

Introduced by: Johnson
Date: 04/06/21
Hearing: 05/04/21
Action: Enacted
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2021-15**

AN ORDINANCE AMENDING KPB 21.18, ANADROMOUS WATERS HABITAT PROTECTION, IN ACCORDANCE WITH RECOMMENDATIONS CONTAINED IN THE FINAL REPORT OF THE WORK GROUP FORMED TO PROVIDE A REVIEW OF CHAPTER 21.18

WHEREAS, Resolution 2019-058, as amended by Resolution 2020-09, established the Anadromous Waters Habitat Protection Work Group (work group), for the purpose of examining the current anadromous waters habitat protection permit process and potentially recommending amendments to KPB 21.18; and

WHEREAS, the first work group meeting occurred on March 12, 2020;

WHEREAS, in total the work group held eight meetings which were all noticed and open to the public in accordance with Alaska's Open Meetings Act; and

WHEREAS, at its final meeting on January 28, 2021, the work group approved its final report; and

WHEREAS, the only work group recommendation not incorporated into this ordinance is recommendation #10, Education Recommendation, because it relates to budgetary matters and did not recommend a change to borough code; and

WHEREAS, the work group's final report is available on the borough's website and accompanies this ordinance; and

WHEREAS, the Kenai Peninsula Borough Planning Commission, at its regular meeting of March 15, 2021, recommended approval by unanimous consent;

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

SECTION 1. That KPB 21.18.010(G) is hereby amended as follows:

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 [NATIVE SHORE COVER] the riparian habitat and natural beauty. These responsibilities are hereby recognized by the Kenai Peninsula Borough.

SECTION 2. That KPB 21.18.020(A)(2) is hereby amended as follows:

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 RIPARIAN] native vegetation;
 - 3. Controlling pollution sources; and
 - 4. Prohibiting certain uses and structures detrimental to anadromous waters and habitat.
 - 5. Decreasing significant erosion, sedimentation, damage to the habitat protection district, ground or surface water pollution, and damage to riparian wetlands and riparian ecosystems.

...

SECTION 3. That KPB 21.18.025(B) is hereby amended as follows:

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 the 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.

...

SECTION 4. That KPB 21.18.065 is hereby amended as follows:

21.18.065. Activities not requiring a permit.

[A. THE PERMIT REQUIRED BY THIS CHAPTER IS NOT REQUIRED FOR 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 permit required under this chapter is not required for:

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.

...

SECTION 5. That KPB 21.18.071(A) and (A)(1) are hereby amended as follows:

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:

- 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.

...

SECTION 6. That KPB 21.18.072 is hereby repealed and replaced as follows:

21.18.072. Limited commercial activity within habitat protection district.

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.

SECTION 7. That KPB 21.18.075 is hereby amended as follows:

21.18.075. Prohibited uses and structures.

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

SECTION 8. That KPB 21.18.100(B) is hereby amended as follows:

21.18.100. Administration by cities – Delegation – Legal proceedings.

- A. The administration and enforcement of this ordinance may be undertaken by a city.
- B. A city may adopt the standards established in this chapter or prescribe standards more stringent than those established in this chapter for the areas of the city within the habitat protection [AREA] district or other areas regulated by this chapter. A conditional use permit issued by a city planning commission may serve to satisfy the requirements of 21.18.072 and 21.18.080.

...

SECTION 9. That KPB 21.18.140 is hereby amended as follows:

21.18.140. Definitions.

As used in this chapter:

“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.

...

"Conditional use" shall mean a use that would not be appropriate without restrictions throughout the habitat protection district[AREA] but which, if controlled as to number, area, location, relation to the habitat or method of operation, would not cause or lead to significant erosion, sedimentation, damage to the habitat protection district, an increase in ground or surface pollution and damage to riparian wetlands and riparian ecosystems.

...

“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.

...

"Ground or water pollution" shall mean the discharge, application, spread or release of chemicals, toxic materials, fuels, pesticides, petroleum based fuels on or into the soil and waters within the habitat protection [AREA] district.

“Habitat protection district” shall mean the anadromous waters habitat protection district land area as established in KPB 21.18.040.

...

“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 [NATIVE PLANT COMMUNITIES THAT ARE UNDISTURBED OR MIMICKED] 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.

“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" [SHALL HAVE THE MEANING GIVEN IN 16 USC § 1302 AS APPLIED TO LAND WITHIN THE HABITAT PROTECTION AREA] 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.


SECTION 10. That this ordinance shall become effective immediately upon enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 4TH DAY OF MAY, 2021.

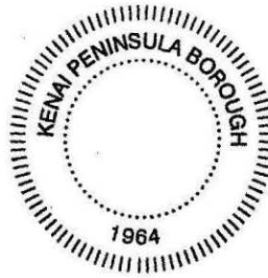


Brent Hibbert, Assembly President

ATTEST:



Jonni Blankenship, MMC, Borough Clerk



Yes: Bjorkman, Carpenter, Chesley, Cox, Derkevorkian, Dunne, Elam, Johnson, Hibbert
No: None
Absent: None