

Kenai Peninsula Borough
Anadromous Waters Habitat Protection Work Group
Final Report and Recommendations
(Approved January 28, 2021)



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PURPOSE

The Anadromous Waters Habitat Protection Work Group was established to examine the current anadromous waters habitat protection permit process and potentially recommend amendments to KPB 21.18.

The establishing resolution provides that the work group shall provide a final report to the planning commission.

Resolution 2019-058, and as amended by Resolution 2020-009, established the Anadromous Waters Habitat Protection Work Group (hereinafter “work group”), “for the purpose of examining the current anadromous [waters] habitat protection permit process and potentially recommending amendments to KPB 21.18.” Per the establishing resolution, the work group “shall provide a final report” to the planning commission which may include recommendations for ordinance amendments.

KPB 21.18.010 through KPB 21.18.145 are the code sections within the borough’s Anadromous Waters Habitat Protection Chapter. The habitat protection district was established to: (A) Protect and preserve the stability of anadromous fish; (B) Provide a guide for growth and development along anadromous waters in accordance with the Kenai Peninsula Borough Comprehensive Plan; (C) Achieve the goals and implement the policies of the Kenai Peninsula Borough Comprehensive Plan; (D) Protect and enhance real property values; and (E) Continuing to enjoy the prosperity and abundance provided by anadromous fish to the citizens of the Kenai Peninsula Borough.¹

The work group was comprised of one assembly member (Johnson), one planning commission member (Ruffner), and six other members of the public appointed by the mayor and confirmed by the assembly – though one member (Slaughter) was unable to attend the meetings due to the timing of the meetings and therefore did not participate in any of the work group meetings. The group was staffed by the Borough Clerk’s Office, the Legal Department, the River Center, and GIS.

The first work group meeting was held on March 13, 2020. Due to the COVID-19 pandemic, the work group was on hiatus for approximately 7 months, reconvening on December 3, 2020. Subsequent meetings were held weekly, but for a change of schedule and two week break of the Christmas/New Years

¹ See KPB 21.18.020. – Purpose.

holiday. The meetings were noticed in accordance with the Open Meetings Act and the public was encouraged to attend; however due to the ongoing COVID-19, public health emergency all meetings were via tele/video-conference held over Zoom.

Upon reconvening the work group met via Zoom on the following dates: December 3, 2020, December 10, 2020, December 17, 2020, January 7, 2021, January 14, 2021, January 21, 2021, and January 28, 2021.

RECOMMENDATIONS

Recommendation #1 – Amendment to KPB 21.18.025(B) (GIS DATA)

Recommendation #1 carried by unanimous consent recommending an amendment to KPB 21.18.025(B) to clarify that the borough’s published GIS data controls as to the location and application of waters that are subject to KPB 21.18.

Code Change: KPB 21.18.025. –Application.

...

- B. The reach of streams subject to this Chapter shall be defined by the beginning points and end points of the anadromous waters as identified in the Catalog **at the time they are approved by assembly and as indicated by published borough GIS data**, unless otherwise specified in KPB 21.18. **To the extent the borough’s mapping of the location of waters subject to this Chapter conflict with the location identified in the Catalog, the borough’s published mapping data controls.**

Justification and Discussion: This amendment clarifies that the borough’s published GIS maps control as to the location and jurisdiction of waters subject to KPB 21.18. Currently, KPB 21.18.025 does not say anything about borough published mapping data and instead indicates that the “Atlas and Catalog of Waters Important for Spawning, Rearing, or Migration of Anadromous Fish” (Catalog) published by the Alaska Department of Fish and Game (ADF&G) controls regarding the location and description of the waters subject to KPB 21.18. Unfortunately, the Catalog does not contain accurate descriptions or clearly identified mapping of streams subject to KPB 21.18. The borough’s GIS division does provide updated and clearly identified mapping of the waters subject to KPB 21.18. Input was provided by River Center staff, and Bobbi Lay, GIS Specialist,

highlighting the need for the proposed amendment to align with current best practice. The group discussed if this would change practices on the ground. River center staff assured the group that on-the-ground measurements and real-time identification of locations of streams and rivers would always be most accurate to determine KPB 21.18 jurisdiction boundaries.

Recommendation #2 – Amendment to KPB 21.18.071(A) (Encouraging pre-project consultation with River Center staff).

