

Kenai Peninsula Borough

144 North Binkley Street

Soldotna, AK 99669



Meeting Agenda

Tuesday, January 21, 2020

6:00 PM

Betty J. Glick Assembly Chambers

Assembly

Kelly Cooper, President

Hal Smalley, Vice President

Norm Blakeley

Jesse Bjorkman

Kenn Carpenter

Tyson Cox

Willy Dunne

Brent Hibbert

Brent Johnson



Assembly Meeting Schedule

TUESDAY, JANUARY 21, 2020

- | | |
|----------------|--|
| 2:30 PM | Finance Committee |
| 3:30 PM | Lands Committee |
| 4:00 PM | Policies and Procedures Committee |
| 4:30 PM | Legislative Committee |
| 6:00 PM | Regular Assembly Meeting |

Above listed meetings will be held in:

Betty J. Glick Assembly Chambers
George A. Navarre Kenai Peninsula Borough Administration Building
144 North Binkley Street, Soldotna, Alaska



Finance Committee

January 21, 2020

2:30 PM

Betty J. Glick Assembly Chambers
George A. Navarre Kenai Peninsula
Borough Administration Building

Brent Hibbert, Chair

Tyson Cox, Vice Chair

Brent Johnson

AGENDA

PUBLIC HEARINGS ON ORDINANCES

1. Ordinance 2019-19-22: Redirecting and Appropriating the Remaining Balance of Funds from the Completion of the U.S. Army Corps of Engineers Salmon Creek Section 205 Project and Unused Grant Funds from the State of Alaska Grant Number 15-DC-090 for Seward Bear Creek Flood Service Area Flood Mitigation Projects (Mayor) 13
2. Ordinance 2019-19-23: Appropriating Funds to Provide for a Facility Management Strategic Plan (Mayor) 18
3. Ordinance 2019-19-24: Appropriating Additional Funds for the Purpose of Purchasing Environmental, Health, and Safety (EHS) Management Software (Mayor) 22
4. Ordinance 2019-19-25: Appropriating Insurance Proceeds and Local Funds for the Purpose of Purchasing a Replacement Fire Truck Deemed a Total Loss (Mayor) 26
5. Ordinance 2019-19-26: Appropriating Additional Funds to the Legal Department for the Costs and Fees for Outside Counsel to Continue Representing the Kenai Peninsula Borough in the Application of the Alaska Gasline Development Corporation Filed with the Federal Energy Regulatory Commission (Mayor) 29

NEW BUSINESS

2. Ordinances for Introduction
 - *a. Ordinance 2020-03: Amending KPB 5.18 Sales Tax Code and Enacting KPB 5.19 – Uniform Remote Seller Sales Tax Code (Cooper, Smalley) (Hearing on 02/25/20) 55

*Consent Agenda Items



Lands Committee

January 21, 2020

3:30 PM

Betty J. Glick Assembly Chambers
George A. Navarre Kenai Peninsula
Borough Administration Building

Brent Johnson, Chair

Kenn Carpenter, Vice Chair

Norm Blakeley

AGENDA

NEW BUSINESS

2. Ordinances for Introduction

- *b. Ordinance 2020-04: Authorizing the Mayor to Select a Parcel of Land in the City of Kenai Through the Kenai Peninsula Borough's Municipal Entitlement Land Grant and Authorizing the Conveyance of the Parcel to the City of Kenai for a Municipal Park (Mayor) (Hearing on 02/04/20) 84

3. Other

- *a. Approving the Petition to Vacate for the Kenai River Keys Subdivision Pedestrian and Maintenance Easement. KPB File 2019-148V. Petitioner: Frank G. Turpin III and Jacqueline A. Turpin of Sterling, AK. 164

[Clerk's Note: The Planning Commission approved the above referenced petition to vacate at its January 6, 2020 meeting by unanimous consent.]

*Consent Agenda Items



Policies and Procedures Committee

January 21, 2020

4:00 PM

Betty J. Glick Assembly Chambers
George A. Navarre Kenai Peninsula
Borough Administration Building

Willy Dunne, Chair

Hal Smalley, Vice Chair

Kenn Carpenter

AGENDA

UNFINISHED BUSINESS

- 1. Postponed Item
 - a. Confirming Appointments to the Anadromous Waters Habitat Protection Work Group (Mayor) 32

NEW BUSINESS

- 2. Ordinances for Introduction
 - *c. Ordinance 2020-05: Amending the Kenai Peninsula Borough Hazard Mitigation Plan by Deleting Existing Annex A, 2015 City of Homer All Hazards Mitigation Plan Update, and Adopting the City of Homer All Hazards Mitigation 2018 Update as the New Annex A (Mayor) (Hearing on 02/04/20) 90

MAYOR'S REPORT 203

- 1. Assembly Requests/Responses – None.
- 2. Agreements and Contracts
 - a. Vote by Mail Project Analysis Sole Source Waiver, Resource Data 204
 - b. Purchasing Request for Central Emergency Services Fire Apparatus, Purchasing will be Through the Houston-Galveston Area Council (HGAC Buy) Purchasing Co-Op Contract #FS12-19 205

- c. Purchasing Request for Central Emergency Services Ambulance. Purchasing will be Through the Houston-Galveston Area Council (HGAC Buy) Purchasing Co-Op Contract #AM10-18..... 206
- d. Purchasing Request for Central Emergency Services Ambulance Gurney System Through Stryker 207
- 3. Other
 - a. Litigation Status Report – Quarter Ending 12/31/19..... 208

*Consent Agenda Items



Legislative Committee

January 21, 2020

4:30 PM

Betty J. Glick Assembly Chambers
George A. Navarre Kenai Peninsula
Borough Administration Building

Hal Smalley, Chair

Jesse Bjorkman, Vice Chair

Willy Dunne

AGENDA

NEW BUSINESS

1. Resolutions

- *a. Resolution 2020-007: Establishing Kenai Peninsula Borough 2020 State Capital Project Priorities for Public Safety Projects (Mayor)
- *b. Resolution 2020-008: Supporting and Calling for an Amendment to the Constitution of the United States to Address Issues that Resulted from Court Decisions such as the United States Supreme Court's Decision in *Citizens United v. Federal Election Commission* (Cox, Johnson)

*Consent Agenda Items



Assembly Agenda

January 21, 2020 - 6:00 PM

Regular Meeting

Betty J. Glick Assembly Chambers
George A. Navarre Kenai Peninsula
Borough Administration Building

Kelly Cooper
Assembly President
Seat 8 – Homer
Term Expires 2020

Harold "Hal" Smalley
Assembly Vice
President
Seat 2 - Kenai
Term Expires 2020

Jesse Bjorkman
Assembly Member
Seat 3 - Nikiski
Term Expires 2022

Norm Blakeley
Assembly Member
Seat 5-Sterling/Funny
River
Term Expires 2020

Kenn Carpenter
Assembly Member
Seat 6 – East Peninsula
Term Expires 2021

Tyson Cox
Assembly Member
Seat 4 - Soldotna
Term Expires 2022

Willy Dunne
Assembly Member
Seat 9 - South
Peninsula
Term Expires 2021

Brent Johnson
Assembly Member
Seat 7 – Central
Term Expires 2022

Brent Hibbert
Assembly Member
Seat 1 – Kalifornsky
Term Expires 2021

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

Any invocation that may be offered at the beginning of the assembly meeting shall be a voluntary offering of a private person, to and for the benefit of the assembly. No member of the community is required to attend or participate in the invocation.

[Clerk's Note: The invocation will be offered by Keith Hamilton.]

ROLL CALL

COMMITTEE REPORTS

APPROVAL OF AGENDA AND CONSENT AGENDA

(Action items listed with an asterisk (*) are considered to be routine and non-controversial by the Assembly and will be approved by one motion. Public testimony will be taken. There will be no separate discussion of these items unless an Assembly Member so requests, in which case the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda.)

ACTION ITEMS CURRENTLY ON CONSENT AGENDA

Resolution 2020-007
Resolution 2020-008
Ordinance 2020-03
Ordinance 2020-04
Ordinance 2020-05
Kenai River Keys Subdivision Vacation

ACTION ITEMS ELIGIBLE TO BE ADDED TO THE CONSENT AGENDA

Ordinance 2019-19-22
Ordinance 2019-19-23
Ordinance 2019-19-24
Ordinance 2019-19-25
Ordinance 2019-19-26

APPROVAL OF MINUTES

- *1. January 7, 2020 Regular Assembly Meeting Minutes 1

COMMENDING RESOLUTIONS AND PROCLAMATIONS

PRESENTATIONS WITH PRIOR NOTICE (20 minutes total)

PUBLIC COMMENTS ON ITEMS NOT APPEARING ON THE AGENDA
(3 minutes per speaker; 20 minutes aggregate)

ITEMS NOT COMPLETED FROM PRIOR AGENDA

PUBLIC HEARINGS ON ORDINANCES (Testimony limited to 3 minutes per speaker)

- 1. Ordinance 2019-19-22: Redirecting and Appropriating the Remaining Balance of Funds from the Completion of the U.S. Army Corps of Engineers Salmon Creek Section 205 Project and Unused Grant Funds from the State of Alaska Grant Number 15-DC-090 for Seward Bear Creek Flood Service Area Flood Mitigation Projects (Mayor) (Referred to Finance Committee) 13
- 2. Ordinance 2019-19-23: Appropriating Funds to Provide for a Facility Management Strategic Plan (Mayor) (Referred to Finance Committee) 18
- 3. Ordinance 2019-19-24: Appropriating Additional Funds for the Purpose of Purchasing Environmental, Health, and Safety (EHS) Management Software (Mayor) (Referred to Finance Committee) 22
- 4. Ordinance 2019-19-25: Appropriating Insurance Proceeds and Local Funds for the Purpose of Purchasing a Replacement Fire Truck Deemed a Total Loss (Mayor) (Referred to Finance Committee) 26
- 5. Ordinance 2019-19-26: Appropriating Additional Funds to the Legal Department for the Costs and Fees for Outside Counsel to Continue Representing the Kenai Peninsula Borough in the Application of the Alaska Gasline Development Corporation Filed with the Federal Energy Regulatory Commission (Mayor) (Referred to Finance Committee) 29

UNFINISHED BUSINESS

- 1. Postponed Item
 - a. Confirming Appointments to the Anadromous Waters Habitat Protection Work Group (Mayor) (Referred to Policies and Procedures Committee) 32

NEW BUSINESS

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 - *a. Resolution 2020-007: Establishing Kenai Peninsula Borough 2020 State Capital Project Priorities for Public Safety Projects (Mayor) (Referred to Legislative Committee) 33
 - *b. Resolution 2020-008: Supporting and Calling for an Amendment to the Constitution of the United States to Address Issues that Resulted from Court Decisions such as the United States Supreme Court's Decision in *Citizens United v. Federal Election Commission* (Cox, Johnson) Referred to Legislative Committee) 41
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 - *c. Ordinance 2020-05: Amending the Kenai Peninsula Borough Hazard Mitigation Plan by Deleting Existing Annex A, 2015 City of Homer All Hazards Mitigation Plan Update, and Adopting the City of Homer All Hazards Mitigation 2018 Update as the New Annex A (Mayor) (Hearing on 02/04/20) (Referred to Policies and Procedures Committee) 90

3.	Other	
	*a.	Approving the Petition to Vacate for the Kenai River Keys Subdivision Pedestrian and Maintenance Easement. KPB File 2019-148V. Petitioner: Frank G. Turpin III and Jacqueline A. Turpin of Sterling, AK. (Referred to Lands Committee) 164

[Clerk's Note: The Planning Commission approved the above referenced petition to vacate at its January 6, 2020 meeting by unanimous consent.]

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	b.	Purchasing Request for Central Emergency Services Fire Apparatus, Purchasing will be Through the Houston-Galveston Area Council (HGAC Buy) Purchasing Co-Op Contract #FS12-19 205
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PUBLIC COMMENTS AND PUBLIC PRESENTATIONS (3 minutes per speaker)

ASSEMBLY COMMENTS

PENDING LEGISLATION (This item lists legislation which will be addressed at a later date as noted.)

1. Ordinance 2019-24 (Mayor) Substitute: Adopting KPB 20.80, Subdivision Private Streets and Gated Subdivisions (Mayor) (Referred to Lands Committee) [*Postponed to 02/25/20*]
2. Ordinance 2019-34: Amending KPB 21.46.040 to Create the Kalifornsky Center Single Family Residential R-1 Local Option Zoning District on an Approximately 55-Acre Borough-Owned Parcel (Mayor) (Referred to Lands Committee) [*Tabled on 01/07/20*]
3. Ordinance 2020-01: Amending KPB 4.30.010 and KPB 4.30.050 Regarding Candidate Qualification and Review of Candidate Qualifications for Borough Elections (Johnson, Cox) (Hearing on 02/04/20) (Referred to Policies and Procedures Committee)
4. Ordinance 2020-02: Amending KPB 2.54.060 Regarding Response to Requests for Access to Public Records to Increase Time Limits for Response (Cooper at the Request of the Borough Clerk) (Hearing on 02/04/20) (Referred to Policies and Procedures Committee)

INFORMATIONAL MATERIALS AND REPORTS

ASSEMBLY MEETING AND HEARING ANNOUNCEMENTS

1. February 4, 2020
6:00 PM
Regular Assembly Meeting
Betty J. Glick Assembly Chambers
Soldotna, Alaska

ADJOURNMENT

This meeting will be broadcast on KDLL-FM 91.9 (Central Peninsula), KBBI-AM 890 (South Peninsula), K201AO(KSKA)-FM 88.1 (East Peninsula).

Copies of agenda items are available at the Borough Clerk's Office and in the Meeting Room just prior to the meeting. For further information, please call the Clerk's Office at 714-2160 or toll free within the Borough at 1-800-478-4441, Ext. 2160. Visit our website at www.kpb.us for copies of the agenda, meeting summaries, ordinances and resolutions.



Kenai Peninsula Borough

144 North Binkley Street
Soldotna, AK 99669

Meeting Minutes - Draft

Assembly

Kelly Cooper, President
Hal Smalley, Vice President
Norm Blakeley
Jesse Bjorkman
Kenn Carpenter
Tyson Cox
Willy Dunne
Brent Hibbert
Brent Johnson

Tuesday, January 7, 2020

6:00 PM

Betty J. Glick Assembly Chambers

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

[Clerk's Note: The invocation was given by Dawn Mallette.]

ROLL CALL

[Clerk's Note: Assembly Member Blakeley participated by phone.]

Present: 9 - Jesse Bjorkman, Norm Blakeley, Kenn Carpenter, Tyson Cox, Willy Dunne, Brent Hibbert, Brent Johnson, Hal Smalley, and Kelly Cooper

Also present were:

Charlie Pierce, Borough Mayor
James Baisden, Chief of Staff
Colette Thompson, Borough Attorney
Johni Blankenship, Borough Clerk
Michele Turner, Deputy Borough Clerk

COMMITTEE REPORTS

Assembly Member Hibbert stated the Finance Committee met and discussed its agenda items.

Assembly Member Johnson stated the Lands Committee met and discussed its agenda items.

Assembly Member Dunne stated the Policies and Procedures Committee met and discussed its agenda items.

APPROVAL OF AGENDA AND CONSENT AGENDA

Smalley moved to approve the agenda and consent agenda.

Copies have been made available to the public, Borough Clerk Johni Blankenship noted by title only the resolutions and ordinances on the consent agenda.

[KPB-2407](#) December 3, 2019 Assembly Regular Meeting Minutes
approved.

[KPB-2402](#) December 13, 2019 Special Assembly Meeting Minutes
approved.

The following public hearing items met the required conditions of KPB 22.40.110 and were added to the consent agenda:

[2019-38](#) An Ordinance Approving and Accepting \$13,738.95 from the State of Alaska Division of Homeland Security and Emergency Management to Reimburse Repairs at the Tebughna School Resulting from the November 30, 2018 Cook Inlet 7.0 Earthquake (Mayor)
This Ordinance was enacted.

[2019-36](#) An Ordinance Authorizing the Negotiated Lease of Garage Space at the Bear Creek Fire Station with the Alaska State Troopers a Detachment North (Mayor)
[Clerk's Note: The final Whereas clause in Ordinance 2019-36 was amended to read, "the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of December 16, 2019 recommended approval by unanimous consent;"]

This Ordinance was enacted as amended.

New Business

[2020-002](#) A Resolution Updating the Kenai Peninsula Borough Schedule of Rates, Charges and Fees, Pursuant to KPB 1.26 (Mayor)
[Clerk's Note: The first Whereas clause of Resolution 2020-002 was amended to read, "KPB 12.06 regarding abandoned vehicles allows the borough to remove vehicles from borough rights-of-way or from borough or private property upon written consent of the private property owner if the vehicle's location abuts a

borough right-of-way; and" and the Disposal Prep Fee listed in Section 1 was amended to read, "\$[150.00]300.00."

This Resolution was adopted as amended.

[2020-003](#) A Resolution Approving the Kenai Peninsula Borough Tourism and Marketing Program Objectives for Fiscal Year 2020 and 2021(Hibbert)

This Resolution was adopted.

[2020-004](#) A Resolution Supporting the City of Kenai's Request for the Kenai Peninsula Borough to Select Through its Municipal Entitlement, Land Described as T6N., R11W. Sec. 31, Lots 40, 41, and 42, Containing 3.75 Acres, From the State of Alaska for the City of Kenai to Enable the Continued Maintenance and Operation of the 4th Avenue Municipal Park (Smalley)

This Resolution was adopted.

[2020-005](#) A Resolution Authorizing a Quarterly Update to the Borough Records Retention Schedule (Cooper at the Request of the Borough Clerk)

[Clerk's Note: The retention schedule update forms that were layed down at the meeting were added to Resolution 2020-005.]

This Resolution was adopted as amended.

[2020-006](#) A Resolution Confirming Appointments to Non-Borough Boards (Cooper) LAYDOWN

This Resolution was adopted.

[2019-19-22](#) An Ordinance Redirecting and Appropriating the Remaining Balance of Funds from the Completion of the U.S. Army Corps of Engineers Salmon Creek Section 205 Project and Unused Grant Funds from the State of Alaska Grant Number 15-DC-090 for Seward Bear Creek Flood Service Area Flood Mitigation Projects (Mayor)

This Budget Ordinance was introduced and set for public hearing.

[2019-19-25](#) An Ordinance Appropriating Insurance Proceeds and Local Funds for the Purpose of Purchasing a Replacement Fire Truck Deemed a Total Loss (Mayor)

This Budget Ordinance was introduced and set for public hearing.

[2020-01](#) An Ordinance Amending KPB 4.30.010 and KPB 4.30.050 Regarding Candidate Qualification and Review of Candidate Qualifications for Borough Elections (Johnson, Cox) (Hearing on 02/04/20)

This Ordinance was introduced and set for public hearing.

[2020-02](#) An Ordinance Amending KPB 2.54.060 Regarding Response to Requests for Access to Public Records Requests to Increase Time Limits for Response (Cooper at the Request of the Borough Clerk) (Hearing on 02/04/20)

This Ordinance was introduced and set for public hearing.

[KPB-2424](#) Petition to Vacate a 100-foot Wide Section Line Easement Running East to West within US Survey 14477 Described as a 50-foot Section Line Easement within Section 27 and a 50-foot Section Line Easement within Section 34. The Section Line Easement Being Vacated is Unconstructed and Located within Sections 27 and 34, Township 5 North, Range 4 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2019-138V. Petitioner: Mary J. Dreifuerst of Cooper Landing, AK.

[Clerk's Note: The Planning Commission approved the above referenced petition to vacate at its December 16, 2019 meeting by unanimous consent.]

approved.

[KPB-2425](#) Confirming Appointments to the Board of Equalization (Mayor)

Brent Johnson, Seat E, Term Expires December 31, 2022
Dale Lee Bagley, Seat B, Term Expires December 31, 2022

approved.

[KPB-2426](#) Confirming Appointments to Service Area Boards (Mayor)

Road Service Area

Mike Tauriainen , Seat At-Large, Term Expires September, 2022

Seward-Bear Creek Flood

Edward Decastro, Seat C, Term Expires October, 2022

Seldovia Recreation

Mark Janes, Seat A, Term Expires October, 2022

approved.

Approval of the Agenda and Consent Agenda

President Cooper called for public comment with none being offered.

The motion to approve the agenda and consent agenda as amended carried by the following vote:

Yes: 9 - Bjorkman, Blakeley, Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, and Cooper

COMMENDING RESOLUTIONS AND PROCLAMATIONS

None.

PRESENTATIONS WITH PRIOR NOTICE

[KPB-2428](#) Kenai Peninsula Project Homeless Connect; Kathy Gensel, Steering Project Chair, Frank Alioto, Co-Chair and Jodi Stuart, PR Chair (10 Minutes)

[Clerk's Note: Jodi Stuart, PR Chair of Kenai Peninsula Project Homeless Connect gave a presentation to the assembly.]

PUBLIC COMMENTS ON ITEMS NOT APPEARING ON THE AGENDA

President Cooper called for public comment.

Carrie Henson, Kalifornsky shared her community volunteering experiences with the assembly.

Austin Stevenson, Soldotna addressed the assembly regarding property assessments.

There being no one else who wished to speak, the public comment period was closed.

ITEMS NOT COMPLETED FROM PRIOR AGENDA

None.

UNFINISHED BUSINESS

Notice to Reconsider

[2019-30](#) An Ordinance Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures (Mayor)

[Clerk's Note: Bjorkman gave notice of reconsideration at the 12/03/19 assembly meeting.]

Bjorkman moved to reconsider Ordinance 2019-30 (Mayor) Substitute.

Assembly Members Bjorkman, Johnson and Cox spoke in support of reconsideration.

Assembly Members Blakeley and Smalley spoke in opposition to reconsideration.

President Cooper passed the gavel to Vice President Smalley and spoke in opposition to reconsideration. Vice President Smalley returned the gavel to President Cooper.

The motion to reconsider Ordinance 2019-20 (Mayor) Substitute failed by the following vote:

Yes: 4 - Bjorkman, Cox, Dunne, and Johnson

No: 5 - Blakeley, Carpenter, Hibbert, Smalley, and Cooper

PUBLIC HEARINGS ON ORDINANCES

[2019-33](#) An Ordinance Amending KPB 20.10.030 and KPB 20.90.010 to Clarify Applicability of Subdivision Requirements (Mayor)

Johnson moved to enact Ordinance 2019-33.

President Cooper called for public comments with none being offered.

Johnson moved to amend Ordinance 2019-33 as follows:

The final Whereas clause to read, "the Kenai Peninsula Borough Planning Commission held a public hearing on December 16, 2019, and recommended approval by unanimous consent."

The motion to amend Ordinance 2019-33 carried by the following vote:

Yes: 9 - Bjorkman, Blakeley, Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, and Cooper

Assembly Member Bjorkman spoke in opposition to Ordinance 2019-33.

The motion to enact Ordinance 2019-33 as amended carried by the following vote:

Yes: 8 - Blakeley, Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, and Cooper

No: 1 - Bjorkman

[2019-34](#) An Ordinance Amending KPB 21.46.040 to Create the Kalifornsky Center Single Family Residential R-1 Local Option Zoning District on an Approximately 55-Acre Borough-Owned Parcel (Mayor) [Tabled on 01/07/20]

Johnson moved to enact Ordinance 2019-34.

President Cooper called for public comment with none being offered.

Johnson moved to amend Ordinance 2019-34 as follows:

The last two Whereas clauses to read, "the Kalifornsky Advisory Planning

Commission reviewed this ordinance at its regularly scheduled meeting of December 2, 2019 and recommended approval; and" and "the Kenai Peninsula Borough Planning Commission reviewed this ordinance at its regularly scheduled meeting of December 16, 2019 and recommended approval by unanimous consent;"

The motion to amend Ordinance 2019-34 carried by the following vote:

Yes: 9 - Bjorkman, Blakeley, Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, and Cooper

Johnson moved to table Ordinance 2019-34.

The motion to table Ordinance 2019-34 carried by the following vote:

Yes: 9 - Bjorkman, Blakeley, Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, and Cooper

[2019-35](#)

An Ordinance Approving C & H Estates Single-Family Residential R-1 Local Option Zoning District and Amending KPB 21.46.040 (Mayor)

Johnson moved to enact Ordinance 2019-35.

President Cooper called for public comment.

The following people spoke in support of Ordinance 2019-35:

Scott Meyer, Homer

Don Pitcher, Homer

Kate Meyer, Homer

Craig Cutler, Homer

Lindsay Martin, Homer

The following people spoke in opposition to Ordinance 2019-35:

Randy Arndt, Homer

Aaron Lang, Homer

There being no one else who wished to speak, the public comment period was closed.

Assembly Members Cox, Dunne, Johnson and Smalley spoke in support of Ordinance 2019-35.

Assembly Member Bjorkman spoke in opposition to Ordinance 2019-35.

The motion to enact Ordinance 2019-35 carried by the following vote:

Yes: 8 - Blakeley, Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, and Cooper

No: 1 - Bjorkman

[2019-37](#)

An Ordinance Amending KPB 17.10.120, Terms of a Land Sale, to

Address Kenai Peninsula Borough Employee and Contractor Participation in Land Disposal Methods (Mayor)

Johnson moved to enact Ordinance 2019-37.

President Cooper called for public comment with none being offered.

Johnson moved to amend Ordinance 2019-37 as follows:

The final Whereas clause to read, "the Kenai Peninsula Borough Planning Commission at its meeting held on December 16, 2019, recommended approval by unanimous consent;"

The motion to amend Ordinance 2019-37 carried by the following vote:

Yes: 9 - Bjorkman, Blakeley, Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, and Cooper

The motion to enact Ordinance 2019-37 as amended carried by the following vote:

Yes: 9 - Bjorkman, Blakeley, Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, and Cooper

[2019-39](#)

An Ordinance Repealing KPB 12.06 and Enacting KPB 12.08 Junk and Abandoned Vehicles (Mayor)

Dunne moved to enact Ordinance 2019-39.

President Cooper called for public comment with none being offered.

Assembly Members Dunne and Bjorkman spoke in support of Ordinance 2019-39.

The motion to enact Ordinance 2019-39 carried by the following vote:

Yes: 9 - Bjorkman, Blakeley, Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, and Cooper

UNFINISHED BUSINESS

Postponed Item

[2019-070](#)

A Resolution Authorizing the Borough to Enter into a Resource Exchange Agreement with TriMark Earth Reserve, LLC for the Construction of a Road to and through Borough Property (Mayor)

[Clerk's Note: The motion to adopt Resolution 2019-070 was on the floor from the December 3, 2019 meeting.]

President Cooper called for public comment with none being offered.

The motion to adopt Resolution 2019-070 carried by the following vote:

Yes: 9 - Bjorkman, Blakeley, Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, and Cooper

NEW BUSINESS

Resolutions

[2020-001](#) A Resolution Adopting an Alternate Allocation Method for the FY20 Shared Fisheries Business Tax Program and Certifying that this Allocation Method Fairly Represents the Distribution of Significant Effects of Fisheries Business Activity in the Cook Inlet Fisheries Management Area (Mayor)

Hibbert moved to adopt Resolution 2020-001.

President Cooper called for public comment with none being offered.

The motion to adopt Resolution 2020-001 carried by the following vote:

Yes: 9 - Bjorkman, Blakeley, Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, and Cooper

Ordinances for Introduction

[2019-19-23](#) An Ordinance Appropriating Funds to Provide for a Facility Management Strategic Plan (Mayor)

Hibbert moved to introduce Ordinance 2019-19-23 and set for public hearing.

President Cooper called for public comment with none being offered.

The motion to introduce Ordinance 2019-19-23 and set for public hearing carried by the following vote:

Yes: 9 - Bjorkman, Blakeley, Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, and Cooper

[2019-19-24](#) An Ordinance Appropriating Additional Funds for the Purpose of Purchasing Environmental, Health, and Safety (EHS) Management Software (Mayor)

Hibbert moved to introduce Ordinance 2019-19-24 and set for public hearing.

President Cooper called for public comment with none being offered.

The motion to introduce Ordinance 2019-19-24 and set for public hearing carried by the following vote:

Yes: 9 - Bjorkman, Blakeley, Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, and Cooper

[2019-19-26](#) An Ordinance Appropriating Additional Funds to the Legal Department for the Costs and Fees for Outside Counsel to Continue Representing the Kenai Peninsula Borough in the Application of the Alaska Gasline Development Corporation Filed with the Federal Energy Regulatory Commission (Mayor)

Hibbert moved to introduce Ordinance 2019-19-26 and set for public hearing.

President Cooper called for public comment with none being offered.

The motion to introduce Ordinance 20019-19-26 and set for public hearing carried by the following vote:

Yes: 9 - Bjorkman, Blakeley, Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, and Cooper

MAYOR'S REPORT

1. Assembly Requests/Responses - None.
2. Agreements and Contracts
 - a. [KPB-2412](#) Native Village of Tyonek Snow Removal Sole Source
 - b. [KPB-2413](#) Authorization to Award a Contract for ITB20-011 Nikiski Fire Station #3 to F-E Contracting, Inc., Palmer, Alaska.
 - c. [KPB-2414](#) Authorization to Award a Contract for ITB20-008 Anchor Point Fire Station Boiler Replacement to Peninsula Plumbing and HEating, Inc., Soldotna, Alaska.
 - d. [KPB-2415](#) Authorization to Award a Contract for RFP20-008 South Peninsula Hospital CT Remodel to Hue Design, Inc.
 - e. [KPB-2419](#) Authorization to Award a Contract for ITB20-012 Kenai Middle School Intensive Needs Remodel to Orion Construction, Inc., Wasilla, Alaska
 - f. [KPB-2420](#) External Mail Gateway Sole Source Waiver with Excel Micro
3. Other
 - a. [KPB-2421](#) Budget Revisions - November 2019
 - b. [KPB-2422](#) Revenue - Expenditure Report - November 2019

PUBLIC COMMENTS AND PUBLIC PRESENTATIONS

President Cooper called for public comment.

Duane Bannock, Kenai encouraged the assembly and borough as a whole to put performance measures and standards in practice.

Carrie Henson, Kalifornsky continued her discussion regarding volunteering in the community.

There being no one else who wished to speak, the public comment period was

closed.

