

Kenai Peninsula Borough

Flood Plain Task Force
April 15, 2009
6:00 PM



photo by: Chris Becker

Cooper Landing Community Hall
18511 Bean Creek Road, Cooper Landing

Flood Plain Task Force Table of Content

Agenda

April 1, 2009 Minutes

Flood Plain Task Force Resolution 2009-02

Permit Examples

Letters of Non Compliance Examples

KPB Flood Hazard District Notice

Take Away - Kevin Lyon

Map - Land Status

Mayor Carey Navigability Letter

Kenai Peninsula Borough

Flood Plain Task Force

April 15, 2009 - 6:00 p.m.

Cooper Landing Community Hall, 18511 Bean Creek Rd., Cooper Landing

Ron Long
Assembly Member

A. Welcome

Charlie Pierce
Assembly Member

B. Public Comment

Kevin Lyon
Capital Projects

C. April 1, 2009 Meeting Summary

Dan Mahalak
Capital Projects

D. Resolution 2009-02

Jane Gabler
Kenai River Center

E. Amendments to Borough Codes

- Road Pre-Construction Review
- Flood Service Area Drainage Plan
- Road Engineering Requirements
- Road Built to Standard Prior to Final Plat Approval
- Disclaimer from Developers to the Buyers
- Surveyor Alert/Warning during the Plat Process

Holly Montague
Legal Department

F. Permits, Letters & Notices

- Types of Permits & Examples
- Letters on Non-Compliance
- Flood Hazard Notice

Scott Walden
Office of Emergency
Services

Todd Peterson
Planning Commission

Sue McClure
Planning Commission

Max Best
Planning Department

G. Channel Migration Zones (CMZ)

- Does the Task Force Recommend Adoption of CMZ Concept?
- Requesting Funding for CMZ Delineation Study
- Study done In-House or Contracted Out
- Prioritization of Streams
- Time Line on the Determination

Ron Wille
Road Service Area
Board

Bill Williamson
Seward Bear Creek
Flood Service Area

Randy Stauffer
Seward Bear Creek
Flood Service Area

H. Land Swap

- Laydown from Marcus Mueller - Borough Land Purchase Process
- Land Purchase Options

Jim McCracken
Public Representative

Robert Hicks
Public Representative

Matt Gray
Public Representative

I. Take Away Item Review

- Review of Final Task Force Product Ideas

Christy Terry
City of Seward
Planning Department

I. General Discussion and Questions

Staff:

J. Task Force Meeting and Announcements

Shellie Morgan
Deputy Clerk

K. Adjournment

Kenai Peninsula Borough

Flood Plain Task Force

Meeting Summary

April 1, 2009 - 6:00 p.m.

Regular Meeting

Seward City Hall, 401 Adams Street, Seward

CALL TO ORDER

A regular meeting of the Flood Plain Task Force was held on April 1, 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
Charlie Pierce, Vice Chair
Colette Thompson
Bill Williamson
Randy Stauffer
Ron Wille
Todd Petersen
Sue McClure

Kevin Lyon
Dan Mahalak
Mary Toll
Jane Gabler
Jim McCracken
Matt Gray
Christy Terry

Absent:

Scott Walden (Excused)
Bob Hicks (Excused)

Also in attendance was:

Shellie Morgan, Deputy Clerk

WELCOME AND INTRODUCTIONS

Chair Long thanked everyone for coming. He amended the agenda by adding two additional items, one being the introduction of two Resolutions and a Take Away Item, requesting all members come to the April 15, 2009 meeting with one item they would like to see completed by the Task Force.

PUBLIC COMMENT - None.

(06:03:56)

RESOLUTION INTRODUCTION

Mr. Wille said Flood Plain Task Force Resolution 2009-01 was a request for the State to remove its March 20, 2006 navigability determination of Salmon Creek, Forth of July Creek and Sawmill Creek. He stated Flood Plain Task Force Resolution 2009-02, requested the State remove the current extraction fee being charged on gravel removal. He said if approved by the Task Force, the resolutions would be introduced at the next Road Board Meeting, from there it would be forwarded to the City of Seward and Planning Commission. He said this would allow for more local support to be gathered prior to introduction to the Kenai Peninsula Borough Assembly.

Flood Plain Task Force Resolution 2009-01

Chair Long stated there was currently a Bill in Congress that would strike the word navigability from water within the United States, and proposed amendments to the Clean Water Act would allow the US Congress to be the regulatory body on all running waters within the United States. He stated this was the proper time to address the navigability issue.

[Clerks Note: Flood Plain Task Force Resolution 2009-01 was amended as follows: The third whereas to read, "The State of Alaska Department of Natural Resources (DNR) charges a [LEVY] royalty fee on all gravel materials removed from these areas; and"; The fourth whereas to read, "This [LEVY] royalty fee makes flood control projects more expensive and cost prohibitive; and"; Section 1 to read, "That Salmon Creek, Fourth of July Creek and Sawmill Creek are not navigable, as defined by and in to the Daniel Ball test, [AND] best survey practices, and are not subject to the Submerged Land Act, which, according to State of Alaska policy on Navigability, on the website http://dnr.alaska.gov/mlw/nav/nav_policy.htm, is the accepted and correct standard for determining navigability." A new Section 3 to read, "The Kenai Peninsula Borough Task Force requests that other concerned local boards and commissions pass similar declarations in support of this resolution."]

Mr. Gray asked if the Task Force Members felt it was appropriate to address the royalty fee from the two different angles.

Mr. Wille stated approaching the State from both angles was the correct way to move forward.

Mr. McCracken stated the Task Force should concentrate on Resolution 2009-01, if the Task Force had the determination on navigability changed, it would then resolve the issues addressed in Resolution 2009-02.

Ms. Thompson said she believed it was the correct approach to focus on the administrative aspect, by addressing the mistake made when Salmon Creek, Forth of July Creek and Sawmill Creek were determined navigable, when just two years prior the creeks had been determined non-navigable. She said regarding the royalty fees, the State was attempting not to give away property that was subject to the constitutional prohibition against private use of public assets.

Mr. Stauffer stated that he agreed the Task Force should initially go after the definition of navigability; however, eventually the royalty fee charged by DNR had to be addressed. He said language needed to be added stating the royalty fee would not be charged when mitigating against natural disasters.

Chair Long stated he was seeing a definite pattern to take when approaching the problem, and listed the pattern in order.

1. Navigability
2. Classification of Debris
3. Legislative Fix

Ms. Terry asked why Resurrection River had been removed from the non-navigable list? Mr. Mahalak said the Federal determination on navigability stated various things; such as, if you could float trees down the river, hunt, fish, or any commercial activities were taking place, the river was then considered navigable.

Flood Plain Task Force Resolution 2009-02

Mr. Wille said he felt introducing both Resolution 2009-01 and Resolution 2009-02 would not cause any harm in the process of either Resolution.

Chair Long stated he was concerned that if both Resolutions were introduced, there would be the possibility of both the Legislature and the Administration waiting to see how the other department would act on the resolutions.

Ms. Terry stated she felt moving forward on Resolution 2009-02 would have a positive effect, allowing extraction of gravel from other creeks in the area that were navigable.

[Clerk's Note: Flood Plain Task Force Resolution 2009-02 was amended as follows: Title to read, "A Resolution Recommending that the State of Alaska [RESCINDS ITS GRAVEL EXTRACTION FEE AS IT APPLIES TO SALMON CREEK, FOURTH OF JULY CREEK AND SAWMILL CREEK, ALL LOCATED IN THE VICINITY OF SEWARD, ALASKA] Exempt Flood Mitigation Projects in the Seward Area from the Gravel Royalty Fee as it Applies to all Flowing Waters into Resurrection Bay in the Vicinity of Seward, Alaska"; the second whereas to read, "The state of Alaska Department of Natural Resources charges a mineral resources extraction royalty fee of \$3.25 per cubic yard for gravel; and"; the third whereas to read, "This extraction royalty fee makes flood control projects more expensive and cost prohibitive; and", Insert a new fourth whereas to read, "charging a royalty fee for gravel extraction for flood mitigation projects is contrary to protecting public health and safety; and"; Section 1 to read, "That Salmon Creek, Fourth of July Creek, and Sawmill Creek are continually filling with sediment and debris that must be removed to lessen flood events [IN THE SEWARD AREA] as it applies to all flowing waters into Resurrection Bay in the vicinity of Seward, Alaska." Insert a new Section 3 to read, "That the Kenai Peninsula Borough Flood Plain Task Force requests that the State exempt from its gravel extraction royalty fee, flood mitigation projects in the Seward area." Insert a new Section 4 to read, "The Kenai Peninsula Borough Task Force request that other concerned local boards and commissions pass similar declarations in support of this resolution."]

Mr. McCracken spoke in opposition to Flood Plain Task Force Resolution 2009-02.

Chair Long stated the Flood Plain Task Force Resolution 2009-02 as amended was asking other boards to pass similar resolutions, and stated it would be a subject for the second half of the Legislative Session.

The Task Force agreed to postpone Flood Plain Task Force Resolution 2009-02 until April 15, 2009.

(06:49:12)

AMENDMENTS TO ROAD CODES - Ingress & Egress

Mr. Wille stated he had spoken to the Roads Director, Staff and the Inspector for the Seward area regarding building roads in the community as a whole. He said the Borough had a template for building roads, and if a builder were to go outside of the normal road building template, an engineer would then be required to explain how the road was to be built, the engineer would be required to sign off on the plan, it could then be approved by the Roads Board. He said the Roads Board may want to consider all roads within the Seward area be designed by an engineer, due to the numerous road failures in the area, including roads that were not in flood zones.

Mr. Best asked what Mr. Wille felt would be gained by hiring an engineer, would the engineer be given direction to build channels, dikes, would there be a general direction for the engineer to take? He felt that an engineer may have an issue with signing off on a road that was fine today; however, future flood events could deteriorate the road integrity. Mr. Wille agreed that was a concern; however, there needed to be some forethought and planning into certain roads, and that was not addressed in the current Borough Code.

Mr. Petersen stated the problem with the engineering idea was, once the road was complete and the engineer had signed off on it, what was going to prevent property owners from building up their personal property, and causing flooding to the road.

Mr. McCracken asked if the Borough had the ability or funds to bring all of the roads up to a new higher standard? Mr. Wille stated the Borough was bringing the roads up to higher standards, one road at a time.

Ms. Terry asked if this discussion would include right-of-way construction permits. Mr. Wille said yes.

