

E. NEW BUSINESS

- 1. Conditional Use Permit; Planning Commission Resolution 2024-08
Request: To install a privacy fence within the 50' HPD of the Kenai River
Location: 35860 Luau Street
Kalifornsky Area**

Multi-Agency Permit Application



514 Funny River Road, Soldotna, AK 99669 • (907) 714-2460 • KenaiRivCenter@kpb.us

Applicant Information: (must be a landowner)

Name: Travis Moulton
 Mailing: 14322 Sheridan Ave
Urbandale, IA 50323
 Phone: 515-494-1056
 Email: travis@precisiondsm.com

Agent Information: (if applicable)

Name: Kent Tompkins DBA: J&B Construction
 Mailing: PO Box 795
Sterling, AK 99672
 Phone: 907-953-1555
 Email: j_bconstruction@msn.com

Project Location:

KPB Parcel ID: 05537033
 Physical Address: 35860 Luau St
Soldotna, AK 99669
 Subdivision: Jake Estate No 2
 Lot: 4A Block: 2 Addition/No.: 2

Waterbody Information:

Waterbody: Kenai River
 Riverbank: (looking downstream) Left Right
 River Mile: _____

KPB Permit Fees: (select one)

- \$50 - KPB Habitat/Floodplain Permit \$300 - KPB Conditional Use/Floodway Permit

Project Information: New **OR** Extension/Amendment to RC# _____

Please select all activities that apply to your project:

- | | | |
|--|--|--|
| <input type="checkbox"/> Bank Stabilization | <input type="checkbox"/> Fish & Wildlife Management | <input type="checkbox"/> Road Construction |
| <input type="checkbox"/> Boat Launch | <input type="checkbox"/> Floating Dock | <input type="checkbox"/> Structure (Accessory) |
| <input type="checkbox"/> Bridge | <input type="checkbox"/> Fuel Storage Green Infrastructure | <input type="checkbox"/> Structure (Residential) |
| <input type="checkbox"/> Coir Logs | <input type="checkbox"/> In-Stream Structures (Weir) | <input type="checkbox"/> Spruce Tree Revetment |
| <input type="checkbox"/> Culvert | <input type="checkbox"/> Oil & Gas | <input type="checkbox"/> Stream Crossing |
| <input type="checkbox"/> ELP Structures | <input type="checkbox"/> On-Site Utilities | <input type="checkbox"/> Utility Line/Easement |
| <input type="checkbox"/> Equipment Stream Crossing | <input type="checkbox"/> Prior-Existing Structure | <input type="checkbox"/> Veg Mat |
| <input type="checkbox"/> Excavation, Dredging, and/or Fill | <input type="checkbox"/> Revegetation | <input type="checkbox"/> Vegetation Removal |
| <input checked="" type="checkbox"/> Fence Installation | <input type="checkbox"/> Root Wads | <input type="checkbox"/> Water Withdrawal |
| | | <input type="checkbox"/> Other: _____ |

Project Description: Provide a detailed description of your project; attach additional pages if necessary.

Installing 2 - 96 foot long each runs of privacy fence on each side of the property'
 The fences will be perpendicular to the Kenai river (see drawing)
 The front 56 feet of fence on each side will be a break-away design to allow water to pass through in the event of a high water/flood

Cost-Share: Is this project funded by the Cost-Share Program? Yes No

KPB Tax Credit Program: The Borough provides a tax credit as partial reimbursement for new habitat protection and restoration projects within 150 feet of anadromous streams. If you would like to pre-qualify for this credit, please provide your estimated project cost(s) below. Do not include grants or other funding assistance:

Elevated Light Penetrating Structures \$ _____
 Habitat Restoration & Protection \$ _____
 Green Infrastructure \$ _____
 Other Activities \$ _____

Project Questions

1. Start date: 6/12/2024 End date: 6/31/2024 Estimated Days of Construction: 5

2. Is any portion of the work already complete? If yes, please describe: Yes No

Ordinary High Water (OHW) and Mean High Water (MHW):

3. Is the project located within 50 feet of OHW or MHW a waterbody? Yes No

4. Does any portion of the project extend below the OHW or MHW of the waterbody? Yes No

5. Does any portion of the project cantilever or extend over the MHW of the waterbody? Yes No

6. Will anything be placed below OHW or MHW of the waterbody? Yes No

Regulatory Floodplains:

7. Is the property where the project is taking place near or within a regulatory floodplain? Yes No

a. Is this project within or adjacent to a regulatory floodway? Yes No

b. Is this project within or adjacent to a coastal high hazard zone? Yes No

c. For new buildings and/or additions, list all project costs (labor, materials, etc.): \$ _____

Excavation, Dredging, and Fill:

8. Will material be excavated or dredged from the site? Yes No

a. Type of material(s): sub soil (sand) top soil- from post holes only

b. Area to be dredged below OHW or MHW:

Length: _____ (ft) Width: _____ (ft) Depth: _____ (ft) Total Cubic Yards: _____

c. Area to be excavated above OHW or MHW:

Length: _____ (ft) Width: _____ (ft) Depth: _____ (ft) Total Cubic Yards: _____

d. Location materials will be deposited: back in hole or trailer to be removed

9. Will any material (including soils, debris, and/or overburden) be used as fill? Yes No

a. Type of material(s): soils removed from post hole will be placed back in hole

b. Is this fill permanent or temporary? Perm Temp

c. Area to be filled above OHW or MHW:

Length: _____ (ft), Width: _____ (ft), Depth: _____ (ft), Total Cubic Yards: _____

d. Area to be filled below OHW or MHW:

Length: _____ (ft), Width: _____ (ft), Depth: _____ (ft), Total Cubic Yards: _____

Motorized Equipment:

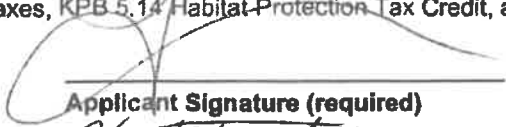
10. Will you be using motorized equipment for this project? If yes, please list all equipment: Yes No
Skidloader with auger

a. Will you be crossing a stream or waterbody? Yes No

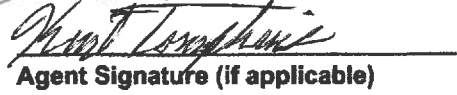
b. How long will equipment be used below OHW or MHW? 1 day

Signature & Certification:

This application is hereby made requesting permit(s) to authorize the work described in this application form. I certify the information in this application is complete and accurate to the best of my knowledge and that my site plans or drawings are attached. If applying for a tax credit, I certify that I have not begun construction of the project and that the project will be constructed to the standards in KPB 5.12 Real Property and Personal Property Taxes, KPB 5.14 Habitat Protection Tax Credit, and other applicable federal, state, and local regulations.


