

Introduced by:	Smith, Haggerty
Date:	02/28/12
Hearing:	04/03/12
Action:	Postponed as Amended Until 04/17/12
Date:	04/17/12
Action:	Postponed as Amended Until 05/15/12
Date:	05/15/12
Action:	Enacted
Vote:	6 Yes, 1 No, 2 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2012-06**

**AN ORDINANCE AMENDING KPB 21.18.025(B), 21.18.081, 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**

- WHEREAS**, KPB Chapter 21.18, Anadromous Streams Habitat Protection, was initially adopted in 1996 to protect salmon spawning and rearing habitat; and
- WHEREAS**, initially the provisions of the ordinance only applied to portions of the Kenai River; and
- WHEREAS**, through Ordinance 2000-08 the Assembly expanded the scope of this chapter to apply to 10 tributaries of the Kenai River and 14 additional streams within the east side of Cook Inlet; and
- WHEREAS**, through Ordinance 2011-12 the Assembly expanded the scope of this chapter to apply to most of the remaining anadromous streams within the borough; and
- WHEREAS**, the development restrictions on small parcels within the Habitat Protection District, including those originally regulated and some newly regulated, may unduly restrict development rights on some parcels; and
- WHEREAS**, the best interest of the borough will be served by enacting a conditional use process which can allow development, with appropriate standards, on small parcels; and
- WHEREAS**, at its regularly scheduled meeting of March 12, 2012, the Planning Commission denied approval by majority consent;

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

**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 CREEK 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.

**SECTION 2.** That KPB 21.18.081(B) is hereby amended by adding a new provision as follows:

...

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 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.
  - 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 3,000 square feet of area able to sustain native vegetation, whichever is less.
  - f. The standard for development is to first utilize suitable parcel areas outside the habitat protection district. Within the habitat protection

district, it is preferred to minimize impact by preserving the nearshore areas which may sustain native vegetation.

**SECTION 3.** That KPB 21.18.140 is hereby amended by adding the following definitions:

...

AB. "Native vegetation" means native plant communities that are undisturbed or mimicked.

AC. "Impervious Coverage" means an area of ground that, by reason of its physical characteristics or the characteristics of materials covering it, does not absorb rain or surface water. All parking areas, driveways, roads, sidewalks and walkways, whether paved or not, and any areas covered by buildings, structures, or water shedding material such as, but not limited to, concrete, asphalt, brick, stone, wood, ceramic tile, plastic sheeting or metal shall be considered to be or have impervious coverage. Elevated light penetrating structures meeting the requirements of KPB 21.18.071 A.2 shall not be counted as impervious coverage.

AD. "Higher high water" The higher of the two high waters of a tidal day where the tide is of the semidiurnal or mixed type. The single high water occurring daily during periods when the tide is diurnal is considered to be higher high water.

AE. "Mean Higher High Water" A tidal datum. The average of all the daily higher high water recorded over a 19-year period or a computed equivalent period.

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.

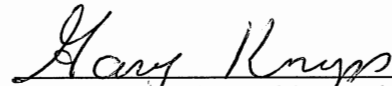
AI. "Lagoon" means relatively shallow bodies of water, mostly-enclosed, with an oceanic source, separated by a low-lying swatch of land, such as a spit or barrier island. This oceanic source may be continual or episodic, such as

storm-induced overwash, and generally has a different salinity as a result of its restricted access.

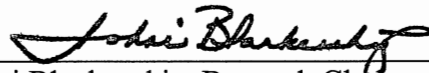
AJ. “Tide Dominated Delta” means a river delta subject to tidal inundation as well as tidal and storm erosion which may be mainly submarine with prominent bars or ridges.

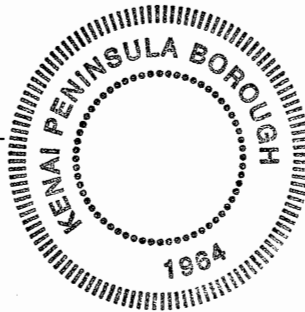
SECTION 4. That this ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 15TH DAY OF MAY, 2012.

  
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Gary Knopp, Assembly President

ATTEST:

  
\_\_\_\_\_  
Johni Blankenship, Borough Clerk



Yes: Haggerty, Johnson, McClure, Murphy, Tauriainen, Knopp  
No: Pierce  
Absent: Smalley, Smith