

Introduced by:	Mayor
Date:	03/02/10
Hearing:	04/06/10
Action:	Enacted as Amended
Vote:	7 Yes, 2 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2010-14**

**AN ORDINANCE REPEALING KPB 21.18.070, ENACTING KPB 21.18.071
PROVIDING FOR STAFF-LEVEL PERMITS FOR CERTAIN ACTIVITIES WITHIN
THE ANADROMOUS STREAM HABITAT PROTECTION DISTRICT, AND
AMENDING KPB 21.18.140 TO ADD THE DEFINITION OF RIVER CENTER**

WHEREAS, KPB Chapter 21.18 was initially adopted in 1996 to protect salmon spawning habitat; and

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

WHEREAS, the first set of revisions to KPB Chapter 21.18 is scheduled to be introduced to the assembly on February 16, 2010; and

WHEREAS, under KPB 21.18.070, certain activities are allowed without a permit; and

WHEREAS, property owners request and receive written letters of approval from river center staff for these allowed projects; and

WHEREAS, providing a permit at staff level for these activities will provide better recordkeeping of activities within the district both for the property owner and river center staff; and

WHEREAS, other agencies concerned about protection of fish and water resources will also benefit from the borough's keeping records of activities within the district; and

WHEREAS, at its regular meeting of February 22, 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 21.18.065 is hereby enacted as follows:

21.18.065. Activities not requiring a permit.

The permit required by this chapter are not required for noncommercial recreational and other non-intrusive activities which do not involve construction, excavation, or fill of land and do not result in erosion, damage to the habitat protection district, or increase ground water pollution.

SECTION 2. That KPB 21.18.070 is hereby repealed as follows:

[21.18.070. ACTIVITIES NOT REQUIRING A PERMIT.

- A. THE ACTIVITIES SPECIFIED IN THIS SECTION MAY BE CONDUCTED WITHIN THE HABITAT PROTECTION AREA ZONE WITHOUT OBTAINING A PERMIT FROM THE BOROUGH UNDER THIS CHAPTER. THIS SECTION IN NO WAY WAIVES OR MODIFIES THE NECESSITY OF ADHERENCE TO OTHER PROVISIONS OF THE KPB CODE, INCLUDING KPB 21.06 (FLOOD PLAIN MANAGEMENT), OR REQUIREMENTS OF A PERMIT FROM FEDERAL, STATE OR LOCAL GOVERNMENTS. CONDUCT OF ACTIVITIES LISTED IN THIS SECTION ARE EXPRESSLY CONDITIONED UPON OBTAINING ALL APPLICABLE PERMITS. CONDUCT OF ACTIVITY WITHOUT OBTAINING NECESSARY PERMITS SHALL BE CONSIDERED A VIOLATION OF THIS CHAPTER, SUBJECT TO THE PROVISIONS OF SECTION 21.18.110.
- B. THE FOLLOWING ACTIVITIES, TO THE EXTENT THEY DO NOT RESULT IN SIGNIFICANT EROSION OR DAMAGE TO RIPARIAN HABITAT, OR RESULT IN OR INCREASE GROUND OR WATER POLLUTION, DO NOT REQUIRE THE ISSUANCE OF A PERMIT UNDER THIS CHAPTER:
1. MINOR VEGETATION MANAGEMENT (TRIMMING, PRUNING, OR REMOVAL OF HAZARDOUS TREES)
 2. PRIVATE NON-COMMERCIAL RECREATIONAL USES THAT DO NOT INVOLVE CONSTRUCTION, EXCAVATION OR FILL OF LAND
 3. CONSTRUCTION, INSTALLATION, REPAIR AND MAINTENANCE OF LADDERS, STEPS, CANTILEVERED WALKWAYS, PLATFORMS, DOCKS, AND BANK RESTORATION AND PROTECTION AND MAINTENANCE DREDGING THAT ARE REGULATED BY AND REQUIRE A PERMIT FROM THE ALASKA DEPARTMENT OF NATURAL RESOURCES, STATE PARKS DIVISION, AND THE ALASKA DEPARTMENT OF FISH & GAME, U.S. ARMY CORPS OF ENGINEERS AND OTHER APPLICABLE AGENCIES. THE ACTIVITY MUST COMPLY WITH ALL CONDITIONS AND REGULATIONS IMPOSED ON SUCH ACTIVITY.
 4. BOARDWALKS AND GRATEWALKS WITH LESS THAN 75 PERCENT BUT A MINIMUM OF 25 PERCENT LIGHT PENETRATION MUST BE CONSTRUCTED SO THAT NO PART, OTHER THAN THE SUPPORTING POSTS, ARE LESS THAN 18 INCHES OFF THE GROUND. GRATEWALKS WITH AT LEAST 75 PERCENT LIGHT PENETRATION MUST BE CONSTRUCTED SO THAT NO

