

Introduced by: Mayor, McClure  
Date: 07/02/13  
Hearing: 08/06/13  
Action: Enacted  
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2013-29**

**AN ORDINANCE AMENDING KPB TITLES 20, 21 AND 29 TO SATISFY NATIONAL FLOOD INSURANCE PROGRAM REQUIREMENTS FOR MINIMUM NECESSARY UPDATES, ADOPTING FEMA FLOOD INSURANCE STUDY AND ASSOCIATED FLOOD MAPS FOR SEWARD DATED SEPTEMBER 27, 2013, AND REPEALING THE SUNSET CLAUSE FOR THE SEWARD MAPPED FLOOD DATA AREA (SMFDA)**

**WHEREAS**, federal disaster assistance, federal hazard mitigation grants, federally subsidized mortgages, and individual homeowner flood insurance are available within the borough because the Kenai Peninsula Borough has had an accredited floodplain management program under the National Flood Insurance Program (NFIP) since 1986; and

**WHEREAS**, continued participation in the NFIP is predicated upon continued good standing in that program; and

**WHEREAS**, in a June 14, 2013 letter, the Federal Emergency Management Agency (FEMA) indicated that, in order to maintain good standing in the NFIP, appropriate measures must be taken with adoption of proposed new FEMA flood mapping for areas within the Seward-Bear Creek Flood Service Area (SBCFSA); and

**WHEREAS**, FEMA has identified specific minimum necessary changes to the KPB Code of Ordinances; and

**WHEREAS**, during its meeting of July 15, 2013, the KPB Planning Commission recommended enactment by unanimous consent; and

**WHEREAS**, the KPB Assembly established provisions in Ordinances 2009-09, 2010-17, and 2011-02 establishing the Seward Mapped Flood Data Area (SMFDA) in anticipation of proposed new FEMA flood mapping; and

**WHEREAS**, the proposed new FEMA flood mapping does not include areas shown in the SMFDA that are known to be at flood risk based on three major flood events in 1986, 1995, and 2006; and

**WHEREAS**, during its meeting of May 20, 2013, the SBCFSA Board passed SBCFSA Resolution 2013-03 recommending continued administration of KPB 21.06.045 as it pertains to the SMFDA; and

**WHEREAS,** at its meeting of August 5, 2013, the SBCFSA Board considered this ordinance and recommended enactment by majority consent; and

**WHEREAS,** the SMFDA is set to expire with adoption of new proposed FEMA flood mapping; and

**WHEREAS,** the borough's best interests would be served by maintaining a good standing in the NFIP and by its continued administration of the SMFDA, KPB 21.06.045;

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

**SECTION 1.** That 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 FEMA, and which involve 50 lots or five acres whichever is lesser, shall include base flood elevation data and delineate the area involved within the flood plain on the plat. This plat notation shall be consistent with the effective flood insurance study (FIS) and any current effective FIRM or DFIRM.

B. All subdivisions or replats within the FIRM area, DFIRM area or SMFDA, as amended, as defined by KPB[21.06.020] 21.06.070, shall contain the following note or a substantially similar note:

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 base flood elevation for 100-year or 1-percent annual exceedence probability flood level."

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.

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.

F. Exceptions to this section under this chapter are prohibited.

**SECTION 2.** That KPB 20.24.010 is hereby amended as follows:

**20.24.010. Exceptions to regulations—Procedure—Commission authority.**

A. The commission may authorize exceptions to any of the requirements set forth in these regulations. Application for any such exception shall present the commission with substantial evidence, justifying the requested waiver or exception stating fully the grounds for the application and the facts relied upon. The commission shall find the following facts before granting any exceptions:

1. That special circumstances or conditions affecting the property have been shown by application;
2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this title;
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area in which said property is situated.

B. Where a design requirement of this title is addressed by a zoning regulation adopted by the borough assembly, the variance procedures of the applicable zoning code, if any, shall be utilized in lieu of the exception procedures.

C. An appeal of a decision of the planning commission made under this section shall be filed to the board of adjustment, in accordance with the requirements of KPB Chapter 21.20

D. Exceptions to the floodplain requirements for subdivisions set forth in KPB 20.20.260 are prohibited.

**SECTION 3.** That KPB 21.06.020-Definitions is repealed and reenacted as amended at KPB 21.06.070-Definitions.

**SECTION 4.** That KPB 21.06.030 is hereby amended as follows:

**21.06.030. General provisions.**

A. *Lands to Which this Chapter Applies.* This chapter shall apply to all flood hazard areas within the Kenai Peninsula Borough exclusive of the cities of Homer, Kenai, Seward, and Soldotna.

