

E. NEW BUSINESS

4. Conditional Use Permit; PC Resolution 2022-36

Petitioner: Chugach Electric Association

**Request: Install rip rap on a parcel within the 50' Habitat Protection
District of Quartz Creek**

**Location: T05N R02W SEC 16, S.M., SW 2019007 ASL SNo. 2014-26
Cooper Landing Area**

Multi Agency Permit Application



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

Applicant Information:

Name: Chugach Electric Association

Owner? ☒ **Yes** ☐ **No**

Mailing: Attn: Karen Keesecker, Manager, Land Services
PO Box 196300, Anchorage, AK 99519-6300

Phone: 907-762-4726

Email: karen_keesecker@chugachelectric.com

Agent Information: (if applicable)

Name: HDR Engineering, Inc.

Mailing: Attn: Paul McLarnon
582 E 36th Suite 500 Anchorage Alaska 99508

Phone: 907-250-8182

Email: paul.mclarnona@hdrinc.com

Project Location:

KPB Parcel ID: 11930023

Physical Address: 24238 Sterling Highway

Waterbody Name: Quartz Creek

River Mile: 4 Riverbank: ☐ Right
looking downstream ☒ Left

Subdivision: _____

Lot: _____ Block: _____ Addn/No.: _____

Directions to site: Sterling Highway, approximately MP 40.75
located east of where the Sterling Highway crosses
Quartz Creek, substation is on the north side of the highway

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: ☒ New Project OR ☐ Extension to RC# _____
☐ Amendment

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:

- | | | |
|--|---|---|
| ▪ Project location & dimensions | ▪ Construction methods/equipment | ▪ Fuel Storage: location, quantities |
| ▪ Waterbody description & proximity | ▪ Filling/dredging/excavation: | ▪ Vegetation Removal: location, |
| ▪ Proximity to OHW and/or HTL | ○ type, volume, area, location | amount, type |

Please see the attached project description

KPB Tax Credit: (skip this section if your project is prior existing, only applicable to NEW projects)

Please provide your estimated project cost(s) below. Do not include grants or other funding assistance:

Elevated Light Penetrating Structure(s)	\$ _____
Bank or Habitat Restoration & Protection	\$ _____
Other Activities	\$ _____

Project Questions:

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

1. Start date: 9/15/2022 End date: 10/7/2022 Estimated Days of Construction: 17
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: 8,170 SF / 0.19 acre Type of Material: unclassified
Location you will depositing fill: off site upland location or stored on CEA Lease Area in uplands
8. Will any material (including soils, debris, and/or overburden) be used as fill? ☐ Yes ☒ No
Type of material: _____ Amount: _____ 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: see attached project description

10. Is any portion of the work already complete? ☐ Yes ☒ No
If yes, describe: _____

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.

If applying for a tax credit: I certify that I have not begun construction of the project on this the property and that the proposed project will be constructed in a manner consistent with KPB 5.12 Real Property and Personal Property Taxes, KPB 5.14 Habitat Protection Tax Credit, and other applicable ordinances.

Karen Keesecker
Applicant Signature (required)

7/12/2022
Date

McLemore, Paul
Agent Signature (if applicable)

Date

Daves Creek Substation, Flood Mitigation Project

Project Description

Project Purpose

The purpose of the Dave's Creek Substation Flood Mitigation Project (the Project) is to protect the Dave's Creek Substation by redirecting flow from Quartz Creek away from the substation and back into the main channel of Quartz Creek.

Overview

Quartz Creek has been experiencing overbank flows and has caused flooding near the Dave's Creek Substation located at 24238 Sterling Highway / MP 40.75, see **Sheet 1**. Approximately 300 feet upstream from the substation, high flows in Quartz Creek laterally eroded its streambank (downstream river left) and a portion of Quartz Creek's flow has flooded a remanent channel adjacent to the substation, creating an unacceptable level of risk to the electrical substation. The flooding was first recognized by Chugach Electric Association (CEA) in July of 2021 and CEA has been monitoring the facility since that time. In June 2022, levels increased to a point where water was flowing against the north-west edge of the substation's gravel pad and had fully surrounded the adjacent transmission line poles. At that point CEA determined that immediate action was necessary to protect the substation and transmission line poles. In June 2022, CEA obtained permits to place flexible intermediate bulk containers (Super Sacks) to temporarily divert most of the water back into the main channel of Quartz Creek. Since that time, CEA has been working with a professional engineering firm (HDR Engineering, Inc.) to design a long-term solution to protect the substation and adjacent transmission line poles from being affected by Quartz Creek.

Proposed Project

The Project proposes to divert the water back into the main channel of Quartz Creek and protect CEA's substation and transmission assets, as well as the cross-drainage culverts running under the Sterling Highway. Prior to construction, vegetation will be cleared based on the overall project footprint, see **Sheet 2**. The Project includes three primary features, as follows:

- **Frontage Embankment** – consists of a 90-foot (ft.)-long x 24-ft.-wide, 2:1-sloped Class 3 rip-rap embankment with a 15-ft.-wide "toe" located at the base of the embankment, see **Sheets 3 and 4**.
- **Guide Bank** – consists of a 172-ft.-long x 23-ft.-wide x 4.5-ft.-high, 2:1-sloped Class 3 rip-rap embankment that abuts the sound end of the Frontage Embankment and extends to within 3 ft. of the mainstem Quartz Creek stream bank, see **Sheets 3 and 4**.
- **Trench Drain** – consists of a 182-ft.-long x 6-ft.-wide x 6-ft.-deep trench filled with Class 3 rip rap to match original grade, see **Sheets 3 and 4**.

