

RECEIVED

MAY 12 2011

KPB - Clerks Office

05/06/2011

Dear Kenai Borough Assembly Members,

My name is MaryLynn Barnwell and I teach fifth grade in Seward. In 2009 Seward Elementary adopted Scheffler Creek via an educational program with the Chugach National Forest and via a permit with the Department of Fish and Game. With the permission from local landowners, students visit Upper Scheffler each month to take water quality samples, observe changes and set a live minnow trap. We have also collected historical data and have observed many changes to the creek.

There are over eight different parties interested in the health of Scheffler Creek. We will be holding a meeting this coming week to plan the future of the stream and most likely elementary students will help with already established restoration efforts. In addition we will start collecting data from Lower Scheffler Creek that flows between the highway and railroad.

My students have written the following letters to gain support from the Kenai Borough. We would like you to include Seward Area anadromous streams, or at least Scheffler Creek, in Ordinance 2011-12. We have also written to the City of Seward to consider adopting the Ordinance.

Scheffler Creek is a unique salmon stream. Not only is it the closest to the Seward Schools, but it flows directly next to the National Historic Iditarod Trail. It flows next to the Seward Boat Harbor and through the very popular water front campground in Seward. It is highly accessible and visual to tourist but at this point is not clean or healthy. The portion the runs along the Iditarod Trail is nothing more than a "fish ditch" as referred to by the City of Seward in several documents.

In addition, the educational values of children being involved in stream restoration projects are considerable. Students learn better when their education is based on real endeavors within their neighborhood. They will have more pride in their community when their service projects are successful. Please help us to care for Scheffler Creek; include Seward area salmon streams, especially Scheffler Creek in Ordinance 2011-12.

Thank you for your consideration,

*M.L. Barnwell*

MaryLynn Barnwell  
Seward Elementary 5<sup>th</sup> Grade Teacher  
[mlbarnwell@kpbsd.k12.ak.us](mailto:mlbarnwell@kpbsd.k12.ak.us)  
(907) 224-7591

RECEIVED

MAY 12 2011

KPB - Clerks Office

May 3<sup>rd</sup>, 2011

**Re: Ordinance 2011-12, Amending KPB 21.18 Anadromous Streams Habitat Protection to extend protection to all Kenai Peninsula borough Anadromous Streams.**

Dear KPB Assembly Members,

I heard that you were excluding Seward from your Anadromous Streams Habitat Protection program. Well, that's not fair to all the anadromous streams we have here. I support the Ordinance 2011-12, but I think you need to include the Seward area in your project. All you're doing is excluding a bunch of Anadromous streams that are also important.

My whole 5<sup>th</sup> grade class goes to a stream called Scheffler Creek that we adopted.. We all take data for this creek. It's healthy but not that healthy of a creek and that's kind of sad (the top part is healthy, but, not the bottom). I wish it was all healthy, but, it's not. It's so bad, that they call it Fish Ditch and I wish they wouldn't. They only call it that because it is in a ditch. It doesn't have that many fish. It probably only has about 10 fish a month. We all do our part to pick up as much trash as we can. All that I'm saying is that we've seen bank erosion, bank trampling, lots of pollution, inadequate infrastructure tourism, and grazing, but, that's not all that we've seen.

So I'm concluding my letter by saying: please include Seward in the new ordinance.

Sincerely, *Winter Richey*

Winter Richey.

5<sup>th</sup> grader at

Seward El.

5/5/11

RE: Ordinance 2011-12 Amending KPB 21 Anadromous

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MAY 12 2011

KPB - Clerks Office

Dear KPB Assembly Members,

I would like you to please include Scheffler Creek in Ordinance 2011-12. There is bank erosion, bank trampling, pollution, inadequate tourism infrastructure, drainage problems, and maintenance of existing structure of Scheffler Creek problems. Scheffler Creek needs help, we need to fix it and make it a better place. We need the Ordinance to include Scheffler Creek. I believe our salmon streams in the Kenai Peninsula are being polluted and that we need to stop it and try and change something especially for Sheffler Creek. People are calling it fish ditch because it appears to look and is treated like a ditch.

I want and need you to include Sheffler creek as part of the new ordinance because of its health issues and pollution.

Sincerely,

Aurora Paquette, *Aurora Paquette*

5<sup>th</sup> grade

RECEIVED

MAY 12 2011

KPB - Clerks Office

May 3, 2011

Re: Ordinance 2011-12 Amending KPB 21.18 Anadromous Streams Habitat Protection

To extend protection to all Kenai Peninsula Borough Anadromous Streams.

Dear KPB Assembly Members,

I support Ordinance 2011-12 that extends protection to all Kenai Peninsula Borough Anadromous Streams and I want you to include Scheffler Creek. When I heard that you were providing health to all the streams in the KPB I was thrilled. But when my teacher said that they were excluding Scheffler Creek and the rest of the Seward/Bear Creek area I felt horrible.

Well we adopted Scheffler Creek quite a while back. And so every Thursday all of Mrs. Barnwell's 5<sup>th</sup> graders started taking a ton of data from our adopted stream. Then later my teacher said that the stream was pretty dang healthy. That was surprising to all of us. In a good way of course.

I would like you to add Scheffler Creek in the Ordinance of 2011-12. The health is very important when it comes to a stream. Especially when a stream doesn't have the right amount of spawning salmon in it. We think that it isn't right to exclude the streams in Seward or the Bear Creek area especially Scheffler Creek. I really want you to INCLUDE Scheffler Creek.

Thank you for your consideration,

*Kaylee Brockman*

Kaylee Brockman

Seward, Alaska

Grade 5

School: Seward Elementary

May 5, 2011

RECEIVED

MAY 12 2011

KPB - Clerks Office

Re: Ordinance 2011-12 Amending KPB 21.18 Anadromous Streams Habitat Protection to extend protection to all Kenai Peninsula Borough Anadromous Streams.

Dear KPB Assembly Members,

I want you to include Scheffler Creek in your program to that extends protection to all Kenai Peninsula Borough Anadromous Streams. Salmon spawning used to be a regular thing but now it isn't so common in Scheffler Creek.

Scheffler creek has different problems such as bank erosion, bank trampling, pollution, inadequate tourist control, grazing, too many culverts, fuel storage and things from the road such as ice melt gravel and oil. My class has been working on Scheffler creek for almost 9 months now. I think that's unfair that you are ignoring Scheffler creek. Not just my class two devoted members of the Chugach National Forest Ruth D'Amico and Katie Stoble and tons of parent chaperons all helped with Scheffler creek. I think that all of them would agree with me.

I now insist you add my home town Seward Alaska's bodies of water such as Scheffler creek to your program.

Thank you for your consideration,

Anastasia Storle

A 5th grader of Seward, Alaska



Anastasia.storle@g.kpbsd.org

RECEIVED

MAY 12 2011

KPB - Clerks Office

April 3, 2011

Re: Ordinance 2011-12 Amending KPB 21.18 Anadromous Streams Habitat Protection to extend protection to all Kenai Peninsula Borough Anadromous Streams.

Dear KPB Assembly Members,

I support Ordinance 2011-12 that extends protection to all Kenai Peninsula Borough Anadromous Streams and I want you to include Scheffler Creek. When I heard that you were providing health to all the streams in the KPB I was thrilled. But when my teacher said that they were excluding Scheffler Creek and the rest of the Seward/Bear Creek area I felt horrible.

Well we adopted Scheffler Creek quite a while back. And so every Thursday all of Mrs. Barnwell's 5<sup>th</sup> graders started taking a ton of data from our adopted stream. Then later my teacher said that the stream was pretty dang healthy. That was surprising to all of us. In a good way of course.

I would like you to add Scheffler Creek in the Ordinance of 2011-12. The health is very important when it comes to a stream. Especially when a stream doesn't have the right amount of spawning salmon in it. We think that it isn't right to exclude the streams in Seward or the Bear Creek area especially Scheffler Creek. I really want you to INCLUDE Scheffler Creek.

Thank you for your consideration,

*Kaylee Brockman*

Kaylee Brockman

Seward, Alaska

Grade 5

School: Seward Elementary

RECEIVED

MAY 12 2011

KPB - Clerks Office

May 3, 2011

Re: Ordinance 2011-12 Amending KPB 21.18 Anadromous Streams Habitat Protection to extend protection to all Kenai Peninsula Borough Anadromous Streams.


Dear KPB Assemble Members,

I want Seward included in the protection of anadromous streams. We have a stream called Scheffler Creek that needs your help to be protected.

We adopted Scheffler Creek so we could take data and see if it is healthy. The upper Part of it is healthy and it is well taken care of, but the lower part is filled with dirt and trash. People call this part of Scheffler Creek "Fish Ditch".

That is one of many reasons why you should add Seward, AK to the protection of anadromous streams.

Thank you for reading,

Alex Ursel 

Seward, AK

May, 3 2011

RE: Ordinance 2011-12 Amending KPB 21 Anadromous Streams Habitat Protection to extend protection to all Kenai Peninsula Borough Anadromous Streams.

Dear KPB Assembly Members,

I support Ordinance 2011-12 and what you're doing for KPB Anadromous Streams but was very let down when I heard the Seward/Bear Creek Areas were excluded from that list of streams and creeks in need of help. Here in the Seward/Bear Creek Area we have lots and lots streams, rivers, and creeks. We have healthy creeks and not so healthy creeks. We have one main creek my class and I have been taking care of called Scheffler Creek. Our city calls the end of the creek, "fish ditch" and our class would like to change that. We have seen tourists walk right down the middle of Scheffler Creek, we have seen oil run right down in to it. In addition there is a lot of erosion, and, a lack of vegetation. We need people to recognize the danger in killing of our salmon and stomping through creeks, we need signs and publicity so people know how to not harm streams and creeks. Please include us in Ordinance 2011-12, Thank you.

Thank you for your consideration,

*Creeanna Whitcome*

Creeanna Whitcome  
Seward Elementary 5th grader

RECEIVED  
MAY 12 2011  
KPB - Clerks Office



May 16, 2011

Mr. Gary Knopp, President  
Kenai Peninsula Borough Assembly  
And  
Assembly Members

Re: Ord. 2011-09 and Ord. 2011-12

Dear President Knopp,

I extend herewith my strong support of both of the ordinances listed above. It is my view that the Planning Commission has done an admirable job with Ord. 2011-09 to amend what can and cannot occur along the banks of anadromous streams. I strongly urge the Assembly to support this ordinance as it is written.

Likewise, I commend Assemblyman Smith for bringing forward Ord. 2011-12. This is a continuation of the work done by former Assemblyman Drew Scalzi in the 1990's, recognizing the need to protect the Borough's precious stream resources. By adding all streams identified by the Alaska Dept. of Fish and Game, the borough is completing that work. My only wish at this time is that the streams on the west side, within the Kenai Peninsula Borough, were also included. I urge your full support of this ordinance.

Thank you.