ASSEMBLY COMMENTS

Assembly Member Johnson congratulated Brenda Ahlberg for her being awarded Person of the Year. He stated he was excited to hear that Tatyana Shassetz got to travel to Samoa. He thanked the administration for seeking expertise for the management of borough facilities. Mr. Johnson reminded everyone that there was always two sides to every situation and people are not always going to agree on matters. He wished everyone a happy New Year.

Assembly Member Dunne stated he had been attending the union contract negotiations and stated it had been a respectful process so far. He acknowledged the efforts and comments regarding local option zoning. He reminded everyone not to forget Homer resident, Anesha "Duffy" Murnane who has been missing since October 17, 2019 and encouraged those with any information to contact the Homer Police Department.

Assembly Member Bjorkman wished everyone a happy New Year and winter season. He discussed how he encourages his student to have a "team" mentality. He encouraged the residents of the borough to have that same "team" mentality in their communities. Mr. Bjorkman discussed the reconsideration of Ordinance 2019-30 (Mayor) Substitute, stating the assembly put an end to the conversation when the ordinance was not reconsidered. Regarding local option zoning, Mr. Bjorkman stated the borough should error on the side of people and not policy or bad code language that needs to be fixed.

Assembly Member Cox discussed the recent multi-family structure fire that occurred in Soldotna. He thanked the emergency responders for all their hard work and immediate response. He encouraged others to be sure to thank them as well.

Assembly Member Hibbert stated there was great discussion and comments. He encouraged everyone to stay warm.

Assembly Member Carpenter reminded everyone of the Industry Outlook Forum that starts January 8, 2020 in the AVTEC Culinary Arts Building. He also reminded everyone of the Polar Bear Jump on January 18, 2020 in Seward. Mr. Carpenter extended his condolences for the loss of Curt "Jake" Jacobsen, stating he was a great guy and would be missed.

Assembly Member Smalley congratulated Brenda Ahlberg for her Person of the Year award. He congratulated Denis Mueller on his retirement. He encouraged everyone to attend the Industry Outlook Forum. He wished everyone a happy New Year and to stay warm. He discussed the local churches' efforts that were looking to setup a

shelter for those who had no where warm to sleep.

Assembly Member Blakeley wished everyone a happy New Year. He congratulated Brenda Ahlberg on her award. Mr. Blakeley stated he would be back in Alaska in a few days.

President Cooper discussed the reconsideration process and public testimony. She stated she was thrilled with the work Project Homless Connect was doing and encouraged everyone to volunteer at their annual event on January 29, 2020. Ms. Cooper wished everyone a good evening.

INFORMATIONAL MATERIALS AND REPORTS

ASSEMBLY MEETING AND HEARING ANNOUNCEMENTS

- 1. January 21, 2020 Regular Assembly Meeting
6:00 PM Betty J. Glick Assembly Chambers, Soldotna, Alaska

ADJOURNMENT

With no further business to come before the assembly, President Ogle adjourned the meeting at 10:08 p.m.

I certify the above represents accurate minutes of the Kenai Peninsula Borough Assembly meeting of January 7, 2020.

Johni Blankenship, MMC, Borough Clerk

Approved by the Assembly: _____

Introduced by: Mayor
Date: 01/07/20
Hearing: 01/21/20
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-19-22**

**AN ORDINANCE REDIRECTING AND APPROPRIATING THE REMAINING
BALANCE OF FUNDS FROM THE COMPLETION OF THE U.S. ARMY CORPS OF
ENGINEERS SALMON CREEK SECTION 205 PROJECT AND UNUSED GRANT
FUNDS FROM THE STATE OF ALASKA GRANT NUMBER 15-DC-090 FOR
SEWARD-BEAR CREEK FLOOD SERVICE AREA FLOOD MITIGATION PROJECTS**

WHEREAS, the Seward-Bear Creek Flood Service Area (“SBCFSA”) provides flood planning, protection, and mitigation services for flooding within the service area; and

WHEREAS, ordinance 2014-19-17 accepted and appropriated capital grant 15-DC-090 in the amount of \$500,000 from the State of Alaska on behalf of the SBCFSA for flood mitigation projects (“state grant”); and

WHEREAS, mitigation projects were determined based upon recommendations from the 2013 SBCFSA Local Hazard Mitigation Plan and submitted to the mayor for approval; and

WHEREAS, state grant funds in the amount of \$495,049.50 and SBCFSA funds in the amount of \$114,069.36 provided a match for the U.S. Army Corps of Engineers (“USACE”) to complete the Salmon Creek Section 205 flood risk management project; and

WHEREAS, the Salmon Creek project was completed under budget and the USACE will refund the remaining \$68,506.65 in grant funds and \$114,069.36 in service area funds to the borough; and

WHEREAS, the SBCFSA board of directors reviewed and identified potential projects during the November 18, 2019 work session; and

WHEREAS, at the regular meeting of December 16, 2019, the SBCFSA board recommended these funds be reappropriated for the following mitigation projects;

State Grant 15-DC-090 Contractual Services 271.21212.15090.43011:
Sawmill Creek Sediment Management
Seward Mapped Flood Data Area (SMFDA) Flood Risk Analyses
Establish Ground Control Points in Areas of Interest

SBCFSA Contractual Services 259.21212.00000.43011:
Japanese Creek Long Term Mitigation
Box Canyon Creek Project Planning
Sediment Management Planning
Annual Channel & Embankment Maintenance
Second Avenue Culvert Optimization

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

SECTION 1. That funds in the amount of \$114,069.36 are appropriated from the Seward-Bear Creek Flood Service Area Fund fund balance to account number 259.21212.00000.43011.

SECTION 2. That State of Alaska 15-DC-090 grant funds in the amount of \$68,506.65 are deobligated and redirected to account number 271.21212.15090.43011.

SECTION 3. That the grant funds appropriated are of a project length nature and as such do not lapse at the end of any particular fiscal year.

SECTION 4. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2020.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Seward-Bear Creek Flood Service Area

MEMORANDUM

To: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

Thru: Charlie Pierce, Mayor *CP*
Brandi Harbaugh, Finance Director *BH*
John Hedges, Purchasing & Contracting Director *JH*
Brenda Ahlberg, Community & Fiscal Projects Manager *BA*
Dan Nelson, Emergency Manager *DN*

From: Stephanie Presley, SBCFSA Program Lead *SP*

Date: December 26, 2019

Subject: Ordinance 2019-19-22, Redirecting and Appropriating the Remaining Balance of Funds from the Completion of the U.S. Army Corps of Engineers Salmon Creek Section 205 Project and Unused Grant Funds from the State of Alaska Grant Number 15-DC-090 for Seward Bear Creek Flood Service Area Flood Mitigation Projects (Mayor)

Through Ordinance 2014-19-17, the borough accepted grant 15-DC-090 from the State of Alaska on behalf of the Seward-Bear Creek Flood Service Area (SBCFSA) for flood mitigation projects in the amount of \$500,000. Selected mitigation projects were determined based upon recommendations from the SBCFSA 2013 Local Hazard Mitigation Plan and submitted to the mayor for approval.

Mitigation projects completed with the state grant included matching funds for the U.S. Army Corps of Engineers (USACE) Continuing Authorities Program Section 205 for the Salmon Creek flood risk management project. The Salmon Creek revetment and recreational area have been constructed and the one-year inspection was completed in November. The USACE will close out the project under budget and provide the borough with remaining funds of approximately \$165,000.

Matching funds of \$495,049.50 for the USACE Salmon Creek project were appropriated from the 15-DC-090 state grant and \$114,069.36 from the SBCFSA fund balance. We are requesting that remaining grants funds of

December 26, 2019

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Re: O2019-19- 22

\$68,506.65 and the previously appropriated fund balance of \$114,069.36 be redirected and reappropriated for additional SBCFSA mitigation projects and associated administrative service fees.

At the November 18, 2019 work session, the SBCFSA board reviewed and identified flood mitigation projects that it recommends be completed using these funds. At the December 16, 2019 regular meeting, the SBCFSA board recommended the following flood mitigation projects:

15-DC-090 Grant Funds – Account number 271.21212.15090.43011
<u>Sawmill Creek Sediment Management</u> <i>Removal of streambed material from upstream and downstream of Nash Road bridge, as described in the SBCFSA Sawmill Creek Sediment Management Plan.</i>
<u>Seward Mapped Flood Data Area (SMFDA) Flood Risk Analyses</u> <i>Following delivery of LiDAR data (expected December 30, 2019), contractor analyses of three areas of interest (Old Mill, Old Exit Glacier, and Nashwoods subdivisions) and delivery of expected flow paths, base flood depths and updated SMFDA maps.</i>
<u>Establish Ground Control Points in Areas of Interest</u> <i>Installation and survey of benchmarks in selected areas to establish ground control for future imagery and LiDAR data collection.</i>

The 15-DC-090 grant performance period ends June 30, 2020. Stephanie Presley, SBCFSA Program Lead, will provide grant oversight and the Kenai Peninsula Borough Capital Projects Department shall provide project completion oversight.

The \$114,069.36 from fund balance that is appropriated to the SBCFSA contractual services account is recommended to be used for projects listed in the SBCFSA Mitigation Action Plan Projects Priority List. Any funds not expended before June 30, 2020 will roll back into the SBCFSA fund balance.

December 26, 2019

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Re: O2019-19- 22

SBCFSA Contractual Services – Account number 259.21212.00000.43011

Japanese Creek Long Term Mitigation

Japanese Creek Sediment Management Planning, University of Alaska and State Department of Natural Resources permitting fees.

Box Canyon Creek Project Planning

Cook Inlet Region, Inc. and US Department of Agriculture National Forest Service site control agreements and permitting fees.

Sediment Management Planning

Survey and/or design plans for strategic streambed removal plans.

Annual Channel & Embankment Maintenance

Maintenance of areas protecting public and private infrastructure and property.

Second Avenue Culvert Optimization

Matching funds for installation of new culvert under Second Ave to Seward Lagoon. Partnership project with City of Seward, U.S. Fish & Wildlife Service and other agencies.

**FINANCE DEPARTMENT
ACCOUNT / FUNDS VERIFIED**

Acct. No. 259.27910

Amount: \$ 114,069.36

Acct. No. 271.21212.15090.49999

Amount: \$ 68,332.63

Acct. No. 271.21212.15090.61990

Amount: \$ 174.02

By: PP

Date: 12/.18/2019

Introduced by:	Mayor
Date:	01/07/20
Hearing:	01/21/20
Action:	Introduced and Set for Public Hearing
Vote:	9 Yes, 0 No, 0 Absent
Date:	01/21/20
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-19-23**

**AN ORDINANCE APPROPRIATING FUNDS TO PROVIDE FOR A FACILITY
MANAGEMENT STRATEGIC PLAN**

WHEREAS, since its establishment in 1964, the steady growth of the Kenai Peninsula Borough (“KPB”) has accumulated over 148 facilities which have a total value of over one billion dollars; and

WHEREAS, KPB currently has no centralized facility management; and

WHEREAS, in 2019 a facility management committee was formed to identify facility management needs, strategies, and priorities; and

WHEREAS, the committee identified that significant benefits would result from refining the KPB’s scope and approach to facility management; and

WHEREAS, benefits identified include financial and operating efficiencies, maximizing use of assets, energy efficiency gains, regulatory compliance, health and safety, and responsiveness to facility needs; and

WHEREAS, further information gathering is necessary to define prudent actions; and

WHEREAS, the committee recommends creating a project which would include engagement of a third-party facility management consulting firm to investigate KPB’s systems and develop strategic recommendations consistent with best management practices tailored to the borough and its operating agencies;

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

SECTION 1. That \$220,000 is appropriated from the General Fund fund balance to projects account 100.94910.FCLTY.49999 for facility management strategic planning and associated costs.

SECTION 2. That this is a multi-year project and funds shall not lapse.

SECTION 3. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2020.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

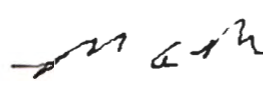
Kenai Peninsula Borough

Planning Department – Land Management Division

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor CP
James Baisden, Chief of Staff JCB
Max Best, Planning Director MB

FROM: John Hedges, Purchasing and Contracting Director JH
Scott Griebel, Maintenance Director SG
Ben Hanson, IT Director BH
Sovala Kisenia, Claims Manager SK
Marcus A. Mueller, Land Management Officer 

DATE: December 26, 2019

RE: Ordinance 2019-19-23, Appropriating Funds to Provide for a Facility Management Strategic Plan (Mayor)

The borough currently handles facilities management on an as-needed basis by the department or agency that is utilizing the borough's capital assets. This procedure appears to have been established early-on in the borough's history when infrastructure needs were still small and a less coordinated approach was adequate. Given the substantial growth of borough infrastructure over the years, this approach has led to numerous inefficiencies and inconsistent polices throughout the borough's organization.

In 2019 a committee consisting of borough administrative employees was formed to address the increasing issues associated with the lack of facility management coordination. Since early Spring 2019, the Facilities Management Committee has met approximately twice a month to review and discuss solutions to ongoing issues. The goal of this review has been to identify strategies and priorities in facility management to address issues throughout the borough and its operating agencies. These issues involve, but are not necessarily limited to, the following areas of concern:

- Life safety assessment, compliance and monitoring
- Preventive maintenance
- Capital improvement planning
- Major and minor maintenance
- Energy consumption

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January 7, 2020
KPB Assembly
RE: Ord 2019-19-23

- Operational efficiencies & standardization
- Asset inventories & operating agreements

It is the recommendation of this committee that, due to the size and complexity of this issue, a project be created to identify and apply best management practices for borough facility needs. This project would solicit a third-party facilities management consulting organization to inventory, evaluate, and recommend organizational and information systems structures to the Facilities Management Committee.

In addition, the use of a third-party consultant may bring a broader experienced based perspective to our efforts. Once approved by the committee a detailed report will be generated that will, at a minimum, include an organizational structure, a capital asset inventory, and recommendations on best management practices to address areas of concern such as the ones listed above. This report will then be used by the Facilities Management Committee to make recommendations for implementing these best management practices. The goal of this effort is improved efficiency in all aspects of building ownership through a collaborative approach within an organization structure that is the right fit for the borough and its agencies as we move forward.

Your consideration of this ordinance is appreciated.

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No:	<u>100.27900</u>
Amount:	<u>\$ 220,000.00</u>
By:	<u>PP</u>
By:	<u>BT</u> Date: <u>12/19/2019</u>

Introduced by:	Mayor
Date:	01/07/20
Hearing:	01/21/20
Action:	Introduced and Set for Public Hearing
Vote:	9 Yes, 0 No, 0 Absent
Date:	01/21/20
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-19-24**

**AN ORDINANCE APPROPRIATING ADDITIONAL FUNDS FOR THE PURPOSE OF
PURCHASING ENVIRONMENTAL, HEALTH , AND SAFETY MANAGEMENT
SOFTWARE**

WHEREAS, The Office of Risk Management (“Risk”) administers the health, safety, and environmental compliance programs for both the Kenai Peninsula Borough (“KPB”) and Kenai Peninsula Borough School District (“KPBSD”) using a paper filing system and, more recently, spreadsheets; and

WHEREAS, this method of program management remains largely unchanged since the Office of Risk Management was established in 1989; and

WHEREAS, in an effort to identify departmental improvements, EHS Management software was quickly recognized as an effective tool to improve the Risk Department’s overall ability to meet its mission statement and departmental goals.; and

WHEREAS, the process of identifying and selecting an ideal EHS Management software provider extended beyond the end of fiscal year 2019 allowing the funds identified for this purpose to lapse and become unavailable; and

WHEREAS, annual software maintenance and projected change order amounts were budgeted in the FY2020 budget cycle reducing the additional project funds to be reappropriated;

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

SECTION 1. That funds in the amount of \$20,000 are appropriated from the Insurance and Litigation Fund fund balance 700.27910 to be transferred to account 700.11234.48XXX. to purchase EHS Management software.

SECTION 4. This ordinance takes effect immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY
OF *, 2020.**

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough
Kenai Peninsula Borough School District
Office of Risk Management

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *CP*
Kim Saner, Human Resources Director *KS*

FROM: Sovala Kisenia, Claims Manager *SK*
John Hedges, Purchasing and Contracting Director *JH*
Brandi Harbaugh, Finance Director *BH*

DATE: December 26, 2019

RE: Ordinance 2019-19-24, Appropriating Additional Funds for the Purpose of Purchasing Environmental, Health, and Safety (EHS) Management Software (Mayor)

The Office of Risk Management ("Risk") administers the health, safety, and environmental compliance programs for both the Kenai Peninsula Borough ("KPB") and Kenai Peninsula Borough School District ("KPBSD") using a paper filing system and, more recently, spreadsheets. This method of program management remains largely unchanged since the Division of Risk Management was established in 1989.

Given Risk's significant expansion of responsibilities throughout the years, our department began to identify areas where departmental improvements could be made. Environmental, health and safety management ("EHS Management") software quickly surfaced as the most significant and effective means to drastically improve the department's overall ability to meet our mission statement.

By January 2019, we began the process of identifying and selecting an ideal EHS Management software provider intending to use funds available in FY2019. Unfortunately, the RFP process carried into FY2020 and those funds lapsed at the end of the fiscal year, making them unavailable. Fortunately, In anticipation of the software being fully implemented by the start of FY2020, annual maintenance fees were budgeted for the EHS Management software, leaving only additional implementation fees to apportion.

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December 26, 2019
Re: O2019-19- 24

Therefore, Risk is requesting that additional funds be appropriated from the Insurance and Litigation Fund fund balance in the amount of \$20,000.00 to cover the additional cost of implementation. The funding and acquisition of this EHS software has been reviewed and supported by the KPB, KPBSD, and the Risk Committee.

Your consideration of this ordinance is appreciated.

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No.	<u>700.27910</u>
Amount	<u>\$ 20,000.00</u>
By: <u>PP</u>	Date: <u>12/26/2019</u>

Introduced by: Mayor
Date: 01/07/20
Hearing: 01/21/20
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-19-25**

**AN ORDINANCE APPROPRIATING INSURANCE PROCEEDS AND LOCAL FUNDS
FOR THE PURPOSE OF PURCHASING A REPLACEMENT FIRE TRUCK DEEMED
A TOTAL LOSS**

- WHEREAS,** in November 2017, Central Emergency Service Area (“CES”) fire truck #914 was involved in an accident while responding to an emergency; and
- WHEREAS,** a claim for the damaged fire truck was opened by the borough with Alaska Municipal League-Joint Insurance Association and the fire truck was determined to be a total loss; and
- WHEREAS,** initial insurance payments totaling \$266,956.38 were received by the Borough after accounting for the borough deductibles and applicable costs, however the policy has replacement cost coverage where the damaged fire truck can be replaced with a new fire truck less the deductibles and salvage value; and
- WHEREAS,** the reinsurer valued the replacement truck to be \$655,683.00 based on a quote from Hughes Fire Equipment Inc.; and
- WHEREAS,** the reinsurer will provide a supplemental payment of \$349,626.62 once the replacement truck has been ordered; and
- WHEREAS,** CES is requesting local funds of \$133,417 and insurance proceeds of \$266,956.38 be appropriated from the CES fund balance and the acceptance and appropriation of committed insurance proceeds in the amount of \$349,626.62 to be received once the truck is ordered, to cover the total replacement cost of \$750,000.00 covering replacement costs, administrative service fees and any change orders to the purchase; and
- WHEREAS,** in order to ensure that the funds necessary to award the contract are available an appropriation will need to be made to offset the difference in the project cost; and
- WHEREAS,** at its meeting on November 21, 2019, the Central Emergency Service Area Board unanimously recommended approval of the project;

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

SECTION 1. That funds in the amount of \$400,373.38 are appropriated from the Central Emergency Service Area fund balance 443.27910 to be transferred to project account 443.51610.20FTK.49999.

SECTION 2. That insurance proceeds in the amount of \$349,626.62 are accepted and appropriated to project account 443.51610.20FTK.49999.

SECTION 3. That the appropriations made in this ordinance are of a project length nature and as such do not lapse at the end of any particular fiscal year.

SECTION 4. This ordinance takes effect immediately upon enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2020.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Central Emergency Services

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *charlie pierce*

FROM: Roy Browning, CES Chief *RCB*
Brandi Harbaugh, Finance Director *BH*
John Hedges, Purchasing & Contracting Director *JH*
Sovala Kisena, Claims Manager *SK*

DATE: December 26, 2019

RE: Ordinance 2019-19-25, Appropriating Insurance Proceeds and Local Funds for the Purpose of Purchasing a Replacement Fire Truck Deemed a Total Loss (Mayor)

In November 2017, Central Emergency Service Area ("CES") fire truck #914 was involved in an accident while responding to an emergency. A claim for the damaged fire truck was opened by the borough with Alaska Municipal League-Joint Insurance Association. In the claim it was determined that the fire truck was a total loss.

An initial insurance payment of \$266,956.38, which had been reduced by the borough deductible and applicable costs, was received by the Borough. However, the policy has replacement cost coverage where the damaged fire truck can be replaced with a new fire truck less member deductible, vehicle deductible, and salvage costs. The reinsurer valued the replacement truck to be \$655,683.00 based on a quote from Hughes Fire Equipment Inc. The reinsurer will provide a supplemental payment of \$349,626.62 once the truck has been ordered.

CES is requesting funds be appropriated from the CES fund balance in the amount of \$133,417 and insurance proceeds in the amount of \$616,583.00, including proceeds received and to be received. This is to cover the total replacement cost of \$750,000 including replacement costs, administrative service fees and any change orders to the purchase. The CES Service Area Board at its regular meeting on November 21, 2019 unanimously supported the funding and purchase of the replacement fire truck.

Your consideration of this ordinance is appreciated.

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No:	<u>443.27910</u>
Amount:	<u>\$ 400,373.38</u>
Acct. No:	<u>443.51610.20FTK.49999</u>
Amount:	<u>\$ 349,626.62</u>
By: <i>PP</i>	Date: <u>12/26/2019</u>

Introduced by:	Mayor
Date:	01/07/20
Hearing:	01/21/20
Action:	Introduced and Set for Public Hearing
Vote:	9 Yes, 0 No, 0 Absent
Date:	01/21/20
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-19-26**

**APPROPRIATING ADDITIONAL FUNDS TO THE LEGAL DEPARTMENT FOR
COSTS AND FEES FOR OUTSIDE COUNSEL TO CONTINUE REPRESENTING THE
KENAI PENINSULA BOROUGH IN THE APPLICATION OF THE ALASKA GASLINE
DEVELOPMENT CORPORATION FILED WITH THE FEDERAL ENERGY
REGULATORY COMMISSION**

WHEREAS, in Resolution 2018-032 the assembly authorized the Kenai Peninsula Borough (“borough”) to intervene in the matter of the Application of the Alaska Gasline Development Corporation (“AGDC”), Docket No. CP17-178-000, before the Federal Energy Regulatory Commission (“FERC”) regarding the Alaska Liquefied Natural Gas Project; and

WHEREAS, the borough contracted with the law firm of Norton Rose Fulbright US LLP (“Norton Rose”) to represent it in this FERC matter; and

WHEREAS, since then Norton Rose successfully moved to intervene out of time on August 10, 2018, in the FERC action and filed numerous comments on behalf of the borough, and tracked the proceedings for the borough; and

WHEREAS, FERC issued a Draft Environmental Impact Statement (“DEIS”) on June 28, 2019, supporting locating the LNG plant and marine terminal in Nikiski; and

WHEREAS, both the City of Valdez and the Matanuska-Susitna Borough have urged FERC to modify the DEIS to designate the site for the LNG terminal in their respective jurisdictions instead of Nikiski; and

WHEREAS, it is anticipated that the borough will need to continue to participate and file additional documents with FERC to support its position that the facilities should be located in Nikiski; and

WHEREAS, this is a specialized area of law and the continuing services and expertise of Norton Rose will be needed to adequately represent the borough’s interest in this matter; and

WHEREAS, it is estimated that at this time additional funds of at least \$150,000.00 will be needed to pay legal services and costs incurred by outside counsel on behalf of the borough in this matter;

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

SECTION 1. The sum of \$150,000 is hereby appropriated from the General Fund’s fund balance to account number 100.11310.19FRC.49999 for expenses associated with using outside counsel to represent the borough in the AGDC’s application to FERC.

SECTION 2. That this ordinance shall become retroactively effective on the 1st day of October, 2019.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2020.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough Legal Department

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *CP*

FROM: Colette Thompson, Borough Attorney *CT*

DATE: December 26, 2019

RE: Ordinance 2019-19-26, Appropriating Additional Funds to the Legal Department for the Costs and Fees for Outside Counsel to Continue Representing the Kenai Peninsula Borough in the Application of the Alaska Gasline Development Corporation Filed with the Federal Energy Regulatory Commission (Mayor)

Following the assembly's approval of Resolution 2018-032, authorizing the borough to intervene in the application of the Alaska Gasline Development Corporation before the Federal Energy Regulatory Commission ("FERC"), the borough retained the services of Norton Rose Fulbright US LLP ("Norton Rose") to represent it in this matter. Since then, the firm has successfully moved to intervene in the case, tracked filings with FERC, and filed numerous other documents with FERC supporting the borough's interest in locating the LNG facility and marine terminal in Nikiski.

Both the Matanuska-Susitna Borough and the City of Valdez have argued that the LNG terminal should be located in their respective jurisdictions instead of Nikiski. It is anticipated that the borough's interest would best be protected by continuing to participate in the process and retaining Norton Rose to advise and represent it.


It is difficult to accurately predict the extent the borough will continue to be involved going forward but we estimate that additional fees and costs will total at least \$150,000.00. This ordinance would appropriate that amount for some recent costs and legal services provided and preliminarily estimated future services.


As Norton Rose's fees recently exceeded the amount previously appropriated for this project, it is requested that the assembly make the effective date of this ordinance retroactive to October 1, 2019.

FINANCE DEPARTMENT ACCOUNT / FUNDS VERIFIED	
Acct. No.	<u>100.27910</u>
Amount:	<u>\$ 150,000.00</u>
By: <i>PP</i>	Date: <u>12/26/2019</u>
By: <i>BH</i>	

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor 

FROM: Max Best, Planning Director 

DATE: November 25, 2019

RE: Anadromous Waters Habitat Protection Work Group

The borough assembly passed Resolution 2019-058 which established an anadromous waters habitat protection work group. The work group shall consist of at least one member from the assembly; one from the planning commission; and five members of the public. An amendment to Section 3 was made requiring the Mayor to provide a list of 5 members of the public to be approved by the assembly with representation from the north, south, central, east, and west regions of the borough. In addition to Brent Johnson, Assembly, and Robert Ruffner, Planning Commission, the following individuals were selected to provide balance to the group.

Wayne Ogle, past Assembly President (north)

Branden Bornemann, Executive Director, Kenai Watershed Forum (west)

Ed Oberts, local realtor, past KPB Chief of Staff (east)

Dawson Slaughter, Anchor Point Advisory Planning Commission (south)

Kaitlin Vadla, Soldotna Planning Commissioner (central)

Your support of this list is appreciated.

Introduced by: Mayor
Date: 01/21/20
Action:
Vote:

**KENAI PENINSULA BOROUGH
RESOLUTION 2020-007**

**A RESOLUTION ESTABLISHING KENAI PENINSULA BOROUGH 2020 STATE
CAPITAL PROJECT PRIORITIES FOR PUBLIC SAFETY PROJECTS**

WHEREAS, the Thirty-First Legislature, Regular Session, will consider adoption of the state’s operating and capital budget during the session convening January 14, 2020; and

WHEREAS, Anchor Point Fire and Emergency Medical Service Area (“APFEMSA”) requests funding in the amount of \$1,775,550 to supplement the fire apparatus housing construction project in the unincorporated community of Happy Valley; and

WHEREAS, the APFEMSA board at its meeting held _____, recommended _____ of the capital project; and

WHEREAS, Central Emergency Services (CES) requests funding in the amount of \$11,000,000 to supplement the CES Fire Station #1 construction project; and

WHEREAS, the CES board at its meeting held October 24, 2019, unanimously recommended support of the capital project; and

WHEREAS, the borough requests funding in the amount of \$1,088,000 to purchase 160 self-contained breathing apparatus (SCBA) on behalf of municipal and volunteer fire departments within the borough; and

WHEREAS, the municipal and volunteer fire departments collaboratively intend to submit two regional grant applications to the 2020 Assistance to Firefighters Grant for the east fire response region and the south fire response region, which reflected the importance of standardized SCBA for interoperability on the Kenai Peninsula; and

WHEREAS, the assembly finds it is in the best interest of the borough to establish public safety priorities for capital projects which can be submitted to the State for possible funding;

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

SECTION 1. That the borough public safety priorities for capital projects for APFEMSA and CES in the year 2020 are hereby adopted.

SECTION 2. That the borough supports the collaborative efforts to secure funding to purchase standardized SCBA for interoperability among participating municipal and volunteer fire departments within the Kenai Peninsula Borough as an area-wide public safety priority.

SECTION 3. This resolution shall become effective immediately upon adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 21ST DAY OF JANUARY, 2020.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Community & Fiscal Projects

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members of the Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *CPB*
Brandi Harbaugh, Finance Director *BA*

FROM: Brenda Ahlberg, Community & Fiscal Projects Manager *BAH*

DATE: January 8, 2020

SUBJECT: Resolution 2020-001, Establishing Kenai Peninsula Borough 2020 State Capital Project Priorities for Public Safety Projects (Mayor)

This resolution will authorize the borough to apply for the 2020 State of Alaska legislative, capital grants to supplement public safety projects. This resolution reflects the borough's priority projects as well as support for the Kenai Peninsula Fire Chiefs (KPFC) number one project to replace aged, self-contained breathing apparatus (SCBA) for participating municipal and volunteer fire departments in the borough. The project goal is to purchase standardized SCBA to ensure interoperability during mutual aid responses or training events in the amount of \$1,088,000. Should the borough realize a legislative grant on behalf of KPFC, subrecipient agreements will be executed between the borough and non-borough entities to allocate equipment.

The borough also intends to submit its number one priority projects by region for the Central Emergency Services Fire Station #1 construction and the Anchor Point Fire and Emergency Medical Service Area fire apparatus housing construction project in Happy Valley. The assembly previously supported the CES and APFEMSA projects by way of borough resolution 2018-003 and 2019-009.

