



**City of Kenai
Planning and Zoning Commission
WORK SESSION**

**August 12, 2020 – Following Regular
Meeting at 7 p.m.**

Kenai City Council Chambers

210 Fidalgo Avenue, Kenai, Alaska

***Telephonic/Virtual Information below**

www.kenai.city

A Work Session will be held immediately following the regular meeting to discuss a Kenai Peninsula Borough proposed ordinance that would amend Kenai Peninsula Borough Chapter 2.40 – Planning Commission, Chapter 21.20 – Hearing and Appeals, and multiple sections of Title 20 – Subdivisions

Agenda

A. CALL TO ORDER

B. INTRODUCTION

1. Review of Kenai Peninsula Borough proposed ordinance that would amend Kenai Peninsula Borough Chapter 2.40 – Planning Commission, Chapter 21.20 – Hearing and Appeals, and multiple sections of Title 20 – Subdivisions (City Planner Appleby)

C. COMMISSION DISCUSSION

D. PUBLIC COMMENT

(Public comment limited to three (3) minutes per speaker; thirty (30) minutes aggregated)

E. COMMISSION COMMENTS AND QUESTIONS

F. ADJOURNMENT

The agenda and supporting documents are posted on the City's website at www.kenai.city. For additional information, please contact the Planning and Zoning Department at 907-283-8237.

Participation (join Zoom meeting): <https://us02web.zoom.us/j/85650090756>

Virtual Meeting ID: 856 5009 0756

Password: 096569

OR Telephonic Participation: +1 253 215 8782 or +1 301 715 8592

Meeting ID: 893 9106 6123

Password: 165710

File Attachments for Item:

Review of Kenai Peninsula Borough proposed ordinance that would amend Kenai Peninsula Borough Chapter 2.40 – Planning Commission, Chapter 21.20 – Hearing and Appeals, and multiple sections of Title 20 – Subdivisions (City Planner Appleby)

MEMORANDUM

TO: Kenai Planning and Zoning Commission
FROM: Elizabeth Appleby, City Planner
DATE: August 7, 2020
SUBJECT: **Suggested changes to Kenai Peninsula Borough Subdivision Code – Work Session #1**

The Kenai Peninsula Borough contacted the City of Kenai for input on proposed changes to the Borough's Subdivision Code. There are many housekeeping changes along some process changes. Chapters that would be amended by the proposed changes include:

- 2.40 – Planning Commission
- 21.20 – Hearings and Appeals
- Several chapters of Title 20, including:
 - 20.25.050 – Subdivision or replat in first class or home rule city submittal procedure.
 - 20.30.060 – Easements – Requirements.
 - 20.30.270 – Different standards in cities.
 - 20.70.110 – Vacation decision – City council or assembly

Please review the attached document denoting proposed changes. I will go over highlights of changes during the first work session on August 12, 2020. There is a second work session scheduled to follow the regularly scheduled City of Kenai Planning and Zoning Commission meeting on August 26, 2020. Scott Huff, Kenai Peninsula Borough Platting Manager, will be present at that work session to answer questions of the Commission and provide a status update of the proposed changes.

Attachment:

Suggested changes to KPB Subdivision Code, 6/23/20

PROPOSED CLARIFICATIONS/CHANGES TO TITLE 20

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2.40.080. – Plat committee – Powers and duties – Hearing and review procedures

SUGGESTED CHANGE: Clarify who is allowed to request a review of a plat committee decision by the full Planning Commission.

SUGGESTED LANGUAGE:

B. Review of a decision of the plat committee may be heard by the planning commission acting as platting board by filing written notice thereof with the borough planning director on a form provided by the borough planning department. The request for review shall be filed within ten days after notification of the decision of the plat committee by personal service or service by mail. A request for review may be filed by any person or agency receiving a notice of decision. [participated at the plat committee hearing either by written or oral presentation.] The request must have an original signature; filing electronically or by facsimile is prohibited. The request for review must briefly state the reason for the review request and applicable provisions of borough code or other law upon which the request for review is based. Notice of the review hearing will be issued by staff to the original recipients of the plat committee public hearing notice.

JUSTIFICATION: The change will clarify who is allowed to submit a request for review by specifying that any person or agency that receives a notice of decision is able to request a review by the full planning commission.

20.10.040. – Abbreviated plat procedure.

SUGGESTED CHANGE: Clarify this section such that abbreviated plats are platting actions that eliminate lot lines or create new parcels as long as no more than four lots or tracts are created and the proposed plat complies with the remainder of 20.10.040. If the proposed subdivision is within a local option zone, Number 5 ensures continued compliance with KPB Code.

SUGGESTED LANGUAGE:

A. The abbreviated plat procedure may be used where the subdivision or replat [resubdivision] is of a simple nature and meets all of the requirements of this section as follows:

1. The subdivision divides a single lot into not more than four lots or the subdivision moves, or eliminates, lot lines to create not more than four lots or tracts.

JUSTIFICATION: As it reads now, a replat of four lots into one lot would not qualify as an abbreviated plat. The new proposed language clarifies that vacating interior lot lines as long as no more than four lots are being created is acceptable under 20.10.040.

20.10.040. – Abbreviated plat procedure.

SUGGESTED CHANGE: Include compliance with 20.40.

SUGGESTED LANGUAGE:

B. Submission Requirements. All of the submission requirements of KPB Chapters 20.25, 20.30, 20.40 shall be met.

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JUSTIFICATION: All lots being created must comply with wastewater review per 20.40 to ensure public safety and adherence to State Statutes.

20.10.080. – Right-of-Way Vacation Plat and Section Line Easement Vacation Plat.

SUGGESTED CHANGE: Include Section Line Easement Vacation Plats under the Right of Way vacation plat section of code.

SUGGESTED LANGUAGE:

- A. When the sole purpose of a plat is to depict right-of-way, or a section line easement vacation, approved for vacation under KPB Chapter 20.70 as attaching to adjoining parcels in compliance with KPB 20.70.150 and AS 29.40.150, the following procedure shall apply:

JUSTIFICATION: Often a plat is required to vacate a section line easement. When only the section line easement is being vacated, and the boundary is not changing, the plat does not need to be reviewed by the Planning Commission. The Planning Commission has already reviewed, and approved, the vacation application. It is unnecessary for the Planning Commission to also review the plat. The State of Alaska DNR has a review process for section line easement vacation plats and is the final authority on approval of the section line easement vacation including the final plat.

20.10.100. – Building Setback Encroachment Permit.

SUGGESTED CHANGE: By providing an encroachment permit it allows the land owner to have relief from a structure that is located within a building setback. The issuing of the permit would be granted by the Planning Director and would have to meet specific standards.

SUGGESTED LANGUAGE:

20.10.100. – Building Setback Encroachment Permit.

- A. Any person desiring to construct, or cause, an encroachment within a building setback shall apply for a building setback encroachment permit to the Planning Department. Failure to obtain an encroachment permit is subject to remedies set forth in KPB 20.10.030.
- B. A permit fee shall be charged for Building Setback Encroachment Permits as provided in the current approved Kenai Peninsula Borough Schedule of Rates, Charges and Fees. A person who fails to apply for, and obtain, a building setback encroachment permit prior to an enforcement notice being issued pursuant to KPB 21.50.100 is subject to enforcement.
- C. All building setback encroachments, including those that pre-date the effective date of this ordinance, must apply for a building setback encroachment permit. Permits for building setback encroachments that existed prior to the effective date of this ordinance

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- shall pay the same permit fee as applies to permits received prior to placement or construction of the encroachment.
- D. When the building setback encroachment permit application is complete, it will be scheduled for the next available planning commission meeting.
- E. The following standards shall be considered for all building setback encroachment permit applications.
- a. The building setback encroachment may not interfere with road maintenance.
 - b. The building setback encroachment may not interfere with sight lines or distances.
 - c. The building setback encroachment may not create a safety hazard.
- 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. The granting of a building setback permit will not remove any portion of the 20 foot building setback from the parcel.
- G. Upon approval of a building setback encroachment permit, 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.
- 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.