Ms. Terry read a section of Borough Code that stated, "A permit may be subject to additional conditions to protect and manage Borough rights-of-way by preventing damage to the right-of-way on adjacent public and private property or water bodies."

Mr. Wille agreed the language was already there, and someone could come forward and do a typical section of a road, then bring it to the road board, where a problem was discovered, and an additional requirement would be added to the development of the road.

Chair Long stated one item previously discussed was a drainage plan, the Borough had a drainage plan that addressed typical service water run off, culverts, and driveway permits. He said the Task Force may want to consider additional drainage plan depth, that could be introduced by a developer and approved by the Roads Board or Borough Staff, not necessarily an engineer.

Mr. Wille read a section of the Borough Road Construction Standards, "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 drainage to public or private property. The Road Service Area (RSA) Board may require engineering analysis and design for locations susceptible to flooding, excessive siltation, or other natural conditions potentially damaging to the right-of-way, adjacent property, or water courses and water bodies." He stated the developers needed to be aware that additional requirements could be added.

Mr. Long asked Mr. Wille if the RSA Board could approve a road without an engineer analysis. Mr. Wille said yes, the main point he was trying to make was there were problems all over the area and the developers should be aware of the possible engineering requirement before construction begins.

Mr. Best said during the platting process the developer was required to prove that a road could be built to a standard. He said the Planning Commission looked at the condition of the area; was it flat or how steep it was; however, they did not look at the flood prone issue. He said it would be difficult for the Planning Commission to require additional road width, extra fill, or culverts ends that go beyond the road prism, without a pre-conference with the Roads Department, Engineer, and platting, prior to Planning Commission approval.

Mr. Gray stated he felt an on onsite inspection should be done since natural conditions could not be rendered on paper.

Mr. Wille stated the problem was going to continue, unless the Borough required roads to be built before final plat approval.

Mr. Peterson stated if the Borough required roads be built prior to final plat approval, the result would be development coming to a stop.

Mr. Gray suggested requiring a pre-road construction report from property owners, that would summerize land issues that could identify possible problems.

Chair Long asked if there were gradient requirements on plat design?

Mr. Best stated plat design did have grade requirements, and requirements within intersections, 6 to 10 percent, and 4 percent within 100-feet of an intersection.

Vice Chair Pierce said he felt the ability to add requirements for specific problems, was a more appropriate approach, rather than having a hard line saying every road had to be engineered.

Chair Long stated one item that the Borough would not be able to regulate was developers who built a road below standards and then present it to potential buyers as a road that met standards and was eligible for Borough maintenance.

Mr. McCracken asked if it were possible in the preliminary plat process to include something that would warn future developers of geographical challenges.

Mr. Best said there was a current provision in a mapped flood plain area that provided information; however, outside of the mapped flood plain there was no provision in place.

Mr. Petersen said he felt all roads would not need to be engineered; however, some areas of each road may require an engineer.

(07:19:16)

PERMITTING PROCESS

Chair Long stated the Task Force had previously discussed foundation inspections, the idea being, that was the only level of staff the Borough had, or should be required to have. He said it could be done simply.

Mr. Petersen asked who would be doing the foundation inspections? Mr. Lyon said due to staff size his department would not be able to perform the inspections.

Mr. Williamson said if the developer was using lender financing, a building inspection would be required, if it were private financing no inspection was required.

Vice Chair Pierce stated if the Borough Code required a building inspection, it would then become the Borough's responsibility to make sure the inspection was completed.

Mr. McCracken read a statement made by Mr. Walden at the March 18, 2009 Task Force meeting, "The Borough did not have the ability or the authority to enforce building codes as a second class Borough. Regarding enforcement all the Borough could do was judge if the structures had been built to elevation levels that the Borough had deemed appropriate, once the permit was issued the Borough's involvement was over." He then asked if Mr. Walden's statement was correct.

Chair Long said he felt that was not an exclusive statement. He said the Borough had always required more than just elevation standards in flood mapped zones, and the Borough certainly had the authority to enforce the requirements.

Chair Long said that FEMA recognized the owner had a responsibility to build up to the standards.

Ms. Thompson said the Borough did have the ability to adopt code related to the flood insurance rates within the mapped area, the Borough was required to in order to participate in the NFIP program. She said Mr. Walden was probably referring to the lack of enforcement personnel. She said the builder was ultimately responsible for meeting the requirements. She then referred to statements made by Mr. Hicks regarding the requirement that the local authority not only enact the code sections, but also take efforts to enforce the code sections.

Mr. Lyon said he felt that Mr. Walden was referring to building code enforcement which was done by the Fire Marshall, and the Borough did not have that ability. He said the Borough could inspect to the level of the permit.

(07:30:23)

RECORDING DOCUMENTS & ENFORCEMENT OPTIONS

Ms. Thompson explained that a letter of non-compliance was a notice to the property owner stating that they were not in compliance with the existing rules.

Ms. Gabler further explained if a structure was found to be non-compliant of the permit, a letter was sent stating what section was not in compliance and asked the property owner to contact the Kenai River Center within a specific amount of time. She said the responses were prompt, and the Kenai River Center worked with the property owner toward bringing the development into compliance.

Chair Long asked what percentage of the property owners/developers worked with the Kenai River Center to bring the development into compliance.

Mr. Best stated the program was 85 to 95 percent effective, he said the high success rate in compliance was due to the Kenai River Center Staff.

Ms. Gabler said if there were no response to the first letter of non-compliance a code compliance officer would make a site visit.

Vice Chair Pierce asked if fines for non-compliance had ever been assessed, and if there was a fine structure. Ms. Gabler said they had not assessed any fines. Ms. Thompson said there was a fine structure in Borough Code.

Chair Long said he believed the best direction would be guiding developers toward compliance, rather than imposing fines.

Mr. Williamson said he believed that most cases of non-compliance were developers who did not know the correct process, and normally when a developer received a letter of non-compliance the developer would work something out.

Chair Long stated the Borough currently mailed out flood data to property owners within a flood mapped area, he then asked Ms. Gabler how the information was being delivered to people who live outside of the mapped area? Ms. Gabler said the notification would be handled the same for cases outside of the mapped area.

Mr. Gray asked for clarification on the notification process. Ms. Gabler said when Ordinance 2009-09 Substitute passed, the Kenai River Center started notifying property owners who were located within the 100 year flood area outside of the FEMA mapped flood zone.

Mr. Stauffer asked if the notification to property owners outside of the FEMA mapped flood zones would end on the sunset date of Ordinance 2009-09 Substitute. Mr. Best said he would request that the Planning Commission add a notation on plats affected by those flood hazard areas, to include a standard type note which reads, "this area was known to flood, please check with the Kenai River Center."

Mr. Mahalak asked if it would be possible to add information on the plat that included the year the flooding took place? Mr. Best said he felt the warning should not be too specific.

Chair Long stated there were possible actions being taken that all the members of the Task Force were not aware of. He then asked if everyone on the Task Force could bring to the next meeting a list of actions they were taking, that way the Task Force would not be trying to recreate something that was already taking place.

Ms. Terry stated she agreed with Mr. Best's idea of putting a generic flood type warning on plats, and suggested including a requirement within Borough Code of what type of information had to be included on a plat.

Mr. Wille asked if the historic mapped flood areas were going to be included on the Geographic Information Systems website? Ms. Gabler said the information was already available on an FTP site.

Ms. Gabler explained the document she had provided to the Task Force showed FEMA Section 1316 of the NFIP policy, she said it basically read that if a property owner was not in compliance and refused to work toward compliance, FEMA would provide a letter of denial for flood insurance coverage, and also any further assistance should the property flood.

LAND SWAP

Chair Long reviewed the map provided, showing the lands that were owned by the Borough, managed by the Borough, and State land that was selected. He stated there were selected lands in the Bear Lake area. He asked Mr. Best what stage of the survey process those lands were in? Mr. Best said they were not up for survey any time soon.

Chair Long asked Ms. Thompson to explain the State Lands Selection Process.

Ms. Thompson stated at Statehood the Federal Government granted land to the State, the State then enacted the Municipal Land Grant Entitlement Act, and specified that a certain number of acres would go to the listed Municipalities, the Kenai Peninsula Borough was entitled to 10 percent of State land within the municipalities boundaries. Ms. Thompson said the first step was the State needed to obtain patent from the Federal Government, in order to do that the land had to be surveyed, and that process was still ongoing. She said the next step was the Borough identified and applied for property that it would preferred to select, then a preliminary approval was issued from a higher level of government, if the property was preliminarily approved the property was then surveyed, and finally a paten was issued.

Chair Long asked, if the Borough surveyed the land, could the process then be moved forward? Mr. Best said for the managed land, yes, managed means the Borough would have an approved selection on it, and survey instructions could be requested for conveyance. He said the selected land meant the Borough had selected the lands; however, the State had not given a final decision, and until that decision was received the Borough would not want to spend any money or time on it.

Mr. Mahalak referred to pages 16 and 17 of the packet that showed the rock surface, height and slope and further explained the geographic restrictions of the Borough owned lands.

Mr. McCracken stated that he felt a land selection or identification of lands was important and the Task Force needed to be looking at solutions for the next 20 to 30 years.

Mr. Petersen asked if it were possible for the Borough to purchase land to be developed, and referenced an example: The Borough purchased a 30 acre parcel in Soldotna; which, 3 or 4 acres were needed and the remainder was placed in the land bank.

Chair Long stated he would be open to seeing what land was available in the Seward area for purchase.

Mr. McCracken stated the University of Alaska and the Mental Health Trust both owned large pieces of land in and around the Seward area, and a possible trade with one or both was an option to be pursued.

Chair Long stated one of the highest priorities of the Task Force seemed to be finding ways to offer alternative locations for development, attracting developers away from the high risk areas, and leaving more room for the streams and rivers to migrate.

LEVEE

Mr. Mahalak said on a broad scale he felt the NFIP program, other than providing points to the community, really did not do much good for Seward. His reasoning was that very few people in the area actually participate in the program and purchased the flood insurance, so regardless of what the program did, just about every levee in the area would benefit the community. He said on the map side according to the NFIP program the levees in the community were not going to do anything, based on the map and an invisible line in the sand that said, this was hazardous and this was not. He said he could foresee with the new maps everything being classed as some sort of A zone; which, if that was the way things turned out, the community could be expected to see insurance rates rising.

Mr. Williamson said if you were to review the entire levee situation throughout the United States, the Kenai Peninsula Borough and Seward were a very tiny speck on that map. He said if you were to look at the Mississippi River, New Orleans and places like that, FEMA had to provide some type of coverage for the levee certification situation, if not half of the United States needed to move. He said it would be up to the communities to design and build a levee to meet the requirements.

