

Introduced by:	Mayor
Date:	04/20/10
Hearing:	05/18/10
Action:	Postponed as Amended Until 06/08/10
Date:	06/08/10
Action:	Enacted as Amended
Vote:	6 Yes, 3 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2010-21**

**AN ORDINANCE AMENDING KPB CHAPTER 21.18 REGARDING  
PROHIBITED USES AND STRUCTURES, CONDITIONAL USE PERMITS,  
AND PRIOR EXISTING USES AND STRUCTURES IN THE ANADROMOUS  
STREAM HABITAT PROTECTION DISTRICT**

**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,** the third set of revisions is scheduled for introduction on April 6, 2010; and

**WHEREAS,** this ordinance revises the conditional use permit and prior existing use provisions based on field experience over the past 14 years; and

**WHEREAS,** the public and borough would benefit from specifically enumerated uses and structures that may be allowed through the conditional use permit process; and

**WHEREAS,** changes to prior existing uses and structures should increase the level of compliance with KPB Chapter 21.18; and

**WHEREAS,** at its regularly scheduled meeting on April 12, 2010, the planning commission recommended approval;

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

**SECTION 1.** That KPB 21.18.040 is hereby amended as follows:

**21.18.040. Habitat protection district [AREA] established.**

There is established an anadromous stream habitat protection district [AREA]. Except as otherwise provided in this section, this district [AREA] includes all lands within 50 horizontal feet of the streams set forth in KPB 21.18.025. This shall be measured from the ordinary high water mark or mean high water line in tidal areas. Where the banks within this 50-foot district [AREA] consist of a 60 degree or more cut bank the habitat protection district [AREA] shall consist of the greater of 50 feet from the river or to a point 25 feet back from the top of the cut bank.

**SECTION 2.** That KPB 21.18.060 is hereby repealed as follows:

**[21.18.060. PROHIBITED ACTIVITY WITHIN THE PROTECTION AREA.**

WITHIN THE HABITAT PROTECTION AREA ESTABLISHED BY SECTION 21.18.040 OF THIS CHAPTER, NO BUILDING, CONSTRUCTION, FILLING, EXCAVATION, MAJOR CLEARING OF VEGETATION, COMMERCIAL RECREATIONAL USES, OR ACTIVITY WHICH RESULTS IN SIGNIFICANT EROSION OR DAMAGE TO RIPARIAN HABITAT, OR RESULTS IN OR INCREASES GROUND OR WATER POLLUTION, CAN BE CONDUCTED EXCEPT WHEN SPECIFICALLY ALLOWED UNDER KPB 21.18.070, OR WHEN A CONDITIONAL USE PERMIT HAS BEEN ISSUED PURSUANT TO KPB 21.18.072 OR 21.18.080 OR WHEN ALLOWED FOR A PERIOD EXISTING STRUCTURE UNDER THE PROVISIONS OF KPB 21.18.090.]

**SECTION 3.** That KPB 21.18.075 is hereby enacted as follows:

**21.18.075. Prohibited uses and structures.**

Any use or structure not permitted in KPB 21.18.071 or 21.18.081 is prohibited.

**SECTION 4.** That KPB 21.18.080 is hereby repealed 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 UNLESS THE PLANNING COMMISSION FINDS THAT MORE TIME IS NECESSARY TO EFFECTUATE THE PURPOSES OF KPB 21.18.010, IN WHICH CASE THE COMMISSION MAY EXTEND THE DEADLINE FOR A MAXIMUM OF SIX YEARS FROM THE DATE OF ISSUANCE. THE PLANNING COMMISSION SHALL ADOPT FINDINGS CONSISTENT WITH KPB 21.18.010 TO SUPPORT THE ISSUANCE OF A PERMIT, OR AN EXTENSION THEREOF, TOTALING MORE THAN TWO YEARS FROM THE DATE OF ISSUANCE. PRIOR TO ITS

EXPIRATION DATE, A CONDITIONAL USE PERMIT ISSUED FOR UP TO ONE YEAR MAY BE EXTENDED FOR UP TO TWELVE (12) MONTHS 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.