JUSTIFICATION: Building setback requirements are within Chapter 20.30 Subdivision Design Requirements. Exceptions to Design Requirements can only be requested at time of preliminary plat approval. If building setbacks were a function of zoning (Chapter 21.04) than a variance would be required.

By allowing a building setback encroachment permit to be obtained, it allows the land owner relief when a structure or improvement is located within the building setback, while also giving the borough an opportunity to review the encroachment. If the encroachment does not meet the standards then the encroachment permit will be denied and if applicable, the structure may be required to be removed from the setback.

20.25.020. – Compliance with certain provisions required.

SUGGESTED CHANGE: Add language to clarify that submission of a preliminary plat is the responsibility of a licensed land surveyor.

SUGGESTED LANGUAGE:

A [subdivider] licensed surveyor shall prepare a preliminary plat of the proposed subdivision which shall comply with the requirements of KPB 20.25.070 and 20.25.080, and other applicable provisions of this chapter except as provided in KPB 20.10.050.

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JUSTIFICATION: As written, 20.25.020 allows a member of the public to prepare and submit a subdivision plat. Per KPB 20.25.010 the general public is provided an opportunity to meet with the Platting Manager/Planning Director for a preliminary application conference. During the preliminary application conference, the plan of subdivision and subdivision requirements will be discussed with the land owner. The land owner will then have a licensed surveyor prepare and submit the preliminary plat submittal package. Land surveyors are more familiar with the KPB subdivision requirements and will be able to submit a preliminary plat that complies with KPB 20.25. This will allow the preliminary plat review be completed more efficiently for all involved.

20.25.030. – Prints – Types and number to be submitted.

SUGGESTED CHANGE: Clarify that the number of copies and format of submissions is determined by the Planning Director.

SUGGESTED LANGUAGE:

The format and number of [prints] copies of the preliminary plat to be submitted shall be as determined by the planning director and noted on the Borough Plat Submittal Form. Preliminary plat prints shall be folded to 8½ × 13 inches or smaller in a manner such that the subdivision name and legal description show.

JUSTIFICATION: Surveyors still try to submit plats in pdf form by email in a last minute effort to meet the cut-off deadline for preliminary plats or to hasten the submission of final plats. The Planning Department's existing equipment may not allow staff to print plats to scale from pdf documents. If Planning accepts electronic submissions from one surveyor, electronic submissions from all surveyors need to be accepted. And, if Planning accepts electronic submissions of preliminary plats, electronic submissions of final plats also need to be accepted. The cumulative costs of printing preliminary (9 copies each) and final plats (1 each) will create a continual, ever-increasing negative impact on the Planning Department's budget.

At some point in the future, technology and equipment may evolve such that electronic submissions are practical and would not negatively impact the budget. Allowing the Planning Director to determine the format of the submission and number of copies to submit creates flexibility that accommodates ever-changing technology. By noting the number of prints on the Plat Submittal Form, the surveyor will know how many copies are required to be submitted.

20.25.050. – Subdivision or replat in first class or home rule city submittal procedure.

SUGGESTED CHANGE: Revise so that the cities may be delegated total platting powers as opposed to partial powers.

SUGGESTED LANGUAGE:

A. Pursuant to AS 29.40.010, first class and home rule cities within the borough [are] may be delegated [limited authority] platting powers to adopt by ordinance subdivision standards different from those set forth in this chapter.

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F. [To the extent a city has been delegated limited platting authority, a] A final plat may not deviate from the preliminary plat unless the proposed revision has first been submitted to the city by the subdivider and has been approved by the city council or its designee.

JUSTIFICATION: The borough does not enforce city standards or regulations that are different than borough requirements. The recommendations of the City are passed on to the Planning Commission for review. It is up to the owner to work out any platting issues with the City. Any appeal of a city required subdivision standard will be heard by the City, not the borough. Per KPB 21.01, Cities can be delegated full platting authority as long as they request the authority and comply by having proper notice and an appeal process.

20.25.060. – Subdivision or replat in second class city submittal procedure.

SUGGESTED CHANGE: Revise so that the cities may be delegated total platting powers as opposed to partial powers.

SUGGESTED LANGUAGE:

B. [To the extent limited platting authority has been delegated to a second class city, a] A preliminary plat shall not be submitted to the borough planning department for review unless the aspects of the subdivision subject to the city authority have been first approved by the city.

F. [To the extent a city has been delegated limited platting authority, a] A final plat may not deviate from the preliminary plat unless the proposed revision has first been submitted to the city by the subdivider and has been approved by the city council or its designee.

JUSTIFICATION: The borough does not enforce city standards or regulations that are different than borough requirements. The recommendations of the City are passed on to the Planning Commission for review. It is up to the owner to work out any platting issues with the City. Any appeal of a city required subdivision standard will be heard by the City, not the borough. Per KPB 21.01, Cities can be delegated full platting authority as long as they request the authority and comply by having proper notice and an appeal process.

20.25.070. – Form and contents required.

SUGGESTED CHANGE: Carry the parent plat name forward on the preliminary replat.

SUGGESTED LANGUAGE:

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.

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JUSTIFICATION: Carrying the parent plat name forward facilitates future land title searches and allows the plat to be sequentially listed, or at least grouped with, the parent plats in the State Recorder's database. If the owner wants a brand new name for the proposed plat, an exception can be requested.

20.25.070. – Form and contents required.

SUGGESTED CHANGE: Include travel ways on preliminary plat submittal

SUGGESTED LANGUAGE:

- F. The [names and widths of public streets, and alleys, and] location, width and name of existing or platted streets and public ways, railroad rights-of-way, easements, and travel ways existing and proposed, within the subdivision;

JUSTIFICATION: The existing travel ways often provides the most practical, physical access within, and to, the property. The existing travel way may be the best location for a fee right-of-way. If right-of-way is not dedicated over the travel way by the plat, staff may request or recommend an easement be placed atop the existing travel way in order to try to prevent problems with road blockage, trespass, and/or conflicts about usage rights when new owners acquire the property. It may also be pertinent to obtain dedications or easement within the adjacent lands to provide legal access on the traveled way to the boundary of the subdivision. If the owner(s) disagree, an exception can be requested and justified.

20.25.070. – Form and contents required.

SUGGESTED CHANGE: Add a dimension requirement for showing the adjacent parcel information in relation to the proposed subdivision.

SUGGESTED LANGUAGE:

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

JUSTIFICATION: By providing the adjoining information within at least 100 feet of the subdivision it will provide the information for the neighboring parcels and right of ways. A distance of 100 feet will encompass nearly all right-of-way widths that may adjoin the subdivision. It is important to show neighboring status information to plan for street intersections and lot layout configuration. The adjoining information is valuable for land owners and subsequent surveyors to use when gathering information on neighboring parcels.

20.25.070. – Form and contents required.