Ms. Terry said Forest Acres within the City of Seward were not a special flood hazard zone, inexpensive flood insurance was still available to that area; however, that would change with the new FEMA mapping. She said the maintenance schedule on levees would also be a concern, there was no guarantee that the council would designate funds each year to keep up the maintenance.

Mr. Stauffer said the Seward Bear Creek Flood Service Area Board had been recommending that people living within class C flood zones go out and get insurance now, so that they would be grandfathered in should the flood zone class change.

Chair Long said flood insurance would not be optional if the home were financed by a bank, it would be required. He said if the bank placed the insurance it would be ridiculously expensive; however, by shopping around it was available at more affordable rates.

Mr. Gray asked if most typical flood insurance policies covered items damaged within a crawl spaces? Chair Long stated typically they do not.

Ms. Gabler stated that FEMA would consider a crawl space as the first floor of your inclosure.

Chair Long referred to page 8 of packet and the comments he had made regarding the insurance premiums, "If you did not build to the higher standards the premium could be as much as \$25 for every \$100 of coverage," he said that might not be the rate; however, it was a very motivational tool.

GENERAL DISCUSSION AND QUESTIONS

Mr. Wille stated he had discussed drainage issues with the Road Board Members, one question that had come up was drainage easements. He asked if it was allowable to put something on paper and just record a written easement as opposed to platting a drainage easement. He said it costs a lot of money to re-plate. Mr. Best said that was certainly a possibility.

Chair Long asked if the Task Force was aware of any participation in the National Resources Conservation Service (NRCS) easement reversions that was offered. Mr. Mahalak said he had contacted NRCS and asked for a participant list for the Seward area, and had not received anything so far; however, he had knowledge of at least a dozen participants.

Ms. Thompson stated that NCRS had indicated that the property owners in Old Mill Subdivision who may be involved in the recent buy out option, were also eligible to apply for the easement reversion program.

Ms. Terry stated along with residential properties being eligible for the NRCS easement reversion program, there was a section for governments to participate, and the deadline for that was April 15, 2009.

Chair Long stated Robin Ward of CIRI was at the last Task Force meeting and also attended the Assembly Meeting and spoke in support of Ordinance 2009-09 Substitute.

(08:27:55)

TAKE AWAY LIST

Chair Long asked all members of the Task Force to bring with them to the next meeting expectations for the Task Force was.

(08:31:00)

TASK FORCE MEETING AND ANNOUNCEMENTS

The next meeting of the Flood Plain Task Force was scheduled for April 15, 2009 at 6:00 p.m. in the Cooper Landing Community Hall.

ADJOURNMENT

The committee adjourned at 8:33 p.m.

**KENAI PENINSULA BOROUGH FLOOD PLAIN TASK FORCE
RESOLUTION 2009-02**

**A RESOLUTION RECOMMENDING THAT THE STATE OF ALASKA EXEMPT
FLOOD MITIGATION PROJECTS IN THE SEWARD AREA FROM THE GRAVEL
ROYALTY 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 royalty fee of \$3.25 per cubic yard for gravel; and

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

WHEREAS, charging a royalty fee for gravel extraction for flood mitigation projects is contrary to protecting public health and safety; and

WHEREAS, stream bed 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 towards stream bed load removal and other flood control options in the Seward area.

**NOW THEREFORE, BE IT RESOLVED BY THE KENAI PENINSULA BOROUGH
FLOOD PLAIN TASK FORCE:**

SECTION 1. That Salmon Creek, Fourth of July Creek, and Sawmill Creek are continually filling with sediment and debris that must be removed to lessen flood events, as it applies to all flowing waters into Resurrection Bay in the vicinity of Seward, Alaska.

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 Flood Plain Task Force requests that the State exempt from its gravel extraction royalty fee, flood mitigation projects in the Seward area.

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

ADOPTED BY THE KENAI PENINSULA BOROUGH FLOOD PLAIN TASK FORCE ON THIS 15TH DAY OF APRIL, 2009.

Ron Long, Task Force Chair



KENAI PENINSULA BOROUGH
 Road Service Area
 47140 E. Poppy Lane • Soldotna, Alaska 99669
 Toll-free within the Borough: 1-800-478-4427
PHONE: (907) 262-4427 • **FAX:** (907) 262-6090
 www.borough.kenai.ak.us

RIGHT-OF-WAY (ROW) DRIVEWAY PERMIT APPLICATION
(ONLY pertains to driveway construction)

APPLICANT NAME _____

APPLICANT MAILING ADDRESS _____ **CITY** _____

STATE _____ **ZIP** _____ **TELEPHONE** _____

EMAIL _____ **FAX** _____ **CELL** _____

ROAD NAME _____ **CONTRACTOR NAME** _____

APPROXIMATE START DATE _____ **APPROXIMATE COMPLETION DATE** _____

DRIVEWAY ACCESSED FROM CONSTRUCTED ROAD: YES NO

NOTE: Provide a map with proposed location of driveway. Minimum 15" x 30' driveway culverts are required unless an exception is approved by the RSA director.

DETAILED DESCRIPTION OF PROJECT: _____

Statement of Applicant: I hereby affirm and agree that the work necessary to bring the project into compliance with KP.B 14.40, 14.06, and any RSA Director Permit Requirements will be, or has been completed. **By signing this application, I agree that I am the responsible party for all project construction and communication with the Road Service Area.** I further acknowledge and agree that any violation of a permit condition or failure to obtain a permit prior to working or doing maintenance in a ROW is subject to a civil penalty of up to \$250 per day pursuant to KP.B 14.40.260.

Signature of Applicant

Date

RSA Director Permit Requirements: _____

<input type="checkbox"/> Denied	<input type="checkbox"/> Approved Right-of-Way Driveway Permit # _____	Expiration Date: _____
Region/Unit _____		
Reviewed By Inspector: _____		Date _____
Approved By RSA Director: _____		Date: _____

**KENAI PENINSULA BOROUGH
ROAD SERVICE AREA**

**POLICY STATEMENT NO. 2004-01
CONSTRUCTION PERMITTING WITHIN BOROUGH RIGHTS-OF-WAY**

Pursuant to KPB 14.40.060(B)(11) the following guidelines are hereby established for road construction projects and maintenance subject to permitting by the borough:

A. DRIVEWAY PERMITS

1. Pursuant to KPB 14.40.040(A)(1) a driveway permit must be obtained for construction at intersections between private drives and borough rights-of-way.
2. Permittee shall construct an adequate transition from the shoulder of the road to the level of the driveway. Length of intersection approaches shall be as required to create a smooth intersection. Where practical, vertical grade shall not exceed 4% within 50 feet of the driveway intersection with the road.
3. Material for driveway intersections shall meet the requirements for subbase grading Type 1 specified in KPB 14.06.
4. Installation of a driveway culvert shall normally be required to provide proper drainage for the road. Driveway culverts shall be a minimum of 15 inches in diameter and 30 feet in length or as determined by the RSA director. All culverts, coupling bands and special sections shall be corrugated steel pipe, minimum 16 gauge. Plastic culverts are acceptable if they meet AASHTO Standard Section 706-2.07 corrugated polyethylene pipe, AASHTO M 294, Type S.
5. Driveway intersections shall be constructed as nearly at right angles with roadway as possible.
6. Exceptions due to individual circumstances may be granted by the RSA Director.

ADOPTED APRIL 13, 2004, BY THE KENAI PENINSULA BOROUGH ROAD SERVICE AREA BOARD OF DIRECTORS. APPROVED BY MAYOR DALE BAGLEY ON JULY 9, 2004.

**KENAI PENINSULA BOROUGH
ROAD SERVICE AREA**

**RIGHT-OF-WAY (ROW) CONSTRUCTION PERMIT
MANDATORY CONDITIONS**

Pursuant to KPB 14.40.060 (B) all right-of-way construction permits shall be subject to the following conditions:

1. The permittee has responsibility to properly locate the proposed facility within the named right-of-way and to coordinate construction activity with utilities in the right-of-way.
2. Driveways or roads crossing utility installations shall cross as nearly perpendicular as possible to the utility line. The line locator phone number is 1-800-478-3121.
3. The Kenai Peninsula Borough disclaims any warranty or liability regarding location or coordination with utility companies.
4. Materials or trees shall not be used or removed except to the extent necessary to construct the road or driveway and provide adequate snow storage areas. Gravel may NOT be mined from any borough right-of-way unless the permittee has specific prior written approval by RSA staff.
5. The permittee must agree to comply with the terms, conditions and requirements of KPB 14.40, and any regulations adopted pursuant to this chapter. This includes an expiration date as determined by the RSA director.
6. Upon completion of construction, permittee shall provide an as-built drawing prepared by a professional land surveyor registered to practice in Alaska under AS 8.48 if deemed necessary by the roads director.
7. Upon completion, permittee shall agree not to restrict the flow of traffic, place traffic signs, or prevent use by the public unless prior approval has been received from the borough.
8. The permittee shall indemnify, defend, and hold and save the borough, its elected and appointed officers, agents and employees harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys fees. The permittee shall be responsible under this clause for any and all legal actions or claims of any character arising from applicant's or applicant's agents' performance or failure to perform this permit in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions of the borough or its agents, which are said to have contributed to the losses, failure, violations or damages.
9. Permittee is responsible for determining the need for any other local, state, or federal permits and acquiring the same. Permittee must abide by all applicable local, state and federal laws.
10. Violation of the permit's terms may result in its termination and/or an assessment of penalties against the permittee. The borough reserves the right to revoke the permit at any time for its convenience.
11. Construction of rights-of ways for motor vehicle use within the Kenai Peninsula Borough Road Service Area under a seasonal permit shall meet the borough road standards set forth in KPB 14.06. All other construction projects are subject to either a driveway or a project-specific permit, and may be required to meet road construction standards pursuant to road service area board policies approved by the mayor. Construction shall not damage the right-of-way, adjacent properties, or adjacent water bodies.

