

# Kenai Peninsula Borough

Flood Plain Task Force

March 10, 2010

6:00 PM



PHOTO BY CHRIS BECKER

**Council Chambers, Seward City Hall  
401 Adams Street, Seward**

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# Kenai Peninsula Borough

## Flood Plain Task Force

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March 10, 2010 - 6:00 p.m.

Seward City Hall, 401 Adams Street, Seward

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Sue McClure  
Assembly Member

Charlie Pierce  
Assembly Member

Dan Mahalak  
Hydrologist

Jane Gabler  
Donald E. Gilman  
River Center

Holly Montague  
Legal Department

Todd Peterson  
Planning Commission

Max Best  
Planning Department

Ron Wille  
Road Service Area  
Board

Bill Williamson  
Seward Bear Creek  
Flood Service Area

Randy Stauffer  
Seward Bear Creek  
Flood Service Area

Jim McCracken  
Public Representative

Robert Hicks  
Public Representative

Matt Gray  
Public Representative

Christy Terry  
City of Seward  
Community  
Development

Staff:

Shellie Saner  
Deputy Clerk

### **A. Welcome**

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### **C. July 8, 2009 Meeting Summary**

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# Kenai Peninsula Borough

## Flood Plain Task Force

### Meeting Summary

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July 8, 2009 - 6:00 p.m.

Regular Meeting

Seward City Hall, 401 Adams Street, Seward

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#### **CALL TO ORDER**

A regular meeting of the Flood Plain Task Force was held on July 8, 2009, in the Council Chambers of Seward City Hall, Seward, Alaska. Chair Long called the meeting to order at 6:00 p.m.

There were present:

Ron Long, Chair	Hall Smalley, Alternate Vice Chair
Colette Thompson	Matt Gray
Dan Mahalak	Max Best
Jane Gabler	Ron Wille
Christy Terry	Randy Stauffer
Todd Petersen	Jim McCracken
Sue McClure	Bill Williamson

Absent:

Charlie Pierce (excused)  
Kevin Lyon (excused)  
Scott Walden (excused)  
Robert Hicks (excused)

Also in attendance:

Shellie Morgan, Deputy Clerk  
Mary Toll, KPB Planning

#### **WELCOME**

Chair Long thanked everyone for attending the Flood Plain Task Force Meeting.

**PUBLIC COMMENT** - None.

#### **JUNE 24, 2009 MEETING SUMMARY**

(06:05:12)

#### **RECOMMENDATION DISCUSSION**

#### **Ordinance 2009-09**

Mr. McCracken said he would like to see Ordinance 2009-09 continue until sunset as scheduled.

Mr. Peterson felt Ordinance 2009-09 should be allowed to sunset, he said there was still a lot of information to be gathered from this process, and that would have to be considered when making the final decisions.

Mr. Stauffer said he was concerned the new Federal Emergency Management Agency (FEMA) maps due in September, may cause parts of Ordinance 2009-09 to become obsolete. He felt the new information coming from FEMA needed to be reviewed prior to the Assembly's decision regarding the sunset of Ordinance 2009-09.

Mr. Gray suggested the Task Force request the Seward-Bear Creek Flood Service Area (SBCFSA) provide the recommendation some time closer to the sunset date of Ordinance 2009-09.

Chair Long noted his intent was for Ordinance 2009-09 to be a stop-gap measure, until something permanent could be provided, such as; maps, comprehensive strategy, mitigation plan or some other basis for mitigation work outside of the current Flood Insurance Rate Map (FIRM) areas. He said previous indications were the new FEMA maps were not going to be delivered for some time, and that prompted the Ordinance. He noted that some level of oversight was needed, especially in the repetitive loss areas that were not included on the existing maps.

Mr. Williamson said members of the public had been approaching him with questions regarding the effects of Ordinance 2009-09. He felt the problems were now more apparent, more information was available, and the public was involved. He said Ordinance 2009-09 had made a difference.

(06:12:51)

### **Subdivision Requirements**

Chair Long asked Mr. Best if he believed that a CMZ Lite or Suitability Mapping program would give the Planning Department the tools needed for managing development within the Flood Hazard areas, or would something more be required. Mr. Best felt they would provide enough information to begin setting regulations.

Chair Long felt the Borough Assembly would want to see results from the actions taken by the Task Force so far, prior to introducing new subdivision requirements.

Mr. Peterson asked how the Planning Department would be using the maps when setting subdivision codes. Mr. Best said being able to see all aspects of the property within the maps would show the number of properties involved with the Flood Hazard area. He further stated the Planning Department may not be able to prevent a lot from being split; however, when it came to dedicating additional roads, the Borough could deny the application.

Mr. Williamson noted that if a developer were financing through a lender, the developer would be regulated by the Clean Water Act, and be required to show the water flow.

Mr. Wille felt that the correct information would allow the Borough to tell a developer when a right-of-way could not be dedicated, when located in a high hazard area. He said if a right-of-way was not dedicated through the subdivision, there would be no legal access.

Mr. Best said Planning Codes required every lot front on a dedication; therefore, when a new dedication was created, the Borough could require engineering and acceptance through Borough Road Maintenance Standards.

Mr. Peterson noted if there was a 10 acre tract with roads on two or more sides, it would then have enough access to subdivide. Mr. Best said yes, as long as no additional right-of-way was required.

(06:20:31)

## RESOLUTIONS

### Resolution 2009-04

Chair Long referred to the suggested amended version of Resolution 2009-04 shown on page 15 of the packet. The Task Force agreed to amend to the Land Management Version of Ordinance 2009-04.

The Task Force agreed without objection to the following amendments:

Insert a new sixth whereas to read, "Restoring these repetitive loss parcels to an undeveloped state restores necessary flood carrying capacity that reduces the overall hazard; and"

Insert the previously removed whereas to read, "the Borough Planning Commission reviewed this resolution on \_\_\_\_\_ and recommended \_\_\_\_\_; and"

Section 1 to read, "The Kenai Peninsula Borough Flood Plain Task Force (FPTF) recommends to the Assembly that it evaluate lands for purchase, sale and trade in order to move property owners from flood hazard areas within the SBCFSA. The FPTF further recommends that the administration seek additional municipal entitlement lands which may be appropriate for such purpose and to work with the State of Alaska Department of Natural Resources as necessary to achieve beneficial entitlement selections. The FPTF further recommends that this program be developed to primarily aid homeowners, and that parcels with structures in flood hazard areas have priority in receiving relief. The FPTF further recommends that the administration submit the program to the Assembly for approval [BY JULY 1, 2010] prior to March 24, 2010."

Section 1 to read, "The Kenai Peninsula Borough Flood Plain Task Force (FPTF) recommends to the Assembly that it evaluate lands for purchase, sale and trade in order to move property owners from flood hazard areas within the SBCFSA. The FPTF further recommends that the administration seek additional municipal entitlement lands, University of Alaska lands, and Mental Health Trust lands which may be appropriate for such purpose and to work with the State of Alaska Department of Natural Resources as necessary to achieve beneficial entitlement selections. The FPTF further recommends that this program be developed to primarily aid homeowners, and that parcels with structures in flood hazard areas have priority in receiving relief. The FPTF further recommends that the administration submit the program to the Assembly for approval prior to March 24, 2010."

Mr. McCracken noted he would like to see open lines of communication between the Kenai Peninsula Borough and the Seward-Bear Creek Flood Service Area (SBCFSA).

Resolution 2009-04 was adopted as amended by the Task Force without objection.

## Resolution 2009-05

Mr. McCracken and Mr. Stauffer noted concerns regarding Resolution 2009-05 and the Task Forces scope of responsibility.

The Task Force agreed without objection to the following amendments:

The fourth whereas to read, "a CMZ analysis will establish the historic river channels and floodways; identify areas of high bank erosion; identify areas of aggradation; identify methods to prevent erosion; identify methods to maximize sediment transport; provide maps that clearly define the flooding threat for individual properties; identify areas where bed load reduction is needed; identify where dikes need to be added [OR], improved or removed; identify areas that are restricting current water flow and work to improve and or remove them where appropriate and identify where river banks need to be reinforced; and"

The Task Force discussed dike maintenance and certification and the requirements necessary to participate in the National Flood Insurance Program (NFIP).

The fifth whereas to read, "CMZ analysis in combination with suitability mapping will identify areas where development is appropriate; identify areas where development could occur if proper construction techniques are utilized; identify where flooding is too common and development should not occur; identify where currently developed areas should be returned to the floodway to give the rivers reasonable flow channels; including possible dwelling or development relocations; and include a coordinated effort to see that suitable upland areas (federal, state, borough, and private) are opened for development as soon as possible; and"

Insert a new third whereas to read, "existing Federal Emergency Management Agency (FEMA) Federal Insurance Rate Maps (FIRM) Maps were drawn using out of date information that does not accurately describe present day flood hazard areas; and"

Insert a new fourth whereas to read, "updated FEMA Maps are expected in the relatively near future, but by themselves only show the existence or non existence of prior flooding and did not contain information on flood depth, velocity, duration, resistance or vulnerability characteristics of the surrounding topography or development and thus are inadequate as planning tools; and"

(07:07:00)

Title to read, "A Resolution Recommending that the Borough Assembly Authorize A Watershed Master Plan including A Channel Migration Zone (CMZ) Analysis and Suitability Mapping Project within the Seward-Bear Creek Flood Service Area"

Section one to read, "That the Kenai Peninsula Borough Flood Plain Task Force recommends that the Kenai Peninsula Borough Assembly authorize the completion and funding of a watershed master plan including a CMZ analysis in combination with a suitability mapping project and the development of a flood zone building methods program."

The Task Force agreed without objection to the following amendment:

Title to read, "A Resolution Recommending that the Borough Assembly Authorize the Administration and the Seward-Bear Creek Flood Service Area Board to Complete A Watershed Master Plan Including [A] Channel Migration Zone (CMZ) Analysis and A Suitability Mapping Project within the Seward-Bear Creek Flood Service Area"

Section one to read, "That the Kenai Peninsula Borough Flood Plain Task Force recommends that the Kenai Peninsula Borough Assembly authorize the Administration and Seward-Bear Creek Flood Service Area Board to complete [COMPLETION] and [FUNDING OF] fund a watershed master plan including a CMZ analysis in combination with a suitability mapping project and the development of a flood zone building methods program."

The newly numbered ninth whereas to read, "a flood zone building methods program would establish recommended building methods combined with a highly developed outreach effort; proved the most compelling process to encourage people to build correctly without imposing codes and establishing a complex and expensive compliance effort; provide low interest loans for landowners who follow the flood zone building methods program from the state revolving funds (SRF), and interest rates would be [1.5 TO 3 POINTS] below conventional loans; would save the owner thousands over the life of the loan, essentially paying for special construction methods; and the Alaska SRF currently has \$43.2 million (\$237,000 dedicated to planning and is actively looking for applicable projects; and"

The newly numbered thirteenth whereas to read, "the next EPA funding cycle (proposal deadline) [WILL PROBABLY BE EARLY WINTER 2010] could be available as early as fall 2009, providing a reasonable time line for working out the details with the various governmental agencies and producing the proposal; and"

The following amendment failed, with one vote of support:

To delete the newly numbered eighth whereas.

Resolution 2009-05 was adopted as amended by the Task Force with one objection.

(08:04:48)

## **REVIEW OF KPБ FLOOD PLAIN ACTIONS**

Chair Long summarized the accomplishments of the Task Force.

Ms. Terry referred to Borough Code 14.03.100(D), which referred to the Seward Mapped Flood Data Area (SMFDA). She noted that Assembly Ordinance 2009-09 outlined what the SMFDA actually was and noted the effects by Ordinance 2009-09 at sunset. She suggested a separate ordinance defining the SMFDA outside of Ordinance 2009-09.

Mr. Gray asked if KPБ Ordinance 2009-29 would also be removed when KPБ Ordinance 2009-09 sunset. Chair Long said no.

Mr. McCracken asked if any information had been received from the State of Alaska regarding the navigability determination. Mr. Mahalak no.

Mr. Mahalak requested a recommendation from the Task Force to the Assembly regarding in-kind



services to EPA and FEMA. The Task Force agreed the recommendation from SBCFSA was appropriate.

Mr. Stauffer noted he would like to see a one page summary that reflected the accomplishments of the Task Force. Chair Long said he would be drafting a memo to that effect.

Mr. Peterson suggested the Task Force meet one more time prior to the sunset of Ordinance 2009-09. Chair Long said he would include that information in his memo.

Mr. McCracken noted the final meeting should be a follow up on the actions taken by the Task Force.

(08:17:56)

## **GENERAL DISCUSSION AND QUESTIONS**

Ms. McClure noted she had been approached with questions about the Task Force and the effects on property values.

Mr. Wille thanked the Borough staff for working on the Task Force.

Mr. Williamson said he spoke with Seward-Bear Creek Fire Chief, Dave Hays, and Mr. Hays had voiced concerns about sending his staff into some of the hazard areas during events.

