

E. NEW BUSINESS

- 2. Conditional Use Permit; PC Resolution 2022-
Petitioner: Castaway Cover Homeowners Association
Request: Install a foot bridge on a parcel within the 50'
Habitat Protection District of the Kenai River**

Multi-Agency Permit Application



RIVER CENTER

Please answer all questions completely.

Applicant Information:

Name: CASTAWAY COVE ASSOC.
Owner? Yes No

Mailing Address:
(permits will be mailed to this address)
Bay Bivley Assoc. MEMPH
1577 C STREET SUITE 1010
ANCHORAGE AK 99501
Phone (Home/Work): 907-343-8911
Cell Phone: _____
Fax: 907-297-2910

E-Mail: rb@PROPERTYMANAGEMENT@
Google.gmailps.com

Agent Information:

Name: HEON JAMES

Mailing Address:
940 SE 12TH AVE.
ON TARI, OREGON 97911
Phone (Home/Work): 541-889-6483
Cell Phone: 541-881-6014
Fax: 541-889-4621

E-Mail: HEON.J@FMTC.COM

Project Location:

Please complete all information including the legal description of the property or site location. This information can be found on your tax bill or by visiting the KPB Assessing Department website at www.borough.kenai.ak.us/assessingdept/default.htm.

Waterbody Name: KENAI RIVER

River Mile: _____ Right or Left bank (looking downstream)

Subdivision: CASTAWAY COVE Lot: _____ Block: _____

Township: 5 NORTH Range: 10 WEST Section: 19

KPB Parcel Number: 055.15342 Physical Address: TRACK B & A

Directions to the site: CIECHANSKI RD TO PORTER ROAD TO BOARDWALK TRAIL.

Please Complete the Following:

1) This activity is a: new project modification, addition, repair, or replacement to an existing project

2) What is the purpose of this project? ACCESS TO ISLAND PROPERTIES

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7) Does any portion of the project cantilever or extend **over** the OHW or MHW of the stream or waterbody?
 Yes No Not sure where OHW or MHW line is

8a) Does any portion of the project extend **below** the OHW or MHW of the stream or waterbody?
 Yes No Not sure where OHW or MHW line is

8b) Will a structure (e.g., culvert, bridge support, dike) be placed below OHW, MHW, or High Tide Line (HTL) of the waterbody?
 Yes No

9) Will material be extracted or dredged from

Floodplain of a river, lake, or ocean

Tidal or non-tidal waters

If you checked one of the above boxes, what type of material? _____
What amount of material? _____
Where will the material be deposited? _____

10) Will material (including spoils, debris or overburden) be deposited in a

Mapped floodplain or velocity zone of a river, lake or ocean

Tidal or non-tidal waters

If you checked one of the above boxes, is the fill temporary or permanent ?

If temporary, how long will it be in place? _____

What type of material is it? _____ Amount? _____

Identify the location(s) of any deposited material on the attached top-view site plan drawing.

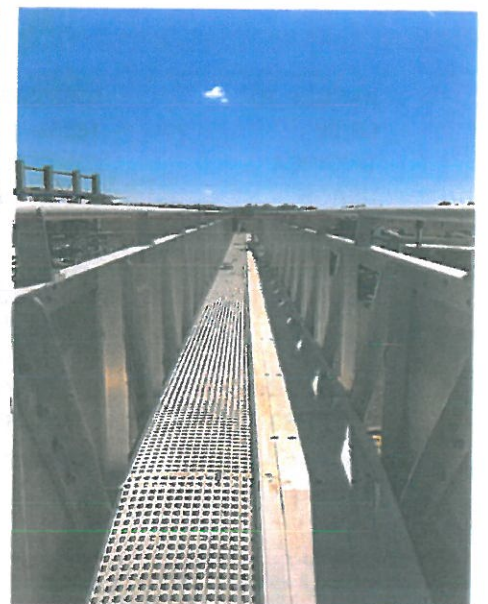
11) What is the surface area (in acres) that would be filled, excavated, or dredged of any waters, including areas below the HTL or MHW of tidal waters, below the OHW of non-tidal waters and/or wetlands adjacent to tidal or non-tidal waters? _____

12a) List all motorized equipment to be used in this project, including access route to site and any stream or waterbody crossings:

BOOM TRUCK to SET WALKWAY

12b) How long will motorized equipment be used **below** OHW, MHW, or the HTL? 0

13) Are there any threatened or endangered species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work? Yes No If yes, list all species: _____



LEON JAMES CONSTRUCTION CO., INC.

