



KENAI PENINSULA BOROUGH

PLANNING DEPARTMENT

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DAVID R. CAREY
BOROUGH MAYOR

MEMORANDUM

TO: Pete Sprague, Assembly President
Kenai Peninsula Borough Assembly Members

THRU: *plb* David R. Carey, Borough Mayor

FROM: *mb* Max J. Best, Planning Director

DATE: March 24, 2010

SUBJECTS: Ordinance 2010-16; An Ordinance amending KPB 21.18.010, KPB 21.18.020, KPB 21.18.135, KPB 21.18.140, and enacting KPB 21.18.145 to clarify the findings, purposes, and emergency exemptions of the chapter and to provide a reference to a variance procedure.

During their regularly scheduled March 8, 2010 meeting, the Planning Commission reviewed and by unanimous consent recommended enactment of Ordinance 2010-16; An Ordinance amending KPB 21.18.010, KPB 21.18.020, KPB 21.18.135, KPB 21.18.140, and enacting KPB 21.18.145 to clarify the findings, purposes, and emergency exemptions of the chapter and to provide a reference to a variance procedure.

Approved minutes of the subject portion of the meeting are attached.

AGENDA ITEM F. PUBLIC HEARINGS

4. Ordinance 2010-____; An Ordinance amending KPB 21.18.010, KPB 21.18.020, KPB 21.18.135, KPB 21.18.140, and enacting KPB 21.18.145 to clarify the findings, purposes, and emergency exemptions of the chapter and to provide a reference to a variance procedure.

Staff Report given by John Czarnezki

PC Meeting: 3/8/10

This is the third round of proposed revisions to the habitat protection ordinance. This is the scheduled continued regular review of our Phase I process. KPB 21.18.030 calls for a regular review of the benefits and effectiveness of the chapter. As you are aware in preparation of this review the borough supported a study completed by the Kenai Watershed Forum, (KWF) in 2009. All of the KWF reports and findings are available on the Donald E. Gilman River Center web site <http://www.kenairivercenter.org/workinggroup/index.html> if you would like to access them.

The ordinance for introduction includes proposed changes to five separate sections of the existing code: 21.18.010 Purpose, 21.18.020 Findings, 21.18.135 Exemption for Emergency Situations, 21.18.140 Definitions, and 21.18.145 Variances. The rationale supporting each proposed revision is detailed in the power point presentation included in the commissioner's packet.

In continuation of the code review process, staff will be presenting this power point presentation to the KPB 21.18 Interest Group, and the Kenai River Special Management Area Board.

Staff's proposed recommendations are based on shortcomings of current code language, our experience in the field, research of similar municipal codes, goals and policies of the Kenai Peninsula Borough Comprehensive Plan and public input through the 21.18 Interest Group.

We seek comments, ideas and recommendations throughout this process. Staff is available to assist if you decide to create a subcommittee or schedule specific work sessions throughout this effort. Thank you and we look forward to working with you.

Staff received the LiDAR information which is the contour intervals along the Kenai River but having technical problems.

The Assembly introduced the second set of recommendations on March 2, 2010 so the first and second set of recommendations have been introduced at the Assembly and will be open for public hearing on April 6, 2010. Staff has been working with the Legal staff on the fourth set of recommendations.

There have been very few hits on the blog. The hits on the website have increased from approximately 25 hits a day to 27 hits a day. Staff was not getting a whole lot of input from the public at this point.

END OF STAFF REPORT

POWERPOINT PRESENTATION

PowerPoint presentation given by John Czarnezki

PC Meeting: 3/08/10

Below are the highlights of the PowerPoint presentation.

KPB 21.18 Items for Review

21.18.020 Findings

21.18.010 Purpose

21.18.135 Emergency Exemptions

21.18.145 Variances

SECTION 1 – KPB 21.18.020 FINDINGS

Current Ordinance Language:

In enacting this ordinance the assembly finds numerous factors affect the habitat of the anadromous streams within the Kenai Peninsula Borough. 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 anadromous streams and only activities which do not damage the habitat should be allowed. The assembly finds that certain activities have 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 anadromous streams need regulation to protect the salmon habitat.

Proposed Changes:

- *Renumber "Findings" so that it is placed before the "Purpose" section.*
- *Portions of the current section raise uncertainty regarding the level of impact of certain activities (left unidentified) and leave too much discretion to whomever is supposed to enforce the ordinance.*

21.18.020 Recommended Language

- A. *In enacting this ordinance the assembly finds numerous factors affect the habitat of the anadromous streams within the Kenai Peninsula Borough. These include bank erosion, bank trampling, pollution, inadequate tourism infrastructure, unsuccessful attempts to remedy bank erosion or protect and restore habitat, inconsistent regulations and enforcement, logging, grazing, mining, wetland fill and drainage, excavation and fill of property, dredging, inappropriately installed culverts, fuel storage, and maintenance of existing structures.*
- B. *The assembly finds that the sensitivity of the river area requires general prohibition of activities within an area immediately adjacent to the anadromous streams and only activities which do not damage the habitat should be allowed.*
- C. *The assembly further finds that fuel storage and significant removal of vegetation within the 100 year flood plain along the anadromous streams need regulation to protect the salmon habitat.*
- D. *The assembly finds that the uncontrolled use and pollution of shoreland and riparian areas adversely affects the public health, safety, convenience, and general welfare, and impairs the tax base.*
- E. *The assembly finds that the legislature of Alaska authorizes the borough to provide for planning, platting and land use regulation. AS 29.40.010 Planning, Platting and Land Use Regulation states In subsection (a) that "A first or second class borough shall provide for planning, platting, and land use regulation on an area wide basis."*
- F. *The assembly finds that the riparian ecosystem includes stream bank and floodplain areas, and recognizes that impacts to anadromous streams may be due to activities and uses within the greater watershed.*
- G. *The assembly finds that 1997 update of the Alaska Department of Natural Resources Kenai River Comprehensive Management Plan recognized the increased use of the Kenai River resource and its associated impacts; and recognized the deterioration of near-shore habitat for juvenile salmon, and stated in Section 2.2 that "the importance of riparian vegetation to fish and wildlife values cannot be overestimated."*
- H. *The assembly finds that it is in the public's interest to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control*

building sites, placement of structures and land uses; and to preserve shore cover and natural beauty. These responsibilities are hereby recognized by the Kenai Peninsula Borough.

Chairman Bryson asked if there were questions or comments. There being no questions or comments, the presentation continued.

KPB 21.18.010 PURPOSE

Current Ordinance Language:

The purpose of this chapter is to ensure measures for the protection within the Kenai Peninsula Borough of 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.

Proposed Changes:

- *Re-number the Purpose section so that it follows the findings section.*
- *Better define the goals of the ordinance.*

21.18.010 Recommended Language

For the purpose of promoting the public health, safety and welfare, this chapter has been established to:

- A. *Protect and preserve the stability of fish, wildlife and other natural resources through:*
 - 1. *Controlling shoreline alterations and disturbances.*
 - 2. *Preserving near-shore habitat and restricting the removal of natural riparian vegetation.*
 - 3. *Controlling pollution sources.*
 - 4. *Prohibiting certain uses and structures detrimental to anadromous streams and habitat.*
- B. *Providing a guide for growth and development along anadromous streams in accordance with the Kenai Peninsula Borough Comprehensive Plan and through:*
 - 1. *Minimizing the number and impacts of structures within the habitat protection district.*
 - 2. *Regulating access to and within the habitat protection district.*
 - 3. *Establishing minimum lot sizes and widths to provide adequate area for private sewage treatment and to control density.*
 - 4. *Regulating building setbacks from waterways and steep slopes.*
 - 5. *Separating conflicting land uses.*
 - 6. *Prohibiting certain uses and structures detrimental to the shoreland area.*
- C. *Achieve the goals and implement the policies of the Kenai Peninsula Borough Comprehensive Plan.*
- D. *Protect and enhance real property values.*

Chairman Bryson asked if there were questions or comments.

Commissioner Isham asked if variances were taking the place of conditional use permits. Mr. Czarnecki replied there would still be variances and conditional use permits.

There being no other questions or comments, the presentation continued.

KPB 21.18.135 EMERGENCY EXEMPTIONS

Current Ordinance Language:

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.