Milli Martin

P.O. Box 2652  
Homer, AK 99603

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**From:** Dave Lyon [alaskabha@gmail.com]  
**Sent:** Tuesday, May 17, 2011 6:30 PM  
**To:** Blankenship, Johni  
**Subject:** Fwd: KPB ord 2011-12

Could you please include this and the following email in the assembly packet this evening?  
I sent to the members but neglected the clerks office.

Oops!

Thank you ,  
Dave Lyon  
Co-chair AK BHA



Agenda Item M. 8.  
Committee Lands  
Page Number 92

May 15, 2011

Dear Members of the Kenai Peninsula Borough Assembly,

Alaska Backcountry Hunters & Anglers (AK BHA) is a nonprofit organization that works to promote conservation and protection of habitat and sound stewardship of fish and wildlife. We strive to ensure that future generations of hunters and anglers are provided the same opportunities that we have now, to include public lands that hold the full complement of predators and prey, and clean, free-flowing waters for continued and unparalleled fishing opportunities.

We are writing to strongly support proposed Kenai Peninsula Borough Ordinance 2011-12, which would extend existing salmon stream buffers to additional fish streams throughout the Kenai Borough. As we have learned all too well in the Pacific Northwest, piecemeal management approaches along wild salmon streams invariably lead to degraded fisheries. Salmon and salmon habitat do not recognize political boundaries, and while the Kenai Borough does not encompass the entire Cook Inlet watershed, it covers a substantial amount of the area's most important spawning and rearing habitat. As a result, the KPB has an opportunity to take a common-sense approach to protect the Cook Inlet salmon fisheries that play such an important economic role for families and communities throughout our region.

In addition to our strong support for Ordinance 2011-12, we would like to clarify that this proposal will not impede responsible mining. For example, there have been concerns raised that recreational placer mining would be impacted by this ordinance. However, because placer mining occurs in streams below the water line (i.e. beyond the KPB's jurisdiction), the ordinance does not prevent placer mining. While the ordinance may require a permit from the KPB to work within the proposed buffer area of the salmon stream, the KPB apparently issues those permits on a regular basis. For example, see the enclosed recent permit issued for placer mining on

Quartz Creek, which is already covered by the KPB setback ordinance.

AK BHA believes Ordinance 2011-12 reflects sound management policy that will complement responsible development and protect wild salmon habitat throughout the Kenai Peninsula Borough. Thank you for your attention to this matter.

Sincerely,

Dave Lyon co-Chair AK BHA  
[alaskabha@gmail.com](mailto:alaskabha@gmail.com)

Sent from the home office.

---

**From:** Dave Lyon [alaskabha@gmail.com]  
**Sent:** Tuesday, May 17, 2011 6:31 PM  
**To:** Blankenship, Johni  
**Subject:** Fwd: Example placer mining permit

Sent from the home office.

Begin forwarded message:

**From:** Dave Lyon <alaskabha@gmail.com>  
**Date:** May 16, 2011 8:46:00 AM AKDT  
**To:** "mako@xyz.net" <mako@xyz.net>  
**Subject:** Example placer mining permit

Agenda Item M. 8.  
Committee lands  
Page Number 92

May 10, 2011

Terry Rademaker  
1337 Medfra #B  
Anchorage, AK 99501

**RE: KENAI PENINSULA BOROUGH HABITAT PERMIT KRC # 8710**

**Issued:** May 10, 2011 **Expires:** December 31, 2011

**Permit for Recreational Placer Mining, Quartz Creek**

Dear Mr. Rademaker:

Pursuant to KPB 21.18, the Kenai Peninsula Borough (KPB) has reviewed and approved your proposal to placer mine using a 4-inch suction dredge in Quartz Creek, Section 30, T5N R2W, S.M. This approval does not relieve you of the responsibility to obtain other state and federal permits.

The Kenai Peninsula Borough has established a habitat protection district on Quartz Creek pursuant to KPB 21.18.025 and KPB 21.18.040. This area includes all lands within 50 horizontal feet of Quartz Creek, and is measured from the ordinary high water mark. A Borough Habitat Permit is not required for mining activities on Crescent Creek.

In accordance with KPB 21.18 and the Alaska Coastal Management Program General Concurrence (GC-1) B-List, project approval is hereby granted subject to the following stipulations:

1. Fuel storage is not permitted in the habitat protection district.
2. The habitat protection district and stream banks shall not be mined or disturbed. All dredging shall be conducted within the limits of the existing wetted perimeter (water level).
3. Suction dredges shall not be used as hydraulic monitors to wash soils or other materials from above the water surface.
4. No filling, excavation, major clearing of vegetation or activities that result in erosion, damage to riparian habitat, or water pollution are allowed.

KRC # 8710      Page 2

5. Extracted materials shall not be placed in the habitat protection district. Tailings shall be left in a stable configuration so as not to contribute to erosion or sedimentation problems in State waters.
6. All placer operations shall be designed, constructed, and operated in compliance with applicable state and federal regulations and water quality standards.
7. Heavy equipment/machinery shall not be operated in the habitat protection district. No wheeled or tracked equipment shall be used in-stream.

The permittee is responsible for the actions of any contractors, agents, or other persons who perform work to accomplish the approved plan/permit. For any activity that deviates from the approved plan, the permittee shall notify the River Center and obtain written approval before beginning the activity.

If I can be of any assistance, please don't hesitate to call me.

Sincerely,

John Czarnecki  
Resource Planner  
Kenai Peninsula Borough

cc:River Center Staff

Dear Assembly,

#### Comment on Chapter 21.18: Anadromous Stream Habitat Protection

The NOAA Restoration Center is in support of the 50 ft set back from the ordinary high water mark of streams or river corridors. A set back of this size has been seen to allow for stream function. This stream function includes stabilization of the stream bank which prevents sloughing as well as allowing for lateral movement of the stream. Fifty foot set backs also aid in maintaining good water quality by acting as a filter for sediment and nutrients from runoff and maintaining healthy stream temperatures allowing for aquatic invertebrates and vegetation which then leads to further improvements in water quality. When a stream system has good water quality and is supporting primary vegetative and invertebrate life the chances that the stream can repair itself after periodic events such as flooding or even accidental urban pollution increases.

In addition to the establishment of the distance of setbacks there is a need to investigate the quality of the land used for the setback. Vegetative cover, slope of the bank, and enforcement of stated setbacks are important elements that dictate the success of the set back. Furthermore, conservation of stream function does not end at the set back but should include rules for land use beyond the setback (storage of toxics, storm water runoff, septic systems, etc.).

Vegetative cover is an important factor in the effectiveness of a stream buffer. Root systems of trees provide bank stability as well as minimizing stream lateral movement. Without adequate trees and root systems the lateral movement of the stream can cause more problems to development by meandering than if forested land on either side is left untouched to reign in the stream. Vegetative cover also is integral to the processes that can convert potential pollutants into nutrients usable by the aquatic system as well as controlling sediment input into the stream system. Native vegetation surrounding streams should also be protected in the designated set back area to reap the full beneficial effects of the setback. In areas where trails will be built within the set back care should be taken to limit planting non-native plants, especially lawn –type grasses and plants needing fertilization. Also set back size can be variable for different vegetative growth. Adequate protection of the stream bank may be offered by 25 feet of alder and willow but the same protection would not be produced by 25 feet of wild grasses.

Enforcement of stated setbacks can also be a concern. Support of set back ordinances does little good if these ordinances are not enforced and continually encroached upon. Enforcement would entail initially educating the public of existing set backs. Additionally, it would be helpful if the code identified the ownership of the set back land as either public or private property. After education, actual enforcement could be performed by periodic stream walks to monitor set backs, issuing fines for encroachment on these setbacks and ensuring that the fines are substantial enough so that paying the fine would be more costly to a developer than the benefits reaped by ignoring the setback. Other options could be establishment of a call in line reporting illegal encroachments on set backs.

While set backs are important what is just beyond the setback also needs regulation. This includes increases in distance from a stream for storage of toxic

materials, raised septic systems or drainage fields from septic systems, storm water runoff, etc. Every area will have different development pressures but it is important to acknowledge that consideration of the stream can not end at the border of the set back.

Appropriate setback distances can have cost saving implications for the municipality. There are many examples of minimal setbacks in the Anchorage Bowl area and the drastic measures that both the municipality and homeowners have needed to take to protect their property. With setbacks of 50ft or more vegetation is left in place and can naturally protect against erosion. When there is no set back landowners and even municipalities have been known to mow right to the river's edge for a pretty lawn or park. The non-native grasses do not have the root system necessary to stabilize the bank. After the process has begun it is very expensive to try to stop the erosion process and measures such as additional culverts, water pumps and armoring have been used to protect homes and municipal lands with great expense and limited success. The foresight in establishing appropriate setbacks for the system that you are working in can reduce trouble and maintenance into the future.

Erika Ammann  
NOAA Restoration Center

# ***Kenai River Watershed Foundation, Inc.***

*P.O. Box 815  
Cooper Landing, Alaska 99572*

May 23, 2011

Gary Knopp, Assembly President  
And Assembly Members  
Kenai Peninsula Borough  
C/o Borough Clerk  
Johni Blankenship <jblankenship@borough.kenai.ak.us>

Subject: Ordinance 2011-12 Anadromous Stream and Habitat Protection

Dear President Knopp and Members:

The Kenai River Watershed Foundation strongly supports Ordinance 2011-12.

We represent stakeholders in the Kenai River Watershed, primarily in Cooper Landing and Moose Pass. The ecology and overall integrity of the Kenai River is due to blended contributions from all of its headwaters. Protection of anadromous waters, and the chemical, mineral, organic, solid, and thermal constituents of anadromous waters that keep them healthy, are vital to our local and regional economies.

We ask you to consider adding a whereas indicating the Borough's recognition of the importance of protecting the entire Kenai River Watershed, including tributary drainages and waters outside the Kenai Peninsula Borough, within the Chugach National Forest.

Please support Ordinance 2011-12.

Thank you,



/s/ Bob Baldwin, President  
<kenailake@arctic.net>  
907-250-3913





# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Kenai Fish and Wildlife Field Office  
43655 Kalifornsky Beach Road  
Soldotna, Alaska 99669



Tuesday, May 24, 2011

TO: Gary Knoop, Assembly President  
Kenai Peninsula Borough Assembly Members

FROM: Mike Edwards, Habitat Restoration Branch Chief  
Kenai Fish and Wildlife Field Office

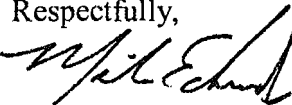
SUBJECT: Ordinance 2011-12, possible amendment to KPB 21.18.025

Dear Mr. Knoop and Assembly Members:

As Habitat Restoration Branch Chief for the Kenai Field Office of the Service I would like to take the opportunity to comment on the Assembly's proposed expansion of KPB 21.18.025 to include all anadromous streams within the Borough. The use of riparian zone set-backs has been shown to be successful in supporting healthy aquatic systems and is well documented in the scientific literature. Healthy riparian zones that are properly maintained and sized provide services to communities including flood control, erosion control, and water quality protection, at little cost. Salmon stocks which are critical to the economy and culture of the Kenai Peninsula are also dependant on healthy riparian habitat. Salmon are not the only species to benefit from healthy riparian zones, moose, bears, and numerous birds are dependent on riparian habitat.