&

MILL SERVICE COMPANY

940 S. E. 12TH AVE. ONTARIO OR. 97914
PHONE 541-889-6483 FAX: 541-889-4621
CCB#73005

Castaway Cove Owners Association

Date: 2-21-2020

Board of Directors: Subject- Foot Bridge

Ward Hepper, President

Dear Ward,

Please find enclosed letter to coast Guard on subject footbridge along with drawing, photos of structure assembled in our yard. The subject is Dismantled and ready to ship. I have not contacted any trucking firms Thinking someone may be able to suggest a fairly inexpensive way To get the package to job site. No Permits are necessary.

The unit , dismantled into three sections measures 24' long x 8'wide x 8'-6" high with shipping weight of 6500 pounds U.S

Ward, at this time I have \$10.000 in this unit. Hopefully I can get some relief from the Association. I am sure the owners on the island will Donate. I will be on site end of June and with donated man power Can assist in assembly. With 4 able bodys, assembly will take only one day. I have an Idea on Inexpensive supports structure for each end. I will draft it and email to you. Local supplies.

Respectfully

Thank You

Leon James Construction Company Inc,

940 S.E 12th Avenue

Ontario, Oregon

Cell: 541-881-6014

Email: leonj@fmtc.com

LEON JAMES CONSTRUCTION CO., INC.

&

MILL SERVICE COMPANY

940 S. E. 12TH AVE. ONTARIO OR. 97914
PHONE 541-889-6483 FAX: 541-889-4621
CCB#73005

David Seris
17th Coast Guard District DPW
P.O. Box 25517
Juneau AK. 99802-5517

Date: 2-21-2020

Dear David

As per our phone conversation on 2/14/2020 concerning the proposed foot bridge at Castaway Cove on the Kenai river, Please find the drawing we spoke about. The unit is structural Aluminum. Dimension Being 36" wide inside x 70'-7" overall length. As stated, I measured the water way width on July 28 2019 at the River Quest Bridge, which is just across the fence from the proposed location of our foot bridge. At that time the actual waterway measured 54' across and 48" deep. Please find enclosed my drawing based on those measurements. Also See the letter from Castaway Cove Association to property owners. The river is in the process of cutting through the island. Although a gallant Attempt to avoid this disaster by the installation of hundreds of spruce Trees laced into the area. We know that the river will prevail in the end.

At our annual meeting on June 29, 2019, the subject of a footbridge was Discussed. I accepted the duty to search out the permits that might be needed to make this foot bridge a reality. As I understand it, no permits are necessary. The only criteria being a safe distance from the bottom of the structure to the water and no fill or disturbance of the canal bank.

To: Castaway Cove Owners Association Inc.
C/O Roy Briley Association Management
1577 C Street Suite 101C
Anchorage, AK 99501
Phone: 907-343-8911
Fax: 907-297-2910
Email: vbpropertymanagers@googlegroups.com



From: Leon James Construction Co., Inc.
940 SE 12th Ave
Ontario, OR 97914
Phone: 541-881-6014
Fax: 541-889-4621
Email: leonj@fmtc.com

April 1, 2019

Gentleman,

My name is Leon James, I own property within association boundaries, namely, Lot 10 Block 8, and Lots 12 and 13 in Block 9, which I purchased in 2007. Working summers, I complete my two cabins in 2014. I have \$200,000 tied up in this property with no access besides boat. I have great concern the value will drop with no access.

The Association has a 30' easement at the River Quest Boundary. I would suggest a foot bridge at this location. When I purchased my property in 2007 the walkway was wood planks nailed to logs, or whatever, it was poor at its best, and required a great deal of maintenance. During the flood of around 2011, the boardwalk was washed away. Under the leadership of Bob Larkey SR. the walkway was replaced with metal. Bob Larkey SR. did an incredible job as President and the Association moved forward. I was instrumental in the installation of the new metal walkway and the supports were designed by myself and built by others. During the early stages, electricity was promised to all by Homer Electric, but they reneged that promise and again, those on the island fell short. The roads, walkways, and electricity went to the mainland where the majority of the association dues were spent.

Year after year I have watched the river take huge sections of the bank as it caved in and the trees went with it. Year by year closer and closer the river moved toward the walkway. Yet nothing was been done to prevent the destruction of our precious bank. That was now the responsibility of the Association because all the owners' lots were already lost to the river. In 2017, the walkway had to be relocated and the Association hired to have spruce trees woven into the bank to try to ward off the inevitable, which I considered too little too late. Winter ice took it out, the river continued to lay waste to the land, and then the decision was made by the Board of Directors to remove about a hundred feet of the walkway, thereby, cutting off access to some 60 property owners beyond this point.