Upon approval, the resolution and projects will be provided to state legislators and entered into the 2020 State of Alaska Capital Project Submission and Information System (referred to as "CAPSIS"). The attached CAPSIS forms provide detailed project descriptions.

Enclosed: APFEMSA project description
CES project description



Kenai Peninsula Borough

Year 2020 State Capital Improvement Projects

ANCHOR POINT FIRE AND EMERGENCY MEDICAL SERVICE AREA

Funding Recipient:	Kenai Peninsula Borough		
Project Name:	Happy Valley Fire Apparatus Housing Facility	Project Priority Ranking:	1

Detailed Project Description and Justification:

In 2014 Anchor Point Fire & EMS (APFEMS), along with the Kenai Peninsula Borough's Land Management Division started a water tank fill site and five-to-ten year fire station location analysis that encompasses the service area. The Resch Road property was identified as the best location for the water tank fill site because of the five mile radius guidelines set by ISO for fire station locations. This property is 10 miles north of Anchor Point and 10 miles south of Ninilchik, making it the perfect location for a water fill site and future fire station.

Phased project actions

- 2015 purchased seven acre property known as the Resch Road property
- 2016 purchased a 20,000 gallon holding tank
- 2017 site preparation and the holding tank installed
- 2018 bid solicitation process and water well construction
- 2020 secure capital funding grant to supplement project construction
- 2021 design and construction phases of the Fire Apparatus Housing Facility (facility)

With this funding request, the facility will be constructed to protect the fill site and pumping system as well as house fire apparatus that is desperately needed in this area of Anchor Point known as the Happy Valley Community. This facility will need to be 64' in length X 52' wide with furnishings and restrooms.

This facility will help APFEMS and the Happy Valley community by providing fire protection for an area that currently takes APFEMS Station #1 approximately 15-20 minute respond time under normal weather conditions. This will also provide home owners in this area a chance to lower their insurance premium cost. We anticipate that by having this fire department facility in Happy Valley we will attract new fire and EMS volunteers that find APFEMS Station #1 too far away to volunteer. The fire apparatus housing facility will support our ability to plan and save for a fully operational fire station at this location that will include a firefighter training facility, fire apparatus driving course, helicopter evacuation landing zone and a staging area for wildland fires or large emergency incidents.

Funding Requested:	\$1,895,550	Election District:	Senate:	O, P
Total Project Cost:	\$2,095,550		House:	31
Local Match (if any):	\$200,000			

CONTACT INFORMATION

Name, Title:	Jon Marsh, Deputy Fire Chief	Phone:	907 235-6700
Address:	72440 Milo Fritz Ave	Fax:	907 235-2633
City, State Zip:	Anchor Point, AK 99556	Email:	jmarsh@kpb.us

Funding Plan:

Total Project Cost:	\$	2,095,550	This should be the most accurate estimate of how much this project will cost.
Funding Secured:	\$	200,000	How much of the project costs are in hand, secured, guaranteed, appropriated, etc. You may include in-kind contributions and volunteer labor. Do not include hypothetical funds.
Funding Requested:	\$	1,895,550	How much is being requested from this year's capital budget.
Pending Requests	\$	0	Amount requested from other sources not yet received.
Project Deficit:	\$	1,895,550	Additional funding needed to complete the project.

Please list Secured Funding Sources and Amounts:

The APFEMS secured \$50,000 in FY11, \$100,000 in FY18, \$100,000 in the FY19 budget.

If this project is funded this year, will you be requesting state funding again?

Yes: No:

Please describe the project time-line and when the expenditures will occur:

July 2020: Secure total project funds through legislative grants and approved KPB budget process

Fall 2020: Design & Engineer project

Spring 2021: Construction

Has this project gone through a public review process at the local level?

Yes: No:
 Yes: No:

If a community or service area meeting was conducted, how was it advertised? When and where was it held? Who attended?

The service area presented this project for recommendation at the public meeting held November 15, 2017. The project was presented at the January 22, 2019 (see attached resolution). Project discussions will continue during the FY21 budget meetings, which are also public meetings.

Who will own the project or facility? Kenai Peninsula Borough

Entity responsible for providing ongoing operation and maintenance of this project? APFEMS Service Area

How will operations and maintenance be funded after the project is complete? APFEMS, Operating Budget, Kenai Peninsula Borough

Please select a project type (chosed only one):

- Planning and Research
- Maintenance and Repairs
- Remodel, Reconstruction and Upgrades
- New Construction and Land Acquisition
- Equipment and Materials
- Information System and Technology
- Other:



Kenai Peninsula Borough

Year 2020 State Capital Improvement Projects

CENTRAL EMERGENCY SERVICE AREA

Funding Recipient:	Kenai Peninsula Borough		
Project Name:	CES Fire Station #1	Project Priority Ranking:	1

Detailed Project Description and Justification:

Central Emergency Service (CES) Station #1 needs to be replaced. CES Station #1 is the primary fire station, serving the City of Soldotna as well as outlying areas that are within 12 minute response times for approximately 14,000 residents. It is also part of the tiered response protocol for 25,000 residents of the entire emergency service area. In addition to being the primary response location for the City of Soldotna, Station #1 is the headquarters to five CES substations that serve the unincorporated communities of Ridgeway, Sterling, Kalifornsky, Kasilof and Funny River. Meeting the service area needs for ~32,000 local residents, summer influx of visitors to state and national forests as well as providing emergency response services on the Kenai and Kasilof Rivers. It is the busiest fire station on the Kenai Peninsula, providing ~2,800 responses annually. Additionally, CES supports wildland fire operations to the Alaska Division of Forestry and provides auto-aid to the City of Kenai. The current CES Station #1 was originally built in 1957 with additions added to meet response demands in 1961, 1971 and 1981. The current station and staging area has far exceeded useful life and operational capacity, with issues such as significant structural deficiencies, insufficient ADA compliance, minimal sleeping quarters per gender regulations, no fleet maintenance bays, and no secured property storage for water or snow rescue vehicles.

This construction project includes: land acquisition, architectural design, engineering, site development, construction, furnishings and firefighting equipment. A new facility will include apparatus bays, training/conference room, kitchen, common living area, gender specific sleeping quarters, locker rooms and restrooms. Constructing the new station will provide fire personnel with a facility and property to effectively meet the service area’s growing demands of emergency response capabilities.

Phased project actions

- January 2018: Kick off public engagement campaign to inform and educate the general public (on-going)
- Spring 2019-2020 Site selection recommendation based upon committee evaluations will be brought to assembly
- July 2020 - February 2021: Secure funding for total project budget
- April - December 2021: Design and engineering requirements
- Spring 2022 - Fall 2023: Construction phase

Funding Requested:	\$11,000,000	Election District:	Senate:	O, P
Total Project Cost:	\$11,000,000		House:	29, 30, 31 & 32
Local Match (if any):	\$0			

CONTACT INFORMATION

Name, Title:	Roy Browning, Fire Chief	Phone:	907 262-4792
Address:	231 S. Binkley St.	Fax:	
City, State Zip:	Soldotna, Alaska 99669	Email:	rbrowning@kpb.us

Funding Plan:

Total Project Cost:	\$	11,000,000	This should be the most accurate estimate of how much this project will cost.
Funding Secured:	\$	0	How much of the project costs are in hand, secured, guaranteed, appropriated, etc. You may include in-kind contributions and volunteer labor. Do not include hypothetical funds.
Funding Requested:	\$	11,000,000	How much is being requested from this year's capital budget.
Pending Requests	\$	900,000	Amount requested from other sources not yet received.
Project Deficit:	\$	11,000,000	Additional funding needed to complete the project.

Please list Secured Funding Sources and Amounts:

The borough has identified the land requirements and anticipates negotiations with the land owners. Final purchase of the properties is subject to assembly approval, which is anticipated Summer 2020.

If this project is funded this year, will you be requesting state funding again?

Yes: No:

Please describe the project time-line and when the expenditures will occur:

The borough will request state funding in future years if awards are issued in increments to supplement stages of the project. The estimated timeline is July 2020 - February 2021: The state capital award will be used for land acquisition, design/engineering, construction, furnishings and administrative fee. The administration will also seek funds through future legislative grants, foundation grant applications and other supplemental funding avenues.

Has this project gone through a public review process at the local level?

Yes: No:
 Yes: No:

If a community or service area meeting was conducted, how was it advertised? When and where was it held? Who attended?

The service area presented this project for recommendation at the public meeting held November 15, 2017. The service area will continue to garner public input through the public engagement campaign, which includes formal public meetings to be scheduled with the City of Soldotna council and the borough planning commission and assembly. The Following public meetings and events were held throughout 2018, in our Fire Service Area communities of Soldotna, Ridgeway, Sterling, K-Beach, Kasilof and Funny River:

- January 18, 2018-Central Emergency Service Area Board- Regular meeting, Soldotna Fire Station #1 priority.
- January 22, 2018-Kenai Peninsula Borough Planning Commission Meeting-Soldotna Fire Station Project Site Selection overview.
- January 27, 2018-Peninsula Winter Games, Public Event, Informational engagement on the new Soldotna Fire Station Project
- February 22, 2018 –Central Emergency Service Area Board Special Meeting-Budget review, Fire Station project, Site Selection
- February 27, 2018-Central Emergency Service Area Board Special Meeting -Budget review, Fire Station project, Site Selection
- March 7, 2018-City of Soldotna Planning and Zoning meeting-Fire Station project site selection overview
- April 6-8, 2018-Kenai Peninsula Home Show-Public Event, Informational engagement on the new Soldotna Fire Station Project.
- April 19, 2018-Central Emergency Service Area Board-Regular Meeting-Strategic Planning Construction of a new Soldotna Fire Station
- May 5, 2018-Central Emergency Services Soldotna Fire Station Open House-Public Event, Pancake Breakfast, Apparatus Dedicatio
- July 19, 2018-Central Emergency Service Area Board-Special Meeting-Soldotna Fire Station land acquisition
- August 4, 2018-Funny River Festival-Funny River Community Center-Public Event, Informational engagement of new Soldotna Fire Station Project.
- August 27, 2018-Kenai Peninsula Borough Planning Commission Meeting-Soldotna Fire Station project land acquisition update
- September 20, 2019-Central Emergency Service Area Board-Regular Meeting-Soldotna Station Land-planning commission update, alternate site discussed.
- October 18, 2018-Central Emergency Service Area Board Regular Meeting-Review Soldotna Station Site Selection Alternate sites.
- November 15, 2018-Central Emergency Service Area Board Regular meeting-Updated on Station 1 proposed site
- January 22, 2019 presented to assembly for approval.
- Project discussions will continue during the FY21 budget meetings, which are also public meetings.

Who will own the project or facility? Kenai Peninsula Borough

Entity responsible for providing ongoing operation and maintenance of this project? Central Emergency Services

How will operations and maintenance be funded after the project is complete? Central Emergency Services, Operating Budget, Kenai Peninsula Borough

Please select a project type (chose only one):

- Planning and Research
- Maintenance and Repairs
- Remodel, Reconstruction and Upgrades
- New Construction and Land Acquisition
- Equipment and Materials
- Information System and Technology
- Other:

Introduced by: Cox, Johnson
Date: 01/21/20
Action:
Vote:

**KENAI PENINSULA BOROUGH
RESOLUTION 2020-008**

**A RESOLUTION SUPPORTING AND CALLING FOR AN AMENDMENT TO THE
CONSTITUTION OF THE UNITED STATES TO ADDRESS ISSUES THAT
RESULTED FROM COURT DECISIONS SUCH AS THE UNITED STATES SUPREME
COURT'S DECISION IN *CITIZENS UNITED v. FEDERAL ELECTION COMMISSION***

WHEREAS, the heart of democracy is the right of human beings to govern themselves, and the United States is the first and foremost democracy since the days of ancient Greece; and

WHEREAS, the founding documents of the United States, the Declaration of Independence and the Constitution, recognize that human beings have certain inalienable rights; and

WHEREAS, the Declaration of Independence and the United States Constitution do not mention or grant any rights to corporations or to any artificial entities other than the United States of America and its constituent States; and

WHEREAS, corporations and other artificial entities are not and never have been human beings, and are only entitled to the legal powers and protections that the People grant to them; and

WHEREAS, recent judicial decisions, including the United States Supreme Court decision in *Citizens United v. Federal Election Commission*, 130 S.Ct. 876, 558 U.S. 310 (2010), have held that corporations and other artificial entities are "persons" under the United States Constitution with a constitutional right to spend as much money as they wish on political speech, thereby greatly expanding the power of corporations and other artificial entities to influence elections and otherwise undermine the power of the People to govern themselves; and

WHEREAS, when freedom of speech is equated with freedom to spend money, the free speech of the majority of the People may be overwhelmed by the messages of the few who are able to spend millions of dollars to influence the political process; and

WHEREAS, we the People are supreme, and have the power to overrule the Supreme Court through a constitutional amendment; and

WHEREAS, over 800 municipalities and local governments, and 20 state governments, have already passed resolutions calling for an amendment to the United States

Constitution to address the types of issues identified above; and

WHEREAS, in the state of Alaska; the Homer City Council, the City and Borough Assembly of Sitka and the Anchorage Municipal Assembly have already passed resolutions calling for an amendment to the United States Constitution to address the types of issues identified above;

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

SECTION 1. The assembly supports, and calls for, an amendment to the United States Constitution establishing the following principles:

- A. The United States Constitution does not create, grant, or protect any constitutional rights of corporations or other artificial entities; and
- B. That the United States government has the right to enact statutes and regulations governing the expenditure of money to influence elections and political decision making, to the end that all voices and opinions of the People can be expressed and heard; and

SECTION 2. That copies of this resolution shall be provided to the Kenai Peninsula Borough delegation to the Alaska Legislature, to Alaska's delegation to the United States Congress, and to each Kenai Peninsula Borough municipality.

SECTION 3. This resolution shall take effect immediately upon adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 21ST DAY OF JANUARY, 2020.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Tyson Cox, Assembly Member *JC*
Brent Johnson, Assembly Member *BJ*

DATE: January 9, 2020

RE: Resolution 2020- 008, Supporting and Calling for an Amendment to the Constitution of the United States to Address Issues that Resulted from Court Decisions such as the United States Supreme Court's Decision in Citizens United V. Federal Election Commission

Please consider supporting this resolution. It calls for an amendment to the United States Constitution to establish that corporations are not granted any constitutional rights and that the United States will have the right to enact statutes and regulations governing money used to influence elections and political decision making. This is an issue that is now affecting us at every level of government throughout our country.

Included in the packet are the following resources for your information:

Documents Included with the Resolution:

- Call to Amend the Constitution on Corporate Personhood
- Movement to Overturn Citizens United Reaches New Milestone
- Are constitutional rights a local issue?

Alaska Borough and Municipal Resolutions:

- Resolution 2012-15 of the City and Borough of Sitka Assembly
- Resolution 14-097 of the Homer City Council
- Resolution 2018-391 of the Anchorage Municipal Assembly

Below is a link to a brief clip from the film Dark Money: A Kimberly Reed Film:

Dark Money and Elections | POV | PBS (Clip 6:59)

<https://www.pbs.org/pov/watch/darkmoney/video-darkmoney-classroom-clip-dark-money-and-elections/>

Call to Amend the Constitution on Corporate Personhood

1. The *Citizens United v. FEC* decision of the Supreme Court **eliminated the legal limits on corporate spending to influence elections.** It upholds the notion that corporations have constitutional rights and that money spent on political campaigns is protected under “free speech”.
2. **Already billions of dollars are being spent on negative ads,** which often misinform voters rather than lead to productive discussion of the states’ and nation’s most important issues.
3. Unless the Supreme Court decides to reverse this decision, the **only way to correct it is to amend** the US Constitution.
4. While this is a national issue, **it is at the heart of our democratic form of governance,** right down to the community level. See article “Are Constitutional Rights a Local Issue?”
5. **This is not a partisan issue.** In an independent poll, 60% of Republicans, 63% of Democrats, and 67% of Independents who have heard about *Citizens United* think the new rules have a negative effect on campaigns. (<http://www.people-press.org/2012/01/17/super-pacs-having-negative-impact-say-voters-aware-of-citizens-united-ruling/>)
6. **The majority of small businesses also see this as a concern.** In an independent poll, 66% of small business owners view the *Citizens United* decision as bad for small business, and 88% held a negative view of money in politics overall. (<http://mainstreetalliance.org/5487/smallbusiness-v-citizensunited/#more-5487>)
7. **Campaign finance reform is a conservative legacy.**
 - In a recent Republican Primary Vote in Wisconsin, voters approved a resolution calling for an amendment to the US Constitution to establish that corporations are not people and money is not speech.
 - In the words of conservative icon Barry Goldwater, “Our nation faces a crisis of liberty if we do not control campaign expenditures.”
 - The Bipartisan Campaign Reform Act of 2002 was introduced by Senator John McCain and signed into law by George W. Bush in 2003.
 - Republican Senator Warren Rudman of New Hampshire recently wrote in favor of limiting campaign contributions, stating that “free speech can hardly be called free when only the rich are heard.”
8. **Resolutions are being passed across the nation at the state, city and local levels.** Many organizations and tens of thousands of persons across this nation, including several communities around Alaska, are joining in this move to amend the US constitution. See <http://united4thepeople.org/state-and-local-support-2/>

Partisans Agree on Negative Effects of New Rules

	All voters	Rep	Dem	Ind
	%	%	%	%
Heard about	54	51	54	56
Among those who have heard				
<i>Effect on campaign</i>				
Negative effect	65	60	63	67
Positive effect	16	17	21	12
No effect	10	16	6	11
Mixed/DK	<u>9</u>	<u>7</u>	<u>10</u>	<u>10</u>
	100	100	100	100

PEW RESEARCH CENTER Jan. 11-16, 2012. Q59-Q61. Based on registered voters (N=1,207). Figures may not add to 100% because of rounding.

This information provided by the Move to Amend, Anchorage Affiliate Group. You can learn more about us at the Move to Amend website: www.movetoamend.org/ak-anchorage

Movement to Overturn *Citizens United* Reaches New Milestone

By Rhoda Feng/ Public Citizen, July 1, 2019

In June, the country took a major step toward fixing our broken democracy, as New Hampshire became the 20th state to support a constitutional amendment to overturn the U.S. Supreme Court's disastrous *Citizens United* decision, allow Congress to regulate big money and help restore elections to the people.

The Granite State's approval of HB 504 represents a major milestone, bringing the national movement to overturn *Citizens United* beyond the symbolic halfway point of the 38 states needed to ratify a constitutional amendment to overturn the 2010 ruling, which allowed unlimited money from wealthy and corporate donors to flood elections. The state Senate's vote to overturn *Citizens United* followed the March 19 approval of HB 504 by the state House of Representatives.

"New Hampshire's vote should signal to the U.S. Senate that it should vote on the For the People Act (H.R. 1), which contains a host of democracy reforms, including a call for overturning *Citizens United*," said Jonah Minkoff-Zern, co-director of Public Citizen's Democracy Is For People Campaign.

Over the past seven years, Public Citizen has led an energized to pass 82 local resolutions in support of an amendment, which would establish that corporations don't have a right to participate in elections and that campaign money does not equal speech. Public Citizen held countless rallies in Concord and marches at other locations across New Hampshire. Thousands of residents attended hearings, called state lawmakers, signed petitions and turned out for demonstrations.

The New Hampshire legislature was not always in sync with the state's residents. As recently as March 2014, the New Hampshire Senate defeated proposed language calling for a constitutional amendment to overturn *Citizens United*. Instead lawmakers moved forward a hollow bill, SB 307, which created a committee to examine the impact of the *Citizens United* ruling.

New Hampshire residents, on the other hand, consistently made it crystal clear that they wanted to free elections from corporate influence and megadonors. For example, in 2014, the same year that the Senate voted down the resolution, Granite State residents overwhelmingly passed at 48 town meetings in 2014 calling for the state Legislature to support a constitutional amendment to overturn the U.S. Supreme Court ruling. Thirty-six of the 48 towns that voted to pass a resolution were in Senate Republican districts, showing bipartisan support for an amendment.

Americans across the political spectrum agree that big donors have too much power over our government. With New Hampshire joining the national movement to support [overturning *Citizens United*](#), limiting corporate influence on federal lawmakers is within arm's reach.

Nineteen other states (California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Montana, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington and West Virginia), Washington, D.C., and more than 800 municipalities have called for a constitutional amendment to overturn *Citizens United*. More than 5 million petition signatures have been gathered nationwide calling for an amendment.

“By overwhelming margins, the American people want to end big money domination of our elections and politics,” said Robert Weissman, president, Public Citizen. “No state legislature lightly calls for a constitutional amendment. But New Hampshire joins those who recognize that we need a constitutional amendment to loosen the death grip by which giant corporations and the superrich are strangling our democracy.”

To build on that victory, Public Citizen is urging readers to tell their members of Congress to co-sponsor H.J.Res. 2, a constitutional amendment that would permit Congress and the states to set reasonable limits on campaign finance spending.

Are constitutional rights a local issue?

HEIGHTS OBSERVER

News and Views from Cleveland Heights and University Heights

March 4, 2016

by Carla Rautenberg and Deborah Van Kleef

[Heights Observer](#)

Is amending the U.S. Constitution a local issue, and, if so, how?

Ever since an initiative by Cleveland Heights citizens placed Issue 32 on the November 2013 ballot, some residents have asked that question. Two city council members expressed opposing views on it at a Jan. 21 public hearing, where residents testified about abuses of corporate power and the corrupting effect of money in politics.

Issue 32 stated: “Shall the proposed ordinance entitled ‘Political Influence by Corporate Entities,’ establishing annual public hearings before City Council on this subject, and sending a summary of the public hearing to Congressional and State representatives, and calling for an amendment to the U.S. Constitution declaring that only human beings, not corporations, are legal persons with Constitutional rights and that money is not the equivalent of speech, be adopted?” (Emphasis added.)

With a resounding 78 percent “yes” vote, Issue 32 became Title XV, Chapter 183 of the Cleveland Heights Codified Ordinances. Similar laws have been approved by voters in six other Ohio cities, and in hundreds of municipalities across the United States. Another will be on the Toledo ballot on March 15, and citizens are collecting signatures for ballot initiatives in Shaker Heights, South Euclid and Cleveland.

So, how is the proposed amendment to the U.S. Constitution a concern of local city councils and mayors?

Corporate agenda-setting has led to much less effective regulation and to the slashing of funds for safe water, clean air, public education, roads and bridges, public health and decent jobs. Budget cuts at the state and federal levels return less of our tax money to municipalities, thereby impoverishing our cities and school districts.

With the passage of Issue 32, Cleveland Heights joined a grassroots nonpartisan national movement of citizens, Move to Amend, which arose in response to the U.S. Supreme Court’s 2010 Citizens United decision. That decision built upon long-standing (though obscure) precedents of treating corporations as legal “persons” and money as constitutionally protected free speech. After the 2008 presidential race, up to then the most expensive in history, Citizens United made an already terrible situation dramatically worse.

It makes sense to build support for a federal constitutional amendment from the local level up. Once approved by Congress, an amendment must be ratified by three-fourths of the states. Local

initiative campaigns educate citizens and prepare them to pressure state governments when the time comes for ratification.

The annual public hearing affords any citizen the opportunity to place into the public record evidence of how, in the guise of legal personhood, corporations usurp the sovereign rights of We the People.

On Jan. 21, 17 area residents cited dozens of ways that corporate lobbying and secret campaign contributions have degraded the ability of government to address our most pressing problems, including:

- damaging effects on public education of for-profit charter schools and the corporate-funded Common Core State Standards;
- Ohio’s failure to regulate energy costs;
- lack of access to health care despite the Affordable Care Act;
- the squeeze on local government budgets when corporations and wealthy individuals win sweeping tax breaks as a result of their “investments” in the campaigns of state legislators and governors—the loss to Cleveland Heights, \$2.5 million per year;
- loss of jobs, tax revenue and national sovereignty to past and future international trade agreements.

They connected the dots: policies serving the needs of unaccountable, unelected corporate interests too often negatively affect our daily lives.

After listening to the public testimony, Mayor Cheryl Stephens thanked citizens for their contributions and asked council members if they had any remarks.

Council Member Mary Dunbar suggested that council’s time would be better spent working on specific local problems. She cited as examples the lack of suitable housing for senior citizens who wish to remain in Cleveland Heights, and the priority set by the Ohio Department of Transportation on funding new roads rather than repairing existing ones. “I just don’t feel this is the best use of my time, and I know that’s not a popular message to this group,” Dunbar stated.

Council Member Melissa Yasinow disagreed, and said, “[W]e are the most basic and important intersection between the people and their government. . . . If we can’t have one night a year on this issue for people to come and say what matters to them and what matters to their democracy, then I think we’ve failed as a local government.”

You can watch the third annual hearing on video, posted on the city’s website.

Jan. 21 was the sixth anniversary of the Citizens United decision.

Carla Rautenberg is an activist and a lifelong Cleveland Heights resident. Deborah Van Kleef is a musician and writer. She grew up in Cleveland Heights, and has lived here as an adult for 30 years.

RESOLUTION 2012-15

A RESOLUTION OF THE CITY AND BOROUGH OF SITKA TO SUPPORT AMENDING THE UNITED STATES CONSTITUTION TO RESTORE THE PEOPLE'S POWER TO LIMIT CORPORATE INFLUENCE IN ELECTIONS AND POLICYMAKING

WHEREAS, Due to the incorrect interpretation of the Constitution and the adverse impact on the rights of people in our democracy in the U.S. Supreme Court decision in *Citizens United vs. Federal Election Commission (FEC)*, local, state, and federal elected officials must take action to restore the authority of the American people to restrict the undue influence of corporations on our elections and public policy; and

WHEREAS, the Supreme Court's 5-4 decision in *Citizens United v. FEC* broke away from the legal precedents that acknowledged the power of citizens through their elected representatives to limit corporate influence in elections because the interests of corporations do not always correspond with the public interest and therefore, the political influence of corporations should be limited; and

WHEREAS, the Supreme Court's radical rewrite of the First Amendment's protections will permit even greater corporate influence over our political process by allowing unlimited spending from corporate profits to favor or oppose candidates; and

WHEREAS, the Supreme Court's decision will allow the free speech rights of a corporation to dilute and outweigh the free speech rights of ordinary citizens, because of the vast financial resources corporations have for spending money to influence elections compared with regular people; and

WHEREAS, the Supreme Court's elevation of corporate "rights" may have constitutional repercussions that go far beyond this one case and will undermine the ability of the people to regulate corporations in numerous policy areas affecting people's health, wealth and opportunities; and

WHEREAS, THE American people, through their local, state, and federal governments must reclaim their rightful place as sovereigns in our democracy and protect the electoral process from corporate domination; and

WHEREAS, fair elections are fundamental to the health and well-being of our democracy; and


WHEREAS, the City and Borough of Sitka Assembly stands in agreement that corporations are not entitled to the same first amendment rights in our elections as people and further urge our state legislators to adopt and send to the United States Congress a resolution in support of amending the Constitution to restore the ability of the American people to limit corporate spending in our elections.

NOW, THEREFORE, BE IT RESOLVED BY THE ELECTED OFFICIALS OF THE CITY AND BOROUGH OF SITKA THAT:

The City and Borough of Sitka, strongly condemns the Supreme Court's ruling in *Citizens United vs. FEC* and supports amending the U.S. Constitution to limit corporate influence and restore democracy in our elections for the benefit of the American people.

PASSED and APPROVED this 10th day of July, 2012.

ATTEST


Colleen Ingman, MMC
Municipal Clerk


Cheryl Westover, Mayor

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**CITY OF HOMER
HOMER, ALASKA**

Lewis/Burgess

RESOLUTION 14-097

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA,
CALLING FOR AN AMENDMENT TO THE CONSTITUTION OF THE
UNITED STATES TO ABOLISH CORPORATE PERSONHOOD.

WHEREAS, Government of, by, and for the people has long been a cherished American value, and We The People's fundamental and inalienable right to self-govern, and thereby secure rights to life, liberty, property, and the pursuit of happiness is guaranteed in the Constitution of the United States and the Declaration of Independence; and

WHEREAS, Free and fair elections are essential to democracy and effective self-governance; and

WHEREAS, Persons are rightfully recognized as human beings whose essential needs include clean air, clean water, safe and secure food; and

WHEREAS, Corporations are entirely human-made legal fictions created by express permission of We The People and our government; and

WHEREAS, Corporations can exist in perpetuity, can exist simultaneously in many nations at once, need only profit for survival, and exist solely through the legal charter imposed by the government of We The People; and

WHEREAS, In addition to these advantages, the great wealth of large corporations allows them to wield coercive force of law to overpower human beings and communities, thus denying We The People's exercise of our Constitutional rights; and

WHEREAS, Corporations are not mentioned in the Constitution of the United States, and The People have never granted constitutional rights to corporations, nor have We decreed that corporations have authority that exceeds the authority of We The People of the United States; and

WHEREAS, Interpretation of the Constitution of the United States by appointed Supreme Court justices to include corporations in the term 'persons' has long denied We The Peoples' exercise of self-governance by endowing corporations with Constitutional protections intended for We The People; and

42 WHEREAS, The illegitimate judicial bestowal of civil and political rights upon
43 corporations usurps basic human and Constitutional rights guaranteed to human persons,
44 and also empowers corporations to sue municipal and state governments for adopting laws
45 that violate ‘corporate rights’ even when those laws serve to protect and defend the rights of
46 human persons and communities; and

47
48 WHEREAS, Corporations are not and have never been human beings, and therefore
49 are rightfully subservient to human beings and governments as our legal creations; and

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51 WHEREAS, Large corporations’ profits and survival are often in direct conflict with the
52 essential needs and rights of human beings; and

53
54 WHEREAS, The recent Citizens United v. the Federal Election Commission Supreme
55 Court decision that rolled back the legal limits on spending in the electoral process creates an
56 unequal playing field and allows unlimited spending by wealthy individuals, corporations
57 and other entities to influence elections, candidate selection, policy decisions and sway
58 votes, and forces elected officials to divert their attention from The Peoples’ business, or
59 even vote against the interest of their human constituents, in order to ensure competitive
60 campaign funds for their own re-election; and

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62 WHEREAS, The judicial interpretation to construe spending money in political
63 campaigns as speech is contrary of the notion of one person, one vote and allows those with
64 the most money to have an unfair advantage in a political system that should be about
65 ensuring that all citizens have equal access to the political process and to influencing the
66 outcome of elections; and

67
68 WHEREAS, Money is property, not speech; and

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70 WHEREAS, Large corporations own most of America’s mass media and use that media
71 as a megaphone to express loudly their political agenda and to convince Americans that their
72 primary role is that of consumers, rather than sovereign citizens with rights and
73 responsibilities within our democracy, and this forces citizens to toil to discern the truth
74 behind headlines and election campaigning; and

75
76 WHEREAS, Tens of thousands of people and municipalities across the nation are
77 joining with the Move to Amend campaign to call for an Amendment to the Constitution of
78 the United States to Abolish Corporate Personhood and the doctrine of Money as Speech.