Mr. Stauffer thanked everyone for their participation with the Task Force. He felt it was interesting that this Task Force had made some of the same recommendations made by the Task Force in 1987.

Mr. Gray noted the Task Force had made several accomplishments, and felt there was much more to do; however, these were steps in the right direction. He thanked everyone involved with the Task Force.

Ms. Terry thanked the Kenai Peninsula Borough Assembly for making the Seward flood hazard a priority, and the Borough staff who participated.

Ms. Gabler explained the process being used when permits were issued for development within flood plains, she showed an example of the permit notice which would be posted in a visible area of the property.

Ms. Thompson said she was impressed with the work done by the Task Force and staff.

Ms. Toll agreed with Ms. Thompson and said it was nice to see the all of the specific ordinances and resolutions that came from the Task Force.

Chair Long thanked everyone for their participation, he felt the task force was successful due to the individual diverse contributions that brought the Task Force together. He said everyone had a common interest; however, a different approach. He said if everyone had thought alike, there may not have been as much progress made.

## **TASK FORCE MEETING AND ANNOUNCEMENTS**

The next meeting of the Flood Plain Task Force will be held in early 2010 prior to the sunset date of Ordinance 09-09

## **ADJOURNMENT**

The committee adjourned at 8:31 p.m.

State of Alaska  
Department of Natural Resources  
Division of Mining, Land and Water  
Preliminary Finding and Decision  
Material Sale and Storage  
ADL 230445  
Kenai Peninsula Borough  
Salmon Creek Dredging Project

## DRAFT DOCUMENT

**Proposed Action:** In accordance with AS 38.05.110, 38.05.810(a) and 11 AAC 71, the Division of Mining, Land and Water is reviewing an application from the Kenai Peninsula Borough for material extraction for flood control from Salmon Creek. The purpose of this decision is to allow for mitigation of the recurring flooding and its impact on the Salmon Creek drainage by removing excess gravel deposits, as need annually, during the allowable fish window ( May 15 to July 15) each year, and to minimize the amount of emergency response required to reduce the impact of such flooding on adjacent homeowners.

**The public is invited to comment on this Preliminary Decision. Please see the Public Notice section, at the end of this document, for details on submission of comments, including comment deadline conditions.**

**Scope of Review and Proposed Finding:**

The scope of administrative review, under AS 38.05.035(e) (1)-(2), for the proposed material sale contract under AS 38. 05.110-120 Sale of Timber and Material and AS 38.05. 810 (a) Public and Charitable use. The scope of this decision is based upon the statutes, regulations and other facts contained in case file ADL 230445 and ADL 230099, a past emergency authorization for flood control.

**Justification for Action:**

The Alaska State Constitution directs the Alaska Department of Natural Resources (ADNR) to provide for a variety of uses on state land while developing, conserving, and enhancing natural resources. ADNR is directed to establish a balanced combination of land available for public and private purposes. It directs that the land and natural resources be available for the maximum use consistent with the public interest.

**Legal Description of the proposed project: Attachment A**

SC 7 (portion near the river bend of Salmon Creek to the OHW)  
SC8-SC9  
Township 1 North, Range 1 West, Section 14, Seward Meridian

SC 10-SC 14

Township 1 North ,Range 1 West, Section 14, Seward Meridian

SC15-SC19

Township 1 North, Range 1 West, Section 26, Seward Meridian

SC 20-21

Township 1 North, Range 1 West, Section 35, Seward Meridian

**Authorities:**

AS 38.05.020 Duties of the commissioner

11 AAC 55 Classification

AS 38.05.035 Duties of the director

11 AAC 71 Timber and material sales

AS 38.05.110 Sale of timber and materials

AS 38.05.810 (a) Public and Charitable

AS 27.19.030-.050 Reclamation Plan

**Administrative Records:**

- a) Administrative ADL 230455 and ADL 230099 case file by reference
- b) Kenai Area Plan (KAP) 2000 Region 3A Seward and North Resurrection Bay.
- c) Alaska Constitution, Equal Footing Doctrine, Tide and Submerged Lands, Public Trust Doctrine, Alaska Statutes Title 38 and Alaska Administrative Code Title 11, by reference.
- d) State Fish Habitat Permit
- e) Alaska Coastal Management Review
- f) Memo of Navigability Determination ( Scott Ogan ADNR/ PAAD Dated April 17, 2009)

The administrative records contain background information on issues, existing resources, land status, land ownership patterns, management intent, and land classification. The administrative records also contain background information for each proposed use on size, location, proposed construction, history of adjudication, title, and agency comments.

**Borough/Municipality:** The material source is within the Kenai Peninsula Borough.

**Native Regional/Village Corporation(s):** Chugach Alaska Corporation

**Area Plan:** Kenai Area Plan (KAP) 2000, Region 3 Seward and Resurrection Bay states:

Management Intent for Navigable Water bodies: The intent of the plan is to designate and provide management intent for the shore lands under all the navigable water bodies and their waters. There are so many navigable rivers and lakes in the planning area that it is not practical to state the individual management intent for each and every water body. Therefore, the plan identifies several general types of water bodies that are assigned common unit numbers, management intents, and designations.

**Navigability Determination Memo Dated April 17, 2009:** The navigability determination memo considers the creek known locally and referred to by the by the KPB as Glacier and Kwechak Creek, to be the creek described as Salmon Creek in the USGS Professional Paper 567, Dictionary of Alaska Place Names, Orth, Don J., 1971 with Minor Revisions, Page 830 and depicted on the USGS maps. The defined reaches will include the reaches of the creek marked KC1 thru 12 and SC 8 thru 21 on the KPB Seward Vicinity Gravel Mitigation Units Dated June 5, 2008. The Dictionary of Alaska Place names also describes Salmon Creek as; stream, heads at the terminus of Bear Lake Glacier, flows WSW 7 miles to Resurrection River, 2 miles NE of Seward, Chugach Mountains 60 degrees 08' N 149 degrees 24'W.

The reaches of the creek marked LC 5 and SC 1 thru SC 7 are actually Lost Creek. Lost Creek is described by the KPB, the locals and ADOT signs at the Seward Highway Bridge as Salmon Creek. However, the state concurs with the Department of Interior that Lost Creek is the creek described in the Dictionary of Alaska Place Names on Page 597 as: stream on Kenai Peninsula, heads at Lost Lake flows S 6.6 miles to Salmon Creek 4.5 miles NE of Seward, Chugach Mountains 60 degrees 15'45" N, 136 degrees 25'00' W (map 9).

Further research is needed on the reaches of Salmon Creek above this confluence to determine the depth, width, gradient for susceptibility to navigation. Additionally, interconnecting sloughs are also considered State's property, regardless of susceptibility to floating a water craft on them. The exception is an avulsive event.

**ACMP Review:** The project as proposed was found consistent on April 29, 2009 AK 0902-18AA

**Environmental Risk:** As part of the application process, the project is reviewed for environmental risk. The applicant is not permitted to store any potentially hazardous materials or fuel at any of the removal sites.

**Prior Land Use:** The land in this area is private. Portions of Salmon Creek are navigable and anadromous.

**Planned Future Use:** Residential and recreational.

**Access:** Access to the creek is across private, borough, city and state land. Formal written permission to access the creek via private land must be obtained by the KPB or their agents or contractors.

**Background:** In May 2005 the KPB contacted the ADNR stating the Seward Bear Creek Flood Service Area (SBCFSA) objectives in establishing a cooperative relationship with the agency to reduce the bed-load in the local streams and requested exemption from all material extraction royalty fees.

In September 2006, ADNR Commissioner Mike Menge sent a letter to KPB explaining the following: AS 38.05.110 does not allow the commissioner to waive fees for material sales. The base rate for material is established by 11 AAC 71.090 (b) which states that material sold may not be for less than the base rate.

The commissioner proposed issuing a modified Material Sale Contract to allow the removal of materials in flood prone areas for this flood project area. The KPB would be permitted to store the removed material on borough or state land, with no payment required at the time of removal from the flood

zone. The volume and location of the material stored would be reported to ADNR, according to the terms and conditions of the material sale contract.

The base rate of \$.50 per cubic yards for contracts issued under AS 38.05.810 (a) will apply only if the materials are used for future public projects. The Borough will report the volume purchased and pay the appropriate cost at the time of use. This delayed point of sale would be made a part of the special stipulations within the material sale contract.

If other buyers from private industry or other public agencies would like to purchase the material, ADNR would accept an application to issue a material sale contract to the third party.

When materials are removed below the OHW and removed from the creek and placed on private upland locations, a material sale is necessary and private parties are subject to the current retail cost of \$3.25 per cubic yard as set by AS. 71.090. Residents along the creek commented to ADNR stating they did not feel that the materials should be purchased and the price of the material was too expensive. ADNR responded to the homeowners, explaining the regulations governing material sale contracts and fees.

In June 2007, the Kenai Peninsula Borough as the applicant, qualifying for a contract under AS 38.05.810 (a), submitted an application for the removal of gravel from Salmon Creek for flood mitigation. A contract for one year was issued for 10,000 cubic yards to the KBP for flood mitigation.

In February 2008 the KPB, Alaska Division of Coastal Management, Corps of Engineers, Alaska Department of Fish and Game, and the Alaska Department of Commerce and Economic Development met to discuss ways in which this project could be done in an orderly, expeditious way. In the past, there has been concern among the agencies that this project was becoming convoluted with different entities applying to the agencies to do sections of the project and not having a comprehensive plan that encompasses the scope of the project. It was agreed among the agencies and the SBCFSA that the KPB would be the agency applying for the necessary permits and the agency in charge of implementing the flood control material extraction. This decision permits ADNR to issue a material sale contracts for the gravel extraction, the delayed point of sale at the Public and Charitable rate of \$0.50 a cubic yard. The KPB hired a hydrologist who initiated mapping of the project. The project was then able to be reviewed by ACMP and a Preliminary Finding and Decision by the ADNR for flood mitigation. After the public review process, and upon issuance of a Final Finding and Decision, ADNR will be able to proceed with a material sale contract issued to the KPB in advance of any future flood events.

**Alternative Considered:** Alternative 1: Issue a year to year material sale contract to the Kenai Peninsula Borough for the purpose of flood mitigation control for Salmon Creek.

**Preferred Alternative:** In this case, only one alternative was considered. The “emergency” material sale contract ADL 230099 was intended as a temporary fix for a situation that requires long term management in flood prone areas. The last two years, ADNR has worked closely with the Kenai Peninsula Borough, Alaska Coastal Management Program, Corps of Engineers, Alaska Department of Fish and Game, and the Alaska Department of Commerce and Economic Development in implementing a plan for flood control that would be in the best interest of the residents and agencies.

**Recommendation:**

I find that all applicable statutes and regulations have been met thus far. It is in the best interest of the State of Alaska, the Kenai Peninsula Borough, the City of Seward and the affected homeowners along Salmon Creek to issue a material sale contract for dredging operations for flood mitigation. Contract conditions, storage locations, and quantities will be reviewed on an annual basis.

Submitted by: Christina B. Nahorney  
Natural Resource Specialist II

Date: \_\_\_\_\_

\_\_\_\_\_ I concur

\_\_\_\_\_ I do not concur

\_\_\_\_\_ I concur with modifications

\_\_\_\_\_  
Manager –Southcentral Region ADNR

Date:

Attachment B  
Special Stipulations  
Kenai Peninsula Borough  
Salmon Creek Dredging Project  
ADL 230445

1. Authorized Officer (AO): The Authorized Officer for ADNR is the Regional Manager, Southcentral Region, Land Office. The Authorized Officer may designate a representative for administration for specific portions of this authorization.
2. By signing this, I have agreed that I have read the contract and will comply with the boundaries of the site. The buyer shall ensure that operations will not encroach upon those lands outside the material site/creek.
3. The buyer is responsible for the proper location within the boundaries of the site. The buyer shall ensure that operations will not encroach upon lands outside of the material site/creek authorization.
4. This contract authorizes activity only on lands under the management jurisdiction of the State of Alaska. The issuance of the contract does not preclude the buyer's need to acquire any necessary state, federal or local authorizations or permits as may be required and to be in compliance with these authorizations. Failure to do so shall be considered a breach of the terms and conditions of the contract and may be cause for contract revocation.
5. The buyer or their agent shall carry a copy of the executed contract while operating in the material site/creek. No materials will be removed without the issued contract in hand.
6. The personnel and representatives of the Alaska Department of Natural Resources (ADNR), the Division of Mining, Land and Water (DMLW) may inspect these activities at any time.
7. The DMLW retains the right to cancel or suspend operations under any sale for reasons of safety, disputes between operators, or at any other time it should be in the State's best interest to do so. ADNR retains the right of use and of ingress to and egress from portions of the material site/creek.
8. The use and storage of hazardous substances and explosive material by the contractor a contractor must be in accordance with existing federal, state, and local laws, regulations and ordinances.
9. All waste generated during operation and termination activities under this authorization shall be removed or otherwise disposed of as required by state and federal law. No waste shall be deposited or buried on the authorized site of this contract. Waste in the paragraph means all discarded matter, including, but not limited to, human waste, trash, garbage, refuse, litter, oil drums, petroleum products, ashes, scrap steel or used culverts and discarded equipment.