Applicant Signature (required)

5-9-24
Date


Agent Signature (if applicable)

5-16-24
Date

Project Drawings: Side View

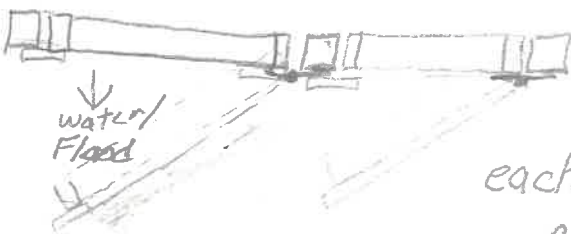
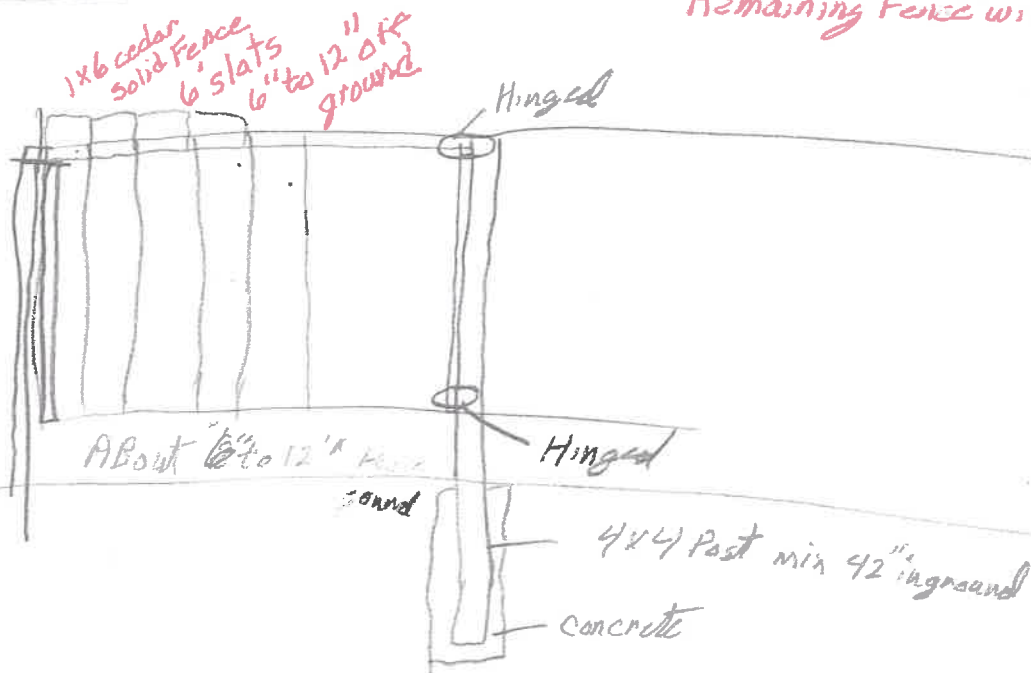
Drawings do not have to be to scale, but must show the following:

- Property boundaries
- Floodplain zone(s)
- OHW or MHW line
- Dimensions for all structures
- 50-foot Habitat Protection District
- Length, width, height

Travis Moulton
~~35~~ 35860 Luau St
 Fence Permit

2 - Runs of 96' Fence
 First 56' in Flood Zone will
 Be Hinged to meet Flood code

Remaining Fence will Be Fixed



each 8' section will open with water
 Pressure when Needed will be closed
 Manually After Flood water Recedes

Project Drawings: Top View

Drawings do not have to be to scale, but must show the following:

- Property boundaries
- Floodplain zone(s)
- OHW or MHW line
- Dimensions for all structures
- 50-foot Habitat Protection District
- Length, width, height



North

Travis Moulton Fence Layout

101
Division
Any
by
sst

*Fence Permit
Travis Moulton
35868 Luau St
Lot 4A*

PLAT APPROVAL

This plat was approved by the KENAI PENINSULA BOROUGH PLANNING COMMISSION at the meeting of

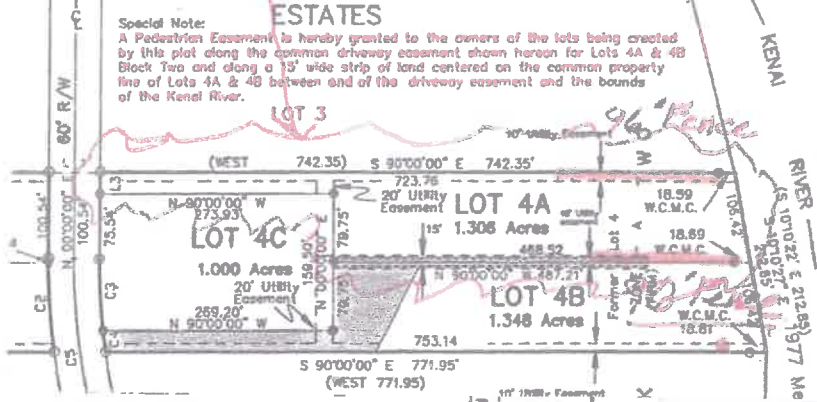
Feb. 25 1991.