The Fish and Wildlife Service's Partners for Fish and Wildlife Program has been assisting Borough landowners in conducting projects to restore and protect riparian habitat for the past 15 years. The willingness of landowners to work with us demonstrates the value Borough residents place on healthy riparian habitat and the fisheries this habitat supports.

The value of the fisheries within the Borough cannot be over emphasized; the same is true of the value of the riparian zones that support these fisheries. In taking the proactive approach of including all anadromous streams in KPB 21.18.025, the Assembly is demonstrating their commitment to the natural resources and people of the Kenai Peninsula Borough.

Respectfully,  


Mike Edwards  
Habitat Restoration Branch Chief  
U.S. Fish and Wildlife Service  
Kenai Fish and Wildlife Field Office

---

**Subject:**

FW: KPB Ordinance 2011-12 Public Comment

**From:** theo lexmond [mailto:tlexmond@gmail.com]

**Sent:** Monday, May 23, 2011 8:16 AM

**To:** Blankenship, Johni

**Subject:** KPB Ordinance 2011-12 Public Comment

Members of the Kenai Peninsula Borough Assembly,

My name is Theo Lexmond. I am a full time resident of Cooper Landing. I am writing to you to express my support for Borough Ordinance 2011-12, expanding the 50' setback to all catalogued anadromous streams that flow through Kenai Peninsula Borough lands. Maintaining the quality of the Kenai River means protecting the entire watershed from which the river's source waters originate. The many little streams and swamps that make up this watershed are slowly but surely dying by a thousand cuts. Everywhere you look people do things that degrade them. Wetlands get drained or filled, stream-side forests get cut, stream beds get disturbed and silted, culverts from previous generations decay and make the streams impassable to fish, people plant grass and spread fertilizer up to the stream or wetland edge, etc. I encourage the Borough Assembly take a long view, where the Kenai River is concerned, and realize that we must do all we can to protect the entire watershed from our own, often unintentionally destructive behavior. We are loving this watershed to death. Thank you for your consideration of my comments on this issue.

Theo Lexmond  
Cooper Landing

Janette Cadieux  
P.O. Box 873  
Cooper Landing, AK  
99572

May 22, 2011

Kenai Borough Assembly  
Attn: Johni Blankenship, Borough Clerk  
144 N Binkley  
Soldotna, AK 99669

Dear Assembly Members:

I think passage of ordinance 2011-12 is critical to the life and health of the Kenai River Watershed. We have a responsibility not to destroy one of the surviving salmon rearing watersheds in the United States. This is one, significant step towards that. KPB cannot ignore its responsibilities when it comes to salmon rearing streams. All of the science points to the importance of the uplands, feeder streams, and wetland habitat as critical to the life of an anadromous watershed. We also have a huge economic investment to protect. Please support this ordinance.

Thank you for allowing me to express this opinion,

  
Janette Cadieux  
Cooper Landing Resident



## *"Village with a Past, City with a Future"*

210 Fidalgo Avenue, Kenai, Alaska 99611-7794  
Telephone: 907-283-7535 / Fax: 907-283-3014  
[www.ci.kenai.ak.us](http://www.ci.kenai.ak.us)

May 27, 2011

The Honorable Gary Knopp  
Kenai Peninsula Borough Assembly  
144 N. Binkley Street  
Soldotna, AK 99669

Subject: Kenai Peninsula Borough Ordinance 2011-12

Dear President Knopp:

The purpose of this correspondence is to request a postponement of Assembly action on the above referenced ordinance until after a public meeting can be held, and the ordinance is discussed/considered by the City of Kenai's Planning & Zoning Commission and City Council.

The City had not received communication from the Borough that this ordinance was being considered and only became aware of the legislation recently.

The City of Kenai has advertised for a public meeting to be held on June 3, 2011, 6:00PM-8:00PM, in Council Chambers at Kenai City Hall. The purpose of the meeting is to provide information to residents of Kenai as well as discuss the above ordinance.

This issue will be a discussion item before the Planning & Zoning Commission on June 8, 2011, and a resolution may be scheduled before Council at their June 15, 2011 regularly scheduled meeting.

I respectfully request that Borough staff attend the City of Kenai's public meeting on June 3rd to define the specific effect of the ordinance and respond to questions.

Within the City's corporate boundaries, approximately 191 properties are affected by Ordinance 2011-12. The City is contacting each of the property owners to inform them of the ordinance and to invite them to the June 3<sup>rd</sup> public meeting.

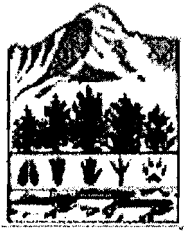
Thank you for your consideration in this matter. If you have any questions, please contact me at your earliest convenience.

Sincerely,  
CITY OF KENAI

  
Rick R. Koch

cc: Mayor Dave Carey  
Kenai City Council





**RESURRECTION BAY  
CONSERVATION  
ALLIANCE**

**BOX 1092  
SEWARD, ALASKA 99664  
907 224 4621  
RBCA-ALASKA.ORG**

May 31, 2011

Via email

Kenai Borough Assembly  
Attention Johni Blankenship  
144 North Binkley  
Soldotna, AK 99669

Dear Assembly Members:

Our conservation advocacy group based in Seward supports the passage of ordinance 2011-12 that will protect anadromous streams and habitat. Salmon are the economic and cultural backbone of our state and salmon rely on quality habitat.

We do not support the exclusion of "all portions of waterways found within the Seward-Bear Creek Flood Service area" because they too contribute to salmon productivity and abundance.

Please support ordinance 2011-12 amended by eliminating the Seward-Bear Creek exclusion.

Thank you,

A handwritten signature in black ink, appearing to read "Mark Luttrell". The signature is fluid and cursive, written in a professional style.

Mark Luttrell, President

Kenai Peninsula Borough Assembly  
144 N. Binkley St.  
Soldotna, AK 99669

Re: Support for Salmon Habitat Protection/KPB Ordinance 2011-12

Dear Kenai Peninsula Borough Assembly:

The undersigned groups represent thousands of Alaskans who support healthy wild salmon runs and common-sense salmon habitat protections. We are writing now to support KPB Ordinance 2011-12, "AN ORDINANCE AMENDING KPB 21.18.025 TO ADD ADDITIONAL WATER BODIES SUBJECT TO ANADROMOUS STREAM HABITAT PROTECTION."

Wild healthy salmon support our families and communities in countless ways. From commercial and sport fishing, to subsistence and personal use, salmon are a vital economic engine for the KPB and they connect Alaskans like no other resource in the state.

In 1996, the Kenai Peninsula Borough showed vision and leadership when it passed the KPB's first salmon habitat protection rules; in 2000, it reinforced this effort with riparian setbacks around some of the KPB's most visible salmon streams. Now, proposed Ordinance 2011-12 will expand these setbacks to cover fish streams throughout the Borough.

We support this ordinance because we know how important it is to have broad-based protections that cover as much of the ecosystem as possible. Though the Kenai Peninsula Borough certainly does not cover the entire Cook Inlet watershed, it contains the majority of salmon streams found throughout the region.

The Kenai Peninsula Borough will be protecting the interests of its residents and standing up for local control by recognizing the valid role Borough government can and must play in effective salmon habitat management.

We need look no further than the mistakes made in the Pacific Northwest to understand we must take proactive steps to protect our salmon resources. Ordinance 2011-12 simply builds on the successful efforts of previous KPB Assemblies, and reflects the need to manage our fisheries and habitat in a common-sense fashion for current and future generations.

Signed

Kenai Area Fisherman's Coalition  
Kenai River Sportfishing Association  
Kenai Watershed Forum  
South-Central Alaska Dipnetters Association  
Cook Inletkeepers  
United Cook Inlet Drift Association  
Kenai Peninsula Fisherman's Association  
Cook Inlet Aquaculture Association  
Alaska Backcountry Hunting & Fishing

Shana Loshbaugh  
1257 Richard Berry Dr.  
Fairbanks, AK 99709  
[sloshbau@alaska.edu](mailto:sloshbau@alaska.edu)

15 June 2011

Kenai Peninsula Borough Assembly  
c/o Borough Clerk Johni Blankenship  
144 N. Binkley St.  
Soldotna, AK 99669

Re: Salmon habitat protection/Ordinance 2011-12

Ladies and Gentlemen,

I am a former borough resident now in Fairbanks at the university, where I am studying the Kenai River Watershed in pursuit of a doctoral degree in natural resource management and sustainability science. Recently I completed a study relevant to salmon habitat protection on the Kenai Peninsula.

I collected information on 61 different salmon-producing watersheds from California to Alaska and analyzed the relationship between land use and the health of salmon stocks. The Kenai and Anchor rivers were included. The available measurements showed a strong link between development pressures and dwindling salmon. A few watersheds diverged from the overall trend, but reviewing their histories showed why. Some had healthy salmon runs despite relatively high amounts of development, and that discrepancy was most pronounced in Southcentral Alaska. These surprisingly healthy rivers are all systems where extensive development occurred only in recent decades, and landscape “legacy effects” have not yet worked their way through the systems. Such legacy effects take decades to destroy stocks, and include factors such as blocked creeks, chronic contamination, exotic species, siltation from extra erosion, and runoff disruption due to impervious surfaces.

Development levels on the Kenai and Anchor rivers match with rivers in other areas of the Pacific Northwest that now have depressed or threatened salmon stocks. Peninsula development levels have progressed past the “safe for salmon” threshold but have not yet reached the “salmon are doomed” zone. Of all the rivers I looked at, the Anchor River was the most at risk, and the Kenai River fell into the category of “mediocre” for sustaining salmon habitat.

My interpretation of these results is that they highlight how vulnerable Kenai Peninsula salmon runs are to development pressures already in play. To preserve these salmon runs, people on the Kenai Peninsula cannot rely on “business as usual” but must aggressively invest in managing the landscape better than has been done elsewhere. For that reason, I support expanded habitat protection and recommend approval of this ordinance.

Sincerely,

Shana Loshbaugh

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

### DIVISION OF MINING, LAND AND WATER

**SEAN PARNELL, GOVERNOR**

DIRECTOR'S OFFICE  
550 W. 7<sup>th</sup> AVE., SUITE 1070  
ANCHORAGE, ALASKA 99501-3579

PHONE (907) 269-8600  
FAX (907) 269-8904

June 15, 2011

Kenai Peninsula Borough Assembly  
Assembly Clerk  
144 N. Binkley St.  
Soldotna, AK 99669

Re: Proposed Habitat Protection Ordinance Revisions (Ordinance 2011-12)

Dear Members of the Assembly:

The Kenai Peninsula Borough is reviewing proposed revisions to 21.18 Habitat Protection Ordinance. The Department of Natural Resources submits this comment letter for your consideration.