10. Sorbent material in sufficient quantity to handle operational spills must be on site at all times for use in the event of a spill. All petroleum, oil and lubricants, (POL) (e.g. motor oil and fuel) will not be stored within 100 feet of water bodies and must be located within double walled tanks or lined bermed areas designed to contain at least 110 percent of the total amount of POL stored. Oil and fuel shall be cleaned up immediately and contaminated ice, snow, or earth material shall be disposed of as required by the Alaska Department of Environmental Conservation regulations. Failure to carry out this stipulation may lead to contract suspension.
11. Disposal of grey or black water waste into the ground surface or nearby water source from any operation associated with authorization is specifically prohibited.
12. Vegetative waste and materials may not be deposited into any stream or creek or other water area. Locations and improvements necessary for stream crossing for haul roads must be preapproved in advance by the seller.
13. Resource extraction activities to be conducted shall minimize accelerated shoreline erosion causing adverse impacts to shore line processes. Extraction shall retain existing vegetative coverage in erosion-prone areas to the greatest extent feasible and prudent.
14. The buyer shall conduct all operations in a manner which will prevent unwarranted erosion. Any such erosion shall be repaired in a manner satisfactory to ADNR at the buyer's expense.
15. An AFD&G habitat permit shall be obtained prior to beginning excavation activities. Excavation depths will be restricted to the depth as permitted by the ADFG Habitat Management and Permitting Office within lands below the OHW of Salmon Creek.
16. Historic and archeological objects are part of Alaska's cultural heritage and are protected under AS 41.35. If in connection with activities authorized under this material contract, the buyer, its officers, agents, employees, contractors, subcontractors, or their personnel encounter any paleontological, archeological, or historic sites or artifacts, the buyer shall suspend all field activities on the effected portion of the parcel, and shall immediately notify the State historic Preservation Officer (SHPO) at 269-8721. The buyer shall not resume field activities within the affection portion of the site until authorization is obtained from SHPO.
17. The buyer shall administer on-site operations of this material source and oversee all site activities. The KPB will require its contractors to operate within the guidelines outlined in the development guidelines, mining plans and /or reclamation plans as well as any modification or additions to these plans that were submitted with the application for approval.
18. Bonding and insurance will not be required of the buyer for this contract. However, the buyer must require bonding of its contractor(s) and the bond shall apply to all activities associated with the development and operation of this material site authorized by this contract with ADNR as a named party. The bond is intended to recover any expenses ADNR may incur if the site requires clean up /reclamation. The buyer shall require its contractor(s) to provide confirmation of insurance for all activities authorized by this contract. Copies of confirmation of insurance and bonding will be provided to ADNR, by the KPB within 120 days from the date that KPB awards its contract to its successful bidder.

19. ADNR/DMLW may conduct an annual review at the end of each extraction season to evaluate new development/mining/reclamation information, and tally the amount of material removed. The DMLW reserves the right to modify the contract as new information becomes available.
20. The buyer is fully responsible for the costs of cleanup and full restoration of the site. The extraction area will be cleaned of all solid waste and vegetative debris, to the satisfaction of the seller upon termination of this contract. No off-site generated materials will be brought on-site, including organics, vegetation debris, non-native vegetation or other waste. Reclamation will be implemented as stated in the contract mining and reclamation plan.
- 21. Storage and payments of material:** The material removed from flood prone areas of Salmon Creek will be stored on borough land or state land, with no payment required at the time of removal from the flood zone. When the borough or the City of Seward uses any of the stored materials, the base rate of .50 per cubic yard is due to the State of Alaska. The volume and location of the stored material must be reported to the ADNR on an annual basis, no later than December 31<sup>st</sup> of each contract year.
- 22. Other buyers:** The materials stored remain the property of the State of Alaska, until purchased by the KPB. The material may not be sold by the KPB to private or public buyers.

If other buyers from private industry or other public agencies would like to purchase the material, the ADNR would accept an application to issue a material sale contract to the third party buyer.

The Borough is responsible for prohibiting public access to the storage, and to eliminate any theft or unauthorized removal of the state owned material.

23. Annual site development/completion report shall be submitted annually by December 31 of each year. The report shall consist of a series of ground level photographs and a statement confirming:
  - a) Volume of materials extracted
  - b) Location of stored materials
  - c) Payment, if any due
  - d) Compliance with stipulations requiring the removal of personal property and the restoration/reclamation of the area, and
  - e) Photographs accompanying the report accurately depicting 1) the site before extraction, 2) the site during operation.

PUBLIC NOTICE for ADL 230445:

In accordance with the provisions of AS 38.05.945(b), agency review, public notice seeing comments on this preliminary decision will be published in the Anchorage Daily News and the Seward Phoenix Log. Notice will also be given to the City of Seward, Kenai Peninsula Borough, Chugach Alaska Association, and other affected parties. In addition, the Seward and Moose Pass post offices will be requested to post the notice per AS 38.05.945 (b) (2) and the notice will be available on the internet at the Alaska Online Public Notice System website, which can be accessed at [www.state.ak.us](http://www.state.ak.us) ( click on :Notices” at the top of the page).

The public is invited to comment on this preliminary decision. Comments must be received in writing by the ADNDR Division of Mining, Land, and Water, Southcentral Region Office by mail at 550 W. 7<sup>th</sup> Avenue, Suite 900 C, Anchorage AK 99501, by fax 907-269-8913, or by electronic mail to [christina.nahorney@alaska.gov](mailto:christina.nahorney@alaska.gov), by \_\_\_\_\_ in order to ensure consideration. Please include your mailing address and telephone contact. In order to establish appeal rights regarding this decision, you are required by law to meaningfully participate in the decision process by commenting on the decision in writing, prior to the comment deadline. Following the deadline, all timely written comments will be considered, and the DMLW may modify this decision based on public comments received.

If DMLW determines that public comments in response to this notice indicate the need for significant changes to the decision, additional public notice will be given. If no significant changes are required, the preliminary decision, after any necessary minor changes, will be issued as a final decision. A copy of the final decision, along with instructions on filing an appeal, will be sent to all persons who comment on the preliminary decision. Persons who do not submit written comments during the comment period will have no legal right to appeal the final decision.

Attachment: Parcel Maps

Section AS 38.05.872 is amended to read:

**Section 38.05.872. Disposition of state land and resources for flood control projects or as mitigation of flooding.** (a) ~~The division of land commissioner may make conveyances of title or other interests in state land, provide for exchange of land, or make other arrangements with respect to state land, as necessary to meet federally established requirements of flood control projects authorized inside the state by the United States before or after June 6, 1971.~~

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(b) The commissioner may convey material at less than fair market value to municipalities or other state and federal agencies and make other arrangements with respect to land and materials as mitigation of a flooding area consistent with a site specific flood mitigation plan approved by the commissioner to be fair and proper and in the best interests of the public.

*(All else should be under regulation)*

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**11AAC 76.010. Applicability.** This chapter covers methods disposing materials for the purpose of mitigating flooding. This is to be used where there is an annual or frequent flooding events resulting in an over accumulation of deposition materials causing or worsening flooding impacts.

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**11AAC 76.020 Disposal Process.** (a) ~~The commissioner, in consultation with the commissioner of the department of fish and game if anadromous waters are involved, and at the request of an affected municipal government, if within a municipality, may make a written determination under AS 38.05.035(e) that it is in the state's best interest to approve a site specific flood mitigation plan prepared by the municipality to address the disposition of accumulating material on state owned land deposited as a result of annual or frequent flooding events. The affected area, if within a municipality, must be located within an established Flood Service Area of a municipality and the accumulation of material poses a continuing threat to public safety and protection of property. In areas outside of a municipality, the commissioner may approve a site specific flood mitigation plan prepared by state or federal agencies to address the same concerns on state land.~~

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(b) ~~Classification or reclassification of state land under AS 38.05.300 of the affected area is not necessary. The commissioner shall meet the requirements of AS38.05.945 for public notice. The commissioner will determine if a public hearing is necessary to establish facts on which to base the decision.~~

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(b) The disposal decision will have a maximum duration of 5 years.

(c) ~~The commissioner will only consider the use of this section upon evidence that the municipality has taken steps to prevent further development in the flooding area that is contributing to the continued threat to public safety and protection of property.~~

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11AAC 76.030 Application. A municipality or state or federal agency wishing to utilize the authorities under this chapter may submit an application on a department approved application form at the regional office of the Division of Mining, Land and Water nearest the project location. The applicant must submit a separate application for each project area. The project area may include multiple drainages with one flood service area. The application fee, if any, prescribed by 11 AAC 05.010 must accompany the application. The application must contain the project are description and a site specific flood mitigation plan proposal.

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11AAC 76.040 Site Specific Flood Mitigation Plan Requirements. (a) The site specific flood mitigation plan shall address the following as a minimum

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(1) the hydraulics of the water body or bodies involved including the deposition of material;

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(2) estimated quantities of annual deposition of materials;

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(3) ownership of the material to be removed;

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(4) potential public safety and protection concerns that are being addressed by the plan;

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(5) plan for and oversight of material removal;

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(6) location and estimated quantities of material to be removed;

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(7) the intended use of any materials removed, inclusive of storage locations if necessary;

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(8) intended sources of funding for material removal;

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(9) the duration of the expected project;

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(10) any agreements necessary to implement the plan; and

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(11) the effect of the proposed action on navigability of the water body.

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(b) The site specific mitigation plan shall not replace the flood mitigation plans or all hazard plans approved by the Office of Homeland Security, but may be used to augment those plans.

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11AAC 76.050 Material Pricing. (a) The commissioner, in implementing a site specific flood mitigation plan, shall make a written finding under AS 38.05.035(e) that may require the disposal of material at less than estimated fair market value, disposal of material for public and charitable use at no cost or at less than estimated fair market value, or other arrangements that may include the removal and use of the material through cooperative agreement or contract with another state agency, a federal agency, the municipality, a non-profit organization, or a commercial operator or any combination of these. When considering whether to dispose of material at less than estimated fair market value, the commissioner will consider the intended use of the material to be removed, giving priority of discount to uses that will be used directly for flood control structures outside of the ordinary high water line, for public projects, and where there is no market or potential use of the material. The commissioner's written finding shall address any impact of disposal of the material on local commercial material businesses.

(b) Disposal of material under this section does not require an appraisal of fair market value unless determined in the commissioner's finding that it is necessary.

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**11AAC 76.050 General Provisions.** (a) Nothing in this chapter shall negate the provisions of AS 26.23.020 during emergency declarations. (b) Nothing in this section obviates the need for the operating entity removing material to obtain necessary authorizations from other agencies.

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**From:** [Mahalak, Daniel](#)  
**To:** [Morgan, Shellie](#);  
**Subject:** FW: Salmon Creek Navigability and Errors  
**Date:** Monday, February 22, 2010 9:57:52 AM

---

Here is the one missing admin document from the Prelim Decision doc.

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**From:** Mahalak, Daniel  
**Sent:** Monday, February 08, 2010 2:42 PM  
**To:** Tena Morgan; Christina Stauffer; randy stauffer; bill williamson; terry Federed; matt hall; bob white; Walter Sedlik  
**Subject:** FW: Salmon Creek Navigability and Errors

Here is the memo we did not have as listed in the admin docs of the prelim material sale contract for the state gravel

Pay close attention the the pink paragraph as it includes additional waters that may be subject to state assertion of ownership

---

**From:** Ogan, William S (DNR)  
**Sent:** Friday, April 17, 2009 3:14 PM  
**To:** Nahorney, Christina B (DNR)  
**Cc:** Cox, Clark A (DNR); Menefee, Wyn (DNR)  
**Subject:** Salmon Creek Navigability and Errors

[Chris,](#)

Thanks for meeting with me to discuss Salmon Creek near the Seward area. I have expedited this memo due to the fact that this issue is out for public comment and a decision is pending. This is not a formal Navigability Determination, but rather a preliminary determination to expedite a pending decision and protect the public safety and private property in a flood prone area. I have the delegated authority to make a navigability determination. I will be formally responding to the inquiry by KPB and writing a determination with the proper delegated authority. The DNR Navigability Memo dated June 19, 2007 lacks that proper signatory authority.

I am in receipt of a letter dated April 7, 2009 from Mayor David Carey of the KPB. He advised me that our 2006 navigability determination on Salmon Creek was in error because of the physical description of the creek being derived from Bear Lake Glacier. The reach of the river from Bear Lake Glacier to it's confluence with what is known locally as Salmon Creek is referred locally as Glacier or Kwechak Creek.