Castaway Cove HOA Footbridge



KPB Parcels

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

KPB File No.	2022-34
Planning Commission Meeting:	August 22, 2022
Applicant	Castaway Cove Association
Mailing Address	1577 C Street Anchorage, AK 99501
Legal Description	T 5N R 10W SEC 19 SEWARD MERIDIAN KN 0840140 CASTAWAY COVE SUB AMENDED TRACTS A & B
KPB Parcel Number	055-255-47 & 055-253-42

Project Description

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

Background Information

Castaway Cove Home Owners Association (HOA) is a gated private subdivision located in Kenai, AK. Currently, there are approximately 56 parcels located on the island that are accessed by an existing 5-foot wide by 80 feet long clear span footbridge. Over the past few years the island has experienced significant erosion that has required the HOA to install and maintain over 800-feet of spruce tree revetment to protect the island properties. The majority of the parcels on the island are located on the western portion of the erosion area. When the island erosion section succumbs to the Kenai River, the western parcels will have no access off the island.

The Association has access to an aluminum 70'-7" long by 36" wide by 8'-6" high footbridge to be installed on the western portion of the island for access within the HOA right of way easement. In 2005, the HOA replaced the upstream prior existing wooden footbridge. The new footbridge will be lighter and higher than the upstream bridge. The pilings will be driven 15 feet leaving 5 feet above to maintain a maximum height of 7 foot, when assembled to not impede boat traffic. The only portion of the footbridge located within the Habitat Protection District (HPD) will be 4 vertical supports and the access ramps.

In 2020, the Castaway Cove HOA requested a Conditional Use Permit to install a footbridge across the man made canal for access. On August 24, 2020, the Borough Planning Commission unanimously approved Resolution 2020-22, for the installation of the footbridge.

Prior to installation of the bridge, COVID stalled the transportation of the bridge to Alaska and the applicant requested a one year time extension, granted by the Planning Director. On July 5, 2022, the applicant again submitted an application for the installation of a foot bridge as the one year CUP permit granted by resolution 2020-22 and one year time extension will both expire on August 24, 2022. At the time of application, work on this project has not been finished.

Project Details within the 50-foot Habitat Protection District

1. Installation of 4 supports of 6" well casing.
2. Access ramps on either side of the canal

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; **Conditions 1-3 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 1-4, 6 appear to support this standard.**
3. The development of the use or structure shall not physically damage the adjoining property; **Findings 7-8 appear to support this standard.**
4. The proposed use or structure is water-dependent; **Findings 4 and 9 appear to support this standard.**
5. Applicant's or owner's compliance with other borough permits and ordinance requirements; **Conditions 11-12 and Finding 14 appear to support this standard.**

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)(5), construction of critical 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. The proposed project is consistent with the 2019 Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents and borough code, including the Kenai Peninsula Borough Coastal Management Plan.
7. Access to the site and all construction activities will occur from the Castaway Cove Homeowners Association right of way and will not affect neighboring parcels.
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 August 22, 2022.
11. Agency review was distributed on August 5, 2022. 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 August 3, 2022. A total of 236 mailings were sent.

13. Pursuant to KPB 21.11.020, public notice was published in the Peninsula Clarion on August 11 2022 and August 18, 2022.
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 foot bridge 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)).

Attachments

Multi-Agency Application
Resolution 2020-22
Draft Resolution 2022-34

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 2022-34.

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



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

Charlie Pierce
Borough Mayor

KENAI PENINSULA BOROUGH PLANNING COMMISSION NOTICE OF PUBLIC HEARING

Public notice is hereby given that an application for a Conditional Use Permit has been received to install a foot bridge on a parcel within the 50-foot Habitat Protection District of the Kenai River, near Kenai, Alaska. ***You have been sent this notice because you are a property owner within 300 feet of the described property.***

Pursuant to KPB 21.18.081(B)(5) Transportation and Utility Infrastructure and KPB 21.18.091 Mitigation measures, projects within the 50-foot Habitat Protection District are not permitted unless a Conditional Use Permit (CUP) is approved by the Planning Commission. This project is located on both banks of a man made canal of the Kenai River in Kenai, Alaska.

