, the sound of equipment clearing trees caused me to take a walk along my property line which was well marked with flagging and stakes. I discovered multiple encroachments by the Fosters, one of which was 15 feet wide and 170 feet long. While then searching for the equipment, I followed the sounds of the excavator which had its way to the site of the current well 1 before turning south. By the time I caught up to the equipment, the operator was departing the site. The Fosters admitted fault and we reached an amicable settlement for the damages. Before I left Alaska on 1 OCT 2019, I again walked that area and there was no well present at that time. A drill truck could not pass that “road” in the then condition.

There are too many communications and there is a plethora of objective data that negates the position that the wells were drilled in SEP 2019. What other “facts” and “data” have been misrepresented? If the monitoring began in SEP 2019 when the wells were drilled, why did the Fosters not file the current application in SEP 2020 after meeting the mandatory time period? If there is other data from well monitoring, why was it not disclosed? Any experienced real estate agent will tell you that the majority of septic tank issues occur during the spring thaw. Why did the applicant not supply data for the March/April time period?

The code requires well monitoring and data analysis, with attendant certification, by an independent, qualified engineer or hydrogeologist. The language relating to dewatering requires a certification by an unbiased civil engineer. The professional qualifications for McLane are not being questioned. But, McLane is neither independent nor unbiased.

1. Common knowledge on the Peninsula is that McLane Consulting is the exclusive engineering and consulting group for the Foster's many entities.
2. The staff should have made a "finding of fact" that McLane was independent and unbiased. The staff avoided that determination completely, and in conversations with the staff, McLane Consulting and River Resources were used interchangeably.
3. In a conversation in mid-April 2021 with Carole Nolden, Mr. Kyle Foster, in an effort to deflect responsibility from himself regarding mining within the water table, stated that he was "only doing what McLane tells him to do". That is not an independent or unbiased engineer.
4. McLane has indirectly represented the multiple parties owning properties along both sides of Patson Circle through the subdivision process in 2019. McLane has represented me in 2020 as we navigated the subdivision process through the Planning Commission. In an effort to obtain engineering and hydrogeologic information relative to mining within the water table and the attendant de-watering associated therewith, I contacted McLane as the independent and unbiased engineering consultant. By email of 23 APR 2021, Ms. Gina Debardolaban advised me that their firm could not provide unbiased and independent opinions to me because of a conflict of interest, stating: "We have been working with the Fosters on the permit application." Where is the independent and unbiased engineer?
5. By email of 14 MAY 2021, Kyle Foster wrote: "I will be granted permission to dig below the water table no matter the decision on dewatering. I am working with McLane's to present a de-watering plan at our next meeting." Attached to the staff report on this matter which was made available to the public a week before the 12 APR 2021 public hearing was Resolution 2021-10 ready for signature. That resolution made reference to the decision of this Planning Commission as if it had already occurred, and set forth dates that support the arguments above regarding the applicant not meeting the statutory requirements mandated in order to grant this permit. Having been involved in similar proceedings similar to this in other jurisdictions, I have never seen a resolution referencing a decision by a body from a public hearing that has not yet occurred until a week after the publication of the resolution. The document had already been assigned the number 2021-10. If the decision to grant this permit has already been made, and apparently Mr. Foster and the staff report indicate so, why waste everyone's time going through the public hearing process? Let's ignore one more requirement of the code and not have the public hearing.
6. An independent and unbiased civil engineer would respond to the following questions:
 - a. When mining below the water table and the hydraulic pressure of the upper aquifer is released, what is the resulting permanent impact on the "upgradient" (to the southeast) side of this quarry? This response is based upon the limited data which shows the gradient across the proposed pit running down from the southeast toward the northwest. An independent consultant's calculation is that the water table supporting the wells on that side will be permanently lowered by almost two feet. Some of the wells within that direction are only 30 feet deep. One must recognize that the water flowing into and out of the pit site will also have an effect on the water table laterally, because water flows in the direction of least resistance. Dewatering near the south end of the property will drop the water table an additional 15 feet on average and the wells to the southeast are proximate enough to be negatively impacted and may not recover once the pits are filled with water.

- b. The same question relative to the impact on the northern and eastern side of the proposed mine site. And the answer would be an approximate permanent increase in the water table of almost two feet. To this two foot increase in the level of the water table, one must add the capillary rise where water defies gravity due to surface tension and the molecular attraction of water molecules which cause water to wick upwards. (Google capillary rise to find basic demonstrations. The same process by which trees supply water to leaves to the top of a tree.) Fine sand can have a capillary rise of up to 30 feet. Sand/gravel can reach ten feet, depending upon the grain size and compaction of the material. McLane makes reference to a “coarse” sand gravel layer. Those two factors will permanently increase the level of the water table to the north by more than 12 feet. The limited data supplied by McLane indicates that the interval between the ground level and the bottom of the top aquifer decreases as you travel north across the pit. That permanent increase in the water level will most likely cause the septic tanks along that end to be flooded and to fail, causing potential pollution issues. Several of the septic systems are marginal under current conditions due to the attendant ground water level.
- c. Since the dewatering plan is to pump the pits to the north ahead of mining, once operations approach that end of the mine site, temporary inundation of those septic systems will occur. The Fosters state that they may have to run their 1000gpm pumps occasionally for a day or two. A 24-hour pumping dewatering cycle will discharge 1.44 million gallons per day. While they state that the dewatering will not extend more than 200 feet from the pit, and will not affect the water table, simple math and common sense indicates otherwise. Maybe the discharge hose will be 200 feet away, but the discharge must be far enough away so the water does not flow back into the pit. By pumping the dewatering discharge to the north, the majority of the water will move in the direction of the gradient toward the Kenai River. That volume of water, if capable of being stacked (which it cannot be) would inundate one acre (208 feet by 208 feet) with 33 gallons of water per square foot over 24 hours, or more than 4 feet of water per square foot over an entire acre. Double that for a two-day pumping operation.
- d. The dewatering operation will permanently destroy wells on the south side of the proposed mining site and the septic systems to the north and west.

For all of the above reasons—failure to follow mandatory code requirements for the filing of the application, the lack of an independent or unbiased civil engineer or hydrogeologist, the impact of the operations on the wells and septic systems near the mine site, this application needs to be denied. The operations need to be limited to what they asked for when the underlying permit was granted, which was based upon staying at least two feet above the bottom of the upper aquifer and for a post mining reclamation plan which included residential housing. That reclamation plan would keep River Resources in compliance with their commitments to their former partners who now own the properties on both sides of Patson Circle and prevent potential litigation, which has been discussed by some of those owners. I doubt seriously whether this permit process for its modification would be validated by judicial review. If in fact the decision has already been made to grant the permit, at a minimum, make the reclamation bond meet the requirement to cover the potential damages, namely at least \$1.25 million.

Respectfully submitted,

Dale McBride

May 21, 2021

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

SUBJECT: PC Resolution 2019-39
KPB Tax Parcel No. 135-243-13 & 135-243-29

RE: Conditional Land Use Permit Modification Application

Dear Mr. Taylor & Planning Commission:

River Resources, LLC, the property owner of KPB 135-243-13 & 135-243-29, is applying for modification of CLUP approved by PC Resolution 2019-39. The modification would allow for excavation in the water table on approximately 31.2 acres of the permitted property. River Resources has met all four (4) criteria set forth in KPB 21.29 to excavate within the water table.

Please excuse the error on the letter submitted April 12, 2021 regarding the date of monitor well installation. The five groundwater monitor wells were installed in *September 2019*, not April 2020. Attached is a copy of field survey notes from September 17, 2019 when the MCI field crew initially the monitor wells. The monitor wells are also shown on the original CLUP application site exhibit which is part of the public record at the November 25, 2019 Planning Commission Meeting. Since initial submittal of the CLUP Modification, the monitor wells have been measured again on April 23, 2021 in accordance with KPB 21.29.

Per KPB 21.29050.A.4.d, excavation is only proposed within the upper unconfined aquifer, not to exceed approximately 32' below original ground (approximate elevation 68.0). On May 7, 2021, Smith Well Drilling installed a water well on the permit property. According to the well log (Log ID 836), the confining layer is 35' below existing ground, deeper than the proposed depth of excavation. Attached is Well Log 836.

If approved to excavate below the water table, this site will utilize a manmade lake as final reclamation. This is a recognized form of reclamation in the City of Soldotna and the City of Kenai material site permitting codes. Attached are photos of two material sites owned by the applicants' family that are reclaimed as manmade lakes. The Riverbend material site is still active and the Anglers Drive material site is fully reclaimed and subdivided with lots selling and being residentially developed.

River Resources has proposed to utilize dewatering during the lower limits of excavation within the groundwater table. Dewatering will be conducted on an as needed, temporary basis while extracting below the groundwater table. Attachment D is a dewatering plan that includes a representative dewatering layout, dewatering equipment sizing, drawdown, and recharge calculations.

Per KPB 29.10.050.A.5, the groundwater data has been evaluated by a licensed, qualified civil engineer. The excavation and dewatering plan included in the CLUP Modification Application will not negatively impact the quantity of the aquifer serving the existing water sources.

If you have questions, please contact me.

Sincerely,

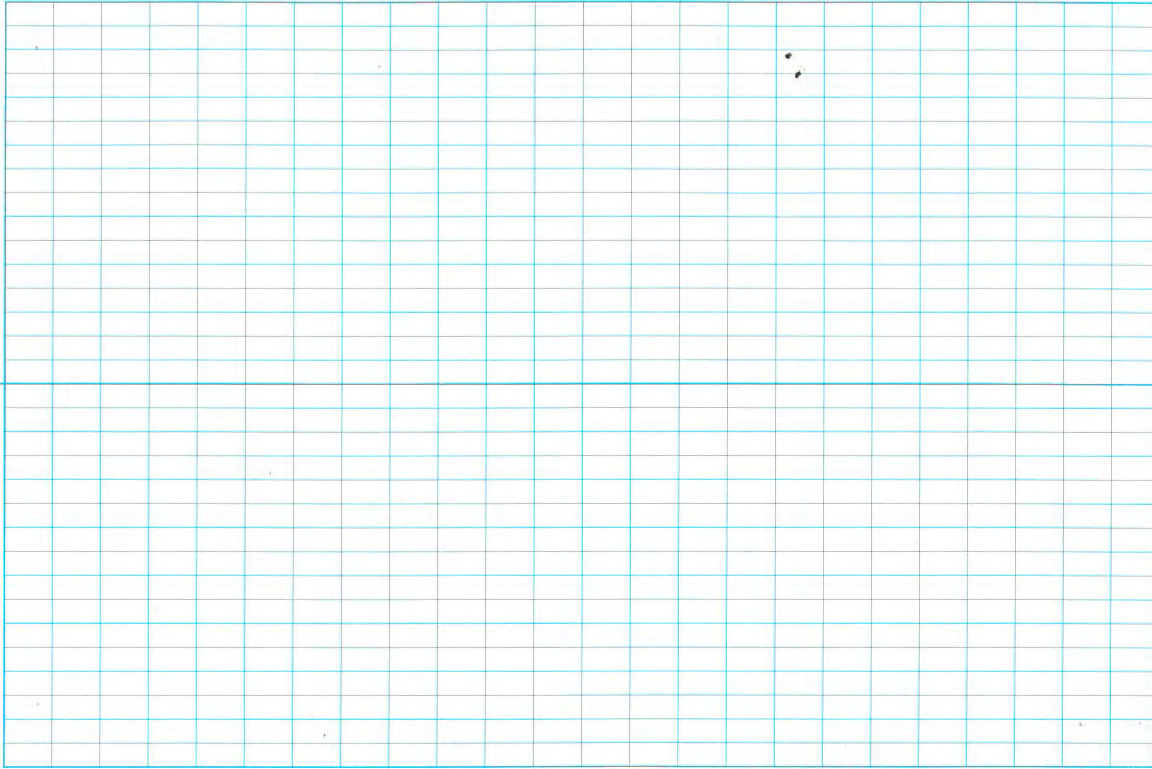
A handwritten signature in black ink that reads "Gina DeBardelaben". The script is cursive and fluid.

Gina DeBardelaben, PE
McLane Consulting, Inc.

Attachments:

- A. McLane Consulting Survey Field Notes 9-17-2021
- B. Smith Well Drilling Material Site Water Well Log Well ID 836 5-7-2021
- C. Photos of reclaimed manmade lake material sites, Riverbend & Anglers Drive.
- D. River Resources, LLC. Site Specific Dewatering Plan 5-19-2021

19-11-29



Plot in the Rain

EC AIX	19-17-19	19-2016P	19-4035
	Foster Club		
	APPROACH	LINE OF SIGHT	
	EAST	+ 1000'	
	WEST	+ 500'	
413	TOP 4" PVC	TEST HOLE	"
414	GRND @ PVC	"	"
415	TEST HOLE	"	"
416	TOP 4" PVC	"	"
417	GRND @ PVC	"	"
418	TOP 4" PVC	"	"
419	GRND @ PVC	"	"
420	TOP 4" PVC	"	"
421	GRND @ PVC	"	"
	EXPORT ALL POINTS		
	- IXL		

Smith Well Drilling

35876 Isbell St.
Soldotna, Ak 99669
Ph(907)-262-3970

Water Well Construction Log**Log ID** 836**Well Owner:** Foster Construcion**Date Completed:** 05/07/2021**NearestCommunity:** Soldotna**Driller:** Tyler Smith**Well Location:** Patson Rd.-Funny River

Use of Well:	Commercial	Depth of Well:	180ft	Static Water Level:	Above Ground Level	
Depth of Casing:	165ft	Casing Stickup:	2ft	Pumping Level:	160ft	Duration: 4hr(s)
Casing Type:	Steel	Casing Dia:	6in.	Flow Rate:	300GPM	Testing Method: Air
Casing Thickness:	0.250in.	Finish of Well:	Screen	Development Method:	Air	Drilling Method: Air Rotary
Intervals and Size:	12 Slot Stainless Steel Screen			Drilling Fluid:	Water	
From: 165ft	To: 180ft					

Drillers Material Log

(Description of strata penetrated)

Depth Below Top
Of Casing In Feet

From	To	Material
0	— 35	Brown Gravel
35	— 116	Blue Clay and Gravel
116	— 128	Blue Clay
128	— 140	Blue Silt and Sand
140	— 165	Blue Sand and Gravel
165	— 170	Blue Sandstone
170	— 180	Blue Sand

Riverbend Material Site (PID 04912003). Currently active material extraction site in City of Kenai.



Angler Drive (PID 04949054-9). Reclaimed & subdivided material site in City of Kenai.



River Resources, LLC
 Funny River - Patson Properties Conditional Land Use Permit
 Excavation Dewatering Plan

River Resources has proposed to utilize dewatering during the lower limits of excavation within the groundwater table. Excavation dewatering will be utilized on an as-needed basis during material extraction within the groundwater table. This plan is to provide information and parameters for that process. Dewatering parameters are as follows:

Pump Intake: 6" diameter maximum
 Rate of Pump: 2200 GPM (4.901620 cfs)
 Length of Dewatering: 10 day maximum

Excavation dewatering temporarily depresses shallow groundwater within the immediate area of the dewatering, but the groundwater level will recover to pre-dewatering elevations upon termination of dewatering. If dewatering was removed from the site, the aquifer would experience the well drawdown shown in Table A.

TABLE A. Well Drawdown without Immediate Adjacent Discharge
 (if dewatering was removed from site)

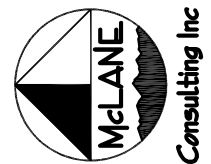
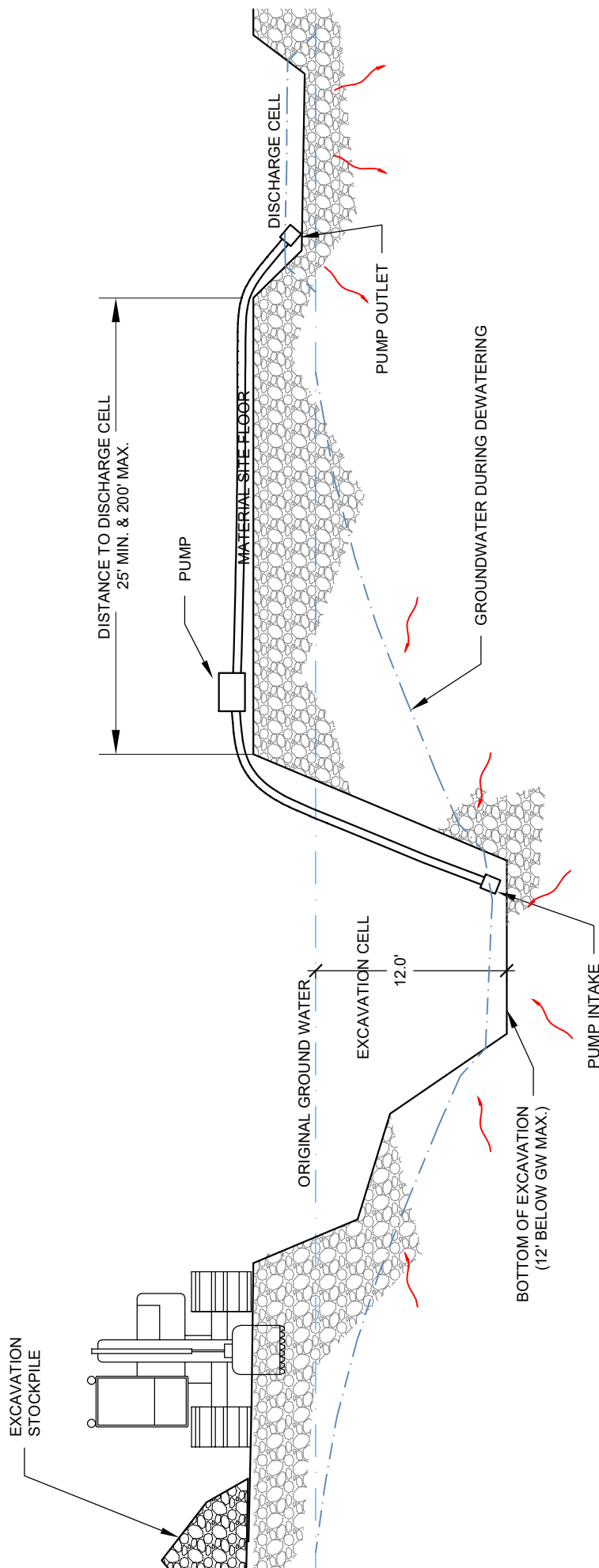
Distance from Dewatering Point	Length of Dewatering		
	1-day	7-day	10-day
300 feet	1.22 ft	1.98 ft	2.12 ft
0.25 mile	0.22 ft	0.84 ft	0.97 ft
0.50 mile	0.02 ft	0.40 ft	0.51 ft
1.0 mile	0.0 ft	0.07 ft	0.12 ft

Dewatering will not be removed from the subject property. Waters from the dewatering process will be discharged within the permit property to re-enter the groundwater table, therefore providing rapid recharge to the aquifer which negates the effects on surrounding groundwater elevations. Therefore, the aquifer would experience the well drawdown shown in Table B.

TABLE B. Well Drawdown with Immediate Adjacent Discharge
 (dewatering is discharged adjacent to removal dewatering location)

Distance from Dewatering Point	Length of Dewatering		
	1-day	7-day	10-day
300 feet	0.0 ft	0.04 ft	0.10 ft
0.25 mile	0.0 ft	0.0 ft	0.0 ft
0.50 mile	0.0 ft	0.0 ft	0.0 ft
1.0 mile	0.0 ft	0.0 ft	0.0 ft

An exhibit of the proposed pumping layout is included on Sheet 1.



McLANE CONSULTING INC.

ENGINEERING - TESTING
SURVEYING - MAPPING
P.O. BOX 468
SOLDOTNA, AK 99669
VOICE: (907) 283-4218
FAX: (907) 283-3265
WWW.MCLANECG.COM

PROJECT

DEWATERING PLAN EXHIBIT

LOCATION

FUNNY RIVER - PATSON PROPERTIES

CLIENTS

RIVER RESOURCES, LLC
SOLDOTNA, ALASKA 99669

REVISION: 1

DATE: 5/19/2021

DRAWN BY: GMD

SCALE: NTS

PROJECT NO. 204014

BOOK NO. 19-11

SHEET

1

MISCELLANEOUS / ADDITIONAL INFORMATION

Public Notice of Meeting



Planning Department

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

Charlie Pierce
Borough Mayor

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: River Resources, LLC

Landowner: River Resources, LLC

Parcel Numbers: 135-243-13 & 135-243-29

Legal Description: **T 5N R 10W SEC 34 SEWARD MERIDIAN KN NW1/4 SE1/4 EXCLUDING PATSON PROPERTIES PART 1**

T 05N R 10W SEC 34 SEWARD MERIDIAN KN 2019068 PATSON PROPERTIES 2019 REPLAT TRACT C1

Location: 34386 PATSON RD

Proposed Land Use: The applicant wishes to modify an existing material site permit to allow for sand and gravel extraction in the water table.

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, April 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, April 8, 2021.

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

Bryan Taylor

Planner

Ph: (907) 714-2206

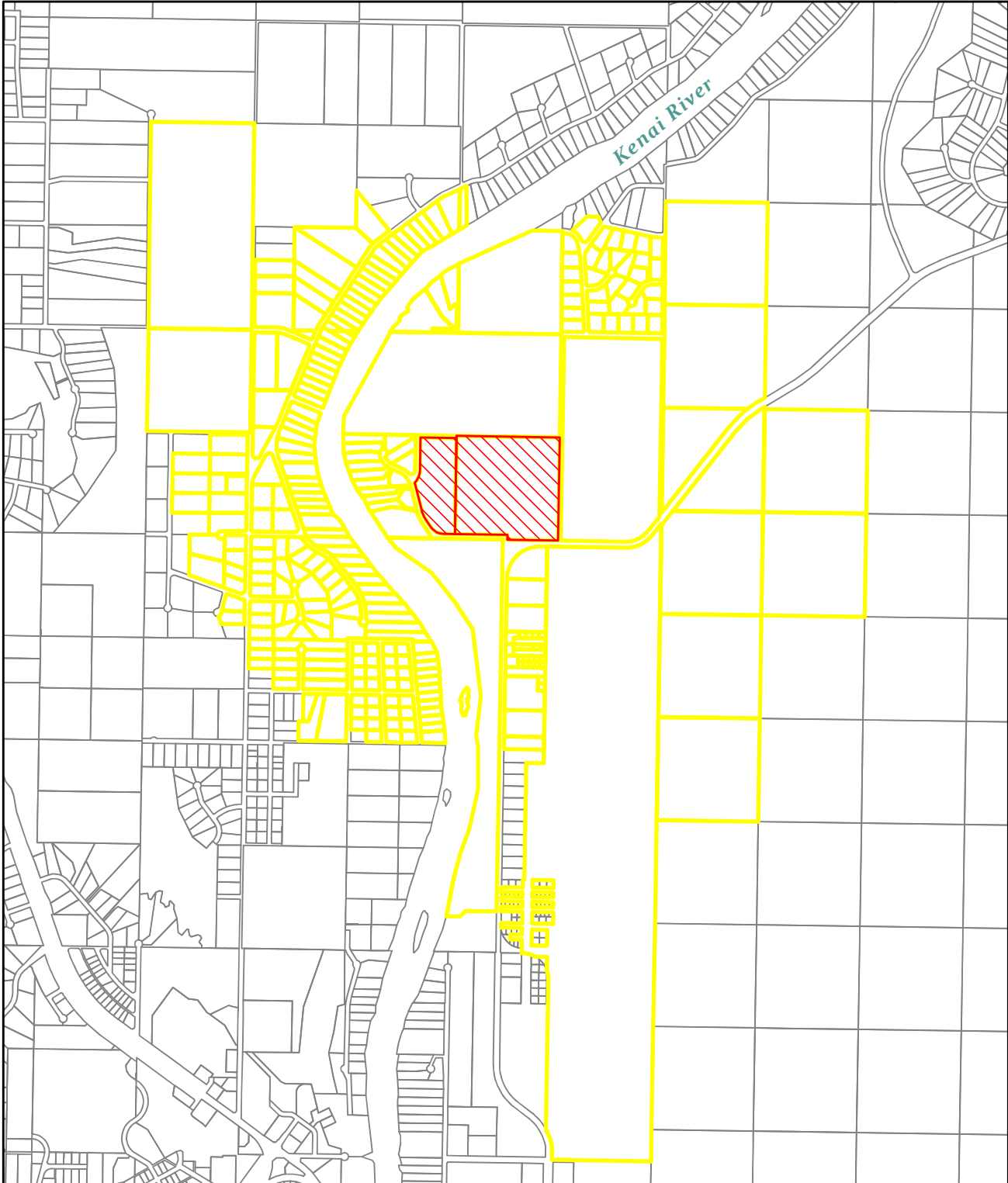
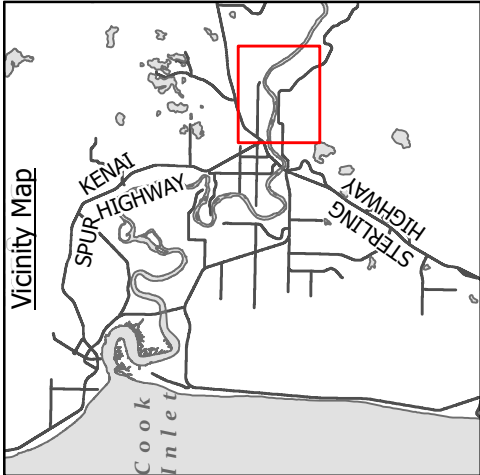
Fx: (907) 714-2378

KENAI PENINSULA BOROUGH
144 North Binkley Street
Soldotna, Alaska 99669



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

Parcels: 135-243-13 & -29
Applicant: River Resources LLC



LEGEND

- KPB Tax Parcels (1006)
- Subject Parcels (2)
- Properties 1/2-Mile Radius (285)



0 500 1,000 2,000 Feet

The information depicted herein is a graphical representation only and should not be used for any purpose other than that for which it was prepared. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.

Newspaper Ads & Affidavits

PUBLISHER'S AFFIDAVIT

UNITED STATES OF AMERICA,
STATE OF ALASKA

} SS:

Jeff Hayden, being first duly sworn, on oath deposes
and says:

That I am and was at all times here in this affidavit
mentions, Supervisor of Legals of the Sound
Publishing / Peninsula Clarion, a newspaper of general
circulation and published at Kenai, Alaska, that the
advertisement, a printed copy of which is hereto
annexed was published in said paper on the dates
listed below:

PC NPH
04/01/21
1/0/00

4

X Jeff Hayden

SUBSCRIBED AND SWORN before me on this

14th day of April, 2021.

Elizabeth A. McDonald

NOTARY PUBLIC in favor for the State of Alaska.

My commission expires 3-6-24.

Elizabeth A. McDonald
Notary Public, State of Alaska
Commission #200306009
My Commission Expires March 6, 2024



KENAI PENINSULA BOROUGH PLANNING COMMISSION
NOTICE OF PUBLIC HEARING
Monday, April 12, 2021

The following items are scheduled for public hearings to be held by the Kenai Peninsula Borough Planning Commission on Monday, April 12, 2021 commencing at 7:30 p.m., or as soon thereafter as business permits. Due to the current COVID-19 pandemic and CDC guidelines, the meeting will not be physically open to the public. The public is invited to participate via teleconferencing. The Planning Commissioners, along with staff members, will be attending via video/teleconferencing. 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 1-877-863-5247. 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 toll free numbers, the Meeting ID, and your participant number. Detailed instructions will be posted on the Planning Commission's webpage prior to the meeting - <https://www.kpb.us/planning-dept/planning-commission>

1. Public notice is hereby given that a petition was received to name a private road in the Bear Creek area. Area under consideration is described as follows: **Location:** *Unnamed private road*; Section 22, T01N, R01W; Seward Meridian, Kenai Peninsula Borough, AK; In the Bear Creek Community; ESN 752. **Proposed Name:** **WOODLAND HOLLOW CT.** **Purpose as stated in petition:** The street does not yet have a name, and the adjacent subdivision is called Woodland Hollow. **Petitioner(s):** Maxwell Enterprises, LLC (Jules Maxwell)

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, April 9, 2021. [Written comments may also be sent by email to the address below or by Fax to 907-714-2378].

2. 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. **Applicant:** River Resources, LLC. **Landowner:** River Resources, LLC. **Parcel Numbers:** 135-243-13 & 135-243-29. **Legal Description:** T05N R10W SEC 34 S.M. KN NW1/4 SE1/4 EXCLUDING PATSON PROPERTIES PART 1 & T05N R10W SEC 34 S.M. KN 2019068 PATSON PROPERTIES 2019 REPLAT TRACT C1. **Location:** 34386 Patson Road. **Proposed Land Use:** The applicant wishes to modify an existing material site permit to allow for sand and gravel extraction in the water table.
3. Public notice is hereby given that the Kenai Peninsula Borough has been notified of an application for a Retail Marijuana Store license in the Kalifornsky Area. The Borough will hold a public hearing prior to providing comments to the State on this application. The application under consideration is described as follows: **Applicant** - Greenstar, Inc.; **Landowner** - OTIUM SANCTUM LLC; **Parcel Number** - 055-040-33; **Property Description** - T05N R11W SEC 15 S.M. KN 0940082 CARROL MARTIN SUB NO 2 LOT 1; **Location:** 40593 Kalifornsky Beach Road, Soldotna, AK 99669; **Proposed Land Use:** The applicant wishes to obtain a license from the Alaska Marijuana Control Board for a Retail Marijuana Store on the parcel listed above.
4. Public notice is hereby given that the Kenai Peninsula Borough has been notified of an application for a marijuana concentrate manufacturing facility license in the Kalifornsky Area. The Borough will hold a public hearing prior to providing comments to the State on this application. The application under consideration is described as follows: **Applicant** - Gold Star Concentrates, Inc.; **Landowner** - OTIUM SANCTUM LLC; **Parcel Number** - 055-040-33; **Property Description** - T05N R11W SEC 15 S.M. KN 0940082 CARROL MARTIN SUB NO 2 LOT 1; **Location:** 40593 Kalifornsky Beach Road, Soldotna, AK 99669; **Proposed Land Use:** The applicant wishes to obtain a license from the Alaska Marijuana Control Board for a Retail Marijuana Store on the parcel listed above.

Those wishing to comment on the above items may come to the 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 Friday, April 9, 2021.

5. Ordinance 2021-___: An ordinance authorizing a negotiated lease with Alaska Department of Transportation & Public Facilities for staging and material disposal in support of the Sterling Highway MP 45-60 Construction Project near Cooper Landing.
6. Ordinance 2021-___: An ordinance authorizing a negotiated lease of Tract C Quartz Creek subdivision with Kiewit Infrastructure West Company for staging in support of the Sterling Highway MP 45-60 Construction Project near Cooper Landing

Those wishing to comment on the above two items may come to the 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 imdweb@kpb.us. Please provide written statements by Friday, April 9, 2021.

256595

PUBLISHER'S AFFIDAVIT

UNITED STATES OF AMERICA,
STATE OF ALASKA

} SS:

Jeff Hayden, being first duly sworn, on oath deposes
and says:

That I am and was at all times here in this affidavit
mentions, Supervisor of Legals of the Sound
Publishing / Peninsula Clarion, a newspaper of general
circulation and published at Kenai, Alaska, that the
advertisement, a printed copy of which is hereto
annexed was published in said paper on the dates
listed below:

PC Agenda
04/08/21
1/0/00

4

X  _____

SUBSCRIBED AND SWORN before me on this

14th day of April, 2021.

 _____

NOTARY PUBLIC in favor for the State of Alaska.

My commission expires 3.6.24.

Elizabeth A. McDonald
Notary Public, State of Alaska
Commission #200306009
My Commission Expires March 6, 2024



Kenai Peninsula Borough Planning Commission April 12, 2021 TENTATIVE AGENDA

The next regularly scheduled Plat Committee and Planning Commission meetings will be held Monday, April 12, 2021. Due to the COVID-19 pandemic and CDC guidelines the meeting will not be physically open to the public. The meetings will be held through Zoom. The Planning Commission & staff members will be attending via teleconferencing. The public will be able to listen or participate. To join the meeting from a computer visit:

<http://zoom.us/j/2084259541>

To attend the meetings by telephone call toll free 1-888-788-0099 or 1-877-853-5247. When calling in you will need the Meeting ID number of 208 425 9541. Detailed instructions will be posted on the Planning Commission webpage prior to the meeting: <https://www.kpb.us/planning-dept/planning-commission>

PLAT COMMITTEE – 6:00 P.M.

New Business

1. Bluff Haven Estates 2021 Replat; KPB File: 2021-030; [Geovera, LLC / Evensen]; Location: Sterling Hwy. & Bluff Road – Diamond Ridge Area; Kachemak Bay APC
2. Kachemak Vista Subdivision 2021; KPB File: 2021-023; [Ability Surveys / Adele Josepho Family Trust]; Location: Skyline Dr. & Taylor Ave. – Fritz Creek Area; Kachemak Bay APC
3. Townsite of Kenai 2021 Kenaitze Replat; KPB File: 2021-13; [Edge Survey & Design / Kenaitze Indian Tribe IRA & Kenaitze Indian Tribe]; Location: Overland Ave., Mission Ave. & Upland St.; City of Kenai
4. Beaver Dam Estates Part Seven; KPB File: 2021-025; [Segesser Surveys / Thibodeau]; Location: K-Beach Rd., Eider Dr., & Mallard Rd. – Kalifornsky Area; Kalifornsky APC
5. FBO Subdivision No. 10; KPB File 2021-037; [Segesser Surveys / City of Kenai]; Location: Floatplane Rd., Main St., Geebe E Ave. & N. Willow St.; City of Kenai
6. Hulen 2021 Addition; KPB File 2021-024; [Johnson Surveying / Hulen]; Location: Tovarish Rd., Cecelia St. & Aspen Ave.; Ninilchik Area
7. Tesch Subd 2021 Addn; KPB File: 2021-032; [Johnson Surveying / Gagnon & Fanning]; Location: Cass Ave. & Odman St.; Ninilchik Area
8. Folz Subdivision 2021 Addition; KPB File: 2021-036; [McLane Consulting Group / ZPA, LLC]; Location: Milepost 3.5 Seward Hwy.; Bear Creek Area
9. Lakewood Estates 2021 Replat; KPB File: 2021-035; [McLane Consulting Group / Myers, Mehler & Mehler III]; Location: Sterling Hwy. to Lakewood Rd.; Sterling Area
10. Rex W. Eagle Homestead 2021 Replat; KPB File: 2021-033; [McLane Consulting Group / Richeson & Eagle]; Location: Mink Ave., Magpie St. & Golden Eagle Ave.; Ridgway Area
11. Rozak Subdivision; KPB File: 2021-028; [McLane Consulting Group / Rozak]; Location: Derks Lake Rd., Cinnamon St. & Mill Ave.; Sterling Area

PLANNING COMMISSION – 7:30 P.M.

New Business

1. Right-of-Way Time Extension Request; KPB 2019-171V; Approved 10/28/19 for One Year; Mountain Ash Street, Dedicated by Forest Hills Lookout Sub Amended, KN 86-204
2. Street Name Change; SN Resolution 2021-03; Unnamed Private Rd.; Location: SEC 22, T01N, R01W, S.M., KPB; Bear Creek Community; ESN 752; Proposed Name: Woodland Hollow Ct
3. Utility Easement Vacation; KPB File 2021-010V; Petitioner: Ronald F. Black of Nikiski, AK; Vacate a 10' x 30' utility easement within Lot 6, adjoining Pembroke Drive, granted by Green Forest Subdivision; Plat KN 84-309
4. Utility Easement Vacation; KPB File: 2021-034V; Petitioner: Jacob J. Doth of Nikiski; Vacate a 10' utility easement, excluding the west 20', adjoining the north boundary of Lot 17, Block 2, granted by Forest Subdivision Part 1: Plat KN 82-76
5. Utility Easement & Anchor Easement Vacations; KPB File: 2021-026V; Petitioner: Mirimia-Sanarov of Homer, AK:
 - a. Vacate a 10' utility easement adjoining the south boundary of Lot 2-C, Block 1, Mountain, granted by Mountain Glacier Estates Sub Part 4 Amended, Plat HM 83-20
 - b. Vacate a 10' x 10' portion of a 10' X 30' anchor easement within Lot 2-C, Block 1, granted by Mountain Glacier Estates Sub Part 2, Plat HM 81-22
6. Negotiated Lease; Ordinance 2021-14: An ordinance authorizing a negotiated lease with Alaska Department of Transportation & Public Facilities for staging and material disposal in support of the Sterling Highway MP 45-60 Construction Project near Cooper Landing.
7. Negotiated Lease; Ordinance 2021-13: An ordinance authorizing a negotiated lease of Tract C Quartz Creek subdivision with Kiewit Infrastructure West Company for staging in support of the Sterling Highway MP 45-60 Construction Project near Cooper Landing
8. Conditional Land Use Permit (CLUP); Modification of an approved CLUP for material extraction; Applicant: River Resources, LLC; Location: 34386 Patson Rd., Soldotna, AK 99669; PINs: 135-243-13 & 135-243-29
9. Retail Marijuana Store License; Applicant: Greenstar, Inc.; Land Owner: Otium Sanctum, LLC; Location: 40593 Kalifornsky Beach Rd., Soldotna, AK 99669; PIN: 055-040-33
10. Marijuana Manufacturing Facility License; Applicant: Gold Star Concentrates; Land Owner: Otium Sanctum, LLC; Location 40593 Kalifornsky Beach Rd., Soldotna, AK 99669; PIN 055-04033

Anyone wishing to testify may attend through Zoom to give testimony. It is highly recommended that at this time written statements be submitted by email (planning@kpb.us) or fax (907-714-2378). Written comments may be submitted by hand-delivery or mail (Planning Department, 144 N. Binkley St., Soldotna, AK 99669).

FUTURE MEETINGS

The next regularly scheduled Plat Committee meeting will be held Monday April 28, 2021. The Plat Committee meeting will begin at 6:00 p.m. The next regularly scheduled Planning Commission meeting will be held Monday April 28, 2021. The Planning Commission meeting will begin at 7:30 p.m.

PUBLISHER'S AFFIDAVIT

UNITED STATES OF AMERICA,
STATE OF ALASKA

} SS:

Jeff Hayden, being first duly sworn, on oath deposes and says:

That I am and was at all times here in this affidavit mentions, Supervisor of Legals of the Sound Publishing / Peninsula Clarion, a newspaper of general circulation and published at Kenai, Alaska, that the advertisement, a printed copy of which is hereto annexed was published in said paper on the dates listed below:

NPH
05/13/21
1/0/00

4

X Jeff Hayden

SUBSCRIBED AND SWORN before me on this

2nd day of May, 2021.

Elizabeth A. McDonald

NOTARY PUBLIC in favor for the State of Alaska.

My commission expires 3-6-24

Elizabeth A. McDonald
Notary Public, State of Alaska
Commission #200306009
My Commission Expires March 6, 2024

KENAI PENINSULA BOROUGH PLANNING COMMISSION
NOTICE OF PUBLIC HEARING
Monday, May 24, 2021

The following item is scheduled for a public hearing to be held by the Kenai Peninsula Borough Planning Commission on Monday, May 24, 2021 commencing at 7:30 p.m., or as soon thereafter as business permits. The meeting is being held in person at the Betty J. Glick Assembly Chambers of the Kenai Peninsula Borough George A Navarre Administration Building, 144 N. Binkley St., Soldotna, AK. Participation is also available through video conferencing using Zoom. To join the meeting via Zoom, 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 toll free numbers, the Meeting ID, and your participant number. Detailed instructions will be posted on the Planning Commission's webpage prior to the meeting at:
<https://www.kpb.us/planning-dept/planning-commission>

1. 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. Applicant: River Resources, LLC. Landowner: River Resources, LLC. Parcel Numbers: 135-243-13 & 135-243-29. Legal Description: T05N R10W SEC 34 S.M. KN NW1/4 SE1/4 Excluding Patson Properties Part 1 & T05N R10W SEC 34 S.M. KN 2019068 Patson Properties 2019 Replat Tract C1. Location: 34386 Patson Road. Proposed Land Use: The applicant wishes to modify an existing material site permit to allow for sand and gravel extraction in the water table.

Those wishing to comment on the above items may come to the 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 Friday, May 21, 2021.

2576545

PUBLISHER'S AFFIDAVIT

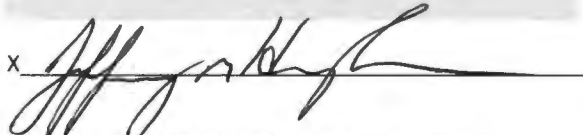
UNITED STATES OF AMERICA,
STATE OF ALASKA

} SS:

Jeff Hayden, being first duly sworn, on oath deposes and says:

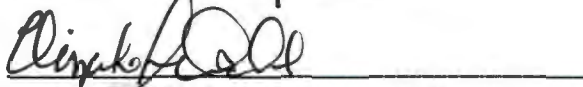
That I am and was at all times here in this affidavit mentions, Supervisor of Legals of the Sound Publishing / Peninsula Clarion, a newspaper of general circulation and published at Kenai, Alaska, that the advertisement, a printed copy of which is hereto annexed was published in said paper on the dates listed below:

PC agenda
05/20/21

X 

SUBSCRIBED AND SWORN before me on this

26th day of May, 2021.



NOTARY PUBLIC in favor for the State of Alaska.

My commission expires 3-6-24

Elizabeth A. McDonald
Notary Public, State of Alaska
Commission #200306009
My Commission Expires March 6, 2024

Kenai Peninsula Borough Planning Commission May 24, 2021 TENTATIVE AGENDA	
The next regularly Planning Commission meetings will be held Monday, May 24, 2021 at the KPB George A Navarre Administration Building, 144 N. Binkley St., Soldotna, AK. The public may also listen or participate in the meeting via Zoom. To join the meeting via Zoom from a computer visit: http://zoom.us/j.2084259541	
To attend the meetings by telephone call toll free 1-888-788-0099 or 1-877-853-5247. When calling in you will need the Meeting ID number of 208 425 9541. Detailed instructions will be posted on the Planning Commission webpage prior to the meeting: https://www.kpb.us/planning-dept/planning-commission	
Please note the Plat Committee will not be meeting.	
PLANNING COMMISSION - 7:30 P.M.	
New Business	
1. Barnett's South Slope Subdivision Quiet Creek Park Replat Lots 35, 36 & 37; KPB File: 2021-057; Geovera, LLC / Martin, Carter, Harris, Ferraro; Location: on Nelson Ave.; City of Homer	
2. Barnett's South Slope Subdivision Quiet Creek Park Lot 38 Replat; KPB File: 2021-058; Geovera, LLC / Echo Trading Company, LLC, Drake; Location: on Nelson Ave.; City of Homer	
3. Poage Subdivision Chaloux Replat; KPB File: 2021-059; Segesser Surveys / Chaloux; Location: on Robert Ave.; Funny River Area / Funny River APC	
4. Don's Place Subdivision Heazlett Replat; KPB File: 2021-060; Segesser Surveys / Heazlett; Location: on Eagle Ave.; Nikiski area	
5. Bos'N Landing 2021 Replat; KPB File: 2021-062; McLane Consulting Group / Edward N. Krohn Estate; Location: off Lou Morgan Rd., on Starboard Beam Cir. & Focsie Cir.; Sterling Area	
6. River Quest 2021 Replat; KPB File 2021-061; McLane Consulting Group / Schalke, Crosswhite, Willkie; Location: on Davison Ave.; Kalifornsky Area / Kalifornsky APC	
7. Review of the KPB Plat Committee Preliminary Approval; Bluff Haven Estates 20201 Replat; KPB File: 2021-030; Geovera, LLC / Evensen; Location: in the Diamond Ridge Area	
8. Conditional Land Use Permit (CLUP) - Modification of CLUP for material extraction; PC Resolution 2021-10; Applicant: River Resources, LLC; Location: 34386 Patson Rd., Soldotna, AK 99669; PINs: 135-243-13 & 135-243-29	
Anyone wishing to testify must attend in person or via Zoom to give testimony. It is highly recommended that at this time written statements be submitted by email (planning@kpb.us) or fax: (907-714-2378). Written comments may be submitted by hand-delivery or mail (Planning Department, 144 N. Binkley St., Soldotna, AK 99669).	
FUTURE MEETINGS	
The next regularly scheduled Plat Committee meeting will be held Monday June 14, 2021. The Plat Committee meeting will begin at 5:30 p.m. The next regularly scheduled Planning Commission meeting will be held Monday May 24, 2021. The Planning Commission meeting will begin at 7:30 p.m.	
KPB PLANNING DEPARTMENT Ann Shmberg, Administrative Assistant Phone: (907) 714-2215 / Fax: (907) 714-2378 Toll free within the Borough 1-800-478-4441	

PLANNING COMMISSION MEETING MINUTES APRIL 12, 2021

MOTION PASSED: Hearing no further discussion or objection the motion passed by the following vote:

Yes	9	No	0	Absent	2
Yes	Brantley, Carluccio, Chesser, Ecklund, Fikes, Gillham, Morgan, Ruffner, Venuti				
Absent	Bentz, Martin				

AGENDA ITEM E CONDITIONAL LAND USE PERMIT MODIFICATION

8. Conditional Land Use Permit Modification for an Existing Material Site Operation

Applicant: River Resources, LLC

Landowner: River Resources, LLC

Parcel Numbers: 135-243-13 & 29

Legal Description:

- T05N, R10W, SEC 34, Seward Meridian, KN NW1/4 SE1/4, Excluding Patson Properties Part 1
- T05N, R10W, SEC 34 Seward Meridian, KN 2019-068, Patson Properties 2019 Replat Tract 1C

Location: 34386 Patson Road

Staff report given by Bryan Taylor

GENERAL OVERVIEW: The applicant wishes to modify the existing conditional land use permit for material extraction on the above property, approved by the planning commission on December 16, 2019, to allow for gravel extraction below the groundwater elevation. A copy of the application, including the required water monitoring information, is included as **Attachment A**. The applicant is also requesting an exemption for dewatering as part of the extraction activities. Dewatering will only be conducted within the permitted material site and water will not leave the property.

KPB 21.29.050(A)(5) provides that the planning commission may approve excavation in the water table provided the applicant completes certain water monitoring requirements carried out by an independent civil engineer or professional hydrogeologist, submits the monitoring data, and has certification by the engineer or hydrogeologist that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources.

As required by KPB 21.29.050(A)(5), McLane Consulting has certified that the excavation plan proposed by the applicant will not negatively impact the quantity of the aquifer serving the existing water sources. The excavation and reclamation site plan submitted with the application states that monitor wells will be maintained and measurements recorded for the life of the material site. Vicinity, aerial, topography, land use and ownership maps are included here as **Attachments B – F**.

According to the modification application received on March 3, 2021, the applicant seeks to excavate and area of approximately 31.2 acres to a maximum depth of 32' below original ground. The groundwater elevation data provided indicates that groundwater elevation is approximately 17' below original ground. The aquifer-confining layer of dense blue-gray silt is estimated to be approximately 35' below original ground and approximately 30' thick.

As in the original application, primary ingress and egress to the site is directly onto Funny River Road, a state maintained road, with alternate access proposed to Kenai River Avenue, a City of Soldotna maintained road, and then to Funny River Road. The groundwater excavation plan for the site is the same as the phased development originally approved, with material being excavated in the southern portion of the parcel and working northerly. Dewatering will be localized and will remain within the same property to re-enter the groundwater table. The required buffers will remain the same. As originally permitted, the impacted area remains at approximately 52 acres, with excavation within the water table on approximately 31.2 acres; the annual quantity of material expected to be removed is 45,000cy; and, the site has an expected lifespan of 40 years.

PUBLIC NOTICE: Public notice of the application was mailed on March 19, 2021 to the 233 landowners or Kenai Peninsula Borough.

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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**. Public comments received prior to the packet deadline are included as **Attachment H**. Any public comments received by the Planning Department prior to the hearing will be included as desk packet items at the April 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 December 16, 2019, the planning commission passed resolution 2019-39, which approved a conditional land use permit to River Resources, LLC, for material extraction on KPB tax parcels #135-243-13 & 135-243-29.
 - D. On February 26, 2021, River Resources, LLC, submitted to the KPB Planning Department an application to modify its existing conditional land use permit for parcels #135-243-13 & 135-243-29 to allow for excavation below groundwater elevation. After a request from staff, additional information was provided on March 3, 2021.
 - E. KPB 21.29.050(A)(5) provides the conditions upon which the planning commission may permit excavation within the water table greater than a 300-foot distance from a water source. Conditions include installation of at least three monitoring wells, completion of monitoring requirements, certification by a qualified independent civil engineer or professional hydrogeologist that the excavation will not negatively impact the quantity of an aquifer serving existing sources, and a prohibition on operations breaching an aquifer confining layer.
 - F. The applicant contracted McLane Consulting to measure groundwater monitor wells and analyze the data in accordance with KPB 21.29.050(A)(5).
 - G. McLane Consulting collected groundwater elevation measurements in three month intervals from five monitor wells over the course of one year.
 - H. From the measurements and data from the Alaska Department of Natural Resources, McLane Consulting determined the flow direction at the site to be northwesterly, and the flow rate, or hydraulic conductivity, to be typical of dense gravel and coarse sand.
 - I. As required by KPB 21.29.050(A)(5)(a), McLane Consulting has certified that the excavation plan proposed by the applicant will not negatively impact the quantity of the aquifer serving the existing water sources.
 - J. The excavation and reclamation site plan states that at least three monitor wells will be maintained and measurements recorded for the life of the material site.
 - K. A staff site visit was conducted on March 25, 2021.
 - L. In accordance with KPB 21.29.050(A)(4-5), all excavation between 300 and 100 horizontal feet of existing wells must remain at least two feet above groundwater.
 - M. In accordance with KPB 21.29.050(A)(4), material extraction is prohibited within 100 horizontal feet of wells existing prior to the original permit issuance.
 - N. A public hearing of the planning commission was held on April 12, 2021, and notice of the application was mailed on March 19, 2021, to the 233 landowners or leaseholders of the parcels within one-half mile of the subject parcels. Public notice was sent to the postmaster in Soldotna requesting that it be posted at the Post Office. Public notice of the application was scheduled for publication in the March 31, 2021, & April 7, 2021, issues of the Peninsula Clarion.
 - O. 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 and has verified that stakes have been placed along the

permit boundaries.

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 property boundary that will provide visual and noise screening to adjacent properties:
50 feet of undisturbed natural vegetation to be replaced by a sight limiting minimum six-foot high fence when excavation is within 50 feet of the permit boundary and its associated utility easement, if applicable. The fence will be replaced with a minimum six-foot high berm with 2:1 slopes when excavation in that area is exhausted.
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 17.9-acre processing area that is located 300 feet from the permit 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 three wells with 300 feet of permit area but none of them is within 100 feet of the proposed excavation.
 - B. An exemption has been requested for dewatering within the permitted area. If granted, borough staff will regularly monitor the site to ensure that dewatering takes place only within the permitted material site.
 - C. Borough staff will regularly monitor the material site to ensure compliance with the two-foot vertical separation from the water table requirement between 100 and 300 feet of a water source.
 - D. The requirement that the permittee post a bond of \$30,000 for liability to potential accrued damages for dewatering activities will be met by permit condition number 8.
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 seeks permission to excavate within the water table.
 - B. Five monitoring tubes have been installed to monitor ground water within the permitted site. At least three wells will be maintained and measurements taken for the life of the material site.
 - C. Data and interpretation for groundwater elevation, flow direction, and flow rate for the subject parcel, measured in three month intervals by a qualified independent civil engineer at least one year prior to the modification application has been provided.
 - D. Certification by a qualified, independent engineer that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources has been provided.
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. The Kenai River and its associated floodplain and riparian wetland is approximately 350 feet north of the proposed material site at its closest point.

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 submitted site plan indicates that the haul route will be directly to Funny River Road, a state maintained road. Two alternate access points are proposed to Kenai River Avenue, a Soldotna City maintained road, then to Funny River Road.
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. Updated drawings for the original reclamation plan were submitted with the modification application. The reclamation plan indicates that reclamation will be completed annually before the growing season ends (September), that seeding will be applied as necessary each season to areas that achieve final grade in order to minimize erosion and dust, and that the southwesterly portions of the site will be utilized for future buildings.
 - B. The site plan indicates that the reclamation will include recontouring using strippings, overburden, waste import and topsoil to a condition that allows for reestablishment of natural vegetation, slopes no steeper than 2:1, with slopes covered with a minimum of 4 inches of topsoil mix and seeded. Reclamation slopes within water table will be the same where above the water table, with unseeded slopes no steeper than 2:1 below the water table.
 - C. Borough staff will inspect the material site once the reclamation has been completed to ensure compliance with the reclamation plan.
 - D. The permittee is exempt from the state bond requirements until he exceeds a disturbed area of 5 acres or he extracts more than 50,000 cubic yards per year.
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. No additional conditions have been volunteered.
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. Operations under the permit have already commenced.

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, eastern, and western boundaries - 50 feet of undisturbed natural vegetation to be replaced by a sight limiting minimum six-foot high fence when excavation is within 50 feet of the permit boundary and its associated utility easement, if applicable. The fence will be replaced with a minimum six-foot high berm with 2:1 slopes when excavation in that area is exhausted.
 Southern boundary - 50 feet of undisturbed natural vegetation.
 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 between 100 and 300 horizontal feet of any water source existing prior to the issuance of this permit.
8. Prior to dewatering, the permittee shall post a bond for liability for potential accrued damages pursuant to KPB 21.29.050(A)(4)(d) in the amount of \$30,000.
9. 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.

10. 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.
11. 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.
12. 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.
13. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
14. The permittee shall reclaim the site as described in the reclamation plan for this parcel and as approved by the planning commission.
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

Vice Chair Ruffner opened the item for public comment.

Kyle Foster, Petitioner; 34717 Sentinel, Soldotna AK, 99669: Mr. Foster and his brother are the owners of River Resources, LLC. He and his brother are petitioning to modify their existing material site permit to allow them to dig down into the water table and to do localized dewater within their pit. Their de-watering plans are relatively small. They plan to build two 50' x 50' cells with an 8' levy in between them to pump water out of one and into the other to allowing for a 50' x 50' excavation area. The dewatering activity will run only a few days at a time.

Commissioner Ruffner understood the plans for dewatering for the project. He asked Mr. Foster to verify that there would be no additional runoff because of the pumping of water between the cells. In addition, the water being pumped will stay within the 50' x 50' foot cell. Mr. Foster replied that he was correct. That the pump will only be run while they are trying to excavate the gravel in the other cell. Commissioner Ruffner asked if this activity would require a DNR permit. Mr. Foster replied that he did not believe so.

Commissioner Fikes asked Mr. Foster if the pumping of the water between the two cells would negatively affect any of the area wells. Mr. Foster replied that he believe this activity would not negatively affect any of the area wells as they are not removing the water but just moving over to the next cell.

Commissioner Venuti wanted to know what happens to the water level of the receiving cell. Mr. Foster stated the cell receiving the water would only be dug down about 6" above the water table, which will allow for plenty of room for the pumped water. Commissioner Venuti then ask what was the reclamation plan for this pit. Mr. Foster said it would become a manmade lake.

Gina DeBardelaben, McLane Consulting; P.O. Box 468, Soldotna AK, 99669: Ms. DeBardelaben was the author of the well monitoring report for this project. Ms. DeBardelaben assisted the petitioner with completing their application and stated that the application met the standards of borough code. She realizes that the commissions does not see many applications for gravel extraction from within the water table however this a common occurrence. She is aware of many gravel pits on the peninsula that currently are extracting gravel from within the water table. Ms. DeBardelaben reviewed all the comments from surrounding neighbors regarding this permit modification and found that most all of them were upgrade of the material site, with the closest neighbor being about 1400' east of the pit. None of the commenters were owners of wells within 300' of the pit. She then reviewed the results of the well monitoring report (which was contained in the meeting packet) with the commission. She noted one of the questions the neighboring landowner had was the type of monitoring well used. The wells are 4" PVC pipes, approximately 25' in length with the lower 10' – 15' of the pipe having curve cuts. The wells were surveyed on a quarterly schedule and the collected data was utilized to determine the ground water depth, ground water directional flow and the hydraulic connectivity. The petitioners have no incentive to extract into the confining layer as this material is not used in construction and if excavated is considered waste material. In the course of preparing her report she contacted the DEC and DNR to analyze any well log data in the area. She noted that many logs were missing from the database. State statute requires that well drillers to register wells in the system but unfortunately, the State does not have a means to enforce well registration. The petitioner plans to dig to a depth to a maximum of 32' below existing ground elevation, which is approximately 15' in to the ground water table. They will not be digging into the confining layers. While dewatering is not a requirement to excavating into the water table, it does provide for a cleaner means of excavation and line of site. The dewatering process would be conducted over a 5-7 day period. Day 1 would be excavating the cells to begin dewatering. Days two to five would be excavation and stockpiling of materials. Days 6 and 7 would be slope dressing of the excavated cell and decommission of the water pumps. She noted some of the neighbors were concerned about dewatering affecting their private wells, which is known as well draw down. Using a pump to remove ground water creates what is called a cone of depression within the water table. Using the information from the petitioners dewatering plan she calculated that within a 300' radius of the operation the drawdown would be approximately .7 of a foot on day-1, 1.1 feet by day-7 and it would be 1.2 feet by day-10. She noted the majority of the comments from neighboring property owners were 1400' or more from the site. Using the same data, she calculated that at ¼-mile radius, the drawdown on day-1 would be approximately .1 of foot, by day-7 it would be .5 of a foot and by day-10, the drawdown would be .6 of a foot. This data shows that the proposed dewatering process will have minimal impact on the surrounding wells. The ground water being pumped in the proposed excavation process will become a non-factor, as it will be reintroduced within the same property and will be allowed to infiltrate back into the ground water table, recharging the aquafer. The operators will have to meet DEC requirements for dewatering as well as protection of water rights and quality. The petitioners would like to ask the commission to potentially separate the permit modification from the exemption from dewatering request. Doing this would limit the bonding requirements to the timeframe of the dewatering process only and not for the entire life of the permit. This petition meets all the requirements of code and they would ask that the commission approve the request.

Commissioner Venuti wanted to know how long would the pumps in the dewatering operation run on average. He noted when he ran pumps for dewatering during commercial project the pumps were required

to run 24 hours a day and they were loud. He wondered what the noise factor would be for this pump operation. Ms. DeBardelaben replied that the pumps would not be overly loud and would only run 3-5 days during the 7-day excavation period.

Commissioner Ruffner asked Ms. DeBardelaben what the maximum drawdown would be for the three closest wells. Ms. DeBardelaben replied that the maximum drawdown within 300' of the operation during a 10 period would 1.2 feet.

Commissioner Ecklund asked if McLane Consulting had a hydrologist on staff or was one hired to consult on her research for this project. Ms. DeBardelaben replied that she is a licensed civil engineer and meets the requirement under borough code to consult on this project. She did talk with a hydrologist regarding this project but a hydrologist was not hired as a consultant.

Mr. Taylor provided clarification on the bonding requirements. Permit condition number eight states that prior to dewatering the permittee shall post a bond for liability for potential accrued damages for \$30,000.00. There is no need to separate the modification permit from the exemption from dewatering request.

Michael Pomplin; 41918 River Park Dr., Soldotna AK, 99669: Mr. Pomplin would like to ask that a decision on this permit be delayed to allow time for the neighboring properties to conduct their own research. He only received notice on this permit application two weeks ago. This did not give him adequate time to do any research. In his subdivision, he is one of eight landowners who have 30' wells. He has concerns about the dewatering aspect of this permit. The operator is talking about pumping 1000 gallons a minute during this process over the 40-year life of this site. He is very concerned how this will affect the water table. There will also be trucks and excavating equipment being used and he wants to know what measures are going to be put in place regarding spills and leakage from the equipment. He has concerns about contamination of the water due to exposure. He appreciates Ms. DeBardelaben trying to answer some of his questions but not all were answered. In the meantime, he has applied for his water rights because that is the only thing that he knows to do to try to protect himself. He also has concerns about noise from the pumps; they already have to deal with the noise of the trucks backing up and tailgates slamming. The pumps would just add to an already noisy pit operation. He wonders how the effects of this permit modification will affect his property value. He would really like more research into how many wells could be affected by the dewatering. He knows there are more wells in the area than are showing up on the DEC logs. He also noted that a \$30,000 bond would not do a whole lot if a lot of the area well were affected.

Michael Gravier; 34540 Marcus St., Soldotna AK, 99669: Mr. Gravier has a well that is 1400' away from this pit. He found a gravel pit study, not in the Kenai Peninsula area, regarding drawdown. As far away as his well is, he should not be affected by the drawdown of this project. However, the study did state that open pits could affect groundwater flow direction causing a local increase in the hydrologic gradient. He is concerned that should the groundwater flow shift it could negatively affect his well. He also does not believe that the \$30,000 bond is enough; there are more than just three wells in the area. He just wants assurance that this project will not negatively affect his well.

Commissioner Venuti asked Mr. Gravier if he has had his water quality tested recently. He stated that it is important to have a benchmark place to have something to compare to. Mr. Gravier said his water was tested last year when he refinanced his house. He also is currently in the process of have a more comprehensive water test done and should get the results within the next week or two.

Bill Ferguson; 34484 Marcus St., Soldotna AK, 99669: Mr. Ferguson is a neighbor to Mr. Gravier and he has lived on his property since 1970. He well is within 150' of Mr. Ferguson's property. He stated that area well logs are incomplete. He recently found out his well is more shallow than he believed. He was shocked to find out the reclamation plan for the 31.2-acre pit is to turn it into a lake. The lake will most likely be pretty stagnate and will provide a wonderful breeding ground for mosquitos. He is also concerned that the standing water during the dewatering process could become contaminated and negatively affect his well. He is a retired slope worker and knows that spill and contamination can happen, even with the best practices in place. This application does not contain information on a safety plan, what they will do if there are spills or if the water is contaminated. Also with this pit being so close to the Kenai River, he has concerns regarding possible negative affects to the river. There are a whole lot of unknowns associated with this project and there is only one viewpoint being heard here tonight. He would also request that a

decision on this permit be delayed to allow the area residents more time to do research. There is only one engineer's report being considered here. He believes that the area residents should have the opportunity to hire their own experts and have that information considered as well.

Commissioner Ruffner asked Mr. Ferguson how much time he thought it would take, if the commission delayed a decision on this permit, for the residents to do their own research. Mr. Ferguson replied anywhere of 30-60 days. Commissioner Ruffner then asked Mr. Ferguson if he had applied for his water rights from DNR. Mr. Ferguson stated that he is in the process of doing so. Commissioner Ruffner then stated one way the area residents could protect themselves would be to apply for their water rights.

Commissioner Fikes asked Mr. Ferguson if he had any idea how many of his neighbors might be seasonal residents and may not have received notification about this material site permit. Mr. Ferguson stated that he could not answer that question.

Joseph & Billie Hardy; 41937 River Park Dr., Soldotna AK, 99669: Mr. Hardy lives approximately ¼ mile from the pit. He stated he shares the same concerns that the neighbors before him have expressed. He is particularly concerned that there is no baseline information on any of the local well around this pit. He believes that information should have been a part of the study. While he respects the McLane Consulting firm, their information is based on hypotheticals; he would like to see hard numbers. He also noted that the state requires a dewatering permit and he does not believe the operators have obtained one yet. He believes that question should be answered before the commission makes a decision on the permit. He wants to see the spill plan for this operation. He is also concerned about them using Kenai River Ave. to access Funny River Rd. This is a dangerous intersection for regular vehicles; there is no way it would be safe from large trucks to use. He also believes that the \$30,000 bond is a joke. They too would request that the commission delay making a decision on this permit for 30-60 days. The delay would allow the residents time to hire their own hydrologist.

Lillian Weed; 34054 Snow Lane, Soldotna AK, 99669: Ms. Weed stated the others have already brought up many of her concerns. She then stated that she is very concerned about how this operation could negatively affect the Kenai River and the surrounding habitat. She would ask that the delay be upwards of 60 days due to the challenges associated with the COVID pandemic.

Bill Elam; 47320 Jefferson Ave., Soldotna AK, 99669: As an assembly member, he would support the area residents request to delay the decision on this matter. The delay would allow time for them to bring in a hydrologist to conduct a study. He believes that this would be a nice accommodation to extend to the residents.

Lindsey Holland; 41750 River Park Dr., Soldotna AK, 99669: Ms. Holland stated that she shares Ms. Weed's concern about negative impacts to the river. She would like to know what kind of safe guards would be put in place for the river. She noted the engineer from McLane stated there are numerous pits in the area that have extracted into the water table. She wondered how many of them were within 350 feet of a river. She believed that a 350' buffer was practically nothing in the grand scheme of things. She too would like to ask the commission to delay making a decision on this permit until the neighborhood can hire their own hydrologist.

Gina DeBardelaben, McLane Consulting; P.O. Box 468, Soldotna AK, 99669: Ms. DeBardelaben wanted the public testifiers to know that other permitting processes for material sites, outside of the borough permitting process, will address the concerns expressed regarding spill mitigation and other environmental concerns. This information has not been requested or provided with this application because it is not a required part of the borough permitting process.

Commissioner Fikes asked if this permit had been reviewed by the Kenai River Center. Mr. Taylor responded the application had not been sent to the River Center for review because this project is not within the 50 ft. Habitat Protection District and was not within their jurisdiction. Commissioner Fikes also noted several members of the public stated that there was a discrepancy in the number of wells in the area. She asked if the applicant would be prepared to increase the amount of their bond if it was discovered there were more well in the area than have been reported. Mr. Foster stated that going out further from the project seem to be a bit extreme to him. He noted that their application meets the requirements of borough

code and does not believe additional bonding should be required.

Commissioner Venuti asked Mr. Foster if equipment to be used at this site would have white noise backup alarms. Mr. Foster replied no, the equipment does not have white noise alarms.

Hearing no one else wishing to comment, Vice Chair Ruffner closed public comment and opened discussion among the Commission.

MOTION: Commissioner Gillham moved, seconded by Commissioner Brantley to approved PC Resolution 2021-10 granting a modification to a conditional land use permit issued to River Resources, LLC.

Commissioner Gillham would like to know what would be a reasonable amount of time to allow the area residents to secure a hydrologist to conduct survey.

Commissioner Fikes stated that she would support a delay to allow the area residence to bring in their own hydrologist. She does not believe that is an unreasonable request.

Commissioner Ecklund also agreed with postponement to allow the residents more time to conduct their research.

Commissioner Gillham thought a 30-day postponement would be fair to both the applicant and the area residents.

Planning Director stated she and Bryan Taylor would be on vacation for the first part of May. Should the commission wish to postpone the application, she would suggest moving it to the May 24, 2021 meeting as they both will be back from vacation by then.

AMENDMENT MOTION: Commissioner Gillham moved, seconded by Commissioner Carluccio to postpone this item to the May 24, 2021 meeting.

Commissioner Carluccio noted that she believed May 24th meeting was a good compromise as it was between the 30-60 day timeframe.

Mr. Taylor asked for clarification in regards to the delay and the commission's expectations of him. What did they expect from him in regards to research. Commissioner Ruffner stated that was a fair question and posed the question to the commission.

Commissioner Fikes asked if Mr. Taylor if he could secure an expert that could address any potential impact to local wells because of the dewatering process and spill containment plans. She would also like to have additional information regarding any noise impacts. Concerns have been brought up and the information in the application does not address these issues. She believes they are being asked to make a decision without having the information needed. Mr. Taylor replied several of the permit conditions do address contamination concerns. As far as what borough codes lays out to address the issues such as drawdown and contamination he believes the application has addressed them. He is not sure what would be considered outstanding with this application.

Commissioner Ecklund asked Mr. Taylor if the borough had a hydrologist on staff. Mr. Taylor replied no, the borough does not have a hydrologist on staff. Commissioner Ecklund then asked if Mr. Taylor made any calls to or sought the input from a hydrologist on this permit. Mr. Taylor replied that he did not consult with a hydrologist. He stated he did reach out to DNR regarding reclamation and bonding requirements.

Commissioner Ruffner stated what he heard was a request to delay making a decision, which would allow the area residents time to research and/or hire a hydrologist. Then they could bring their information back to the commission. He did not hear any expectations for staff to conduct additional research.

Commissioner Venuti wanted to state that he did not believe the borough should bear the cost of hiring a hydrologist. Commissioner Ruffner stated he believed it was understood that the residents would bear the cost of the hydrologist.

Commissioner Fikes asked if there was a way to know for sure how many wells are within the affected area, since it was brought up that there was a discrepancy in the number. Mr. Taylor replied that the site plan was an on the ground survey, so he does not believe there were wells missed in the immediate vicinity. For wells within the ¼ mile area, if they are not registered in the DNR log the only way to determine the number would be to conduct an on the ground survey. If the commission wanted to identify an area, he might be able to do some research. Commissioner Fikes stated she just wanted to know if there were any other wells in the immediate area, say along Kenai River Ave., other than the three identified in the report. Mr. Taylor stated that he could do some additional research and see if there were any other wells in that immediate area.

Commissioner Ruffner passed the gavel to Jeremy Brantley so he could make a statement on the motion. He stated that he is inclined to support the motion to postpone giving the landowners a little bit more time to assess this proposal. He stated he does have some professional association with ground water and geology and does not see anything in the application that would give him pause in approving the permit in the future. He believed that quantifying how much water is moved and being able to put some sort of limits or expectation on it would be beneficial, however he recognizes that code does not address this issue. He noted that it is the responsibility of the applicant to protect the water surrounding the pit. Having reviewed these types of applications for a long time, the water quality issues and spill mitigation associated with digging in this pit are no different from any other pit. He does have concerns with over dewatering and it causing water loss in area wells as he has seen this happen here on the peninsula.

AMENDMENT MOTION PASSED: Hearing no further discussion or objection the motion passed by the following vote:

Yes	8	No	1	Absent	2
Yes	Carluccio, Chesser, Ecklund, Fikes, Gillham, Morgan, Ruffner, Venuti				
No	Brantley				
Absent	Bentz, Martin				

AGENDA ITEM E.

PUBLIC HEARING

9. State application for a marijuana establishment license; Kalifornsky area.

Applicant: Greenstar, Inc. dba Gold Star Concentrates
Landowner: Otium Sanctum, LLC
Parcel ID#: 055-040-33
Legal Description: T05N, R11W, S.M., KN 0940082 Carrol Martin Sub. No. 2, Lot 1
Location: 40593 Kalifornsky Beach Road

Staff report given by Bryan Taylor

BACKGROUND INFORMATION: On June 30, 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 Retail Marijuana Store license. The AMCO notified the borough that the application was complete on March 1, 2021. On March 16, 2021, the applicant supplied the borough with a signed acknowledgement form and a site plan of the proposed Retail Marijuana Store on the above-described parcel. 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 complies 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,

PLANNING COMMISSION MEETING MINUTES MAY 24, 2021

**May 24, 2021
7:30 P.M.
APPROVED MINUTES**

CALL TO ORDER

Chair Martin called the meeting to order at 8:20 p.m.
(Meeting started late due to appeal hearing running over time)

ROLL CALL

Commissioners Present

Paulette Bokenko-Carluccio, City of Seldovia
Jeremy Brantley, Sterling
Cindy Ecklund, City of Seward
Diane Fikes, City of Kenai
Pamela Gillham, Ridgeway
Blair Martin, Kalifornsky Beach
Virginia Morgan, East Peninsula
Robert Ruffner, Kasilof/Clam Gulch
Franco Venuti, City of Homer

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

Staff Present

Melanie Aeschliman, Planning Director
Scott Huff, Platting Manager
Bryan Taylor, Borough Planner
Ann Shirnberg, Administrative Assistant
Avery Harrison, Administrative Assistant

AGENDA ITEM B. ROLL CALL

AGENDA ITEM C. CONSENT AGENDA

- *2. Planning Commission Resolution 2021-016V
- *3. Plat Granted Administrative Approval
 - a. Seashore Bluffs; KPB File 2017-043R1
 - b. Inglima Tract 2019 Replat: KPB File 2019-139
- *4. Plats Granted Final Approval
 - a. Marion Subdivision 2021 Replat; KPB File 2021-038
- *6. Commissioner Excused Absences
 - a. Syverine Bentz, Anchor Point/ Ninilchik
 - b. Davin Chesser, Northwest Borough
- *7. Minutes
 - a. May 10, 2021 Plat Committee Meeting
 - b. May 10, 2021 Planning Commission Meeting

Chair Martin asked if anyone present wanted to speak to or had concerns about any of the items on the consent or regular agendas.

