

Introduced by: Bagley, Ogle, Wolf  
Date: 05/19/15  
Hearing: 06/16/15  
Action: Introduced and Set for  
Public Hearing on 06/16/15  
Date: 06/16/15  
Action: Postponed as Amended  
Until 07/07/15  
Date: 07/07/15  
Action: Failed as Amended  
Vote: 4 Yes, 5 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2015-14**

**AN ORDINANCE AMENDING KPB CHAPTER 21.18 TO REPEAL THE KENAI  
RIVER, MAJOR WATERS, WEST, SOUTH, AND NORTH DISTRICTS AND ADD THE  
KENAI RIVER WATERSHED DISTRICT AND KASILOF RIVER WATERSHED  
DISTRICT**

**WHEREAS,** several amendments have been made to KPB Chapter 21.18 adding anadromous waters to be regulated by the 50-foot anadromous habitat setback; and

**WHEREAS,** the extensive addition of waters to the habitat protection district through Ordinance 2011-12 was highly controversial and many property owners impacted by the new regulations expressed concern, especially to the application of KPB 21.18 to lakes; and

**WHEREAS,** the primary waters in need of protection are found in the Kenai Watershed and the Kasilof Watershed; and

**WHEREAS,** reducing the number of regulated waters would require less permitting and enforcement for the planning department's River Center in these fiscally challenged times; and

**WHEREAS,** the major changes made by the Anadromous Fish Habitat Protection Task Force resulting in the enactment of Ordinance 2013-18 can be retained while deleting the waters in west, south, and north districts from regulation;

**WHEREAS,** the planning commission reviewed this ordinance at its June 22, 2015 meeting and denied the recommendation for approval by unanimous consent;

**NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI  
PENINSULA BOROUGH:**

**SECTION 1.** That KPB 21.18.025 is hereby amended as follows:

**21.18.025. Application.**

A. The following anadromous waters, as identified in the "Atlas and Catalog of Waters Important for Spawning, Rearing, or Migration of Anadromous Fish" published by the Alaska Department of Fish and Game (ADF&G) and listed in the KPB 21.18 Appendix adopted by the assembly and incorporated herein by reference, are subject to this chapter:

1. Kenai River Watershed District.

2. Kasilof River Watershed District.

- [1. KENAI RIVER DISTRICT ANADROMOUS WATERS MADE SUBJECT TO THIS CHAPTER ON MAY 15, 1996.
2. MAJOR WATERS DISTRICT ANADROMOUS WATERS MADE SUBJECT TO THIS CHAPTER ON MAY 16, 2000.
3. WEST DISTRICT ANADROMOUS WATERS.
4. NORTH DISTRICT ANADROMOUS WATERS MADE SUBJECT TO THIS CHAPTER BEGINNING JANUARY 1, 2014.
5. SOUTH DISTRICT ANADROMOUS WATERS MADE SUBJECT TO THIS CHAPTER BEGINNING JANUARY 1, 2014.]

B. The reach of streams subject to this Chapter shall be defined by the beginning and end points of the anadromous waters as identified in the Catalog, unless otherwise specified in KPB 21.18.

C. The following waters are excluded from regulation by KPB 21.18:

1. All portions of waterways found within the Seward-Bear Creek Flood Service Area are exempt from KPB 21.18
2. Braided Channels, Tide Dominated Deltas, Estuaries and Lagoons which are primarily seawater and are identified as anadromous in the State of Alaska Atlas and Catalog of Waters Important for Spawning, Rearing, or Migration of Anadromous Fish are exempt from KPB 21.18

D. Lands within the habitat protection district adjacent to the anadromous waters set forth in KPB 21.[28]18.025(A) and the KPB 21.18 Appendix are subject to KPB 21.18.090 governing prior existing uses and structures, as of the date the land becomes subject to this chapter.

E. The KPB 21.18 Appendix shall be available at the clerk's office, on the borough web page, and other locations as determined by the mayor for ease of access by the public.

**SECTION 2.** That KPB 21.18.090(C) is hereby amended as follows:

**21.18.090. Prior existing uses and structures.**

...

C. Structures. Structures which were under construction or in use before the effective date of any provision of this chapter, but that would be prohibited or restricted under the terms of this chapter, shall be allowed to continue, provided that a structure under construction must have been substantially completed by April 16, 1998 [FOR THE ANADROMOUS WATERS SET FORTH IN KPB 21.18 APPENDIX KENAI RIVER DISTRICT], May 16, 2002, [FOR THE ANADROMOUS WATERS SET FORTH IN KPB 21.18 APPENDIX MAJOR WATERS DISTRICT, JANUARY 1, 2014 FOR THE ANADROMOUS WATERS SET FORTH IN KPB 21.18 APPENDIX WEST DISTRICT, AND] or January 1, 2016 [FOR THE ANADROMOUS WATERS SET FORTH IN KPB 21.18 APPENDIX SOUTH DISTRICT AND NORTH DISTRICT] as identified by the effective date for regulation of each water set forth in the Kenai Peninsula Borough 21.18 Appendix.