Recommendation #2 carried by unanimous consent recommending an amendment to KPB 21.18.071(A) encouraging property owners to consult with River Center staff prior to starting a project under KPB 21.18.071(A) and/or going through the permitting process.

Code Change: 21.18.071. - Staff permits.

- A. An application for a permit shall be made and a permit issued before commencement of certain activities, uses, and structures set forth in this section if they do not result in significant erosion, sedimentation, damage to the habitat protection district, an increase in ground or surface water pollution, and damage to the riparian wetlands and riparian ecosystems. **Property owners are encouraged to contact the Kenai River Center staff to determine if these impacts are likely to occur before starting the project.** An application for a permit shall be made to the Kenai Peninsula Borough planning department central office or at the river center. Upon determination that the submitted information of record supporting the permit application meets the requirements of this section, staff shall issue a permit for the following activities, uses, and structures in the habitat protection district:

...

Justification and Discussion: This amendment was brought forward by River Center staff. The purpose of the change is to reduce “after the fact” permitting needs because land owners didn’t think they needed a permit after performing their own assessment. River Center staff stated that they commonly receive permit requests after the fact where the property owners contact the river center after they find out their projects required permit, either due to complaints or a misreading of ordinances. River Center staff stated its belief that this amendment to KPB 21.18.071(A) would result in increased voluntary compliance and positive partnering with borough property owners.

Recommendation #3 – Amendment to KPB 21.18.065 - (Flagpole exemption amendment, Repeal of Subsection A)

Recommendation #3 was handled as two separate amendments, each of which carried by unanimous consent, recommending amendments to KPB 21.18.065 to repeal subsection "A", to improve the formatting of this section of code, and to provide a new item – known as the flagpole exception - to allow a single flagpole within the Habitat Protection District as an activity not requiring a permit under KPB 21.18.

Code Change: 21.18.065. - Activities not requiring a permit.

[A.] [THE] **A** permit required under[by] this chapter is not required for:

[A. NONCOMMERCIAL RECREATIONAL AND OTHER NON-INTRUSIVE ACTIVITIES WHICH DO NOT INVOLVE CONSTRUCTION, EXCAVATION, OR FILL OF LAND AND DO NOT RESULT IN SIGNIFICANT EROSION, SEDIMENTATION, DAMAGE TO THE HABITAT PROTECTION DISTRICT, AN INCREASE IN GROUND OR SURFACE WATER POLLUTION, AND DAMAGE TO THE RIPARIAN WETLANDS AND RIPARIAN ECOSYSTEMS.]

A. Listed vegetation removal activities. Natural vegetation on land abutting lakes and streams protects scenic beauty, controls erosion, provides fish and wildlife habitat, moderates temperature, stabilizes the banks, and reduces the flow of effluents and nutrients from the shoreland into the water. Vegetation removal and land disturbing activities within the habitat protection district are prohibited, with the following exceptions: [WHICH DO NOT REQUIRE A PERMIT:]

1. Routine maintenance of existing legally established landscaping and landscape features developed prior to regulation by KPB 21.18, in the habitat protection district, may be continued without a permit. To be considered routine maintenance, activities must have been consistently carried out so that lawns or ornamental plants predominate over native or invasive species. Maintenance is performed with hand tools or light equipment only. Tree removal is not included. "Routine maintenance" activities include mowing; pruning; weeding; planting annuals, perennials, fruits and vegetables; and other activities associated with an ornamental landscape.
2. Pruning of trees and woody shrubs for the health and/or renewal of vegetation shall not result in removal of more than

25% of the living crown of a tree, nor jeopardize the health and natural shape of a tree or shrub.

3. The removal of trees downed by force of nature.
4. The planting of native vegetation does not require a permit provided runoff and erosion are controlled and do not enter the water body.

B. A single flagpole with a surface area footprint not to exceed 4 square feet and above ground height not to exceed 30 feet.