Scott Huff requested that that item D6 – River Quest 2021 Replat, be removed from the agenda. There are

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes	9	No	0	Absent	2
Yes	Brantley, Carluccio, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
Absent	Bentz, Chesser				

AGENDA ITEM E. OLD BUSINESS

- D1. Conditional Land Use Permit Modification
PC Resolution 2021-10
Applicant & Landowner: River Resources, LLC
Parcel Numbers: 135-243-13 &-29
Location: 34386 Patson Road
Legal Description: T 5N R 10W SEC 34 SEWARD MERIDIAN KN NW1/4 SE1/4
EXCLUDING PATSON PROPERTIES PART 1, T 05N R 10W SEC 34
SEWARD MERIDIAN KN 2019068 PATSON PROPERTIES 2019
REPLAT TRACT C1

Staff given by Bryan Taylor.

During consideration of PC Resolution 2021-10 at the Planning Commission's April 12, 2021, meeting, Mr. Taylor was asked by the commission to review ADNR's data to see if there were any wells within the vicinity of the Rivers Resources LLC approved material site along Kenai River Avenue that were not represented within the Well Log Tracking System (WELTS).

Mr. Taylor conducted a site visit to inspect lands in the vicinity of the material site along Kenai Avenue, Marcus Street, and Patson Road/Circle. He did not find evidence of any water wells along Kenai River Avenue south of the material site. At the end of Marcus Street (approximately ¼ mile east of the material site), there are two residences on parcels 135- 243-17, belonging to Michael and Ann Gravier, and 135-243-06, belonging to William and Karen Ferguson. Only one well is shown in the WELTS inventory in this area, located on the Gravier property.

Along Patson Road/Circle to the north of the material site, there is new construction, which appears to have begun this season. Since the field surveys represented on the site plan for the River Resources LLC modification application, there have been two resubdivisions of Tracts of land along the river. Copies of the new plats are included in the desk packet. Several of the parcels have new homes under construction. In addition to the seasonal residence shown on the site plan, there appears to be nine other homes newly constructed or under construction along Patson Road/Patson Circle. Any new wells installed along with construction are not yet represented within the WELTS inventory or shown the applicant's site plan. However, as shown within the site plan, the proposed excavation below the water table will not be within 300 feet of these properties.

Conditional Land Use Permit for a Material Site
STAFF REPORT
PC MEETING: April 12, 2021

GENERAL OVERVIEW: The applicant wishes to modify the existing conditional land use permit for material extraction on the above property, approved by the planning commission on December 16, 2019, to allow for gravel extraction below the groundwater elevation. A copy of the application, including the required water monitoring information, is included as **Attachment A**. The applicant is also requesting an exemption for dewatering as part of the extraction activities. Dewatering will only be conducted within the permitted material site and water will not leave the property.

KPB 21.29.050(A)(5) provides that the planning commission may approve excavation in the water table provided the applicant completes certain water monitoring requirements carried out by an independent civil engineer or professional hydrogeologist, submits the monitoring data, and has certification by the engineer or hydrogeologist that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources.

As required by KPB 21.29.050(A)(5), McLane Consulting has certified that the excavation plan proposed by the applicant will not negatively impact the quantity of the aquifer serving the existing water sources. The excavation and reclamation site plan submitted with the application states that monitor wells will be maintained and measurements recorded for the life of the material site. Vicinity, aerial, topography, land use and ownership maps are included here as **Attachments B – F**.

According to the modification application received on March 3, 2021, the applicant seeks to excavate an area of approximately 31.2 acres to a maximum depth of 32' below original ground. The groundwater elevation data provided indicates that groundwater elevation is approximately 17' below original ground. The aquifer-confining layer of dense blue-gray silt is estimated to be approximately 35' below original ground and approximately 30' thick.

As in the original application, primary ingress and egress to the site is directly onto Funny River Road, a state maintained road, with alternate access proposed to Kenai River Avenue, a City of Soldotna maintained road, and then to Funny River Road. The groundwater excavation plan for the site is the same as the phased development originally approved, with material being excavated in the southern portion of the parcel and working northerly. Dewatering will be localized and will remain within the same property to re-enter the groundwater table. The required buffers will remain the same. As originally permitted, the impacted area remains at approximately 52 acres, with excavation within the water table on approximately 31.2 acres; the annual quantity of material expected to be removed is 45,000cy; and, the site has an expected lifespan of 40 years.

PUBLIC NOTICE: Public notice of the application was mailed on March 19, 2021 to the 233 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**. Public comments received prior to the packet deadline are included as **Attachment H**. Any public comments received by the Planning Department prior to the hearing will be included as desk packet items at the April 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 December 16, 2019, the planning commission passed resolution 2019-39, which approved a conditional land use permit to River Resources, LLC, for material extraction on KPB tax parcels #135-243-13 & 135-243-29.
- D. On February 26, 2021, River Resources, LLC, submitted to the KPB Planning Department an application to modify its existing conditional land use permit for parcels #135-243-13 & 135-243-29 to allow for excavation below groundwater elevation. After a request from staff, additional information was provided on March 3, 2021.
- E. KPB 21.29.050(A)(5) provides the conditions upon which the planning commission may permit excavation within the water table greater than a 300-foot distance from a water source. Conditions include installation of at least three monitoring wells, completion of monitoring requirements, certification by a qualified independent civil engineer or professional hydrogeologist that the excavation will not negatively impact the quantity of an aquifer serving existing sources, and a prohibition on operations breaching an aquifer confining layer.
- F. The applicant contracted McLane Consulting to measure groundwater monitor wells and analyze the data in accordance with KPB 21.29.050(A)(5).
- G. McLane Consulting collected groundwater elevation measurements in three month intervals from five monitor wells over the course of one year.
- H. From the measurements and data from the Alaska Department of Natural Resources, McLane Consulting determined the flow direction at the site to be northwesterly, and the flow rate, or hydraulic conductivity, to be typical of dense gravel and coarse sand.
- I. As required by KPB 21.29.050(A)(5)(a), McLane Consulting has certified that the

- excavation plan proposed by the applicant will not negatively impact the quantity of the aquifer serving the existing water sources.
- J. The excavation and reclamation site plan states that at least three monitor wells will be maintained and measurements recorded for the life of the material site.
 - K. A staff site visit was conducted on March 25, 2021.
 - L. In accordance with KPB 21.29.050(A)(4-5), all excavation between 300 and 100 horizontal feet of existing wells must remain at least two feet above groundwater.
 - M. In accordance with KPB 21.29.050(A)(4), material extraction is prohibited within 100 horizontal feet of wells existing prior to the original permit issuance.
 - N. A public hearing of the planning commission was held on April 12, 2021, and notice of the application was mailed on March 19, 2021, to the 233 landowners or leaseholders of the parcels within one-half mile of the subject parcels. Public notice was sent to the postmaster in Soldotna requesting that it be posted at the Post Office. Public notice of the application was scheduled for publication in the March 31, 2021, & April 7, 2021, issues of the Peninsula Clarion.
 - O. 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 and has verified that stakes have been placed along the permit boundaries.
 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 property boundary that will provide visual and noise screening to adjacent properties:
50 feet of undisturbed natural vegetation to be replaced by a sight limiting minimum six-foot high fence when excavation is within 50 feet of the permit boundary and its associated utility easement, if applicable. The fence will be replaced with a minimum six-foot high berm with 2:1 slopes when excavation in that area is exhausted.
 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 17.9-acre processing area that is located 300 feet from the permit 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 three wells with 300 feet of permit area but none of them is within 100 feet of the proposed excavation.
 - B. An exemption has been requested for dewatering within the permitted area. If granted, borough staff will regularly monitor the site to ensure that dewatering takes place only within the permitted material site.
 - C. Borough staff will regularly monitor the material site to ensure compliance with the two-foot vertical separation from the water table requirement between 100 and 300 feet of a water source.
 - D. The requirement that the permittee post a bond of \$30,000 for liability to potential accrued damages for dewatering activities will be met by permit condition number 8.
 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 seeks permission to excavate within the water table.
 - B. Five monitoring tubes have been installed to monitor ground water within the permitted site. At least three wells will be maintained and measurements taken for the life of the material site.
 - C. Data and interpretation for groundwater elevation, flow direction, and flow rate for the subject parcel, measured in three month intervals by a qualified independent civil engineer at least one year prior to the modification application has been provided.
 - D. Certification by a qualified, independent engineer that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources has been provided.
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. The Kenai River and its associated floodplain and riparian wetland is approximately 350 feet north of the proposed material site at its closest point.
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 submitted site plan indicates that the haul route will be directly to Funny River Road, a state maintained road. Two alternate access points are proposed to Kenai River Avenue, a Soldotna City maintained road, then to Funny River Road.
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. Updated drawings for the original reclamation plan were submitted with the modification application. The reclamation plan indicates that reclamation will be completed annually before the growing season ends (September), that seeding will be applied as necessary each season to areas that achieve final grade in order to minimize erosion and dust, and that the southwesterly portions of the site will be utilized for future buildings.
 - B. The site plan indicates that the reclamation will include recontouring using strippings, overburden, waste import and topsoil to a condition that allows for reestablishment of

natural vegetation, slopes no steeper than 2:1, with slopes covered with a minimum of 4 inches of topsoil mix and seeded. Reclamation slopes within water table will be the same where above the water table, with unseeded slopes no steeper than 2:1 below the water table.

- C. Borough staff will inspect the material site once the reclamation has been completed to ensure compliance with the reclamation plan.
 - D. The permittee is exempt from the state bond requirements until he exceeds a disturbed area of 5 acres or he extracts more than 50,000 cubic yards per year.
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. No additional conditions have been volunteered.
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. Operations under the permit have already commenced.

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, eastern, and western boundaries - 50 feet of undisturbed natural vegetation to be replaced by a sight limiting minimum six-foot high fence when excavation is within 50 feet of the permit boundary and its associated utility easement, if applicable. The fence will be replaced with a minimum six-foot high berm with 2:1 slopes when excavation in that area is exhausted.
 - Southern boundary - 50 feet of undisturbed natural vegetation.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 between 100 and 300 horizontal feet of any water source existing prior to the issuance of this permit.
 8. Prior to dewatering, the permittee shall post a bond for liability for potential accrued damages pursuant to KPB 21.29.050(A)(4)(d) in the amount of \$30,000.
 9. 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.
 10. 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.
 11. 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.
 12. 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.
 13. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
 14. The permittee shall reclaim the site as described in the reclamation plan for this parcel and as approved by the planning commission.
 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.

Kyle Foster; Foster Construction; P.O. Box 3036 Soldotna AK 99669: Mr. Foster is the applicant. He noted that the commission may not be aware, but the Soldotna/Kenai areas are running low on gravel sources. Being able to excavate below the water table will double the quantity of gravel that the pit can produce. Currently the material site has 15 feet of gravel above the water table and about the same amount of gravel below the water table. Being able to excavate below the water table will double the life of this pit. Doubling the life of this pit will mean they will not have to go out and find other sources of gravel creating yet another gravel pit. He believes that this gravel deposit is so rich that he and his brother will not be able to mine all the material from this site. If they receive the permit allowing them to mine below the water table, his children and grandchildren could still be mining in this pit. He and his brother are just trying to maximize the amount of gravel they can mine on their land. He noted currently there are numerous mines in the area that have been permitted to do this kind of mining and he and his brother would like to be permitted to do the same.

Billie Hardy; 41937 River Park Dr., Soldotna AK 99669: Ms. Hardy's property is about 1500' from this material site. She noted that she had gather 21 signatures from landowners in this area opposing the proposed modification to this permit. She also noted that she agrees with the comments submitted by Pat Nolden, Mike Pomplin, William Ferguson, Michael Gravier & Dale McBride. She would request that de-watering be denied due to the real probability of damage to wells and flooding of septic systems within the area. She would also request that any commissioner involved with quarrying both currently and in the past recuse themselves from voting on this permit. She also stated if the modification to the permit is granted, in spite of the evidence against it, the bonding requirements should be increased to 1.25 million and that well monitoring be done both inside and outside of the pit in compliance to borough code. She would ask the commission to help protect their wonderful neighborhood and homes.

Commissioner Carluccio asked Ms. Hardy how she came up with the 1.25 million dollar figure for the bond. Ms. Hardy replied that Dale McBride submitted a lengthy written comment to the commission, which was included in the desk packet, and he had quite a bit of good documentation that he used to come up with that figure.

Joseph Hardy; 41937 River Park Dr., Soldotna AK 99669: Mr. Hardy stated he is not necessarily against de-water or mining into the aquifer, but he would insist that proper procedure be followed. In reviewing the materials with this application, it is not clear that the applicant has met the well testing requirements, which is four wells tests, ninety days apart, within a year. These tests are required to occur before that submittal of the application. He also believes that wells adjacent to the pit be tested and monitored. There should be concerns not only for what happens within the pit, but also the effects of the pit on the surrounding properties. He also agrees with Ms. Hardy that some members of the commission should recuse themselves from voting on this matter. He also noted that code requires an independent engineer/hydrologist be used to complete the report. He is not casting any aspersions on McLane Consult but they have been doing business with the applicant for years and he does not believe that using them meets code requirements. Someone completely independent of this project and applicant is needed to produce the required reports. He also has concerns about water pollution. At the last meeting, he noted Mr. Ruffner stated there is quite a few feet of filter bed, but that filter bed only works for solids. Water dissolved solids do not get filter out by the rock bed. He noted that California has had serious problems with these types of contaminates and he would hate to see it happen here. Years ago when he work for ARCO they had developed an additive for gasoline that was to reduce air pollution. It turned out that all it really did was contaminate the water systems. He stills has concerns regarding ingress/egress issues coming off Kenai River Avenue that have not been addressed. He also believes the fine structure and bond amount are inadequate. The fine amount needs to be high enough to be an economic stop and not just a regular cost of doing business.

Ann Gravier; 34540 Marcus St., Soldotna AK 99669: Ms. Gravier stated that she had reviewed all the

materials and testimony from the last two meetings and does not really have anything new to add. She did however want to add some perspective to what has been said. She noted that Mr. Foster had talked about how de-watering would extend the life of the pit, and what that would mean to his business and his family. She believes this perspective also applies to the other area homeowners and their concerns about impacts to their wells and property values, as well as impacts to the Kenai River and the environment. Impacts to well can be catastrophic for homeowners. She understands it is within the rights of the applicant to apply for the permit to go into the aquifer, but she also believes that just because you can do something does not mean that you should.

Gina DeBardelaben, McLane's Consulting Group; P.O. Box 468, Soldotna AK 99669: Ms. DeBardelaben was the engineer for this project. She noted at the last meeting she gave the commission a lot of information verbally, which might have been a little overwhelming. This time she has submitted additional information in written form to address some of the issues brought up at the last meeting. She then apologized for an error in her letter from the April 12, 2021 meeting. The monitoring wells were installed in September of 2019; they were a part of the original conditional land use application. At the time of the initial application, the question was asked of the applicant if they planned to mine into the water table, and the applicant's response at that time was undetermined. She added it is not an uncommon practice to continue well monitoring with the idea of possibly seeking a permit to mine into the water table. She also stated they had submitted several photos showing the reclamation of several material sites, which have mined into the water table, that have been turned into manmade lakes. She noted that since the April meeting another well has been installed and the information on the well was included in the desk packet. There are two separate requests in this application, one is to mine into the water table and the other is de-watering. While both of these requests are contained in the one resolution, she would ask that they be considered separately. She understands the concerns expressed by the area residents regarding impacts to wells. Code states that we have to study and recognize wells within 300' of the property, and that is what has been shown on the various exhibits. However, the de-watering plan included with the application shows potential well drawdown impacts on wells up one mile from the property. The figures used in the de-watering plan are based on maximum uses. The applicant states that he sees no situation where the de-watering would last more than 10 days – in most cases it would be a maximum of 5 days. They chose to use 10 days for the de-watering plan figures to show the maximum drawdown effects. They are not planning to remove the water from the property. In most cases where there has been drawdown effects to wells, it is in situations where the water being removed from the site or is being used in processing. The applicant has no plans to use this water as a part of their mining processes. The water from the de-watering process will be pumped into a holding cell on the same property allowing it to go back into the water table.

Rick Weed; 34054 Snow Lane, Soldotna AK 99663: Mr. Weed stated he would like the commission to take into consideration the futures of all property owners in the area and not just the future of the applicant. There is only one opinion regarding the effects of water drawdown and that is from the engineer hired by the applicant. He believes her opinion she should not be considered independent because the applicant hired her. Code states that the report should come from an independent engineer. When this permit came to the commission a year ago, folks were not happy about it then. At that time, it was stated that they would not be digging in the water table. Now less than a year later they back asking to do that. He believes that this request should have been a part of the initial application.

Lillian Weed; 34065 Snow Lane, Soldotna AK 99669: She asked if this pit is going to go on for 40-50 years she wondered where the reclamation is going to come into play. She also stated the applicant wants to leave this pit to his grandchildren, well she has grandchildren that she would like to leave her property to one day and she would like it to be worth something. She too questions whether the engineer should be considered independent since the applicant hired them. She would like to see a study done by a truly independent engineer.

Kyle Foster; Foster Construction; P.O. Box 3036 Soldotna AK 99669: Mr. Foster stated there would be no above ground discharge of water. They will be pumping water directly into another cell on the property allowing the water to seep back into the water table. He also stated the formulas used by McLane's are the same formulas that will be used by any other engineer, math is math. He also noted the water table moves throughout the year. If you look at the water table data that was supplied in the application you will see that the water table has moved in some cases up to 4'. Their operation would have a manmade impact

on water table movement of less than an inch. He noted the permit application process does not allow him to apply for both gravel extraction and gravel extraction within the water table at the same time. They are two separate permit processes. Reclamation is very important his company. He shared that his father had a pit for Angler Drive that he reclaimed and he is currently in the process of selling as lake front property. He has included in the packet photos of this project showing their reclamation work.

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 Gillham to adopt PC Resolution 2021-10 granting modification to an existing conditional land use permit for a material site to allow for excavation within the water table on Tract C1, Patson Properties 2019 Replat, according to Plat 2019-68, and the NW ¼, SE ¼, SEC 37, T 05N R 10W, S.M., excluding Patson Road right-of-way.

Commissioner Ruffner stated his thoughts on this permit have not really changed from the last meeting. He appreciated the additional work done by the engineer on modeling the effect of de-watering on the water table levels. He has had concerns in the past where there was de-watering but no recharging and its effects on water table levels. That is not what the applicant is proposing in this case. Following the code and knowing what he knows about the groundwater industry he will be inclined to support this permit modification. If he thought there was something that was going to hurt the neighboring wells or the Kenai River he would be the first one to raise an objections.

Commissioner Ecklund thanked McLane Consulting for adding the additional drawings and information. She noted originally she came from northern Minnesota where there are open pit iron ore mines that have been reclaimed that are now beautiful tourist attractions. However while the mines were operational they were ugly. She understands no one wants the dust and the noise from these operations in their neighborhoods; however, she also understands the need for gravel. She had a question for staff and wanted to know whose role is it to hire the independent engineer. Mr. Taylor responded code states that an independent engineer is required to do the testing and prepare the report. Past precedent has been that the applicant hires and bears the cost of the engineer. He noted that code does not define what would be considered an independent engineer. Commissioner Ecklund also noted there were concerns expressed regarding the required bond amount and what it exactly covers. She noted there were comments made about a bond from DNR and again she wanted to know what that bond covered. Mr. Taylor stated DNR oversee bonding for reclamation work and the bonding required by the borough code is for liability for surrounding property owners. He also noted code does not give direction on what the amount of the bond should be. He recommend a bond amount of \$30,000 based on the replacement costs for the number wells within 300' of the pit that were in existence at the time of the application. He noted at the time of the application there were three wells within the vicinity of the pit and the approximate replacement cost of a well was \$10,000. Commissioner Ecklund then noted currently there is new construction going on in the area and so there will be more than three well in the vicinity. Are the costs of replacing these well not considered in the bond amount since they occurred after the application had been submitted? Mr. Taylor replied that if the commission had concerns about the bond amount they could amend the resolution and have the bond amount set at an amount deemed appropriate by the Planning Director.

Commissioner Carluccio asked about the definition of an impartial and independent in reference to the engineer. Since the engineer from McLane is being employed by the applicant, how can she be considered impartial and independent? Mr. Taylor replied that code does not give a definition for impartial and independent. Past practice has been the applicant would contact these services with engineers outside of their company and that had been deemed acceptable by this body. Commissioner Carluccio then stated that this had not ever been brought up before and perhaps this is something that should be considered. Just because it has been done one way in the past does not mean they have to keep doing it that way. Now that it has been brought up, it does give her some pause and makes her wonder if an engineer hired by the applicant should be considered impartial and independent. Mr. Taylor replied it would raise a red flag if it were a situation where the company directly employed the engineer. In this case, the only option available for the applicant is to contract those services with an outside consultant. He then asked the commission if they would like change this would they like to give him direction to look into in this matter for future application.

Commissioner Ecklund then asked if the term impartial is used in code or was the term just one used by some of the commenters tonight. Ms. Aeschliman replied that KPB 21.29.050(5a) states *that excavation in the water table may be permitted with the approval of the planning commission based on certification by a qualified independent civil engineer or professional hydrogeologist that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources.* Commissioner Ecklund then stated that it would be helpful if the term independent was better defined. An engineer hired by the applicant to do the work does not really sound very independent to her.

Commissioner Brantley stated that he felt the intent of code was directed at larger operations that have their own engineers on staff. He believed the intent here was that the engineer not be in the employment of the applicant. Perhaps one way to resolve this issue would be for the application fee to be increased to cover the cost of having the borough contract with an engineer. Mr. Taylor thanked the commissioner for his suggestion. He then noted the topic of the borough hiring the engineer came up in some of the comments but current code does not require or direct staff to hire the engineer.

Ms. Aeschliman noted that licensed civil engineers have guidelines they have to adhere to and not doing so could jeopardize their license.

Chair Martin then stated that this topic would be a discussion point for revising the material site ordinance and not for this specific application.

AMENDMENT MOTION: Commissioner Ecklund moved, seconded by Commissioner Fikes to change the requirement of the bonding to a dollar amount to be set by the Planning Director.

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

AMENDMENT MOTION FAILED BY MAJORITY VOTE:

Yes	4	No	5	Absent	2
Yes	Carluccio, Ecklund, Morgan, Venuti				
No	Brantley, Fikes, Gillham, Martin, Ruffner				
Absent	Bentz, Chesser				

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

MOTION FAILED BY MAJORITY VOTE:

Yes	4	No	5	Absent	2
Yes	Brantley, Gillham, Martin, Ruffner				
No	Carluccio, Ecklund, Fikes, Morgan, Venuti				
Absent	Bentz, Chesser				

Commissioner Ecklund cited the following findings to be attached their decision:

1. The bond was not high enough based on the number of surrounding wells.
2. KPB Code needs to define impartial and independent more clearly.
3. The well monitoring timeline is in question as to whether or not it meets borough code.

AGENDA ITEM K. DIRECTOR'S COMMENTS

AGENDA ITEM L. COMMISSIONER COMMENTS

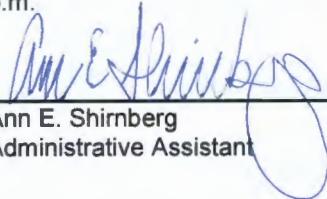
Commission Morgan stated that she appreciates being able to attend meetings via Zoom. However she did notice some issues related to the new microphone system that made meeting video a bit dizzying. She will be definitely be more aware of how she uses the microphone when she is in chambers.

Commissioner Ecklund noted that material site extraction permits are one of the most contentious items that come before the commission. The commission has worked hard to try to address some of the most pressing issues through the establishment of a material site working group. The group had made a number

of recommendations and unfortunately, it did not go anywhere. The permit tonight dealt with dewatering and she felt the pressure to be more careful folks water and that they can get new wells should something happen. She also believes that in cases like this there should be more monitoring and care is taken in these type of situations.

Commissioner Ruffner stated that he appreciates how folks have a choice as to whether or not to attend these meetings in person. He knows that dealing with all the new technology can be frustrating but he know that things will be get better as time moves on. He also noted that he is happy to be meeting back in person and he feels totally comfortable doing so.

AGENDA ITEM M. ADJOURNMENT – Commissioner Carluccio moved to adjourn the meeting at 9:50 p.m.



Ann E. Shirnberg
Administrative Assistant

**Verbatim Transcript
Planning Commission Meeting
April 12, 2021**

KENAI PENINSULA BOROUGH PLANNING COMMISSION

Betty J. Glick Assembly Chambers
George A. Navarre Administration Building
144 North Binkley Street
Soldotna, Alaska 99669

Meeting Held via Videoconference

April 12, 2021
7:30 p.m.

TRANSCRIPT OF PROCEEDINGS - EXCERPT
Pages 1 - 60, inclusive

Commissioners Present:

Paulette Bokenko-Carluccio, City of Seldovia
Jeremy Brantley, Sterling
Davin Chesser, Northwest Borough
Cindy Ecklund, City of Seward
Diane Fikes, City of Kenai
Pamela Gillham, Ridgeway
Virginia Morgan, East Peninsula
Robert Ruffner, Kasilof/Clam Gulch
Franco Venuti, City of Homer

Staff Present:

Melanie Aeschliman, Planning Director
Sean Kelly, Borough Attorney
Scott Huff, Planning Manager
Marcus Mueller, Land Management Officer
Bryan Taylor, Planner
Ann Shirnberg, Administrative Assistant

Transcribed by: Lenny DiPaolo, RPR, CRR, CCP

<p style="text-align: right;">Page 2</p> <p>1 PROCEEDINGS</p> <p>2 0:00:00</p> <p>3 (This portion not requested)</p> <p>4 02:39:04</p> <p>5 VICE CHAIR RUFFNER: That takes us to a</p> <p>6 conditional land use permit, a modification of a CLUP</p> <p>7 for material extraction, PC Resolution 2021-10. Staff</p> <p>8 report please.</p> <p>9 BRYAN TAYLOR: Yes. Through the chair.</p> <p>10 Good evening, Commissioners. This application is for</p> <p>11 River Resources, LLC. As it says, this is an already</p> <p>12 approved conditional land use permit, and that</p> <p>13 location is at 34386 Patson Road, which is at the east</p> <p>14 end of the Soldotna airport. The property is composed</p> <p>15 of two tax parcels.</p> <p>16 The original permit was granted by the</p> <p>17 commission on December 16th, 2019. So this</p> <p>18 application is to modify that permit to allow for</p> <p>19 extraction activities within the water table.</p> <p>20 Additionally, there is an exemption</p> <p>21 being requested because the extraction activities will</p> <p>22 include dewatering. So there's an exemption for the</p> <p>23 dewatering prohibition from 21.29.050(A)(4)(d) is also</p> <p>24 being requested.</p> <p>25 The application itself you can see is on</p>	<p style="text-align: right;">Page 4</p> <p>1 aerial topography, land use and ownership maps, those</p> <p>2 beginning on page 180 of the packet.</p> <p>3 The modification application seeks to</p> <p>4 excavate in the water table for an area of</p> <p>5 approximately 31.2 acres. The original permitted area</p> <p>6 of excavation is 52 acres, so only 31 acres of that</p> <p>7 are proposed for in-the-water-table excavation.</p> <p>8 The groundwater elevation data provided</p> <p>9 shows that the groundwater elevation is approximately</p> <p>10 17 feet below original ground, and the</p> <p>11 aquifer-confining layer consists of a dense blue-gray</p> <p>12 silt that's estimated to be around 35 feet below the</p> <p>13 original ground and approximately 30 feet thick.</p> <p>14 The exemption for dewatering activities</p> <p>15 requires that the applicant provide some sort of bond</p> <p>16 for liabilities. Now, there aren't real criteria for</p> <p>17 determining liability or costs, so I've made a</p> <p>18 recommendation that shows up in the resolution itself</p> <p>19 of a bond of \$30,000. That is an aggregate estimate</p> <p>20 of what it would cost to replace all three wells that</p> <p>21 are in the vicinity of excavation.</p> <p>22 Two of those wells serve city resources.</p> <p>23 One of them serves the City of Soldotna's maintenance</p> <p>24 shop for drinking water. The other city well is</p> <p>25 actually what's in the right-of-way to the south of</p>
<p style="text-align: right;">Page 3</p> <p>1 page -- starts on page 181 of your packet, and there's</p> <p>2 a site plan on page 185.</p> <p>3 KPB 21.29.050(A)(5) provides that the</p> <p>4 planning commission may approve excavation in the</p> <p>5 water table provided that the applicant complete</p> <p>6 certain water monitoring requirements carried out by</p> <p>7 an independent civil engineer or professional</p> <p>8 hydrogeologist. And that the certification by the</p> <p>9 engineer -- that the excavation will not negatively</p> <p>10 impact the quantity of the aquifer serving existing</p> <p>11 water sources. And you can see on the site plan that</p> <p>12 there are three wells adjacent to the excavation area</p> <p>13 to the north-northeast.</p> <p>14 So as required, McLane Consulting has</p> <p>15 been contracted, and they've certified that the</p> <p>16 excavation plan as proposed by the applicant would not</p> <p>17 negatively impact the quantity of the aquifer serving</p> <p>18 those water sources.</p> <p>19 And with consultation with McLane, the</p> <p>20 applicant has installed five monitoring wells. Those</p> <p>21 have been monitored over the course of a year in</p> <p>22 three-month increments, and the data was collected by</p> <p>23 McLane and was submitted as part of this application.</p> <p>24 And you can see there for the overall</p> <p>25 maps I've provided attachments, including vicinity</p>	<p style="text-align: right;">Page 5</p> <p>1 the maintenance station.</p> <p>2 In talking to the public works director</p> <p>3 at the City of Soldotna, he said that well doesn't</p> <p>4 have much of a use for drinking. It serves irrigation</p> <p>5 purposes at this point.</p> <p>6 And the third well to the north of the</p> <p>7 excavation area serves a seasonal residence.</p> <p>8 The public works director, Kyle</p> <p>9 Kornelis, did confirm that the city wells in terms of</p> <p>10 their function and depth are comparable to residential</p> <p>11 wells. So with the estimate of residential well</p> <p>12 replacement costs being about \$10,000 each, the bond</p> <p>13 was being suggested at \$30,000.</p> <p>14 And much of the other requirements or</p> <p>15 conditions of the permit will remain the same. The</p> <p>16 activities as in the application, primary ingress and</p> <p>17 egress of the site will remain directly onto Funny</p> <p>18 River Road, a state-maintained road. And there's</p> <p>19 alternate access proposed for Kenai River Avenue, a</p> <p>20 City of Soldotna-maintained road, and then on Funny</p> <p>21 River.</p> <p>22 The groundwater excavation plan is in</p> <p>23 phased development similar to the original permit, and</p> <p>24 it will operate early phases being in the south part</p> <p>25 of the parcel working north.</p>

<p style="text-align: right;">Page 6</p> <p>1 The dewatering will be localized and on 2 the property. The water won't be dewatered off of the 3 property line; it'll be moved from cell to cell within 4 the excavation parameters and the perimeter. 5 And the required buffers will remain the 6 same as the original permit. And the total impact 7 area being 52 acres will remain the same. And the 8 quantity, annual quantity of material expected to be 9 removed is around 45,000 cubic yards. 10 The original expected life span of the 11 site was 40 years. I believe that will be extended 12 now. The applicant can give an estimate, but 40 years 13 would have been without any excavation in the water 14 table. 15 And as required by borough code, the 16 public notice has been mailed to the 233 landowners 17 within a half mile of the proposed property for 18 excavation. And the radius map can be found, 19 Attachment G, on page 192. 20 I've prepared -- I've submitted the 21 comments that I received. It should be in your desk 22 packets. You should have seen them. And we received 23 eight comments from landowners within the half-mile 24 radius. 25 And a general summary of concerns, there</p>	<p style="text-align: right;">Page 8</p> <p>1 systems, public sewer system, manhole cleanouts, 2 septic tanks, are 100 feet separation; animal 3 containment areas, 50 feet separation; manure and 4 animal excrement storage areas, 100 feet of 5 separation; outhouses or pit privy, 100 feet of 6 separation. 7 Now, if it's a public water well, there 8 are different guidelines within Title 18 of the Alaska 9 Administrative Code, Chapter 80, Section 20, and those 10 would be separation from wastewater treatment works, 11 disposal systems, sewer manholes, lift stations, or 12 clean-outs would be 200 from a public well. Community 13 sewer lines, holding tanks, other potential sources of 14 contamination, and those would include -- oh, that 15 would be 200 feet. And then private sewer lines, 16 petroleum lines, and storage tanks, and those are 17 petroleum storage tanks of over 500 gallons, would be 18 100 feet. 19 And in terms of -- those are -- those 20 are just to address some of the concerns to do with 21 contamination. 22 In terms of the drawdown of the aquifer, 23 I did not find anything in state regulations 24 specifically addressing distances, but that -- in the 25 application, that should be addressed by the</p>
<p style="text-align: right;">Page 7</p> <p>1 were concerns about contaminants with -- because of 2 excavation activity both for well water and for the 3 Kenai River. There were concerns about drawing down 4 the aquifer and impacts that might have on water 5 sources. And there were a few requests, three 6 requests I believe, to have a postponement of the 7 consideration of this to give the property owners more 8 time to gather data on the aquifer. 9 And because there were several concerns 10 about contamination, I just thought I would address a 11 few things here in terms of distance. The commenters, 12 based on property ownership, the distances between the 13 properties and the excavation site varied between 14 1,450 feet to 2,500 feet. 15 The Alaska Department of Environmental 16 Conservation and Alaska Department of Natural 17 Resources and the Alaska Water Well Association does 18 have guidelines for best practices for separation 19 distances for private wells from potential sources of 20 contamination. And in going over a few of those, the 21 distances from private sewer lines is 25 feet; curtain 22 drains, 25 feet; petroleum hydrocarbon storage tanks, 23 25 feet; public sewer system trunk lines, 75 feet; any 24 other source of potential contamination, 75 feet; 25 holding tank for wastewater, 75 feet; septic disposal</p>	<p style="text-align: right;">Page 9</p> <p>1 applicant's consultant, McLane. 2 And I've prepared Resolution 2021-10 3 recommending approval of the modification request and 4 the exemption request, and also that the conditions -- 5 and adopt the finding of facts subject to the 6 following: 7 Filing the planning commission 8 resolution in the appropriate recording district after 9 the deadline to appeal the planning commission's 10 approval has expired unless there are no parties with 11 appeal rights. 12 The planning department is responsible 13 for filing a planning commission resolution. 14 The applicant will provide a recording 15 fee for the resolution to the planning department. 16 Any driveway permits must be acquired 17 from either the state or borough as necessary prior to 18 the issuance of the material site permit. 19 And that the conditions of the modified 20 permit will replace those of the original permit. 21 And as I mentioned, the permit 22 conditions remain the same with the exception that now 23 the modification will be granted. There will be 24 excavation within the water table. There still will 25 not be any excavation of the water table between --</p>

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1 within 300 feet of a well, and between 300 feet and
2 100 feet of a well that can be excavation above 2 feet
3 of the -- 2 feet of vertical separation above seasonal
4 high water. And then, of course, no excavation within
5 100 feet of existing wells.
6 And that's the end of the staff report.
7 **VICE CHAIR RUFFNER:** Thank you, Mr.
8 Taylor.
9 So we'll move to public comment, but I
10 just want to kind of remind everybody of the rules
11 that we read at the beginning, is that the applicant
12 gets the first introduction of their application. The
13 public can provide testimony up to five minutes
14 apiece, and then we do offer a rebuttal at the end for
15 the applicant. So that's just the rules that we use
16 for getting public comments.
17 So with that, the applicant or the
18 applicant's agent should start us off here. It looks
19 like Kyle has his hand up.
20 **KYLE FOSTER:** Good evening. My brother
21 and I are looking to have the ability to dig below
22 water table for material site.
23 **VICE CHAIR RUFFNER:** Hey, Kyle, can you
24 start with just your name and address so we have that
25 on our record.

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1 **KYLE FOSTER:** Kyle Foster, 34717
2 Sentinel, Soldotna.
3 **VICE CHAIR RUFFNER:** Great, thank you.
4 **KYLE FOSTER:** I am the applicant. My
5 brother and I are looking to be granted permission to
6 dig below water table as well as to do localized
7 dewatering within the gravel pit.
8 The dewatering is a pretty big name, but
9 yet in theory we're really only doing about a -- maybe
10 a 50-foot cell, 50-by-50 square cell, taking out that
11 material, and then digging another cell 50-by-50 with
12 a levee in between basically using a four-inch trash
13 pump or a six-inch pump to move that water from one
14 cell to another cell over the levee. Once we've
15 reached our depth, remove the levee. Now you have two
16 squares.
17 So it's basically a small thing. It's
18 not a massive pumping operation that will last more
19 than a few days at a time. It's not beneficial for us
20 to continually pump water. We're trying to just allow
21 us to have just a lower water table right in that
22 50-50 area of excavation.
23 **VICE CHAIR RUFFNER:** Okay. Do any
24 commissioners have questions for the applicant? I
25 don't see anybody that -- any of the commissioners

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1 that have applications -- or questions. So I'll ask
2 you one, Mr. Foster.
3 So the cells as you've described on
4 the -- you know, 50-by-50 more or less and separated,
5 so the water that you're going to pump out of the
6 ground you're going to pump into another cell. So
7 there wouldn't be any additional surface runoff as a
8 result of the pumping that you're proposing?
9 **KYLE FOSTER:** Correct. The pumping from
10 one cell to another cell separated by a levee, so we
11 only have to move a small amount of water. I'm trying
12 to minimize how much water we need to move. And we
13 use that 50-by-50 kind of as a gauge, you know, what
14 an excavator can move in a reasonable amount of time
15 during the day. And we use that pump to try to keep
16 that water down while we're excavating the gravel, and
17 then that helps us excavate the gravel.
18 **VICE CHAIR RUFFNER:** And does that
19 activity require a DNR permit, the water withdrawal
20 and re-pumping it?
21 **KYLE FOSTER:** No, I don't believe so.
22 **VICE CHAIR RUFFNER:** Okay.
23 **KYLE FOSTER:** You'd have to -- Gina
24 could speak to that a little bit better.
25 **VICE CHAIR RUFFNER:** Okay.

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1 **KYLE FOSTER:** Yeah, I don't know if it
2 does or not.
3 **VICE CHAIR RUFFNER:** Any other
4 commissioners have questions for the applicant?
5 **COMMISSIONER FIKES:** Commissioner
6 Fikes has a question.
7 **VICE CHAIR RUFFNER:** Commissioner Fikes.
8 **COMMISSIONER FIKES:** Yes. Through the
9 chair. So when you're pulling out this water from one
10 cell to the next, how is that going to impact the
11 water pressure for those in the area with the three
12 wells?
13 **KYLE FOSTER:** I don't believe that will
14 be affecting them.
15 **UNIDENTIFIED SPEAKER:** We're just moving
16 water.
17 **KYLE FOSTER:** We're just moving water.
18 My cell that has -- is separated by about an
19 eight-foot levee, that's constantly trying to refill
20 that other 50-by-50 square. So essentially it's right
21 next door trying to get back in. So I don't believe
22 it could really have much of an impact on something
23 outside of 300 feet or so.
24 **COMMISSIONER FIKES:** Okay.
25 **KYLE FOSTER:** We do have -- Gina has

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1 conducted a -- she has a map on that, so she can speak
2 to that a little better.

3 **COMMISSIONER VENUTI:** Mr. Chair.
4 **VICE CHAIR RUFFNER:** Mr. Venuti.
5 **COMMISSIONER VENUTI:** I have a question,
6 through you to the applicant, to Kyle.
7 I understand that you're going to be
8 pumping water from one pit into the next, which means
9 that you need an empty pit to pump water into. So
10 where does the water go out of the first pit?
11 **KYLE FOSTER:** You dig the first pit
12 roughly down to the top of the water, and then you dig
13 another pit next to it leaving a levee down to the
14 same depth so you have two pits that are, say, roughly
15 a half a foot above water table. And then --
16 separated. And then that levee is maybe about five or
17 six feet.
18 And then you start digging on cell 1 and
19 getting deeper, and as you remove that gravel, that
20 water is there. And you pump that cell 1 into cell 2,
21 which already has been excavated. And that serves as
22 a holding of like a pool of water.
23 **COMMISSIONER VENUTI:** And also how do
24 you propose to reclaim these pits?
25 **KYLE FOSTER:** The reclamation for the

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1 edges, there is the detail for, like, a 2-to-1 slope,
2 grass slope. And our plan for reclamation is a lake,
3 a man-made lake.
4 **COMMISSIONER VENUTI:** Thank you.
5 **VICE CHAIR RUFFNER:** Any other questions
6 for the applicant? Okay. We'll circle back to him at
7 the end and move on now. I know there are some others
8 that would like to testify.
9 Who is ready to go next? Oh, Gina, you
10 want to go now? Yeah. Okay.
11 **GINA DEBARDELABEN:** Hi. My name is Gina
12 DeBardelaben. I'm with McLane Consulting. Sorry, I
13 reside at 49354 Allmon Avenue. I'm going to be a
14 little bit long-winded, so I'm sorry, but I think I'll
15 be able to answer some questions that have been put
16 forth by the commission and then also some residents.
17 And I'm sorry that I'm probably going to repeat a few
18 things that Mr. Taylor addressed also.
19 So River Resources is the owner-operator
20 of the site. And they've applied for this permit
21 modification into the groundwater table after meeting
22 all the requirements set forth in the borough code.
23 This isn't a topic that the planning
24 commission hears regularly, but there are many
25 material sites in the Kenai Peninsula that excavate

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1 within the groundwater table.
2 Just a quick visual inspection of the
3 GIS material site database shows approximately 15
4 material sites within a half mile of the Kenai River
5 and/or Beaver Creek alone. So it's not uncommon or
6 unknown with our borough.
7 I did read all the written testimony
8 that was in the desk packet hoping I can vet those
9 questions. I thought it interesting that all the
10 surrounding property owners that submitted letters to
11 the planning commission are up gradient of the
12 material site, with the closest being about 1400 feet
13 east, and none of them are owners of the wells within
14 300 feet of the property, although I do realize two of
15 those are municipal wells.
16 There were many good questions and
17 concerns brought up in those letters. So the two
18 things that were -- that the modification focuses on
19 are, within the borough code, are water resource
20 separation and excavation in the water table. I will
21 try to just address those items.
22 River Resources, they installed five
23 monitor wells in September of 2019. The monitor well
24 data was taken at that time, and then they were
25 allowed to stay stagnant until continuous monitoring

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1 was started, which, you know, it stayed stagnant until
2 after the CLUP was granted.
3 Continuous monitoring began in May of
4 2020. These monitor wells, there was some questions
5 about the monitor wells from the commission. It's my
6 understanding they are four-inch PVC. They are
7 approximately 25 feet in length, and they have kerf
8 cuts in the lower 10 to 15 feet of them.
9 The monitor wells were surveyed on a
10 quarterly schedule and collected data was utilized to
11 determine the groundwater depth, direction of
12 groundwater flow, the hydraulic conductivity, which
13 was found to be in the low range for typical of dense
14 gravel and sand.
15 These items, along with some research,
16 was used to put my report together and look at the
17 viability for entering the groundwater table and also
18 dewatering.
19 The DNR WELTS data was utilized to
20 determine the depth of the confining layer in order to
21 find what the maximum excavation depth could be. The
22 confining layer in this area is recognized by drilling
23 or excavation into the soil. The soils become a dense
24 bluish-gray silt, which is very common for
25 Southcentral Alaska.

<p style="text-align: right;">Page 18</p> <p>1 This combining layer is approximately 30 2 feet thick according to the well logs. There is no 3 incentive for the operator to enter a confining layer. 4 This material of this layer is not utilized in 5 building or construction, and if it is excavated, it 6 becomes a waste material that is difficult to 7 stabilize. It also exceeds the depth that is 8 accessible by an excavator. So, again, there is no 9 desire to even get -- to enter that confining layer. 10 In analyzing the well log data, I also 11 spoke to DEC and DNR regarding groundwater of well 12 logs in the area as there are many logs that are 13 missing from the database. There is an Alaska statute 14 that requires well drillers to register in the WELTS 15 system. Unfortunately, the state -- according to the 16 state, there is not a current means of enforcing well 17 registration. 18 Written testimony from three of the 19 residents support the depth of this aquifer and the 20 location of the confining layer. 21 Utilizing this information, the 22 modification proposes the excavations be a maximum 23 depth of 32 feet below the existing ground elevation, 24 which is approximately 15 feet into the groundwater 25 and not breach the confining layer, as required by</p>	<p style="text-align: right;">Page 20</p> <p>1 dewatering pump, stabilization of the process, etc. 2 Neighboring residents are concerned 3 about how dewatering will affect their private wells. 4 This is called well drawdown. Utilizing a pump to 5 remove groundwater creates a cone of depression within 6 the water table. I ran some computations utilizing a 7 Theis calculation based on discussions with the 8 operator on how they would dewater for gravel 9 extraction. 10 I did this to evaluate what potential 11 drawdown would be anticipated during this extraction 12 within the cone of depression. The cone of depression 13 would be all the affected areas from the pumping. 14 My calculations are based on utilizing a 15 four-inch pump pulling 1,260 gallons per minute, which 16 is typical of a trash pump. 17 So just a few of those numbers. Within 18 a 300-foot radius on day 1, out of 300 feet, you would 19 see a drawdown of 7/10 of a foot. On day 7, it would 20 be about 1.1 feet. And 10 -- if it operated for 10 21 days, that would be 1.2 feet. 22 At a quarter mile, which is about that 23 1400 feet, which are closest residents to have -- or 24 have submitted written -- sorry, have submitted 25 written testimony.</p>
<p style="text-align: right;">Page 19</p> <p>1 code. 2 This groundwater aquifer is large with 3 many recharge means, and groundwater is not being 4 removed from the overall site. Groundwater quantity 5 will not be affected by localized excavation into the 6 water table. 7 The operator has also asked for a 8 dewatering exemption. Excavation into the water table 9 is not reliant on dewatering and can be performed 10 without dewatering, although dewatering provides a 11 cleaner means of excavation and line of sight. 12 For this site, dewatering will be 13 conducted by excavating the two cells like Kyle said. 14 So you submerge a pump into cell 1 and discharge into 15 cell 2. This allows for the extraction to take place 16 in a semi-dry and visible environment. The discharge 17 cell would be the same -- within the same property 18 approximately 50 to 200 feet from the dewatering cell. 19 Dewatering would take place over a 20 course of approximately five to seven days. Like, day 21 1 you would be excavating the cells and beginning 22 dewatering, continuing dewatering until operations are 23 complete. Day 2, 3, 4, 5, excavation and stockpiling 24 of the extracted gravel. And Day 6 would be slope 25 dressing of the excavation cell and shutdown of the</p>	<p style="text-align: right;">Page 21</p> <p>1 So at a quarter mile on day 1, there 2 would be less than a tenth of a foot drawdown. By day 3 7 there would be 5/10 of a foot, which is equal to 4 about 6 inches. And day 10 would be 6/10 of a foot. 5 And I did these computations at half mile and one 6 mile, and at those intervals you don't see any 7 drawdown effect over a ten-day period. 8 These computations show that dewatering 9 will have a minimal effect on groundwater elevations 10 over the extent of the time it will be utilized. Once 11 pumping is complete, groundwater will be charged to 12 its native elevation. 13 There are many contributing factors to 14 calculating groundwater recharge. These calculations 15 rely on precipitation, of aqua transpiration and 16 runoffs, which are not affected by the extraction 17 process, and they rely on the changing groundwater 18 storage and groundwater extraction. 19 We are increasing groundwater storage in 20 a large aquifer. Groundwater extraction becomes a 21 nonfactor as the water will be reintroduced within the 22 said property and allowed to infiltrate back to the 23 groundwater table. This will allow for natural 24 recharge at a faster rate. And upon shutdown of the 25 dewatering pump, the historical groundwater elevations</p>

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1 at the pumping site will resume based on the hydraulic
2 conductivity of the gravel. At this site,
3 approximately three inches per minute with the
4 outlying areas recharging even quicker.
5 Almost done. So excavation in the
6 groundwater table requires the operator to meet four
7 requirements, which this application has done. And we
8 ask that the commission approve this modification.
9 As well, a dewatering exemption at this
10 location for its proposed purpose will have minimal
11 and short-term effect on the wells in the vicinity and
12 should be approved.
13 The operator will be required to meet
14 these new requirements for dewatering, protecting
15 water rights, and water quality. Dewatering is also
16 addressed in the DEC standard practices for material
17 sites.
18 We have discussed with the operator and
19 think we would like to ask the commission to
20 essentially separate the permit modification from the
21 exemption for dewatering request because -- to limit
22 the required bonding at the beginning of the -- to
23 begin at the time when dewatering becomes warranted,
24 which is anticipated at two to four years from now.
25 So while the operator would like to

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1 enter the groundwater table, they may not need the
2 need for dewatering for a few years. And to carry
3 that bond at the beginning of the permit seems
4 excessive as does the value of the bonding requirement
5 at \$30,000.
6 I understand this -- you know, this is
7 something that's set forth by the planning department
8 and then agreed on by the operator, et cetera, but,
9 again, there's -- maybe something could be altered
10 there.
11 Is there any questions? Hopefully I
12 answered some and didn't speak too quickly.
13 **VICE CHAIR RUFFNER:** Mr. Venuti.
14 **COMMISSIONER VENUTI:** You always sound
15 so smart when you talk.
16 But I'm wondering when the pump starts
17 dewatering, how long would you anticipate would they
18 be running for? Typically when I've done any
19 dewatering on the commercial projects, those pumps
20 needed to run all of the time. So I'm wondering about
21 the noise factor of these pumps.
22 **GINA DEBARDELABEN:** So trash pumps
23 aren't overly loud. And dewatering would take place
24 over a -- less than seven days with the pump running
25 probably three to five days of that time.

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1 **COMMISSIONER VENUTI:** Thank you.
2 **VICE CHAIR RUFFNER:** Any other questions
3 for Ms. DeBardelaben?
4 I have one, Gina. If you could just
5 say -- state again, when you did your calculations for
6 the three wells that were closest to the site under
7 maximum conditions that you modeled, you said 7/10 of
8 a foot?
9 **GINA DEBARDELABEN:** So for 300 feet
10 away, with one day of operation, it's 7/10 of a foot.
11 At a ten-day operation, that's 1.2 feet of drawdown.
12 **VICE CHAIR RUFFNER:** Okay. 1.2 feet
13 would be the maximum drawdown 300 feet away?
14 **GINA DEBARDELABEN:** Now, we're -- yes.
15 And we're saying that it's only going to take seven
16 days, and that's 1.1 feet. You can see that it's --
17 the curve on the drawdown once you hit it, it pulls
18 slower, right?
19 **VICE CHAIR RUFFNER:** Okay. Yeah, I was
20 just trying to get some sense of the magnitude. So,
21 any other questions for Gina?
22 **MS. SHIRNBERG:** Commissioner Ecklund has
23 her hand raised.
24 **VICE CHAIR RUFFNER:** Yes.
25 **COMMISSIONER ECKLUND:** Thank you.

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1 Through the chair to Gina.
2 Gina, does McLane Consulting have a
3 hydrologist on staff, or did you hire a hydrologist
4 for your research?
5 **GINA DEBARDELABEN:** So I am a licensed
6 civil engineer and qualified underneath your borough
7 code. I do -- I did talk to a hydrologist that I
8 speak with, consult with occasionally, but just in
9 passing some ideas passing back and forth.
10 **COMMISSIONER ECKLUND:** Thank you.
11 **VICE CHAIR RUFFNER:** Any other
12 commissioners have questions for Ms. DeBardelaben?
13 **MS. SHIRNBERG:** Bryan Taylor had his
14 hand raised, staff.
15 **BRYAN TAYLOR:** Yes. Through the chair.
16 I don't have a question. I just did want to provide
17 some information.
18 Gina had mentioned possibly separating
19 the dewatering from the excavating modification so
20 that the bonding didn't have to apply. And as worded
21 right now, permit condition No. 8 says, "Prior to
22 dewatering, the permittee shall post a bond for
23 liability for potential accrued damages...in the
24 amount of \$30,000."
25 So if that was the concern, I think the

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1 wording as is would probably serve. It just has to be
2 put in place before dewatering begins. That's all.
3 **VICE CHAIR RUFFNER:** Okay. I appreciate
4 that clarification. All right.

5 If there is no other questions for the
6 engineer, we will move on. And I see a hand up,
7 Michael's iPhone.

8 **MICHAEL POMPLIN:** Thank you. My name's
9 Mike Pomplin. I live at 41918 River Park Drive in
10 Soldotna.

11 First and foremost, I'm begging that we
12 get an extension on this. We just got this notice
13 less than two weeks ago, and we have not had a whole
14 lot of time to do a lot of investigating.

15 I have a major concern about this. In
16 our subdivision, I'm one of eight people who have
17 30-foot wells. Kraxberger is the one who drilled my
18 well, and he said that he does not use the WELTS
19 program. And that there is four others that -- we
20 have many that are shallow as well.

21 But some of the concerns I have with the
22 dewatering, it all sounds good, but you're talking
23 about a thousand gallons a minute, and then we also
24 talk about this being a 40-year project. It's like
25 I'm concerned about how much water we're going to

1 Because, honestly, a \$30,000 bond is not
2 going to do a whole lot if a lot of these wells are
3 affected by this. So I would like that investigated.
4 We would like to do some checking on our side as well.

5 But I think that covers all I've got,
6 and I thank you for your time.

7 **VICE CHAIR RUFFNER:** Yes, great. Thank
8 you for testifying. Any questions from commissioners
9 for the testifier? All right. I don't see any
10 commissioners looking to ask questions, but I do see
11 Ms. Hardy had her -- raised her hand, or was that a
12 raising your hand?

13 Oh, no. Now mine froze up.

14 **MS. SHIRNBERG:** I don't see any hands,
15 Commissioner Ruffner.

16 **VICE CHAIR RUFFNER:** Okay. All right.
17 Well, we'll move on to the next member of the public
18 that wishes to testify. I see Michael Gravier.

19 **MICHAEL GRAVIER:** Yes, Chair, this is
20 Michael Gravier. I live at 34540 Marcus Street in
21 Soldotna. I have -- I'm the guy you're talking about
22 that's 1400 feet away, so I probably have the closest
23 well other than those three that have been described.

24 My concern with this project, my well
25 is, you know, like, a little over a quarter of a mile.

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1 displace there.

2 Then, while we're doing this dewatering,
3 we've got trucks, we got all kinds of excavating
4 equipment in there. What are we doing for protection
5 against spills and leakages from these trucks and
6 equipment in this vicinity? Then what about
7 contamination of the water due to exposure? That has
8 a potential to cause some harm.

9 Other than that, Gina covered a lot of
10 the stuff. I think she read some of the notes right
11 off of my sheet that I submitted. I thank her for
12 doing that. And I am one person who just for my own
13 insurance have applied for my water rights just
14 because I don't know what else I can do. I am
15 concerned about this over 40 years. We won't even get
16 into the noise that this pump is going to cause. We
17 listen to these trucks backing up and tailgates
18 slamming all the time as it is. Now we're going to be
19 listening to pumps running for an extended period of
20 time. You take all this into consideration of what is
21 this going to do to our property values?

22 So I guess you -- that's a big thing
23 with the investigation. I really would like some more
24 thought goes into how many wells are in this
25 subdivision and how many wells will be affected.

1 I did send a letter in to Mr. Taylor, and I appreciate
2 some of the answers I got tonight from McLane.

3 After I submitted my letter to Mr.
4 Taylor, I found a study, and I could not find any for
5 the Kenai area, but I found a study. I'm talking
6 about a gravel pit study indicating the amount of
7 drawdown, et cetera. And as far away as I am, I
8 should not be impacted, I don't think, by the
9 drawdown.

10 However, to quote the study, "Open pit
11 affects groundwater flow direction and causes a local
12 increase in the hydrologic gradient."

13 And so my concern is with the current
14 flow being towards the northwest prior to the gravel
15 pit being built, and then the dewatering more in a
16 westerly direction, if the flow into my well shifts
17 from heading northwest to a more westerly direction, I
18 could lose the water into my well. I mean, it would
19 just never get here if the flow changed direction.

20 I didn't hear that addressed from
21 McLane. I did not ask that in my first letter because
22 I did not have this study at the time.

23 Anyway, and being as close as I am, I
24 would also request a bond that would include some of
25 the other wells that are closer. I did not realize so

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1 many wells were not known in this area. My well is 64
2 feet deep. My static water is five feet. So it's
3 basically an artesian well.
4 And that's all. I would like some
5 assurance that should something happen to my well that
6 I could get my water back, good clean drinking water.
7 My well pumps 15 gallons a minute according to the
8 well charts. So I'd just like some assurance that I
9 won't lose that. And thank you very much.
10 One more thing, please. With me is Bill
11 Ferguson, and he doesn't Zoom, and so he is listening
12 on my computer. So if the chair could please provide
13 some guidance on how he could also speak, we
14 appreciate that. Thank you.
15 **VICE CHAIR RUFFNER:** Sure. Well, we'll
16 see, does anybody have any questions for Michael first
17 before we -- Mr. Venuti.
18 **MS. SHIRNBERG:** You're muted, Mr.
19 Venuti.
20 **COMMISSIONER VENUTI:** All right. Excuse
21 me.
22 Mr. Gravier, have you had the quality of
23 your water tested lately?
24 **MICHAEL GRAVIER:** Yes, sir. I had the
25 quality of it tested, I believe, one year ago as part

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1 of a refinance with a VA loan, and they required some
2 testing for coliform. And I have also recently had it
3 tested, a full screen of a private well testing, and I
4 have yet to receive those results. I should have
5 those in a week or two.
6 **COMMISSIONER VENUTI:** So you have a
7 benchmark of what the water is like now that you can
8 measure against?
9 **MICHAEL GRAVIER:** That is correct.
10 **COMMISSIONER VENUTI:** Thank you.
11 **VICE CHAIR RUFFNER:** Any other questions
12 for the testifier?
13 **ANN SHIRNBERG:** I see no hands,
14 Commissioner Ruffner.
15 **VICE CHAIR RUFFNER:** Okay, great. Thank
16 you. My screen does continue to lock up occasionally
17 here, so I'm doing my best. If I pause, that's why
18 I'm paused.
19 All right. So Mr. Gravier, you said
20 there was another person there with you. So we can
21 give them their five minutes now as well. Just kind
22 of hand your device off to them.
23 **WILLIAM FERGUSON:** Yes, Mr. Chairman,
24 I'm William Ferguson. I live at 34484 Marcus Street.
25 I'm Mike's next-door neighbor. Within about 150 feet

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1 is my well to his home.
2 My well -- this home -- my home has been
3 here 51 years. I moved onto this lot in 1970. The
4 well log is pretty incomplete. What I found was my
5 well is at 42 feet. The static water is at 33 feet.
6 It ended up being a lot shallower than I had
7 anticipated.
8 A couple of points that I learned this
9 evening that it's somewhat shocking is the fact that
10 the 31.2 acres, if I'm wrong please correct me, but it
11 sounds like it's going to turn into a 31.2-acre lake,
12 which that amount of water, number one, is going to
13 provide a wonderful haven for growing mosquitos
14 because it's going to be pretty stagnant, and also
15 could again contaminate the existing water table, and
16 the fact that it's just -- will end up being merely
17 standing water for over a 40-year period of time
18 before reclamation happens to occur.
19 The other thing in the application that
20 I didn't see anything of, and I'm working with the
21 State of Alaska now to make some determinations, and I
22 did request some additional time in which to do so,
23 but there's nothing in the application for any kind of
24 quality of when they're moving this water around of
25 how it's going to be tested, if there's any

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1 contamination. I don't see any safety plan in place
2 for what happens when spills occur.
3 I just retired from the North Slope. I
4 worked up there 20 years. It's the most
5 environmentally sensitive area in the world, but they
6 still have spills, folks, and lots of them.
7 So I don't see anything in the plan here
8 as far as how to go about dealing with those spills,
9 what they're going to do when the water table becomes
10 contaminated. It does flow in a northwesterly
11 direction, so it could very possibly reach the Kenai
12 River. I have some concerns with that.
13 So there's a whole lot of unknowns that
14 we really don't know about that we only have one
15 viewpoint from one engineering study that's giving us
16 all the information. And I think the residents here
17 really need the opportunity to go out and get our own
18 experts and come back to the table with this. Thank
19 you.
20 **VICE CHAIR RUFFNER:** Thank you, Mr.
21 Ferguson. Any commissioners have questions for the
22 testifier? I'll ask you one.
23 Do you have a sense of how much time it
24 might take if the commission so desired to postpone to
25 give you a chance to do your research and come back?

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1 **WILLIAM FERGUSON:** I've asked for a 30-
2 to 60-day postponement. I think that would be
3 rational.
4 I also -- there was a question asked of
5 Mike about a baseline water study. We owned a B&B
6 here, for 20-some years we ran it. We always ran
7 water tests every year. It tested out fine for
8 coliforms. I don't expect anything different. But I
9 now just ran a complete baseline metals test, which
10 isn't cheap, through Tauriainen, and I should have at
11 least a baseline study completed here very shortly.
12 **VICE CHAIR RUFFNER:** And then one other
13 question was here, your neighbor there said that he
14 filed his for DNR water rights. Have you done the
15 same?
16 **WILLIAM FERGUSON:** I am in the process.
17 **VICE CHAIR RUFFNER:** Okay. So everybody
18 knows about that. I think that's probably the point
19 that I would want to try to get across, is that that's
20 one of the ways that you can get some protection is at
21 least by filing for your own water rights.
22 **WILLIAM FERGUSON:** Correct.
23 **VICE CHAIR RUFFNER:** Ms. Fikes, do you
24 have a question for the testifier? Mute.
25 **COMMISSIONER FIKES:** Yes. Through the

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1 chair. Mr. Ferguson, how many of your neighbors are
2 seasonal that are not aware of this application right
3 now? Have you had a chance to talk to any of them?
4 **WILLIAM FERGUSON:** I can't really answer
5 that to you because of the fact -- we sit down sort of
6 in a little hollow all off by ourselves. So my
7 nearest neighbor is Mike, and we're pretty private
8 people, we don't get out much. So I couldn't answer
9 that to you, but...
10 **VICE CHAIR RUFFNER:** Any other questions
11 from commissioners for this testifier? Okay, I don't
12 see any commissioner hands go up. So, yes, Hardys.
13 You can pull it off of mute.
14 **MS. SHIRNBERG:** Star 6 if you're on your
15 phone.
16 **JOSEPH HARDY:** All right. Are we ready?
17 **VICE CHAIR RUFFNER:** We're ready.
18 **JOSEPH HARDY:** Okay. Joe Hardy, 41937
19 River Park Drive, about a quarter mile from the pit.
20 Most of the prior testimony has hit on
21 the same points I was going to make, but there are
22 concerns there is no baseline done on any of the local
23 resident wells to the east and southeast. I would
24 have thought that should have been part of the study,
25 because we are the ones that will be affected the most

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1 if there is any effect.
2 And I respect the McLane Engineering
3 firm, but it's all hypothetical, their information and
4 their facts. We need true figures. And there is --
5 according to the state, there is no dewatering permit,
6 which they need. I don't think this commission should
7 proceed until that question is answered.
8 And as far as I'm concerned, this should
9 have been part of the original permit. They knew how
10 deep that water table was when they give them the
11 original permit.
12 And to back up what Bill said about no
13 spill plan, we're going to have loaders and excavators
14 with hydraulic lines that are going to break and et
15 cetera, et cetera, and they're going to spill into
16 that water. And they need to have a spill mitigation
17 plan and the equipment on site to take care of that.
18 You know, that's pretty much standard operating
19 procedure in today's world. And I'm sure you all
20 realize that anything that creates a sheen on water is
21 considered a legal spill.
22 And the last thing that really concerns
23 me is the access down Kenai River Avenue to Funny
24 River Road. I thought we put that to bed with the
25 original permit application as a dangerous

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1 intersection. You have to be super careful in a
2 vehicle. There's no way that trucks and tandem
3 trailer trucks are going to make a safe entry onto
4 that road, both for themselves and traffic coming down
5 Funny River Road around that corner, that there's only
6 one corner.
7 And that's pretty much what I've got to
8 say, and thanks for the opportunity.
9 **VICE CHAIR RUFFNER:** Yeah, thanks for
10 testifying, Mr. Hardy. Any questions for the
11 testifier? We're not seeing any.
12 **JOSEPH HARDY:** I would say one -- add
13 one thing --
14 **VICE CHAIR RUFFNER:** Sure.
15 **JOSEPH HARDY:** -- if I could, Mr.
16 Ruffner.
17 **VICE CHAIR RUFFNER:** Yes, you can.
18 **JOSEPH HARDY:** A \$30,000 bond is a joke,
19 really. That wouldn't even cover the cost of going in
20 and talking to some lawyers. Anyway, thank you.
21 **VICE CHAIR RUFFNER:** You're welcome.
22 All right. While you're open, does Ms. Hardy wish to
23 speak as well?
24 **BILLIE HARDY:** No. I think I would just
25 like to reiterate, and I live at the same address as

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1 Joe Hardy, but we would like a 30- to 60-day extension
2 to talk to an independent hydrologist.
3 **VICE CHAIR RUFFNER:** Okay. Any
4 questions for Ms. Hardy? Okay. Not seeing anyone, so
5 the next hand that I see up is Lillian Weed. There
6 you go.
7 **LILLIAN WEED:** My name is Lillian Weed.
8 I live at 34054 Snow Lane in the subdivision here.
9 And most everything has been touched on. Everybody's
10 talked about, you know, wanting the extension.
11 I'm really concerned about the Kenai
12 River and our fish and the habitat around there. That
13 hasn't been brought up very much.
14 The other thing I feel that with all the
15 COVID and everything going on, that probably we should
16 lean closer to a 60-day postponement. Anything else?
17 **VICE CHAIR RUFFNER:** No. We're here.
18 **LILLIAN WEED:** Okay.
19 **VICE CHAIR RUFFNER:** So --
20 **LILLIAN WEED:** I have the same concerns
21 that everybody else has. I absolutely am opposed to
22 dewatering so...
23 **VICE CHAIR RUFFNER:** Okay. Any
24 questions for Ms. Weed from the commissioners? I'm
25 not seeing anyone. So the next hand I see raised on

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1 my screen in Mr. Elam.
2 **BILL ELAM:** Hello. Can you hear me all
3 right?
4 **VICE CHAIR RUFFNER:** I can.
5 **BILL ELAM:** All right, thank you. I'm
6 Bill Elam, borough assembly. My address is 47320
7 Jefferson Avenue.
8 I received, you know -- and I realize
9 being a member of the borough assembly, it's not
10 necessarily completely my lane here, and so I was just
11 going to publically testify that I heard from several
12 members of the public here. Several of them have
13 spoken here tonight, and, you know, I think that they
14 all have valid concerns, you know, with what's going
15 on and changes.
16 And having the opportunity to be able to
17 bring in a hydrologist of their own to get some
18 review, I'm not sure what the legalities of everything
19 would be, but, you know, I kind of feel that that
20 would be a nice accommodation to be able to lend them.
21 You know, there are -- the addition of a
22 lake close to the river. I do realize that their
23 communities, you know, are a bit away, you know. So,
24 you know, I'm not a hydrologist or an engineer on
25 this, you know, I mean, but I can see that there's

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1 some space there, so...
2 But, you know, giving them a little
3 extra time seems kind of nice to be able to bring in a
4 hydrologist to take a look at it. And I'm available
5 for any questions if anybody has anything.
6 **VICE CHAIR RUFFNER:** Great. Thanks,
7 Bill. Any questions for our testifier from the
8 commission, from commissioners? I don't see any
9 commissioner hands coming up.
10 **UNIDENTIFIED SPEAKER:** (Indiscernible).
11 **VICE CHAIR RUFFNER:** That's okay. So
12 Ms. Brown, I see you, but I did have Lindsey's hand up
13 first, so I'm going to go to her and then I'll come to
14 you next, okay?
15 **LINDSEY HOLLAND:** Hey, can you hear me?
16 **VICE CHAIR RUFFNER:** I can.
17 **LINDSEY HOLLAND:** All right. So this is
18 Lindsey Holland. I am at 41750 River Park Drive. I'm
19 concerned because, you know, y'all touched on the well
20 situation, but really, like Lillian said, I'm
21 concerned about the river.
22 Now, I'd -- when McLane was talking, she
23 said that there were gravel pits within a half of a
24 mile, but on the last meeting minutes, I saw that
25 the -- at the closest point, the river is 350 feet

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1 from the gravel pit. What kind of safeguards are
2 going to be put in place for the river?
3 I mean, anything could happen, and 350
4 feet of a buffer is practically nothing in the grand
5 scheme of things, especially when it's such an
6 important part of Alaska, such an important part of
7 the Kenai Peninsula, there just has to be a safeguard
8 there. And I would like to know what that is.
9 And -- yeah, also the extension, that
10 would be really nice for the neighborhood to get their
11 hydrologist in. I do believe we have that right to
12 ask for that. That's all I got. Thank you.
13 **VICE CHAIR RUFFNER:** Okay, great. Thank
14 you. Any questions from commissioners for our
15 testifier? I'm not seeing anyone so we will move on
16 to Ms. Brown, I believe.
17 **ASONYA BROWN:** Thank you, Commissioner.
18 This is not my lane either, but just listening
19 publically, what I'm asking myself --
20 **VICE CHAIR RUFFNER:** Do the name and
21 address thing, please. Sorry.
22 **ASONYA BROWN:** Oh, excuse me. I'm
23 Asonya Brown. That's 40594 K-Beach. That's our
24 property. That's not my mailing address if that's
25 what you would prefer.

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1 **VICE CHAIR RUFFNER:** I'll defer to Ann.
2 What do you need?
3 **MS. SHIRNBERG:** Mailing would be nice.
4 **ASONYA BROWN:** Okay. It is out of
5 state. 1152 Norton, N-o-r-t-o-n, Avenue. And that's
6 in Columbus, Ohio 43212-3637.
7 **VICE CHAIR RUFFNER:** Great. Thank you.
8 Go ahead.
9 **ASONYA BROWN:** I'm just listening to
10 everybody speak, and I'm thinking -- and this may be a
11 very moot question, but how much is all this costing
12 each individual homeowner to check their water
13 qualities, to get these previous tests done, to file
14 for their water rights, to -- there's four or five or
15 six different things. To get the hydrologist, I mean,
16 that can't be cheap. And is the petitioner planning
17 on reimbursing each one of these well owners for this
18 extra work that they're doing?
19 That was my question. That's what I
20 would want to know if it were my property, is I'm
21 putting out all this extra money to protect my
22 property when someone else wants to possibly endanger
23 it. Thank you.
24 **VICE CHAIR RUFFNER:** Thank you, Ms.
25 Brown. Any commissioners have questions for Ms.

