

## **E. NEW BUSINESS**

### **5. Conditional Use Permit; PC Resolution 2022-35**

**Petitioner: Paul LaFond**

**Request: Install a fence within the 50' Habitat Protection District of the Kenai River**

**Location: Lot 24, Block 2, Key Stone Estates Sub Part 2, Plat KN 0760050**

**Soldotna Area**

# Multi Agency Permit Application



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

## Applicant Information:

Name: Paul LaFond  
Owner? ☒ Yes ☐ No  
Mailing: 871 Forget me Not Lane  
Homer AK 99603  
Phone: 352 634 2473  
Email: PaulLaFond2@yahoo.com

## Agent Information: (if applicable)

Name: \_\_\_\_\_  
Mailing: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

## Project Location:

KPB Parcel ID: 055-150-4700  
Physical Address: 34635 Keystone Drive  
Soldotna AK 99669  
Waterbody Name: Kenai River  
River Mile: \_\_\_\_\_ Riverbank: ☒ Right  
looking downstream ☐ Left

Subdivision: Keystone Estate Sub.  
Lot: 24 Block: 2 Addn/No.: \_\_\_\_\_  
Directions to site: \_\_\_\_\_

## 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 ☐ Extension ☐ Amendment to RC# \_\_\_\_\_

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:

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

We want to build an 8' high fence on left side of property  
for privacy from neighbor house. we will be about 20' above  
high water line & will be 30' long on 50' Easement & 74' more beyond total 104'  
The 50 FT Easement wood post every 8' & 8' high 1" boards no fill & no  
Fuel storage no Removal we are using dead trees to make posts to put  
up Part time project will take 1 year to complete ONLY power is post  
hole digger

## 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 Boards 0 screws 160 \$ 450  
Paint 300

**Project Questions:**

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

1. Start date: aug 2012 End date: aug. 2013 Estimated Days of Construction: \_\_\_\_\_
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: none 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: \_\_\_\_\_ 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: Post hole digger  
\_\_\_\_\_
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.

Paul LaForte

Applicant Signature (required)

July 1 2022

Date

Agent Signature (if applicable)

