

# Kenai Peninsula Borough

## Anadromous Fish Habitat Protection Task Force

### October 18, 2012 Meeting Summary

6:00 p.m.

Borough Building, Assembly Chambers

**Task Force Members:** Fred Braun, Jim Isham, Ginny Litchfield (nonvoting), Stacy Oliva, Paul Ostrander (Facilitator), Bill Smith, Ray Tauriainen, Ken Tarbox and Dave Wartinbee

**Technical Experts:** John Czarnezki, Gilman River Center; Holly Montague, Deputy Borough Attorney

**Staff Support:** Johni Blankenship, Borough Clerk

#### CALL TO ORDER

A Regular Meeting of the Anadromous Fish Habitat Protection (AFHP) Task Force was held on October 18, 2012, in the Borough Assembly Chambers, Soldotna, Alaska. Facilitator Ostrander called the meeting to order at 6:00 p.m.

#### There were present:

Paul Ostrander, Facilitator	Fred Braun
Jim Isham	Bill Smith
Ginny Litchfield	Stacy Oliva
Ken Tarbox	Ray Tauriainen
Dave Wartinbee ( <i>arrived at 7:02 p.m.</i> )	

comprising a quorum of the task force.

#### Also in attendance were:

Holly Montague, Deputy Borough Attorney  
Johni Blankenship, Borough Clerk  
John Czarnezki, River Center

#### APPROVAL OF AGENDA

(6:02:00)

MOTION: Braun moved to approve the agenda.

SECOND: Tarbox

VOTE ON MOTION: Without objection.

## APPROVAL OF MINUTES

(6:03:05)

September 13, 2012 AFHP task force meeting summary

MOTION: Braun moved to approve the September 13, 2012 Anadromous Fish Habitat Protection task force meeting summary.

SECOND: Tarbox

VOTE ON MOTION: Without objection.

## NEW BUSINESS

Presentations

(6:04:02)

***Steve Colt, Professor of Economics, Institute of Social and Economic Research,  
University of Alaska, Anchorage***

Mr. Colt gave a presentation regarding the economic value of streams and lakes. He summarized the following:

- How economists think about natural resource values
  - Ecosystem services
  - Total Economic Value (TEV)
    - Use and Non-Use
    - Market and non-Market
    - Social costs and benefits vs. Private costs and benefits
- How economists attempt to measure natural resource values
- Review of some pertinent literature
  - What have we learned about valuation of lakes and streams in other places?
- Preliminary results from “hedonic valuation” of Mat-Su Borough land parcels and associated resource values
  - Methodology (would it work on the Kenai?)
  - Potential applicability to KPB lakes and streams

Braun asked if Mr. Colt had had an opportunity to research any of the local covenants. Mr. Colt indicated he had not; however, if Mr. Braun had access to any of those he would like to have them for his research.

Tarbox asked if maintaining large forested areas and ecosystem services added value to properties. Colt stated that in some locations there had been measureable documentation of the benefits of keeping undeveloped land to protect the habitat.

Smith described the Bridge Creek watershed protection district and indicated that he had spoken with property owners who were willing to pay more for property based on the restriction imposed on the protection district because of the additional benefits that were derived due to the restrictions imposed. Colt indicated that those situations were not uncommon that proximity to conservations area did produce an increase in property values. It appears to be desirable to have property that backs up against undeveloped land and or conservation land.

Smith indicated the property owners themselves were subject to restrictions. Mr. Colt stated that there were all kinds of situations in which people voluntarily impose restrictions on themselves and it appeared to directly correlate to more the desirable property and in turn add higher values to the property.

Tarbox summarized the habitat protection buffer and asked if greenbelts were synonymous with parks as presented on his presentation? Colt understood that Anchorage assigned a 15% increase to properties that abut a habitat buffer or setback, and apparently the market values support the increase.

Braun asked how he would address the supply and demand issue, based on the population compared to the miles of water bodies available. Mr. Colt indicated that the value of something partly depends on the number of people that are able to enjoy it and how many people are being affected and could enjoy the property.

Colt reiterated there would be a new database that should be up and running soon. He would supply that information in the future.

Ostrander asked what type of data was being reviewed and what the task force could anticipate learning from the data? Colt indicated it was his hope that there would be specific studies on lake side and stream side studies and how that relates to values when there is a habitat protection zone.

**Review of KPB 5.12.112 – Real property tax – Exemptions – Anadromous stream habitat protection area, John Czarnezki**

Czarnezki gave a brief overview of the Borough's tax exemption program, specifically KPB 5.12.112.

