

Introduced by:	Land Use Committee
Date:	2/20/96
Hearing:	3/19/96
Postponed to:	3/27/96
Postponed to:	4/02/96
Carried over to:	4/16/96
Action:	Enacted as Amended
Vote:	6 Yes, 3 No
Reconsideration noticed:	4/22/96
Action:	No Motion Made

**KENAI PENINSULA BOROUGH  
ORDINANCE 96-06**

**AN ORDINANCE DEFINING THE KENAI RIVER WATERSHED,  
ESTABLISHING AREAS FOR REGULATION OF ACTIVITIES FOR HABITAT  
PROTECTION WITHIN THE WATERSHED AND ENACTING LAND USE  
RESTRICTIONS WITHIN THOSE AREAS**

**WHEREAS,** the Kenai River is recognized as a critical natural resource and is very important to the economic well being and quality of life and lifestyle of the Kenai Peninsula Borough and its residents; and

**WHEREAS,** numerous studies have been completed detailing and inventorying the complexity of the Kenai River; and

**WHEREAS,** the aforementioned studies are unanimous in concluding that restricting land use is necessary to protect and preserve the riparian habitat of the Kenai River; and

**WHEREAS,** the Kenai Peninsula Borough has authority for and is responsible for land use planning within its boundaries; and

**WHEREAS,** the “Kenai River Comprehensive Plan - Goals and Objectives for the Kenai River Corridor” was adopted in Ordinance 87-48 as part of the borough’s comprehensive plan; and

**WHEREAS,** within one year from enactment of this ordinance the Assembly intends to expand the habitat protection area, as defined in this ordinance, to include anadromous Kenai River tributaries;

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

**SECTION 1.** That a new chapter 21.18 to the borough code of ordinances be enacted to read:  
**KENAI RIVER HABITAT PROTECTION**

**21.18.010 Purpose.**

Establish measures for the protection of Kenai River Salmon spawning and rearing habitat are applied in a consistent manner while recognizing private property rights and providing cities the option to administer the ordinance within their boundaries. It is the intent of this ordinance to avoid duplicating regulations of state, federal, or municipal agencies and to minimize conflicts between those regulations and this ordinance.

**21.18.020 Findings.**

In enacting this ordinance the assembly finds numerous factors affect the habitat of the Kenai River. Among others these include bank erosion, bank trampling, pollution, inadequate tourism infrastructure, unsuccessful attempts to remedy bank erosion or protect and restore habitat, inconsistent regulations, logging, grazing, mining, wetland fill and drainage, excavation and fill of property, dredging, inappropriately installed culverts, fuel storage, and maintenance of existing structures. The assembly finds that the sensitivity of the river area requires general prohibition of activities within an area immediately adjacent to the Kenai River and only activities which do not damage the habitat should be allowed. The assembly finds that certain activities having minor impact and that existing state, federal and local laws and regulations contain sufficient controls on these activities that further regulation is not currently needed. The assembly further finds that fuel storage and significant removal of vegetation within the 100-year flood plain along the Kenai River and its tributaries need regulation to protect the Kenai River salmon habitat.

**21.18.030 Periodic Review.**

As part of its role in comprehensive planning the planning department shall prepare an assessment of the benefits and effectiveness of this chapter after one year, with a review every two years thereafter. In preparing this evaluation the planning commission shall hold at least one public hearing.

**21.18.035 Kenai River watershed district.**

There is established a Kenai River watershed district comprised of all lands lying within or contiguous to the Kenai River drainage system as bounded and defined on the official map, a copy of which is attached as Exhibit A, which shall be kept on file in the planning department. The Kenai River drainage system shall include all sections of the Kenai River to its outlet into Cook Inlet, all tributaries and small lake systems including Kenai and Skilak Lakes and their headwaters. The purpose of establishing this watershed district is for watershed boundaries only. Inclusion indicates that the area is important to the Kenai River watershed.