KENAI PENINSULA BOROUGH by

Richard P. Torgue
Authorized Official

CHORD	BEARING	DELTA
4.21	S 02°59'59" E	103.7517
100.01	S 04°02'00" E	97.2898
84.08	S 03°13'48" E	105.2737
35.21	S 07°25'47" E	91.5810
713.72	S 07°29'16" E	759.811

LINE	DIRECTION	DISTANCE
L1	N 90°00'00" E	60.00'
L2	S 90°00'00" E	33.00'
L3	North	25.00'



Total length: 96.06 ft

New Fence

Total length: 96.38 ft

New Fence

WASTEWATER DISPOSAL:

Soil conditions in this subdivision have been found unsuitable for conventional onsite wastewater disposal treatment and disposal systems. Plans for an approved alternate wastewater disposal system for use on lots in this subdivision are available from the Alaska Department of Environmental Conservation. Any other type of 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.

Subject to any noted restrictions, the Alaska Department of Environmental Conservation approves this subdivision for platting.

Name and Title of Alaska Department of Environmental Conservation Approving Official: *John J. Johnson, ES III*
Date: *6-4-91*

*Fence Permit
Travis Moulton
35868 Luau St
Lot 4A*

PLAT APPROVAL

This plat was approved by the KENAI PENINSULA BOROUGH PLANNING COMMISSION at the meeting of

Feb. 25 1991.

KENAI PENINSULA BOROUGH by

Richard T. Torga
Authorized Official



LEGEND

- ⊗ Found G.L.O. Monument
- ⊕ Found 3 1/4" slum, capped manumnt
- Found 1/2" rebar at property corner
- ⊙ Set 1/2" X 24" rebar with McLane & Assoc. cap attached
- () Record Data K.R.D. 7B-4
- ▭ Indicates common driveway easements for the use of Lot 4A & Lot 4B Block Two only.

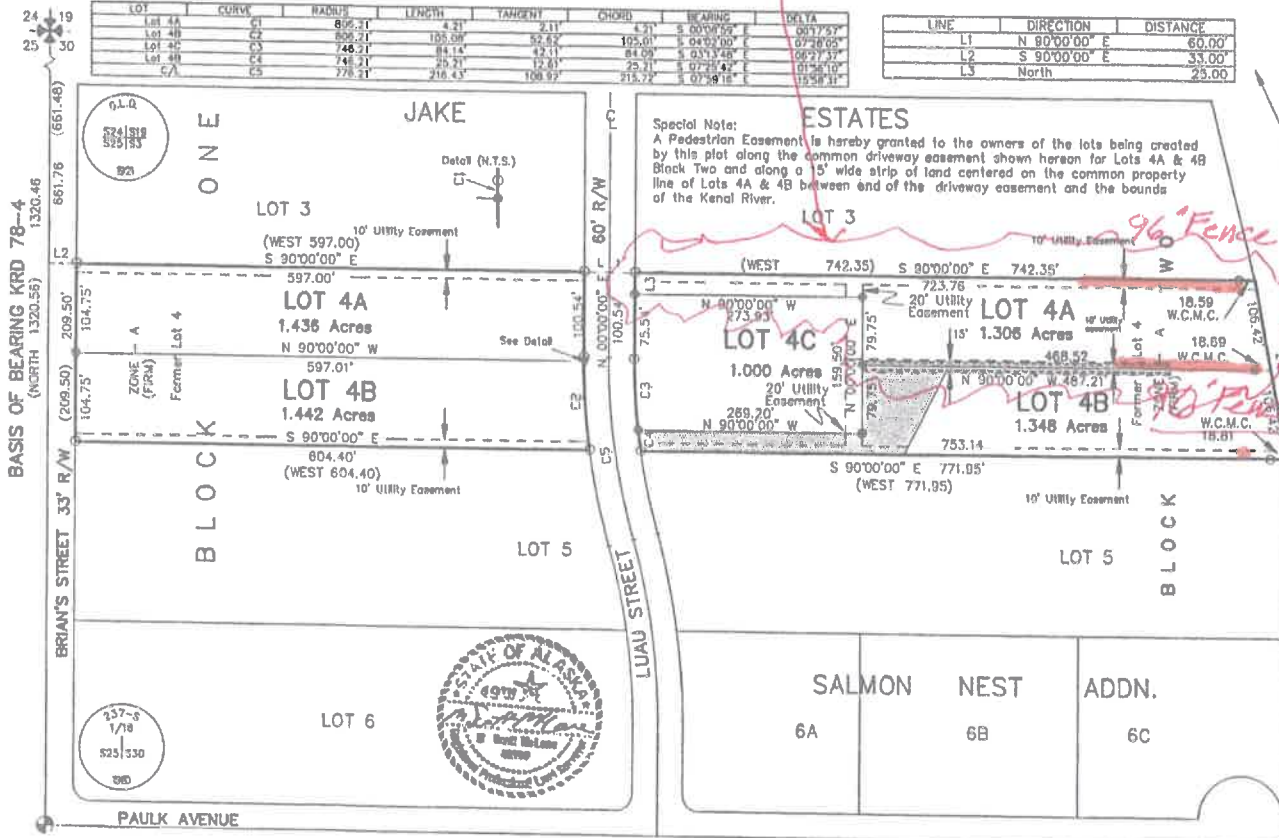
NOTES

- 1) Water supply and sewage disposal systems shall be permitted only in conformance with applicable requirements of 18 AAC 70, 18 AAC 72, and 18 AAC 80.
- 2) BUILDING SET BACK-A building set back of 20 ft. is required from all atreet rights-of-way unless a lesser standard is approved by resolution of the appropriate Planning Commission.
- 3) No direct access to state maintained ROWS permitted unless approved by State of Alaska Department of Transportation.
- 4) The natural meanders of ordinary high water for the Kenai River form the true bounds of lots 4A and 4B Block Two. The meander line shown hereon is for survey computations only.
- 5) Lots within this subdivision may be located within a designated flood hazards area: If such is the case, development must comply with Title 21, Chapter 5 of the Kenai Peninsula Borough Code of Ordinances. A survey to determine the elevation of the property may be required prior to construction.
- 6) No permanent structure shall be constructed or placed within an easement which would interfere with the ability of a utility to use the easement.
- 7) No structures permitted within panhandle portion of flag lots (Lot 4A and Lot 4B, Block Two).
- 8) The front 10' of Building Setback is also a utility easement, as is the entire setback within 5' of the side lot lines.

