

## **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

## 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

## 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

## 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.

[Signature]  
Applicant Signature (required)

[Signature]  
Agent Signature (if applicable)

5-9-24  
Date

5-16-24  
Date

# Project Drawings: Side View

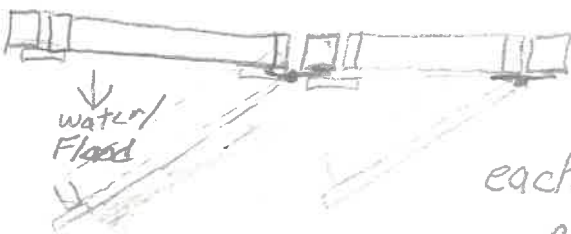
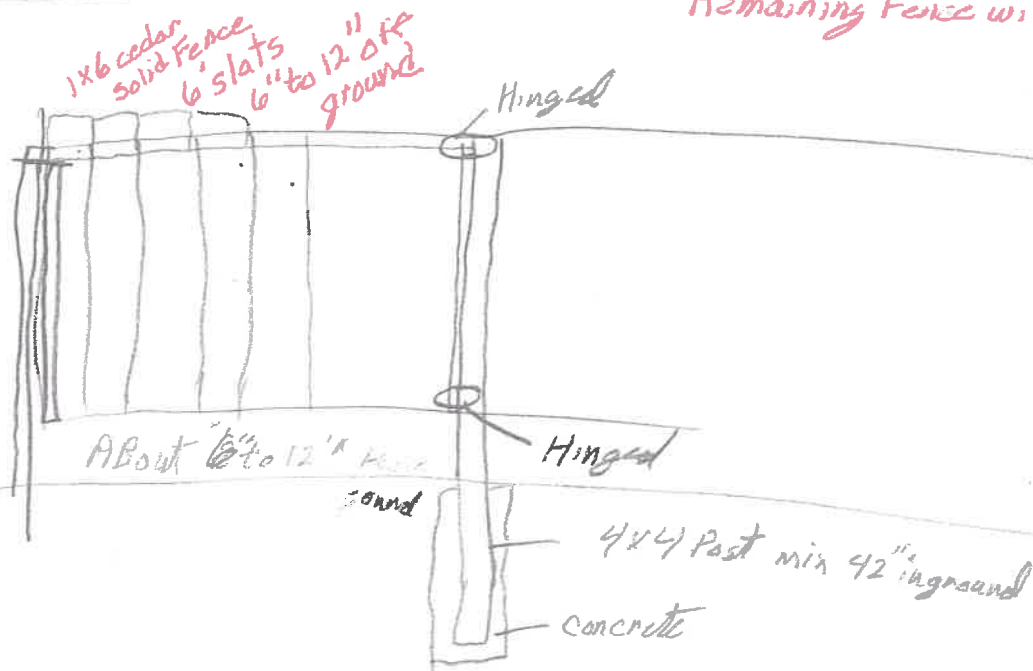
Drawings do not have to be to scale, but must show the following:

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

Travis Moulton  
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
- OHW or MHW line
- 50-foot Habitat Protection District
- Floodplain zone(s)
- Dimensions for all structures
- 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 T. Torg*  
Authorized Official

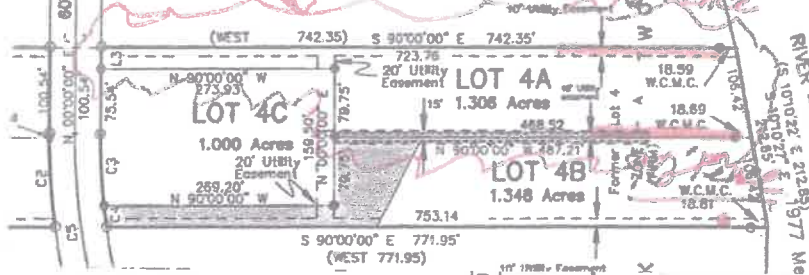
CHORD	BEARING	DELTA
100.01	S 00°00'00" E	001°25'17"
84.08	S 01°13'48" E	002°27'31"
25.21	S 07°25'47" E	001°50'10"
715.72	S 07°25'16" E	001°50'10"

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

### 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.

LOT 3



Total length: 96.00 ft

*New Fence*

Total length: 96.00 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 Approving Official: *John E. Johnson, E.E. III*  
Date: *6-4-91*  
Alaska Department of Environmental Conservation