SUGGESTED CHANGE: Clarification for showing non-tidal water features on the preliminary plat

SUGGESTED LANGUAGE:

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- 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 [wetlands when adjacent to lakes or non-tidal streams and the appropriate study which identifies a floodplain, if applicable]. 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;

JUSTIFICATION: The intent is to show the approximate location(s) low wet or marshy/swampy areas on the plat. Knowledge of the locations of low wet areas helps the owners plan for prudent placement of structures, wells, septic systems, and rights-of-way. A wetland is a designation based on specific testing by qualified personnel. Remove mention of floodplains because 20.30.280 addresses these areas. Depiction of the low wet areas can easily clutter a plat such that other information, like basis of bearings and dimensions, can be difficult to discern.

20.25.090. – Notice.

SUGGESTED CHANGE: Clarify and update the required items to be included in the notice published in the newspaper and the notice sent to affected property owners.

SUGGESTED LANGUAGE:

- B. Notice of public hearing shall appear at least once in a newspaper of general circulation stating:
- a. name of subdivision[a general description of the subdivision or replat];
 - b. KPB File no.[who filed the subdivision petition];
 - c. general location[when the subdivision petition was filed];
 - d. general description of the subdivision[the time and place of the hearing on the subdivision; and
 - e. the time and place of the hearing; and[the process and deadline for submittal of comments.]
 - f. process and deadline for submitted comments.
- C. The notice in subsection B, including the name of the surveyor and applicant, shall be sent by regular mail to the affected property owners at least 14 days prior to the public hearing. A certificate of mailing listing the names, addresses and parcel information for each notified owner shall be maintained in the subdivision file.

JUSTIFICATION: The edits to this section will reduce the size of the newspaper ad and clarify what items are included with the notice. The reduction in the newspaper ad will be a cost savings measure for the Planning Department.

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20.25.110. – Approval – Commission Authority – Notification required.

SUGGESTED CHANGE: Clarify the approval time frame of preliminary plats and the expiration of approved plats.

SUGGESTED LANGUAGE:

- A. Approval of the preliminary plat shall not constitute approval of the final plat, but means only that the basic lot and street design is acceptable. The subdivider is on notice that it is the subdivider's responsibility to provide all the information required in this ordinance and to submit a correct final plat within two years of the date of the planning commission's conditional approval of the preliminary plat. Upon application by the subdivider prior to the two-year deadline for final plat submittal, a time extension for two years beyond the initial two-year period for submittal of the final plat may be granted by the planning director. A second [third] and final two-year extension may be granted by the planning director when requested by the subdivider prior to expiration of the previous approval. [, allowing for a total approval time of six years]. When the preliminary plat is located within city limits, submittal of documentation from the city advisory planning commission indicating concurrence with the time extension request must accompany a time extension request. When a preliminary plat that has been granted a time extension is finalized, the final plat must comply with the current code. Expiration of the original plat approval or time extensions will require the submission of, and action on, a new preliminary plat.

JUSTIFICATION: The edits made to this section will clarify when an approved plat expires and clarify how many time extensions can be granted. The removal of the six-year limit is removed so that a combination of phase extensions and time extension requests can be used in combination for a development.

20.25.110. – Approval – Commission Authority – Notification required.

SUGGESTED CHANGE: revise the language in 20.25.110.B so that the time extensions for phased subdivisions is clear.

SUGGESTED LANGUAGE:

- B. Preliminary plats that will be finalized in phases must comply with current code at the time each phase is finalized. All dedications for streets that are required pursuant to KPB 20.30.030 must be provided in the first phase. The approval of a final plat for a portion of the phased preliminary shall [extend] reset the [preliminary] approval date for two years from the date the subdivision phase final plat is recorded. [for t] The remaining land within the phased subdivision [, except that the commission] may require a new preliminary plat approval if the abutting road system changes. Phases must be filed in sequential order.

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JUSTIFICATION: By rewording this section it is clear that the approval date is reset to allow two years to complete the next phase from the date that the final plat for a phase is recorded. This will allow the subdivider the most time to complete their project.

20.25.110. – Approval – Commission Authority – Notification required.

SUGGESTED CHANGE: Include a requirement that subdivision plats approved under 20.12, 20.14, 20.16, and 20.20 with approvals 10 years or more convert to the requirements of 20.25, 20.30, 20.40, and 20.60.

SUGGESTED LANGUAGE:

E. Subdivision plats approved under KPB 20.12, 20.14, 20.16, and 20.20 with approvals that are greater than 10 years in length, and with approvals that will expire, will be considered expired on the expiration date. Continuation of an expired subdivision will require the submission of, and action on, a new preliminary plat that complies with current subdivision requirements.

JUSTIFICATION: To maintain consistency, plats approved per KPB 20.12, 20.14, 20.16, and 20.20 have been allowed to continue review under these codes as long as it was evident the project would be concluded within a reasonable amount of time. Allowing plats to continue review under 20.12, 20.14, 20.16, and 20.20 indefinitely is inconsistent with the intent and application of the current Title 20.

20.25.120. Review and appeal.

SUGGESTED CHANGE: Revise the review and appeal statement to remove 'parties of record' so that chapter 20 is consistent with KPB 2.40.080.

SUGGESTED LANGUAGE:

[A party of record] In accord with KPB 2.40.080, any person or agency that participated at the plat committee hearing, either by written or oral presentation, may request that a decision of the plat committee can be reviewed by the planning commission by filing a written request within 10 days of date of distribution [notification] of the decision [in accordance with KPB 2.40.080]. A decision of the planning commission may be appealed to the board of adjustment by a party of record within 15 days of the date of distribution[notice] of decision in accordance with KPB 21.20.250.

JUSTIFICATION: This change will keep the code consistent between chapter 2 and chapter 20. It will allow any person or agency who participated at the plat committee hearing, either by written or oral testimony, to request a review by the full Planning Commission. An appeal to the hearing officer will require a party of record to meet the Party of record requirements per KPB 20.20.210.

20.30.060. – Easements – Requirements.

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SUGGESTED CHANGE: Remove the default 10-foot utility easement if the plat is within a city, and the city planning commission and affected utilities do not request new utility easements.

SUGGESTED LANGUAGE:

- D. Unless a utility company requests additional easements, the front ten feet [of the building setback] adjoining rights-of-way shall be designated as a utility easement, graphically or by note. Within boundaries of a city, the width and location of utility easements will be determined by the City and affected utility providers.

JUSTIFICATION: If the affected utility companies and the city, which is a utility provider, do not request easements, adding new easements is an unnecessary burden on the property within city limits. Some zoning districts do not have building setbacks so in order to consistently grant utility easements along rights-of-way, the language should clarify the front footage adjoining rights-of-way is subject to a utility easement unless otherwise requested by the city and utility providers.

20.30.110 – Half Streets

20.30.120. – Streets – Width requirements.

SUGGESTED CHANGE: Move the requirements of 20.30.110 – Half Streets to be incorporated within 20.30.120 Streets – Width requirements. Also, revise the half street notification statement to remove 'parties of record' so that chapter 20 is consistent with KPB 2.40.080.

SUGGESTED LANGUAGE:

[20.30.110 – Half Streets.]

- [A.] [Half streets shall generally not be allowed except where one of the following circumstances applies:]
- [1. The street is identified on the borough road plan as an arterial;]
 - [2. The street is a logical extension of an existing street; or]
 - [3. The remaining half street can reasonably be expected to be dedicated.]
- [B.] [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 are parties of record and will be sent a copy of the plat committee minutes and a sketch showing the new half right-of-way. Pursuant to KPB 2.40.080 review of the plat committee decision by the planning commission may be requested by parties of record.]

20.30.120. Streets—Width requirements.

- A. 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

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and a sketch showing the new half right-of-way and per KPB 2.40.080 can request a review of the preliminary plat 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.

JUSTIFICATION: It will simplify the code to move the half street width requirements to fall with the street width requirements section of the code, instead of having the half width be a separate section.