This local description is in error.

For the purposes of our navigability determination, we will consider the creek known locally and referred to by KPB as Glacier and Kwechak Creek, to be the creek described as Salmon Creek in the USGS Professional Paper 567, Dictionary of Alaska Place Names, Orth, Donald J., 1971 with Minor Revisions, Page 830 and depicted on the USGS maps. These reaches will include the reaches of the creek marked KC 1 thru 12 and SC 8 thru 21 on the KPB Seward Vicinity Gravel Mitigation Units Dated June 5, 2008. The Dictionary of Alaska Place Names, describes Salmon Creek as: stream, heads at the terminus of Bear Lake Glacier, flows WSW 7 mi. to Resurrection River, 2 mi NE of Seward, Chugach Mts.; 60 degrees 08' N, 149 degrees 24' W.

The reaches of the creek marked LC 5 and SC 1 thru SC 7 are actually Lost Creek. Lost Creek is described by the KPB the locals and the DOT sign at the Seward Highway Bridge as Salmon Creek. However, the State concurs with the Department of Interior that Lost Creek is the creek described in the Dictionary of Alaska Place Names on Page 597 as: stream, on Kenai Penin., heads at Lost Lake flows S 6.5 mi. to Salmon Creek 4.5 mi NE of Seward, Chugach Mts. 60 degrees 15' 45" N, 136 degrees 25' 00" W; (map 9).

Incorrect "local" creek names are a potential public safety issue in a river with the history of flooding and should be corrected with the DOT, local emergency responders and the KPB records. DOT should be notified to correctly post signs with the right names on the rivers.

After a field inspection last Monday and a review of PAAD's previous Navigability memo dated March 20, 2006, by Adam McCullough, I see no reason to revoke the previous memo up to and including the reaches of the creek at the confluence of what is identified in the Alaska Place Names as Salmon Creek and Lost Creek (SC7) . The coordinates of this aforementioned confluence are approximately 149°23'43.464" W 60°10'31.711" N.

Further research is needed on the reaches of Salmon Creek above this confluence to determine the depth, width, gradient for susceptibility to navigation. I have requested Dan Mahalak of the KPB to look at where the upper reaches of Salmon Creek exceed a 50 feet per mile gradient.

Additionally, interconnecting sloughs are also considered State property, regardless of the susceptibility to floating a watercraft on them. The exception is an avulsive event. Please consult with Brian Raymes for further riparian boundary issues.



The reaches of Lost Creek as described by Alaska Place Names and known locally as Salmon Creek below the confluence of Lost and Grouse Creek is still considered to be non-navigable to the confluence with Salmon Creek at 149. However a review of satellite photos suggests further research is needed as the creek may be susceptible to navigation by the Ahtna standard. I would suggest holding off on issuing leases on this stretch of Lost Creek. If this area is a priority for work this summer, let me know and I will prioritize additional efforts to make a determination.

The standard of navigability-in-fact and susceptibility to navigation is: State of Alaska v. Ahtna, Inc 891 F2d 1401 (9th Cir. 1989). Essentially, if the river or creek was used or is susceptible to use, by inflatable rafts capable of a load capacity of approximately 1000 lbs., and, given that the river's characteristics remained unchanged since statehood, it is considered navigable for travel, trade and commerce, and thus the title to the riverbed transferred to the State upon Statehood. The ability to navigate does not have to be without difficulty. While Salmon Creek is ambulatory, it appears to be navigable in fact, in the described areas, notwithstanding it's ambulatory nature.

Please let us know in the future if we can assist with navigability issues. While we generally need more time to make these determinations, the health safety issues drove my fast response on this one. If anything looks uncertain, it is best to confirm navigability status before leasing mineral extractions in riverbeds.

Scott Ogan

**Donald E. Gilman River Center  
Flood Hazard Notifications  
Summary Report to Floodplain Task Force**

**Background**

The Donald E. Gilman River Center has been performing outreach to new waterfront property owners since April, 2008. This includes mailing an introductory letter, brochure explaining the river center, and the center's On The River book. The floodplain task force discussed a similar program for flood hazard areas in the Seward/Bear Creek Flood Service Area to warn homeowners of the flood risk.

**Process**

The assessing department is able to report on ownership changes that occur within the Kenai Peninsula Borough. Assessing was provided a list of parcels within this area and was able to build a custom report to include only flood hazard areas. The two reports generated each month report on changes in the FIRM mapped area, and the SMFDA mapped area.

A flood hazard notice is sent to each property owner of record notifying them of the hazard and permit requirements. There are two different notices sent depending if they are in a SMFDA only area or a FIRM or FIRM and SMFDA area.

Records are kept of the contact with the parcel file for documentation.

**Parcel Count**

Month	FIRM KPB	FIRM SBCFSA	SMFDA	
June 2009	4	2	5	
July 2009	4	2	4	
August 2009	5	1	7	
September 2009	5	0	3	
October 2009	2	0	2	
November 2009	6	2	3	
December 2009	2	0	0	
January 2010	0	0	0	
<b>Totals</b>	<b>28</b>	<b>7</b>	<b>24</b>	<b>59</b>

## SAMPLE LETTER – FIRM

Date

<Owner>

<Address>

<C S Z>

**Subject: Flood Hazard Notice**

Parcel: <Parcel ID>

Description: <Legal Description>

Dear <Owner>:

Congratulations on the purchase of your new property! We are writing to provide some information about certain requirements that affect your property. Your property is within a flood hazard area as designated by the **Federal Emergency Management Agency (FEMA)**.

The Kenai Peninsula Borough (KPB) participates in the National Flood Insurance Program (NFIP). As part of this program, the borough requires certain standards when developing in flood prone areas. Although the floodplain program doesn't prohibit development in flood areas, it requires permits and provides measures to reduce flood damage and protect life and property.

Please be advised that under the Kenai Peninsula Borough Code of Ordinance Chapter 21.06, Floodplain Management, any development, including buildings, roads, dredging, filling, excavating or substantial structural improvements within the designated flood hazard area, will *require a KPB floodplain development permit*.

The Kenai River Center is a multi-agency permitting and educational center located in Soldotna. Resources are available to assist homeowners with projects that will reduce flood losses and damage, obtain permits, and provide general guidance.

Your property is also located in the Seward/Bear Creek Flood Service Area, a service area of the KPB that provides flood planning and mitigation services to the Seward/Bear Creek community. The Board is tasked to determine flood planning needs and to advise and facilitate flood hazard reduction measures. The Board meets on a regular schedule and the public is invited to participate. For more information, please visit [www.sewardbearcreekfloodservicearea.org](http://www.sewardbearcreekfloodservicearea.org)

The KPB Seward Annex can assist homeowners by reviewing maps, program information, and providing forms and publications. The Seward Office is located in the Seaview Plaza, 302 Railway Ave., Room 122 in Seward. Office hours are 10am – 2pm Monday – Friday.

For additional information on development standards and permit requirements, please contact Jane Gabler at the Kenai River Center at 1-800-478-4441 ext. 2464 or visit our website: [www.kenairivercenter.org](http://www.kenairivercenter.org). To request a determination of the flood area on your property, please return the enclosed form.

Sincerely,

Staff of the Donald E. Gilman River Center  
[www.KenaiRiverCenter.org](http://www.KenaiRiverCenter.org)

## SAMPLE LETTER – FIRM

Date

<Owner>

<Address>

<C S Z>

**Subject: Flood Hazard Notice**

Parcel: <Parcel ID>

Description: <Legal Description>

Dear <Owner>:

Congratulations on the purchase of your new property! We are writing to provide some information about certain requirements that affect your property. Your property is within a flood hazard area as designated by the Kenai Peninsula Borough (KPB). This district is called the **Seward Mapped Flood Data Area (SMFDA)**.

On March 24, 2009 the Borough assembly enacted Ordinance 2009-09, which created a flood hazard district within the Seward-Bear Creek Flood Service Area that includes areas that were flooded in the 1986, 1995, and 2006 flood events. Certain work in this area requires a development permit and adherence to certain standards designed to protect life and property and reduce flood damage in the area.

A permit is required for new construction and substantial improvements to primary structures, and work done in the active physical bank full channel of a stream, river, or creek.

The Kenai River Center is a multi-agency permitting and educational center located in Soldotna. Resources are available to assist homeowners with projects that will reduce flood losses and damage, obtain permits, and provide general guidance.

Your property is also located in the Seward/Bear Creek Flood Service Area, a service area of the KPB that provides flood planning and mitigation services to the Seward/Bear Creek community. The Board is tasked to determine flood planning needs and to advise and facilitate flood hazard reduction measures. The Board meets on a regular schedule and the public is invited to participate. For more information, please visit [www.sewardbearcreekfloodservicearea.org](http://www.sewardbearcreekfloodservicearea.org)

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Sincerely,

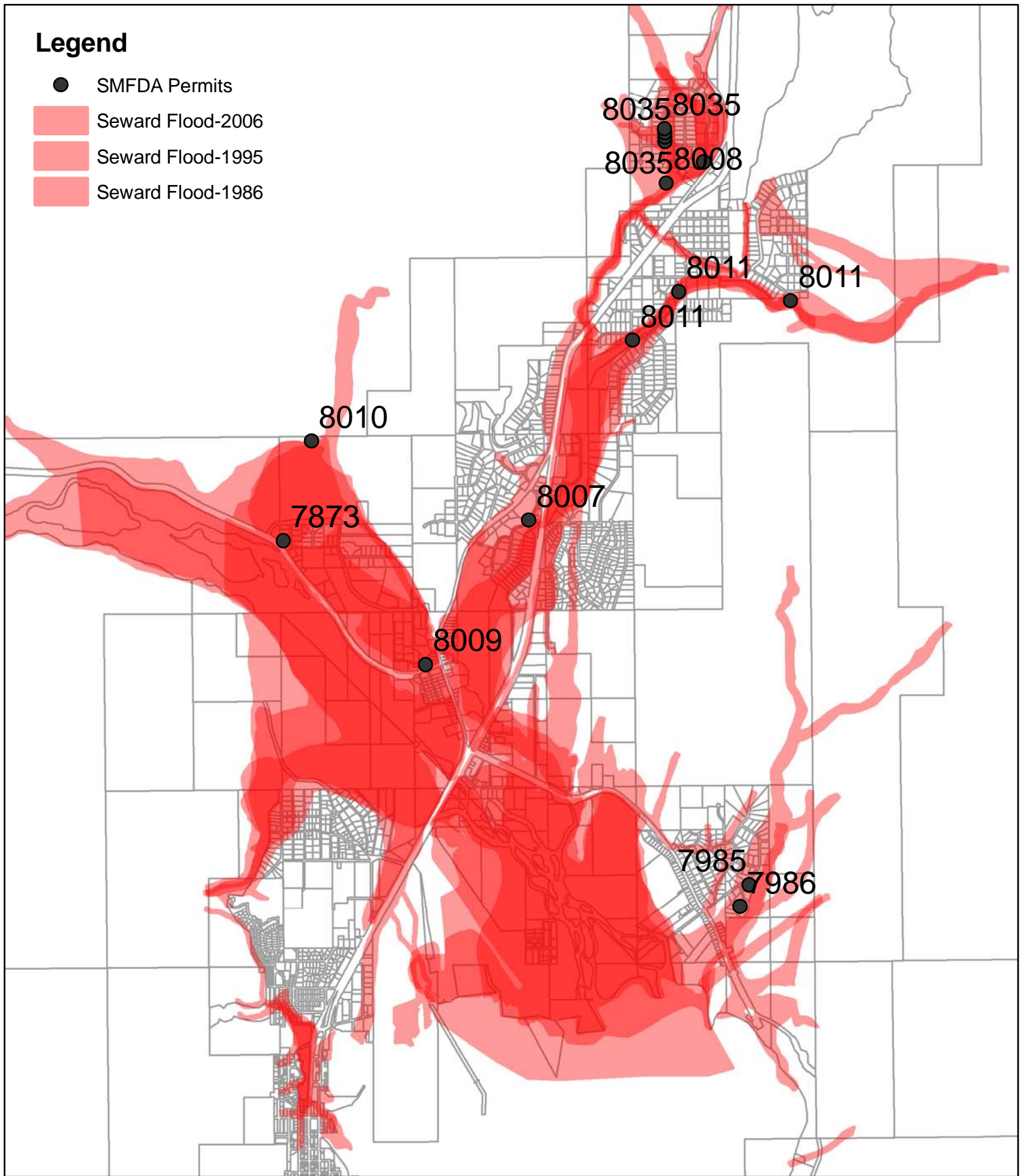
Staff of the Kenai River Center  
[www.KenaiRiverCenter.org](http://www.KenaiRiverCenter.org)

**Donald E. Gilman River Center  
Seward Mapped Flood Data Area Ord. 09-09  
Permit Summary**

KRC# 7856	05/27/09	145-231-39	Permit Pending
Placement of 28' x 35' Residential Structure			
KRC# 7873	06/01/09	144-220-30	Permit Issued
Placement of 24' x 34' Residential Structure			
KRC# 7985	09/05/09	145-231-52	Permit Issued
Placement of 30' x 20' Residential Structure			
KRC# 7986	08/05/09	Nashwoods Phase 5	Permit Not Required
Subdivision Road Construction			
KRC# 8007	08/17/09	Nautical Ave	Permit Not Required
Road Repair after High Water Event			
KRC# 8008	08/17/09	Sometimes Creek	Permit Not Required
Abutment Repair			
KRC# 8009	08/17/09	Old Exit Glacier Rd.	Permit Not Required
Road Repair after High Water Event			
KRC# 8010	08/17/09	Box Canyon	Permit Issued
Material Removal from Active Channel			
KRC# 8011	08/17/09	Kwechak Creek	Permit Issued
Material Removal from Active Channel – 4 areas			
KRC# 8031	08/27/09	125-370-13	Permit Issued
Material Removal from Active Channel (Lost Creek)			
KRC# 8035	08/28/09	125-370-72 thru 75	Permit Issued
Material Removal from Active Channel (Sometimes Creek)			

# Legend

- SMFDA Permits
- Seward Flood-2006
- Seward Flood-1995
- Seward Flood-1986



The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.