PART, OTHER THAN THE SUPPORTING POSTS, ARE WITHIN EIGHT INCHES OFF THE GROUND. BOARDWALKS AND GRATEWALKS ARE NOT TO EXCEED EIGHT FEET IN WIDTH, AND THOSE BOARDWALKS AND GRATEWALKS RUNNING ALONG OR PARALLEL TO THE BANKS OF THE STREAMS SHALL BE LIMITED IN LENGTH TO NO MORE THAN ONE-THIRD (1/3) THE TOTAL LINEAL RIVER FRONTAGE OF THE PARCEL ON WHICH IT IS CONSTRUCTED. BOARDWALKS AND GRATEWALKS MUST BE CONSTRUCTED OF WOOD, PLASTIC, FIBERGLASS, ALUMINUM, STEEL, OR OTHER NON-TOXIC MATERIAL. IF THE WOOD IS TREATED, IT MUST BE CERTIFIED AS NON-TOXIC TO PLANTS AND ANIMALS BY AN INDEPENDENT LABORATORY OR OTHER APPROPRIATE AGENCY. BOARDWALKS AND GRATEWALKS NOT MEETING THE ABOVE REQUIREMENTS SHALL REQUIRE A CONDITIONAL USE PERMIT.

5. STAIRWAYS, STEPS AND LADDERS ACROSS LAND ADJACENT TO THE RIVER WHICH IS AT LEAST 10 DEGREES STEEP, OR FROM ANY ADJACENT LAND INTO THE WATER OR ONTO A FLOATING DOCK, AND WITH AT LEAST 75 PERCENT LIGHT PENETRATION, MUST BE CONSTRUCTED SO THAT NO PART, OTHER THAN THE SUPPORTING POSTS, ARE WITHIN 8 INCHES OFF THE GROUND. STAIRWAYS, STEPS AND LADDERS WITH LESS THAN 75 PERCENT BUT A MINIMUM OF 25 PERCENT LIGHT PENETRATION MUST BE CONSTRUCTED SO THAT NO PART, OTHER THAN THE SUPPORTING POSTS, ARE LESS THAN 18 INCHES OFF THE GROUND. STAIRWAYS, STEPS AND LADDERS MUST BE CONSTRUCTED OF WOOD, PLASTIC, FIBERGLASS, ALUMINUM, STEEL, OR OTHER NON-TOXIC MATERIAL. IF THE WOOD IS TREATED, IT MUST BE CERTIFIED AS NON-TOXIC TO PLANTS AND ANIMALS BY AN INDEPENDENT LABORATORY OR OTHER APPROPRIATE AGENCY. STAIRWAYS, STEPS AND LADDERS NOT MEETING THE ABOVE REQUIREMENTS SHALL REQUIRE A CONDITIONAL USE PERMIT.
6. FISH CLEANING STATIONS. (COVERED AND/OR WALLED IN FISH CLEANING STATIONS SHALL REQUIRE A CONDITIONAL USE PERMIT.))