Discretionary conditions. The director may impose the following discretionary conditions:

1. The permit may be subject to additional conditions to protect and manage borough rights-of-way by preventing damage to the rights-of-way and adjacent public and private property or water bodies.
2. The posting of a bond in favor of the borough or other security may be required for permits involving right-of-way construction, except driveway construction permits. The amount of bond shall be based on the length of right-of-way subject to construction. The bond shall be released upon the receipt of the as-built survey and the borough's determination that the construction has been performed in compliance with permit requirements, within the boundaries of the right-of-way, and does not pose a threat to the right-of-way or adjacent lands and water bodies. The bond warrants the permittee will faithfully observe the terms and conditions of the permit and may be used to defray any costs for restoration and rehabilitation of the property, including without limitation environmental damage and cleanup. The bond may be in the form of a certificate of deposit ("CD") of a term specified by the borough appropriate to the period of time it will take to complete construction. The certificate of deposit shall be in the borough's name, deposited with a duly licensed commercial bank having a branch office in Soldotna, Alaska. Principal and interest may be applied to defray any costs incurred by the borough in rehabilitation and restoration of the right-of-way. Upon satisfactory compliance with all permit conditions and termination of the permit, any balance remaining, including any remaining accrued interest, will be returned to the permittee. The security, bond or CD shall not be the borough's exclusive monetary remedy if the costs of restoration and cleanup exceed the amount of the CD.
3. A right-of-way construction permit may be denied if conditions cannot be placed on it to prevent damage to the right-of-way, adjacent public or private property, or water bodies. Dedication of right-of-way alone does not mean a construction permit will be issued if issuance may damage the right-of-way, adjacent private or public property, or watercourses and water bodies.
4. Upon completion of construction, the permittee shall provide an as-built drawing prepared by a professional land surveyor registered to practice in Alaska under AS 8.48, if deemed necessary by the roads director.

Water bodies: Permits will not be issued to construct any part of a road or driveway within the right-of-way where the driveway or road will be parallel and within 50 feet of a bank of a watercourse or shore of a lake unless necessary for access to a lot where no reasonable alternative access exists or unless the road is for access to a bridge or public facility, water body or watercourse.



KENAI PENINSULA BOROUGH

Road Service Area

47140 E. Poppy Lane • Soldotna, Alaska 99669

Toll-free within the Borough: 1-800-478-4427

PHONE: (907) 262-4427 • FAX: (907) 262-6090

www.borough.kenai.ak.us

PROJECT SPECIFIC RIGHT-OF-WAY (ROW) CONSTRUCTION PERMIT APPLICATION

Road Construction Project

Other (excluding driveways)

Please List _____

Existing Road Upgrade

New Road Construction

*Road Construction
not to KPB 14.06
Standards

*Alternate Design

*Engineered Design

*Category IV Rd

* (These require prior RSA board approval before construction)

It is the applicant's responsibility to determine the need for any other local, state, or federal permits and acquire the same. Similarly, it is the applicant's responsibility to ensure all construction activity complies with all federal, state, and local laws.

APPLICANT NAME _____

APPLICANT MAILING ADDRESS _____

CITY _____ STATE _____ ZIP _____

TELEPHONE _____ CELL _____ FAX _____

CONTRACTOR NAME _____

ROAD NAME _____ SUBDIVISION _____

REGION/UNIT (Determined by RSA) _____

APPROXIMATE START DATE _____ APPROXIMATE COMPLETION DATE _____

REQUIRED ATTACHMENTS

- Attachment A
- Preliminary Plat or Final Plat
- Map

OTHER ATTACHMENTS (if applicable)

- Engineering Design
- Other Government Agency Applications/
Permits
- As-built Survey

Where information provided by existing topographic maps, aerial photography, and photographs is inadequate to accurately reflect conditions of the right-of-way or potential problems created or exacerbated by construction, additional information, surveys, or engineering analysis may be required prior to issuance of a permit.

TRAFFIC FLOW: Applicant may request authority to regulate traffic: Yes No during the following hours of the day on the following dates:_____.

Applicant shall provide signage and safeguards in accordance with the Alaska Traffic Manual and shall obtain any further permission for such routing from appropriate entities including but not limited to fire, emergency medical, police, and school transportation agencies.

Road passage or alternate access must be maintained or provided to residents at all times.

WATERBODIES: (KPB 14.40.061)

All floodplains, floodways, wetlands, streams, lakes, or other waterbodies adjacent to or within 50 feet of the outer boundaries of the right-of-way must be clearly delineated on a map attached to application. Are water bodies as described above present within 50 feet of right-of-way? Yes No.

Development conditions for rights-of-way accessing waterbodies. No development within 100 feet of the high water mark of a waterbody within a right-of-way providing access to the waterbody may occur without a permit. All permits issued under this section shall be submitted to the RSA Board for its consideration. **If applicable, date and Resolution No. of RSA Board approval** _____.

Right-of-way construction permits pursuant to KPB 14.40.040-14.40.060 will not be issued to construct any part of a road or driveway or other development within the right-of-way where the construction or development will be within 100 feet of the ordinary high water mark of a watercourse or lake unless necessary for access to a lot where no reasonable alternative access exists or unless the road is for access to a bridge or public facility, waterbody, or watercourse. Construction will will not occur within 100 feet of the ordinary high water mark of a watercourse.

Pursuant to KPB 14.40.040–14.40.060 for waterbody crossings where a dedication crosses a waterbody catalogued as important to the protection of anadromous fish under AS 41.14.870(a) as now enacted or hereinafter amended, applicants must provide completed application for project permits to the United States Army Corps of Engineers and Alaska Department of Fish and Game Division of Habitat. Anadromous waterbody crossings must be

designed by a licensed civil engineer and submitted to the RSA Board for review and approval prior to construction. Designs must comply with KPB 14.40.061 requirements.

Attached applications if applicable:

US Army Corp of Engineers Submitted on: _____

AK Dept. of Fish & Game Submitted on: _____

Construction does **not** cross dedicated catalogued waterbody as described above.

THE KENAI PENINSULA BOROUGH SPECIFICALLY DISCLAIMS ANY WARRANTY OR LIABILITY REGARDING LOCATION OR COORDINATION WITH UTILITY COMPANIES.

Statement of Applicant: I hereby affirm and agree that the work necessary to bring the project described herein to applicable roads standards as described in KPB 14.06 will be, or has been, completed to follow all permit requirements contained herein, in KPB 14.40, and Attachment B "Mandatory Conditions." By signing this application, I certify that all the information provided above is true and accurate to the best of my knowledge, that I am the responsible party for all project construction, and that I am responsible for all communication with the Road Service Area (RSA). I further acknowledge and agree that any violation of a permit condition or failure to obtain a permit for work in a ROW is subject to a civil penalty of up to \$250 per day pursuant to KPB 14.40.260.

Signature of Applicant

Date

INDEMNIFICATION: I hereby agree to indemnify, defend, and hold and save the borough, its elected and appointed officers, agents and employees harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys fees. I agree that I am responsible under this clause for any and all legal actions or claims of any character arising from performance or failure to perform this permit in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions of the borough or its agents, which are said to have contributed to the losses, failure, violations, or damages.

Signature of Applicant

Date

Pursuant to KPB 14.40.060(C), this permit may be subject to additional conditions to protect and manage borough ROWs by preventing damage to ROWs and adjacent public and private properties or waterbodies. This Permit may be revoked at any time for the Borough's convenience or for failure to comply with the requirements herein, KPB code, or other applicable local, state, or federal law.

Incomplete permit forms will be returned to applicants.

Will Road Maintenance be requested? **Yes** **No**

If yes, a separate Road Maintenance Application must be submitted by September 1 for consideration that calendar year.

PERMIT

Road Name: _____ Region/Unit: _____

Applicant Name: _____ Contractor: _____

Road Construction Permit Category of Road _____ Other

Denied Approved Permit # _____

Permit Issue Date: _____ Permit Expires: _____

Reviewed By Inspector: _____ Date _____

Approved By RSA Director: _____ Date: _____

Approved By RSA Board (if required): _____ Date: _____

RSA Special Provisions: _____

Regulation of Traffic Flow: Permit holder may regulate traffic by (signage/ regulatory device/ barricade) during hours of: _____ from (date) _____ to (date) _____.

RIGHT-OF-WAY CONSTRUCTION PROJECT DESCRIPTION
ATTACHMENT A (pursuant to KPB Chapter 14.40.050)

PROJECT DESCRIPTION (use extra pages if needed)

1. Brief narrative of construction plans:

2. Proposed design and method of construction:

3. Statement of length and width of project and right-of-way to be constructed:

4. Approximate grade of natural terrain and final grade of proposed construction:

5. Soil conditions of area subject to construction:

6. Amount, type and placement of materials used in construction:

7. Identify all properties affected, served or accessed by the proposed construction by owner name and parcel number:

8. Proposed uses after construction:

**KENAI PENINSULA BOROUGH
ROAD SERVICE AREA**

**POLICY STATEMENT NO. 2004-01
CONSTRUCTION PERMITTING WITHIN BOROUGH RIGHTS-OF-WAY**

Pursuant to KPB 14.40.060(B)(11) the following guidelines are hereby established for road construction projects and maintenance subject to permitting by the borough:

A. DRIVEWAY PERMITS

1. Pursuant to KPB 14.40.040(A)(1) a driveway permit must be obtained for construction at intersections between private drives and borough rights-of-way.
2. Permittee shall construct an adequate transition from the shoulder of the road to the level of the driveway. Length of intersection approaches shall be as required to create a smooth intersection. Where practical, vertical grade shall not exceed 4% within 50 feet of the driveway intersection with the road.
3. Material for driveway intersections shall meet the requirements for subbase grading Type A specified in KPB 14.06.
4. Installation of a driveway culvert shall normally be required to provide proper drainage for the road. Driveway culverts shall be a minimum of 15 inches in diameter and 30 feet in length or as determined by the RSA director. All culverts, coupling bands and special sections shall be corrugated steel pipe, minimum 16 gauge. Plastic culverts are acceptable if they meet AASHTO Standard Section 706-2.07 corrugated polyethylene pipe, AASHTO M 294, Type S.
5. Driveway intersections shall be constructed as nearly at right angles with roadway as possible.
6. Exceptions due to individual circumstances may be granted by the RSA Director.

B. SEASONAL PERMITS

1. Pursuant to KPB 14.40.040(A)(2) seasonal permits may be issued to someone holding a State of Alaska contractor's license. Such permits shall be valid from April 1 through November 15 of each year for all projects a contractor is constructing to the typical section under KPB 14.06.
2. Projects within the right-of-way not constructed to the typical section require a project-specific permit or a driveway permit.
3. In order for the seasonal permit to remain in effect, the contractor must hold a current contractor's license issued pursuant to Title 8 of the Alaska Statutes, and must not be in arrears in any financial obligations to the borough.
4. A contractor must provide 48 hours' written notice to the borough prior to commencing construction on each individual road project subject to the seasonal permit. Facsimile notice is acceptable.
5. The contractor shall also provide a list of projects completed under that year's seasonal permit no later than December 31 of the year in which the permit was granted.