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1 Brown? I'm not seeing anyone, so we will carry on.
2 Is there anybody else from the public
3 that wishes to address us on this application?
4 **MS. SHIRNBERG:** I see no hands.
5 **VICE CHAIR RUFFNER:** Okay. So again,
6 you know, just reminding us of our rules. You know,
7 we afford the applicant the opportunity to introduce
8 the petition, and then we also give them a chance to
9 rebut at the end of all the rest of the public
10 testimony. So I'm going to trust that everybody has
11 said what they wanted to say; and if not, let me know
12 now.
13 Otherwise I'm going to go back and see
14 if Mr. Foster or his agent wishes to address us again.
15 Kyle or Gina, either one of you want to say something
16 else? I see Kyle has his hand up.
17 **KYLE FOSTER:** I have nothing else at
18 this time. Gina can speak if she feels the need.
19 **VICE CHAIR RUFFNER:** Ms. DeBardelaben,
20 do you have anything you want to add after hearing the
21 public testimony?
22 **GINA DEBARDELABEN:** Sure. I can -- I'll
23 just speak to a couple things really quick. Hold on
24 just a second.
25 **VICE CHAIR RUFFNER:** And just as a

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1 reminder for everybody, it's, you know, nothing new,
2 just kind of addressing the concerns that were heard,
3 so...
4 **GINA DEBARDELABEN:** Yes. So a few
5 things that were brought up regarding, like, spill
6 mitigation, environmental concerns. You know, those
7 are -- those are things that are taken up in other
8 permits and other processes with a material site.
9 There's, you know, DEC requirements that have to be
10 met and DNR requirements outside of the borough code.
11 And while all that information hasn't
12 necessarily been shared or provided to the borough
13 because it's not part of this permit process, there's
14 other municipalities or departments that handle those.
15 But those are all -- there are multiple requirements
16 in other areas to be met here.
17 **VICE CHAIR RUFFNER:** Okay. Thank you.
18 Any final questions for the engineer from
19 commissioners? Ms. Fikes.
20 **COMMISSIONER FIKES:** Yes. Through the
21 chair. Have you heard any comments or has anybody
22 contacted the River Center? Did they have any input
23 or thoughts?
24 **VICE CHAIR RUFFNER:** That's probably a
25 question for Mr. Taylor.

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1 **BRYAN TAYLOR:** Through the chair. If
2 there's a project that is within the overlay district
3 for a naturalist protection, it will be sent as part
4 of agency review to the River Center. This project is
5 not within their jurisdiction, so it was not sent
6 there.
7 **VICE CHAIR RUFFNER:** Okay. Any other --
8 that's if -- I haven't closed public comment yet, so
9 any last questions for the engineer? Okay. Did your
10 hand go back up, Ms. Fikes?
11 **COMMISSIONER FIKES:** Yes.
12 **VICE CHAIR RUFFNER:** Yeah, okay.
13 **COMMISSIONER FIKES:** So several of the
14 testifiers brought up that there was a discrepancy in
15 the actual count of the wells in the area, and then
16 some of them brought up the fact that 30,000 might not
17 be enough to cover a bond. So is the applicant
18 prepared that should there be a discovery of more
19 wells, are they prepared to add to that bond?
20 **VICE CHAIR RUFFNER:** Kyle, that probably
21 goes to you, I would guess.
22 **KYLE FOSTER:** 1400 feet seems to be a
23 little extreme on distance from the project to me.
24 **VICE CHAIR RUFFNER:** I'm not sure who
25 that was that just spoke up.

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1 **MS. SHIRNBERG:** I believe it was Kyle
2 Foster.
3 **VICE CHAIR RUFFNER:** Okay. Right, yeah.
4 Sorry, I was getting a phone call on the other end at
5 the same time, so...
6 **UNIDENTIFIED SPEAKER:** (Indiscernible).
7 **KYLE FOSTER:** Yes. At this time we
8 don't feel like additional bonding for the 1400-foot
9 distance.
10 **VICE CHAIR RUFFNER:** Okay. Does that
11 answer your question, Ms. Fikes?
12 **COMMISSIONER FIKES:** Yes, thank you.
13 **VICE CHAIR RUFFNER:** Mr. Venuti.
14 **COMMISSIONER VENUTI:** Thank you, Mr.
15 Chair. I have a question for Mr. Foster.
16 Mr. Foster, will the equipment operating
17 at this site use white-noise backup alarms?
18 **KYLE FOSTER:** No, sir. I don't believe
19 we have white noise backup alarms installed on our
20 equipment.
21 **COMMISSIONER VENUTI:** Thank you.
22 **VICE CHAIR RUFFNER:** Ann, I did just
23 notice that Ms. Ecklund dropped off the call.
24 **MS. SHIRNBERG:** She had informed me that
25 her iPad was going low, so she came back in on her

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1 phone.
2 **VICE CHAIR RUFFNER:** Okay. So what's
3 our protocol? I mean, I just saw it disappear, so
4 should we wait till she comes back?
5 **MS. SHIRNBERG:** She is back.
6 **VICE CHAIR RUFFNER:** Okay.
7 **COMMISSIONER ECKLUND:** Yes.
8 **VICE CHAIR RUFFNER:** Okay. Okay. If
9 there are no other questions for the applicant or the
10 engineer, I'm going to close public testimony. I'm
11 not seeing any.
12 So Mr. Gravier, sorry, we don't go back
13 to the public once we've closed out that part of it.
14 So I do see your hand, but that's just the rule we
15 follow. Otherwise, we keep going back and forth, back
16 and forth. So I apologize if that was not clear, but
17 that's the rules that we follow.
18 So seeing none of the commissioners have
19 their hands raised to ask a question of the applicant
20 or the engineer, we'll close public testimony and
21 bring it back to the commission. I would entertain a
22 motion. Ms. Gillham.
23 **COMMISSIONER GILLHAM:** I'll move to
24 approve the PC Resolution 2021-10 granting a
25 modification to a conditional land use permit issued

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1 to River Resources, LLC.
2 **COMMISSIONER BRANTLEY:** Second.
3 **VICE CHAIR RUFFNER:** Okay. It's been
4 moved and seconded by Mr. Brantley. So we'll open it
5 up for discussion.
6 **COMMISSIONER GILLHAM:** I'd like to make
7 a comment. Anyway, I'm thinking I would at least --
8 what I'm trying -- and explore what a reasonable time
9 would be to allow the residents around this to
10 investigate their -- have a hydraulic professional
11 come in and take a look at what potentially could
12 happen with the -- with going down below the water
13 table for excavation. I mean, is that a good time to
14 raise that right now?
15 **VICE CHAIR RUFFNER:** Sure. Yeah, I
16 mean, we could -- you know, this is kind of our motion
17 now, so, I mean, we can talk about that, and then that
18 would just require us to amend it to postpone it if we
19 wanted to do that. But yeah, we can certainly chat
20 about it.
21 So I gathered from -- so you're
22 interested in just hearing what other commissioners
23 think about postponement?
24 **COMMISSIONER GILLHAM:** Yes, I do. Yeah.
25 **VICE CHAIR RUFFNER:** Okay. I just

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1 wanted to make sure I was clear. Ms. Fikes.
2 **COMMISSIONER FIKES:** Yes. I'd just like
3 to weigh in with Ms. Gillham as well. I believe that
4 we're absent two commissioners right now, and the fact
5 that we've had one that had a call fall off, there's
6 no certainty what testimony she did or did not hear.
7 And I don't think it's unreasonable to
8 request a postponement so that the folks have the
9 chance to gather up some additional information. It
10 seems like it's pretty pertinent to their livelihood.
11 It's pretty important to their wells. If we were to
12 postpone it for a month or whatever to give them extra
13 time to come up with some factual information, I think
14 it would be better for the commission to have a
15 balanced approach to their facts and our decision
16 making. That's just my two cents.
17 **COMMISSIONER ECKLUND:** This is
18 Commissioner Ecklund, and I did not log off of the
19 iPad until I was back on my iPhone. I have not missed
20 any testimony. But I do agree with the postponement.
21 **VICE CHAIR RUFFNER:** Well, we're all
22 concerned about you being on or off the call.
23 **COMMISSIONER ECKLUND:** I'm on. I'm on
24 the call.
25 **VICE CHAIR RUFFNER:** Perfect. Very

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1 good. Okay, other discussion?

2 **COMMISSIONER GILLHAM:** I think maybe in

3 order to be fair to both the landowners and the people

4 that own property around it, maybe propose a 30-day

5 extension and then see what they can come up with

6 within that period of time.

7 **VICE CHAIR RUFFNER:** Okay. There's a --

8 I'm going to turn that into a motion. That's a motion

9 to postpone for at least 30 days. We have our

10 director with her hand up. Yes, Melanie.

11 **MELANIE AESCHLIMAN:** Hi. Thank you. I

12 just wanted to state that May 10th will put us about

13 30 days. However, Bryan Taylor and myself will be on

14 vacation. So if you would like us to be present, I

15 would say the May 24th -- just a suggestion.

16 **VICE CHAIR RUFFNER:** Okay. Okay, we

17 didn't get a second on that motion, so I'll go back to

18 the maker of the motion, see what she thinks about

19 your suggestion. Ms. Gillham?

20 **COMMISSIONER GILLHAM:** I think that's

21 reasonable to put it out to May 24th.

22 **COMMISSIONER CARLUCCIO:** I'll second

23 that motion.

24 **VICE CHAIR RUFFNER:** Okay. It's been

25 seconded by Ms. Carluccio. So now we have a motion to

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1 postpone in front of us. Is there any discussion on

2 the motion to postpone? Ann, I --

3 **COMMISSIONER CARLUCCIO:** Yes, I do have

4 something to say. Sorry, I had my hand raised, but --

5 **VICE CHAIR RUFFNER:** Okay.

6 **COMMISSIONER CARLUCCIO:** I was going to

7 say that that is halfway between, just about halfway

8 between the 30 days and the 60 days, and I think the

9 extra time would be worthwhile to give to the people

10 that want to get a hydrologist involved. Thirty days

11 right now seems, by the time they even get someone to

12 commit, it's probably going to be a week or two. So

13 I'm in favor of the May 24th meeting.

14 **VICE CHAIR RUFFNER:** Mr. Taylor, you

15 wish to weigh in?

16 **BRYAN TAYLOR:** Yes. Through the chair.

17 Could I get a little bit of direction about why the

18 postponement is being requested from the planning

19 commission's perspective and if I am supposed to be

20 gathering information from these other professionals

21 to bring back to the meeting?

22 **VICE CHAIR RUFFNER:** Yes, that's -- it's

23 a very fair question, so I think warrants some

24 discussion among the commissioners. You know, what's

25 the expectation of the role of the staff in requesting

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1 a postponement? Ms. Fikes.

2 **COMMISSIONER FIKES:** Yes, just my

3 thoughts are it's just more information on the

4 dewatering impact studies. So, I mean, is there

5 somebody that you can go to to draw back -- or draw

6 some information from, some kind of expert testimony

7 or something?

8 We have one individual before us that's

9 testified, but, you know, what are the credentials

10 behind that? I would like to hear more of that.

11 And then also I'd like to hear how it's

12 going to impact the people around it as far as the

13 noise and stuff as well. What are your operating

14 hours, and what are your plans for any kind of spill

15 containment? Like you say, there's kind of some

16 things that aren't included in the packet, so what are

17 the requirements? You're asking us to weigh in and

18 make a decision, but we don't really have some of

19 these questions answered, in my opinion yet. So how

20 you can go out and get some of these answers for us

21 I'm not sure.

22 **BRYAN TAYLOR:** Through the chair. Yeah,

23 I believe you're speaking to me there. The -- we do

24 have permit conditions that address some of the

25 contaminant secondary storage for fuel containers.

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1 And in terms of what code lays out to address these

2 issues, source contamination and the drawdown of the

3 well, I believe that's all been addressed, so I don't

4 know that there's anything outstanding here.

5 If you're wishing to hear alternate

6 expert testimony from consultants that the neighbors

7 bring to the table, I just don't know -- you know, we

8 don't have anything in -- procedurally to accept that

9 or to weigh it, so just any guidance you want to

10 provide there.

11 **COMMISSIONER ECKLUND:** Through the

12 chair. This is Commissioner Ecklund through the chair

13 to Bryan Taylor. Bryan, is there a hydrologist on the

14 borough staff?

15 **BRYAN TAYLOR:** No, there is not.

16 Through the chair, sorry.

17 **COMMISSIONER ECKLUND:** Did you -- follow

18 up.

19 Did you make any phone calls or

20 inquiries to a alternate hydrologist or any

21 hydrologist with regards to the direction that the

22 water, that the groundwater flows towards the Kenai

23 River, or if a dewatering continues three to four days

24 out of every seven for years, what kind of effect that

25 would have on wells that are only 30 feet deep.

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1 **BRYAN TAYLOR:** I did not contract --
2 contact a hydrologist with those questions in mind. I
3 did reach out to DNR, but it was specifically related
4 to their reclamation bonding requirements, but not
5 with those questions in mind.
6 **COMMISSIONER ECKLUND:** Thank you.
7 **VICE CHAIR RUFFNER:** All right. So we
8 have -- the motion that we have in front of us is to
9 postpone till May 24th. Is there further discussion?
10 And, Bryan, feel free -- I mean, if you
11 feel like you're not getting what you want from the
12 commission in terms of what is expected of your
13 role -- I mean, what I've heard people say is that
14 there's expectation that maybe some of the landowners
15 will gather some more information to present to us,
16 but I did not hear that the commission was directing
17 nor requesting that you do that work.
18 **BRYAN TAYLOR:** Okay. Thank you, Chair.
19 Yeah, I'll just take the direction to be that you're
20 postponing your decision and that any new information
21 will be brought by testifiers at that time.
22 **VICE CHAIR RUFFNER:** That seem
23 consistent with what the commission wishes?
24 **UNIDENTIFIED SPEAKER:** That would be my
25 line of thought.

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1 **VICE CHAIR RUFFNER:** Okay. All right.
2 Further comments on the motion to postpone? Mr.
3 Venuti.
4 **COMMISSIONER VENUTI:** Perhaps we should
5 put a caveat in that the cost of this hydrologist
6 would not be borne by the borough.
7 **VICE CHAIR RUFFNER:** Again, I mean, I
8 think it's fair to state that. I mean, that's what's
9 understood, I think. Ms. Fikes.
10 **COMMISSIONER FIKES:** Yes. Through the
11 chair. It was brought up in testimony that there was
12 a discrepancy on exactly how many wells.
13 So going back to Bryan or the borough,
14 how could we better determine how many true wells are
15 in that area? If they're saying that some are
16 registered but the registration is not a requirement,
17 how can we gather better information to get an
18 accurate count of who truly is impacted?
19 **BRYAN TAYLOR:** Through the chair. I
20 think I can address that somewhat. The site plan was
21 done by -- in part by on-the-ground survey. So I
22 don't know that anyone was questioning that within the
23 immediate vicinity there were wells missed. I think
24 that was with respect to the larger area of the half
25 mile noticing.

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1 So for any wells missed there, if
2 they're not in the DNR's database, I wouldn't have a
3 way of accessing that information. There would have
4 to be field research.
5 So if you wanted to define an area
6 within the vicinity that you would like us to look to
7 see where there might have been some wells missed, we
8 could -- I could do some research in that regard. Are
9 you speaking about the half-mile radius?
10 **COMMISSIONER FIKES:** I was referencing
11 along the Kenai River Avenue where they said there was
12 going to have a route for the trucks and stuff
13 traveling by. So is there -- other than those three
14 applicants that testified, is there any other
15 households or properties in that area? I can't tell
16 looking at this map that that's a half mile or how far
17 that is. I'm looking at the Kenai River Ave.
18 **BRYAN TAYLOR:** Okay. Through the chair.
19 The Kenai River Avenue is just at the south part of
20 the property, the permitted property. I can do some
21 research to see if there were any wells missed in that
22 immediate vicinity.
23 **COMMISSIONER FIKES:** Okay.
24 **VICE CHAIR RUFFNER:** Okay. Any further
25 discussion on the motion to postpone? All right.

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1 I'm going to -- I don't really know how
2 to do this with no chair and no parliamentarian, so
3 the next person on the list is Jeremy. So I'm going
4 to pass the gavel to Mr. Brantley so I can speak
5 briefly here.
6 So I'm inclined to support the motion to
7 postpone to give landowners a little bit more time to
8 assess the proposal. I mean, I get it. I mean, it's
9 a big project, you know, and in my neighborhood I can
10 imagine how I'd feel about that.
11 But I also have been around this for
12 quite a while and do have some professional
13 association with groundwater and geology and so forth.
14 And so I don't see anything in here that would give me
15 pause in approving this in the future.
16 The one thing that I think would
17 probably be better, and, you know, unfortunately the
18 code doesn't allow for this, but I think quantifying
19 how much water gets moved and putting some sort of
20 limits or expectations on that would probably be
21 warranted, you know. And it's a wide open -- you can
22 do dewatering and so forth. I mean, you know, is it a
23 thousand gallons a minute with a four-inch pump? Is
24 it, you know, two six-inch pumps running at the same
25 time? All those will affect those levels.

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1 So the ultimate responsibility is on the
2 applicant to protect the water around the pits, and in
3 my experience and kind of looking at this for a long
4 time, the water quality issues associated with just
5 digging in the pit are not really any different than
6 any other gravel pit. If you spill hydrocarbons on
7 the ground, it goes through the ground and into the
8 water table just the same as it does if it's an open
9 water source.
10 But I have had and continue to have
11 concerns about, you know, overdewatering and people
12 losing water in wells, because I think we have seen
13 that on the Peninsula, not in this location.
14 So those are my thoughts. Again, I will
15 be supporting a motion to postpone.
16 Any further discussion before we take a
17 vote on the motion to postpone? All right, hearing
18 and seeing none, so the motion is to postpone till the
19 May 24th meeting. Roll call.
20 **MS. SHIRNBERG:** Okay. Brantley?
21 **COMMISSIONER BRANTLEY:** No.
22 **MS. SHIRNBERG:** Carluccio?
23 **COMMISSIONER CARLUCCIO:** Yes.
24 **MS. SHIRNBERG:** Chesser?
25 **COMMISSIONER CHESSER:** Yes.

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1 **MS. SHIRNBERG:** Ecklund?
2 **COMMISSIONER ECKLUND:** Yes.
3 **MS. SHIRNBERG:** Fikes?
4 **COMMISSIONER FIKES:** Yes.
5 **MS. SHIRNBERG:** Gillham?
6 **COMMISSIONER GILLHAM:** Yes.
7 **MS. SHIRNBERG:** Morgan?
8 **COMMISSIONER MORGAN:** Yes.
9 **MS. SHIRNBERG:** Venuti?
10 **COMMISSIONER VENUTI:** Yes.
11 **MS. SHIRNBERG:** Ruffner?
12 **VICE CHAIR RUFFNER:** Yes.
13 Okay. So the motion passes, and we will
14 hear more on this at the May 24th meeting.
15 So thanks everybody for coming in and
16 testifying. I know it's a stressful event, as are
17 other material sites that we've had to deal with. So
18 I do appreciate your coming in and speaking your peace
19 on this.
20 04:00:23
21 (End of requested portion)
22 04:37:46
23 (End of recording)
24
25

1 **CERTIFICATE**
2 I, LEONARD J. DiPAOLO, Registered Professional
3 Reporter, Certified Realtime Reporter, Certified CART
4 Provider, and Notary Public in and for the State of
5 Alaska, do hereby certify:
6 That the tape recording was transcribed under my
7 direction by computer transcription; that the foregoing
8 is a true record of the testimony and proceedings taken
9 at that time to the best of my ability; and that I am
10 not a party to nor have I any interest in the outcome
11 of the action herein contained.
12 IN WITNESS WHEREOF, I have hereunto set my
13 hand and affixed my seal this 3rd day
14 of July, 2021.
15
16
17
18
19
20
21 **LEONARD J. DiPAOLO, RPR, CRR, CCP**
22 **Notary Public for Alaska**
23 **My Commission Expires: 2-3-2024**
24
25 #3753

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**Verbatim Transcript
Planning Commission Meeting
May 24, 2021**

KENAI PENINSULA BOROUGH PLANNING COMMISSION

Betty J. Glick Assembly Chambers
George A. Navarre Administration Building
144 North Binkley Street
Soldotna, Alaska 99669

May 24, 2021
7:30 p.m.

TRANSCRIPT OF PROCEEDINGS - EXCERPT
Pages 1 - 36, inclusive

Commissioners Present:

Paulette Bokenko-Carluccio, City of Seldovia
Jeremy Brantley, Sterling
Cindy Ecklund, City of Seward
Diane Fikes, City of Kenai
Pamela Gillham, Ridgeway
Blair Martin, Kalifornsky Beach
Virginia Morgan, East Peninsula
Robert Ruffner, Kasilof/Clam Gulch
Franco Venuti, City of Homer

Staff Present:

Melanie Aeschliman, Planning Director
Scott Huff, Planning Manager
Bryan Taylor, Borough Planner
Ann Shirnberg, Administrative Assistant
Avery Harrison, Administrative Assistant

Transcribed by: Leonard J. DiPaolo, RPR, CRR, CCP

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1 P R O C E E D I N G S
2 0:00:00
3 (This portion not requested)
4 2:29:29
5 **CHAIR MARTIN:** Now we'll move on to old
6 business for Item E-1 for a conditional land use
7 permit. Staff report, please.
8 **BRYAN TAYLOR:** Through the chair. Good
9 evening, Commissioners. I don't have another staff
10 report, so this is a postponed item from the April
11 12th meeting. I don't have anything to add to the
12 report.
13 But at that meeting you did ask me to
14 look into the DNR WELTS data, the log of what -- wells
15 in the area because there was a thought that there
16 might be some missing.
17 So I took a look at the online data and
18 did a field visit out to the location of the existing
19 conditional land use permit for a material site, and
20 looked around on basically any right-of-way that was
21 constructed around the perimeter.
22 So I went on Kenai Avenue, I didn't
23 notice any wells there, left out of there. To the
24 east on Marcus Street, which is about a quarter mile
25 from the material site to the east, at the end of

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1 there there's Ferguson and Gravier properties, and I
2 think this was brought up at the last meeting, DNR's
3 data shows one well, and there are two residential
4 structures there, so I think there's probably one well
5 left off there.
6 I came around to Patson Road, Patson
7 Circle, and they're actually -- that's to the north of
8 the proposed -- or of the existing gravel pit, and
9 there's a lot of construction going on. I sent you a
10 memo for this meeting. It should have been in your
11 desk packet. And I counted about nine new structures
12 going up in that area, and it does appear that they
13 were started this construction season, but I don't
14 have specific details on that. That's all I really
15 had to add.
16 One point procedurally, I did include
17 any comments I received. I know you opened and closed
18 public hearing last -- on April 12th, but I
19 anticipated you opening another public hearing, so
20 those are provided in your packet. And I'll be
21 available if any issues come up on what -- those
22 comments, I can speak to that. And I see the
23 applicant here, and I'm sure those can -- some of
24 those issues can be addressed.
25 Any questions for me at this time?

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1 **CHAIR MARTIN:** Not at this time. So
2 we'll move to the petitioner. Applicant gets a chance
3 to speak.
4 **KYLE FOSTER:** Kyle Foster. P.O. Box
5 3036, Soldotna. We're here again to discuss gravel
6 pits. It seems like Mr. Ruffner always gets these. I
7 believe I have five minutes, is that correct?
8 You know, we're trying to do this gravel
9 pit. We're locals here. We're trying to do the best
10 job we can. You may not know it, the Soldotna/Kenai
11 area is running low on gravel sources. Some of you
12 guys were involved in the material site meetings that
13 they had. There was a lot of people in this room last
14 year because of it.
15 Being able to dig below the water table
16 allows the -- our volume of gravel to basically
17 double. Essentially there's 15 feet of gravel above
18 the water table, and there's about 15 feet of gravel
19 below the water table.
20 By being able to have an active,
21 permitted mine in this area and being able to double
22 the life of it, that means we're not having to go out
23 and find other sources.
24 You know, there was a lot of -- or some
25 people not wanting it there, and now it's a permitted

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1 gravel source. We're trying to maximize our resources
2 instead of just go hunting more gravel locations.
3 Really this gravel, this material site,
4 is really going to be for my kids, because I don't
5 believe me and my brother, my partner, can mine all
6 this gravel by ourselves even selling it to, you know,
7 Knik or Quality for major highway projects. I
8 don't -- I mean, I would like to be able to sell that
9 much gravel in my lifetime, but really this is going
10 to be -- if we go below water table, then I bet you my
11 great-grandkids will still be mining that and having a
12 career for it. So it would be about three
13 generations.
14 Yeah, we're locals trying to do the
15 right thing. We have a company here. We're just
16 trying to maximize our property and the amount of
17 gravel we can get out of it.
18 I don't believe that there's really much
19 impact. The City of Kenai, the City of Soldotna, a
20 lot of other material sites within the borough are
21 doing exactly what we're requesting to do. And so
22 really that's what we're looking to do is do what a
23 lot of those other people are doing and see if we can
24 get approved.
25 **CHAIR MARTIN:** Thank you. Are there any

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1 questions from commissioners at this time? Not now,
2 but we'll call you back if we need it.
3 Continuing with public comment, is there
4 anyone out there in the public or on Zoom wishing to
5 testify? Please come to the podium and state your
6 name and address for the record.
7 **BILLIE HARDY:** Members of the
8 commission, good evening. My name is Billie Hardy. I
9 live at 41937 River Park Drive, Soldotna. And we're
10 about 1500 feet from the gravel pit.
11 I gathered 21 neighborhood signatures
12 for the letter that we sent you May 7th, and evidently
13 from what I've read in the packet today, the desk
14 packet said you were not able to open page 2 of the
15 signatures, so I have it here for you. There were 21
16 signers.
17 We also agree with the individual
18 comments submitted by Pat Nolden, Dale McBride, Mike
19 Gravier, Bill Ferguson, and Mike Pomplin. I guess I
20 should put my glasses on.
21 We all request that dewatering be denied
22 because of the real probability of damage to our wells
23 on the south and east side of the pit and flooding
24 septic systems on the north and west side.
25 We additionally request that any

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1 commission members engaged in quarrying, either
2 currently or in the past, recuse themselves from
3 voting on any river resources permit applications and
4 modifications.
5 If the permit is granted in spite of
6 evidence against it, the bonding requirement should be
7 increased to 1.25 million, and well monitoring to be
8 done per Kenai Peninsula Borough mandate, including
9 outside the pit, not just within the pit.
10 Please help us protect our wonderful
11 neighborhood and homes.
12 **CHAIR MARTIN:** Thank you, Ms. Hardy. Is
13 there any questions from commissioners? Ms.
14 Carluccio.
15 **COMMISSIONER CARLUCCIO:**
16 (Indiscernible).
17 **UNIDENTIFIED SPEAKER:** We can't hear
18 online.
19 **CHAIR MARTIN:** Yeah, we're having a
20 little Zoom problem. Go ahead.
21 **COMMISSIONER CARLUCCIO:**
22 (Indiscernible - mic not on).
23 **UNIDENTIFIED SPEAKER:** You're not on.
24 **COMMISSIONER CARLUCCIO:** I'm not on?
25 **ANN SHIRNBERG:** I think it's too many

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1 mics are on.
2 **UNIDENTIFIED SPEAKER:** Okay. Okay. It
3 just went out.
4 **COMMISSIONER CARLUCCIO:**
5 (Indiscernible - mic not on).
6 **BILLIE HARDY:** Is it my turn to speak?
7 Mr. Dale McBride submitted a lengthy letter, which was
8 in your desk packet today. I spent quite a bit of
9 time reading through everything that was submitted to
10 you the previous times and today, and he had some
11 pretty good documentation to come up with that figure,
12 so I borrowed it.
13 **CHAIR MARTIN:** Thank you for your
14 testimony. Next testifier, please.
15 **JOSEPH HARDY:** (Indiscernible - mic not
16 on) which, like my wife said, is about 1500 feet from
17 the pit. Am I on? Yep.
18 I'm not necessarily against the
19 dewatering or going into the aquifer, but I am
20 insisting that we follow proper procedure, you know.
21 Reading some of this stuff, it's not
22 really clear that we've got four well tests 90 days
23 apart for a year prior to the application. I think
24 that needs to be followed even if we have to start
25 over from scratch.

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1 I also think we need to test adjacent
2 wells to the pit. Who cares what happens to wells in
3 the pit? It's us that are surrounding the pit that
4 are really concerned about our property values and
5 water quality.
6 I also agree with Billie's -- there's
7 some folks on the committee here that really should
8 recuse themselves.
9 And one thing that is mandatory in the
10 code is an independent engineering hydrologist be used
11 for this. I'm not casting any aspirations on McLane.
12 They've been around here a long time, but they have
13 been doing business with Fosters forever. So we need
14 somebody that has a complete independent look at this.
15 In the last meeting, we kind of touched
16 on water pollution problems. As Robert said, we have
17 quite a few feet of filter bed, but that filter bed
18 only works on solids like bacteria and oil and stuff.
19 Water dissolves solids and do not get filtered out by
20 the rock bed. We've had serious problems in
21 California from contaminants. I'd hate to see that
22 same thing happen here.
23 I remember when I worked for Arco, we
24 had an additive to gasoline that we invented. It was
25 supposed to be the new method to decrease pollution.

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1 Well, it turned out all it did was contaminate the
2 water systems. You can't have wells in those areas
3 anymore.
4 One thing I addressed last time was
5 ingress and egress off of Kenai River Avenue, and that
6 hasn't really been addressed. It should be for
7 emergency use only. I just ask how many of you folks
8 have gone out there and actually driven off that road
9 onto Funny River Road? I think when you -- if you do
10 that, you'd see why I think it's going to be such a
11 problem.
12 And then the fire -- fine structure and
13 the bond is inadequate. You know, it needs to be such
14 to actually be an economic stop, not just a cost of
15 doing business. I do know personally that some of the
16 pit operators use the fine structures as just a cost
17 of doing business, and that doesn't work.
18 Thank you, that's it for me.
19 **CHAIR MARTIN:** Thank you. Any
20 questions? None at this time. We have one testifier
21 online. Go ahead, online.
22 **ANN GRAVIER:** Yes, good evening. Can
23 you hear me?
24 **CHAIR MARTIN:** Loud and clear.
25 **ANN GRAVIER:** Yes. My name is Ann

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1 Gravier. I reside at 34540 Marcus Street with my
2 husband Michael Gravier.
3 And I have to say that I read through
4 all the packet information and heard the testimony
5 over the last two meetings, and I really don't have
6 anything to add to all the concerns that were raised
7 by the homeowners.
8 I did want to comment, though, a little
9 bit on perspective. I'm glad Mr. Foster brought up
10 what dewatering the water pit would mean for the
11 lifetime of the gravel operations to his business and
12 his family.
13 I think that same perspective also
14 applies in the long run -- in the short run and the
15 long run for the homeowners and their concerns about
16 their wells, the Kenai River, and the environment
17 around us.
18 Even today we can hear the noise of the
19 gravel operations six days a week. But I also ask you
20 to consider the perspective on the long term for all
21 the homeowners that live in that area and to our
22 quality of life as well as our concerns about the
23 livability of our properties.
24 Really, if you look at it, impacts on
25 our wells is catastrophic to homeowners. It affects

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1 our ability to draw one of the most essential
2 resources that we need to live here.
3 So I just wanted to make a comment and
4 bring a little bit of that perspective and ask the
5 planning commission to consider that.
6 I understand that asking for a permit to
7 drill into the aquifer is well within their rights,
8 but I also believe that just because you can do a
9 thing, it doesn't mean -- necessarily mean that you
10 should do a thing.
11 And that's really all I have to say,
12 thank you.
13 **CHAIR MARTIN:** Thanks for your
14 testimony. Is there anyone else online? Anybody else
15 in the audience wishing to testify?
16 **GINA DEBARDELABEN:** Hi. My name is Gina
17 DeBardelaben. I'm with McLane Consulting. I am --
18 sorry. I reside at 49354 Allmon Avenue.
19 I am a licensed civil engineer in the
20 state of Alaska, and I just -- I know that last
21 meeting I threw a lot of information at you guys
22 verbally and maybe it was a little much, so I did
23 submit some written documentation to touch on some of
24 the things that were discussed, or that I brought up
25 and maybe some questions. So, hopefully, you had a

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1 chance to look at that. It was the last part of your
2 desk lay-down packet.
3 First of all, I'd like to apologize
4 from -- for an error in my letter on the April 12th
5 meeting. The monitor wells were installed in
6 September of 2019. You can see them in the original
7 CLUP application exhibits and they're mentioned there,
8 along with the fact that in that permit application
9 when asked if the applicant would potentially mine
10 within the water table, it said "undetermined" at that
11 time.
12 I have to say, you know, I have -- there
13 are multiple material sites that have monitor wells
14 that are being looked at with the thought that the
15 client -- the applicant may want to mine within the
16 water table, and until enough data is collected and
17 such, I just -- just -- they don't necessarily know if
18 it's okay, if they're going to be able to get a
19 hydrology report that supports that or not.
20 So there are quite a few out there that
21 the planning commission doesn't see come before them
22 because it's not a -- it's -- in that location it's
23 not a good idea or it will have potential other
24 issues.
25 The other thing in my letter, I -- we

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1 have some backup that there was a water well installed
2 on this site since the previous meetings. So that log
3 is there to back up where the confining layer is,
4 which is what supported our previous information.
5 We provided -- I provided a couple
6 pictures of material sites that are reclaimed as lakes
7 that have been excavated below the groundwater table
8 just for an idea what those look like and some areas
9 that those are located here on the Peninsula. There's
10 quite a few of them in certain areas where groundwater
11 is shallow and materials are good, and those -- a lot
12 of those lie along or within a vicinity of major
13 drainages.
14 We've got two issues that are applied
15 for here. We've got a request to mine below the
16 groundwater table and then also a request for
17 dewatering. They -- while they're in the same
18 resolution, they are kind of two separate issues, and
19 I hope the planning commission looks at both of them.
20 We've -- within the -- there's been a
21 lot of questions about wells from residents, and I
22 totally understand that. Water is so important to
23 our -- to where we live and how we live, et cetera.
24 The code states that we have to study and recognize
25 wells within 300 feet of the property, and that's

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1 what's shown on the exhibits from the outtake of this
2 application.
3 But if you look at our dewatering plan,
4 I've ran well drawdown on wells up to one mile away
5 so -- to show what would happen if we -- Table A
6 has -- first of all, the dewatering plan I -- that we
7 included here is a maximum. I spent some time with
8 the applicant on what would their maximum use if they
9 wanted to dewater, and they determined that, you know,
10 their pump maximum would be in a six-inch intake. And
11 the length, there was no reason they would ever need
12 to dewater more than ten days. And really we were
13 really like -- well, five days, but for the maximum
14 amount of potential impact, let's go out to ten days
15 so that we have that data also to look at.
16 You'll see Table A is a drawdown without
17 putting the water back into the water table or back
18 into the property. If we were to take that --
19 dewater, take that, put it in a tank and haul it away,
20 of what you'd see on well drawdown.
21 Or if we were going to use it for some
22 process like -- you know, out at Marathon or Agrium
23 we've seen well drawdown out there because they
24 utilize that water in their processing. Well, that's
25 not the case for what -- for mining within the

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1 groundwater table.
2 We've provided a -- an exhibit of what
3 groundwater -- I thought there were some questions on
4 what it actually looks like or how it was done. So
5 the very back page -- and I think it is the last page
6 in your lay-down -- in your desk packet -- is kind of
7 an exhibit or a drawing that shows what an excavation
8 cell would look like and groundwater, and as we draw
9 down, how the groundwater would dip and how -- where
10 the discharge cell would be and the water would
11 re-enter within adjacent -- within the same property
12 and re-enter the groundwater table right in that
13 cycle.
14 So, you know, they would be -- the
15 applicant would be fighting themselves. They'd be
16 pulling water and putting it back in, and so they'd be
17 constantly moving it within the same site during that
18 process.
19 So you'll see in Table B that I ran the
20 computations that include putting the dewatering
21 discharge back into adjacent cell and the drawdown
22 drops to virtually -- virtually undetectable.
23 These are all engineering computations.
24 And I think that's my time. If you have any questions
25 for me. Okay, thanks.

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1 **CHAIR MARTIN:** Petitioner, the final
2 comment. Is there anyone else in the public beside
3 the petitioner willing to testify tonight?
4 **RICK WEED:** I'm Rick Weed, 34054 Snow
5 Lane, just down the road from the pit.
6 So I just got -- Ms. Gravier there, she
7 kind of hit on the -- one of my deals. It was what
8 about our future? They're worried about their kids'
9 future and grandkids' future, and we all got property
10 out there. That's part of our future too, not just
11 Fosters and their gravel pit. That's not just their
12 future. That's our future too. I just wanted to kind
13 of bring that up, that it's not all about them. We
14 got a future too out there.
15 And then the groundwater drawdown, you
16 only got one opinion. That's the lady over here.
17 That's the only opinion you got. There should be an
18 independent in there. Your codes say that, you know.
19 You got to follow the rules. If you make the rules,
20 follow the rules.
21 Then, you know, a year ago we were here,
22 and this permit come through and there was a lot of
23 people not for that. And the permit was, you know, no
24 groundwater, digging down below the groundwater, the
25 water table. Now less than a year later, now they

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1 want to go down in the ground and dig down into the
2 water table.
3 You know, I think I kind of would
4 have -- if I'd have dropped that kind of money on a
5 place like that, I think I'd have had my ducks in a
6 row and knew what was down there, not a year later
7 come back for another permit. It should have -- you
8 know, it should have been in the program from the
9 get-go. That's all I got to say on that one.
10 **CHAIR MARTIN:** Thank you. Last call for
11 public comment other than the applicant.
12 **UNIDENTIFIED SPEAKER:** (Indiscernible).
13 **CHAIR MARTIN:** No, sir. Anyone else?
14 You get one shot at it. We need to keep it moving.
15 **LILLIAN WEED:** Well, when we did this
16 before, we got to come back and finish our five
17 minutes, but the rules changed I guess.
18 My name is Lillian Weed. I live at
19 34054 Snow Lane out in the neighborhood.
20 My question is if everything -- if this
21 is going to go on for 40, 50, 60 years, where is the
22 reclamation going to come in on any of this property?
23 They're supposed to be reclaiming. What's going to
24 happen with that?
25 And I, too, just wanted to reiterate

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1 that I have grandchildren that I would love to leave
2 my property to and it would still be worth something.
3 I can't read your writing. Groundwater
4 in ponds around is two to four feet, not 35 feet. In
5 our area, the groundwater is not down 35 feet.
6 **UNIDENTIFIED SPEAKER:** It is.
7 **LILLIAN WEED:** It is down 35 feet, okay.
8 Did I get the point across? Difference in feet in
9 different locations.
10 **CHAIR MARTIN:** Do we have any --
11 **LILLIAN WEED:** And again, I also just
12 want to say I'm not judging or anything, but I do feel
13 that we need an independent study. We need somebody
14 different to do more studies.
15 **CHAIR MARTIN:** Thank you. Are there any
16 questions from commissioners? None at this time. All
17 right. All right, last call for the general public.
18 We'll close with the petitioner for a
19 rebuttal.
20 **KYLE FOSTER:** Kyle Foster, P.O. Box
21 3036, Soldotna.
22 In regards to septic systems will be
23 flooded, as you can see from the detail that Gina and
24 I came up with, the water is being pumped. Basically
25 if you have this building, or this room, and you have

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1 another room over there and it's being pumped from
2 here to there, so that water is continually trying to
3 come back in. We're not doing above-ground pumping
4 discharge of waters throughout the property. It's
5 literally going from one pond to another because
6 that's how you're able to capture it and contain it.
7 We don't -- there's no reason to
8 discharge, like, above ground. So septic systems
9 won't be flooded because it's going into the
10 groundwater.
11 McLane's -- you guys are talking about
12 the impartiality and things like that. McLane's are
13 engineers so they're using formulas. When I was over
14 there at McLane's, I was looking at the formulas
15 trying to -- I pulled out my calculator. I was going
16 to do some stuff, and then she shows me this formula.
17 This formula is probably 16 to 20-some
18 number -- you know, weird looking stuff. These
19 aren't -- this is -- basically it's facts of finding.
20 She's creating -- she's using the data that -- for
21 gravel and doing what she does.
22 I don't believe that if there's another
23 engineer or hydrologist they'll be able to come up
24 with something else because it is math. It's not a --
25 there's not variables that they're able to work in to

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1 say, "Oh, if I make this different variable a
2 different soil type, I'll be able to, you know, change
3 it a huge amount."
4 Also, too, the water table moves
5 throughout the year. If you look at the water table
6 stuff that we had when we were measuring, you can see
7 in the summer and springtime it moves. It's moving,
8 like, four feet or so. And if you look at the table
9 for the drawdown with recharge, basically it is less
10 than an inch of movement that man make -- that man can
11 do versus what Mother Nature does year after year in
12 the movement of the wells.
13 In regards to digging below water table
14 for permit time, I would have loved to be able to
15 knock that all out at once, but because of the way the
16 permitting is, I'm not allowed to do that, and I would
17 only be able to have, you know, maybe one meeting
18 versus three to four.
19 The reclamation. That's something
20 that's really big for us. We current -- or my dad
21 currently has a reclaimed gravel pit that is now being
22 sold off of Angler Drive. One lot sold. Three are
23 pending. He showed one today. If you look at the
24 packet, you can see the nice grass. Actually at one
25 time it was, like, a par 3 golf course that my uncle

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1 was running.
2 So that was what the Fosters do to their
3 gravel pits when they reclaim them. We turn around
4 and sell them for high-end property around man-made
5 lakes. So that would be one comment about the
6 reclamation. And I believe we're also covered under
7 DNR for reclamation bonding costs too.
8 I believe that's all the rebuttal I
9 have.
10 **CHAIR MARTIN:** Any final questions from
11 commissioners? Seeing none, thank you.
12 That ends public comment. Bring it back
13 to the commission for a motion. Mr. Ruffner.
14 **COMMISSIONER RUFFNER:** I'll move to
15 adopt PC Resolution 2021-10 granting modification to
16 an existing conditional use permit for material site
17 extraction within the water table on Tract C1,
18 Patterson [sic] Properties 2019 Replat, according to
19 Plat 2019-68 in the Northwest quarter, Southeast
20 quarter, Section 34, Township 5 North, Range 10 West,
21 Seward Meridian, excluding the Patterson [sic]
22 right-of-way.
23 **COMMISSIONER GILLHAM:** (Indiscernible -
24 mic not on).
25 **CHAIR MARTIN:** Seconded by Ms. Gillham.

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1 Discussion? Mr. Ruffner.
2 **COMMISSIONER RUFFNER:** I guess I'll
3 speak to the motion. So, you know, I haven't really
4 changed my thoughts from last time, so it's -- you
5 know, I don't -- I do appreciate the additional work
6 that the engineer went through to do some modeling on,
7 you know, exactly how much the water table would
8 change, because that is a concern that I have had in
9 other areas when you're dewatering and not recharging.
10 We have had cases on the Peninsula where that has
11 caused problems, but that's not the case that they're
12 proposing here.
13 And, I mean, this is a tough one. I
14 mean, several of these people in the room I consider
15 as good friends and acquaintances that I've known for
16 a long time, and they're sitting on opposite sides of
17 the desired outcome here.
18 But following the code and knowing what
19 I know about groundwater and the industry, I'm
20 comfortable that we're following the code that's been
21 given to us by the assembly. And if there was
22 something that I thought was really going to hurt
23 people's water or the Kenai River, I'd be the first
24 one to raise those objections and try to get something
25 different done.

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1 So with that I'm likely to support this
2 unless I hear something different.
3 **COMMISSIONER ECKLUND:** Thank you.
4 Through the chair. I, too, want to thank McLane
5 Consulting for adding the nice drawing. It really
6 helped me understand it.
7 And I will say that I come from -- some
8 45 years ago came from Northern Minnesota with open
9 pit iron ore mines, and they are a beautiful tourist
10 attraction now with bike paths all around them and
11 camp sites on the edge of them and little cabins you
12 can rent, and it's really become an economic boom.
13 But in the meantime, it was ugly. And,
14 yeah, none of us want the noise and the dust and
15 everything in our backyard, but we all know we need
16 the gravel.
17 I did have a question on the
18 application. It said that the additional excavation
19 depth beyond permitted depth is 10 feet, but in
20 comments it was mentioned that they were going to go
21 15 feet below the water table. So I don't know who's
22 checking on that. I mean, is that because it's been a
23 delay and we've changed?
24 And I have a question for Mr. Taylor.
25 Whose role is it to get an independent engineer, and

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1 does our code require that?
2 **BRYAN TAYLOR:** Through the chair,
3 Commissioner Ecklund, yes, it is a code requirement
4 that an independent engineer be hired by the applicant
5 to do the testing, to -- and consult about installing
6 monitor wells, and then to do the data collection and
7 interpretation. And that's what they've done.
8 **COMMISSIONER ECKLUND:** Does McLane meet
9 the definition of an independent engineer? Or are
10 they their engineer that drew up the application and
11 filed all the -- helped them file all the paperwork?
12 Is that considered independent?
13 **BRYAN TAYLOR:** Yes. By this commission,
14 based on all past approvals and applications, this --
15 this is the independent -- yes, the situation that
16 we --
17 **COMMISSIONER ECKLUND:** (Indiscernible)
18 other items for you is bonding. I didn't see anything
19 about bonding, but Mr. Foster mentioned that they --
20 DNR and bonding, they'd be covered under DNR for
21 bonding?
22 **BRYAN TAYLOR:** KPB code is requiring
23 bonding for liability in this case, so the bonding
24 that the applicant was referring to was for
25 reclamation purposes. So there would be bonding for

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1 two different purposes.
2 Reclaiming the property is what's being
3 referred to. It's -- DNR has a statewide policy for
4 that. And then code is requiring liability bonding,
5 and that's really for the private property owners
6 around.
7 **COMMISSIONER ECKLUND:** And what is the
8 bonding on this project?
9 **BRYAN TAYLOR:** It's not specifically
10 laid out in code. And so I have recommended a bond of
11 \$30,000 based on the wells that were existing at the
12 time of application in the immediate vicinity. And
13 that's a replacement cost in case something were to
14 happen, then the wells can be redrilled.
15 **COMMISSIONER ECKLUND:** 30,000. So --
16 and you came up with, like, nine wells within the
17 immediate vicinity?
18 **BRYAN TAYLOR:** This was based on
19 (indiscernible - mic not on) in the application, in
20 the site plan in the immediate vicinity. So there
21 were three identified, and replacement costs generally
22 are \$10,000 a well.
23 **COMMISSIONER ECKLUND:** And then you
24 mentioned that there's nine new properties that have
25 started, but that wouldn't be included in the bonding

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1 requirement because at the time of application they
2 weren't there?
3 **BRYAN TAYLOR:** The construction appears
4 to have been started this season, so I'm not sure when
5 wells, or if they've gone in. It looks like they are
6 far enough along that a lot of the wells would have
7 been put in by now.
8 If there's some question about the bond
9 requirement with regard to new wells, I would suggest
10 having -- amending your resolution. You could amend
11 the resolution to have it be to the discretion of the
12 planning director. That's what's required for
13 reclamation bonding.
14 If DNR's exemption doesn't apply to a
15 material site operation plan under the conditional
16 land use permit, the director is left with discretion
17 to set a bond amount. So that could be applied here
18 if you wanted to go in that direction.
19 It may be -- if that's where you wanted
20 to go, it would just be a matter of revising the
21 resolution a little bit to take out \$30,000 and put
22 "to an amount deemed appropriate by the planning
23 director."
24 **COMMISSIONER CARLUCCIO:** Yes. I have a
25 question back to the independent -- the independence.

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1 And you said that it was according to code. I don't
2 quite understand that when McLane is being employed,
3 correct?
4 **BRYAN TAYLOR:** Yes. Through the chair.
5 Commissioner Carluccio, sorry, I may have trailed off
6 during that conversation.
7 There's not a direct definition in code
8 about what "independent" is. The contracting through
9 a consultant is what has been done in the past, and
10 those have been considered independent by this body
11 approving applications in the past.
12 **COMMISSIONER CARLUCCIO:** I guess my
13 question is that maybe we haven't actually looked at
14 that, and it hasn't been brought up before. And so
15 just because it's something that is taking place in
16 the past doesn't mean that we have to keep doing it
17 that way.
18 So I'm -- that's one of the questions
19 that gives me a little pause on here that it's not
20 really an independent company.
21 **BRYAN TAYLOR:** If I may, just through
22 the chair. If you wanted to provide something for
23 staff to look in for the future, we could do that.
24 And in this case, in terms of staff
25 reviewing it, there might be a red flag if, you know,

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1 you had a civil engineer that was in direct employment
2 of a company that was applying. But short of that,
3 they have to contract some way, and we have a licensed
4 civil engineer that's being contracted through as a
5 consultant in this case.
6 I'm not sure what -- how much more
7 independent you're looking for, but if you wanted to
8 provide staff some guidance, we could look into that
9 as a future change.
10 **COMMISSIONER ECKLUND:** Isn't the other
11 term "impartial?" Is that used in code or was that
12 just used in public comment in the packet?
13 **BRYAN TAYLOR:** I do believe that that
14 word is also used in code, and I believe that -- Ms.
15 Aeschliman had her hand up.
16 **MELANIE AESCHLIMAN:** I have code pulled
17 up here. "Excavation in the water table. Excavation
18 in the water table greater than 300 horizontal feet of
19 a water source may be permitted with the approval of
20 the planning commission based on the following:
21 (A) Certification by a qualified
22 independent civil engineer or a professional
23 hydrologist that the excavation plan will not
24 negatively impact the quantity of an aquifer serving
25 existing water sources."

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1 **COMMISSIONER ECKLUND:** The -- I think
2 that the term "independent" might need to be further,
3 like --
4 **UNIDENTIFIED SPEAKER:** (Indiscernible -
5 away from mic).
6 **COMMISSIONER ECKLUND:** Yeah. Maybe a
7 different one, because "independent" -- I'd like to
8 see, like, a borough staff engineer maybe instead of
9 independent. I mean, someone -- an engineer hired by
10 the company that wants to do the work doesn't kind of
11 sound, like, independent to me.
12 No personal things going on, but it
13 just -- and I -- yeah. And, again, we've never really
14 gone that deep into that line item in code.
15 **COMMISSIONER BRANTLEY:** I think the
16 intent of that was a lot of the larger operators, like
17 Quality Asphalt, they have their own engineers on
18 staff. And I think maybe the intent was to, if
19 they -- and they do have a ton of pits around here.
20 If they apply for something like that, they can't just
21 use a staff engineer, so they have to go hire an
22 independent.
23 But just for future sake, one way of
24 doing it would be to increase the fee for the
25 application to cover the borough for hiring that out,

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1 but chances are they'd use McLane's. They tend to do
2 that quite a bit, so...
3 **BRYAN TAYLOR:** Yeah, if I may --
4 **CHAIR MARTIN:** Go ahead.
5 **BRYAN TAYLOR:** -- through the chair.
6 Thank you for the suggestions.
7 Yeah, the borough -- it doesn't require
8 that -- that did come up in some comments, but it
9 doesn't -- the code doesn't require or direct staff to
10 hire their own independent engineer. Thank you for
11 that.
12 **MELANIE AESCHLIMAN:** Through the chair.
13 One of my concerns would be as a civil engineer and a
14 license -- are they under certain guidelines to
15 provide false information? Would their license be
16 in -- I mean, it's just another consideration.
17 **CHAIR MARTIN:** And it's a -- that's a
18 discussion for a gravel pit ordinance, not for this
19 application.
20 Further discussion? Ms. Ecklund.
21 **COMMISSIONER ECKLUND:** I guess I'd like
22 to make an amendment to the motion -- or to the
23 resolution -- to change the requirement of the bonding
24 from a dollar amount to be set by the planning
25 director. Is that a second?

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1 **CHAIR MARTIN:** No, I can't second
2 anything.
3 **COMMISSIONER FIKES:** Second.
4 **CHAIR MARTIN:** Second by Ms. Fikes. So
5 discussion. Roll call, please.
6 **ANN SHIRNBERG:** Brantley?
7 **COMMISSIONER BRANTLEY:** No.
8 **ANN SHIRNBERG:** Carluccio?
9 **COMMISSIONER CARLUCCIO:** Yes.
10 **ANN SHIRNBERG:** Ecklund?
11 **COMMISSIONER ECKLUND:** Yes.
12 **ANN SHIRNBERG:** Fikes?
13 **COMMISSIONER FIKES:** No.
14 **ANN SHIRNBERG:** Gillham?
15 **COMMISSIONER GILLHAM:** No.
16 **ANN SHIRNBERG:** Morgan?
17 **COMMISSIONER MORGAN:** Yes.
18 **ANN SHIRNBERG:** Venuti?
19 **COMMISSIONER VENUTI:** Yes.
20 **ANN SHIRNBERG:** Ruffner?
21 **COMMISSIONER RUFFNER:** No.
22 **ANN SHIRNBERG:** Martin?
23 **CHAIR MARTIN:** No.
24 **ANN SHIRNBERG:** Four yes; five no.
25 **CHAIR MARTIN:** Motion fails. Further

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1 discussion on the main motion? Yes.
2 **UNIDENTIFIED SPEAKER:** (Indiscernible -
3 away from mic) four yes and five no. (Indiscernible -
4 away from mic).
5 **CHAIR MARTIN:** We've got five no.
6 That's how I got it. I just want -- I wasn't going to
7 say it failed because I wasn't a hundred percent sure.
8 So if there's no more discussion, roll
9 call, please.
10 **ANN SHIRNBERG:** Brantley?
11 **COMMISSIONER BRANTLEY:** Yes.
12 **ANN SHIRNBERG:** Carluccio?
13 **COMMISSIONER CARLUCCIO:** No.
14 **ANN SHIRNBERG:** Ecklund?
15 **COMMISSIONER ECKLUND:** No.
16 **ANN SHIRNBERG:** Fikes.
17 **COMMISSIONER FIKES:** No.
18 **ANN SHIRNBERG:** Gillham.
19 **COMMISSIONER GILLHAM:** Yes.
20 **ANN SHIRNBERG:** Morgan?
21 **COMMISSIONER MORGAN:** No.
22 **ANN SHIRNBERG:** Venuti?
23 **COMMISSIONER VENUTI:** No.
24 **ANN SHIRNBERG:** Ruffner?
25 **COMMISSIONER RUFFNER:** Yes.

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1 **ANN SHIRNBERG:** Martin?
2 **CHAIR MARTIN:** Yes.
3 **ANN SHIRNBERG:** Four yes; five no.
4 **CHAIR MARTIN:** I'd like to call a
5 five-minute recess to come up with the justification
6 for denial, the findings.
7 (Recess)
8 **CHAIR MARTIN:** ...this meeting back to
9 order. Ms. Ecklund.
10 **COMMISSIONER ECKLUND:** Thank you, Chair.
11 The three findings that we've come up with are, No. 1,
12 that the bond is not high enough based on the number
13 of surrounding wells; that the Kenai Peninsula Borough
14 Code needs to define "impartial" and "independent"
15 more clearly; and that the well monitoring timeline is
16 in question if it actually meets the code.
17 **UNIDENTIFIED SPEAKER:** Second.
18 **CHAIR MARTIN:** Yeah. Yeah, I don't --
19 **UNIDENTIFIED SPEAKER:** (Indiscernible).
20 **CHAIR MARTIN:** I think -- no, so the
21 second is what tripped me up. No, we're good. Those
22 are the findings that the no voters attached to
23 justify the denial.
24 And you heard me read the appeal
25 process. You have 15 days from notification, and I'd

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1 like to thank everybody for participating in the
2 process.
3 3:18:37
4 (End of requested portion)
5 3:22:19
6 (End of recording)
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1 **CERTIFICATE**
2 I, LEONARD J. DiPAOLO, Registered Professional
3 Reporter, Certified Realtime Reporter, Certified CART
4 Provider, and Notary Public in and for the State of
5 Alaska, do hereby certify:
6 That the tape recording was transcribed under my
7 direction by computer transcription; that the foregoing
8 is a true record of the testimony and proceedings taken
9 at that time to the best of my ability; and that I am
10 not a party to nor have I any interest in the outcome
11 of the action herein contained.
12 IN WITNESS WHEREOF, I have hereunto set my
13 hand and affixed my seal this 3rd day
14 of July, 2021.
15
16
17
18
19
20
21 _____
22 LEONARD J. DiPAOLO, RPR, CRR, CCP
23 Notary Public for Alaska
24 My Commission Expires: 2-3-2024
25 #3754

	17:21;24:8	apply (2) 27:14;30:20	25:14;26:11,18; 29:20;34:12	3:2;11:9;12:24; 28:14
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the aquifer matrix, and a shorter aquifer contact time over a large area has been shown to lower overall arsenic concentration along the Kenai River basin in this area (Coble, 2006).

This is just one public benefit resource conflict that needs to be addressed, noting that the City of Soldotna drinking water interests involve the whole community – and as community populations can increase, the demand for materials sites increases just as these areas for groundwater exploration had been cited as wise to set aside from a water quality perspective (Coble, 2006).

Confined Aquifer

Wellhead protection seeks to reduce the incidence of groundwater pollution by activities 'within a wellhead' which can be loosely defined as the area where a well is extracting water.

The City of Soldotna Well E is a relevant well in this memorandum, as it has a large wellhead encompassing the Patson Materials Site and produces a significant amount of the water for the City. During a single pumping test in 2003 it produced over 9 feet of drawdown in a well *across the river in Swiftwater Park* (Coble, 2003), and measurable at three wells between 7,000 and 9,000 feet away. This is why we say the wellhead of Well E likely *does* impact confined aquifer levels under the Patson Material Site (e.g. the confined Foster Construction well of Appendix A) which is about 3,500 feet away.

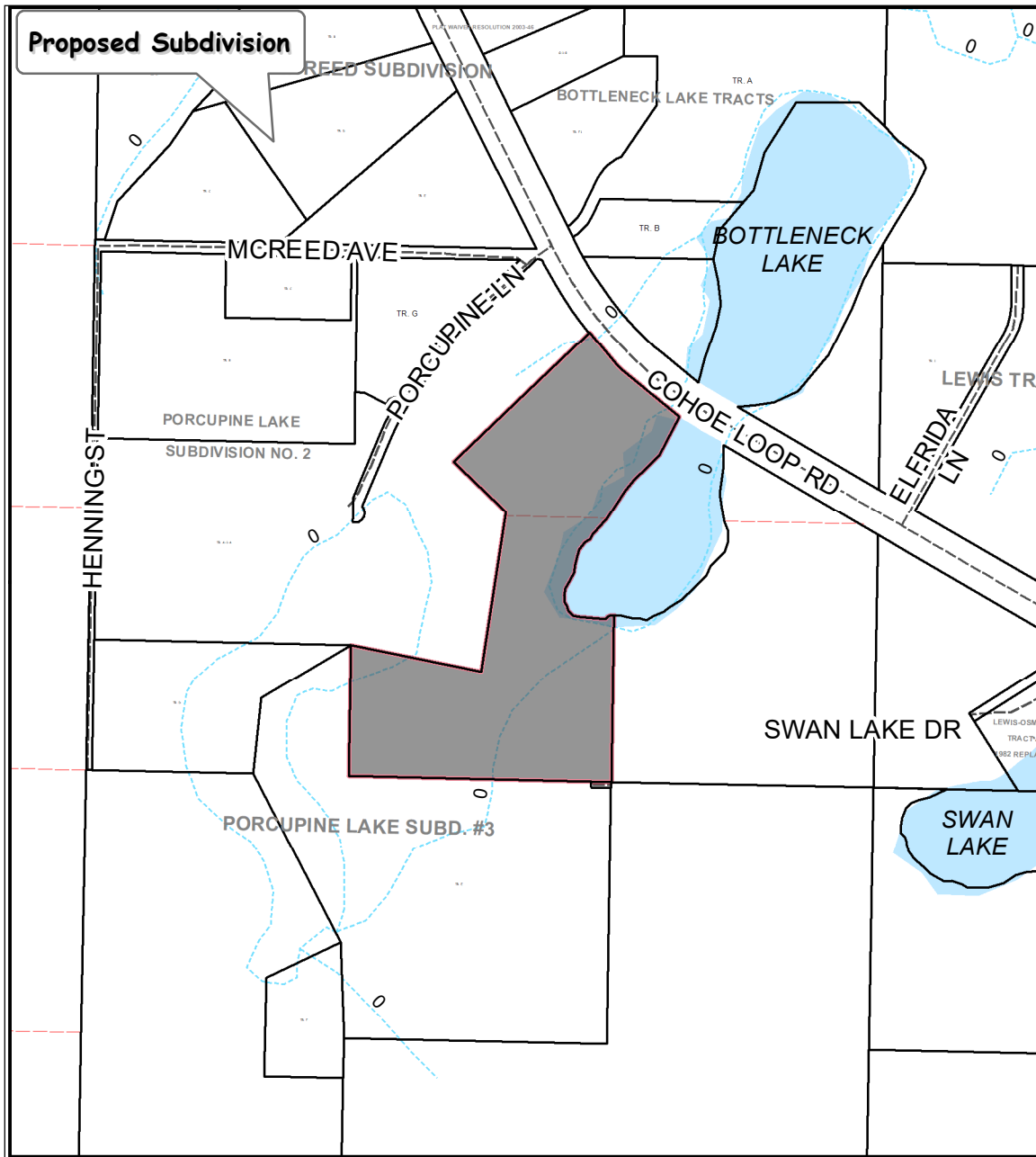
This means we really rely on this confining layer. But what if contaminants did breach the confining layer...in other words, should a discussion be had about a potential fuel spill on top of a confining layer regarding public water supply? Confining layers are far from perfect; flow has been shown in KPB pumping tests between the unconfined and confined aquifers, especially close to the pumped well – and no such test was performed on Well E.

Given the long and expensive efforts by the City of Soldotna to reduce arsenic in its water supplies, we would benefit from looking at Soldotna's wellhead protection. This would include subjects such as *Roles and Responsibilities*, or the individuals responsible for the development, implementation of the local public water supply (a resource that concerns everyone), basic *Wellhead Protection Area Delineation*, in order to identify and limit potential sources of contamination within the wellhead protection area, *Wellhead Protection Area Management* which would provide ways to prevent potential sources of contamination from reaching the public water supply wellfield, a *Contingency Plan* in case of a water supply emergency related to use of conflicting resources, *New Wells* to provide information on existing groundwater availability and future demands, and the vulnerability of the existing wells to contamination, as well as *Public Education and Outreach* to generate community awareness in wellhead protection.

So from a regulatory standpoint, there is at least some effort to determine how large the important public wellhead areas are, where future groundwater exploration may be in conflict with material sites, and how robust the confining layer is within the wellhead etc.

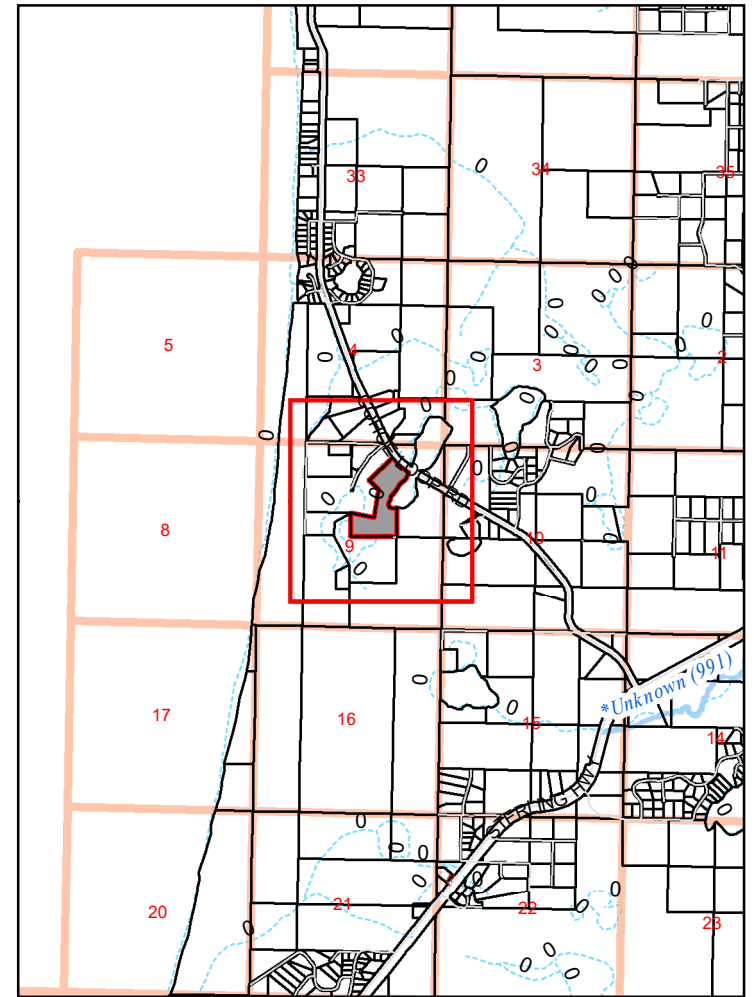
COBLE GEOPHYSICAL SERVICES
Geoff Coble, M.S., PG
Homer Professional Building
910 East End Rd, Suite #1
Homer, Alaska 99603





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.

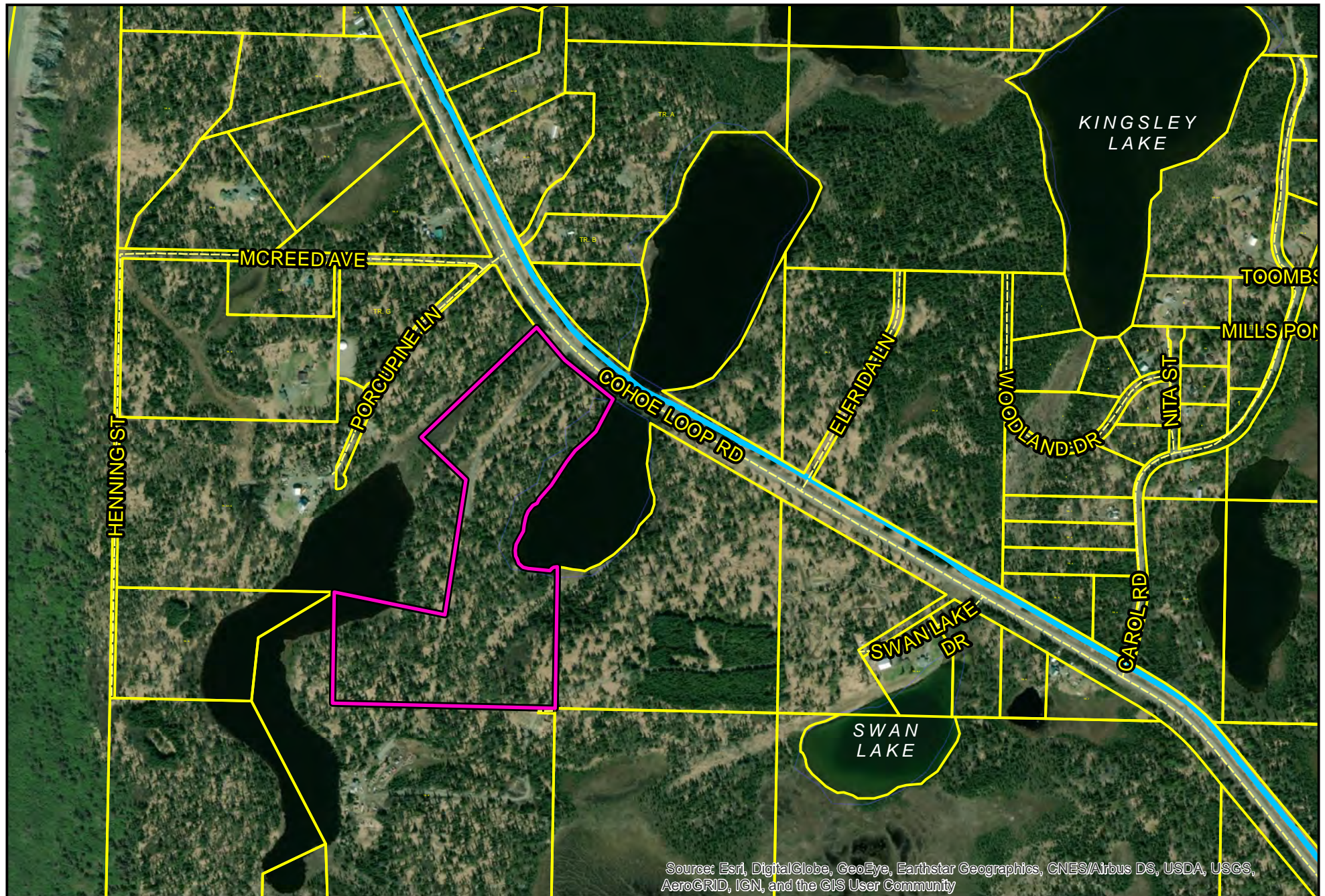
0 500 1,000 2,000'



0 2,000 4,000 8,000 Feet



KPB 2021-152
S09 T02N R12W
Cohoe



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.

