

E. NEW BUSINESS

- 4. Ordinance 2025-12: Amending KPB 21.18.081 to clarify the requirements for conditional use permits and amending KPB 21.18.140 to define "Water-Dependent"**
(Staff Person: KRC Manager Samantha Lopez)

Kenai Peninsula Borough

Planning Department

MEMORANDUM

TO: Peter Ribbens, Assembly President
Members, KPB Assembly

THRU: Peter A. Micciche, Mayor *PM*
Robert Ruffner, Planning Director *RR*

FROM: Samantha Lopez, River Center Manager *SL*

DATE: May 27, 2025

SUBJECT: Ordinance 2025-____, Amending KPB 21.18.081 to Clarify the Requirements for Conditional Use Permits and Amending KPB 21.18.140 to Define “Water-Dependent” (Mayor)

The Kenai Peninsula Borough (KPB) is home to vital watersheds that our salmon require to spawn, rear, and grow in. Maintaining watershed connectivity via riparian habitat buffers along anadromous waterbodies is one crucial tool that has proven to aid in sustaining the Kenai Peninsula’s salmon populations. It is important that these buffers are developed in ways that allow property owners to recreate while also maintaining a healthy riparian habitat that benefits our salmon.

The KPB Planning Commission is tasked with reviewing applications for Conditional Use Permits (CUP) for developments within the Habitat Protection District (HPD). Their review is quasi-judicial and requires code that sets standards for which the commission may set conditions to meet those standards and are supported by findings.

To approve a CUP, the project must meet all five general standards. One of the standards states that “the proposed use or structure is water-dependent”. Because code did not previously define “water-dependent”, the Planning Commission drafted PC Resolution 2015-35. To provide for consistency in the analysis of permit applications and approval of permits, the ordinance amends code to formally define “water-dependent” and clarify the conditional uses and structures that may be approved within the HPD. The ordinance also provides additional clarification for fences and utilities that have proven challenging for commissioners to reconcile with the water dependent standard.

Your consideration is appreciated.

Introduced by: Mayor
Date: 06/03/2025
Hearing: 07/08/2025
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2025-**

**AN ORDINANCE AMENDING KPB 21.18.081 TO CLARIFY THE
REQUIREMENTS FOR CONDITIONAL USE PERMITS AND
AMENDING KPB 21.18.140 TO DEFINE “WATER-DEPENDENT”**

WHEREAS, the Kenai Peninsula Borough (KPB) is home to vital watersheds that our salmon require to spawn, rear, and grow in; and

WHEREAS, maintaining watershed connectivity via riparian habitat buffers along anadromous waterbodies is one crucial tool that has proven to aid in sustaining the Kenai Peninsula’s salmon populations; and

WHEREAS, Goal 2, Objective D, Strategy 2 of the 2019 KPB Comprehensive Plan calls for the identification and protection of critical natural systems of the Kenai Peninsula Borough, its rivers, watersheds, floodplains, and fish and wildlife habitats and resources, specifically through KPB 21.18; and

WHEREAS, KPB Chapter 21.18 provides for the approval of a conditional use permit (CUP) for certain activities within the Habitat Protection District (HPD); and

WHEREAS, KPB 21.18.081(B) sets forth the uses and structures within the HPD allowed through a CUP; and

WHEREAS, clarifying the allowable uses and structures allowed through a CUP will provide for consistency in the analysis of permit applications and approval of permits; and

WHEREAS, KPB 21.18.081(D) sets forth the general standards which must be met before a CUP may be granted; and

WHEREAS, KPB 21.18.081(D)(4) requires that the proposed use or structure be water dependent; and

WHEREAS, defining the term “water dependent” will provide for consistency in the analysis of CUP applications and approval of CUPs; and

WHEREAS, the KPB Planning Commission at its regularly scheduled meeting of _____, 2025 recommended _____;

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

SECTION 1. That this ordinance amends KPB Code and will be codified.

SECTION 2. That KPB 21.18.081 is hereby amended as follows:

21.18.081. Conditional use permit.

- A. Intent. The intent of this section is to allow special uses and structures which may be compatible with KPB 21.18.071 in the habitat protection district through the approval of a conditional use, if certain standards and conditions exist.
- B. Conditional uses and structures. The following conditional uses and structures may be approved in the habitat protection district:
 - 1. Fish-cleaning stations not meeting the standards of KPB 21.18.071;
 - 2. Fences[;] provided the following standards are met:
 - a. The fence is located adjacent to public property or a public right-of-way.
 - b. At least twenty (20) feet of the fence nearest to the waterbody will be seasonally removed to facilitate wildlife crossings and the unobstructed flow of flood waters. More of the fence may be required to be seasonally removed if the Planning Commission may require seasonal removal of the fence greater than twenty (20) feet if the Planning Commission finds a length greater than twenty (20) feet is necessary to facilitate these standards.
 - 3. Signs;
 - 4. Public owned facilities, parks, campgrounds, and their related uses and structures;
 - 5. Transportation [AND UTILITY] infrastructure, provided the following standards are met:[;]
 - a. All projects must minimize their footprint in the habitat protection district to the maximum extent possible, and must first utilize all suitable areas outside the habitat protection district.
 - b. Infrastructure that will cross a waterbody must cross perpendicular to the waterbody through the habitat protection district. Within the habitat protection district, nearshore areas that may sustain native vegetation must be preserved to minimize impact.
 - 6. Elevated light penetrating [S]structures compliant with the Americans [W]with Disabilities Act [AND ELEVATED LIGHT PENETRATING STRUCTURES] that do not meet[ING] the standards of KPB 21.18.071;
 - 7. Utility infrastructure for natural gas, electric, communications, and [W]wells and waterlines provided the following standards are met:[;]
 - a. All projects must minimize their footprint in the habitat protection district to the maximum extent possible, and must first utilize all suitable areas outside the habitat protection district.