LOT	CURVE	RADIUS	LENGTH	TANGENT	CHORD	BEARING	DELTA
Lot 4A	C1	816.21	4.21	2.11	4.21	S 00°00'00" E	007°55'
Lot 4B	C2	806.21	105.08	52.62	195.01	S 04°03'00" E	07°30'00"
Lot 4C	C3	746.21	84.14	42.11	84.09	S 01°14'48" E	06°27'39"
Lot 4B	C4	746.21	25.21	12.61	25.21	S 07°25'42" E	01°28'10"
C5		778.21	216.43	108.97	216.22	S 07°58'18" E	15°58'11"

LINE	DIRECTION	DISTANCE
L1	N 80°00'00" E	60.00'
L2	S 90°00'00" E	33.00'
L3	North	25.00'

ESTATES
Special Note:
A Pedestrian Easement is hereby granted to the owners of the lots being created by this plat along the common driveway easement shown hereon for Lots 4A & 4B Block Two and along a 15' wide strip of land centered on the common property line of Lots 4A & 4B between end of the driveway easement and the bounds of the Kenai River.



NOTARY'S ACKNOWLEDGEMENT

FOR: *Sue Ann Kinney*
Subscribed and sworn before me this *29th* day of *May* 1991, 1991
My commission expires *5-1-92*
Sue Ann Kinney
Notary Public for the State of Alaska

NOTARY'S ACKNOWLEDGEMENT

FOR: *Keiso + Marcella Masuda*
Subscribed and sworn before me this *31st* day of *May*, 1991
My commission expires *1-15-95*
Robin E. Ward
Notary Public for the State of Alaska



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 grant all easements to the use shown.

Sue Ann Kinney
Sue Ann Kinney

CERTIFICATE OF OWNERSHIP AND DEDICATION

We hereby certify that we have an equity interest as beneficiaries on a Deed of Trust of the real property shown and described hereon and that we hereby acknowledge this plan of subdivision.

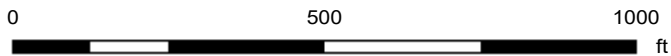
Keiso Masuda + Marcella T. Masuda
Keiso Masuda Marcella T. Masuda

91-32
RECORDED 3D
KENAI REC. DIST
DATE *June 29 1991*
TIME *10:15 A.M.*
REGISTERED BY *McLANE & ASSOC.*
ADDRESS *P.O. BOX 468
SOLDOTNA, AK. 99589*

JAKE ESTATE SUBDIVISION NO. 2
(A RE-SUBDIVISION OF LOT 4 BLOCK 1 & LOT 4 BLOCK 2 JAKE ESTATE SUBDIVISION)

Sue Ann Kinney
5211 122nd St. NE
Everett, WA. 98208
6.525 Ac. M/A. SITUATED IN THE NW1/4 NW1/4 SEC. 30, T5N, R10W, S.M. AK., THE KENAI PENINSULA BOROUGH AND KENAI RECORDING DISTRICT.
Surveyed by:
McLane and Associates
Box 468 Soldotna, AK 99589

Project No. 902025	Book No. 90-21	Dwg. No. 902026
Drawn by mjb	Scale 1" = 100'	K.P.B. File No. 91-017
Checked by msm		



Fence

Project Area

KPB Parcel(s):
05537033

Project Description:

Vicinity: Kalifornsky



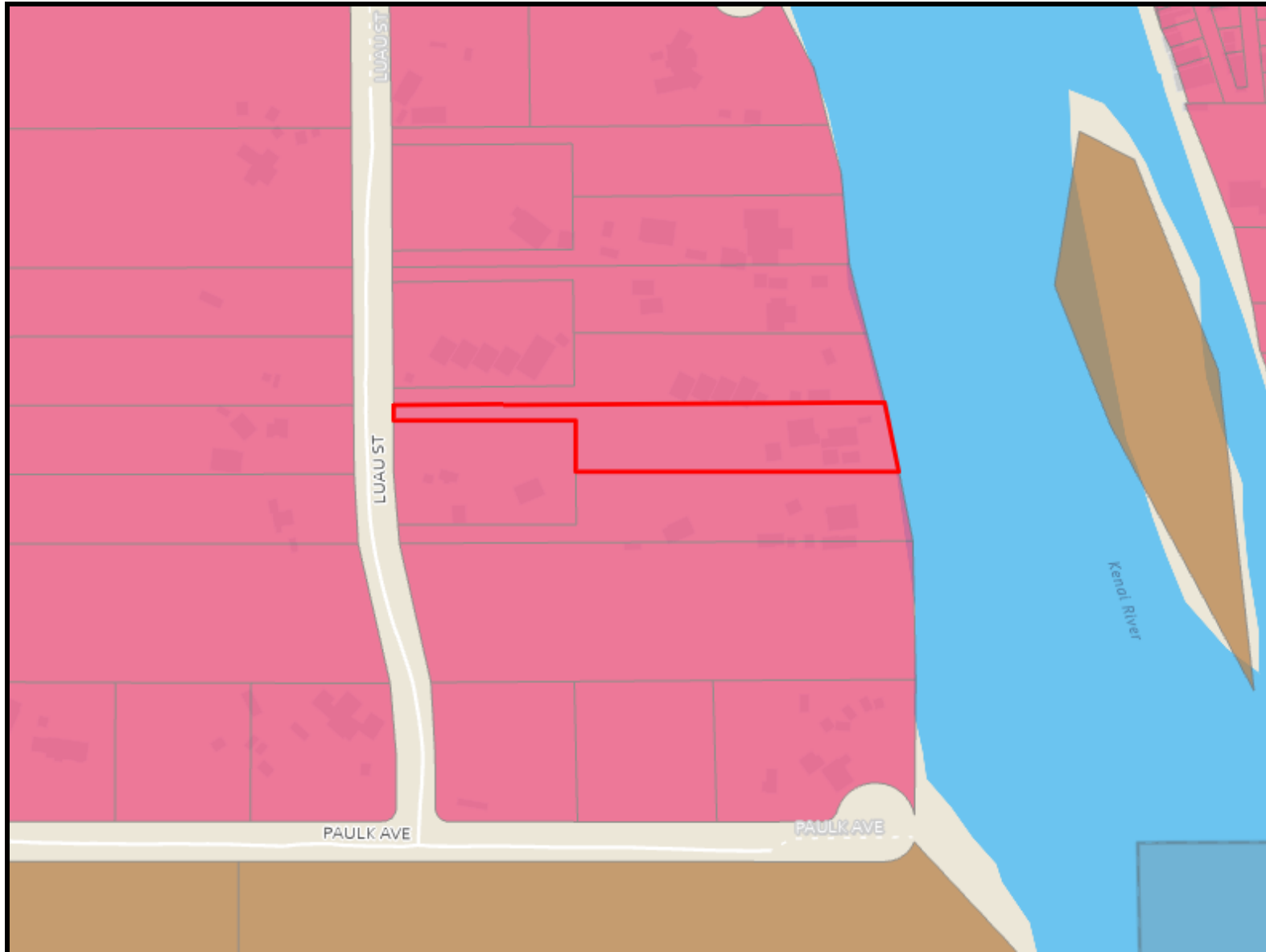
Map created by Aldridge, Morgan
Tuesday, May 21, 2024