0 250 500 1,000'

Aerial View

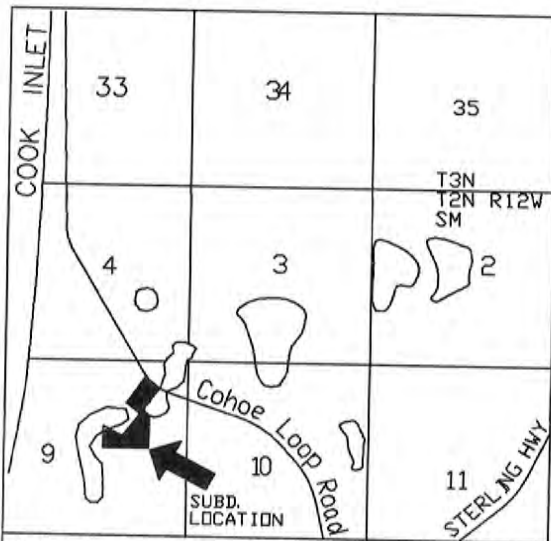


PRELIMINARY PLAT



KPB Vector DBO Pipelines

PClements, KPB 2021-152
Imagery World



VICINITY 1" = 1 mile MAP

Porcupine Lake Subd. #6 PRELIMINARY PLAT

A subdivision of the Unsubdivided Remainder shown on Porcupine Lake Subd. #4, KRD 2005-1.
Located in Gov Lots 2 & 5, NE1/4 Section 9, T2N R12W, SM, Coho, Alaska.
Kenai Recording District Kenai Peninsula Borough

Prepared for

Gerard L Johnson
P.O. Box 27
Clam Gulch, AK 99568

Brent G & Judith A Johnson
P.O. Box 27
Clam Gulch, AK 99568

Prepared by

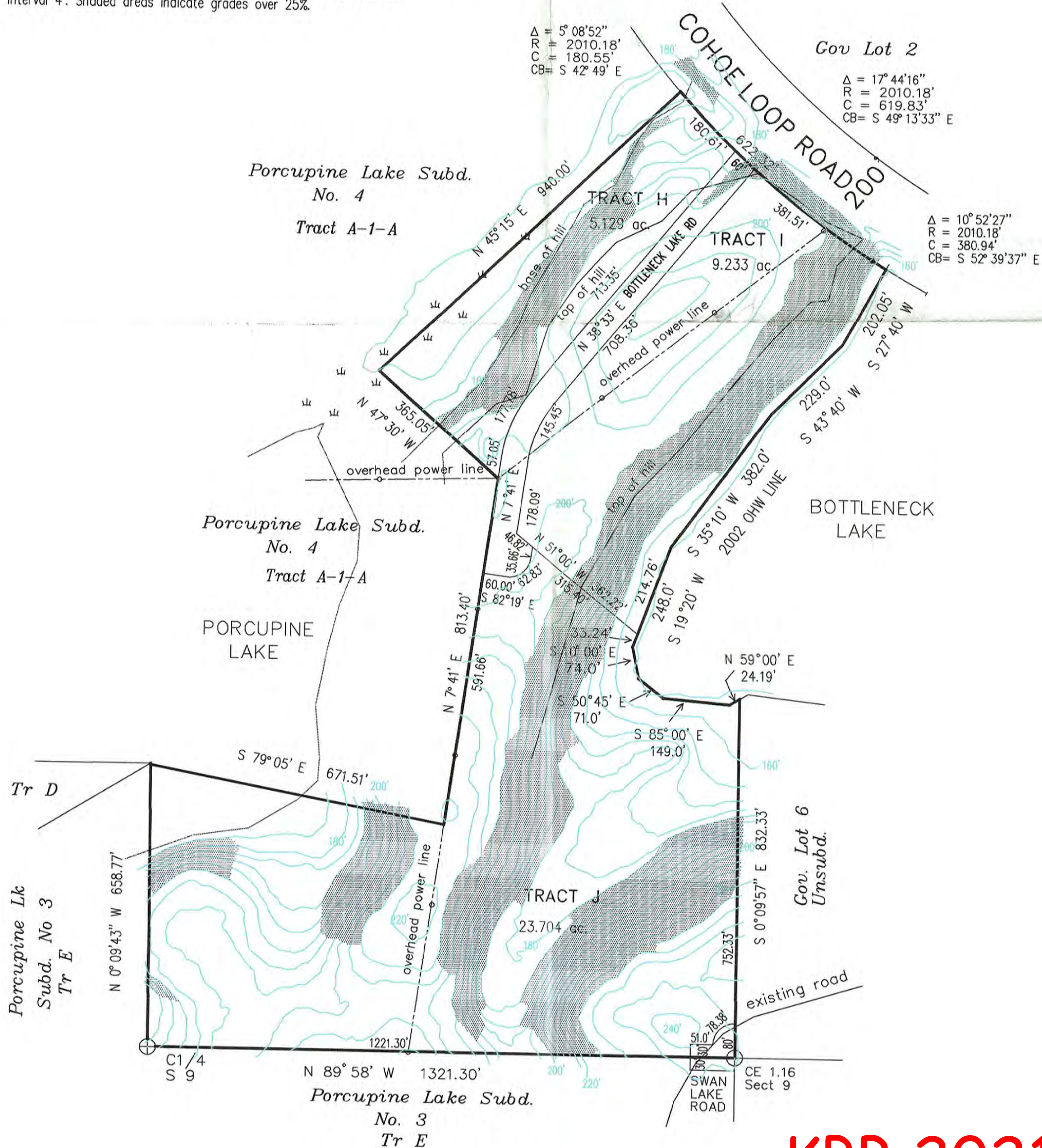
Johnson Surveying
P.O. Box 27
Clam Gulch, AK 99568

SCALE 1" = 200'
5 August, 2021

AREA = 39.802 acres

NOTES

1. A building setback of 20' from all street ROWs is required unless a lesser standard is approved by a resolution of the appropriate planning commission. Front 10' of building setback is also a utility easement, as is the entire setback within 5' of side lot lines.
2. 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.
3. 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 No. 757, dated April 7, 1958; and Dept. of the Interior Order No. 2665, dated October 16, 1951, Amendment No. 1 thereto, dated July 17, 1952 and Amendment No. 2 thereto, dated September 15, 1956, filed in the Federal Register.
4. This property is subject to restrictive covenants, conditions, and restrictions filed as Kenai Records Document #2002-012600-0. These are KPB imposed covenants.
5. Contour interval 4'. Shaded areas indicate grades over 25%.



KPB 2021-152

AGENDA ITEM E. NEW BUSINESS

ITEM 1 - PORCUPINE LAKE SUBD NO 6

KPB File No.	2021-152
Plat Committee Meeting:	December 13, 2021
Applicant / Owner:	Gerald Johnson Brent Johnson Judith Johnson, all of Clam Gulch, AK
Surveyor:	Jerry Johnson / Johnson Surveying
General Location:	Cohoe Loop Road, Cohoe area

Parent Parcel No.:	137-010-66
Legal Description:	Government Lot 2 lying southwesterly of Cohoe Loop Road and Government Lot 5 in Section 9, Township 2 North, Range 12 West, excluding therefrom Porcupine Lake Subdivision No. 4, Plat KN 2005-1 and Porcupine Lane, Plat KN 79-116
Assessing Use:	Residential
Zoning:	Rural Unrestricted
Water / Wastewater	On site

STAFF REPORT

Specific Request / Scope of Subdivision: The proposed plat will subdivide a 40 acre parcel into three tracts that will be 5.1, 9.2, and 23.7 acres.

Location and Legal Access (existing and proposed): The subdivision is located near mile 2 of Cohoe Loop Road.

This plat will dedicate a 60 foot wide right of way between Tract H and Tract I to provide legal and physical access to Tract J. The right of way dedication appears to encompass an existing travel way.

This plat will dedicate a portion of Swan Lake Drive in the southeast corner of the subdivision. Swan Lake Drive is a road located off Cohoe Loop Road. Although not is a fully dedicated right of way, a travel way does exist from Cohoe Loop Road to Tract E located south of this subdivision. Porcupine Lake Subdivision #3, KN 2000-66, dedicated a 30 foot wide and 100 foot long portion of Swan Lake Drive. This plat is proposing to dedicate the matching 30 foot width and an angle to allow the existing road to be within the dedication. ***Staff recommends that a detail sketch may be necessary to clearly depict the dimensions of the Swan Lake Road right of way dedication.***

An exception has been requested to not dedicate additional right of way for Swan Lake Drive or along the eastern boundary.

The block is defined by section line easements and partial dedications. Cohoe Loop Road, McReed Avenue, Henning Street, and section line easement define the block. An additional dedication is located to the north, Porcupine Lane, which is currently not a through dedication and does not improve the block. The block exceeds allowable lengths and is not closed due to lacking dedications. Multiple lakes are within the block. The future continuation of proposed Bottleneck Lake Road, in addition to future dedications of Swan Lake Drive will improve the block configuration.

KPB Roads Dept. comments	Out of Jurisdiction: No Roads Director: Uhlin, Dil Comments: No comments
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SOA DOT comments	The ROW for Cohoe Loop Road is as shown on State of Alaska Department of Highways Right of Way Map Alaska Project S-0461(1) sheet 4 of 11, and appears to be shown correctly based on recovered concrete ROW monuments from adjacent plat 2005-1. Staff recommends that a reference be added to the plat for the Right of Way Map.
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Site Investigation: Steep terrain, lakes, and areas with low wet lands affect this subdivision. The plat depicts the contour information and provides shading for slopes greater than 25 percent. Except near the intersection with Cohoe Loop Road, steep slopes do not affect the location of proposed Bottleneck Road. An existing travel way has been constructed within the proposed Bottleneck Lake Road. Per KPB Code, grades shall not exceed 10 percent or 4 percent within 130 feet of any centerline intersection. **Staff recommends** that the committee concur that cross-sections and centerline profiles are not required for Bottleneck Road as there is already a constructed travel way within this proposed right of way.

Bottleneck Lake forms the northeast boundary of this subdivision. The plat is providing the 2002 Ordinary High Water Line as the boundary. **Staff recommends** the source of the OHW line be stated on the face of the plat or within a plat note and the following plat note be added "The natural meanders of ordinary high water is for area computations only, the true corners being on the extension of the sidelines and the intersection with the natural meanders."

Additional wetlands are depicted within Tract H. Per KPB GIS data, there are additional drainage ways within proposed Tract J. **Staff recommends** all low wet areas be depicted and labeled with the following plat note added, "Any person developing the property is responsible for obtaining all required local, state, and federal permits, including a U.S. Army Corps of Engineers wetland determination if applicable."

KPB River Center review	<p>A. Floodplain</p> <p>Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments</p> <p>B. Habitat Protection</p> <p>Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments</p> <p>C. State Parks</p> <p>Reviewer: Russell, Pam Comments: No Comments</p>
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Staff Analysis The proposed subdivision will subdivide a remainder portion of Government Lots. The surrounding lots are large acreage tracts and this plat will create similar sized parcels.

The three tracts will all be greater than 200,000 square feet. A soils analysis report will not be required and an engineer will not need to sign the plat.

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

The property is not within an advisory planning commission.

Utility Easements The plat is proposing to grant easements adjoining all dedicated right of ways as outlined in KPB Code. Overhead power lines are depicted on the plat. Plats for surrounding areas showed power lines and granted 20 foot utility easements centered on the lines. As the lot within this subdivision has not been previously surveyed, utility easements have not been granted at this time. If existing easements are in place they will need to be depicted and noted on the plat. Any easements granted by this plat will need to be depicted and labeled. **Staff recommends the surveyor/owners work with the utility companies to determine if easements exist or grant easements over the existing lines.**

The affected utility providers were emailed the subdivision plat public hearing notice as part of the routine notification process. **Staff recommends** to grant utility easements requested by the utility providers or work with the utility providers to obtain approval.

Utility provider review:

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

KPB department / agency review:

Addressing	Reviewer: Haws, Derek Affected Addresses: None Existing Street Names are Correct: Yes List of Correct Street Names: COHO LOOP RD Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied: BOTTLENECK LAKE RD Comments: BOTTLENECK LAKE RD exceeds maximum street name length of 17 characters including spaces. Staff recommends using the name BOTTLENECK RD for the newly dedicated ROW.
Code Compliance	Reviewer: Ogren, Eric Comments: No comments
Planner	
Assessing	Reviewer: Wilcox, Adeena Comments: No comment
Advisory Planning Commission	

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

STAFF RECOMMENDATIONS
CORRECTIONS / EDITS

KPB 20.25.070 – Form and contents required

Staff recommendation: final plat submittals must comply with 20.25.070. Additional information, revisions, and/or corrections are required as noted below.

A. Within the Title Block

1. Name of the subdivision which shall not be the same as an existing city, town, tract, or subdivision of land in the borough, of which a plat has been previously recorded, or so nearly the same as to mislead the public or cause confusion. The parent plat's name shall be the primary name of the preliminary plat.
2. Legal description, location, date, and total area in acres of the proposed subdivision;
3. Name and address of owner(s), as shown on the KPB records and the certificate to plat, and registered land surveyor.

Staff recommendation:

- The subdivision description should be updated. "Portion of Government Lot 2 lying southwesterly of Cohoe Loop Road and Government Lot 5 excluding therefrom Porcupine Lake Subdivision #4, Plat KN 2005-1 and Porcupine Lane, Plat KN 79-116, within NE ¼ Section 9, Township 2 North, Range 12 West, S.M., State of Alaska, Kenai Recording District."
- KPB Assessing records show a different mailing address for Brent and Judith Johnson. Please update.
- The scale appears to be slightly off.

D. A vicinity map, drawn to scale showing location of proposed subdivision, north arrow if different from plat orientation, township and range, section lines, roads, political boundaries, and prominent natural and manmade features, such as shorelines or streams;

Staff recommendation: Scale appears to be off. Adjust character spacing in Sterling Hwy as the "I" and "N" appear to overlap.

G. The status of adjacent lands within 100 feet of the proposed subdivision boundary or the land status across from any dedicated rights-of-way that adjoin the proposed subdivision boundary, including names of subdivisions, lot lines, block numbers, lot numbers, rights-of-way; or an indication that the adjacent land is not subdivided;

Staff recommendation:

- Add "Portion" or "PTN" to the Government Lot located north of Cohoe Loop Road.
- Add "Unsubdivided" to the lot located to the southeast of the subdivision.
- Correct the suffix for Swan Lake Drive.

KPB 20.30 – Subdivision Design Requirements

Staff recommendation: final plat submittals must comply with 20.30. Additional information, revisions, and/or corrections are required as noted below.

KPB 20.40 – Wastewater Disposal

Staff recommendation: final plat submittals must comply with 20.40. Additional information, revisions, and/or corrections are required as noted below.

20.40.010 Wastewater disposal.

Platting Staff Comments: All lots larger than 200,000 square feet. Soils analysis not required. Provide correct wastewater disposal note. "WASTEWATER DISPOSAL: Lots which are at least 200,000 square feet in size may not be suitable for onsite wastewater treatment and disposal. Any wastewater treatment or disposal system must meet the regulatory requirements of the Alaska Department of Environmental Conservation."

Staff recommendation: comply with 20.40.

KPB 20.60 – Final Plat

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

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

Staff recommendation: Provide a certificate of acceptance for right of ways being dedicated.

20.60.180. Plat notes.

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

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

Staff recommendation: Place the following notes on the plat.

- "No access to state maintained rights-of-way permitted unless approved by the State of Alaska Department of Transportation."
- Roads must meet the design and construction standards established by the borough in order to be considered for certification and inclusion in the road maintenance program (KPB 14.06).
- Add a plat note for any exceptions granted.

Update plat note 3, "...No. 757, dated October 10, 1959; Public Land Order No. 1613, dated April 7, 1958; and Department of the Interior..."

20.60.190. Certificates, statements, and signatures required.

Staff recommendation: comply with 20.60.190.

EXCEPTIONS REQUESTED:

KPB 20.30.030 – proposed street layout-requirements

KPB 20.30.170 – blocks-length requirements

Surveyor's Discussion: Exceptions requested for ROW dedication matching Swan Lake Road or along east boundary due to steep grades and lack of need for providing access to other properties. ROW dedication to provide access from Bottleneck Lake Road to Tract D, would require additional subdivision and both lots J & D will have the same owner.

Staff Discussion: The subdivision is within a non-compliant block as it currently is not closed and the distances are all larger than the allowable limits. Dedications could help improve the block length as well as provide additional access to large acreage lots. Swan Lake Drive is a small portion of a right of way. The proposed right of way dedication will atop existing travelways. Large acreage tracts are being created that can be further subdivided in the future where they can provide access that complies with subdivision standards and fits with the terrain and site features.

Denial of the exception will require dedications along the south and eastern boundary of the subdivision as well as a continuation of Bottleneck Lake Road so that a connection with Sean Lake Drive would be possible in the future.

Findings:

1. The tracts are large enough to be further subdivided in the future.
2. Lakes are found along the east border of the subdivision and within a portion of the western area of Tract J.
3. The lakes make it difficult to acquire closed blocks.
4. The subdivision contains areas with steep slopes.
5. The subdivision contains areas with low wet areas.
6. The proposed dedications are within areas that provide feasible construction.
7. Proposed Bottleneck Lake Road appears to be over an existing travelway.
8. The three tracks will have access via the proposed right of way.
9. The right of way proposed has a turnaround area but can be extended in the future if Tract J is further subdivided.
10. The design, length, and suffix proposed indicate future extension of the right of way is possible.
11. One of the owners of this subdivision owns the 50 acre lot located south of the subdivision.
12. The eastern portion of Swan Lake Drive is dedicated along a constructed travelway.
13. The proposed plat will dedicate a portion of Swan Lake Drive to match past dedication.
14. The proposed plat is dedicating a portion of Swan Lake Drive atop the constructed travelway.
15. A continuation of Swan Lake Drive within this subdivision will not match the current travelway.
16. A continuation of Swan Lake Drive along the southern boundary will cross steep areas.
17. A dedication along the eastern boundary will result in crossing steep slopes and will end at Bottleneck Lake.

Staff reviewed the exception request and recommends granting approval.

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

Unless prohibited under this title, the commission (committee) may authorize exceptions to any of the requirements set forth in this title. Application for an exception shall present the commission (committee) with substantial evidence, justifying the requested waiver or exception stating fully the grounds for the application and the facts relied upon. All exceptions must be requested and granted at the time of preliminary plat approval. Exceptions may not be requested with a final plat submittal.

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

1. That special circumstances or conditions affecting the property have been shown by application;
Findings 1-5, 8-11, 15-17 appear to support this standard.
2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this title;
Findings 1-5, 8-11, 15-17 appear to support this standard.
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area in which said property is situated.
Findings 1-5, 8-11, 15-17 appear to support this standard.

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

RECOMMENDATION:

SUBJECT TO EXCEPTION(S) GRANTED, STAFF RECOMMENDS:

- **GRANT APPROVAL OF THE PRELIMINARY PLAT SUBJECT TO STAFF RECOMMENDATIONS, AND**

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

NOTE: 20.25.120. - REVIEW AND APPEAL.

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

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

END OF STAFF REPORT

Parcel 137-010-66

430



05/18/2021

Parcel 137-010-66 Swan Lake Road

431

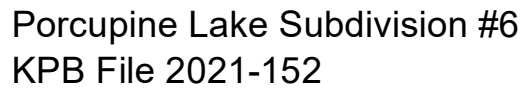


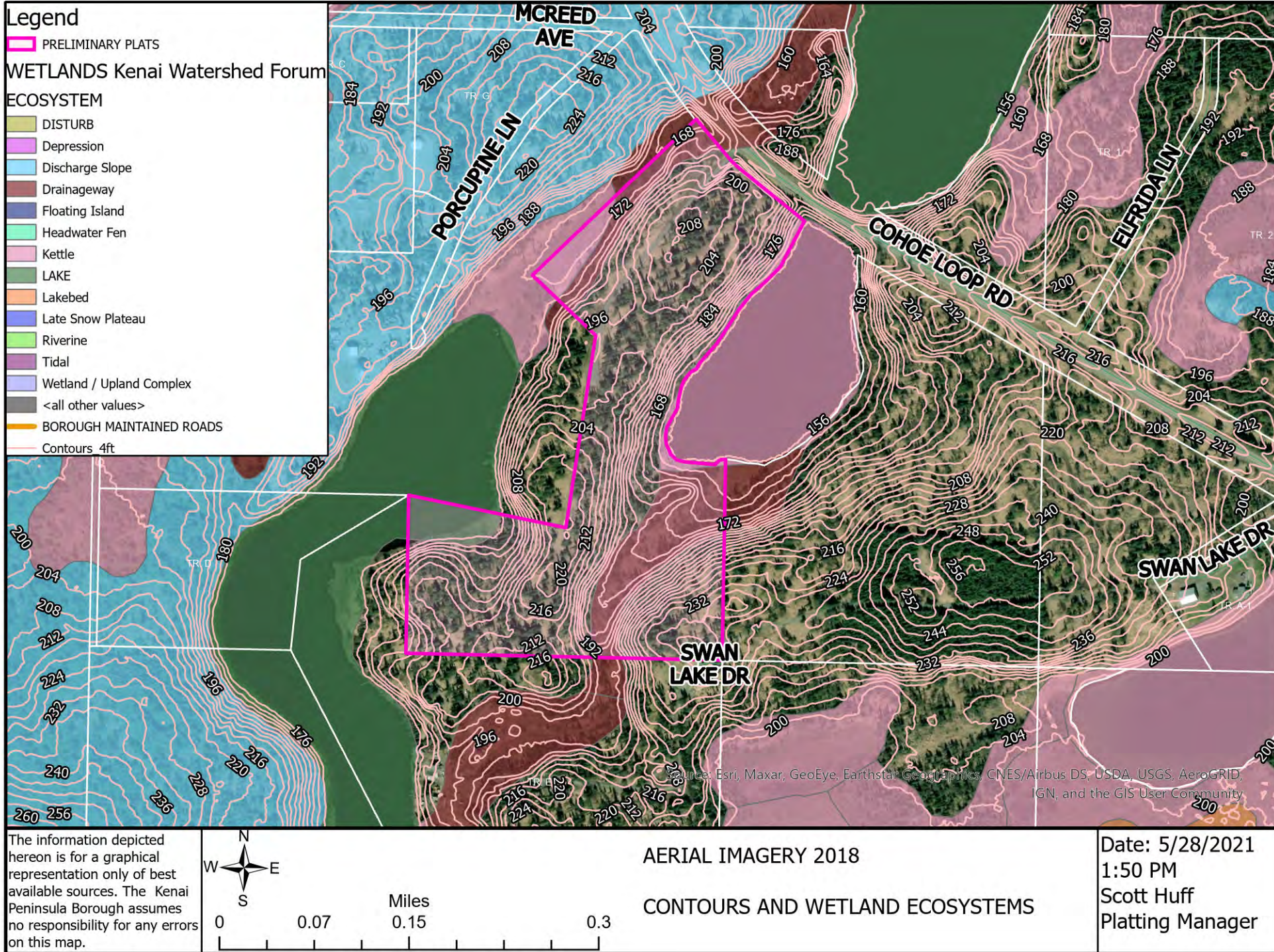
© All Pictometry

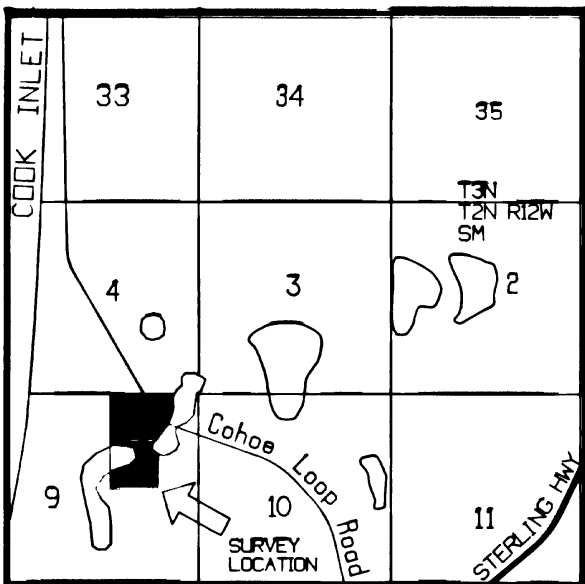
05/18/2021



Date: 11/24/2021





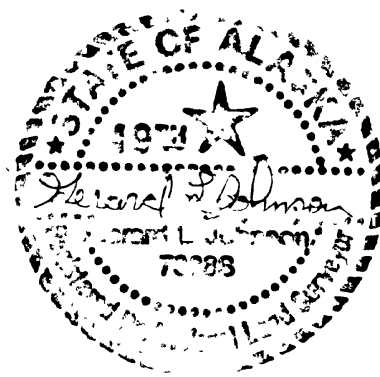


RECORD OF SURVEY

Of Gov Lots 2 & 5, NE1/4 Section 9, T2N R12W, SM, Cohoe, Alaska
Kenai Recording District

Prepared for
Kenai Peninsula Borough
144 N Binkley
Soldotna, AK 99669

Prepared by
Johnson Surveying
Box 27
Clam Gulch, AK 99568



SCALE 1" = 200'

AREA = 83.632 acres

23 Sept, 2000

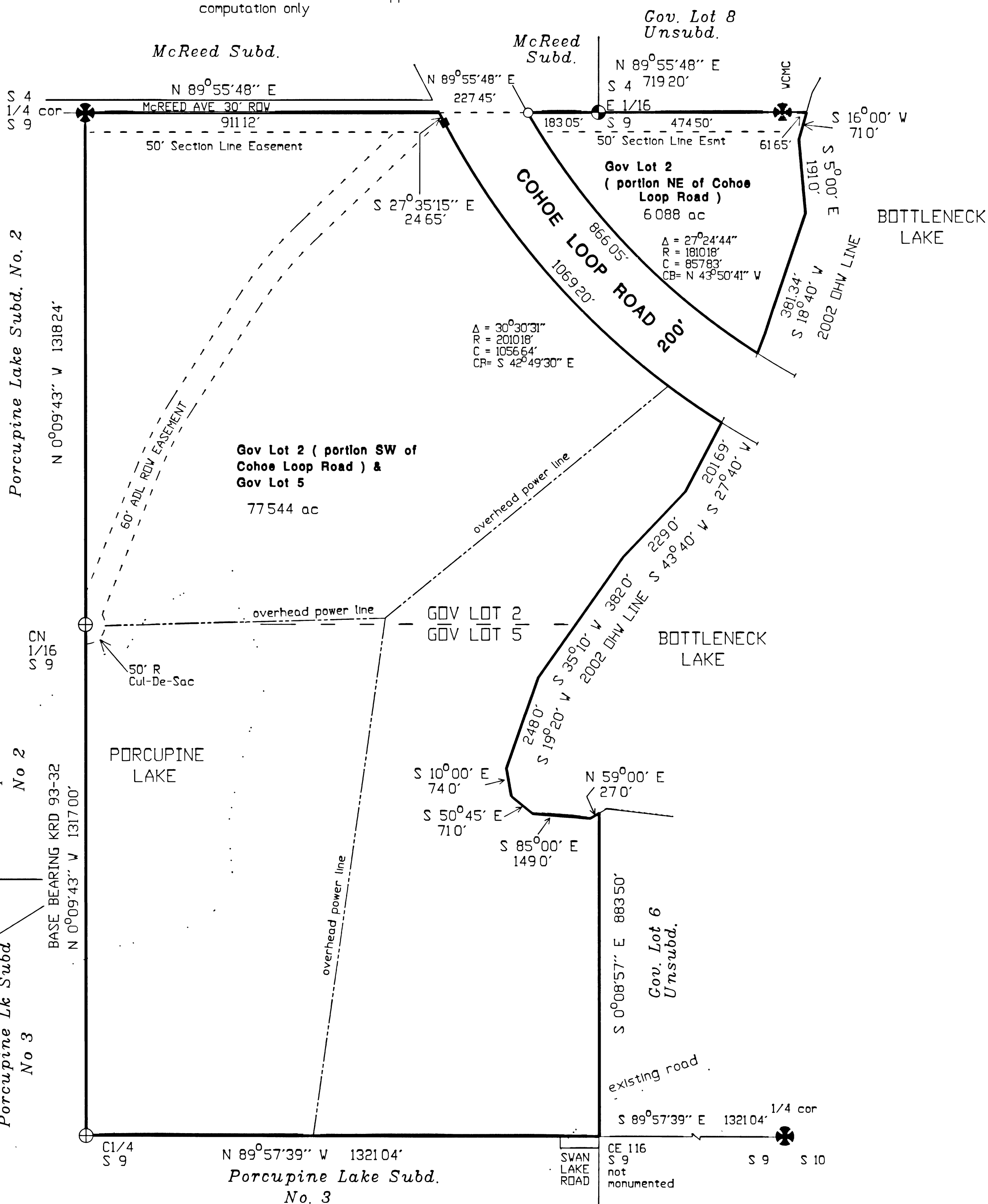
LEGEND

- ✱ - 2 1/2" USGLD brass cap monument, 1919, Found
- ⊕ - 2 1/2" brass cap monument, 268-S, 1975, Found
- ⊙ - 2" alcap monument, 7328-S, 1993, Found
- - Concrete ROW monument, State DOT, Found
- - 1/2" rebar with 1" plastic cap, 7328-S, 1993, Found

NOTES

- 1 This survey does not constitute a subdivision as defined by AS 40 15 190 (2)
- 2 True OHW Line forms the true riparian boundary of these Tracts OHW Line shown is approximate and for area computation only

2002-98
RECORDED-FILED 20
KENAI REC DIST
DATE 11-15-2002
TIME 3:44 P M
Requested by:
KPB



Prepared for

Brent G & Judith A Johnson
P.O. Box 27
Clam Gulch, AK 99568

Prepared by

Johnson Surveying
P.O. Box 27
Clam Gulch, Ak 99568

AREA = 39.802 acres

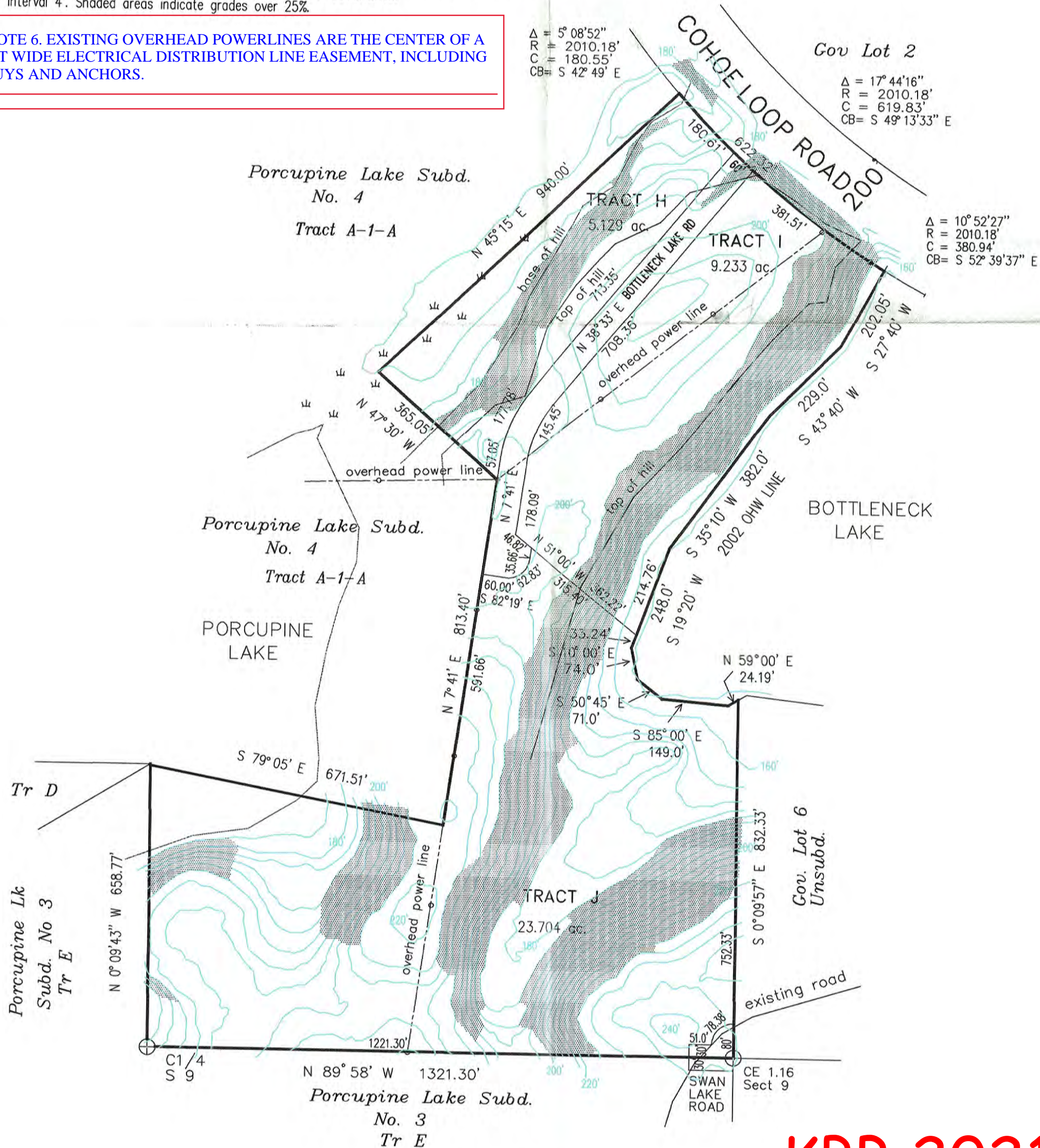
VICINITY 1" = 1 mile MAP

NOTES

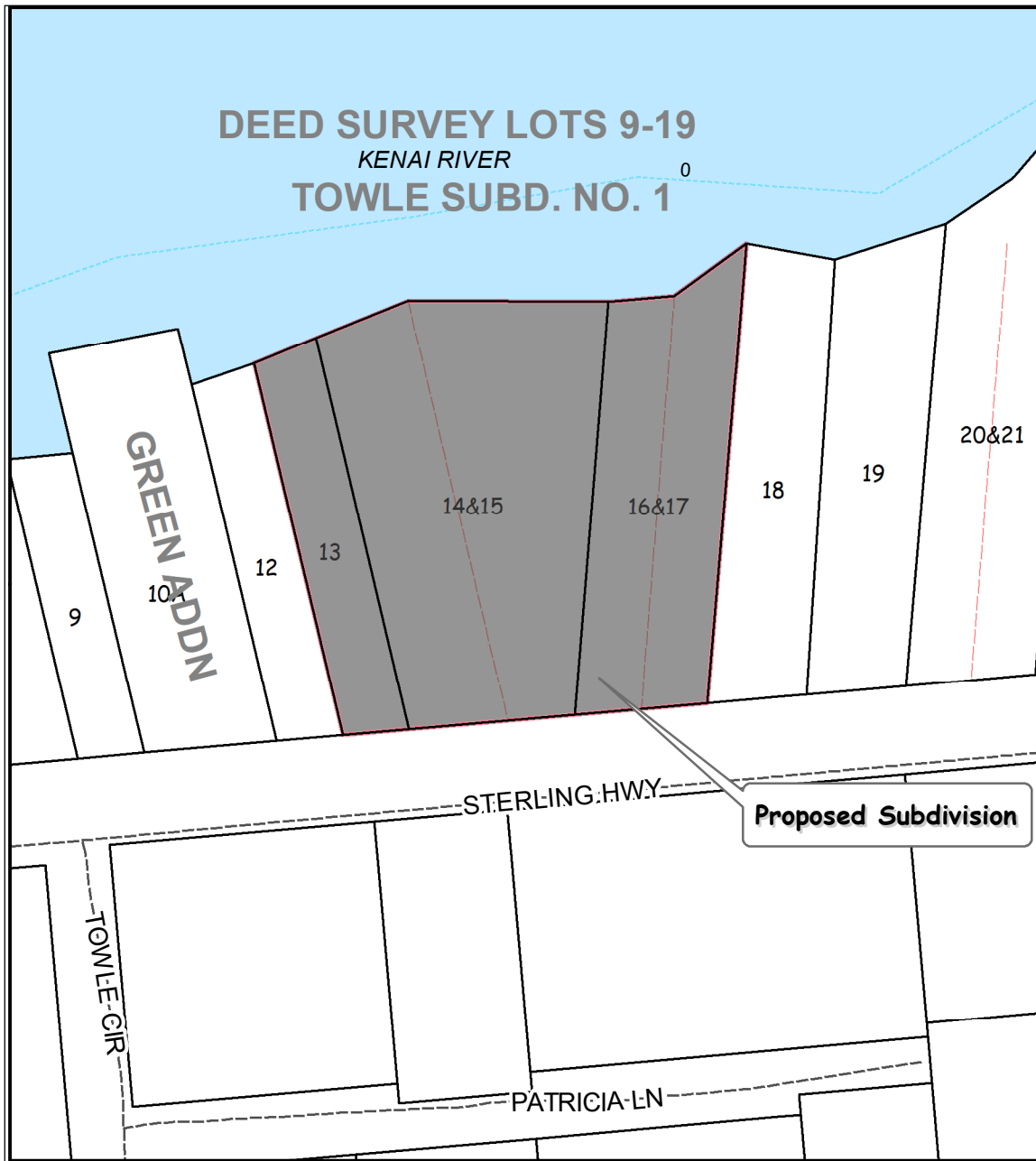
1. A building setback of 20' from all street ROWs is required unless a lesser standard is approved by a resolution of the appropriate planning commission. Front 10' of building setback is also a utility easement, as is the entire setback within 5' of side lot lines.
2. No permanent structure shall be constructed or placed within a utility easement which would interfere with the ability of a utility to use the easement.
3. 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 No. 757, dated April 7, 1958; and Dept. of the Interior Order No. 2665, dated October 16, 1951, Amendment No. 1 thereto, dated July 17, 1952 and Amendment No. 2 thereto, dated September 15, 1956, filed in the Federal Register.
4. This property is subject to restrictive covenants, conditions, and restrictions filed as Kenai Records Document #2002-012600-0. These are KPB imposed covenants.
5. Contour interval 4'. Shaded areas indicate grades over 25%.

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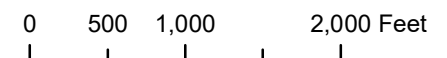
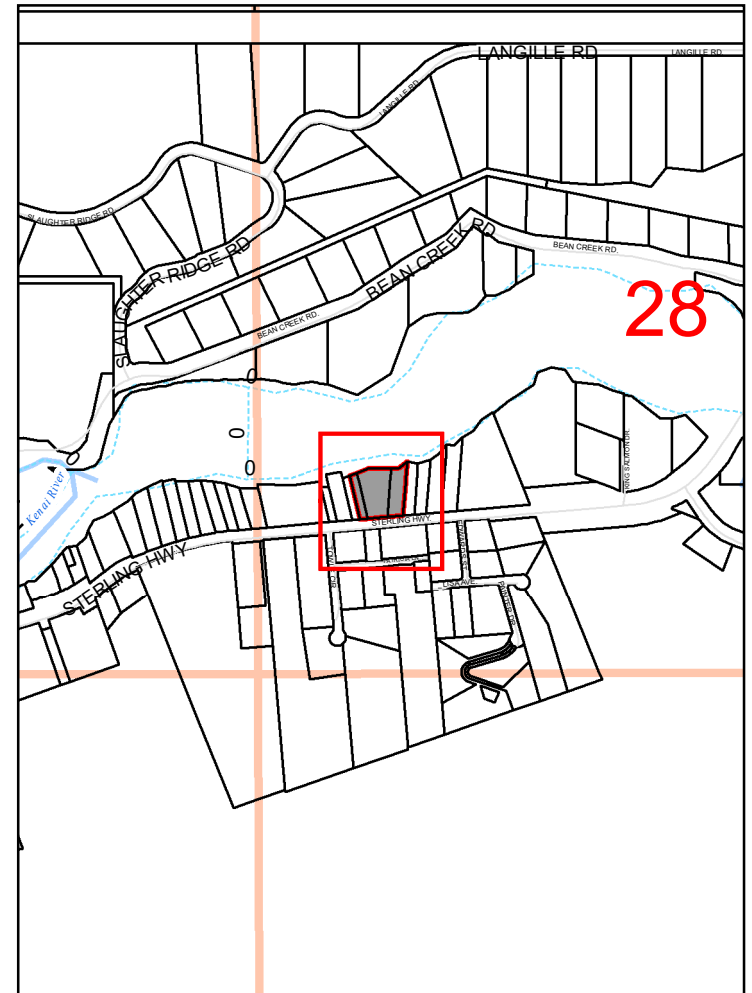
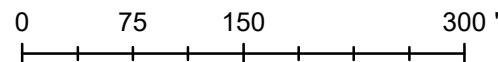
Gov Lot 2

$$\begin{aligned}\Delta &= 17^{\circ} 44' 16'' \\ R &= 2010.18' \\ C &= 619.83' \\ CB &= S 49^{\circ} 13' 33'' E\end{aligned}$$
$$\begin{aligned}\Delta &= 10^{\circ} 52' 27'' \\ R &= 2010.18' \\ C &= 380.94' \\ CB &= S 52^{\circ} 39' 37'' E\end{aligned}$$


KPB 2021-152



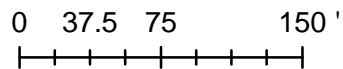
The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.



KPB 2021-153
S28 T05N R03W
Cooper Landing



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.

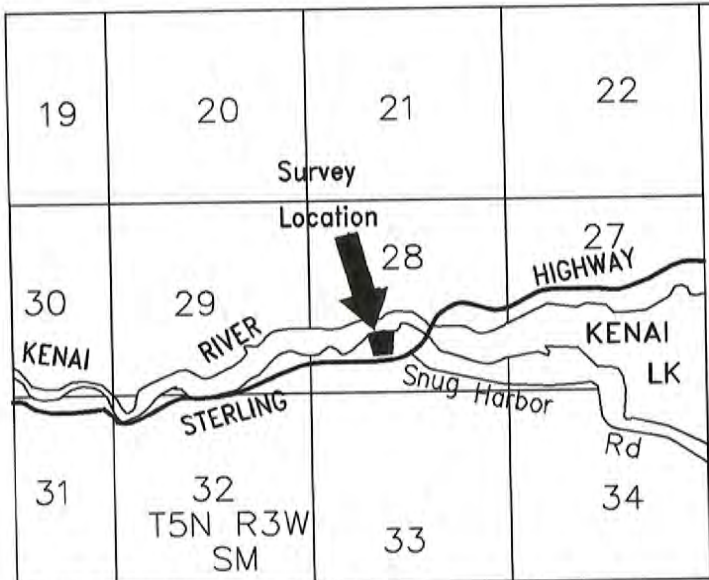


Aerial View



 PRELIMINARY PLAT

PClements, KPB 2021-153
Imagery World



VICINITY 1" = 1 mile MAP

Towle Subdivision, 2021 Replat

Preliminary Plat

Located in H.E.S 95, in Section 28, T5N R3W, Seward Meridian, Cooper Landing, Alaska.
Seward Recording District Kenai Peninsula Borough

Prepared for

Robert S Rima Sr.
Kenai River Drifter's Lodge
P.O. Box 746
Cooper Landing, AK 99572

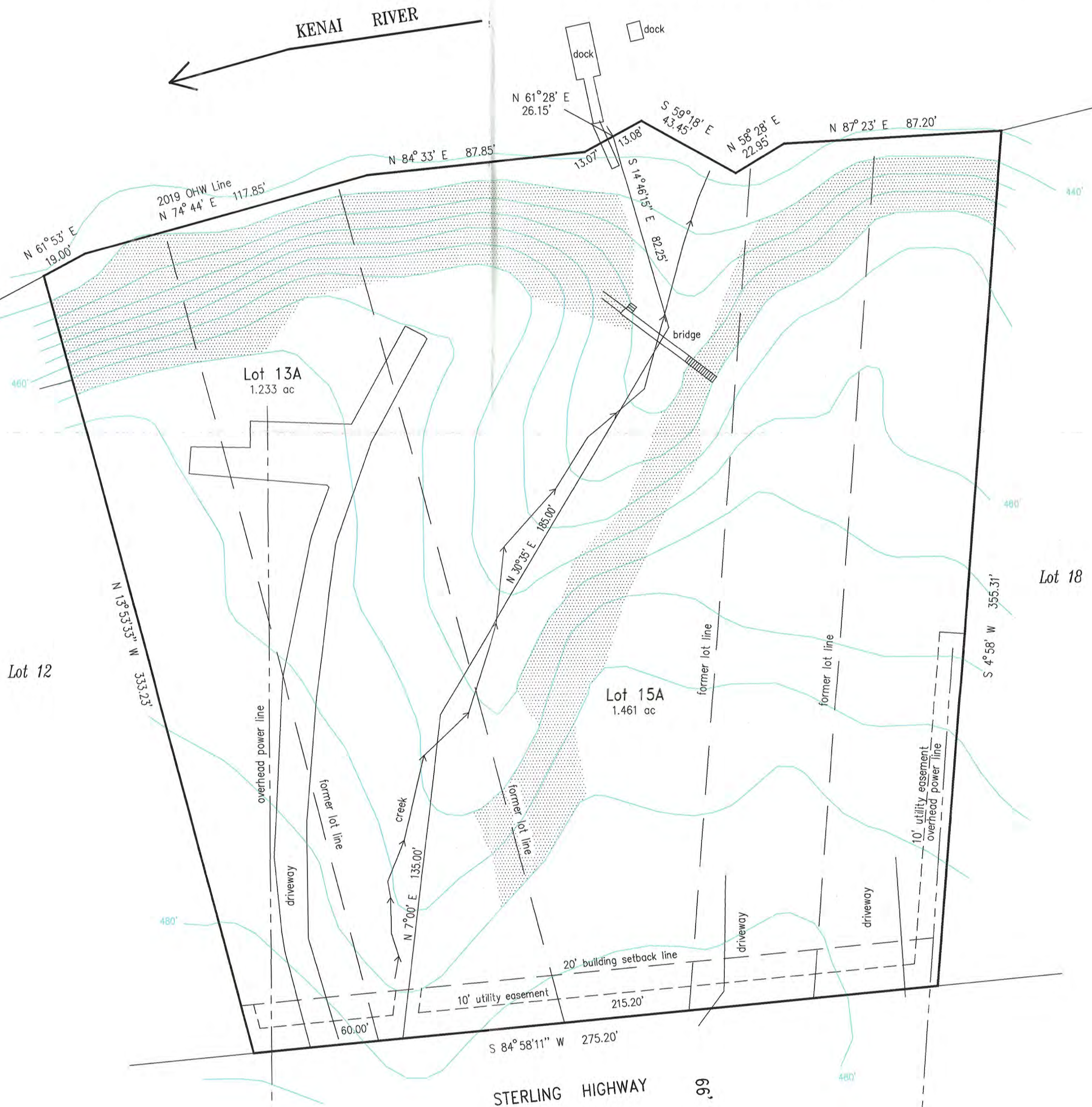
Prepared by

Johnson Surveying
P.O. Box 27
Clam Gulch, Ak 99568

SCALE 1" = 30' 14 October, 2021
AREA = 2.694 acres

NOTES

1. A building setback of 20' from all street ROW's is required unless a lesser standard is approved by a resolution of the appropriate planning commission. Front 10' of building setback is also a utility easement, as is the entire setback within 5' of side lot lines.
2. 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.
3. This property is subject to a reservation of an easement for highway purposes as disclosed by Public Land Order No. 601, dated August 10, 1949 and amended by Public Land Order No. 757, dated October 10, 1959; Public Land Order No. 1613, dated April 7, 1958; and Dept. of Interior Order No. 2665 dated October 16, 1951; Amendment No. 1 thereto, dated July 17, 1952, and Amendment No. 2, thereto dated September 15, 1956, filed in the Federal Register.
4. This property is subject to an easement for highway purposes granted to the Territory of Alaska (State) for highway purposes granted in SWD Records book 9 page 88.
5. Contour interval 4'. Shaded areas indicate grades over 25%. There are no wet areas on the property aside from the creek & river.



KPB 2021-153

AGENDA ITEM E. NEW BUSINESS

ITEM 2 - TOWLE SUBDIVISION 2021 REPLAT

KPB File No.	2021-153
Plat Committee Meeting:	December 13, 2021
Applicant / Owner:	Robert S. Rima, Jr. of Cooper Landing, AK
Surveyor:	Jerry Johnson / Johnson Surveying
General Location:	Near mile 48 of the Sterling Highway in the Cooper Landing area

Parent Parcel No.:	119-020-08, 119-020-09, 119-020-10
Legal Description:	Lots 13 thru 17 of Towle Subdivision No. 1 (Unrecorded) within H.E.S. 95
Assessing Use:	Residential / Lodge
Zoning:	Rural Unrestricted
Water / Wastewater	On Site

STAFF REPORT

Specific Request / Scope of Subdivision: The plat will be reconfiguring five lots into two lots that will be 1.2 acres and 1.5 acres.

Location and Legal Access (existing and proposed): The subdivision is located near mile 48 of the Sterling Highway in Cooper Landing. Both lots will have access from the Sterling Highway. The lots are also located along the Kenai River, providing water access.

Three existing driveways are depicted on the preliminary plat and may be removed for the final plat.

The block does not comply with code. Due to the proximity of the Kenai River, the narrow area between the river and the highway, the ability to acquire a closed block with compliant lengths will not be possible. ***Staff recommends the plat committee concur that an exception is not needed, as there are no dedications that can be granted to improve the block.***

KPB Roads Dept. comments	Out of Jurisdiction: No Roads Director: Uhlin, Dil Comments: No comments
SOA DOT comments	The ROW for Sterling Highway is as mentioned on Right of Way Deed Book 9, Page 88 SRD and appears to be shown correctly. (We do not currently have mapping for this section of highway.)

Site Investigation: Contours are shown on the plat. The land is sloping towards the Kenai River with a drainage that crosses through the middle of the subdivision. The new lot boundary will generally follow the existing drainage. Areas with steep slopes exist near the shore of the Kenai River and the slopes greater than 25 percent are depicted with shading. Per KPB GIS data, there are no low wet areas on the plat. Plat note 5 states that there are no low wet areas except for the depicted creek and the Kenai River.

The plat shows the ordinary high water line from 2019. ***Staff recommends the source information for the ordinary high water line be noted.***

A portion of Lot 15 is within a flood plain. The areas should be depicted and labeled with the required plat note to be added. The subdivision also is located along the Kenai River. The Anadromous Waters Habitat note must be added. ***Staff recommends depict any flood hazard areas and provide the correct plat notes regarding flooding and***

anadromous waters habitat protection districts.

KPB River Center review	<p>A. Floodplain</p> <p>Reviewer: Carver, Nancy Floodplain Status: IS in flood hazard area Comments: Flood Zone: AE,X (shaded),Floodway Map Panel: 02122C-1380E In Floodway: False Floodway Panel:</p> <p>B. Habitat Protection</p> <p>Reviewer: Aldridge, Morgan Habitat Protection District Status: IS totally or partially within HPD Comments: KPB\maldrige</p> <p>C. State Parks</p> <p>Reviewer: Russell, Pam Comments: No Comments</p>
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Staff Analysis The parent lots are within Homestead Entry Survey No. 95. The survey for those lands was completed in 1919 and created 108.84 acres along the Kenai River and within the Chugach National Forest. The lots within this subdivision were considered the Towle Subdivision No. 1 and the lots were created by deeds of record. A subdivision plat was never recorded. Another Towle Subdivision No. 1 exists but does not contain the lots within the proposed subdivision. Record of surveys have been completed for Lots 13 through 15. The final acreage will need to be verified and may not match current KPB records due to the lack of surveys and changes with the water boundary of the Kenai River.

In the past, the KPB Assessing department allowed lots to be combined for tax purposes, but they are legally separate lots. Per KPB Assessing and GIS records, the lots are shown as three parcels instead of the five. Lot 13 is shown as a single lot while Lots 14 and 15 are combined as well as Lots 16 and 17 being combined.

The current lot configurations are narrow lots that do not comply with the current 3:1 depth to width ratio standard. Multiple improvements cross the parcel boundaries. Encroachment easements were granted by the land owner for the buildings and improvements that cross the parcel boundaries. The replatting of the lot lines will terminate the easement with merger of title. **Staff recommends** that a plat note be added stating, 'Encroachment easements of record as recorded in Bk. 85 Pg 517 and Serial No. 2011-000496-0 Seward Record District will be terminated with merger of title with the recording of this subdivision plat.'

The lots are increasing in size and a soil analysis report will not be required.

Notice of the proposed plat was mailed to two beneficial interest holders on November 19, 2021. The beneficial interest holder will be given 30 days from the date of the mailing of the notification to respond. They are given the opportunity to notify staff if their beneficial interest prohibits or restricts subdivision or requires their signature on the final plat. If no response is received within 30 days, staff will assume they have no requirements regarding the subdivision and it may be finalized.

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

Fixed wing imagery indicates structure(s) are very close to the lot line of proposed Lot 15A and lot 18. It is the duty of a surveyor to report any encroachments found during a survey to his client. **Staff recommends** the surveyor confirm whether an encroachment affects the replat. If a permanent structure or structures cross a lot line, **staff recommends** a plat note be placed on the final plat to indicate that acceptance of the plat by the Borough does not indicate acceptance of any encroachments.

Utility Easements As the parcels involved have not been part of a recorded subdivision plat, the only existing utility easements have been granted by recorded documents. There is currently an easement to Chugach Electric with no definite location. **Staff recommends** a plat note be added with the document information for the easement granted to Chugach Electric Association, Inc.

An easement has been recorded for the benefit of Chugach Electric that is located on the east 10 feet of the south 200 feet of Lot 17. This easement is depicted. **Staff recommends** the label state that the easement was granted by Book 76 Page 273 of the Seward Recording District or refer to a plat note that provides the information for the creation of the easement.

The plat will be granting the required utility easements as set out in KPB Code. They are depicted and labeled within the drawing and identified within plat note 1.

The affected utility providers were emailed the subdivision plat public hearing notice as part of the routine notification process. **Staff recommends** to grant utility easements requested by the utility providers or work with the utility providers to obtain approval.

Utility provider review:

HEA	
ENSTAR	No comments or objections.
ACS	
GCI	Approved as shown
SEWARD ELECTRIC	
CHUGACH ELECTRIC	
TELALASKA	

KPB department / agency review:

Addressing	<p>Reviewer: Haws, Derek Affected Addresses: 18364 STERLING HWY 18368 STERLING HWY 18374 STERLING HWY 18404 STERLING HWY</p> <p>Existing Street Names are Correct: Yes List of Correct Street Names: STERLING HWY</p> <p>Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied:</p> <p>Comments: 18364 STERLING HWY will remain with lot 13A 18368 STERLING HWY will remain with lot 13A</p>
------------	--

	18374 STERLING HWY will remain with lot 15A 18404 STERLING HWY will remain with lot 15A
Code Compliance	Reviewer: Ogren, Eric Comments: No comments
Planner	
Assessing	Reviewer: Wilcox, Adeena Comments: No comment
Advisory Planning Commission	Comments not received when staff report was prepared.

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

STAFF RECOMMENDATIONS

CORRECTIONS / EDITS

KPB 20.25.070 – Form and contents required

Staff recommendation: final plat submittals must comply with 20.25.070. Additional information, revisions, and/or corrections are required as noted below.

A. Within the Title Block

1. Name of the subdivision which shall not be the same as an existing city, town, tract, or subdivision of land in the borough, of which a plat has been previously recorded, or so nearly the same as to mislead the public or cause confusion. The parent plat's name shall be the primary name of the preliminary plat.
2. Legal description, location, date, and total area in acres of the proposed subdivision;
3. Name and address of owner(s), as shown on the KPB records and the certificate to plat, and registered land surveyor.

Staff recommendation:

- The lots being replatted are currently shown as part of the Towle Subdivision No. 1, which was never recorded. Update the description to "Lots 13 – 17 of Towle Subdivision No. 1 (unrecorded) within H.E.S. 95, located in SW1/4 of Section 28, ..."
- The scale appears to be off. Please verify before submitting the final for review.
- The Certificate to Plat states the owner is Robert J. Rima, Jr. The deeds attached do show Robert S. Rima, Jr. Work with the title company to correct the name. On the plat, update "SR" to "JR".
- The name of the business may remain in the title block but for the signature line and the notary, he will be signing, as an individual as that is how title was taken.

D. A vicinity map, drawn to scale showing location of proposed subdivision, north arrow if different from plat orientation, township and range, section lines, roads, political boundaries, and prominent natural and manmade features, such as shorelines or streams;

Staff recommendation: Depict and label the boundary for Chugach National Forest.

G. The status of adjacent lands within 100 feet of the proposed subdivision boundary or the land status across from any dedicated rights-of-way that adjoin the propose subdivision boundary, including names of subdivisions, lot lines, block numbers, lot numbers, rights-of-way; or an indication that the adjacent land is not subdivided;

Staff recommendation: The Sterling Highway is shown as 66 feet wide in this area. Provide status labels and lot line depictions to the parcels south of the Sterling Highway.

N. Apparent encroachments, with a statement indicating how the encroachments will be resolved prior to final plat approval;

Staff recommendation: The existing buildings cross property boundaries and encroachment easement have been recorded to resolve this issue in the past. With all the lands under common ownership the

easement has been terminated with merger of title. The bridge depicted on the plat crosses over the lot line. An easement for the bridge is not required at this time as both lots are under common ownership. If the lots are to be sold separately, **Staff encourages** the landowner to consider granting an easement for the bridge.

KPB 20.30 – Subdivision Design Requirements

Staff recommendation: final plat submittals must comply with 20.30. Additional information, revisions, and/or corrections are required as noted below.

20.30.280. Floodplain requirements.

- A. All subdivision plats which are within areas where the floodplain has been identified by the Federal Emergency Management Agency (FEMA), and which involve 50 lots or five acres whichever is lesser, shall include the base flood elevation source.
- B. Any area of the subdivision within the floodplain, floodway or Seward Mapped Flood Data Area (SMFDA) is to be shown and labeled on the plat.
- C. All subdivisions which are wholly or partially located within flood hazard areas as defined by KPB 21.06.030 must comply with KPB 21.06.050 standards for Floodplain Management.
- D. All subdivisions or replats within the Flood Insurance Rate Map (FIRM) area or SMFDA, as amended, as defined by KPB 21.06.020, shall contain the following note:

FLOOD HAZARD NOTICE:

Some or all of the property shown on this plat has been designated by FEMA or the Kenai Peninsula Borough Seward Mapped Flood Data Area as a flood hazard area district as of the date this plat is recorded with the district recorder's office. Prior to development, the Kenai Peninsula Borough floodplain administrator should be contacted for current information and regulations. Development must comply with Chapter 21.06 of the Kenai Peninsula Borough Code.

- E. All subdivisions or replats that include any portion of the mapped floodway shall contain the following note:

FLOODWAY NOTICE:

Portions of this subdivision are within the floodway. Pursuant to KPB Chapter 21.06, all development (including fill) in the floodway is prohibited unless certification by an engineer or architect is provided demonstrating that encroachments shall not result in any increases in flood levels during the occurrence of the base flood discharge.

- F. Each plat within a city which has met the requirements of this section shall contain the following statement: "The first finished and habitable floor of a building constructed within a floodplain shall be built at or above the 100-year flood level."
- G. This section applies to all cities which adopt a resolution requesting participation in the FEMA floodplain program and which are subsequently recognized by the state as participants.
- H. A city may adopt an ordinance as part of its building code with greater restrictions than those set forth in KPB 20.30.280(A). A note shall be placed on the plat to indicate that the developer is responsible for contacting the city to determine the restrictions prior to any development.

Staff recommendation: Comply with 20.30.280

20.30.290. Anadromous Waters Habitat Protection District. If any portion of a subdivision or replat is located within an anadromous waters habitat protection district, the plat shall contain the following note:

ANADROMOUS WATERS HABITAT PROTECTION DISTRICT NOTE:

Portions of this subdivision are within the Kenai Peninsula Borough Anadromous Waters Habitat Protection District. See KPB Chapter 21.18, as may be amended, for restrictions that affect development in this subdivision. Width of the habitat protection district shall be in accordance with KPB 21.18.040.

Platting Staff Comments:

Staff recommendation: *comply with 20.30.290.*

KPB 20.40 – Wastewater Disposal

Staff recommendation: *final plat submittals must comply with 20.40. Additional information, revisions, and/or corrections are required as noted below.*

20.40.010 Wastewater disposal.

Platting Staff Comments: Per KPB 20.40.020(A)(2), a soils analysis report will not be required as the lots will be increasing and adding more than 1,000 square feet of suitable area. Add plat note "WASTEWATER DISPOSAL: Wastewater treatment and disposal systems must meet the regulatory requirements of the Alaska Department of Environmental Conservation."

Staff recommendation: *comply with 20.40.*

KPB 20.60 – Final Plat

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

20.60.180. Plat notes.

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

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

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

- *"No access to state maintained rights-of-way permitted unless approved by the State of Alaska Department of Transportation."*
- *The natural meanders of ordinary high water is for area computations only, the true corners being on the extension of the sidelines and the intersection with the natural meanders.*
- *Acceptance of this plat by the Kenai Peninsula Borough does not indicate acceptance of any encroachments.*
- *Subject to a right of way easement granted to Chugach Electric Association, Inc., to construct, operate, and maintain an electric transmission and/or telephone distribution line as found in Seward Recording District Book 33R Page 310. No definite location defined.*

Plat note 3 needs the word "Amendment" correct in the second to last line.

RECOMMENDATION:

STAFF RECOMMENDS:

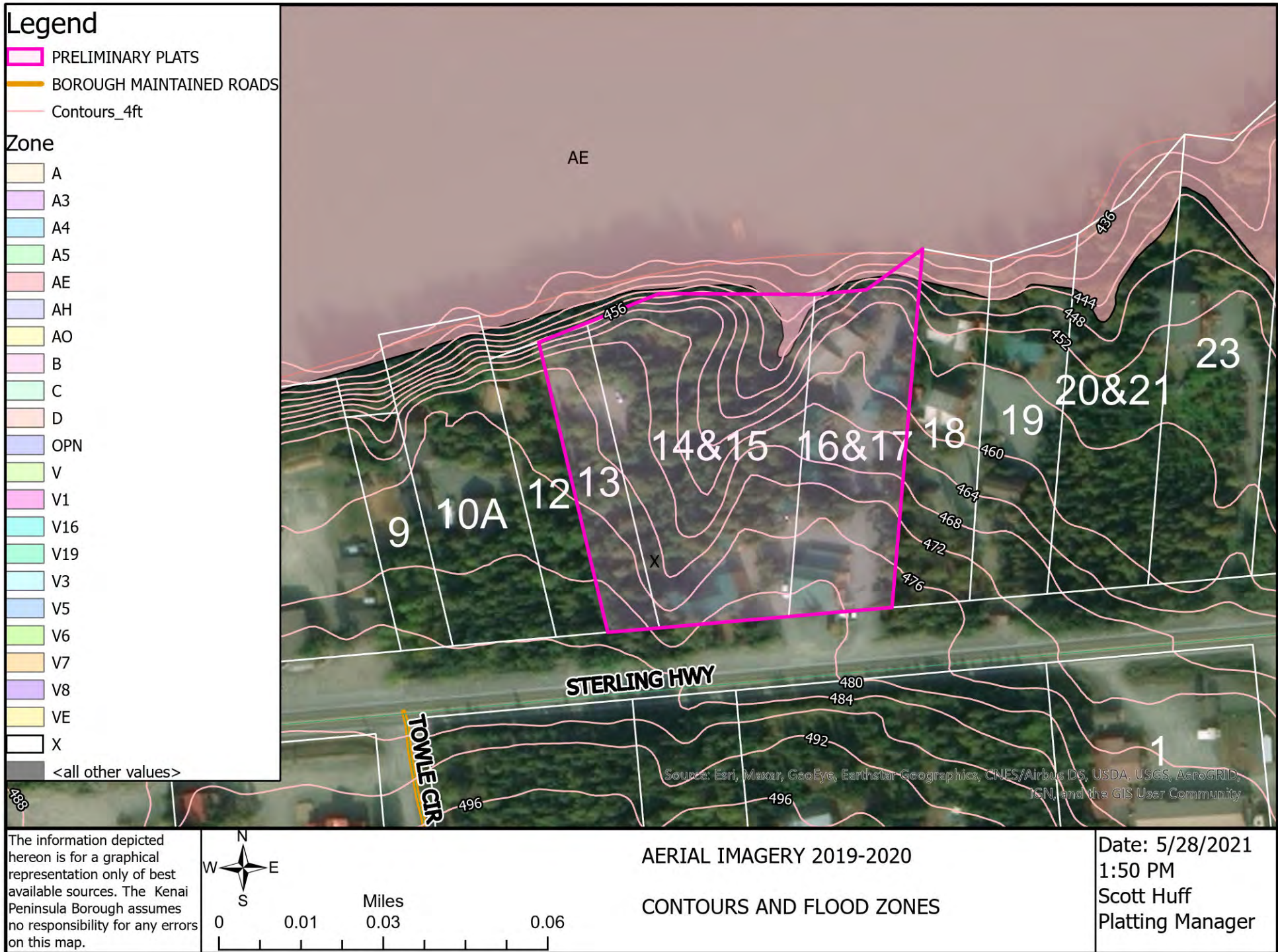
- GRANT APPROVAL OF THE PRELIMINARY PLAT SUBJECT TO STAFF RECOMMENDATIONS, AND
- COMPLIANCE WITH KPB 20.25.070 (FORM AND CONTENTS), KPB 20.25.080 (PETITION REQUIRED), KPB 20.30 (DESIGN REQUIREMENTS); AND KPB 20.40 (WASTEWATER DISPOSAL), AND
- COMPLIANCE WITH KPB 20.60 TO ENSURE ADMINISTRATIVE APPROVAL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

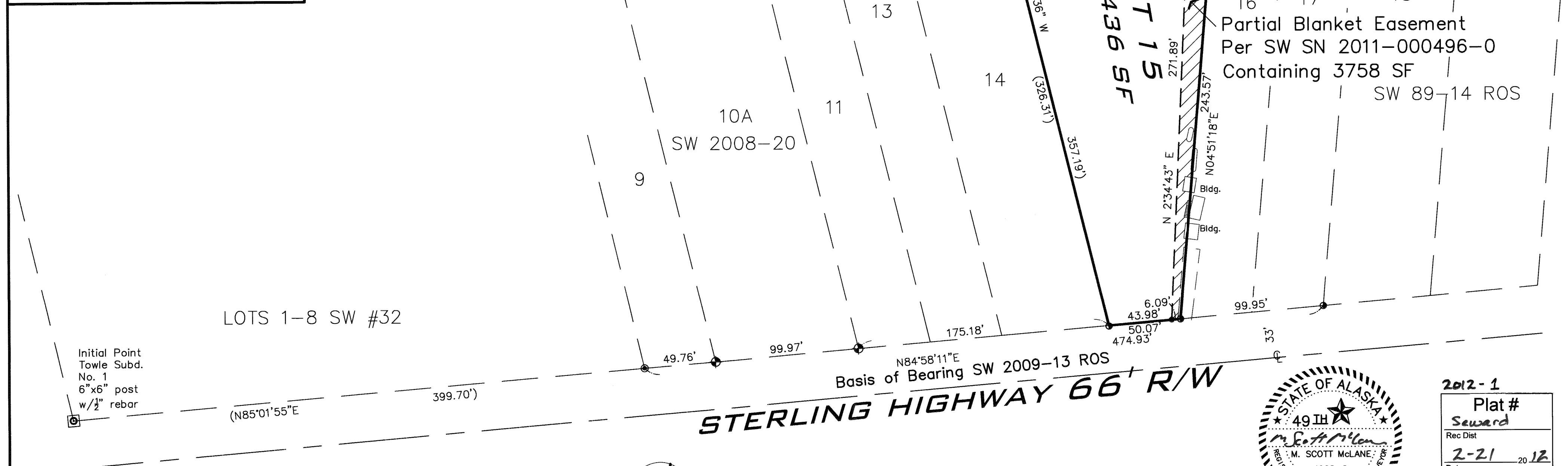
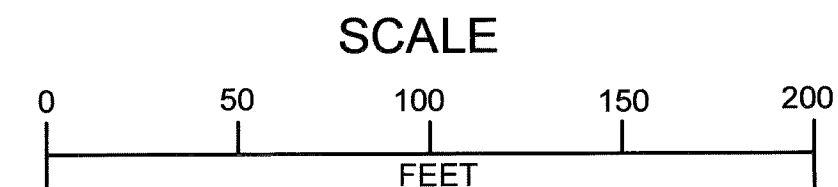
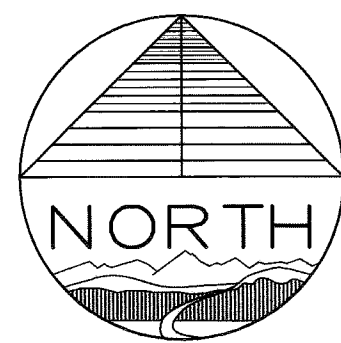
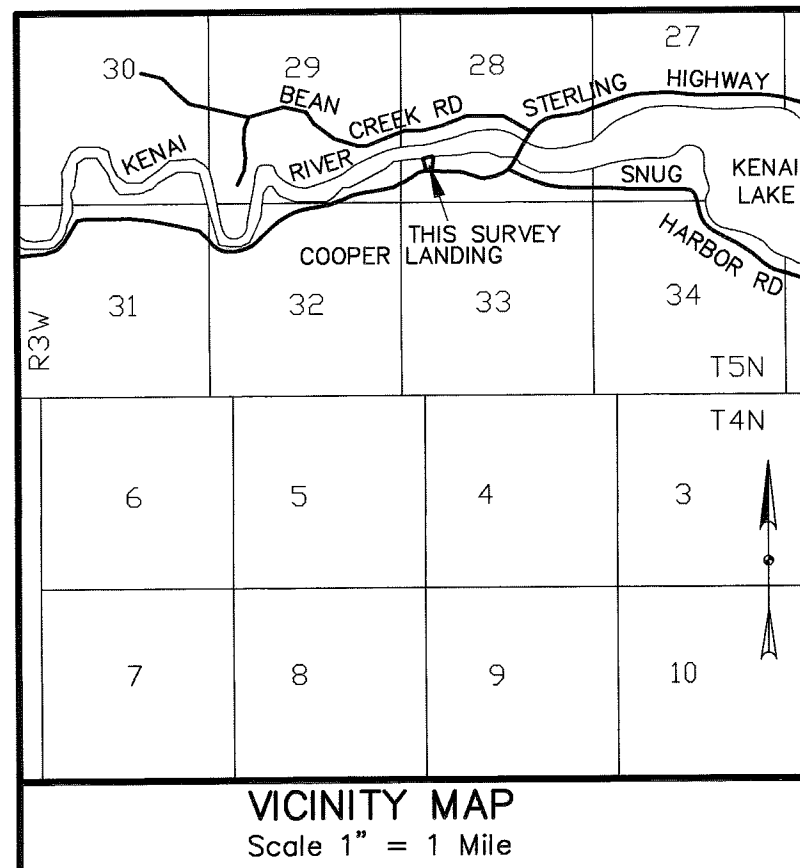
NOTE: 20.25.120. - REVIEW AND APPEAL.

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

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

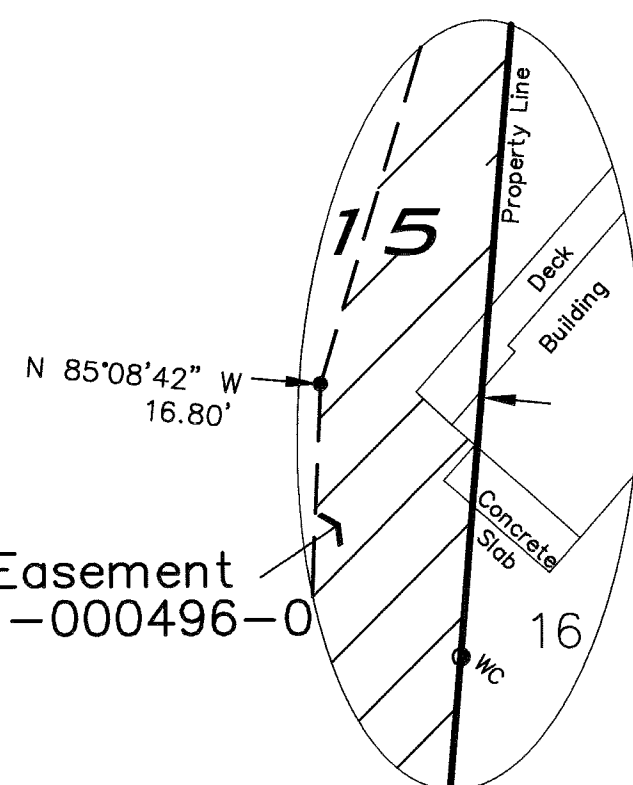
END OF STAFF REPORT





LEGEND

- Fnd pipe 1/2" diam.
- Fnd 2" diam. alum. cap and or 5/8" rebar
- Set 5/8" x 30" diam. rebar w/ 2" diam. alum. cap 4928-S
- Fnd 2 1/2" alum. cap LS 5733 2008
- WC Witness Corner SW Seward Recording District
- () Record data SW 2009-13 ROS



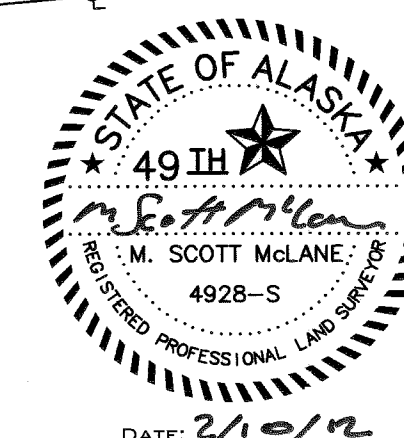
Partial Blanket Easement
Per SW SN 2011-000496-0

LINE TABLE		
LINE	LENGTH	BEARING
L1	20.60	S59°54'11"W
L2	19.81	N88°55'34"W
L3	29.26	N44°15'14"W
L4	17.17	S62°40'03"W

NOTES

- This survey does not constitute a subdivision as defined by A.S. 40.15.190(2).
- This plat represents a partial retracement survey of the following parcel:
Lot 15 Towle Subdivision No. 1 created by deeds of record per:

Statement of Real Property Ownership
Territorial Department of Lands Recorders Filing Number 69 Seward, AK Third Judicial District December 12, 1955 and as shown on Record of Survey SW 2009-13.
- The purpose of this survey was to retrace common line between Lot 15 and Lot 16 Towle Subdivision No. 1 and monument the easement boundaries of the PARTIAL BLANKET EASEMENT as described in SW SN 2011-000496-0.



