



# **KENAI PENINSULA BOROUGH**

PLANNING DEPARTMENT

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**MIKE NAVARRE**  
**BOROUGH MAYOR**

## **MEMORANDUM**

**TO:** Dale Bagley, Assembly President  
Kenai Peninsula Borough Assembly Members

**THRU:** Mike Navarre, Borough Mayor

**FROM:** Max Best, Planning Director 

**DATE:** June 26, 2015

**SUBJECT:** 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.

The Kenai Peninsula Borough Planning Commission reviewed the subject ordinance during their regularly scheduled June 22, 2015 meeting. A motion failed by unanimous consent to recommend approval of the 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.

In the Ordinance, please make the following amendment to the last WHEREAS statement:

*WHEREAS, the Planning Commission conducted a public hearing on June 22, 2015 and denied the recommendation for approval by unanimous consent.*

Attached are the unapproved minutes of the subject portion of the meeting.

AGENDA ITEM F. PUBLIC HEARINGS

2. 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.

Memorandum reviewed by Max Best

PC Meeting 6/22/15

The anadromous waters habitat protection ordinance was subject to an extensive addition of regulated waters by Ordinance 2011-12. The primary waters in need of habitat protection are within the Kenai and Kasilof watersheds. The proposal would be the deletion of the five current districts known as the Kenai River District, the Major Waters District, West District, North District, and South District. Instead the proposal would have two districts which will contain waters in the current districts that are within the Kenai River and Kasilof River watersheds. Mapping and a revised appendix reflecting these amendments are included in the packet. The changes made by the Anadromous Fish Habitat. Protection Task Force resulting in the enactment of Ordinance 2015-18 are not changed by this ordinance with the exception of regulating fewer waters. Definitions of the Kenai and Kasilof Rivers are added to aid interpretation of the area of regulation. The grandfather clause is modified to remove references of the current five districts and to cross-reference the revised appendix.

Consideration of this ordinance is appreciated.

END OF MEMORANDUM AND STAFF REPORT

Chairman Martin opened the meeting for public comment.

1. David Morris, 36083 Betty Lou Dr, Sterling

Mr. Morris' property is on the river and expressed opposition to this kind of regulation even though this does not have any direct effect on him. It is an invasion of someone's private property but he has seen the damage that can be done by the public and how harmful it can be to the Salmon environment so he supports the regulations.

Mr. Morris expressed concern regarding the regulations that were passed back in 2012-2013 for all Anadromous Streams and lakes without public comment. It didn't take long for a terrific public uproar so the Mayor at that time appointed a task force of experts to study the issues and develop regulations that were appropriate. He stated that after a year of study, and well attended public hearings; the final rules were formulated and adopted in Ordinance 2013-18.

Mr. Morris comments that now there are three Assembly members that want to remove all waters except for the Kenai and Kasilof. This doesn't make sense and questioned where the experts go wrong. He thought the regulations can be corrected amended if they are not working.

Mr. Morris stated that the Assembly information stated that the permitting load on the River Center is too great. The River Center is still passing out a brochure that lists all of the scientific reasons why the Borough adopted those regulations. The burden being too great on the River Center is not a very valid reason to take other waters out. He had several ideas of how they could reduce the number of permits and thanked the Commission for the time.

Chairman Martin asked if there were questions for Mr. Morris. Hearing none, the public hearing continued.

2. Donna Stephens, 36135 Betty Lou Dr.

Ms. Stephens has owned their property for three years and they have found great benefit in having the permit system and have learned so much on how to protect their valuable resource. They have done some revetment work on their property which shows that they are committed to being in the area. She believed the economy of the Borough is dependent upon people's lifestyle of recreation and fishing to the large degree. The general public, sometimes from ignorance will not protect a river

because they don't know to protect the river.

Ms. Stephens stated that it doesn't make sense to her to just wipe out all the experts hard work to come up with good regulations for all the rivers in the area. She believed the risk of damaging the rivers and the lifestyle that everyone enjoys is worth the effort and the permitting process. The 50 feet is minimal and she recommended that be retained. She thanked the Commission for their time.

Chairman Martin asked if there were questions for Ms. Stephens. Hearing none, the public hearing continued.

3. Ken Tarbox, 33270 Community College Dr., Soldotna

Mr. Tarbox was on the Anadromous Fish Habitat taskforce. They worked nine months and tried to accommodate most people's concerns about what they could do within that 50 foot buffer and still maintain a minimal protection for salmon habitat. It was a long and hard process. They could not accommodate those who wanted a no buffer. The majority of the people on the taskforce, Assembly and Planning Commission voted to have buffers on the streams. He maintained that the majority of the public and their representatives are supporting 21.18 in its present form. The repeal initiative was not what the majority of the people want. As a fish biologist, he could only caution them that 50 foot along salmon streams is a minimum buffer. Mr. Tarbox hoped that the 50 foot minimum minimizes the risk to the resources but it doesn't eliminate it.