79
80 NOW, THEREFORE, BE IT RESOLVED that the City of Homer, Alaska, hereby calls on our
81 legislators, elected officials, mayor, commissioners, of Alaska to join the tens of thousands of
82 citizens, grassroots organizations and local governments across the country in the Move to
83 Amend campaign to call for an Amendment to the Constitution to Abolish Corporate

84 Personhood and the doctrine of Money as Speech and return our democracy, our elections,
85 our communities to America's human persons and to thus claim our sovereign right to self-
86 governance.

87

88 BE IT FURTHER RESOLVED that the City of Homer, Alaska, calls on other communities
89 and jurisdictions to join with us in this action by passing similar Resolutions. Be it further
90 resolved that the City of Homer Alaska supports education to increase public awareness of
91 the threats to our democracy posed by Corporate Personhood, and encourages lively
92 discussion to build understanding and consensus to take appropriate community and
93 municipal actions to democratically respond to these threats.

94

95 PASSED AND ADOPTED by the Homer City Council this 22nd day of September, 2014.

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CITY OF HOMER

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Mary E. Wythe
MARY E. WYTHE, MAYOR

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ATTEST:

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Jo Johnson
JO JOHNSON, MMC, CITY CLERK

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Fiscal Note: N/A

Municipal Clerk's Office

Approved

Date: **December 18, 2018**

Submitted by: Assembly Vice-Chair Croft and
Assembly Members Petersen
and Quinn-Davidson

Reviewed by: Assembly Counsel's Office
For reading: December 18, 2018

**ANCHORAGE, ALASKA
AR No. 2018-391**

**A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY SUPPORTING
AND CALLING FOR AN AMENDMENT TO THE CONSTITUTION OF THE
UNITED STATES TO ADDRESS ISSUES THAT RESULTED FROM COURT
DECISIONS SUCH AS THE UNITED STATES SUPREME COURT'S DECISION
IN *CITIZENS UNITED v. FEDERAL ELECTION COMMISSION*.**

WHEREAS the heart of democracy is the right of human beings to govern themselves, and the United States is the first and foremost democracy since the days of ancient Greece; and

WHEREAS the founding documents of the United States, the Declaration of Independence and the Constitution, recognize that human beings have certain inalienable rights; and

WHEREAS the Declaration of Independence and the United States Constitution do not mention or grant any rights to corporations or to any artificial entities other than the United States of America and its constituent States; and

WHEREAS corporations and other artificial entities are not and never have been human beings, and are only entitled to the legal powers and protections that the People grant to them; and

WHEREAS recent judicial decisions, including the United States Supreme Court decision in *Citizens United v. Federal Election Commission*, 130 S.Ct. 876, 558 U.S. 310 (2010), have held that corporations and other artificial entities are "persons" under the United States Constitution with a constitutional right to spend as much money as they wish on political speech, thereby greatly expanding the power of corporations and other artificial entities to influence elections and otherwise undermine the power of the People to govern themselves; and

WHEREAS when freedom of speech is equated with freedom to spend money, the free speech of 99 percent of the People is overwhelmed by the messages of the few who are able to spend millions of dollars to influence the political process; and

WHEREAS respected national political polls show that large majorities of the People from all parts of the political spectrum believe that corporations and other artificial entities have too much power in our political system; and

WHEREAS we the People are supreme, and have the power to overrule the Supreme Court through a constitutional amendment; and

Introduced by: Cooper, Smalley
Date: 01/21/20
Hearing: 02/25/20
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2020-03**

**AN ORDINANCE AMENDING KPB 5.18 SALES TAX CODE AND ENACTING KPB
5.19 UNIFORM REMOTE SELLER SALES TAX CODE**

WHEREAS, the inability to effectively collect sales tax on sales of personal property, products or services transferred or delivered into Alaska by sellers who do not have a physical presence in the borough (“remote seller”) is eroding the sales tax base of Alaska communities and resulting in revenue losses that are causing imminent harm to residents through the loss of critical funding for local education; and

WHEREAS, the harm from the loss of revenue is especially problematic in Alaska because the state has no broad-based sales tax, and sales tax revenues are essential in funding the provision of services by local governments; and

WHEREAS, the failure to collect tax on remote sales creates artificial market distortions and competitive advantages for remote sellers by perpetuating tax shelters for businesses that limit their physical presence in the state or its municipalities but still sell goods and services to local consumers without collecting sales tax, something that becomes easier and more prevalent as technology continues to advance; and

WHEREAS, the structural advantages for remote sellers, including the absence of point-of-sale tax collection, combined with the general growth of online retail sales, means that the erosion of the sales tax base is a growing problem that will only worsen in the near future if the borough is not able to legally collect remote seller sales tax within the framework of current United States Supreme Court case law; and

WHEREAS, the failure to effectively collect sales tax on remote or internet-based sales results in the creation of incentives for businesses to avoid a physical presence in the borough, resulting in less jobs and increasing the share of taxes paid by those consumers who buy from competitors with a physical presence in the borough; and

WHEREAS, remote sellers who make a substantial number of deliveries into or have large gross revenues from Alaska benefit extensively from the Alaska market, affecting the economy generally, as well as local infrastructure; and

WHEREAS, the recent decision by the United States Supreme Court in *South Dakota v. Wayfair* (“*Wayfair*”) allows for the amendment of the sales tax code to account for remote sellers who do not have a physical presence in the borough, but do have a taxable connection with the borough; and

WHEREAS, the *Wayfair* decision provides guidance that includes the defensibility of a single-level statewide administration of remote sales tax collection and remittance so long as the law is not retroactive in its application and provides a safe harbor to sellers who have limited sales or transactions in Alaska; and

WHEREAS, in order to implement a single-level statewide sales tax administration, numerous local taxing jurisdictions within Alaska worked together to establish an intergovernmental entity known as the Alaska Remote Seller Sales Tax Commission (the “Commission”); and

WHEREAS, currently 23 municipalities in Alaska are members of the Commission; and

WHEREAS, the function and powers of the Commission are set forth in the Alaska Intergovernmental Remote Seller Sales Tax Agreement (the “Agreement”), a cooperative agreement between Commission members; and

WHEREAS, as part of the process to implement a remote seller sales tax code and pursuant to Resolution 2019-056, the borough signed the Agreement and is currently a full member of the Commission; and

WHEREAS, five of the incorporated cities within the borough are members of the Commission; and

WHEREAS, representatives from the borough, the City of Soldotna, and the City of Kenai also currently hold three of the seven Board of Director seats on the Commission; and

WHEREAS, under the terms of the Agreement, in order to maintain membership in the Commission, local governments must enact the Uniform Remote Seller Sales Tax Code (“Uniform Code”) as adopted by the Commission’s Board of Directors;

WHEREAS, the Board of Directors adopted the Uniform Code at its meeting on January 6, 2020; and

WHEREAS, the Uniform Code will govern the collection and remittance of municipal sales tax applicable to remote or internet-based sales; and

WHEREAS, the purpose of the Uniform Code is to comply with guidance in *Wayfair* by providing statewide threshold criteria, streamlined single-level tax administration for remote sellers, and no retroactive application; and

WHEREAS, the Uniform Code will provide for streamlined remote sales tax collection and remittance process which is necessary to avoid claims that local municipal tax unduly burdens interstate sellers; and

WHEREAS, this ordinance will adopt the Uniform Code, amend current borough sales tax code for consistency, and authorize the Commission to administer the remote sales tax collection and remittance for the borough; and

WHEREAS, this is the culmination of a process that began in June of 2019 and is the last step before municipal tax collected by remote sellers can be remitted to the borough through the Commission; and

WHEREAS, in light of the *Wayfair* decision, failure to adopt a uniform, streamlined, remote seller sales tax code will jeopardize the ability of the borough and its cities to collect tax on remote sales;

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

SECTION 1. That KPB 5.18.450(A) is hereby amended as follows:

5.18.450. - Tax jurisdiction Point of Taxation.

A. The rate of tax to be added to the sale price is based on the place of sale. The place of sale of goods and merchandise is the location of the [RETAIL OUTLET] physical presence at which or from which delivery was made. This provision applies to goods delivered to buyers within the borough and to goods delivered to buyers outside the borough but within the state of Alaska. If the invoice includes a charge for installation, then the place of the sale for the goods and service is the retail outlet at which or from which delivery was made. When goods are delivered into the borough from a point outside of the borough and the seller maintains an ongoing physical presence in the borough, then the location of the seller's in-borough presence will determine the place of sale. [IF A SELLER HAS NO ONGOING PHYSICAL PRESENCE IN THE BOROUGH BUT HAS ESTABLISHED NEXUS WITH THE BOROUGH, THE POINT OF DELIVERY WILL DETERMINE THE PLACE OF SALE. IF THE SELLER HAS NO ONGOING PHYSICAL PRESENCE IN, OR NEXUS WITH, THE BOROUGH THE SALE IS NOT SUBJECT TO THE BOROUGH SALES TAX. FOR PURPOSES OF THIS SECTION THE FOLLOWING TERMS ARE DEFINED AS SHOWN BELOW:

1. "NEXUS" MEANS THE SELLER HAS ESTABLISHED A TAXABLE CONNECTION WITHIN THE BOROUGH BY USE OF MARKETING TECHNIQUES, SUCH AS DIRECTED ADVERTISING IN THE BOROUGH VIA TELEPHONE OR INTERNET, OR DOOR-TO-DOOR SALES WITHIN THE BOROUGH, OR BY USE OF CONTRACT WORKERS OR CONTRACT OR COMMISSION AGENTS OR BUSINESSES, WHICH ARE ASSOCIATED WITH THE SELLER'S EFFORTS TO ESTABLISH OR MAINTAIN A MARKET FOR ITS GOODS OR SERVICES, DELIVER THOSE GOODS OR SERVICES, OR PROVIDE WARRANTY OR OTHER REPAIR OR RETURN SERVICES IN THE BOROUGH.

2. THE "POINT OF DELIVERY" WHERE THERE IS NO ONGOING PHYSICAL PRESENCE IN THE BOROUGH IS THE PLACE WHERE PHYSICAL POSSESSION OF THE GOODS IS TRANSFERRED TO THE CUSTOMER.]

...

SECTION 2. That KPB 5.18.680 is hereby enacted as follows:

5.18.680 Uniform Remote Seller Sales Tax Code

Sellers with no physical presence in the borough that have remote or internet-based sales in the borough and sellers with a physical presence in the borough that have remote or internet-based sales within other taxing jurisdictions in Alaska are subject to KPB 5.19 instead of KPB 5.18.

SECTION 3. That KPB 5.19 is enacted as follows:

KPB 5.19. Uniform Remote Seller Sales Tax Code

5.19.010. Interpretation.

- A. In order to prevent evasion of the sales taxes and to aid in its administration, it is presumed that all sales and services by a person or entity engaging in business are subject to the sales tax.
- B. The application of the tax levied under this Code shall be broadly construed and shall favor inclusion rather than exclusion.
- C. Exemptions from the tax levied under this Code or from the taxing jurisdiction shall be narrowly construed against the claimant and allowed only when such exemption clearly falls within an exemption defined in this Code or the taxing jurisdiction's Code.
- D. The scope of this Code shall apply to remote sellers or marketplace facilitators, delivering products or services to Member municipalities adopting this Code, within the state of Alaska.

5.19.020. Title to Collected Sales Tax.

Upon collection by the remote seller or marketplace facilitator, title to collected sales tax vests in the Commission for remittance to the taxing jurisdiction. The remote seller or marketplace facilitator remits collected sales tax to the Commission on behalf of the taxing jurisdiction, from whom that power is delegated, in trust for the taxing jurisdiction and is accountable to the Commission and taxing jurisdiction.

5.19.030. Imposition – Rate.

- A. To the fullest extent permitted by law, a sales tax is levied and assessed on all remote sales where delivery is made within the local taxing jurisdiction(s) that is a Member, within the state of Alaska.

- B. The applicable tax shall be added to the sales price.
- C. The tax rate added to the sale price shall be the tax rate for the taxing jurisdiction(s) where the property or product is sold, or service that was rendered is received, and based on the date the property or product was sold or the date the service rendered was received.
- D. An Address and Tax Rate Database will be made available to remote sellers and marketplace facilitators, indicating the appropriate tax rate to be applied.
- E. The tax assessed shall be consistent with relevant jurisdictional tax caps, single unit sales, and exemptions.
- F. When a sale is made on an installment basis, the applicable sales tax shall be collected at each payment, calculated at the sales tax rate in effect, and with the cap applied, at the time of the original sale or the date the service is rendered, based on the local jurisdictions' Code(s).
- G. When a sales transaction involves placement of a single order with multiple deliveries made at different points in time that are separately invoiced, the applicable sales tax shall be collected on each separately invoiced delivery, calculated at the sales tax rate in effect, and with the cap applied, at the time of the original sale or the date the service is rendered.

5.19.040. Obligation to Collect Tax - Threshold Criteria.

- A. Any remote seller or marketplace facilitator must collect and remit sales tax in compliance with all applicable procedures and requirements of law, provided the remote seller or marketplace facilitator has met one of the following Threshold Criteria ("Threshold Criteria") in the previous calendar year:
 - 1. The remote seller's statewide gross sales, including the seller's marketplace facilitator's statewide gross sales, from the sale(s) of property, products or services delivered into the state meets or exceeds one hundred thousand dollars (\$100,000); or
 - 2. The remote seller, including the seller's marketplace facilitator, sold property, products, or services delivered into the state in two hundred (200) or more separate transactions.
- B. For purposes of determining whether the Threshold Criteria are met, remote sellers or marketplace facilitators shall include all gross sales, from all sales of goods, property, products, or services rendered within the state of Alaska.

5.19.050. No Retroactive Application.

The obligations to collect and remit sales tax required by this chapter are applicable at the effective date of the ordinance adopting the Alaska Remote Seller Sales Tax Code.

5.19.060. Payment and Collection.

Pursuant to this Code, taxes imposed shall be due and paid by the buyer to the remote seller or marketplace facilitator at the time of the sale of property or product or date service is rendered, or with respect to credit transactions, at the time of collection. It shall be the duty of each remote seller or marketplace facilitator to collect the taxes from the buyer and to hold those taxes in trust for the taxing authority of the taxing jurisdiction. Failure by the remote seller or marketplace facilitator to collect the tax shall not affect the remote seller's, or marketplace facilitator's, responsibility for payment to the Commission.

5.19.070. Remote Seller and Marketplace Facilitator Registration Requirement.

- A. If a remote seller's gross statewide sales within the last calendar year meets or exceeds the Threshold Criteria, the remote seller shall register with the Commission. If a marketplace facilitator's gross statewide sales within the last calendar year meets or exceeds the Threshold Criteria, the marketplace facilitator shall register with the Commission.
- B. A remote seller or marketplace facilitator meeting the Threshold Criteria shall apply for a certificate of sales tax registration within thirty (30) calendar days of the effective date of this Code or within thirty (30) calendar days of meeting the Threshold Criteria whichever occurs second. Registration shall be to the Commission on forms prescribed by the Commission.
- C. An extension may be applied for and granted based on criteria established by the Commission, based on evidence produced to describe time necessary to update software or other technical needs, not to exceed ninety (90) days.
- D. Upon receipt of a properly executed application, the Commission shall confirm registration, stating the legal name of the remote seller or marketplace facilitator, the primary address, and the primary sales tax contact name and corresponding title. The failure of the Commission to confirm registration does not relieve the remote seller or marketplace facilitator of its duty to collect and remit sales tax.
- E. Each business entity shall have a sales tax registration under the advertised name.
- F. The sales tax certificate is non-assignable and non-transferable.

5.19.080. Tax Filing Schedule.

- A. All remote sellers or marketplace facilitators subject to this Code shall file a return on a form or in a format prescribed by the Commission and shall pay the tax due.
- B. Filing of sales tax returns are due monthly; quarterly filing is optional upon application and approval by the Commission, consistent with the code of the local jurisdiction.
- C. A remote seller or marketplace facilitator who has filed a sales tax return will be presumed to be making sales in successive periods unless the remote seller or marketplace facilitator

files a return showing a termination or sale of the business in accordance with this Code.

- D. The completed and executed return, together with the remittance in full for the tax due, shall be transmitted to and must be received by the Commission on or before midnight Alaska Standard Time on the due date. Monthly returns are due the last day of the immediate subsequent month. Quarterly returns are due as follows:

<u>Quarter 1 (January – March)</u>	<u>April 30</u>
<u>Quarter 2 (April – June)</u>	<u>July 31</u>
<u>Quarter 3 (July – September)</u>	<u>October 31</u>
<u>Quarter 4 (October – December)</u>	<u>January 31</u>

- E. If the last day of the month following the end of the filing period falls on a Saturday, Sunday, federal holiday or Alaska state holiday, the due date will be extended until the next business day immediately following.

- F. Any remote seller or marketplace facilitator holding a remote seller registration shall file a sales tax return even though no tax may be due. This return shall show why no tax is due. If the remote seller or marketplace facilitator intends to continue doing business a return shall be filed reflecting no sales and a confirmation of the intent to continue doing business and shall continue to do so each filing period until the entity ceases doing business or sells the business. If the remote seller or marketplace facilitator intends to cease doing business, a final return shall be filed along with a statement of business closure.

- G. The remote seller or marketplace facilitator shall prepare the return and remit sales tax to the Commission on the same basis, cash or accrual, which the remote seller or marketplace facilitator uses in preparing its federal income tax return. The remote seller or marketplace facilitator shall sign the return, and transmit the return, with the amount of sales tax and any applicable penalty, interest or fees that it shows to be due, to the Commission.

- H. Remote sellers and marketplace facilitators failing to comply with the provisions of this Code shall, if required by the Commission and if quarterly filing has been chosen, file and transmit collected sales taxes more frequently until such time as they have demonstrated to the Commission that they are or will be able to comply with the provisions of this Code. Six (6) consecutive on-time sales tax filings, with full remittance of the sales taxes collected, shall establish the presumption of compliance and return to quarterly filing.

- I. The preparer of the sales tax return shall keep and maintain all documentation supporting any and all claims of exempted sales and purchases. Documentation for exempted sales should include the number of the exemption authorization card presented by the buyer at the time of the purchase; the date of the purchase; the name of the person making the purchase; the organization making the purchase; the total amount of the purchase; and the amount of sales tax exempted. This documentation shall be made available to the Commission upon request. Failure to provide such documentation may invalidate that

portion of the claim of exemption for which no documentation is provided.

5.19.090 Estimated Tax

- A. In the event the Commission is unable to ascertain the tax due from a remote seller or marketplace facilitator by reason of the failure of the remote seller or marketplace facilitator to keep accurate books, allow inspection, or file a return, or by reason of the remote seller or marketplace facilitator filing a false or inaccurate return, the Commission may make an estimate of the tax due based on any evidence in their possession.
- B. Sales taxes may also be estimated, based on any information available, whenever the Commission has reasonable cause to believe that any information on a sales tax return is not accurate.
- C. A remote seller's or marketplace facilitator's tax liability under this Code may be determined and assessed for a period of six (6) years after the date the return was filed or due to be filed with the Commission. No civil action for the collection of such tax may be commenced after the expiration of the six (6) year period except an action for taxes, penalties and interest due from those filing periods that are the subject of a written demand or assessment made within the six (6) year period, unless the remote seller or marketplace facilitator waives the protection of this section.
- D. The Commission shall notify the remote seller or marketplace facilitator, in writing, that the Commission has estimated the amount of sales tax that is due from the remote seller or marketplace facilitator. The Commission shall serve the notice on the remote seller or marketplace facilitator by delivering the notice to the remote seller's or marketplace facilitator's place of business, or by mailing the notice by certified mail, return receipt requested, to the remote seller's or marketplace facilitator's last known mailing address. A remote seller or marketplace facilitator who refuses the certified mail will be considered to have accepted the certified mail for purposes of service.
- E. The Commission's estimate of the amount of sales tax that is due from a remote seller or marketplace facilitator shall become a final determination of the amount that is due unless the remote seller or marketplace facilitator, within thirty (30) calendar days after service of notice of the estimated tax:
 - 1. Files a complete and accurate sales tax return for the delinquent periods supported by satisfactory records and accompanied by a full remittance of all taxes, interest, penalties, costs and other charges due; or
 - 2. Files a written notice with the Commission appealing the estimated tax amount in accordance with the appeal procedures.
 - 3. Arguments or reasons for failure to timely file a return and remit taxes collected shall not be considered a valid basis or grounds for granting an appeal. The basis and grounds for granting an appeal of an assessment are:

- a. The identity of the remote seller or marketplace facilitator is in error;
 - b. The amount of the debt is erroneous due to a clerical error (and the nature and extent of the error is specified in the request for appeal); or
 - c. The remote seller or marketplace facilitator disputes the denial of exemption(s) for certain sales.
- F. The amount of sales tax finally determined to be due under this section shall bear interest and penalty from the date that the sales tax originally was due, plus an additional civil penalty of fifty dollars (\$50) for each calendar month or partial month for which the amount of sales tax that is due has been determined.

5.19.100. Returns – Filing Contents.

- A. Every remote seller or marketplace facilitator required by this chapter to collect sales tax shall file with the Commission upon forms furnished by the Commission a return setting forth the following information with totals rounded to the nearest dollar:
- 1. Gross sales;
 - 2. The nontaxable portions separately stating the amount of sales revenue attributable to each class of exemption;
 - 3. Computation of taxes to be remitted;
 - 4. Calculated discount (if applicable) based on taxing jurisdiction’s code; and
 - 5. Such other information as may be required by the Commission.
- B. Each tax return remitted by a remote seller or marketplace facilitator shall be signed (digital or otherwise) by a responsible individual who shall attest to the completeness and accuracy of the information on the tax return.
- C. The Commission reserves the right to reject a filed return for failure to comply with the requirements of this Code for up to three (3) months from the date of filing. The Commission shall give written notice to a remote seller or marketplace facilitator that a return has been rejected, including the reason for the rejection.

5.19.110. Refunds.

- A. Upon request from a buyer or remote seller or marketplace facilitator the Commission shall provide a determination of correct tax rate and amount applicable to the transaction. In the case of an overpayment of taxes, the remote seller or marketplace facilitator shall process the refund and amend any returns accordingly.

- B. If the claimant is a remote seller or marketplace facilitator, and the tax refund is owed to any buyer, the remote seller or marketplace facilitator submits, and the Commission approves, a refund plan to all affected buyers.
- C. The Taxing Jurisdictions may allow a buyer to request a refund directly from the Taxing Jurisdiction.

5.19.120. Amended Returns.

- A. A remote seller or marketplace facilitator may file an amended sales tax return, with supporting documentation, and the Commission may accept the amended return, but only in the following circumstances:
 - i. The amended return is filed within one (1) year of the original due date for the return; and
 - ii. The remote seller or marketplace facilitator provides a written justification for requesting approval of the amended return; and
 - iii. The remote seller or marketplace facilitator agrees to submit to an audit upon request of the Commission.
- B. The Commission shall notify the remote seller or marketplace facilitator in writing (by email or otherwise) whether the Commission accepts or rejects an amended return, including the reasons for any rejection.
- C. The Commission may adjust a return for a remote seller or marketplace facilitator if, after investigation, the Commission determines the figure included in the original returns are incorrect; and the Commission adjusts the return within two (2) years of the original due date for the return.
- D. A remote seller or marketplace facilitator may file a supplemental sales tax return, with supporting documentation, and the Commission may accept the supplemental return, but only in the following circumstances:
 - i. The remote seller or marketplace facilitator provides a written justification for requesting approval of the supplemental return; and
 - ii. The remote seller or marketplace facilitator agrees to submit to an audit upon request of the Commission.

5.19.130. Extension of Time to File Tax Return.

Upon written application of a remote seller or marketplace facilitator, stating the reasons therefor, the Commission may extend the time to file a sales tax return but only if the Commission finds each of the following:

1. For reasons beyond the remote seller's or marketplace facilitator's control, the remote seller or marketplace facilitator has been unable to maintain in a current condition the books and records that contain the information required to complete the return;
2. Such extension is a dire necessity for bookkeeping reasons and would avert undue hardship upon the remote seller or marketplace facilitator;
3. The remote seller or marketplace facilitator has a plan to cure the problem that caused the remote seller or marketplace facilitator to apply for an extension and the remote seller or marketplace facilitator agrees to proceed with diligence to cure the problem;
4. At the time of the application, the remote seller or marketplace facilitator is not delinquent in filing any other sales tax return, in remitting sales tax to the Commission or otherwise in violation of this chapter;
5. No such extension shall be made retroactively to cover existing delinquencies.

5.19.140. Audits.

- A. Any remote seller or marketplace facilitator who has registered with the Commission, who is required to collect and remit sales tax, or who is required to submit a sales tax return is subject to a discretionary sales tax audit at any time. The purpose of such an audit is to examine the business records of the remote seller or marketplace facilitator in order to determine whether appropriate amounts of sales tax revenue have been collected by the remote seller or marketplace facilitator and remitted to the Commission.
- B. The Commission is not bound to accept a sales tax return as correct. The Commission may make an independent investigation of all retail sales or transactions conducted within the State or taxing jurisdiction.
- C. The records that a remote seller or marketplace facilitator is required to maintain under this chapter shall be subject to inspection and copying by authorized employees or agents of the Commission for the purpose of auditing any return filed under this chapter, or to determine the remote seller's or marketplace facilitator's liability for sales tax where no return has been filed.
- D. In addition to the information required on returns, the Commission may request, and the remote seller or marketplace facilitator must furnish, any reasonable information deemed necessary for a correct computation of the tax.

- E. The Commission may adjust a return for a remote seller or marketplace facilitator if, after investigation or audit, the Commission determines that the figures included in the original return are incorrect, and that additional sales taxes are due; and the Commission adjusts the return within two (2) years of the original due date for the return.
- F. For the purpose of ascertaining the correctness of a return or the amount of taxes owed when a return has not been filed, the Commission may conduct investigations, hearings and audits and may examine any relevant books, papers, statements, memoranda, records, accounts or other writings of any remote seller or marketplace facilitator at any reasonable hour on the premises of the remote seller or marketplace facilitator and may require the attendance of any officer or employee of the remote seller or marketplace facilitator. Upon written demand by the Commission, the remote seller or marketplace facilitator shall present for examination, in the office of the Commission, such books, papers, statements, memoranda, records, accounts and other written material as may be set out in the demand unless the Commission and the person upon whom the demand is made agree to presentation of such materials at a different place.
- G. The Commission may issue subpoenas to compel attendance or to require production of relevant books, papers, records or memoranda. If any remote seller or marketplace facilitator refuses to obey any such subpoena, the Commissioner may refer the matter to the Commission's attorney for an application to the superior court for an order requiring the remote seller or marketplace facilitator to comply therewith.
- H. Any remote seller, marketplace facilitator, or person engaged in business who is unable or unwilling to submit their records to the Commission shall be required to pay the Commission for all necessary expenses incurred for the examination and inspection of their records maintained outside the Commission.
- I. After the completion of a sales tax audit, the results of the audit will be sent to the business owner's address of record.
- J. In the event the Commission, upon completion of an audit, discovers more than five hundred dollars (\$500) in additional sales tax due from a remote seller or marketplace facilitator resulting from a remote seller's or marketplace facilitator's failure to accurately report sales and taxes due thereupon, the remote seller or marketplace facilitator shall bear responsibility for the full cost of the audit. The audit fee assessment will be in addition to interest and penalties applicable to amounts deemed to be delinquent by the Commission at the time of the conclusion of the audit.

5.19.150. Audit protest.

- A. If the remote seller or marketplace facilitator wishes to dispute the amount of the estimate, or the results of an examination or audit, the remote seller or marketplace facilitator must file a written protest with the Commission, within thirty (30) calendar days of the date of the notice of estimated tax or results of an audit or examination. The protest must set forth:

1. The remote seller's or marketplace facilitator's justification for reducing or increasing the estimated tax amount, including any missing sales tax returns for the periods estimated; or
 2. The remote seller's or marketplace facilitator's reasons for challenging the examination or audit results.
- B. In processing the protest, the Commission may hold an informal meeting or hearing with the remote seller or marketplace facilitator, either on its own or upon request of the remote seller or marketplace facilitator, and may also require that the remote seller or marketplace facilitator submit to an audit, if one was not previously conducted or a more formal audit, if an estimation audit was previously performed.
- C. The Commission shall make a final written determination on the remote seller's or marketplace facilitator's protest and mail a copy of the determination to the remote seller or marketplace facilitator.
- D. If a written protest is not filed within thirty (30) days of the date of the notice of estimated tax or the result of a review, audit or examination, then the estimated tax, review, audit or examination result shall be final, due and payable to the Commission.

5.19.160. Penalties and Interest for Late Filing.

- A. A late filing fee of twenty-five dollars (\$25) per month (or quarter) shall be added to all late-filed sales tax reports in addition to interest and penalties.
- B. Delinquent sales tax bear interest at the rate of fifteen percent (15%) per annum until paid.
- C. In addition, delinquent sales tax shall be subject to an additional penalty of 5% per month, or fraction thereof, until a total of 20% of delinquent tax has been reached. The penalty does not bear interest.
- D. Penalties and interest shall be assessed and collected in the same manner as the tax is assessed and collected, and applied first to penalties and interest, second to past due sales tax.
- E. The filing of an incomplete return, or the failure to remit all tax, shall be treated as the filing of no return.
- F. A penalty assessed under this section for the delinquent remittance of sales tax or failure to file a sales tax return may be waived by the Commission, upon written application of the remote seller or marketplace facilitator accompanied by a payment of all delinquent sales tax, interest and penalty otherwise owed by the remote seller or marketplace facilitator, within forty-five (45) calendar days after the date of delinquency. A remote seller or marketplace facilitator may not be granted more than one (1) waiver of penalty

under this subsection in any one calendar year. The Commission shall report such waivers of penalty to the taxing jurisdiction, in writing.

