

KENAI PENINSULA BOROUGH PLANNING COMMISSION

RESOLUTION 2024-04

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT PURSUANT TO KPB 21.18.081 FOR THE CONSTRUCTION OF FOOTBRIDGE 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 KPB 21.11.030; and
- WHEREAS,** public notice was published in the Peninsula Clarion on February 14, 2024 and February 21, 2024 as provided in KPB 21.11.020; and
- WHEREAS,** public testimony was received at the February 26, 2024 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. The pedestrian bridge is 70-feet and 7-inches in length, is 3-feet in width, and will be installed within the private 30-foot right-of-way owned by the Castaway Cove Home Owners Association (the "HOA").
2. The bridge will be elevated 7 feet above grade to comply with KPB Floodplain Management, and elevated 8 feet above ordinary high water to allow unobstructed boating traffic.
3. Installation of four 6-inch diameter pilings, two on each side of the canal, which will be driven to a maximum depth of 15 feet. The pilings will be installed 8 feet behind the riverbanks and well above ordinary high water.
4. Two 16-foot-long elevated light-penetrating ramps will be placed on each side of the canal, and will be approximately a 2:1 grade.
5. Project site on the island may be accessed with heavy equipment via various methods that each depend on conditions, water levels, and applicable permits and permissions. Methods such as: a) crossing the upstream vehicle bridge, b) construction of a snow/ice bridge in the canal during low water, or c) in-water work from the canal during low-water.

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 critical 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 proposed project is consistent with the 2019 Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents and borough code, including the Kenai Peninsula Borough Coastal Management Plan.
7. A survey was provided to the River Center in February 2024, and certified that the right-of-way had been surveyed and marked.
8. Per the engineering report, the planned construction procedure, involving the installation of driven pilings for the bridge foundation, ensures minimal environmental impact. It will also eliminate any need for excavation or disturbance of the surrounding soil, which reduces any risk of damaging the riverbank or neighboring properties.
9. Per the project details and engineering report, because the pilings will be installed 8 feet behind the riverbanks and well above ordinary high water, the pilings will not contribute to any erosion.
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. The River Center found the application complete and scheduled a public hearing for February 26, 2024.
12. Per KPB 21.18.081(C), a person seeking a permit must submit an application to the River Center, which can be done by property owner or agent. This application lists the property owner as Castaway Cove HOA, and the person (agent) applying for the permit is listed as DeWayne Benton.
13. Agency review was distributed on February 7th, 2024. The following comments and/or permits were received:
 - a. KPB Floodplain Management; permit to be approved upon CUP approval
 - b. US Army Corps of Engineers; no permit required
 - c. Alaska Division of Natural Resources - State Parks; verbal support; permit pending
 - d. Alaska Department of Fish and Game - Habitat Section; permit approved
14. Pursuant to KPB 21.11.030, public notice was mailed to all property owners within a radius of 300 feet of the subject property on February 7, 2024. A total of 242 mailings were sent.
15. Pursuant to KPB 21.11.020, public notice was published in the Peninsula Clarion on February 14, 2024 and February 21, 2024.

16. The applicant is currently in compliance with KPB permits and ordinances.

Section 3. Permit Conditions

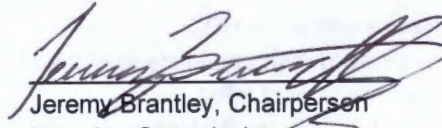
1. Construction techniques and best management practices shall be utilized to ensure that land disturbing activities do not result in runoff or sedimentation to the Kenai River.
2. The permittee shall minimize damage to all vegetation and shall revegetate all disturbed areas with native vegetation. Permittee will also use rig-matting to cross any vegetated areas so as to reduce disturbance within the HPD.
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 CUP must be completed within six years calendar year from the date of the permit's issuance, or the CUP 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 CUP 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 KPB 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 KPB 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)).

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

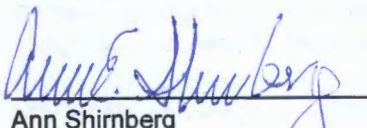
1. The use or structure will not cause significant erosion, sedimentation, damage within the habitat protection district, an increase in ground or surface water pollution, and damage to riparian wetlands and riparian ecosystems; **Findings 8-9 and Conditions 1-4 support this standard.**
2. Granting of 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 2, 4-6 and Conditions 10-11 support this standard.**
3. The development of the use or structure shall not physically damage the adjoining property; **Findings 7-9 and Condition 1,2, 7 support this standard.**
4. The proposed use or structure is water-dependent; **Findings 1, 2, 10 support this standard.**

5. Applicant's or owner's compliance with other borough permits and ordinance requirements;
Findings 13, 14 and Conditions 10, 11 support this standard.

THIS CONDITIONAL USE PERMIT EFFECTIVE ON 26th DAY OF FEBRUARY, 2024.


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.