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

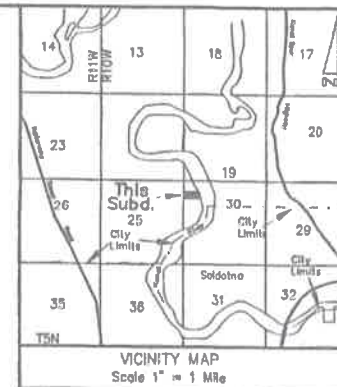
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KENAI PENINSULA BOROUGH by

*Richard T. Torga*  
Authorized Official

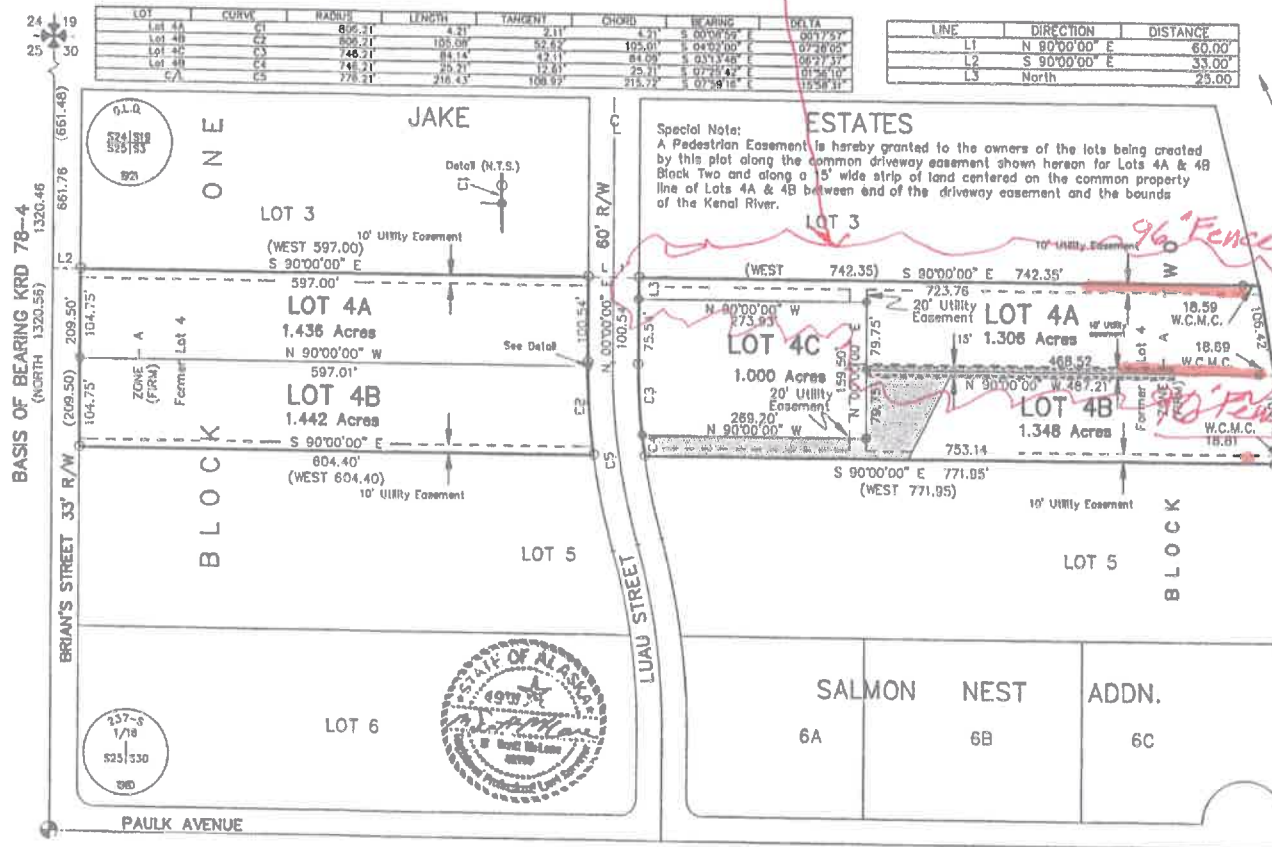


## LEGEND

- Found G.L.O. Monument
- Found 3 1/4" alum. capped monument
- Found 1/2" rebar at property corner
- Set 1/2" X 24" rebar with McLane & Assoc. cap attached
- Record Data K.R.D. 78-4
- 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 street 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 handle 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.