B. *Basis for Establishing Flood Hazard Areas.* Flood hazard areas are identified as follows:

1. By the areas of special flood hazard identified by the Federal Insurance Administration in scientific and engineering report entitled “Flood Insurance Study” (FIS) for the Kenai Peninsula Borough, Alaska dated [FLOOD INSURANCE

RATE MAPS WITH AN EFFECTIVE DATE OF]May 19, 1981, revised on July 5, 1983,[AND]December 6, 1999, and September 27, 2013. These areas are depicted on the effective flood FIRM and DFIRM Panels. 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. The best available information for flood hazard as outlined in KPB 21.06.040(C)(3) shall be the basis for regulation until a new FIRM or DFIRM is issued which incorporates the base flood plain data obtained pursuant to that section.

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, not including any Special Flood Hazard Area identified in a current, effective FIRM or DFIRM. 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 or 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).

*C. Warning and Disclaimer of Liability.* The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the Kenai Peninsula Borough, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

*D. Noncompliance—Enforcement.* No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violation of the provisions of this chapter by failure to comply with any of its requirements shall be enforced by the remedies set forth in KPB 21.50. Each day a violation continues is a separate violation.

**SECTION 5.** That KPB 21.06.040 is hereby amended as follows:

**21.06.040. Administration.**

A. *Development Permit Required.* A development permit shall be obtained before construction or development begins within flood hazard areas established in [SECTION]KPB 21.06.030(B). The permit shall be for all structures and for all other development including fill and other activities. Application for a development permit shall be made on forms furnished by the borough and shall include but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; logging, placement of storage tanks (fuel or other), existing or proposed structures, substantial improvements of existing structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

1. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;
2. Elevation in relation to mean sea level to which any structure has been floodproofed;
3. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in [SECTION]KPB 21.06.050(B)(2);
4. Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.

B. *Designation of the Borough Administrator.* The planning department is appointed to administer and implement this chapter by granting or denying development permit applications in accordance with its provisions.

C. *Duties and Responsibilities of the Planning Department.* Duties of the planning department shall include, but not be limited to:

1. Permit Application Review.

- a. Review all development permit applications to determine that the permit requirements have been met,
- b. Review all development permit applications to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required,
- c. Review all development permit applications to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of [SECTION]KPB 21.06.050(C)(1) are met.

2. Issue Permit.

a. Upon determination that the submitted and recorded information connected with the permit application meets the terms of this chapter, the planning department shall issue a floodplain development permit to the original applicant.

b. The floodplain development permit shall be valid for a period of 1 year from the issue date, and the start of construction must occur within 180 days of the permit issue date. The planning department floodplain management office shall be notified at least three days prior to start of construction for possible site inspection and notice-to-proceed.

c. The floodplain development permit is not assignable without permission from the planning department.

3. Use of Other Base Flood Data. When base flood elevation data has not been provided in accordance with [SECTION]KPB 21.06.030(B), the Planning Department shall obtain, review, and reasonably utilize any base flood and floodway elevation data available from a federal, state or other source, in order to administer subsections (B)(1), (B)(2) and (C) of [SECTION]KPB 21.06.050

4. Information to be Obtained and Maintained.

a. Where base flood elevation data is provided through the Flood Insurance Study or required in subsection (C)(2) of this section, record the actual elevation as submitted (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement;

b. For all new or substantially improved floodproofed structures:

i. Record the actual elevation as submitted (in relation to mean sea level), and

ii. Maintain the floodproofing certifications required in [SECTION]KPB 21.06.040(A)(3);

c. Maintain for public inspection all records pertaining to the provisions of this chapter in perpetuity.

5. Alteration of Watercourses.

a. Notify adjacent communities and the Department of Community and Regional Affairs prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.

b. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

6. Fee Required. The planning department shall charge fees for permits and [VARIANCES] exceptions. Fees shall be [ESTABLISHED BY IN] the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees

to be paid by the applicant at the time that the floodplain development permit application is submitted.

**SECTION 6.** That KPB 21.06.045 is hereby amended 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, which does not include any area of the Special Flood Hazard Area represented in an effective FIRM or DFIRM, is established by a [LICENSED] professional [REGISTERED] land surveyor licensed in the State of Alaska or professional [CIVIL] engineer licensed in the State of Alaska at the highest point within the lot measured downslope from the specific construction site.

B. *Exemption from application of SMFDA district.*

1. A property owner may request an exemption for application of SMFDA, which does not include any area of the Special Flood Hazard Area represented in an effective FIRM or DFIRM, 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 cannot 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.