Justification and Discussion: The proposed amendment repealing KPB 21.18.065(A) will eliminate language related to non-intrusive activities and undefined terms therein, such as “significant erosion,” “damage to the habitat,” “increase in ground or surface water pollution,” “damage to the riparian wetlands,” and “damage to riparian ecosystems”. In the past 5 years, the river center is not aware of any activities that landowners performed under this “non-intrusive activities” paragraph. The group therefore determined that repealing this paragraph of KPB 21.18.065 would not appear to impact landowners, aligns with the intent of KPB 21.18, and would improve the overall readability of this chapter. The recommendation is to repeal subsection A as a measure of code clean-up, to make the entire chapter easier to read and understand. Additionally, an objective stated by a few group members during this KPB 21.18 review process was to provide a streamlined process for landowners desiring to install a single flagpole within the habitat protection district on their property. The flagpole amendment provides lists a single flagpole, that meets the not to exceed language provided, as an activity that does not require a permit under KPB 21.18.

[Recommendation #4 – Amendment to KPB 21.18.010\(G\) \(“Housekeeping Amendment #1”\)](#)

Recommendation #4 carried by unanimous consent recommending an amendment to KPB 21.18.010(G) to delete the term “native shore cover” and replace it with “the riparian habitat)

Code Change: KPB 21.18.010. – Findings.

- G. The assembly finds that it is in the public interest to further public knowledge of, and the maintenance of safe and healthful conditions; prevent and control water pollution; protect anadromous

fish spawning grounds, rearing waters, and migration corridors and aquatic life; control building sites, placement of structures, and land uses; and to preserve **the riparian habitat** [NATIVE SHORE COVER] and natural beauty. These responsibilities are hereby recognized by the Kenai Peninsula Borough.

Justification and Discussion: The term “native shore cover” is not used elsewhere in KPB 21.18 and is not defined. Using riparian habitat instead appears to fit better within the overall purpose and intent of KPB 21.18. This amendment was introduced at the work group’s meeting on January 7, 2021 and voted on at the work group’s meeting on January 14, 2021.

Recommendation #5 – Amendment to KPB 21.18.020 (“Housekeeping Amendment #2”)

Recommendation #5 carried by unanimous consent recommending an amendment to KPB 21.18.020 deleting the word “natural” and replacing it with the word “native” (vegetation) to align better with other references in code to native vegetation.

Code Change:

KPB 21.18.020. – Purpose.

- A. Protect and preserve the stability of anadromous fish through:
 - 1. Controlling shoreline alterations and disturbances;
 - 2. Preserving nearshore habitat and restricting the removal of [NATURAL] **native** [RIPARIAN] vegetation;

Justification and Discussion: The term “natural riparian vegetation” is not defined in code and is not used anywhere else in the chapter. The term native vegetation is defined in KPB 21.18.140. This amendment was introduced at the work group’s meeting on January 7, 2021 and voted on at the work group’s meeting on January 14, 2021.

Recommendation #6 – Amendment to KPB 21.18.071(A) (add the term “shrub”)

Recommendation #6 carried by unanimous consent recommending an amendment to KPB 21.18.071(A) to add the term “shrub”.

Code Change: KPB 21.18.071. – Staff permits.

- A. An application for a permit shall be made and a permit issued before commencement of certain activities, uses, and structures set forth in this section if they do not result in significant erosion, sedimentation, damage to the habitat protection district, an increase in ground or surface water pollution, and damage to the riparian wetlands and riparian ecosystems. An application for a permit shall be made to the Kenai Peninsula Borough planning department central office or at the river center. Upon determination that the submitted information of record supporting the permit application meets the requirements of this section, staff shall issue a permit for the following activities, uses, and structures in the habitat protection district:

1. Tree **and Shrub** Management

- a. A tree **or shrub**, or portion thereof, may be removed for one or more of the following reasons:
- (i) The tree **or shrub**, or portion thereof, is dead[.];
 - (ii) The tree **or shrub** is a safety hazard to persons or property[.]; **or**
 - (iii) The tree **or shrub** removal is for the purpose of preventing the spread of disease to other trees.

Whenever a tree is removed, it shall be replaced with two seedlings less than 5.5 feet tall of a species native to the region.

Justification and Discussion: This amendment addresses public comments that raised confusion about whether shrubs can also be removed when they are dead or pose a safety hazard.