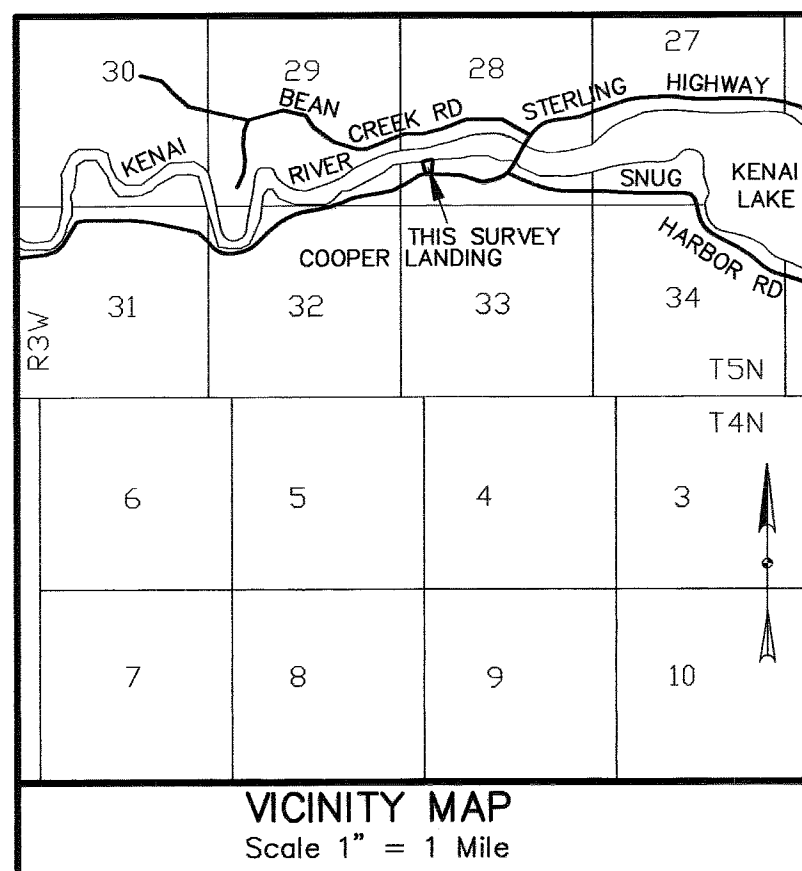
2012-1
Plat #
Seward
Rec Dist
2-21 2012
Date
Time 10:29 A.M.

RECORD OF SURVEY

WITHIN
LOT 15
TOWLE SUBDIVISION NO. 1
H.E.S. 95, SECTION 28, T5N, R3W
SEWARD MERIDIAN, AK
SEWARD RECORDING DISTRICT

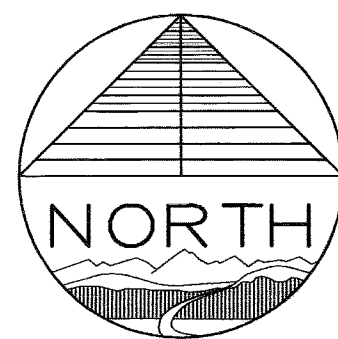
ENGINEERING - TESTING
SURVEYING - MAPPING
P.O. BOX 468
SOLDOTNA, AK. 99669
VOICE: (907) 283-4218
FAX: (907) 283-3265
WWW.MCLANECG.COM

DWG. No. 112011 ROS
PROJECT No. 112011
SCALE 1" = 50' DATE: FEB 2012 BOOK No.: 09-04 DRAWN BY: MSM

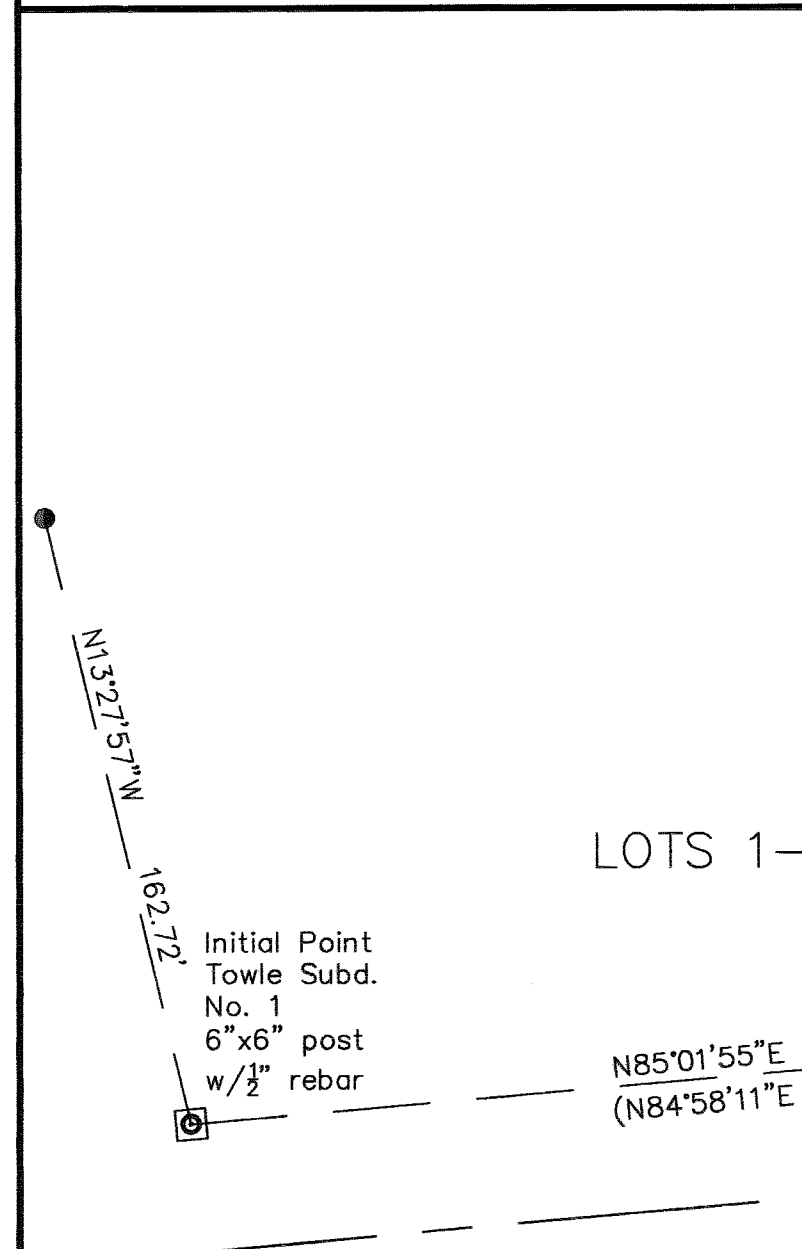
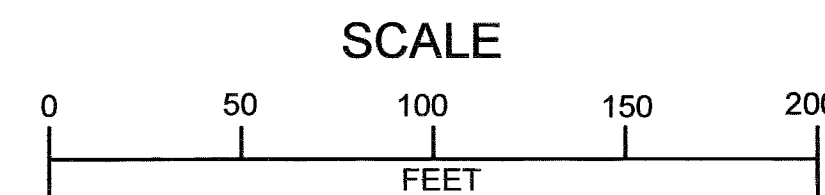


DETAIL A 1"=20'

- 1) Adjoiners propane tank 5.6' encroachment
- 2) Adjoiners propane tank 0.9' encroachment
- 3) Adjoiners shed 5.5' encroachment
- 4) Adjoiners stairs 3.1' encroachment
- 5) Adjoiners shed 2.1' encroachment
- 6) Adjoiners driveway 1.6' encroachment



KENAI RIVER



LEGEND

- Fnd pipe 1/2" diam.
- Fnd 2" diam. alum. cap and or 5/8" rebar
- Set 5/8" x 30" diam. rebar w/ 2" diam. alum. cap 4928-S
- ⊕ Fnd 2 1/2" alum. cap LS 5733 2008
- Fnd 1/2" rebar WC Witness Corner
- () Record data SW 89-14 ROS [] Towle Subd. No. 1 Deeds

LINE TABLE		
LINE	LENGTH	BEARING
L1	20.60	S59°54'11"W
L2	19.81	N88°55'34"W
L3	29.26	N44°15'14"W
L4	17.17	S62°40'03"W

- 7) Adjoiners deck 6.8' encroachment
- 8) Adjoiners Building 2.8' encroachment
- 9) Adjoiners Concrete Slab 3.2' encroachment

DETAIL B 1"=20'

NOTES

- 1) This survey does not constitute a subdivision as defined by A.S. 40.15.190(2).
- 2) This plat represents a boundary survey of the following parcel(s) Lots 13, 14 and 15 Towle Subdivision No. 1 created by deeds of record per:
 - Lot 13
Statement of Real Property Ownership
Territorial Department of Lands Recorders Filing Number 173 Seward, AK Third Judicial District October 17, 1957
 - Lot 14
Statement of Real Property Ownership
Territorial Department of Lands Recorders Filing Number 68 Seward, AK Third Judicial District December 5, 1955
 - Lot 15
Statement of Real Property Ownership
Territorial Department of Lands Recorders Filing Number 69 Seward, AK Third Judicial District December 12, 1955
- 3) The south bank of the Kenai River forms the true bounds of these lots. The 2009 Meander of OHWL is for survey computations only.
- 4) The metes and bounds description for Lot 15 contains an erroneous distance call between the initial stake from the southwest corner of said lot. This distance in the deed is 750' but should have been 725'.
- 5) Established east boundary of Lot 15 utilizing previous survey data obtained during a 2004 asbuilt survey of adjoining Lots 16 and 17 performed by McLane Consulting Inc. (Job No. 041006).



2009-13

SEWARD REC. DIST.

Date Sept. 30 20 09

Time 10:12 A M

Requested By McLANE

Address _____

RECORD OF SURVEY

WITHIN
LOTS 13, 14 & 15
TOWLE SUBDIVISION NO. 1
H.E.S. 95, SECTION 28, T5N, R3W
SEWARD MERIDIAN, AK

SEWARD RECORDING DISTRICT



ENGINEERING - TESTING
SURVEYING - MAPPING
P.O. BOX 468
SOLDOTNA, AK. 99669
VOICE: (907) 283-4218
FAX: (907) 283-3265
WWW.MCLANECG.COM

DWS. No. 092007ROS

PROJECT NO. 092007

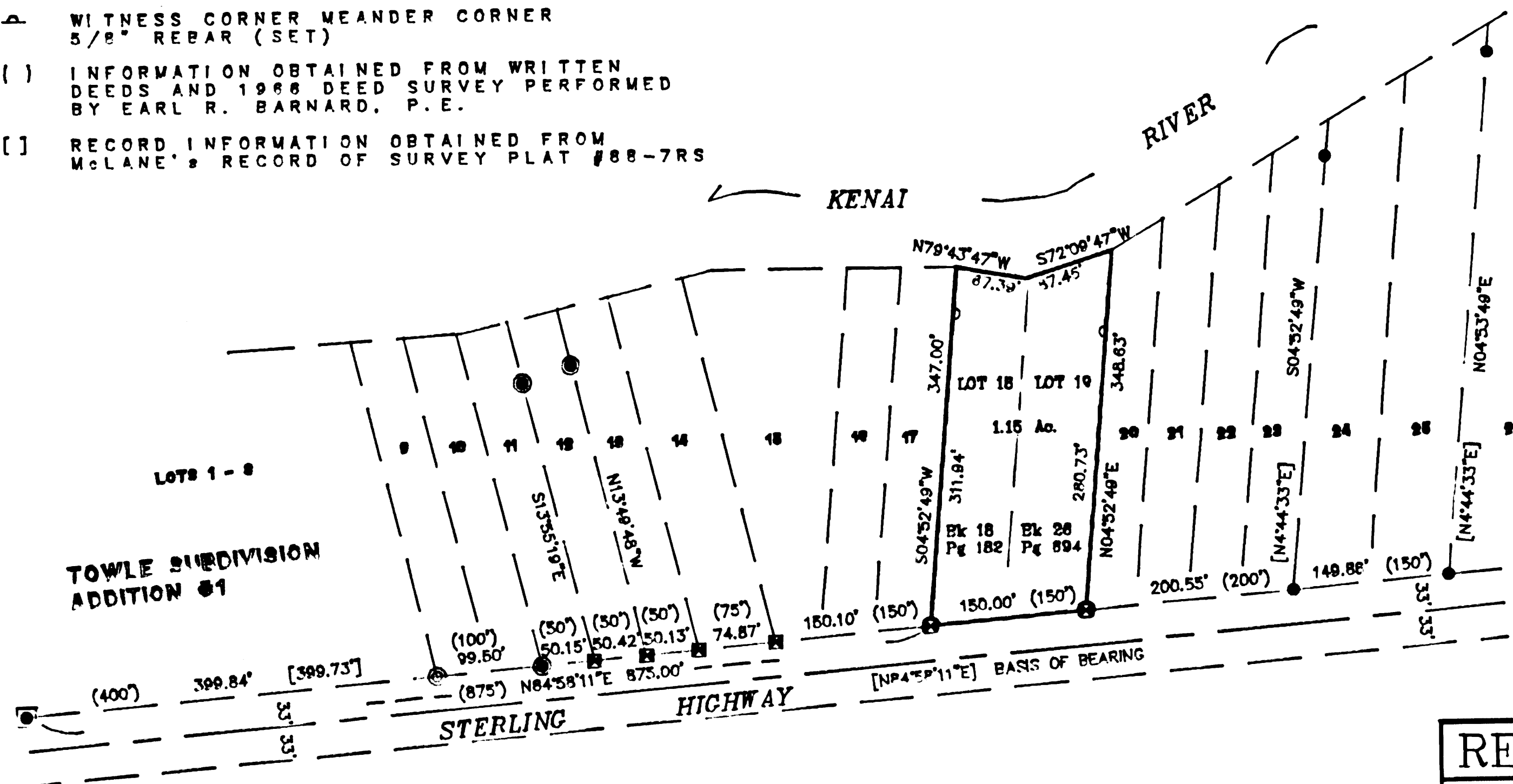
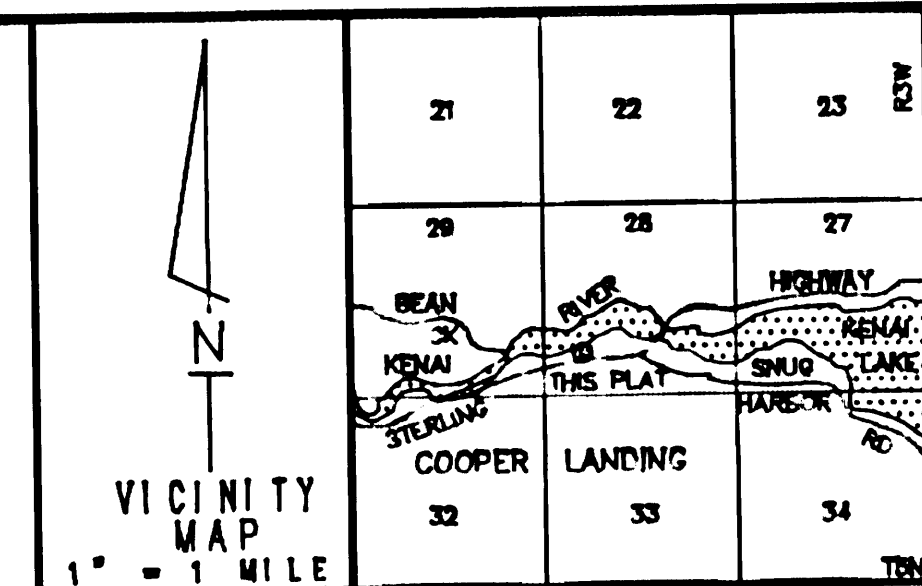
SCALE 1" = 50' DATE: JULY 09 BOOK No.: 09-04 DRAWN BY: MSM

LEGEND:

- 6"x6" WOOD POST WITH 1/2" REBAR IN CENTER FLUSH WITH SHOULDER (INITIAL POINT TOWLE SUBD. #1)
- ⊙ 1 1/2" I.D. IRON PIPE (FOUND)
- 1 1/2" O.D. IRON PIPE (FOUND)
- HUB & TACK (FOUND)
SET BY EARL R. BARNARD, P. E.
1986 DEED SURVEY OF LOTS 9-19
- ⊙ 5/8" REBAR (SET)
DRIVEN THROUGH FOUND HUB
- 1/2" REBAR (FOUND)
- △ WITNESS CORNER MEANDER CORNER
5/8" REBAR (SET)
- () INFORMATION OBTAINED FROM WRITTEN DEEDS AND 1986 DEED SURVEY PERFORMED BY EARL R. BARNARD, P. E.
- [] RECORD INFORMATION OBTAINED FROM McLANE'S RECORD OF SURVEY PLAT #88-7RS

NOTES:

- 1) THIS SURVEY DOES NOT CONSTITUTE A SUBDIVISION AS DEFINED BY A.S. 40.15.190(2). THIS IS A DEED OF RECORD SURVEY OF DEEDS RECORDED BOOK 18 PAGE 182 AND BOOK 28 PAGE 894 IN THE SEWARD RECORDING DISTRICT.
- 2) THE NORTH LOT LINES ARE THE NORMAL HIGH WATER LINE OF THE KENAI RIVER. THE NORTH LINE SHOWN IS FOR COMPUTATIONS ONLY.
- 3) THE BASIS OF BEARING IS THE CENTERLINE OF THE STERLING HIGHWAY, WHICH IS THE SAME BEARING USED ON EARL R. BARNARD'S 1986 DEED SURVEY AND McLANE'S RECORD OF SURVEY PLAT #88-7RS.



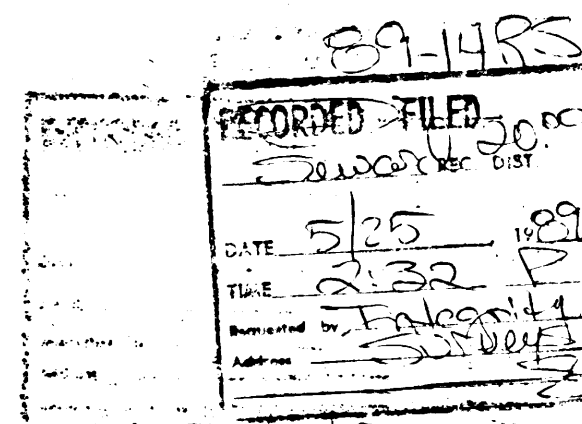
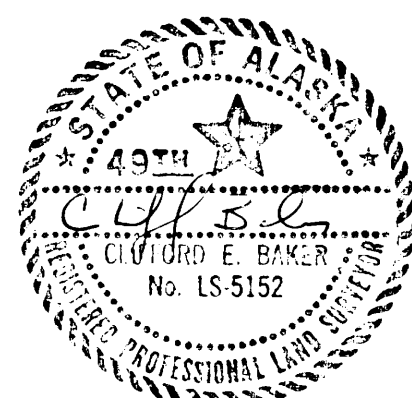
SURVEYOR'S CERTIFICATE

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

Date 5/1/89

Clifford E. Baker C. E. Baker

Registration Number LS 5152



RECORD OF SURVEY

OF

LOTS 18 & 19 TOWLE SUBDIVISION No. 1
WITHIN

HOMESTEAD ENTRY SURVEY No. 95
SECTION 28 (PROTRACTED), T5N, R3W, S. M.,
SEWARD RECORDING DISTRICT, KENAI PENINSULA
BOROUGH, ALASKA.

INTEGRITY SURVEYS

HC2 BOX 385 SOLDOTNA, ALASKA 99669
SURVEYORS 2629461 PLANNERS

DATE OF SURVEY:
MAY 4-5, 1989

DRAWN BY & DATE
CB, MAY 7, 1989

CHECKED BY: CB
FIELD BOOK: 89 - 1

SCALE: 1" = 100'
FILE #: 89 - 44
DISK #: 05 - 20

December 2, 2021

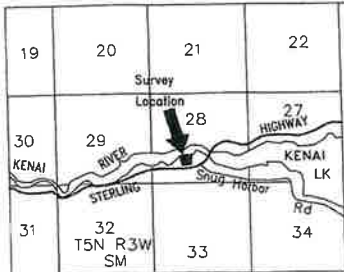
Chugach Electric Association, Inc. (Chugach)
KPB Plat Review Comments

**Subject: KPB File No. KPB 2021-153 Utility Comments
Towle Subdivision, 2021 Replat, Lots 13A & 15A**

Chugach has the following comments on the subject preliminary plat.

1. Add 5'x 90' UE along the SW'ly boundary of Lot 13A.
2. Add 20' T&E Easement centered on the existing Chugach powerline on Lot 13A.

If there are changes to the configuration or additional dedications requested in those same areas identified as utility easements, Chugach requests the opportunity to review the revised preliminary plat.



VICINITY 1" = 1 mile MAP

Towle Subdivision, 2021 Replat

Preliminary Plat

Located in H.E.S 95, in Section 28, T5N R3W, Seward Meridian, Cooper Landing, Alaska.
Seward Recording District Kenai Peninsula Borough

Prepared for

Robert S Rima Sr.
Kenai River Drifter's Lodge
P.O. Box 746
Cooper Landing, AK 99572

Prepared by

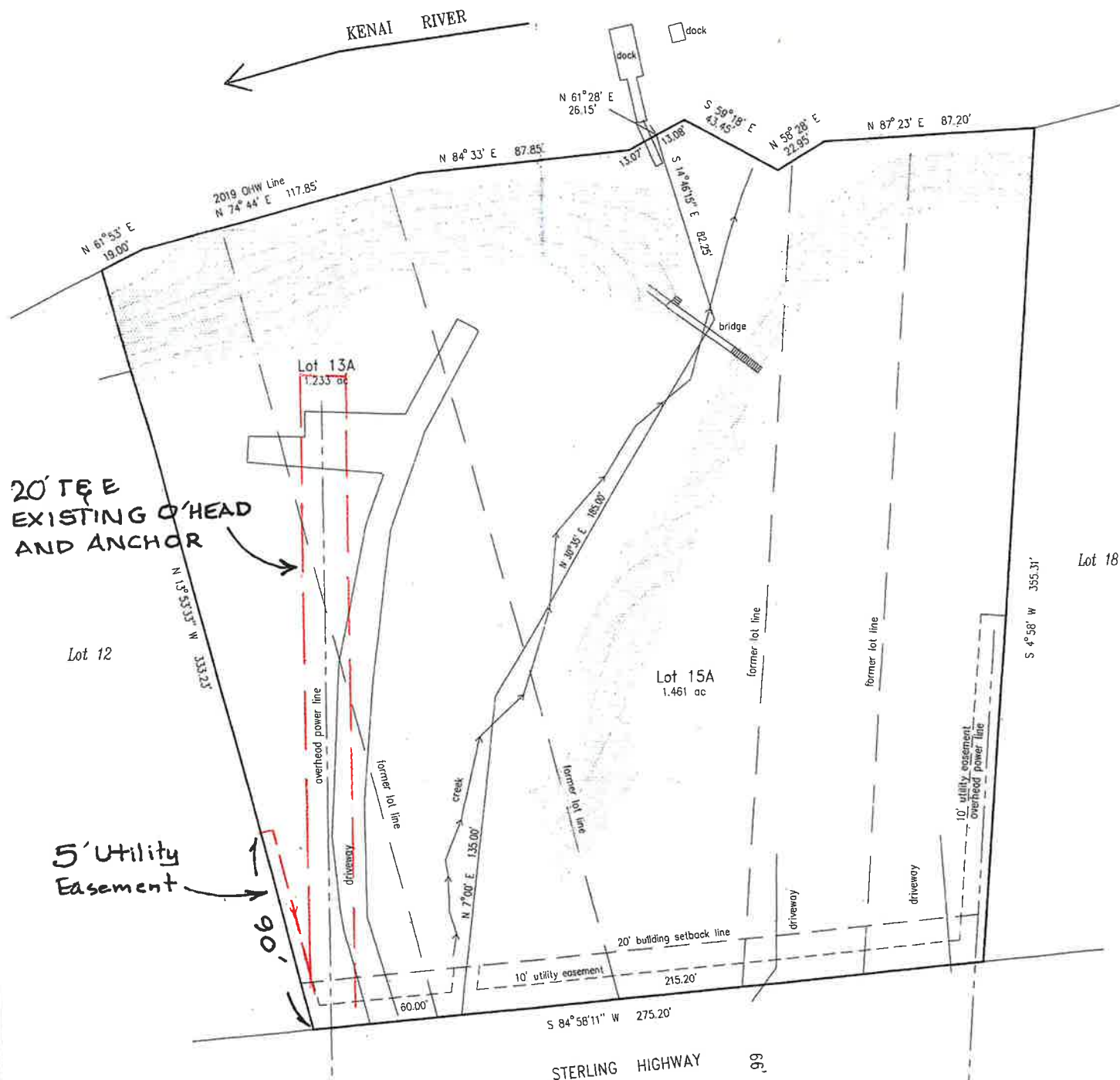
Johnson Surveying
P.O. Box 27
Clam Gulch, Ak 99588

SCALE 1" = 30' 14 October, 2021

AREA = 2.694 acres

NOTES

1. A building setback of 20' from all street ROW's is required unless a lesser standard is approved by a resolution of the appropriate planning commission. Front 10' of building setback is also a utility easement, as is the entire setback within 5' of side lot lines.
2. 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.
3. This property is subject to a reservation of an easement for highway purposes as disclosed by Public Land Order No. 601, dated August 10, 1949 and amended by Public Land Order No. 757, dated October 10, 1959; Public Land Order No. 1613, dated April 7, 1958; and Dept. of Interior Order No. 2665 dated October 16, 1951; Amendment No. 1 thereto, dated July 17, 1952, and Amendment No. 2, thereto dated September 15, 1956, filed in the Federal Register.
4. This property is subject to an easement for highway purposes granted to the Territory of Alaska (State) for highway purposes granted in SMO Records book 9 page 88.
5. Contour interval 4'. Shaded areas indicate grades over 25%. There are no wet areas on the property aside from the creek & river.



KPB 2021-153

From: [Clements, Peggy](#)
To: ["Allen Hippler"](#)
Cc: bob@drifterslodge.com
Subject: RE: <EXTERNAL-SENDER>KPB File 2021-153 no objection to replat
Date: Monday, December 6, 2021 4:01:45 PM
Attachments: [image001.png](#)

Thank you for the non-objection, I will add this to the file.

Kind regards,

Peggy Clements

Platting Technician
Planning Department
907-714-2207

KENAI PENINSULA BOROUGH
144 North Binkley Street
Soldotna, Alaska 99669



PUBLIC RECORDS LAW DISCLOSURE: This email and responses to this email may be subject to provisions of Alaska Statutes and may be made available to the public upon request.

From: Allen Hippler <Allen.Hippler@nrim.com>
Sent: Monday, December 6, 2021 3:40 PM
To: Clements, Peggy <PClements@kpb.us>
Cc: bob@drifterslodge.com
Subject: <EXTERNAL-SENDER>KPB File 2021-153 no objection to replat

CAUTION: This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Dear Ms. Clements,

Please accept this email as a letter of non-objection to proposed replat of Towle Subdivision. KPB file 2021-153

Sincerely,

Allen Hippler | Vice President - Commercial Lending Team Lead
Northrim Bank | Achieve More
t: 907-261-3335 | m: 907-830-9995
www.northrim.com | NMLS# 1202595



First National Bank
A L A S K A

December 7, 2021

KENAI PENINSULA BOROUGH
144 NORTH BINKLEY STREET
SOLDOTNA AK 99669-7520
PEGGY CLEMENTS

RE: **RIME JR, ROBERT S (TOWLE SUBDIVISION 2021 REPLAT)**
FNBA: 3339
KPB File: 2021-153

Dear Ms. Clements:

We have received your notice that a replat is pending for the above mentioned property. This letter is to inform you of our need to review and approve the replat. If you have any questions, please feel free to call me at 907-777-4372. Thank you for your assistance.

Sincerely,

Hamza Mustafa
Administrative Supervisor
Loan Servicing Division

Operations Center • 1751 Gambell Street • P.O. Box 100720 • Anchorage, AK 99510-0720
907/777-4362 • FNBAAlaska.com • Member FDIC



**COOPER LANDING ADVISORY PLANNING COMMISSION
REGULAR MEETING
LOCATION: ZOOM TELECONFERENCE
WEDNESDAY, DECEMBER 8, 2021
6:00 PM
UNAPPROVED MINUTES**

1. CALL TO ORDER - 6:00pm
2. ROLL CALL – J. Cadieux, C. Degernes, K. Recken, Y. Galbraith, L. Johnson, D. Story present. H. Harrison excused.
 - a. Sterling Highway MP 45-60 Project Team Members present
 - i. Kelly Kilpatrick, Alvin Talbert, Ryan Marlow, Sean Baski, Alice Rademacher, Jonathan Tymick
 - b. KPB Staff present
 - i. Marcus Mueller, Nancy Carver
 - c. Members of the public present
 - i. Virginia Morgan, Weston..., Jerry Fox, Phil Weber, Courtney... Michael Davidson
3. APPROVAL OF AGENDA – K. Recken moves to approve as written. L. Johnson seconds. All approve.
4. APPROVAL OF MINUTES for November 3, 2021 – Y. Galbraith moves to approve as written. K. Recken seconds. All approve.
5. CORRESPONDENCE – none.
6. PUBLIC COMMENT/PRESENTATION WITHOUT PREVIOUS NOTICE –
 - a. Phil Weber commented that it is interesting that the mantra of the bypass project was to “keep it away from the river” and that it seems to have changed now.
7. REPORT FROM BOROUGH
 - a. M. Mueller – Assembly passed a revision of the Planning Commission seats to mirror the 14 districts of the KPB Assembly.
8. OLD BUSINESS - none
9. NEW BUSINESS
 - a. Sterling Hwy MP 45-60 Project Phases 3 & 4 85% Plan review with S Baski and J Tymick from ADOT&PF

8. J. Cadieux said that she appreciates the careful approach since this is a very important piece of land that will have a large impact on the community.
 - a. M. Mueller shared some of the types of issues that have been discussed so far within the borough's planning group.
 - i. Local option zoning.
 - ii. Whether AirBnBs could be an issue.
 - iii. Wildfire scenarios.
 - iv. Gravel
 - v. Waste handling
 - vi. Campgrounds
 - vii. Separation from highway noise.
 - viii. Recreation corridors
 - ix. Watersheds and hydrology
 - x. Greenspace
 - xi. Subdivisions that integrate more land uses.
 - xii. Walkable community
 - xiii. How to integrate the area into the community without making a "Cooper Landing West"

10. PLAT REVIEW

- a. Towle Subdivision 2021 Replat 2021-153
 - i. K. Recken mentioned that the right-of-way should be clearly demarcated.
 - ii. C. Degernes said that the property boundary is outside of the right-of-way.
 - iii. J Cadieux indicated that within the staff report there are very important community values incorporated such as Anadromous Waters protection, Flood Plain mapping, and waste disposal citations.
 - iv. C. Degernes moves to recommend grant approval of the preliminary plat subject to the staff recommendations outlined in the KPB staff report. L. Johnson seconds. All approve.

11. INFORMATION and ANNOUNCEMENTS

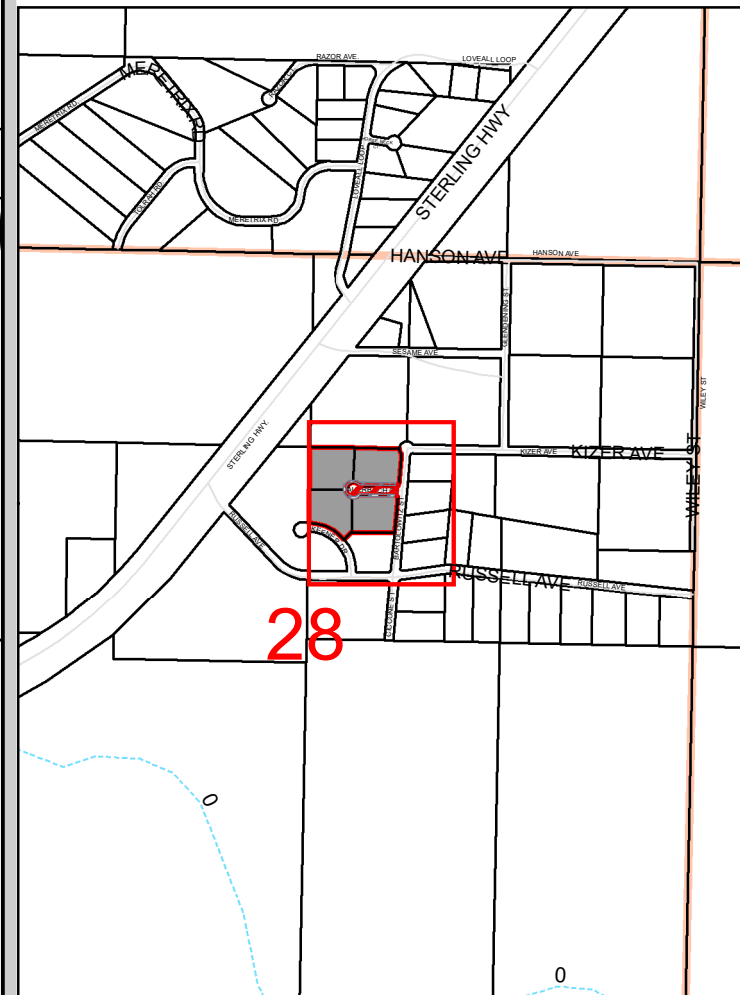
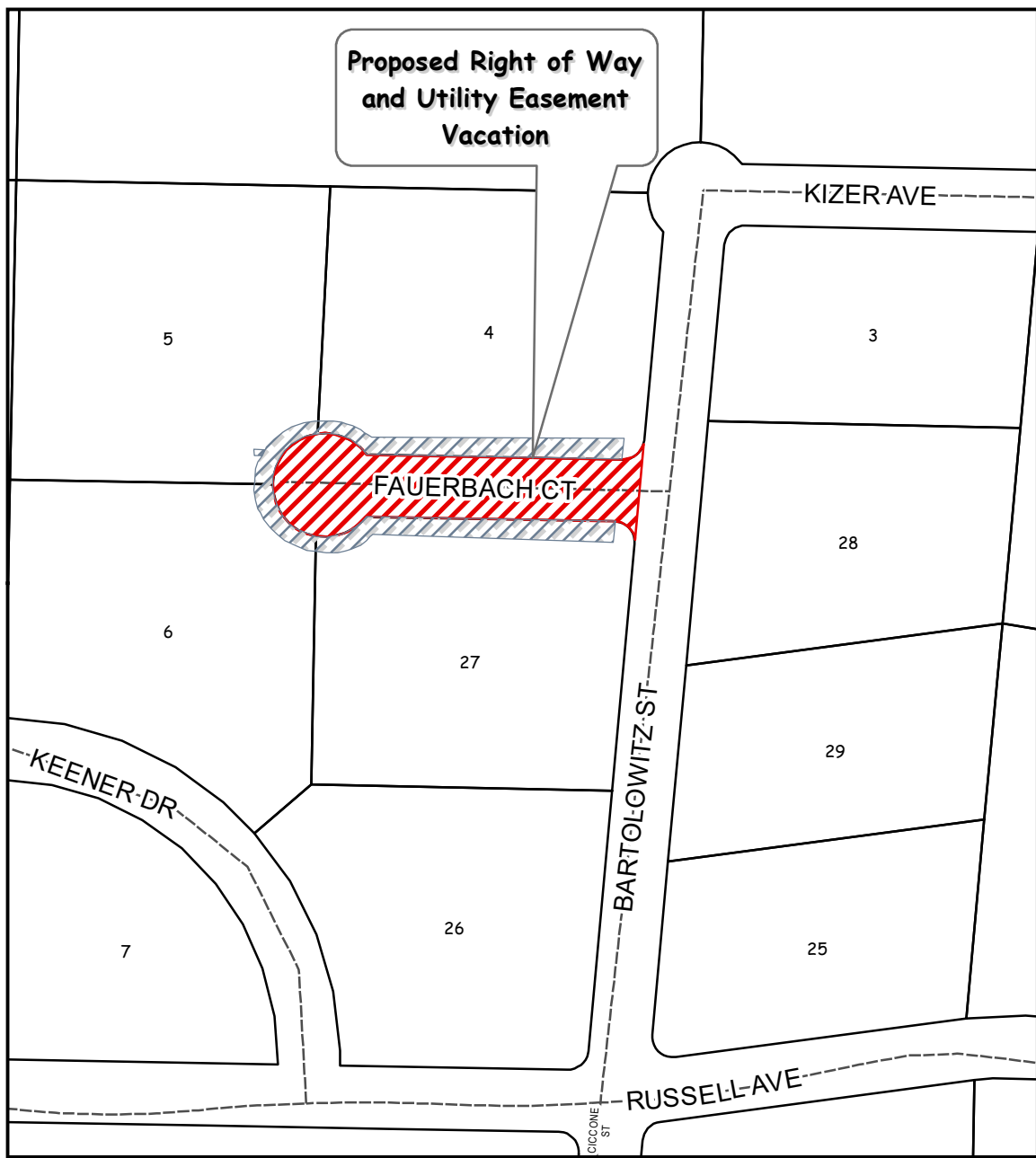
- a. Congratulations to J. Cadieux for winning the Cooper Landing Woodpile Contest.
- b. D. Story said that snow trail grooming is starting this weekend.

12. COMMISSIONER'S COMMENTS none offered.

13. ADJOURNMENT – L. Johnson moves to adjourn. Y. Galbraith seconds. All approve. 7:55pm

For more information or to submit comments please contact:

David Story, Secretary Treasurer or Janette Cadieux, Chair, P.O. Box 694, Cooper Landing, 99572 CooperLandingAPC@gmail.com



0 625 1,250 2,500 Feet



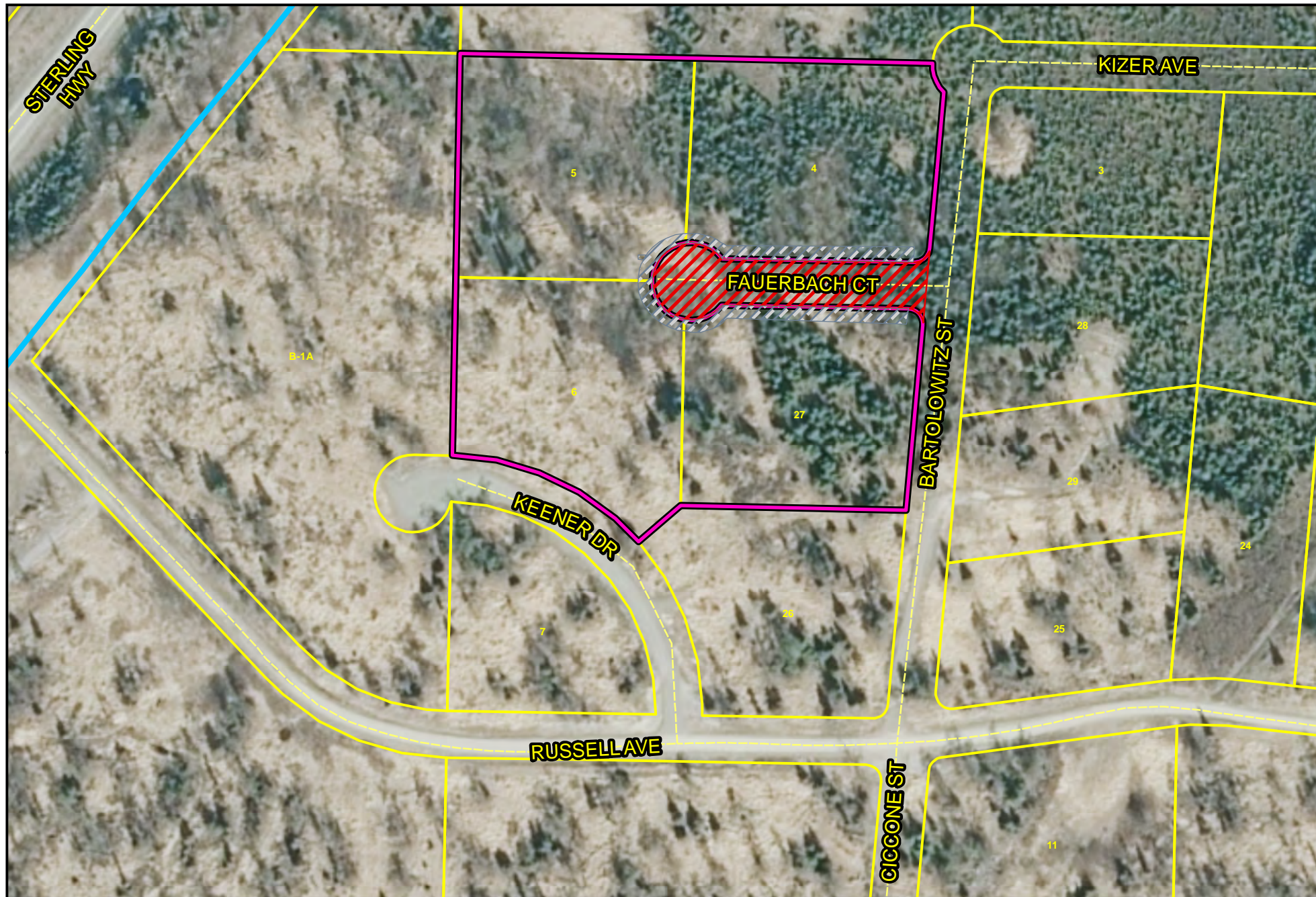
KPB 2021-150V
S28 T02N R12W
Clam Gulch

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.

0 125 250 500'

PClements, KPB 2021-150V

Date: 11/16/2021



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.

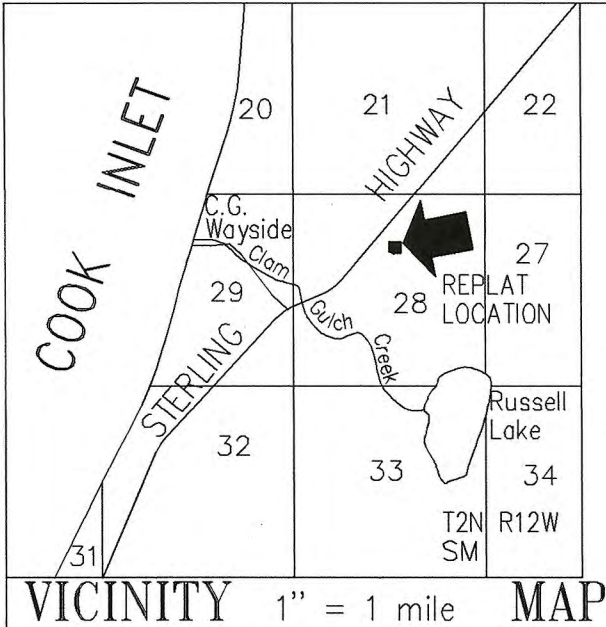
0 50 100 200'

Aerial View



- Anchor Easement
- Utility Easement Vacation
- Right of Way Vacation

PClements, KPB 2021-150V
Imagery FixedWing 2012-13



Clam Gulch Heights 2021 Addition

Preliminary Plat

A replat of Lots 4, 5, 6, & 27 Clam Gulch Heights, Glendening 1979 Subd. of Tracts 12,13, 14, 15, 16, 17, 18 (KRD 81-135), including a vacation of Fauerbach Ct & associated utility easements. Located in the NE1/4 Section 28, T2N R12W, SM, Clam Gulch, Alaska. Kenai Recording District Kenai Peninsula Borough

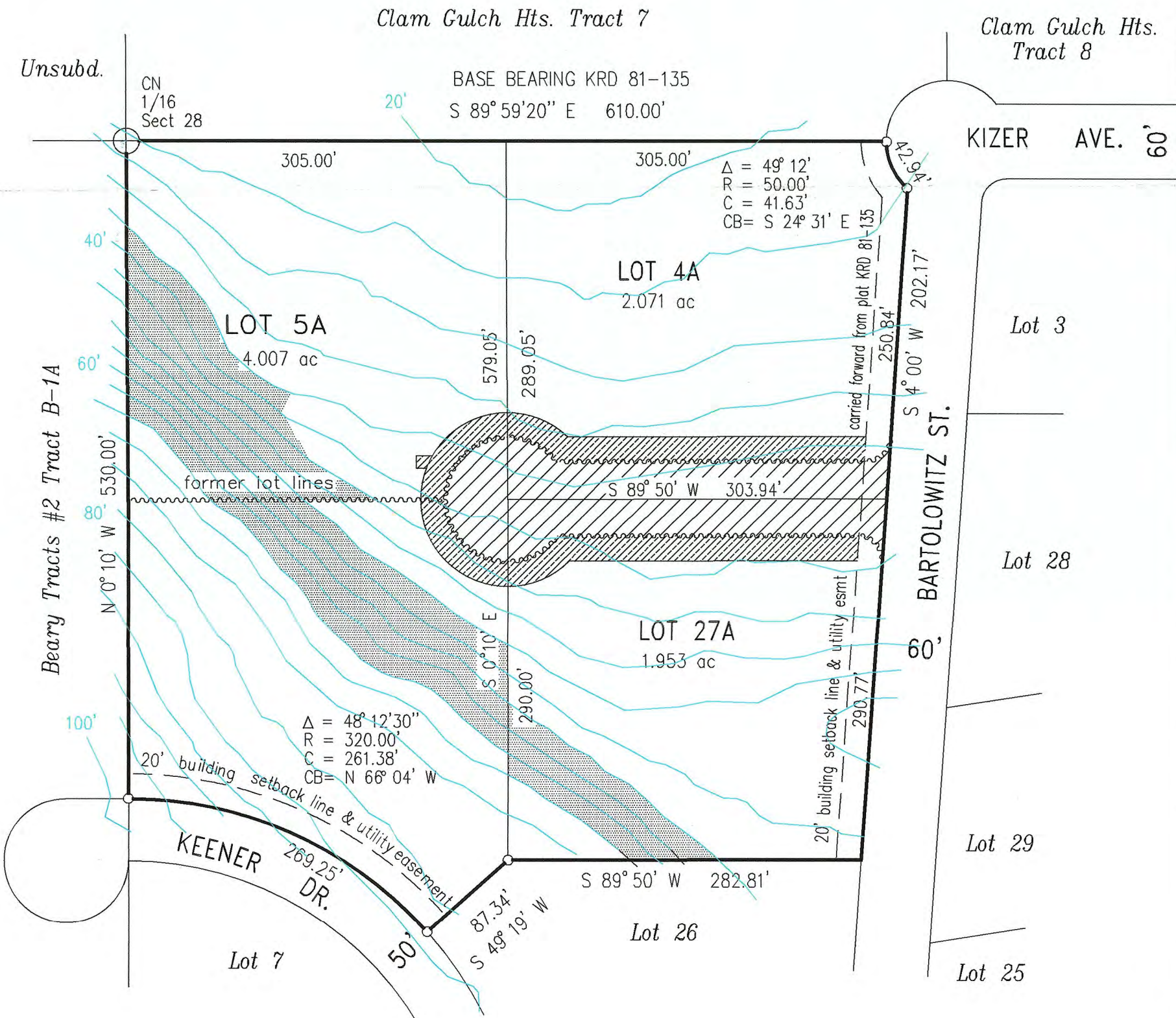
Prepared for		Prepared by
James E Glendening 694 Sycamore Cir. Kenai, AK 99611	Daniel John Sims 2130 9th St W Columbia Falls, MT 59912	Johnson Surveying P.O. Box 27 Clam Gulch, Ak 99568 (907) 262-5772

SCALE 1" = 100' AREA = 5.764 acres
3 August, 2021

- indicates Fauerbach Court ROW being vacated.
- indicates utility & anchor easement being vacated.

NOTES

1. A building setback of 20' from all street ROWs is required unless a lesser standard is approved by a resolution of the appropriate planning commission. Building setback is also a utility easement as granted by plat KRD 85-135.
2. No permanent structures shall be constructed or placed within a utility easement that would interfere with the ability of a utility to use the easement.
3. Contour interval 4'. Shaded areas are grades over 25%. there are no wet ares on the property.



KPB 2021-150V

AGENDA ITEM E. NEW BUSINESS

**ITEM 3 - FAUERBACH COURT RIGHT OF WAY VACATION AND
ASSOCIATED UTILITY EASEMENTS AND ANCHOR EASEMENT**

KPB File No.	2021-150V
Planning Commission Meeting:	December 13, 2021
Applicant / Owner:	James E. Glendening of Kenai, Alaska and Daniel John Sims of Columbia Falls, Montana
Surveyor:	Jerry Johnson / Johnson Surveying
General Location:	Russell Avenue, Keener Drive, and Bartolowitz Street / Clam Gulch
Legal Description:	Lots 4, 5, 6 and 27, Clam Gulch Heights Glendening 1979 Subdivision Plat No 81-135

STAFF REPORT

Specific Request / Purpose as stated in the petition: Lots are being combined with an associated replat, eliminating the need for this ROW.

Notification: Public notice appeared in the December 2, 2021 issue of the Peninsula Clarion as a separate ad. The public hearing notice was published in the December 9, 2021 issue of the Peninsula Clarion as part of the Commission's tentative agenda.

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

Library of Clam Gulch

Post Office of Clam Gulch

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

Seventeen 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
Central Emergency Services

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

Legal Access (existing and proposed): Fauerbach Court a 60 foot wide and 350 feet in length right of way that ends in a cul-de-sac. Fauerbach Court is unconstructed and not maintained by KPB Roads Department. It is located off of Bartolowitz Street, a 60 foot wide right of way that is only partially constructed and not maintained by the borough.

A replat has been submitted that will reconfigure four lots into three. Proposed Lot 4A and 27A will have access via Bartolowitz Street. Lots 5 and 6 will be combined into proposed Lot 5A and will have access from Keener Drive. Keener Drive is a 50 foot wide borough maintained right of way. Both Keener Drive and Bartolowitz Street are located off Russell Avenue, a 60 foot wide borough maintained right of way located near mile 117 of the Sterling Highway.

No new dedications are proposed.

The block is irregular in design. The block does close but the block length exceeds code requirements. Sterling Highway, Russell Avenue, Bartolowitz Street, Kizer Avenue, Glendening Street, and Sesame Avenue define the block. As the right of way proposed for vacation is a cul-de-sac, it does not improve block lengths or help provide a closed block. The vacation will not affect the block requirements.

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

Site Investigation: The right of way and lots adjoining this right of way are not affected by low wet areas. The right of way is free of any steep slopes. There are steep slopes that will divide the newly proposed Lot 5A and access to the northern portion may be more difficult without the right of way. Vacating the right of way may reduce the ability or design options for Lot 5A to be further subdivided.

River Center Review	<p>A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments</p> <p>B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments</p> <p>C. State Parks Reviewer: Russell, Pam Comments: No Comments</p>
---------------------	---

Staff Analysis: The subdivision is located in the Clam Gulch area and is not within an advisory planning commission boundary. It is located near mile 117 of the Sterling Highway.

The subject parcels and right of way were originally subdivided by Clam Gulch Heights, Plat KN 72-61. That plat created aliquot description lots. Clam Gulch Heights Glendening 1979 Subdivision, Plat KN 81-135, further subdivided the parcels and dedicated Shady Court. Resolution SN 2005-07 renamed Shady Court to Fauerbach Court.

Fauerbach Court provides the only legal access to Lot 5 and provides a secondary access to Lots 4, 6, and 27. A replat, Clam Gulch Heights 2021 Addition KPB File 2021-150, has been submitted. The proposed plat will combine Lots 5 and 6 into one lot with access from Keener Drive. Lot 4 and Lot 27 will continue to have access via Bartolowitz Street.

A 20 foot building setback was put in place adjoining Fauerbach Court. The parent plat granted the full setback as a utility easement. A 10 foot by 30 foot anchor easement was also granted within Lot 5 along the cul-de-sac, which extends beyond the granted easement by 10 feet. The proposal includes vacating the associated utility easement and the anchor easement. A 20 foot utility easement will be granted along the new lot line boundaries abutting Bartolowitz Street. Review has been sent to the utility companies for comment and staff recommends that requested easements be worked out with the utility companies and be granted.

20.65.050 – Action on vacation application

- D. The planning commission shall consider the merits of each vacation request and in all cases the planning commission shall deem the area being vacated to be of value to the public. It shall be incumbent upon the applicant to show that the area proposed for vacation is no longer practical for the uses or purposes authorized, or that other provisions have been made which are more beneficial to the public. In evaluating the merits of the proposed vacation, the planning commission shall consider whether:
1. The right-of-way or public easement to be vacated is being used;
Staff comments: The right of way is currently not constructed and does not appear to be used.
 2. A road is impossible or impractical to construct, and alternative access has been provided;
Staff comments: The road is relatively flat and contains no wet lands. Alternative access is provided by previously dedicated right of ways.
 3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;
Staff comments: Additional right of ways are in place, as well as utility easements, to provide adequate access and utilities to all surrounding parcels.
 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: This right of way does not provide access to any water body or area with public interest.
 5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;
Staff comments: The proposed vacation will not limit opportunities for interconnectivity with adjacent parcels and adequate right of ways and utility easements have been dedicated.
 6. Other public access, other than general road use, exist or are feasible for the right-of-way;
Staff comments: Other public access does not appear to be needed as the cul-de-sac provides access to private property.
 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: Utility easements will be provided that exceed requirements but follows the parent plat dedications. Any requested easements from utility providers shall be worked out with the land owners before final plat approval.
 8. Any other factors that are relevant to the vacation application or the area proposed to be vacated.
Staff comments: The right of way provided access to four lots. The reconfiguration proposed will allow all lots to have adequate access.

If approved, the plat Clam Gulch Heights 2021 Addition will finalize the proposed right of way vacations. The Planning Commission is scheduled to review the plat on December 13, 2021. If the vacation is approved, the consent by the Kenai Peninsula Borough Assembly is required. The Assembly must hear the vacation within thirty days of the Planning Commission decision. The Assembly should hear the vacation at their January 4, 2022 meeting.

KPB department / agency review:

Planner	
Code Compliance	Reviewer: Ogren, Eric

	Comments: No comments
Addressing	<p>Reviewer: Haws, Derek Affected Addresses: 55450 FAUERBACH CT 17635 BARTOLOWITZ ST 17610 KEENER DR 17615 BARTOLOWITZ ST</p> <p>Existing Street Names are Correct: Yes List of Correct Street Names: FAUERBACH CT BARTOLOWITZ ST KEENER DR KIZER AVE</p> <p>Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied:</p> <p>Comments: 55450 FAUERBACH CT will be deleted. 17635 BARTOLOWITZ ST will remain with lot 4A. 17610 KEENER DR will remain with lot 5A. 17615 BARTOLOWITZ ST will remain with lot 27A.</p>
Assessing	<p>Reviewer: Wilcox, Adeena Comments: No comment</p>

Utility provider review:

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

RECOMMENDATION:

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

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

KPB 20.65.050 – Action on vacation application

H. A planning commission decision to approve a vacation is not effective without the consent of the city council, if the vacated area to be vacated is within a city, or by the assembly in all other cases. The council or assembly shall have 30 days from the date of the planning commission approval to either consent to or veto the vacation. Notice of veto of the vacation shall be immediately given to the planning commission. Failure to act on the vacation within 30 days shall be considered to be consent to the

vacation. This provision does not apply to alterations of utility easements under KPB 20.65.070 which do not require the consent of the assembly or city council unless city code specifically provides otherwise.

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

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

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

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

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

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

END OF STAFF REPORT

CLAM GULCH HEIGHTS

GLENDENING 1979 SUBDIVISION OF TRACTS 12, 13, 14, 15, 16, 17, 18

LOCATED IN S1/2 NE1/4 SEC. 28, T2N R12W S.M. CLAM GULCH, ALASKA 99568
SCALE 1" = 200' AREA = 70.058 AC. DEC. 26, 1980

BY: JAMES E. AND BARBARA E. GLENDENING BOX 38 KASLOF, AK. 99568

PLAT APPROVAL

This plat was approved by the KENAI PENINSULA BOROUGH PLANNING COMMISSION at the meeting of AUGUST 6 19 79
KENAI PENINSULA BOROUGH By [Signature] ADMINISTRATIVE OFFICER

CERTIFICATE OF OWNERSHIP AND DEDICATION

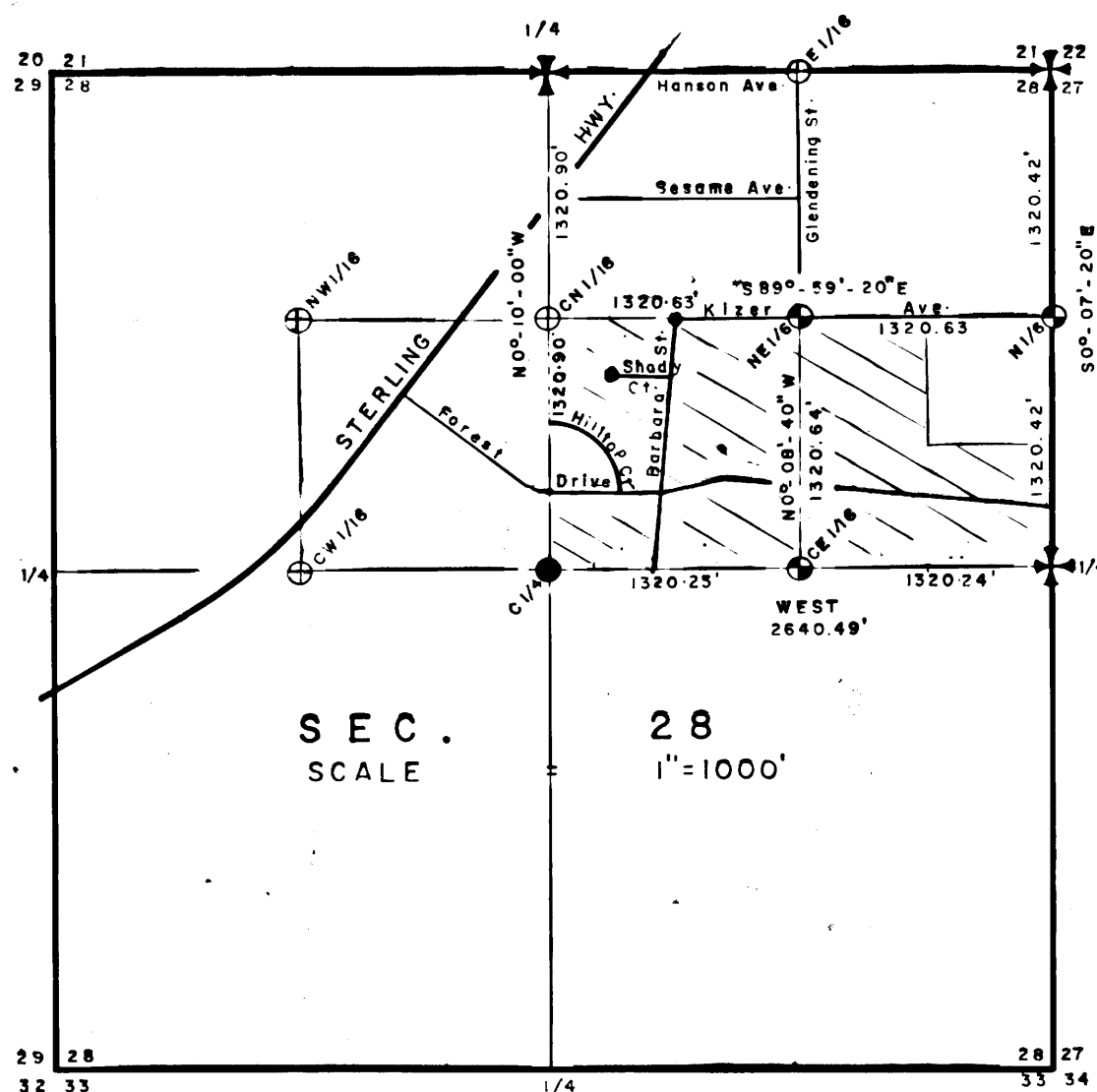
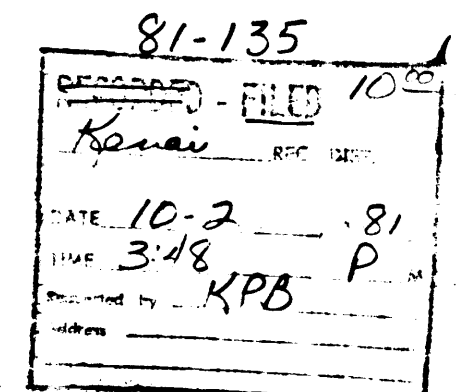
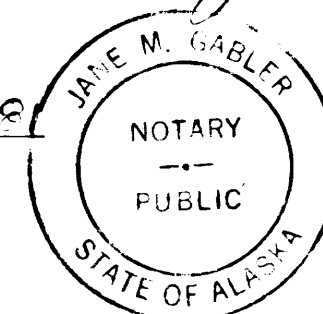
We hereby certify that we are the owners of the property shown and described hereon, and that we hereby adopt this plan of subdivision, and dedicate all right of ways to public use, and grant all easements to the use shown.

[Signature]
JAMES E. GLENDENING

[Signature]
BARBARA E. GLENDENING

NOTARY'S ACKNOWLEDGEMENT

Subscribed and sworn to before me this 4th day of September 19 81
[Signature] Sept. 13, 1981
NOTARY PUBLIC FOR ALASKA, for James E. and Barbara E. Glendenning My commission expires

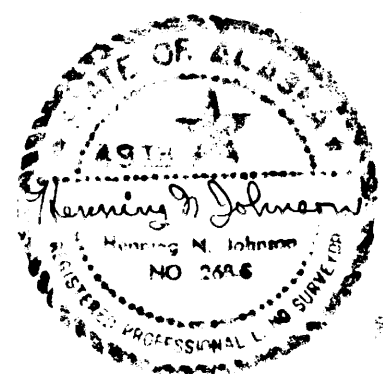
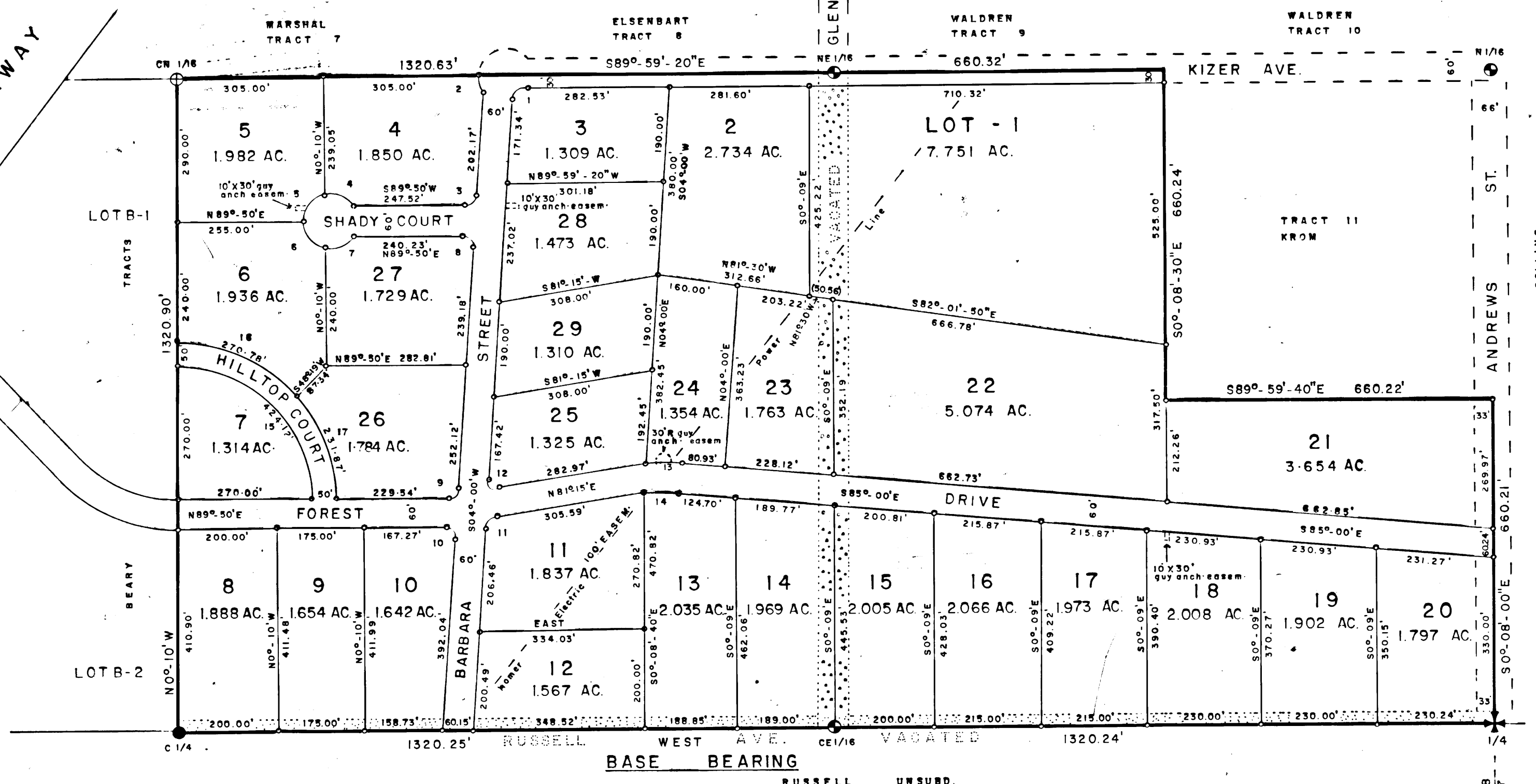


NOTE: BUILDING SETBACKS - A setback of 20' is required from all street right of ways unless a lesser standard is approved by resolution of appropriate planning commission.
UTILITY EASEMENTS - 20' building setback line is to be limit of utilities easements.

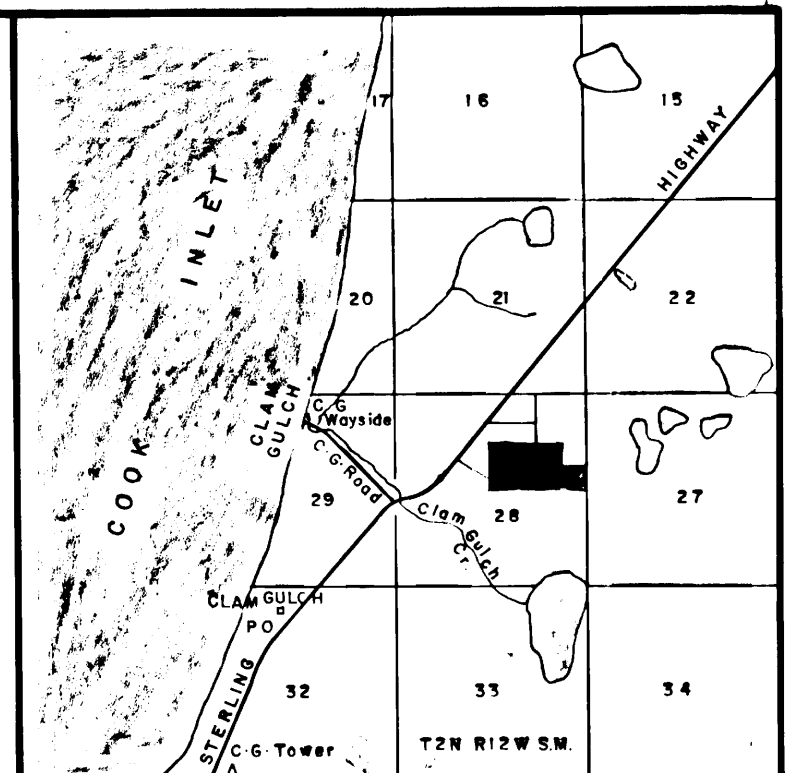
LEGEND

- ⊕ - Brass cap monument set by 268-S
- ⊕ - 1978 brass cap mon. by 268-S found
- - brass cap by Claud Hoffman, found
- ⊕ - 1919 brass cap by G.L.O., found
- - 1/2" x 2" rerod set.