The change to the notice of adjoiningers will keep the code consistent between chapter 2 and chapter 20. It will allow any person or agency who participated at the plat committee hearing, either by written or oral testimony, to request a review by the full Planning Commission. An appeal to the hearing officer will require a party of record to meet the Party of record requirements per KPB 20.20.210.

20.30.150. – Streets – Intersection requirements.

SUGGESTED CHANGE: Provide a distance requirement for offset intersections.

SUGGESTED LANGUAGE:

- B. Offset intersections are not allowed. The distance between intersection centerlines shall be no less than 150 feet.

JUSTIFICATION: By adding a specific distance it clarifies the distance required between offset intersections. This distance complies with 20.30.090 Streets – Maximum grade allowed, where the grade at an intersection shall not exceed 4 percent within 130 feet of any centerline intersections.

Muni of Anchorage requires 150 feet. Matsu Borough requires 150 feet centerline to centerline for residential sub-collectors or below or 330 feet on residential collector or higher class of road.

20.30.240. – Building Setbacks.

SUGGESTED CHANGE: Revise the wording of this section of code to reference 'dedicated' right of way instead of 'fee simple'.

SUGGESTED LANGUAGE:

- A. The commission shall require a building setback of at least 70 feet from the centerline of all dedicated [fee simple] arterial rights-of-way in a subdivision. A minimum 20-foot building setback shall be required for dedicated [fee simple] non-arterial rights-of-way in subdivisions located outside incorporated cities.
- C. The setback shall be noted on the plat in the following format:

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

JUSTIFICATION: By changing the required plat note to add 'dedicated' it will match the building setback requirement of 20.30.240.A. This will be beneficial to avoid confusion when public access easements, temporary turnaround easements, and section line easement affect a subdivision plat. Changing the plat note would clarify that only fee simple right of way dedications will require a 20 foot building setback.

20.30.250. – Building setbacks – Within cities.

SUGGESTED CHANGE: clarify that a building setback of record does not need to be carried forward on a new subdivision plat when located within the subdivision is affected by City zoning.

SUGGESTED LANGUAGE:

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 record 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."

JUSTIFICATION: This will allow new plats to be complete without requiring an exception to 20.30.240 when the record plat shows a building setback.

20.30.270. - Different standards in cities.

SUGGESTED CHANGE: Clarify that the planning commission may follow different standards when requested by the cities. The borough is not required to follow the different standards within a city. Any appeal of a city design standard shall be conducted by the city.

SUGGESTED LANGUAGE:

Where cities have [been delegated partial platting powers by the borough and have] enacted by ordinance different subdivision design standards than those set forth in this chapter, the planning commission [shall] may apply the city standards in lieu of those set forth in this chapter. [The application of the city design standard is subject to the city having an ordinance in place that satisfies the notice requirements of KPB 20.25.090(A) through (D) and a process to appeal decisions made by the city regarding application of its subdivision design standards.] Any appeal of a city design standard is subject to KPB 21.01.020.

JUSTIFICATION:

Some cities have enacted different subdivision standards than KPB standards. The KPB Planning Commission can agree to follow those different standards, but any appeal of those standards

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will be at the city level. Any appeal of a planning commission decision, that is based on KPB code will be handled by the borough.

20.30.280. – Floodplain requirements.

SUGGESTED CHANGE: clarify which portion of floodplain management code is required to be followed for subdivision plats.

SUGGESTED LANGUAGE:

- C. All subdivisions which are wholly or partially located within flood hazard areas as defined by KPB 21.06.030 must comply [areas where the floodplain has not been mapped and base flood elevation data is not available shall provide the information in compliance] with KPB 21.06.050.A.4.

JUSTIFICATION: Adding the specific code clarifies what floodplain requirements affect proposed subdivision plats.

20.30.290. – Anadromous habitat protection district.

SUGGESTED CHANGE: Revise anadromous habitat protection district to anadromous waters habitat protection and clarify the width of the Anadromous habitat protection district.

SUGGESTED LANGUAGE:

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 or as amended.

JUSTIFICATION: Revise the language to be consistent with Chapter 21.18. Cite 21.18.040 instead of a specific with, such as 50 feet, to allow flexibility for future changes.

20.40.030. – Abbreviated submittal.

SUGGESTED CHANGE: Define the wastewater review submittal requirements for parcels that are 200,000 sq. ft. or larger.

SUGGESTED LANGUAGE:

Lots within the proposed subdivision that will be at least 200,000 square feet [or nominal five acres] in size [do not require a soils analysis and report prepared by a qualified engineer] must

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comply with 20.40.100.F. Before a final plat is recorded or filed for subdivision, the following note must be placed on the plat:

WASTEWATER DISPOSAL: Lots which are at least 200,000 square feet [or nominal five acres] 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.

JUSTIFICATION: Currently a wastewater soils analysis report is not being submitted for lots that are larger than 200,000 square feet. This change will require the subdivision plat to comply with KPB 20.40.100.F. The options to comply would be a report from a licensed engineer based on,

- 1. Existing information, such as an approved DEC septic system currently on the parcel.*
- 2. Visual analysis, or local knowledge.*

Test pits will not be required for an abbreviated wastewater analysis report.

20.40.100.F is in the code but because of the wording of 20.40.030 it is not being followed. The change within 20.40.030 will require large parcels to comply with 20.40.100.F.

20.40.030. – Abbreviated submittal.

SUGGESTED CHANGE: Remove the nominal five acres description from the abbreviated submittal for the wastewater review.

SUGGESTED LANGUAGE:

Lots within the proposed subdivision that will be at least 200,000 square feet [or nominal five acres] in size do not require a soils analysis and report prepared by a qualified engineer. Before a final plat is recorded or filed for subdivision, the following note must be placed on the plat:

WASTEWATER DISPOSAL: Lots which are at least 200,000 square feet [or nominal five acres] 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.

JUSTIFICATION: Although 'nominal' and 'aliquot' are defined in KPB code, there has been some confusion in regards to nominal five acres and how it can be determined by aliquot subdivision. Some thoughts are that nominal means you can include the adjoining right of way when determining parcel size. By removing the nominal five acres, and sticking with a set square footage, there will be less confusion. This will also allow for subdivision designs that better fit the site instead of a strict midpoint method of subdividing the property. 200,000 square feet will still allow for an aliquot 20 acre parcel, that may be as small as 18.365 feet, to be split into four aliquot parcels.

20.40.040. – Conventional onsite soil absorption systems.

SUGGESTED CHANGE: Edit the slope requirement to match State of Alaska DEC regulations.

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SUGGESTED LANGUAGE:

A.3.a Ground slopes greater than 25[20] percent, or 5 percent where a bed system is proposed, and other topographic features as needed by a qualified engineer to meet the design requirements for wastewater disposal as defined in this chapter;

JUSTIFICATION: Alaska Department of Environmental Conservation regulates wastewater disposal via State Statutes, and required a setback from slopes greater than 25 percent. This item was noted in the last code re-write to be changed to 25 percent but was missed.

20.40.040. – Conventional onsite soil absorption systems.

SUGGESTED CHANGE: Remove regulatory requirements of the Kenai Peninsula Borough from the wastewater disposal note.

SUGGESTED LANGUAGE:

B. Before a final plat is recorded or filed for subdivision under this section, the borough will require the engineer to sign the following note on the final plat:

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.] An Engineer's Subdivision and Soils Report is available from the Kenai Peninsula Borough. Any other type of onsite wastewater treatment and disposal system must be designed by a qualified engineer, registered to practice in Alaska, and the design must be approved by the Alaska Department of Environmental Conservation.