Although we understand the goal of the proposed revision and value the importance of habitat protection in the riparian area, DNR believes that the revision may conflict with the state's authority to utilize and manage its resources, including regulation of mining claims and mining authorizations. The Alaska Constitution places certain obligations on the State with respect to its land and resource assets. In response to these constitutional directives, the legislature has adopted comprehensive statutory schemes for the management, development, and conservation of state land and resources. *See e.g.*, AS 38.05 & AS 27.19 – AS 27.20. These statutory schemes delegate to DNR decision-making authority for the management and use of state land and resources, including the balancing of local and state interests. Local regulation that conflicts with or unreasonably impairs state management is pre-empted.

There are a number of mining claims that have been staked in rivers in the Kenai Peninsula Borough. The mineral estate is the dominant estate and those mining claim owners have a vested right to be able to extract locatable minerals from those claims, inclusive of the lands within the affected streams or rivers. The proposed expansion of the ordinance to include all anadromous fish streams will create the potential that the borough may attempt to prohibit a miner from extracting material from within the protection buffers and stream beds. Although the miners would not be adding hazardous substances to the water and will be abiding by the environmental protection requirements that we apply, the ordinance appears to possibly preclude the mining activity. The ordinance must recognize the right of present and future valid mining operations authorized by the state to operate within the habitat protection boundaries.

***"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans."***



We request that any revision to Title 21.18 acknowledge the borough's limited ability to regulate state land, and remove any provisions inconsistent with the state's authority.

Thank you for your attention to this matter. I can be reached for any follow-up questions at 269-8501 or [wyn.menefee@alaska.gov](mailto:wyn.menefee@alaska.gov) .

Sincerely,



Wyn Menefee, Chief of Operations  
Division of Mining, Land and Water

cc: Brent Goodrum, Director, DMLW  
Rick Fredericksen, DMLW Mining Section Chief  
Scott Ogan, DMLW Public Access Assertion and Defense Unit Manager  
Colleen Moore, Department of Law

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**To:** Blankenship, Johni  
**Subject:** RE: In support of Ordinance 2011-12

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**From:** Rachel Lord [mailto:rachel.e.lord@gmail.com]  
**Sent:** Tuesday, June 21, 2011 12:41 PM  
**To:** Blankenship, Johni; pa12gary@hotmail.com; linda@clerkworksak.com; ragweb@gci.net; hvsmalley@yahoo.com; cpierce@gci.net; bsmith@xyz.net; rtauri@gci.net; suemccl@gmail.com; mako@xyz.net  
**Subject:** In support of Ordinance 2011-12

Dear Members of the Kenai Peninsula Borough Assembly,  
I strongly support Ordinance 2011-12, which serves the residents of the Kenai Peninsula Borough by protecting the integrity of salmon streams through 50 feet of streambank protection throughout the Borough. Protecting streambanks is smart its smart for landowners, businesses, and our local and Borough government. Protecting streambanks keeps our fish and our downstream neighbors happy. The destruction of streambanks leads to dirty water, warmer water, fewer fish, and less tourism and property tax dollars coming into the Borough. **The destruction of streambanks affects all of us, and it is bad business.** This ordinance is not earth-shattering in its scope. It allows you to trim your shrubs, mow your lawn, access your rivers and streams, fish, and install boardwalks and gateways that are designed for streambanks. Together we can make sure that our children grow up fishing and eating wild salmon from OUR rivers, from our backyard. We need to make a choice to protect the places where healthy and wild salmon live. This is why many of us live here, and why so many people come and spend their money here **a 50 foot setback to protect streambanks is not too much to ask for the salmon streams across the Borough.** There are a lot of unknowns in Alaska were a big state with tens of thousands of miles of rivers and streams. Where we know there are salmon, lets protect those streams. We have a lot to lose if we dont, and by doing so we know we are doing our part for todays families and for future generations to keep this place the envy of the country in its beauty and incredible bounty of wild salmon. **Thank you for supporting Ordinance 2011-12 and protecting our quality of life and our salmon.**

Sincerely,  
Rachel Lord  
Resident, City of Homer  
602 Shellfish Ave  
Homer, AK 99603  
235-3250/cell: 509-860-4622

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Committee Lands  
Page Number 74

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**To:** Blankenship, Johni  
**Subject:** RE: Comments on proposed KPB 21.18.025 Ordinance Revision

**From:** Deantha Crockett [mailto:dcrockett@akrdc.org]

**Sent:** Tuesday, June 21, 2011 1:09 PM

**To:** Blankenship, Johni; pa12gary@hotmail.com; linda@clerkworksak.com; ragweb@gci.net; hvsmalley@yahoo.com; cpierce@gci.net; bsmith@xyz.net; rtauri@gci.net; suemccl@gmail.com; mako@xyz.net

**Subject:** Comments on proposed KPB 21.18.025 Ordinance Revision

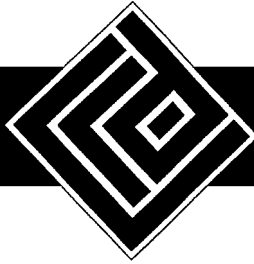
Dear Members of the Assembly.

Attached are the Resource Development Council's comments regarding revisions to ordinance KPB 21.18.025, which I understand will be on the agenda for tonight's Assembly meeting. RDC appreciates the opportunity to submit these comments. Please don't hesitate to contact me if you have any questions.

Sincerely,

Deantha Crockett  
Resource Development Council for Alaska, Inc.  
121 W Fireweed Lane, Suite 250  
Anchorage, AK 99503  
Office: (907) 276-0700 ext. 3  
Mobile: (907) 317-6323

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Page Number 74



# RESOURCE DEVELOPMENT COUNCIL

Growing Alaska Through Responsible Resource Development

Founded 1975

June 21, 2011

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Phil Cochrane, Sr. Vice President  
L.F. "Len" Horst, Vice President  
Eric Fjelstad, Treasurer  
Steve Denton, Secretary  
Wendy Lindskoog, Past President

Bob Berto  
Patty Bielawski  
Pat Carter  
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Lance Miller  
Dale Pittman  
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Thomas Krzewinski  
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Linda Leary  
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Andy Mack

John MacKinnon  
Mary McDowell  
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James Mery  
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Hans Neidig  
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Judy Patrick  
Charlie Powers  
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Mary Sattler  
Danny Seybert  
Ken Sheffield

Keith Silver  
John Sturgeon  
Dan Sullivan

Michael Terminel  
Jan Trigg  
John Zager

**Ex-Officio Members**  
Senator Mark Begich  
Senator Lisa Murkowski  
Congressman Don Young  
Governor Sean Parnell

Kenai Peninsula Borough Assembly

Re: Proposed KPB 21.18.025 Ordinance Revision

Dear Members of the Assembly:

The Resource Development Council for Alaska, Inc. (RDC) writes to caution the Assembly against expanding Kenai Peninsula Borough Code 21.18 to include all anadromous bodies of water within the municipal boundaries of the Borough, without considering inclusion of qualifying language.

RDC is a statewide business association comprised of individuals and companies from Alaska's oil and gas, mining, forest products, tourism and fisheries industries. RDC's membership includes Alaska Native Corporations, local communities, organized labor, and industry support firms. RDC's purpose is to encourage a strong, diversified private sector in Alaska and expand the state's economic base through the responsible development of our natural resources.

While RDC appreciates the ordinance as established in 1996, we caution against the proposed amendment to include all anadromous bodies of water within the Borough. The section titled "Purpose" states "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." The proposed revision counters the language written in the Purpose section and duplicates existing state and federal laws, with no added benefit to salmon habitat.

Including all anadromous streams in the Borough could have unforeseen and unintended consequences. When adopted in 1996, the ordinance was intended to protect high-use areas from fishing pressure and urban development. These areas have few regulations from agencies outside of the Borough, and therefore municipal ordinance may be appropriate for them. However, much of the expansion areas being contemplated do not need the same type of protection as the currently covered areas. The added areas may include large-scale resource development projects that are already subject to extensive state and federal permit processes, including detailed salmon habitat review. These processes, including National Environmental Policy Act (NEPA) reviews, provide opportunities for the Borough and its residents to address concerns regarding large-scale projects. The agencies also have experts on hand with a breadth of knowledge on their given subject area. A local planning commission does not have the resources to conduct extensive reviews such as this.

RDC urges you to recognize the intent of the 1996 planning commission and apply protection only to the areas that need it, while recognizing development projects subject to extensive state and federal regulations that do not need additional, and duplicative, requirements applied by the Borough.

Thank you for the opportunity to comment.

Deantha Crockett  
Projects Coordinator

For distribution at tonight's hearing on the noted proposed ordinance, attached please find a letter from PacRim Coal to the Kenai Peninsula Borough Assembly providing comment on the proposed habitat protection ordinance (Ordinance 2011-12) which seeks to amend KPB Code Section 21.18.

We would appreciate confirmation of receipt of the letter.

Please feel free to contact our office if you have any questions.

Thank you,

Victoria Thorson  
Administrative Assistant  
PacRim Coal, LP  
907-276-6868

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# PACRIM COAL, LP

1007 W 3<sup>rd</sup> Avenue Suite 304 • Anchorage, AK 99501  
Tel: (907) 276-6868 • Fax: (907) 276 2395

June 21, 2011

Kenai Peninsula Borough Assembly  
Assembly Clerk  
144 N. Binkley St.  
Soldotna, AK 99669

## **Re: Proposed Habitat Protection Ordinance Revisions (Ordinance 2011-12)**

Dear Members of the Assembly:

This letter is respectfully submitted to provide comments by PacRim Coal, LP (“PRC”) on proposed Ordinance 2011-12.

The following information is necessary to predicate those comments. PRC owns 5 coal leases issued by the State of Alaska in the 1970’s. The leases are located on the west side of the Cook Inlet in the Chuit River Watershed. They cover lands originally owned by the State of Alaska and designated for coal development by the State. The Alaska Mental Health Land Trust recently became owner of the leases.

Baseline data collection and preliminary exploration on the leases began in the 1970’s and led to completion of an Environmental Impact Statement (“EIS”), a favorable Record of Decision by the Environmental Protection Agency (“EPA”) in 1990, and a coal mining permit issued by the Alaska Department of Natural Resources (“ADNR”) under the Alaska Surface Coal Mine Control and Reclamation Act (“ASMCRA”), along with various other relevant permits, including habitat permits from the Alaska Department of Fish & Game (“ADF&G”).

In support of the original permitting effort, PRC’s predecessors entered into an “Option for Ground Lease at Ladd Landing” with the Kenai Peninsula Borough (“KPB”) in 1987. The option and the consequent surface lease were and remain specifically designated for coal development. PRC exercised the option and effective September 8, 2009, acquired the surface lease subject to the payment of a not insubstantial annual fee.