- b. Utilities that will cross a waterbody must cross perpendicular to the waterbody through the habitat protection district. Within the habitat protection district, nearshore areas that may sustain native vegetation must be preserved to minimize impact.
- 8. Lifts.
- 9. Private boat launches and related facilities that are established to serve the public provided the following standards are met:
 - a. A plan of operation is submitted that includes hours of operation, seasons of operation, daily boat launch capacity, parking plan, types of boats and clients to be served, fees charged, location of other public boat launches on the anadromous waters; ancillary facilities including but not limited to restrooms, storage sheds, waiting platforms or areas, a statement of need that the facility will serve, and other information requested to aid in the determination of habitat protection measures.
 - b. The boat launch must be open to the public and not have exclusive membership.
 - c. When no longer serving the public as defined in the plan of operation the boat launch must be removed and the area reclaimed, revegetated or otherwise subject to mitigation measures to restore habitat. A reclamation plan must be submitted with the application as part of the plan of operation.
 - d. The planning commission may establish additional conditions to protect and preserve the purposes of the habitat protection district.
 - e. A conditional use permit under this subsection expires two years after being granted, unless an application for renewal meeting the criteria of KPB 21.18.081(B)(9)(a) is approved by the planning commission which demonstrates that the applicant is in compliance with the original permit conditions and the provisions of this chapter.
- 10. A principal structure or an addition to a principal structure on a small parcel that meets the standards below are considered water-dependent because the minimal lot size limits development of other non-water-dependent uses. Such structures may be approved within the habitat protection district provided all the following standards are met:
 - a. The parcel boundaries were defined prior to January 1, 2012.
 - b. The parcel and is served by a public sewer system or sewage holding tank or septic system, provided the holding tank or septic system are located entirely outside the habitat protection district.
 - c. The parcel has an area of .3 acres or less and less than 4,000 square feet of total developed impervious coverage.
 - d. The parcel has less than 4,000 square feet of suitable development area outside the habitat protection district.
 - e. On the portion of the parcel within the habitat protection district, the total impervious coverage may not exceed 50% of the area able to sustain native vegetation, or 3,000 square feet of area able to sustain native vegetation, whichever is less.

- f. The standard for development is to first utilize suitable parcel areas outside the habitat protection district. Within the habitat protection district, nearshore areas that may sustain native vegetation must be preserved to minimize impact.

...

SECTION 2. That KPB 21.18.140 is hereby amended as follows:

21.18.140. Definitions.

...

“Water-dependent” means a use or structure that must be located on, in, or adjacent to water areas because the use or structure requires access to the waterbody and therefore cannot be located further inland. Structures and uses only considered to be water-dependent if they are dependent on the water as part of the intrinsic nature of their operation. Examples of water-dependent structures include, but are not limited to, piers, boat ramps, and elevated walkways.

...

SECTION 3. That if any provision of this ordinance or its application is determined to be invalid, the remaining provisions shall continue in full force and effect.

SECTION 4. That this ordinance shall be effective immediately.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2025.

Peter Ribbens, Assembly President

ATTEST:

Michele Turner, CMC, Borough Clerk

Yes:

No:

Absent:

KENAI PENINSULA BOROUGH PLANNING COMMISSION

RESOLUTION 2015-35

A RESOLUTION TO DEFINE THE TERM "WATER DEPENDENT"
AS IT APPEARS IN KPB 21.18.081(D)(4)

WHEREAS, KPB Chapter 21.18 provides for the approval of Conditional Use Permits for certain activities within the habitat protection district; and

WHEREAS, KPB 21.18.081(B) sets forth the uses and structures within the Habitat Protection District allowed through a conditional use permit; and

WHEREAS, KPB 21.18.081(D) sets forth the general standards which must be met before a conditional use permit may be granted; and

WHEREAS, KPB 21.18.081(D)(4) requires that the proposed use or structure be water dependent; and

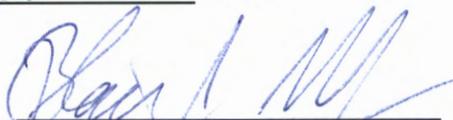
WHEREAS, defining the term water dependent will provide for consistency in the analysis of permit applications and approval of permits;

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH:

Section 1. That the Planning Commission defines the term water dependent as a use or structure located on, in or adjacent to water areas because the use requires access to the waterbody. The definition is applicable to facilities or activities that must be located at or near the shoreline and within the 50-foot buffer. An activity is considered water dependent if it is dependent on the water as part of the intrinsic nature of its operation. Examples of water dependent facilities may include, but are not limited to, piers, boat ramps, and elevated walkways.

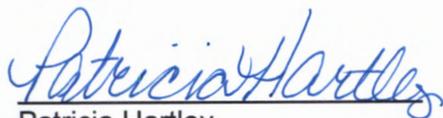
Section 2. That this Resolution becomes effective immediately upon adoption.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON THIS 9 DAY OF November 2015.



Blair J. Martin, Chairperson
Planning Commission

ATTEST:



Patricia Hartley
Administrative Assistant