



KENAI PENINSULA BOROUGH

PLANNING DEPARTMENT

144 North Binkley Street • Soldotna, Alaska 99669-7520

PHONE: (907) 714-2200 • FAX: (907) 714-2378

Toll-free within the Borough: 1-800-478-4441, Ext. 2200

www.borough.kenai.ak.us

DAVID R. CAREY
BOROUGH MAYOR

MEMORANDUM

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

THRU: David R. Carey, Borough Mayor *Shelley*

FROM: *MB* Max J. Best, Planning Director

DATE: April 28, 2011

SUBJECT: Ordinance 2011-12, An ordinance amending KPB 21.18.025 to add additional water bodies subject to Anadromous Stream Habitat Protection.

The Planning Commission reviewed the subject ordinance during their regularly scheduled April 25, 2011 meeting. A motion passed by unanimous consent to recommend approval of the ordinance.

In the ordinance, please make the following amendment to the last WHEREAS:

WHEREAS, at its regularly scheduled meeting of April 25, 2011, the KPB Planning Commission recommended approval.

Attached are the unapproved minutes of the subject portion of the meeting.

AGENDA ITEM F. PUBLIC HEARINGS

5. Ordinance 2011-12, An ordinance amending KPB 21.18.025 to add additional water bodies subject to Anadromous Stream Habitat Protection.

Memorandum given by Max Best

PC Meeting: 2/28/2011

In 1996, the Kenai Peninsula Borough began regulating development adjacent to the Kenai River in order to provide riparian habitat protection.

In 2000, the Assembly enacted Ordinance 2000-08 which added 24 additional streams to include more of the major salmon rearing and spawning habitat on the Kenai Peninsula.

The findings validating Ordinance 2000-08 are not only valid for the currently managed anadromous streams; they are valid for all anadromous streams within the borough.

Some findings in Ordinance 2010-16 include:

- A. In enacting this ordinance the assembly finds numerous factors affect the habitat of the anadromous streams within the Kenai Peninsula Borough. These include bank erosion, bank trampling, pollution, inadequate tourism infrastructure, unsuccessful attempts to remedy bank erosion or protect and restore habitat, inconsistent regulations and enforcement, logging, grazing, mining, wetland fill and drainage, excavation and fill of property, dredging, inappropriately installed culverts, fuel storage, and maintenance of existing structures.
- B. The assembly finds that the sensitivity of the river area requires general prohibition on activities within an area immediately adjacent to anadromous streams, and only activities which do not damage the habitat should be allowed.
- C. The assembly finds that fuel storage and significant removal of vegetation within the 100 year floodplain along the anadromous streams require regulation to protect the salmon habitat.
- D. The assembly finds that the uncontrolled use and pollution of shoreland and riparian areas adversely affects the public health, safety, convenience, and general welfare, and impairs the tax base.
- E. The assembly finds that the legislature of Alaska authorizes the borough to provide for planning, platting, and land use regulation. AS 29.40.010, Planning, platting, and land use regulation, states in subsection (a) that "[a] first or second class borough shall provide for planning, platting, and land use regulation on an areawide basis."
- F. The assembly finds that the riparian ecosystem includes stream bank and floodplain areas and recognizes that impacts to anadromous streams may be due to activities and uses within the greater watershed.
- G. The assembly finds that the 1997 update of the Alaska Department of Natural Resources Kenai River Comprehensive Management Plan recognized the increased use of the Kenai River resource and its associated impacts and recognized the deterioration of near shore habitat for juvenile salmon and stated in Section 2.2 that "[t]he importance of riparian (stream bank) vegetation to fish and wildlife values cannot be overestimated."
- H. The assembly finds that it is in the public interest to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish, and aquatic life; control building sites, placement of structures, and land uses; and to preserve shore cover and natural beauty. These responsibilities are hereby recognized by the Kenai Peninsula Borough.

Mr. Smith believe the findings above well elaborate the need to provide protection for salmon habitat and

should apply equally to all such habitat within the borough. Your consideration will be appreciated.

END OF MEMORANDUM

John Mohorcich was available to answer questions.

Vice Chairman Martin opened the meeting for public comment. Seeing and hearing no one wishing to speak, Vice Chairman Martin closed the public comment period and opened discussion among the Commission.

MOTION: Commissioner Tauriainen moved, seconded by Commissioner Isham to recommend adoption of Ordinance 2011-12; an ordinance amending KPB 21.18.025 to add additional water bodies subject to Anadromous Stream Habitat Protection.

Commissioner Tauriainen felt it would be a good thing to add streams that have salmon in them to the habitat protection ordinance.

Commissioner Holsten stated that Mr. Smith told her that this ordinance would apply to streams once they were identified as Anadromous. She strongly supported the motion.

Commissioner Isham felt that anything that helps protect the salmon runs is definitely a plus so he would be voting in support of the motion.

Commissioner Gross expressed concern about any resolution that includes all of everything. She asked if there were side effects that could come back and bite them. Vice Chairman Martin stated that there would be unintended consequences.

Commissioner Ruffner stated this was something he felt strongly about since he has over the years of worked on salmon protection and salmon issues across the borough. There is the discussion between the sports fishing industry which generates \$9 billion and the commercial fishing industry which generates \$13 billion. The bottom line is that salmon is really important to the borough economy and culture. There are some consequences to asking for protection on other salmon bearing streams.