5.19.170. Repayment Plans.

- A. The Commission may agree to enter into a repayment plan with a delinquent remote seller or marketplace facilitator. No repayment plan shall be valid unless agreed to by both parties in writing.
- B. A remote seller or marketplace facilitator shall not be eligible to enter into a repayment plan with the Commission if the remote seller or marketplace facilitator has defaulted on a repayment plan in the previous two (2) calendar years.
- C. The repayment plan shall include a secured promissory note that substantially complies with the following terms:
 - i. The remote seller or marketplace facilitator agrees to pay a minimum of ten percent (10%) down payment on the tax, interest and penalty amount due. The down payment shall be applied first to penalty, then to accumulated interest, and then to the tax owed.
 - ii. The remote seller or marketplace facilitator agrees to pay the balance of the tax, penalty and interest owed in monthly installments over a period not to exceed two (2) years.
 - iii. Interest at a rate of fifteen percent (15%) per annum shall accrue on the principal sum due. Interest shall not apply to penalties owed or to interest accrued at the time the repayment plan is executed or accruing during the term of the repayment plan.
 - iv. If the remote seller or marketplace facilitator is a corporation or a limited liability entity the remote seller or marketplace facilitator agrees to provide a personal guarantee of the obligations under the repayment plan.
 - v. The remote seller or marketplace facilitator agrees to pay all future tax bills in accordance with the provisions of this chapter.
 - vi. The remote seller or marketplace facilitator agrees to provide a security interest in the form of a sales tax lien for the entire unpaid balance of the promissory note to be recorded by the Commission at the time the repayment plan is signed. The remote seller or marketplace facilitator shall be responsible for the cost of recording the tax lien.
- D. If a remote seller or marketplace facilitator fails to pay two (2) or more payments as required by the repayment plan agreement, the remote seller or marketplace facilitator shall be in default and the entire amount owed at the time of default shall become

immediately due. The Commission will send the remote seller or marketplace facilitator a notice of default. The Commission may immediately foreclose on the sales tax lien or take any other remedy available under the law.

5.19.180. Remote Seller or Marketplace Facilitator Record Retention.

Remote sellers or marketplace facilitators shall keep and preserve suitable records of all sales made and such other books or accounts as may be necessary to determine the amount of tax which the remote seller or marketplace facilitator is obliged to collect. Remote sellers or marketplace facilitators shall preserve suitable records of sales for a period of six (6) years from the date of the return reporting such sales, and shall preserve for a period of six (6) years all invoices of goods and merchandise purchased for resale, and all such other books, invoices and records as may be necessary to accurately determine the amount of taxes which the remote seller or marketplace facilitator was obliged to collect under this chapter.

5.19.190. Cessation or Transfer of Business.

- A. A remote seller or marketplace facilitator who sells, leases, conveys, forfeits, transfers or assigns the majority of their business interest, including a creditor or secured party, shall make a final sales tax return within thirty (30) days after the date of such conveyance.
- B. At least ten (10) business days before any such sale is completed, the remote seller or marketplace facilitator shall send to the Commission, by approved communication (email confirmation, certified first-class mail, postage prepaid) a notice that the remote seller's or marketplace facilitator's interest is to be conveyed and shall include the name, address and telephone number of the person or entity to whom the interest is to be conveyed.
- C. Upon notice of sale and disclosure of buyer, the Commission shall be authorized to disclose the status of the remote seller's or marketplace facilitator's sales tax account to the named buyer or assignee.
- D. Upon receipt of notice of a sale or transfer, the Commission shall send the transferee a copy of this Code with this section highlighted.
- E. Neither the Commission's failure to give the notice nor the transferee's failure to receive the notice shall relieve the transferee of any obligations under this section.
- F. Following receipt of the notice, the Commission shall have sixty (60) days in which to perform a final sales tax audit and assess sales tax liability against the seller of the business. If the notice is not mailed at least ten (10) business days before the sale is completed, the Commission shall have twelve (12) months from the date of the completion of the sale or the Commission's knowledge of the completion of the sale within which to begin a final sales tax audit and assess sales tax liability against the seller of the business. The Commission may also initiate an estimated assessment if the requirements for such an assessment exist.

- G. A person acquiring any interest of a remote seller or marketplace facilitator in a business required to collect the tax under this chapter assumes the liability of the remote seller or marketplace facilitator for all taxes due the Commission, whether current or delinquent, whether known to the Commission or discovered later, and for all interest, penalties, costs and charges on such taxes.
- H. Before the effective date of the transfer, the transferee of a business shall obtain from the Commission an estimate of the delinquent sales tax, penalty and interest, if any, owed by the remote seller or marketplace facilitator as of the date of the transfer, and shall withhold that amount from the consideration payable for the transfer, until the remote seller or marketplace facilitator has produced a receipt from the Commission showing that all tax obligations imposed by this chapter have been paid. A transferee that fails to withhold the amount required under this subsection shall be liable to the Commission and taxing jurisdiction for the lesser of the amount of delinquent sales tax, penalty and interest due from the remote seller or marketplace facilitator as of the date of transfer, and the amount that the transferee was required to withhold.
- I. In this section, the term “transfer” includes the following:
1. A change in voting control, or in more than fifty percent (50%) of the ownership interest in a remote seller or marketplace facilitator that is a corporation, limited liability company or partnership; or
 2. A sale of all or substantially all the assets used in the business of the remote seller or marketplace facilitator; or
 3. The initiation of a lease, management agreement or other arrangement under which another person becomes entitled to the remote seller’s or marketplace facilitator’s gross receipts from sales, rentals or services.
- J. Subsection H of this section shall not apply to any person who acquires their ownership interest in the ongoing business as a result of the foreclosure of a lien that has priority over the Commission’s sales tax lien.
- K. Upon termination, dissolution or abandonment of a corporate business, any officer having control or supervision of sales tax funds collected, or who is charged with responsibility for the filing of returns or the payment of sales tax funds collected, shall be personally liable for any unpaid taxes, interest, administrative costs and penalties on those taxes if such officer willfully fails to pay or cause to be paid any taxes due from the corporation. In addition, regardless of willfulness, each director of the corporation shall be jointly and severally liable for unpaid amounts. The officer shall be liable only for taxes collected which became due during the period he or she had the control, supervision, responsibility or duty to act for the corporation. This section does not relieve the corporation of other tax liabilities or otherwise impair other tax collection remedies afforded by law.

L. A remote seller or marketplace facilitator who terminates the business without the benefit of a purchaser, successor or assign shall make a final tax return and settlement of tax obligations within thirty (30) days after such termination. If a final return and settlement are not received within thirty (30) days of the termination, the remote seller or marketplace facilitator shall pay a penalty of one hundred dollars (\$100), plus an additional penalty of twenty-five dollars (\$25) for each additional thirty- (30-) day period, or part of such a period, during which the final return and settlement have not been made, for a maximum of six (6) additional periods.

5.19.200. Use of Information on Tax Returns.

A. Except as otherwise provided in this chapter, all returns, reports and information required to be filed with the Commission under this Code, and all information contained therein, shall be kept confidential and shall be subject to inspection only by:

1. Employees and agents of the Commission and taxing jurisdiction whose job responsibilities are directly related to such returns, reports and information;
2. The person supplying such returns, reports and information; and
3. Persons authorized in writing by the person supplying such returns, reports and information.

B. The Commission will release information described in subsection A of this section pursuant to subpoena, order of a court or administrative agency of competent jurisdiction, and where otherwise required by law to do so.

C. Notwithstanding subsection A of this section, the following information is available for public inspection:

1. The name and address of sellers;
2. Whether a business is registered to collect taxes under this chapter;
3. The name and address of businesses that are sixty (60) days or more delinquent in filing returns or in remitting sales tax, or both filing returns and remitting sales tax; and, if so delinquent, the amount of estimated sales tax due, and the number of returns not filed.

D. The Commission may provide the public statistical information related to sales tax collections, provided that no information identifiable to a particular remote seller or marketplace facilitator is disclosed.

E. Nothing contained in this section shall be construed to prohibit the delivery to a person, or their duly authorized representative, of a copy of any return or report filed by them, nor to prohibit the publication of statistics so classified as to prevent the identification of

particular buyers, remote sellers, or marketplace facilitators, nor to prohibit the furnishing of information on a reciprocal basis to other agencies or political subdivisions of the state or the United States concerned with the enforcement of tax laws.

- F. Nothing contained in this section shall be construed to prohibit the disclosure through enforcement action proceedings or by public inspection or publication of the name, estimated balance due, and current status of payments, and filings of any remote seller or marketplace facilitator or agent of any remote seller or marketplace facilitator required to collect sales taxes or file returns under this chapter, who fails to file any return and/or remit in full all sales taxes due within thirty (30) days after the required date for that business. Entry into any agreement whether pursuant to the provisions of this chapter or otherwise shall not act as any prohibition to disclosure of the records of that remote seller or marketplace facilitator as otherwise provided in this chapter.
- G. A prospective lessee or purchaser of any business or business interest may inquire as to the obligation or tax status of any business upon presenting to the Commission a release of tax information request signed by the authorized agent of the business.
- H. All returns referred to in this chapter, and all data taken therefrom, shall be kept secure from public inspection, and from all private inspection.

5.19.210. Violations.

- A. A remote seller or marketplace facilitator that fails to file a sales tax return or remit sales tax when due, in addition to any other liability imposed by this Code, shall pay to the Commission all costs incurred by the Commission to determine the amount of the remote seller's or marketplace facilitator's liability or to collect the sales tax, including, without limitation, reviewing and auditing the remote seller's or marketplace facilitator's business records, collection agency fees, and actual reasonable attorney's fees.
- B. A person who causes or permits a corporation of which the person is an officer or director, a limited liability company of which the person is a member or manager, or a partnership of which the person is a partner, to fail to collect sales tax or to remit sales tax to the Commission as required by this Code shall be liable to the Commission for the amount that should have been collected or remitted, plus any applicable interest and penalty.
- C. Notwithstanding any other provision of law, and whether or not the Commission initiates an audit or other tax collection procedure, the Commission may bring a declaratory judgment action against a remote seller or marketplace facilitator believed to meet the criteria to establish that the obligation to remit sales tax is applicable and valid under local, state and federal law. The action shall be brought in the judicial district of the taxing jurisdiction.
- D. The Commission may cause a sales tax lien to be filed and recorded against all real and personal property of a remote seller or marketplace facilitator where the remote seller or marketplace facilitator has:

1. Failed to file sales tax returns for two (2) consecutive filing periods as required by the Code; or
2. Failed within sixty (60) days of the end of the filing period from which taxes were due to either (a) remit all amounts due or (b) to enter into a secured payment agreement as provided in this Code.
3. Prior to filing a sales tax lien, the Commission shall cause a written notice of intent to file to be mailed to the last known address of the delinquent remote seller or marketplace facilitator.

E. In addition to other remedies discussed in this Code, the Commission may bring a civil action to:

1. Enjoin a violation of this Code. On application for injunctive relief and a finding of a violation or threatened violation, the superior court shall enjoin the violation.
2. Collect delinquent sales tax, penalty, interest and costs of collection, either before or after estimating the amount of sales tax due.
3. Foreclose a recorded sales tax lien as provided by law.

F. All remedies hereunder are cumulative and are in addition to those existing at law or equity.

5.19.220. Penalties for Violations.

- A. A buyer, remote seller, or marketplace facilitator who knowingly or negligently submits false information in a document filed with the Commission pursuant to this Code is subject to a penalty of five hundred dollars (\$500).
- B. A remote seller or marketplace facilitator who knowingly or negligently falsifies or conceals information related to its business activities with the Commission or taxing jurisdiction is subject to a penalty of five hundred dollars (\$500).
- C. A person who knowingly or negligently provides false information when applying for a certificate of exemption is subject to a penalty of five hundred dollars (\$500).
- D. Any remote seller or marketplace facilitator who fails to file a return required under this chapter by the due date, regardless of whether any taxes were due for the reporting period for which the return was required, shall be subject to a penalty of twenty-five dollars (\$25) for the first sales tax return not timely filed. The filing of an incomplete return shall be treated as the filing of no return.

- E. A remote seller or marketplace facilitator who fails or refuses to produce requested records or to allow inspection of their books and records shall pay to the Commission a penalty equal to three (3) times any deficiency found or estimated by the Commission with a minimum penalty of five hundred dollars (\$500).
- F. A remote seller or marketplace facilitator who falsifies or misrepresents any record filed with the Commission is guilty of an infraction and subject to a penalty of five hundred dollars (\$500) per record.
- G. Misuse of an exemption card is a violation and subject to a penalty of fifty dollars (\$50) per incident of misuse;
- H. Nothing in this chapter shall be construed as preventing the Commission from filing and maintaining an action at law to recover any taxes, penalties, interest and/or fees due from a remote seller or marketplace facilitator. The Commission may also recover attorney's fees in any action against a delinquent remote seller or marketplace facilitator.

5.19.230. Remote Sellers with a physical presence in the taxing jurisdiction.

- A. Sellers with a physical presence in a Taxing Jurisdiction and no remote or internet-based sales shall report, remit, and comply with standards, including audit authority, of the Taxing Jurisdiction.
- B. Sellers with a physical presence in a Taxing Jurisdiction that also have remote or internet-based sales where the Point of Delivery is in a different Taxing Jurisdictions shall (i) report and remit the remote or internet sales to the Commission; and (ii) report and remit the in-store sales to the Taxing Jurisdiction.
- C. Sellers with a physical presence in a Taxing Jurisdiction that also have remote or internet-based sales where the Point of Delivery is in the same Taxing Jurisdictions shall report and remit those remote sales to the Taxing Jurisdiction.
- D. Remote Sellers and marketplace facilitators that do not have a physical presence in a Taxing Jurisdiction must report and remit all remote sales to the Commission.
- E. For all purchases the tax rate added to the sale price shall be as provided in the Taxing Jurisdiction's sales tax code, based on point of delivery.
- F. A marketplace facilitator is considered the remote seller for each sale facilitated through its marketplace and shall collect, report, and remit sales tax to the Commission. A marketplace facilitator is not considered to be the remote seller for each sale or rental of lodging facilitated through its marketplace, wherein the seller is considered to have a physical presence in the Taxing Jurisdiction.

5.19.240. Remittance of Tax; Remote Seller Held Harmless.

- A. Any remote seller or marketplace facilitator that collects and remits sales tax to the Commission as provided by law may use an electronic database of state addresses that is certified by the Commission pursuant to subsection (C) of this section to determine the jurisdictions to which tax is owed.
- B. Any remote seller or marketplace facilitator that uses the data contained in an electronic database certified by the Commission pursuant to subsection (C) of this section to determine the jurisdictions to which tax is owed shall be held harmless for any tax, charge, or fee liability to any taxing jurisdiction that otherwise would be due solely as a result of an error or omission in the database.
- C. Any electronic database provider may apply to the Commission to be certified for use by remote sellers or marketplace facilitators pursuant to this section. Such certification shall be valid for three years. In order to be certified, an electronic database provider shall have a database that satisfies the following criteria:
 - 1. The database shall designate each address in the state, including, to the extent practicable, any multiple postal address applicable to one location and the taxing jurisdictions that have the authority to impose a tax on purchases made by purchasers at each address in the state.
 - 2. The information contained in the electronic database shall be updated as necessary and maintained in an accurate condition. In order to keep the database accurate, the database provider shall provide a convenient method for taxing jurisdictions that may be affected by the use of the database to inform the provider of apparent errors in the database. The provider shall have a process in place to promptly correct any errors brought to the provider's attention.

5.19.250. Definitions.

For purposes of this chapter, the following definitions shall apply:

“Buyer or purchaser” means a person to whom a sale of property or product is made or to whom a service is furnished.

“Commission” means the Alaska Intergovernmental Remote Sales Tax Commission established by Agreement between local government taxing jurisdictions within Alaska, and delegated tax collection authority.

“Delivered electronically” means delivered to the purchaser by means other than tangible storage media.

“Entity-based exemption” means an exemption based on who purchases the product or who sells the product. An exemption that is available to all individuals shall not be considered an entity-based exemption.

“Goods for resale” means:

- A. the sale of goods by a manufacturer, wholesaler or distributor to a retail vendor; sales to a wholesale or retail dealer who deals in the property sold, for the purpose of resale by the dealer.
- B. Sales of personal property as raw material to a person engaged in manufacturing components for sale, where the property sold is consumed in the manufacturing process of, or becomes an ingredient or component part of, a product manufactured for sale by the manufacturer.
- C. Sale of personal property as construction material to a licensed building contractor where the property sold becomes part of the permanent structure.

“Marketplace facilitator” means a person that contracts with remote sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the remote seller’s property or services through a physical or electronic marketplace operated by the person, and engages:

- A. Directly or indirectly, through one or more affiliated persons in any of the following:
 - (i) Transmitting or otherwise communicating the offer or acceptance between the buyer and remote seller;
 - (ii) Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and remote sellers together;
 - (iii) Providing a virtual currency that buyers are allowed or required to use to purchase products from the remote seller; or
 - (iv) Software development or research and development activities related to any of the activities described in (b) of this subsection (3), if such activities are directly related to a physical or electronic marketplace operated by the person or an affiliated person; and
- B. In any of the following activities with respect to the seller’s products:
 - (i) Payment processing services;
 - (ii) Fulfillment or storage services;
 - (iii) Listing products for sale;

(iv) Setting prices;

(v) Branding sales as those of the marketplace facilitator;

(vi) Order taking;

(vii) Advertising or promotion; or

(viii) Providing customer service or accepting or assisting with returns or exchanges.

“Member” means a taxing jurisdiction that is a signatory of the Alaska Remote Sales Tax Intergovernmental Agreement, thereby members of the Commission, and who have adopted the Remote Seller Sales Tax Code.

“Monthly” means occurring once per calendar month.

“Nonprofit organization” means a business that has been granted tax-exempt status by the Internal Revenue Service (IRS); means an association, corporation, or other organization where no part of the net earnings of the organization inures to the benefit of any member, shareholder, or other individual, as certified by registration with the IRS.

“Person” means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

“Physical presence” means a seller who establishes any one or more of the following within a local taxing jurisdiction:

1. Has any office, distribution or sales house, warehouse, storefront, or any other place of business within the boundaries of the local taxing jurisdiction;
2. Solicits business or receiving orders through any employee, agent, salesman, or other representative within the boundaries of the local taxing jurisdiction or engages in activities in this state that are significantly associated with the seller’s ability to establish or maintain a market for its products in this state;
3. Provides services or holds inventory within the boundaries of the local taxing jurisdiction;
4. Rents or Leases property located within the boundaries of the local taxing jurisdiction.

A seller that establishes a physical presence within the local taxing jurisdiction in any calendar year will be deemed to have a physical presence within the local taxing jurisdiction for the following calendar year.

“Point of delivery” means the location at which property or a product is delivered or service rendered.

- A. When the product is not received or paid for by the purchaser at a business location of a remote seller in a Taxing Jurisdiction, the sale is considered delivered to the location where receipt by the purchaser (or the purchaser's recipient, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery as supplied by the purchaser (or recipient) and as known to the seller.
- B. When the product is received or paid for by a purchaser who is physically present at a business location of a Remote Seller in a Taxing Jurisdiction the sale is considered to have been made in the Taxing Jurisdiction where the purchaser is present even if delivery of the product takes place in another Taxing Jurisdiction. Such sales are reported and tax remitted directly to the Taxing Jurisdiction not to the Commission.
- C. For products transferred electronically, or other sales where the remote seller or marketplace facilitator lacks a delivery address for the purchaser, the remote seller or marketplace facilitator shall consider the point of delivery the sale to the billing address of the buyer.

“Product-based exemptions” means an exemption based on the description of the product and not based on who purchases the product or how the purchaser intends to use the product.

“Property” and “product” means both tangible property, an item that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses; and intangible property, anything that is not physical in nature (i.e.; intellectual property, brand recognition, goodwill, trade, copyright and patents).

“Quarter” means trimonthly periods of a calendar year; January-March, April-June, July-September, and October-December.

“Receive or receipt” means

- A. Taking possession of property;
- B. Making first use of services; or
- C. Taking possession or making first use of digital goods, whichever comes first.

The terms “receive” and “receipt” do not include temporary possession by a shipping company on behalf of the purchaser.

“Remote sales” means sales of goods or services by a remote seller or marketplace facilitator.

“Remote seller” means a seller or marketplace facilitator making sales of goods or services delivered within the State of Alaska, without having a physical presence in a taxing jurisdiction, or conducting business between taxing jurisdictions, when sales are made by internet, mail order,

phone or other remote means. A marketplace facilitator shall be considered the remote seller for each sale facilitated through its marketplace.

“Resale of services” means sales of intermediate services to a business the charge for which will be passed directly by that business to a specific buyer.

“Sale” or “retail sale” means any transfer of property for consideration for any purpose other than for resale.

“Sales or purchase price” means the total amount of consideration, including cash, credit, property, products, and services, for which property, products, or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- A. The seller’s cost of the property or product sold;
- B. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- C. Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- D. Delivery charges;
- E. Installation charges; and
- F. Credit for any trade-in, as determined by state law.

“Seller” means a person making sales of property, products, or services, or a marketplace facilitator facilitating sales on behalf of a seller.

“Services” means all services of every manner and description, which are performed or furnished for compensation, and delivered electronically or otherwise outside the taxing jurisdiction (but excluding any that are rendered physically within the taxing jurisdiction, including but not limited to:

- A. Professional services;
- B. Services in which a sale of property or product may be involved, including property or products made to order;
- C. Utilities and utility services not constituting a sale of property or products, including but not limited to sewer, water, solid waste collection or disposal, electrical, telephone services and repair, natural gas, cable or satellite television, and Internet services;
- D. The sale of transportation services;

E. Services rendered for compensation by any person who furnishes any such services in the course of his trade, business, or occupation, including all services rendered for commission;

F. Advertising, maintenance, recreation, amusement, and craftsman services.

“Tax cap” means a maximum taxable transaction.

“Taxing jurisdiction” means a local government in Alaska that has a sales tax and is a member of the Alaska Remote Sellers Sales Tax Commission.

“Transferred electronically” means obtained by the purchaser by means other than tangible storage media.

5.19.260 Supplemental Definitions.

The Commission shall promulgate Supplemental Definitions that are incorporated into this Remote Seller Sales Tax Code. Supplemental Definitions are available at www.arsstc.org. Provisions of the Supplemental Definitions that are amended, deleted, or added prior to or after the effective date of the latest amendment to this chapter shall be applicable for purposes of this chapter on the effective date provided for such amendments, deletions, or additions, including retroactive provisions.

SECTION 4. That the Alaska Intergovernmental Remote Sales Tax Commission is hereby authorized to implement, administer, and enforce the provisions of KPB 5.19 Uniform Remote Seller Sales Tax Code. This authority remains in full force and effect until the assembly revokes this authorization or otherwise withdraws from the Alaska Remote Seller Sales Tax Commission.

SECTION 5. This ordinance is effective March 1, 2020.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2020.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough Finance Department

MEMORANDUM

TO: Members, Kenai Peninsula Borough Assembly

THRU: Kelly Cooper, Assembly President ^{KC}
Hal Smalley, Assembly Vice-President ^{(1/3) for H. S.}

FROM: Brandi Harbaugh, Finance Director ^{BH}
Sean Kelley, Deputy Borough Attorney ^{SK}

DATE: January 9, 2020

RE: Ordinance 2020-03, Amending KPB 5.18 Sales Tax Code and Enacting KPB 5.19 – Uniform Remote Seller Sales Tax Code (Cooper, Smalley)

In order to implement a single-level statewide sales tax administration, numerous local taxing jurisdictions within Alaska banded together to establish an intergovernmental entity known as the Alaska Remote Seller Sales Tax Commission (the "Commission"). This ordinance represents the culmination of a process that began in June of 2019 and is the last step before municipal tax collected by remote sellers can be remitted to the borough through the Commission.

The recent decision by the United States Supreme Court in *South Dakota v. Wayfair* ("Wayfair") allows for the amendment of the sales tax code to account for remote sellers who do not have a physical presence in the borough, but do have a taxable connection with the borough. Remote sellers who make a substantial number of deliveries into or have large gross revenues from Alaska benefit extensively from the Alaska market, affecting the economy generally, as well as local infrastructure. The *Wayfair* decision provides guidance that includes the defensibility of a single-level statewide administration of remote sales tax collection and remittance so long as the law is not retroactive in its application and provides a safe harbor to sellers who have limited sales or transactions in Alaska.

There are currently 23 municipalities in Alaska that are members of the Commission. The function and powers of the Commission are set forth in the Alaska Intergovernmental Remote Seller Sales Tax Agreement (the "Agreement"), a cooperative agreement between Commission members.

Page -2-
January 9, 2020
RE: Ordinance 2020-03

On November 5, 2019, the assembly unanimously passed Resolution 2019-056 authorizing the borough to become a member of the Commission and authorizing the mayor to sign the Agreement on behalf of the borough. Five of the incorporated cities within the borough are members of the Commission. In addition, representatives from the borough, the City of Soldotna, and the City of Kenai also comprise three of the seven Board of Director seats on the Commission.

Under the terms of the Agreement, in order to maintain membership in the Commission, local governments must enact the uniform Remote Seller Sales Tax Code ("Uniform Code") as adopted by the Commission's Board of Directors. The Board of Directors adopted the Uniform Code at its meeting on January 6, 2020. The Uniform Code will govern the collection and remittance of municipal sales tax applicable to remote or internet-based sales. The purpose of the Uniform Code is to comply with guidance in *Wayfair* by providing a statewide threshold criteria, streamlined single-level tax administration for remote sellers, and no retroactive application. The Uniform Code will provide for streamlined remote sales tax collection and remittance process which is necessary to avoid claims that local municipal tax unduly burdens interstate sellers.

This ordinance will adopt the Uniform Code, amend current borough sales tax code for consistency, and authorize the Commission to administer remote sales tax collection and remittance. In light of the *Wayfair* decision, failure to adopt a uniform, streamlined, remote seller sales tax code will jeopardize the ability of the borough and its cities to collect tax on remote sales.

Your consideration of this ordinance is appreciated.

Introduced by:

Date:

Hearing:

Action:

Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2020-04**

**AN ORDINANCE AUTHORIZING THE MAYOR TO SELECT A PARCEL OF LAND
IN THE CITY OF KENAI THROUGH THE KENAI PENINSULA BOROUGH'S
MUNICIPAL ENTITLEMENT LAND GRANT AND AUTHORIZING THE
CONVEYANCE OF THE PARCEL TO THE CITY OF KENAI FOR A MUNICIPAL
PARK**

WHEREAS, City of Kenai Resolution No. 2019-83, dated December 18, 2019, requested that the borough select Kenai Peninsula Borough parcel #043-050-17 through the state municipal entitlement program and convey the parcel to the City of Kenai in order to return ownership of the parcel to the City of Kenai in an efficient and timely manner; and

WHEREAS, the 3.75-acre parcel #043-050-17 is legally described as Government Lots 40, 41, and 42 within Section 31, T. 6N., R. 11W., S.M., Kenai Recording District, Third Judicial District, State of Alaska; and

WHEREAS, the property on which the Park sits was originally patented from the BLM to the North Kenai Home Owners Association (“HOA”) with the restriction that it could only be used for playground purposes and could not be further conveyed without BLM consent; and

WHEREAS, the parcel was transferred to the City of Kenai in 1978 by Clerk’s Deed through tax foreclosure by the Kenai Peninsula Borough (BK 126, PG 786-788, Kenai Recording District); and

WHEREAS, subsequent to the City of Kenai receiving the parcel through Clerk’s Deed, the United States Bureau of Land Management re-asserted ownership of the parcel through a reversionary provision of the original patent to North Kenai Home Owners Association, Inc.; and

WHEREAS, the State of Alaska, pursuant to Section 6(b) of the Alaska Statehood Act of July 7, 1958, Pub. L. 85-508, 72 Stat. 339, as amended, selected the lands and subsequently received patent to the lands (#50-2019-0040) on January 25, 2019; and

WHEREAS, the City of Kenai currently maintains the 4th Avenue Park on the property and has done so since the 1970s; and

WHEREAS, within the 2016 Imagine Kenai 2030 Comprehensive Plan, Object 2 of Goal 6 is to maintain existing recreational opportunities and plan for new parks and recreation improvements; and

WHEREAS, the 4th Avenue Park is included within the City of Kenai’s inventory of parks and recreational areas, including on the city’s website and within the 2016 Imagine Kenai 2030 Comprehensive Plan, with the listed amenities of a playground, basketball court, shelter, barbecue grill, and baseball field; and

WHEREAS, acquisition of parcel #043-050-17 by the borough and conveyance to the City of Kenai would further Goal 6, Objective 2 of the 2016 Imagine Kenai 2030 Comprehensive Plan; and

WHEREAS, the Kenai Peninsula Borough (KPB) is entitled to select 155,780 acres of land under AS 29.65.010 municipal general land grant entitlement; and

WHEREAS, the KPB, as of this date, has a remaining entitlement of approximately 13,000 acres; and

WHEREAS, the 3.75-acre parcel #043-050-17 has an assessed value of \$56,000; and

WHEREAS, the Kenai Peninsula Borough Planning Commission held a public hearing on January 27, 2020 and recommended _____;

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

SECTION 1. That the mayor is authorized to submit an application pursuant to AS 29.65.010 to the State of Alaska Department of Natural Resources for parcel #043-050-17, legally described as Government Lots 40, 41, and 42 within Section 31, T. 6N., R. 11W., S.M., Kenai Recording District, Third Judicial District, State of Alaska.

SECTION 2. That pursuant to KPB 17.10.120(D) the Assembly finds that conveying the above-described property at less than fair market value to the City of Kenai for continued use as a park is in the best interest of the borough.