JUSTIFICATION: KPB does not regulate wastewater disposal. Alaska Department of Environmental Conservation regulates wastewater disposal via State Statutes. By noting the soils analysis and report it gives notification to the land owners that there is a report on file with the borough.

20.40.070. – Connection to an existing system.

SUGGESTED CHANGE: Add a new section to clarify that a licensed engineer or surveyor does not have to sign a wastewater disposal note for subdivisions served by city septic systems.

SUGGESTED LANGUAGE:

C. If the subdivision is served by a home rule, or general law city, wastewater treatment and disposal system, then signature by an engineer or surveyor is not required.

Justification: Oversight and authority for septic systems within a city are within the purview of the city and/or the Alaska Department of Environmental Conservation. An engineer or surveyor in private practice should not be required to sign a statement that the city's septic system complies with the requirements of the Alaska Department of Environmental Conservation.

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20.40.100. – Soils analysis and report.

SUGGESTED CHANGE: Remove the nominal five acres description from the abbreviated submittal for the wastewater review.

SUGGESTED LANGUAGE:

F. Soil testing requirements for subdivision lots equal or greater than 200,000 square feet [nominal five acres] consist of general soils and water table description with sufficient detail to support the applicability of the proposed means of wastewater disposal; the description must be based on:

1. Existing information; or
2. Visual analysis by, or local knowledge of, a qualified engineer.

Justification: This will keep the code consistent by removing the references to nominal five acres and replacing with 200,000 square feet.

20.60.025. – Fee required.

SUGGESTED CHANGE: Add a new section to the final plat code to cover the fee for final plat submittals.

SUGGESTED LANGUAGE:

20.60.025. – Fee required.

The fee established by the current Kenai Peninsula Borough Schedule of Rates, Charges and Fees shall accompany the submission of the final plat.

Justification: Fees for final plat submittal were established in August of 2019. Before this date there was no fee for the final plat submittal. By adding this section of code it will notify all subdividers that there is a fee for the final plat submittal.

20.60.070. – Plat specifications.

SUGGESTED CHANGE: Specify minimum font size, define acceptable drawing scales, and remove the legal size for a final plat.

SUGGESTED LANGUAGE:

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. 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 font, (0.1") 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: [8½" × 14"]; 11" × 17"; 18" × 24"; and 24" or 30" × 36". When more than one sheet is required, an index map shall be provided on the first sheet showing the

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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.

JUSTIFICATION: These guidelines follow with DNR Platting recommendations. Drawings should be plotted at a standard scale (1" = multiples of 10 feet or of 100') to allow a user to make measurements with a standard engineer's scale. 10-point font size is acceptable for labels, plat notes, certificates and information within the title block. An 8 point, capitalized font, will be legible when the full size drawing is reduced to an 11 x 17 drawing. An 8 point will allow the surveyor to have discretion on the size of the fonts used to label features where space is limited. A font smaller than 8 point is very difficult to read when printed on a reduced size piece of paper (11 x 17). No plats have been submitted on legal size. It would be difficult to prepare a subdivision plat with all the required information, on a legal size paper and keep the information clear and legible.

20.60.110. – Dimensional Data required.

SUGGESTED CHANGE: Add clarification for dimensioning the subdivision boundary. Remove the last sentence in Section A. Label non-radial lot lines and/or include in the legend. Note computed distances. Label computed data and source if applicable.

SUGGESTED LANGUAGE:

- A. The bearing and length of every lot line, block line, and boundary line shall be shown. The bearing and length of the subdivision boundary are to be generally shown on the outside of the subdivision boundary. Dimensions of lots shall be given as net dimensions to the boundaries of adjoining streets and shall be shown in feet. No ditto marks shall be used. Information shall be shown for all curves, including radius, central angle, arc length, chord length and chord bearing. The initial point of survey shall be shown and labeled. Label all non-radial lines. If monumented lines were not surveyed during this platting action, show the computed data per the record plat information.

JUSTIFICATION: The labeling of the subdivision boundary on the outside of the boundary clarifies the parent parcel and identifies the parent parcel boundary dimensions. 20.30.220 recommends radial/right angle lines. By labeling the non-radial lines it will provide useful information to the land owner and especially the subsequent surveyors. By labeling the computed data it will alert subsequent surveyors and owners that the surveyed line(s) were not measured during this platting action.

20.60.110. Dimensional Data Required

SUGGESTED CHANGE: Add a requirement for clarification when a discrepancy is found between survey markers and/or clarify how new survey marker locations were established.

SUGGESTED LANGUAGE:

- C. Any discrepancy between the survey and the record description, and the source of all information used in making the survey shall be indicated. When an inconsistency is

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found including a gap or overlap, excess or deficiency, erroneously located boundary lines or monuments, or when any doubt as to the location on the ground of the true boundary or property rights exists, the nature of the inconsistency shall be clearly shown on the drawing.

JUSTIFICATION: This language is consistent with item F of the ASPLS Minimum Standards for the Practice of Land Surveying Manual. This requirement will provide useful information by showing how property boundaries were established and why certain survey markers were used, or not used, to establish boundaries. Any following surveyor will find this information useful as they perform a survey to re-establish a boundary or subdivide property.

20.60.130. – Boundary of Subdivision

SUGGESTED CHANGE: Define how the boundary of the subdivision shall be established and shown on the drawing.

SUGGESTED LANGUAGE:

The boundary of the subdivision shall be designated by a wider border and shall not interfere with the legibility of figures or other data. The boundary of the subdivided area shall clearly show what survey markers, or other evidence, was found or established on the ground to determine the boundary of the subdivision. Bearing and distance ties to all survey markers used to locate the subdivision boundary shall be shown.

JUSTIFICATION: This requirement will provide that the boundary of the subdivision, and the method used to determine the boundary, will be shown on all subdivision plats.

20.60.170. – Other data required by law.

SUGGESTED CHANGE: Include a statement clarifying that KPB does not enforce private restrictive covenants.

SUGGESTED LANGUAGE:

- B. Private covenants and restrictions of record in effect at the time the final plat is approved shall be referenced on the plat. The borough will not enforce private covenants, easements, or deed restrictions.

JUSTIFICATION: Since 20.60.170 requires private covenants to be noted on plats, it could be interpreted that KPB has control or oversight over private covenants. The suggested language is consistent with KPB 21.44.080, which prohibits KPB from enforcing private covenants.

20.60.170. – Other data required by law.

SUGGESTED CHANGE: Add a requirement that subdivision plats shall conform to applicable Local Option Zoning.

SUGGESTED LANGUAGE:

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- C. The plat shall adhere to the requirements of the local option zone, where applicable.

JUSTIFICATION: This item will require a subdivision plat to comply with local option zoning, if the subdivision is located within an existing local option zone. Currently there is no mention of subdivision plats needing to comply with Local Option Zoning. This requirement will help to keep a local option zone intact, which is one of the reasons, and benefits, to applying a local option zone.

20.60.180. Plat notes.

SUGGESTED CHANGE: Add new section for plat note revision or removal.

SUGGESTED LANGUAGE:

- 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 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.

JUSTIFICATION: Title 20 is silent on procedures to modify or remove a plat note on a recorded plat. Occasionally, owners wish to change or remove notes from a recorded plat due to changes in development, alternative solutions to requirements per plat note, new technology, removal of existing overhead electric power lines, and/or new regulations. All owners within the subdivision are also subject to the plat note and should be notified of proposed changes. Following the exception process allows for orderly presentation and support for the requested action.

20.60.210. – Approval – Authority – Certificate issued when.