Commissioner Ruffner also stated that there was going to be some increased oversight of increased work but what they have right now is not consistent across the board. There was a plat at tonight's Plat Committee meeting that was platted across a salmon stream but it was noted in the notes that it wasn't part of the KPB 21.18 streams so it didn't get a note on the plat. There are cases like that, that happen on a regular basis. It doesn't make sense to pull the streams out that have names on them but the unnamed streams that has just as many or more salmon in them isn't recognized. He wondered if the salmon were being protected or not and felt that this ordinance allowed them to be more consistent across the borough. He spoke strongly in support of this ordinance.

Vice Chairman Martin also spoke in favor of the motion just for the educational purposes of it.

Commissioner Foster asked Mr. Mohorcich if the Bradley River would have some repercussions with the dam there as well as the Fox River with the cattle ranching in the area. Mr. Mohorcich replied the lists that included those two rivers were picked up in 2000 so they have been managing those rivers since 2000. Staff has not had physical presence on Bradley River. Staff has been at Fox River about 3-4 on four wheelers due to applications in that area. So far they worked with one individual with cattle. It was for the installation of a fence which was placed outside the 50 foot area.

Commissioner Isham stated that gold mining and panning were allowed in rivers and creeks. He asked how this ordinance would affect mining. Mr. Mohorcich replied that it would have some impact since there was quite a bit of recreational gold mining specifically in the Chugach National Forest. Permits are issued for that type of activity on Quartz Creek but with the price of gold and the expansion of the proposed additional streams they would be definitely busier concerning recreational mining in the Chugach National Forest. Currently Fish and Game permits these types of mining. He stated that Fish and Game has the authority

within the streambed, from ordinary high to the vegetation lines within the stream. The Borough manages from the ordinary high back 50 feet on both sides. This would be more comprehensive of what was going on in the area.

Commissioner Isham stated that a six inch sluice box could be used. If this ordinance passed then staff would have jurisdiction over the banks so the miners could not get to the stream. They would have to through that 50 foot. He asked how that would be affected. Mr. Mohorcich replied that how it would be affected would be how the ordinance was written. If it didn't change other than including additional streams basically they would look at that access so they would minimize someone to be able to drive their four -wheeler or heavy equipment all the way to the stream. They would not disallow the access to the stream but would manage and regulate how they were impacting the vegetation within the 50 foot habitat protection area.

Commissioner Gross asked if there would be a need for additional manpower. Mr. Mohorcich replied that they had that discussion at committee level of how much manpower that this would take fiscally. There are all kinds of answers to that. He knew that Mr. Smith thought about this and really wants to recognize the need to protect all of the fish streams but also realizes the budget constraints. Currently, out of all of the streams in the catalog staff was managing approximately 20% of those river miles, 70% of streams are not currently being managed. There also needs to be taken into consideration the geographic location for potential increase of budgets for staff. That is where it starts getting complicated. Mr. Mohorcich hoped to have more information. There has to be additional information for everyone to make a good decision. Mr. Smith added an additional hearing at the Assembly level to provide more discussion.

Commissioner Tauriainen asked how this ordinance could be impacted by Chuitna mining project as well as the additional costs this ordinance may cause regarding large mining issues. Mr. Mohorcich replied that the footprint of the mine was outside the borough however, the access to the Inlet was within so there would be crossings or adjacent work to some of the streams.

Commissioner Holsten asked if applicant fees were being looked at to help cover the costs of implementing this ordinance. Mr. Mohorcich replied yes, the Mayor has tasked each department to come up with potential revenue increases. He stated that a draft fee schedule has been presented to the Mayor. Commissioner Holsten asked how much it cost to rehab a stream bank or restore a stream when it has been damaged. Mr. Mohorcich replied it was much more expensive to rehab it than not to touch it. It could not be rehabbed back to its natural state that Mother Nature had so it would always be lesser of a fix. He stated there are varying costs for different types of fixes that could be used.

There being no further comments or questions, the Commissioners proceeded to vote.

VOTE: The motion passed by unanimous consent.

BRYSON ABSENT	CARLUCCIO YES	COLLINS YES	ECKLUND YES	FOSTER YES	GROSS YES	HOLSTEN YES
ISHAM YES	LOCKWOOD YES	MARTIN YES	PARKER YES	RUFFNER YES	TAURIAINEN YES	12 YES 1 ABSENT

AGENDA ITEM G. ANADROMOUS STREAM HABITAT PROTECTION AREA (KPB 21.18) - None

AGENDA ITEM H. VACATIONS NOT REQUIRING A PUBLIC HEARING - None

AGENDA ITEM I. SPECIAL CONSIDERATIONS

1. Time extension of DeGarmo Subdivision No. 2 Section Line Easement Vacation: KPB File 2007-009; Seabright/Yourkowski, Griffin; Location: City of Homer

Staff Report given by Paul Voeller

PC Meeting: 4/25/11

Homer Advisory Planning Commission approved the proposed vacation on February 1, 2006 subject to granting a 20-foot pedestrian easement to the bluff. HM 2009-05 granted the 20-foot pedestrian easement per