

## **E. NEW BUSINESS**

### **3. Conditional Use Permit; PC Resolution 2023-28**

**Petitioner: Wilson**

**Request: To construct a cabin in the 50' HPD of the Kenai River**

**Location: 45646 Spruce Avenue West / PIN: 05749306**

**Soldotna Area**

# Multi Agency Permit Application



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

## Applicant Information:

Name: Trevor Wilson  
Owner? ☒ Yes ☐ No  
Mailing: 1406 276<sup>th</sup> ST NW  
STANWOOD WA 98292  
Phone: 360 661-3828  
Email: CWilsonconcrete@AOL.com

## Agent Information: (if applicable)

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

## Project Location: PIN# 05748938

KPB Parcel ID: \_\_\_\_\_ Subdivision: Poachers Cove  
Physical Address: 45646 SPRUCE AVEW Lot: 4 Block: \_\_\_\_\_ Addn/No.: \_\_\_\_\_  
Lot 4 Poachers Cove, Soldotna Directions to site: \_\_\_\_\_  
Waterbody Name: Kenai  
River Mile: \_\_\_\_\_ Riverbank: ☒ Right ☐ Left  
looking downstream

## 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 ☐ 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:

- |                                     |                                  |                                      |
|-------------------------------------|----------------------------------|--------------------------------------|
| ▪ 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                         |

Remove 640 # Cabin + Rebuild 744 # Cabin  
Site Plan + Drawings Attached

## 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)	\$ <u>40,000</u>
Bank or Habitat Restoration & Protection	\$ _____
Other Activities	\$ _____

**Project Questions:**

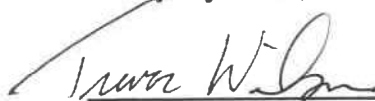
**Note:** Use Ordinary High Water (OHW) for non-tidal waters, and Mean High Tide (MHT) for tidal waters.

1. Start date: 5/15/24 End date: 9/15/25 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: \_\_\_\_\_ 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: \_\_\_\_\_  
\_\_\_\_\_
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.



Applicant Signature (required)