Tauriainen stated the Assessing Department had given a value to elevated walkways and asked if spruce tree cabled parallel to the river bank had been given a value by the Assessing Department? Czarnezki stated he was unaware of a value that had been assigned by the Assessing Department to spruce tree revetment or re-vegetation projects. He further indicated that some property owners had indicated their hesitation to apply for such exemptions as they were unwilling to alert the Borough of the improvements and face possible tax increases.

**Review of KPB 5.14 – Habitat Protection Tax Credit, John Czarnezki**

Czarnezki gave a brief overview of the Borough's tax credit program, specifically KPB 5.14. He stated the tax credit was a partial reimbursement program and was more widely applied for the tax exemption program.

He described a scenario and gave the following formula example:

Dock & Boardwalk = \$3,000 (homeowners actual cost)  
Assessed Value of 1 acre lot = \$168,000 land only  
Mill Rate = 8.65 (.00865 \* 168,000)  
Taxes on land = \$1,453.00  
50% of taxes = \$726.60  
3 years of credit = \$2,179.80

Essentially the property owner was reimbursed whichever was, less the cost of the boardwalk or the tax credit over three years.

Braun asked if the land owner was reimbursed based on their personal expense not necessarily the value of the structure? Czarnezki indicated he was correct, only the actual expense was considered in the tax credit formula.

Wartinbee asked how many times someone could apply for a tax credit. Czarnezki indicated there was no limit to how many times a person could apply for a tax credit.

Smith asked if a parcel abutted the habitat protection district and the new owner wanted to construct a new light penetrating walkway, would the project be eligible for the tax credit? Czarnezki stated it would be eligible as long as it met the standards set forth in Borough code.

Tarbox asked if re-vegetation of habitat would qualify for the tax credit. Czarnezki indicated that habitat restoration would qualify for the tax credit pursuant to KPB 5.14.040.

Smith addressed floating docks and asked if anchored or fixed docks would be outside of the buffer. Czarnezki stated that was correct, floating docks would be the only docks to consider in the tax credit because Borough code only deals with above ordinary high water to 150 feet up the bank and the anchored or fixed dock would be below ordinary high water. He further indicated you would need to more than likely have to get a permit from another agency, either the Alaska Department of Fish and Game or the Corps of Engineers.

Tarbox stated that there appeared to be no incentive for leaving the property unimproved. Czarnezki indicated that was correct.

Smith asked if a conservation easement would affect the property values. Montague stated that tax credit had to be allowed by statute.

(7:33:15)

#### **Activities Allowed within the 50-foot habitat protection buffer, John Czarnezki**

John Czarnezki gave a brief summary of the following code provisions which outlined allowed activities within the habitat protection buffer:

KPB 21.18.065 Activities Not Requiring a Permit;  
KPB 21.18.071 Permitted Uses;  
KPB 21.18.081 Conditional Uses; and  
KPB 21.18.090 Prior Existing Activities and Structures.

Braun asked if there was ever a time when the preexisting code provision would take precedence over an existing boat launch if the launch was exclusive to certain private property owners. Czarnezki indicated the boat launch would be allowed to continue; however, a permit would be required if it was to be expanded. Montague addressed the private agreement between property owners and indicated Borough code would not govern the agreement between the private property owners.

Smith asked if the ordinance governed the remodeling of a grandfathered structure, such as a house reroof or new kitchen. Czarnezki indicated the ordinance would not restrict the remodeling of the interior of an existing structure.

Ostrander asked about the permit process and the approximate turnaround time. Czarnezki summarized the permit process and described the collaboration of the agencies at the Gilman River Center. He stated fees were waived if the project was designed to protect the habitat. A thirty day turnaround was the goal; however, typical turnaround was fifteen days and typically, permits were issued for one construction season unless it was issued for a complicated project.

Tauriainen asked about a fixed dock and if it would be approved. Czarnezki stated it would depend on the size and location and he couldn't address if ADF&G would allow fixed docks. He further indicated the Corps of Engineers had their own requirements if it was on a navigable stream. Litchfield indicated that if the water body was a state park (Kenai River) a fixed dock would not be allowed. The ADF&G would look at each project on a case by case basis. She further indicated lakes would be more likely to be approved; however, she was uncertain about state parks. Czarnezki reiterated the Borough did not regulate anything within the water and only would require compliance with the portion that was in the habitat protection buffer. Czarnezki stated that if any part of the dock was over the land it would require a permit from the Borough and would have to comply with the requirements.

Wartinbee asked how the ordinance would affect float planes on the lakes and if those planes and ramps and/or docks would fall in the pre existing use category. Czarnezki summarized what Borough code would allow in the scenario suggested. He further indicated a permit would be issued for vegetation removal. Wartinbee further asked about commercial flight services. Czarnezki indicated Borough code did not address the type of use, i.e. commercial or personal use; it simply addressed the regulations and the restrictions pertaining to the project or structure.

