

Introduced by: Smith, Mayor
Date: 09/20/11
Hearing: 11/01/11
Action: Enacted
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2011-37**

**AN ORDINANCE AMENDING KPB CHAPTER 5.14 AND KPB 5.12.112 REGARDING
THE ANADROMOUS STREAM HABITAT PROTECTION
TAX CREDIT AND TAX EXEMPTION**

WHEREAS, Ordinance 2011-12 amended KPB 21.18 to expand the anadromous habitat protection district by adding streams identified by Alaska Department of Fish and Game as important to the spawning, rearing, and migration of anadromous fish; and

WHEREAS, Alaska Statute 29.45.046 authorizes a municipal river habitat protection credit for improvements that protect fish habitat from degradation or restores fish habitat along rivers destroyed by land use practices; and

WHEREAS, KPB Chapter 5.14 adopted in 1995 provided a tax credit for anadromous habitat protection projects on the Kenai River and its tributaries; and

WHEREAS, property owners within the recently expanded anadromous habitat protection district should also receive the benefit of a habitat protection tax credit; and

WHEREAS, the River Center now performs the functions previously performed by the planning director regarding the habitat protection tax credit, and other code changes have been enacted impacting KPB Chapter 5.14, and the code should be amended accordingly;

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

SECTION 1. That KPB Chapter 5.14 is hereby amended as follows:

CHAPTER 5.14. HABITAT PROTECTION TAX CREDIT

5.14.010. Purpose.

The purpose of this chapter is to promote the health of the [FOLLOWING] anadromous streams identified in KPB 21.18.025 by providing tax credits as partial reimbursement for habitat protection and restoration project expenses on and adjacent to these streams. [:

1. KENAI RIVER, STREAM No. 244-30-10010, AND ITS TRIBUTARIES:
2. SWANSON RIVER, STREAM No. 247-90-10020
3. KASILOF RIVER, STREAM No. 244-30-10050
4. NINILCHIK RIVER, STREAM No. 244-20-10090
5. DEEP CREEK, STREAM No. 244-20-10100
6. STARISKI CREEK, STREAM No. 244-10-10050
7. ANCHOR RIVER, STREAM No. 244-10-10010
8. FOX RIVER, STREAM No. 241-14-10645
9. SELDOVIA RIVER, STREAM No. 241-11-10730
10. ENGLISH BAY RIVER, STREAM No. 241-30-10500
11. BRADLEY RIVER, STREAM No. 241-1410625-2010
12. BISHOP CREEK, STREAM No. 246-90-10030
13. CHICKALOON CREEK, STREAM No. 247-60-10110
14. NORTH FORK OF ANCHOR RIVER, STREAM No. 24410-10010-2011
15. SEVEN EGG CREEK, STREAM No.24780-10010]

5.14.020. Administration.

- A. This chapter shall be administered by the [PLANNING] river center director and the director of assessing under the direction of the mayor.
- B. Prior to beginning construction of a project for which one wishes to receive a tax credit, the property owner must submit an application for prequalification of the project to the [PLANNING DIRECTOR] River Center on a form provided by the [PLANNING] river center director. This application must be accompanied by all necessary federal, state, and local permits or approvals for the project. Within 30 business days of application, the [PLANNING] river center director shall mail notice to the applicant as to whether the proposed project has pre-qualified. If this notice is not mailed as provided herein, prequalification is deemed denied.
- C. Upon completion, the applicant must schedule an inspection of the project with the [PLANNING DIRECTOR] River Center. If the applicant does not schedule an inspection the borough may enter the property to conduct the inspection. Inspections must be scheduled no later than January 15 of the year for which the tax credit is sought. Within 30 business days of this inspection, the [PLANNING DIRECTOR] River Center shall mail notice to the applicant whether the project as completed qualifies for the tax credit. The notice shall contain a determination of the costs being allowed. A copy shall be sent to the assessor. If this notice is not mailed as provided herein, the tax credit is deemed denied.
- D. For the first tax year following completion of the project, the assessor shall provide a credit to the owner of the land upon which the project was constructed of up to 50% of the taxes levied upon that land, or the taxable interest in that land, for that year or the costs incurred on the project, whichever is less. In the second year, the assessor will provide a further