**21.18.040 Habitat protection area established.**

There is established a Kenai River habitat protection area within the Kenai River watershed district. Except as otherwise provided in this section, this area includes all lands within 50 horizontal feet of the Kenai River. This shall be measured from the ordinary high water mark or mean high water line in tidal areas. Where the banks within this fifty-foot area consist of a 60 degree or more cut bank the habitat protection area shall consist of the greater of 50 feet from the river or to a point 25 feet back from the top of the cut bank.

**21.18.050 Flood plain — Restrictions within for habitat protection — Permit required — Fuel storage tanks and logging — Conditions.**

A. No person shall install or replace a fuel storage tank or conduct logging activities as defined in this section within any flood hazard area bordering the Kenai River or any of its tributaries without first obtaining a permit from the borough planning director. In this section "flood hazard area" means any area designated as such pursuant to KPB 21.06 and shown on the most recent flood insurance rate maps published by the Federal Emergency Management Agency.

B. Application for a permit shall be made to the borough planning department. No permit shall be issued unless the planning director or designee determines that the proposed activity meets the requirements of subsection C of this section. The applicant shall submit site or work plans showing the location of the activity, the proposed means of conducting the activity, and information showing that the proposed activity meets the conditions of this section.

C. Fuel storage tanks must be attached or anchored solidly to a structure or to the ground. Cables may be used for anchoring that are of sufficient strength to prevent the tank from tearing loose if it were to float while empty. The tank must also be installed within an impervious containment basin of a size sufficient to contain 110% of storage capacity plus 12 inches of free board.

D. No permit shall be issued for logging unless the borough planning director, or designee, determines the clearing does not result in a cleared area larger than 20 percent of the total area of the parcel provided that clearing for the footprint of a building may exceed this 20 percent limit. Multiple cleared areas may exist on a parcel but the total of all such areas may not exceed 50 percent of the total area of the parcel upon which the logging permit is sought. The planning director may also deny a permit upon a determination that the proposed logging will increase runoff and/or erosion to such levels that it may significantly damage the riparian habitat and wetlands within the habitat protection area.

E. A decision of the planning director under this section may be appealed to the planning commission. The appeal must be filed with the planning director within seven days of the date of the decision and state the basis of the appeal. Only the applicant or an affected property owner may appeal a decision.

**21.18.060 Prohibited activity within the protection area.**

Within the habitat protection area established by Section 21.18.040 of this chapter, no building, construction, filling, excavation, major clearing of vegetation, commercial recreational uses, or activity which results in significant erosion or damage to riparian habitat, or results in or increases ground or water pollution, can be conducted except when specifically allowed under KPB 21.18.070, or when a conditional use permit has been issued pursuant to KPB 21.18.072 or 21.18.080 or when allowed for a prior existing structure under the provisions of KPB 21.18.090.

**21.18.070 Activities not requiring a permit.**

A. The activities specified in this section may be conducted within the habitat protection area zone without obtaining a permit from the borough under this chapter. This section in no way waives or modifies the necessity of adherence to other provisions of the KPB code, including KPB 21.06 (flood plain management), or requirements of a permit from federal, state or local governments. Conduct of activities listed in this section are expressly conditioned upon obtaining all applicable permits. Conduct of activity without obtaining necessary permits shall be considered a violation of this chapter, subject to the provisions of Section 21.18.110.

B. The following activities, to the extent they do not result in significant erosion or damage

to riparian habitat, or result in or increase ground or water pollution, do not require the issuance of a permit under this chapter:

1. Minor vegetation management (trimming, pruning, or removal of hazardous trees)
2. Private non-commercial recreational uses that do not involve construction, excavation or fill of land
3. Construction, installation, repair and maintenance of ladders, steps, cantilevered walkways, platforms, docks, and bank restoration and protection and maintenance dredging that are regulated by and require a permit from the Alaska Department of Natural Resources, State Parks Division, and the Alaska Department of Fish & Game, U.S. Army Corps of Engineers and other applicable agencies. The activity must comply with all conditions and regulations imposed on such activity.
4. Boardwalks meeting specifications established in KPB 5.14.040(A).

