

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 BANK STABILIZATION PROJECT 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 May 11, 2022 and May 19, 2022 as provided in Section 21.11.020; and
- WHEREAS,** public testimony was received at the May 23, 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. Taper the bluff back, decreasing the angle from 45 degrees to 22 degrees.
2. Place approximately 4" of topsoil and plant natural vegetation along the new slope.
3. Toe-in three and four-foot-diameter boulders at the High-High Tide mark.
4. Backfill with 6-12-inch diameter rock and gravel, layered in geotextile fabrics.

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(A), the proposed components may be approved as a conditional structure or use within the habitat protection district.
3. The KPB Planning Commission granted similar bank stabilization techniques on a nearby property through Resolution 2020-08.
4. This property is the only undeveloped land in this area of the river, and is bordered by impervious surfaces upstream and downstream, which have contributed to the erosion of this parcel.

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 21.18.071(A)(4) Bank protection measures, this project's intent is to preserve the bank and stabilize it against future erosion. Placing boulders at the toe of the bank will mitigate further erosion to the bluff, and allow the newly tapered bluff to be revegetated.
9. Pursuant to KPB 21.06.081(D)(3), the proposed structure shall not physically damage adjoining properties. The applicant was granted permission from both adjacent property owners, and will extend the revetment onto those properties in order to mitigate any damage from reflective wave energy and reduce any chance of back eddying.
10. Pursuant to KPB 21.18.020(D), one of the purposes of Chapter 21.18 is to provide a guide for growth and development along anadromous waters in accordance with Kenai Peninsula Comprehensive Plan and through protecting and enhancing real property values.
11. 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."*
12. On April 13, 2022, the River Center, the Alaska Department of Fish and Game, US Army Corps of Engineers, and US Fish and Wildlife staff met with the applicant to perform a site visit.
13. The River Center found the application complete and scheduled a public hearing for May 23, 2022.
14. Agency review was distributed on May 6, 2022. No comments or objections have been received from resource agencies.
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 May 9, 2022. A total of 9 mailings were sent. No comments or objections have been received.
16. Pursuant to KPB 21.11.020, public notice was published in the Peninsula Clarion on May 11, 2022 and May 19, 2022.
17. The applicant is currently in compliance with Borough permits and ordinances.

Section 3. Permit Conditions

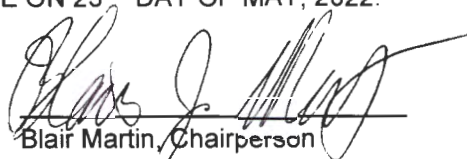
1. Construction techniques and best management practices shall be utilized to ensure that land disturbing activities do not result in runoff or sedimentation to the Kenai River.
2. The permittee shall minimize damage to all vegetation and shall revegetate all disturbed areas with native vegetation.
3. For each tree removed, two seedlings less than 5.5-feet tall of a species native to the region will be planted within the 50-foot HPD.
4. Storage or use of fuel is prohibited within 50-feet of any open water.
5. The River Center shall be notified at least 3 days prior to the start of the project.

6. If changes to the approved project described above are proposed prior to or during its siting, construction, or operation, the permittee is required to notify the River Center to determine if additional approval is required.
7. The permittee shall be held responsible for the actions of the contractors, agents, or others who perform work to accomplish the approved plan.
8. The construction or installation phase of this Conditional Use Permit must be completed within one calendar year from the date of the permit's issuance, or the Conditional Use Permit shall expire unless the Planning Commission finds that more time is necessary to effectuate the purposes of this chapter, in which case the commission may extend the deadline for a maximum of six years from the date of issuance. Prior to its expiration date and upon written request, the Planning Director may grant a Conditional Use Permit extension for 12 months (KPB 21.18.081(H)).
9. In addition to the penalties provided by KPB 21.18.110, and pursuant to KPB 21.50, the permit may be revoked if the permittee fails to comply with the provisions of this chapter or the terms and conditions of a permit issued under this chapter. The Borough Clerk shall provide at least 15 day's written notice to the permittee of a revocation hearing before the hearing officer (KPB 21.18.082).
10. The permittee shall comply with the terms, conditions and requirements of the Kenai Peninsula Borough Code of Ordinances Chapter 21.18, and any regulations adopted pursuant to this chapter.
11. The permittee is responsible for abiding by all other federal, state, and local laws, regulations, and permitting requirements applicable to the project (KPB 21.18.081 (G)). The Alaska Department of Fish and Game issued a Fish Habitat Permit on May 10, 2022. Applicant is also working to obtain a permit from the US Army Corps of Engineers.

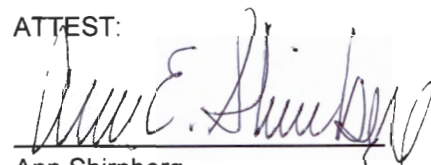
Section 4. Pursuant to 21.18.081(D) General Standards, the following standards shall be met before conditional use approval may be granted:

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 3, 4, 8, 9 and Conditions 1-3 appear to support this standard.**
2. Granting of the conditional use shall be consistent with the purposes of this chapter, the borough comprehensive plan, other applicable chapters of the borough Code, and other applicable planning documents adopted by the borough; **Findings 1, 2, 5-11, and Condition 10 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 4, 8, 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 23RD DAY OF MAY, 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.