Proximity to Ordinary High Water

The Project's proximity to ordinary high water of Quartz Creek varies. The Frontage Embankment is located approximately 90 ft. from the main channel of Quartz Creek and the Guide Bank will terminate 3 ft. from the bank of Quartz Creek.

Substation Lease Area

The substation is located on a parcel of land leased from the State of Alaska (ADL 225852). A portion of the Guide Bank (68 linear ft. / 0.016 acre) extends beyond the western boundary of CEA's lease area and into the easement for the Transmission Line. The Transmission Line easement is located on land owned by the State of Alaska, **see Sheet 3**.

Construction Methods and Equipment

- **Dewatering** – Dewatering of the work area will likely be needed. If a pump is needed a screened intake will be enclosed and centered within a screened structure to avoid fish entrainment, impingement or injury to fish while pumping water. The screened mesh size will not exceed 1/8-inch and water velocity will not exceed 0.5 ft. per second at the screen surface. Intake screens will be inspected for damage (torn screen, crushed scree, screen separated from intake ends, etc.) before and after each use. Any damage observed will be repaired prior to use. The intake screen will conform to the original design specification while in use.
- **Equipment** – An excavator, loader, and dump truck will be needed to move and place material. There is a potential that a pump may be needed for dewatering activities, as identified above.

Filling, Dredging and Excavation

- Fill type, fill volume, and total Project area:
 - **Class 3 rip rap:** 824 cubic yards,
 - **Filter Rock:** 115 cubic yards,
 - **Geotextile:** 690 square yards
 - **Total Project area:** 0.194 acres
 - **Total impacts to wetlands:** 0.054 acres

Fuel Storage and Vegetation Clearing

- Location and Quantity – All fuel storage will have secondary containment and occur in an upland area located within the lease area for the substation.
- Vegetation removal will occur over a 0.23-acre area, **see Sheet 2**.

Avoidance and Minimization Measures

- Unnecessary stream bank disturbance will be avoided.
- No vehicles or other equipment leaking fuels, oils hydraulic or cooling fluids will be operated during construction.
- All equipment used will be cleaned in accordance with the best management practices reference in Preventing the Spread of Invasive Species. [Unit 2 – Best Management Practices – Controlling Invasive Plants in Alaska \(uaf.edu\)](#)
- Trenches will not be constructed or backfilled in such a manner as to drain Waters of the U.S. (e.g., backfilling with extensive gravel layers, creating a French drain effect). Ditch plugs or other methods will be used to prevent this situation.
- Except for material placed as minor trench over-fill or surcharge necessary to offset subsidence or compaction, all excess materials will be removed to an upland location.

- Any excavated material that may need to be temporarily side cast into wetlands will be underlain with geotextile, or similar material, to allow for removal of the temporary material to the maximum extent practicable.
- Re-vegetation of disturbed areas within the Project site will begin as soon as site conditions allow and in the same growing season as the disturbance, unless climatic conditions warrant additional time. Topsoil (the outermost layer of soil, usually the top 2 – 8 inches) removed from the construction area shall be separated and used for site rehabilitation.
- When backfilling, topsoil will be placed as the top layer to provide a seed bed for regrowth. If topsoil is not available from the Project site, local native soil material obtained from an approved site may be used.
- Plant species used for seeding and planting will be in accordance with the recommendations by the Alaska Plant Material Center <http://www.plants.alaska.gov/>.
- Natural drainage patterns will be maintained using well-established and appropriate methods.

