

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

KPB File No.	2021-27
Planning Commission Meeting:	August 23, 2021
Applicant	Sharon Keating
Mailing Address	134 Sierra Heights St Soldotna, AK 99669
Legal Description	T 5N R 10W SEC 19 SEWARD MERIDIAN KN 0970046 POACHER'S COVE MOORE ADDN AMENDED LOT 177B
Physical Address	None
KPB Parcel Number	057-487-84

Project Description

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

Background Information

Applicant proposes to remove a prior-existing trailer and replace with a new, two-story residential structure with a footprint measuring 17 by 37 feet. The portion of the structure that falls within the HPD is not along the flowing waters of the main stem of the Kenai River, but along the KPB regulated canal. The new structure will be built in compliance with the current FEMA Floodplain standards and will be elevated in accordance with the KPB Floodplain Permit 12812.

Project Details within the 50-foot Habitat Protection District

1. Construction of 17 by 37 foot cabin partially on prior existing structure footprint.
2. The footprint of this structure within the HPD will expand by approximately 150 square feet.
3. Placement of sonotubes into HPD to elevate in accordance to KPB Floodplain Permit RC #12812.
4. Revegetate any areas that are disturbed with the construction.

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.

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 an addition to a 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. Pursuant to KPB 21.18.081(B)(10)
 - a. The parcel boundaries were defined prior to January 1, 2012.
 - b. The parcel is served by a public sewer system or sewage holding tank or septic system, provided the holding tank or septic system are located entirely outside the Habitat Protection District.
 - c. The parcel has an area of .3 acres or less and less than 4,000 square feet of total developed impervious coverage.
 - d. The parcel has less than 4,000 square feet of suitable development area outside the habitat protection district.
 - e. On the portion of the parcel within the Habitat Protection District, the total impervious coverage may not exceed 50% of the area able to sustain native vegetation, or 3,000 square feet of area able to sustain native vegetation, whichever is less.
 - f. The standard for development is to first utilize suitable parcel areas outside the habitat protection district. Within the Habitat Protection District, it is preferred to minimize impact by preserving the nearshore areas which may sustain native vegetation.
7. 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.
8. 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."
9. The River Center found the application complete and scheduled a public hearing for August 23, 2021.
10. Agency review was distributed on August 5, 2021. No comments or objections have been received from resource agencies to date.
11. Pursuant to KPB 21.11.030, public notice was mailed to all property owners within a radius of 300 feet of the project on August 11, 2021. A total of 62 mailings were sent.
12. Pursuant to KPB 21.11.020, public notice was published in the Peninsula Clarion on August 12, 2021 and August 19, 2021.
13. 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 21.06 Floodplain Management 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)).

Attachments

Multi-Agency Application
Draft Resolution 2021-27
Floodplain Permit RC #12812

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 2020-27.

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