0 1,850 3,700 7,400 Feet

## Seward Mapped Flood Data Area Permits Issued



Printed on Feb 24, 2010

## OLD MILL SUBDIVISION VOLUNTARY BUYOUT PROGRAM

### Project Timeline Estimates:

Application Package to Old Mill Subdivision Land Owners:	November 5, 2009
Public Notices:	November 2009
Open House Public Meeting @ Sealife Center	December 4, 2009
<b>Application Postmark Deadline</b>	<b>January 15, 2010</b>
Ranking of Applications and Notice to Highest Ranked (~Top 6)	February 2010
Due Diligence and Appraisals (Highest Ranked Only)	Feb-July 2010
<b>Offers to Purchase Based on Appraised Value</b>	<b>July-Sept 2010</b>
Assembly Action Approving Purchases	Aug-Nov 2010
<b>Close Property Purchases</b>	<b>Sept- Dec 2010</b>

**NOTE: A second group of properties may begin the due diligence process beginning approximately September 2010 based on availability of funding and outcome**

*This timeline is a preliminary and subject to change.*



## **KENAI PENINSULA BOROUGH**

Planning Department • Land Management Division  
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](http://www.borough.kenai.ak.us)

**DAVID R. CAREY**  
**BOROUGH MAYOR**

### **MEMORANDUM**

**TO:** Sue McClure, Chair  
Flood Plain Task Force

**FROM:** Marcus A. Mueller, Land Management Officer

**DATE:** February 22, 2010

**SUBJECT:** Old Mill Subdivision Buyout Program Update

The Kenai Peninsula Borough in partnership with the Natural Resources Conservation Service (NRCS) and the State of Alaska Division of Homeland Security and Emergency Management has undertaken a voluntary buyout program to buy Lost Creek floodplain properties within the Old Mill Subdivision through NRCS's Emergency Watershed Protection (EWP) program.

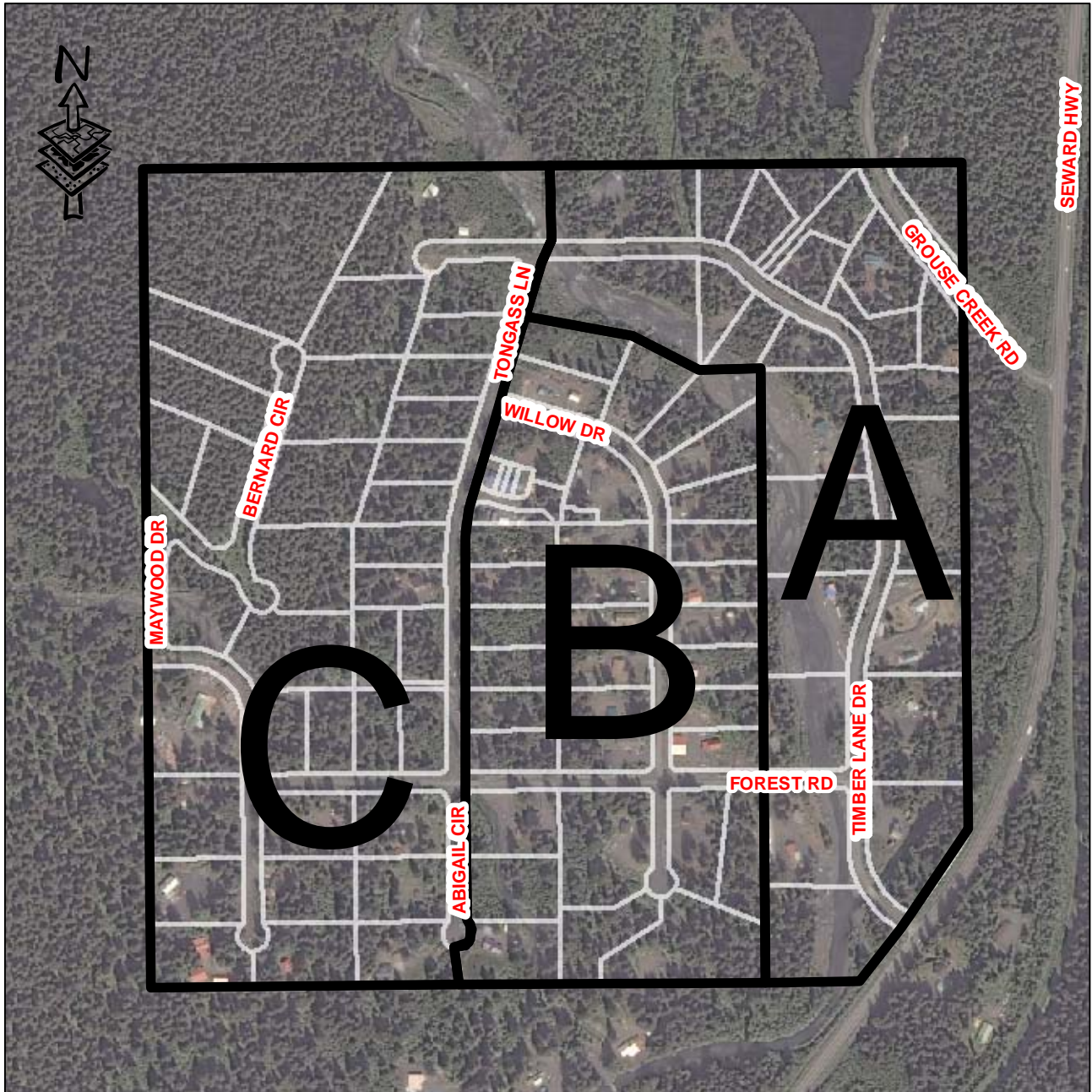
Application and informational materials were sent to all property owners within Old Mill Subdivision and a public meeting was held in December 2009. The Application period closed on January 15, 2010. Applications were received on 35 of the 75 privately owned properties within the subdivision, including both residential and vacant properties.

We are currently working with NRCS in ranking the applications and expect to release results by letter to each applicant in the upcoming weeks. The highest ranked applications, based on available funding, will proceed in the process. Attached is an estimated timeline which indicates the steps to be taken.

As the real substance of this project is yet to take place, it is difficult to gauge success or satisfaction with this voluntary pilot program. It does appear from the number of application received that there is some level of local interest in the project.



# PRIORITY DESIGNATIONS OLD MILL SUBDIVISION, SEWARD, ALASKA



0 200 400 800 Feet

MAM 11/03/09

**Seward Area  
Wetlands Functional Assessment Project  
Draft Project Summary  
1/15/2010**

**Project Summary:**

Phase 1: Seward Area Wetlands Functional Assessment Project: The Seward Watershed Partnership, including the Seward Bear Creek Flood Service Area (SBCFSA) the Kenai Peninsula Borough (KPB), the Resurrection Bay Conservation Alliance (RBCA), and The Kenai Watershed Forum (KWF), proposes to utilize state-of-the-art aerial mapping and GIS technology, in conjunction with the knowledge and skills of local and regional wetlands, hydrology and stream experts, to complete a functional analysis of wetlands within the SBCFSA jurisdiction. Additional specialists from other Partnership agencies will be members of the Technical Advisory Committee, which will provide collaborative project guidance. The final product would be a Wetlands Management Plan that would clearly identify wetlands functions as well as recommended management criteria. The Wetlands Management Plan would also develop a prioritization for the higher functioning wetlands for use by regional land managers and programs purchasing critical habitats to remain in trust for future generations. Since salmon are a critical component of the local economy, anadromous stream habitat functional analysis would be included as a component of this project. The KWF and RBCA would complete anadromous stream surveys and provide project coordination. The KPB interactive web-maps will also be updated to include this wetlands and salmon habitat information.

The Seward Area Wetlands Functional Assessment Project is proposed as a 22-month project, with a total cost of \$113,080. The SBCFSA and the KPB is requesting \$83,060 in federal funds for this project and would contribute \$30,020 in matching funds (36% of federal funds). The project period is July 1, 2010 through April 30, 2012. (Note: dollar values a very preliminary)

The information gained in Phase 1 would be used to develop additional new management tools, including the SBCFSA Comprehensive Watershed Master Plan, and Phase 2 of this project.

Phase 2: Seward Area Suitability Mapping Project, with channel migration zone analysis and recommended flood zone building methods; July 2012 to March 2014. The Suitability Mapping Project would produce approximately 30 GIS mapping layers to address land use criteria including wetlands, streams and habitat, wildlife corridors, as well as flood hazards and historic channel migration zones, among many others. Phase 2 would also develop recommended building criteria for areas affected by occasional flooding and would identify areas that can be developed with proper building techniques, areas that should not be developed and areas that should be reverted to a natural condition due to repeated flooding.

These projects would ensure that, as the human population increases in the Seward area, wise decisions are made in regard to development impacting wetlands and stream resources.

Several SBCFSA and KPB resolutions have been passed in support of this project. In April 2009, the SBCFSA passed a resolution making a commitment to develop a Comprehensive Watershed Master Plan. In June 2009, the Seward Floodplain Task Force, the SBCFSA, and the KPB Assembly passed resolutions supporting the completion of a Suitability Mapping project that

would include a historic channel migration zone analysis and development of recommended building methods for areas that receive occasional flooding (Phase 2). Other related work that will be incorporated into the SBCFSA Comprehensive Watershed Master Plan includes:

- Kenai Watershed Form completed detailed wetlands mapping for the area's non-federal lands in 2002 and 2003
- LIDAR mapping for the SBCFSA was completed in 2006 and 2009
- The 2009 Flood Task Force Panel and the KPB passed several resolutions that would inform prospective developers of flood dangers
- FEMA released draft maps for revised floodplain designations (final FEMA maps are scheduled for release by Fall 2010)
- The Natural Resources Conservation Service (NRCS) has developed the Old Mill Subdivision flood way property buy-out project (ongoing)
- In 2010, the NRCS will complete detailed soil surveys to build on existing data
- The SBCFSA is currently seeking funding for a detailed flood risk assessment
- The KPB is pursuing a study to provide access to KPB upland areas so that non-flood impacted lands are available
- The Kachemak Heritage Land Trust will utilize significant mitigation funds to protect critical salmon habitat in the Seward area

There is also a related project that has recently been initiated for the entire Kenai Peninsula. The Kenai Peninsula Wetlands/Watershed Functional Assessment Program has brought together a wide array of wetlands management professionals from state and federal agencies and several conservation groups. This program will methodically perform wetlands functional assessments across the peninsula. The peninsula-wide program will be focusing on the highly productive salmon rivers on the western side of the Kenai Peninsula. Although Seward area watersheds are not a high priority of the peninsula-wide project, it is important that the Seward Area Functional Wetlands Assessments be completed now so that this information is incorporated into the Suitability Mapping Project as well as the SBCFSA Comprehensive Watershed Master Plan. The Seward area project would be able utilize some of the work completed by the peninsula-wide program. Currently the peninsula-wide program is reviewing the assessment criteria to insure that all wetland related issues on the peninsula are considered. The Seward Area Wetlands Functional Assessment Project can save significant effort by utilizing this criteria as well as encouraging members of the peninsula wide program to take part in the Seward project.

### **Key Project Objectives:**

The Seward Area Wetlands Functional Assessment Project is planned as an 22-month project. The overall goal is to improve Seward area wetlands management within the SBCFSA jurisdiction. There are two primary objectives.

Objective 1: Review existing wetlands maps and complete ground-truth surveys to identify all wetlands functions (objective assessment) and values (objective assessment) within mapping units.

Objective 2: Produce a Wetlands Management Plan that would present the above information and would develop management recommendations.

Objective 3: Update KPB interactive web-maps with this new information.