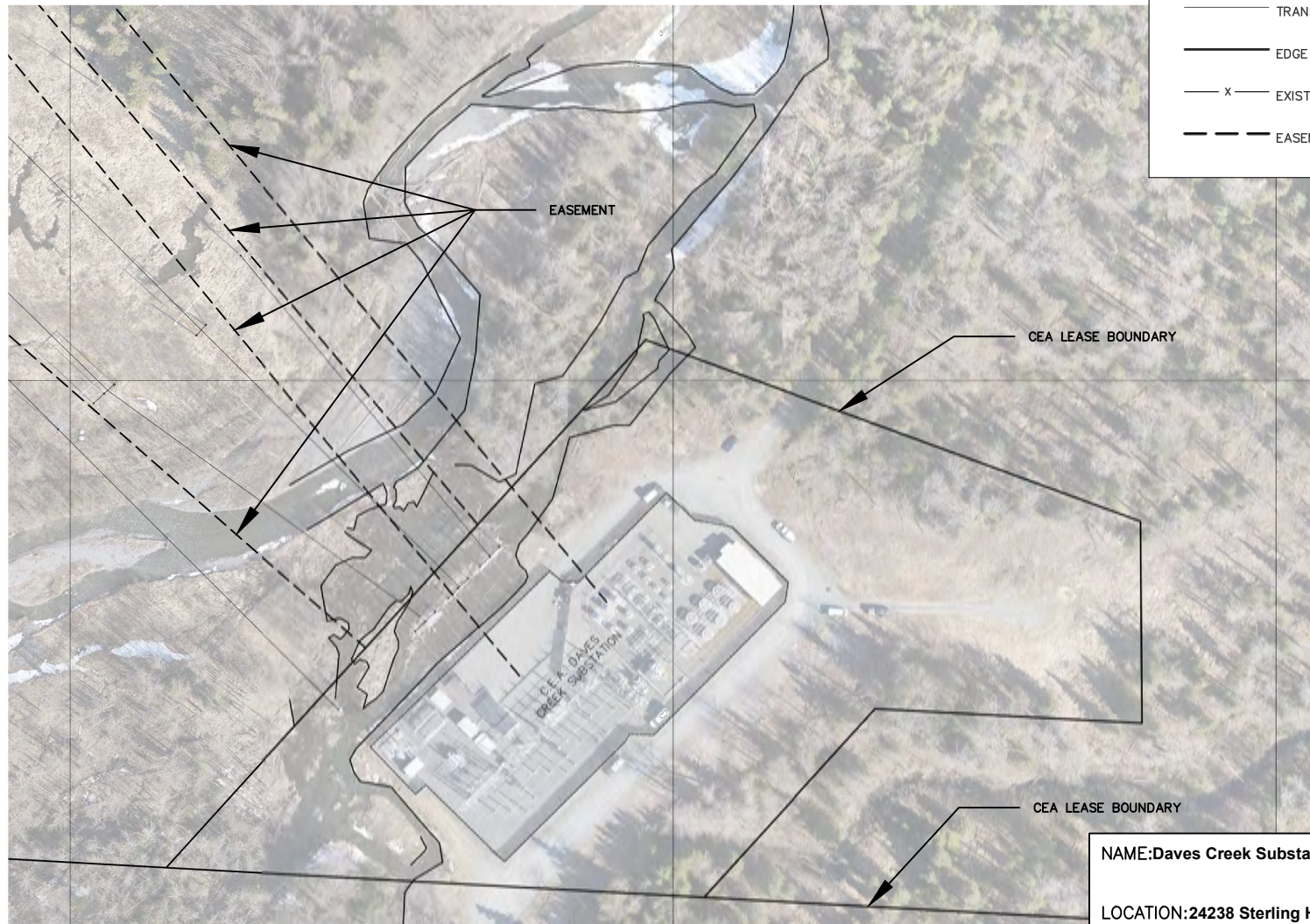
Required Permits

- Division of Parks and Outdoor Recreation – Special Use Permit
- Alaska Department of Fish and Game – Fish Habitat permit
- Kenai Peninsula Borough – Conditional Use Permit
- U.S. Army Corps of Engineers – Section 10/404 Nationwide Permit
- Alaska Department of Environmental Conservation – 401 Discharge Certification

PERMT APPLICATION FIGURES

LEGEND

- RIGHT OF WAY
- TRANSMISSION LINE
- EDGE OF WATER
- x — EXISTING FENCE
- - - EASEMENT



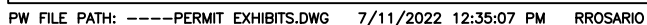
NAME: Daves Creek Substation Flood Mitigation

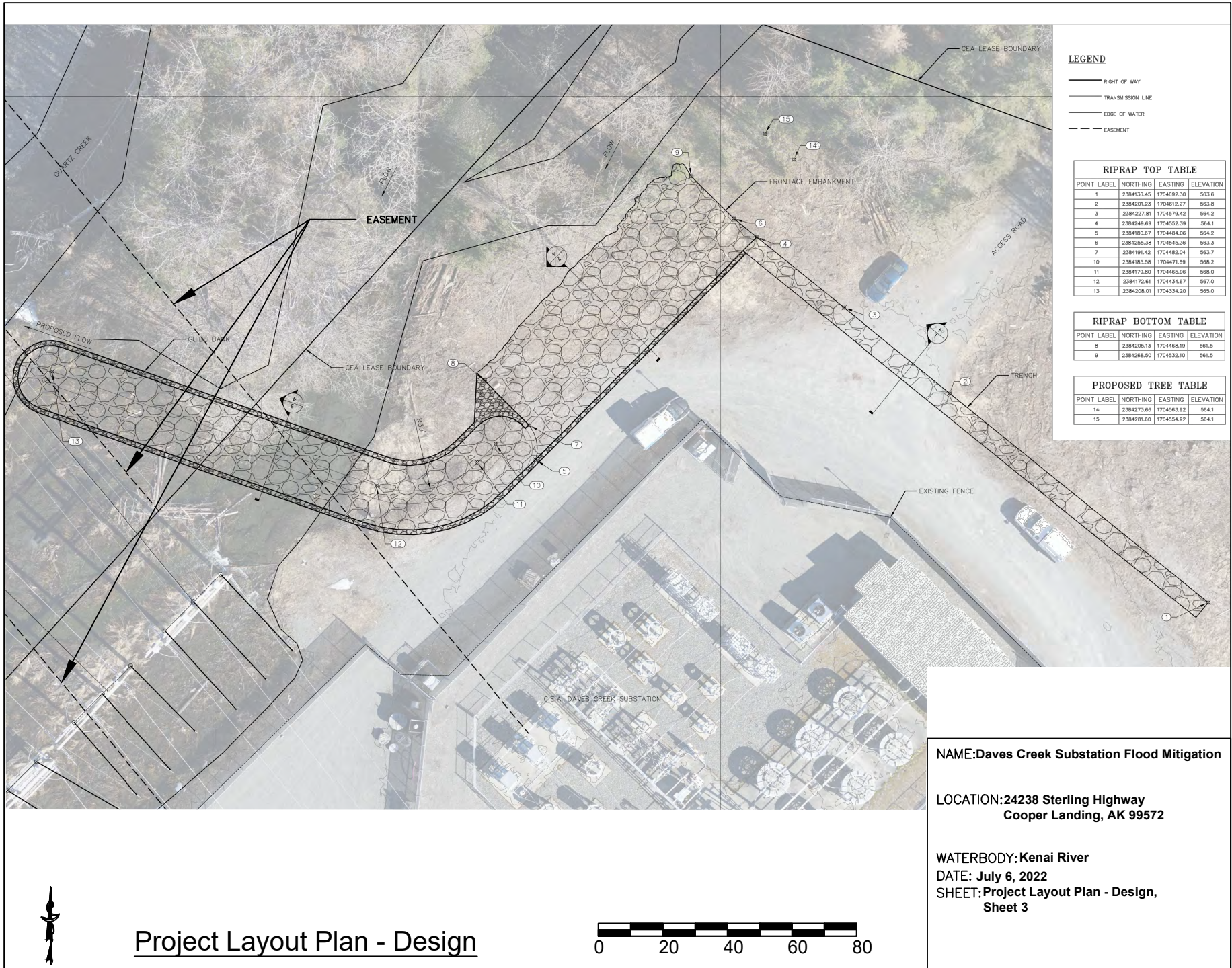
LOCATION: 24238 Sterling Highway
Cooper Landing, AK 99572

