

## KENAI PENINSULA BOROUGH PLANNING COMMISSION

### RESOLUTION 2022-05

#### **A RESOLUTION GRANTING A CONDITIONAL USE PERMIT PURSUANT TO KPB 21.18 FOR THE INSTALLATION OF A FISH PASSAGE CULVERT AT MP 4 OF THE KENAI SPUR HIGHWAY WITHIN THE 50-FOOT HABITAT PROTECTION DISTRICT OF UNNAMED STREAM 3 (AWC 244-30-10010-2031).**

- 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 February 2, 2022 and February 9, 2022 as provided in Section 21.11.020; and
- WHEREAS,** public testimony was received at the February 14, 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. Reconstruct the Kenai Spur Highway between Sports Lake Road and Robin Drive to facilitate two travel lanes in either direction with a center two-way left turn lane.
2. Replace the existing 36-inch-diameter culvert with a 108-inch-diameter by 288-foot-long culvert that will be installed approximately 30 feet to the south and embedded at least 42 inches in stream substrate material.
3. From the new outlet, a new 23-foot-long channel will be established to tie back into the stream.
4. The culvert crossing has been designed to meet Tier I fish passage criteria in accordance with the *DOT&PF/ADF&G Memorandum of Agreement for Designing, Permitting, and Construction of Culverts for Fish Passage*.
5. Work in the Habitat Protection District will consist of excavating 129 cubic yards of native material and replacing with 378 cubic yards of fill and riprap above Ordinary High Water.
6. An additional 876 cubic yards of riprap will be placed inside the culvert, and riprap voids will be filled with a mixture of sand, gravel, and cobble.

7. Impacts to wetlands within and adjacent to the Habitat Protection District includes: vegetation clearing; excavation of unsuitable native material; and the permanent placement of 15,522 cubic yards of material to widen the roadway and realign the pedestrian pathway.
8. Native vegetation will be salvaged to the maximum extent possible for use in revegetating the banks of the newly established channel. Any remaining disturbed areas will be covered in clean fill, topsoil and seeded to specifications found in the Department of Natural Resources' *A Revegetation Manual for Alaska*.

## **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), Transportation and utility infrastructure may be approved as a conditional structure/use within the habitat protection district.
3. The purpose of the proposed project is to extend the service life of the facility, enhance transportation capacity, and enhance overall safety of the Kenai Spur Highway, supported by KPB 21.18.010(G).
4. The culvert crossing has been designed to meet Tier I fish passage criteria in accordance with the *DOT&PF/ADF&G Memorandum of Agreement for Designing, Permitting, and Construction of Culverts for Fish Passage*, which will lead to an improvement of fish passage and fish habitat at the site, supported by KPB 21.18.020(E).
5. Pursuant to 21.18.081(D) General Standards, staff finds that the proposed project meets the five general standards.
6. 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.
7. Pursuant to KPB 21.18.20(B)(5), one purpose of this chapter was established to separate conflicting land uses.
8. Pursuant to KPB 21.06.081(D)(3), the proposed work will occur within the ADOT right-of-way and shall not have an adverse effect on adjoining properties.
9. Pursuant to KPB 21.18.081(D)(4), the proposed use or structure is water-dependent. 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 February 14, 2022.
11. Agency review was distributed on January 15, 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 January 24, 2022. A total of 15 mailings were sent.
13. Pursuant to KPB 21.11.020, public notice was published in the Peninsula Clarion on February 2, 2022 and February 9, 2022.
14. 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. A Storm Water Pollution Prevention Plan (SWPPP) has been developed and Best Management Practices will be implemented to minimize erosion and sedimentation of adjacent water bodies during construction.
3. Temporary stream diversions will be constructed using the method most practicable, subject to approval by ADOT&PF and resource agencies.
4. Temporary erosion and sediment control measures such as fiber rolls and temporary seeding will be used as necessary to stabilize disturbed soils until final stabilization is achieved.
5. Any temporary fill placed to facilitate installation of culverts, including stream diversions, would be removed upon project completion and revegetated.
6. All bank cuts, slopes, fills, or other exposed earthworks attributable to this project shall be stabilized to prevent erosion, both during and after construction.
7. Construction techniques and best management practices shall be utilized to ensure that land disturbing activities do not result in runoff or sedimentation to Unnamed Stream 3 (AWC 244-30-10010-2031).
8. The permittee shall minimize damage to all vegetation and shall revegetate all disturbed areas with native vegetation.
9. 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.
10. Storage or use of fuel is prohibited within 50-feet of any open water.
11. The River Center shall be notified at least 3 days prior to the start of the project.
12. 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.
13. The permittee shall be held responsible for the actions of the contractors, agents, or others who perform work to accomplish the approved plan.
14. Applicant requests that the permit be valid through October 31, 2023. 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)).
15. 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).
16. 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.
17. 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; **Findings 4, 6 and Conditions 1 - 9 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, 10 - 14 appear to support this standard.**
3. The development of the use or structure shall not physically damage the adjoining property; **Finding 8 appears to support this standard.**
4. The proposed use or structure is water-dependent; **Findings 1 - 3, 6, 9 appear to support this standard.**
5. Applicant's or owner's compliance with other borough permits and ordinance requirements. **Finding 14 appears to support this standard.**

THIS CONDITIONAL USE PERMIT EFFECTIVE ON 14 DAY OF February, 2022.

  
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Robert Ruffner, Vice Chairperson  
Planning Commission

ATTEST:

  
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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.**