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.



Ownership Map

Fence



Project Area

KPB Parcel(s):

05537033

Parcel Ownership Type

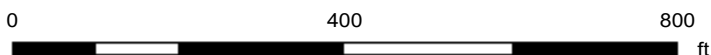
Parcel Ownership

Private

State

Habitat

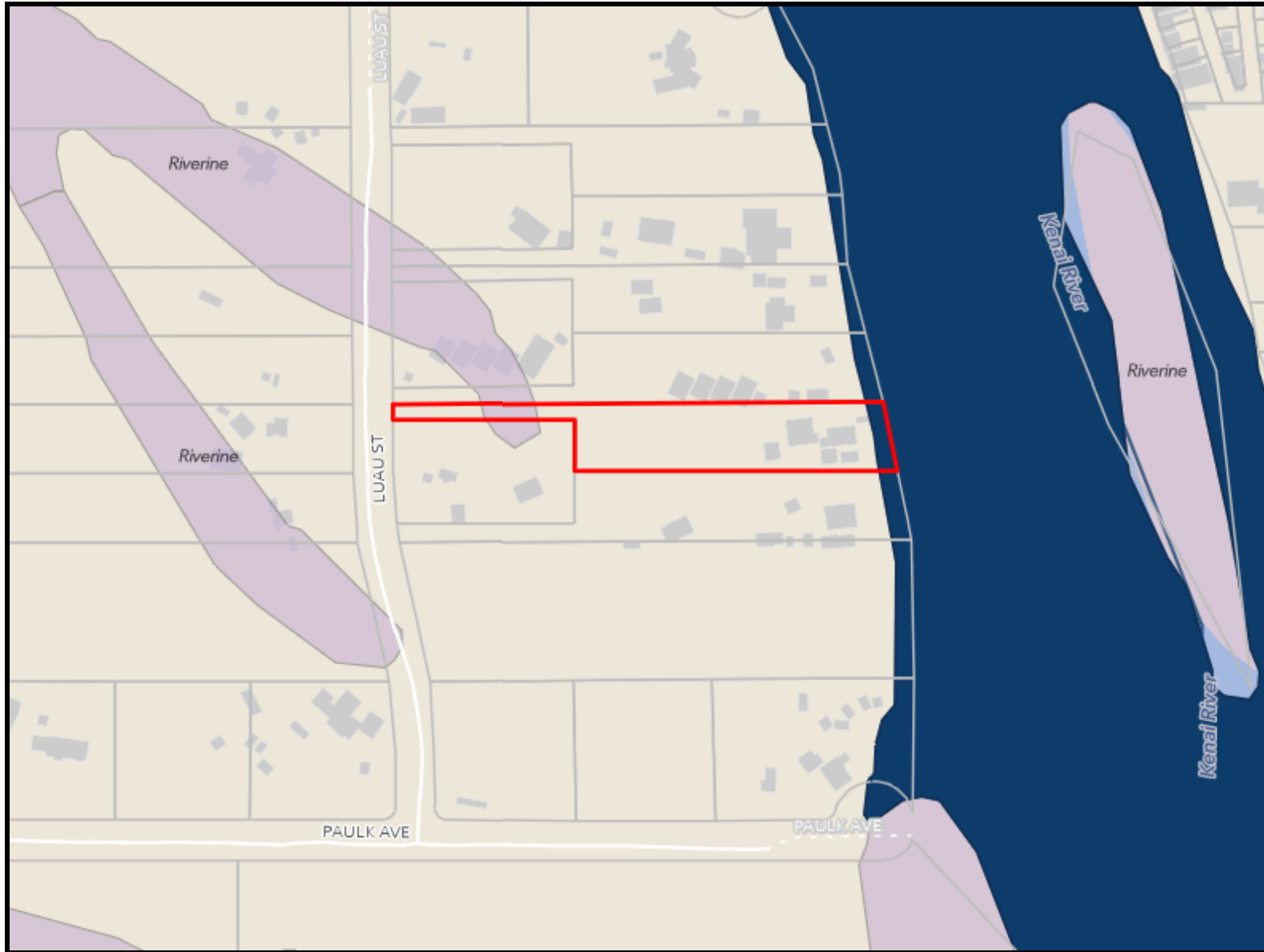
KPB 2118 - KPB 2118 Districts





Wetlands Map

Fence



Project Area

KPB Parcel(s):