8/15/23

Date

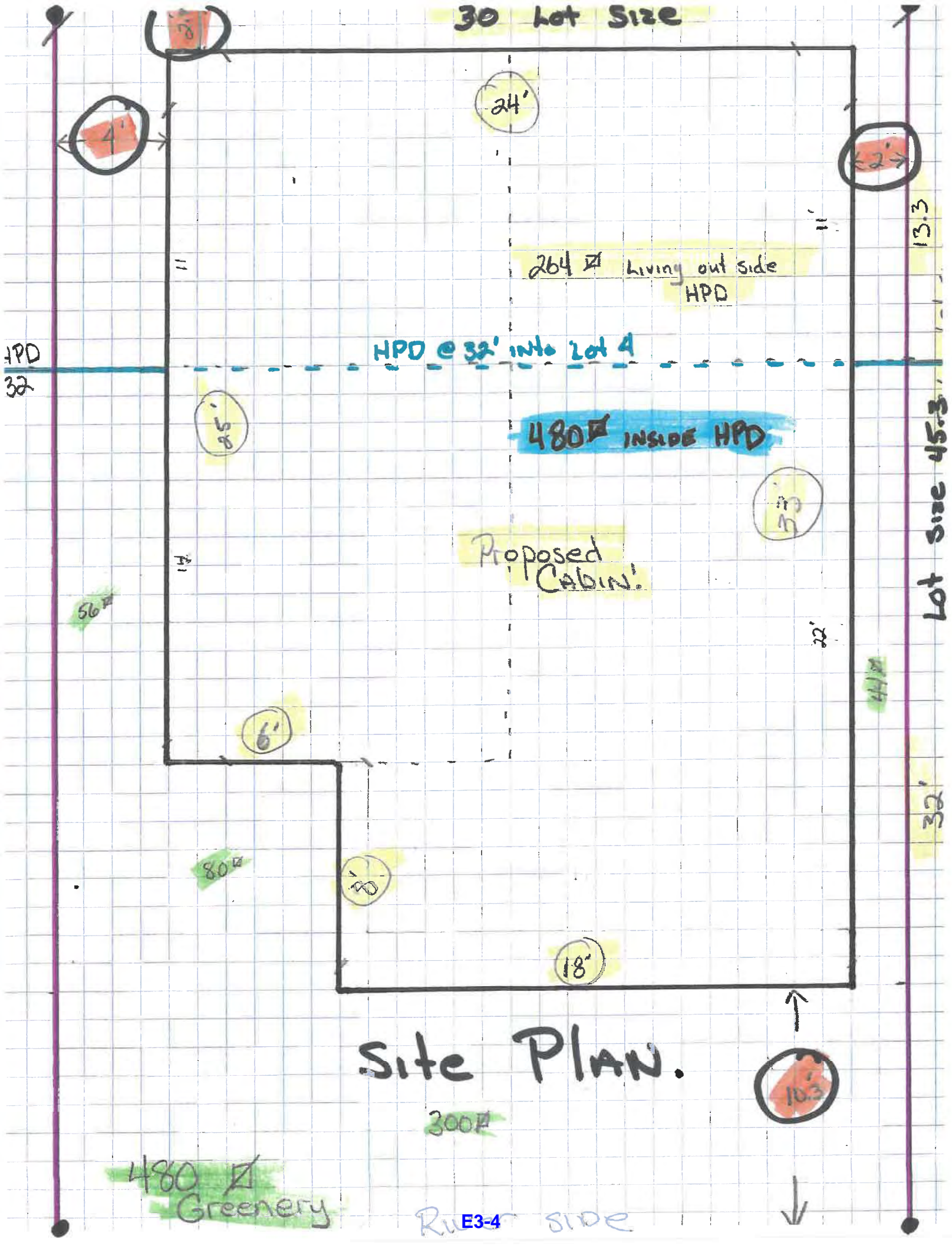
\_\_\_\_\_  
Agent Signature (if applicable)