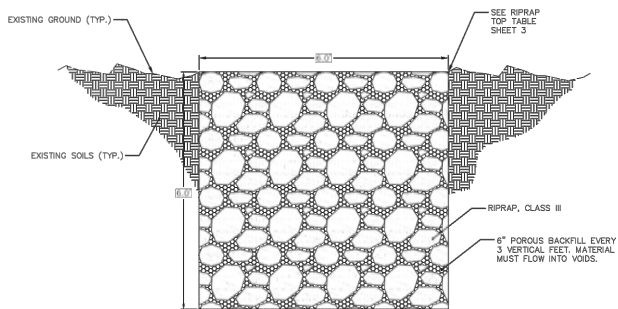
WATERBODY: Kenai River
DATE: July 6, 2022
SHEET: Overall Plan View, Sheet 1

Overall Project Plan View

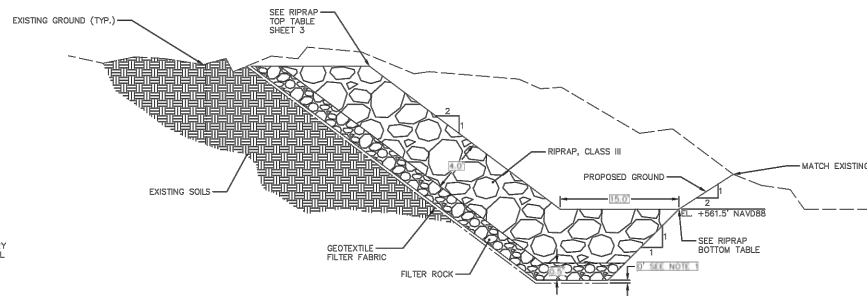
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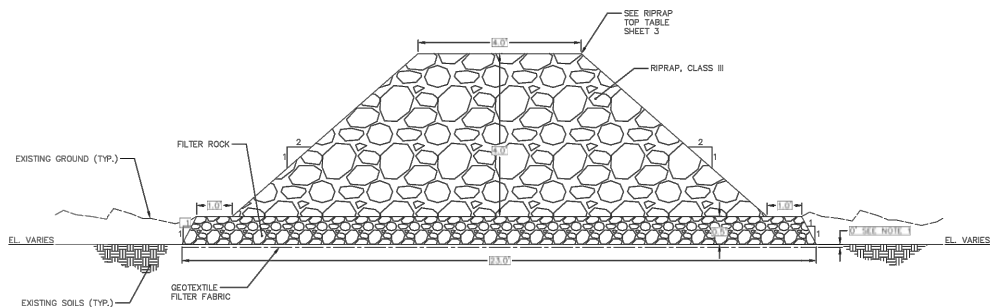




① TRENCH TYPICAL SECTION



② FRONTAGE EMBANKMENT TYPICAL SECTION



③ GUIDE BANK TYPICAL SECTION

- NOTES:
1. SPACE BETWEEN FILTER ROCK AND GEOTEXTILE FILTER FABRIC SHALL BE 1/4\"/>

Typical Sections

NAME:Daves Creek Substation Flood Mitigation

LOCATION:24238 Sterling Highway
Cooper Landing, AK 99572

WATERBODY:Kenai River
DATE: July 6, 2022
SHEET:Typical Sections, Sheet 4

Daves Creek Substation, Flood Mitigation Project

Project Description

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Overview

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- **Trench Drain** – consists of a 180-ft.-long x 6-ft.-wide x 6-ft.-deep trench filled with Class 3 rip rap to match original grade, see **Sheets 3 and 4**.

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- **Equipment** – An excavator, loader, and dump truck will be needed to move and place material. There is a potential that a pump may be needed for dewatering activities, as identified above.

Filling, Dredging and Excavation

- Fill type, fill volume, and total Project area:
 - **Class 3 rip rap:** 906 cubic yards,
 - **Filter Rock:** 126 cubic yards,
 - **Geotextile:** 690 square yards
 - **Total Project area:** 0.214 acres
 - **Total impacts to wetlands:** 0.07 acres
 - **Dredge / excavation volume:** 233 cubic yards

Fuel Storage and Vegetation Clearing

- Location and Quantity – All fuel storage will have secondary containment and occur in an upland area located within the lease area for the substation.
- Vegetation removal will occur over a 0.23-acre area, **see Sheet 2**. A total of eight (8) trees will need to be removed. To compensate for the tree removal, a total of eighteen (18) will be replanted on site, **see Sheet 3**.

Avoidance and Minimization Measures

- To compensate for the tree removal, a total of eighteen (18) will be replanted on site, **see Sheet 3**.
- Unnecessary stream bank disturbance will be avoided.