**21.18.072 Limited commercial activity within habitat protection area.**

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 21.18.070 B. 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, destruction of wetlands or riparian habitat, or result in or increase ground or water pollution. Permits are conditioned upon compliance with all applicable federal, state and local laws and regulations. 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 erosion, destruction of wetlands or riparian habitat or result in or increase ground or water pollution. 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.

**21.18.080 Conditional use permit.**

A. An owner may apply for a conditional use permit to allow activities which are prohibited within the habitat protection area. Conditional use permit requests shall be approved or denied by the planning commission. A conditional use permit may not be approved unless it is determined the activity will be conducted in a manner that does not result in significant erosion, destruction of wetlands or riparian habitat, or result in or increase ground or water pollution. Conditional use permits are conditioned upon compliance with all applicable federal, state and local laws and regulations. In granting a conditional use 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 erosion, destruction of wetlands or riparian habitat, or result in or increase ground or water pollution. Additionally a conditional use permit may not be granted unless the planning commission determines that the owner will be deprived of reasonable use of the property without a conditional use permit being granted.

B. A person seeking a conditional use permit must make application to the borough planning department. The application shall provide information describing the proposed activity and demonstrate that the activity meets the conditions for conditional use permit. The planning

commission has no obligation to ascertain whether special conditions can be developed or imposed unless the applicant has submitted adequate information to demonstrate that the proposed methods or conditions will eliminate the impacts of the activity within the protection area. If the planning commission determines a proposed activity will cause significant erosion, destruction of wetlands or riparian habitat, or result in or increase ground or water pollution it shall deny a conditional use permit for the requested activity.

#### **21.18.090 Prior existing activities and structures.**

A. Intent. There are activities which were conducted, and structures which were under construction, or exist and were in use before the enactment of this ordinance which would be prohibited or restricted under the terms of this ordinance or future amendments. It is the intent of this section to permit these prior existing activities or structures to continue. Any such activities or structures must still comply with other applicable laws. The activities referenced in this section shall be allowed if they do not result in significant erosion or damage to the riparian habitat.

B. Structures. Structures which were under construction or in use before the effective date of any provision of this chapter, but that would be prohibited or restricted under the terms of this chapter shall be allowed to continue, provided that a structure under construction must be substantially completed within two years of enactment of this ordinance. Such a structure may be maintained or repaired without a permit. Such a structure may also be replaced or reconstructed within two years after accidental damage or accidental destruction by fire, explosion, or other casualty or act of God. Reconstruction or replacement not completed within two years of the date of the damage is prohibited except in compliance with current requirements. Such replacement or reconstruction may only be undertaken in the same space that the structure occupied prior to damage or destruction.

C. Activities. This chapter shall not prohibit or restrict activities which were conducted before the effective date of any provision of this chapter, provided that, after the effective date, such activities are conducted in the same location and are not enlarged to include a greater number of participants or to occupy a greater area of land.

D. Permits. Any enlargement or expansion of such an activity or structure within the habitat protection area shall require a conditional use permit. A conditional use permit shall be granted to an applicant if the enlargement or expansion will be conducted in a manner that does not result in significant erosion, destruction of wetlands or riparian habitat or increase in ground or water pollution. The permitting authority may attach conditions to the permit it feels are reasonably necessary to achieve the above objectives.

E. Other provisions.

1. Any prior existing activity or structure which is abandoned for two years or more shall thereafter not be conducted, used or occupied except in conformity with the provisions of this chapter.

2. Nothing in this chapter shall prevent any change of tenancy, ownership or management of any prior existing structure.

#### **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 or other areas regulated by this chapter.

C. A city wishing to administer and enforce this chapter shall enact an ordinance adopting the provisions of this chapter by reference, providing the city will undertake the administration in conjunction with the administration of land use regulations and building and health codes enacted by the city. Within 30 days of passage of the ordinance the mayor shall transfer the administration and enforcement to the city. The city may relinquish and transfer the administration and enforcement back to the borough by ordinance, however the transfer shall not take effect until 90 days or the commencement of a new fiscal year for the borough, whichever is greater.