This finding is based on the following facts:

- a. The conveyance will benefit borough residents by allowing the continuation of a municipal park within the City of Kenai that will be available to both city and non-city residents.
- b. The City of Kenai will be responsible for the costs of maintenance and operation of the park for the benefit of the city and other borough residents.

- c. Charging fair market value for this property would preclude the use of such funds for the maintenance and operation of the park.
- d. The offer to convey the above-described property must be accepted within 60 days after enactment of this ordinance.

SECTION 3. The mayor is authorized, pursuant to KPB 17.10.100(D), (E), and (I) to convey property to the City of Kenai as described in Section 1 above for the sum of \$1. Borough land shall be conveyed to the City of Kenai by Quitclaim Deed. The City of Kenai shall be responsible for title insurance and any other closing costs.

SECTION 4. There shall be a restriction placed on the deed to the City of Kenai. The deed restriction shall require that the parcel be used as a park only and that it not be limited to use by Kenai residents but rather shall be open to the general public. If at any time the parcel is used for purposes other than a park, the parcel shall revert to the borough.

SECTION 5. This ordinance shall become effective immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2020.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members of Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *CP*
Max Best, Planning Director *MB*

FROM: Marcus Mueller, Land Management Officer *MM*

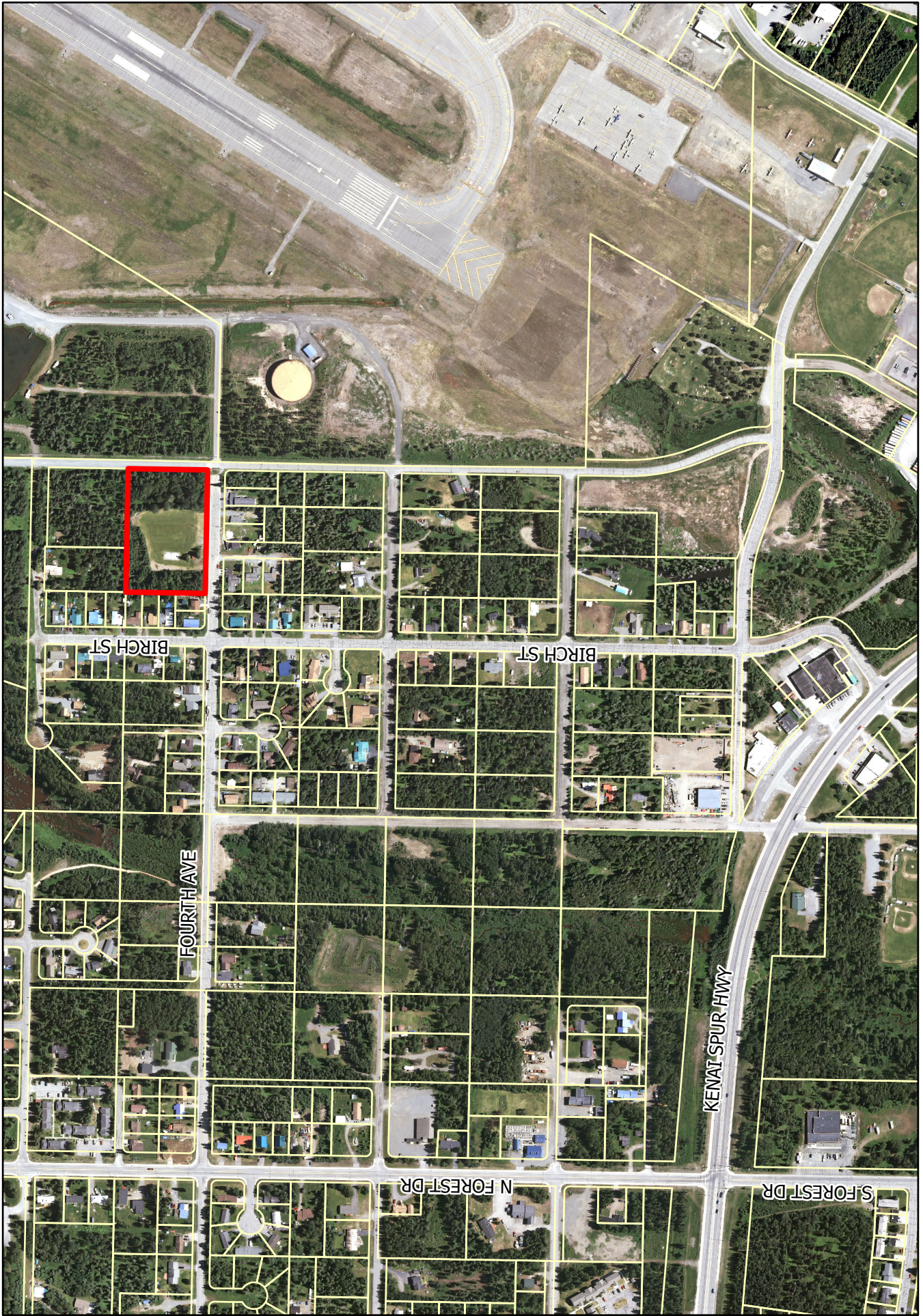
DATE: January 9, 2020

RE: Ordinance 2020-04 Authorizing the Mayor to Select a Parcel of Land in the City of Kenai through the Kenai Peninsula Borough's Municipal Entitlement Land Grant and Authorizing the Conveyance of the Parcel to the City of Kenai for a Municipal Park (Mayor)

A parcel of land originally deeded from the Bureau of Land Management (BLM) to the North Kenai Home Owners Association and made into the 4th Avenue Park went through tax foreclosure and became deeded to the City of Kenai (the "city") in 1978. BLM later enforced a reversionary clause in the original deed, reclaiming title and divesting the city of lawful interests in the municipal park that the city had assumed and continued to manage. To efficiently resolve the title matter, the city has requested that the borough work with the state to convey title using land selection processes and ultimately to transfer title back to the city under a cooperative arrangement.

This ordinance would authorize the mayor to select the 3.75 acre parcel through the borough's 155,780-acre municipal entitlement land grant and also would authorize the Mayor to then convey the parcel to the City of Kenai. The ordinance specifies that a restriction would be placed on the title for park purposes open to the general public.

Your consideration of this resolution of this ordinance is appreciated.



PARCELS

4TH AVENUE PARK

PARCEL # 043-050-17

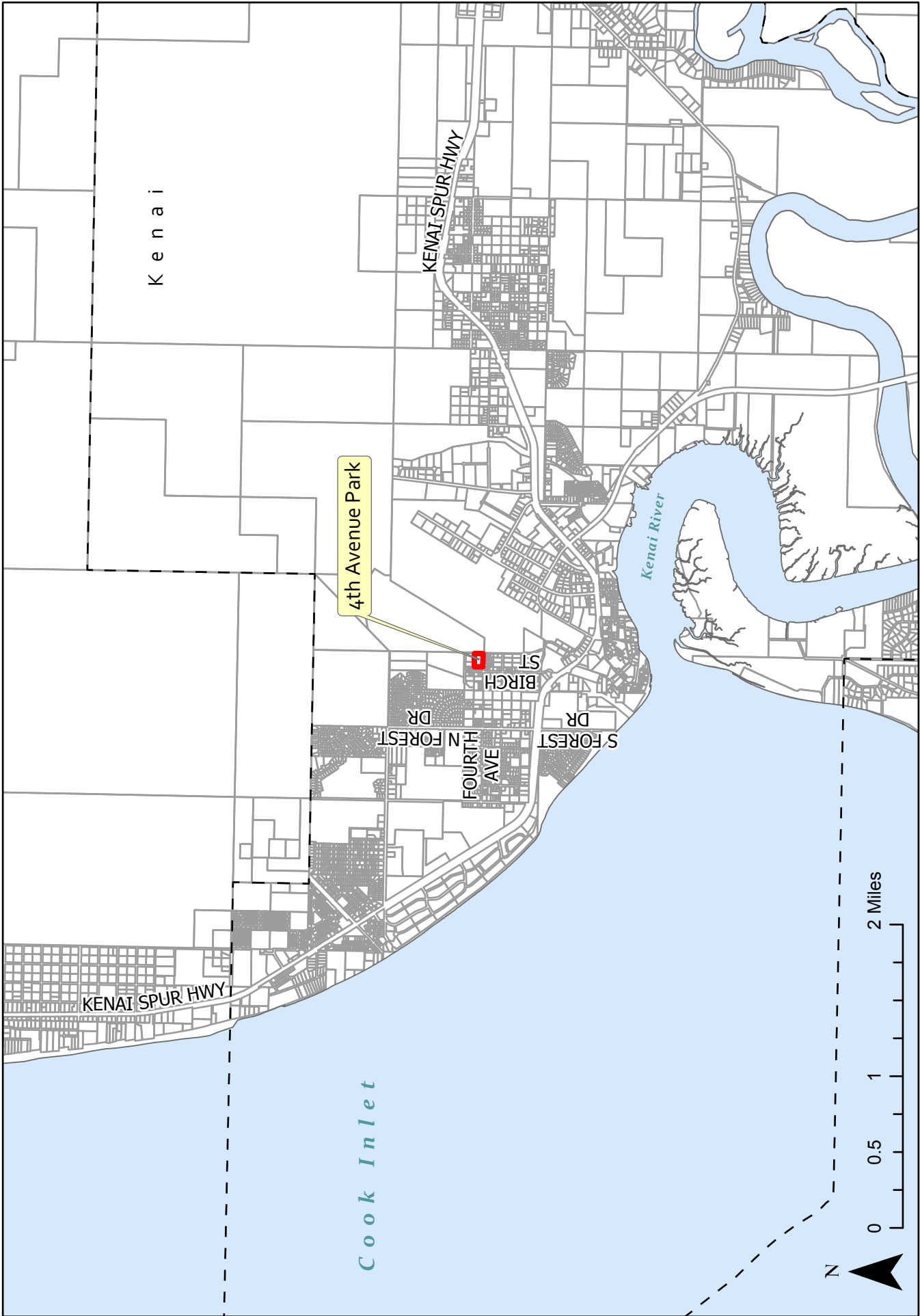
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0.1

0.05

0





Kenai

KENAI SPUR HWY

4th Avenue Park

BIRCH ST

FOURTH AVE

S FOREST DR

N FOREST DR

Kenai River

Cook Inlet

KENAI SPUR HWY

2 Miles

1

0.5

0

N

- KENAI CITY LIMITS
- ▭ PARCELS
- ▭ PARCEL #043-050-17

4TH AVENUE PARK
VICINITY MAP

Introduced by: Mayor
Date: 01/21/20
Hearing: 02/04/20
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2020-05**

**AN ORDINANCE AMENDING THE KENAI PENINSULA BOROUGH HAZARD
MITIGATION PLAN BY DELETING EXISTING ANNEX A, 2015 CITY OF HOMER
ALL HAZARD MITIGATION PLAN UPDATE, AND ADOPTING THE CITY OF
HOMER ALL HAZARD MITIGATION PLAN 2018 UPDATE AS THE NEW ANNEX A**

- WHEREAS,** the Federal Emergency Management Agency (“FEMA”) requires all states to submit a hazard mitigation plan to be eligible for any FEMA funding for non-emergency disasters; and
- WHEREAS,** on December 3, 2019, the borough assembly enacted Ordinance 2019-057, adopting an updated Hazard Mitigation Plan (“HMP”) as the local mitigation plan for the area within the borough and a required component of the State of Alaska Hazard Mitigation Plan; and
- WHEREAS,** the HMP is a multi-jurisdictional plan developed in coordination with the incorporated cities within the borough, the All Lands/All Hands Interagency Wildfire Mitigation Group, the State of Alaska Division of Homeland Security and Emergency Management (DHS & EM), and FEMA; and
- WHEREAS,** the HMP was designed to assist borough residents, local and private organizations and other parties interested in hazard mitigation planning, as well as to coordinate planning efforts between government agencies; and
- WHEREAS,** the City of Homer approved and adopted its All Hazard Mitigation Plan 2015 Update in Homer Resolution 16-012; and
- WHEREAS,** FEMA disaster recovery funding and grant programs require regular updates to the mitigation plans; and
- WHEREAS,** HMP update process is required every five years to remain current for mitigation planning efforts and for successful grant funding applications; and
- WHEREAS,** the Homer City Council held a public hearing on February 12, 2018, and reviewed the final draft of the update and recommended approval of the plan to the borough; and

WHEREAS, the borough Planning Commission at its regularly scheduled meeting of January 06, 2020 recommended approval by unanimous consent of the City of Homer All Hazard Mitigation Plan 2018 Update;

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

SECTION 1. That the existing Annex A in the borough’s HMP plan adopted by KPB 2.80.010 is hereby deleted.

SECTION 2. That the borough’s HMP is hereby amended by adopting the City of Homer’s All Hazard Mitigation Plan 2018 Update as the new Annex A.

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

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2020.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *JCB*
Dan Nelson, OEM Senior Manager *DN*
Max Best, Planning Director *MB*

FROM: Brenda Ahlberg, Community & Fiscal Projects Manager *B.A.*

DATE: January 9, 2020

RE: Ordinance *2020-05* . Amending the Kenai Peninsula Borough Hazard Mitigation Plan by Deleting Existing Annex A, 2015 City of Homer All Hazards Mitigation Plan Update and Adopting the City of Homer All Hazards Mitigation Plan 2018 Update as the New Annex A (Mayor)

On January 6, 2020, the borough planning commission recommended adopting the City of Homer All Hazards Mitigation Plan 2018 Update as the new Annex A in the Kenai Peninsula Borough Hazard Mitigation Plan 2019 Update.

If this ordinance is approved, the borough plan and updated annexes by city will be available on online at <https://www.kpb.us/emergency-mgmt/plans/plans>. Hardcopies may be viewed in the planning department or available for print through public records request.

Your consideration of this ordinance is appreciated.

Attachments:

2019 Kenai Peninsula Borough Hazard Mitigation Plan Update

**CITY OF HOMER
HOMER, ALASKA**

City Manager

RESOLUTION 18-014

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA, ADOPTING THE CITY OF HOMER ALL HAZARDS MITIGATION PLAN 2018 UPDATE/REVISION AND AUTHORIZING THE CITY MANAGER TO FORWARD THE DOCUMENTS TO THE KENAI PENINSULA BOROUGH, THE ALASKA DIVISION HOMELAND SECURITY, AND OTHER ORGANIZATIONS AS APPROPRIATE.

WHEREAS, The Homer City Council recognizes the threat that natural and human generated hazards pose to its residents, their property, public infrastructure, and the health and safety of the community at large; and

WHEREAS, Planning for and implementing actions that avoid or mitigate the impacts of hazards before disasters occur reduces the potential for harm to people and property and saves taxpayer dollars; and

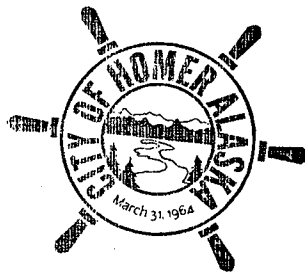
WHEREAS, An adopted All Hazards Mitigation Plan is required as a condition for future grant funding to the City for hazard mitigation projects; and

WHEREAS, The City has provided notice of the draft plan revision and opportunities to comment to its local partners in disaster mitigation, has participated jointly in the planning process with the Borough and other units of government, and held a hearing to solicit comments from the public.

NOW, THEREFORE, BE IT RESOLVED that the City Council of Homer, Alaska, hereby adopts the All Hazards Mitigation Plan 2018 Update/Revision.

BE IT FURTHER RESOLVED that the Homer City Council authorizes the City Manager to forward the Plan to the Kenai Peninsula Borough, the Federal Emergency Management Agency, the State Division of Emergency Management, and other organizations as appropriate.

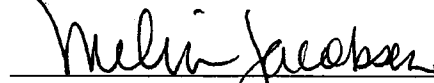
PASSED AND ADOPTED by the Homer City Council this 12 day of February, 2018.



CITY OF HOMER


DONNA ADERHOLD, MAYOR PRO TEMPORE

ATTEST:


MELISSA JACOBSEN, MMC, CITY CLERK

Fiscal note: N/A



FEMA

January 24, 2018

Mr. Brent Nichols
State Hazard Mitigation Officer
Alaska Division of Homeland Security and Emergency Management
P.O. Box 5750
Fort Richardson, Alaska 99505-5750

Dear Mr. Nichols:

As requested, on January 24, 2018, the U.S. Department of Homeland Security’s Federal Emergency Management Agency (FEMA), Region 10, completed a pre-adoption review of the City of Homer Annex to the Kenai Peninsula Borough Hazard Mitigation Plan. This letter serves as Region 10’s commitment to approve the plan upon receiving documentation of its adoption by the community. The plan successfully contains the required criteria, excluding the adoption, for hazard mitigation plans, as outlined in Code of Federal Regulation Title 44 Part 201.

Once FEMA approves the plan, the community is eligible for mitigation project grants.

Please contact our Regional Mitigation Planning Program Manager, Brett Holt, at (425) 487-4553 with any questions.

Sincerely,

1/24/2018

X 

Signed by: TAMRA D BIASCO

Tamra Biasco
Chief, Risk Analysis Branch
Mitigation Division

AS:vl



**City of Homer
All-Hazard
Mitigation Plan**

2018 Update

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Chapter I – Introduction

A. Purpose of the Plan:

The purpose of the All-Hazard Mitigation Plan is to fulfill the FEMA requirement under The Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Act), Section 322, Mitigation Planning enacted by Section 104 of the Disaster Mitigation Act of 2000 (DMA) (P.L. 106-390). In accordance with FEMA directives, the City of Homer All-Hazard Mitigation Plan originally adopted in July of 2004 must be updated and revised to reflect the current situation as determined by a review of the mitigation efforts completed under the existing plan and a review of events that have occurred since adoption of the first plan. This plan will identify hazards; establish community goals and objectives and develop mitigation strategies and activities that are appropriate for the City of Homer.

The Disaster Mitigation Act of 2000 (DMA 2000), Section 322 (a-d), as implemented through 44 CFR Part 201.6 requires that local governments, as a condition of receiving federal disaster mitigation funds, have a mitigation plan that describes the process for identifying hazards, risks and vulnerabilities, identifying and prioritizing mitigation actions, encouraging development of local mitigation and providing technical support for those efforts. Although only required to address natural hazards such as earthquake, severe storms, etc., it is the intent of the City of Homer to address, to the fullest extent possible, all-hazards that might reasonably be expected to strike the greater Homer area including natural, technological, and man-made hazards.

The purpose of this plan is to produce a program of activities through actions and projects that will best deal with the City of Homer’s hazard vulnerabilities, while meeting other community needs. This plan will accomplish the following objectives consistent with FEMA planning process guidelines:

- Describe the planning process to include public involvement;
- Sustain outreach to help build support within the community.
- Provide hazard specific information at community meetings.
- Conduct an assessment of the potential risks;
- Determine what facilities, or portions of infrastructure, are vulnerable to a disaster;
- Develop a mitigation strategy, where possible, to reduce potential losses and target resources;
- Describe how each entity will periodically evaluate, monitor, maintain and update the plan; and,
- Describe the process for implementing the plan after adoption by the local governing body of the community and receiving FEMA approval.

B. Methodology

The City of Homer All-Hazards Mitigation Plan 2015 Update was developed as a multi-jurisdictional plan in cooperation with the Kenai Peninsula Borough. On January 25, 2015, the Homer City Council adopted by Resolution, 16-012 the City of Homer All-Hazards Mitigation Plan 2015 Update. This plan becomes an Annex of the Kenai Peninsula Hazard Mitigation Plan. This plan must also be approved by the State of Alaska Division of Homeland Security, Emergency Management, and the Federal Emergency Management Agency (FEMA). Due to the length of time between initial submittal and approval the City of Homer will re-introduce a Resolution to adopt the finalized and adopted plan upon approval by the State of Alaska and FEMA. The Plan will become the 2018 All-Hazard Mitigation Plan.

The approach used for the review and update of the City of Homer All-Hazard Mitigation Plan consisted of the following tasks:

1. Coordinate with other agencies and organizations
2. Solicit public involvement
3. Conduct hazard area inventory
4. Review and analyze previous and future mitigation activities
5. Describe the update and review process and schedule for plan maintenance
6. Coordinating the Plan with the KPB and State Hazard Mitigation Plan
7. Submitting to the State Hazard Mitigation Officer for Review
8. Submitting to FEMA Region 10 for Review and Approval
9. Adoption of the Plan following the public hearing process

This All Hazard Local Mitigation Plan Revision contains a list of potential goals and activities with a brief rationale or explanation of how each project or group of projects contributes to the overall mitigation strategy outlined in the plan.

This plan summarizes the activities above to assess the effects of hazards in the City of Homer: flooding, earthquake, wildfire etc. and recommends mitigation strategies and activities.

The mitigation plan will be evaluated and updated every five years. In addition, the plan will be reviewed annually by the City of Homer Director of Emergency Services (Emergency Manager) and as appropriate when a disaster occurs that significantly affects Homer, whether or not it receives a Presidential Declaration. If it is determined that mitigation planning was insufficient to address the particular event, the Director will convene the All-Hazard Planning Group made up of community stake-holders.

Years 1 & 3 Funding streams will be discussed, and which mitigation action should be implemented within the coming year. All departments and/or organization that are responsible for mitigation action will be invited to attend. Potential funding sources for mitigation programs are actively pursued by City Administration. Mitigation planning will be coordinated with the Kenai Peninsula Borough's Office of Emergency Management, by representation of Homer's City Manager's Office or designee at Borough hazard mitigation planning meetings in order to combine planning efforts and mitigation activities wherever possible.

Years 2 & 4 Absent a large scale event or disaster to trigger earlier plan maintenance, the Director of Emergency Services will, with agreement of the City Manager, establish the All-Hazard Planning Group to review and update the plan in year 4 of the cycle. The City

will determine whether there are components of the plan's Risk Assessment that can be updated. The previous year's disasters (if any) will be assessed and, if needed, produce better maps to aid in future hazard mitigation. The public and key stakeholders will be a part of this review. A representative of the Kenai Peninsula Borough's hazard mitigation planning team will be invited to represent the borough's mitigation activities.

Year 5 A full update of the all-hazards mitigation plan will be completed. The public, key stakeholders and the committee will convene and if needed assign plan update tasks. The plan review process is scheduled to accommodate the various stakeholder agencies/individuals involved in the process. Regular updates of the planning process are provided to the City Manager, who reports bimonthly to the City Council in a verbal and written report. Once a draft plan update has been created by the planning team it is presented to the City Council for review and approval to be submitted for state and FEMA approval. Once the plan is approved by both agencies the plan is formally adopted by Resolution by the City of Homer. The approved plan becomes an annex to the Kenai Peninsula Borough Hazard Mitigation Plan. Routine maintenance of the plan will include updating historical hazard information, completing hazard analysis and adding projects as new funding sources become available, or taking projects off the list when they are accomplished.

Public Outreach The City of Homer will publish routine announcements regarding the Hazard Mitigation Planning Process adoption/revision session, or within 90 days following a declared disaster to solicit public input pertaining to the event or any necessary plan updates for the following years. Public input is obtained through feedback questions generated on the City of Homer website, public comment cards available at all city offices and through public comment during every city council meeting. The City of Homer All-Hazard Disaster Mitigation Plan is adopted by public process during City Council meetings, in which the public are asked to testify at the beginning and end of each council meeting. In addition the Draft Plan is posted on the City of Homer website for public review and comment.

C. Homer – Background

The following information was obtained from the Department of Commerce, Community, and Economic Development Community Database online at this website:
<http://www.commerce.state.ak.us/> as of April 24, 2015.

General Location

Homer is located on the north shore of Kachemak Bay on the southwestern edge of the Kenai Peninsula. The Homer Spit, a 4.5-mile long gravel bar, extends from the Homer shoreline into Kachemak Bay. Homer is 227 road miles south of Anchorage, at the southern-most point of the Sterling Highway. It lies approximately 59.6425° and -151.54833°. (Section 19, Township 6 South, Range 13 West, Seward Meridian. Homer is located in the Homer Recording District. The area encompasses 10.6 square miles of land and 14.9 square miles of water. The city limits extends easterly approximately 4.5 miles, northward along Skyline Drive and to the west just beyond Roger's Loop. The City of Homer abuts Kachemak City to the east and is a part of the Kenai Peninsula Borough.

Climate

Homer lies in the Gulf Coast Maritime Climate Zone. The Minimum Daily Temperature during Winter is -1° F and the Maximum Daily Temperature during Summer is 76° F. The Maximum Daily Precipitation totals 1.1” with a Total Annual Precipitation of 24.1 inches, including 55 inches of snow.

History

The Homer area has been home to Kenaitze Indians for thousands of years. In 1895, the U.S. Geological Survey arrived to study coal and gold resources. Prospectors bound for Hope and Sunrise disembarked at the Homer Spit. The community was named for Homer Pennock, a gold mining company promoter who arrived in 1896 and built living quarters for his crew of 50 on the Spit. Their plans were to mine the beach sands along Cook Inlet, from Homer to Ninilchik. The Homer post office opened shortly thereafter. In 1899, Cook Inlet Coal Fields Company built a town and dock on the Spit, a coal mine at Homer’s Bluff Point, and a 7-mile long railroad, which carried the coal to the end of the Spit. Various coal mining operations continued until World War I, and settlers continued to trickle into the area, some to homestead in the 1930s and 1940s, other to work in the canneries built to process Cook Inlet fish. Coal provided fuel for homes, and there is still an estimated 400 million tons of coal deposits near Homer. The City government was incorporated in March 1964. After the Good Friday earthquake in 1964, the Homer Spit subsided approximately 4 to 6 feet. Since then several buildings were relocated to reduce the effects of hazards with particular emphasis on new and existing buildings and infrastructure.

Culture

While commercial fishing has long been the mainstay of the Homer economy, tourism has become increasingly important. Homer is known as an arts community and is also a gateway community in relation to more remote destinations, such as Kachemak Bay State Park and Lake Clark National Park and Preserve. The Homer Jackpot Halibut Derby attracts summer recreational fisherman and the Kachemak Bay Shorebird Festival attracts spring time birders.

Population and Economy

The Alaska State Department of Labor estimates the 2014 population of Homer at 5,099. Homer is incorporated as a first-class city. It is primarily a fishing, fish processing, trade and service center, and enjoys a considerable seasonal visitor industry. The Homer Spit has two deep water docking facilities: the Deep Water Dock and the newer Pioneer Dock which is home to the U.S. Coast Guard Cutter Hickory and is the home berth of the Alaska Marine Highways Ferry Tustumena. Homer is home to the Islands and Ocean Visitor Center, an interagency facility and important meeting place.

Estimated resident per capita income for 2014 was \$33,469 and the unemployment rate was 8.8% according to the Alaska State Department of Commerce 2014 Audit Report.

Facilities

Over 90% of homes are fully plumbed. Water is supplied by a dam and 35-acre reservoir at Bridge Creek, is treated, and stored in a 500,000-gallon tank and a newly constructed 1,000,000-gallon tank, and piped to the majority of homes in the City. The newly completed water treatment plant can treat 2 million gallons of water per day, with the potential for another one million gallons per day when needed due to population growth. Other residents use individual wells or have water delivered to home tanks. City sewage is piped to a deep-shaft sewer treatment plant; capacity is 880,000 gallons per day. Refuse is collected by one of two private trash collection services, and hauled to an updated Borough Class 1 Monofill landfill at mile 169.3 Sterling Highway.

Homer Electric Association is a member-owned electric cooperative that provides power to the western Kenai Peninsula, including Sterling, Soldotna, Kenai, Nikiski, Kasilof, Ninilchick, Homer and south Kachemak Bay. HEA facts:

- 22,892 member-owners
- 33,341 meter locations
- 2,407 total miles of energized line
- 3,166 square-mile service area on the southern Kenai Peninsula

The City is the major property owner on the Spit and operates the port and harbor facilities which include:

- **Small Boat Harbor:** which has 920 reserved stalls, plus 6000 linear feet of transient mooring.
- **Fish Dock and Ice Plant:** The Fish Dock operates for a 9-month season. The dock has eight cranes and the Ice Plant has a 200 ton ice storage capacity.
- **Deep Water Dock:** 245 linear feet with a 40 foot depth.
- **Pioneer Dock:** 469 linear feet with a 40 foot depth that serves the Alaska Marine Highway system.

KEY LOCATIONS

- Corporate office in Homer
- Central Peninsula Service Center in Kenai
- Nikiski Generation Plant
- Bradley Lake Hydroelectric Plant (owned by the State of Alaska)
- Bernice Lake Power Plant (Nikiski)
- Soldotna Power Plan

Transportation

Homer is accessible by the Sterling Highway to Anchorage, Fairbanks, Canada and the lower 48 states. It is often referred to as “The End of the Road”, because it lies at the terminus of the Sterling Highway. The State owns and operates the Homer Airport, with a 6,700 ft asphalt runway, and a seaplane base at Beluga Lake. The City is served by several scheduled and chartered aircraft services. There are four additional private landing strips in the Homer vicinity. The Alaska Marine Highway and local ferry services provide water transportation. The Deep Water Dock was constructed in 1990 and can accommodate vessels up to 800 ft, displacing 65,000 tons. The Pioneer Dock, constructed in 2001-2002 can accept vessels up to 750 ft and displacing 80,000 tons. The Small Boat Harbor has 920 reserved boat slips (up to 85 ft boats); 6,000+ linear feet of transient moorage; 48.7 acre boat basin; two tidal grids; and a five lane load and launch ramp.