## NOTARY'S ACKNOWLEDGEMENT

FOR: *Sue Ann Kinney*  
Subscribed and sworn before me this  
*29th* day of *May* 1991, 1991  
My commission expires *5-1-93*  
*John A. Cook*  
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.

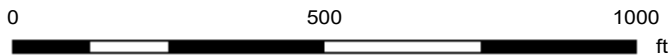
*Keiso Masuda* *Marcella T. Masuda*  
Keiso Masuda Marcella T. Masuda

91-32

RECORDED 3D  
KENAI REC. DIST  
DATE *June 28, 91*  
TIME *10:15 A.*  
REQUESTED BY *McLANE & ASSOC.*  
ADDRESS *P.O. BOX 468*  
*SOLDOTNA, AK. 99689*

## 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/L SITUATED IN THE NW1/4 NW1/4 SEC. 30,  
TSN, R10W, S.M. AK., THE KENAI PENINSULA BOROUGH AND  
KENAI RECORDING DISTRICT.  
Surveyed by:  
*McLane and Associates*  
Box 468 Soldotna, AK 99689  
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



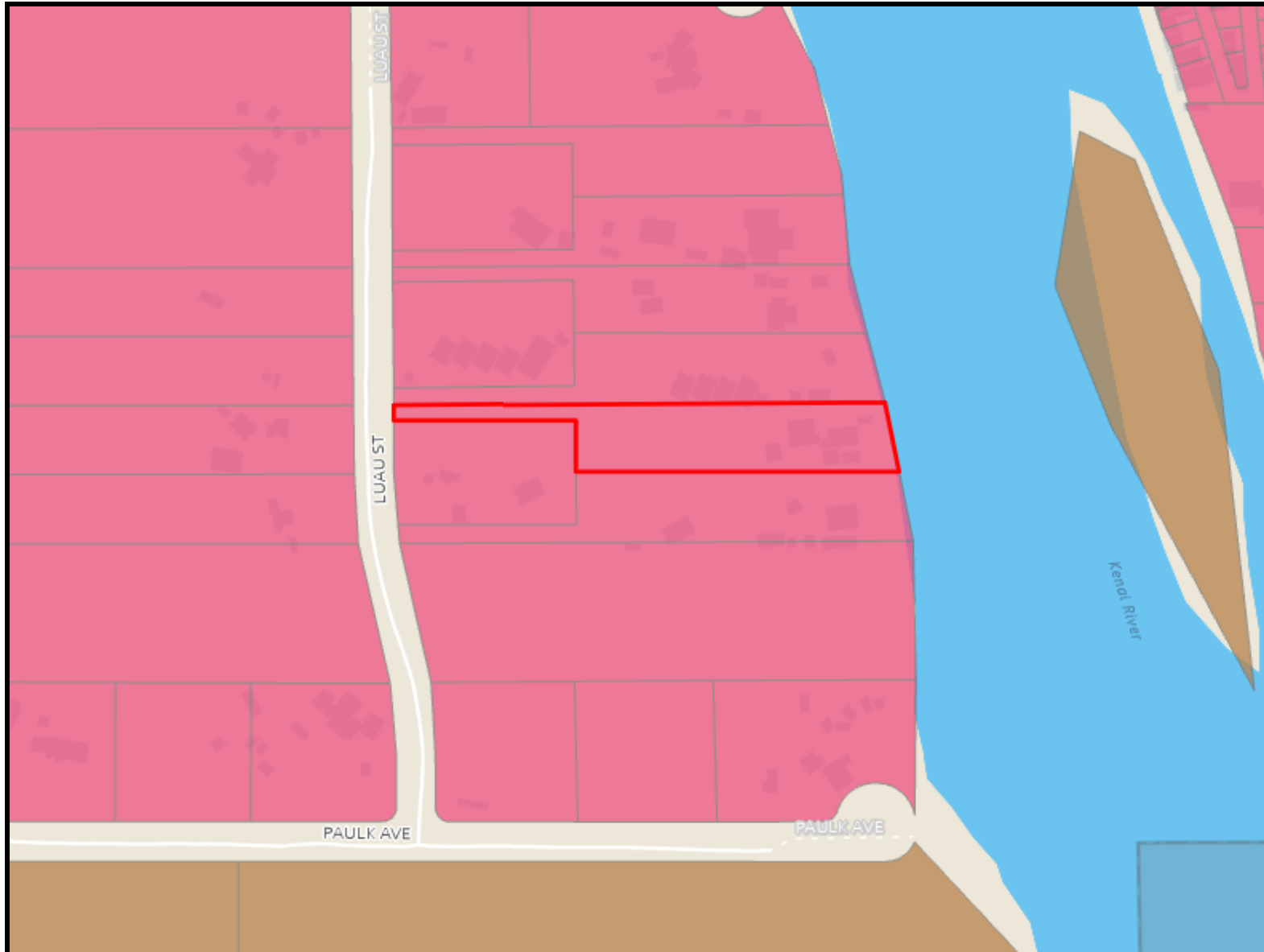
Map created by Aldridge, Morgan  
Tuesday, May 21, 2024