CURVES			
1	A=86°-00'-40"	2	A=49°-12'-09"
R=20.00'	R=50.00'	C=27.28'	C=41.63'
T=18.65'	T=22.89'	L=30.02'	L=42.94'
CB=N47°-00'-20"E	BC=S2°-54'-25"E		
3	A=85°-50'	4	A=53°-08'
R=20.00'	R=50.00'	C=27.24'	C=44.72'
T=18.60'	T=25.00'	L=29.96'	L=46.37'
CB=S46°-55'W	CB=N63°-36'-06"W		
5	A=90°	6	A=90°
R=50.00'	R=50.00'	C=70.71'	C=70.71'
T=50.00'	T=50.00'	L=78.54'	L=78.54'
CB=S44°-50'W	CB=S45°-10'E		
7	A=53°-08'	8	A=94°-02'
R=20.00'	R=20.00'	C=29.29'	C=29.29'
T=25.00'	T=21.51'	L=46.37'	L=32.87'
CB=N63°-16'-06"E	CB=S43°-01'E		
9	A=85°-50'	10	A=94°-10'
R=20.00'	R=20.00'	C=27.24'	C=29.29'
T=18.60'	T=21.51'	L=29.96'	L=32.87'
CB=S46°-55'W	CB=S45°-05'E		
11	A=77°-15'	12	A=102°-45'
R=20.00'	R=20.00'	C=24.97'	C=31.25'
T=15.98'	T=25.03'	L=26.97'	L=35.87'
CB=N42°-37'-30"E	CB=N47°-22'-30"W		
13	A=13°-45'	14	A=13°-45'
R=270.00'	R=270.00'	C=64.64'	C=64.64'
T=39.79'	T=39.79'	L=64.80'	L=64.80'
CB=S88°-07'-30"W	CB=N88°-07'-30"E		
15	A=90°-00'	16	A=48°-29'
R=270.00'	R=270.00'	C=262.77'	C=262.77'
T=144.00'	T=144.00'	L=270.78'	L=270.78'
CB=N65°-55'-29"W	CB=N20°-55'-31"W		
17	A=41°-31'		
R=320.00'	R=320.00'	C=228.83'	C=228.83'
T=121.29'	T=121.29'	L=231.87'	L=231.87'

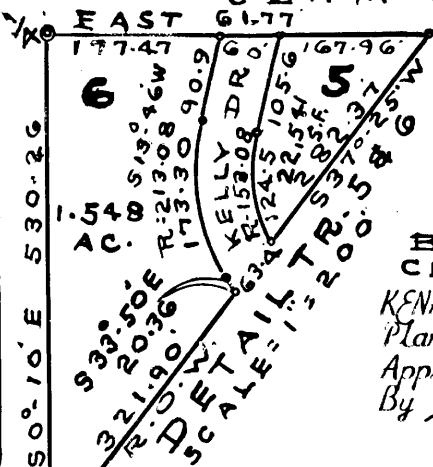
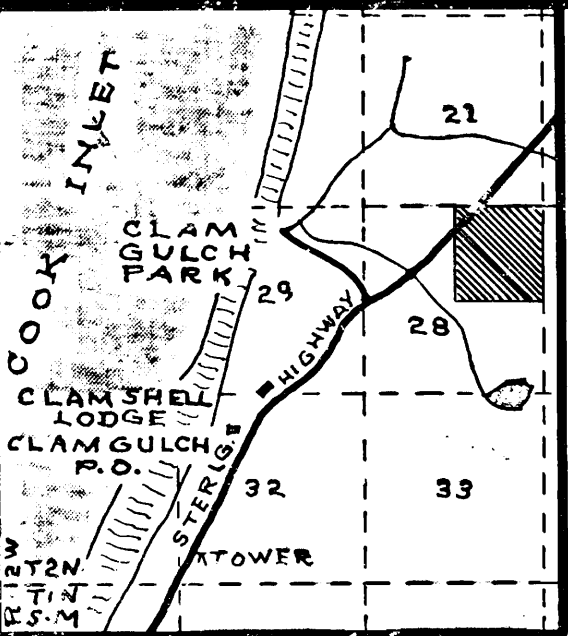


VICINITY SCALE 1" = 1 MILE MAP



CLAM GULCH HEIGHTS

IN NE 1/4 SEC. 28, T2N. R12W. S.M.;
CLAM GULCH, ALASKA.



NOTE:

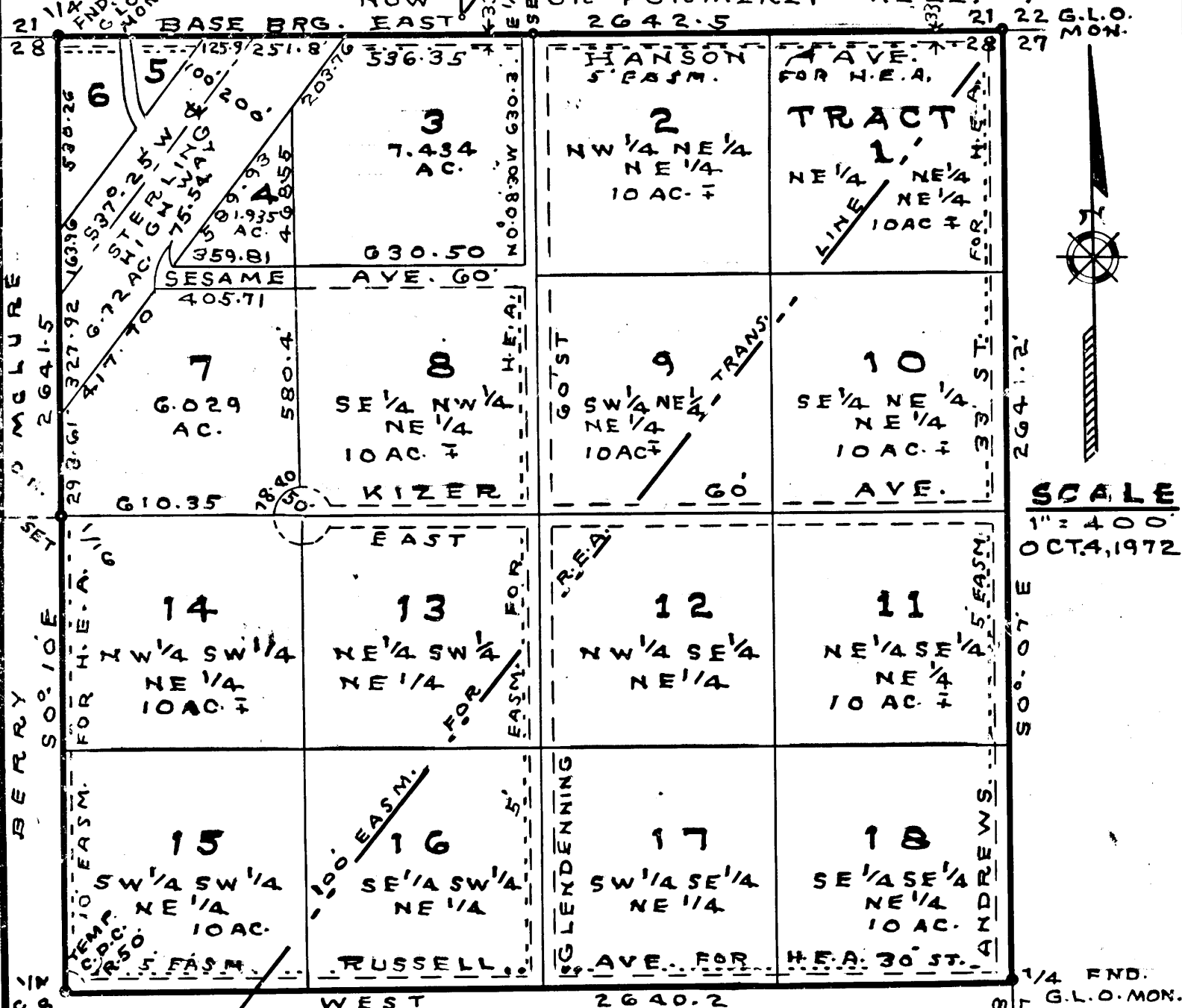
TRACTS DESC. BY
ALIQUOT PARTS INCL.
STREET AREAS.

0-IND. BRASS CAP MON.
0-IND. 1/2" X 24" REBAR.

BY: JAMES & DELLA KIZER
CLAM GULCH, ALASKA.

KENAI PENINSULA BOROUGH
Planning Commission
Approved OCTOBER 30, 1972
By *Stanley F. Thompson*

VICINITY MAP 1"=1M



SCALE
1"=400'
OCT 4, 1972

CERTIFICATE OF OWNERSHIP AND DEDICATION

We certify that we are the owners of the property shown and described hereon and that we hereby adopt this plan of subdivision and dedicate all streets to public use and to the use of public utilities.

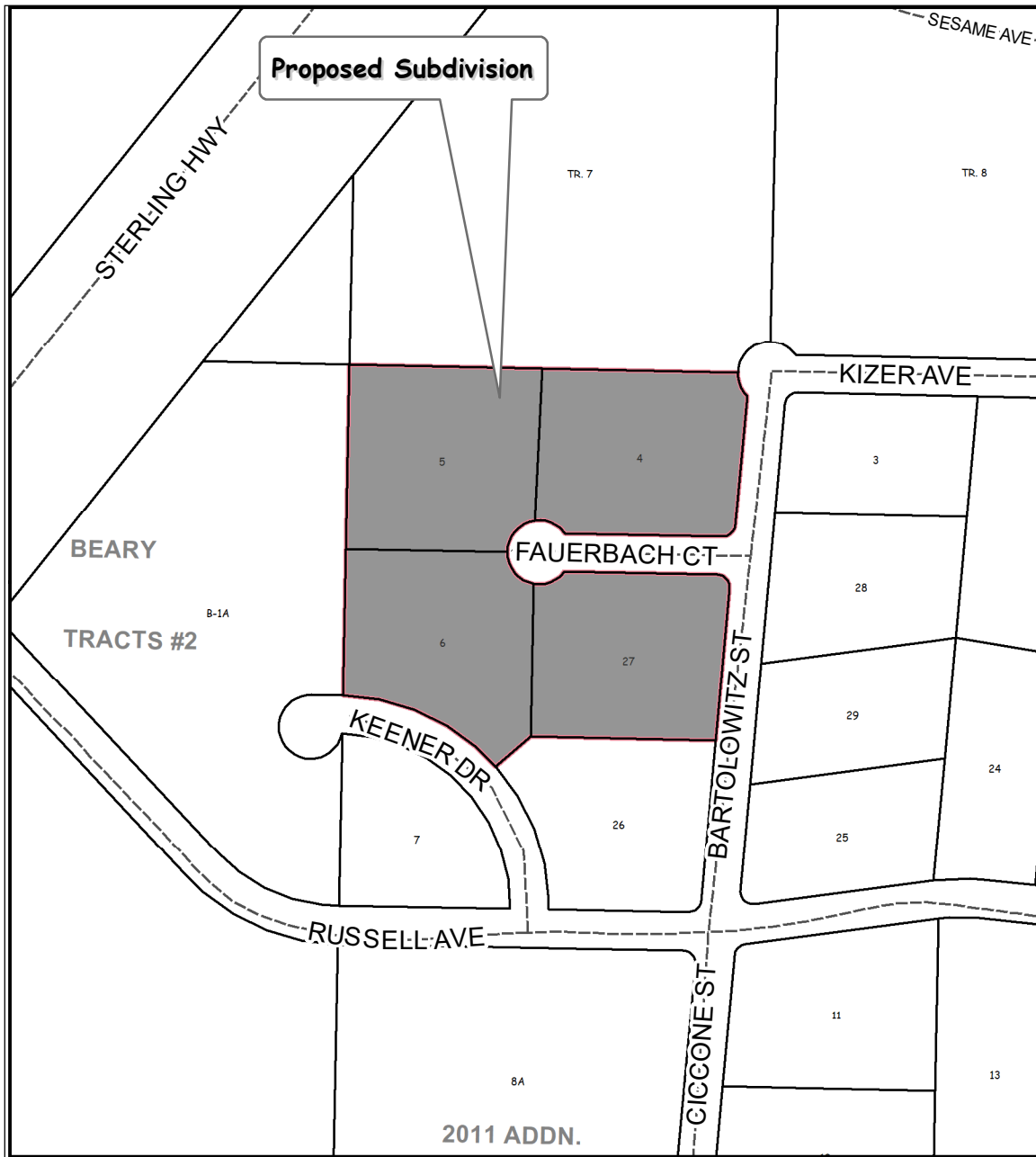
Owner *James & Della Kizer* 72-61



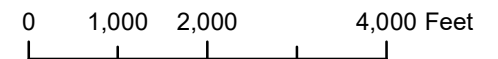
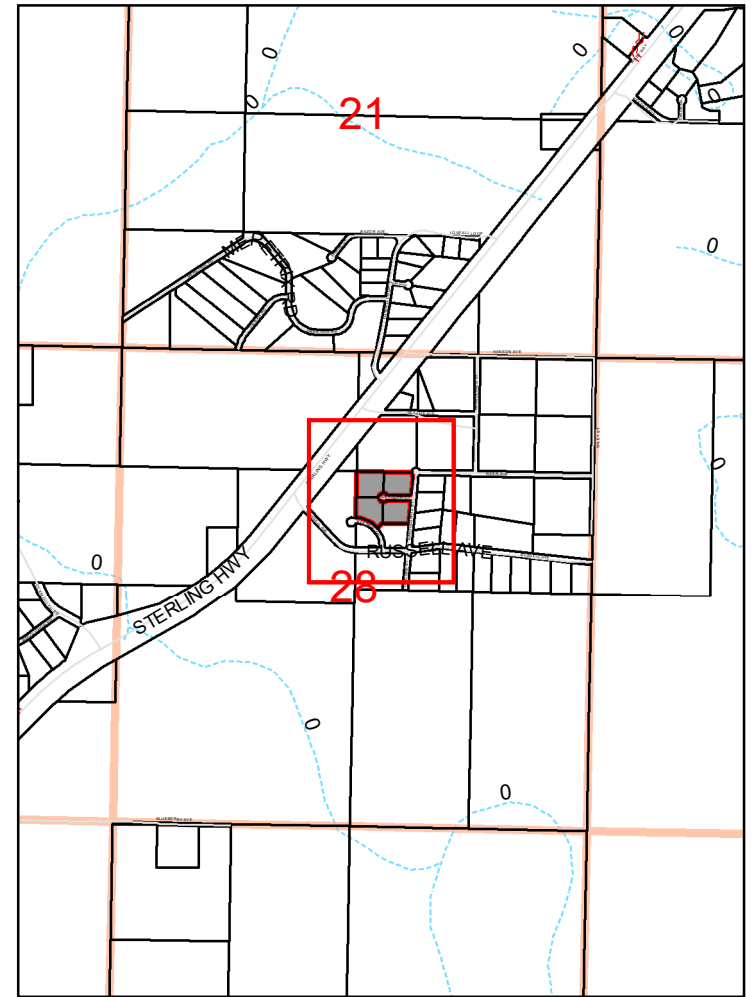
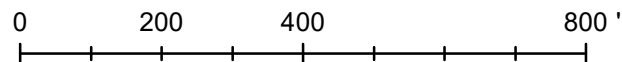
STATE OF ALASKA
NOTARY'S ACKNOWLEDGEMENT
Subscribed and sworn before me this 1 day of
My commission expires 12-12-75
Patricia Brown
NOTARY PUBLIC FOR ALASKA

RECORDED - FILED
Kenai REC. DIST.
No. 1, 1972.
DATE 11/3 1972
TIME 4:09 A.M.
Recorded by KPB
Address 491288

Clam Gulch Heights
T 2 N, R 12 W, S.M.



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.



KPB 2021-150
S28 T02N R12W
Clam Gulch





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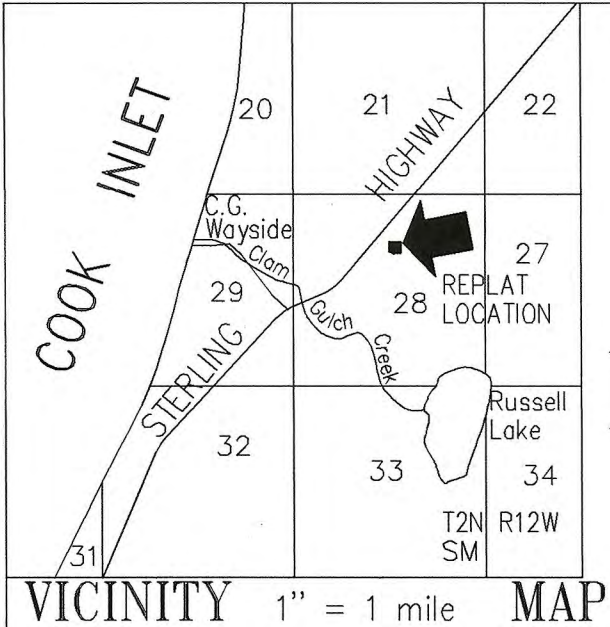
0 75 150 300'

Aerial View



 PRELIMINARY PLAT
 KPBVector.DBO.Pipelines

PClements, KPB 2021-150
Imagery FixedWing 2012-13



Clam Gulch Heights 2021 Addition

Preliminary Plat

A replat of Lots 4, 5, 6, & 27 Clam Gulch Heights, Glendening 1979 Subd. of Tracts 12,13, 14, 15, 16, 17, 18 (KRD 81-135), including a vacation of Fauerbach Ct & associated utility easements. Located in the NE1/4 Section 28, T2N R12W, SM, Clam Gulch, Alaska. Kenai Recording District Kenai Peninsula Borough

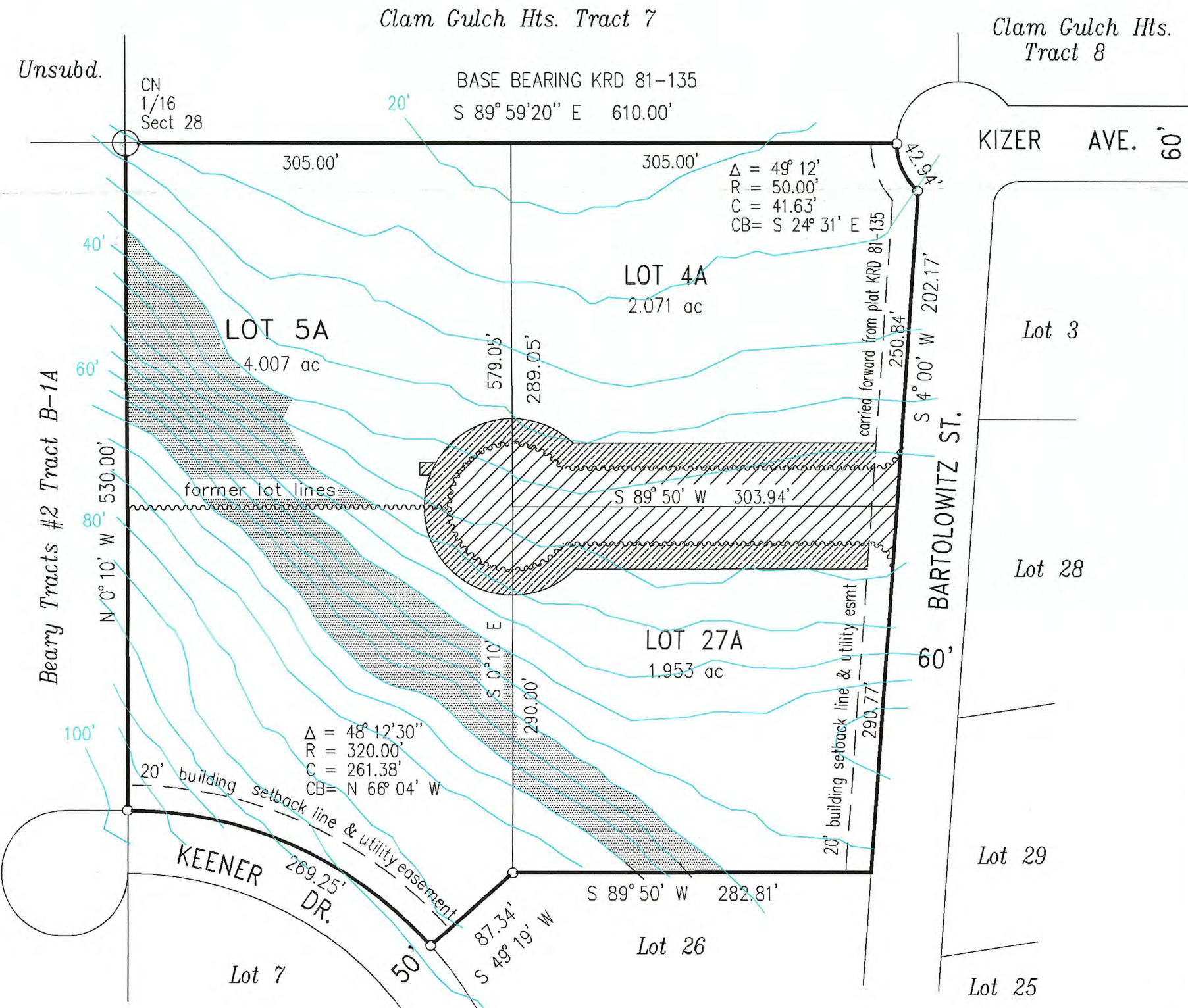
Prepared for		Prepared by
James E Glendening	Daniel John Sims	Johnson Surveying
694 Sycamore Cir.	2130 9th St W	P.O. Box 27
Kenai, AK 99611	Columbia Falls,	Clam Gulch, Ak 99568
	MT 59912	(907) 262-5772

SCALE 1" = 100' AREA = 5.764 acres
3 August, 2021

- indicates Fauerbach Court ROW being vacated.
- indicates utility & anchor easement being vacated.

NOTES

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- 2.No permanent structures shall be constructed or placed within a utility easement that would interfere with the ability of a utility to use the easement.
- 3.Contour interval 4'. Shaded areas are grades over 25%. there are no wet ares on the property.



KPB 2021-150

AGENDA ITEM E. NEW BUSINESS

ITEM 4 - CLAM GULCH HEIGHTS 2021 ADDITION

KPB File No.	2021-150
Plat Committee Meeting:	December 13, 2021
Applicant / Owner:	James E. Glendening of Kenai, Alaska Daniel John Sims of Columbia Falls, Montana
Surveyor:	Jerry Johnson / Johnson Surveying
General Location:	Keener Drive, Bartolowitz Street and Fauerbach Court, Clam Gulch

Parent Parcel No.:	137-370-04, 137-370-05, 137-370-06, 137-370-07
Legal Description:	Lots 4, 5, 6 and 27, Clam Gulch Heights Glendening 1979 Subdivision Plat No 81-135
Assessing Use:	Residential
Zoning:	Rural Unrestricted
Water / Wastewater	On Site

STAFF REPORT

Specific Request / Scope of Subdivision: The proposed plat creates three lots from four lots and finalizes a right of way vacation of Fauerbach Court including the associated utility easements.

Location and Legal Access (existing and proposed): The subdivision is located in the Clam Gulch area, near mile 117 of the Sterling Highway. The four parent lots have access from Fauerbach Court, a 60 foot wide right of way that ends in a cul-de-sac. Former Lot 6 has secondary access from Keener Drive.

If approved by the KPB Planning Commission and the KPB Assembly, this plat will finalize the vacation of Fauerbach Court.

The new lot configuration will result in Bartolowitz Street providing access to proposed lots 4A and 27A. Bartolowitz Street is a 60 foot wide right of way that is partially constructed and not maintained by the borough. Proposed Lot 5A is the combination of Lots 5 and 6 and will have access off Keener Drive, a 50 foot wide borough maintained right of way. Both Keener Drive and Bartolowitz Street are located off Russell Avenue, a 60 foot wide borough maintained right of way that connects to the Sterling Highway.

The block is irregular in design. The block does close but some of the lengths exceed code requirements. Sterling Highway, Russell Avenue, Bartolowitz Street, Kizer Avenue, Glendening Street, and Sesame Avenue define the block. Fauerbach Court is a cul-de-sac, intended to remain permanently closed, and does not provide any improvement to the block requirements. ***Staff recommends the Planning Commission concur that an exception is not required, as any required dedications will not improve the block.***

Keener Drive was dedicated on Clam Gulch Heights Glendening 1979 Subdivision, Plat KN 81-135. It was dedicated as a 50 foot wide right of way without a cul-de-sac at the end. Beary Tracts #2, Plat KN 2008-88, provided the cul-de-sac right of way dedication. The cul-de-sac is in alignment with the 50 foot width of Keener Drive.

Keener Drive will provide access to four lots. Three of the four lots have other access available. Keener Drive is constructed and maintained by the Kenai Peninsula Borough. Per KPB Code, right of ways widths shall be a minimum of 60 feet. Additional dedication of 10 feet is required to create a compliant right of way. If this plat were to dedicate 10 feet, or 5 feet with the expectation to receive 5 feet from the lots on the other side of the right of way, it will not align with the platted cul-de-sac. ***Staff recommends that the Planning Commission concur that an exception is not required and additional right of way dedication is not required at this time as KPB already maintains this road, it serves four parcels, and any right of way dedication will not align with the cul-de-sac bulb.***

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

Site Investigation: The subdivision does not contain any low wet areas. Contours are present with shading for the areas with steel slopes over 25 percent. The steeper slopes are not located along the right of ways. The steep slopes will be located within proposed Lot 5A and 27A. The access to Lot 5A will be from Keener Drive.

KPB River Center review	<p>A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments</p> <p>B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments</p> <p>C. State Parks Reviewer: Russell, Pam Comments: No Comments</p>
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Staff Analysis The plat will be finalizing a right of way vacation and associated utility easements. The current lot configuration and right of way dedication were created by Clam Gulch Heights Glendening 1979 Subdivision, Plat KN 81-135.

Lot 5 and 6 will be combined along with a portion of the cul-de-sac to create Lot 5A and will be 4.007 acres. Lot 4 and Lot 27 will both receive half of the right of way being vacated. Lot 4 will be Lot 4A and will increase from 1.85 acres to 2.071 acres. Lot 27 will be Lot 27A and will increase from 1.729 acres to 1.953 acres.

A soils report will not be required. Per KPB 20.40.020(A)(2), lots increasing in size by 1,000 square feet or more of area suitable for conventional development, a wastewater system review is not required.

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

The property is not within an advisory planning commission.

Utility Easements Clam Gulch Heights, Plat KN 72-61, did not grant any utility easements within the proposed subdivision. Clam Gulch Heights Glendening 1979 Subdivision, Plat KN 81-135, granted the area affected by the 20 foot building setback as the limits for the utility easements. A 20 by 30 anchor easement was also granted within Lot 5 off the bulb for Fauerbach Court.

The right of way vacation will include the vacation of the utility easements adjoining Fauerbach Court as well as the 10' x 30' anchor easement. A 20 foot wide utility easement will remain in place adjoining Bartolowitz Street within the vacated right of way. Full 20 foot utility easements will be adjoin Bartolowitz Street and Keener Drive rights-of-way.

The affected utility providers were emailed the subdivision plat public hearing notice as part of the routine notification process. **Staff recommends** to grant utility easements requested by the utility providers or work with the utility providers to obtain approval.

Utility provider review:

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

KPB department / agency review:

Addressing	<p>Affected Addresses: 55450 FAUERBACH CT 17635 BARTOLOWITZ ST 17610 KEENER DR 17615 BARTOLOWITZ ST</p> <p>Existing Street Names are Correct: Yes</p> <p>List of Correct Street Names: FAUERBACH CT BARTOLOWITZ ST KEENER DR KIZER AVE</p> <p>Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied:</p> <p>Comments: 55450 FAUERBACH CT will be deleted. 17635 BARTOLOWITZ ST will remain with lot 4A. 17610 KEENER DR will remain with lot 5A. 17615 BARTOLOWITZ ST will remain with lot 27A.</p>
Code Compliance	<p>Reviewer: Ogren, Eric Comments: No comments</p>
Planner	
Assessing	<p>Reviewer: Wilcox, Adeena Comments: No comment</p>

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

STAFF RECOMMENDATIONS
CORRECTIONS / EDITS

KPB 20.25.070 – Form and contents required

Staff recommendation: final plat submittals must comply with 20.25.070. Additional information, revisions, and/or corrections are required as noted below.

- D. A vicinity map, drawn to scale showing location of proposed subdivision, north arrow if different from plat orientation, township and range, section lines, roads, political boundaries, and prominent natural and manmade features, such as shorelines or streams;
Staff recommendation: Update the label for C.G. Wayside to Clam Gulch Road. Provide a label for Clam Gulch Recreational Area that is within sections 20, 28, and 29.

KPB 20.40 – Wastewater Disposal

Staff recommendation: final plat submittals must comply with 20.40. Additional information, revisions, and/or corrections are required as noted below.

20.40.010 Wastewater disposal.

Platting Staff Comments: Soils report is not required as all lots are increasing by more than 1,000 square feet. Add the required plat note.

Staff recommendation: comply with 20.40.

KPB 20.60 – Final Plat

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

20.60.150. Utility easements.

A. The utility easements approved by the planning commission shall be clearly shown on the final plat in dimensioned graphic form or as a note.

B. The following note shall be shown on the final plat:

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.

Staff recommendation: Provide a plat note for the utility easement of record as recorded in Bk. Misc. 3 Pg. 128a, Kenai Recording District. Comply with 20.60.150.

20.60.180. Plat notes.

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

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

Staff recommendation: Place the following notes on the plat.

- Subject to covenants, conditions, and restrictions recorded within the Kenai Recording District in Book 513 Page 542 and amended in Book 536 Page 510.
- The borough will not enforce private covenants, easements, or deed restrictions per KPB 20.60.170.
- Easement for electric lines or system and/or telephone lines together with right to enter, maintain, repair and clear shrubbery granted to Homer Electric Association, Inc. in Book Misc. 3 Page 128a within the Kenai Recording District. No definite location given.
- WASTEWATER DISPOSAL: Wastewater treatment and disposal systems must meet the regulatory requirements of the Alaska Department of Environmental Conservation.

Within plat note 1, correct the recording number to 81-135.

20.60.190. Certificates, statements, and signatures required.

Staff recommendation: Make sure the former lots are listed with the signature lines. Comply with 20.60.190.

KPB 20.70 – Vacation Requirements

Staff recommendation. *Plat must be recorded within one year from Assembly consent or new petition will be required for the right of way vacation.*

RECOMMENDATION:

SUBJECT TO EXCEPTION(S) GRANTED, STAFF RECOMMENDS:

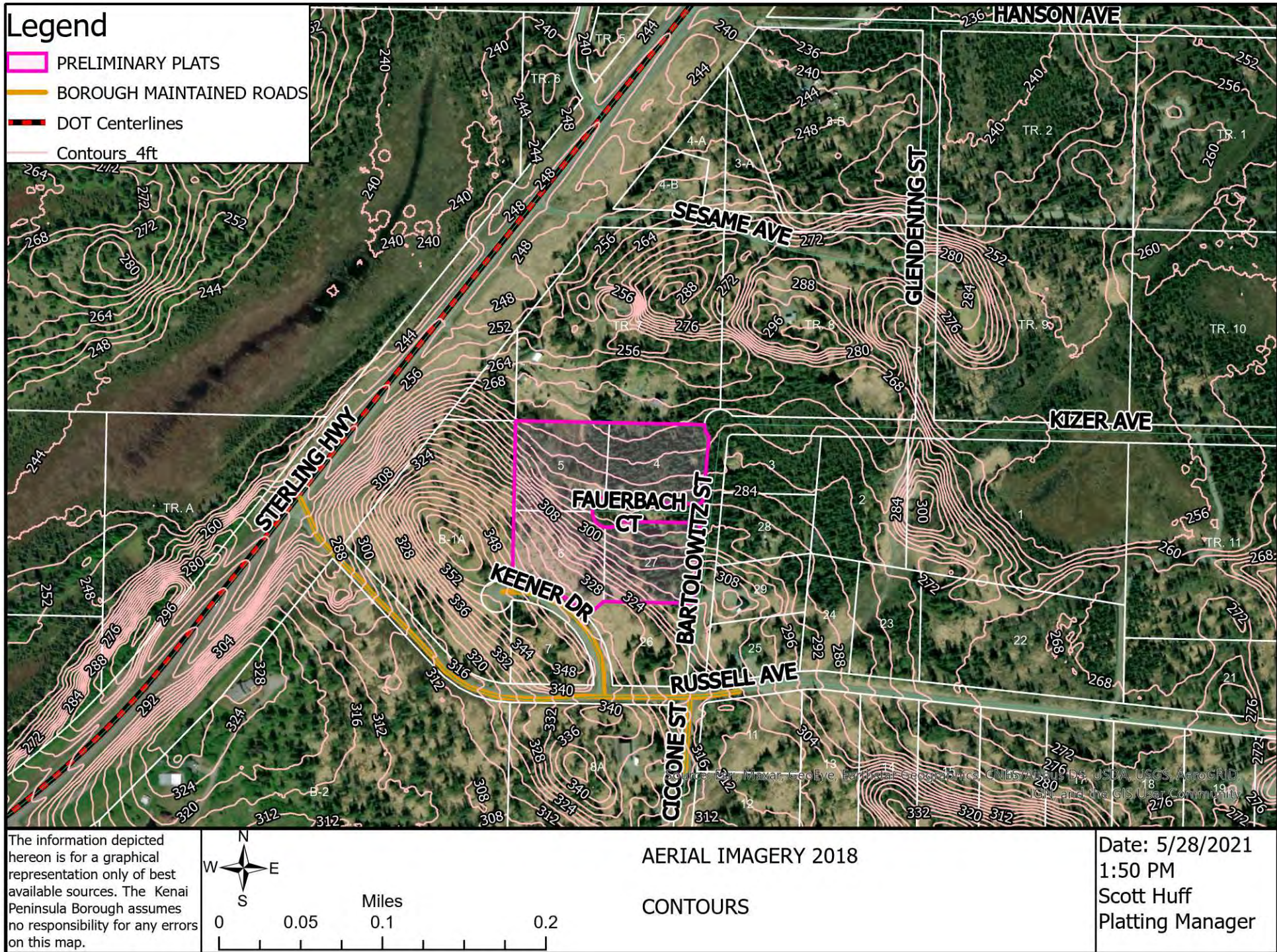
- GRANT APPROVAL OF THE PRELIMINARY PLAT SUBJECT TO STAFF RECOMMENDATIONS, AND
- COMPLIANCE WITH KPB 20.25.070 (FORM AND CONTENTS), KPB 20.25.080 (PETITION REQUIRED), KPB 20.30 (DESIGN REQUIREMENTS); AND KPB 20.40 (WASTEWATER DISPOSAL), AND
- COMPLIANCE WITH KPB 20.60 TO ENSURE ADMINISTRATIVE APPROVAL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

NOTE: 20.25.120. - REVIEW AND APPEAL.

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

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

END OF STAFF REPORT



CLAM GULCH HEIGHTS

GLENDENING 1979 SUBDIVISION OF TRACTS 12, 13, 14, 15, 16, 17, 18

LOCATED IN S1/2 NE1/4 SEC. 28, T2N R12W S.M. CLAM GULCH, ALASKA 99568
SCALE 1" = 200' AREA = 70.058 AC. DEC. 26, 1980

BY: JAMES E. AND BARBARA E. GLENDENING BOX 38 KASLOF, AK. 99568

PLAT APPROVAL

This plat was approved by the KENAI PENINSULA BOROUGH PLANNING COMMISSION at the meeting of AUGUST 6 19 79
KENAI PENINSULA BOROUGH By [Signature] ADMINISTRATIVE OFFICER

CERTIFICATE OF OWNERSHIP AND DEDICATION

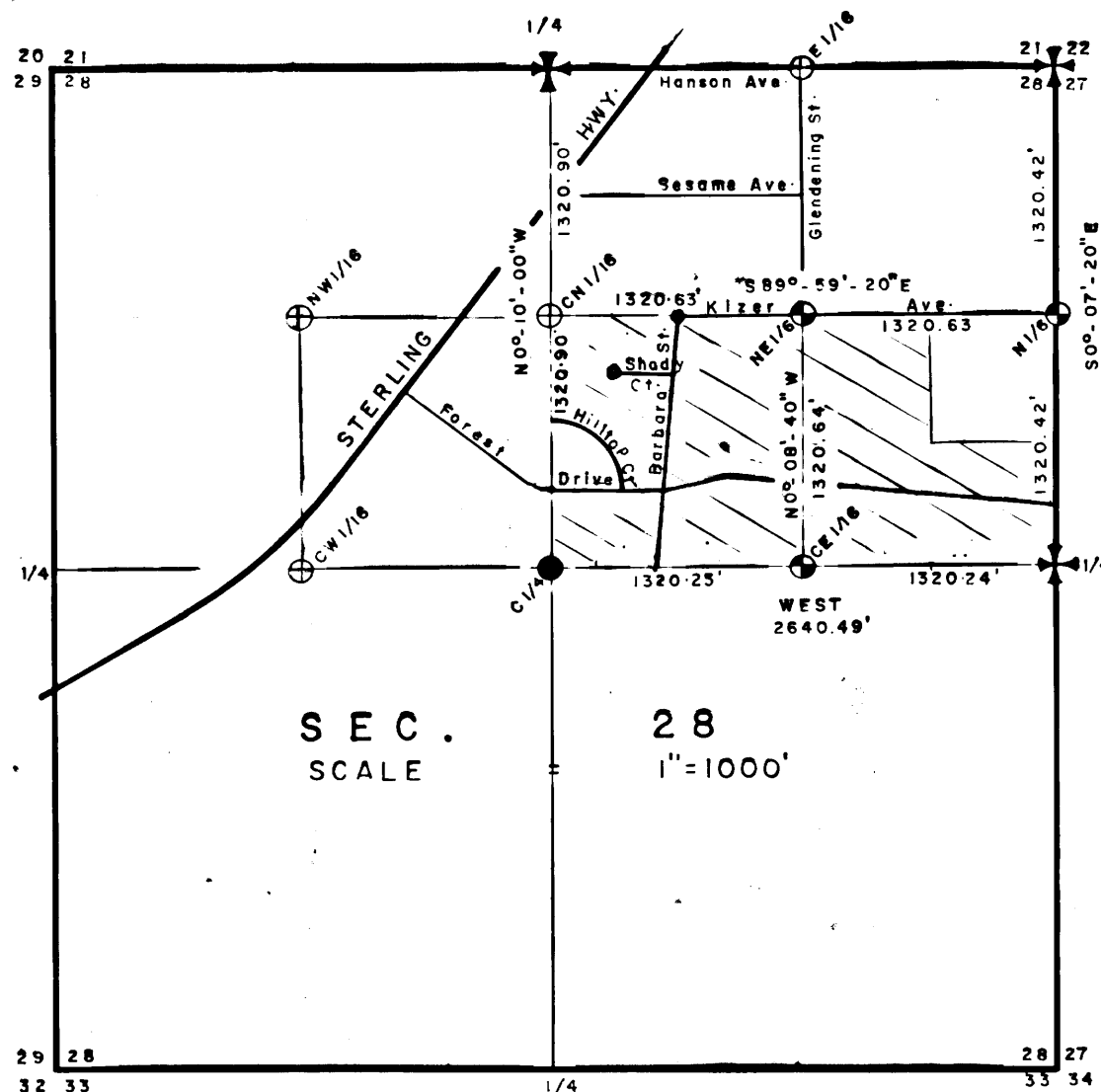
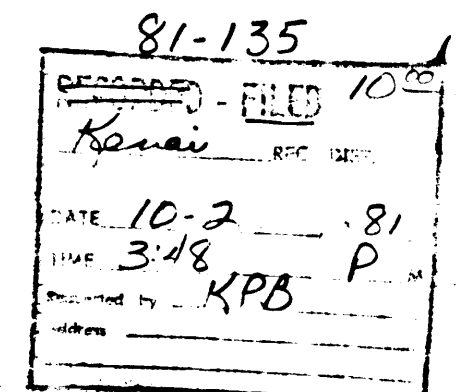
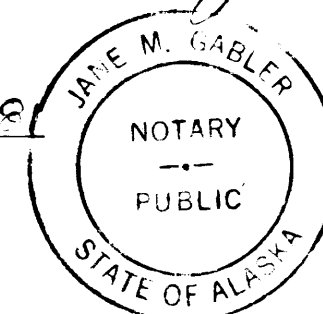
We hereby certify that we are the owners of the property shown and described hereon, and that we hereby adopt this plan of subdivision, and dedicate all right of ways to public use, and grant all easements to the use shown.

[Signature]
JAMES E. GLENDENING

[Signature]
BARBARA E. GLENDENING

NOTARY'S ACKNOWLEDGEMENT

Subscribed and sworn to before me this 4th day of September 19 81
[Signature] Sept. 13, 1981
NOTARY PUBLIC FOR ALASKA, for James E. and Barbara E. Glendenning My commission expires

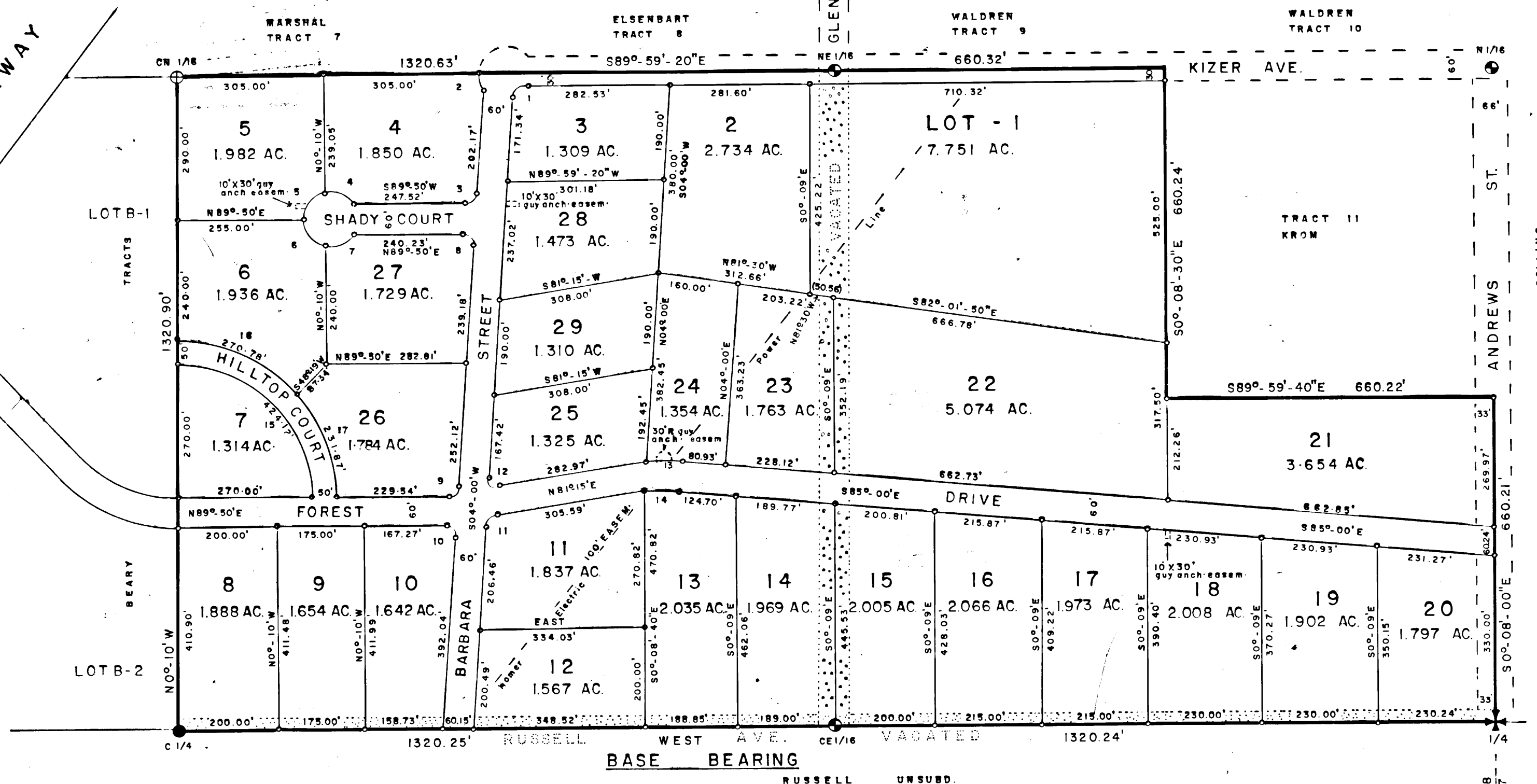


NOTE: BUILDING SETBACKS - A setback of 20' is required from all street right of ways unless a lesser standard is approved by resolution of appropriate planning commission.
UTILITY EASEMENTS - 20' building setback line is to be limit of utilities easements.

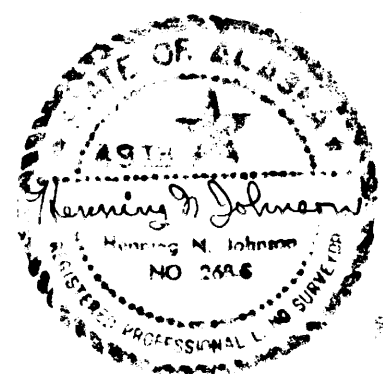
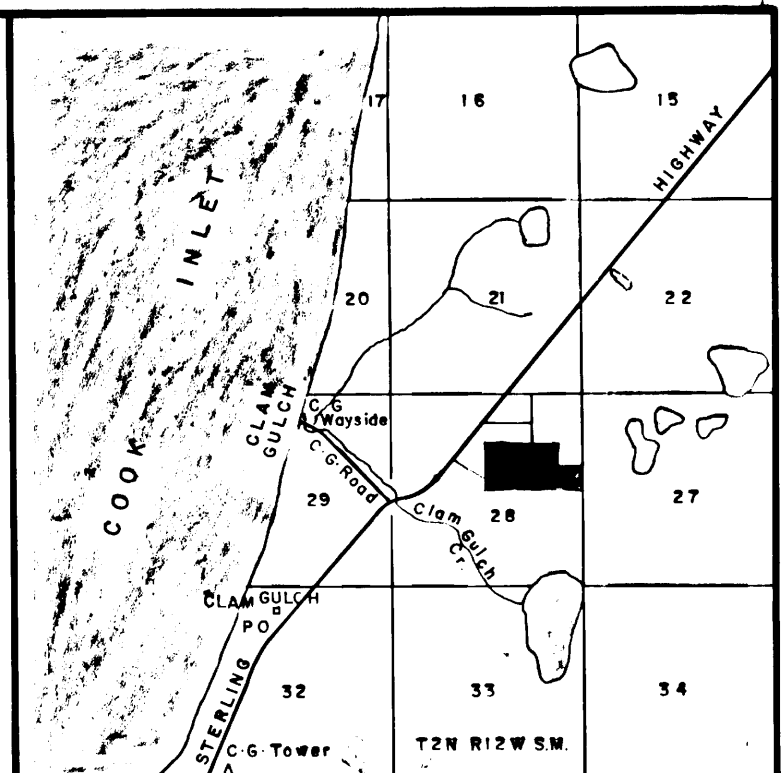
LEGEND

- ⊕ - Brass cap monument set by 268-S
- ⊕ - 1978 brass cap mon. by 268-S found
- - brass cap by Claud Hoffman, found
- ⊕ - 1919 brass cap by G.L.O., found
- - 1/2" x 2" rerod set.

CURVES	
1	A=86°-00'-40" R=20.00' C=27.28' T=18.65' L=30.02' CB=N47°-00'-20"E
2	A=49°-12'-09" R=50.00' C=41.63' T=22.89' L=42.94' CB=S42°-54'-25"E
3	A=85°-50' R=20.00' C=27.24' T=18.60' L=29.96' CB=S46°-55'W
4	A=53°-08' R=50.00' C=44.72' T=25.00' L=46.37' CB=N63°-36'-06"W
5	A=90° R=50.00' C=70.71' T=50.00' L=78.54' CB=S44°-50'W
6	A=90° R=50.00' C=70.71' T=50.00' L=78.54' CB=S45°-10'E
7	A=53°-08' R=50.00' C=44.72' T=25.00' L=46.37' CB=N63°-16'-06"E
8	A=94°-02' R=20.00' C=29.29' T=21.51' L=32.87' CB=S43°-01'E
9	A=85°-50' R=20.00' C=27.24' T=18.60' L=29.96' CB=S46°-55'W
10	A=94°-10' R=20.00' C=29.29' T=21.51' L=32.87' CB=S43°-05'E
11	A=77°-15' R=20.00' C=24.97' T=15.98' L=26.97' CB=N42°-37'-30"E
12	A=102°-45' R=20.00' C=31.25' T=25.03' L=35.87' CB=N47°-22'-30"W
13	A=13°-45' R=270.00' C=64.64' T=39.79' L=64.80' CB=S88°-07'-30"W
14	A=13°-45' R=270.00' C=64.64' T=39.79' L=64.80' CB=N88°-07'-30"E
15	A=90°-00' R=270.00' C=64.64' T=39.79' L=64.80' CB=S45°-10'E
16	A=48°-29' R=320.00' C=262.77' T=144.09' L=270.78' CB=N65°-55'-29"W
17	A=41°-31' R=320.00' C=228.83' T=121.29' L=231.87' CB=N20°-55'-31"W



VICINITY SCALE 1" = 1 MILE MAP



CLAM GULCH HEIGHTS

IN NE 1/4 SEC. 28, T2N. R12W. S.M.; CLAM GULCH, ALASKA.

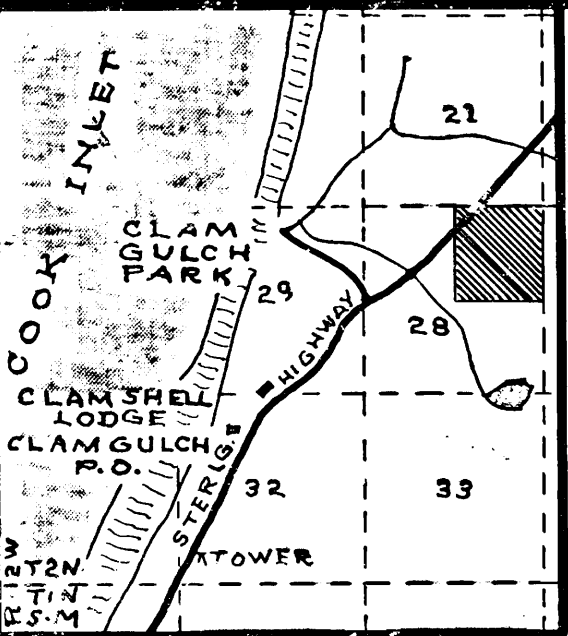
EAST 61.77 160 AC. ±

NOTE:

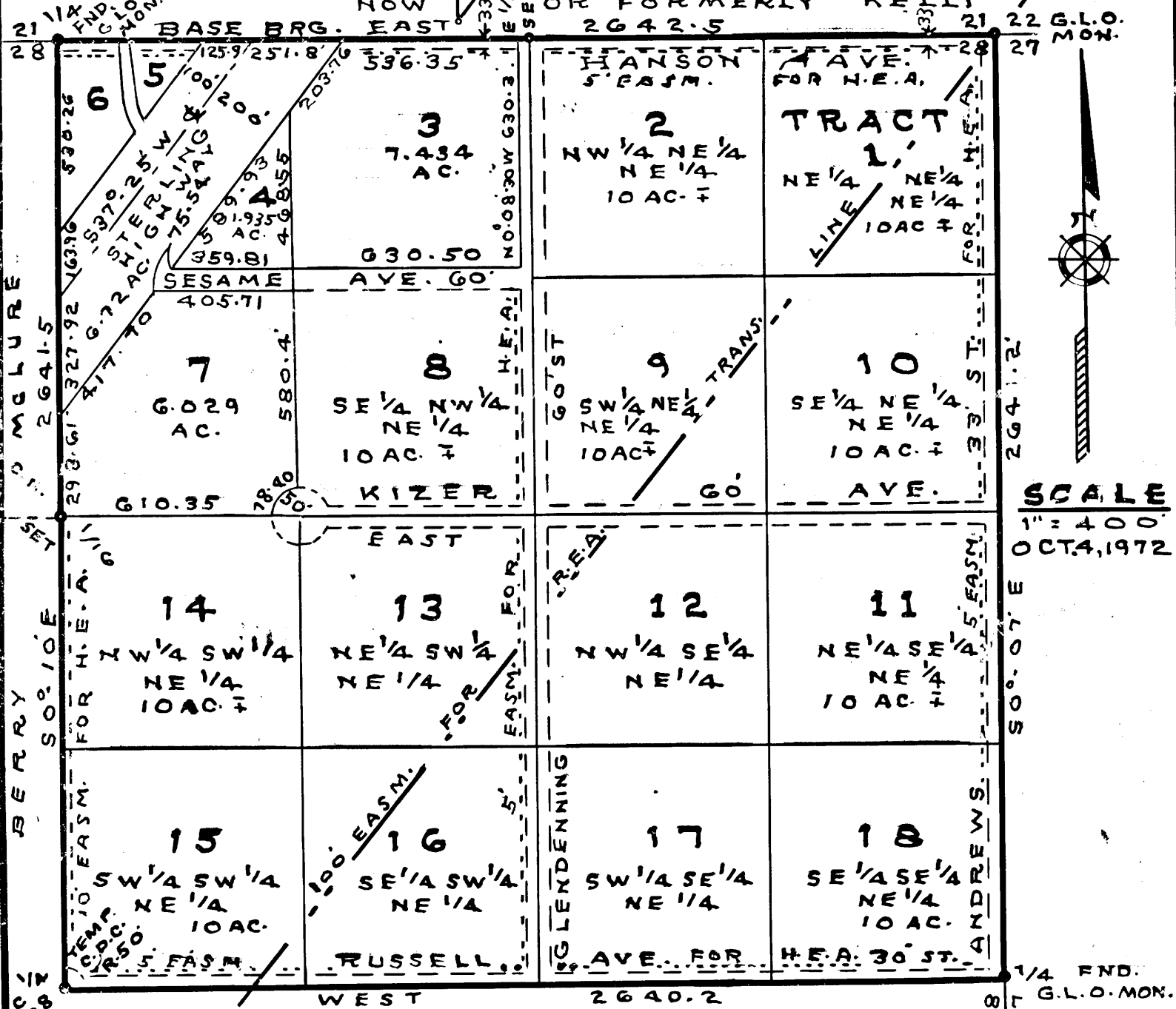
TRACTS DESC. BY ALIQUOT PARTS INCL. STREET AREAS.

0-IND. BRASS CAP MON.
0-IND. 1/2" X 24" REBAR.
BY: JAMES & DELLA KIZER
CLAM GULCH, ALASKA.

KENAI PENINSULA BOROUGH
Planning Commission
Approved OCTOBER 30, 1972
By *Stanley F. Thompson*



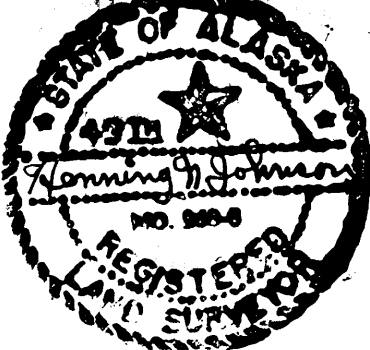
VICINITY MAP 1"=1M



CERTIFICATE OF OWNERSHIP AND DEDICATION

We certify that we are the owners of the property shown and described hereon and that we hereby adopt this plan of subdivision and dedicate all streets to public use and to the use of public utilities.

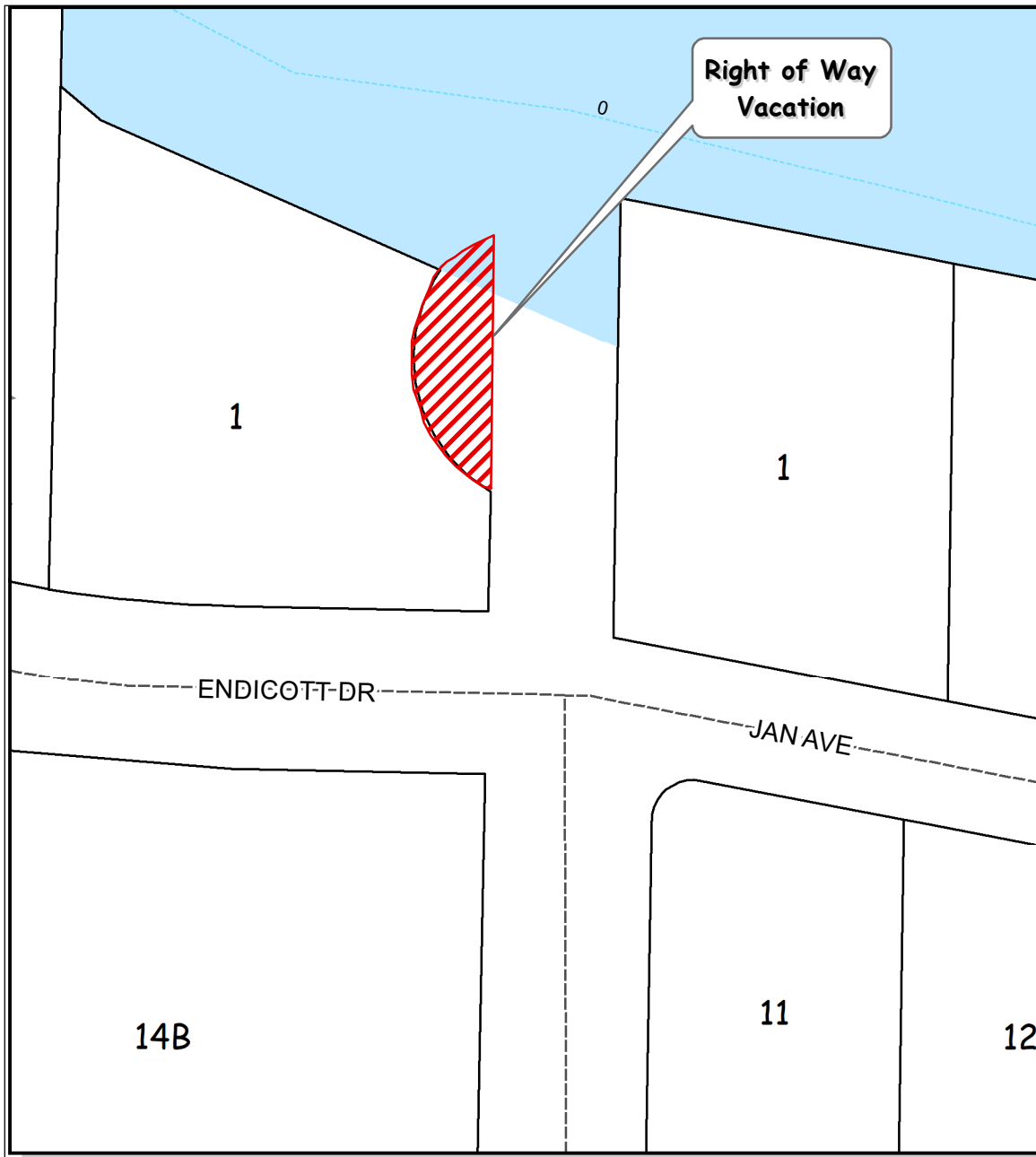
Owner *James & Della Kizer* 72-61



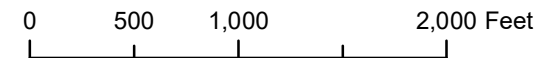
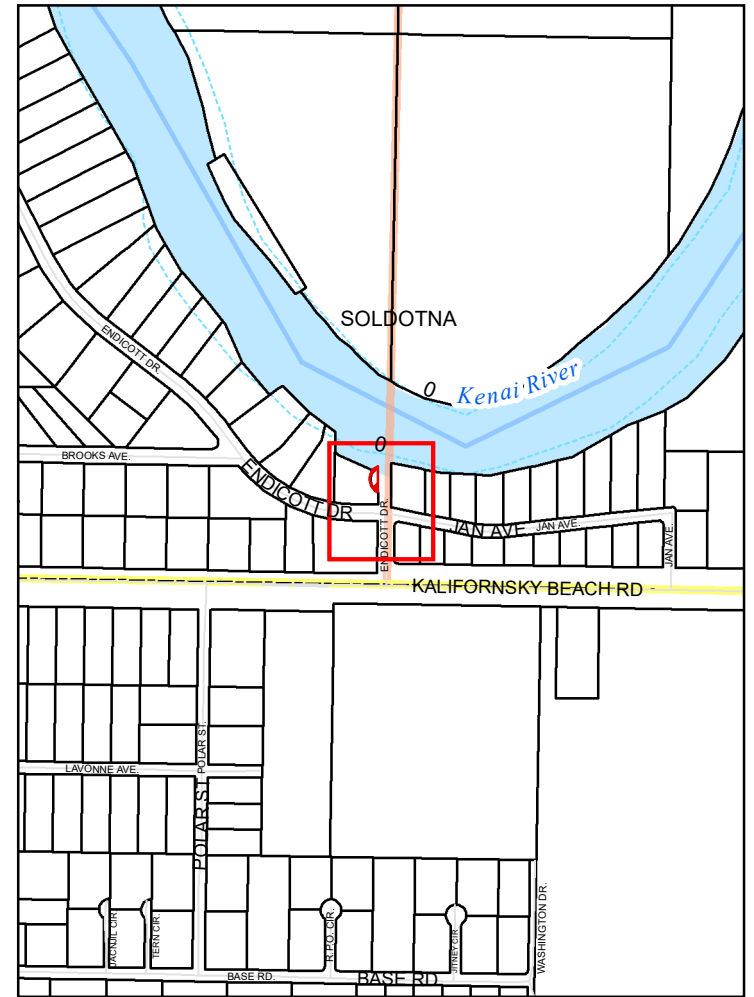
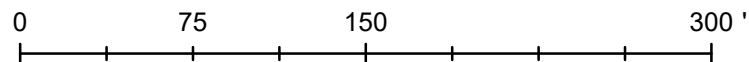
STATE OF ALASKA
NOTARY'S ACKNOWLEDGEMENT
Subscribed and sworn before me this 1 day of
My commission expires 12-12-75
Planning Johnson
NOTARY PUBLIC FOR ALASKA

RECORDED - FILED
Kenai REC. DIST.
No. 1, 1972.
DATE 11/3 1972
TIME 4:09 A.M.
Recorded by KPB
Address 491288

Clam Gulch Heights
T 2 N, R 12 W, S.M.



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.



KPB 2021-151V
S36 T05N R11W
Soldotna



 PRELIMINARY PLAT

Aerial View

PClements, KPB 2021-151V
Imagery Soldotna 2018

CERTIFICATE OF OWNERSHIP AND DEDICATION

WE HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE REAL PROPERTY SHOWN AND DESCRIBED HEREON AND WE HEREBY ADOPT THIS PLAN OF SUBDIVISION AND BY OUR FREE CONSENT DEDICATE ALL RIGHTS-OF-WAY AND PUBLIC AREAS TO PUBLIC USE AND GRANT ALL EASEMENTS TO THE USE SHOWN.

JAMES MARKLEY WILLINGHAM
476 ENDICOTT DR, SOLDOTNA, AK 99669

PANDORA BANE WILLINGHAM
476 ENDICOTT DR, SOLDOTNA, AK 99669

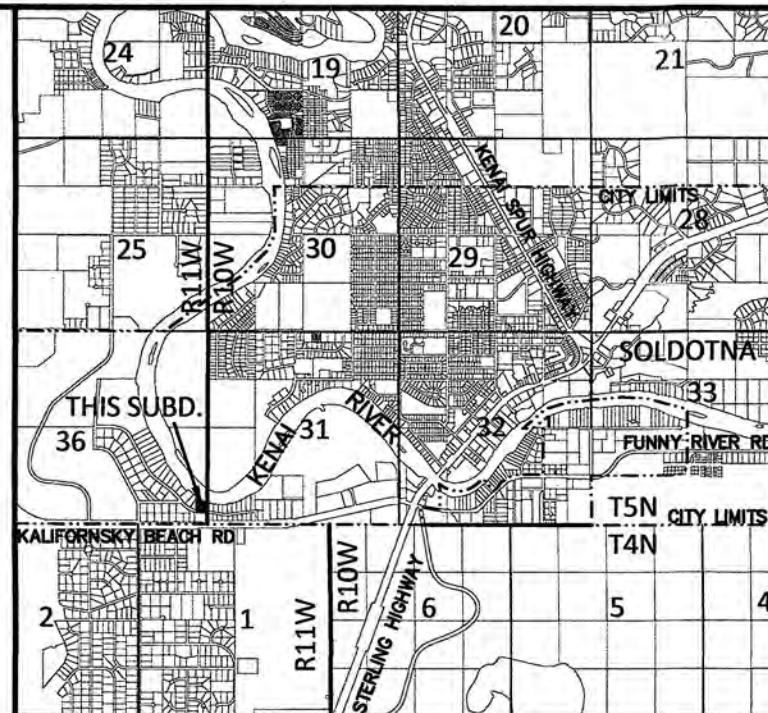
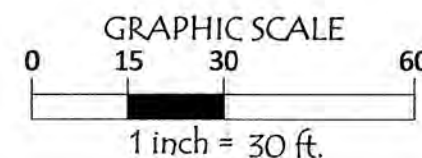
NOTARY'S ACKNOWLEDGEMENT

FOR: JAMES MARKLEY WILLINGHAM &
PANDORA BANE WILLINGHAM
ACKNOWLEDGED BEFORE ME THIS

DAY OF _____, 20__

MY COMMISSION EXPIRES: _____

NOTARY PUBLIC FOR THE
STATE OF ALASKA



VICINITY MAP
Scale 1" = 1 Mile

LEGEND

- ⊕ RECORD PRIMARY MONUMENT
- RECORD SECONDARY MONUMENT
- CONTOUR INTERVAL = 4'

NOTES

1. DEVELOPMENT MUST MEET THE CITY OF SOLDOTNA TITLE 17 ZONING CODE REQUIREMENTS.
2. THE FRONT 10 FEET ADJOINING DEDICATED RIGHTS-OF-WAY IS GRANTED AS A UTILITY EASEMENT.
3. 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.
4. THIS PLAT WAS PREPARED FROM DATA OF RECORD, SLIKOK CREEK ALASKA SUBDIVISION (K1361), SLIKOK CREEK ALASKA SUBDIVISION #4 (KN2009-17) AND K-BEACH PARK SUBDIVISION ADDITION No.2 (KN79-21). NO ADDITIONAL FIELD SURVEY WAS PERFORMED THIS DATE.
5. THE NATURAL MEANDERS OF ORDINARY HIGH WATER FOR THE KENAI RIVER FORM THE TRUE BOUNDS OF LOT 1A BLOCK 1. THE RECORD MEANDER LINE SHOWN HEREON IS FOR SURVEY COMPUTATIONS ONLY. THE TRUE CORNERS BEING ON THE EXTENSION OF THE SIDE LINES AND THE INTERSECTION WITH THE NATURAL MEANDERS.
6. PORTIONS OF THIS SUBDIVISION ARE WITHIN THE KENAI PENINSULA BOROUGH ANADROMOUS WATERS HABITAT PROTECTION DISTRICT. DEVELOPMENT MAY BE RESTRICTED UNDER CHAPTER 21.18 BOROUGH CODE OF ORDINANCES.
7. ANY PERSON DEVELOPING THE PROPERTY IS RESPONSIBLE FOR OBTAINING ALL REQUIRED LOCAL, STATE, AND FEDERAL PERMITS, INCLUDING A U.S. ARMY CORPS OF ENGINEERS WETLAND DETERMINATION IF APPLICABLE.
8. THE KENAI PENINSULA BOROUGH PLANNING COMMISSION APPROVED THE VACATION OF A PORTION OF ENDICOTT DRIVE AND AT THE MEETING OF DECEMBER 13, 2021.

WASTEWATER DISPOSAL

THE PURPOSE OF THIS PLATTING ACTION IS TO REMOVE A LOT LINE, WHICH WILL PROVIDE GREATER AVAILABLE WASTEWATER DISPOSAL AREA AS DESCRIBED BY KPB 20.40.020(A)(2), WASTEWATER TREATMENT AND DISPOSAL SYSTEMS MUST MEET THE REGULATORY REQUIREMENTS OF THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

PLAT APPROVAL

THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH IN ACCORDANCE WITH KPB 20.10.080.

AUTHORIZED OFFICIAL



Plat #

Rec Dist _____

Date _____ 20__

Time _____ M

SLIKOK CREEK 2021 REPLAT

REPLAT OF LOT 1 BLOCK 1 SLIKOK CREEK ALASKA SUBDIVISION (K1361) AND THE ASSOCIATED R/W VACATION

OWNER
JAMES MARKLEY WILLINGHAM
476 ENDICOTT DR
SOLDOTNA, AK 99669

OWNER
PANDORA BANE WILLINGHAM
476 ENDICOTT DR
SOLDOTNA, AK 99669

1.393 AC. M/L SITUATED IN THE SE1/4 OF SECTION 36, TOWNSHIP 5 NORTH, RANGE 11 WEST, SEWARD MERIDIAN, CITY OF SOLDOTNA, KENAI PENINSULA BOROUGH, AND THE KENAI RECORDING DISTRICT, ALASKA.



ENGINEERING - TESTING
SURVEYING - MAPPING
P.O. BOX 468
SOLDOTNA, AK 99669
VOICE: (907) 283-4218
FAX: (907) 283-3265
WWW.MCLANECG.COM

KPB File No. 2021-xxx

Project No. 212044

Scale 1" = 30'

Date : OCT. 2021

Drawn by : JAH

KPB 2021-151V

AGENDA ITEM E. NEW BUSINESS

ITEM 5 - ENDICOTT DRIVE CUL-DE-SAC RIGHT OF WAY VACATION

KPB File No.	2021-151V
Planning Commission Meeting:	December 13, 2021
Applicant / Owner:	James Markley Willingham and Pandora Bane Willingham of Soldotna, AK
Surveyor:	James Hall / McLane Consulting, Inc.
General Location:	Kalifornsky Beach Road, Endicott Drive and Jan Avenue, City of Soldotna
Legal Description:	Lot 1 Block 1 Slikok Creek Alaska Subdivision Plat No K-1361

STAFF REPORT

Specific Request / Purpose as stated in the petition:

Right of way vacation: Endicott Drive as it extends north to the Kenai River has a 75 foot radius cul-de-sac that encumbers Lot 1 Block 1 K1361. KPB Code 20.30.100 requires a minimum 50 foot radius cul-de-sac design.

Current right of way width is 50 feet with additional 10 foot "walkway" per KN 79-21 for a 60 foot wide r/w for access to the Kenai River.

Proposed vacation is approximately 1,940 square feet.

No alternate r/w is being dedicated. The vacated r/w is a sliver edge of an of an over-size cul-de-sac that encumbers a smaller lot.

Reasoning: Property is encumbered by an over-sized cul-de-sac design that is not constructed nor used.

Property is situated between steep slopes to the Kenai River, 80 foot R/W of Endicott Drive on the south and 60 foot R/W of Endicott Drive on the east as it extends to the Kenai River.

Notification: Public notice appeared in the December 2, 2021 issue of the Peninsula Clarion as a separate ad. The public hearing notice was published in the December 9, 2021 issue of the Peninsula Clarion as part of the Commission's tentative agenda.

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

Library of Soldotna

Post Office of Soldotna

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

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

Sixteen 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
Central Emergency Services

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

Legal Access (existing and proposed): The proposed vacation is a portion of an unnamed right of way that is in extension of Endicott Drive where the road intersects Kalifornsky Beach Road near mile 21. The dedicated right of way extends north from the intersection of Endicott Drive and Jan Avenue to the Kenai River.

At the intersection, the constructed Endicott Drive is located to the west while constructed Jan Avenue is to the east. The proposed vacation of the cul-de-sac bulb is to the north of the intersection. The road is being referred to as Endicott Drive although Endicott Drive turns to the west.

The vacation will remove of the 75 foot radius bulb located on the west side of the 50 foot wide dedicated right of way. This will result in the right of way extending to the Kenai River with a constant width of 50 feet with an adjoining 10 foot walkway right of way.

Per KPB data, a 50 foot section line easement coincides with the 50 foot dedication with a 33 foot section line easement adjoining to the east. This provides a 83 foot wide public access.

The block is not closed due to the Kenai River. The block length along Endicott Drive exceeds allowable lengths. The subject lot is a corner lot and is bordered by right of way along the south and east. The Kenai River borders along the north. This parcel cannot provide any additional right of way dedications to improve the block. The vacation of the portion of the cul-de-sac will not change the existing block configuration.

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

Site Investigation: Steep slopes are present to the north where sloping to the river edge. As this property is along the Kenai River, it will be subject to the Anadromous Waters Habitat Protection District. This is within the City of Soldotna; they do not participate in the FEMA program.

River Center Review	<p>A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Within City of Soldotna/Kenai Comments: No comments</p> <p>B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: IS totally or partially within HPD Comments: No comments</p> <p>C. State Parks Reviewer: Russell, Pam Comments: No Comments</p>
---------------------	---

Staff Analysis: The right of way was dedicated on Slikok Creek Alaska Subdivision, K1361, recorded in 1963. It was dedicated as a 50 foot wide right of way with a 75 foot radius bulb at the end on the top of the river bank. K-Beach Park Subdivision Addition No. 2, KN 79-21, is located to the east of the dedication. That plat dedicated an additional 10 foot right of way designated as a walkway. The access width to the river to 60 feet.