1. Upon application and approval of a prior-existing structure/use permit by planning department staff principal structures may be replaced, repaired or reconstructed within three years after damage or destruction. If a principal structure is not substantially damaged and only a portion of the structure has been damaged or destroyed, only that portion may be repaired or replaced. The height of an original principal structure and area encompassed by the original footprint cannot be increased, unless necessary to comply with the requirements of KPB 21.06. The structure must be similar in size and use to the structure being repaired or replaced. Repair, replacement, or reconstruction may only encompass the same square footage that the structure occupied prior to damage or destruction, and the structure must be more compliant with this chapter which shall be determined by application of mitigation measures set forth in KPB 21.18.091 to the maximum extent practicable. Staff will determine the mitigation measures to be used consistent with the following conditions:
  - a. The structure will not increase significant erosion, sedimentation, damage to the habitat protection district, an increase in ground or surface water pollution, and damage to riparian wetlands and riparian ecosystems;
  - b. Permitting repair, reconstruction, or replacement shall be consistent with the purposes of this chapter as set forth in KPB 21.18.020, the borough comprehensive plan, another

applicable chapters of the borough code, and other applicable planning documents adopted by the borough;

- c. The reconstruction, replacement, or repair will not damage the adjoining property;
- d. Removal of materials or debris remaining from the damage or destruction; and
- e. Owner's compliance with other borough permits and ordinance requirements.

2. The right to reconstruct in nonconformity with the chapter is forever lost if:

- a. the application for reconstruction or repair is not made within 24 months after the date of accidental damage or destruction or within 6 months prior to the owner's intentional damage or destruction, or
- b. the application is approved but the structure is not substantially reconstructed within 36 months of the date of the approval of the application for reconstruction.
  - (i) For reasonable and sufficient cause shown for the delay, the director of planning may authorize an extension not to exceed 12 months to complete reconstruction.
  - (ii) To obtain an extension of time an applicant shall submit a written request for an extension to the planning department prior to the expiration of the 36 months reconstruction period. The applicant must show reasonable and sufficient cause for the extension.

3. Nothing in this section prohibits reconstruction at any time in compliance with this chapter.

4. The provisions applicable to principal prior existing structures set forth in KPB 21.18.090(C)(1), (2), (3) also apply to the replacement, repair or reconstruction of accessory structures within the habitat protection district. In addition to those provisions the following rules apply to accessory structures:

- a. Accessory structures may be replaced or reconstructed outside of the habitat protection district without a KPB 21.18 permit.
  - b. The applicant must document the specific circumstances that would prevent the accessory structure from being located outside of the habitat protection district in order to be permitted to replace, or reconstruct the accessory structure within the habitat protection district.
5. Any prior existing structure which has been declared a public nuisance, health or fire hazard pursuant to KPB 21.16.010 shall thereafter not be conducted, used or occupied except in conformity with the provisions of this chapter. The Planning Department may require removal of structures which have been declared a public nuisance, health or fire hazard pursuant to KPB 21.16.010.

...

**SECTION 3.** That KPB 21.18.140 Definitions is hereby amended as follows:

...

“Kasilof River” shall mean the main stem of the river from and including Tustumena Lake to the east-west ¼ line of Section 12, T3N, R12W, S.M. AK. The main stem shall include all sloughs, channels, boat basins, distributaries, lakes, and lagoons.

"Kenai River" shall mean the main stem of the river from and including Kenai Lake to the [MOUTH] Warren Ames Bridge including Skilak Lake. The main stem shall include all sloughs, channels, boat basins, distributaries, lakes and lagoons. [FOR THE PURPOSE OF THIS CHAPTER, THE MOUTH SHALL BE DESCRIBED AS THE WESTERN MOST SECTION LINE COMMON TO SECTION 5 AND SECTION 8, T5N, R11W, SEWARD MERIDIAN.]

...

**SECTION 4.** That this ordinance shall take effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS \*  
DAY OF \* 2015.**

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Dale Bagley, Assembly President

ATTEST:

\_\_\_\_\_  
Johni Blankenship, Borough Clerk

05/19/15 Vote on Introduction and Set for Public Hearing:

Yes: Gilman, McClure, Ogle, Welles, Wolf, Bagley

No: Cooper, Haggerty, Johnson

Absent: None

06/16/15 Vote on Postponement:

Yes: Cooper, Haggerty, Gilman, Johnson, McClure, Ogle, Welles, Wolf, Bagley

No: None

Absent: None

07/07/15 Vote on Enactment as Amended:

Yes: Bagley, Ogle, Welles, Wolf

No: Cooper, Haggerty, Gilman, Johnson, McClure

Absent: None