Since 2006, PRC has sought to re-permit a surface coal mine on a portion of its leases. A Supplemental EIS (“SEIS”) is being prepared under the auspices of the United States Army Corps of Engineers (“USACE”) as lead Federal Agency. To support the SEIS and permit applications, PRC has expended significant effort and incurred material expense to acquire additional baseline data at the request of various relevant State and Federal Agencies. Major permits required for PRC’s proposed operations include:

- Alaska Surface Coal Mine Control and Reclamation Act from ADNR;
- 404 and Section 10 from USACE;
- Air quality and water discharge permits from the Alaska Department of Environmental Conservation (“ADEC”);
- Habitat Permits from ADF&G.

These permits will require that PRC (a) precisely identify and pinpoint the place(s) of developmental activities; (b) accurately predict the scope and extent of those activities; (c) purposefully limit the impact of such activities; and, (d) not only repair and restore any affected anadromous habitats, but also to improve them, which we have shown and will further demonstrate can be done. The KPBB will have the opportunity to comment and address its concerns during most of these various permitting processes. As a result of these permitting reviews and protections, as well as other applicable federal and state regulatory controls, major resource development projects should be exempt from any need for a conditional use permit from the KPBB.

Kenai Peninsula Borough Code Section 21.18 “Anadromous Streams Habitat Protection” was enacted in 1996 to address concerns about anadromous stream habitat in heavily used areas in and around specific rivers and streams on the east side of the Cook Inlet. Ordinance 2011-12 seeks to amend 21.18 by expanding coverage beyond the existing list of selected high-use streams to include all anadromous streams within the KPBB. This blanket geographical expansion will extend Code Section 21.18 for the first time to areas within the KPBB that have uniquely different, long-standing public and private property rights for resource development activities materially beyond those currently covered by the Ordinance.

Expansion of the areas covered by Section 21.18 without further consideration of these special resource development property rights will directly interdict the purposes stated in 21.18.010<sup>1</sup> by:

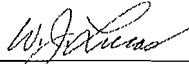
- Duplicating and possibly directly impeding State and Federal agencies’ existing and long standing regulatory over-sight of and enforcement activities for anadromous stream habitat(s);
- Denying the exercise of private property rights;
- Interfering unreasonably with carefully controlled public property rights;
- Debilitating enforceable coal development activity agreements between the KPBB and PRC;

Additionally, undue local governmental interference with new resource development may ultimately reduce or eliminate the potential economic, employment and commercial opportunities for the voters and citizens of the KPBB.

Consequently, PRC respectfully suggests that, if Ordinance 2011-12 is to be adopted as presently proposed, it should also include an exemption procedure in Section 21.18.070 for highly regulated activities such as PRC’s type of resource development, so that the Borough Code Section, as amended by Ordinance 2011-12, conforms to its stated purpose(s), does not unnecessarily duplicate or impede other carefully enacted regulatory functions, and promotes local growth and prosperity.

We thank you for your attention to the matter. If you have any follow-up questions, please call our office at (907) 276-6868.

Sincerely,

PacRim Coal, LP.  
By: PacRim Coal-GP, LLC,  
its general partner  
By:   
W.J. Lucas  
Title: Vice President

---

<sup>i</sup> 21.18.010. 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.



*The* TRUST  
LAND OFFICE

June 21, 2011

Kenai Peninsula Borough Assembly  
Assembly Clerk  
144 North Binkley Street  
Soldotna, Alaska 99669

Re: Opposition to proposed Kenai Peninsula Borough Ordinance 2011-12

Dear Members of the Assembly:

The Trust Land Office (TLO) manages land for the Alaska Mental Health Trust Authority (The Trust), which is a substantial land owner in the Kenai Peninsula Borough (KPB), having interests in over 200,000 acres of land within the KPB. The TLO, without any notification from anyone at the KPB, became aware late yesterday afternoon that the Assembly would be considering what could be final action on proposed Ordinance 2011-12, which would revise Chapter 21.18 of the borough code to substantially increase the area affected by this Chapter. Apparently, discussion of this ordinance has been on-going since mid-April. As a major property owner in the KPB that stands to be severely impacted by the passage of such an ordinance, we are disappointed that we were not advised of the proposed change so we could provide comment.

It is not clear why the expansion of the areas currently listed in 21.18.025 is being considered at this time. The proposed ordinance suggests that “the findings” in 21.18.010 somehow support expanding the scope of 21.18 to “virtually all anadromous streams in the borough”. What are the “findings” that support or warrant the blanket expansion of the provisions of this chapter as proposed? More important, can these findings be circulated to The Trust and other stakeholders in advance of the hearing with enough time to formulate and submit informed comments? To date, that hasn’t happened.

The original intent in establishing the provisions of the current code in Chapter 21.18 was to protect high use areas on the Kenai Peninsula from the effects of intense public fishing pressure and urban development on the rivers and streams listed in 21.18.025. All of the water bodies addressed by the original ordinance are relatively easily accessible to the public and subject to the effects of public and private uses that had little or no permit requirements or oversight from other agencies. Conversely, the areas now being considered for expansion of the requirements of 21.18, particularly on the west side of Cook Inlet, do not have the same type of protection needs. For the most part, these areas are remote and inaccessible. They are not subject to intense pressure by the public or traditional land uses. This is particularly true of Trust lands on the west side of Cook Inlet. Do the “findings” address these remote lands and major resource

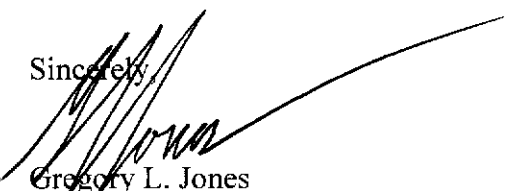
development projects? We have no way of telling, since we have not been invited into the discussion.

Large scale commercial projects in Alaska such as mineral development are subject to extensive state and federal permit processes that address habitat, environmental, land use and numerous other issues, in great detail. All aspects of a project of this nature are reviewed by various agency personnel who are experts in their field. The KPB has multiple opportunities to contribute comments and concerns throughout those permitting processes. We question whether the KPB has the resources or expertise to manage a concurrent project review on projects at this level? This would appear to be a duplication of governmental effort that adds little value –only expense-- to the public. The result would be a confusing and expensive addition to the permitting process that would have the affect of slowing the process and delaying both tax revenue and job creation within the borough.

Passage of this ordinance, in its present form, would significantly impact the ability of The Trust to develop its mineral interests. In particular Trust resource development projects may be adversely affected or delayed on the west side of Cook Inlet, where The Trust owns substantial acreage that is prospective for mineral development and where large scale development is being considered.

Considering the fact that approximately one in every ten Alaskans is a beneficiary of The Trust, it is incumbent upon local government to reconsider passing duplicative, overreaching laws that diminish The Trust's ability to generate revenue from its lands for the beneficiaries and mental health programs in your community. In short, this proposed ordinance, if passed, would result in a regressive and punitive law. Please do not pass it. If you must consider it, please delay action until you can solicit input from major land owners, such as The Trust, and resource development interests within the KPB. If you decide to pass the ordinance, the TLO respectfully requests that where permitting processes are already in place, large scale resource development projects be exempt from the proposed Conditional Use Permit process to avoid redundancy in the already extensive permitting process and to avoid the possibility of precluding a project that otherwise meets the state and federal permitting requirements.

Sincerely,



Gregory L. Jones  
Executive Director

---

**Subject:** FW: Kenai Peninsula Borough Ordinance  
**Attachments:** Kenai Peninsula Borough Ordinance Comment Ltr 6-21-2011.pdf

-----Original Message-----

**From:** Alaska Miners Association [mailto:[ama@alaskaminers.org](mailto:ama@alaskaminers.org)]

**Sent:** Tuesday, June 21, 2011 4:32 PM

**To:** Blankenship, Johni; pa12gary@hotmail.com; linda@clerkworksak.com; ragweb@gci.net; hvsmalley@yahoo.com; cpierce@gci.net; bsmith@xyz.net; rtauri@gci.net; suemccl@gmail.com; mako@xyz.net

**Subject:** Kenai Peninsula Borough Ordinance

Dear Assembly Members,

Please find attached in pdf format a comment letter from Steven C. Borell, P.E., Executive Director of the Alaska Miners Association to you regarding the proposal to amend Code 21.18.

Thank you.

Sharon Cox  
Alaska Miners Association  
3305 Arctic Blvd., Ste. 105  
Anchorage, AK 99503  
907-563-9229  
[www.alaskaminers.org](http://www.alaskaminers.org)

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# ALASKA MINERS ASSOCIATION, INC.

3305 Arctic Blvd., #105, Anchorage, Alaska 99503 • (907) 563-9229 • FAX: (907) 563-9225 • [www.alaskaminers.org](http://www.alaskaminers.org)

June 21, 2011

Kenai Peninsula Borough Assembly  
144 N. Binkley Street  
Soldotna, AK 99669

**RECEIVED**

**JUN 22 2011**

**KPB - Clerks Office**

Submitted via:

<http://www.borough.kenai.ak.us/AssemblyClerk/Assembly%20Member%20Information/Assembly%20Info.htm>

Dear Assembly Members,

The Alaska Miners Association is extremely concerned about the proposal by the Kenai Peninsula Borough Assembly to amend the Kenai Peninsula Borough (KPB) Code 21.18 (Anadromous Streams Habitat Protection) to include "all anadromous water bodies within the municipal boundaries of the Kenai Peninsula Borough" based on the ADF&G catalogue. We believe this action will have many "unintended" consequences, including negative economic impacts in the KPB and South-Central Alaska in general.

The Alaska Miners Association was involved several years ago with the planning process on the Kenai Peninsula. In that process AMA supported, and still supports, the use of "leasehold location" for mining claims near the major sport fishing streams. However, the current proposal is much different and is not necessary.

Expanding the Application section 21.18.025 as written is counter to the purpose statement and would actually add duplicity.

"21.18.010. 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."

In the case of mining, extensive Federal and State mining regulations are already in effect. Over 60 permits are required to permit a large mine in the State of Alaska. Adequate safeguards are assured by such agencies as the Alaska Department of Natural Resources, Alaska Department of Environmental Conservation, Alaska Department of Fish and game, U.S. Army Corps of Engineers, U.S. EPA, Office of Surface Mining and Enforcement, and the U.S. Forest Service. In addition NEPA ensures adequate involvement of the public and local governments.

The State statutes and regulations are a comprehensive system of requirements that provide both the protections and the flexibility needed for the State to manage resource development. Also, the State has the experience and expertise to manage the multitude of technical issues involved in

permitting and overseeing modern mines. It would be impossible for the KPB to afford and maintain that level of expertise. To do so would be redundant of the State agencies of DNR, DEC and ADF&G. the KPB does not have adequate funds and/or personnel with sufficient expertise to implement and regulate the amendment effectively. Also, the KPB would be creating new burdens to the general management of the borough that it does not now have to deal with.

Adding all anadromous water bodies would not be appropriate. That list of water bodies provides a broad designation and is not site-specific. Many areas listed may have portions of the water body that provide the important habitat but other areas are limited to passage of fish only. To include all the water bodies would expand the affected area far beyond what is intended. The details and values for site-specific areas of a water body are addressed in the base line studies and permitting process.