tax credit of up to 50% of the taxes levied upon that land, or the taxable interest in that land, for that year of the remainder of the costs incurred on that project not previously credited, whichever is less. In the third year, the assessor will provide further tax credit of up to 50% of the taxes levied upon that land, or the taxable interest in that land, for that year or the remainder of the costs expended on that project not previously credited, whichever is less. The credit must be taken in 3 consecutive years and is limited to those 3 years regardless of the costs incurred by the applicant. Only the land value, which is defined as that value attributed to the land in the assessor's notice of assessment, is included in calculating the amount of the tax credit.

- E. If prequalification of the tax credit is denied, or less costs for the project are allowed than the applicant thinks appropriate, the applicant may appeal that decision to the mayor on a form provided by the mayor. Appeals shall be made within ten days of the date of notice of any decision under this section [OR IF A NOTICE WAS NOT MAILED TEN DAYS FROM THE DATE THE ACTION IS DEEMED TO BE DENIED]. In reviewing a denial, the mayor shall grant prequalification if the proposal conforms to the requirements of the ordinance. The mayor shall grant the credit if the project, as completed, substantially conforms to the plans submitted for prequalification or if the mayor determines the project conforms to the requirements of the ordinance. Appeals from the mayor's determination shall be taken to superior court in Kenai Alaska pursuant to the Alaska Rules of Appellate Procedure Part 6. [IN REVIEWING AN APPEAL REQUESTING ALLOWANCE OF MORE COSTS THAN ALLOWED, THE MAYOR SHALL GRANT THE REQUEST IF THE VERIFIABLE COSTS ARE THE SAME AS OUTLINED IN THE PLANS SUBMITTED FOR PREQUALIFICATION OR IF THE MAYOR DETERMINES THE COSTS WERE NECESSARILY INCURRED TO COMPLETE THE PROJECT AS PROPOSED.]

5.14.030. Limitations on tax credit.

- A. The tax credit for the protection/restoration project will only be granted for preapproved and verified out of pocket costs. In the calculation of the out of pocket expenses, federal, state and private non-repayable grants cannot be considered. Out of pocket costs not pre-approved may be granted if shown to be necessary and they are verified in writing. Invoices or other written verification must identify the owner of the property as the ultimate purchaser.
- B. The tax credit is not transferable, including but not limited to, a purchaser of the land upon which the project was constructed.
- C. Projects which are required by state, federal, or local authorities do not qualify for the tax credit.

- D. All projects must be located within 150 horizontal feet from the mean high tide line or ordinary high water line of the rivers and streams listed in KPB [5.14.010] 21.18.
- E. The tax credit only applies to that portion of the taxes levied by the borough and any applicable service area and the credit would be apportioned pro rata between them based on their respective mill rates. However, if a city within the borough adopts a tax credit ordinance identical to this ordinance and the city further requests that the borough administer the city's tax credit ordinance, then the borough will do so.
- F. The total tax credit available in any year is 50% of the taxes due on the land value for that year regardless of the number of projects on that property.
- G. Any exemption applicable to property for which the tax credit is sought shall first be deducted from the improvement value of the property and then from the land value remaining before determining the amount of the tax credit. No tax credit may be granted during a year on property for which no taxes are due for that year.
- H. Property that has been subdivided or transferred after construction of an eligible project will not be eligible for any portion of the tax credit in any year following the subdivision or transfer.
- I. Neither an owner's labor, or that of volunteers, qualifies as an allowable cost for calculating a tax credit under this ordinance.
- J. If an enforcement proceeding has been initiated on the property under KPB 21.25 the project will not be eligible for a tax credit until the enforcement notice has been resolved.