05537033

Tax Parcels



Habitat

KPB 2118 - KPB 2118 Districts



KPB 2118 - KPB 2118 Anadromous Streams

- Exempt
- Managed
- Unregulated
- others

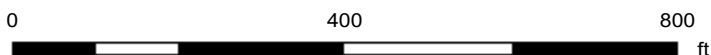
KPB 2118 - KPB 2118 Anadromous Lakes and Areas

- Exempt
- Managed
- Unregulated
- n/a

Landcover Features

KWF Wetlands Assessment

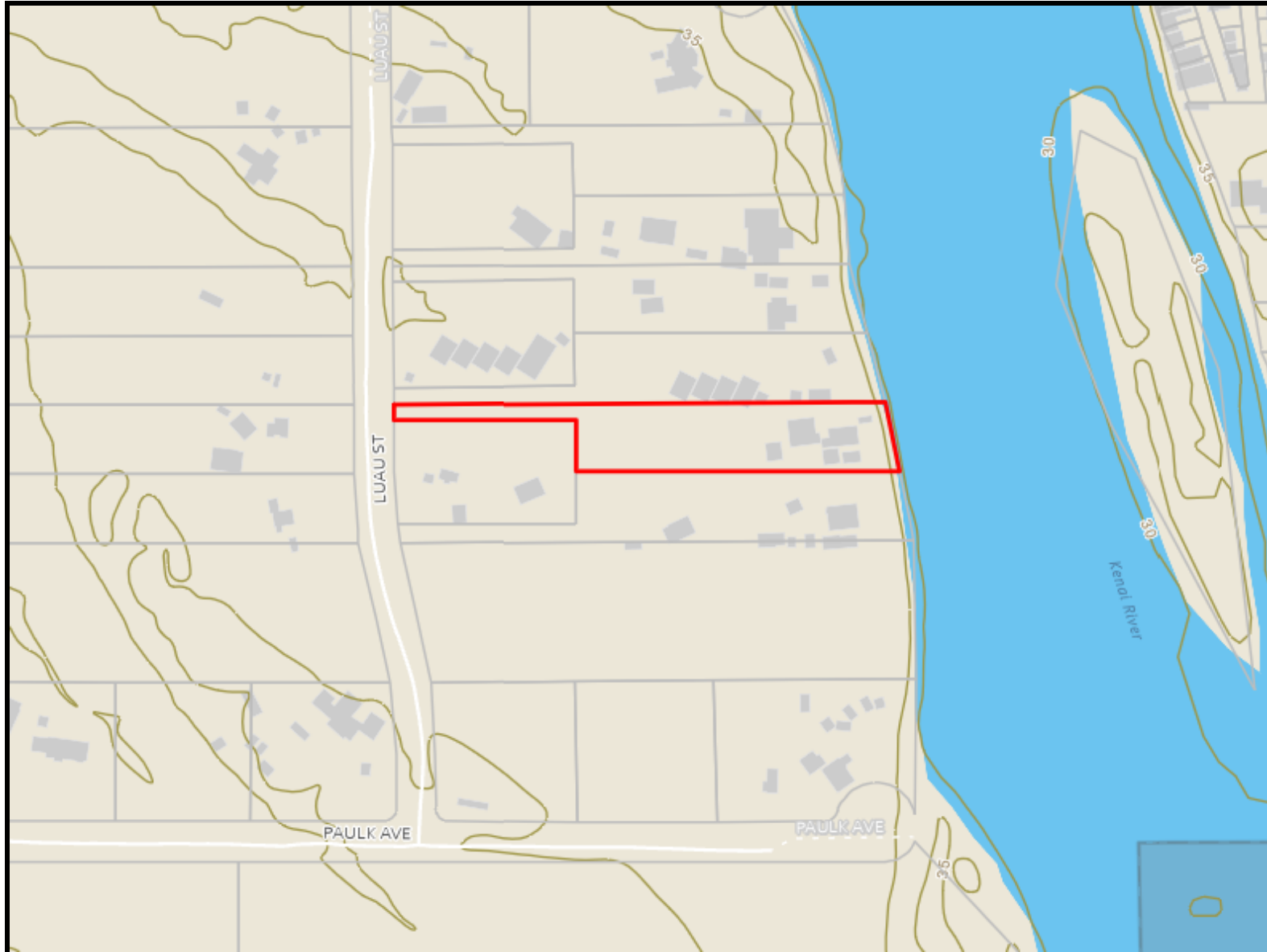
- DISTURB
- Depression
- Discharge Slope





Terrain Map

Fence



Project Area

KPB Parcel(s):