C. PROJECT-SPECIFIC PERMITS

1. Pursuant to KPB 14.40.040(A)(3) a project-specific permit is required for all construction within a borough right-of-way that is not covered by a seasonal permit or a driveway permit.

2. Project-specific permits shall require improvement of a right-of-way, and shall require improvement to borough standards set forth in KPB 14.06
3. Construction of subdivision roads shall be required to meet borough standards set forth in KPB 14.06.
4. Paving projects shall be required to meet borough standards set forth in KPB 14.06.
5. Construction of new roads within borough rights-of-way shall be required to meet borough standards set forth in KPB 14.06.
6. Improvements of existing borough roads shall bring roads up to borough standards set forth in KPB 14.06.
7. At the director's discretion or upon RSA board approval, construction of a new road or improvement of an existing road may be permitted without requiring that the improvement bring the road up to minimum standards set forth in KPB 14.06 with respect to roadway width, horizontal alignment, vertical alignment, turnarounds or intersections. The director and RSA Board shall consider the following factors in determining whether to allow exceptions to the standards: topography; location and width of right-of-way; traffic volume; traffic flow; other physical characteristics; economic feasibility of the project; and compliance with recognized standards such as AASHTO guidelines. If the director grants an exception to the minimum road construction standards he or she shall present this permit to the board, at its next scheduled meeting, stating why such an exception has been deemed necessary.
8. Materials used for improvements subject to project-specific permits shall meet the standards set forth in KPB 14.06.
9. All project specific permits shall be issued and expire on an annual basis. New permits may be requested in accordance with KPB 14.40.040(D)

D. CITIZEN MAINTENANCE PERMITS

1. Pursuant to KPB 14.40.040(B) maintenance permits shall be issued for citizen maintenance of borough rights-of-way.
2. A single application may be filed for several rights-of-way or for ongoing seasonal Citizen maintenance pursuant to KPB 14.40.040(B). Applicants for citizen seasonal maintenance shall reapply each year.
3. On rights-of-way that have not been certified for maintenance by the borough, annual permit application for seasonal citizen maintenance consisting of only snow removal, may be waived at the discretion of the roads director.
4. Citizen maintenance includes, but is not limited to, snow removal; grading; replacing lost gravel (not to exceed a depth of six inches); reshaping shoulders, slopes, and ditches; unplugging culverts and clearing ditches; filling potholes; dust control; and other such activities consistent with sound maintenance practice.
5. Citizen maintenance does not include such activities as relocating a road; survey and design of a road; widening a road; adding lost material in excess of six inches in depth; and other such activities that would constitute road construction as opposed to road maintenance.
6. Construction within a borough right-of-way must comply with the right-of-way construction permit provisions of KPB 14.40.

END OF POLICY

ADOPTED APRIL 13, 2004, BY THE KENAI PENINSULA BOROUGH ROAD SERVICE AREA BOARD OF DIRECTORS. APPROVED BY MAYOR DALE BAGLEY ON JULY 9, 2004.

**KENAI PENINSULA BOROUGH
ROAD SERVICE AREA**

**RIGHT-OF-WAY (ROW) CONSTRUCTION PERMIT
MANDATORY CONDITIONS**

Pursuant to KPB 14.40.060 (B) all right-of-way construction permits shall be subject to the following conditions:

1. The permittee has responsibility to properly locate the proposed facility within the named right-of-way and to coordinate construction activity with utilities in the right-of-way.
2. Driveways or roads crossing utility installations shall cross as nearly perpendicular as possible to the utility line. The line locator phone number is 1-800-478-3121.
3. The Kenai Peninsula Borough disclaims any warranty or liability regarding location or coordination with utility companies.
4. Materials or trees shall not be used or removed except to the extent necessary to construct the road or driveway and provide adequate snow storage areas. Gravel may NOT be mined from any borough right-of-way unless the permittee has specific prior written approval by RSA staff.
5. The permittee must agree to comply with the terms, conditions and requirements of KPB 14.40, and any regulations adopted pursuant to this chapter. This includes an expiration date as determined by the RSA director.
6. Upon completion of construction, permittee shall provide an as-built drawing prepared by a professional land surveyor registered to practice in Alaska under AS 8.48 if deemed necessary by the roads director.
7. Upon completion, permittee shall agree not to restrict the flow of traffic, place traffic signs, or prevent use by the public unless prior approval has been received from the borough.
8. The permittee shall indemnify, defend, and hold and save the borough, its elected and appointed officers, agents and employees harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys fees. The permittee shall be responsible under this clause for any and all legal actions or claims of any character arising from applicant's or applicant's agents' performance or failure to perform this permit in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions of the borough or its agents, which are said to have contributed to the losses, failure, violations or damages.
9. Permittee is responsible for determining the need for any other local, state, or federal permits and acquiring the same. Permittee must abide by all applicable local, state and federal laws.
10. Violation of the permit's terms may result in its termination and/or an assessment of penalties against the permittee. The borough reserves the right to revoke the permit at any time for its convenience.
11. Construction of rights-of ways for motor vehicle use within the Kenai Peninsula Borough Road Service Area under a seasonal permit shall meet the borough road standards set forth in KPB 14.06. All other construction projects are subject to either a driveway or a project-specific permit, and may be required to meet road construction standards pursuant to road service area board policies approved by the mayor. Construction shall not damage the right-of-way, adjacent properties, or adjacent water bodies.

Discretionary conditions. The director may impose the following discretionary conditions:

1. The permit may be subject to additional conditions to protect and manage borough rights-of-way by preventing damage to the rights-of-way and adjacent public and private property or water bodies.
2. The posting of a bond in favor of the borough or other security may be required for permits involving right-of-way construction, except driveway construction permits. The amount of bond shall be based on the length of right-of-way subject to construction. The bond shall be released upon the receipt of the as-built survey and the borough's determination that the construction has been performed in compliance with permit requirements, within the boundaries of the right-of-way, and does not pose a threat to the right-of-way or adjacent lands and water bodies. The bond warrants the permittee will faithfully observe the terms and conditions of the permit and may be used to defray any costs for restoration and rehabilitation of the property, including without limitation environmental damage and cleanup. The bond may be in the form of a certificate of deposit ("CD") of a term specified by the borough appropriate to the period of time it will take to complete construction. The certificate of deposit shall be in the borough's name, deposited with a duly licensed commercial bank having a branch office in Soldotna, Alaska. Principal and interest may be applied to defray any costs incurred by the borough in rehabilitation and restoration of the right-of-way. Upon satisfactory compliance with all permit conditions and termination of the permit, any balance remaining, including any remaining accrued interest, will be returned to the permittee. The security, bond or CD shall not be the borough's exclusive monetary remedy if the costs of restoration and cleanup exceed the amount of the CD.
3. A right-of-way construction permit may be denied if conditions cannot be placed on it to prevent damage to the right-of-way, adjacent public or private property, or water bodies. Dedication of right-of-way alone does not mean a construction permit will be issued if issuance may damage the right-of-way, adjacent private or public property, or watercourses and water bodies.
4. Upon completion of construction, the permittee shall provide an as-built drawing prepared by a professional land surveyor registered to practice in Alaska under AS 8.48, if deemed necessary by the roads director.

Water bodies: Permits will not be issued to construct any part of a road or driveway within the right-of-way where the driveway or road will be parallel and within 50 feet of a bank of a watercourse or shore of a lake unless necessary for access to a lot where no reasonable alternative access exists or unless the road is for access to a bridge or public facility, water body or watercourse.



KENAI PENINSULA BOROUGH
 Road Service Area
 47140 E. Poppy Lane • Soldotna, Alaska 99669
 Toll-free within the Borough: 1-800-478-4427
PHONE: (907) 262-4427 • **FAX:** (907) 262-6090
 www.borough.kenai.ak.us

RIGHT-OF-WAY (ROW) CITIZEN MAINTENANCE PERMIT APPLICATION

APPLICANT NAME _____

APPLICANT MAILING ADDRESS _____ **CITY** _____

STATE _____ **ZIP** _____ **TELEPHONE** _____

EMAIL _____ **FAX** _____ **CELL** _____

ROAD NAME _____ **CONTRACTOR NAME** _____

APPROXIMATE START DATE _____ **APPROXIMATE COMPLETION DATE** _____

REQUIRED:

MAP

DETAILED DESCRIPTION OF PROJECT:

Statement of Applicant: I hereby affirm and agree that the work requested in this permit application and any RSA Director permit requirements will comply with KPB 14.40, 14.06. **By signing this application, I agree that I am the responsible party for all citizen maintenance and communication with the Road Service Area.** I further acknowledge and agree that any violation of a permit condition or failure to obtain a permit prior to working or doing maintenance in a ROW is subject to a civil penalty of up to \$250 per day pursuant to KPB 14.40.260.

Signature of Applicant

Date

RSA Director Permit Requirements: _____

PERMIT	
<input type="checkbox"/> Denied	<input type="checkbox"/> Approved Citizen Maintenance Permit # _____ Expiration Date: _____
Region/Unit _____	
Reviewed By Inspector: _____	Date: _____
Approved By RSA Director: _____	Date: _____

**KENAI PENINSULA BOROUGH
ROAD SERVICE AREA**

**POLICY STATEMENT NO. 2004-01
CONSTRUCTION PERMITTING WITHIN BOROUGH RIGHTS-OF-WAY**

Pursuant to KPB 14.40.060(B)(11) the following guidelines are hereby established for road construction projects and maintenance subject to permitting by the borough:

D. CITIZEN MAINTENANCE PERMITS

1. Pursuant to KPB 14.40.040(B) maintenance permits shall be issued for citizen maintenance of borough rights-of-way.
2. A single application may be filed for several rights-of-way or for ongoing seasonal Citizen maintenance pursuant to KPB 14.40.040(B). Applicants for citizen seasonal maintenance shall reapply each year.
3. On rights-of-way that have not been certified for maintenance by the borough, annual permit application for seasonal citizen maintenance consisting of only snow removal, may be waived at the discretion of the roads director.
4. Citizen maintenance includes, but is not limited to, snow removal; grading; replacing lost gravel (not to exceed a depth of six inches); reshaping shoulders, slopes, and ditches; unplugging culverts and clearing ditches; filling potholes; dust control; and other such activities consistent with sound maintenance practice.
5. Citizen maintenance does not include such activities as relocating a road; survey and design of a road; widening a road; adding lost material in excess of six inches in depth; and other such activities that would constitute road construction as opposed to road maintenance.
6. Construction within a borough right-of-way must comply with the right-of-way construction permit provisions of KPB 14.40.