SUGGESTED CHANGE: Add new section to require notification to the owner(s) of the affected lot and/or owners in the subdivision when a request to amend a recorded plat is received.

SUGGESTED LANGUAGE:

- E. When an application to amend a recorded plat, as defined by 11 AAC 53.900, is received, notice by regular mail of the requested amendment to the plat shall be sent to owner(s) of the affected lot or tract and/or the owners in the subdivision per Borough tax rolls. Separate advertising of the proposed plat amendment is not required.
1. The surveyor shall submit a copy of the plat showing the proposed new wording and/or a sketch of the proposed amendment with the application.
 2. The plat amendment may be scheduled as a consent agenda item unless otherwise requested by the owner(s), Planning Director or Planning Commission.

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JUSTIFICATION: Title 20 is silent on procedures to amend recorded plats. Per 11 AAC 53.260 amending a plat consists of correcting a technical error that will not adversely affect any valid existing right. The owner(s) accepted the information on the recorded plat when the Certificate of Ownership and Dedication was acknowledged. Owner(s) should be notified of any changes to the recorded plat. If the proposed change affects other lots/tracts, all owners in the subdivision should be notified. Notice can be sent by regular mail to owners of record per Borough tax rolls allowing a reasonable amount of time to respond. Separate advertising is not necessary.

20.70.035. – Approval of Vacations.

SUGGESTED CHANGE: Add standards that must be met for approval of right of way vacations.

SUGGESTED LANGUAGE:

The platting authority shall consider the merits of each request to vacate a city street, public right-of-way, public area, or public easement and in all cases the platting authority shall deem the area being vacated to be of value to the Borough unless proven otherwise. The burden of proof shall lie entirely with the petitioner. In considering any vacation of city street, public right-of-way, public area, or public easement the Borough shall consider the following:

1. The current and future needs of the right of way, public access easement, or public areas.
2. The vacation of the right of way, public access easement, or public areas will not limit access to surrounding property.
3. The vacation of the right of way or public access easement will not be detrimental to the public welfare.
4. The borough will consider realignment of right of way by vacation and rededication where it can clearly be shown the right of way realignment will enhance access and the realigned right of way is located to provide reasonable means of ingress and egress.

JUSTIFICATION: By specifying standards of approval of right of way vacations, it allows both the applicant and Borough to review the petition for completeness and verify that all standards are met.

20.70.040. Application—Petition required.

SUGGESTED CHANGE: Revise who is allowed to submit a petition to vacate a utility easement.

SUGGESTED LANGUAGE:

- A. A platted right-of-way or platted public area may not be vacated, except upon petition by resolution of the governing body from a municipality in which the property is located or by the owners of the majority of land fronting or abutting the right-of-way or public area to be vacated. The petition shall be filed with the planning commission.
- B. A petition to vacate a utility easement [only must] may be submitted by the state, the borough, a public utility, or the owners of the land subject to the easement.

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JUSTIFICATION: By incorporating these changes, the State, Borough, or utility company, can petition to vacate a utility easement.

20.70.050 – Petition – Information required.

SUGGESTED CHANGE: Allow the number of copies required to be determined by staff.

SUGGESTED LANGUAGE:

- B. Persons listed on the borough assessor's tax roll shall be deemed the legal owners for purposes of the vacation petition. The petition shall include a statement containing the reasons in support of the vacation and be accompanied by [a minimum of three copies of] a sketch clearly indicating the proposed vacation, submitted to the planning department at least 30 calendar days in advance of the meeting at which it will be considered. [Additional copies may be required as needed.] The format and number of copies shall be determined by the planning director. In cases where encroachments on public rights-of-way are in question, an as-built survey, sealed by a surveyor, is required showing the improvements, existing travel ways, amount of encroachment, and any other submittal as requested by the planning commission. The burden of proof shall lie with the petitioner to support the vacation.

JUSTIFICATION: The number of copies required for petitions has changed over the years primarily based on evolving technology and wide use of electronic media. To the extent possible, staff distributes public hearing notices electronically, which saves time, money, and paperwork. Allowing the number of copies required to be determined by staff creates flexibility of the submittal requirements, reduces paperwork, and saves money.

20.70.080. – Utility easement vacations.

SUGGESTED CHANGE: Include language to address situations in which the utility easement is in a city or adjoining a State Department of Transportation or KPB right-of-way.

SUGGESTED LANGUAGE:

- A. Where a vacation petition is for a utility easement only, the petitioner has the responsibility to obtain comments from [the KPB Road Service Area and] all appropriate utility providers and the jurisdictional authority of the adjoining right-of-way, if applicable, and submit those comments with the petition. The petition must be signed by the owners of the land subject to the easement as shown on the Kenai Peninsula Borough tax rolls. A sketch showing the location of the requested vacation must accompany the petition. A public hearing is not required in the case of vacation of a utility easement that is not associated with the vacation of a right-of-way.

JUSTIFICATION: Unless a KPB right-of-way adjoins or could be impacted by a proposed utility easement vacation, review and comments by the KPB Roads Department are unnecessary. DOT should be notified and offered the opportunity to comment when the proposed utility easement

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vacation adjoins their right-of-way. If jurisdictional authority is uncertain, comments from all possible jurisdictional authorities can be obtained.

20.70.080. – Utility easement vacations.

SUGGESTED CHANGE: Revise language within A to reflect how the utility easement vacation petition is currently handled, which is for the petition to go to the planning commission.

Revise language in C to clarify the amount of time allowed for those within the 300-foot notification buffer to respond to the notice of the proposed vacation. Include the option to finalize the vacation by a plat.

Approximately half of the utility easement vacations are finalized by recording a subdivision plat. Add to D and create E to clarify the procedures for finalizing a utility easement by plat.

Add item F to provide clarification for how an appeal of a Planning Commission decision of a utility easement is handled.

SUGGESTED LANGUAGE:

- A. Where a vacation petition is for a utility easement only, the petitioner has the responsibility to obtain comments from the KPB Road Service Area and all appropriate utility providers and submit those comments with the petition. The petition must be signed by the owners of the land subject to the easement. A sketch showing the location of the requested vacation must accompany the petition. A public hearing is [not] required [in the case of vacation of a utility easement that is not associated with the vacation of a right-of-way].
- B. Publication of a notice in the newspaper is not required for utility easement vacations.
- C. A notice shall be sent by regular mail to each property owner as shown on the Kenai Peninsula Borough tax rolls within a 300-foot radius from the utility easement proposed for vacation at least 14 days prior to the scheduled public hearing.
- D. When the application is complete, the planning director will schedule the petition to be head by the Planning Commission[take action on the requested vacation] within ten working days, [, either approving or denying the requested vacation. If the director approves the vacation, t] The vacation may be finalized by a vacation resolution that will be prepared and taken to the planning commission for adoption, in accordance with KPB 20.70.140, or the owner may finalize the vacation in conjunction with a preliminary plat depicting the requested vacation, that shall be submitted in accordance KPB Title 20. [If the director denies the vacation, a letter containing the reasons supporting the denial will be sent to the petitioner. The director may choose to forward any utility easement vacation request to the planning commission for action. If the reasons for denial are

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resolved, the petitioner may submit a new petition for vacation with documentation that the issues have been resolved, accompanied by a new fee.]

- E. If the utility easement vacation will be finalized in conjunction with the recording of a subdivision plat in accordance with KPB Title 20, the final plat must be recorded within one year of the planning commission's approval or the municipal vacation consent in KPB 20.70.050(F).
- F. When a utility easement vacation is located within a municipality, a Notice of Decision will be sent to the municipality in which the easement vacation is located.
- F. A party of record can appeal the planning commission decision of a petition to vacate a utility easement, in accordance with KPB 21.20.

