

Introduced by:	Mayor
Date:	02/16/10
Hearing:	04/06/10
Action:	Enacted as Amended
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2010-12**

**AN ORDINANCE AMENDING KPB CHAPTER 21.18 REPEALING THE KENAI
WATERSHED DISTRICT, REPEALING AND REENACTING CERTAIN
FLOODPLAIN PROVISIONS, AND CLARIFYING APPLICATION OF THE
ORDINANCE ON SLOPED RIVERBANKS**

- WHEREAS,** KPB Chapter 21.18, Anadromous Streams Habitat Protection, was initially adopted in 1996; and
- WHEREAS,** KPB Chapter 21.18 has not received a detailed review and analysis of its functionality; and
- WHEREAS,** the Kenai Watershed Forum recently conducted an independent review of KPB Chapter 21.18 and has provided an overview of this review to interested groups in the community, including the planning commission and assembly; and
- WHEREAS,** KPB 21.18.030 requires periodic review by the planning commission of KPB Chapter 21.18; and
- WHEREAS,** given the importance of the anadromous stream resources and habitat, comprehensive review should take place on a regular basis; and
- WHEREAS,** there is no regulation for the Kenai Watershed District set forth in KPB Chapter 21.18, rendering KPB 21.18.035 purposeless; and
- WHEREAS,** current technologies allow staff to accurately identify watershed boundaries without the inclusion of exhibits or maps in the code; and
- WHEREAS,** the purpose of this ordinance is to protect anadromous stream water quality through reduced erosion and runoff, keep riverbanks and bluffs stable by protecting soil and vegetation, protect private property values, and maintain aesthetics; and
- WHEREAS,** repealing KPB 21.18.050 and moving these floodplain regulations to KPB Chapter 21.06, Floodplain Management, will provide organization, clarity, and ease of administration; and
- WHEREAS,** goal 7.7, objectives 1 and 2 of the Kenai Peninsula Borough 2005 Comprehensive Plan is to identify and mitigate impacts on critical habitat; and

WHEREAS, goal 6.7, objective 1, section D of the 2005 Kenai Peninsula Borough Comprehensive Plan is to work with property owners to minimize development impact on essential habitats; and

WHEREAS, the KPB Planning Commission at its regularly scheduled meeting of February 8, 2010, recommended enactment by unanimous consent;

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

SECTION 1. That KPB 21.18.030 is hereby amended as follows:

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.]

- A. To assist in the assessment of the effectiveness of KPB Chapter 21.18, the river center shall provide an annual permit and activity report to the planning commission. This report shall include a statistical analysis of permit activity and trends, commentary on river and land use issues and trends, and any other information that may assist in furthering the management of borough water resources and riparian habitat.
- B. A staff review of KPB 21.18 shall be presented to the planning commission and assembly every fifth year beginning in 2015. The review shall recommend whether it is advisable to amend the regulations to bring them in accord with the purpose and findings of this chapter and the comprehensive plan, to take advantage of new information and techniques, to correct deficiencies or difficulties which may have developed in administration, or for other reasons as staff may determine.
- C. For each annual permit and activity report and five-year review, the planning commission shall hold at least one public hearing.

SECTION 2. That KPB 21.18.035 is hereby repealed as follows:

[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.]

SECTION 3. That KPB 21.18.050 is hereby repealed as follows:

[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 OR OTHER ANADROMOUS STREAMS SET FORTH IN KPB 21.18.025 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.]

SECTION 4. That KPB 21.06.055 is hereby enacted as follows:

21.06.055. Floodplain—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 or other anadromous streams set forth in KPB 21.18.025 without first obtaining a permit from the Kenai Peninsula Borough Floodplain Coordinator. In this section "flood hazard area" means any area designated as such pursuant to KPB Chapter 21.06 and shown on the most recent flood insurance rate maps published by the Federal Emergency Management Agency.
- B. No permit shall be issued unless the floodplain coordinator 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 percent of storage capacity plus 12 inches of freeboard.
- D. No permit shall be issued for logging unless the floodplain coordinator, 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 floodplain coordinator 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 district.


- E. A decision of the floodplain coordinator 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.

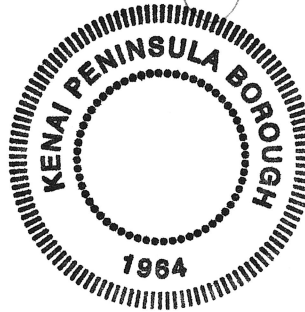
SECTION 5. That this ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 6TH DAY OF APRIL, 2010.


Pete Sprague, Assembly President

ATTEST:


Johni Blankenship, Borough Clerk



Yes: Fischer, Haggerty, Knopp, McClure, Pierce, Smalley, Smith, Superman, Sprague
No: None
Absent: None