\_\_\_\_\_  
Date





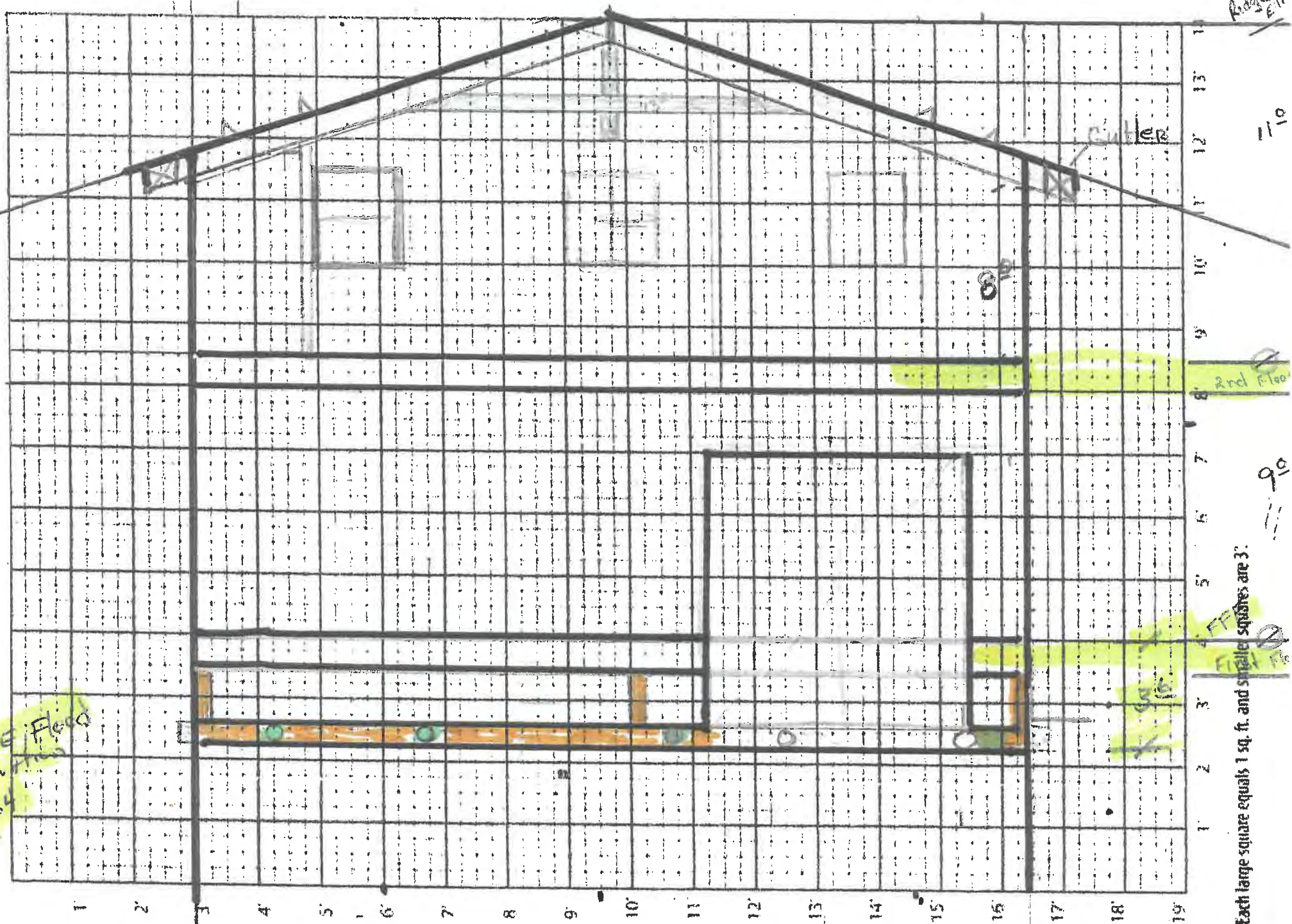
30 Lot Size



Site Plan.



SIDE Floor  
Elevation  
32.4

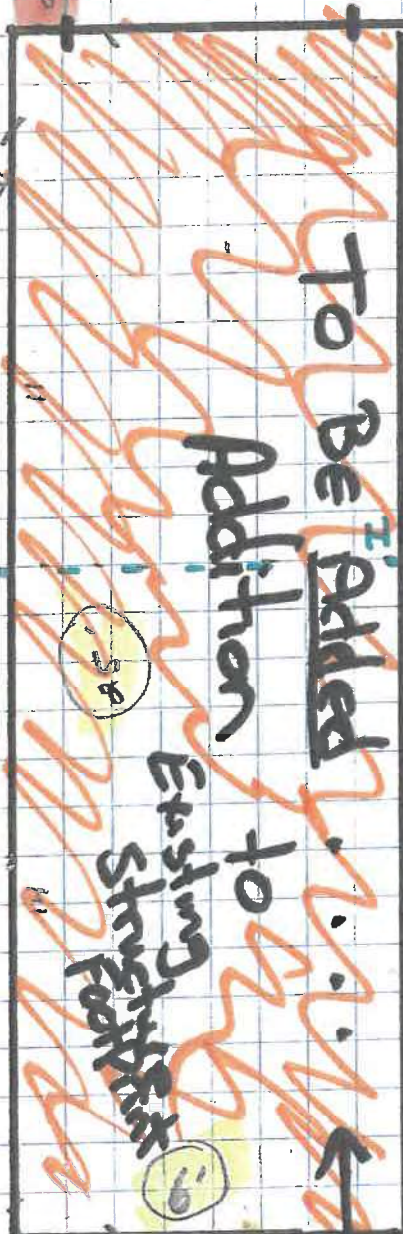




30' lot size

HPD  
32

Porchers Cove lot 4



24'

264' Living out side HPD

HPD @ 32' into lot 4

480' INSIDE HPD

Remodel  
Existing Cabin Footprint.