Introduced by:	Long
Substitute Introduced:	02/17/09
O2009-09 (Long):	See Original for Prior History
Hearings:	02/17/09 and 03/24/09
Action:	Postponed Until 03/24/09
Date	03/24/09
Action:	Enacted as Amended
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2009-09  
(LONG) SUBSTITUTE**

**AN ORDINANCE CREATING A FLOOD HAZARD DISTRICT, OUTSIDE THE  
FLOOD INSURANCE RATE MAP AREA, WITHIN THE SEWARD-BEAR CREEK  
FLOOD SERVICE AREA TO INCLUDE THE 1986, 1995, AND 2006 KPB GIS MAPPED  
FLOOD DATA AREAS**

- WHEREAS,** flooding has occurred in the Seward-Bear Creek Flood Service Area (SBCFSA) repeatedly; and
- WHEREAS,** a federal disaster has been proclaimed within SBCFSA three times since 1986; and
- WHEREAS,** the Flood Insurance Rate Maps (FIRMs) are outdated and inaccurate; and
- WHEREAS,** the Federal Emergency Management Agency (FEMA) is in the process of preparing new FIRMs; and
- WHEREAS,** there have been millions of dollars in damage to private properties and public infrastructure caused by flooding events in the area; and
- WHEREAS,** flooding places the public health and safety at risk; and
- WHEREAS,** gravel deposits are steadily and rapidly increasing in SBCFSA streams, and the risk of flooding and related loss increases; and
- WHEREAS,** subdivision and development in SBCFSA has increased dramatically since 1996, increasing flood loss potential; and
- WHEREAS,** FEMA Disaster Assistance only provides a minimal amount of funding to repair damages to a home not covered by flood insurance to return it to a safe, sanitary, and functioning condition, but not to rebuild the home to current codes; and
- WHEREAS,** merely returning the structures to their preexisting condition results in potential for repeated flood damage and destruction to the same properties; and

**WHEREAS,** according to the 2005 KPB comprehensive plan, enforcement of floodplain requirements is primarily through voluntary compliance and assistance from mortgage companies since the borough does not require building permits or inspections; and

**WHEREAS,** the City of Seward has permitting regulations in place to assist with flood issues in the area of the SBCFSA within city limits; and

**WHEREAS,** KPB Chapter 21.06 contains the minimal regulations required by FEMA for floodplain management, and these regulations alone have not proved an effective tool for mitigating flood damage in the SBCFSA; and

**WHEREAS,** goal 6.7, objective 1, implementation action G of the comprehensive plan is to identify wetlands, floodplains, and erosion areas and minimize adverse impacts of flooding or erosion on neighboring properties; and

**WHEREAS,** goal 6.7, objective 2, of the comprehensive plan is to increase local participation in decisions regarding development in floodplains and wetlands; and

**WHEREAS,** goal 6.7, objective 3, implementation action A of the comprehensive plan is to improve the borough's floodplain ordinance; and

**WHEREAS,** a one year sunset clause is appropriate as FEMA is the process of developing new FIRM maps; and

**WHEREAS,** at its March 2, 2009, meeting, the SBCFSA board recommended enactment; and

**WHEREAS,** at its March 9, 2009, meeting, the Kenai Peninsula Borough Planning Commission recommended enactment by majority consent;

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

**SECTION 1.** That KPB 21.06.020 is hereby amended by adding the following definitions:

Q. “SMFDA” means the Seward Mapped Flood Data Area which includes the 1986, 1995, and 2006 KPB GIS mapped flood data area within the Seward-Bear Creek Flood Service Area outside the FIRM and city limits of Seward.

R. “Primary structure” means a dwelling, a building suitable for commercial use, or any structure which will be served by water or wastewater disposal systems or a fuel storage tank. This definition is applicable only in the SMFDA.

S. “Substantial Evidence” means evidence a reasonable mind might accept to support a conclusion.

- T. Minimum Flood Corridor means the active physical bank full channel of the stream, river or creek as measured at the seasonal high water flows.

**SECTION 2.** That KPB 21.06.030(B) is hereby amended as follows:

- B. Basis for establishing flood hazard areas. Flood hazard areas are identified as follows:
1. By the flood insurance rate maps with an effective date of May 19, 1981, revised on July 5, 1983 and December 6, 1999. The map panels numbered 020012-1350 and 1700 have been deleted and the areas depicted by these panels are not subject to the terms of this chapter. Excluding these panels, the flood insurance rate maps are adopted by reference and declared to be a part of this chapter. The flood insurance rate maps are on file at the planning department.
  2. The 1986, 1995, and 2006 KPB GIS mapped flood data area within the Seward-Bear Creek Flood Service Area (SMFDA) outside the city limits of Seward. A map showing this floodplain and flood data and a list of properties represented by this map shall be retained by the planning department and made available to the public. If any portion of a lot is included in the flood data mapped area, the entire lot shall be subject to the provisions of this chapter. Special provisions for development permits in the KPB mapped flood data area are set forth in KPB 21.06.045. Data available from other Federal, State of other sources shall be reviewed and reasonably utilized including but not limited to the following:
    - a. “Flood of October 1986 at Seward Alaska,” USGS Water-Resources Investigation Report 87-4278. Jones, S.H., and Zenone, Chester. (1988).
    - b. “Hydrologic Reconnaissance near Fourth of July Creek, Seward, Alaska.” USGS Water Resources Investigations 81-21. Nelson, G.L. (1981).

**SECTION 3.** That KPB 21.06.045 is hereby enacted as follows:

**21.06.045. KPB GIS mapped flood data area.**

- A. Base flood elevation in the SMFDA district. Based upon a digital elevation model provided by the borough base flood elevation in the SMFDA district is established by a licensed professional registered land surveyor or professional civil engineer at the highest point within the lot measured downslope from the specific construction site.
- B. Exemption from application of SMFDA district. A property owner may request an exemption for application of SMFDA to his proposed

development upon a showing by substantial evidence that his property was not inundated by flood waters in the 1986, 1995, or 2006 floods; adverse bank erosion has not occurred during the property owner's ownership, erosion can not be determined by analysis of KPB aerial photos beginning in 1986; the property is not a Corps of Engineers regulated wetland; or adjacent property owners concur there has been no adverse impact to their properties by flooding from the property of ownership making the request for SMFDA exemption. Staff shall verify whether the application for exemption meets the criteria and shall issue a written determination regarding the same. This determination may be appealed to the planning commission within 15 days of issuance.

C. Conditions. Only primary structures, substantial improvements to primary structures, and development in the minimum flood corridor in the SMFDA district require a development permit. The permits in the SMFDA district are subject to the following conditions:

1. Primary structures in the SMFDA district shall be a minimum of two feet above base flood elevation. Below-grade supports shall be at a two-to-one ratio as compared to the support above grade;
2. Foundations shall have an erosion resistant design; and
3. Where applicable, the standards for the permit is subject to the standards set forth in KPB 21.06.050; and
4. The permitted activity shall not increase the risk of flood damage to downstream or adjacent properties.

D. Currently active channels within the SMFDA district. All development in the SMFDA district in the minimum flood corridor within the Resurrection River watershed, Spruce and Sawmill Creeks, shall be subject to the permitting requirements of KPB 21.06.050(C).

E. If review of the permit application by staff indicates that the conditions set forth in KPB 21.06.045(C) cannot be met, staff shall deny the application. The applicant may apply for a permit from the planning commission by submitting a project-specific design under the waiver provisions of KPB 21.06.045(F).

F. Waivers. The variance procedure in KPB 21.06.060 only applies to permitting in the FIRM area. A project-specific design prepared by a licensed professional civil engineer may be submitted for consideration to the planning commission in lieu of meeting the conditions set forth in KPB 21.06.045(C). Based upon written findings of fact, the planning commission may grant or deny the permit and place conditions on the permit it grants in order that the risk of flood damage to downstream or adjacent property or



flood damage to public infrastructure will not be increased. The grant or denial of a permit may be appealed to the Board of Adjustment within 15 days of distribution of the planning commission's written decision.

**SECTION 4.** That this ordinance shall automatically expire on March 24, 2010 unless the assembly by ordinance alters or extends that date.

**SECTION 5.** That this ordinance is effective on the date of its enactment. The ordinance is not applicable to parcels where the "actual start of construction" has commenced as defined by KPB 21.06.020(M) prior to the date of enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 24TH DAY OF MARCH, 2009.**

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Milli Martin, Assembly President

ATTEST:

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Johni Blankenship, Borough Clerk

Yes: Fischer, Knopp, Long, Pierce, Smalley, Smith, Sprague, Superman, Martin

No: None

Absent: None

## KPB Ordinance / Resolution

The following Ordinance's and Resolutions were presented to the Kenai Peninsula Borough Assembly at the recommendation of the Flood Plain Task Force:

Ordinance 2009-29: Amending KPB 14.06.100 and KPB 14.06.170 to require an Engineering Analysis and Design for Road Construction in the Seward Mapped Flood Data Area and Flood Insurance Rate Map Area within the Seward-Bear Creek Flood Service Area - Enacted on June 16, 2009

Ordinance 2009-30: Establishing Criteria for Plat Notes and Providing a Flood-Prone Plat Note for the Seward Mapped Flood Data Area and Flood Insurance Rate Map Area - Enacted on June 16, 2009

Resolution 2009-044: Requesting that the State of Alaska Exempt Flood Mitigation Projects in the Seward Area from the Gravel Extraction Fee, as it Applies to all Flowing Waters into Resurrection Bay, in the Vicinity of Seward, Alaska - Adopted as Amended May 5, 2009

Resolution 2009-060: Waiving Fees Charged by the Kenai Peninsula Borough to the Seward-Bear Creek Flood Service Area for Riprap Removal from the Seward Rock Quarry to be used for Flood Mitigation Projects - Adopted on July 7, 2009

Resolution 2009-061: Urging the State of Alaska Recommend that Salmon Creek, Fourth of July Creek and Sawmill Creek, all Located in the Vicinity of Seward, Alaska be Deemed Non-Navigable - Adopted on July 7, 2009

Resolution 2009-070: Authorizing the Administration to Pursue Various Solutions Including Land Purchase, Sale, and Trade in Order to Facilitate Moving citizens within the Seward-Bear Creek Flood Service Area From Flood Hazard Areas - Adopted on August 4, 2009

Resolution 2009-071: Authorizing the Administration and the Seward-Bear Creek Flood Service Area Board to Complete a Watershed Master Plan Including Channel Migration Zone (CMZ) Analysis and a Suitability Mapping Project within the Seward-Bear Creek Flood Service Area - Adopted on August 4, 2009

### **Other Procedures recommended by the Flood Plain Task Force**

New Procedure Introduced and Implemented between the Assessing Department & the Kenai River Center (Donald E. Gilman River Center as of August 4, 2009)

A report is generated monthly that lists any transfers of ownership that had taken place in a mapped flood area. Notices are then sent to the new property owner.

Introduced by: Long, Mayor at the Request of the  
Flood Plain Task Force  
Date: 05/19/09  
Hearing: 06/16/09  
Action: Enacted as Amended  
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2009-29**

**AN ORDINANCE AMENDING KPB 14.06.100 AND KPB 14.06.170 TO REQUIRE AN  
ENGINEERING ANALYSIS AND DESIGN FOR ROAD CONSTRUCTION IN THE  
SEWARD MAPPED FLOOD DATA AREA AND FLOOD INSURANCE RATE MAP  
AREA WITHIN THE SEWARD-BEAR CREEK FLOOD SERVICE AREA**

- WHEREAS**, there have been numerous road failures in the road service area in the Seward vicinity; and
- WHEREAS**, Ordinance 2009-09 (Substitute) adopted the Seward Mapped Flood Data Area designating the areas subject to the 1985, 1995, and 2006 floods as flood hazard areas; and
- WHEREAS**, Section 2.11.1 of Chapter 2, Floods, of the All Hazard Mitigation Plan is to reduce susceptibility to damage and disruption by avoiding hazardous, uneconomic, and unwise development in known hazard areas; and
- WHEREAS**, Strategy 5 in Chapter 2, Floods, of the All Hazard Mitigation Plan includes a recommendation to amend KPB Chapter 14.06 to include drainage plans for roads; and
- WHEREAS**, requiring engineer designs for roads within flood hazard areas will reduce road failure; and
- WHEREAS**, road failures are expensive to repair, inconvenience the public and emergency services, and threaten life, health, safety, and property; and
- WHEREAS**, at its meeting of April 29, 2009, the Flood Plain Task Force recommended enactment; and
- WHEREAS**, at its meeting of May 12, 2009, the Kenai Peninsula Borough Road Service Area recommended enactment by unanimous consent; and
- WHEREAS**, at its meeting of May 26, 2009, the Kenai Peninsula Borough Planning Commission recommended enactment by unanimous consent; and
- WHEREAS**, at its meeting of June 1, 2009, the Seward-Bear Creek Flood Service Area Board recommended enactment of this ordinance;