2. Where elevation and conveyance data is not available, applications for development permits shall be reviewed to assure that proposed development will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes the use of historical data, high water marks, photographs of past flooding, best management practices, and other available reasonably reliable data.

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, including the crawl space, basement, or any part of the structure other than the supports, in the SMFDA district, which does not include any area of the Special Flood Hazard Area represented in an effective FIRM or DFIRM, shall be a minimum of two feet above base flood elevation;

2. Foundations shall have an erosion resistant design; and

3. Where applicable, including for attached garages and similar construction, 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 require a permit that is based on best management practices to minimize adverse impacts to properties in the vicinity of the subject activity.

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]~~Exceptions. The ~~[VARIANCE]~~exception procedure in KPB 21.06.060 only applies to permitting in Special Flood Hazard Area of the current effective ~~[THE]~~ FIRM or DFIRM area. For the SMFDA area, [A]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 7.** That KPB 21.06.050 is hereby amended as follows:

**21.06.050. Standards.**

A. General Standards. In all flood hazard areas, the following standards are required:

1. Anchoring.

a. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

b. All manufactured homes must be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors.



## 2. Construction Materials and Methods.

- a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- c. Electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

## 3. Utilities.

- a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
- b. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters; and,
- c. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

## 4. Subdivision Proposals.

- a. All subdivision proposals shall be consistent with the need to minimize flood damage.
- b. All proposed improvements such as water, sewer, natural gas, telephone and electrical facilities shall be located and constructed in a manner which will minimize damage in the event of a flood.
- c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
- d. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals [AND] which contain[S] 50 lots or 5 acres, [OR GREATER]whichever is less.
- e. It is the responsibility of the subdivider to provide all necessary information regarding flood protection measures at the time the preliminary plat is presented for consideration by the planning commission.

5. Review of Building Permits. Where elevation data is not available, applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available.

B. Specific Standards. In all flood hazard areas where base flood elevation data has been provided as set forth in [SECTION]KPB 21.06.030(B), the following provisions are required:

1. Residential Construction.

a. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above the base flood elevation.

b. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

i. A minimum of two openings having a total net area of not less than 1 square inch for every square foot of enclosed area subject to flooding shall be provided.

ii. The bottom of all openings shall be no higher than 1 foot above grade.

iii. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

c. For zones AH and AO, drainage paths are required around structures on slopes to drain floodwaters away from proposed structures.

2. Nonresidential Construction. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

a. Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;

b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

c. Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the official as set forth in [SECTION]KPB 21.06.040(C)(4)(b).

d. Nonresidential structures that are elevated, not floodproofed, must meet the same standard for space below the lowest floor as described in [SECTION]KPB 21.06.050(B)(1)(b).

e. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are 1 foot below the

floodproofed level (e.g. a building constructed to the base flood level will be rated as 1 foot below that level).

f. For zones AH and AO, drainage paths are required around structures on slopes to drain floodwaters away from proposed structures.

3. Manufactured Homes. All manufactured homes to be placed or substantially improved within Zones A1-30, AH, and AE shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of subsection (A)(1) of this section.

4. Recreational vehicles. Recreational vehicles that are placed on sites within a Special Flood Hazard Area as identified by the current effective FIRM or DFIRM panel are required to either:

a. Meet the requirements of chapter 21.06.050(A) and (B), or

b. Be on the site for fewer than 180 consecutive days, or

c. Be fully licensed and ready for highway use, on its wheels or jacking system, and attached to the site only by a quick disconnect type utilities and security devices,

5. Before regulatory floodway. In areas where a regulatory floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Special Flood Hazard Area zones AE, A1-A30 as identified in the current effective FIRM or DFIRM panel at that location unless the applicant demonstrates in the application that the cumulative effect of the proposed development when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point within the community.

6. Fuel storage tanks. Any fuel storage tanks shall be elevated above the base flood elevation or made watertight and anchored to resist flotation, collapse, and lateral movement. The tank must also be installed within an impervious containment basin of a size sufficient to contain 110 percent of storage capacity plus 12 inches of freeboard.

7. Logging or clearing. Within any special flood hazard area of the current effective FIRM or DFIRM, logging or clearing is allowed only for 20 percent of the total area of a parcel, except clearing for the footprint of a building may exceed this 20 percent limit. Multiple cleared areas may exist on a parcel, but the total of all such areas may not exceed 50 percent of the total area of the parcel. Logging or clearing may not increase runoff and/or erosion to such levels that it may significantly damage the floodplain function, riparian habitat or wetlands.