END OF POLICY

ADOPTED APRIL 13, 2004, BY THE KENAI PENINSULA BOROUGH ROAD SERVICE AREA BOARD OF DIRECTORS. APPROVED BY MAYOR DALE BAGLEY ON JULY 9, 2004.

KPB 14.40.65. Maintenance permits.

- A. A maintenance permit is required for rights-of-way which are subject to citizen maintenance. Permits for citizen maintenance on borough rights-of-way shall be issued by the roads director. A maintenance permit is not required for snow removal on roads not certified for maintenance by the road service area.
- B. Maintenance includes, but is not limited to, snow removal; grading; replacing lost gravel (not to exceed a depth of six inches); reshaping shoulders, slopes, and ditches; unplugging culverts and clearing ditches; filling potholes; dust control; and other similar activities consistent with the goals set forth in subsection A. Maintenance does not include such activities as relocating a road; survey and design of road; widening a road; adding lost material in excess of six inches in depth; and other such activities that would constitute road construction as opposed to road maintenance. Construction within a borough right-of-way must comply with the right-of-way construction permit provisions of KPB 14.40.
- C. Citizens applying to perform maintenance on a borough right-of-way must file an application which shall include: the applicant's name, mailing address, physical address, and phone number; the name of the person or contractor performing the work; the name of the road and the location where the maintenance will be performed; the time frame within which the maintenance will be performed; the quantity and quality of material to be used in performing the maintenance; and the equipment to be used in performing the maintenance. A single application may be filed for several rights-of-way or for ongoing seasonal maintenance. Applicants for seasonal maintenance shall reapply each year.
- D. Citizen maintenance shall limit interference with the traveling public, and shall not create a hazard to the road, the traveling public, or adjacent properties. The director may require security in the form of a bond, certificate of deposit, or certified check or other practical means to ensure compliance with the terms of these application procedures. The citizen shall hold the borough harmless for the maintenance that is the subject of the application.
- E. The director shall issue approvals or denials of applications for citizen road maintenance. If the basis for denial is that the project constitutes construction, and not maintenance, the applicant shall be advised of the right-of-way construction permit process.
- F. There shall be no fee for citizen maintenance applications.
- (Ord. No. 2000-57, § 10, 12-12-00; Ord. No. 99-48, § 5, 8-17-99)
-

KENAI RIVER

C E N T E R

514 Funny River Road • Soldotna, Alaska 99669 • (907) 260-4882 • Fax: (907) 260-5992

May 23, 2007

P O Box
Kenai AK 99611

Subject: ***Floodplain Development Permit – Non-Compliant Action***
Project: New Deck and Replacement of Three Existing (Grand
fathered) Cabins
Parcel:
KRC #

Dear Mr.:

The Kenai River Center is requesting documentation and finalization for the above reference parcel. Issues which still remain, are the large deck between the cabins and the "grand fathered" cabins which were elevated to the base flood elevation (BFE) but required to have "open" underneath to allow floodwater to flow through.

It was decided when your permit was issued, that no conveyance calculation was required for the cabins, due to the fact the application indicated the cabins would be raised above the base flood elevation (BFE), which was better then having the cabin on the ground as constructed prior to the floodplain ordinance. Photos now indicated some material around the base of the cabins and a large deck area between the cabins has been built, which was not permitted in the original permit.

As per *KPB Code of Ordinance 21.06.050 C -1, Floodways*, a conveyance calculation is required for the large deck area. If the material around the cabins are not remove, the conveyance calculation will have to include this portion of "blockage" and proper openings will also have to be installed. Enclosed you will find a floodplain application to address the deck area and the base of the cabins, if you wish not to remove the enclosures.

You and I verbally spoke at the Kenai River Center (KRC) regarding this issue the week of May 7, 2007. On May 10, 2007, you were sent an e-mail requesting an engineer needed to contact the KRC by May 18, 2007 with the intent of handling this issue. On May 11, 2007, the KRC e-mail system indicated the e-mail sent to you on the May 10, 2007 was received / deleted.

Please contact the Kenai River Center by May 31, 2007, with a completed floodplain application for the addition of the large deck and your intentions regarding the elevated cabins with material round them. Also correspondence from you and/or your engineer is required, indicating a time line of these issues.

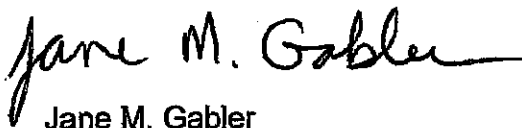
Your application for your 2007 Cost Share Bank Restoration project will not be issued until this issue has been resolved.

Pursuant to *KPB 21.24. Administration and Penalty*, you may be assessed a fine by failure to contact this office by May 31, 2007.

Should you have questions relating to this matter you may contact me at the Kenai River Center, (907) 260-4882 # 234 or e-mail jgabler@borough.kenai.ak.us.

Thank you.

Sincerely,



Jane M. Gabler
Floodplain Administrator

CC McLane and Assoc
ATT: Sam McLane

Mr. Warren Finley
KPB Code Compliance Officer



KENAI RIVER
C E N T E R

514 Funny River Road • Soldotna, Alaska 99669 • (907) 260-4882 • Fax: (907) 260-5992

September 4, 2007

P O Box
Kenai AK 99611

Subject: Floodplain Development Permit – Non-Compliant Action
Project: Large Deck and Replacement of Three Existing (Grand fathered) Cabins
Parcel: BAUGHMAN SUB NO 2 LOT 3-C-1, Section 24, T5N, R11W, SM, KRC #

Dear Mr.

On May 23, 2007, the Kenai River Center requested documentation and finalization for the above reference parcel. That correspondence is attached.

You and I verbally spoke at the Kenai River Center (KRC) regarding this issue the week of May 7, 2007. On May 10, 2007, you were sent an e-mail requesting an engineer needed to contact the KRC by May 18, 2007 with the intent of handling this issue. On May 11, 2007, the KRC e-mail system indicated the e-mail sent to you on the May 10, 2007 was received / deleted.

Your application for your *2007 Cost Share Bank Restoration project* was granted due to the fact in May of 2007, you verbally assured the Kenai River Center that you would provide the correct documentation. You did state that openings would be provided in the structures, but proper documentation has still not been received.

Pursuant to *KPB 21.24. Administration and Penalty*, you may be assessed a fine by failure to submit a floodplain application and the proper conveyance

calculations for the three cabins and the large deck area to this office by
September 21, 2007.

Should you have questions relating to this matter you may contact me at the
Kenai River Center, (907) 260-4882 # 234 or e-mail
jgabler@borough.kenai.ak.us.

Thank you.

Sincerely,



Jane M. Gabler
Floodplain Administrator

CC McLane and Assoc
ATT: Sam McLane

Mr. Warren Finley
KPB Code Compliance Officer

KENAI PENINSULA BOROUGH NOTICE **FLOOD HAZARD DISTRICT**

April 2009

You are being sent this notice to advise you that in accordance to a newly enacted Kenai Peninsula Borough (KPB) Ordinance, your property is within the SEWARD MAP FLOOD DATA AREA or “**SMFDA.**” You must obtain a floodplain development permit prior to building a primary structure or developing certain activities on your property.

How did this happen?

The KPB Assembly, on March 24, 2009 unanimously enacted KPB Ordinance 2009-09 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. To view this complete ordinance please visit www.kenairivercenter.org/smfda

What does this mean to me?

Within the SMFDA, the Kenai Peninsula Borough will now be requiring a floodplain development permit prior to construction of:

- Residential structures or substantial remodeling, repairs, or reconstruction to a residential structure.
- Buildings for commercial use.
- Any structure that will be served by water or wastewater disposal systems or a fuel storage tank.
- Any activity conducted within the minimum flood corridor in the SMFDA district. This will include activities done by hand and/or with equipment involving changes to your bank or riverbed such as removing material, re-channeling the water course or developing bank stabilization.

The ordinance contains standards to ensure:

- Residential structures and commercial buildings are elevated at least two feet above the highest point on your property to minimize risk of flood damage.
- The design of foundations and structures are resistant to flood damage.
- Development does not increase risk of flood damage to other properties.

**To obtain more information about the new requirements, visit
www.kenairivercenter.org/smfda**

Our website will link you to:

- A list of properties that are affected by the new ordinance
- A copy of the new ordinance with building requirements
- An interactive map of the new floodplain boundaries
- Frequently asked questions about the ordinance
- Permit applications and information

Have Questions?

To obtain additional information, paper copies of the maps or regulations, or a SMFDA Flood Development application, please contact Jane Gabler, Kenai River Center, 514 Funny River Road, Soldotna AK 99669, via email jgabler@borough.kenai.ak.us or by phone at (907) 260-4882.

You may also contact the Kenai Peninsula Borough Seward Office, at the Seaview Plaza, Suite 122; 302 Railway Avenue, Suite 122, Seward Alaska. Hours 10-2:00 M-F. Phone (907) 224-2001.