- B. A PERSON SEEKING A CONDITIONAL USE PERMIT MUST MAKE APPLICATION TO THE BOROUGH PLANNING DEPARTMENT. THE APPLICATION SHALL PROVIDE INFORMATION DESCRIBING THE PROPOSED ACTIVITY AND DEMONSTRATE THAT THE ACTIVITY MEETS THE CONDITIONS FOR CONDITIONAL USE PERMIT. THE PLANNING COMMISSION HAS NO OBLIGATION TO ASCERTAIN WHETHER SPECIAL CONDITIONS CAN BE DEVELOPED OR IMPOSED UNLESS THE APPLICANT HAS SUBMITTED ADEQUATE INFORMATION TO DEMONSTRATE THAT THE PROPOSED METHODS OR CONDITIONS WILL ELIMINATE THE IMPACTS OF THE ACTIVITY WITHIN THE PROTECTION AREA. IF THE PLANNING COMMISSION DETERMINES A PROPOSED ACTIVITY WILL CAUSE SIGNIFICANT EROSION, DESTRUCTION OF WETLANDS OR RIPARIAN HABITAT, OR RESULT IN OR INCREASE GROUND OR WATER POLLUTION IT SHALL DENY A CONDITIONAL USE PERMIT FOR THE REQUESTED ACTIVITY.]

**SECTION 5.** That KPB 21.18.081 is hereby enacted as follows:

**21.18.081. Conditional use permit.**

- A. Intent. The intent of this section is to allow special uses and structures which may be compatible with KPB 21.18.071 in the habitat protection district through the approval of a conditional use, if certain standards and conditions exist.
- B. Conditional uses and structures. The following conditional uses and structures may be approved in the habitat protection district:
1. Fish-cleaning stations;

2. Fences;
3. Signs;
4. Public owned facilities, parks, campgrounds, and their related uses and structures;
5. Transportation and utility infrastructure;
6. Structures compliant with the Americans With Disabilities Act and elevated light penetrating structures not meeting the standards of KPB 21.18.071;
7. Wells and waterlines;
8. Lifts.
9. Private boat launches and related facilities that are established to serve the public provided the following standards are met:
  - a. A plan of operation is submitted that includes hours of operation, seasons of operation, daily boat launch capacity, parking plan, types of boats and clients to be served, fees charged, location of other public boat launches on the anadromous stream; ancillary facilities including but not limited to restrooms, storage sheds, waiting platforms or areas, a statement of need that the facility will serve, and other information requested to aid in the determination of habitat protection measures.
  - b. The boat launch must be open to the public and not have exclusive membership.
  - c. When no longer serving the public as defined in the plan of operation the boat launch must be removed and the area reclaimed, revegetated or otherwise subject to mitigation measures to restore habitat. A reclamation plan must be submitted with the application as part of the plan of operation.
  - d. The planning commission may establish additional conditions to protect and preserve the purposes of the habitat protection district.
  - e. A conditional use permit under this subsection expires two years after being granted, unless an application for renewal meeting the criteria of KPB 21.18.081(B)(9)(a) is approved by the planning commission which demonstrates that the applicant is in compliance with the original permit conditions and the provisions of this chapter.

C. Application procedure. A person seeking a conditional use permit must make application to the river center on a form provided by the river center and receive approval prior to commencement of the project. The application shall provide information describing the proposed use or structure and demonstrate that the use or structure meets the general standards for a conditional use permit. The planning commission may approve, deny, or conditionally approve an application for a conditional use permit. The planning commission has no obligation to ascertain whether special conditions can be developed or imposed unless the applicant has submitted adequate information to demonstrate that the proposed methods or conditions will mitigate the impacts of the use or structure within the habitat protection district.

D. General standards. All of the following standards shall be met before conditional use approval may be granted.

1. The use or structure will not cause significant erosion, sedimentation, damage within the habitat protection district, or an increase in ground or surface water pollution;
2. Granting of the conditional use shall be consistent with the purposes of this chapter, the borough comprehensive plan, other applicable chapters of the borough code, and other applicable planning documents adopted by the borough;
3. The development of the use or structure shall not physically damage the adjoining property;
4. The proposed use or structure is water-dependent.
5. Applicant or owner's compliance with other borough permits and ordinance requirements.

E. Conditions attached to conditional uses and structures. In granting a conditional use permit, the planning commission may establish such conditions on the development, use, or operation of the use or structure for which the conditional use permit is granted as it determines necessary to prevent significant erosion, sedimentation, damage within the habitat protection district, or result in or increase ground or surface water pollution. Such conditions may include specifications for type of vegetative shore cover, location of structures and uses, periods of operation, type of construction, and mitigation. Violation of any of these conditions shall be deemed a violation of this ordinance. To secure information upon which to base its determination, the planning commission may require the applicant to furnish the following information:

1. A plan of the area showing surface contours, ordinary high water or mean high water marks, vegetative cover, slope measurements, soil conditions, wetlands, and drainages;
  2. Location of buildings, parking areas, access, walkways, and other manmade features on the landscape;
  3. Other pertinent information necessary to determine if the proposed use meets the requirements of this ordinance.
- F. If the planning commission denies a conditional use permit, a similar application for a conditional use permit may not be made within two years from the date of the denial unless there has been a substantial change in circumstances affecting the application.
- G. Applicants for a conditional use permit are responsible for abiding by all other federal, state, and local laws, regulations, and permitting requirements applicable to the project.
- H. The construction or installation phase of a use 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 unless the planning commission finds that more time is necessary to effectuate the purposes of this chapter, in which case the commission may extend the deadline for a maximum of six years from the date of issuance. The planning commission shall adopt findings consistent with the purposes of this chapter to support the issuance of a permit, or an extension thereof, totaling more than two years from the date of issuance. Prior to its expiration date, a conditional use permit issued for up to one year may be extended for up to twelve (12) months by the river center director upon written request.