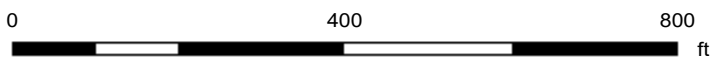
05537033

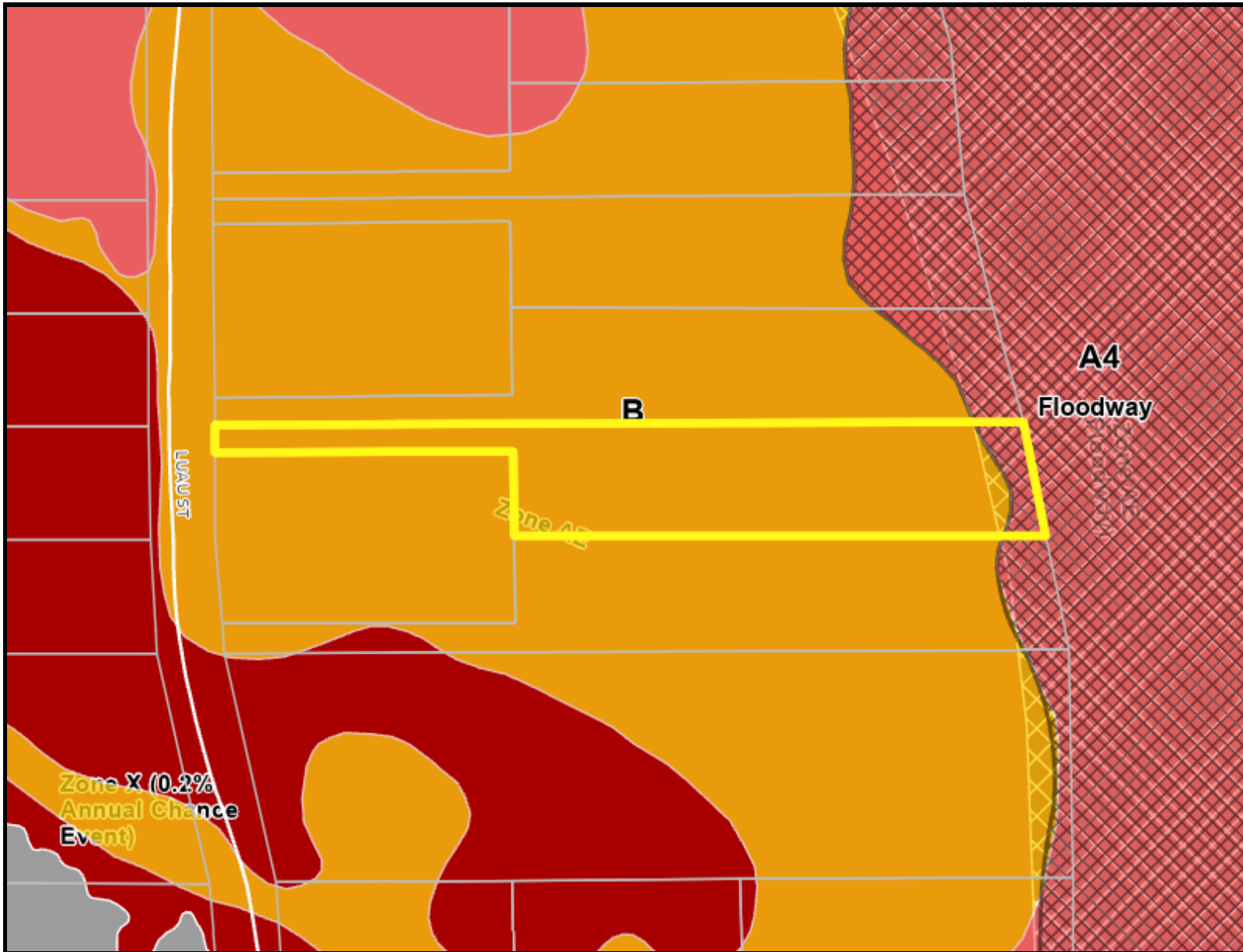
Tax Parcels



Habitat

KPB 2118 - KPB 2118 Districts





KPB Parcel ID(s):

05537033

Selected Parcel Boundary or Boundaries



Tax Parcels



Regulatory Floodplain

Regulatory Floodway



Floodplain



A4



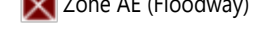
B

FEMA Proposed Floodzone 2022

DBO.FEMApromposed_2022



Zone AE



Zone AE (Floodway)

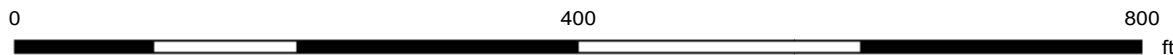


Zone X (0.2% Annual Chance Event)

Community Flood Insurance Rate Map (FIRM) Panel(s):

0200122045C

For a detailed description of the mapped floodplain areas, please see the letter accompanying this map.



From: [Hindman, Julie](#)
To: [Aldridge, Morgan](#)
Cc: [Lopez, Samantha](#)
Subject: KRC 13472 - CUP
Date: Wednesday, May 29, 2024 10:18:00 AM
Attachments: [05537033 Floodplain Determination.pdf](#)
[image001.png](#)

Morgan,

I have reviewed the project as proposed. The fence is proposed to be open along the bottom to allow water to move underneath. The portions within the mapped floodway (please see attached floodplain determination map) will require the hinged portions allow them to open to not restrict water movement during a flood event.

I have compared the current mapped floodway to the preliminary floodway on the new FIRM maps and find that the floodway along the property boundary does not have a significant change.

The project as described is permissible under KPB 21.06.

Thank you,

Julie Hindman

Planner – Floodplain Administrator
Donald E. Gilman River Center
KPB Planning Department
907-714-2463

KENAI PENINSULA BOROUGH
514 Funny River Road
Soldotna, Alaska 99669



**Conditional Use Permit
Anadromous Waters Habitat Protection District
Staff Report**

PC Res No.	2024-08
Planning Commission Meeting:	June 10, 2024
Applicant	Travis Moulton
Mailing Address	14322 Sheridan Ave Urbandale, IA 50323
Legal Description	T 5N R 10W SEC 30 SM KN 0910032 JAKE ESTATE SUB NO 2 LOT 4A BLK 2
Physical Address	35860 Luau St
KPB Parcel Number	05537033

Project Description

A Conditional Use Permit is sought pursuant to KPB 21.18 for the construction of fence within the 50-foot Habitat Protection District of the Kenai River, as established in KPB 21.18.040.

Background Information

Applicant would like to install a 96 foot fence along the sides of the parcel for privacy. This would be 50 foot of fencing within the 50 foot setback of the Kenai River and then another 5 feet of fencing within the FEMA mapped floodplain. The fence will be cedar planking, about 12 inches off the ground. It will be hinged on 8 foot sections within the floodplain in order to comply with break away regulations for flood events. These sections will easily swing open with any pressure.

Project Details within the 50-foot Habitat Protection District

1. Cedar plank fencing 50 foot deep constructed perpendicular to the water
2. 4x4 wooden support posts driven every 8 foot section of fence into poured concrete footing

Findings of fact pursuant to KPB 21.18.081 Conditional Use Permit

1. Portions of this proposed project are within the 50-foot habitat protection district as defined by KPB 21.18.040.
2. Pursuant to KPB 21.18.081(B)(2), construction of a fence 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. Pursuant to KPB 21.06.050, the bottom 12 inches of fence will be open to allow for the unobstructed passage of water.
7. Pursuant to KPB 21.06.050, sections of the fence will be break away by touch in order to allow for the flow of water during any flood event or animal passage.
8. 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.
9. 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."
10. The River Center found the application complete and scheduled a public hearing for June 10, 2024.
11. Agency review was distributed on May 30, 2024. No comments or objections have been received from resource agencies to date.
12. Pursuant to KPB 21.11.030, public notice was mailed to all property owners within a radius of 300 feet of the project on May 24, 2024. A total of 19 mailings were sent.
13. Pursuant to KPB 21.11.020, public notice was published in the Peninsula Clarion on May 29, 2024 and June 5, 2024.
14. The applicant is currently in compliance with Borough permits and ordinances.