Isham asked about the additional work load that may be anticipated due to the addition of the water bodies included in Ordinance 2011-12. Czarnezki indicated the administration was currently taking a wait and see approach as the Ordinance was not currently scheduled to be implemented until January of 2013.

Litchfield indicated that creations of boat launches within the water were currently regulated by ADF&G and there had been a recent wave of projects on lakes and wanted to caution property owners regarding the regulations of those projects

Oliva asked if there was a sunset on the permit fee waivers. Czarnezki indicated there was no sunset on that waiver. Smith gave additional historical information regarding the waiver. Ostrander confirmed there was no sunset.

Smith asked if the Borough had ever given tickets, be uniformed officers, to property owners that were mowing their lawns. Czarnezki indicated the Borough had never given tickets and did not have uniformed officers.

(8:11:33)

### **Code Compliance, Stacy Mattson**

Ostrander gave an overview of the Borough's enforcement process and summarized KPB 21.50.

Tauriainen asked if the Borough had an employee that was seeking out violations or if the River Center was mostly notified of alleged violations from neighbors. Mattson indicated enforcement was complaint driver.

Braun asked if most violations that had been reported were on the Kenai River. Mattson indicated that the majority were on the Kenai River.

Smith asked if Ms. Mattson wore a uniform as a Borough employee. Mattson indicated she did not wear a uniform and had never issued a ticket to anyone for mowing their lawn

(8:18:34)

### **Responses from J. Johnson, State of Alaska Department of Fish and Game**

Ostrander reviewed the questions presented to J. Johnson and gave a brief summary of his responses.

Smith addressed the removal process and reported the reason it took a number of years to remove a water body from the catalog may result in a water body being prematurely removed prior to fish returning after a natural or manmade event which may have caused the fish to have a less than annual return.

Litchfield indicated the importance of having additional time and review prior to removing a water body from the catalog.

Braun asked if additions and/or deletion to the catalog should come to the Assembly as an amendment to the ordinance or would a change to the catalog be automatic.

Ostrander stated that issue was the exact type of amendment that the task force should be considering.

Montague indicated the ordinance as written gave notice that the additional water bodies would be added as the catalog was annually updated. She agreed to further research the issue and bring forward an opinion.

Smith stated he was considering a five year review of the water bodies in the catalog and adopt those additional water bodies by ordinance.

Tauriainen asked if there was any attempt to quantify the number of fish and the size of the run. Litchfield indicated that was not part of the catalog; however, it did require the presences of a minimum of two (2) fish and it had to be documented.

Tauriainen asked about the public process and if it the notice was specific to the area affected and what papers were the notices published in. Litchfield indicated the notices were more generic in nature; however, they did indicate where the maps were located for public review.

Wartinbee asked Braun about the improvements along the river that would not qualify for the tax exemption or tax credit, i.e. erosion control, and if those improvement would make the property more valuable. Braun indicated that they would make the property more valuable if the property owner could use them.

Ostrander stated that prior existing use was transferable from owner to another.

(8::354)

## **PUBLIC COMMENT**

Facilitator Ostrander called for public comment.

The following members of the public addressed the task force:

**Gerald Brookman**, Kenai, addressed the task force and stated the habitat was priceless and a legacy for our children and grand children. He encouraged the task force to do whatever it took to protect the value of the habitat.

**Mike Wiley**, Clam Gulch, addressed the task force regarding protection of the habitat and asked that the task force consider the weight of protection of the habitat against the rights of private property owners. He indicated there should be additional incentives for the tax credit and tax exemption programs. He encouraged the notification of all property owners to the tax credit and tax exemption programs.

**George Pierce**, Kasilof, asked the following questions:

- How many streams had private property owners destroyed?
- How many task force members were in favor of the ordinance?
- How many task force members were in opposition to the ordinance?
- Did the State get a permit for hydro seeding at Holt-Lamplight Road?
- Did the State get a permit for dunes project in Kasilof?
- How many agencies did it take to protect the habitat?

He further stated the ordinance was an overreach of Borough government and that there was a newly elected assembly member that had indicated he would be repealing the ordinance.

Tarbox stated he was in support of the ordinance; however, was open minded to amendments to the ordinance.

Litchfield indicated there had been many sites where private property owners had negatively impacted the habitat.

Braun asked if Mr. Pierce was in support of a restart of the ordinance. Mr. Pierce stated he could live with the outcome of the process.

Litchfield reiterated the ADF&G had jurisdiction from ordinance high water down into the water.