While the bulb proposed to be vacated does provide a potential turn around area for vehicles, the 50 foot wide right of way adjacent to the bulb contains steep slopes making the construction of a turnaround area for vehicle use difficult within this portion of the right of way.

The parent plat did not grant utility easements adjoining the rights of way. Per plat note 2 of the preliminary plat, a 10 foot utility easement will be granted adjoining all right of ways.

Per KPB GIS imagery from 2021, it appears that improvements, (possibly a raised bed garden) on Lot 1 may be very close to the right of way or possibly within the portion to be vacated. Additionally, a set of stairs appear to be constructed with a platform along the river. Staff is unable to determine if the walkway is within the right of way or within the boundary of Lot 1.

The proposed lot is showing an increase in acreage that is more than the area within the vacated right of way. This is due to the meander line information used on the original plat. K1361 states, "The natural meanders along the Kenai River form the bounds of the lots adjoining the river. The traverse line, as shown, is for survey computations and data only. All corners, as set on said traverse line, are witness corners being on the extension of lot lines and the natural meanders." Due to the steep terrain, the additional portion of the lot was not designated nor were any additional measurements or bearings given to help make the depiction more accurate. The surveyor is showing more recent meander information from the west and east and using that to compute a more accurate meander for this lot.

The City of Soldotna Planning and Zoning Commission heard the vacation at their November 3, 2021 meeting. Per the staff report prepared for that meeting, the Director of Public Works had no objection and stated the 75 foot radius was excessive. That 50 foot is usually good in commercial areas while 30 foot in residential areas can be done. The Director of Streets and Maintenance had no objection to the vacation and stated an important culvert is in that area to drain parts of Kalifornsky Beach Road and Endicott Drive and could cause some issues with development. The City of Soldotna Planning and Zoning Commission approved the 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:
1. The right-of-way or public easement to be vacated is being used;
Staff comments: The public is not using the area proposed to be vacated.
 2. A road is impossible or impractical to construct, and alternative access has been provided;
Staff comments: A 83 foot wide public access will remain to the river. Steep terrain is located within the right of way where near the proposed vacation. Endicott Drive and Jan Avenue are constructed streets and provide a turnaround area.
 3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;
Staff comments: 10 foot utility easements will be granted along dedicated right of ways. Additional requests were not made by the City of Soldotna Streets and Maintenance. Owners are to work with the utility companies to ensure all utility easement needs are met. Dedicated right of way provides legal access to all nearby parcels.
 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 83 foot wide access to the Kenai River will remain in place.
 5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;

Staff comments: The right of way ends at the Kenai River and will not connect with other right of ways.

6. Other public access, other than general road use, exist or are feasible for the right-of-way;

Staff comments: Although affected by steep terrain, the public can use this access to the Kenai River.

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: Grant requested utility easements.

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

Staff comments: This is a right of way managed by the City of Soldotna and the State of Alaska DNR. Any vacation of the Section Line Easement would require review and approval by the State of Alaska.

If approved, a right of way vacation plat (Slikok Creek 2021 Replat) will finalize the proposed right of way vacation. As allowed under KPB 20.10.080, the planning director may review the preliminary vacation plat. If for any reason, the preliminary plat may not be reviewed as a vacation plat it will be scheduled for review by the Plat Committee.

If approved by the Kenai Peninsula Borough Planning Commission, the decision will be forwarded to the City of Soldotna to be heard by their City Council. They will have 30 days to review the decision and either consent or veto the vacation.

KPB department / agency review:

Planner	
Code Compliance	Reviewer: Ogren, Eric Comments: No comments
Addressing	Reviewer: Haws, Derek Affected Addresses: 476 ENDICOTT DR Existing Street Names are Correct: Yes List of Correct Street Names: ENDICOTT DR Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied: Comments: City of Soldotna will advise on affected address.
Assessing	Reviewer: Wilcox, Adeena Comments: Property improvements appear to be in the public right of way. This parcel is not considered river frontage.

Utility provider review:

HEA	No comments.
ENSTAR	No comments or objections
ACS	

GCI	Approved as shown.
-----	--------------------

RECOMMENDATION:

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

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

KPB 20.65.050 – Action on vacation application

- H. A planning commission decision to approve a vacation is not effective without the consent of the city council, if the vacated area to be vacated is within a city, or by the assembly in all other cases. The council or assembly shall have 30 days from the date of the planning commission approval to either consent to or veto the vacation. Notice of veto of the vacation shall be immediately given to the planning commission. Failure to act on the vacation within 30 days shall be considered to be consent to the vacation. This provision does not apply to alterations of utility easements under KPB 20.65.070 which do not require the consent of the assembly or city council unless city code specifically provides otherwise.**
- I. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, where applicable, the applicant shall have a surveyor prepare and submit a plat including the entire area approved for vacation in conformance with KPB 20.10.080. Only the area approved for vacation by the assembly or council may be included on the plat. The final plat must be recorded within one year of the vacation consent.**
- J. A planning commission decision denying a vacation application is final. No reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.**
- K. An appeal of the planning commission, city council or assembly vacation action under this chapter must be filed in the superior court in accordance with the Alaska Rules of Appellate Procedure.**

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

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

- Focus Area: Energy and Utilities

- *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



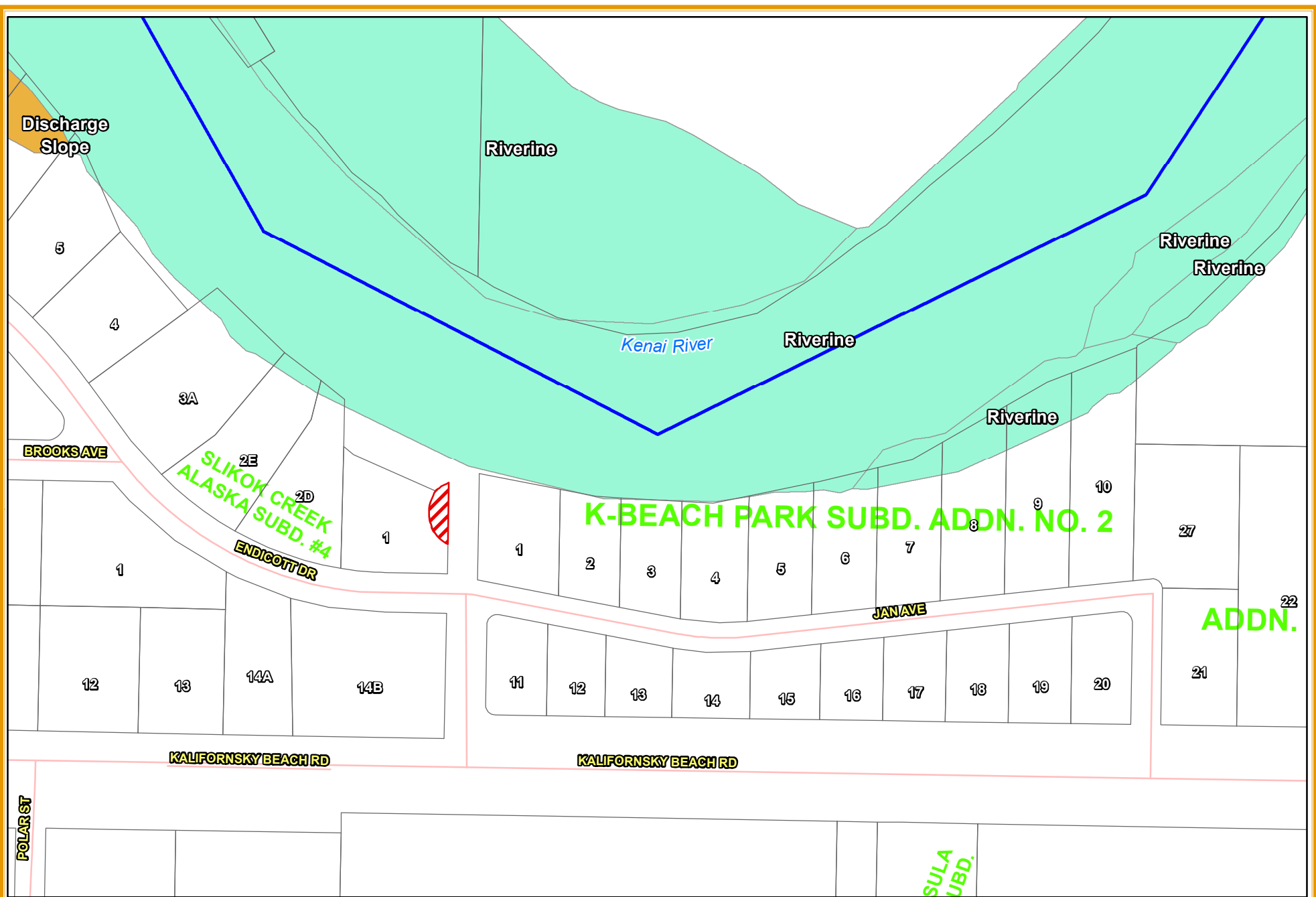
KPB 2021-151V North

487



© All Pictometry

05/15/2021



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.

GIS WETLANDS



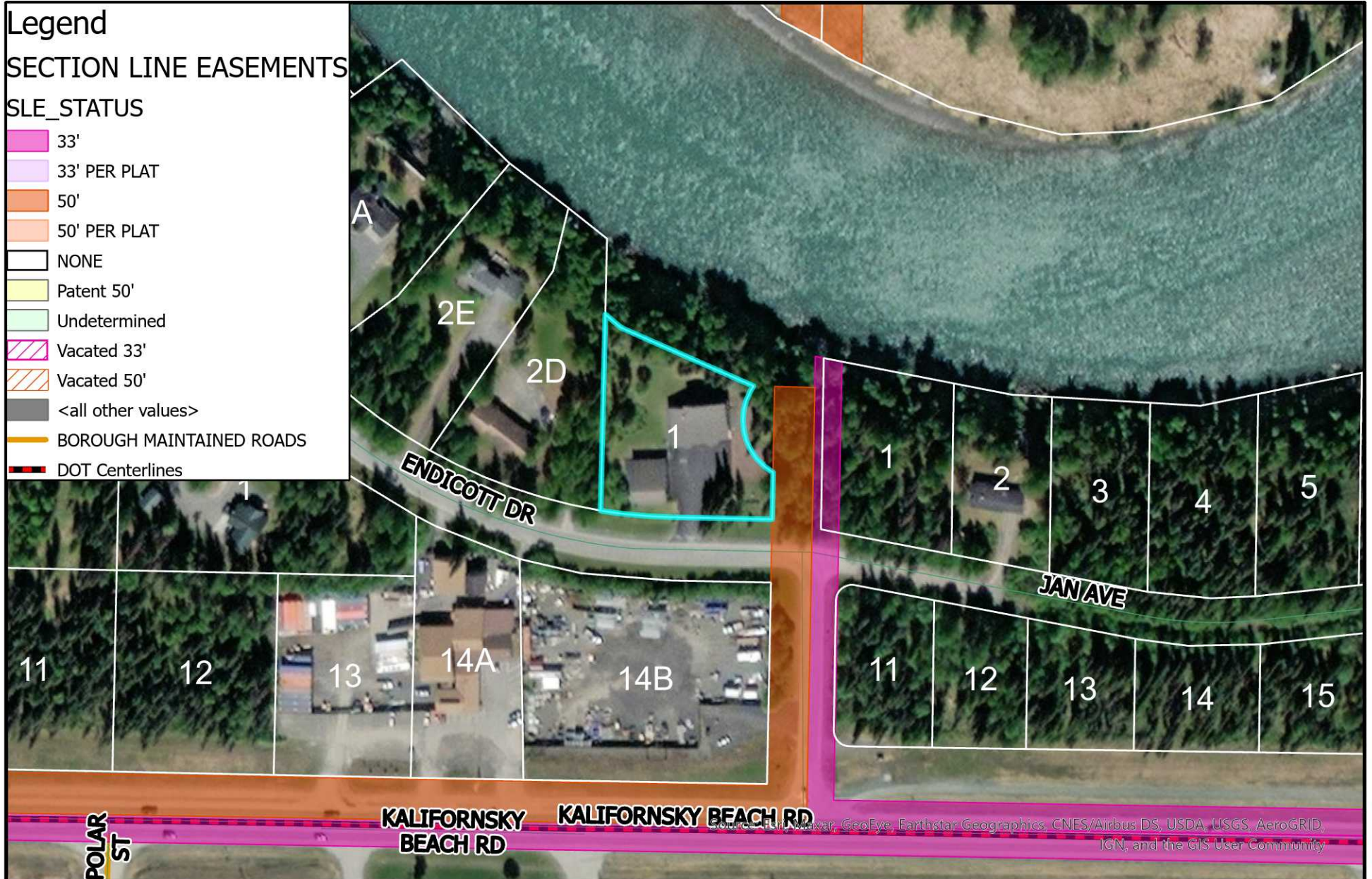
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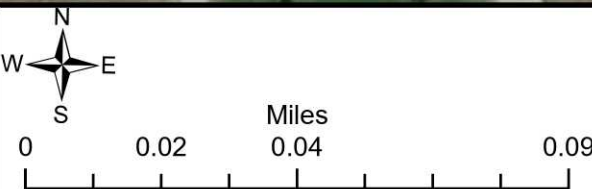
SECTION LINE EASEMENTS

SLE_STATUS

- 33'
- 33' PER PLAT
- 50'
- 50' PER PLAT
- NONE
- Patent 50'
- Undetermined
- Vacated 33'
- Vacated 50'
- <all other values>
- BOROUGH MAINTAINED ROADS
- DOT Centerlines



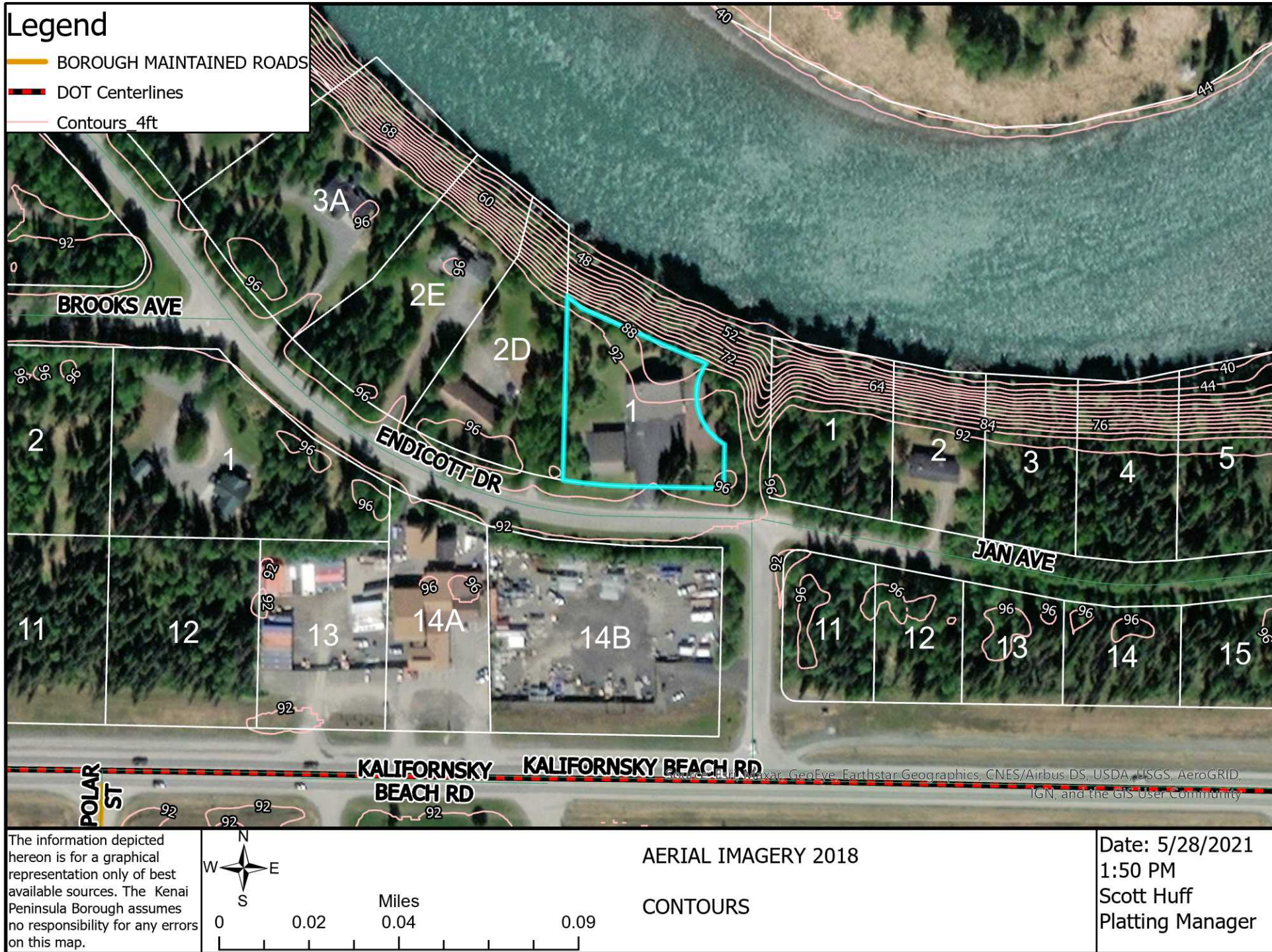
The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.

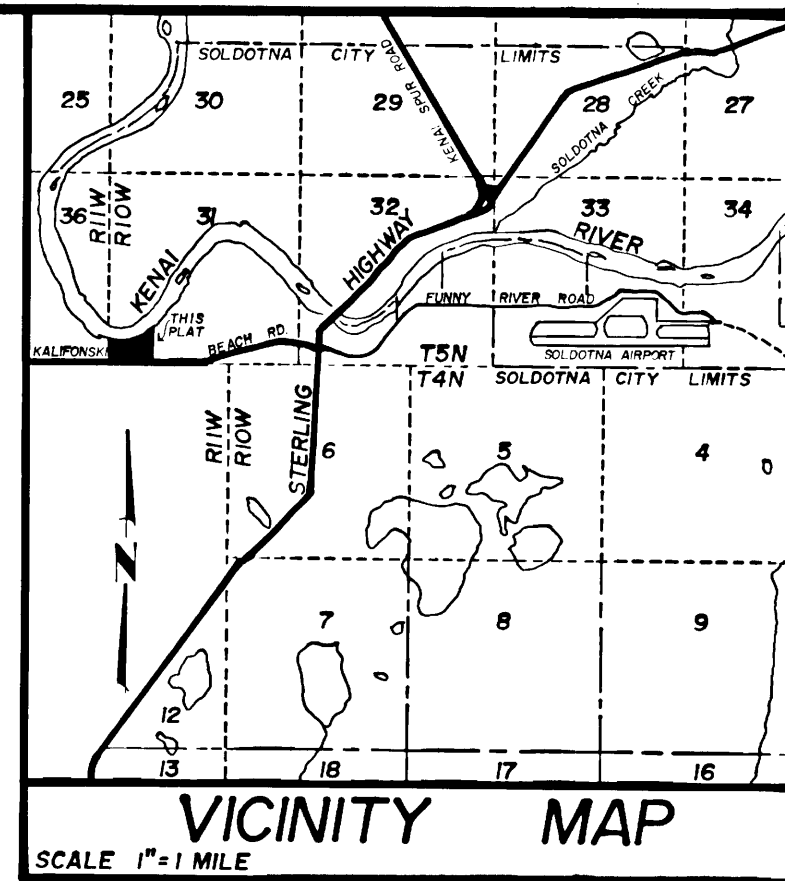
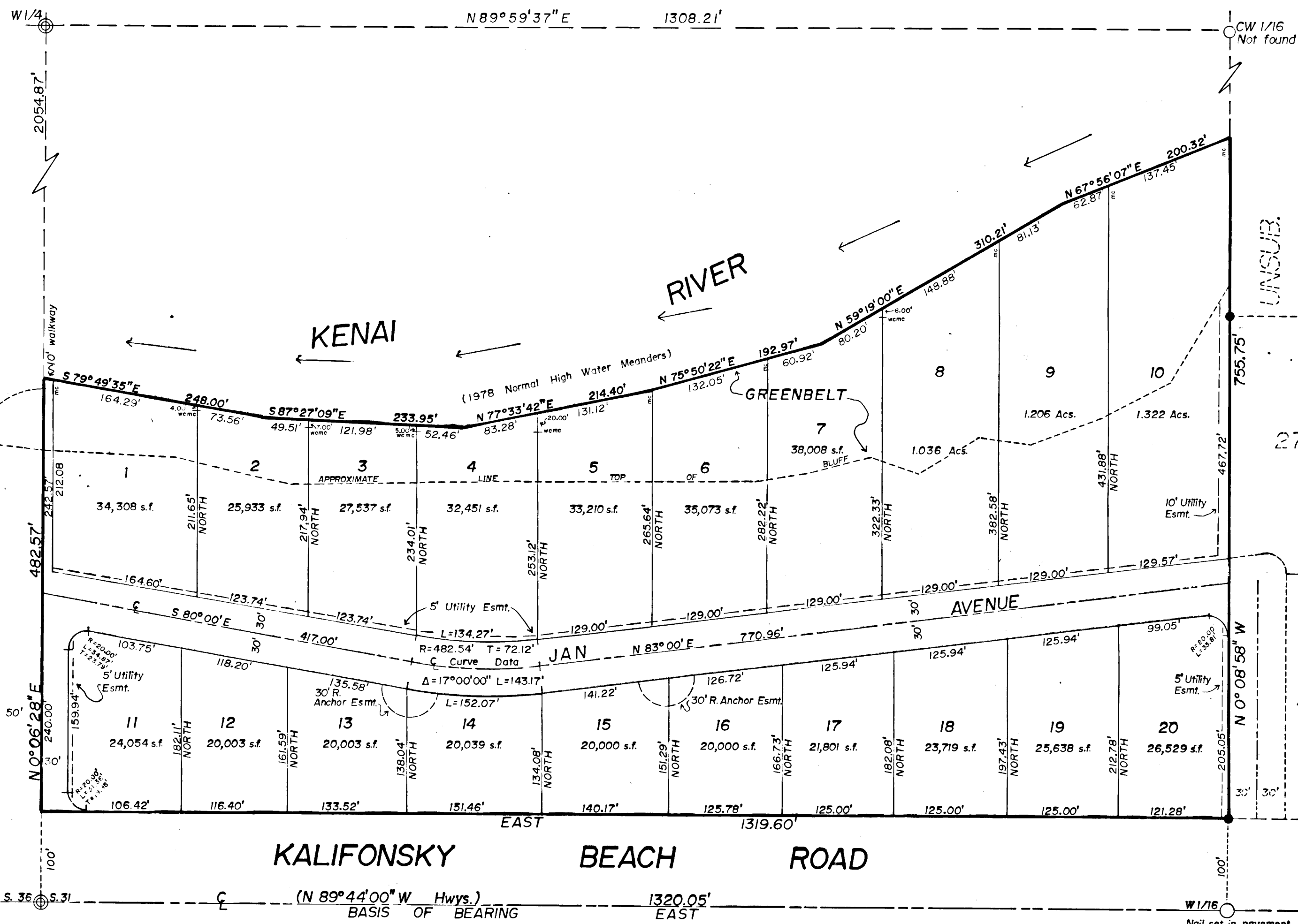


AERIAL IMAGERY 2018

CONTOURS

Date: 5/28/2021
1:50 PM
Scott Huff
Platting Manager





LEGEND AND NOTES

- ⊕ Found 1 1/2" Aluminum Cap Monument (1300-S 1977)
- ⊕ Found U.S.G.L.O. Brass Cap Monument (1921)
- Found 1/2" rebar.
- ⊥ Set 1/2" x 20" steel rebar.

All bearings refer to the south boundary of Sec. 31, T5N, R10W, S.M., AK. as being East.

All datum of record shown thus ().

All lots are subject to a 20' bldg. setback along all dedicated R/W's.

All wastewater disposal systems shall comply with existing law at time of construction.

All of the lots in this subdivision are subject to assessment for improvements required by ordinance of the City of Soldotna when installed by the City of Soldotna.

The natural meanders of normal high water of the Kenai River form the northerly boundary of Lots 1 through 10.

A greenbelt exists on Lots 1 through 10 between the Kenai River and the top of the bluff and no trees shall be cut in this greenbelt area.

Lots 11 through 20 have access to Endicott Drive and Jan Avenue only.

CERTIFICATE OF OWNERSHIP AND DEDICATION

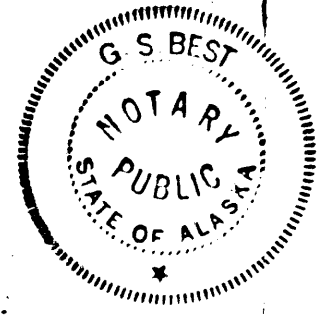
We hereby certify that we are the owners of the property shown and described hereon and that we hereby adopt this plan of subdivision, and dedicate all streets, alleys, walks, parks, utility easements, and other open spaces to public use.

Herman Stenga Janet L. Stenga
Herman Stenga Janet L. Stenga
P.O. Box 506
Soldotna, AK 99669

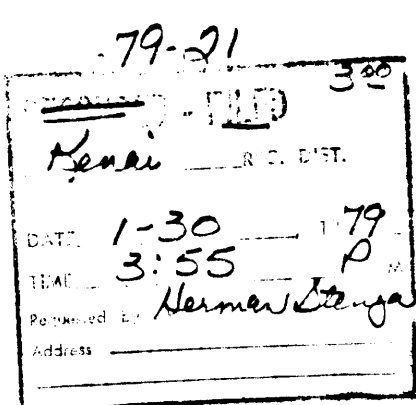
NOTARY'S ACKNOWLEDGEMENT

Subscribed and sworn to before me this 29th day of AUGUST, 1978.

[Signature]
Notary Public for Alaska
My Commission Expires: July 1, 1982



UNSUBDIVIDED



PLAT APPROVAL

This plat having been approved by the Kenai Peninsula Borough Planning Commission as recorded in the official minutes of the meeting of August 7th, 1978, is hereby acknowledged and accepted as the official plat, subject to any and all conditions and requirements of ordinances and law appertaining thereto.

KENAI PENINSULA BOROUGH
By Lyle Bayley



K-BEACH PARK SUBDIVISION ADDITION NO. 2

DESCRIPTION: Located within U.S. Government Lot 12, Section 31, T5N, R10W, S.M., AK. and within the City of Soldotna containing 15.889 acres more or less.

Owner: Herman Stenga
P.O. Box 506
Soldotna, Alaska 99669

P.O. BOX 476	G.S. Best	SOLDOTNA, AK
Geologist, Registered Land Surveyor		
Date Surveyed August 1978	Scale 1" = 100'	Bk No. 78-1



NOTE:
The natural meanders along the Kenai River form the bounds of lots adjoining the river. The traverse line, as shown, is for survey computation and data only. All corners, as set on said traverse line, are witness corners, with the true corners being on the extension of lot lines and the natural meanders.

SLIKOK CREEK ALASKA SUBDIVISION Within Section 36, Township 5 North, Range 11 West, Seward Meridian Total Area = 133.23 Acres (Including Tract A) Soldatna, Alaska

DATE	REVISION RECORD	DWN	CHK	APP	REC	APP
8/10/61	Added Lengths of curves for center lines of streets	is	6	2		
7/17/62	Clarification of Tract A	SAW				
5/8/62	Added note on natural meanders	SAW				

DATE OF SURVEY BEGINNING 8/22/60 ENDING 12/22/60		NAME OF SURVEYOR (FIELD BOOK #) C. M. HOFFMAN	
STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES DIVISION OF LANDS ANCHORAGE, ALASKA			
SLIKOK CREEK ALASKA SUBDIVISION			
DRWN BY: C. M. H.	APPROVAL RECOMMENDED [Signature]	DATE APPROVED Nov. 30, 1960	
SCALE: 1" = 100'	SHEET 1 OF 2 SHEETS	FILE NO.	21-12

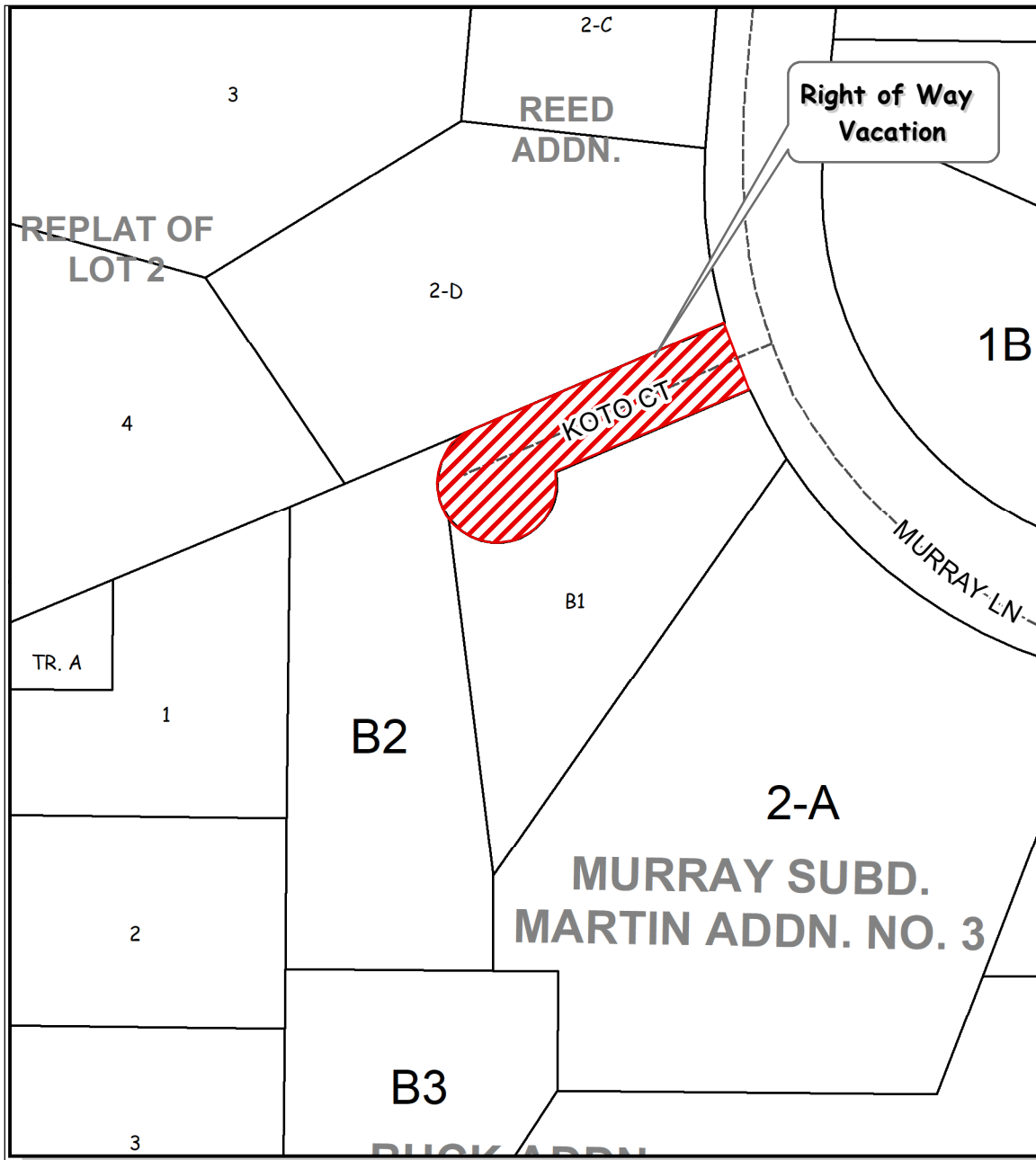
Slikok Creek Alaska Sub.
K-1361



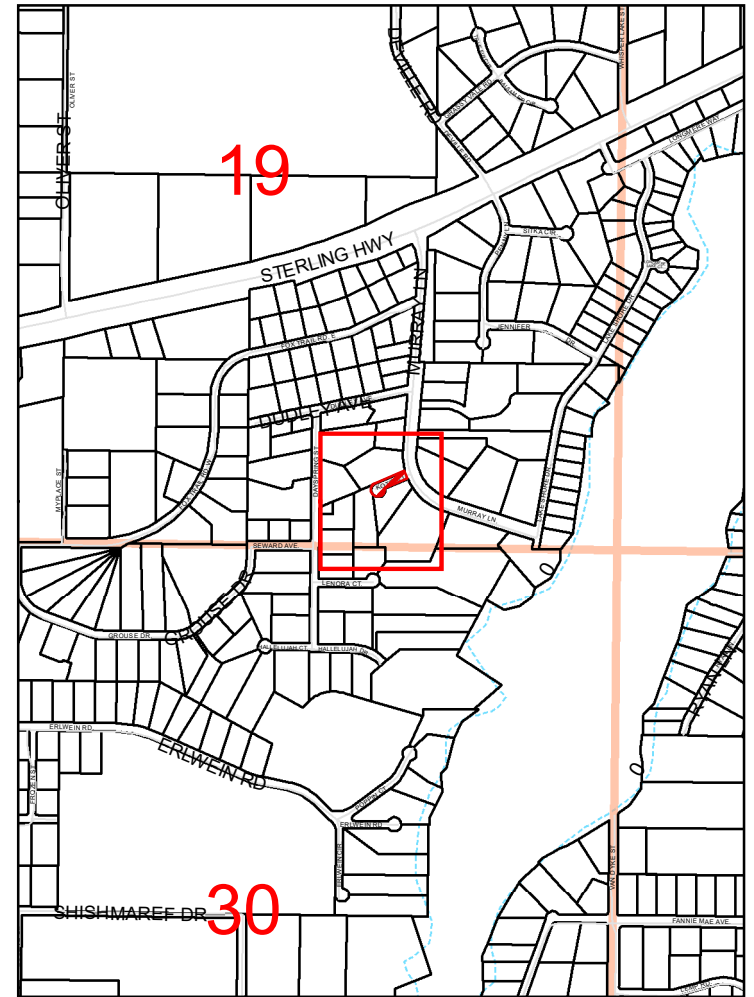
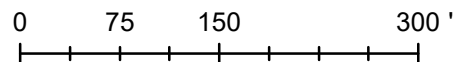
SLIKOK CREEK ALASKA SUBDIVISION
Within Section 36, Township 5 North, Range 11 West, Seward Meridian
Tract A Area = 37.14 Acres Soldatna, Alaska

DATE	7/17/62	REVISION	CHANGE PUBLIC PARK TO TRACT "A"	BY	SAW
DATE	7/17/62	REVISION		BY	

DATE OF SURVEY	6/22/60	NAME OF SURVEYOR (FIELD BOOK No. 1)	C. M. HOFFMAN
SECTION	36	TOWNSHIP	5 N
RANGE	11 W	MERIDIAN	S
STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES DIVISION OF LANDS ANCHORAGE, ALASKA			
SLIKOK CREEK ALASKA SUBDIVISION			
DRWN. BY	C.M.H.	APPROVAL	RECOMMENDED
DATE APPROVED	Nov. 30, 1960	APPROVED	
SCALE	1" = 100'	SHEET	2 OF 2 SHEETS
FILE NO.	21-11		



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.



0 550 1,100 2,200 Feet

KPB 2021-154V
S19 T05N R09W
Sterling




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.

0 50 100 200'

Aerial View



 Right of Way Vacation

PClements, KPB 2021-154V
Imagery Sterling 2018

LEGEND:

- ⊗ 2 1/2" BRASS CAP MON. GLO 1920 RECORD
- 1/2" REBAR RECORD
- () RECORD DATUM PLAT 2017-59 KRD

NOTES:

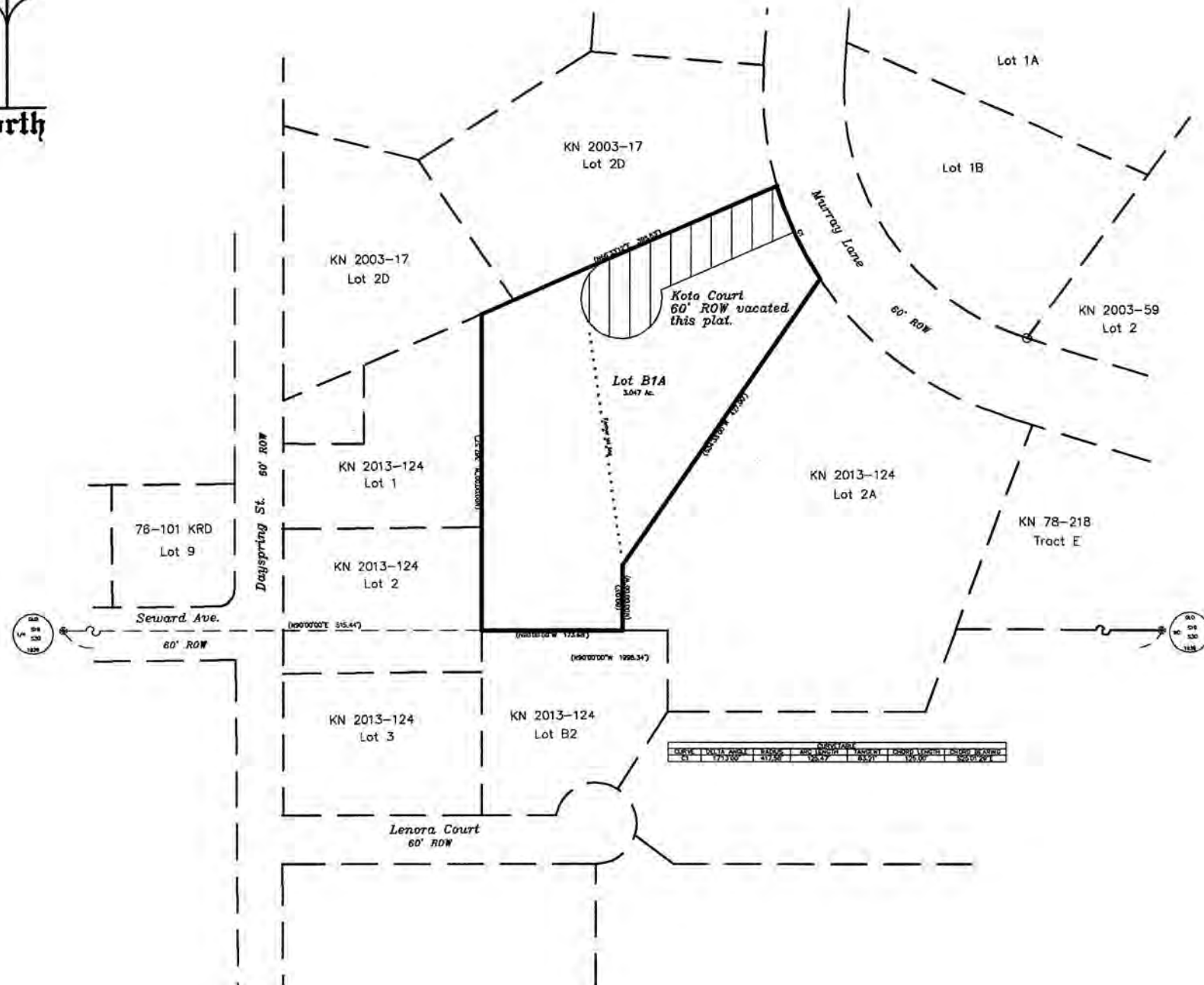
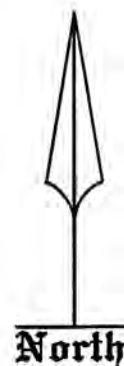
- 1) This is a paper plat. A field survey was not performed in accordance with KPB 20.60.200(A).
- 2) Basis of bearing taken from Murray Subdivision Buck Addition, Plat 2017-59, Kenai Recording District.
- 3) Building Setback-A setback of 20 feet is required from all street Rights-of-Way unless a lesser standard is approved by resolution by the appropriate Planning Commission.
- 4) The vacation of Koto Court was approved by the Planning Commission at the meeting of ,2022.
- 5) Front 15 feet adjacent to right-of-ways and 20 feet within 5 feet of the side lot lines is a utility easement per KN 2017-59. 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.
- 6) **WASTEWATER DISPOSAL:** The parent subdivision for lots resulting from this platting action was approved by the Kenai Peninsula Borough on November 3, 2017. Wastewater treatment and disposal systems must meet the regulatory requirements of the Alaska Department of Environmental Conservation.



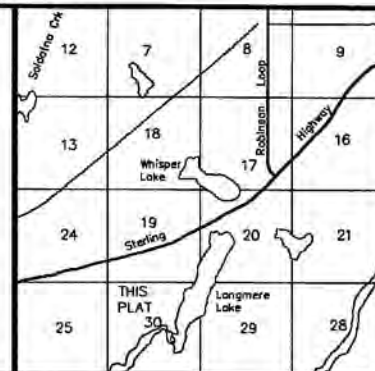
SURVEYOR'S CERTIFICATE

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 _____



VICINITY
MAP
1" = 1 MILE



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.

MARSHALL W. MARTIN
36075 MURRAY LANE
SOLDOTNA, ALASKA 99669

NOTARY'S ACKNOWLEDGEMENT

FOR _____
ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____ 20____.

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. _____

Murray Subdivision
2022 Replat

A resubdivision of Lots B1 and B2 Murray Subdivision Buck Addition, Plot 2017-59, Kenai Recording District, and the vacation of Koto Court.

Located within the SW1/4 SE1/4 Section 19, T5N, R9W, S.M., Kenai Peninsula Borough, Alaska.

Containing xxxxxx Ac.

Surveyor Segesser Surveys 30485 Rosland St. Soldotna, AK 99669 (907) 262-3909	Owner Marshall W. Martin 36075 Murray Lane Soldotna, AK 99669
JOB NO. 21319	DRAWN: 11-16-21
SURVEYED: N/A	SCALE: 1"=50'
FIELD BOOK: N/A	SHEET: 1 of 1

KPB 2021-154V

AGENDA ITEM E. NEW BUSINESS

**ITEM 6 - KOTO COURT RIGHT OF WAY VACATION
AND ASSOCIATED UTILITY EASEMENTS**

KPB File No.	2021-154V
Planning Commission Meeting:	December 13, 2021
Applicant / Owner:	Marshall Martin of Soldotna, Alaska
Surveyor:	John Segesser / Segesser Surveys, Inc.
General Location:	Murray Lane, Sterling area
Legal Description:	Lots B1 AND B2 Murray Subdivision Buck Addition, Plat KN 2017-59

STAFF REPORT

Specific Request / Purpose as stated in the petition: My client, Marshall Martin, wants to vacate the line between Lots B1 and B2 and include the vacation of Koto Court. Koto Court was dedicated to provide legal access to Lot B2 and does not provide access to the adjoining property.

Notification: Public notice appeared in the December 2, 2021 issue of the Peninsula Clarion as a separate ad. The public hearing notice was published in the December 9, 2021 issue of the Peninsula Clarion as part of the Commission's tentative agenda.

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

Library of Soldotna Post Office of Sterling

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

Public hearing notices were sent by regular mail to 20 owners within 600 feet of the proposed vacation.

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

State of Alaska Dept. of Fish and Game	Alaska Communication Systems (ACS)
State of Alaska DNR	ENSTAR Natural Gas
State of Alaska DOT	General Communications Inc. (GCI)
State of Alaska DNR Forestry	Homer Electric Association (HEA)
Central Emergency Services	
Ninilchik Traditional Council	

Legal Access (existing and proposed): The proposed vacation is for Koto Court, a 60 foot wide right of way that is approximately 275 feet long and ends with a cul-de-sac. Koto Court is currently unconstructed and not maintained. Three lots abut Koto Court, Lots B1 and B2 of Murray Subdivision Buck Addition, KN 2017-59, and Lot 2D of Murray Subdivision Reed Addition, KN 2003-17.

If approved, Murry Lane will be the legal access for Lot 2D as well as proposed Lot B1A. Lot B1A will be the combined parcels of Lot B1 and Lot B2.

Murray Lane is a dedicated right of way with varying width. The portion abutting the area included in the petition is 100 foot wide. Murray Lane is constructed and maintained by the State of Alaska. Murray Lane connects to the Sterling Highway near mile post 89.

No new dedications are proposed. Lot 2D, adjoining the north boundary of Koto Court, has a driveway to Murray Lane.

The block is not closed and is not compliant. Murray Lane, Dudley Avenue, Dayspring Street, and Hallelujah Drive define the block. A vacation has removed the section line easements that would have provided a closed and compliant block. Murray Lane ends at an intersection with Lakeshore Drive while Hallelujah Drive ends at a lot. This block is bordered by Longmere Lake and the ability to get a closed block will be difficult due to existing structures and low wet areas. The distance along Dayspring Street exceed allowable lengths. When the plat is reviewed, staff will request that the plat committee concur that an exception to block length requirements is not required as this subdivision will not be able to provide any dedications to improve the block length. Koto Court is a cul-de-sac and by KPB code definitions is to be permanently closed. Approval or denial of the vacation of Koto Court will not affect block compliance.

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

Site Investigation: The right of way area and the lots abutting do not contain any low wet areas. Steep slopes are not present.

River Center Review	<p>A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments</p> <p>B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments</p> <p>C. State Parks Reviewer: Russell, Pam Comments: No Comments</p>
---------------------	---

Staff Analysis: Koto Court was dedicated on Murray Subdivision Buck Addition, Plat KN 2017-59. That plat dedicated the right of way and created the current lot configurations for Lots B1 and B2. The land within this proposal has been part of past subdivisions starting with the creation of a 16 acre tract with Murray Tract "A", Plat KN 76-26. Several subdivisions that subdivided that original Tract A and then lot reconfigurations have occurred until Plat KN 2017-59 created the current configuration.

Murray Subdivision Buck Addition, Plat KN 2017-59, dedicated Koto Court as a 60 foot wide cul-de-sac. Three lots abut the right of way, Lot 2D of Murray Subdivision Reed Addition (Plat KN 2003-17), and Lot B1 and Lot B2 of Murray Subdivision Buck Addition.

Murray Subdivision Buck Addition, Plat KN 2017-59, granted 15 foot utility easements along dedicated right of ways. The proposed vacation includes the associated utility easements. All utility easements along the Koto Court dedication will be vacated. A 15 foot wide utility easement adjoining Murray Lane will remain in place including the area within the vacated Koto Court right of way.

Murray Subdivision Replat of Lot 2 and Martin 1986 Subdivision of Tract A-1 and Replat of Tract D, Plat KN 88-38, granted a 20 foot utility easement centered on the common boundary of Lot 2D and former Lot 5D. This 10 foot utility easement was carried forward on Murray Subdivision Martin Addition No. 2, Plat KN 2007-85, and Murray Subdivision Martin Addition No. 3, Plat KN 2013-124. The dedication of Koto Court was atop the utility easement. Utilities within a right of way are allowable with the correct permitting.

This application requests all associated utility easements to be vacated and that would include the easement granted by Plat KN 88-38 located on the north 10 feet of Koto Ct. If the owners wish to leave that easement intact or a utility provider requests the easement remain, it must be depicted and noted. **Staff recommends that a plat note be added that states, 'The 10 foot utility easement granted per KN 88-38, where located within Koto Court, will be vacated with the recording of this plat.'**

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

20.65.050 – Action on vacation application

- D. The planning commission shall consider the merits of each vacation request and in all cases the planning commission shall deem the area being vacated to be of value to the public. It shall be incumbent upon the applicant to show that the area proposed for vacation is no longer practical for the uses or purposes authorized, or that other provisions have been made which are more beneficial to the public. In evaluating the merits of the proposed vacation, the planning commission shall consider whether:
1. The right-of-way or public easement to be vacated is being used;
Staff comments: The right of way is not constructed and does not appear to be used.
 2. A road is impossible or impractical to construct, and alternative access has been provided;
Staff comments: Koto Court is possible to construct as it is not affected by steep terrain or wetlands. No alternative access is proposed as all lots, and proposed lots, abutting Koto Court will have access via Murray Lane.
 3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;
Staff comments: The area has been subdivided with all sufficient right of way dedications to provide legal access to all parcels.
 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 any public interest area or water body.
 5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;
Staff comments: This is a cul-de-sac with no intention to be further extended and will not limit interconnectivity.
 6. Other public access, other than general road use, exist or are feasible for the right-of-way;
Staff comments: Other use is not needed. The current right of way provides access to private lands and does not connect to any public lands or provide connection to walkways or pedestrian easements.
 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: 15 foot wide utility easements will remain along Murray Lane. The 10 foot utility easement per KN 88-38, where located within Koto Court, will be vacated with this platting action. The utility providers did not request any additional utility easement.

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

Staff comments: The proposed lot configuration will provide that all lots front on a dedicated right of way.

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

The Assembly or City Council will hear the vacation at their scheduled January 4, 2022 meeting.

If approved, a subdivision plat will finalize the proposed right of way vacations. A preliminary plat has not been submitted at this time.

KPB department / agency review:

Planner	
Code Compliance	Reviewer: Ogren, Eric Comments: No comments
Addressing	Reviewer: Haws, Derek Affected Addresses: None Existing Street Names are Correct: Yes List of Correct Street Names: SEWARD AVE LENORA CT DAYSPRING ST MURRAY LN KOTO CT Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied: Comments: No addresses affected.
Assessing	Reviewer: Wilcox, Adeena Comments: No comment

Utility provider review:

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

RECOMMENDATION:

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

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

KPB 20.65.050 – Action on vacation application

- H. A planning commission decision to approve a vacation is not effective without the consent of the city council, if the vacated area to be vacated is within a city, or by the assembly in all other cases. The council or assembly shall have 30 days from the date of the planning commission approval to either consent to or veto the vacation. Notice of veto of the vacation shall be immediately given to the planning commission. Failure to act on the vacation within 30 days shall be considered to be consent to the vacation. This provision does not apply to alterations of utility easements under KPB 20.65.070 which do not require the consent of the assembly or city council unless city code specifically provides otherwise.**
- I. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, where applicable, the applicant shall have a surveyor prepare and submit a plat including the entire area approved for vacation in conformance with KPB 20.10.080. Only the area approved for vacation by the assembly or council may be included on the plat. The final plat must be recorded within one year of the vacation consent.**
- J. A planning commission decision denying a vacation application is final. No reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.**
- K. An appeal of the planning commission, city council or assembly vacation action under this chapter must be filed in the superior court in accordance with the Alaska Rules of Appellate Procedure.**

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

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

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

that are appropriate for future growth, to align plans for future expansion of services to serve future residential development and manage growth.

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

- Focus Area: Transportation

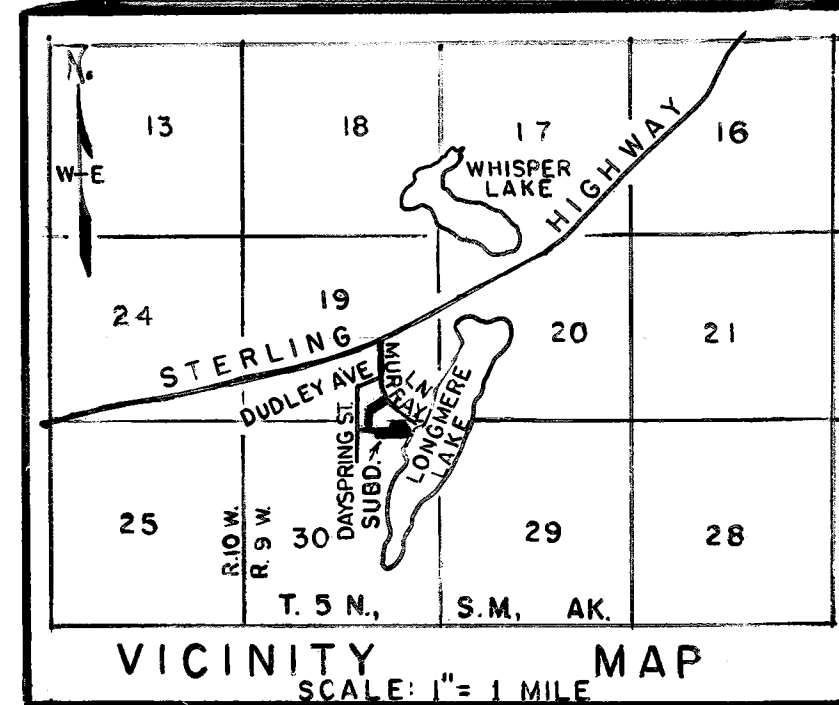
o Objective B. Ensure new roads are developed in alignment with existing and planned growth and development.

- Strategy 2. Near – Term: Establish subdivision codes that dictate road construction standards to accommodate future interconnectivity and/or public safety.*
- Strategy 3. Near – Term: Identify areas of anticipated growth to determine future access needs.*

END OF STAFF REPORT

Δ	R	T	ARC	BEARING	CORD
1. 17°13'02"	417.56'	63.21'	125.47'	S 25°01'29"E	125.0'
2. 8°15'02"	417.56'	30.12'	60.13'	S 20°32'30"E	60.08'
3. 8°58'00"	417.56'	32.74'	65.34'	S 29°09'00"E	65.28'
4. 101°32'20"	50.0'	61.24'	88.61'	S 15°47'00"W	77.46'
5. 156°55'10"	50.0'	244.88'	136.94'	N 66°33'12"E	97.98'
6. 110°59'00"	50.0'	72.73'	96.85'	N 67°01'43"E	82.4'
7. 73°44'23"	50.0'	37.5'	64.35'	S 20°36'35"E	60.0'
8. 73°44'23"	50.0'	37.5'	64.35'	S 53°07'48"W	60.0'

LEGEND
 2 1/2" BRASS CAP MONUMENT FOUND 1920 G.L.O.
 1/2" REBAR ROD FOUND
 1/2" x 24" REBAR ROD SET
 --- UTILITY EASEMENT
 --- BUILDING SETBACK LINE
 () = RECORD DATA

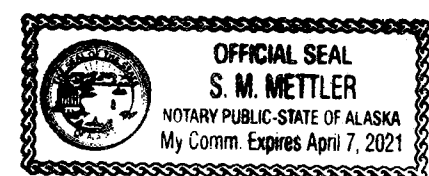


CERTIFICATION OF OWNERSHIP AND DEDICATION
 I HEREBY CERTIFY THAT I AM THE OWNER OF THE PROPERTY SHOWN AND DESCRIBED HEREON, AND THAT I HEREBY ADOPT THIS PLAN OF SUBDIVISION AND BY MY FREE CONSENT DEDICATE ALL RIGHT OF WAYS TO PUBLIC USE AND GRANT ALL EASEMENTS TO THE USE SHOWN.

Marshall W. Martin
 Marshall W. Martin (36075 MURRAY LANE, SOLDOTNA, AK 99669)

NOTARY'S JURAT
 SUBSCRIBED AND SWORN BEFORE ME THIS 24 DAY OF Nov 2017
 FOR: Marshall W. Martin
 NOTARY PUBLIC FOR ALASKA

My Commission Expires 4/7/2021

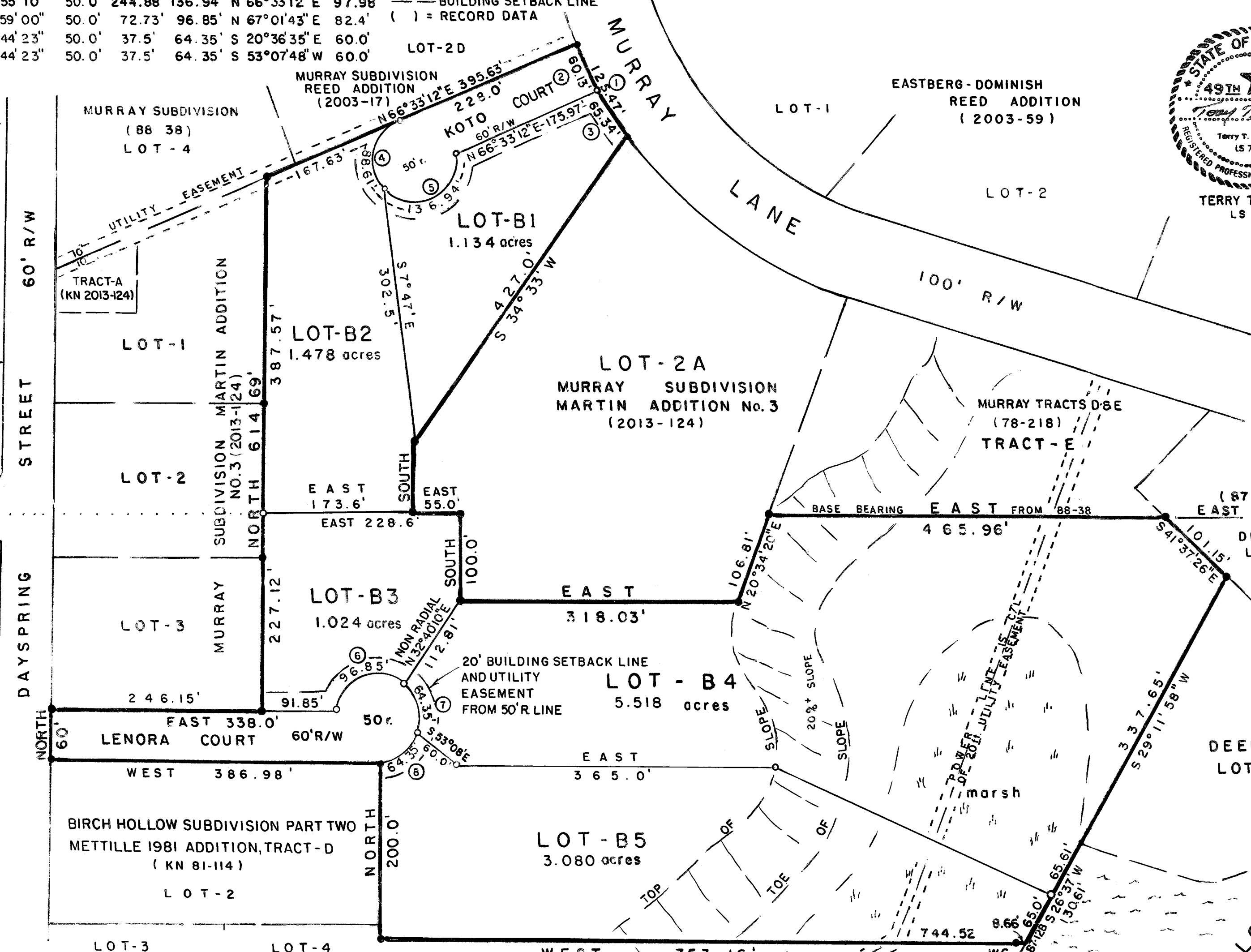


PLAT APPROVAL:
 This subdivision plat was approved by the Kenai Peninsula Borough Planning Commission at the meeting of MAY 8, 2017
 Kenai Peninsula Borough by *Max Best*
 Authorized Official

MURRAY SUBDIVISION BUCK ADDITION

COMPRISED OF 13.324 acres TRACT-B OF MURRAY SUBDIVISION MARTIN ADDITION NO.3 (2013-124) IN THE S 1/2 SE 1/4 SECTION 19, AND IN THE N 1/2 NE 1/4 SECTION 30, T.5N., R.9W., S.M. KENAI RECORDING DISTRICT
 KENAI PENINSULA BOROUGH, ALASKA
 OWNER: MARSHALL W. MARTIN, 36075 MURRAY LANE, SOLDOTNA, AK 99669
 SURVEYOR: TERRY T. EASTHAM No. 7629-S
 33986 COMMUNITY COLLEGE DR. SOLDOTNA, AK 99669
 K. P. B. File No. 2015-066R1 Scale: 1" = 100' March 15, 2017

SCALE: 1"=100'
 LOT-6 (76-101)
 LOT-8 LOT-9 JONES STREET
 LOT-1 BIRCH HOLLOW SUBD. PART-TWO JEAN DITTRICK 1983 SUBDIVISION TRACT-C (KN 83-249)
 LOT-2

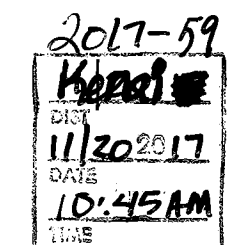


- NOTES:**
- SUBDIVISION TIES TO MONUMENTS ARE MEASURED AND OF RECORD IN COMPLIANCE WITH K.P.B. 20.60.120.
 - FOR AREAS SUBJECT TO INUNDATION ANY PERSON DEVELOPING THE PROPERTY IS RESPONSIBLE FOR OBTAINING ALL REQUIRED LOCAL, STATE, AND FEDERAL PERMITS, INCLUDING A U.S. ARMY CORPS OF ENG. WETLANDS DETERMINATION IF APPLICABLE.
 - AN EXCEPTION TO KPB 20.30.190. 3:1 DEPTH TO WIDTH RATIO FOR LOT-B5, AND A EXCEPTION TO KPB 20.30.170. BLOCK LENGTH REQUIREMENTS WERE GRANTED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF JULY 13, 2015.
 - ROADS MUST MEET THE DESIGN AND CONSTRUCTION STANDARDS ESTABLISHED BY THE BOROUGH IN ORDER TO BE CONSIDERED FOR CERTIFICATION AND INCLUSION IN THE ROAD MAINTENANCE PROGRAM (KPB 14.06).
 - A BUILDING SETBACK OF 20FT. IS REQUIRED FROM ALL STREET RIGHT OF WAYS UNLESS A LESSER STANDARD IS APPROVED BY RESOLUTION OF THE APPROPRIATE PLANNING COMMISSION.
 - NO DIRECT ACCESS TO STATE MAINTAINED RIGHT-OF-WAY PERMITTED UNLESS APPROVED BY THE STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES.
 - EXISTING OVERHEAD POWER LINES ARE CENTERLINE OF A 20FT. WIDE ELECTRICAL DISTRIBUTION LINE EASEMENT INCLUDING GUYS AND ANCHORS.
 - THE FRONT 15' FT. OF THE 20FT. BUILDING SETBACK IS A UTILITY EASEMENT, AND THE ENTIRE SETBACK WITHIN 5 FT. OF SIDE LOT LINES IS 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.
 - THE NATURAL MEANDERS OF ORDINARY HIGH WATER FORMS THE TRUE LIMITS OF LOT LINES.
 - THIS SUBDIVISION IS SUBJECT TO CONDITIONS AND EASEMENT FROM PARENT PLATS KN 2013-124 KN 86-246, AND KN 2007-85.
 - THE UTILITY EASEMENT FOR LOTS B3, B4, AND B5, FRONTING LENORA COURT IS LIMIT OF 20FT. BUILDING SETBACK LINE PER BIRCH HOLLOW SUBDIVISION NO. 3, KN 83-245.

WASTEWATER DISPOSAL

SOIL CONDITIONS, WATER TABLE LEVELS, AND SOIL SLOPES IN THIS SUBDIVISION HAVE BEEN FOUND SUITABLE FOR CONVENTIONAL ONSITE WASTEWATER TREATMENT AND DISPOSAL SYSTEMS SERVING SINGLE-FAMILY OR DUPLEX RESIDENCES AND MEETING THE REGULATORY REQUIREMENTS OF THE KENAI PENINSULA BOROUGH. ANY OTHER TYPE OF ONSITE WASTEWATER TREATMENT AND DISPOSAL SYSTEM MUST BE DESIGNED BY A PROFESSIONAL ENGINEER REGISTERED TO PRACTICE IN ALASKA, AND THE DESIGN MUST BE APPROVED BY THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

DECEASED ON 11/03/17
 (SIGNATURE OF ENGINEER) LICENSE NO. DATE
 ORIGINAL SIGNED SOIL REPORT
 IS ON FILE WITH K.P.B. *P.O.B. Jeller 11/20/17*
 PLATTING OFFICER

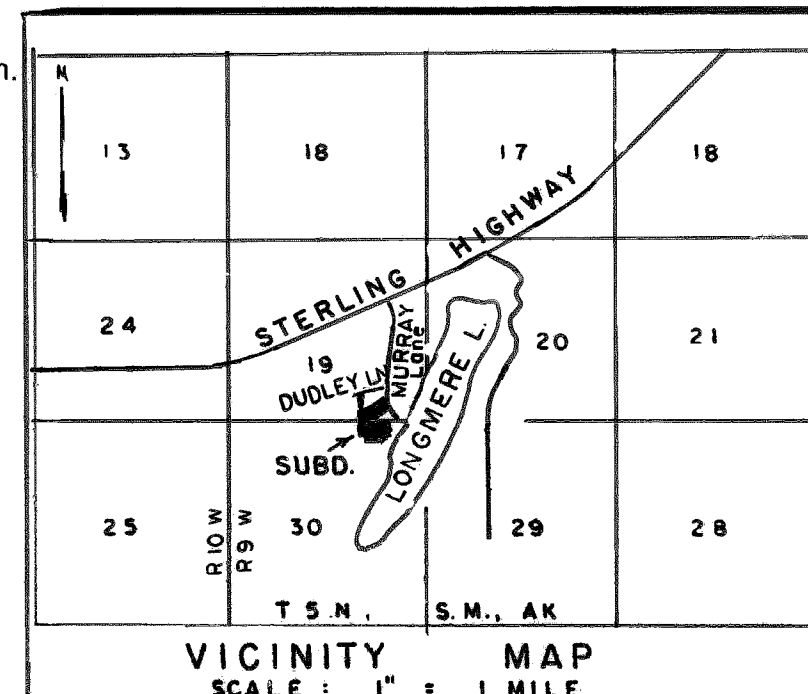


WASTEWATER DISPOSAL FOR TRACT-A: No wastewater will be generated or disposed of on Tract-A. Conditions might not be suitable for onsite wastewater treatment and disposal systems. Any onsite wastewater treatment and disposal system must meet the wastewater disposal requirements of KPB Chapter 20.14 and regulatory requirements of the Alaska Department of Environmental Conservation.

NOTE: Exceptions were granted to 20.20.030 and 20.20.190 by the Kenai Peninsula Borough Nov. 14, 2014

NOTES:

1. Subdivision limits and ties to monuments are record data from Murray Subdivision. (no.88-38) measured and accepted as true data for this subdivision.
2. A building setback of 20ft. is required from all street right-of-ways unless a lesser standard is approved by resolution of the appropriate planning commission.
3. No permanent structure shall be constructed or placed within an easement which would interfere with the ability of a utility to use the easement.
4. The data for the State (Murray Lane) is record for subdivision limits from Murray Subdivision (no.88-38).
5. No access to state maintained rights-of-way permitted unless approved by the State of Alaska Department of Transportation.
6. Existing overhead power lines are centerline of a 20 ft. wide electrical distribution line easement including guys and anchors.
7. The front 10 ft. of the 20 ft. building setback is a utility easement.
8. Tract and Lots in this subdivision are subject to reservations, easements, dedications, and restrictions of record. U.S. Mineral Patent 9-27-1982 B.194 P.758, Oil gas and mineral rights 5-28-1976 B.96 P.28 H.E.A Elec. easement 8-4-1961 B.7 P.37, Subdivision plats and notes by 83-245, 86-246, 2007-85.



CERTIFICATION OF OWNERSHIP AND DEDICATION

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

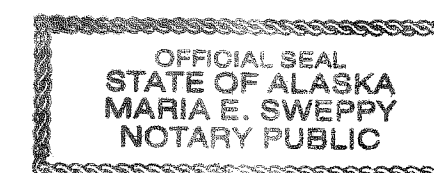
Marshall W. Martin
MARSHALL W. MARTIN
36075 Murray LN
Soldotna AK 99669

NOTARY'S ACKNOWLEDGEMENT

Subscribed and sworn before me
this 30 day of December 2013
for: Marshall W. Martin

Notary Public
for Alaska

My Commission
Expires
1-16-15



PLAT APPROVAL

This subdivision plat was approved
by the Kenai Peninsula Borough
Planning Commission at the
meeting
of NOVEMBER 14, 2011
Kenai Peninsula Borough
by *Paul B. Joell*
Authorized Official

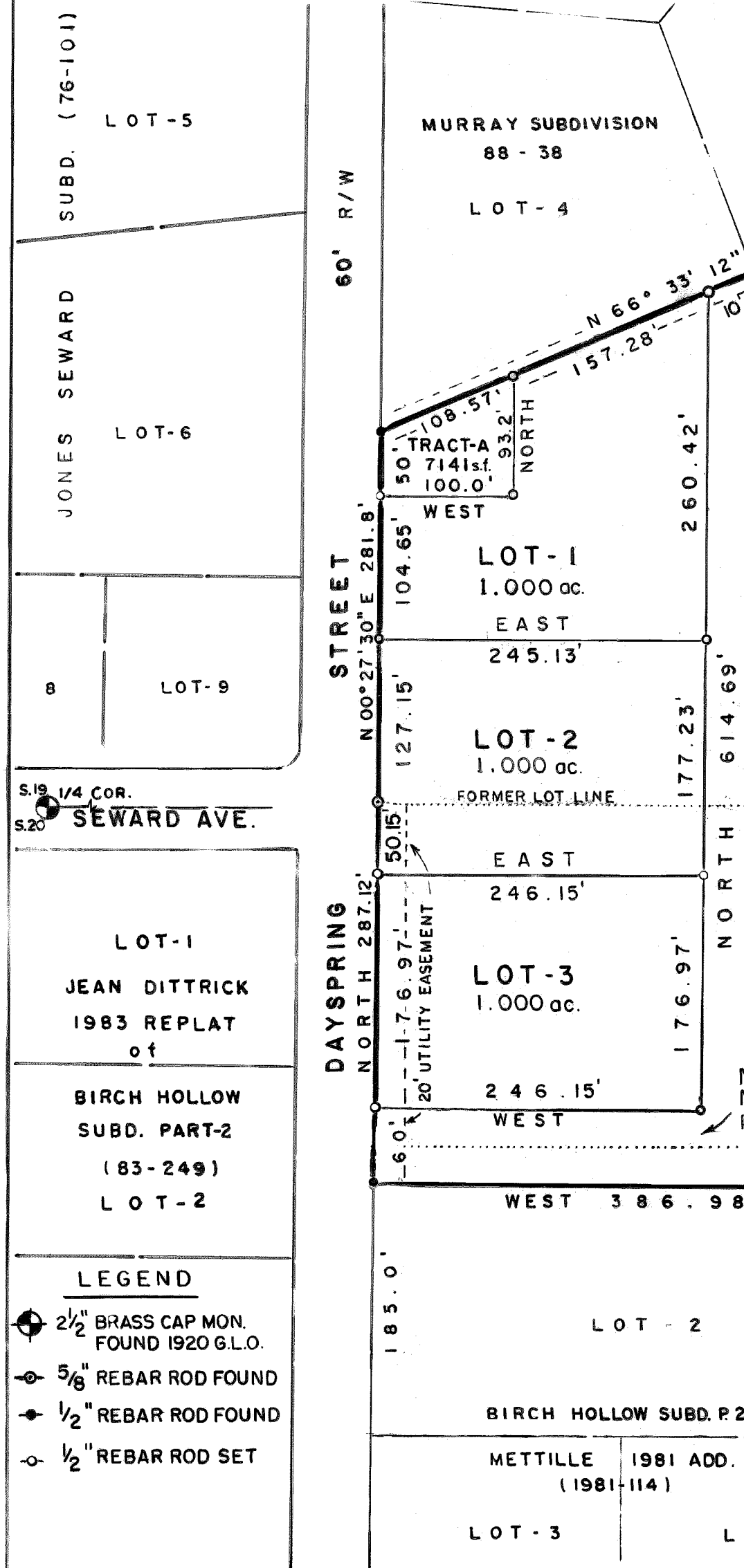
MURRAY SUBDIVISION MARTIN ADDITION NO.3

COMPRISED OF 20.345 acres LOT-1 (4.993 ac) LOT-2 (3.00 ac)
MURRAY SUBDIVISION MARTIN ADDITION NO.2 (2007-85)
TRACT-B-1 (4.731 ac) BIRCH HOLLOW SUBD. NO.3 (83-245)
LOT-1A-1 (7.621 ac) BIRCH HOLLOW SUBD. P.2 (87-120)
IN THE N1/2 NE1/4 SECTION 30, and the SE1/4 SECTION 19
T.5N., R.9N., S.M., Kenai Recording District

KENAI PENINSULA BOROUGH, ALASKA

OWNERS: MARSHALL W. MARTIN
BOX 49 R1 2 SOLDOTNA, AK 99669

SURVEYOR: TERRY T. EASTHAM NO. 7629, 33986 COMMUNITY COLLEGE DR.
SCALE: 1" = 100' DATE: AUGUST 2011 SOLDOTNA, AK 99669



NOTE:
No structures are permitted within the
panhandle portion of flag lot.