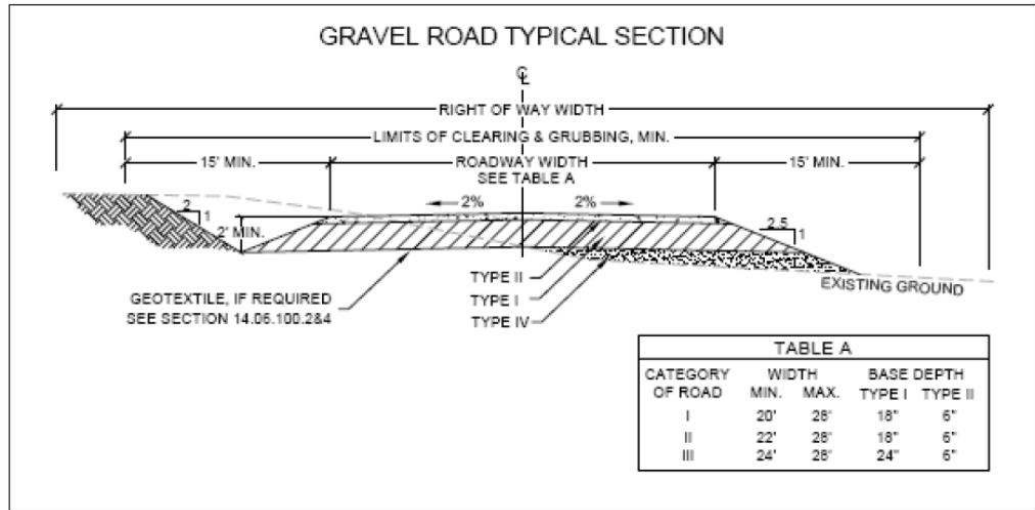
**NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:**

**SECTION 1.** That KPB 14.06.100 is hereby amended as follows:

**14.06.100. Road construction standards—Construction standards for maintenance certification.**

- A. Typical section. Gravel roads shall be constructed in accordance with the Gravel Road Typical Section drawing and associated tables. Additional requirements are:
1. Roads must be contiguous with an existing road system maintained by the borough or other governmental agency. All roads must be on a dedicated right-of-way or a section-line easement and must be built along the right-of-way centerline. Minimum right-of-way width shall be 60 feet.
  2. All organic material shall be stripped and removed to a minimum depth of four feet below finished grade. If geotextile is utilized over organics, then the depth of embankment must be two feet minimum or greater as required for stability for Category I and II roads, and 30 inches or greater for Category III roads.
  3. Extraction of material between the ditch lines for any purpose other than excavation to subgrade is prohibited.
  4. Geotextile shall be placed over all subgrade soils consisting of silts or clays with a frost classification of F4 (U.S. Corps of Engineers). Geotextile shall be provided to cover maximum width of embankment.
  5. The roadway embankment shall be placed in lifts of 12 inches or less and compacted to not less than 92 percent of maximum density. Maximum density shall be determined by AASHTO T 180, Method D.
  6. In place usable excavation material within the outside 12 feet of 60-foot or greater rights-of-way meeting the specifications of the required embankment material may be utilized in lieu of borrow. Backfill must be placed in lifts and equipment tracked. No organic debris may be buried within the right-of-way.
  7. The RSA requires a 2.5:1 fore slope in ditchlines. Fill areas over six feet must be an engineered design, preapproved by the RSA director.

8. Roads constructed in level terrain susceptible to ponding require the applicant to submit to the RSA director for approval drainage designs which may include approved drainage galleries or elevated road sections.
- B. Roads must pass a proof roll test at the RSA director's discretion if expected or intended traffic volume or use of the road has not materialized prior to release of the applicant's security as provided in KPB 14.06.140. The RSA director or his staff shall make written findings stating the reason(s) a proof roll test is required. The applicant must provide the means to conduct a proof roll test during the final inspection. The proof roll test will consist of a 12-cubic-yard end dump truck loaded to maximum legal capacity traversing the road as directed by the RSA director or designee. The minimum proof rolling is full length of the road, on both lanes. If excessive rutting, greater than three-inch-depth tracks, occurs, remedial work will be required. The RSA director or designee will designate the defective areas in a written report.
- C. Roads constructed across wetlands, including peatlands, must be designed and certified by a licensed civil engineer preapproved by the RSA director.
- D. In order to limit damage to the right-of-way, adjacent properties, watercourses, and waterbodies, construction of roads within the Seward Mapped Flood Data Area (SMFDA) and Flood Insurance Rate Map (FIRM) area WITHIN THE Seward-Bear Creek Flood Service Area, as both are defined by KPB 21.06, requires an engineering analysis and design certified by a licensed civil engineer approved by the road service area board prior to start of construction. Any exception to this requirement must be approved by the road service area board in accordance with KPB 14.06.230.



Requirements for Embankment Material

Percent Passing by Weight

Category I, II, & III Roads Table

Sieve Designation	Type I	Type II	Type III*
4 inch	95--100	--	--
2 inch	85--100	100	100
1 inch	--	--	95--100
No. 4	30--60	30--65	40--75
No. 16	--	--	20--43
No. 200	0--6	6--10	4--10

\*Type III relates to Category IV Gravel Roads: Typical Section

**SECTION 2.** That KPB 14.06.170 is hereby amended as follows:

**14.06.170. Road construction standards—Drainage and culvert material.**

Roads shall be constructed to prevent ponding of runoff waters in roadside ditches. Drainage ditches shall be constructed such that runoff waters will be conveyed to natural drainage courses, ditches or waterways, or other man-made drainage courses. Outfalls shall be constructed to prevent excessive siltation of riparian habitats, channel erosion, or other damage to public or private property. The RSA board may require[, UPON STAFF RECOMMENDATION,] an engineering analysis and design for locations susceptible to flooding, siltation, or other natural conditions potentially damaging to the right-of-way, adjacent property, or water courses and water bodies. Pursuant to KPB 14.06.100, the board shall require this engineering analysis and

design in the SMFDA and FIRM area. A roadway cross culvert shall be a minimum diameter of 18 inches, and with at least a one percent drainage grade through the culvert, and driveway culverts shall be a minimum of 15 inches and 30 feet in length. Culverts, coupling bands and special sections shall be corrugated steel pipe of at least 16 gauge. Plastic culverts are acceptable for driveway culverts only, if they meet AASHTO Standard Section 706-2.07 corrugated polyethylene pipe, AASHTO M 294, Type S. AASHTO cross culvert markers must be installed.

**SECTION 3.** That this ordinance takes effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 16TH DAY OF JUNE, 2009.**

\_\_\_\_\_  
Milli Martin, Assembly President

ATTEST:

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

Yes: Fischer, Knopp, Long, Pierce, Smalley, Smith, Sprague, Superman, Martin  
No: None  
Absent: None

Introduced by: Long, Mayor at the Request of  
the Flood Plain Task Force  
Date: 05/19/09  
Hearing: 06/16/09  
Action: Enacted as Amended  
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2009-30**

**AN ORDINANCE ESTABLISHING CRITERIA FOR PLAT NOTES AND PROVIDING  
A FLOOD-PRONE PLAT NOTE FOR THE SEWARD MAPPED FLOOD DATA AREA  
AND FLOOD INSURANCE RATE MAP AREA**

**WHEREAS,** plat notes provide a beneficial consumer protection service in advising the public about important issues such as flooding, access, and development restrictions; and

**WHEREAS,** Ordinance 2009-05 formed the Seward Mapped Flood Data Area (“SMFDA”) requiring permits in flood hazard areas outside the Flood Insurance Rate Map (“FIRM”) area in the Seward-Bear Creek Flood Service Area (“SBCFSA”); and

**WHEREAS,** there should be restrictions on the type of plat notes that can be placed on a plat to ensure that the borough or another governmental entity can enforce the same; and

**WHEREAS,** the Flood Plain Task Force considered this ordinance at its April 29, 2009 meeting and recommended enactment without objection; and

**WHEREAS,** the planning commission considered this ordinance at its May 26, 2009 meeting and recommended enactment by unanimous consent; and

**WHEREAS,** the SBCFSA considered this ordinance at its June 1, 2009 meeting and recommended enactment by unanimous consent;

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

**SECTION 1.** That KPB 20.16.145 is hereby enacted as follows:

**20.16.145. Plat notes.**

Plat notes shall not be placed on a final plat unless required by the planning commission in order to promote or protect the public health, safety, and welfare consistent with borough and state law.



**SECTION 2.** KPB 20.20.260 is hereby amended as follows:

**20.20.260. Flood plain requirements.**

- A. All subdivision plats which are within areas where the flood plain has been identified by [THE ARMY CORPS OF ENGINEERS] FEMA, and which involve 50 lots or 5 acres whichever is lesser, shall include base flood elevation data and delineate the area involved within the flood plain on the plat.
- B. All subdivisions or replats within the FIRM area or SMFDA, as amended, as defined by KPB 21.06.020, shall contain the following note or a substantially similar note:

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FLOOD PRONE NOTICE: Some or all of the property shown on this plat has been designated by FEMA or the Kenai Peninsula Borough as a flood hazard area district as of the date this plat is filed with the district recorder's office. Prior to development, the Kenai Peninsula Borough floodplain administrator should be contacted for current information and regulations.

- 
- C. Each plat within a city which has met the requirements of this section shall contain the following statement: "The first finished and habitable floor of a building constructed within a flood plain shall be built at or above the 100-year flood level."

[C]D. This section applies to all cities which adopt a resolution requesting participation in the program and which are subsequently recognized by the state as participants.

[D]E. A city which wishes greater restrictions than those contained in subsection A may do so by passing a more restrictive ordinance as a part of their building code.

**SECTION 3.** That this ordinance takes effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 16TH DAY OF JUNE, 2009.**

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Milli Martin, Assembly President

ATTEST:

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Johni Blankenship, Borough Clerk

Yes: Fischer, Knopp, Long, Pierce, Smalley, Smith, Sprague, Superman, Martin

No: None

Absent: None

Introduced by: Long, Mayor  
Date: 05/19/09  
Action: Adopted as Amended  
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
RESOLUTION 2009-044**

**A RESOLUTION REQUESTING THAT THE STATE OF ALASKA EXEMPT FLOOD  
MITIGATION PROJECTS IN THE SEWARD AREA FROM THE GRAVEL  
EXTRACTION FEE, AS IT APPLIES TO ALL FLOWING WATERS INTO  
RESURRECTION BAY, IN THE VICINITY OF SEWARD, ALASKA**

**WHEREAS**, the Seward-Bear Creek Flood Service Area and the Kenai Peninsula Borough are working to lessen impacts to flooding in the Seward area; and

**WHEREAS**, the State of Alaska Department of Natural Resources charges a mineral resources extraction fee of \$3.25 per cubic yard for gravel; and

**WHEREAS**, this extraction fee makes flood control projects more expensive and cost prohibitive; and

**WHEREAS**, charging an extraction fee for gravel extracted for flood mitigation projects is contrary to protecting public health and safety; and

**WHEREAS**, streambed loading due to sediment deposits increase the frequency of flooding in the Seward area; and

**WHEREAS**, the Seward-Bear Creek Flood Service Area Board and the Kenai Peninsula Borough are working toward streambed load removal and other flood control options in the Seward area; and

**WHEREAS**, on April 1, 2009, the Flood Plain Task Force adopted a resolution recommending that the State of Alaska exempt flood mitigation property from the gravel extraction fee; and

**WHEREAS**, on May 18, 2009, the Seward-Bear Creek Flood Service Area considered this resolution and recommended adoption by unanimous consent;

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

**SECTION 1.** That all flowing waters into Resurrection Bay in the vicinity of Seward, Alaska are continually filling with sediment and debris that must be removed to lessen the flood events in the Seward area.

**SECTION 2.** The gravel deposits in these streams need to be removed regularly to ensure the economic viability of the community as well as ensure public health and safety.

**SECTION 3.** That the Kenai Peninsula Borough Assembly requests that the State exempt flood mitigation projects in the Seward area from its gravel extraction fee.

**SECTION 4.** The Kenai Peninsula Borough Assembly requests that other concerned local boards and commissions pass similar declarations in support of this resolution.

**SECTION 5.** That copies of this resolution shall be sent to the Honorable Governor Sarah Palin, Senators Con Bunde, Albert Kookesh, Gary Stevens, and Tom Wagoner, Representatives Mike Chenault, Mike Hawker, Kurt Olson, Woodie Salmon, and Paul Seaton, Commissioner of Alaska Department of Natural Resources Tom Irwin, Kenai Peninsula Borough Road Service Area Board, Seward-Bear Creek Flood Service Area Board, and the Kenai Peninsula Borough Planning Commission.