Petitioner: Castaway Cove Homeowners Association
Roy Briley Property Management Co
1577 C Street
Anchorage, AK 99501

Public Hearing: The Kenai Peninsula Borough Planning Commission meeting will hold a public hearing on August 22, 2022 commencing at 7:30 p.m., or as soon thereafter as business permits. The meeting is to be held in the Borough Administrative Building, 144 N. Binkley St., Soldotna, Alaska. The public may also attend the meeting electronically/telephonically via Zoom. To join the meeting from a computer visit <https://us06web.zoom.us/j/9077142200>. To attend the Zoom meeting by telephone call toll free 1-888-788-0099 or 1-877-853-5247. When calling in you will need the Meeting ID **907 714 2200**.

Public Comment: Anyone wishing to testify may attend the above meeting to give testimony, or may submit written comment via the methods below. **Written comments must be submitted by 1:00 pm Friday, August 19, 2022 via**

Mail comments to:

Donald E. Gilman River Center
514 Funny River Road
Soldotna, Alaska 99669

Fax comments to:

(907) 260-5992

Email comments to:

planning@kpb.us
KenaiRivCenter@kpb.us

For additional information contact Morgan Aldridge, maldridge@kpb.us, Donald E. Gilman River Center, (907) 714-2465.

KENAI PENINSULA BOROUGH PLANNING COMMISSION

RESOLUTION 2022-34

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT PURSUANT TO KPB 21.18 FOR THE CONSTRUCTION OF A FOOTBRIDGE 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,** this project was unanimously approved by the Planning Commission as Resolution 2020-22 on August 24, 2020; and
- WHEREAS,** due to the Covid pandemic, delays occurred in moving the bridge to Alaska and the project is not complete; and
- WHEREAS,** applicant requested a time extension of Resolution 2020-22 for one year from the August 24, 2020 date and it was approved by the Planning Director; 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 August 11, 2022 and August 18, 2022 as provided in Section 21.11.020; and
- WHEREAS,** public testimony was received at the August 22, 2022 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. Installation of 4 supports of 6" well casing.
2. Access ramps on either side of the canal

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 critical 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. The proposed project is consistent with the 2019 Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents and borough code, including the Kenai Peninsula Borough Coastal Management Plan.
7. Access to the site and all construction activities will occur from the Castaway Cove Homeowners Association right of way and will not affect neighboring parcels.
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 August 22, 2022.
11. Agency review was distributed on August 5, 2022. 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 August 5, 2022. A total of 236 mailings were sent.
13. Pursuant to KPB 21.11.020, public notice was published in the Peninsula Clarion on August 11, 2022 and August 18, 2022.
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 foot bridge 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; **Conditions 1-3 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 1-4, 6 appear to support this standard.**
3. The development of the use or structure shall not physically damage the adjoining property; **Findings 7-8 appear to support this standard.**
4. The proposed use or structure is water-dependent; **Finding 4, 9 appear to support this standard.**
5. Applicant's or owner's compliance with other borough permits and ordinance requirements. **Conditions 11-12 and Finding 14 appear to support this standard.**

THIS CONDITIONAL USE PERMIT EFFECTIVE ON _____ DAY OF _____, 2022.

Blair Martin, 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.

KENAI PENINSULA BOROUGH PLANNING COMMISSION

RESOLUTION 2020-22

A Conditional Use Permit is sought pursuant to KPB 21.18 for placement of a 70'-7" long by 36" wide by 8'-6" high footbridge to access island properties in Castaway Cove Homeowners Association, within the 50-foot Habitat Protection District of the Kenai River as established in KPB 21.18.040.

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; and

WHEREAS public notice was published in the *Peninsula Clarion* on August 13 and 20, 2020, as provided in Section 21.20.010; and

WHEREAS public testimony was received at the August 24, 2020 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. Installation of 4 supports of 6" well casing.
2. Access ramps on either side of the canal.

Section 2. 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)(5), the proposed critical infrastructure may be approved as conditional structures within the habitat protection district.
3. One of the purposes of Chapter 21.18 is to provide a means for a continuation of the abundance and prosperity provided by anadromous fish to the citizens of the Kenai Peninsula Borough (KPB 21.18.020(E)).
4. Staff finds the proposed project is consistent with the 2019 Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents and borough code including the Kenai Peninsula Borough Coastal Management Plan.
5. 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.