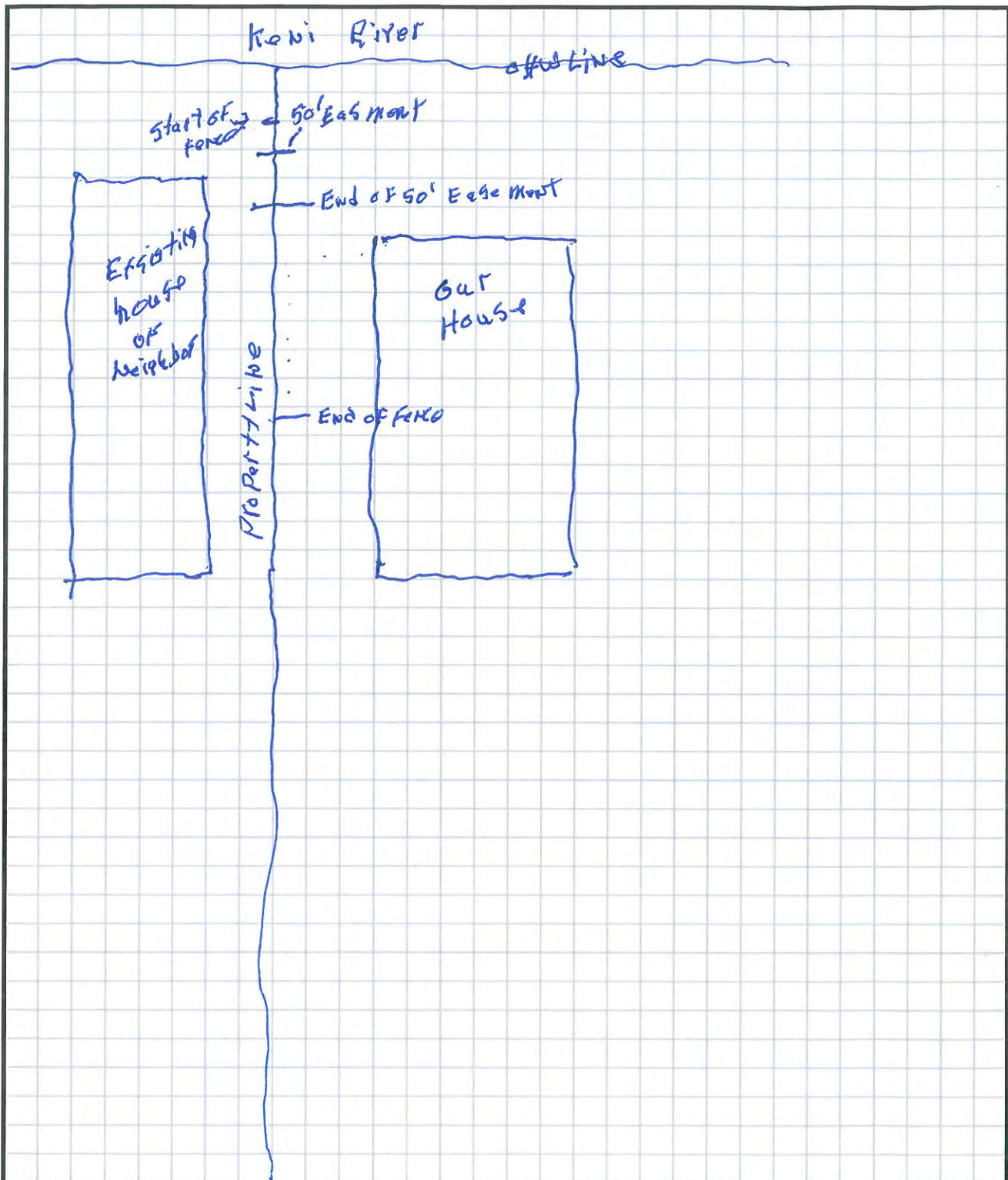
JULY 2022

Date



# Site Plan: Top View

MUST show the OHW line