JUSTIFICATION: The changes will require the planning commission to review and approve all utility easement vacations. If the utility easement vacation request is simple in nature, non-controversial and no comments were received, then the utility easement vacations may be placed on the Planning Commission's consent agenda.

Adequate time needs to be provided to allow for those within the 300-foot notification buffer to respond to the notice of vacation. Fourteen days is consistent with KPB 20.25.090.

If the owner wants to vacate the utility easement by plat, a Planning Commission resolution is not required. Length of vacation approval is consistent with 20.70.130.

Clarification is needed for how a party of record can appeal a decision to vacate a utility easement. By referencing Chapter 21.20 it provides a clear process to appeal the planning commission decision. The hearing officer will hear and decide all appeals of a planning commission decision when related to the vacation of utility easements.

20.70.090. – Notice required.

SUGGESTED CHANGE: Remove 'by regular mail' from the method required to notice utility providers and municipalities. Remove the sentence that requires KPB to publish the notice in a newspaper.

SUGGESTED LANGUAGE:

Notice of public hearings shall be posted in a public area such as a post office, community center, or library. Public hearings will be advertised twice, once on the agenda in a local newspaper and either on the KPB website or social media.

The notice shall include:

- a. name of applicant and surveyor
- b. general location

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- c. legal description
- d. summarized purpose
- e. time and location of public hearing
- f. KPB File number.

[The planning director shall publish a notice stating when and by whom the petition was filed, its purpose, and the time and place of the public hearing. The notice shall describe, through both legal and general description, the location, nature, and extent of the vacation. The notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the area of the vacation.]_Certified mail notice shall [also] be mailed to each property owner as shown on borough tax rolls within a 300-foot radius and regular mail notice sent to owners within the next 300-foot radius to equal a 600-foot total notice radius from the boundaries of the area proposed to be vacated. If the 600-foot radius does not include owners other than the petitioner(s), notice must be sent to owners of parcels adjoining the boundaries of the parcel(s) that contain the area of the proposed vacation. Notice [by regular mail] shall be sent to all public utilities operating within the general area of the vacation and to the municipality in which the property is located.

JUSTIFICATION:

Outlining the specific items required in the notice will make it clear as to which items must be included. Currently the notice is e-mailed to all utility providers as well as municipalities. This method has been acceptable to the reviewers and provided for a quick and uniform method of notice. AS 29.40.130 requires the platting authority to publish a notice of the public hearing. KPB sends out notice to all property within the specified radius, publishes the agenda in the newspaper, posts a notice on the KPB website, and posts a notice on the KPB face book page. By removing the sentence that states newspaper it will save the borough \$100 - \$200 per right of way vacation add. KPB notice will comply with AS 29.40.130.

20.70.110 – Vacation [consent] decision – City council or assembly.

SUGGESTED CHANGE: clarify section 20.70.110 to specify approval or denial and also to include utility easements.

SUGGESTED LANGUAGE:

A vacation approval, or denial, by the Planning Commission, of a [city] street, public right-of-way, public area, utility easement, or public easement located within an incorporated city [may not be approved without the consent of the city council] must be sent to the city for consent or veto of the vacation decision. A vacation of a street, right-of-way, public area, utility easement, or public easement within the borough outside of the boundaries [limits]of a city[ies may not be made without the consent of the borough assembly] must be sent to the assembly for consent or veto of the vacation decision. The assembly or council shall have 30 days from the date of [approval]the planning commission decision in which to consent or veto the planning commission decision. If no consent or veto decision is made [is received by the planning director] within [the specified period]30 days of the date of the planning commission decision,

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the city or borough shall be considered to have given consent to the vacation. An appeal of a city council or borough assembly action under this provision must be filed in the superior court in accordance with the Alaska Rules of Appellate Procedure.

JUSTIFICATION:

The clarification in this section will make it clear how the vacation process works and that utility easements are included in the vacations that are reviewed by the planning commission. If the vacation is located within the city, then the city will be given a 30 day window in which it can be vetoed by city council. The KPB assembly will have the opportunity to veto the planning commission decision if it is within 30 days.

20.70.130. – Vacation plat – Preparation, approval and recording.

SUGGESTED CHANGE: Revise this section of the code so that a right of way vacation can be completed by a Right of Way Vacation Plat as well as the typical subdivision plat. Revise the language so that the time frame is consistent with either method of platting.

SUGGESTED LANGUAGE:

Upon approval of the vacation request by the planning commission and consent [no veto] by the city council or assembly, 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, or KPB 20.25. 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 in KPB 20.70.110. No extensions of time may be granted for the right of way vacation. To allow time for State of Alaska DNR review and approval, section line easement vacation plats must be recorded within four years of the vacation consent in KPB 20.70.110.

JUSTIFICATION:

Many right of way vacations are completed on plats that do not fall under KPB 20.10.080, but instead the vacations are included on a typical subdivision plat. By identifying KPB 20.25 as a way to complete the vacation it gives the applicant the ability to vacate at the same time as subdividing or changing property boundaries. Adding the language of 'no time extensions' keeps the code consistent between 20.10.080 and 20.70.130. Right of way vacations should be completed in a timely manner so as not to interfere with legal access to surrounding properties. Section line easement vacations require State DNR review and approval. This process can be lengthy. By allowing four years for section line easement vacation plats it allows the applicant time to complete the process without the vacation becoming void.

20.70.140. – Vacation resolution – Easement.

SUGGESTED CHANGE: Add a requirement for the petitioner to provide a legal description, a written description and/or drawing, prepared by a land surveyor.

SUGGESTED LANGUAGE:

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Upon approval of an easement vacation not associated with the vacation of a right-of-way or not requiring transfer of title or platting action, a vacation resolution may be adopted by the planning commission and recorded by the planning department within the time frame set out in the resolution to finalize the vacation. The petitioner is responsible for the recording fee as well as a legal description of the area to be vacated. The legal description shall be a written description and/or a drawing prepared, stamped, and signed by a land surveyor.

JUSTIFICATION:

By requiring a legal description of the area to be vacated it will be clear to the exact area that is being vacated. It is the responsibility of the applicant to provide this information to the Planning Commission. Per AS 08.48.221 Seals – all final drawings, specifications, surveys, plats, plates, reports, or similar documents includes, but is not limited to, parcel exhibits, parcel plats, legal descriptions, and similar professional works that may or may not be part of other documents are required to be sealed and signed.

20.70.220. – Section line easement vacations.

SUGGESTED CHANGE: Update and correct the section for section line easement vacations.

SUGGESTED LANGUAGE:

Section line easement vacation petitions must comply with the requirement of KPB 20.70.040, 20.70.050 and 20.70.060. [a fee is required in compliance with KPB 20.70.060.] Public hearing and notice must comply with the requirements or KPB 20.70.070, [20.70.080]20.70.090, 20.70.100, 20.70.110, [and] 20.70.120, and 20.70.130. [The mail notice required in KPB 20.70.090 may be by regular mail. Publication on the planning commission agenda, advertised once in local papers, posted in public areas, and on the borough website prior to the meeting will satisfy the publishing requirement.] The petitioner is responsible for all submittals required by the State of Alaska Department of Natural Resources, (DNR) in compliance with their procedures. The petition must be reviewed and approved by the planning commission but final authority for approval and platting of the vacation rests with DNR. The petitioner is responsible for coordination with DNR and submittals to DNR.

JUSTIFICATION: A section line easement is statutorily the same as a dedicated right of way and must follow the same review and approval process. The only difference is that a section line easement vacation must also obtain State of Alaska DNR review and approval. This additional review can lengthen the process. A redundant reference to KPB 20.70.060 is being removed. The notice requirements are being removed from this section as it specifies in section 20.70.090 what requirements are required.