SECTION 6. That KPB 21.18.082 is hereby enacted as follows:

**21.18.082. Permit revocation.**

A conditional use permit issued pursuant to this chapter may be revoked by the planning commission if the applicant fails to comply with the provisions of this chapter or the terms of a permit issued under this chapter. River center staff shall provide at least 30 days written notice to the permittee of a revocation hearing before the planning commission. The notice shall provide specific grounds for the proposed revocation. If the permittee provides written evidence to the river center staff demonstrating reasonable compliance with this chapter and the terms of his permit within the 30 day period then the revocation hearing may be canceled at the discretion of the river center director.

**SECTION 7.** That KPB 21.18 091 is hereby enacted as follows:

**21.18.091. Mitigation measures.**

Mitigation measures may be required by river center staff to address impacts to the habitat protection district from a proposed, ongoing, or completed project. These measures may include, but are not limited to:

- A. Standard erosion and storm water runoff control measures;
- B. Restoration and maintenance of native vegetation and water quality protection functions;
- C. Restoration and maintenance of native vegetation and water quality protection functions along areas that immediately abut the habitat protection district;
- D. Removal of non-conforming accessory structures from the habitat protection district;
- E. Other measures as agreed upon by the river center and applicant. Examples include removal of seawalls, riprap, jetties, and other structures that may be detrimental to fish habitat; installation of approved bank protection measures; professional evaluation of privately owned waste water treatment system; removal of materials, structures and other items that may be present in the habitat protection district or along the shore.

**SECTION 8.** That KPB 21.18.140(M) is hereby amended as follows:

- M. "Structure" shall mean anything which is constructed, erected or moved to or from any premises and which is located above, on, or below the ground, including buildings, roads, signs, billboards, satellite antennas and other communication structures, fences, and mobile homes. Building materials including but not limited to doors, windows, carpet, roofing, posts, and beams which have not been assembled, incorporated, or erected into a structure do not alone or collectively constitute structures.

**SECTION 9.** That KPB 21.18.140 is hereby amended by adding subsections U, V, W, X and Y as follows:

- U. "Conditional use" means a use or associated structure which, owing to some special characteristics attendant to its operation or installation, is permitted in a district subject to special standards and conditions in addition to the usual requirements for the district in which the conditional use may be located.
- V. "Lift" means a structure which elevates and lowers boats, floatplanes, people, and cargo to and from the river or adjacent shoreland.

W. "Accessory structure" means a use or structure that is subordinate in size or purpose to the principal structure or use of the same lot or parcel of ground and serving a purpose customarily incidental to the use of the principal structure or use of land.

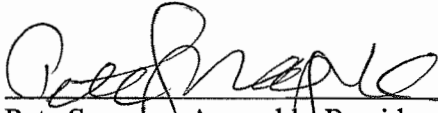
X. "Principal structure" means a structure in which is conducted the principal use of the lot on which it is located.

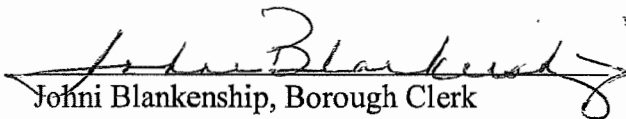
Y. "Abandoned" means to stop the use of property intentionally. When the use of a property has ceased and the property has been vacant for 24 months, abandonment of use will be presumed unless the owner can show that a diligent effort has been made to sell, rent, or continue the prior existing use of the property.

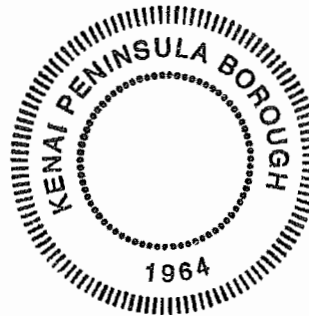
**SECTION 10.** That this ordinance takes effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 8TH DAY OF JUNE, 2010.**

ATTEST:

  
Pete Sprague, Assembly President

  
John Blankenship, Borough Clerk



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