Chapter II – Planning Process

A. Planning Process

The City of Homer began the 2015 All-Hazard Mitigation Plan Update process in April with a preliminary committee meeting held on April 3, 2015, and conducted the first of several public meetings regarding the plan update on April 17, 2015 (attendance included only one member of the public, 2 media representatives, and 3 committee members). The Committee will meet monthly through the completion of the update. In August 2015, committee member who is also on the Homer City Council member, Catriona Reynolds provided the public an update and timeline for public review. The Homer All-Hazard Mitigation Plan Update Committee included:

- Robert Painter, Director of Emergency Services
- Dotti Harness-Foster, Planning Technician
- Catriona Reynolds, Homer City Council
- Glenn Radeke, Support Services Director, South Peninsula Hospital
- Charlie Pierce, Enstar Natural Gas
- Joe Gallagher, Homer Electric Association
- Terry Rensel, Program Director, KBBI Homer Public Radio
- Scott Nelsen, State of Alaska Division of Homeland Security and Emergency Management, Hazard Mitigation Planner

Ex Officio members of the committee included:

- Beth Wythe, Mayor
- Katie Koester, City Manager
- Mark Robl, Police Chief
- Rick Abboud, City Planner
- Zhiyong Li, Finance Director
- Anne Dixon, Library Director
- Byran Hawkins, Port & Harbor Director/Harbormaster
- Carey Meyer, Public Works Director
- Jo Johnson, City Clerk

Other city staff, community stake-holders, and content experts provided support and review services of the draft documents and provided helpful feedback to the committee, including, but not limited to:

- Alaska Department of Transportation
- Kenai Peninsula Office of Emergency Management
- Alaska Division of Homeland Security and Emergency Management
- Homer City Council
- National Tsunami Warning Center
- Alaska Volcano Observatory
- National Weather Service
- Kenai Peninsula Borough School District
- Enstar Natural Gas
- Homer Electric Association
- Homer Chamber of Commerce

B. Opportunity for Public Involvement

Public involvement was on full-alert in March of 2015 when the South Peninsula Hospital conducted a full-scale emergency preparedness exercise. The 3-day evacuation of a large facility to an alternative site was titled “Rock and a Hard Place.” The exercise was designed to test and evaluate the City’s and South Peninsula Hospital’s response to overwhelming catastrophic events. The City of Homer along with eleven other Federal, State, and Local agencies, plus 50-75 mock victims participated in the 3-day exercise. The mock scenario involved heavy rains that saturated the ground resulting in a landslide that threatened the hospital which initiated the need for an alternate care site. The mock rains also closed the Sterling Highway.

In addition, the City hosts a biennial disaster preparedness conference where citizens can learn about the entire emergency management cycle, including mitigation and areas of concern. All the above stakeholders participate during these updates as required following any large scale event or during the planning cycle.

In order to enlist public comment on the draft City of Homer All-Hazard Mitigation Plan 2015 Update/Revision, an initial Town Hall meeting was advertised and conducted on April 17, 2015 in the City of Homer Council Chambers from 6:00 PM until 7:30 PM. Links to the draft plan were posted as a Key Topic on the Fire Department and on the State’s Emergency Management Library.

Two public hearings were advertised in the local newspapers. This plan was available on the City’s website and at the Homer Public Library. Feedback was accepted by email, fax, in person, or by phone.

On January 11, 2016, the Homer City Council introduced a resolution for adoption and held a public hearing on January 25, 2016 and adopted the Plan by Resolution 16-012.

The City of Homer is dedicated to involving the public directly in the continual reshaping and updating of the LHMP. The Planning Team will identify opportunities to raise community awareness about the LHMP and the hazards that affect the City. Any public comments received regarding the LHMP will be collected by the Planning Team Leader will be included in the annual review and considered during future LHMP updates

In order to maintain public involvement with hazard mitigation planning the city posts the adopted plan and any impending drafts on the City of Homer website <http://www.cityofhomer-ak.gov/> . On the website are avenues for the public to comment on specific issues. In addition, the city has Public Comment Cards readily accessible in every city office where anyone can submit comments regarding any issues of interest. The Fire Department maintains an active Facebook presence and regularly posts articles of interest for the public, including issues related to disaster preparation and all-hazard mitigation efforts. The planning group organized for each plan review/revision is made up of a wide range of community stakeholders, including members of the media. In addition, every Homer City Council Meeting is broadcast via KBBI Homer Public Radio to accommodate those people that cannot attend council meetings in person. All City Council meetings are advertised in accordance with the Open Meeting Rules and there are opportunities for public comment on any matters at the beginning and end of each meeting.

Chapter III– Hazard Profiles

The City of Homer participates in the National Flood Insurance Program (NFIP). The function of the NFIP is to provide flood insurance at a reasonable cost to homes and businesses located in floodplains. The program is based upon mapping areas of flood risk, and requiring local implementation to reduce flood damage primarily through requiring the elevation of structures above the base (100-year) flood elevation (BFE). In 2009 the City of Homer adopted higher regulatory standards which require that all new structures be elevated one foot or more above the best flood elevation (BFE+1). The Planning Office requested, and FEMA provided updated flood maps date September, 25, 2009 for the Homer Spit, Ord. 08-29 and Ord. 09-38. Another map update is schedule for adoption in 2016 that includes the Beluga Lake and Beluga Slough areas.

The City of Homer Fire Department, under the direction of the Fire Chief/Director of Emergency Services will be the lead for prioritize, implement and administer this plan. This Planning Office offers support and coordination.

A. Hazard Identification Matrix – City of Homer

Flood	Wildland Fire	Earthquake	Volcano	Snow Avalanche	Tsunami
Y-M	Y-H	Y-M	Y-M	Y-M	Y-M
Weather	Landslides	Erosion	Drought	Technological	Economic
Y-H	Y-M	Y-H	N	Y-L	Y-M
Biologic	Man-Made				
Y-M	Y-L				

Hazard Identification:

- Y: Hazard is present in jurisdiction but probability unknown
- N: Hazard is not present
- U: Unknown if the hazard occurs in the jurisdiction

Risk:

- L : Hazard is present with a low probability of occurrence
- M : Hazard is present with a moderate probability of occurrence
- H: Hazard is present with a high probability of occurrence

Emergency Management Specialist rate hazards based on the following criteria for probability (Table 1) and impact (Table 2).

Table 1: Hazard Probability Criteria	
Probability	Criteria
4 - Certain	<ul style="list-style-type: none"> <input type="checkbox"/> Event is probable within the calendar year. · Event has up to 1 in 1 year chance of occurring (1/1=100 percent). · Probability is greater than 33 percent per year. · Event is Certain.
3 - Likely	<ul style="list-style-type: none"> <input type="checkbox"/> Event is probable within the next three years. · Event has up to 1 in 3 years chance of occurring (1/3=33 percent). · Probability is greater than 20per cent but less than or equal to 33 percent per year. · Event is Likely.
2 - Credible	<ul style="list-style-type: none"> <input type="checkbox"/> Event is probable within the next five years. · Event has up to 1 in 5 years chance of occurring (1/5=20 percent). · Probability is greater than 10 percent but less than or equal to 20 percent per year. · Event is Credible.
1 - Plausible	<ul style="list-style-type: none"> <input type="checkbox"/> Event is possible within the next ten years. · Event has up to 1 in 10 years chance of occurring (1/10=10 percent). · History of events is less than or equal to 10 percent likely per year. · Event is Plausible.

Table 2: Hazard Impact Criteria	
Impact	Criteria
4 - Catastrophic	<ul style="list-style-type: none"> <input type="checkbox"/> Multiple deaths. · Complete shutdown of facilities for 30 or more days. · More than 50 percent of property is severely damaged.
3 - Critical	<ul style="list-style-type: none"> <input type="checkbox"/> Injuries and/or illnesses result in permanent disability. · Complete shutdown of critical facilities for at least two weeks. · More than 25 percent of property is severely damaged.
2 - Limited	<ul style="list-style-type: none"> <input type="checkbox"/> Injuries and/or illnesses do not result in permanent disability. · Complete shutdown of critical facilities for more than one week. · More than 10 percent of property is severely damaged.
1 - Negligible	<ul style="list-style-type: none"> <input type="checkbox"/> Injuries and/or illnesses are treatable with first aid. · Minor quality of life lost. · Shutdown of critical facilities and services for 24 hours or less. · Less than 10 percent of property is severely damaged.

Table 3 assigns numerical ratings to each risk factor. Each factor is a part of the whole risk, which is represented by the number 1, (.45 + .30 + .15 + .10 = 1.0).

Table 3: Priority Risk Index Values			
.45 Probability	.30 Impact	.15 Warning Time	.10 Duration
4 - Certain	4 - Catastrophic	4 - under 6 Hours	4 - under 1 Week
3 - Likely	3 - Critical	3 - 6-12 Hours	3 - over 1 Week
2 - Credible	2 - Limited	2 - 12-24 Hours	2 - under 1 Day
1 - Plausible	1 - Negligible	1 - 24+ Hours	1 - under 6 Hours

The community rates each risk factor by degree, such as “Certain” or “Catastrophic”. The ratings are multiplied by the risk factors:

Example: Probability = 4-Certain, Impact=3-Critical, Warning Time=2-12-24 Hours, Duration=4-over 1 Week.

$$(4 \times 0.45) + (3 \times 0.30) + (2 \times 0.15) + (4 \times 0.10) = 1.8 + 0.9 + 0.3 = 3.0$$

The planning team rated each factor using data from prior disasters, and used the results to assign relative importance to each hazard. Projects that protect life are given the highest priority, followed by critical infrastructure, public property, and private property, in that order. Mitigation actions are dependent on available funding and must be coordinated with existing projects and are driven by available weather conditions.

Table 4: Risk Priority Index					
Hazard	Probability	Impact	Warning Time	Duration	Priority Risk Index
Earthquake	4 Certain	2 Limited	4 < 6 Hours	1 < 6 Hours	3.1
Erosion	4 Certain	1 Negligible	1 24+ Hours	4 > One Week	2.65
Flooding	1 Plausible	2 Limited	2 12-24 Hours	3 < One Week	1.65
Volcano	2 Credible	2 Limited	1 24+ Hours	1 < 6 Hours	1.75
Weather	2 Credible	2 Limited	1 24+ Hours	3 < One Week	1.95
Wildfires	3 Likely	3 Critical	2 12-24 Hours	4 > One Week	2.95
Landslides	1 Plausible	2 Limited	4 < 6 Hours	3 < One Week	1.95
Tsunami	2 Credible	1 Negligible	4 < 6 Hours	1 < 6 Hours	1.9
Technological	1 Plausible	1 Negligible	4- < 6 Hours	1- < 6 Hours	1.45
Economic	2 Credible	2 Limited	1- 24+ Hours	4- > One Week	2.05

Table 4: Risk Priority Index					
Hazard	Probability	Impact	Warning Time	Duration	Priority Risk Index
Biological	2 Credible	3 Critical	2 -12-24 Hours	4- > One Week	2.5
Man-Made	1 Plausible	2 Limited	4-<6 Hours	3- <One Week	1.95

Action Plan: Priority will be given to projects that are the most effective, easy to implement, and are supported by the community. Outreach programs have minimal cost and can have a dramatic effect on the reduction and avoidance of hazards.

Benefit-Cost Analysis is an option that often involves long-range planning to consider how best to reduce and avoid hazards. Multiple departments and agencies are often involved in long-range planning. This is a very public process, which takes time and in the end may recommend policy and code changes.

B. Flood: Profile of Hazard Events

Flooding is a natural event and damages occur when humans interfere with the natural process by altering the waterway, developing watersheds, and/or building inappropriately within the floodplain. This flooding threatens life, safety and health; causes extensive property loss; and results in substantial damage.

Homer participates in the NFIP which is a source of reasonably priced flood insurance for property owners that build to floodplain standards. In 2013 the City adopted updated Flood Insurance Rate Maps. The flood maps are based on a 100 year chance event and do not include tsunamis because the relatively short period of record.

Flooding in Homer can be broken into a number of categories including: rainfall-runoff floods, snowmelt floods, ground-water flooding, and stream/creek flash floods. Homer also experiences coastal flooding from storm surge but this will be discussed in the Weather section.

Homer has experienced floods on several occasions in the last 15 years. Major events occurred in 2002, 2007 and 2013, resulting in numerous bridges being washed out on the Kenai Peninsula and isolating Homer for several weeks while temporary repairs were made. Two of these events were declared disasters and resulted in disruptions to the economy by preventing the flow of goods and materials south of Ninilchik except by barge or airplane.



There continue to be local events caused by ground water saturation, snow-melt, water runoff and local topography.

On October 26, 2013 the National Weather Service issued a flood watch for areas around Western Prince William Sound due to a slow moving system which brought heavy rainfall to the mainland. Seward, Homer, and other areas of the Kenai Peninsula received over 5 inches of rain which caused widespread flooding, landslides, and road washouts. Seward, Homer, Kenai, Anchor Point, and the Tyonek area all reported damages. Disaster Declarations were received from the Kenai Peninsula Borough on October 29, 2013. (13-F-243, KPFB Flood Disaster declared by G. Parnell on Nov. 18, 2013 then FEMA declared January 16, 2014 (DR-4161).

Rainfall-Runoff Floods

A typical rainfall event occurs in mid to late summer and early fall. The rainfall intensity, duration, distribution and geomorphic characteristics of the watershed all play a role in determining the magnitude of the flood. Runoff flooding is the most common type of flood.

In November 2007 heavy rains, above freezing temperatures and melting snow caused small stream flood advisory for the southern Kenai Peninsula. The National Weather Service reported 1.64 inches of rain in a 24-hr period, which led to overflowing culverts that sent water over the roadways.

Snowmelt Floods

Snowmelt floods usually occur in the spring or early summer. The depths of the snowpack and spring weather patterns influence the magnitude of river and stream flooding. The Sterling Highway between Homer and Anchor Point is subject to snowmelt flooding each spring.

Ground-water Floods

Ground-water flooding occurs when water accumulates and saturates the soil. The water-table rises and floods low-lying areas, including homes, septic tanks, and other facilities. Ground-water flooding can also occur in basements of structures along streams or in low-lying areas. Areas along Kachemak Drive are subject to ground water flooding.

Flash Floods

These floods are characterized by a rapid rise in water. They are often caused by heavy rain on small stream basins, ice jam formation or by dam failure. They are usually swift moving and debris filled, causing them to be very powerful and destructive. Steep coastal areas in general are subject to flash floods. Debris slides are often associated with heavy rains. The 2002 events resulted in several flash floods which closed roads and washed away bridges. Several small creeks and streams in the Homer area produced substantial debris laden flows during this time.

Homer Participation in the National Flood Program

City	Initial FHBM Identified	Initial FIRM Identified	Current Effective Map Date	Reg-Emer Date	Tribal
Homer	05/19/1981	06/16/1999	11/6/2013	06/02/2003	No

Homer NFIP Insurance as of 5/31/2015

Total Premium	No. of Policies	Total Coverage	Ttl Claims Since 1978	Ttl paid Since 1978
\$15,899	12	\$2,854,600	0	0

Homer Repetitive Loss

Total Payments	Losses	Properties	As of Date
0	0	0	5/27/2015

Extent

The extent of coastal flooding is limited to the Homer Spit and East End Road areas. Flooding from excessive precipitation is largely limited to roads and structures located along stream drainages.

Impact

Impacts to the community are “Limited” with minor injuries and/or illnesses not resulting in permanent disability, complete shutdown of critical facilities for more than one week, and more than 10 percent of property severely damaged (Table 2). Flooding events, even for those properties unaffected directly, will suffer due to road closures, impacts to public safety (access and response capabilities), limited availability of perishable commodities, and isolation.

Probability

Recorded historical flooding information indicates Homer experiences flooding every 10 years, and that trend is expected to continue. Therefore, the probability of continued flooding is “Plausible” (Table 1).

Probability	Impact	Warning Time	Duration	Calculated Risk
1 x .45	2 x .30	2 x .15	3 x .10	1.65

C. Wildland Fires

Wildland fires occur in every state in the country and Alaska is no exception. Each year, between 600 and 800 wildland fires, mostly between March and October, burn across Alaska causing extensive damage.

Fire is recognized as a critical feature of the natural history of many ecosystems. It is essential to maintain the biodiversity and long-term ecological health of the land. In Alaska, the natural fire regime is characterized by a return interval of 50 to 200 years, depending on the vegetation type, topography and location. The role of wildland fire as an essential ecological process and natural change agent has been incorporated into the fire management planning process and the full range of fire management activities is exercised in Alaska to help achieve ecosystem

sustainability, including its interrelated ecological, economic, and social consequences on firefighter and public safety and welfare, natural and cultural resources threatened, and the other values to be protected dictate the appropriate management response to the fire. Firefighter and public safety is always the first and overriding priority for all fire management activities.

Hazard Analysis/Characteristics

Fires can be divided into the following categories:

Structure fires – originate in and burn a building, shelter or other structure. These may subsequently spread to adjacent wildlands.

Prescribed fires - ignited under predetermined conditions to meet specific objectives, to mitigate risks to people and their communities, and/or to restore and maintain healthy, diverse ecological systems.

Wildland fire - any non-structure fire, other than prescribed fire, that occurs in the wildland.

Wildland Fire Use - a wildland fire functioning in its natural ecological role and fulfilling land management objectives.

Wildland-Urban Interface Fires - fires that burn within the line, area, or zone where structures and other human development meet or intermingle with undeveloped wildland or vegetative fuels. The potential exists in areas of wildland-urban interface for extremely dangerous and complex fire burning conditions which pose a tremendous threat to public and firefighter safety.

Fuel, weather, and topography influence wildland fire behavior. Wildland fire behavior can be erratic and extreme causing fire-whirls and firestorms that can endanger the lives of the firefighters trying to suppress the blaze. Fuel determines how much energy the fire releases, how quickly the fire spreads and how much effort is needed to contain the fire. Weather is the most variable factor. Temperature and humidity also affect fire behavior. High temperatures and low humidity encourage fire activity while low temperatures and high humidity help retard fire behavior. Wind affects the speed and direction of a fire. Topography directs the movement of air, which can also affect fire behavior. When the terrain funnels air, like what happens in a canyon, it can lead to faster spreading. Fire can also travel up slope quicker than it goes down.

Wildland fire risk is increasing in Alaska due to the spruce bark beetle infestation. The beetles lay eggs under the bark of a tree. When the larvae emerge, they eat the tree's phloem, which is what the tree uses to transport nutrients from its roots to its needles. If enough phloem is lost, the tree will die. The dead trees dry out and become highly flammable.

Homer like other areas of the Kenai Peninsula has been dramatically affected by the beetle-kill. The vast majority of wildland fires on the Kenai Peninsula are the result of human activities with open burning being the most prevalent. Lightning caused fire, though they do occur, are infrequent, especially on the south Kenai Peninsula. The 2005 Tracy Avenue Fire, and the 2009 mile 17 East End Road Fire were especially threatening to property and had potential loss of life. In May of 2014 a human caused fire started along the Funny River Road in the central Kenai Peninsula. Over its course, this fire grew to almost 200,000 acres of Black Spruce, mixed hardwoods and Spruce and old beetle kill and grass. Though located outside Homer City Limits, these recent fires demonstrate the potential for rapid fire spread given the weather conditions, topography and the availability of local and state wildfire fighting crews.

Wildland Fire Management in Alaska

In Homer, wildland fire management is the responsibility of Division of Forestry and the City of Homer, Homer Volunteer Fire Department.

The Alaska Division of Forestry has statutory authority of all wildlands within the state of Alaska. The City of Homer provides wildland fire protection under terms of a Cooperative Agreement and Annual Operating Plan with the Division of Forestry (DOF).

These two agencies, along with other mutual-aid fire departments, work together to fight wildfires in and around Homer.

Location

Wildland fires have not been documented within the boundaries of Homer; however, wildland fires have occurred in the vicinity.

Extent

During the summer, the entire community is vulnerable to wildland fire as most of the structures are constructed of wood and other flammable materials. Standing timber and other natural fuels interface with the community. The entire South Zone of the Kenai Peninsula is subject to wildfire conflagration. Perhaps with the exception of portions of the Homer Spit, the entire Homer community could be considered an “interface” zone. History has demonstrated that fire brands can be carried by local winds up to ½ mile, jumping man-made fire lines and spreading fire across large areas. Most areas of Homer are immediately adjacent to wildland areas and could be threatened by uncontrolled fire.

Impact

Based on past wildland fire events and the criteria identified in Table 2, the impacts could be “Critical” with injuries, critical facilities shut down for more than two weeks, and more than 25 percent severely damaged property and infrastructure. Additionally, airborne smoke and ash have driven those with sensitive respiratory systems to temporarily relocate during past wildfires.

Without mitigation or preparation efforts, the impacts of a wildland interface fire in Homer could grow into an emergency or disaster. In addition to impacting people, wildland fires may severely impact livestock and pets. Such situations may require emergency life support, evacuation, and alternative shelter.

Indirect impacts of wildland fires can be catastrophic. In addition to stripping the land of vegetation and destroying forest resources, large, intense fires can harm the soil, waterways, and the land itself. Soil exposed to intense heat may lose its capability to absorb moisture and support life. Exposed soils erode quickly and enhance siltation of rivers and streams, thus increasing flood potential, harming aquatic life, and degrading water quality.

Probability

Recorded wildland fires within 10 years and 50 miles of Homer have an average recurrence rate of approximately 2.5 to 3 years (Figure 1). Therefore it is “Likely” a wildland fire will occur within 50 miles of McGrath, as the probability is greater than 20 percent but less than or equal to 33 percent likely each year.

Probability	Magnitude	Warning Time	Duration	Priority
3 x .45	3 x .30	2 x .15	4 x .10	2.95

Figure 3 Alaska Fire Management Options, 2012

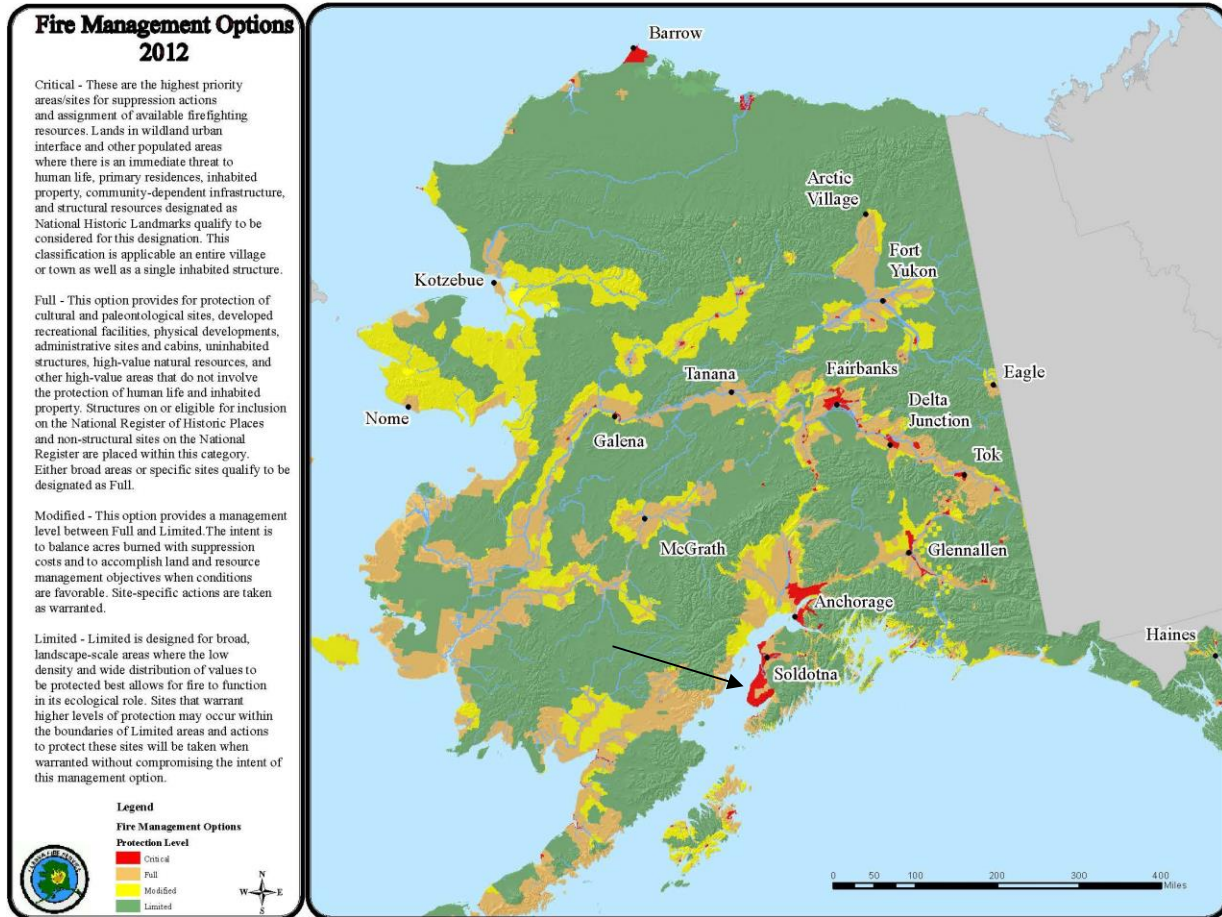


Figure 3 Source: Alaska Interagency Coordination Center 2015

According to the Alaska Interagency Coordination Center, Homer is located in a Critical Management Option area of the state (Figure 3). “Critical Management Option” is the highest management level, intending to minimize loss of life and burned acreage in developed areas.

D. Weather

Weather is the result of four main features: the sun, the planet's atmosphere, moisture, and the structure of the planet. Certain combinations can result in severe weather events that have the potential to become a disaster.

In Homer, there is potential for weather disasters. Wind-driven waves from intense storms produce coastal flooding and erosion. High winds, common on the Kenai Peninsula can topple trees, damage roofs, and result in power outages across vast areas of Homer and the surrounding communities. Heavy snow contributes to the availability of water for the Bradley Lake Hydroelectric Plant, and for keeping the Bridge Creek watershed supplied, but can also cause avalanches or collapse roofs of buildings throughout the area when accumulations are too heavy. A quick thaw can lead to erosion and flooding along creeks and area streams.

Winter Storms

Winter storms originate as mid-latitude depressions or cyclonic weather systems. High winds, heavy snow, and cold temperatures usually accompany them. To develop, they require:

- Cold air - Subfreezing temperatures (below 32°F) in the clouds and/or near the ground to make snow and/or ice.
- Moisture - The air must contain moisture in order to form clouds and precipitation.
- Lift - A mechanism to raise the moist air to form the clouds and cause precipitation. Lift may be provided by any or all of the following:
 - The flow of air up a mountainside.
 - Fronts, where warm air collides with cold air and rises over the dome of cold air.
 - Upper-level low pressure troughs.

Each year the Seward Highway between Anchorage and the Kenai Peninsula is closed for intervals due to either avalanche or avalanche control efforts.

Heavy Snow

Heavy snow, generally more than 12 inches of accumulation in less than 24 hours, can immobilize a community by bringing transportation to a halt. Until the snow can be removed, airports and major roadways are impacted, even closed completely, stopping the flow of supplies and disrupting emergency and medical services. Accumulations of snow can cause roofs to collapse and knock down trees and power lines. Heavy snow can also damage light aircraft and sink small boats. In the mountains, heavy snow can lead to avalanches. A quick thaw after a heavy snow can cause substantial flooding, especially along small streams and in urban areas. The cost of snow removal, repairing damages, and the loss of business can have severe economic impacts on cities and towns.

Injuries and deaths related to heavy snow usually occur as a result of vehicle accidents. Casualties also occur due to overexertion while shoveling snow and hypothermia caused by overexposure to the cold weather.

Record heavy snow occurred in Anchorage on March 17, 2002 when two to three feet of snow fell in less than 24 hours over portions of the city. Ted Stevens International Airport recorded a storm total of 28.7 inches, and an observer near Lake Hood measured over 33 inches. The city of Anchorage was essentially shut down during the storm, which fortunately occurred on a

Sunday morning when a minimal number of businesses were open. Both military bases, universities, and many businesses remained closed the following day, and Anchorage schools remained closed for two days. It took four days for snow plows to reach all areas of the city. This snowfall also impacted Homer and the Kenai Peninsula and resulted in airport closures, travel delays, and delays of transportation of foodstuffs and other commodities.

Ice Storms

The term ice storm is used to describe occasions when damaging accumulations of ice are expected during freezing rain situations. They can be the most devastating of winter weather phenomena and are often the cause of automobile accidents, power outages and personal injury. Ice storms result from the accumulation of freezing rain, which is rain that becomes super-cooled and freezes upon impact with cold surfaces. Freezing rain most commonly occurs in a narrow band within a winter storm that is also producing heavy amounts of snow and sleet in other locations.

Freezing rain develops as falling snow encounters a layer of warm air in the atmosphere deep enough for the snow to completely melt and become rain. As the rain continues to fall, it passes through a thin layer of cold air just above the earth's surface and cools to a temperature below freezing. The drops themselves do not freeze, but rather they become super-cooled. When these super-cooled drops strike the frozen ground, power lines, tree branches, etc., they instantly freeze.

The atmospheric conditions that can lead to ice storms occur most frequently in Southwestern Alaska along the Alaska Peninsula and around Cook Inlet. Brief instances of freezing rain occur frequently along the southern coast of Alaska, but these events generally produce very light precipitation with less than ¼ inch of ice accumulation.

High Winds

In Alaska, high winds (winds in excess of 60 mph) occur rather frequently over the coastal areas along the Bering Sea and the Gulf of Alaska because of coastal storms. High winds, especially across the coast, can also combine with loose snow to produce blinding blizzard conditions and dangerous wind chill temperatures.

They can reach hurricane force and have the potential to seriously damage port facilities, the fishing industry and community infrastructure (especially above ground utility lines).

In the spring of 2003, strong winds across the Kenai Peninsula resulted in wide-spread power outages, downed trees, and structural damage and fanned the flames of a 150 acre wildfire in Anchor Point.

On December 12, 2011 a Kenai Peninsula Windstorm was declared by Governor Parnell, followed by FEMA's declaration on February 2, 2012 (DR-4054). In November, 2011, a series of major windstorms caused widespread power outages threatening life and property. Power was disrupted to 17,300 homes and businesses. Local utilities, Homer Electric Association (HEA) and Chugach Electric employed several work crews to restore power to the area. Public Infrastructure, commercial property, and personal property damages were reported in the metropolitan areas and throughout the borough. DHS&EM received local declarations from the Kenai Peninsula Borough (KPB) requesting state disaster assistance to cover immediate response, public and individual costs and from the City of Seward through the KPB requesting State assistance.

Coastal Storms

From the fall through the spring, low pressure cyclones either develop in the Bering Sea or Gulf of Alaska or are brought to the region by wind systems in the upper atmosphere that tend to steer storms in the north Pacific Ocean toward Alaska. When these storms impact the shoreline, they often bring wide swathes of high winds and occasionally cause coastal flooding and erosion.