Ostrander further reiterated that the Kenai Peninsula Borough was the only agency that regulated the 50-foot habitat protection zone from ordinary high water, up.

Czarnezki stated the Department of Transportation did get a conditional land use permit for both the Holt-Lamplight Road project and the Kasilof dunes project. The culvert that was in the water was ADF&G jurisdiction.

**Fred Sturman**, Soldotna, addressed the task force regarding what goes on in the river during the sports and personal use fisheries and encouraged the task force to address the issue. He stated the fishermen are destroying the habitat and that most of those people were from Anchorage and they leave their trash behind. Additionally, he asked who was going to pay for inspecting the water bodies if Mr. Smith's five year review recommendation was adopted.

Ostrander stated the catalog would be managed by the State of Alaska and they would make those determinations. He asked Mr. Sturman to identify the Borough power that would authorize the Borough or the task force to control the sports or personal use fisheries.

Mr. Sturman indicated he did not know the answer to the question; however, the City of Kenai had indicated it had become very costly to manage the fishery.

**Michele Hartline**, Nikiski, addressed the task force regarding lakes and the perceived lack of knowledge that lakes were included in the ordinance. She accused Mr. Smith of deceiving the other assembly members into supporting the ordinance. She commented on the makeup of the task force and asked for Mr. Smith to be excused from the task force immediately due to his inherent conflict of interest.

**Wenda Kennedy**, Nikiski, addressed the task force regarding Mr. Colt's presentation. She indicated a number of the members of the audience had been discussing a class action lawsuit. She further addressed unequal application (i.e. Seldovia and Tribal Lands), notice, and the catalog itself.

Ostrander noted that the Native Allotment issue would be addressed at the next meeting.

Braun asked if Ms. Kennedy would be in favor of a restart versus repeal of the ordinance. Ms. Kennedy indicated she would be in favor of the restart if there was proper notice and if the catalog was not tied to the ordinance.

(9:03:56)

## **OTHER**

Braun asked for a presentation from the American Land Rights Association and indicated Assembly Member Wolf had expressed interest in addressing the task force.

Tauriainen asked Montague to give a presentation regarding the notification processes that currently existed in the Borough code and what the drawback would have been had the ordinance had additional notification to affected property owners.

(9:09:04)

## **TASK FORCE COMMENTS**

Oliva stated the issue regarding notice was a concern that there was a direct impact to the land owners.

Braun indicated he hated gravel pits and indicated he would like to be noticed somehow of new gravel pits no matter where it was going to be located. He drew the members to pages 61-19 of their packet and addressed the memo from the Alaska Association of Realtors which originated from the National Association of Realtors. Colt mentioned other jurisdictions with large

populations and fewer water bodies being available to the public for purchase. He encouraged the members to consider supply and demand within the Kenai Peninsula Borough.

Smith commented on the realtors review and stated he appreciated the content. He noted that George Pierce had testified on Ordinance 2011-12 many times and didn't understand his concerns regarding notification. He apologized to Michele Hartline and clarified, Ordinance 2011-12 only added a small section of language to Borough code and the section stated water bodies. Smith stated lakes had been in Borough code for over 10 years and proposed amendments to the ordinance defined water bodies specifically. He stated he was open to changes. Finally, he stated he had no more of a conflict than Mr. Tauriainen did, as he too had voted in support of Ordinance 2011-12.

Tauriainen stated his discomfort with the ordinance being tied to the catalog.

Tarbox stated that the ordinance affected the entire population of the Borough not just the adjacent property owners. He also used Campbell Creek, Ship Creek and Chester Creek in the Anchorage Municipality and indicated it demonstrated that the costs of not originally protecting the habitat were too high.

Ostrander stated at the next meeting there would be a proposed timeline for consideration. He indicated there were some Cooper Landing citizens who were having negative reactions to the ordinance; however, Cooper Landing had been under the regulation since 1996. When he asked the citizens what had changed, they had implied they could no longer cut their lawns or cut trees and Borough could now remove your house. He encouraged the task force members to be responsible for dispelling fear among our citizens and responsibly addressing concerns and providing the public with the facts. He addressed the concept of a restart versus repeal by summarizing what a restart may look like and the potential process. He stated that in his opinion a restart would look very much like what the task force was already in the process of doing and what the goals of the task force were for the future. He noted his lack of understanding as to why what the task force was already doing wasn't sufficient.

#### **ANNOUNCEMENT OF FUTURE MEETING DATES AND TIME**

November 5, 2012	6:00 p.m.	Borough Administration Bldg. Assembly Chambers
December 3, 2012	6:00 p.m.	Gilman River Center Conference Room

There being no further business before the task force the meeting was adjourned at 9:24 p.m.