C. Floodways. Located within flood hazard areas established in [SECTION]KPB 21.06.030(B) are areas designated as floodways. Since the floodway is an extremely hazardous area due to erosion potential and the velocity of floodwaters which carry debris, the following provisions apply:

1. All encroachments, including fill, new construction, substantial improvements, and other development are prohibited unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge. Letter-of-Map-Revision-Based-On-Fill for projects within a floodway are not allowed.

2. If subdivision (1) of this subsection is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this section.

D. Coastal High Hazard Areas. When FEMA has identified [ON THE COMMUNITIES] FIRM or DFIRM Zones VE, V1-V30, and V (coastal high hazard areas) construction shall meet the following requirements in addition to all other provisions in this chapter:

1. All new construction shall be located landward of the reach of mean high tide.

2. All new construction, manufactured homes, and substantial improvements within Zones V1-V30 on the FIRM shall be elevated on adequately anchored pilings or columns such that:

a. The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level; and

b. The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall each have a 1 percent chance of being equaled or exceeded in any given year (100-year or 1-percent annual exceedence probability mean recurrence interval); and

c. A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction and shall provide a certification[CERTIFY] that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of subdivisions (2)(a) and (2)(b) of this subsection. The certification and related records will be maintained in the planning department permit files in perpetuity.

3. All new construction and substantial improvements shall have the space below the lowest floor free of obstructions or constructed with breakaway walls. Such [TEMPORARILY] enclosed space shall not be used for human habitation. For

the purpose of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local or State codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

a. Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and

b. The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Maximum wind and water loading values to be used in this determination shall each have a 1 percent chance of being equaled or exceeded in any given year (100-year or 1-percent annual exceedence probability mean recurrence interval).

4. The use of fill for structural support of buildings within Zones V1-V30 on the FIRM is prohibited.

5. Manufactured Homes. All manufactured homes to be placed or substantially improved within Zones VE, V1-30, and V shall meet the requirements for new and substantial improvement construction.

**SECTION 8.** That KPB 21.06.055 is hereby repealed.

**SECTION 9.** That KPB 21.06.060 is hereby amended as follows:

**21.06.060. [VARIANCE] Exceptions procedure.**

A. Appeal Board.

1. The Kenai Peninsula Borough Planning Commission shall hear and decide appeals and requests for [VARIANCES] exceptions from the requirements of this chapter.

2. The planning commission shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the planning department in the enforcement or administration of this chapter.

3. Those aggrieved by the decision of the planning commission[, OR ANY TAXPAYER,] may appeal such decision to the board of adjustment, as provided in AS 29.40.050.

4. In passing upon such applications, the planning commission shall consider all technical evaluations, all relevant factors, standards specified in other section of this chapter, and:

- a. The danger that materials may be swept onto other lands to the injury of others;
  - b. The danger to life and property due to flooding or erosion damage;
  - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - d. The importance of the services provided by the proposed facility to the community;
  - e. The necessity to the facility of a waterfront location, where applicable;
  - f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
  - g. The compatibility of the proposed use with the existing and anticipated development;
  - h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
  - i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - j. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
  - k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
5. Upon consideration of the factors of subsection (A)(4) of this section and the purposes of this chapter, the planning commission may attach such conditions to the granting of [VARIANCES]exceptions as it deems necessary to further the purposes of this chapter,
6. The planning department shall maintain the records of all appeal actions and report any [VARIANCES]exceptions to the Federal Insurance Administration upon request.

B. Conditions for [VARIANCES]Exceptions.

1. Generally, the only condition under which an [VARIANCE]exception from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of ½ acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing subparagraphs (a) through (k) of subsection (A)(4) of this

section have been fully considered. As the lot size increases the technical justification required for issuing the [VARIANCE]exception increases.

2. [VARIANCES]Exceptions may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in this section.

3. [VARIANCES]Exceptions shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.

4. [VARIANCES]Exceptions shall only be issued upon a determination that the exception is the minimum necessary, considering the flood hazard, to afford relief.

5. [VARIANCES]Exceptions shall only be issued upon:

a. A showing of good and sufficient cause;

b. A determination that failure to grant the [VARIANCE]exception would result in exceptional hardship to the applicant;

c. A determination that the granting of a [VARIANCE]exception will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.

6. [VARIANCES]Exceptions, or variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, [VARIANCE]exceptions from the flood elevations should be quite rare.

7. [VARIANCES]Exceptions may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-flood proofing where it can be determined that such action will have low damage potential, complies with all other [VARIANCE]exception criteria except subsection (B)(1) of this section, and otherwise complies with [SECTION]KPB 21.06.060(A) and (B).