Purpose of Proposed Code Change:

- *To further identify parties that may be exempt in emergency situations.*
- *To limit the extent of work to only that necessary to provide for safety.*
- *To allow for mitigation after the emergency.*

Exemption for Emergency Situations Recommended Language

- A. *In an emergency, the River Center, through its authorized representative, may issue temporary, oral permits to protect life and property from imminent danger or to restore, repair or maintain public works, utilities or services destroy, damaged or interrupted by the emergency.*
- B. *An emergency permit shall only authorize the minimum amount of work required to mitigate the emergency situation. An emergency permit is not intended to provide for any work beyond that necessary to provide for a safe environment. Any additional work shall follow applicable permitting procedures set forth in this chapter. Work shall be conducted using best management practices to ensure that any adverse affect on the habitat protection district and anadromous waters is minimized.*
- C. *Conditions may be attached to emergency permits to secure the purposes of this chapter. A final report that includes the plans and specifications for the work that was completed must be submitted to the River Center within 60 days of the date of the emergency. The Borough may require mitigation to repair damage to the habitat protection district.*
- D. *Emergency permits shall be valid until the date of expiration stated on the permit.*
- E. *This section is intended to provide for the immediate response to emergency situations for life and safety issues when time is not adequate to process permits in the normal fashion.*

Chairman Bryson asked if there were questions or comments.

Chairman Bryson thought this has only been needed once since 2002 but going back several decades, there has been a number of situations that this would have been appropriate. In the 1980's, the Highway Department dumped gravel along the side near Beaver Loop Road to keep from losing the Spur Highway. Mr. Czarnezki stated he was aware of another instance where the Railroad asked for an emergency permit along Kenai Lake where they fortified that riprap bank with additional rock because it was being undercut in a flooding situation.

There being no further questions or comments, the presentation continued.

KPB 21.18.145 VARIANCE

Current Ordinance Language:

At this time, there is no variance language in Chapter 21.18. Instead, the procedures for variances are established in Chapter 21.05:

The purpose of this chapter is to grant relief from the literal application of this title where unusual individualized situations result in more stringent burdens being placed on some parcels of land than others and to prevent special hardships to individual landowners or deprivation of rights commonly enjoyed by other properties in a district.

Purpose of Proposed Code Change:

- *The purpose of this code change is to provide a reference to the variance procedure within Chapter 21.18 (similar to Chapter 21.15). This makes it clear to the reader that 21.18 allows for a variance procedure and directs them to the appropriate section.*
- *Inclusion of the variance procedure language should also help rectify the past practice of using the conditional use permit process as a de facto variance procedure.*

21.18.145 Recommended Language

- *Variances from the requirements of this chapter may be requested pursuant to KPB 21.05.*

Chairman Bryson asked if there were questions or comments.

Commissioner Isham asked what the definition was for variance. Mr. Czarnecki replied that variance was defined in 21.05. It specifically goes through the procedures and the standards that would have to be met in order to receive a variance.

There being no further comments or questions, the presentation continued.

Definitions

- *"Best management practices" shall mean that combination of conservation measures, structures, or management practices that reduces or avoids adverse impacts of development on land, water or waterways, and waterbodies.*
- *"Emergency" shall mean a sudden unexpected occurrence, either the result of human or natural forces, necessitating immediate action to prevent or mitigate significant loss or damage to life, health, property, essential public services, or the environment.*
- *"Watershed" shall mean a land area, also known as a drainage area, which collects precipitation and contributes runoff to a receiving body of water or point along a watercourse.*

END OF POWERPOINT PRESENTATION

Chairman Bryson opened the meeting for public comment. Seeing and hearing no one wishing to speak, Chairman Bryson closed the public comment period and opened discussion among the Commission.

MOTION: Commissioner Tauriainen moved, seconded by Commissioner Johnson to recommend enactment Ordinance 2010-___; An Ordinance amending KPB 21.18.010, KPB 21.18.020, KPB 21.18.135, KPB 21.18.140, and enacting KPB 21.18.145 to clarify the findings, purposes, and emergency exemptions of the chapter and to provide a reference to a variance procedure.

VOTE: The motion passed by unanimous consent.

BRYSON YES	CARLUCCIO ABSENT	COLLINS ABSENT	ECKLUND ABSENT	FOSTER ABSENT	GROSS YES	ISHAM YES
JOHNSON YES	LOCKWOOD YES	MARTIN YES	MURPHY ABSENT	PETERSEN ABSENT	TAURIAINEN YES	7 YES 6 ABSENT

AGENDA ITEM G. ANDROMOUS STREAM HABITAT PROTECTION (KPB 21.18)

1. Resolution 2010-03; Conditional Use Permit Pursuant to KPB 21.18 to fill a 75-foot by 25-foot area of the Kenai River habitat protection area. This project is located on the left bank of the Kenai River at river mile 7.4, located on Lots 4 and 5, Block 6, Castaway Cove Sub Amended, S19 T5N R10W SM., AK, (KPB Parcel ID: 055-256-31 and 055-256-32). Petitioner: Wayne Ashworth.

Kenai Peninsula Borough (KPB) Planning Commission Resolution 2010-03