Finish Floor Elevation

32.6

2' Above Flood Plane

80'

8'

16'

Remove  
8x16  
Existing

10'

480' Greenery



Ponchar's Cove lot 4

30' Lot Size

Lower Floor:

264 sq Living out side HPD

HPD @ 32' into lot 4

480 sq INSIDE HPD

Garage  
Non Parking  
Living Storage  
Space

Proposed  
Cabin Remodel

Base  
F.F. Elev  
= B.F.E.  
32.0

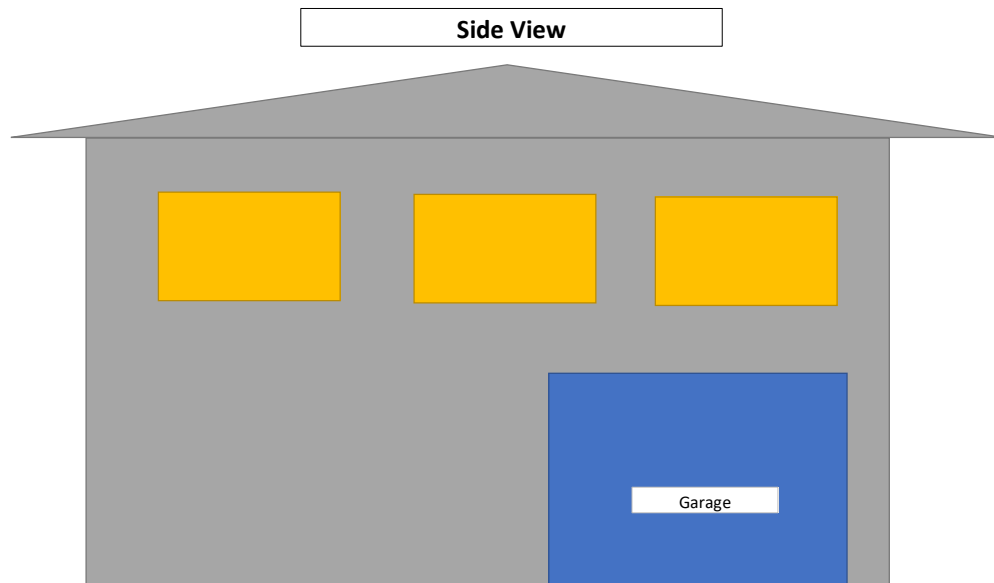
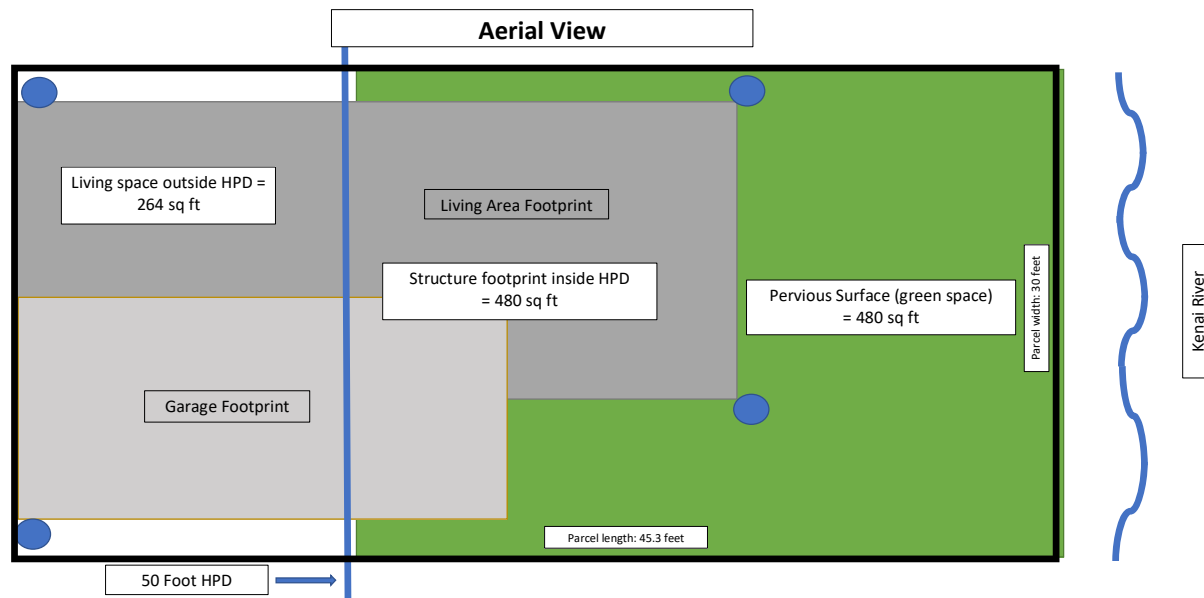
GRAVEL  
DRIVE  
to be  
REMOVED  
800

