

KENAI PENINSULA BOROUGH

Kenai Peninsula Borough Assembly

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Gary Knopp, Assembly President
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MEMORANDUM

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

FROM: Bill Smith, Assembly Member *Bill Smith*
Mako Haggerty, Assembly Member *B for M. H.*

DATE: April 17, 2012

RE: Ordinance 2012-06, Amending KPB 21.18.081, 21.18.100 and 21.18.140 to Permit Certain Structures in Tidally Inundated Areas, and Conditionally Permit Certain Structures Within the Habitat Protection District and Adding Definitions

Following are some amendments proposed to address the concerns discussed regarding the application of KPB Chapter 21.18 to small parcels and the beginning point of regulation on anadromous waterbodies:

- Amend the title as follows:

AN ORDINANCE AMENDING KPB 21.18.025(B), 21.18.081, [~~21.18.100,~~] AND 21.18.140 TO PERMIT CERTAIN STRUCTURES IN TIDALLY INUNDATED AREAS, AND CONDITIONALLY PERMIT CERTAIN STRUCTURES WITHIN THE HABITAT PROTECTION DISTRICT AND ADDING DEFINITIONS

- Insert a new Section 1 as follows and renumber the existing Section 1 to Section 2:

SECTION 1. That KPB 21.18.025 (B) is hereby amended as follows:

- B. In addition to the water bodies listed in 21.18.025(A), all anadromous waterbodies within the municipal boundaries of the Kenai Peninsula Borough which are listed in the "Atlas and Catalogue of Waters Important for Spawning, Rearing, or Migration of Anadromous Fish" as periodically updated and published by the Alaska Department of Fish and Game[, EXCLUDING ALL PORTIONS OF WATERWAYS FOUND WITHIN THE SEWARD-BEAR CREED FLOOD SERVICE AREA,] are subject to this chapter as of January 1, 2012, excluding the following:

1. All portions of waterways found within the Seward-Bear Creek Flood Service Area are exempt from KPB 21.18.
 2. Braided Channels, Tide Dominated Deltas, Estuaries and Lagoons which are primarily seawater and are identified as anadromous in the State of Alaska Atlas and Catalogue of Waters Important for Spawning, Rearing, or Migration of Anadromous Fish are exempt from KPB 21.18.
- Amend newly numbered Section 2, KPB 21.18.081(B)(10)(b) as follows, with new changes shown in **bold**:
10. A principal structure or an addition to a principal structure may be approved within the habitat protection district provided all the following standards are met:
 - a. The parcel boundaries were defined prior to January 1, 2012.
 - b. The parcel **[IS SUBJECT TO A CITY BUILDING CODE AND]** is served by a public sewer system or sewage holding tank or septic system, provided the holding tank or septic system are located entirely outside the habitat protection district.
 - c. The parcel has an area of .3 acres or less and less than 4,000 square feet of total developed impervious coverage.
 - d. The parcel has less than 4,000 square feet of suitable development area outside the habitat protection district.
 - [d]e. On the portion of the parcel within the habitat protection district, the total impervious coverage may not exceed 50% of the area able to sustain native vegetation, or **[5,000] 3,000** square feet of area able to sustain native vegetation, whichever is less.
 - [e]f. The standard for development is to first utilize suitable parcel areas outside the HPD**[AS A PREFERRED ALTERNATIVE TO DEVELOPMENT WITHIN A HPD]**. Within the HPD, it is preferred to minimize impact by preserving the nearshore areas which may sustain native vegetation.
- Delete the original Section 2 that added a new section E to KPB 21.18.100.
- Add the following additional definitions to Section 3, KPB 21.18.140:
- AF. “Mile Zero” The downstream beginning point of the anadromous waters identified in 21.18, and the riparian zone defined as the habitat protection district. On riverine systems subject to tidal inundation, Mile Zero begins at the elevation of mean high tide, where not otherwise designated by KPB code or prior designations.

AG. "Estuary" means a semi-enclosed coastal body of water with a free connection to the sea and in which seawater is measurably diluted with freshwater derived from land drainage.

AH. "Braided Channels" means the intertwined branches or secondary channels of a river or stream and characterized by the separation and rejoining of two or more channels separated by bars or islands.

AI. "Lagoon" means relatively shallow bodies of water, mostly-enclosed, with an oceanic source, separated by a low-lying swatch of land, such as a spit or barrier island. This oceanic source may be continual or episodic, such as storm-induced overwash, and generally has a different salinity as a result of its restricted access.

AJ. "Tide Dominated Delta" means a river delta subject to tidal inundation as well as tidal and storm erosion which may be mainly submarine with prominent bars or ridges.