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

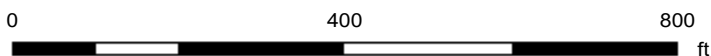
Habitat

KPB 2118 - KPB 2118 Districts



Map created by Aldridge, Morga

Tuesday, May 21, 2024

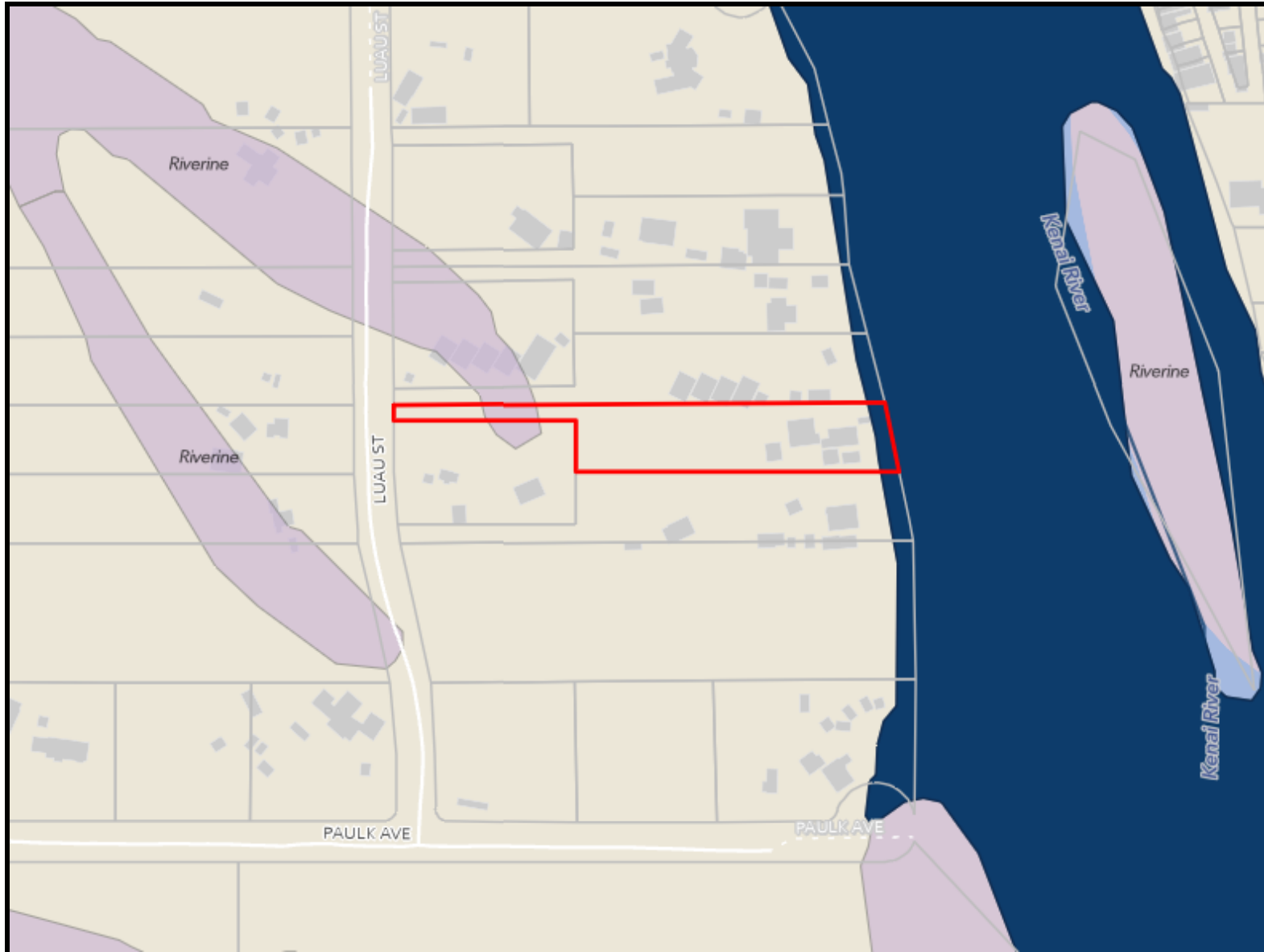






## Wetlands Map

### 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

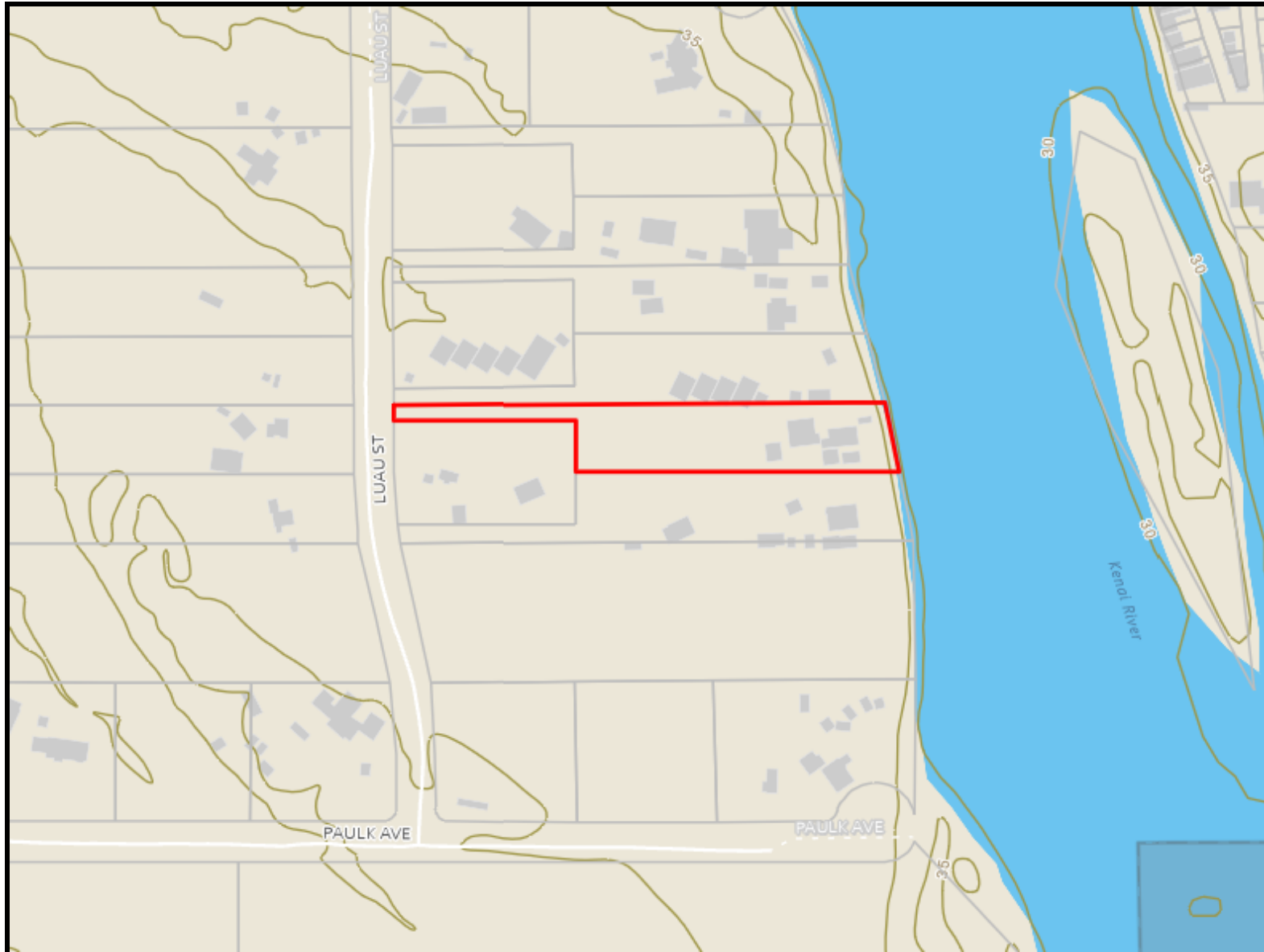
-  DISTURB
-  Depression
-  Discharge Slope





