

E. NEW BUSINESS

6. Conditional Use Permit; PC Resolution 2022-11

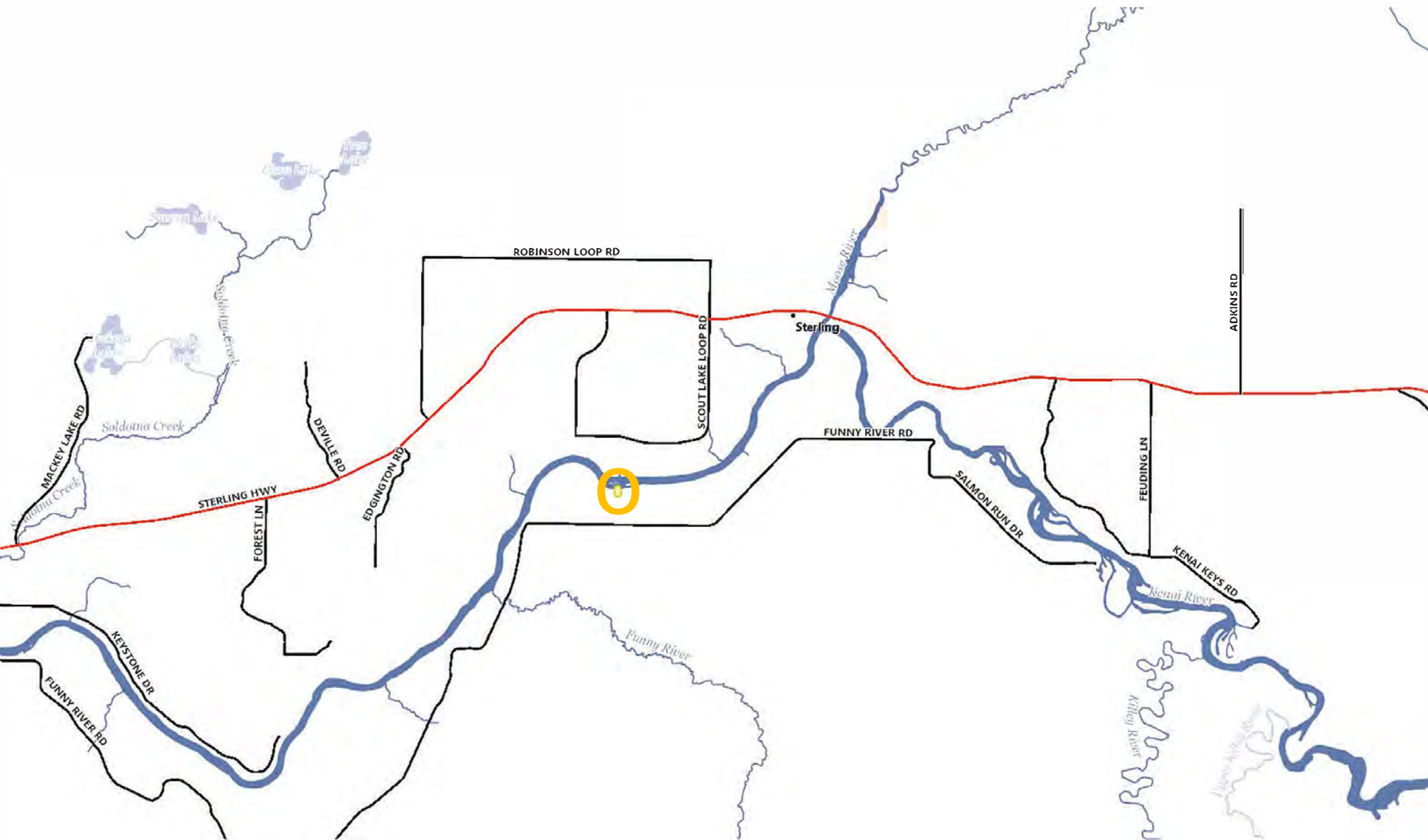
Applicant: Mark Arkens

Parcel ID: 066-250-23

Location: 36315 Mykiss Street

Funny River Area

Vicinity Map



Aerial View



 **Proposed fence location**

Riverside View



 **Proposed fence location**

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

KPB File No.	2022-22
Planning Commission Meeting:	March 21, 2022
Applicant	Mark Arkens
Mailing Address	PO Box 2079 Soldotna, AK 99669
Legal Description	T 5N R 9W SEC 22 SEWARD MERIDIAN KN 0750114 BEND IN THE RIVER SUB LOT 11 BLK 1
Physical Address	36315 Mykiss
KPB Parcel Number	06625023

Project Description

A Conditional Use Permit is sought pursuant to KPB 21.18 for the installation of a 140-foot chain-link fence on a parcel within the 50-foot Habitat Protection District of the Kenai River.