- No vehicles or other equipment leaking fuels, oils hydraulic or cooling fluids will be operated during construction.
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- Plant species used for seeding and planting will be in accordance with the recommendations by the Alaska Plant Material Center <http://www.plants.alaska.gov/>.
- Natural drainage patterns will be maintained using well-established and appropriate methods.

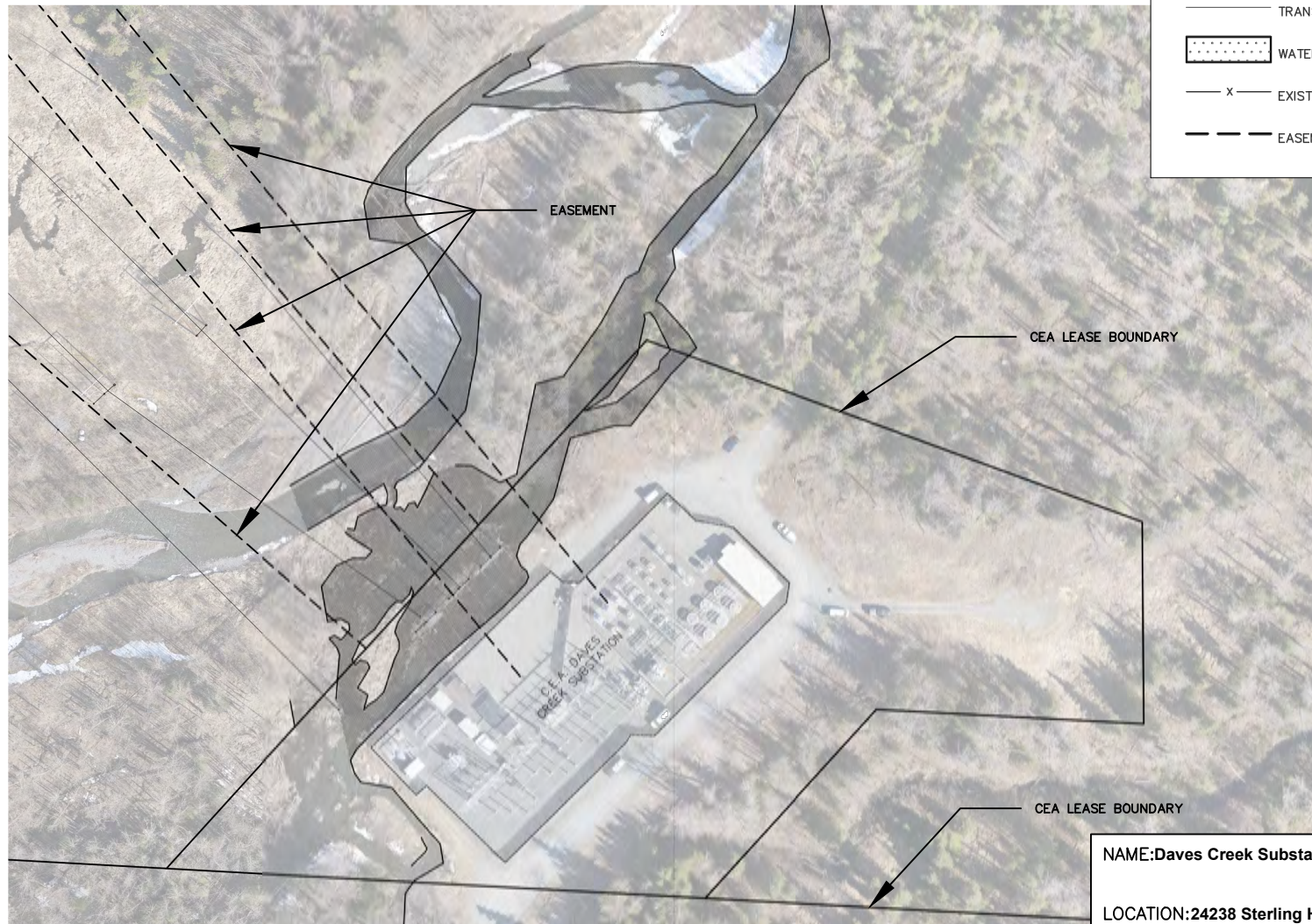
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- U.S. Army Corps of Engineers – Section 10/404 Nationwide Permit
- Alaska Department of Environmental Conservation – 401 Discharge Certification

PERMT APPLICATION FIGURES

LEGEND

- RIGHT OF WAY
- TRANSMISSION LINE
-  WATER
- x — EXISTING FENCE
- - - EASEMENT



NAME: Daves Creek Substation Flood Mitigation

LOCATION: 24238 Sterling Highway
Cooper Landing, AK 99572

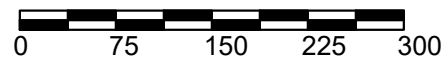
WATERBODY: Kenai River

DATE: July 25, 2022

SHEET: Overall Plan View, Sheet 1



Overall Project Plan View



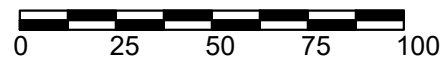


NAME:Daves Creek Substation Flood Mitigation

LOCATION:24238 Sterling Highway
Cooper Landing, AK 99572

WATERBODY:Kenai River
DATE: July 25, 2022
SHEET: Project Layout Plan - Demolition,
Sheet 2

