



KENAI PENINSULA BOROUGH

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MIKE NAVARRE
BOROUGH MAYOR

MEMORANDUM

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

THRU: Mike Navarre, Mayor *MN*

FROM: Pat Malone, Road Service Area Director *Pat Malone*

DATE: August 17, 2015

SUBJECT: Amendments to Ordinance 2015-22, An Ordinance Amending KPB Chapter 14.40 Regarding the Use and Control of Borough Rights-of-Way and Enforcement of Right-of-Way Regulations

The administration respectfully requests the assembly approve the following amendments to this ordinance. Further conversation with the planning director led to the proposed amendments to KPB 14.40.061 regarding waterbody access and crossing permits. These amendments were approved and recommended by both the Planning Commission and the Road Service Area Board at their meetings on August 10, 2015 and August 11, 2015, respectively.

1. Comment: The proposed amendment to 14.40.040 clarifies that encroachment permits are required for both existing and new encroachments.

➤ Amend KPB 14.40:040(D), as shown in **bold and underline** and [BRACKETS]:

Encroachment permits. Encroachment permits [MAY BE] **are issued by the RSA director for objects existing or to be constructed, installed or placed within a borough right-of-way by a private party or other non-borough entity.**

2. Comment: Under the proposed amendments, applicants for road construction permits that will cross an anadromous waterbody are required to obtain all other necessary permits before a road construction permit can be issued. Because the Donald E. Gilman River Center currently coordinates such permitting, it is not necessary for the River Center to review the RSA application (it would be redundant), so the new paragraph 5 has been deleted. Because the RSA director does not have jurisdiction to enforce permits issued by any other agency, paragraph 2 has been amended to simply require the RSA applicant to certify that they have obtained all necessary permits, thereby leaving the responsibility

of following all other municipal, state and federal law squarely within the applicant's hands.

- Amend KPB 14.40.061(A)(2) and (5), as shown by removing [BRACKETED LANGUAGE] and adding language in **bold and underline**:

...

[2. PROJECT-SPECIFIC PERMITS FOR CROSSING AN ANADROMOUS WATERBODY WITHIN A DEDICATED RIGHT-OF-WAY WILL ONLY BE ISSUED UPON RECEIPT BY THE RSA OF AN APPLICANT'S COMPLETED APPLICATIONS FOR PROJECT PERMITS TO THE UNITED STATES ARMY CORPS OF ENGINEERS AND ALASKA DEPARTMENT OF NATURAL RESOURCES OFFICE OF HABITAT MANAGEMENT AND PERMITTING, CHANGED AFTER JULY 1, 2008 TO THE ALASKA DEPARTMENT OF FISH AND GAME DIVISION OF HABITAT. IT SHALL BE THE SOLE RESPONSIBILITY OF ALL APPLICANTS FOR PROJECT-SPECIFIC PERMITS TO ENSURE COMPLIANCE WITH ALL APPLICABLE STATE AND FEDERAL LAW, INCLUDING PERMITTING REQUIREMENTS.]

2. Project specific construction permits for crossing an anadromous waterbody within a dedicated right-of-way will only be issued upon receipt by the RSA director of applicant's written certification that s/he has obtained all other applicable permits for the project, including but not limited to permits issued by the Army Corps of Engineers, Kenai Peninsula Borough, Alaska Department of Fish & Game, Alaska State Parks, and the U.S. Fish & Wildlife Service. It shall be the sole responsibility of all applicants for project-specific construction permits to ensure compliance with all applicable state and federal law, including permitting requirements.

...

[5. UPON RECEIPT OF A COMPLETE PROJECT-SPECIFIC CONSTRUCTION PERMIT APPLICATION, INCLUDING COPIES OF THE PERMITTEE'S PERMITS FROM THE ARMY CORPS OF ENGINEERS AND ALASKA DEPARTMENT OF FISH AND GAME, THE RSA DIRECTOR WILL FORWARD A COPY OF THE MATERIALS TO THE KENAI RIVER CENTER FOR REVIEW AND RECOMMENDATIONS REGARDING MITIGATION MEASURES.]

3. Comment: scrivener's error.

- Amend KPB 14.40.300(C)(3).

The RSA director may post a cease and desist order within the affected right-of-way if the person violating [CHAPTER] KPB chapter 14.40 cannot be ascertained. Removal of a posted notice is subject to the fines set forth in KPB 14.40.380.