The original Code was crafted to protect high-use areas such as the Kenai and Anchor Rivers from fishing pressure and urban development. The code was not intended to control large scale projects which are subject to the extensive State and Federal permit processes referenced above. Application of the code to all anadromous drainages could have unintended consequences including the costly delay or outright veto of large scale development projects that could be critical to the economy of the region. This action will negatively impact opportunity for creation of new jobs in the borough. The KPB currently has a 10% plus unemployment rate (*Alaska Economic Trends*, June 2011) and the proposed changes would retard improving that situation.

We recommend and urge that the KPB not make these proposed changes.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Borell", written over a horizontal line.

Steven C. Borell, P.E.  
Executive Director

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

*Division of Sport Fish*

**SEAN PARNELL, GOVERNOR**

333 Raspberry Road  
Anchorage, AK 99518-1565  
PHONE: (907) 267-2289  
FAX: (907) 267-2464

Kenai Peninsula Borough Clerk's Office  
144 N. Binkley Street  
Soldotna, AK 99669

Dear Borough Clerk:

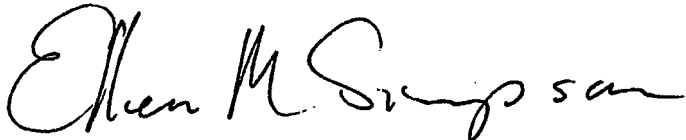
RE: Kenai Peninsula Borough Ordinance 2011-12

The Alaska Department of Fish and Game (ADF&G) has reviewed the Kenai Peninsula Borough Ordinance 2011-12, the planning commission report and the review materials available on the KPB website. This amendment would amend KPB 21.18.025 to make all anadromous streams, except those in the Seward area, subject to the Anadromous Stream Habitat Protection Ordinance.

ADF&G has long recommended the establishment of riparian buffers to protect anadromous waters in state land plans, including the Kenai Area Plan. Because the statutory authority of ADF&G is limited to the portion of the water body between ordinary high water, the KPB Habitat Protection Ordinance complements the ADF&G statutory authority by ensuring that projects in the riparian area adjacent to anadromous waters are designed to protect salmon habitat, including the maintenance of overhanging vegetation. Over the years, ADF&G has invested millions of dollars through various programs working with other agencies and land owners to maintain and rehabilitate riparian habitat along the Kenai River. Extending the ordinance to apply to all anadromous streams gives a consistent message to the public about the importance of salmon habitat throughout the borough.

ADF&G supports the geographic expansion of the Habitat Protection ordinance.

Thank you for the opportunity to comment. I apologize for the lateness of our comments. Please contact me at 267-2463 if you have any questions.



Ellen Simpson  
Habitat Biologist

Agenda Item M.3

Committee Lands

Page Number 74

## Blankenship, Johni

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**From:** Linda Murphy [linda@clerkworksak.com]  
**Sent:** Wednesday, July 06, 2011 11:44 AM  
**To:** Blankenship, Johni  
**Subject:** Fwd: Ord 2011-12

----- Forwarded message -----

**From:** Dale Banks <dale@loopylupine.com>  
**Date:** Tue, Jun 21, 2011 at 12:44 PM  
**Subject:** Ord 2011-12  
**To:** [linda@clerkworksak.com](mailto:linda@clerkworksak.com)

Members of the Assembly,

I am a small business owner in Homer. I recognize the connection between clean, healthy streams, and the economy. I am in favor of Ordinance 2011-12.

Please vote to pass this ordinance.

Thank you for your time,

Dale Banks

(907) 235-5100 phone  
(907) 299-0524 mobile  
Loopy Lupine Distribution  
PO Box 2888  
4854 Eagle Place  
Homer, AK 99603  
[www.loopylupine.com](http://www.loopylupine.com)

Dale Banks  
4854 Eagle Place  
Homer, AK 99603

## Blankenship, Johni

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**From:** Linda Murphy [linda@clerkworksak.com]  
**Sent:** Wednesday, July 06, 2011 11:43 AM  
**To:** Blankenship, Johni  
**Subject:** Fwd: I support 2011-12

----- Forwarded message -----

**From:** **Linda Feiler** <akmoonlit@yahoo.com>  
**Date:** Mon, Jun 20, 2011 at 2:10 PM  
**Subject:** I support 2011-12  
**To:** [linda@clerkworksak.com](mailto:linda@clerkworksak.com)

I have heard so much dismay from the fishermen in our area and would hope that we could manage our fisheries better so that we can insure that our food sources remain in good to excellent condition. Please pass this ordinance and respect the needs of our citizens.

Thank you and sincerely,  
Linda Feiler  
Geneva Craig

Linda Feiler  
tryagain Ave  
tryagain ave  
Anchor Point, AK 99556  
235-1305



## Blankenship, Johni

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**From:** Linda Murphy [linda@clerkworksak.com]  
**Sent:** Wednesday, July 06, 2011 11:43 AM  
**To:** Blankenship, Johni  
**Subject:** Fwd: Ordinance 2011-12

----- Forwarded message -----

**From:** **Gregory Demers** <[gdemers@horizonsatellite.com](mailto:gdemers@horizonsatellite.com)>  
**Date:** Sun, Jun 19, 2011 at 11:40 PM  
**Subject:** Ordinance 2011-12  
**To:** [linda@clerkworksak.com](mailto:linda@clerkworksak.com)

Dear Borough Assembly members,

I am writing tonight to urge you to pass proposed ordinance 2011-12, to provide a 50 foot buffer zone on all Kenai Peninsula anadromous streams and rivers.

I am a retired ADF&G employee who spent 28 years collecting field data pertaining to salmon management and research. I have observed both the benefits of having buffer zones, and the adverse effects of not having them.

Clearly, protecting riparian habitat is good for fish.

Salmon drive not only the ecological engine in coastal Alaska, but the economic one as well. Protecting their habitat will ultimately benefit all Alaskans.

Sincerely,

Greg Demers

Homer

Gregory Demers  
PO Box 2612  
36508 Fox Rd  
Homer, AK 99603  
907-235-8938

## Blankenship, Johni

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**From:** Linda Murphy [linda@clerkworksak.com]  
**Sent:** Wednesday, July 06, 2011 11:40 AM  
**To:** Blankenship, Johni  
**Subject:** Fwd: Kenai Protection Zone

----- Forwarded message -----

**From:** **Kathryn Haber** <kathaber@aol.com>  
**Date:** Thu, Jun 16, 2011 at 11:30 AM  
**Subject:** Kenai Protection Zone  
**To:** [linda@clerkworksak.com](mailto:linda@clerkworksak.com)

My son and husband have fished the Kenia for 15 years. They consider a great priveledge of living in Alaska to fly cast into the clean turquoise waters for steelhead and salmon. They have also noticed that outside where protected sones are not established for rivers, the fish population is far less robust. We do not need to make that mistake. We can manage the Kenai differently by protecting riparian habitat.

My boys support the economy in Cooper Landing , Kenai, and Soldotna because of their love of fishing on the Kenai.

This piece of public interest you have a say in. Please use your voice and vote to protect wild, healthy salmon populations for my son's sons.

Kathryn Haber  
PO Box 2429  
300 WHispering Meadows  
Homer, AK 99603  
907-299-2363

## Blankenship, Johni

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**From:** Linda Murphy [linda@clerkworksak.com]  
**Sent:** Wednesday, July 06, 2011 11:41 AM  
**To:** Blankenship, Johni  
**Subject:** Fwd: Ordinance 2011-12

----- Forwarded message -----

**From:** **Rob Lund** <summersong@alaska.net>  
**Date:** Thu, Jun 16, 2011 at 11:54 AM  
**Subject:** Ordinance 2011-12  
**To:** [linda@clerkworksak.com](mailto:linda@clerkworksak.com)

The devastating losses of salmon stocks in Washington, Oregon and California testify to the crucial nature of healthy, natural and intact freshwater habitat for maintaining anadromous fish populations. Thus, protecting riparian habitat is essential if we are to continue to enjoy healthy salmon runs on the Kenai Peninsula. Please support Ordinance 2011-12 to ensure that our salmon stocks remain viable.

Rob Lund  
4178 Hohe St.  
4178 Hohe St.  
Homer, AK 99603  
907-235-3608

## Blankenship, Johni

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**From:** Linda Murphy [linda@clerkworksak.com]  
**Sent:** Wednesday, July 06, 2011 11:41 AM  
**To:** Blankenship, Johni  
**Subject:** Fwd: Salmon habitat protection

----- Forwarded message -----

**From:** **Ralph Van Dusseldorp** <[johnvan@att.net](mailto:johnvan@att.net)>  
**Date:** Thu, Jun 16, 2011 at 5:36 PM  
**Subject:** Salmon habitat protection  
**To:** [linda@clerkworksak.com](mailto:linda@clerkworksak.com)

I strongly urge you to enact ordinance 2011-12 to create a 50 foot buffer to protect salmon habitat. I no longer fish for sport and am not a commercial fisherman. My only interest is the long range economic well-being of the Peninsula. Our income from oil and gas will be temporary but our income based on salmon can go on forever. For the long-range health of our community we must have the income generated by sports and commercial salmon fishing.

Ralph Van Dusseldorp  
PO Box 2648  
Kenai, AK 99611  
907-283-5034

## Blankenship, Johni

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**From:** Linda Murphy [linda@clerkworksak.com]  
**Sent:** Wednesday, July 06, 2011 11:42 AM  
**To:** Blankenship, Johni  
**Subject:** Fwd: Ordinance 2011-12

----- Forwarded message -----

**From:** Francie Roberts <[roberts2@alaska.net](mailto:roberts2@alaska.net)>  
**Date:** Sun, Jun 19, 2011 at 8:50 AM  
**Subject:** Ordinance 2011-12  
**To:** [linda@clerkworksak.com](mailto:linda@clerkworksak.com)

Dear Borough Assemblyperson,

I support Ordinance 2011-12. Salmon fishing is such an important part of the economy of the Kenai Peninsula, both commercial and recreational. This ordinance extends protections to all streams in our borough, protecting all streams the way the Kenai River has already been protected. Please protect the future of our salmon streams.

Francie Roberts

Francie Roberts  
495 Mountain View Dr.  
Homer, AK 99603  
907 235 1068

## Blankenship, Johni

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**From:** Linda Murphy [linda@clerkworksak.com]  
**Sent:** Wednesday, July 06, 2011 11:42 AM  
**To:** Blankenship, Johni  
**Subject:** Fwd: Kenai Borough Proposed Ordinance 2011-12

----- Forwarded message -----

**From:** Duane Howe <duhowe@alaska.net>  
**Date:** Sun, Jun 19, 2011 at 6:12 PM  
**Subject:** Kenai Borough Proposed Ordinance 2011-12  
**To:** [linda@clerkworksak.com](mailto:linda@clerkworksak.com)

I have read the proposed Kenai Peninsula Borough Ordinance 2011-12 along with the supporting findings and memorandum. It appears to me that the assembly has done a thorough job of reviewing the issues and justifying the need for the proposal, and I feel that it should be adopted as soon as possible.