Mr. Tarbox respectfully submitted that KPB 21.18 be maintained and allow it to operate for a while and see how it does. There is too much at risk if they are wrong. He thanked the commission for their time.

Chairman Martin asked if there were questions for Mr. Tarbox. Hearing none, the public hearing continued.

4. Kaitlin Vadla, Clam Gulch

Ms. Vadla grew up in Clam Gulch. Her parents have lived on the Kenai River for the last ten years. She went to school in Washington State where they are now spending billions of dollars to restore salmon runs.

Ms. Vadla supported retaining the 50 buffers on all Anadromous waters in the Borough including lakes and tiny, tiny tributaries where salmon spawn. This is a cheap and easy thing can be done now to ensure the health of the rivers and communities. She would eventually love to buy property on a stream, river or lake and would love for it to be in this community.

Ms. Vadla wants to see the community be vibrant for all the people, for her and someday her kids and grandkids as well as for the lifestyle is here. Also because of the glorious vibrant salmon runs that are here. She asked that the 50 foot buffer be retained for the salmon streams and recommend that the Assembly retain that buffer as well. She thanked the Commission for listening.

Chairman Martin asked if there were questions for Ms. Vadla. Hearing none, the public hearing continued.

5. Wenda Kennedy, 50927 Diomedes Dr., Nikiski

Ms. Kennedy respectfully asked that Commissioner Ernst recuse himself from voting because he has already expressed a public opinion. Her Assembly person stated that Commissioner Ernst before the last Assembly meeting sent him an email asking that he vote no on the Ordinance. She felt that they couldn't have a fair and honest hearing with his behalf. Ms. Kennedy is on the Board of Equalization where she took an oath. She respectfully asked that Commissioner Ernst recuse himself from voting on this ordinance because he has already had a public stated opinion.

Chairman Martin asked if there were questions for Ms. Kennedy. Hearing none, the public hearing continued.

Commissioner Ernst asked if he wasn't qualified to have a vote since he has an opinion on this ordinance. Ms. Kennedy felt that if he publicly voices his opinion in an email to an assembly person then it is a public voiced opinion which would make it very hard for him to sit on the committee and be fair and honestly weigh

this without opinion. Commissioner Ernst asked if he was to form his opinion solely on this committee but this issue has been covered before. Ms. Kennedy understood that but would like him to represent Nikiski fairly.

Seeing and hearing no one else wishing to speak Chairman Martin closed the public comment period and opened discussion among the Commission.

**MOTION:** Commissioner Ruffner moved, seconded by Commissioner Isham to recommend approval of Ordinance 2015-14, an ordinance amending KPB Chapter 21.18.

Commissioner Ruffner has followed this process of the 50 foot buffer on the Kenai River that was adopted back in the 90's. The original ordinance was introduced and was kicked back and forth a number of times. It resulted in a task force where folks went through a very long and contentious set of hearings to ascertain what is in the best interest of the public when it comes to the fishery resources. The fishery resources on the Kenai Peninsula are worth several hundred billion dollars a year worth of revenue that gets generated. Keeping the buffer zone of natural vegetation intact as much as possible between the stuff people do and the water where the fish live is very important in filtering out all kinds of stuff. He strongly expressed opposition of the ordinance as it has been presented.

Mr. Best stated that he spoke with legal representative who determined that this is a legislative issue and to discuss it at will and amongst the community is an acceptable thing to do. They determined that Commissioner Ernst could vote on this matter.

Commissioner Foster stated he too has followed this from the beginning and has received email in support and opposition to changing this ordinance. He also has spent 18 years and is still a property owner in Tahoe, CA where a much, much more restrictive regulation and have been put in place. It has also been tested up to the Supreme Court. The regulations have made a difference there. Commissioner Foster spoke in opposition of the ordinance and would like to continue to see the buffer area coming from a resource ecologist.

Commissioner Carluccio stated that when this ordinance was first passed she remembers a comment made by Commissioner Gross that she hated to vote on something that stated "all". She knows that this has gone through several revisions and has been tweaked a bit to accommodate unusual situations. Seldovia is one of those unusual situations that had to be tweaked a little bit. If there are some things that need to be changed and revised then they should approach them individually and make those changes as needed. She was hard pressed to vote yes on this ordinance.