20.90.010. – Definitions generally.

SUGGESTED CHANGE: Add definition for architect.

SUGGESTED LANGUAGE:

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"Architect" or "qualified architect" means a licensed architect registered to practice in Alaska under AS 08.48 and 12 AAC 36 in the branch of architecture defined by 12 AAC 36.068 applicable to the project.

JUSTIFICATION:

KPB 20.30.280.E. requires a certification by an engineer or architect; however, architect is not included in the definitions.

20.90.010. – Definitions generally.

SUGGESTED CHANGE: Remove 'parties of record' from the definition for 'Date of distribution' or 'distribution' so that Chapter 20 is consistent with KPB 2.40.080.B.

SUGGESTED LANGUAGE:

"Date of distribution" or "distribution" means the date a notice, decision or other document is provided, manually or electronically, or is postmarked [, to a party of record].

JUSTIFICATION: This change will keep the code consistent between chapter 2 and chapter 20.

20.90.010. – Definitions generally.

SUGGESTED CHANGE: Remove Nominal five acres.

SUGGESTED LANGUAGE:

[Nominal five acres" means of, like, or relating to an aliquot five-acre part.]

JUSTIFICATION:

Nominal five acres is being removed from the KPB due to confusion on how to apply the use with septic system reviews. Issues came up with adjoining right of way acreage and the method to subdivide an aliquot parcel. The defined area will be replaced with 200,000 square feet throughout the KPB code.

20.90.010. – Definitions generally.

SUGGESTED CHANGE: Remove 'Parties of Record'

SUGGESTED LANGUAGE:

["Parties of record" unless specified otherwise means those persons who have commented in a written and signed document or in person on an agenda item before the planning commission or plat committee who own property within the notification radii established in this chapter.]

JUSTIFICATION: Remove 'parties of record' from chapter 20, but leave it defined within chapter 21. All references in chapter 20 will be to KPB 2.40.080.B. This will allow a broader group to request a review to the Planning Commission. If an application is appealed to the Hearing Officer, then the stricter definition of 'parties of record', as defined in Chapter 21, will be used to determine standing.

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20.90.010. – Definitions generally

SUGGESTED CHANGE: Change the definition of right of way to be consistent with Title 14 – Roads.

SUGGESTED LANGUAGE: “Right-of-way dedication” or “right-of-way” means a right-of-way dedicated on a plat for road, street, or utility purposes in accordance with the platting requirements of the Kenai Peninsula Borough, or such rights-of-way as have been specifically granted by easement or dedicated by statute [means transfer of fee simple underlying ownership of a right-of-way to the state, borough, or a municipality].

JUSTIFICATION: To be consistent with Chapter 14 – Roads

20.90.010. – Definitions generally

SUGGESTED CHANGE: Include additional wording in the definition of subdivision

SUGGESTED LANGUAGE: "Subdivision" means the division of a tract or parcel of land into two or more lots, or other divisions for the purpose of sale or building development, and includes resubdivision and relates to the process of subdividing or to the land or areas subdivided. As used in this Chapter, it also includes the elimination of lot lines and/or any change to an existing property line.

JUSTIFICATION: To be consistent with AS 29.40.120.

21.20.210 - Definitions

SUGGESTED CHANGE: Update the definition of ‘Party of record’ to specify property owners within the notification radii.

SUGGESTED LANGUAGE:

21.20.210.A.5.b Any party or person aggrieved by the decision where the decision has or could have an adverse effect on the value, use or enjoyment of real property owned by them who appeared before the planning commission with either an oral or written presentation, and who owns lands within the notification radii;

- (1) A signature on a petition does not qualify the signatory as a party of record. [without a separate oral or written presentation to the planning commission]

JUSTIFICATION: This will define that only individuals who own land within the notification radii and who submitted testimony at the Planning Commission hearing have standing to appeal the Planning Commission decision to a Hearing Officer.

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21.20.230 - Jurisdiction

SUGGESTED CHANGE: Update the jurisdiction so that it complies with 20.70 requirements.

SUGGESTED LANGUAGE:

21.20.230 – Jurisdiction

- B. [The assembly shall consider vacation petitions approved by the planning commission in accordance with the procedures in KPB Chapter 20.70.]

JUSTIFICATION: All vacation decisions now fall under 20.70.110 so this section is no longer needed.

21.20.250 -

SUGGESTED CHANGE:

SUGGESTED LANGUAGE:

- E. *Entry of appearance.* The borough clerk shall mail or otherwise deliver copies of the notice of appeal to all parties of record in the proceeding appealed within 15 days of the date of filing the notice of appeal. Proof of service upon each party shall accompany the notice of appeal. Any party desiring to participate in the appeal process must file an entry of appearance containing that party's name and address and signature, or the name and address of the party and the name and address and signature of the party's representative, within 15 days of the date of mailing of the notice of appeal by the borough clerk. If borough staff is not participating in the appeal beyond providing the required staff overview, a notice of non-participation should be filed with the borough clerk. Proof of service of the entry of appearance upon each party shall be made in the manner prescribed in KPB 21.20.280(D). Any party filing an entry of appearance may file additional designations of error or other alternative requests for modification or reversal of the decision.

JUSTIFICATION:

21.20.270 – Record on appeal

SUGGESTED CHANGE:

SUGGESTED LANGUAGE:

- C. *Appeal on the record; new evidence.* Appeals to the hearing officer shall be on the record. No new evidence, or illustrative documents or attachments to written statements, may be filed without prior approval of the hearing officer after a showing by the moving party that there exists cause for supplementing the record and that even with due diligence

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the new evidence could not have been provided at the hearing before the planning commission.

JUSTIFICATION: This will help to clarify that appeals to the hearing officer are on the record.

21.20.280 – Written Statements.

SUGGESTED CHANGE:

SUGGESTED LANGUAGE:

A. *Opening statement.* A party of record who entered an appearance in the appeal[appellant, staff and the applicant if the applicant is not the appellant] shall submit a written statement which shall be filed with the borough clerk within 20 days of the clerk issuing notice that a completed record and transcript have been filed. The written statement may include a statement of facts as derived from the record on appeal, a statement of the party's perception of the correctness of the planning commission decision, a list of asserted errors, and any citations to applicable statutes, ordinances, regulations or other legal authority for the position taken by the party to the appeal. Failure to timely submit the opening written statement will result in dismissal of that party from the appeal. Multiple parties may preserve their party status by filing a single written statement; however, the written statement must clearly identify all parties filing the single statement. The hearing officer may waive irregularities in the content of the notice of appeal or written statements. In appeals where staff does not enter an appearance, the staff overview may be provided in writing when opening statements are due.

JUSTIFICATION: Clarify that staff is not necessarily a participant.

21.20.280 – Written Statements

SUGGESTED CHANGE:

SUGGESTED LANGUAGE:

E. Additional written statements. Unless the hearing officer requests supplemental written statements from the parties of record or staff, no additional written statements shall be accepted.

JUSTIFICATION: Clarify that only the opening and reply statements should be provided unless otherwise requested by hearing officer.

21.20.300 – Motions

SUGGESTED CHANGE:

SUGGESTED LANGUAGE:

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- A. Parties. Motions for continuances, shortened time, or other matters may be filed by the following parties and served in the manner prescribed by KPB 21.20.280(D):
1. The appellant;
 2. The applicant if that party is not the appellant;
 3. A borough official if borough staff enters an appearance in the matter.

JUSTIFICATION: