

Introduced by:	Mayor
Date:	04/06/10
Hearing:	05/04/10
Action:	Enacted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2010-16**

**AN ORDINANCE AMENDING KPB 21.18.010, .020, .135, AND .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**

**WHEREAS,** KPB Chapter 21.18, Anadromous Streams Habitat Protection, was initially adopted in 1996 to protect salmon spawning and rearing habitat; and

**WHEREAS,** KPB Chapter 21.18 is undergoing a thorough review of its effectiveness with suggested code revisions; and

**WHEREAS,** the first two sets of revisions, Ordinances 2010-12 and 2010-14, are scheduled for public hearing on April 6, 2010; and

**WHEREAS,** this ordinance rearranges the order of the first two sections, "findings" and "purpose," better defines the goals of the ordinance, identifies parties and limits the extent of work that may be exempt in emergency situations, and provides a reference to KPB Chapter 21.05, variance procedures, within KPB Chapter 21.18; and

**WHEREAS,** anadromous habitat protection has numerous public health, safety, and welfare benefits including but not limited to controlling uses detrimental to fish and their habitat, controlling pollution sources, and reducing flood damage; and

**WHEREAS,** there are times where emergency circumstances require immediate work in the habitat protection district to protect life, property, and the environment; and

**WHEREAS,** at its regular meeting of March 8, 2010, the planning commission recommended enactment by unanimous consent.

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

**SECTION 1.** That KPB 21.18.010 is hereby amended as follows:

#### **21.18.[010]020. Purpose.**

[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.] 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 and wildlife and other natural resources through:
  - 1. controlling shoreline alterations and disturbances;
  - 2. preserving nearshore habitat and restricting the removal of natural riparian vegetation;
  - 3. controlling pollution sources; and
  - 4. prohibiting certain uses and structures detrimental to anadromous streams and habitat.
- 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; and
  - 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.

**SECTION 2.** That KPB 21.18.020 is hereby amended as follows:

#### **21.18.[020]010. Findings.**

- A. In enacting this ordinance the assembly finds numerous factors affect the habitat of the anadromous streams within the Kenai Peninsula Borough. [AMONG OTHERS T]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] on 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.]
- C. The assembly [FURTHER] finds that fuel storage and significant removal of vegetation within the 100-year floodplain along the anadromous streams [NEED] require 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 areawide 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 the 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 nearshore habitat for juvenile salmon and stated in Section 2.2 that “[t]he importance of riparian (stream bank) vegetation to fish and wildlife values cannot be overestimated.”
- H. The assembly finds that it is in the public 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.

**SECTION 3.** That KPB 21.18.135 is hereby amended as follows:

**21.18.135. Exemption for emergency situations.**

- A. In [A DECLARED] an emergency, the [DEPARTMENT] 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 [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].
- 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 effect on the habitat protection district and anadromous waters is minimized.
- C. Conditions may be attached to emergency permits to comply with 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 accordance with the other applicable permitting provisions of this chapter.

**SECTION 4.** That KPB 21.18.140 is hereby amended by adding subsections R, S, and T as follows:

- R. “Best management practices” means that combination of conservation measures, structures, or management practices that reduces or avoids adverse impacts of development on land, water or waterways, and waterbodies.
- S. “Emergency” means 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.
- T. “Watershed” means 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.


**SECTION 5.** That KPB 21.18.145 is hereby enacted as follows:

**21.18.145. Variances.**

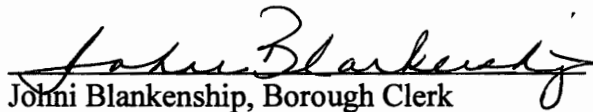
Variances from the requirements of this chapter may be requested pursuant to KPB Chapter 21.05.

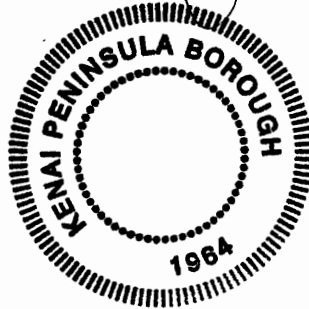
**SECTION 6.** That this ordinance takes effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 4TH DAY OF MAY, 2010.**

  
Pete Sprague, Assembly President

ATTEST:

  
Johni Blankenship, Borough Clerk



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