6. Access to the site and all construction activities will occur from the Castaway Cove Homeowners Association right of way and will not affect neighboring parcels.
7. The River Center found the application complete and scheduled a public hearing for August 24, 2020.
8. Pursuant to KPB 21.11.030, public notice was mailed to all property owners within a radius of 300 feet of the project on August 14, 2020. A total of 175 mailings were sent.
9. Pursuant to KPB 21.11.020, public notice was published in the Peninsula Clarion on August 13 and 20, 2020.
10. Agency review was distributed on August 14, 2020. No comments or objections have been received from resource agencies to date.
11. The applicant is currently in compliance with Borough permits and ordinances.

Pursuant to 21.18.081(D), the following General 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;***
 - **Condition 1** – A temporary silt fence will be installed prior to ground disturbance and stream work to minimize erosion and sediment discharge to the stream during culvert installation and associated work.
 - **Condition 2** – The permittee shall minimize damage to all vegetation and shall revegetate all disturbed areas with native vegetation.
 - **Condition 3** – 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.
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;***
 - **Finding 1** – Portions of this proposed project are within the 50-foot habitat protection district as defined by KPB 21.18.040.
 - **Finding 2** – Pursuant to KPB 21.18.081(B)(5), the proposed critical infrastructure may be approved as conditional structures within the habitat protection district.
 - **Finding 3** – One of the purposes of Chapter 21.18 is to provide a means for a continuation of the abundance and prosperity provided by anadromous fish to the citizens of the Kenai Peninsula Borough (KPB 21.18.020(E)).
 - **Finding 4** – Staff finds the proposed project is consistent with the 2019 Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents and borough code including the Kenai Peninsula Borough Coastal Management Plan.
 - **Finding 7** – The River Center found the application complete and scheduled a public hearing for August 24, 2020.

- **Finding 8** – Public notice was mailed to property owners within a radius of 300 feet (KPB 21.11.030) of the project on August 14, 2020. A total of 175 mailings were sent.
- **Finding 9** – Public notice was published in the *Peninsula Clarion* (KPB 21.11.020) on August 13 and 20, 2020.
- **Finding 10** – Agency review was distributed on August 14, 2020. No comments or objections have been received from resource agencies to date.
- **Finding 11** – At this time, the applicant is currently in compliance with Borough permits and ordinances.

3. ***The development of the use or structure shall not physically damage the adjoining property;***

- **Finding 6** – Access to the site and all construction activities will occur from the Castaway Cove Homeowners Association right of way and will not affect neighboring parcels.

4. ***The proposed use or structure is water-dependent;***

- **Finding 3** – One of the purposes of Chapter 21.18 is to provide a means for a continuation of the abundance and prosperity provided by anadromous fish to the citizens of the Kenai Peninsula Borough (KPB 21.18.020(E)).
- **Finding 5** – 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

5. ***Applicant's or owner's compliance with other borough permits and ordinance requirements.***

- **Finding 11** – At this time, the applicant is currently in compliance with Borough permits and ordinances.

Section 3. Permit Conditions

1. A temporary silt fence will be installed prior to ground disturbance and stream work to minimize erosion and sediment discharge to the stream during culvert installation and associated work.
2. The permittee shall minimize damage to all vegetation and shall revegetate all disturbed areas with native vegetation.
3. 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.
4. Storage or use of fuel is prohibited within 50-feet of any open water.
5. The River Center shall be notified at least 3 days prior to the start of the project.
6. 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.
7. The permittee shall be held responsible for the actions of the contractors, agents, or others who perform work to accomplish the approved plan.

8. 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)).
9. 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).
10. 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.
11. 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)).

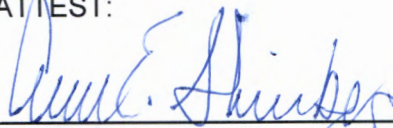
Section 4. Decision:

The Kenai Peninsula Borough Planning Commission authorizes the issuance of a Conditional Use Permit for installation of a 70'-7" long by 36" wide by 8'-6" high footbridge to access island properties in Castaway Cove Homeowners Association, near Kenai, AK.

THIS CONDITIONAL USE PERMIT IS EFFECTIVE ON THIS 24th DAY OF August, 2020.


Blair Martin, 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.