Commissioner Ecklund stated that there have been 15 letters who supported the ordinance and 154 letters who opposed the ordinance so she would be voting no on the approval of the ordinance.

Commissioner Collins stated that she would also be voting no on this ordinance. The Anchor River is an important water body in Anchor Point. She also represents Ninilchik where Deep Creek is located and is vital to the community. They need to keep KPB 21.18 in place.

Commissioner Isham stated he was on the Anadromous Stream Habitat taskforce. One of the biggest things that struck him was the increase of population of people. Urban encroachment is by far one of the biggest destruction of the fish habitat. He also would be voting no on this ordinance.

Commissioner Ernst stated that he too has been following this since the beginning many years ago. It is clear from looking around the country and across the ocean to Europe that development near streams, clear cutting lawns, homes, etc. eliminates shade and potentially introduces environment toxins in the form of pesticides and fertilizers or any number of things that occur in Nikiski. The King Salmon river spawners are particularly sensitive to such stream bank alternations. Similarly, the lake spawning red salmon needs a natural shore site for their reproduction. Living next to a water body that provides that provides the location for Anadromous fish spawning requires a level of responsibility that calls for legal regulations and enforcement. The history of salmon extinction from Europe to East / West Coast of North America tells of the consequences of near shore development near Anadromous habitat on salmon survival. He suggested that they learn from the past and make decisions that avoid this catastrophe. Commissioner Ernst stated he would be voting no on the

recommendation of this ordinance.

Commissioner Glendening understood that ordinance talks about the Kenai River from the Warren Ames Bridge into the ordinance and that is where it would change for the City of Kenai. Mr. Best replied that was correct.

Commissioner Glendening stated that there were six Assembly persons voted for this to go for further public discussion. Mr. Best replied that in May, six Assembly members voted to have a hearing on this ordinance. Commissioner Glendening asked what the role of the Planning Commission was. Mr. Best replied that the Planning Commission will make a recommendation to the Assembly on this ordinance.

Commissioner Foster referred to the folks who felt that think that lakes, rivers and stream are less important in the grand scheme of things. The type of activities that go on at lakes can be more detrimental. Even though lakes was left out of the original, it is a critical component of the system.

There being no further comments or questions, Chairman Martin called for a roll call vote.

**VOTE:** The motion failed by unanimous consent.

CARLUCCIO NO	COLLINS NO	ECKLUND NO	ERNST NO	FOSTER NO	GLENDENING NO	HOLSTEN ABSENT
ISHAM NO	LOCKWOOD ABSENT	MARTIN NO	RUFFNER NO	VENUTI NO	WHITNEY NO	0 YES 11 NO 2 ABSENT

Chairman Martin recused himself from the following agenda item since he was a personal friend and associate of the applicant and landowner. He passed the gavel to Vice Chairman Ruffner.

AGENDA ITEM F. PUBLIC HEARINGS

3. Conditional Land Use Permit for a Material Site; Nikiski Area

Staff Report given by Bruce Wall

PC MEETING: June 22, 2015

**Applicant:** North Wind Properties, LLC

**Landowner:** North Wind Properties, LLC

**Parcel ID#:** 015-210-06

**Legal Description:** NW $\frac{1}{4}$  SW $\frac{1}{4}$ , N $\frac{1}{2}$  NW $\frac{1}{4}$  SW $\frac{1}{4}$  SW $\frac{1}{4}$ , N $\frac{1}{2}$  NE $\frac{1}{4}$  SW $\frac{1}{4}$  SW $\frac{1}{4}$ , SE $\frac{1}{4}$  NE $\frac{1}{4}$  SW $\frac{1}{4}$  SW $\frac{1}{4}$ , and E $\frac{1}{2}$  SE $\frac{1}{4}$  SW $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 35, Township 7 North, Range 12 West, Seward Meridian, State of Alaska.

**Location:** The north side of South Miller Loop Road, approx.  $\frac{1}{4}$  mile east of Kenai Spur Highway and the east side of Walker Street south of Aaron Avenue.

**BACKGROUND INFORMATION:** The applicant wishes to obtain a permit for sand and gravel extraction on the approximately 57 acre parcel listed above.

The submitted site plan indicates that the material site haul route is Walker Street to Aaron Avenue with an alternate haul route directly onto Miller Loop Road.

The site plan and application proposes that a 6-foot berm will be placed along all sides of the material site. Staff recommends that the Planning Commission require a 6-foot berm along the north property line where vegetation has recently been remove; allow either 50 feet of undisturbed natural vegetation or a 6-foot berm along the portion of the east, west, and south property lines that abut a right-of-way; and require 50 feet of