Project Layout Plan - Demolition



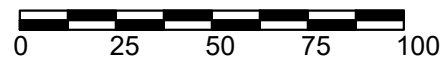


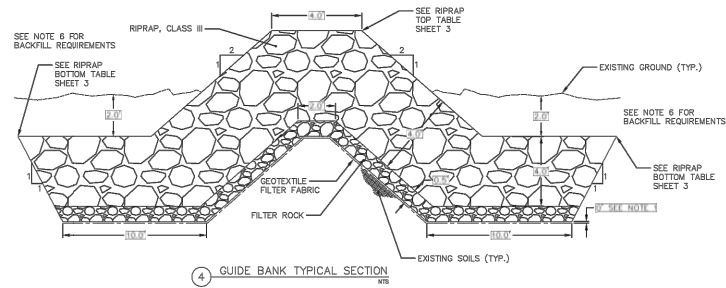
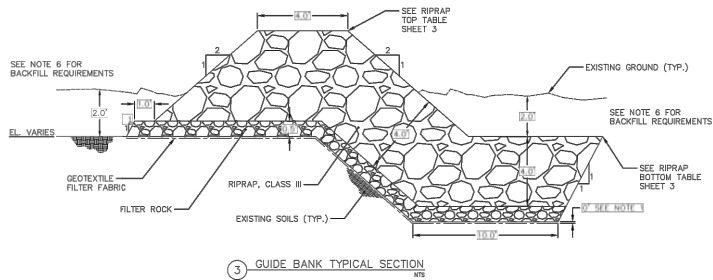
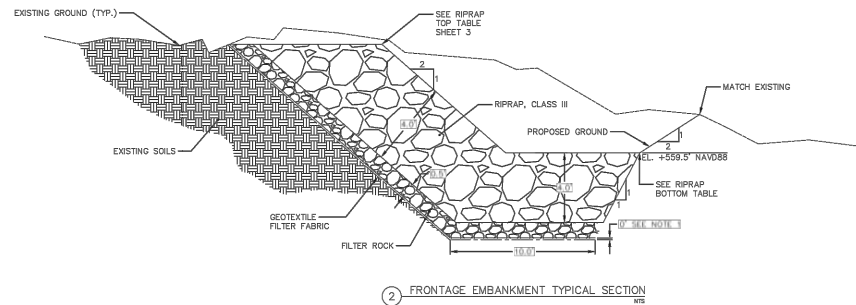
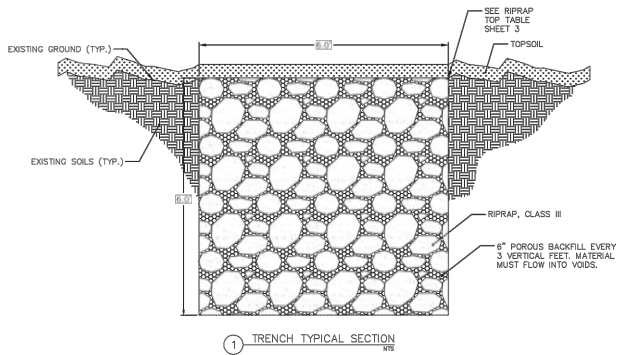
NAME:Daves Creek Substation Flood Mitigation

LOCATION:24238 Sterling Highway
Cooper Landing, AK 99572

WATERBODY:Kenai River
DATE: July 25, 2022
SHEET:Project Layout Plan - Design,
Sheet 3

Project Layout Plan - Design





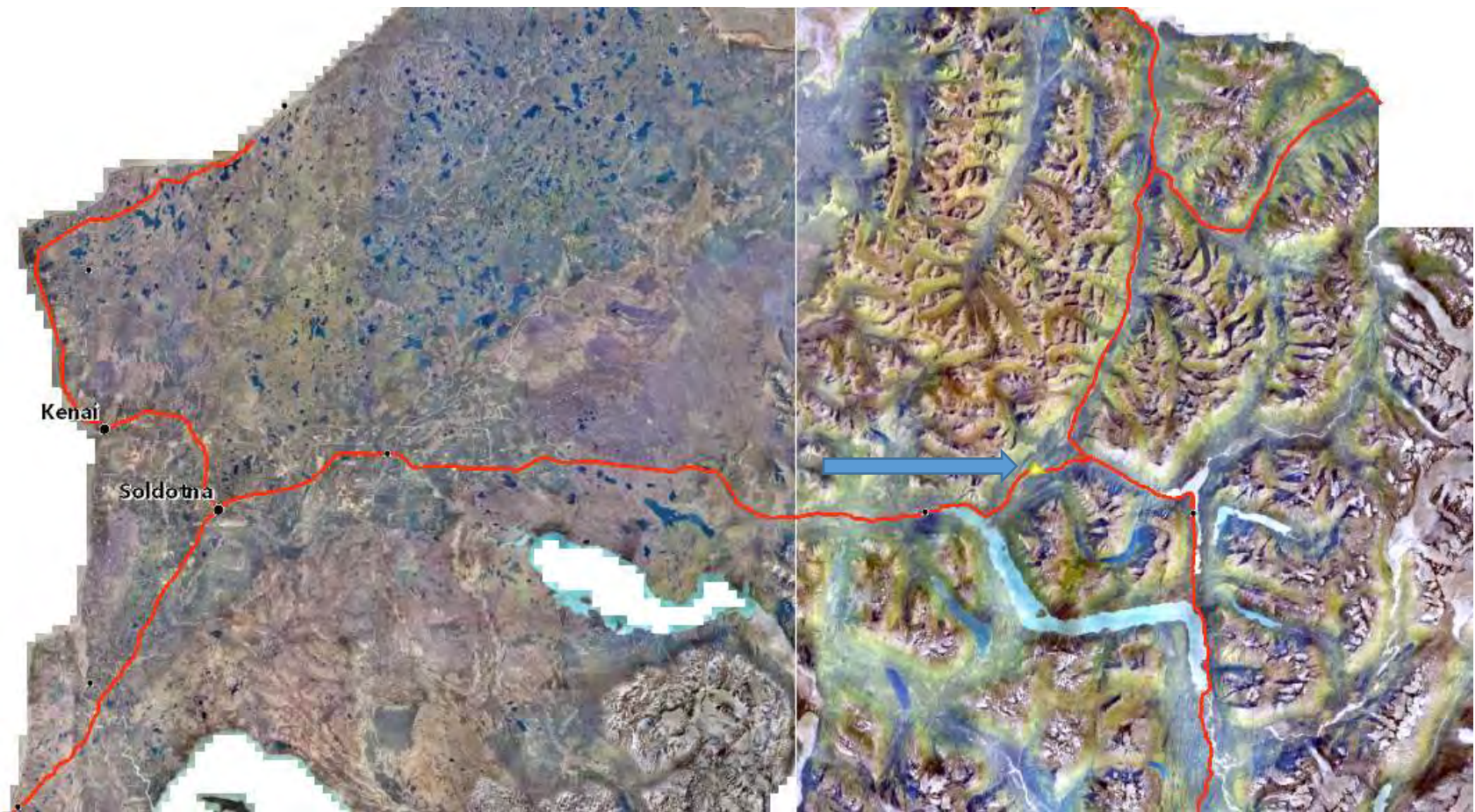
- NOTES:
1. SPACE BETWEEN FILTER ROCK AND GEOTEXTILE FILTER FABRIC SHALL BE 0.5\"/>