Habitat protection of all the tributaries of the Kenai River just makes sense. Any erosion, pollution or habitat loss that occurs in any of the upper branches of the Kenai River will eventually affect the lower branches and should be controlled as much as possible. Recent studies have shown that water temperature in monitored streams is rising and approaching a level that could adversely affect the productivity of the watershed for salmon. Any loss of this important fishery would deal a serious blow to the economy of the entire borough. There would be no excuses for such a failure of stewardship..

Anadromous stream management is a very involved issue and requires attention to a myriad of land use details that necessarily complicate the regulations. Some affected stakeholders will no doubt complain about all the intricacies of the ordinance and decisions that are left to judgment, but proof of its success in the portions of the watershed that have been covered in previous years cannot be denied and should not be allowed to derail the ordinance.

Enforcement of the ordinance seems to be uncertain if the cities within the borough do not agree to accept the responsibility of monitoring the additional streams. Its value will be minimal if there is no visible enforcement. This may not be a problem, but perhaps the enforcement issue should be dealt with more thoroughly before it becomes a problem.

The borough government has put considerable effort into the review, analysis and planning for this habitat protection district ordinance, and I commend its members for their efforts. I certainly hope the ordinance will be successful.

Duane Howe  
41640 Gladys Ct  
Homer, AK 99603  
[907-235-9477](tel:907-235-9477)

## Blankenship, Johni

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**From:** Linda Murphy [linda@clerkworksak.com]  
**Sent:** Wednesday, July 06, 2011 11:39 AM  
**To:** Blankenship, Johni  
**Subject:** Fwd: SALMON HABITAT ORDINANCE  
**Attachments:** LETTER TO BOROUGH ON SALMON 51511.docx

----- Forwarded message -----

**From:** Nancy Hillstrand <[halibuts@gmail.com](mailto:halibuts@gmail.com)>  
**Date:** Mon, May 16, 2011 at 7:39 PM  
**Subject:** SALMON HABITAT ORDINANCE  
**To:** [linda@clerkworksak.com](mailto:linda@clerkworksak.com)

Greetings,  
Please see attached letter for your meeting tomorrow  
Thank-you for your support for our Salmon  
Kind Regards  
Nancy Hillstrand  
Coal Point trading Company  
4306 Homer Spit  
Homer Alaska 99603



May 16, 2011

Assembly Members  
Kenai Peninsula Borough  
144 North Binkley Street  
Soldotna, AK 99669

Re: Support for Ordinance 2011-12, Amending KPB 21.18.025 to Additional Water Bodies Subject to Anadromous Stream Habitat Protection

Dear Assembly Members:

I am the owner of Coal Point Seafood, a custom fish processing, shipping and sales business located on the Homer Spit. We have been in the fisheries business here since 1964. We buy and process fish locally from throughout Cook Inlet and the Gulf of Alaska. This letter is in strong support of Ordinance 2011-12.

Coal Point employs from 60 to 80 workers. The stability and sustainability of our business centers around healthy, wholesome, wild Alaska salmon. The Kenai Borough showed incredible foresight in 2000 when it passed KPB Ordinance 2000-08, which established setback habitat protections for some of our most important salmon streams in the KPB. Yet habitat protection cannot rely on a patchwork of oversight. That's why it's so important to pass Ordinance 2011-12, to provide comprehensive habitat protection for all salmon resources throughout the Kenai Borough.

We Alaskans pride ourselves on responsible stewardship, and that means we can and must, learn from the mistakes of others and our own past errors. We need look no further than the Pacific Northwest to see the dismal state of their once-proud salmon runs to understand that a lack of comprehensive habitat protections played a central role in their salmon's demise. Already we are seeing water temperatures rising in our own Kenai Peninsula salmon streams. We need action.

Most importantly, Ordinance 2011-12 strikes a reasonable balance. Statistics from the existing covered streams show that riparian habitat protections are not too onerous for landowners and user groups. In short, this is a wonderful "pro-fish" ordinance I hope everyone will support.

Thank you kindly for your attention to this vital issue. We have a deep responsibility to pass along healthy salmon runs to the next generation, and Ordinance 2011-12 will play an important role to make that happen.

With Kind Regards

Signed,

*Nancy Hillstrand*

Nancy Hillstrand  
Coal Point Seafood Company  
4306 Homer Spit  
Homer Alaska 99603  
907-235-9772  
www.welovefish.com



## Blankenship, Johni

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**From:** Linda Murphy [linda@clerkworksak.com]  
**Sent:** Wednesday, July 06, 2011 11:44 AM  
**To:** Blankenship, Johni  
**Subject:** Fwd: Please Pass Proposed Ordinance #2011-12

----- Forwarded message -----

**From:** Gary Sheridan <eg62shar@yahoo.com>  
**Date:** Tue, Jun 21, 2011 at 1:49 PM  
**Subject:** Please Pass Proposed Ordinance #2011-12  
**To:** [linda@clerkworksak.com](mailto:linda@clerkworksak.com)

It is time to extend the 50 foot buffer to all salmon streams in the Kenai Bough and in fact it should be an Alaska Statute.

With continued various development inroads into the watershed areas of the Bough our salmon runs are becoming more at risk than ever. Private development has little or no incentive to practice good environmental controls to protect stream habitat. In some cases, individuals do things unknowingly that directly or indirectly damage the delicate balance of complex eco-systems or simply don't care what they do or what impact they have.

There are numerous cases of salmon habitat destruction in the lower 48 where greed and self-serving interests ignored the destruction of salmon habitat for the almighty dollar. As Alaskan continues to grow, many of these same self-serving individuals and companies pushed from their comfort ravages of streams and lakes by lower 48 regulations to protect salmon and other wildlife come with them. Without proper safeguards, these interests will no doubt continue their destructive practices in the name of resource development and new jobs just like they have desiminated the areas they were forced to leave.

I call this 'South-itis' where nothing is sacred and it's all for me. Those of this mindset will not worry about cutting down everything to the stream edges or digging a pit directly in a salmon stream. They care little about birds and other wildlife and flora that help stabilize our salmon streams.

The Bough is to applauded for their work to date to help protect our valuable salmon resources. It is now time to pass this proposed ordinance.

Thank you.

Gary Sheridan (39 year Alaskan resident)

Gary Sheridan  
Box 661  
Anchor Point, AK 99556  
[907-235-5542](tel:907-235-5542)

## Blankenship, Johni

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**From:** Linda Murphy [linda@clerkworksak.com]  
**Sent:** Wednesday, July 06, 2011 11:46 AM  
**To:** Blankenship, Johni  
**Subject:** Fwd: habitat protection

----- Forwarded message -----

**From:** **Linda Murphy** <linda@clerkworksak.com>  
**Date:** Wed, Jun 22, 2011 at 5:09 PM  
**Subject:** Re: habitat protection  
**To:** "Dan B." <tcraftdan@yahoo.com>

Thanks for the kind words. We get so few of those from the public. As I have stated numerous times, I am probably a one-termer since I refuse to pander to the crowd and cast my votes thinking of reelection.

Linda

Linda

On Tue, Jun 21, 2011 at 11:32 PM, Dan B. <tcraftdan@yahoo.com> wrote:  
Dear Ms. Murphy,

Thank-you so much for having a clear head, and being so well spoken, and supporting habitat protection.

It's obvious you take your responsibility seriously.

Thanks, it means a lot to me that decision makers can listen to reasonable discussion and then make good decisions for the betterment of our communities, and generations to come.

Dan Bevington

Dear Assembly Member,

January 1, 2012

My name is Beth Terry, and my husband Mark and I own a lot on the Seldovia Slough.

I first visited Seldovia by airplane in the 1980's, and immediately fell in love with the place. In the 1990's, my husband and I started taking our boat over most every summer. We often talked about purchasing a place, but told ourselves that if we bought something in Seldovia, we'd better be darn sure that we wanted to own it forever, because the town isn't exactly a hotbed of .....well, anything.

Recently, one of the two grocery stores (the larger one) as well as the Boys & Girls Club, have closed. There are actually several businesses that have disappeared since I first started visiting. In fact, the town is down to one bar, no laundromat, and the Catholic, Lutheran, and Russian Orthodox church congregations no longer seem to have enough members to meet regularly. But I also see some bright spots. There are currently more transportation options across the bay than ever, and there seems to be an increase in summer residency and vacation homes. Perhaps Seldovia is on the verge of a Renaissance! One would hope so, for the sake of the people who live and work there, year round.

This past Spring, a property came up for sale on the Seldovia Slough. Due to our frequent visits, we knew that in the previous five or six years, two homes and a large dock had been constructed within a mere 300 foot distance of this particular lot. We consulted the local realtor, as well as a Slough homeowner who had gone through the whole process of "slough construction" in 2005. We then contacted a local builder, who advised that he was in the process of applying for permits for yet another lot, this one approximately 600 feet away. At that point we were satisfied (perhaps we should have delved further, hindsight is 20/20) that the property was indeed build-able, and we purchased our lot for more money per square inch than I ever dreamed of paying in my life. We hired a surveyor, drew up some plans, and made arrangements with a builder (Tim Dillon). For personal reasons, we wanted to move pretty quickly and hoped to start construction the following Summer or Fall.

Then, in October, we learned that there was an ordinance in the works that could seriously affect development of our property. But our builder was under the impression that if we got our permit applications in by January 1, that we would be good to go. Unfortunately, we recently found out that this was not to be the case, that the ordinance had passed and would take effect immediately. In actuality, even if we had submitted our permit applications on the day that we purchased our lot, we would not have been in time to get permitted before either the first of the year or whenever the ordinance actually took effect.

This chain of events appears to have the potential to be financially devastating to my husband and I. We paid cash for a postage stamp sized lot that appears to have been rendered un-developable by new and unexpected (to us) regulation. In some ways we feel quite blindsided. The one bright spot in this is that we have been told that we will

have the opportunity to be the first people to apply for a variance under the new ordinance. This unfortunately brings back a long ago memory of a babysitter that I once had who would happily shout out "Who wants to be first?", and then proceeded to spank every child who raised his or her hand. I've had an aversion to being "first" ever since! But I guess that somebody always has to be first, so maybe we should take our turn.

Anyway, I am a lifelong resident of Alaska and as such, am aware of the erosion problems associated with the Kenai River, the Kenai bluffs, the bluffs in Homer, and many of the other waterways and coastlines of the Kenai Peninsula Borough. But I also know that Seldovia is not the same as these places, and does not have the same challenges. Once you go across Kachemak Bay, you are dealing with an entirely different geology. Instead of meandering glacial rivers and sandy, crumbling bluffs, you have bedrock, gravel beaches, and stable shores. While in transit between Homer and Seldovia, I often take note of the unmistakable disparity between the two areas. They are strikingly dissimilar! And although I wholeheartedly support the movement to preserve fish habitat (to me, salmon are one of Alaska's most important resources, if not THE most important), I have to ask myself if these new regulations have been completely thought out..... that perhaps a "one size fits all" approach is not really called for in this situation.

