

# **DESK PACKET**

(INFORMATION THAT CAME IN AFTER THE MEETING PACKET WAS POSTED)

## **E. NEW BUSINESS**

### **3. Conditional Use Permit; PC Resolution 2023-04**

Request: To perform erosion protection & extend a culvert along the road embankment at MP 58 of the Sterling Hwy. within the ADOT highway easement with fill & vegetation. Portions of this project fall within the 50' Anadromous Waters Protection District of the Kenai River.

**KENAI PENINSULA BOROUGH PLANNING COMMISSION**

**RESOLUTION 2023-4**

**A RESOLUTION GRANTING A CONDITIONAL USE PERMIT PURSUANT TO KPB 21.18 FOR THE  
CONSTRUCTION OF HIGHWAY IMPROVEMENTS WITHIN THE 50-FOOT HABITAT PROTECTION  
DISTRICT OF THE KENAI RIVER**

- WHEREAS,** Chapter 21.18 provides for the approval of Conditional Use Permits for certain activities within the habitat protection district; and
- WHEREAS,** KPB 21.18.081 provides that a conditional use permit is required for construction not meeting the standards of KPB 21.18.071; and
- WHEREAS,** KPB 21.18.091 provides for mitigation measures by the planning department staff to address impacts to the Habitat Protection District from a proposed, ongoing, or completed project; and
- WHEREAS,** public notice was sent to all property owners within a 300-foot radius of the proposed activity as provided in Section 21.11.030; and
- WHEREAS,** public notice was published in the Peninsula Clarion on February 2, 2023 and February 9, 2023 as provided in Section 21.11.020; and
- WHEREAS,** public testimony was received at the February 13, 2023 meeting of the Kenai Peninsula Borough Planning Commission;

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

That the Planning Commission makes the following findings of fact pursuant to KPB 21.18:

**Section 1. Project Details Within the 50-foot Habitat Protection District**

1. A planting ratio of 2:1 will be used for every tree removed within the HPD of Kenai River. The proposed willow staking activities are anticipated to meet ordinance requirements.
2. Approximately 1,080 linear feet of rip rap will be used to stabilize a 4" layer of topsoil (370 Cubic Yards) for planting of seed and live stakes. Rip rap to include 6,600 CY of Class I and III, of which 2,150 CY will be below OHW. Borrow to include 2,775 CY of Type A and C, of which 360CY will be below OHW. An additional 900 CY of ditch lining will be used, with 360 CY being below OHW.
3. Approximately 9,100 square yards seedling and willow staking will be used to establish vegetation and roots, producing a more natural visual effect.

**Section 2. Findings of fact pursuant to KPB 21.18.081**

1. Portions of this proposed project are within the 50-foot habitat protection district as defined by KPB 21.18.040.

2. Pursuant to KPB 21.18.081(B)(5), construction of utility infrastructure may be approved as a conditional structure/use within the habitat protection district.
3. Pursuant to 21.18.081(D) General Standards, staff finds that the proposed project meets the five general standards.
4. Pursuant to KPB 21.18.020(A), this chapter was established to protect and preserve the stability of anadromous fish through controlling shoreline alterations and disturbances along anadromous waters and to preserve nearshore habitat.
5. Pursuant to KPB 21.18.20(B)(5), one purpose of this chapter was established to separate conflicting land uses.
6. A planting ratio of 2:1 will be used for every tree removed within the HPD of Kenai River. The proposed willow staking activities are anticipated to meet ordinance requirements.
7. Approximately 1,080 linear feet of rip rap will be used to stabilize a 4" layer of topsoil (370 Cubic Yards) for planting of seed and live stakes. Rip rap to include 6,600 CY of Class I and III, of which 2,150 CY will be below OHW. Borrow to include 2,775 CY of Type A and C, of which 360CY will be below OHW.
8. Approximately 9,100 square yards seedling and willow staking will be used to establish vegetation and roots, producing a more natural visual effect.
9. Pursuant to KPB 21.06.081(D)(3), the proposed work will occur on the applicant's property and shall not have an adverse effect on adjoining properties.
10. Kenai Peninsula Borough Planning Commission Resolution 2015-35 defines water-dependent as:  
*"...a use or structure located on, in or adjacent to water areas because the use requires access to the waterbody. The definition is applicable to facilities or activities that must be located at or near the shoreline and within the 50-foot buffer. An activity is considered water dependent if it is dependent on the water as part of the intrinsic nature of its operation. Examples of water dependent facilities may include, but are not limited to, piers, boat ramps, and elevated walkways."*
11. The River Center found the application complete and scheduled a public hearing for February 13, 2023.
12. Agency review was distributed on January 27, 2023. No comments or objections have been received from resource agencies to date.
13. Pursuant to KPB 21.11.030, public notice was mailed to all property owners within a radius of 300 feet of the project on January 27, 2023. One mailing was sent.
14. Pursuant to KPB 21.11.020, public notice was published in the Peninsula Clarion on February 3, 2023 and February 10, 2023.
15. The applicant is currently in compliance with Borough permits and ordinances.

### **Section 3. Permit Conditions**

1. Construction techniques and best management practices shall be utilized to ensure that land disturbing activities do not result in runoff or sedimentation to the Kenai River.
2. The bank stabilization must be designed and installed to meet KPB floodplain requirements.
3. The permittee shall minimize damage to all vegetation and shall revegetate all disturbed areas with native vegetation.
4. For each tree removed, two seedlings less than 5.5-feet tall of a species native to the region will be planted within the 50-foot HPD.
5. Storage or use of fuel is prohibited within 50-feet of any open water.
6. The River Center shall be notified at least 3 days prior to the start of the project.

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

**Section 4. Pursuant to 21.18.081(D) General Standards, the following standards shall be met before conditional use approval may be granted:**

1. The use or structure will not cause significant erosion, sedimentation, damage within the habitat protection district, an increase in ground or surface water pollution, and damage to riparian wetlands and riparian ecosystems; **Conditions 1-5 and Findings 6-8 appear to support this standard.**
2. Granting of the conditional use shall be consistent with the purposes of this chapter, the borough comprehensive plan, other applicable chapters of the borough Code, and other applicable planning documents adopted by the borough; **Findings 1-2 and Condition 11 appear to support this standard.**
3. The development of the use or structure shall not physically damage the adjoining property; **Finding 9 appear to support this standard.**
4. The proposed use or structure is water-dependent; **Finding 10 appear to support this standard.**
5. Applicant's or owner's compliance with other borough permits and ordinance requirements. **Finding 12 appears to support this standard.**

THIS CONDITIONAL USE PERMIT EFFECTIVE ON \_\_\_\_\_ DAY OF \_\_\_\_\_, 2023.

\_\_\_\_\_  
Jeremy Brantley, Chairperson  
Planning Commission

ATTEST:

\_\_\_\_\_  
Ann Shirnberg  
Administrative Assistant

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