Typical Sections

NAME:Daves Creek Substation Flood Mitigation

LOCATION:24238 Sterling Highway
Cooper Landing, AK 99572

WATERBODY:Kenai River
DATE: July 25, 2022
SHEET:Typical Sections, Sheet 4







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

KPB File No.	2022-36
Planning Commission Meeting:	August 8, 2022
Applicant	Chugach Electric
Mailing Address	PO Box 196300
	Anchorage, AK 99519
Legal Description	T 05N R 02W SEC 16 SEWARD MERIDIAN SW 2019007
	ALASKA STATE LAND SURVEY NO 2014-26 TRACT A
Physical Address	24238 STERLING HWY
KPB Parcel Number	119-300-23

Project Description

A Conditional Use Permit is sought pursuant to KPB 21.18 for the construction of rip rap embankments within the 50-foot Habitat Protection District of the Quartz Creek, as established in KPB 21.18.040.

Background Information

Quartz Creek has been experiencing bank overflows and has caused flooding near the Dave's Creek Substation located along the Sterling Highway. About 300 feet upstream from the substation, high flows in Quartz Creek laterally eroded the streambank and a portion of the flow has flooded a remnant channel adjacent to the substation. In June 20022, water levels rose to a point where water was flowing along the north-west edge of the substation's gravel pad and had fully surrounded the transmission line poles. After receiving emergency permits to temporarily place a diversion in the channel in June 2022, Chugach has been working to design a long-term solution to protect the substation and transmission line poles from the waters of Quartz Creek.

To correct the current flooding and prevent future issues, the applicant proposes to create a three sectioned embankment; the Frontage Embankment will consist of a 85 foot long and 24 foot wide 2:1 slope rip rap embankment with a 15 foot wide toe located at the base. The second part, the Guide Bank; will consist of a 140 foot long 23 foot wide 2:1 slope rip rap that abuts the south end of the Frontage Embankment and extends within 3 feet of the mainstream of Quartz Creek. The final portion, the Trench Drain; will consist of a 180 foot long 6 foot wide and 6 foot deep trench filled with rip rap to match the original grade.

Project Details within the 50-foot Habitat Protection District

1. Placement of 906 cubic yards of Class 3 rip rap
2. Placement of 126 cubic yards of filter rock
3. Placement of 690 square yards of geotextile
4. Removal of .23 acres of vegetation, including 8 trees

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 1-4 and Findings 7-8 appear to support this standard.**
2. Granting of the conditional use shall be consistent with the purposes of this chapter, the borough comprehensive plan, other applicable chapters of the borough Code, and other applicable planning documents adopted by the borough; **Findings 1-5, 10-17 appear to support this standard.**
3. The development of the use or structure shall not physically damage the adjoining property; **Finding 9 appears to support this standard.**
4. The proposed use or structure is water-dependent; **Findings 10-11 appear to support this standard.**
5. Applicant's or owner's compliance with other borough permits and ordinance requirements; **Finding 17 appears 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 Transportation and Utility Infrastructure may be approved as a conditional structure/use within the habitat protection district.
3. Pursuant to 21.18.081(D) General Standards, staff finds that the proposed project meets the five general standards.
4. Pursuant to KPB 21.18.020(A), this chapter was established to protect and preserve the stability of anadromous fish through controlling shoreline alterations and disturbances along anadromous waters and to preserve nearshore habitat.
5. Pursuant to KPB 21.18.20(B)(5), one purpose of this chapter was established to separate conflicting land uses.
6. The installation of the rip rap embankments will protect the substation and transmission lines from future flooding and will divert water back into the main channel.
7. Excess materials dredged from the trench will be removed to an upland location.
8. Revegetation of disturbed areas will occur as site conditions allow. Plant species will be in accordance with the Alaska Plant Material Center.
9. Pursuant to KPB 21.06.081(D)(3), the proposed work will occur on the applicant's property and shall not have an adverse effect on adjoining properties.
10. Kenai Peninsula Borough Planning Commission Resolution 2015-35 defines water-dependent as:
"...a use or structure located on, in or adjacent to water areas because the use requires access to the waterbody. The definition is applicable to facilities or activities that must be located at or near the shoreline and within the 50-foot buffer. An activity is considered water dependent if it is dependent on the water as part of the intrinsic nature of its operation. Examples of water dependent facilities may include, but are not limited to, piers, boat ramps, and elevated walkways."
11. While utility services are not a water-dependent use as described in Resolution 2015-35, they are listed as a permissible Conditional Use under KPB 21.18.081 (B) (5).
12. The River Center found the application complete and scheduled a public hearing for August 8, 2022.
13. Agency review was distributed on July 22, 2022. No comments or objections have been received from resource agencies to date.
14. Notice of this project was sent to the Cooper Landing Advisory Planning Commission. The APC recommended approval/denial.