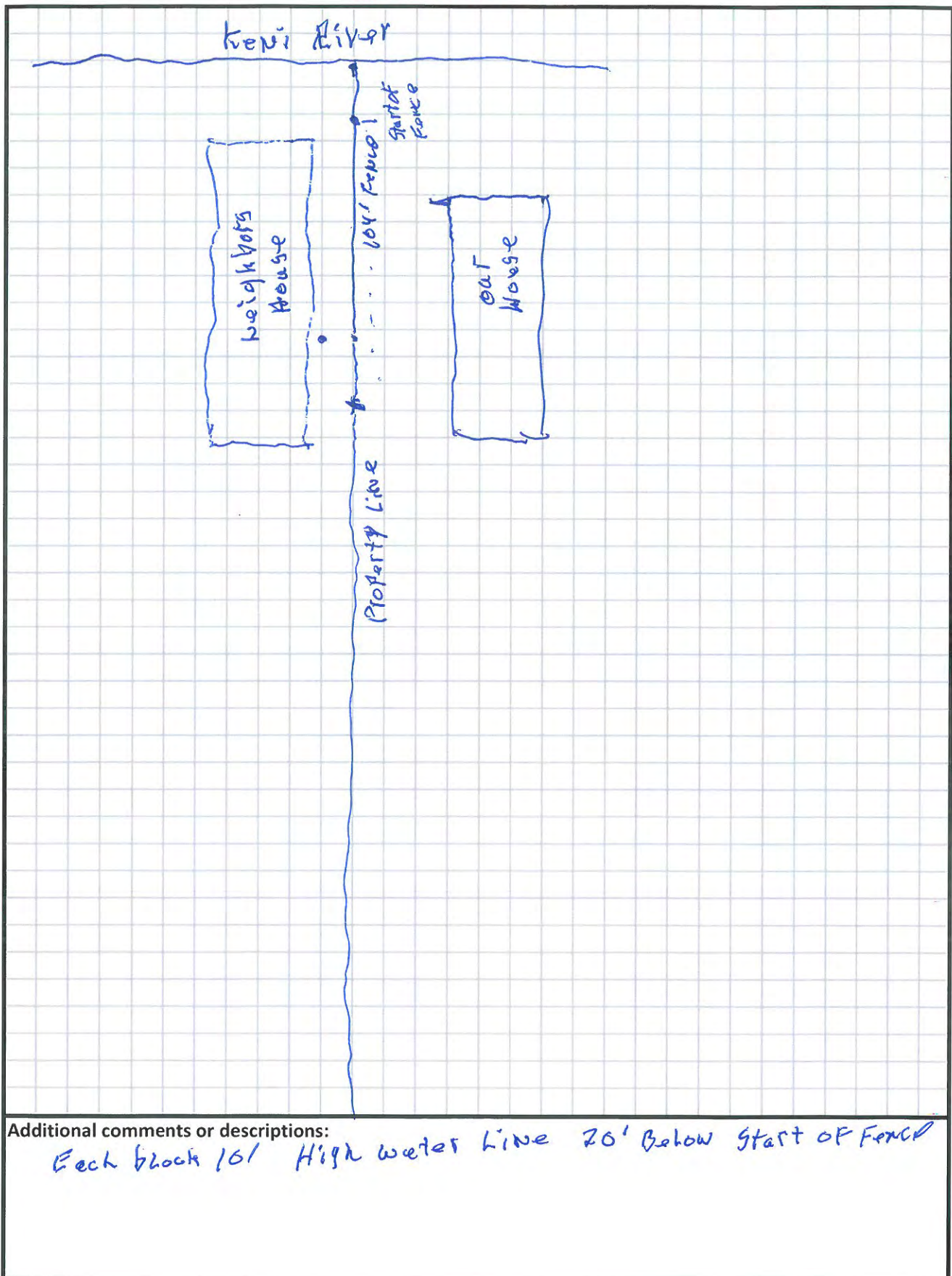


Additional comments or descriptions:

Each block 16'