5.14.040. Allowed fish habitat protection and restoration projects.

Only the following projects may be considered for the tax credit:

- A. Gratewalks, boardwalks, and bridges and spans meeting specifications established in KPB 21.18.071 [21.18.070(B)4].
- B. Spruce trees cabled parallel to the river bank as a buffer between the water and the bank established in KPB 21.18.071.
- C. Stairways, steps, [AND] ladders and fish cleaning stations meeting specifications established in KPB 21.18.071 [21.18.070(B)5].

- D. Floating docks issued the necessary permit or permits to build so long as the completed dock conforms to the standards applicable to the issuance of permits by permitting agencies.
- E. Projects which prevent or reduce the likelihood that petroleum products, including petroleum products in water runoff from roads, will enter the rivers. Where applicable, such projects must conform to any federal or state standards to be eligible for this tax credit.
- F. Bank restoration, bank protection or habitat restoration projects that protect the river's habitat or restore habitat provided the project complies with all conditions, regulations and approvals imposed by local, state or federal agencies. Projects required as mitigation for onsite or offsite habitat degradation, bank hardening, or other bank stabilization strategies not designed to improve habitat are exempted from the tax credit.
- G. Removal of structures from within the habitat protection district [AREA] established in KPB 21.18.040.

5.14.050. [PLANNING] River Center department review.

The [PLANNING] river center director shall prepare an annual report on the number of applications received under this chapter and the action taken on them. This report shall be submitted by April 1 of each year. The report shall also contain any recommendations the [PLANNING] river center department may have for changes in the activities eligible for the credit consistent with the purposes of this chapter. Reports or recommendations for changes may be submitted more frequently at the discretion of the mayor.

SECTION 2. That KPB 5.12.112 is hereby amended as follows:

5.12.112. Real property tax—Exemptions—Anadromous stream habitat protection area.

- A. All of the increase in assessed value of improvements to real property located within 150 horizontal feet from the mean high tide line or ordinary high water line of the rivers and streams listed in KPB 21.18.025 [5.14.010], shall be exempt from taxation for improvements to the real property if:
 - 1. an increase in assessed value is directly attributable to alteration of the natural features of the land, or new maintenance, repair, or renovation of an existing structure; and
 - 2. the alteration, maintenance, repair, or renovation, when completed, enhances the exterior appearance or aesthetic quality of the structure; and

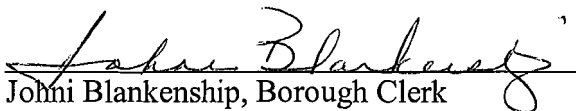
3. meets the criteria for a fish habitat and restoration project described in KPB 5.14.040.
- B. An exemption may not be allowed under this subsection for the construction of an improvement to a structure if the principal purpose of the improvement is to increase the amount of space for occupancy or nonresidential use in the structure or for the alteration of land as a consequence of construction activity.
- C. An exemption provided in this subsection may continue for up to four years from the date improvement is completed, or from the date of approval for the exemption by the local assessor, whichever is later.
- D. In order to qualify for this exemption for any taxable year, the claimant shall make a written application to the assessor who may require such information as is reasonably necessary to determine compliance with the requirements of this ordinance. In order to qualify for the tax exemption for an applicable year, the application must be filed on or before January 15 of the assessment year for which the exemption is sought.

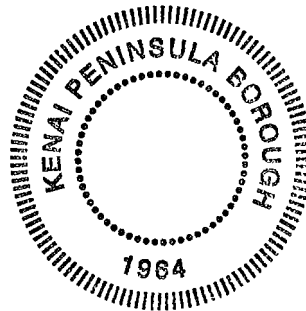
SECTION 3. That this ordinance takes effect on January 1, 2012.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 1ST DAY OF NOVEMBER, 2011.


 Gary Knopp, Assembly President

ATTEST:


 Johni Blankenship, Borough Clerk



Yes: Haggerty, Johnson, McClure, Murphy, Pierce, Smalley, Smith, Tauriainen, Knopp
 No: None
 Absent: None