PRESORTED
FIRST CLASS MAIL
U.S. POSTAGE PAID
SOLDOTNA, ALASKA
99669-7599
PERMIT NO. 1

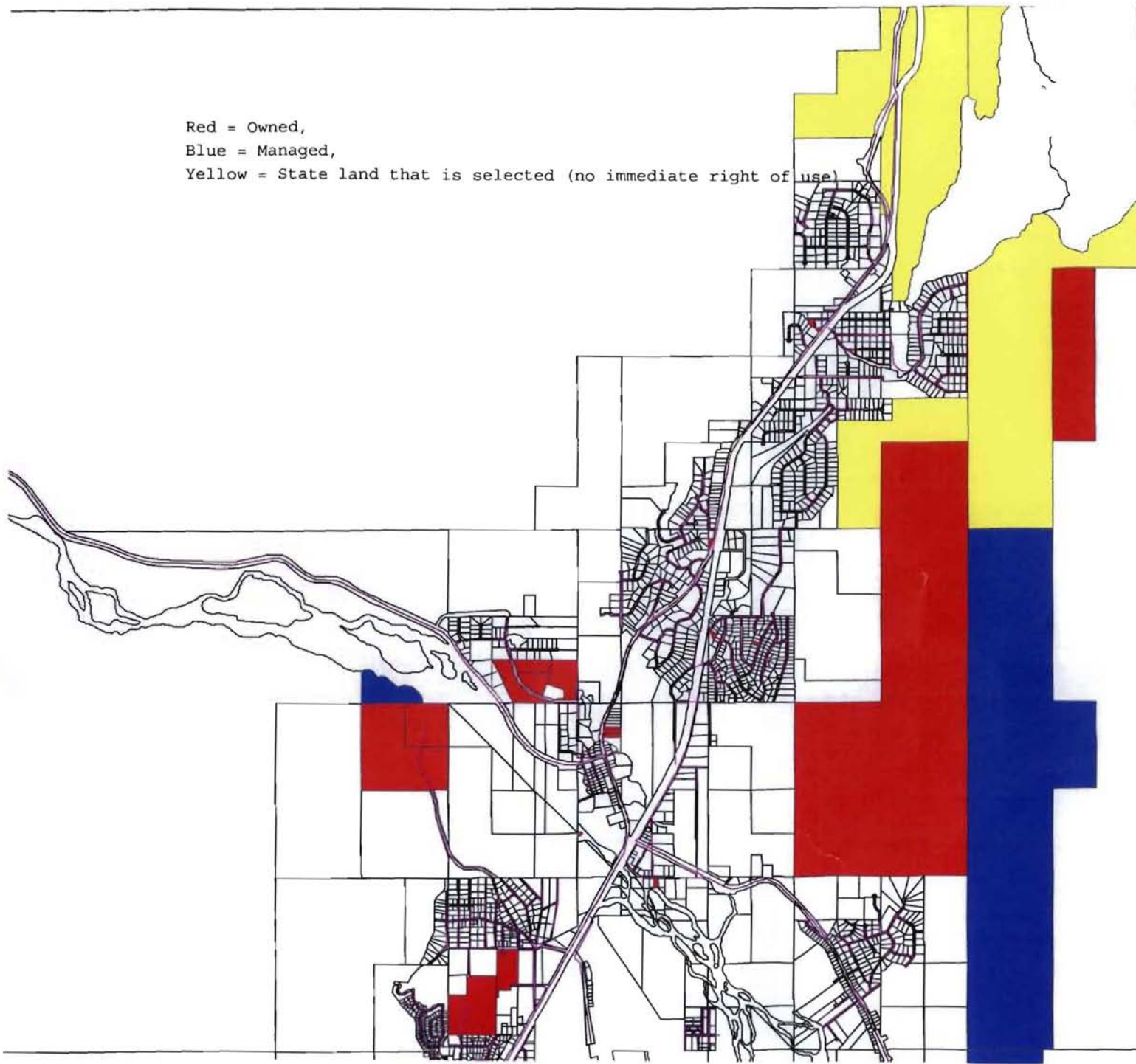
**IMPORTANT NOTICE ABOUT
NEW FLOODPLAIN REGULATIONS**

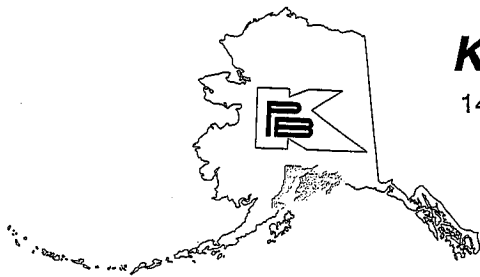
From: [Lyon, Kevin](#)
To: [Morgan, Shellie](#);
Subject: Task force Homework Assignment
Date: Wednesday, April 08, 2009 11:35:36 AM

I will not be at the meeting (on vacation). So here is my homework - The one thing that I believe that should be accomplished by the Task Force is adoption of the CMZ model (vs. the NFIP model) and of a timeline to implement the plan.

Thanks,
Kevin Lyon

Red = Owned,
Blue = Managed,
Yellow = State land that is selected (no immediate right of use)





KENAI PENINSULA BOROUGH

144 North Binkley Street • Soldotna, Alaska 99669-7520

Toll-free within the Borough: 1-800-478-4441

PHONE: (907) 262-4441 • **FAX:** (907) 262-1892

www.borough.kenai.ak.us

**DAVE CAREY
BOROUGH MAYOR**

April 7, 2009

Mr. Scott Ogan
Natural Resource Manager II
Department of Natural Resources
Division of Mining, Land & Water
Public Access Assertion & Defense Unit
550 W. 7th Ave., Suite 1330
Anchorage, AK 99501-3514

Re: State of Alaska Navigability Determination of March 20, 2006

Dear Mr. Ogan:

Based on the following facts, the Kenai Peninsula Borough administration respectfully requests that the state revoke its March 20, 2006 Navigability Determination as to Salmon Creek, Fourth of July Creek and Sawmill Creek, all located in the vicinity of Seward, Alaska. The Borough does not dispute the determination that Resurrection River is navigable at this time. If there is an applicable appeal process governing this request, please advise us as to that process. The determination notice contained no such information.

In 1999 Japp Creek was the only stream of those listed in the 2006 determination that was determined navigable. Kathy Atkinson, Division of Lands, subsequently revoked that determination, with the result that in 1999 the state determined all of the creeks listed in the 2006 letter were non-navigable. (Letter to Seward City Council 1999).

The letter of March 20, 2006, overturning portions of the 1999 determination, provides only cursory and anecdotal information supporting the conclusion that the above creeks should now be classified as navigable. It does not provide enough information for the borough to determine to what extent the state considered the relevant factors when it reversed its long-standing determination that these creeks are not navigable.

BLM recommends that all water bodies, with the exception of Bear Lake, be considered administratively non-navigable in T.1N R. 1E, T. 1N R. 1W, T.2N R.1W, T.1SR. 1W, T. 1S R.1E. This was determined in accordance to the Daniel Ball test and best survey practices which, according to State of Alaska policy on Navigability, on the website http://dnr.alaska.gov/mlw/nav/nav_policy.htm, is the accepted and correct standard for determining navigability.

The above-mentioned website also indicates on page 3, paragraphs 6 and 7, that Alaska policy interprets the Daniel Ball test as requiring the water body to be usable as a highway for the transportation of people or goods. Additional elaboration is found on page 4, paragraph 7, which provides that waters that are only navigable at infrequent and unpredictable periods of high water are not normally considered navigable". None of these streams are capable of fulfilling this requirement except at infrequent and unpredictable periods. Further, if the interpretation according to State of Alaska policy includes recreational uses such as fishing, trapping, shooting or transportation of personal goods, there is no evidence that the streams in question have ever been capable of supporting such activities, anadromous or not. Albert Schaffer, Afognak Logging Co., in 1955 logged substantial portions of Fourth of July Creek and was unable to "float logs" down this stream. (Verbal Communications 2009.) This lack of ability to float logs is in concurrence of Alaska policy and interpretations of policy for a non-navigable determination.

The March 20, 2006 Determination of Navigability 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.

Moreover, on page 7 of the Navigability Policy, the first full paragraph indicates that when information is lacking, the state is forced to rely on the physical characteristics shown on maps and aerial photographs. In those cases, the state identifies as navigable all streams depicted on the USGS maps with double lines (generally at least 70 feet wide) and having an average gradient over the length of the stream of no more than 50 feet per mile. As the state reversed its prior ruling without the benefit of an on-site inspection, it seems appropriate to use these guidelines.

Following is more information concerning the issue of navigability of the streams at issue:

Salmon Creek: In the 2006 determination, Salmon Creek headwaters are said to be derived from Bear Lake Glacier melt (page 4 paragraph 2), which is not correct. Bear Creek/Salmon Creek confluence, also stated in the determination document, clearly supports this. In fact, Glacier Creek (Kwechak), not Salmon Creek, flows from Bear Lake Glacier. Instead, Salmon Creek flows from Lost Creek and runs approximately 5.6 miles to its confluence with Resurrection River. Further, the determination notes that the creek is shown to have significant width along most of its channel, in some places more than 400 feet. This width is attributable to the meandering nature of this creek; only during floods would it possibly reach such a large width. As indicated by Mr. Bardarson, Salmon Creek is often very shallow. Although he states it is floatable in most areas, there is nothing provided to indicate what could float on it in most areas.

Fourth of July Creek: The determination letter indicates that this creek runs approximately 1.14 miles into the Resurrection Bay, and that the lower reaches of this creek are anadromous and tidally influenced. 43 USC § 1301(a)(2) defines lands beneath navigable waters as

(2) all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the

coast line of each such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles . . .

However, this creek has not significantly changed since the 1980 determination. Please provide information supporting the conclusion that the creek is now tidally influenced and therefore subject to the Submerged Lands Act. Further, the Fourth of July Creek gradient exceeds the 50 feet in one mile standard.

Sawmill Creek: Please provide information supporting the conclusion that the creek is now tidally influenced and therefore subject to the Submerged Lands Act and how this Creek has changed from the 1980 determination. Also, Sawmill Creek gradient exceeds the 50 feet in one mile standard.

The determination document dated March 20, 2006, refers to NHD datasets at pages 2 and 4. Please advise us what kind of data the referenced USGS dataset was used in the previous mentioned determination.

We would appreciate your reversing the determination of navigability dated March 20, 2006, or providing us with additional information supporting the conclusions as to these three creeks.