12' x 12' Area  
Brick Pavers  
to be Removed

All Greenery Areas  
will be left Graded w/ natural  
Soils from under the 10  
3000 Gravel + Paver Areas

No Fill in or Out!









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

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<b>KPB File No.</b>	<b>2023-38</b>
<b>Planning Commission Meeting:</b>	<b>September 25, 2023</b>
<b>Applicant</b>	<b>Trevor Wilson</b>
<b>Mailing Address</b>	<b>1406 276<sup>th</sup> St NW</b> <b>Stanwood, WA 98292</b>
<b>Legal Description</b>	<b>T 5N R 10W SEC 19 SM KN 0870069 POACHER'S COVE PLANNED UNIT DEVELOPMENT AMENDED LOT 4</b>
<b>Physical Address</b>	<b>45646 SPRUCE AVE W</b>
<b>KPB Parcel Number</b>	<b>05748938</b>

**Project Description**

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

**Background Information**

The current structure was built in 1997 and is essentially an RV trailer with a pole barn structure surrounding it. The remaining ground on the parcel is either gravel or brick. Applicant would like to remove existing structure and rebuild, partially on the same footprint but it would also come into compliance with current KPB Habitat and Floodplain standards. The new proposed structure will have a smaller footprint, footprint will be reduced within the HPD to 480 square feet down from the current 780 square feet. Because the structure will not be in the exact same footprint and would have a second story, this will not be allowable under a Prior Existing Structures permit but meets the general standards for a Conditional Use Permit. The applicant will remove gravel and brick from the existing ground and will create 480 square feet of green space within the HPD.

**Project Details within the 50-foot Habitat Protection District (HPD)**

1. Removal of existing trailer and surrounding enclosure.
2. Shrinking the building footprint inside the HPD from 780 square feet to 480 square feet.
3. Removing approximately 300 square feet of gravel and 144 square feet of bricks from the HPD.
4. Increasing the pervious (green space) in the HPD from approximately 36 square feet to 480 square feet.
5. Construction of a new residential building, with a second story of living space on top, and attached garage.
6. Structure will be built to KPB Floodplain Management standards, elevated above the Flood Protection Elevation, with sufficient flood vents for any enclosed spaces below.
7. Rain barrels will be placed at the corners of the building to collect and filter runoff water.
8. Place five cubic yards of topsoil 2-4 inches deep, allowing grass and shrub plantings to establish root systems.

### **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)(10), construction of principal structure 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 portions of the parcel covered by impervious surfaces will be decreased by the new structure.
7. The structure will become compliant with KPB Floodplain requirements.
8. 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.
9. 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 September 25, 2023.
11. Agency review was distributed on September 15, 2023. 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 September 11, 2023. A total of 56 mailings were sent.
13. Pursuant to KPB 21.11.020, public notice was published in the Peninsula Clarion on September 14, 2023 and September 20, 2023.
14. 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 structure 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;
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.

### **Attachments**

Multi-Agency Application  
Draft Resolution 2023-38

### **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.

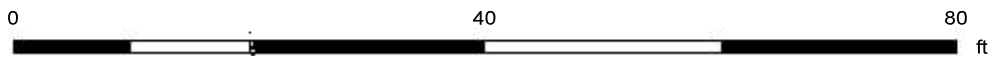
Staff recommends the Planning Commission grant a Conditional Use Permit for the proposed project details subject to adopted conditions as set forth in 2023-38.