**SECTION 6.** That this resolution takes effect immediately upon its adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 19TH DAY OF MAY 2009.**

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Milli Martin, Assembly President

ATTEST:

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Johni Blankenship, Borough Clerk

Yes: Fischer, Knopp, Long, Pierce, Smalley, Smith, Sprague, Superman, Martin

No: None

Absent: None

Introduced by: Long at the Request of the  
Flood Plain Task Force  
Date: 07/07/09  
Action: Adopted  
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
RESOLUTION 2009-060**

**A RESOLUTION WAIVING FEES CHARGED BY THE KENAI PENINSULA  
BOROUGH TO THE SEWARD-BEAR CREEK FLOOD SERVICE AREA FOR RIPRAP  
REMOVED FROM THE SEWARD ROCK QUARRY TO BE USED FOR FLOOD  
MITIGATION PROJECTS**

**WHEREAS**, the Flood Plain Task Force was established January 20, 2009, by Resolution 2009-005 for the purpose of examining certain floodplain issues and developing options for the Seward-Bear Creek Flood Service Area (SBCFSA); and

**WHEREAS**, at its meeting of June 24, 2009, the task force approved requesting the assembly adopt a resolution to waive the royalty fee for riprap removed from the Seward rock quarry that is used for hardening and shoring up levees and revetments in the Seward area to minimize the extent of potential flooding; and

**WHEREAS**, royalty fees for riprap in the borough-owned Seward rock quarry are currently approximately \$3.75 per cubic yard, and waiving these fees would be for the public purpose of minimizing flood damage; and

**WHEREAS**, Implementation Action E of Objective 1, Goal 6.7 in the Comprehensive Plan is to support efforts to minimize adverse impacts of flooding or erosion to protect neighboring properties or resources; and

**WHEREAS**, waiving these fees would be consistent with that implementation action;

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

**SECTION 1.** That the Kenai Peninsula Borough Assembly hereby authorizes the administration to waive royalty fees for the removal of riprap from the Seward rock quarry to be used for the following projects:

1. Hardening the levy and earthen berm built on the Kwechak Creek upstream from the Bear Lake Subdivision for the purpose of protecting the homes and roads in that subdivision.
2. To erosion-proof the revetment along Tiehacker Road to protect Meridian Park and the Bear Lake Subdivision.

3. Other similar projects as may be specifically identified by the SBCFSA from time to time.

**SECTION 2.** That this resolution takes effect immediately upon its adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 7TH DAY OF JULY, 2009.**

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Milli Martin, Assembly President

ATTEST:

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Johni Blankenship, Borough Clerk

Yes: Fischer, Knopp, Long, Pierce, Smalley, Smith, Sprague, Superman, Martin

No: None

Absent: None

Introduced by: Long at the Request of the  
Flood Plain Task Force  
Date: 07/07/09  
Action: Adopted  
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
RESOLUTION 2009-061**

**A RESOLUTION URGING THE STATE OF ALASKA RECOMMEND THAT SALMON CREEK, FOURTH OF JULY CREEK AND SAWMILL CREEK, ALL LOCATED IN THE VICINITY OF SEWARD, ALASKA BE DEEMED NON-NAVIGABLE**

**WHEREAS,** the State of Alaska Department of Natural Resources (DNR) has changed positions on the issue of navigability on several occasions; and

**WHEREAS,** the Seward-Bear Creek Flood Service Area (SBCFSA) and the Kenai Peninsula Borough are working to reduce impacts to flooding in the Seward area; and

**WHEREAS,** the DNR charges a royalty fee on all gravel materials removed from areas defined as navigable; and

**WHEREAS,** this fee makes flood control projects more expensive and cost prohibitive; and

**WHEREAS,** the Bureau of Land Management recommends that all water bodies, with the exception of Bear Lake, be considered administratively non-navigable in T1N R1E, T1N R1W, T2N R1W, T1S R1W, T1S R1E, Seward Meridian, State of Alaska; and

**WHEREAS,** DNR policy interprets the Daniel Ball test as requiring the water body to be usable as a highway for the transportation of people or goods as a test of navigability.

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

**SECTION 1.** That Salmon Creek, Fourth of July Creek and Sawmill Creek are not navigable, as defined by and in the Daniel Ball test and best survey practices, and are not subject to the Submerged Lands Act which, according to State of Alaska policy on navigability on the website [http://dnr.alaska.gov/mlw/nav/nav\\_policy.htm](http://dnr.alaska.gov/mlw/nav/nav_policy.htm), is the accepted and correct standard for determining navigability.

**SECTION 2.** The March 20, 2006 Recommendation of Navigability letter from DNR refers to extreme gradients as conclusive evidence of non-navigability on Spruce Creek. However, all of the creeks listed as navigable in the 2006 determination contain reaches of these same "extreme" gradients as expressed in percent slope derived from LIDAR dataset 2006 and pertinent cross sections.

**SECTION 3.** That based on the above information and findings established in a previous determination the assembly respectfully urges the DNR to determine these streams to be not navigable.

**SECTION 4.** Copies of this resolution shall be sent to Governor Sarah Palin, Commissioner Tom Irwin, Senate President Gary Stevens, Senator Thomas Wagoner, House Speaker Mike Chenault, Representative Kurt Olson, and Representative Paul Seaton.

**SECTION 5.** That this resolution takes effect immediately upon its adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 7TH DAY OF JULY, 2009.**

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Milli Martin, Assembly President

ATTEST:

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Johni Blankenship, Borough Clerk

Yes: Fischer, Knopp, Long, Pierce, Smalley, Smith, Sprague, Superman, Martin

No: None

Absent: None



Introduced by: Long at the Request of the  
Flood Plain Task Force  
Date: 08/04/09  
Action: Adopted  
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
RESOLUTION 2009-070**

**A RESOLUTION AUTHORIZING THE ADMINISTRATION TO PURSUE VARIOUS SOLUTIONS INCLUDING LAND PURCHASE, SALE, AND TRADE IN ORDER TO FACILITATE MOVING CITIZENS WITHIN THE SEWARD-BEAR CREEK FLOOD SERVICE AREA FROM FLOOD HAZARD AREAS**

- WHEREAS**, flooding has occurred in the Seward-Bear Creek Flood Service Area (SBCFSA) repeatedly; and
- WHEREAS**, a federal disaster has been proclaimed within SBCFSA three times since 1986; and
- WHEREAS**, there are parcels that are subject to repetitive loss due to flooding in the SBCFSA; and
- WHEREAS**, the Kenai Peninsula Borough Flood Plain Task Force was formed in order to evaluate long-term solutions to flooding and the repetitive damage flooding causes within the Seward-Bear Creek Flood Service Area (“SBCFSA”); and
- WHEREAS**, it is a priority to remove people and structures from these repetitive loss areas in order to protect life and property and reduce public funds expended on disaster mitigation and relief; and
- WHEREAS**, restoring these repetitive loss parcels to an undeveloped state restores necessary flood carrying capacity that reduces the overall hazard; and
- WHEREAS**, the borough owns lands within the SBCFSA and throughout the borough for community development; and
- WHEREAS**, the borough has the power to purchase, manage, use, and dispose of land under AS 29.35.010(8); and
- WHEREAS**, the Kenai Peninsula Borough Flood Plain Task Force recommended relocation through land transfers by its adoption of Task Force Resolution 2009-04; and
- WHEREAS**, the Borough Planning Commission reviewed Task Force Resolution 2009-04 on July 20, 2009, and recommended adoption by unanimous consent; and

**WHEREAS**, the Seward-Bear Creek Flood Service Area board reviewed Task Force Resolution 2009-04 on July 20, 2009, and unanimously recommended adoption;

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

**SECTION 1.** The assembly authorizes the administration to evaluate available lands for purchase, sale, and trade in order to move property owners from flood hazard areas within the SBCFSA. The assembly further authorizes the administration seek additional municipal entitlement lands, University of Alaska lands, and Mental Health Trust lands which may be appropriate for such purpose and to work with the State of Alaska Department of Natural Resources as necessary to achieve beneficial entitlement selections. This program shall primarily aid homeowners and parcels with structures in flood hazard areas. The administration shall submit the program to the assembly for approval prior to March 24, 2010.

**SECTION 2.** That this resolution takes effect immediately upon its adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 4TH DAY OF AUGUST, 2009.**

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Milli Martin, Assembly President

ATTEST:

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Johni Blankenship, Borough Clerk

Yes: Fischer, Knopp, Long, Pierce, Smalley, Smith, Sprague, Superman, Martin

No: None

Absent: None

Introduced by: Long at the Request of the  
Flood Plain Task Force  
Date: 08/04/09  
Action: Adopted  
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
RESOLUTION 2009-071**

**A RESOLUTION AUTHORIZING THE ADMINISTRATION AND THE  
SEWARD-BEAR CREEK FLOOD SERVICE AREA BOARD TO COMPLETE A  
WATERSHED MASTER PLAN INCLUDING CHANNEL MIGRATION ZONE  
(CMZ) ANALYSIS AND A SUITABILITY MAPPING PROJECT WITHIN THE  
SEWARD-BEAR CREEK FLOOD SERVICE AREA**

**WHEREAS**, flooding has occurred in the Seward-Bear Creek Flood Service Area (SBCFSA) repeatedly; and

**WHEREAS**, a federal disaster has been proclaimed within SBCFSA three times since 1986; and

**WHEREAS**, existing Federal Emergency Management Agency (FEMA) Federal Insurance Rate Maps (FIRM) were drawn using dated information that does not accurately reflect present day flood hazard areas; and

**WHEREAS**, updated FEMA FIRM maps are expected in the relatively near future, but by themselves only show the existence or nonexistence of prior flooding and do not contain information of flood depth, velocity, duration, resistance, or vulnerability characteristics of the surrounding topography or development, and thus are inadequate as planning tools; and

**WHEREAS**, no plan has been developed that clearly defines all the hazards and presents specific actions to steer development away from these known hazards; and

**WHEREAS**, a CMZ analysis will establish the historic river channels and floodways; identify areas of high bank erosion; identify areas of aggradation; identify methods to prevent erosion; identify methods to maximize sediment transport; provide maps that clearly define the flooding threat for individual properties; identify areas where bed load reduction is needed; identify where dikes need to be added, improved or removed; identify areas that are restricting current water flow and work to improve and or remove them where appropriate, and identify where riverbanks need to be reinforced; and

**WHEREAS,** CMZ analysis in combination with suitability mapping will identify areas where development is appropriate; identify areas where development could occur if proper construction techniques are utilized; identify where flooding is too common and development should not occur; identify where currently developed areas should be returned to the floodway to give the rivers reasonable flow channels; including possible dwelling or development relocations; and include a coordinated effort to see that suitable upland areas (federal, state, borough, and private) are opened for development as soon as possible; and

**WHEREAS,** a CMZ analysis and suitability mapping will provide a fair and thorough process, using the best available science, to determine developable, non-developable, and conditionally developable property; will bring new issues and solutions to light; will provide a reasonable level of technical analysis with an organized outreach approach that directly involves the citizens; and would produce a functional plan within the shortest possible time frame, 12 to 18 months from EPA acceptance; and

**WHEREAS,** a flood zone building methods program would establish recommended building methods combined with a highly developed outreach effort; provide the most compelling process to encourage people to build correctly without imposing codes and establishing a complex and expensive compliance effort; provide low interest loans for landowners who follow the flood zone building methods program from the state revolving fund (SRF), and interest rates would be below conventional loans; would save the owner thousands over the life of the loan, essentially paying for special construction methods; and the Alaska SRF currently has \$43.2 million (\$237,000 dedicated to planning) and is actively looking for applicable projects; and

**WHEREAS,** much of the CMZ analysis can be performed by borough personnel with borough data, significantly reducing costs; and

**WHEREAS,** by completing the CMZ in-house, the borough provides the local match for the full CMZ allowing the suitability mapping and builder certification programs to be completed with little expense to local government agencies; and

**WHEREAS,** EPA Wetland Program Development Grants and SRF are likely funding sources for this project; and

**WHEREAS,** the next EPA funding cycle (proposal deadline) could be available as early as fall 2009, providing a reasonable timeline for working out the details with the various governmental agencies and producing the proposal; and

**WHEREAS,** the planning commission reviewed Task Force Resolution 2009-05 at its meeting of July 20, 2009, and recommended adoption by unanimous consent; and

**WHEREAS,** the SBCFSA considered Task Force Resolution 2009-05 at its meeting of July 20, 2009, and unanimously recommended adoption of this resolution;

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

**SECTION 1.** That the administration and Seward-Bear Creek Flood Service area are authorized to complete a Watershed Master Plan including CMZ analysis in combination with a suitability mapping project and the development of a flood zone building methods program, subject to availability of funds, and seek grant funding for the same.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 4TH DAY OF AUGUST, 2009.**

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Milli Martin, Assembly President

ATTEST:

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Johni Blankenship, Borough Clerk

Yes: Fischer, Knopp, Long, Pierce, Smalley, Smith, Sprague, Superman, Martin

No: None

Absent: None