## Terrain Map

### Fence



 **Project Area**

**KPB Parcel(s):**

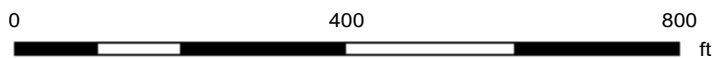
05537033

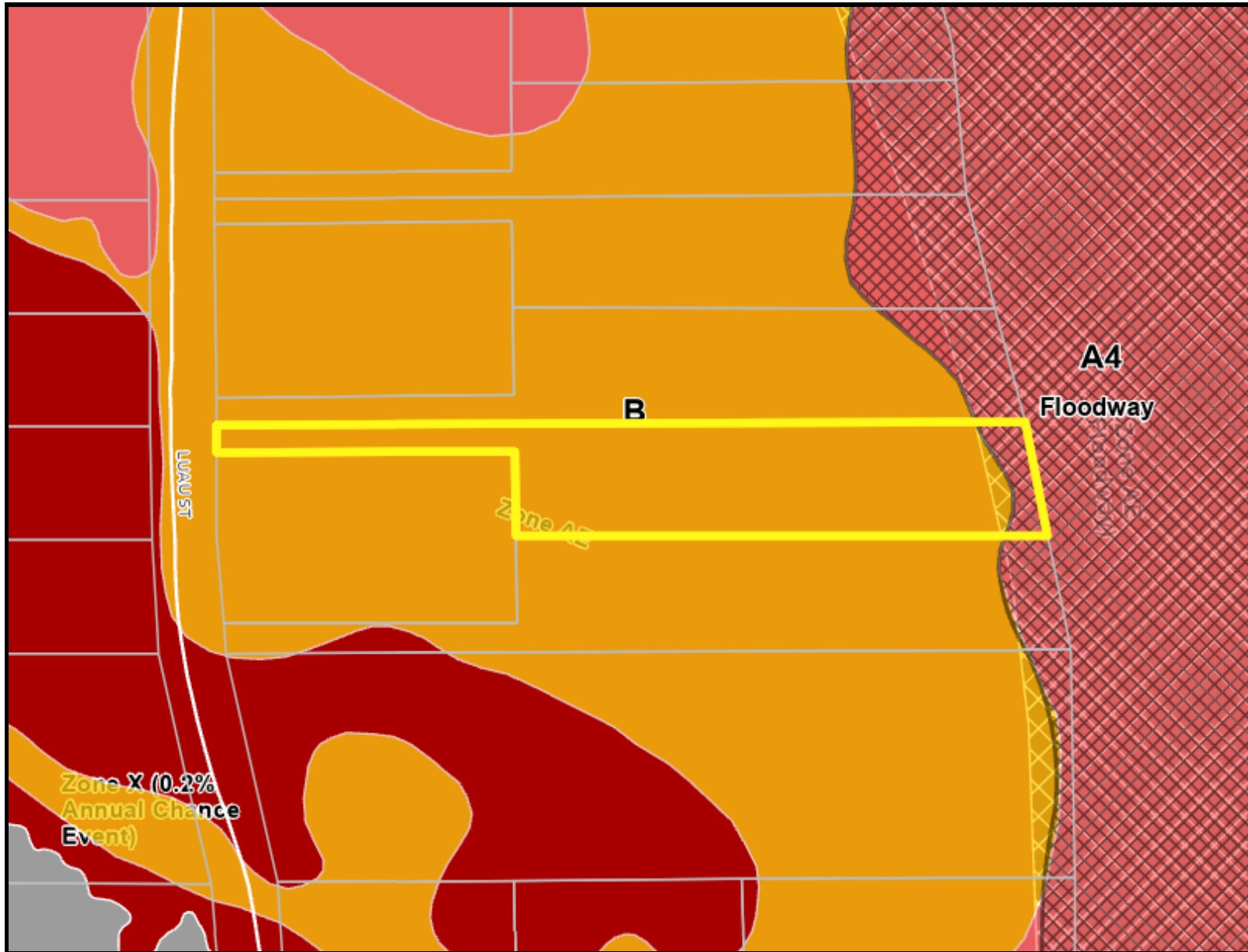
Tax Parcels



Habitat

KPB 2118 - KPB 2118 Districts





KPB Parcel ID(s):

**05537033**

Selected Parcel Boundary or  
Boundaries



Tax Parcels



Regulatory Floodplain

Regulatory Floodway

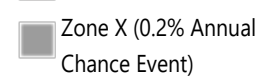
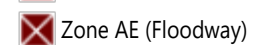


Floodplain



FEMA Proposed Floodzone 2022

DBO.FEMApromposed\_2022



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](#)

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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**

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

**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](mailto:KenaiRivCenter@kpb.us)

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