D. If a city assumes administration of this chapter, conditional use permit determinations shall be made by the city planning commission, or by the city council, as provided by city ordinance. Appeals or legal proceedings taken from actions of the city in administering shall be the sole responsibility of the city.

#### **21.18.110 Penalty for violation.**

For any violation of this chapter the owner, agent, or contractor of a building or premise where such violations have been committed or shall exist, or any other person who maintains any building or premise or conducts an activity in violation of this chapter shall be subject to a civil penalty up to \$300. Each day that a violation continues shall be considered a separate violation for purposes of imposing the penalty. The provisions of KPB 21.24.020 shall not apply to violations of this chapter.

#### **21.18.120 Conflict with city land use authority or other laws or regulations.**

To the extent this chapter may conflict with any previous grant or delegation of land use regulation authority from the borough, such previous delegation of authority is modified or limited so as not to conflict with this chapter. Except as otherwise specifically provided by another provision of this chapter, the restrictions on use of land activity established by this chapter shall be in addition to any other restrictions adopted by any state, federal or local authority having authority to adopt those restrictions.

#### **21.18.130 Administration and appeals.**

Applications for permits, conditional use permits or determinations under this chapter will be administered in accordance with the provisions of KPB 21.20 governing application, notice and conduct of hearings. Appeals from action taken under this chapter will be handled in accordance with the appeal procedures set forth in KPB 21.20

#### **21.18.140 Definitions.**

As used in this chapter:

A. "Commercial use" shall mean an occupation, employment, or enterprise that is carried on for sale of goods or services or for profit.

B. "Conditional use" shall mean a use that would not be appropriate without restrictions throughout the habitat protection 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, destruction of wetlands or riparian habitat, or result in or increase ground or water pollution.

C. "Cut bank" shall mean banks of the Kenai River with exposed soil surface that have occurred from natural or manmade causes whether the exposed surface extends to the high water mark or not.

D. "Erosion" shall mean significant sloughing, washout, or discharge of soil arising from manmade sources or causes.

E. "Fuel storage tank" shall mean any vessel for the storage of petroleum based fuels including gasoline, diesel, kerosene and heating oil having a liquid volume of 200 gallons or more.

F. "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.

G. "Kenai River" shall mean the main stem of the river from and including Kenai Lake to the mouth including Skilak Lake.

H. "Logging" shall mean removal or cutting down more than 50 trees per acre that have a breast diameter height of 6" or more.

I. "Mean high water line" or "ordinary high water line" shall have the definition given in 11 AAC 53.900(15) as it currently exists or as it may be renumbered or revised.

J. "Ordinary high water mark" shall have the definition given in 11 AAC 53.900(23) as it currently exists or as it may be renumbered or revised.

K. "Riparian habitat" shall mean the areas within and adjacent to the river containing spawning and rearing habitat for salmon or that provide immediate cover or stability for salmon and eggs at all stages of development.

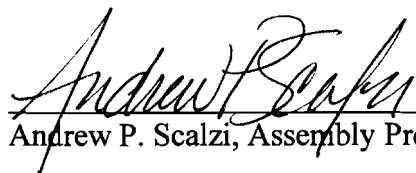
L. "Soil erosion" shall mean the increased movement of soils that occurs as a result of human activities or development.

M. "Structure" shall mean anything which is constructed, erected or moved to or from any premises and which is located above, on, or below the ground, including buildings, roads, signs, billboards, satellite antennas and other communication structures, fences, and mobile homes.

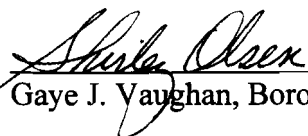
N. "Wetlands" shall have the meaning given in 16 USC § 1302 as applied to land within the habitat protection area.