Background Information

Applicant recently acquired this property and is proposing to install a chain-link fence along the eastern side of the property. This property is adjacent to the Mykiss Street public ROW that grants access to the Kenai River. Over the years, the public's use of this ROW has led to trespassing on the applicant's property, which has degraded the habitat. Applicant would like to install a fence to stop the public from trespassing so the riparian habitat can regenerate. In the fall of 2021, the applicant had the property surveyed and the corners marked to ensure the fence remains out of the ROW and section line easement. Pursuant to KPB 21.18.071, portions of this project have already been permitted under a staff permit.

Project Details within the 50-foot Habitat Protection District

1. Installation of a 6-foot by 140-foot chain-link fence, of which approximately 45 feet will be in the Habitat Protection District.
2. Installation of metal fence posts spaced every 6 - 10 feet.
3. Minimal removal of vegetated material.

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), fences may be permitted within the habitat protection district under a conditional use permit.
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, chain-link fencing allows for the unobstructed passage of water.
7. 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.
8. 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."
9. The River Center found the application complete and scheduled a public hearing for March 21, 2022.
10. Agency review was distributed on February 28, 2022. No comments or objections have been received from resource agencies to date.
11. Pursuant to KPB 21.11.030, public notice was mailed to all property owners within a radius of 300 feet of the project on March 1, 2022. A total of 19 mailings were sent.
12. Pursuant to KPB 21.11.020, public notice was published in the Peninsula Clarion on March 10, 2022 and March 17, 2022.
13. 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 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 or owner's compliance with other borough permits and ordinance requirements. **Finding 13 appears to support this standard.**

Attachments

Vicinity Maps
Multi-Agency Application
Draft Resolution 2022-22

Staff Recommendation

Staff finds that the proposed project meets the five general standards of KPB 21.18.081 and recommends that the Planning Commission grant a Conditional Use Permit subject to the conditions as set forth in PC Resolution 2022-22.

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

Multi Agency Permit Application



RIVER CENTER

514 Funny River Road, Soldotna, AK 99669 • (907) 714-2460

Applicant Information:

Name: MARK ARKENS
Owner? ☒ Yes ☐ No
Mailing: PO BOX 2079
SOLDOTNA AK 99669
Phone: 907-229-0122
Email: KEWAIMARK@yahoo.com

Agent Information: (if applicable)

Name: _____
Mailing: _____
Phone: _____
Email: _____

Project Location:

KPB Parcel ID: 06625023
Physical Address: 36315 MYKISS ST
Waterbody Name: KENAI RIVER
River Mile: 33 ☒ Right ☐ Left

Subdivision: _____
Lot: 11 Block: 1 Addn/No.: _____
Directions to site: BEND IN THE
RIVER SUBDIVISION
TSN R9W SEC 22 SE AND
MERIDIAN KN 0750114

Permit Fees: (please select the applicable permit fees)

- ☐ \$100 - ADNR State Parks Permit ☒ \$300 - KPB Conditional Use Permit
☐ \$50 - KPB Habitat/Floodplain Permit ☐ \$300 - KPB Floodway Development Permit

Project Description: This project is: ☒ New ☐ Existing

Provide a detailed description of your project and all related activities, use additional pages if needed. Include the following information for all existing and proposed structures:

- | | | |
|---|---|---|
| <ul style="list-style-type: none">▪ Project location & dimensions▪ Waterbody description & proximity▪ Proximity to OHW and/or HTL▪ Construction: methods, equipment used | <ul style="list-style-type: none">▪ Filling: type, amount, acquired from▪ Dredging: area, volume, disposal site▪ Fuel Storage: location, quantities, types | <ul style="list-style-type: none">▪ Excavation: type, volume, location▪ Vegetation Removal: location, amount, type▪ Water Withdrawal: purpose, location, methods, rate, quantity |
|---|---|---|