SECTION 3. That KPB 21.18.071 is hereby enacted as follows:

21.18.071. Staff permits.

- A. An application for a permit shall be made and a permit issued before commencement of certain activities, uses, and structures set forth in this section if they do not result in erosion, damage within the habitat protection district, or an increase in ground or water pollution. An application for a permit shall be made to the Kenai Peninsula Borough at the river center. Upon determination that the submitted information of record supporting the permit application meets the requirements of this section, staff shall issue a permit for the following activities, uses, and structures in the habitat protection district:

1. Minor vegetation management (trimming, pruning, or removal of hazardous trees).
2. Elevated light penetrating structures. These structures include structures that are not ancillary to another use but are constructed solely for purposes of accessing the river and may include but are not limited to boardwalks, gratewalks, stairs, ramps, platforms, and gangplanks. Elevated light penetrating structures must be constructed of wood, plastic, fiberglass, aluminum, steel, or other nontoxic material. If the wood is treated, it must be certified as nontoxic to plants and animals by an independent laboratory or other appropriate agency. The topography of the bank and habitat protection district may not be altered to provide for the installation of these structures.
 - a. Elevated light penetrating structures with less than 60 percent but a minimum of 25 percent light penetration must not exceed 6 feet in width and must be constructed so that no part, other than the supporting posts, are less than 18 inches from the ground.
 - b. Elevated light penetrating structures with at least 60 percent light penetration must not exceed 8 feet in width and must be constructed so that no part, other than the supporting posts, is closer than 4 inches from the ground. To ensure safety or to aid access, one side or edge of the elevated light penetrating structure may be lowered, provided that the frame on the riverward edge of the structure, is not less than 4 inches from the ground. Lowering of the surface shall not result in erosion or damage to the bank or vegetation, and the remainder of the structure must still meet the requirements of this chapter.
 - c. For elevated light penetrating structures under KPB 21.18.071(a) and (b), the total length of all elevated light penetrating structures that run along or parallel to the banks of the streams shall be limited in length to no more than one-third of the total lineal river frontage of the parcel on which it is constructed.
 - d. For all elevated light penetrating structures under KPB 21.18.071(a) and (b), the open space must be uniformly distributed throughout the structure surface.
 - e. Elevated light penetrating structures constructed prior to the effective date of this section may be brought into compliance with the standards of this section without obtaining a permit.

3. A single fish-cleaning station may be constructed, provided it has no enclosed sides or roof and that any shelf below the fish-cleaning surface must be at least 60 percent light penetrating and be elevated at least 8 inches from the ground. Fish-cleaning stations shall not exceed 25 square feet, excluding the chute and drain pipes, if any.

4. Bank restoration and protection projects.

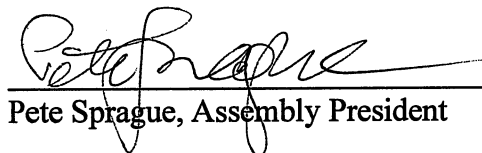
B. Applicants for a river center permit are responsible for abiding by all other federal, state, and local laws, regulations, and permitting requirements applicable to the project.

SECTION 4. That KPB 21.18.140(Q) is hereby amended as follows:


Q. ["BOARDWALKS" SHALL MEAN ELEVATED WALKWAYS UTILIZING WOODEN PLANKS AS A SURFACE.] "River center" shall mean the Kenai Peninsula Borough Donald E. Gilman River Center.

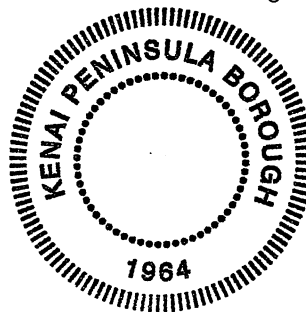
SECTION 5. That this ordinance takes effect immediately upon its enactment.

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