**SECTION 2.** That this ordinance shall take effect May 15, 1996.

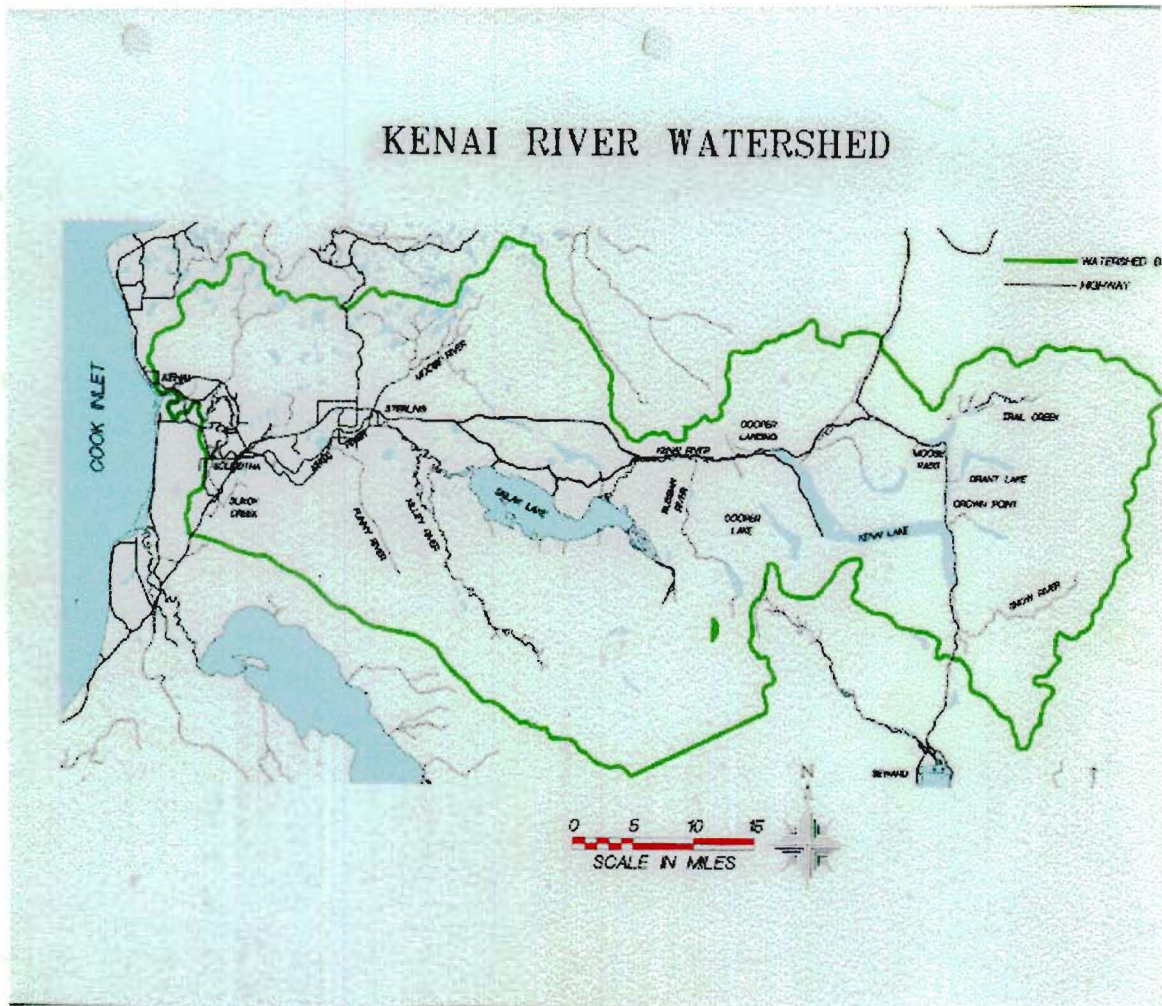
**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 22nd DAY OF APRIL, 1996.**

  
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Andrew P. Scalzi, Assembly President

ATTEST:

  
for \_\_\_\_\_  
Gaye J. Vaughan, Borough Clerk

# KENAI RIVER WATERSHED





# Kenai River Watershed

- WATERSHED BOUNDARY
- - - HIGHWAY
- - - WESTERN SLOPE OF KENAI MOUNTAINS