I'm ASKING TO REPAIR THE BANK OF THE RIVER & RETURN IT TO THE ORIGINAL RIPARIAN STATE. I WOULD LIKE TO TIE SPRUCE BOUGHTS TO THE ENTIRE BANK, RESTORING IT TO ITS NATURAL STATE. I WILL BE USING DUCK BILLED ANKERS & SPRUCE BOUGHTS ONLY. PEOPLE HAVE BEEN WALKING ON IT AND DESTROYING THE BANK & ALL THE RIPARIAN VEGETATION IS GONE. I WANT TO RESTORE IT & KEEP PEOPLE OFF. I ALSO WANT TO BUILD A FENCE TO STOP PEOPLE FROM WALKING & PARKING ON THE LOT. THEY HAVE DAMAGED THE BANK & I MEAN TO RESTORE IT THE BEST I CAN. THE ONLY WAY TO DO IT IS BUILD A FENCE TO KEEP PEOPLE OFF & RESTORE THE BANK. WE NEED TO TAKE CARE OF OUR KENAI RIVER, I CONSIDER MYSELF A RIVER STEWARD, AND I CAN MAKE A DIFFERENCE ON THIS PIECE OF THE RIVER.

Project Questions:

Note: Use Ordinary High Water (OHW) for non-tidal waters, and Mean High Tide (MHT) for tidal waters.

1. Start date: APRIL 1 End date: NOV 1 Estimated Days of Construction: 30
2. Is the project located within 50 feet of OHW or HTL a waterbody? ☒ Yes ☐ No
3. Does any portion of the project extend below the OHW or HTL of the stream or waterbody? ☒ Yes ☐ No
4. Does any portion of the project cantilever or extend over the OHW of the waterbody? ☐ Yes ☒ No
5. Will anything be placed below OHW or HTL of the waterbody? ☒ Yes ☐ No
6. Will material be extracted or dredged from the site? ☐ Yes ☒ No
7. Including areas below OHW or HTL, what is the total area (in acres) that will be excavated or dredged?
Total Area: NA Type of Material: _____
Location you will depositing fill: _____
8. Will any material (including soils, debris, and/or overburden) be used as fill? ☒ Yes ☐ No
Type of material: SPRUCE BOARDS Amount: ENOUGH FOR PERMANENT Permanent ☒ or Temporary ☐
Will fill be placed below OHW or HTL: ☒ Yes ☐ No
9. List all motorized equipment to be used in this project, including access route to site, any stream or waterbody crossings, and (if applicable) how long equipment will be used below OHW or HTL: NA
10. Is any portion of the work already complete? ☐ Yes ☒ No
If yes, describe: _____

Signature & Certification:

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.

[Signature]
Applicant Signature (required)

2-11-22
Date

Agent Signature (if applicable)