From: Jeff Jensen
To: [Planning Dept.; Kenai River Center.](#)
Cc: [George Lowery; "Riverquest Admin \(riverquestak@gmail.com\)"](#)
Subject: <EXTERNAL-SENDER>Castaway Cove Foot Bridge
Date: Thursday, August 11, 2022 12:20:44 PM

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

To whom it may concern,

My name is Jeff Jensen and I own 3 lots in Riverquest adjacent to the 30ft easement in which the proposed bridge is to be installed. The green fence to the south of the easement is mine. My lot extends down to the Kenai River slough just below the Riverquest car bridge. It is also a boat moorage that belongs to me, and has an initial value of \$7500.00 when purchased years ago. It is part of the value of my lot that will be affected by the bridge. The bridge will basically block or make access to my moorage dangerous and or impossible. That one moorage will be located between the 2 bridges. It is my understanding the bridge has been moved to the southernmost position of the easement which is right up against my fence, and leaves even less room for a boat to navigate to and dock. Another major concern is the timber and debris floating the river as water levels rise. If this debris gets hung up on this foot bridge piles or any other part of the structure it will affect my moorage and possibly damage my dock. The dock was not put in this year due to my health problems, but anticipate it being in place next year. Another item that has been overlooked is access to the river slough. Yes, Riverquest owns the car bridge to the south of the proposed location of this project. Our bridge is damaged and can only sustain 12.000lbs safely at this point according to our engineer. I have also talked to the Riverquest residents and most are not in favor of this project or utilizing any property in Riverquest. The approach to the bridge is wetlands for quite a distance and there is no parking provisions which will result in more traffic. In short, this project will affect the value of my property and should be relocated to another location within Castaway Cove. At the very least the bridge should be located on the very northern edge of the right a way to allow room to maybe, safely access to my property.

Jeff Jensen Sr.

President/ Owner

Alas-Co General Construction Company, Inc.

P.O. Box 110629, Anchorage AK 99511

P 907.522.2297 F 907.522.3170 C 907.903.8998

From: libal@gci.net
To: [Planning Dept.; Kenai River Center.](#)
Subject: <EXTERNAL-SENDER>Castaway Cove- Foot bridge installation
Date: Saturday, August 13, 2022 10:12:21 AM

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

To whom it may concern:

I am writing in support of this project. Access to cabins from a lower bridge on the island may soon be cut off due to river erosion. Hundreds of trees have been secured to prevent the erosion, yet the river continues to cut into the pathway and will soon connect to the canal, cutting off access to upriver cabins as more of the lower island is lost to the river. Allowing Castaway Cove to install a walking bridge upriver will provide access to the island from an area not affected by river erosion. Thank you for your consideration.

Joe Libal
(907) 301-7679
Owner in Castaway Cove

From: Robert Rolen
To: [Planning Dept.; Kenai River Center.](#)
Subject: <EXTERNAL-SENDER>CUP for Castaway Cove Footbridge
Date: Friday, August 12, 2022 10:05:52 AM

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Dear Sirs,

Please re-approve the CUP for installing a footbridge across the upper end of the slough in Castaway Cove development.

As an owner on the "island" in the Cove(Lot 5 Block 9), the walking access to my property is about to be lost due to erosion of the bank along the river. It is inevitable. Without reasonable access I will no longer be able to perform river bank spruce tree revetment work on my property, and it too will be lost, sooner than would otherwise need be. I will not be able to get to my property without boating into it, and my elderly wheelchair bound father will lose all access.

Installation of an upper footbridge would assure access to the property for my families' continued enjoyment on the Kenai and, secondly, our considerable and ongoing investment in the local economy.

Again, please vote to approve the CUP.

Thank you,

Robert D Rolen
541-371-6283

From: Roger Rolan
To: [Kenai River Center](#); [Planning Dept.](#)
Subject: <EXTERNAL-SENDER>CC Subdivision CUP -Footbridge
Date: Saturday, August 13, 2022 7:14:28 AM

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Dear Sirs,

Please re-approve the CUP for installing a footbridge across the upper end of the slough in Castaway Cove development.

As an co-owners on the "island" in the Cove(Lot 6 Block 9), the walking and wheelchair access to our property is about to be lost due to erosion of the bank along the river. Within 2-4 years, there will be NO walking/wheelchair access along the current boardwalk to our lot. Without reasonable access we will no longer be able to perform river bank spruce tree revetment work on our property, and it too could be lost. We have had to complete riverbank revetment work on our property at least every other year to maintain our bank. Without the upper bridge the only way we will be able to get to our property is by boating into it.

Installation of an upper footbridge would assure access to the property for ALL property owner's and their continued enjoyment on the Kenai. And secondly, in will continue our considerable and ongoing investment in your local economy.

Again, please vote to approve the CUP.

Thank you,

Roger C Rolan
503-970-0348

Richard E Rolan
541-298-4330

Joan Andersen
593-656-0063