15. Pursuant to KPB 21.11.030, public notice was mailed to all property owners within a radius of 300 feet of the project on July 22, 2022. A total of 1 mailing was sent.
16. Pursuant to KPB 21.11.020, public notice was published in the Peninsula Clarion on July 28, 2022 and August 4, 2022.
17. 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 Quartz Creek
2. The rip rap embankment 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
Draft Resolution 2022-36

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 2022-36.

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 rip rap on a parcel within the 50-foot Habitat Protection District of the Quartz Creek, near Cooper Landing, 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 at T 05N R 02W SEC 16 SEWARD MERIDIAN SW 2019007 ALASKA STATE LAND SURVEY NO 2014-26 TRACT A, Cooper Landing, Alaska.

Petitioner: Chugach Electric Association
PO Box 196300
Anchorage, AK 99519

Public Hearing: The Kenai Peninsula Borough Planning Commission meeting will hold a public hearing on August 8, 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 5, 2022.**

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 2022-36

**A RESOLUTION GRANTING A CONDITIONAL USE PERMIT PURSUANT TO KPB 21.18 FOR THE
CONSTRUCTION OF RIP RAP EMBANKMENT WITHIN THE 50-FOOT HABITAT PROTECTION
DISTRICT OF QUARTZ CREEK.**

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 July 28, 2022 and August 4, 2022 as provided in Section 21.11.020; and

WHEREAS, public testimony was received at the August 8, 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. Placement of 906 cubic yards of Class 3 rip rap
2. Placement of 126 cubic yards of filter rock
3. Placement of 690 square yards of geotextile
4. Removal of .23 acres of vegetation

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 construction of Transportation and Utility Infrastructure may be approved as a conditional structure/use within the habitat protection district.
3. Pursuant to 21.18.081(D) General Standards, staff finds that the proposed project meets the five general standards.

4. Pursuant to KPB 21.18.020(A), this chapter was established to protect and preserve the stability of anadromous fish through controlling shoreline alterations and disturbances along anadromous waters and to preserve nearshore habitat.
5. Pursuant to KPB 21.18.20(B)(5), one purpose of this chapter was established to separate conflicting land uses.
6. The installation of the rip rap embankments will protect the substation and transmission lines from future flooding and will divert water back into the main channel.
7. Excess materials dredged from the trench will be removed to an upland location.
8. Revegetation of disturbed areas will occur as site conditions allow. Plant species will be in accordance with the Alaska Plant Material Center.
9. Pursuant to KPB 21.06.081(D)(3), the proposed work will occur on the applicant's property and shall not have an adverse effect on adjoining properties.
10. Kenai Peninsula Borough Planning Commission Resolution 2015-35 defines water-dependent as:
"...a use or structure located on, in or adjacent to water areas because the use requires access to the waterbody. The definition is applicable to facilities or activities that must be located at or near the shoreline and within the 50-foot buffer. An activity is considered water dependent if it is dependent on the water as part of the intrinsic nature of its operation. Examples of water dependent facilities may include, but are not limited to, piers, boat ramps, and elevated walkways."
11. While utility services are not a water- dependent use as described in Resolution 2015-35, they are listed as a permissible Conditional Use under KPB 21.18.081 (B) (5).
12. The River Center found the application complete and scheduled a public hearing for August 8, 2022.
13. Agency review was distributed on July 22, 2022. No comments or objections have been received from resource agencies to date.
14. Notice of this project was sent to the Cooper Landing Advisory Planning Commission. The APC recommendations have not been received to date.
15. Pursuant to KPB 21.11.030, public notice was mailed to all property owners within a radius of 300 feet of the project on July 22, 2022 A total of 1 mailing were sent.
16. Pursuant to KPB 21.11.020, public notice was published in the Peninsula Clarion on July 28, 2022 and August 4, 2022.
17. 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 Quartz Creek.
2. The rip rap embankment 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 1-4 and Findings 7-8 appear to support this standard.**
2. Granting of the conditional use shall be consistent with the purposes of this chapter, the borough comprehensive plan, other applicable chapters of the borough Code, and other applicable planning documents adopted by the borough; **Findings 1-5, 10-17 appear to support this standard.**
3. The development of the use or structure shall not physically damage the adjoining property; **Finding 9 appears to support this standard.**
4. The proposed use or structure is water-dependent; **Findings 10-11 appear to support this standard.**
5. Applicant's or owner's compliance with other borough permits and ordinance requirements. **Finding 17 appears 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.