

KPB 21.18

Items for Review

21.18.020 Findings

21.18.010 Purpose

21.18.135 Emergency Exemptions

21.18.145 Variances

Findings...

- Are pertinent statements of fact
- A statement or document containing an authoritative decision or conclusion
- An appraisal of the facts underlying a particular matter

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.*

KPB 21.18.020 Findings Reasons for Proposed Changes

- To state additional facts & conclusions
- To organize the chapter -- Renumber "Findings" so that it is placed before the "Purpose" section
- To address concerns with one of the current findings -- 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 Findings 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 anadromous streams and only activities which do not damage the habitat should be allowed.

C. The assembly finds that fuel storage and significant removal of vegetation within the 100-year flood plain along the anadromous streams require regulation to protect the salmon habitat.

21.18.020 Findings Recommended Language

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.

21.18.020 Findings Recommended Language

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.

KPB 21.18.010 Purpose...

- An intended or desired result; end; aim; goal
- A result or effect that is intended or desired; an intention.
- An objective, effect, or result aimed at or attained

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.

KPB 21.18.010 Purpose Reasons for Proposed Changes

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

21.18.010 Purpose 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.*

21.18.010 Purpose Recommended Language (Cont)

- B. Provide 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.*

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Emergency Exemptions

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Exemption for Emergency Situations

■ 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 limit the extent of work to only that necessary to provide for safety
- To allow for mitigation after the emergency

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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 destroyed, damaged or interrupted by the emergency.

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Exemption for Emergency Situations Recommended Language (Cont.)

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.

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Exemption for Emergency Situations Recommended Language (Cont.)

- 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.*

21.18.145 Variances

KPB 21.18.145 Variances

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 ...”

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 21.25). This makes it clear to the reader that 21.18 allows for a variance procedure and directs the reader 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 Variances Recommended Language

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

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.*

**It is not the strongest of the
species that survive, nor the most
intelligent, but the one most
responsive to change.**

Charles Darwin
1809-1882, British Naturalist