Recommendation #7 – Amendment to KPB 21.18 throughout to replace the term “habitat protection area” with term “habitat protection district” (7 total changes in code)

Recommendation #7 carried by unanimous consent recommending replacing the term “habitat protection area” with “habitat protection district”

Code Change: There are seven instances in KPB 21.18 where this amendment would change “habitat protection area” to habitat protection district. The Impacted code sections are KPB 21.18.072 (limited commercial activity) (3 reference changes), KPB 21.18.100 (administration by cities) (1 reference change), KPB 21.18.140 (definitions) (3 reference changes).

Justification and Discussion: In KPB 21.18, “habitat protection area” is used 7 times. It is apparent that the use of “habitat protection area” was intended to have the same meaning as “habitat protection district”. This change would delete the word AREA and replace it with the word DISTRICT in all 7 places that is used as “habitat protection area”

Recommendation #8 – Amend KPB 21.18.075 (Clarify prohibited uses and structures section)

Recommendation #8 carried by unanimous consent recommending amendment to KPB 21.18.075 adding clarifying language regarding the prohibition of uses and structures under KPB 21.18 and to add a section of code to the list in this section.

Code Change: 21.18.075. - Prohibited uses and structures.

Any use or structure **within the habitat protection district** that is not permitted **or allowed under**[IN] KPB 21.18.065, KPB 21.18.071, **KPB 21.18.072**, or **KPB** 21.18.081 is prohibited.

Justification and Discussion: Current code omits KPB 21.18.072 from the list in this section. The additions aim to clarify that any use or structure within the HPD that is not allowed under code is prohibited. The phrase “not permitted in” may have been a source of confusion so that language is adjusted with this change. The group considered trying to develop a non-exhaustive list of prohibited uses or structures but determined such a list may only increase confusion.

Recommendation #9 – Amendment to KPB 21.18.140 (adds 7 definitions for unique terms used within KPB 21.18 but not defined in code)

Recommendation #9 carried by unanimous consent recommending 9 definition changes to KPB 21.18.140.

Code Change: 21.18.140. - Definitions.

9 definition additions or adjustments to code:

- “100-year floodplain” means the land area susceptible to being inundated by water from any source during a 100-year flood, which is a flood event that has a 1 percent change of being equaled or exceed in any year.
- “Habitat protection district” shall mean the anadromous waters habitat protection district land area as established in KPB 21.18.040.
- “Elevated light penetrating structures” mean structures, including walkways, that are off the ground, allow for sunlight ingress, and constructed in such a manner that allow vegetation to grow up to prevent vegetation trampling and increased sedimentation caused by recreational use activities within the habitat protection district
- “Impervious Material” means material that impedes or prevents natural infiltration of water into soil.
- “Mitigation” means the reduction of adverse effects of a proposed project by considering:
 1. Avoiding the impact altogether by not taking a certain action or parts of an action;
 2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
 3. Rectifying the impact by repairing, rehabilitating or restoring the affected environment;
 4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate measures; and
 5. Compensating for the impact by replacing or providing a comparable substitute.
- “Native vegetation” means the indigenous flora, to include all plant life, which naturally and historically occur in the Kenai Peninsula Borough region. A species shall be considered non-native if it is tracked and listed on the Alaska Center for Conservation Science’s

Non-Native Plant Species List. [NATIVE PLANT COMMUNITIES THAT ARE UNDISTURBED OR MIMICKED.]

- **“Riparian” means land abutting anadromous waters subject to this chapter.**
- **“Shrub” means a woody perennial plant differing from a tree by its low stature and by generally producing several basal stems instead of a single bole and from a perennial herb by its persistent and woody stems.**
- **“Wetlands” means land areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.** [SHALL HAVE THE MEANING GIVEN IN 16 USC § 1302 AS APPLIED TO LAND WITHIN THE HABITAT PROTECTION AREA.]

Justification and Discussion: The above terms are either undefined in code or could benefit from some fine-tuning. Sources: Chester L. Arnold, Jr. & C. James Gibbons, Impervious Surface Coverage: The Emergence of a Key Environmental Indicator, 62 J. Am. Plan. Ass'n 244 (1996)(impervious surfaces/material); Alaska Department of Natural Resources, Division of Agriculture, Strategic Plan (invasive species, non-native vegetation) Alaska Center for Conservation Science (native vegetation); United States Department of Agriculture, The Alaska Vegetation Classification, Viereck et al (Shrub); U.S. Army Corps of Engineers (Corps) and the U.S. Environmental Protection Agency (EPA) (Wetlands); Oregon City, Oregon (Mitigation).