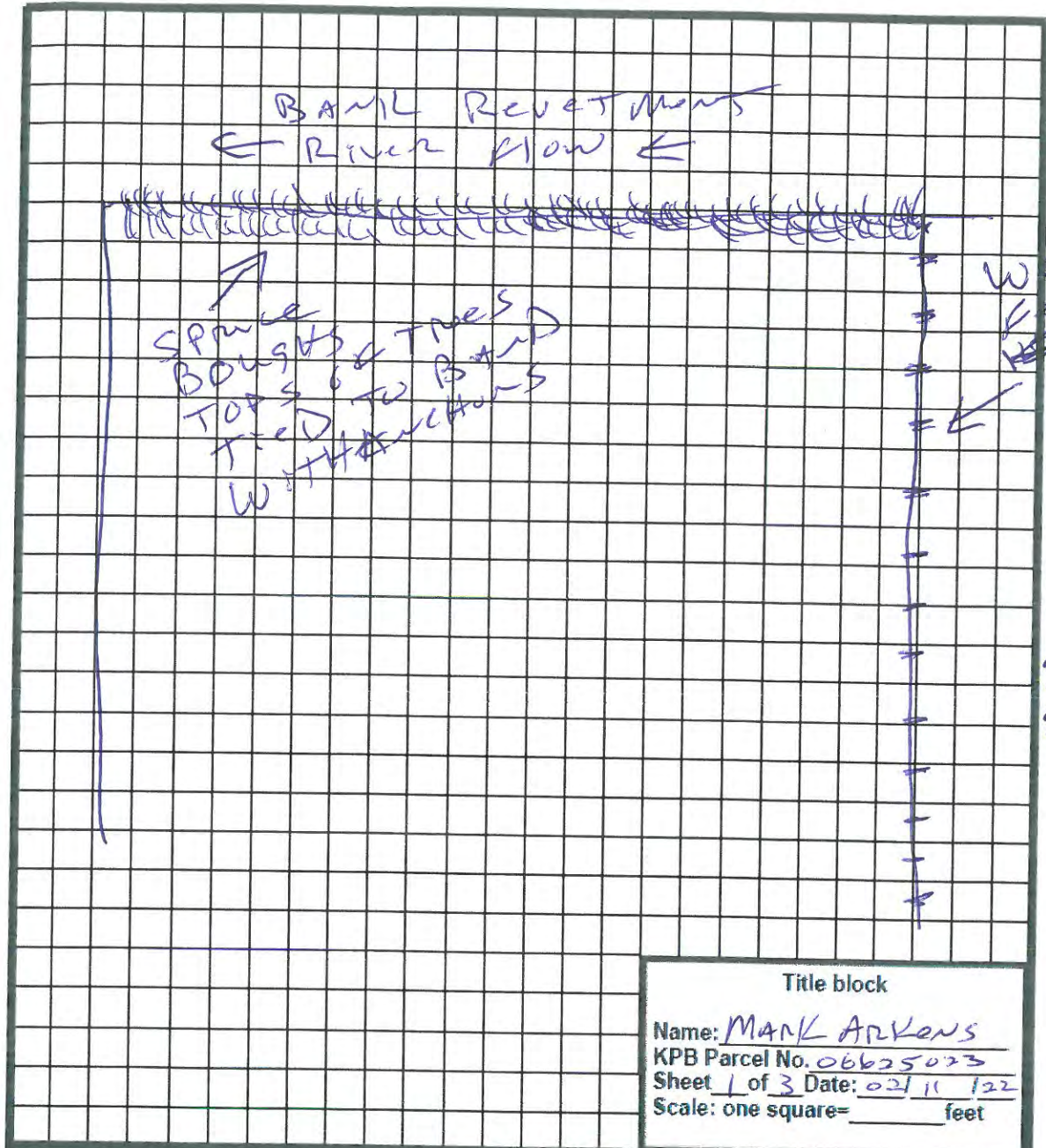
Date

Please make checks payable to the applicable agencies:

State of Alaska

Kenai Peninsula Borough

SITE PLAN: TOP VIEW

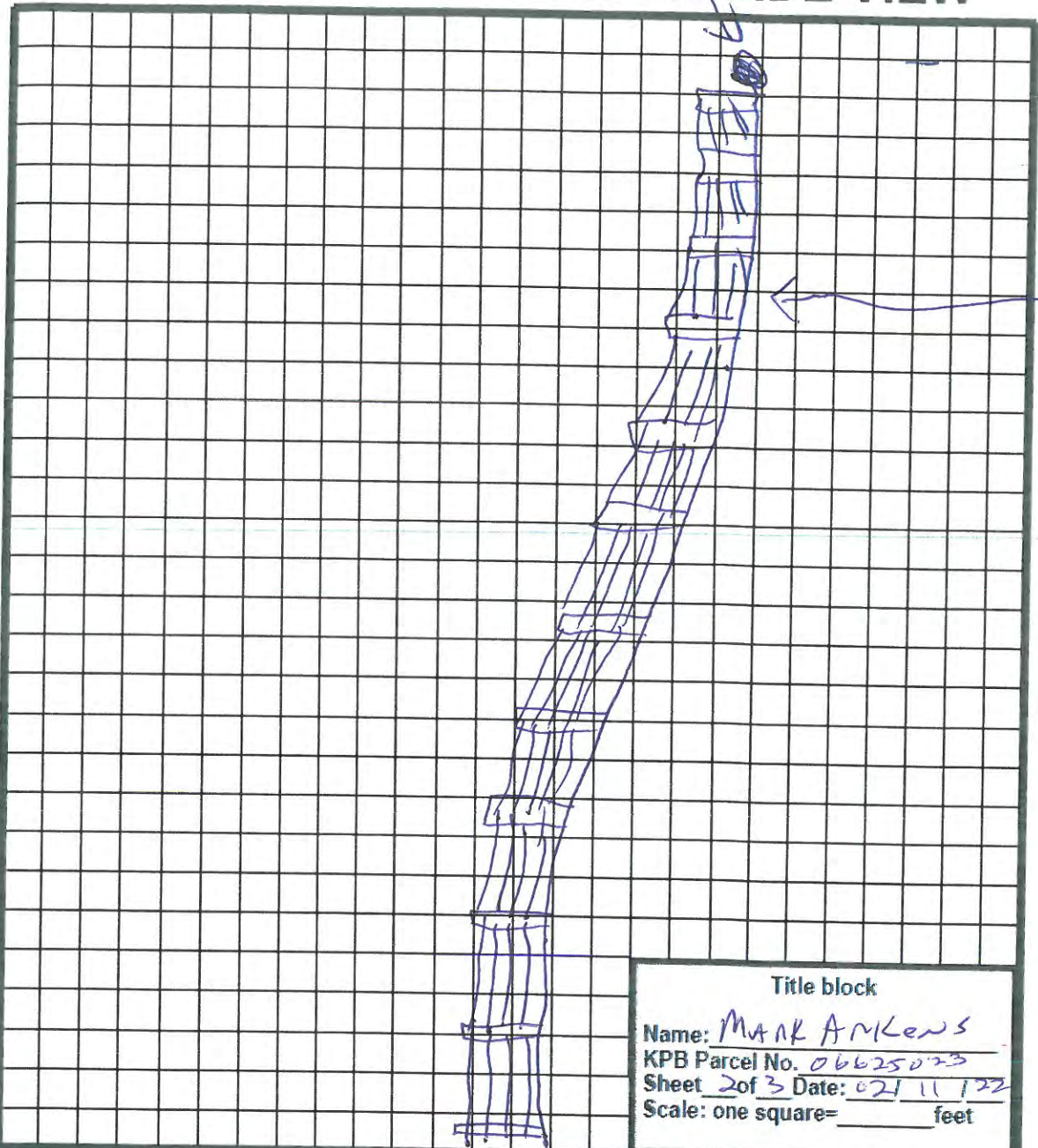


Additional Comments or Descriptions: **MUST show the OHW and/or HTL line**

USING EXISTING BANK TO RESTORE THE ORIGINAL REPTILIAN HABITAT. WITH SPRUCE TREE TOPS TIED WITH DUCK BILLED ANCHORS TO THE FRONT OF THE BANK. I HAVE DONE THIS WORK

BEFORE & IT HAS HELPED THE BANK OUT TREMENDOUSLY.

SITE PLAN: ELEVATION OR SIDE VIEW



Additional Comments or Descriptions: **MUST show the OHW and/or HTL line**

WOOD FENCE IS REQUIRED TO KEEP PEOPLE OFF AND TO PREVENT FURTHER DAMAGE. FENCE COULD BE ELEVATED NEAR RIVER TO LET WATER THROUGH IF REQUIRED. DECK BLOCKS AND ANCHORS WILL BE USED NEAR RIVER TO PREVENT HOLES BEING DRILLED. FENCE COULD BE GATED NEAR RIVER IF REQUIRED & COULD BE OPENED DURING RIVER MONTHS OR AS REQUIRED FOR MOOSE PASSAGE.



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 140-foot wooden fence on a parcel within the 50-foot Habitat Protection District of the Kenai River, near Soldotna, 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)(3) Fences 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 at T 5N R 9W SEC 22 SEWARD MERIDIAN KN 0750114 BEND IN THE RIVER SUB LOT 11 BLK 1, Soldotna, Alaska.

Petitioner: Mark Arkens
PO Box 2079
Soldotna, AK 99669

Public Hearing: The Kenai Peninsula Borough Planning Commission meeting will hold a public hearing on March 21, 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 to the Donald E. Gilman River Center, 514 Funny River Rd., Soldotna, Alaska 99669. Written comments may also be sent by fax to (907) 260-5992 or by email to KenaiRivCenter@kpb.us. **Written comments must be submitted by 1:00 pm Friday, March 18, 2022.**

For additional information contact Samantha Lopez, slopez@kpb.us, Donald E. Gilman River Center, (907) 714-2468.

KENAI PENINSULA BOROUGH PLANNING COMMISSION

RESOLUTION 2022-22

**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 March 10, 2022 and March 17, 2022 as provided in Section 21.11.020; and
- WHEREAS,** public testimony was received at the March 21, 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 a 6-foot by 140-foot chain-link fence, of which approximately 45 feet will be in the Habitat Protection District.
2. Installation of metal fence posts spaced every 6 - 10 feet.
3. Minimal removal of vegetated material.

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), fences may be permitted within the habitat protection district under a conditional use permit.
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, chain-link fencing allows for the unobstructed passage of water.
7. 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.
8. 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."
9. The River Center found the application complete and scheduled a public hearing for March 21, 2022.
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11. Pursuant to KPB 21.11.030, public notice was mailed to all property owners within a radius of 300 feet of the project on March 1, 2022. A total of 19 mailings were sent.
12. Pursuant to KPB 21.11.020, public notice was published in the Peninsula Clarion on March 10, 2022 and March 17, 2022.
13. The applicant is currently in compliance with Borough permits and ordinances.

Section 4. 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 3. 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;
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;
3. The development of the use or structure shall not physically damage the adjoining property;
4. The proposed use or structure is water-dependent;
5. Applicant's or owner's compliance with other borough permits and ordinance requirements.

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.