# Site Plan: Elevation or Side View

MUST show the OHW line





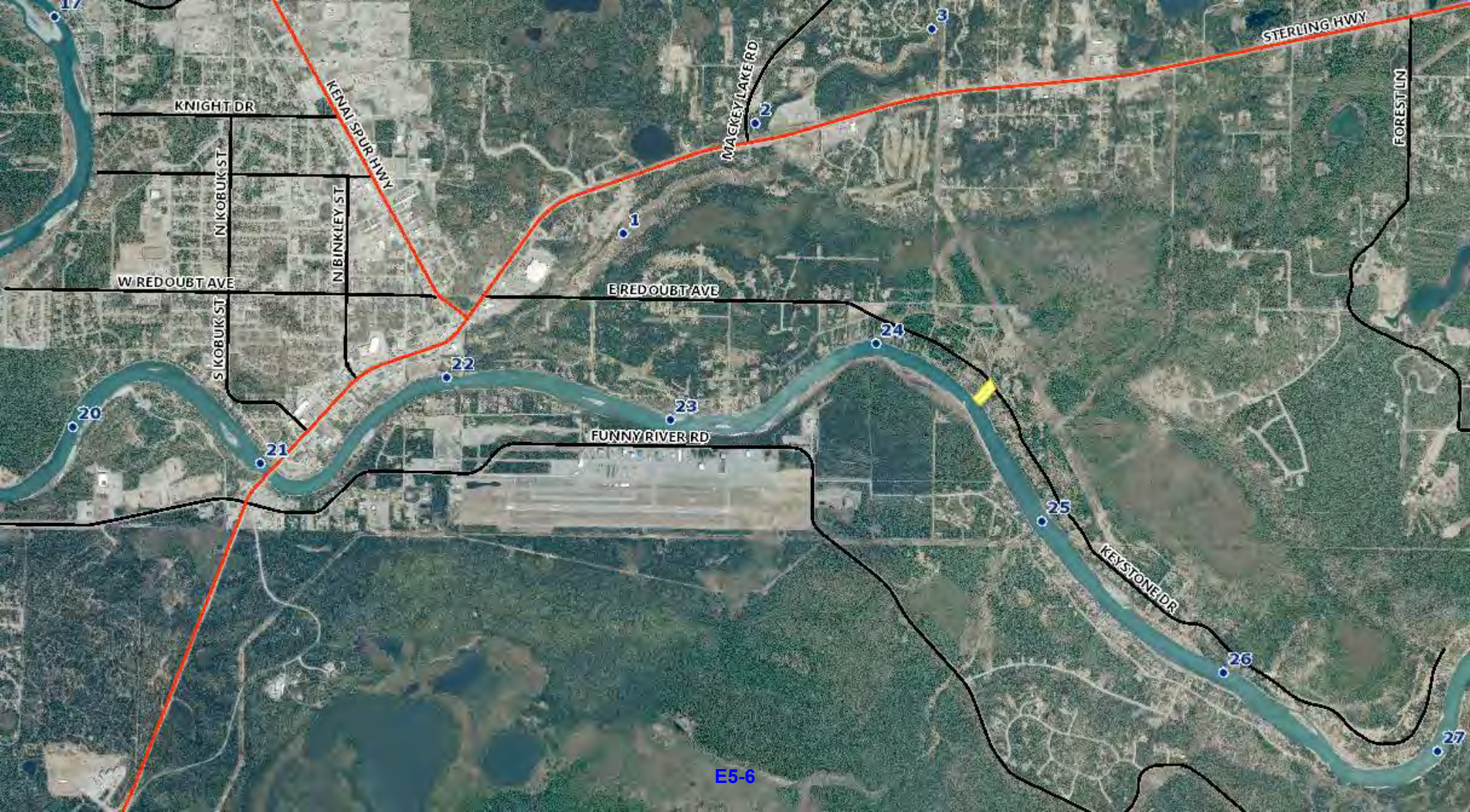


Kenall River

KEYSTONE DR

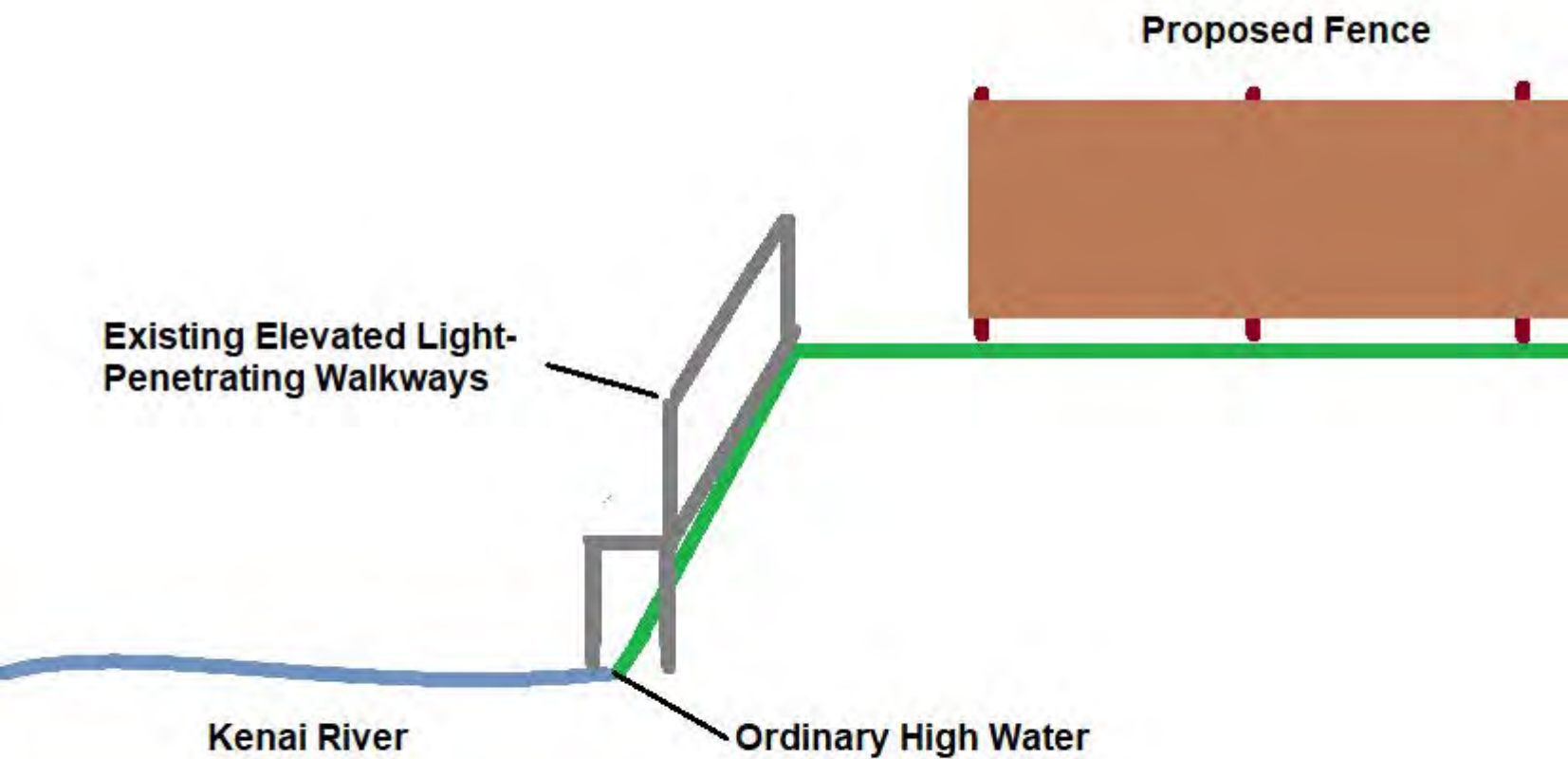
E5-5





E5-6







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

---

<b>KPB File No.</b>	<b>2022-35</b>
<b>Planning Commission Meeting:</b>	<b>August 8, 2022</b>
<b>Applicant</b>	<b>Paul LaFond</b>
<b>Mailing Address</b>	<b>871 Forget Me Not Lane Homer, AK 99603</b>
<b>Legal Description</b>	<b>T 5N R 10W SEC 35 SM KN 0760050 KEYSTONE ESTATES SUB PART 2 LOT 24 BLK 2</b>
<b>Physical Address</b>	<b>34635 KEYSTONE DR</b>
<b>KPB Parcel Number</b>	<b>05820027</b>

**Project Description**

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

**Background Information**

Applicant proposes to install a privacy fence along the upstream side of their parcel, as shown on the attached maps. Fence will be installed approximately five feet back from the edge of the bluff to allow for wildlife passage. Fence will be 8 feet tall and elevated approximately 6 inches off the ground, and mounted to wooden fence posts.

Upon reviewing the floodplain mapping data and performing a site visit, it was determined that the fence would be located outside the floodplain and 15-20 feet above ordinary high water. Because of this, staff finds that the fence will not impede water flows.

**Project Details within the 50-foot Habitat Protection District**

1. Installation of 8-foot tall wooden fence, of which approximately 30 feet will be in the Habitat Protection District.
2. Installation of seven wooden fence posts.
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), construction of fences 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. 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.”*
7. The River Center found the application complete and scheduled a public hearing for August 8, 2022.
8. Agency review was distributed on July 22, 2022. No comments or objections have been received from resource agencies to date.
9. 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 11 mailings were sent.
10. Pursuant to KPB 21.11.020, public notice was published in the Peninsula Clarion on July 28, 2022 and August 4, 2022.
11. Applicant has located and staked the property boundaries to ensure the fence does not encroach on to adjoining properties.
12. 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; **Conditions 1-5 and Finding 4 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 1-6 appear to support this standard.**
3. The development of the use or structure shall not physically damage the adjoining property; **Finding 11 appears to support this standard.**
4. The proposed use or structure is water-dependent; **Findings 1-4, 6 appear to support this standard.**
5. Applicant's or owner's compliance with other borough permits and ordinance requirements; **Finding 12 appears to support this standard.**

## **Attachments**

Multi-Agency Application  
Draft Resolution 2022-35

## **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 2022-35.

**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 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 10W SEC 35 SM KN 0760050 KEYSTONE ESTATES SUB PART 2 LOT 24 BLK 2, Soldotna, Alaska.