CURVE DATA					
Δ	R.	T	L.	B.	C.
① 17°13'02"	417.56'	63.21'	125.47'	S25°01'29"E-125.0'	
② 39°15'12"	417.56'	148.90'	286.07'	S53°15'34"E-280.51'	
③ 56°28'11"	417.56'	224.22'	411.54'	S44°39'00"E-395.08'	

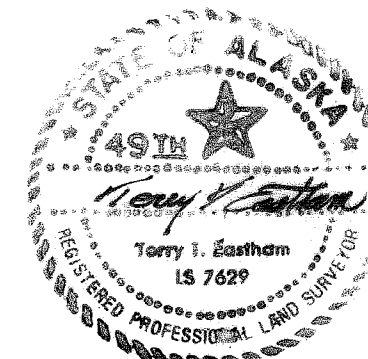
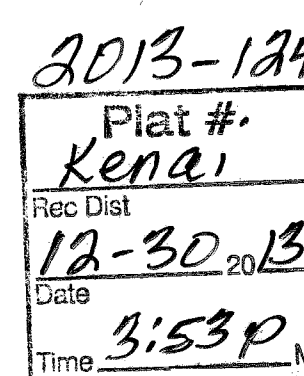
WASTEWATER DISPOSAL FOR TRACT B; Tract-B is at least 200,000 square feet or nominal 5 acres in size and conditions may not be suitable for onsite wastewater treatment and disposal. Any wastewater treatment or disposal system must meet the regulatory requirements of the Alaska Department of Environmental Conservation.

WASTEWATER DISPOSAL: Conditions, water table levels, and soil slopes for LOTS 1, 2, 2A, 3 in this subdivision have been found suitable for conventional onsite wastewater treatment and disposal systems serving single-family or duplex residences and meeting the regulatory requirements of the Kenai Peninsula Borough. Any other type of onsite wastewater treatment and disposal system must be designed by a professional engineer, registered to practice in Alaska, and the design must be approved by the Alaska Department of Environmental Conservation.

[Signature]
(Signature of Engineer)

CE13353
License no.

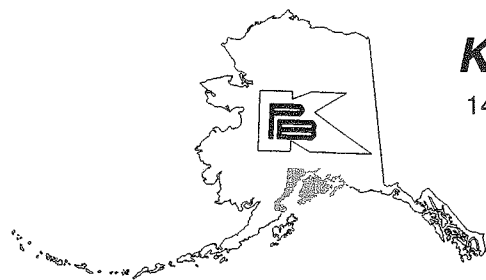
23 Dec 2013
Date



October 30, 2013
Terry T. Eastham
No. LS 7629

K. P. B. FILE NO. 2011-168

Kenai 2013-124



KENAI PENINSULA BOROUGH

144 North Binkley Street • Soldotna, Alaska 99669-7520

Toll-free within the Borough: 1-800-478-4441

PHONE: (907) 262-4441 • FAX: (907) 262-1892

www.borough.kenai.ak.us

MIKE NAVARRE
BOROUGH MAYOR

CERTIFICATE OF TAX DEPARTMENT

I, Rhonda K. Krohn, Property Tax and Collections Supervisor for the Kenai Peninsula Borough, do hereby certify that, as of the date of this certificate, all real property taxes levied by the Kenai Peninsula Borough have been paid for the area(s) described as:

Subdivision: MURRAY SUBDIVISION MARTIN ADDITION NUMBER THREE

Parcel # 06372023

T 5N R 9W SEC 30 Seward Meridian KN 0830245 BIRCH HOLLOW SUB NO 3 TRACT B-1

Parcel # 06372032

T 5N R 9W SEC 30 Seward Meridian KN 0870128 BIRCH HOLLOW SUB PART 2 1987
SUPPLEMENTAL TO PLAT KN860246 LOT 1-A-1

Parcel # 06346020

T 5N R 9W SEC 19 Seward Meridian KN 2007085 MURRAY SUB MARTIN ADDN NO 2 LOT
1

Parcel # 06346021

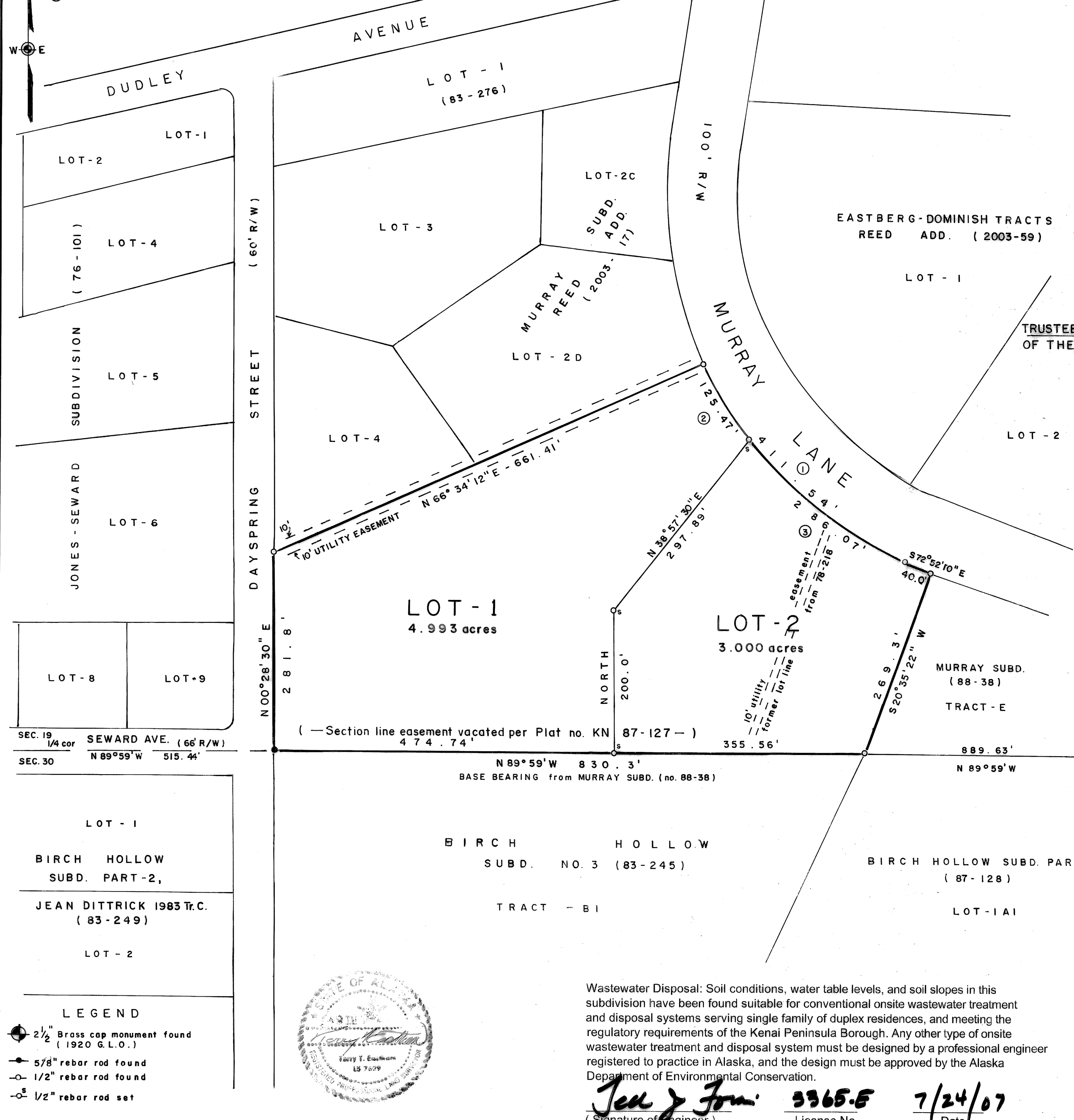
T 5N R 9W SEC 19 Seward Meridian KN 2007085 MURRAY SUB MARTIN ADDN NO 2 LOT
2

The following assessments (except assessments for the cities of Homer, Kenai, Seward, Seldovia, and Soldotna) levied against this property are outstanding:
NONE.

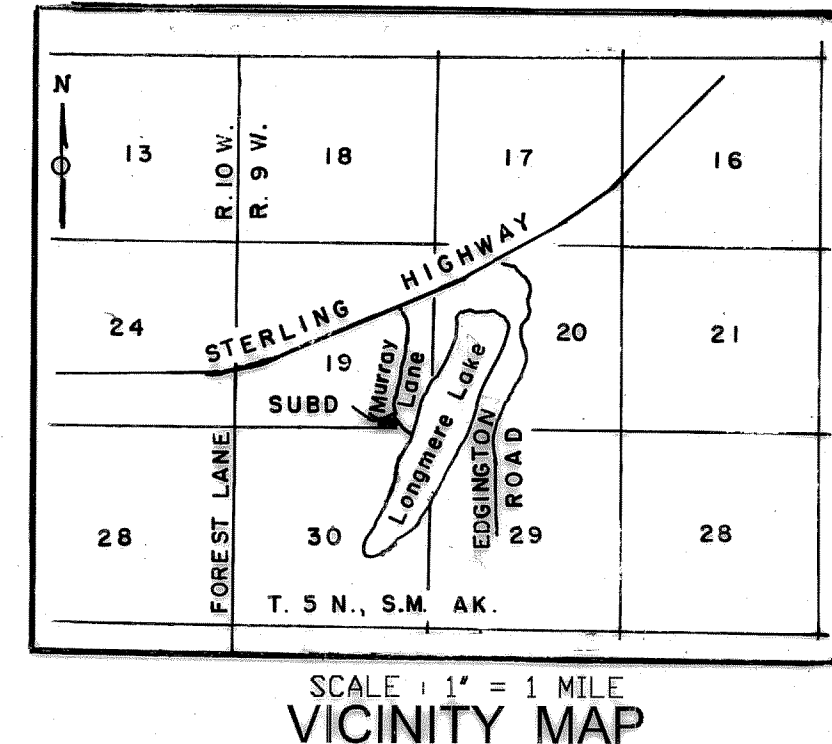
Witness my hand and seal this 13th day of December, 2013.

Rhonda K. Krohn
Property Tax and Collections Supervisor

CURVE DATA					
Δ	R	T	L	B	C
① 56°28'11"	417.56'	224.22'	411.54'	S 44°38'E	395.08'
② 17°13'02"	417.56'	63.21'	125.47'	S 25°00'29"E	125.0'
③ 39°15'12"	417.56'	148.90'	286.07'	S 53°14'34"E	280.51'



PLAT APPROVAL
 This subdivision plat was approved by the Kenai Peninsula Planning Commission at the meeting of October 11, 2004
 Kenai Peninsula Borough
 by Marshall
 Authorized Official



CERTIFICATION OF OWNERSHIP AND DEDICATION
 We hereby certify that we are the owners of the property shown and described hereon, and that we hereby adopt this plan of subdivision and by our free consent grant all easements to the use shown.

TRUSTEE: Marshall W. Martin TRUSTEE: Alice M. Martin
 OF THE MARTIN FAMILY TRUST

NOTARY'S ACKNOWLEDGEMENT
 Subscribed and sworn before me this 06 day of July 2007
 for: Marshall W. Martin
 Alice M. Martin

Notary Public
 for Alaska
Shirley M. Martin

My Commission
 Expires 7-18-11

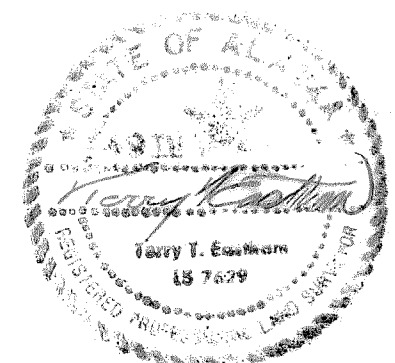
- NOTES**
1. Subdivision limits and ties to monuments are record data from Murray Subdivision. (no.88-38) measured and accepted as true data for this subdivision.
 2. A building setback of 20ft. is required from all street right-of-ways unless a lesser standard is approved by resolution of the appropriate planning commission.
 3. No permanent structure shall be constructed or placed within an easement which would interfere with the ability of a utility to use the easement.
 4. The data for the State road (Murray Lane) is record for subdivision limits from Murray Subdivision (no. 88-38).

2007-85
 Kenai REC DIST 10
 Date 10/2 2007
 Time 10:23 AM
 Requested By Eastham
 Address Terry

SEC. 19 1/4 cor SEWARD AVE. (66' R/W)
 SEC. 30 N 89°59'W 515.44'

LOT - 1
 BIRCH HOLLOW
 SUBD. PART-2,
 JEAN DITTRICK 1983 Tr.C.
 (83-249)
 LOT - 2

- LEGEND**
- 2 1/2" Brass cap monument found (1920 G.L.O.)
 - 5/8" rebar rod found
 - 1/2" rebar rod found
 - 1/2" rebar rod set



Wastewater Disposal: Soil conditions, water table levels, and soil slopes in this subdivision have been found suitable for conventional onsite wastewater treatment and disposal systems serving single family of duplex residences, and meeting the regulatory requirements of the Kenai Peninsula Borough. Any other type of onsite wastewater treatment and disposal system must be designed by a professional engineer registered to practice in Alaska, and the design must be approved by the Alaska Department of Environmental Conservation.

Terry T. Eastham 3365-E 7/24/07
 (Signature of engineer) License No. Date

MURRAY SUBDIVISION MARTIN ADDITION NO.2

Comprised of 7.993 acres; LOT-5D of MURRAY SUBDIVISION Replat of Lot-2 and Martin 1986 Subd. of Tract-1A and Replat of Tract-D. PLAT NO 88-38 K.R.D. AK.
 Owner: Marshall W. Martin and Alice M. Martin
 36195 MURRAY LANE, SOLDOTNA, AK 99669

Surveyor: Terry T. Eastham #7629
 po box 2891 Soldotna AK 99669

Drawn and Surveyed August 2006
 Scale 1"=100" KPB no. 2004-249

'LAT APPROVAL

This plat was approved by the Kenai Peninsula
Borough Planning Commission at the meeting
of Dec. 1 1986

KENAI PENINSULA BOROUGH

by Richard B. Torgue
AUTHORIZED OFFICIAL

NOTE

1. building set back of 20' from all R.O.W.s is
required unless a lesser standard is approved
by a resolution of the appropriate planning commission.
front 10' of building setback is also a utility easement and also the
entire setback within 5' of side lot lines for guy wires.

Soils on these lots may or may not be suitable
for conventional on site waste disposal systems.

No person may construct, install, maintain or
operate a pressurized water system or water

sewer waste disposal system, unless approval

of the ALASKA DEPT. OF ENVIRONMENTAL
CONSERVATION is obtained

No structures permitted within panhandle portion of
lot 1-A-1

OWNER'S CERTIFICATE

We hereby certify that we are the owners of
the property shown and described hereon,
and that we hereby adopt this plan of
subdivision and grant all easements to
uses shown.

Charles W. Mettille
CHARLES W. METTILLE

Diana Mettille
DIANA METTILLE

By Marshall W. Martin
MARSHALL W. MARTIN

By Alice M. Martin
ALICE M. MARTIN

NOTARY'S ACKNOWLEDGEMENT

Subscribed and sworn to before me this 1 day
of December 1986.

NOTARY PUBLIC FOR ALASKA for C.W. and D. Mettille, and
M.W. and A.M. Martin

My commission expires 1987

LEGEND

- ✚ - 1920 G.L.O. brass cap mon.
- - 1/2" rebar found.
- - 1/2" x 2' rebar set.

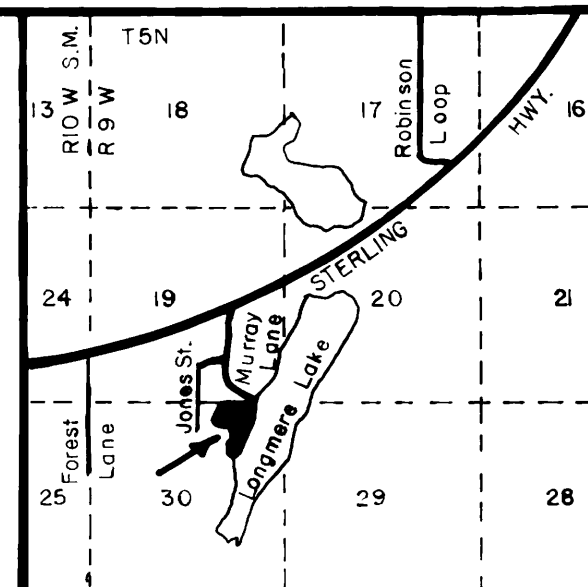
BIRCH HOLLOW SUBD. PART 2 1986 REPLAT OF TRACT A-2, AND LOT 1-A - KRD 83-245

LOCATED IN NE 1/4, SEC. 30, T.5N., R.9W., S.M.,
KENAI RECORDING DISTRICT, ALASKA.

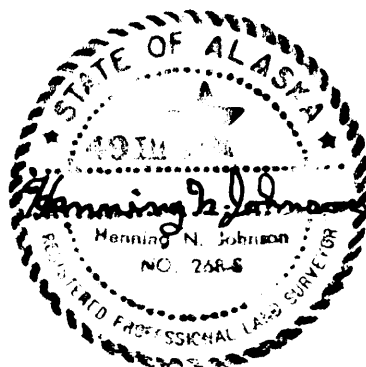
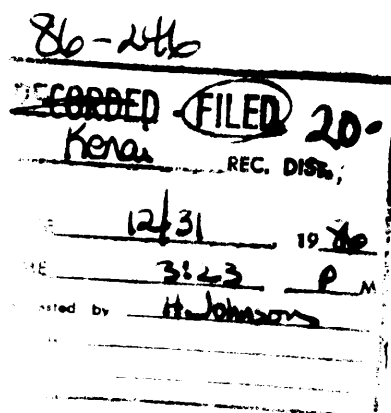
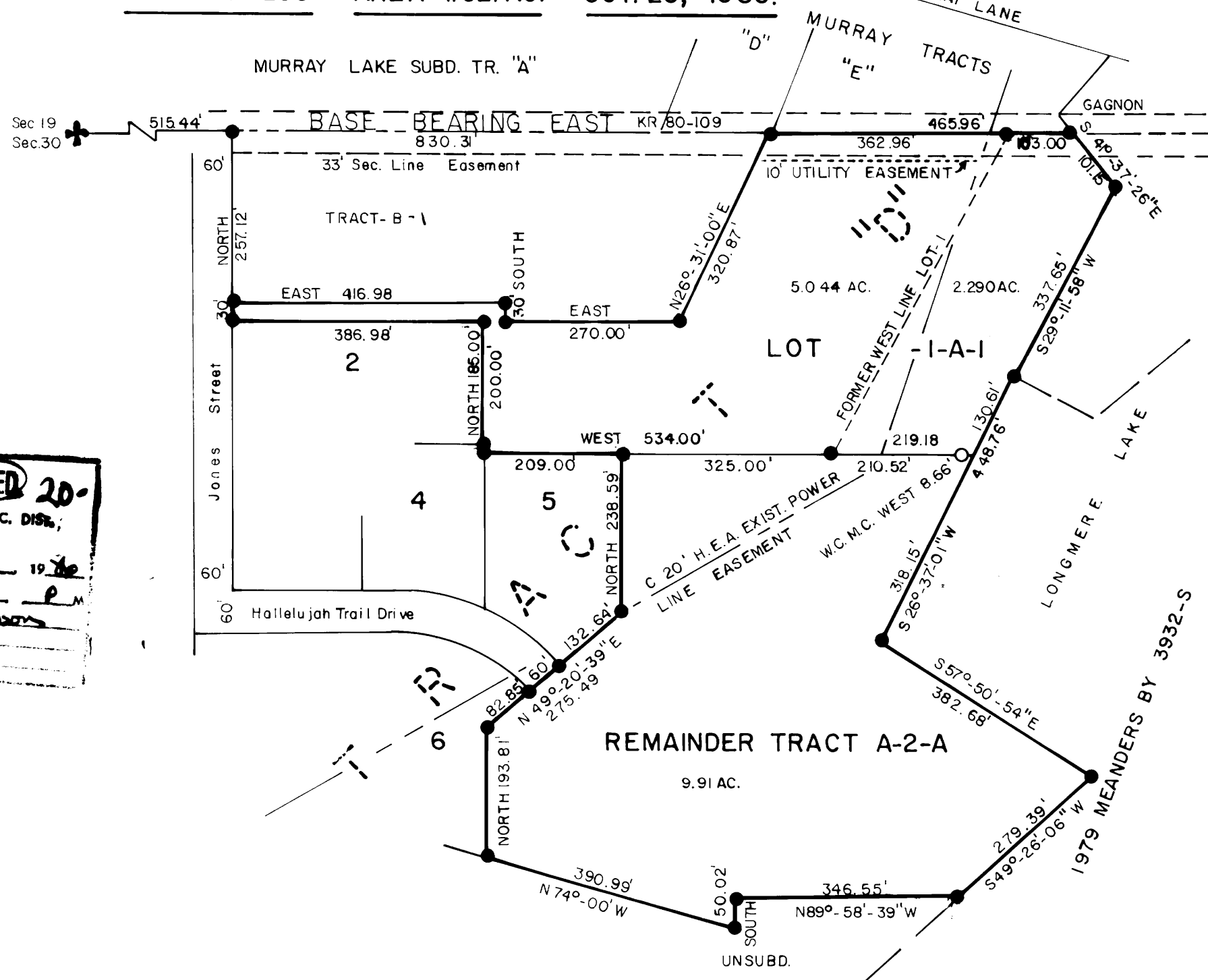
BY MARSHALL AND ALICE MARTIN

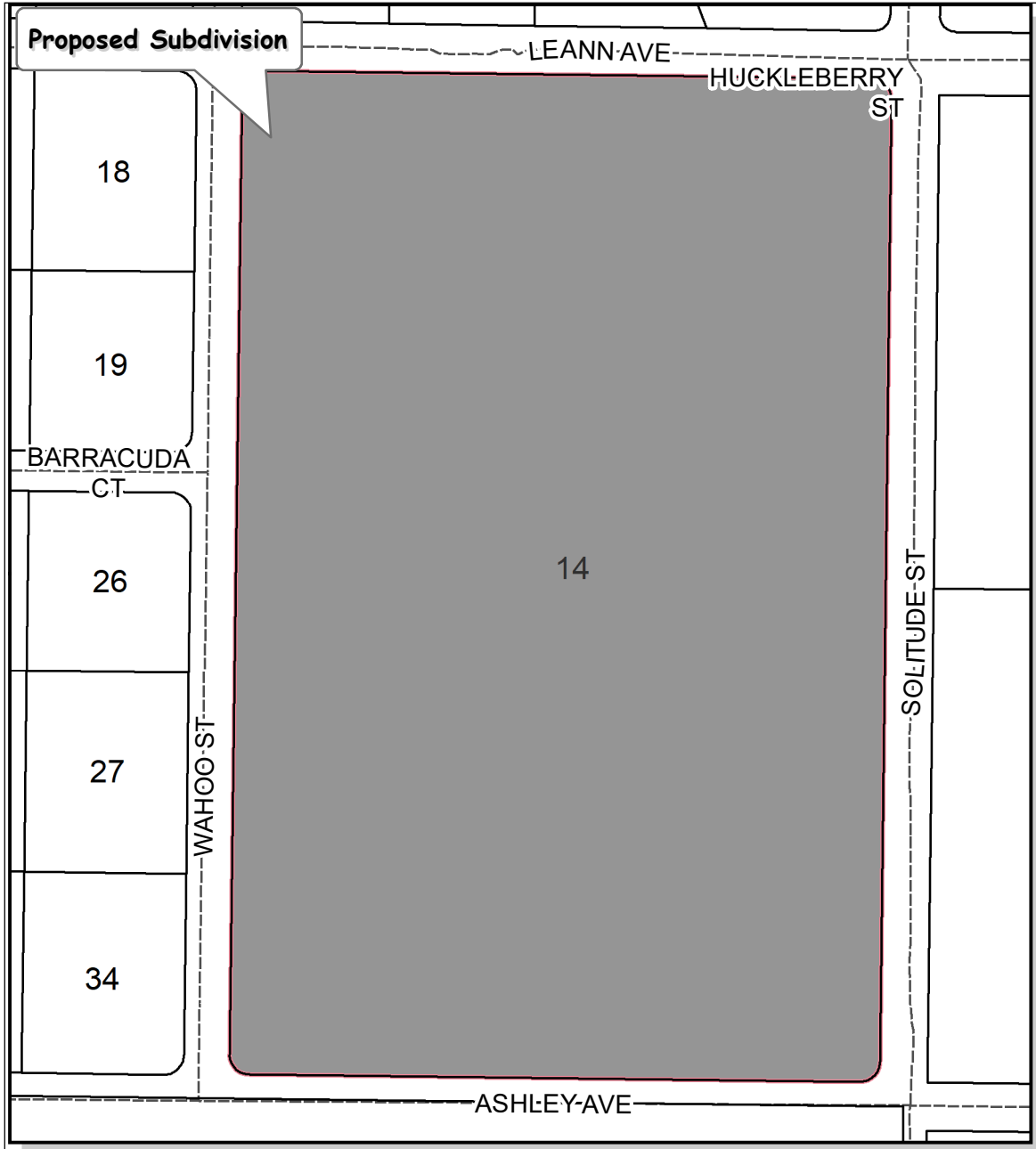
BOX 49 RT.2 SOLDOTNA, ALASKA, 99669

SCALE 1"=200' AREA=7.621 AC. OCT. 20, 1986.

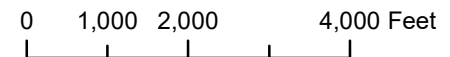
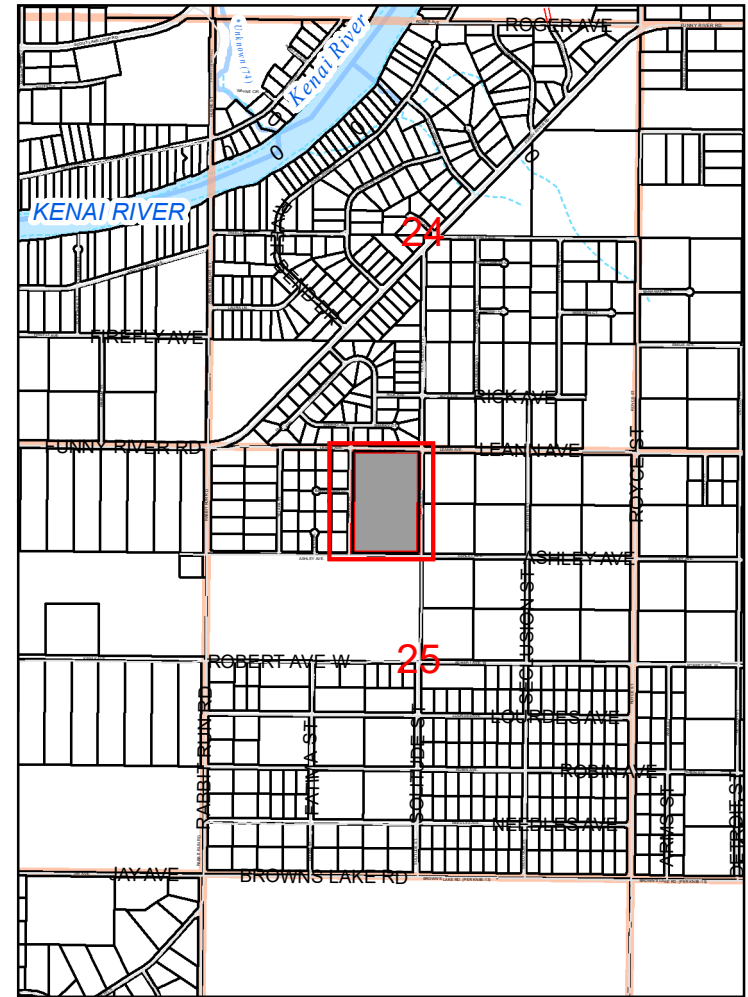
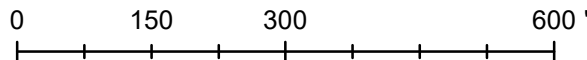


VICINITY MAP

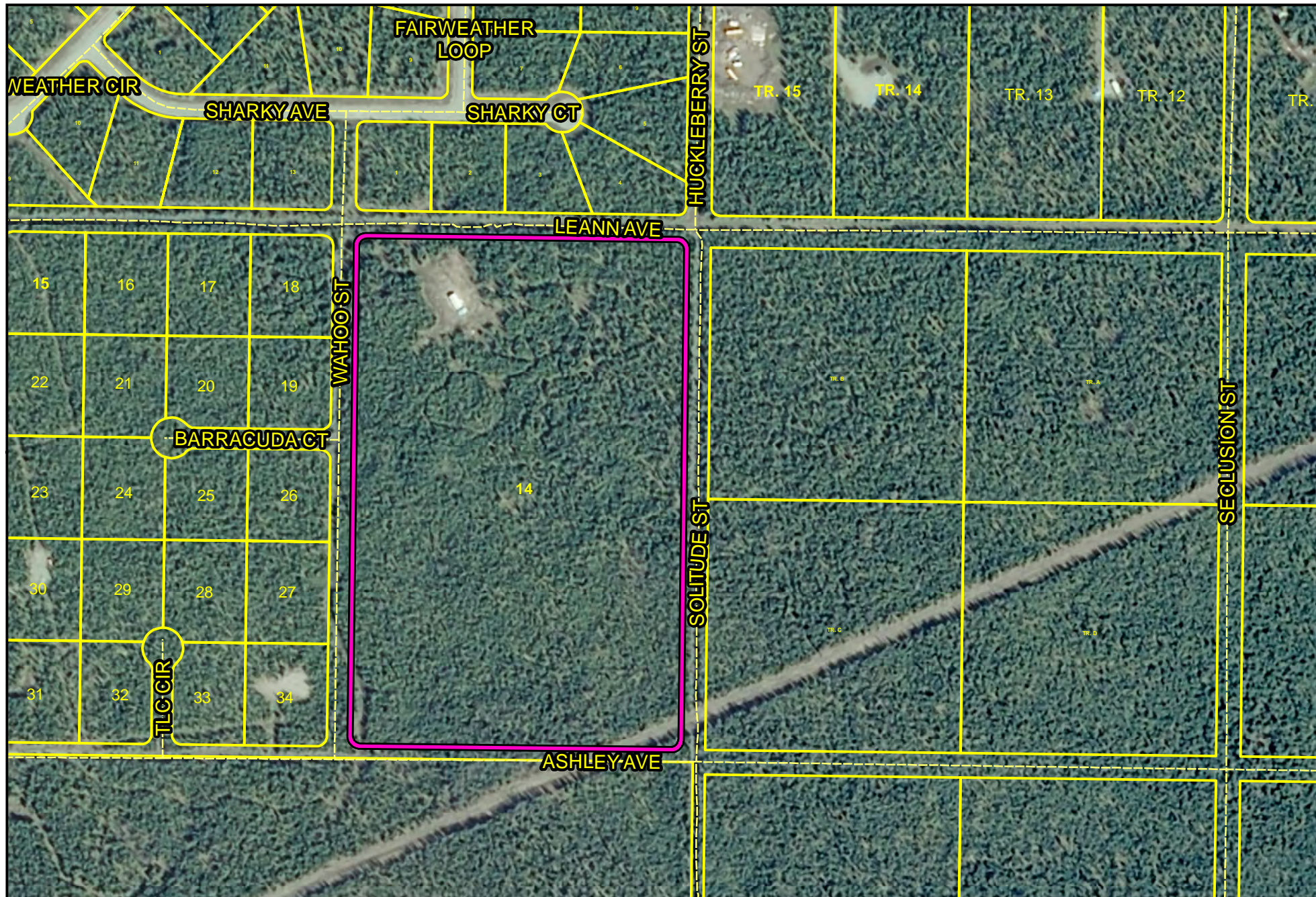




The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.



KPB 2021-149
S25 T05N R09W
Funny River



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.

0 125 250 500'

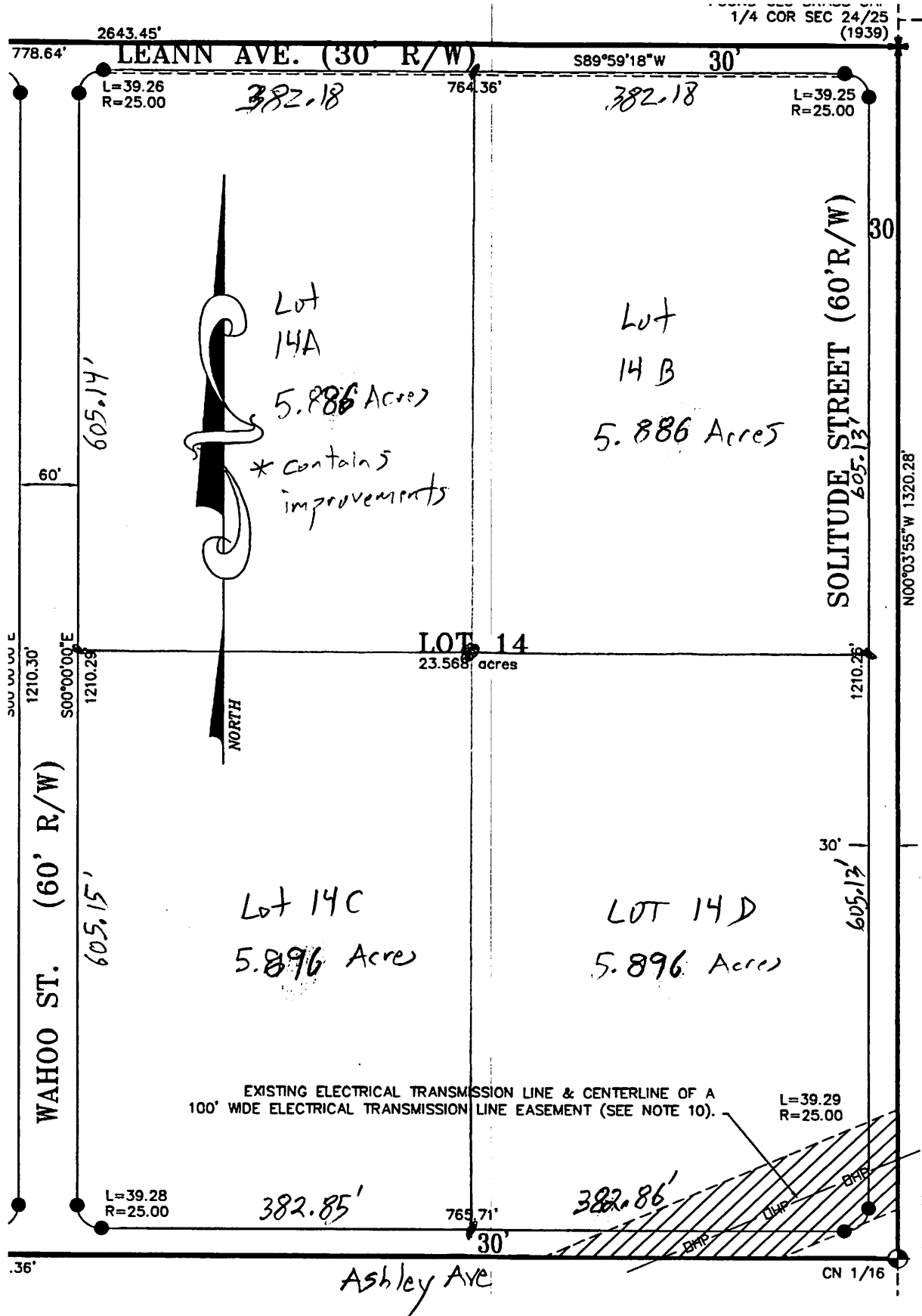
Aerial View



 PRELIMINARY PLAT

PClements, KPB 2021-149
Imagery FixedWing 2012-13

Shady Acres



KPB 2021-149

AGENDA ITEM E. NEW BUSINESS

ITEM 7 - Shady Acres Lot 14 Plat Waiver

KPB File No.	2021-149
Plat Committee Meeting:	December 13, 2021
Applicant / Owner:	Rebecca A. Turner of Homer, Alaska Sheryl Combs, Sheela Lloyd, and Joyce Matthews all of Anchorage, Alaska
Surveyor:	None
General Location:	Wahoo Street, Leann Avenue, Solitude Street and Ashley Avenue / Funny River

Parent Parcel No.:	066-050-26
Legal Description:	Lot 14 Shady Acres, Plat No KN 2003-100
Assessing Use:	Residential
Zoning:	Rural Unrestricted
Water / Wastewater	On-Site

STAFF REPORT

Specific Request / Scope of Subdivision: The proposed plat waiver will subdivide a 23.568 acre lot into four aliquot lots being 5.9 acres more or less.

Location and Legal Access (existing and proposed): The parent lot is 24 acres with dedicated right of way bordering along all sides. Leann Avenue (60 feet wide), Solitude Street (60 feet wide), Ashley Avenue (30 feet wide), and Wahoo Street (60 feet wide) define the block and surround the lot.

Some clearing appears to exist within portions of the right of ways. Per KPB GIS data, none of the right of ways are maintained. Leann Avenue is located near mile 14 of Funny River Road, a state maintained right of way. To the west of the subdivision, Ashley Avenue intersects Rabbit Run Road, a state maintained right of way that intersects with Funny River Road and Leann Avenue.

An 80 acre private parcel is located to the south of Ashley Avenue and will be required to provide a matching dedication when subdivided in the future.

A 33 foot section line easement is located within the area of the Leann Avenue right of way and will affect Lot 14A and 14B.

The block is closed and compliant to length requirements.

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

Site Investigation: The subject area is relatively flat and contains no low wet areas.

Improvements appear to be in place within the area that will be designated as Lot 14A.

The property north of Leann Avenue has been subdivided and is the Funny River Grove local option zoning district. The subject property is not within a local option zoning district.

The parcel is not affected by a material site.

KPB River Center review	A. Floodplain
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	<p>Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments</p> <p>B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments</p> <p>C. State Parks Reviewer: Russell, Pam Comments: No Comments</p>
--	---

Staff Analysis The proposed plat waiver will subdivide a 23.57 acre lot into four aliquot parcels. The parent parcel is Lot 14 of Shady Acres, Plat KN 2003-100. Shady Acres was a subdivision of an aliquot parcel that was 80 acres in size. That subdivision dedicated the 60 foot wide Wahoo Street as well as 30 foot wide dedications for Leann Avenue, Solitude Street, and Ashley Avenue.

Each of the proposed lots are over 200,000 square feet. A soils analysis report is not required.

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

The 20 foot building setback per KN 2003-100 will carry forward with the plat waiver.

Lot 14 will be subdivided by aliquot division with the boundary lines established at the midpoint of the north, east, south and west boundaries and extended to the opposite boundary midpoint location. Lot 14A will be the northwest aliquot division, Lot 14B will be the northeast aliquot division, Lot 14C will be the southwest aliquot division, and Lot 14D will be the southeast aliquot division.

Utility Easements Shady Acres, Plat KN 2003-100, granted 10 foot utility easements adjoining the dedicated right of ways. An additional 100 foot wide electrical transmission line easement is within the lot and will remain within proposed Lot 14D. No new utility easements will be granted and all existing utility easements will remain in place.

KPB department / agency review:

Addressing	<p>Reviewer: Haws, Derek Affected Addresses: 34475 LEANN AVE</p> <p>Existing Street Names are Correct: Yes List of Correct Street Names: LEANN AVE WAHOO ST ASHLEY AVE SOLITUDE ST</p> <p>Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied:</p> <p>Comments:</p>
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	34475 LEANN AVE will remain with lot 14A.
Code Compliance	Reviewer: Ogren, Eric Comments: No comments
Planner	
Assessing	Reviewer: Wilcox, Adeena Comments: No comment
Advisory Planning Commission	Comments not received when staff report was prepared

The applicants wish to replat a 23.57 acre lot into four 5.90 +/- acre lots. If the Plat Waiver is approved, staff recommends the sketch be recorded with the resolution, as an attachment to and as the final page of the resolution. The following are the requirements to qualify for a plat waiver as outlined in KPB Code.

KPB 20.10.050 – Plats-Required when – Waivers

- A. Waiver standards. A plat, prepared and submitted in accordance with the applicable provisions of this title, is required for all subdivisions of land, except for subdivisions which qualify under the provision of AS 29.40.090(b), provided an application is submitted with satisfactory evidence to support a finding that:
1. A single existing division of property is not subdivided into more than four lots.
The sketch shows four lots. This condition has been met.
 2. Legal and physical access is provided to a public highway or street for each lot created by the subdivision.
The property adjoins Wahoo Street (60'), Leann Avenue (60'), Solitude Street (60') and Ashley Avenue (30') as dedicated by the parent plat (KN 2003-100). The right-of-way match for Ashley Avenue will be obtained with the 80 acre parcel to the south when subdivided. This condition has been met.
 3. The subdivision does not contain or require a dedication of a street, public right-of-way, or other area.
No additional public right-of-way or other area is required to be dedicated. This condition has been met.
 4. The subdivision does not require a vacation of a public dedication of land.
The subdivision is not vacating a public dedication of land. This condition has been met.
 5. The subdivision does not require a variance from KPB Title 20 Subdivision regulations.
No exceptions to KPB Code are required. This condition has been met.
 6. Each lot created by the subdivision is five acres or larger.
Each new parcel will be 5.90 +/- acre lots. This condition has been met.
- B. Notice. In addition to the requirements for notice by publication in this title, all beneficial interest holders in the land subject to the plat waiver application who have not provided written non-objection to the plat waiver shall be given notice of the waiver application and the planning commission hearing at least 30 days prior to the planning commission meeting where the waiver will be considered. Applications for plat waivers within a city shall be submitted to the city by the subdivider for comment at least 30 days prior to submittal to the borough for planning commission consideration.
Platting staff comments: *The property is not within a city. The Certificate to Plat did not contain any beneficial interest holders.* This condition has been met.
- C. All plat waivers must meet the following requirements:

1. A certificate of ownership for plat waiver, which meets the requirements of KPB 20.60.190(A)(2) for a certificate to plat, shall be submitted with the application. The certificate of ownership shall be updated and be current to no earlier than three business days prior to the planning commission meeting where the waiver is scheduled for consideration.

Platting staff comments: *A Certificate to Plat was provided with the submittal. This condition has been met.*

2. A certificate from the borough finance department must be obtained indicating that all taxes due and payable on the land subject to the waiver application have been paid.

Platting staff comments: *The 2021 borough property taxes have been paid. If the resolution is not recorded prior to December 31, 2021, the estimated taxes for 2022 will be required to be paid in full prior to recording of Plat Waiver Resolution 2021-36. This condition has been met.*

- D. Upon satisfactory showing by the subdivider that all provisions of KPB 20.10.050 (A), (B), and (C) have been met a waiver of the preparation, submission for approval, and recording of a plat shall be granted by resolution of the commission which shall be recorded in the appropriate district within 30 days after adoption or the waiver shall lapse. The applicant shall pay a plat waiver fee in the amount listed in the current Kenai Peninsula Borough Schedule of Rates, Charges and Fees, and recording fees. **All of the requirements of KPB 20.10.050 have been met.**

Staff recommendation: the Planning Commission adopt KPB PC Resolution 2021-36, thereby approving the requested plat waiver, subject to:

1. Submittal of a certificate from the borough finance department that all taxes due and payable on the land subject to the waiver application have been paid.
2. Submit an updated Certificate to Plat current to no earlier than three business days prior to the planning commission meeting and is valid for 30 days.
3. The Planning Department is responsible for filing the Planning Commission resolution.
4. The applicant will provide the recording fee for the resolution and exhibit drawing to the Planning Department.
5. File the PC Resolution, with the exhibit drawing, 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.
6. The Plat Waiver will be recorded within 30 days after adoption or the waiver shall lapse.
7. The Plat Waiver is subject to all notes, easements, set-backs, and dedications as delineated on Plat No. 2003-100.

Staff Note: A plat waiver does not constitute a survey. A field survey and monumentation of lot lines is not performed. A Record of Survey will be required to find true property boundaries.

RECOMMENDATION:

SUBJECT TO EXCEPTION(S) GRANTED, STAFF RECOMMENDS:

GRANT APPROVAL OF THE PLAT WIAVER SUBJECT TO STAFF RECOMMENDATIONS AND SUBJECT TO THE CONDITIONS LISTED.

NOTE: 20.25.120. - REVIEW AND APPEAL.

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

END OF STAFF REPORT

**KENAI PENINSULA BOROUGH PLANNING COMMISSION
PLAT WAIVER RESOLUTION 2021-36
KENAI RECORDING DISTRICT**

GRANT A PLATTING WAIVER FOR CERTAIN LANDS WITHIN LOT 14, SHADY ACRES (KN 2003-100); IN NW 1/4 S25, T05N, R09W; SEWARD MERIDIAN, ALASKA, WITHIN THE KENAI PENINSULA BOROUGH; KPB FILE NO. 2021-149

WHEREAS, per section 29.40.090 of Alaska Statutes provides that the platting authority shall waive the preparation, submission for approval, and recording of a plat upon satisfactory evidence that certain conditions exist; and

WHEREAS, per section 20.10.050 of Kenai Peninsula Borough Code of Ordinances the Kenai Peninsula Borough, acting as the platting authority, has established a procedure for approving the subdivision of a parcel by plat waiver;

WHEREAS, Rebecca A. Turner of Homer, AK and Sheryl E. Combs, Sheila E. Lloyd, and Joyce M. Matthews of Anchorage, AK have petitioned for a waiver of platting requirements for the following described parcel;

Lot 14, Shady Acres, according to Plat No. 2003-100, Kenai Recording District,
Third Judicial District, State of Alaska; and

WHEREAS, it has been determined by the Planning Commission on December 13, 2021 that all requirements have been met.

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

Section 1. That a waiver of platting requirements is hereby granted for the above described parcel.

Section 2. That the plat waiver is being granted from the purpose of subdividing the above described parcel into four parcels described as follows:

- Lot 14A: The NW 1/4 of Lot 14 of Shady Acres, according to Plat No. 2003-100, Kenai Recording District, Third Judicial District, State of Alaska; 5.9 +/- acres
- Lot 14B: The NE 1/4 of Lot 14 of Shady Acres, according to Plat No. 2003-100, Kenai Recording District, Third Judicial District, State of Alaska; 5.9 +/- acres
- Lot 14C: The SW 1/4 of Lot 14 of Shady Acres, according to Plat No. 2003-100, Kenai Recording District, Third Judicial District, State of Alaska; 5.9 +/- acres
- Lot 14D: The SE 1/4 of Lot 14 of Shady Acres, according to Plat No. 2003-100, Kenai Recording District, Third Judicial District, State of Alaska; 5.9 +/- acres

Section 3. Submittal of a certificate from the borough finance department that all taxes due and payable on the land subject to the waiver application have been paid.

Section 4. Submit an updated Certificate to Plat current to no earlier than three business days prior to the planning commission meeting and is valid for 30 days.

Section 5. The Planning Department is responsible for filing the Planning Commission resolution.

Section 6. The applicant will provide the recording fee for the resolution and exhibit drawing to the Planning Department.

Section 7. File the PC Resolution, with the exhibit drawing, 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.

Section 8. The Plat Waiver will be recorded within 30 days after adoption or the waiver shall lapse.

Section 9. The Plat Waiver is subject to all notes, easements, set-backs, and dedications

as delineated on Plat No. 2003-100.

Section 9. The exhibit drawing is attached hereto and part of this resolution.

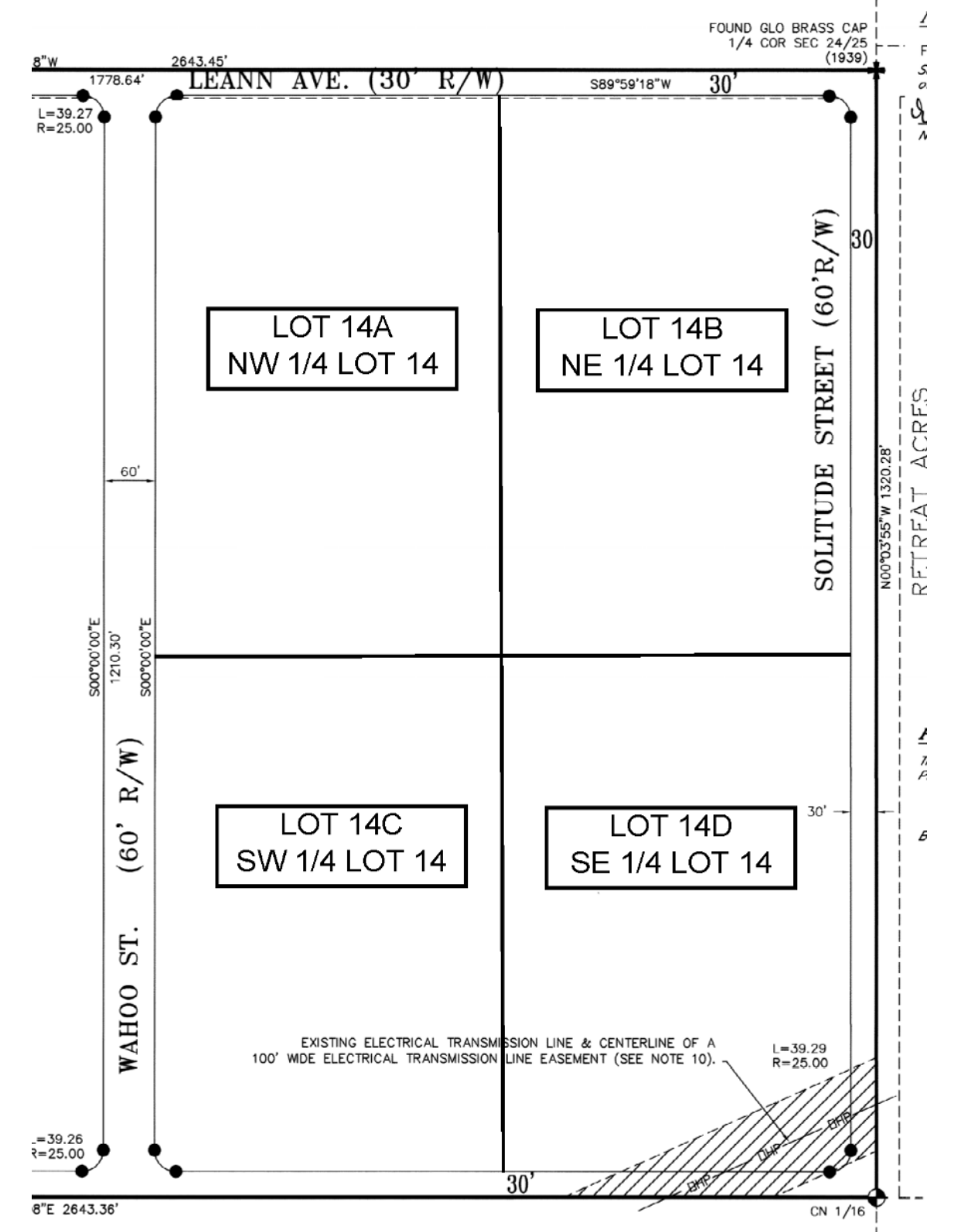
Section 10. That this resolution becomes effective upon being properly recorded.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH
ON THIS _____ DAY OF _____, 2021.

_____	ATTEST	_____
	:	
Blair J. Martin, Chairperson		Ann Shirnberg,
Planning Commission		Administrative Assistant

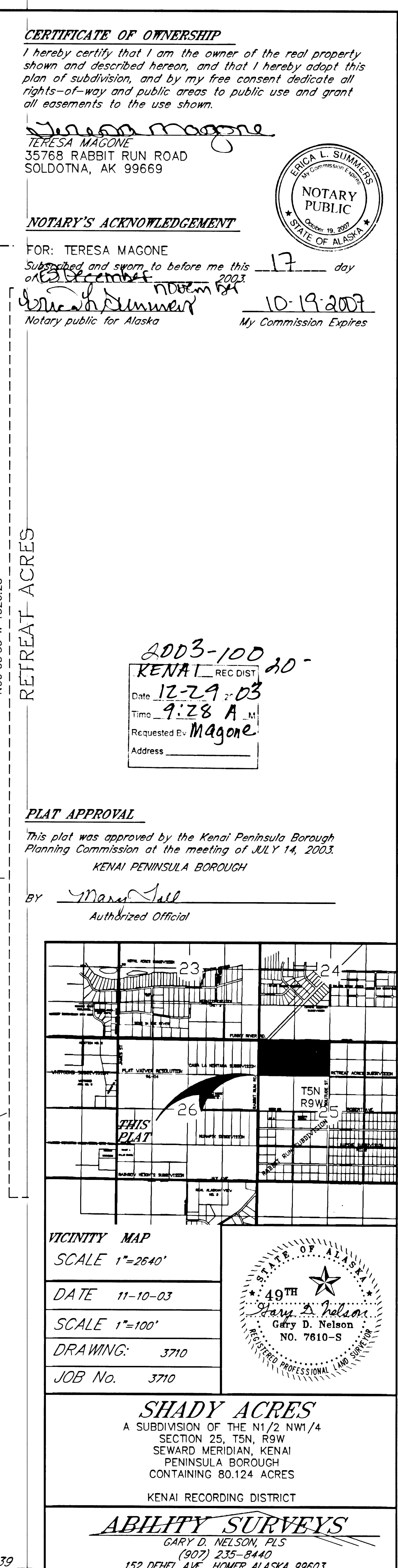
Return to:
Planning Department
Kenai Peninsula Borough
144 North Binkley Street
Soldotna, Alaska 99669

EXHIBIT A
PLAT WAIVER FOR LOT 14, SHADY ACRES (KN 2003-100); IN NW 1/4 S25, T05N, R09W; SEWARD
MERIDIAN, ALASKA, WITHIN THE KENAI PENINSULA BOROUGH; KPB FILE NO. 2021-149



SUBJECT TO PLAT NOTES AS STATED ON SHADY ACRES, 2003-100 KENAI RECORDING DISTRICT

- UNDIVIDED
- PLAT NOTES
1. A 20' BUILDING SET BACK SHALL EXIST ALONG ALL DEDICATED RIGHTS OF WAY UNLESS A LESSER STANDARD IS APPROVED BY RESOLUTION OF THE APPROPRIATE PLANNING COMMISSION. THE FRONT 10' OF THE BUILDING SETBACK IS A UTILITY EASEMENT. THE SHOP ON LOT 1 PREDATES THIS RESTRICTION.
 2. 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.
 3. WASTEWATER DISPOSAL LOTS 1-12: SOIL CONDITIONS, WATER TABLES LEVELS, AND SOIL SLOPES IN THIS SUBDIVISION HAVE BEEN FOUND SUITABLE FOR CONVENTIONAL ONSITE WASTEWATER TREATMENT AND DISPOSAL SYSTEMS SERVING SINGLE-FAMILY OR DUPLEX RESIDENCES AND MEETING THE REGULATORY REQUIREMENTS OF THE KENAI PENINSULA BOROUGH. ANY OTHER TYPE OF ONSITE WASTEWATER TREATMENT AND DISPOSAL SYSTEM MUST BE DESIGNED BY A PROFESSIONAL ENGINEER, REGISTERED TO PRACTICE IN ALASKA, AND THE DESIGN MUST BE APPROVED BY THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION. AN ENGINEER'S SOILS REPORT IS ON FILE AT THE KENAI PENINSULA BOROUGH.
William F. Crain CE4950 11/18/03
ENGINEER LICENSE NO. DATE
 4. WASTEWATER DISPOSAL LOTS 13 AND 14: THESE LOTS ARE AT LEAST 200,000 SQUARE FEET OR NOMINAL 5 ACRES IN SIZE AND CONDITIONS MAY NOT BE SUITABLE FOR ONSITE WASTEWATER TREATMENT AND DISPOSAL. ANY WASTEWATER TREATMENT OR DISPOSAL SYSTEM MUST MEET THE REGULATORY REQUIREMENTS OF THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION.
 5. THE FRONT 10' OF THE 20' BUILDING SETBACK AND THE ENTIRE SETBACK WITHIN 5' OF THE SIDE LOT LINES IS A UTILITY EASEMENT. NO PERMANENT STRUCTURE SHALL BE CONSTRUCTED OR PLACED WITHIN THE UTILITY EASEMENT WHICH WOULD INTERFERE WITH THE ABILITY OF THE UTILITY TO USE THE EASEMENT.
 6. THE BASIS OF BEARINGS IS TRUE BEARINGS AS COMPUTED AT THE C 1/4 SEC. 25 FROM GPS OBSERVATIONS USING TRIMBLE 4700 RECEIVERS AND TRIMBLE TGO VERSION 1.5 SOFTWARE.
 7. ROADS MUST MEET THE DESIGN AND CONSTRUCTION STANDARDS ESTABLISHED BY THE BOROUGH IN ORDER TO BE CONSIDERED FOR CERTIFICATION AND INCLUSION IN THE ROAD MAINTENANCE PROGRAM.
 8. NO DIRECT ACCESS TO STATE MAINTAINED RIGHTS-OF-WAY IS PERMITTED UNLESS APPROVED BY STATE OF ALASKA DEPT. OF TRANSPORTATION.
 9. REFERENCE SHOULD BE MADE TO BOOK 7, PAGE 85 AND BOOK 71, PAGE 204 FOR AN EASEMENT GRANTED TO THE STATE OF ALASKA FOR ROAD AND UTILITY APPURTENANCES.
 10. TRANSMISSION LINE EASEMENT: NO EXCAVATION OR FILL WITHIN THE EASEMENT IS ALLOWED WITHOUT THE EXPRESS WRITTEN PERMISSION OF HEA. NO POLE-STRUCTURES EXIST ON LOT 14 AT TIME OF PLAT CREATION.
- KPB FILE No. 2003-139





Planning Director's Report

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2215 • (907) 714-2378 Fax

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

Melanie Aeschliman, Planning Director • Charlie Pierce, Borough Mayor

Planning Department Directors Report December 10, 2021

Code Compliance

Code Compliance has been working to remediate several trespassing cases that have been brought to our attention. Many of these cases surfaced with the new imagery that showed adjoining property owners who have built structures on the borough properties or have used the land as a place to leave all of their old vehicles, oil barrels, batteries, etc. Many of these cases, the adjoining property owner has been doing this for several years, so the cases have become more egregious over time. Other cases have been worked on over the years and never were settled. Currently, we have 13 cases of which three have been remediated.

Platting

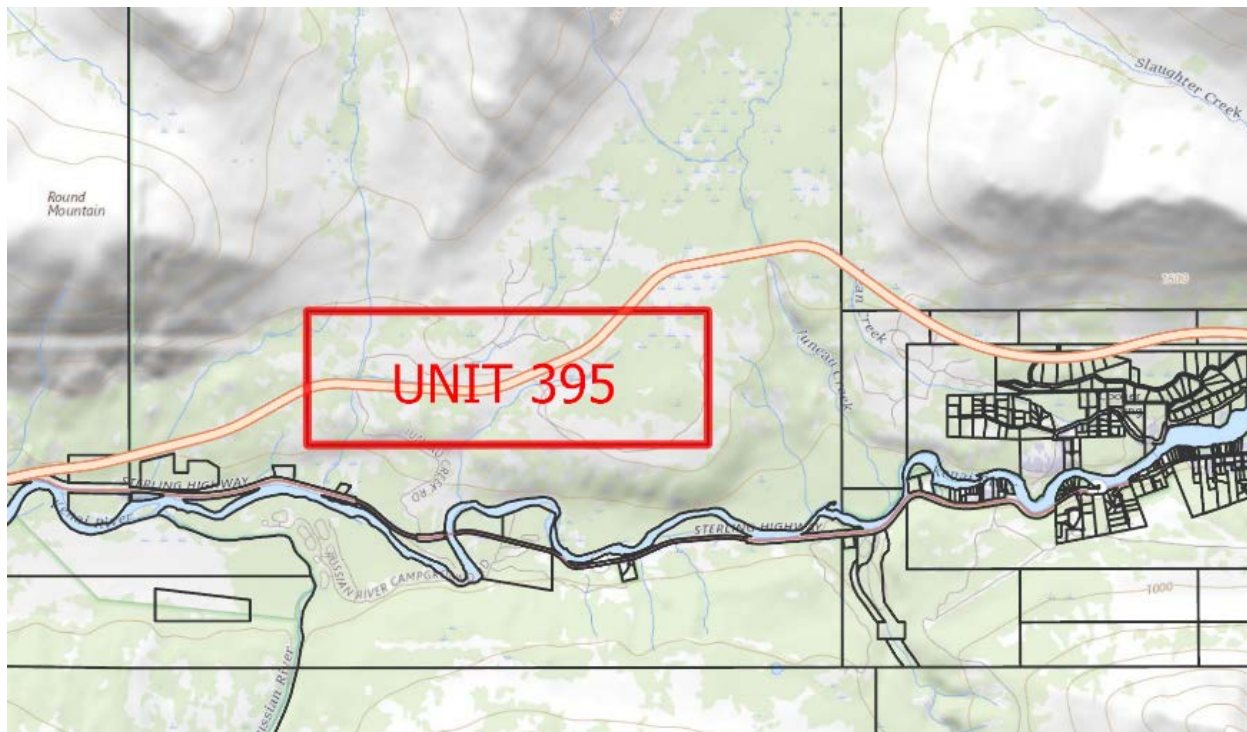
Scott and his team are working to get all the plats recorded before 12/31/2021

River Center Updates

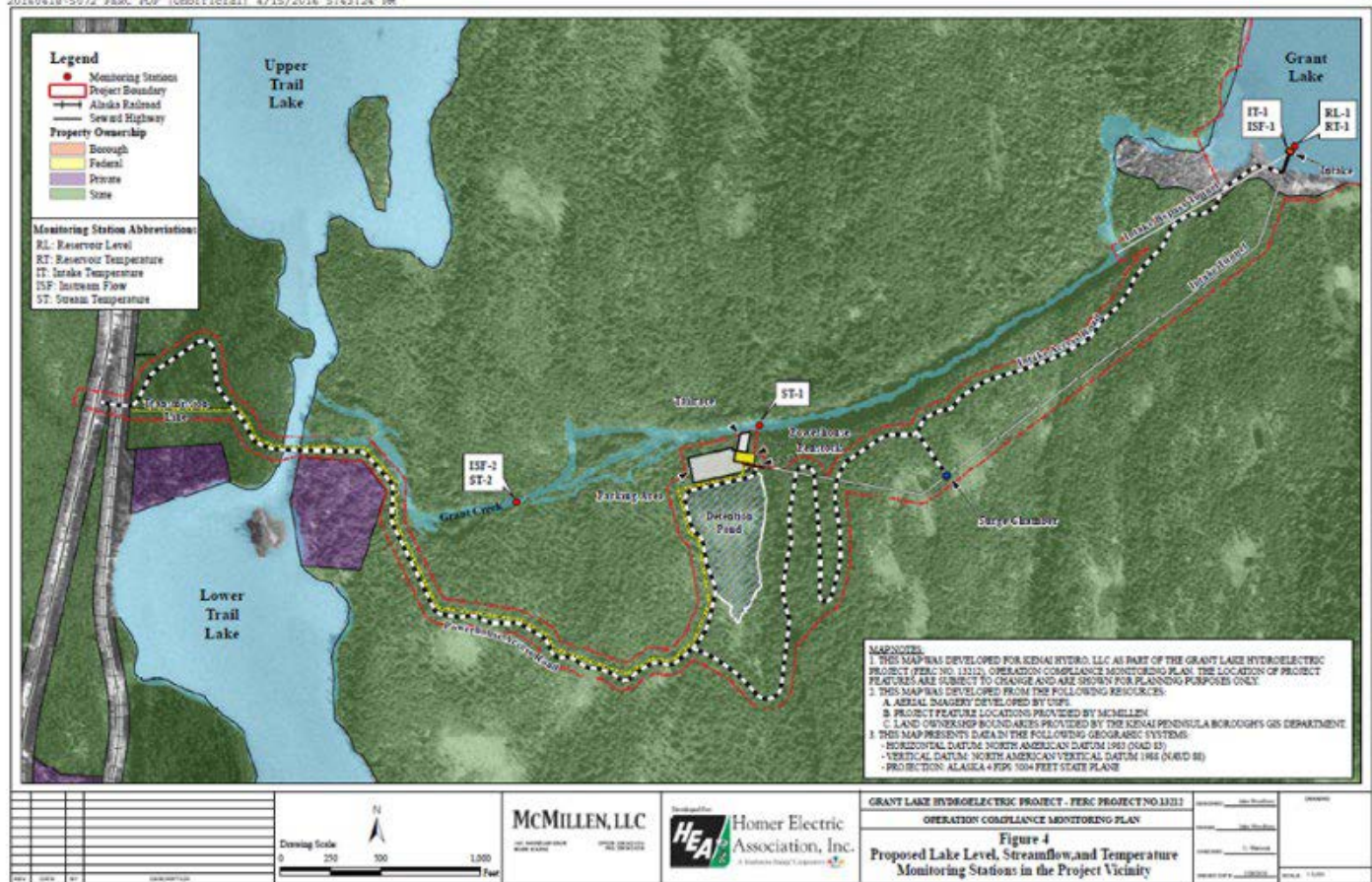
1. We sent a newsletter to approximately 3,000 properties along the borough's regulated anadromous waterbodies and are getting positive responses from the public.
2. River Center staff continue to work with the Kachemak Bay Conservation Society to develop an online outreach platform, which is slated to be live this spring.
3. River Center staff and KWF are hosting an interactive presentation for the community. Folks will have the opportunity to try out KWF's new EM2 River Table, and learn how they can become good stewards of the river. This will be held at the River Center on December 14th from 5:30-6:30pm. See attached flyer.
4. Bryan Taylor has left the KPB and moved on to new adventures. Sam and her team of planners are continuing to work on cross training on all planner related duties. In Bryan's absence, Eric Ogren will aid the planners in covering all the gravel pit and marijuana licensing reviews.

Land Management Division

Land Use Planning of 1,000-acre "Unit 395" in Cooper Landing- The Land Management Division is working toward hiring a professional land planning consulting firm to lead and assemble land use plans on the 1,000 acres of KPB Municipal Entitlement Land on the west side of Cooper Landing known as Juneau Bench or "Unit 395". DOT's Sterling Highway MP 45-60 project runs through this land unit, as does the USFS West Juneau Forest Road. The planning effort would include initial resource studies, evaluation of transportation options, identifying values, community vision, and land use objectives. The planning effort would include a series of work sessions in conjunction with the Cooper Landing Advisory Planning Commission. The project would produce key maps, reports, plans, and recommendations. Land Management is working towards a Request for Proposals and anticipates a project timeline running from Spring 2022- Fall 2022. Land Management is considering also including a smaller scale planning project to conduct land planning of KPB Lands in Moose Pass that are in the immediate area of HEA's Grant Lake Hydro project.



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Planning Commission Updates

At the December 7th Assembly meeting, an ordinance passed moving us to a 14-member planning commission effective immediately. This decision provides for 9 districts that follow in accordance with the assembly districts and additionally provides each city a seat (5). Please see the following documents that will show the transition into these new seats. As we look at trying to get these seats to fall into a cycle that does not have all seats expiring at once, we will have a few seats that would not align with State Statute, which defines a 3-year term. I am working with legal on this and we may bring before the assembly legislation to address this issue to be adopted. With this 14-member creation, I would like to have an open discussion about how we want this to work. Zoom is definitely a great tool to help us manage the seating issues. I would like to suggest the Chair, Co-Chair, and Parliamentarian be in person positions (whenever possible). The other positions we could setup a rotation cycle of in person to Zoom from home.



Planning Department

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

KENAI PENINSULA BOROUGH PLANNING COMMISSION MEMBERS

Member	Contact Information	Term Expires
Diane Fikes 307 Linwood Ln. Kenai, Alaska 99611	907-440-8730 home	City of Kenai Term Expires July 31, 2022
VACANT		City of Soldotna Term Expires July 31, 2024
Franco Venuti 4066 Kachemak Way Homer, AK 99603	907-399-1550 cell	City of Homer Term Expires July 31, 2022
VACANT		City of Seward Term Expires July 31, 2023
VACANT	<i>(New Seat)</i>	<i>City of Seldovia</i> <i>Term Expires July 31, 2022</i>
Pamela Gillham 45710 King Drive Soldotna, AK 99669	907-202-1020 cell	District 1 – Kalifornsky Term Expires July 31, 2023
Blair Martin 48500 Diamond M Ranch Kenai, Alaska 99611	907-252-8070 cell	District 2 – Kenai Term Expires July 31, 2024
VACANT		District 3 – Nikiski Term Expires July 31, 2023
Michael Horton 39548 Grouse Drive Soldotna, AK 99669	907-252-7367 cell <i>(New Seat)</i>	<i>District 4 – Soldotna</i> <i>Term Expires July 31, 2024</i>
Jeremy Brantley PO Box 1444 Soldotna, AK 99669	907-398-1314 cell	District 5 Sterling/Funny River Term Expires July 31, 2024
Virginia Morgan PO Box 657 Cooper Landing, Alaska 99572	907-595-3094 home	District 6 – East Peninsula Term Expires July 31, 2022
Robert Ruffner 48460 Lakeside Ave Soldotna, AK 99669	907-262-0672 home	District 7 – Central Term Expires July 31, 2024
VACANT	<i>(New Seat)</i>	<i>District 8 – Homer</i> <i>Term Expires July 31, 2023</i>
Syverine Abrahamson-Bentz 36884 Ridge St. Anchor Point, AK 99556	907-299-7769 home	District 9 – South Peninsula Term Expires July 31, 2022

Revised 12/10/2021

Fax number for the Planning Commission: 907-714-2378
Email address for the Planning Commission: planning@kpb.us.

PROPOSED SEAT ROTATION SCHEDULE

Seats Expiring in 2022 (New Term August 1, 2022 to July 31, 2025)

- City of Kenai (Fikes)
- City of Homer (Venuti)
- District 6 – East Peninsula (Morgan)
- District 9 – South Peninsula (Bentz)
- ***City of Seldovia – Vacant (New Seat)***

Seats Expiring in 2023 (New Term August 1, 2023 to July 31, 2026)

- City of Seward (Vacant)
- District 1 – Kalifornsky (Gillham)
- District 3 – Nikiski (Vacant)
- ***District 8 – Homer – Vacant (New Seat)***

Seats Expiring in 2024 (New Term August 1, 2024 to July 31, 2027)

- City of Soldotna (Vacant)
- District 7 – Central (Ruffner)
- District 5 – Sterling/Funny River (Brantley)
- District 2 – Kenai (Martin)
- ***District 4 – Soldotna (New Seat)***