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 fence 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 one calendar year from the date of the permit's issuance, or the Conditional Use Permit shall expire unless the Planning Commission finds that more time is necessary to effectuate the purposes of this chapter, in which case the commission may extend the deadline for a maximum of six years from the date of issuance. Prior to its expiration date and upon written request, the Planning Director may grant a Conditional Use Permit extension for 12 months (KPB 21.18.081 (H)).
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)).

General Standards

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

1. The use or structure will not cause significant erosion, sedimentation, damage within the habitat protection district, an increase in ground or surface water pollution, and damage to riparian wetlands and riparian ecosystems; **Finding 4 and Conditions 1-5, 11, 12 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 1-8, 11-13 and Condition 11 appear to support this standard.**
3. The development of the use or structure shall not physically damage the adjoining property; **Finding 7 appears to support this standard.**
4. The proposed use or structure is water-dependent; **Findings 1-4, 8 appear to support this standard.**
5. Applicant's or owner's compliance with other borough permits and ordinance requirements. **Finding 13 and Condition 11 appear to support this standard.**

Attachments

Multi-Agency Application
Floodplain Authorization
Draft Resolution 2024-08

Recommendation

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

Staff recommends the Planning Commission grant a Conditional Use Permit for the proposed project details subject to adopted conditions as set forth in 2024-08.

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

END OF STAFF REPORT

KENAI PENINSULA BOROUGH PLANNING COMMISSION

RESOLUTION 2024-08

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT PURSUANT TO KPB 21.18 FOR THE CONSTRUCTION OF A FENCE 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 May 29, 2024 and June 5, 2024 as provided in Section 21.11.020; and
- WHEREAS,** public testimony was received at the June 10, 2024 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. Cedar plank fencing 50 foot deep constructed perpendicular to the water
2. 4x4 wooden support posts driven every 8 foot section of fence into poured concrete footing

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)(2), construction of a fence 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. Pursuant to KPB 21.06.050, the bottom 12 inches of fence will be open to allow for the unobstructed passage of water.
7. Pursuant to KPB 21.06.050, sections of the fence will be break away by touch in order to allow for the flow of water during any flood event or animal passage.
8. 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.
9. 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."
10. The River Center found the application complete and scheduled a public hearing for June 10, 2024.
11. Agency review was distributed on May 30, 2024. No comments or objections have been received from resource agencies to date.
12. Pursuant to KPB 21.11.030, public notice was mailed to all property owners within a radius of 300 feet of the project on May 24, 2024. A total of 19 mailings were sent.
13. Pursuant to KPB 21.11.020, public notice was published in the Peninsula Clarion on May 29, 2024 and June 5, 2024.
14. 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 fence 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 one calendar year from the date of the permit's issuance, or the Conditional Use Permit shall expire unless the Planning Commission finds that more time is necessary to effectuate the purposes of this chapter, in which case the commission may extend the deadline for a maximum of six years from the date of issuance. Prior to its expiration date and upon written request, the

Planning Director may grant a Conditional Use Permit extension for 12 months (KPB 21.18.081 (H)).

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; **Finding 4 and Conditions 1-5, 11, 12 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 1-8, 11-13 and Condition 11 appear to support this standard.**
3. The development of the use or structure shall not physically damage the adjoining property; **Finding 7 appear to support this standard.**
4. The proposed use or structure is water-dependent; **Findings 1-4, 8 appear to support this standard.**
5. Applicant's or owner's compliance with other borough permits and ordinance requirements. **Finding 13 and Condition 11 appear to support this standard.**

THIS CONDITIONAL USE PERMIT EFFECTIVE ON _____ DAY OF _____, 2024.

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.



Donald E. Gilman River Center

514 Funny River Road, Soldotna, Alaska 99669 • (907) 714-2460 • (907) 260-5992 Fax

A Division of the Planning Department

Peter A. Micciche
Borough Mayor

KENAI PENINSULA BOROUGH PLANNING COMMISSION NOTICE OF PUBLIC HEARING

The Kenai Peninsula Borough received an application for a Conditional Use Permit under KPB 21.18.081 for a project within the 50-foot Habitat Protection District (HPD) of the Kenai River. This project has been scheduled for a public hearing before the Kenai Peninsula Borough Planning Commission.

Why are you receiving this notice?

Per code, property owners within 300 feet of the proposed project must receive notice of the public hearing. This project is located at 35860 Luau St, Soldotna, Alaska, Parcel ID 05537033. Our records indicate that you are a property owner within 300 feet of that parcel.

Project Description:

Landowner is applying to install a privacy fence within the 50-foot HPD of the Kenai River.

How can you look at the application?

The meeting packet will be posted the week prior to the meeting. Once it has been posted it can be viewed at <https://kpb.legistar.com/Calendar> or by scanning this QR code with your phone:



How do you attend the Planning Commission meeting?

When: Monday, June 10, 2024 at 7:30 p.m.
Where: This meeting will only be held electronically via Zoom.
Zoom: Meeting ID 907 714 2200
<https://us06web.zoom.us/j/9077142200>
1-888-788-0099 or 1-877-853-5247

How do I comment on the project?

You can provide verbal comment at the meeting (see information above). You may also submit written comments. **Written comments must be received by 1:00 pm Friday, June 7, 2024.**

Mail comments to:
Donald E. Gilman River Center
514 Funny River Road
Soldotna, Alaska 99669

Email comments to:
KenaiRivCenter@kpb.us

For additional information, please contact Morgan Aldridge at maldridge@kpb.us or (907) 714-2465.