

Introduced by:	Mayor at the request of Planning Commission
Date:	4/22/97
Hearing:	5/20/97
Action:	Amended
Vote:	8 Yes, 1 No
Postponed to:	6/03/97
Carried forward:	6/18/97
Action:	Enacted as Amended
Vote:	6 Yes, 2 No, 1 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 97-26**

**AN ORDINANCE AMENDING CHAPTER 21.18,
KENAI RIVER HABITAT PROTECTION**

WHEREAS, the Kenai Peninsula Borough Assembly enacted Ordinance 96-06, establishing the Kenai River Habitat Protection, on April 22, 1996; and

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, the Kenai River Center, Planning Department and Planning Commission have identified amendments to Chapter 21.18 which would provide clearer definition and implementation of Chapter 21.18; and

WHEREAS, Ordinance 96-06 required the Planning Department to prepare an assessment of the benefits and effectiveness of the chapter within one year; and

WHEREAS, the Planning Commission has provided copies of the proposed ordinance to the Cities of Kenai and Soldotna, advisory planning commissions for Cooper Landing, Funny River and Moose Pass, and held three public hearings; and

WHEREAS, the Planning Commission voted to recommend enactment of the amendments by unanimous consent during their regularly scheduled meeting of March 24, 1997;

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

SECTION 1. That KP.B Section 21.18.070(B) of the borough code of ordinances shall be amended as follows:

21.18.070 Activities not requiring a permit

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 KPUB 5.14.040(A).] and gratewalks with less than 75 percent but a minimum of 25 percent light penetration must be constructed so that no part, other than the supporting posts, are less than 18 inches off the ground. Gratewalks with at least 75 percent light penetration must be constructed so that no part, other than the supporting posts, are within 8 inches off the ground. Boardwalks and gratewalks are not to exceed eight (8) feet in width, and those boardwalks and gratewalks running along or parallel to the banks of the Kenai River shall be limited in length to no more than one third (1/3) the total lineal river frontage of the parcel on which it is constructed. Boardwalks and gratewalks must be constructed of wood, plastic, fiberglass, aluminum, steel, or other non-toxic material. If the wood is treated, it must be certified as non-toxic to plants and animals by an independent laboratory or other appropriate agency. Boardwalks and gratewalks not meeting the above requirements shall require a conditional use permit.

5. Stairways, steps and ladders across land adjacent to the river which is at least 10 degrees steep, or from any adjacent land into the water or onto a floating dock, and with at least 75 percent light penetration, must be constructed so that no part, other than the supporting posts, are within 8 inches off the ground. Stairways, steps and ladders with less than 75 percent but a minimum of 25 percent light penetration must be constructed so that no part, other than the supporting posts, are less than 18 inches off the ground. Stairways, steps and ladders must be constructed of wood, plastic, fiberglass, aluminum, steel, or other non-toxic material. If the wood is treated, it must be certified as non-toxic to plants and animals by an independent laboratory or other appropriate agency. Stairways, steps and ladders not meeting the above requirements shall require a conditional use permit.

6. Fish cleaning stations. (Covered and/or walled in fish cleaning stations shall require a conditional use permit.)

SECTION 2. That KPUB Section 21.18.080(A) of the borough code of ordinances shall be amended as follows:

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. The construction or installation phase of an activity requiring a conditional use permit must be completed within one calendar year from the date of the permit's issuance, or the conditional use permit shall expire. However, prior to its expiration date, a conditional use permit extension for up to twelve (12) months may be granted by the planning director upon written request. 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.

SECTION 3. That KPB Section 21.18.100(B) of the borough code of ordinances shall be amended as follows:

21.18.100 Administration by cities - Delegation - Legal proceedings.

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. 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 4. That KPB Section 21.18.135 shall be added to the borough code of ordinances as follows:

21.18.135 Exemption for emergency situations

In a declared emergency, the department, through its authorized representative, may issue oral permits to a riparian owner for removing obstructions or for repairing existing structures without the necessity of submitting prepared plans and specifications as may be required by this chapter.

SECTION 5. That KPB Section 21.18.140(G) of the borough code of ordinances shall be amended as follows:

21.18.140 Definitions

G. "Kenai River" shall mean the main stem of the river from and including Kenai Lake to the mouth including Skilak Lake. The main stem shall include all sloughs, channels, boat basins, distributaries, and lagoons. For the purpose of this chapter, the mouth shall be described as the western most section line common to Section 5 and Section 8, T5N, R11W, Seward Meridian.

SECTION 6. That KPB Sections 21.18.140(O) and (P) shall be added to the borough code of ordinances as follows:

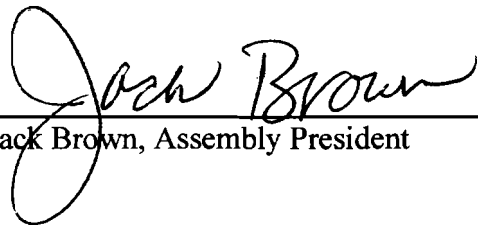
O. "Gratewalks" shall mean elevated light penetrating (ELP) walkways utilizing some variety of open grate material as a surface.

P. "Substantially complete" shall mean essentially completed and available for the owner's beneficial use for the purpose and in the manner intended for the structure.

Q. "Boardwalks" shall mean elevated walkways utilizing wooden planks as a surface.

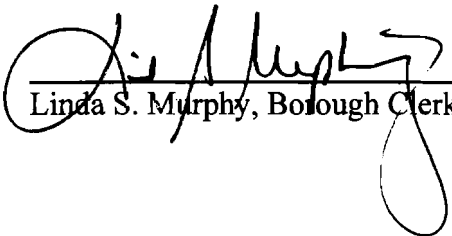
SECTION 7. This ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 18TH DAY OF JUNE, 1997.



Jack Brown, Assembly President

ATTEST:



Linda S. Murphy, Borough Clerk