Ordinance 2011-12 has already passed, it is a done deal, and my husband and I are going to have to attempt to acquire a variance if we hope to build our cabin anytime soon. But it is my understanding that the town of Seldovia would like to see some changes made to the ordinance, perhaps even withdrawing the Seldovia Slough from the affected area. I would urge you to imagine yourself as a full time resident of Seldovia, and to try to understand just how potentially devastating this ordinance could be to the hopes and dreams for a more vibrant Seldovian economy. Small towns can and do die. Just look at what is happening with many of the villages around the state. Schools are closing, people are moving to Anchorage and Wasilla, some even end up leaving Alaska.

I guess that what I am trying to say is that having experienced the "uniqueness" of Seldovia these past twenty-five years, I would hate to see the same thing happen to this very special community, and I would urge you to listen to the concerns of Seldovia's residents. Thank you for your time.

Sincerely,  
Beth A. Terry  
(907) 346-4098

## Blankenship, Johni

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**From:** Linda Murphy [linda@clerkworksak.com]  
**Sent:** Sunday, August 12, 2012 2:01 PM  
**To:** Francie Roberts  
**Cc:** Navarre, Mike; Knopp, Gary; Pierce, Charlie; Smalley, Hal; Johnson, Brent; Tauriainen, Ray; McClure, Sue; Haggerty, Mako; Smith, Bill; Blankenship, Johni  
**Subject:** Re: Riparian zone ordinance

Thank you for your comments. They will be forwarded to the Mayor and Assembly.

Linda Murphy

On Thu, Aug 2, 2012 at 2:29 PM, Francie Roberts <[roberts2@alaska.net](mailto:roberts2@alaska.net)> wrote:

> Dear Mrs. Murphy,  
>  
> I support the protection of all Kenai Peninsula streams under  
> Ordinance 2011-12. The amendments that have been made I am also in agreement with.  
> Please do not significantly change this ordinance.  
>  
> Thank you.  
>  
> Francie Roberts

38094 Salmon Drive  
Soldotna, AK 99669

February 12, 2013

Anadromous Fish Habitat Task Force  
c/o Kenai Peninsula Borough Clerk  
144 N. Binkley  
Soldotna, AK 99669

re: Anadromous Streams  
Habitat Protection  
Ordinance 2011-12

Dear Anadromous Fish Habitat Task Force Member:

I will be away on a trip and unable to attend the Feb. 21, 2013 meeting in Soldotna, so I request that this letter be incorporated into the minutes of that meeting and that the issues which I raise may receive consideration at that time or when appropriate.

While I support reasonable measures to protect the water quality and habitat integrity of the entire Kenai River watershed, I believe that the the Kenai Peninsula Borough's reliance on ADF&G's "Atlas and Cataloge of Waters Important for Spawning, Rearing, or Migration of Anadromous Fish" (hereinafter "Atlas") to incorporate by reference the streams and waterbodies that will be covered under the provisions of the Anadromous Streams Habitat Protection Ordinance is flawed and inaccurate. The "Atlas" was originally created in 1963 as a list, and expanded into a catalog with maps in 1982, and is by ADF&G's own admission incomplete and a work in progress. Though it is updated annually, mostly with newly documented additions, there are errors of both inclusion and omission that have existed in the "Atlas" for decades.

One specific example is the Mackey Lakes area of the Soldotna Creek drainage (T- Kenai River & its following tributaries (c) Soldotna Creek, Stream No. 24430-10010-2039). The "Atlas" map Kenai C-3 (KENC3) continues to erroneously show East Mackey Lake and Dirk's Lake and the stream between them as anadromous waterbodies in the Soldotna Creek tributary drainage of the Kenai River, yet no anadromous fish of any species have existed in East Mackey Lake for more than 25 years. When the road fill crossing at the outlet of Dirk's Lake was constructed illegally more than four decades ago, it effectively cut Dirk's Lake and both of the Mackey Lakes off from a natural surface water connection to Soldotna Creek and the Kenai River system. During high water runoff events, surface water flows over the blockage, but upstream seasonal ingress of anadromous fish remains impossible.

**RECEIVED**

**FEB 12 2013**

Borough Clerk's Office  
Kenai Peninsula Borough

(2)

Invasive Northern Pike were illegally introduced at about this same time and they have infested Dirk's Lake, East and West Mackey Lakes and Union Lake, eating all other fish species in these lakes to extinction, and rendering them unsuitable as anadromous fish habitat.

In spite of repeated notifications over the years, ADF&G has apparently been satisfied with allowing the blockage at the outlet of Dirk's Lake to continue to exist, for fear that removing it would increase the risk of Northern Pike heading downstream through Soldotna Creek to the Kenai River.

Therefore by what logical justification (other than the uncorrected errors in the "Atlas") can the provisions of KPB Chapter 21.18.025 be applied to East Mackey Lake and Dirk's Lake and yet not also to West Mackey Lake, which is connected by a continuously flowing stream to East Mackey Lake, and probably also Union Lake, which has surface marsh communication with West Mackey Lake?

If the inclusion of East Mackey Lake and Dirk's Lake is under the presumption that ADF&G's proposal that these lakes might some day be treated to rid them of Northern Pike and then rehabilitated to anadromous habitat, certainly West Mackey Lake and probably Union Lake should also then be included under the protection provisions of KPB Chapter 21.18.025. If not, then it is unfair and overly restrictive to regulate the banks of East Mackey Lake and Dirk's Lake, while ignoring West Mackey Lake and Union Lake based upon a technical inaccuracy in the "Atlas".

If the rationale is that East Mackey Lake and Dirk's Lake are still important in relation to water quality as tributaries to the Kenai River watershed, even though they are no longer "Important for Spawning, Rearing, or Migration of Anadromous Fish", then once again, how can West Mackey Lake and Union Lake be logically excluded?

I am certain that this is not the only inappropriate inclusion or exclusion of a stream or waterbody under the provisions of KPB Chapter 21.18.025, based upon reliance of the "Atlas" as the standard by which the borough ordinance is applied. However, I request that KPB Chapter 21.18.025 (B) be amended to specifically exclude East Mackey Lake and Dirk's Lake from inclusion under the provisions of the Anadromous Stream Habitat Protection Ordinance.

(3)

Additionally, I would recommend that if the "Atlas" is to remain the standard for which streams and waterbodies are included, then KPB Chapter 21.18.025 (C) should be amended to add the language that:

"Further, the date that an anadromous stream or waterbody is deleted or removed from the "Atlas" by ADF&G due to corrections of past errors or because it no longer supports the spawning, rearing, or migration of anadromous fish, shall be the date that the provisions of KPB Chapter 21.18.025 shall no longer apply to that stream or waterbody."

Alternatively, to be fair and comprehensive, KPB Chapter 21.18.025 would need to be amended to also include West Mackey Lake and Union Lake, along with all other streams and lakes which are tributaries of the Kenai River system whether they are listed in the "Atlas" as anadromous or not. Thank you for your consideration on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Walter Ward". The signature is fluid and cursive, with the first name "Walter" being more prominent than the last name "Ward".

Walter H. Ward  
(East Mackey Lake landowner)

cc:

Mike Navarre, KPB Mayor  
KPB Borough Assembly Members  
Gary Williams, Kenai River Center Manager  
John Czarnezki, Kenai River Center Resource Planner  
Robert Begich, ADF&G Fisheries Biologist, Soldotna  
J. Johnson, ADF&F Habitat Biologist ("Atlas" manager), Anchorage  
Robert Ruffner, Executive Director, Kenai Watershed Forum



The Anadromous Fish Habitat Task Force was originally tasked to determine if 2011-12 code was appropriate for some or all of the lakes included in the Fish and Game Catalog. Paul Ostrander reported to you on January 8<sup>th</sup>, that "The original question posed to the Task Force was too narrow. Other areas of the habitat protection code needed to be addressed."

The Task Force then proceeded to task itself for "individual members [to] draft amendments to present to the Task Force as a whole" and incorporate every issue within the Borough's Zoning Ordinance - Chapter 21.18. Individual members proceeded to propose amendments to 21.18 to the Task Force, and so far, those amendments have been radically different. For example, at the January 17<sup>th</sup> meeting, when Paul asked Ray Tauriainen if he thought he could work with fellow Assemblyman Bill Smith on drafting a compromised amendment to present to the Task Force, Ray responded that their philosophies were so disassociated, the effort would not be worthwhile, and Bill nodded.

Undeterred by the members polarization on the original 2011-12 issue of the lakes inclusion, and now the additional massive self-imposed issues that 21.18 adds, the Task Force has been voting on components of their changes and by their time-line, are scheduled to complete by "the middle of February". After their changes have been made, they *then* plan to conduct three town-hall meetings to "gather public testimony". The order of events suggests that since the public input is after the changes have been made, the effort of public testimony is simply a formality to give the *illusion* that the public was somehow inclusive in giving their input to the Task Force's final recommendations.

Due to the members own self-awareness of their disassociated philosophies and personal agendas – which were pre-existing before their appointment to the task force - and the fact that the task force membership is heavily weighted against private property owner rights, I respectfully request that you ask the task force if their decisions were unanimous; what changes were made to their recommendations AFTER the public hearings; and were affected property owners directly notified of the townhall meetings by the task force before the meetings occurred?

The Task Force correctly assessed that other areas of the habitat protection zoning code 21-18 are simply bad codes that need to be changed. But this aggressive time line cannot possibly give it the attention it requires to become good codes, worthy with sustainable substance.

Mayor Navarre, you appointed this task force. *Please* reinforce to them to stay focused, stay on task to their appointment; not to be over-reaching by trying to fix 21.18 in their short time line and to "pay attention".

I was always taught, "don't throw good money after bad". The same sage advice can be given to you, Don't throw more meaningless, unenforceable bad laws after the bad ones we already have. **REPEAL 2011-12 in its entirety NOW**, throw this bad ordinance **OUT**. Then, when the Task Force presents it's recommendations to you, take the good and the bad information you receive from it and start over again - and this time, take the time to understand the magnitude of the words used, the cost of realistic enforcement, pre-notify affected public citizens, and hold town-hall meetings *before* decisions are made. Appoint a new Task Force to address the unbelievably bad codes in 21-18. A task force whose members are equally balanced in representation of issues; open-minded citizens that are willing to be respectful of each other and their ideas;

willing to listen to 'specialists' presentations and positions in addition to the average borough citizen equally; and willing to commit the time necessary to do a good job.

In summary, please reinforce and encourage the Task Force to address the only issue they were tasked: Is 2011-12 code appropriate for some or all of the lakes included in the Fish and Game Catalog - and live up to the leadership role you've been given and fix this mess - by **Repealing 2011-12 NOW**, then take on the task of fixing 21-18 by creating an un-biased, Assembly-appointed task force sans the perceived conflicts and bias' of currently seated Assembly members.