8. Any applicant to whom a [VARIANCE]exception is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

**SECTION 10.** That KPB 21.06.070 is hereby enacted as follows:

**21.06.070. Definitions.**

For the purposes of this chapter, the following words and phrases shall be defined as follows:

"100-year or 1-percent annual exceedence probability flood" (also called "regulatory flood," "base flood" or "special flood hazard area") means a flood with a 1 percent chance of being equaled or exceeded in any year. Statistical analysis of available streamflow or storm records, or analysis of rainfall and runoff characteristics of the watershed, or topography and storm characteristics are used to determine the extent and depth of the 100-year or 1-percent annual exceedence probability flood.

"Breakaway wall" means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building.

"Clearing" means the act of removing trees or vegetation on a cumulative 20 percent or more of a given parcel of land.

"Coastal high hazard area" means the area subject to high velocity waters due to wind, tidal action, storm, tsunami or any similar force, acting singly or in any combination resulting in a wave or series of waves of sufficient magnitude, velocity or frequency to endanger property and lives.

"Development" means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of special flood hazard.

"Exception" means a grant of relief from the requirements of this chapter, which permits construction in a manner that would otherwise be prohibited by this chapter.

"Federal Emergency Management Agency" is the agency responsible for administration of the National Flood Insurance Program.

"Flood hazard area" means the land area covered by the flood, having a 1 percent chance of occurring in any given year. See also "100-year or 1-percent annual exceedence probability flood".

"Flood Insurance Rate Map (FIRM) and Digital Flood Insurance Rate Map (DFIRM)" means the map of the community issued by the FEMA which delineates the area subject to the 100-year or 1-percent annual exceedence probability flood, the water surface elevation of the base flood and the flood insurance rate zones.



"Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

"Logging" means the process, work, or business of cutting down trees and transporting the logs to sawmill(s), or for sale or export.

"Lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than the basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter found at KPB 21.06.050(B)(1) and (B) (2).

"Manufactured home" means a structure, transportable in 1 or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

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

"Planning department" means the planning department of the Kenai Peninsula Borough.

"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.

"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 of the current, affective FIRM or DFIRM, and outside the city limits of Seward.

"Special Flood Hazard Area (SFHA)" means areas of high risk as defined in the current effective FIRM and DFIRM panels for the Kenai Peninsula Borough.

"Start of construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing,

grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundation or erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

"Structure" means a walled and roofed building including liquid or gas storage tank, as well as a manufactured home that is principally above ground.

"Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its pre-damage condition would equal or exceed 50 percent of the market value of the structure before damage occurred.

"Substantial evidence" means evidence a reasonable mind might accept to support a conclusion.

"Substantial improvement" means any remodeling, repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started or, if the property has been damaged and is being restored, before the damage occurred. This term does not, however, include either:

(1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified or cited by the local code enforcement official, and which are necessary to assure safe living conditions, or,

(2) Any alteration of a structure listed on the National Register of Historic Places or State Register of Historic Places.

**SECTION 11.** That KPB 21.29.010 is hereby amended as follows:

**21.29.010. Material extraction exempt from obtaining a permit.**

A. Material extraction which disturbs an area of less than one acre that is not in a mapped flood plain or subject to 21.29.010(B), does not enter the water table, and does not cross property boundaries, does not require a permit. There will be no excavation within 20 feet of a right-of-way or within ten feet of a lot line.

B. Material extraction taking place on dewatered bars within the confines of the Snow River and the streams within the Seward-Bear Creek Flood Service Area does not require a permit, however, operators subject to this exemption shall provide the planning department with the information required by KPB 21.29.030(A)(1), (2), (6), (7) and a current flood plain development permit prior to beginning operations.

C. A prior existing use under KPB 21.29.120 does not require a material extraction permit, but a floodplain development permit is required for all activities within any mapped special flood hazard area.

**SECTION 12.** That the FEMA Flood Insurance Study Number 02122CV000A and associated flood insurance rate maps dated September 27, 2013, be adopted.

**SECTION 13.** That the expiration date or “sunset clause” for administration of the Seward Mapped Flood Data Area (SMFDA) is repealed. The SMFDA will continue to be administered as a mapped flood data area under KPB 21.06.045 of the KPB Code of Ordinances until which time the Assembly deems otherwise.

**SECTION 14.** That this ordinance takes effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 6TH DAY OF AUGUST, 2013.**

\_\_\_\_\_  
Linda Murphy, Assembly President

ATTEST:

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

Yes: Haggerty, Johnson, McClure, Pierce, Smalley, Smith, Tauriainen, Wolf, Murphy

No: None

Absent: None