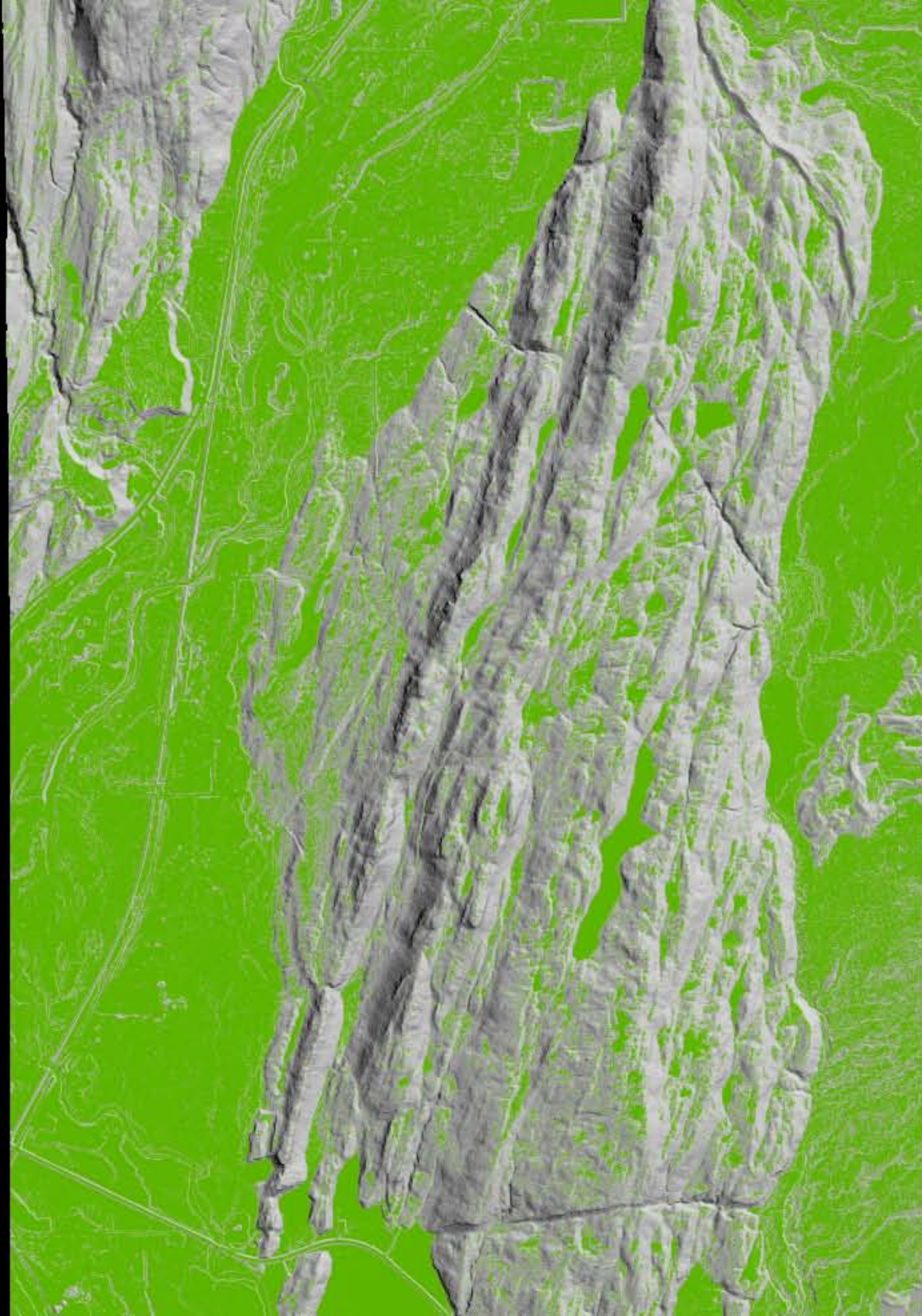
Thank you for your consideration.

Sincerely,

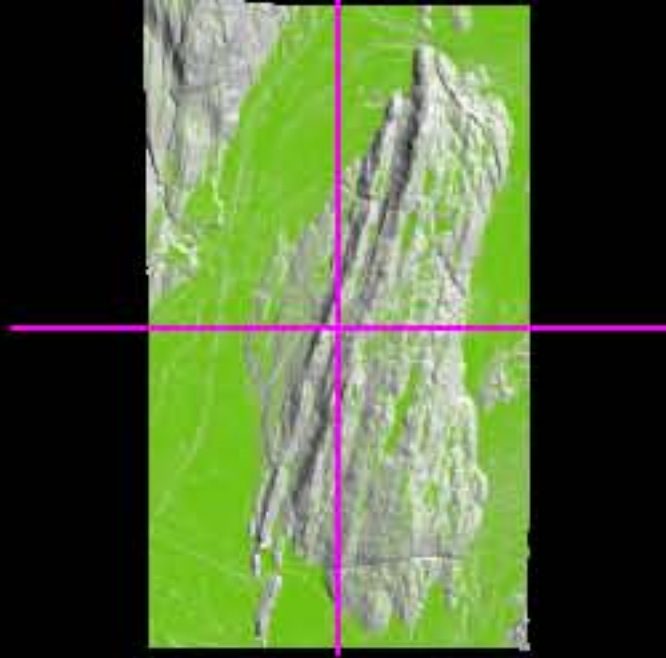


David R. Carey
Borough Mayor

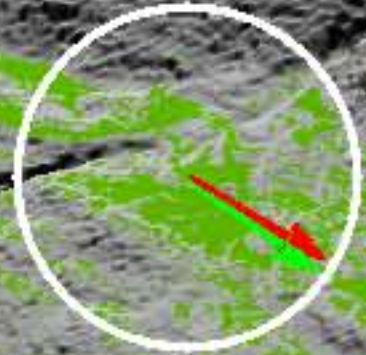
EL : -90.0



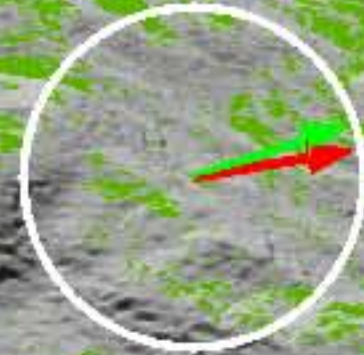
AZ : 0.0



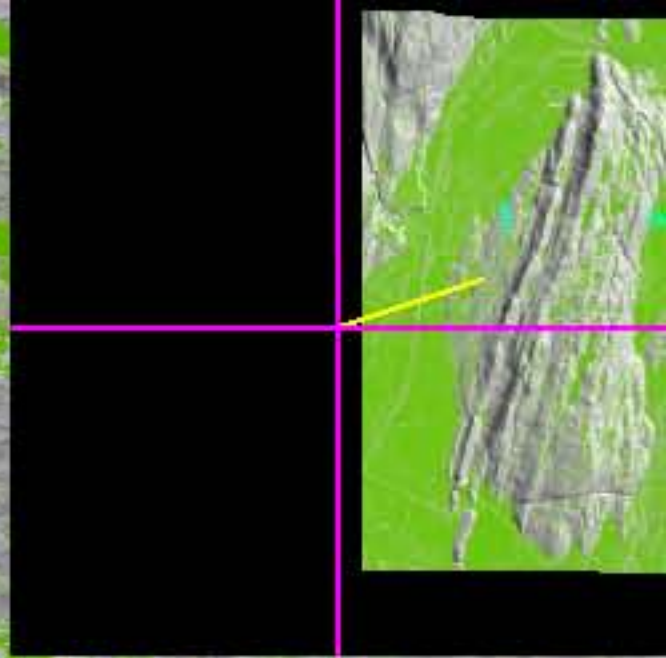
EL : -35.5



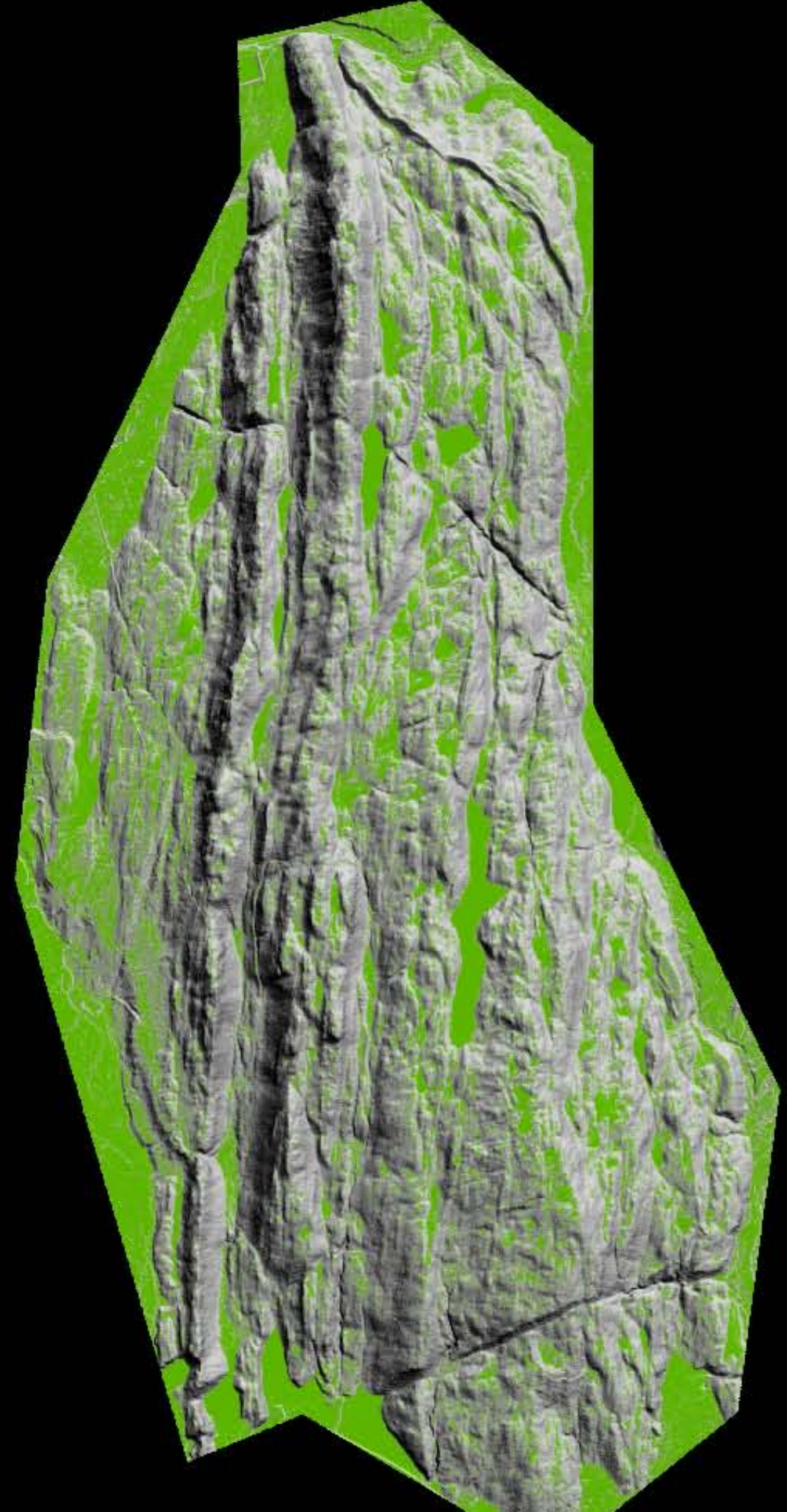
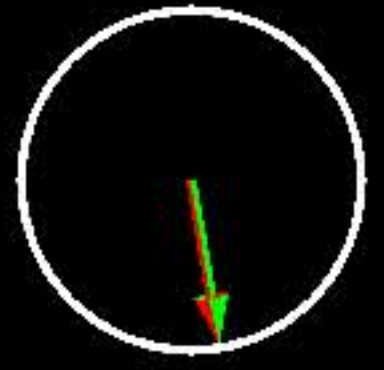
AZ : 71.5



1
Rybakov 1



EL : -80.1



AZ: 14.3