Recommendation #10 – Education Recommendation

Recommendation #10 carried by majority vote recommending that the KPB River Center Staff prioritize education opportunities and partner with local non-profits and other organizations or agencies to accomplish education outreach goals. The recommendation adopted by the work group is as follows:

“Recommendation for consideration regarding education at the Kenai River Center

The working group recognizes the value in providing education on riparian habitat and the 21.18 habitat ordinance, including direct landowner outreach. Further we perceive a gap in services that would provide meaningful public engagement and help defray costs incurred

by existing River Center staff. At the same time the working group does not wish to recommend to the Assembly that the Kenai Peninsula Borough create a new position due to the current fiscal climate. To accomplish this we recommend seeking partnership through local and willing non-profit organizations.

To enhance education and outreach to landowners the working group provides the following recommendation:

- Establish a mechanism to provide for a dedicated education/ outreach position in the Kenai River Center, in conjunction with a non-profit as the employer
- Work with a local non-profit to develop an education/ outreach work plan and budget, with regular reporting back to the Assembly
- Include funding in the KPB budget to support education/ outreach to be used only if outside matching funds can be secured and only as a portion of the total budget for services provided. We suggest 25% of 1 full-time employee (FTE), approximately \$25,000.
- (Vadla Amendment, passed by majority vote) Historically the river center has operated with 5 FTE and in last two years has gone from 5 to 3 FTE. Recommendation is full staff of 5 FTE as normal operating capacity for river center. However, recognizing current budget issues 4 FTE is reasonable in short-term to achieve education outreach goals.

Seek outside funding in collaboration with non-profit to fund the remaining 75% of the budget."

Code Change: No code change required.

Justification and Discussion: The group's objective was to highlight the importance of education and outreach to borough residents, and specifically property owners who own property abutting waters that are subject to KPB 21.18.

Recommendation #11– Re-Write of KPB 21.18.072 (Limited Commercial Activities)

Recommendation #11 carried by unanimous consent recommending a re-write (repeal and replace) of KPB 21.18.072 to provide for certain industrial activities from approximately near river mile 3.5 (West of Ames Bridge) to approximately near river mile 1 on the Kenai River.

Code Change: 21.18.072. - Limited commercial activity within habitat protection district [AREA].

Within the habitat protection district and subject to the requirements of this chapter, the planning commission may issue a permit for commercial activities to be conducted within a line parallel to and 900 feet west of the section line common to Section 4 and Section 5 of Township 5N, Range 11 W, Seward Meridian (approximately near river mile 1) to the north 1/16th aliquot division line of Section 17, T5N, R11W, Seward Meridian (approximately near river mile 3.5). Commercial activities are operations, uses, structures or other activities implemented for a private business purpose. Public parks, docks, and other public infrastructure are not considered commercial activities for purposes of this section.

- A. Activities not requiring permit. Commercial activities of the same nature as those allowed under KPB 21.18.065 do not require a permit under this section.
- B. Allowed Activities. The following commercial activities, uses or structures may be permitted under this section:
 - 1. Dock and boat launch.
 - 2. Stairs and pedestrian use boardwalks.
 - 3. Gas, electric, water or other utility connections, lines, or poles.
 - 4. Other activities, uses, or structures that either do not expand the applicant's surface area footprint within the habitat protection district or are necessary to the operation of the applicant's business and cannot be located outside of the habitat protection district due to conditions specific to the property. The burden is on the applicant, through a registered professional engineer, to show that conditions specific to the property exist.
- C. General standards. The following standards apply to permits issued under this section:
 - 1. The use or structure will not damage the riparian ecosystem or riparian wetlands. If substantial evidence supports a finding that

the use or structure will damage the riparian ecosystem or riparian wetlands, then mitigation shall be required.

2. Granting of the permit 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 or does not expand the surface area footprint of the structure or use in the habitat protection district.
5. Applicant or owner's compliance with other borough permits and ordinance requirements.
6. If the use or structure expands the applicant's surface area footprint within the habitat protection district, then appropriate mitigation shall be required in order to offset impacts to the habitat protection district.