**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**



Project Overview and Vicinity Map



**Poacher's Cove Cabin**



**Project Area**

cabin re-build

**Vicinity**



Map created by Aldridge, Morgan

The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.



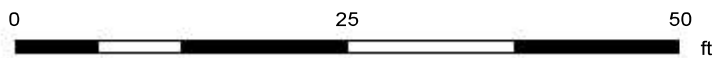


 **Project Area**

Tax Parcels



Map created by Aldridge, Morga  
Thursday, August 31, 2023



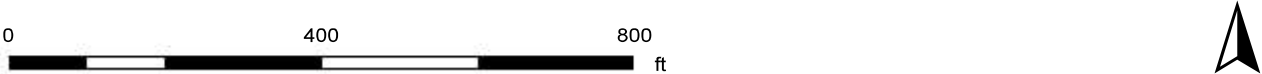


 **Project Area**

River Miles  


Tax Parcels  


Map created by Aldridge, Morga  
Thursday, August 31, 2023





# 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*

Peter A. Micciche  
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 construct a cabin in Poacher's Cove 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)(10) Principal Structures and KPB 21.18.091 Mitigation measures, projects within the 50-foot Habitat Protection District must be approved by the Planning Commission under a Conditional Use Permit (CUP). This project is located at 45646 Spruce Ave W, in Soldotna, Alaska.

**Petitioner:** Trevor Wilson  
1406 276<sup>th</sup> St N W  
Stanwood, WA 98292

**Public Hearing:** The Kenai Peninsula Borough Planning Commission meeting will hold a public hearing on September 25, 2023 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, September 22, 2023.**

**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.





 **Project Area**

River Miles

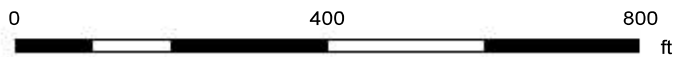


Tax Parcels



Map created by Aldridge, Morga

Thursday, August 31, 2023



**KENAI PENINSULA BOROUGH PLANNING COMMISSION**

**RESOLUTION 2023-28**

**A RESOLUTION GRANTING A CONDITIONAL USE PERMIT PURSUANT TO KPB 21.18 FOR THE  
CONSTRUCTION OF A RESIDENTIAL STRUCTURE 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 September 14, 2023 and September 14, 2023 as provided in Section 21.11.020; and
- WHEREAS,** public testimony was received at the September 25, 2023 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. Removal of existing trailer and surrounding enclosure.
2. Shrinking the building footprint inside the HPD from 780 square feet to 480 square feet.
3. Removing approximately 300 square feet of gravel and 144 square feet of bricks from the HPD.
4. Increasing the pervious (green space) in the HPD from approximately 36 square feet to 480 square feet.
5. Construction of a new residential building, with a second story of living space on top, and attached garage.
6. Structure will be built to KPB Floodplain Management standards, elevated above the Flood Protection Elevation, with sufficient flood vents for any enclosed spaces below.
7. Rain barrels will be placed at the corners of the building to collect and filter runoff water.
8. Place five cubic yards of topsoil 2-4 inches deep, allowing grass and shrub plantings to establish root systems.

## **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)(10), construction of principal structure 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 portions of the parcel covered by impervious surfaces within the HPD will be decreased by the new structure.
7. The structure will become compliant with KPB Floodplain requirements.
8. 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.
9. 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 September 25, 2023.
11. Agency review was distributed on September 15, 2023 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 September 11, 2023. A total of 56 mailings were sent.
13. Pursuant to KPB 21.11.020, public notice was published in the Peninsula Clarion on September 14, 2023 and September 20, 2023.
14. 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 structure 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 1-3 and Findings 6-7 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 9-14 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, 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 \_\_\_\_\_ DAY OF \_\_\_\_\_, 2023.

\_\_\_\_\_  
Jeremy Brantley, 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.**