**Petitioner:** Paul LaFond  
871 Forget Me Not Lane  
Homer, AK 99603

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

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



**KENAI PENINSULA BOROUGH PLANNING COMMISSION**

**RESOLUTION 2022-35**

**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 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. Installation of 8-foot tall wooden fence, of which approximately 30 feet will be in the Habitat Protection District.
2. Installation of seven wooden fence posts.
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), construction of a fence may be approved as a conditional structure/use within the habitat protection district.
3. Pursuant to 21.18.081(D) General Standards, staff finds that the proposed project meets the five general standards.

4. Pursuant to KPB 21.18.020(A), this chapter was established to protect and preserve the stability of anadromous fish through controlling shoreline alterations and disturbances along anadromous waters and to preserve nearshore habitat.
5. Pursuant to KPB 21.18.20(B)(5), one purpose of this chapter was established to separate conflicting land uses.
6. 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."*
7. The River Center found the application complete and scheduled a public hearing for August 8, 2022.
8. Agency review was distributed on July 22, 2022. No comments or objections have been received from resource agencies to date.
9. 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 11 mailings were sent.
10. Pursuant to KPB 21.11.020, public notice was published in the Peninsula Clarion on July 28, 2022 and August 4, 2022.
11. Applicant has located and staked the property boundaries to ensure the fence does not encroach on adjoining properties.
12. The applicant is currently in compliance with Borough permits and ordinances.

### **Section 3. Permit Conditions**

1. Construction techniques and best management practices shall be utilized to ensure that land disturbing activities do not result in runoff or sedimentation to the Kenai River
2. The fence must be designed and installed to meet KPB floodplain requirements.
3. The permittee shall minimize damage to all vegetation and shall revegetate all disturbed areas with native vegetation.
4. For each tree removed, two seedlings less than 5.5-feet tall of a species native to the region will be planted within the 50-foot HPD.
5. Storage or use of fuel is prohibited within 50-feet of any open water.
6. The River Center shall be notified at least 3 days prior to the start of the project.
7. If changes to the approved project described above are proposed prior to or during its siting, construction, or operation, the permittee is required to notify the River Center to determine if additional approval is required.
8. The permittee shall be held responsible for the actions of the contractors, agents, or others who perform work to accomplish the approved plan.
9. The construction or installation phase of this Conditional Use Permit must be completed within one calendar year from the date of the permit's issuance, or the Conditional Use Permit shall expire unless the Planning Commission finds that more time is necessary to effectuate the purposes of this chapter, in which case the commission may extend the deadline for a maximum of six years from the date of issuance. Prior to its expiration date and upon written request, the Planning Director may grant a Conditional Use Permit extension for 12 months (KPB 21.18.081 (H)).



10. In addition to the penalties provided by KPB 21.18.110, and pursuant to KPB 21.50, the permit may be revoked if the permittee fails to comply with the provisions of this chapter or the terms and conditions of a permit issued under this chapter. The Borough Clerk shall provide at least 15 day's written notice to the permittee of a revocation hearing before the hearing officer (KPB 21.18.082).
11. The permittee shall comply with the terms, conditions and requirements of the Kenai Peninsula Borough Code of Ordinances Chapter 21.18, and any regulations adopted pursuant to this chapter.
12. The permittee is responsible for abiding by all other federal, state, and local laws, regulations, and permitting requirements applicable to the project (KPB 21.18.081 (G)).

**Section 4. Pursuant to 21.18.081(D) General Standards, the following standards shall be met before conditional use approval may be granted:**

1. The use or structure will not cause significant erosion, sedimentation, damage within the habitat protection district, an increase in ground or surface water pollution, and damage to riparian wetlands and riparian ecosystems; **Conditions 1-5 and Finding 4 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 1-6 appear to support this standard.**
3. The development of the use or structure shall not physically damage the adjoining property; **Finding 11 appears to support this standard.**
4. The proposed use or structure is water-dependent; **Findings 1-4, 6 appear to support this standard.**
5. Applicant's or owner's compliance with other borough permits and ordinance requirements. **Finding 12 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.**