D. General Conditions. The planning commission may impose permit conditions that it finds are necessary to meet the standards under this section and establish such conditions on the commercial activity, use or structure, for which the permit is granted as it determines necessary to prevent erosion, sedimentation, ground or surface water pollution, or damage to the habitat protection district, riparian wetlands, or riparian ecosystems. The planning commission may require the performance of appropriate mitigation to offset impacts that the planning commission finds may occur as a result of the proposed project or activity.

E. Prohibited activity. A commercial activity, use or structure, that is not allowed under this section and does not qualify for prior existing status under KPB 21.18.090 is prohibited.

F. Application procedure. A person seeking a permit under this section must complete the application and pay any applicable filing fee(s) to the river center on a form provided by the river center and receive planning commission approval prior to commencement of the project. An applicant's failure to abide by the terms and conditions of the planning commission's resolution approving the permit is grounds for revocation of the permit and removal of all non-compliant uses or structures.

[THE PLANNING COMMISSION MAY ISSUE A PERMIT FOR ACTIVITIES TO BE CONDUCTED WITHIN OR USING THE HABITAT PROTECTION AREA AS PROVIDED IN THIS SECTION. PERMITS ARE REQUIRED FOR COMMERCIAL ACTIVITIES OF THE SAME NATURE AS THOSE ALLOWED UNDER KPB 21.18.065 FOR PRIVATE NON-COMMERCIAL USE UPON CONDITIONS THAT THE ACTIVITY IS LIMITED TO PEDESTRIAN USE OVER BOARDWALKS, STAIR AND DOCKS NECESSARY TO ALLEVIATE THE INCREASED LEVELS OF ACTIVITY ATTENDANT TO THE COMMERCIAL ACTIVITY. A PERMIT MAY NOT BE ISSUED UNLESS THE PLANNING COMMISSION DETERMINES THE ACTIVITY WILL BE CONDUCTED IN A MANNER THAT DOES NOT RESULT IN 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. IN GRANTING A PERMIT, THE PLANNING COMMISSION MAY ESTABLISH SUCH CONDITIONS ON THE DEVELOPMENT, USE OR OPERATION OF THE ACTIVITY OR FACILITY FOR WHICH THE CONDITIONAL USE PERMIT IS GRANTED AS IT DETERMINES NECESSARY TO PREVENT 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. THE ACTIVITY MUST BE CONDUCTED ON A PORTION OF PROPERTY ADJACENT TO THE PROPERTY WITHIN THE HABITAT PROTECTION AREA FOR WHICH THE PERMIT IS SOUGHT.]

Justification and Discussion: KPB 21.18.072 (Limited commercial activity within the habitat protection area) is the only section of code within KPB 21.18 specific to commercial or business activities, uses or structures with the HPD. The current wording of this section is difficult to interpret, often open to debate, and has proven to have little useful, practical application. For example, in the past 5 years, it appears that no permits have been issued under this section of code.

The proposed amendment repeals current KPB 21.18.072 and replaces it with a standard-driven permitting process specific to commercial activities. The opening paragraph establishes a permit process for commercial activities within the area described. Subsection A provides for activities that do not require a permit pursuant to KPB 21.18.065. Subsection B provides 4 categories of allowed commercial activities with the HPD. Subsection C provides the general standards applicable to a permit application under this section. Subsection D sets out the general conditions. Subsection E provides that commercial activities not permitted under this section are prohibited, unless the use or structure otherwise qualifies for prior existing status under KPB 21.18.090.

This proposed amendment provides the planning commission authority to impose permit conditions necessary to meet the general standards. The proposed amendments will require mitigation when the proposed activity seeks to expand the applicant's surface footprint within the HPD.

This amendment was requested by and worked on in collaboration with the City of Kenai Administration to allow for commercial activities permitting within the industrialized area of the Kenai River within the City of Kenai. For all intents and purposes, this would create a permitting process similar to the conditional use permit process except that it is specific to commercial activities. There was discussion about extending the permit area west to the near the mouth of the Kenai River, but that amendment did not receive a second. There was also discussion about putting this under KPB 21.18.081 as a conditional use permit but no amendment was put on the floor and the group ultimately unanimously voted to recommend this re-write of KPB 21.18.072 to provide for a clearer permitting process for commercial activities within the area described.

Code Amendments Considered by Work Group but Not Passed

1. Flagpole amendment "option 2".

Proposed code amendment language considered by the group:

21.18.065. - Activities not requiring a permit.

- C. A single flagpole with a surface area footprint not to exceed 8 square feet and above ground height not to exceed 30 feet, installed per manufacture instructions. The flagpole may be lighted by solar or 12-gauge direct burial cable from the existing residence. The cable shall be buried in a trench not to exceed 6 inches in depth or 4 inches in width using hand tools only.

Action: No action taken. A motion was not put on the floor. The work group unanimously passed the flagpole amendment language reflected in Recommendation #3 above.

2. Staff proposed amendment to KPB 21.18.071 (A) adding new number 6

Proposed code amendment language considered by the group:

21.18.071. - Staff permits.

Adding a new (A)(6):

6. **Projects disturbing no more than 1 cubic yard of material that will not have significant negative impacts within the HPD as 21.18.020 provides protection against may be permitted if staff deems appropriate based on project design and/or mitigating native vegetation restoration**

Action: Motion to recommend failed by unanimous consent. The expressed concern was providing too much discretion to permitting decisions at the staff level.

3. Housekeeping amendment #3 to KPB 21.18.071 (A)

Proposed code amendment language considered by the group:

21.18.065. - Activities not requiring a permit.

- A. [n]Noncommercial recreational and other non-intrusive activities which do not involve construction, excavation, or fill of land and do not result in significant erosion, sedimentation, damage to the habitat protection district, an increase in ground or surface water pollution, and damage to the riparian wetlands and riparian ecosystems. **Whether or not a proposed noncommercial recreational activity or other non-intrusive activity may proceed without a permit under this subsection shall be determined by river center staff after consultation with the applicant and appropriate local, state or federal regulatory authorities.**

Action: Motion to recommend failed by unanimous consent. The group discussing adding a new (A)(6) to this section, the expressed concern was providing too much discretion to permitting decisions at the staff level. Alternatively, the group instead voted to repeal KPB 21.18.065(A) to address potential issues with open-to-interpretation terms that are used in this subsection of code.

4. KPB 21.18.075 (Specific reference to Private Boat Launches)

Proposed code amendment language considered by the group:

21.18.075. - Prohibited uses and structures.

Any use or structure within the habitat protection district that is not permitted or allowed under [IN] KPB 21.18.065, KPB 21.18.071, KPB 21.18.072, or **KPB 21.18.081** is prohibited. **A developed private boat launch that does not meet the criteria for a conditional use permit under KPB 21.18.081 or under KPB 21.18.072 is prohibited.**

Action: Motion to recommend failed by unanimous consent. The group expressed concern that the public might see this as a major change and was concerned with singling out boat launches specifically, especially because as far as the group was concerned there does not appear to be an ongoing proliferation of prohibited boat launches and because state parks already regulates boat launches in the water.

5. Amending KPB 21.18.090 (Specific reference to Prior Existing Status for Private Boat Launches)

Code change: 21.18.090. – Prior Existing uses and structures.

- E. Impervious materials placed in the habitat protection district which are not structures are not allowed as either prior existing uses or prior existing structures. The planning department may require removal of these materials. **For the purposes of this subsection, the term “impervious materials” does not include a private boat launch established prior to July 2, 2013, that otherwise meets the criteria for prior existing uses under KPB 21.18.090(D).**

Action: No action taken. A motion was not put on the floor.

6. Repealing lakes from KPB 21.18 jurisdiction

Proposed code amendment language considered by the group: The action would amend KPB 21.18.025 and the appendix to remove all lakes from KPB 21.18 jurisdiction.

Action: Motion to recommend failed. The expressed concern was that the science and majority of public comments did not support repealing lakes.

Final Report and Completion of Purpose

This report was first provided as a draft in the work group’s January 21, 2021, meeting packet. The draft report was published online in advance of the meeting as part of the work group’s packet. The work group held a final meeting on January 28, 2021 for the sole purpose of discussing and approving this final report. On January 28, 2021, the work group unanimously approved the final report reflecting the recommendations passed or considered by the work group. Upon approval of the final report, the Anadromous Waters Habitat Protection Work Group completed its purpose as set out in the assembly’s establishing legislation and then discontinued its work pursuant to Resolution 2019-058.