Homer has an extensive history of storm damage, especially in the coastal areas along the Homer Spit and adjacent properties. In August of 1989 the U.S. Army Corp of Engineers published a *Storm Damage Reduction Draft Interim Feasibility Report with Engineering Design and Environmental Assessment* for the Homer Spit.

Over the years attempts have been made to reduce the impacts of coastal storms and subsequent erosion with varying degrees of success and some notable failures. In 1982 significant damage to the sheet pile reinforcement along the Spit prompted the installation of a concrete slab revetment. In a storm in 1984 those repairs were mostly washed away, again resulting in significant damage to the State Highway leading to the end of the Homer Spit. In the 1990's a major project along the western edge of the Spit Road involved the placement of significant large rock revetments. Again in 2014, ADOT reinforced the western edge of Homer Spit Road.



Above: In the fall of 2015, the City had this camp host building removed from the west side of the Homer Spit. Previous attempts to reduce the impact of coastal storms were not successful.

Storm Surge

Storm surges, or coastal floods, occur when the sea is driven inland above the high-tide level onto land that is normally dry. Often, heavy surf conditions driven by high winds accompany a storm surge adding to the destructive force of the flooding waters. The conditions that cause coastal floods also can cause significant shoreline erosion as the flood waters undercut roads and other structures. Storm surge is a leading cause of property damage in Alaska.

Communities that are situated on low-lying coastal lands with gradually sloping bathymetry near the shore and exposure to strong winds with a long fetch over the water are particularly susceptible to coastal flooding.

The Homer Spit has a moderate exposure to coastal flooding due to the consistent effects of erosion and the extraordinary tidal range in the region. A storm surge and high water levels resulted in flooding on the Homer Spit in November of 2002.

Climatic Factors

Current weather patterns are influenced by short term climate fluctuations, such as the El Nino/La Nina Southern Oscillation (ENSO). Long term changes in atmospheric composition and sea temperatures will exert a greater influence. The Governor appointed Alaska Climate, Ecosystems & Human Health Work Group is determining pending impacts to human health and regional ecosystems from long term changes in the Earth's climate.

Location

The entire Homer area is vulnerable to the effects of severe weather. Winter snows may accumulate up to 3 feet per storm while wind speeds reach as high as 60 mph.

Extent

Homer experiences the severe weather events:

- Heavy Rain
- Heavy Snow
- Freezing Rain and Ice Storms
- Extreme Cold
- Winter Storms
- Drifting Snow

Impact

The Homer area is most vulnerable to high winds during the winter season. Winds may sweep up loose snow and produce blinding blizzards and dangerous wind chills. Additionally, high winds may damage community facilities and infrastructure.



Thrashed gabions baskets and utilities are damaged by coastal storms.

For years, private property owners on the west side of the Homer Spit have attempted to stabilize their shorelines. The typical stabilization methods are rock revetments and gabion baskets that are backfilled with stones and harbor dredge material. The aftermath of storms leaves gabion baskets destroyed and metal debris on the beach with utility service lines exposed to the harsh environment. With intense wave action and freeze/thaw conditions utility companies question the safety of offering utilities in such high hazard areas.

Probability

Based on the event history and the criteria from Table 1, it is “Credible” a severe storm may occur in the next five years. The probability is greater than 10 percent but less than 20 percent per year.

Probability	Impact	Warning Time	Duration	Calculated Risk
2 x .45	2 x .30	1 x .15	3 x .10	1.95

E: Landslides

Ground failure can occur in many ways. Types of ground failure in Alaska include landslides, land subsidence, and failures related to seasonally frozen ground and permafrost.

Landslides usually occur in steep areas but not always. They can occur as ground failure of river bluffs, cut-and-fill failures associated with road and building excavations, collapse of mine-waste piles, and slope failures associated with open-pit mines and quarries. Underwater landslides usually involve areas of low relief and slope gradients in lakes and reservoirs or in offshore marine setting.



Looking up from the beach, chunks of land slough downward toward the shoreline.

Landslides can occur naturally or be triggered by human activities. They occur naturally when inherent weaknesses in the rock or soil combine with one or more triggering events such as heavy rain, snowmelt, changes in groundwater level, and seismic or volcanic activity. They can be caused by long-term climate change that results in increased precipitation, ground saturation and a rise in groundwater level, which reduces the shear strength and increases the weight of the soil. Erosion that removes material from the base of a slope can also cause naturally triggered landslides.

Human activities that trigger landslides are usually associated with construction such as grading that removes material from the base, loads material at the top, or otherwise alters a slope. Changing drainage patterns, groundwater level, slope and surface water, for example the addition of water to a slope from agricultural or landscape irrigation, roof downspouts, septic-tank effluent, or broken water or sewer lines can also cause landslides.

The City of Homer has adopted local ordinances to define Steep Slope, and to require engineering approval for any development of steep slopes within Homer (HCC 21.44.050).

The majority of town rests on a bench of land bordered on the north with steep slopes and gullies. South Peninsula Hospital is situated immediately below such a steep slope and will be subject to landslide damage should one occur. Homer is currently addressing steep slope development to mitigate future impacts from construction in these potentially unstable areas.

In October, 2013 heavy rains caused a 16-foot tall mudslide that roared down Bear Creek Drive, (3 miles east on East End Road). Uphill, Bear Creek canyon is narrow and when heavy rains saturated the soils the steep canyon “let go” sending trees and debris down Bear Creek which jammed a culvert on the uphill side of East End Road. A Disaster Declaration was declared for several rain soaked areas in the Kenai Peninsula Borough. The road crew cleared the mudslide off the roadway allowing traffic to proceed, followed by culvert and debris clean up.

In April of 2015 a landslide occurred along a stretch of Kachemak Drive, near the Homer Airport. The slide resulted in Kachemak Drive being close about a half-mile from Homer Spit Road to the top of the hill by the old airport. Rainy conditions and wet soils caused the slope below the road to slide into Mud Bay. The slide took a 100-foot section of the east bound lane of Kachemak Drive pushing clumps of spruce and alder trees into Mud Bay. Within two-weeks ADOT had repaired the roadway and Kachemak Drive was reopened.

The secondary effects of landslides can also be very destructive. Landslide dams cause damage upstream due to flooding and downstream due to a flood which may develop as a result of a sudden mudslide.

Location

Landslide prone areas are the hillside bordering the City, the vicinities of the South Peninsula Hospital, and Homer Airport.

Extent

The City of Homer may experience landslides from excessive precipitation, frost heaving, or a rapid spring thaw. Additionally Homer may experience earthquake generated slides and liquefaction.

Impact

The City of Homer will experience a “Limited” impact, primarily upon the local hospital, public works, water and sewer service, and roads.

Probability

Referencing their local history and Table 1, it is “Plausible” that the City of Homer will experience a landslide within the next ten years.

Probability	Impact	Warning Time	Duration	Calculated Risk
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1 x .45

2 x .30

4 x .15

3 x .10

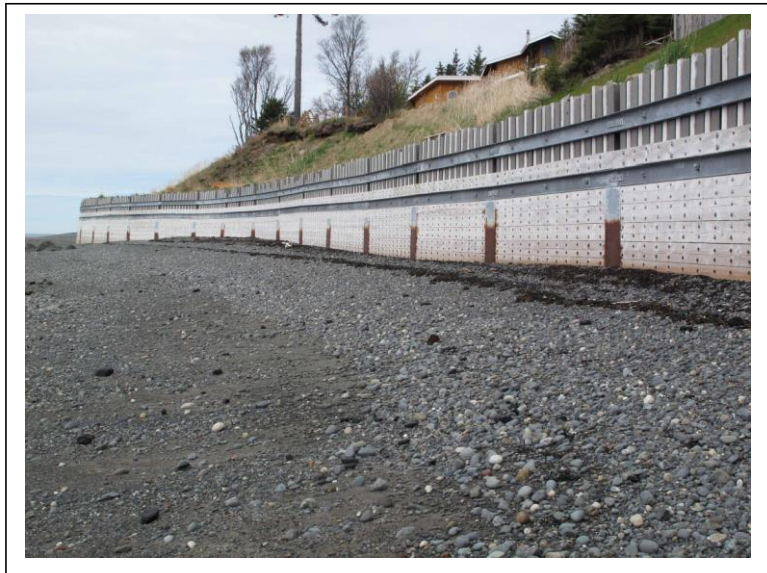
1.95

F. Coastal Erosion in Homer

Erosion is a process that involves the wearing away and movement of land. Coastal erosion along Kachemak Bay is a natural phenomenon which includes four principal processes that include wave action, rain and wind, high tides, and the freeze-thaw liquefaction of soils.

In 2005 the Kachemak Bay Research Reserve completed a study of erosion rates in Homer. The study provided an estimate of coastal bluff erosion rates based on a series of aerial surveys from 1951 to 2003. The result, the average erosion rates along Homer's shoreline is approximately 0.3-1.2 meters per year.

Homer confronts coastal erosion seasonally, usually with winter storms, especially along the Spit and along Ocean Drive Loop, a residential housing area. A seawall was constructed in 2002 in an attempt to protect residential structures from continued erosion. The initial construction consisted of the installation of 20, 22, and 24 foot long resin reinforced fiberglass sheet pilings, generally installed 10 ft below beach level and 10 – 14 ft above. All construction occurred above the mean high tide line. The piling was installed by trenching. The top of the wall is at elevation 30' (mean high tide = 17.3).



Even before the seawall was completed it was damaged by a moderate storm. The City and property owners have annually attempted to replace missing anchor bolts that attach the wood timbers to the wall and replace bent/missing metal plates that were designed to protect timer joints.

In addition, portions of the Sterling Highway along the Spit had to be reconstructed when undercut by several strong winter storms in 1998-1999.

Photo: Homer's seawall.

West of the Homer Spit, erosion threatens the Sterling Highway where steep bluffs are creeping close to the Sterling Highway. Redirecting portions of the Sterling Highway inland and other mitigation methods are projects that the State of Alaska, DOT&PF and FEMA are considering.

Protective measures such as seawalls, or revetments, can actually lead to increased erosion. This is because shoreline structures eliminate the natural wave run-up and sand deposition and can increase reflected wave action. The increased wave action can scour in front of and behind structures and prevent the settlement of suspended sediment.

Factors Influencing the Erosion Process

Extent

When undeveloped coastlines undergo erosion, it does not present a problem because there is nothing to be damaged. However, pressure to develop and protect properties along the Kachemak Bay is increasing. There are a variety of natural and human-induced factors that influence the erosion process. For example, shoreline orientation, beach composition and exposure to prevailing winds, open ocean swells, and waves all influence erosion rates. Natural factors may include:

- Shoreline type
- Geomorphology of the coast
- Nature of the coastal topography
- Elevation of coastal dunes and bluffs
- Shoreline exposure to wind and waves

Human factors include: Information from *Erosion Responses for Property Owners*, pg 2, 12.

- Shoreline stabilization structures that change the power and direction of waves and of sediment transport.
- Density of development
- Development encroaching into the high hazard zones.
- Altered drainages
- Added water to soil
- Cleared lands
- Change of absorption rate of land surface

Climatic factors such as sea-level rise, increased storm activity, and land subsidence exacerbate coastal erosion in Alaska. According to the National Oceanic and Atmospheric Administration (NOAA), global average sea levels rose a total of 7.7 inches between 1870 and 2004.

Impact

The primary impact from erosion is the loss of developable land and anything on it. Utility companies reburying utilities that are exposed by ocean waves. The impact to infrastructure is expensive and ongoing and includes the Sterling Highway and Homer Spit Road.

Probability

Given the event history, it is “Certain” the City of Homer will experience further erosion of its land. Additional events are probable within the calendar year with a 1 in 1 year chance of occurring (1/1=100 percent) and the event history is greater than 33 percent likely per year.

Probability	Impact	Warning Time	Duration	Calculated Risk
4 x .45	1 x .30	1 x .15	4 x .10	2.65

G. Earthquake

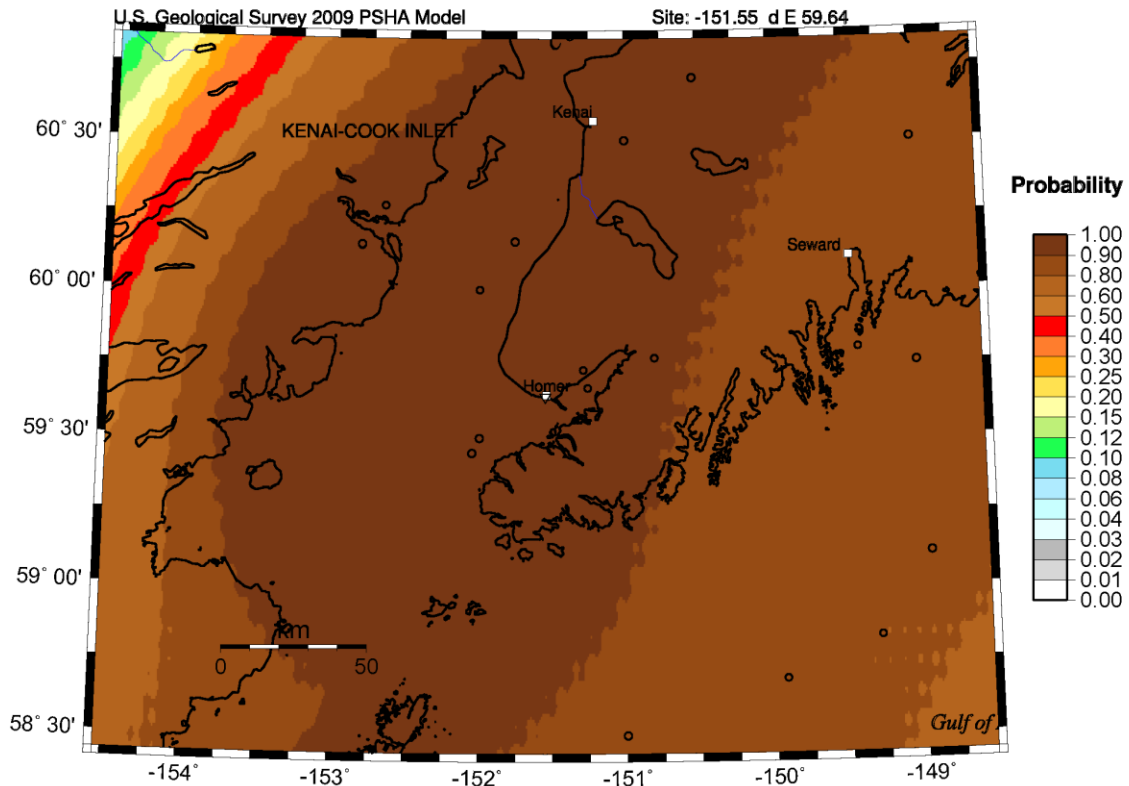
Seismic hazards in Alaska come from several sources. The largest earthquakes in the state are caused by subduction of the Pacific plate beneath Alaska. Three of the seven largest earthquakes in the 20th century occurred in Alaska (1957 Aleutian, 1964 Prince William Sound, and 1965 Rat Islands). Another type of hazard comes from the smaller magnitude 6.8 to 8.0 earthquakes, which occur in many regions of central and south-central Alaska. These events, while smaller, occur at more frequent intervals, and in locations that cannot always be predicted. On average, Alaska has a magnitude 7.0 or larger earthquake about every two years. Similar in size to recent California earthquakes, these events could cause major damage if they occurred in a populated or strategically sensitive area. A third hazard exists from the many smaller events that often occur near populated areas. While these events are too small to cause widespread damage, they are relatively common and thus pose a continuous threat to urban areas. Alaska Earthquake Information Center (AEIC) personnel locate and report about 22,000 earthquakes each year, and advise federal and state officials of each major earthquake's location and size within 30 minutes. (AEIC, 2015)

Location

The entire geographic area of Alaska is prone to the effects of an earthquake. Figure 4 was generated using the U.S. Geologic Survey (USGS) Earthquake Mapping model and indicates an 80 to 100 percent probability of a 5.0 magnitude or greater earthquake occurring within 20 years and 50 kilometers of Homer.

Figure 4 Homer Earthquake Probabilities

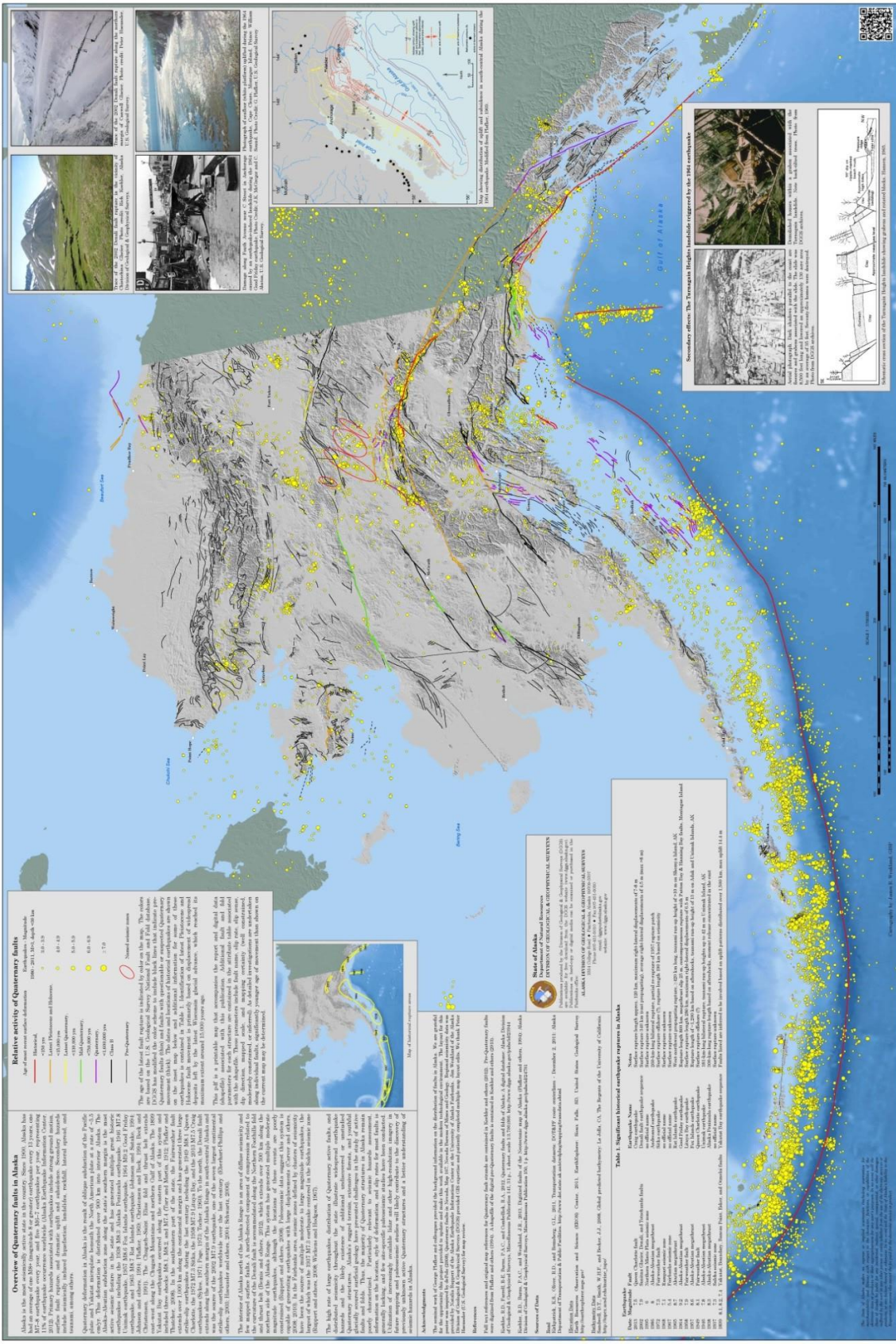
Probability of earthquake with M > 5.0 within 20 years & 50 km



GMT 2015 Jul 22 16:32:33 EQ probabilities from USGS OFR 2007-1043 PSHA. 50 km maximum horizontal distance. Site of interest: triangle. Fault traces are brown; rivers blue. Epicenters M_w>6.0 circles.

The Department of Geological and Geophysical Survey (DGGS) Map of Alaska’s Quaternary Faults depicts Alaska’s known earthquake fault locations (Figure 5).

ALASKA'S QUATERNARY FAULTS



Map showing distribution of major and sub-branches in conventional strike-slip fault systems. Modified from Taylor, 1990.

Secondary effects: The Trough fault includes registered by the 1964 earthquake.

Map showing cross-section of the Trough fault, including hanging wall and footwall blocks.

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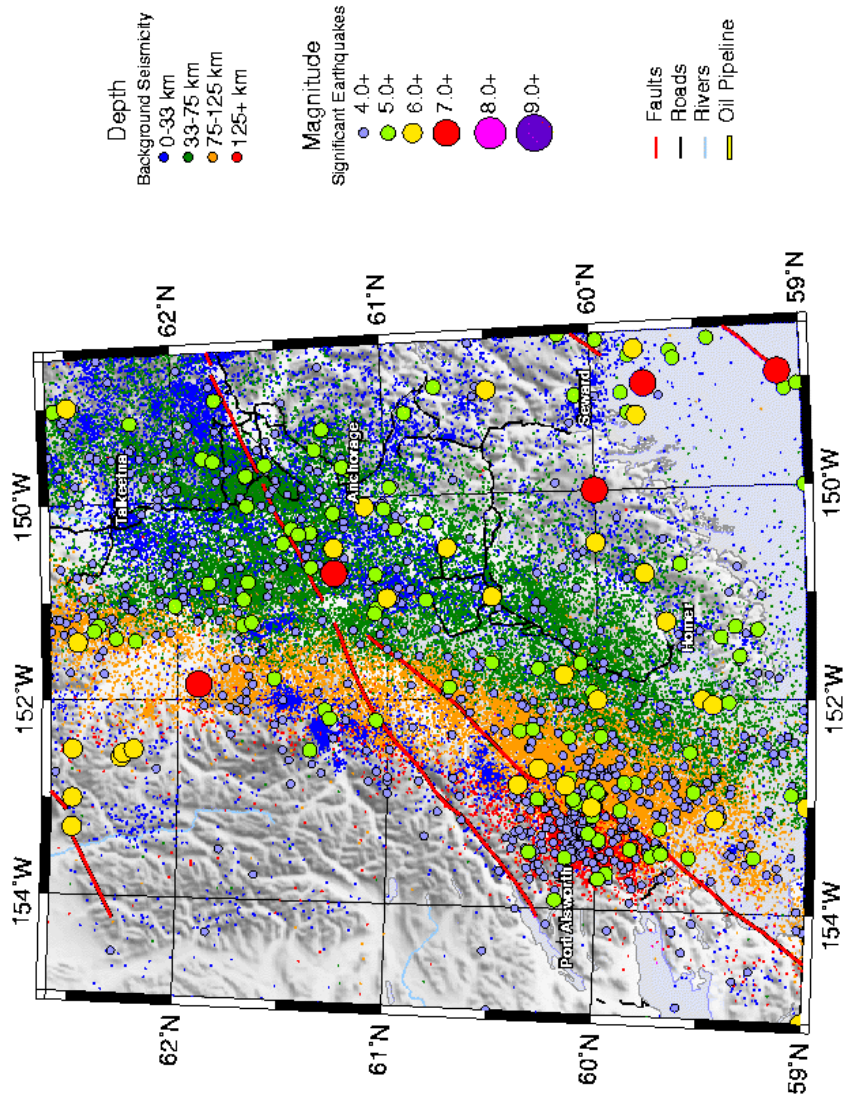
Map showing cross-section of the Trough fault, including hanging wall and footwall blocks.

Map showing cross-section of the Trough fault, including hanging wall and footwall blocks.

Figure 6 shows recent earthquakes of M 4.0 or greater from 1903 to present near Homer, Alaska. No damage resulted from these earthquakes.

Figure 6 Homer Earthquake History

Cook Inlet Seismicity



Extent

Alaskans experience approximately 5,000 earthquakes annually, including 1,000 measuring above magnitude 3.5. Alaska is vulnerable to three types of earthquakes:

1. **Subduction zone earthquakes** begin with one crustal plate moving beneath another plate. This is the case in Southcentral Alaska and along the Aleutian Islands, where the Pacific Plate dives beneath the North American Plate. The Good Friday Earthquake in Alaska resulted from movement along the Aleutian Megathrust subduction zone.
2. **Transform fault earthquakes** originate from crustal plates sliding by each other. A popular example is the San Andreas Fault in California. A transform fault exists just offshore of southeastern Alaska, where the North American Plate and the Pacific Plate slide past each other on the Fairweather - Queen Charlotte Fault.
3. **Intraplate earthquakes** occur within a tectonic plate, occasionally at great distance from the plate boundaries. These types of earthquakes may have magnitudes of 7.0 and greater. Shallow earthquakes in the Fairbanks area are an example of intraplate earthquakes.

Impact

Homer is located in a region of high seismicity. Although nearby earthquakes will be felt in the City, only “Limited” impact is expected due to prior history and seismic retrofits. However, no facilities are seismically reinforced for a high magnitude event and the soil structure in the area tends to be very weak. Therefore, the impact of a high magnitude earthquake could be “Critical” with injury, illness, death, complete shutdown of critical facilities for at least two weeks, and more than 25 percent severely damaged property.

Probability

Considering Figures 1, 2, and 3, it is “Certain” an earthquake M 5.0 or greater may occur within 100 kilometers of Homer within the next 10 years (Table 1). Referencing Figure 1, earthquake modeling or Shake Map indicates an 80 to 100 percent probability of a 5.0 magnitude or greater earthquake occurring within 20 years near Homer.

This 2009 Shake Map incorporates current seismicity in its development and is the most current map available for this area. Peter Haeussler, USGS, Alaska Region, explained factors influencing probability in earthquake hazard mapping in 2009:

The occurrence of various small earthquakes does not change earthquake probabilities. In fact, in the most dramatic case, the probability of an earthquake on the Denali fault was/is the same the day before the 2002 earthquake as the day afterward. Those are time-independent probabilities. The things that change the hazard maps is changing the number of active faults or changing their slip rate.

Probability	Impact	Warning Time	Duration	Calculated Risk
4 x .45	2 x .30	4 x .15	1 x .10	3.1

H. Tsunamis

Tsunamis are traveling gravity waves in water, generated by a sudden vertical displacement of the water surface. They are typically generated by uplift or drop in the ocean floor, seismic activity, volcanic activity, meteor impact, or landslides (above or under sea in origin).

Most tsunamis are small and are only detected by instruments. Tsunami damage is a direct result of three factors: inundation (extent the water goes over the land), wave impact on structures and coastal erosion.

In 2003, Homer became the first community in Alaska to receive both a Tsunami and Storm Ready Community Designation from the National Weather Service and DHS&EM. That designation has been reviewed and updated every 4 year since then, most recently in 2015.

Types of Tsunamis

Tele-tsunami

Tele-tsunami is the term for a tsunami observed at places 1,000 kilometers from their source. In many cases, tele-tsunamis can allow for sufficient warning time and evacuation. No part of Alaska is expected to have significant damage due to a tele-tsunami. There is a slight risk in the western Aleutians and some parts of Southeast Alaska.

Most tele-tsunamis that have reached Alaska have not caused damage. In fact, most tele-tsunamis have had their largest recorded amplitude (in Alaska) at Massacre Bay, Attu Island. The amplitude is usually under 1 foot.

Risk is even less for communities within Kachemak Bay including Homer.

<i>Magnitude</i>	<i>Height (ft)</i>
-2 to -1	<1.0 to 2.5
-1 to 0	2.5 to 4.9
0 to 1	4.9 to 9.9
1 to 2	9.9 to 19.7
2 to 3	19.7 to 34.2
3 to 4	34.2 to 79.0
4 to 5	79 to >105.0

Volcanic Tsunamis

There has been at least one confirmed volcanically triggered tsunami in Alaska. In 1883, a debris flow from the Saint Augustine volcano reportedly triggered a tsunami that inundated Port Graham (across Kachemak Bay from Homer) with waves 30 feet high, although geologic evidence is inconclusive to substantiate the wave height claim. Other volcanic events may have caused tsunamis but there is not enough evidence to report that conclusively. Many volcanoes have the potential to generate tsunamis.

Seismically-Generated Local Tsunamis

Most seismically-generated local tsunamis have occurred along the Aleutian Arc. Other locations include the back arc area in the Bering Sea and the eastern boundary of the Aleutian Arc plate. They generally reach land 20 to 45 minutes after starting.

Landslide-Generated Tsunamis

Submarine and subaerial landslides can generate large tsunamis. Subaerial landslides have more kinetic energy associated with them so they trigger larger tsunamis. An earthquake usually, but not always, triggers this type of landslide and they are usually confined to the bay or lake of origin. One earthquake can trigger multiple landslides and landslide-generated tsunamis. Low tide is a factor for submarine landslides because low tide leaves part of the water-saturated sediments exposed without the support of the water.

Landslide –generated tsunamis are responsible for most of the tsunami deaths in Alaska because they allow virtually no warning time.

There is some historical evidence of a landslide generated tsunami impacting the Homer area when a large landslide near the Grewingk Glacier across from Homer impacted the glacier lake sending large quantities of water across Kachemak Bay.

Tsunamis generated by landslides in lakes occur more in Alaska than any other part of the U.S. They are associated with the collapse of deltas in glacial lakes having great depths. They may also be associated with delta deposits from rapidly flowing streams and rivers carrying glacial debris.

Historical Tsunamis

1964 Earthquake Tsunami

The 1964 earthquake triggered several tsunamis, one major tectonic tsunami and about 20 local submarine and sub aerial landslide tsunamis. The major tsunami hit between 20 and 45 minutes after the earthquake. The locally generated tsunamis struck between two and five minutes after being created and caused most of the deaths and damage. Tsunamis caused more than 90% of the deaths – 106 Alaskans and 16 Californian and Oregonian residents were killed.

Extent

Based on tsunami inundation mapping (Figure 7), very limited areas of the Homer coast line would be potentially damaged by tsunami, with no critical infrastructure immediately threatened.

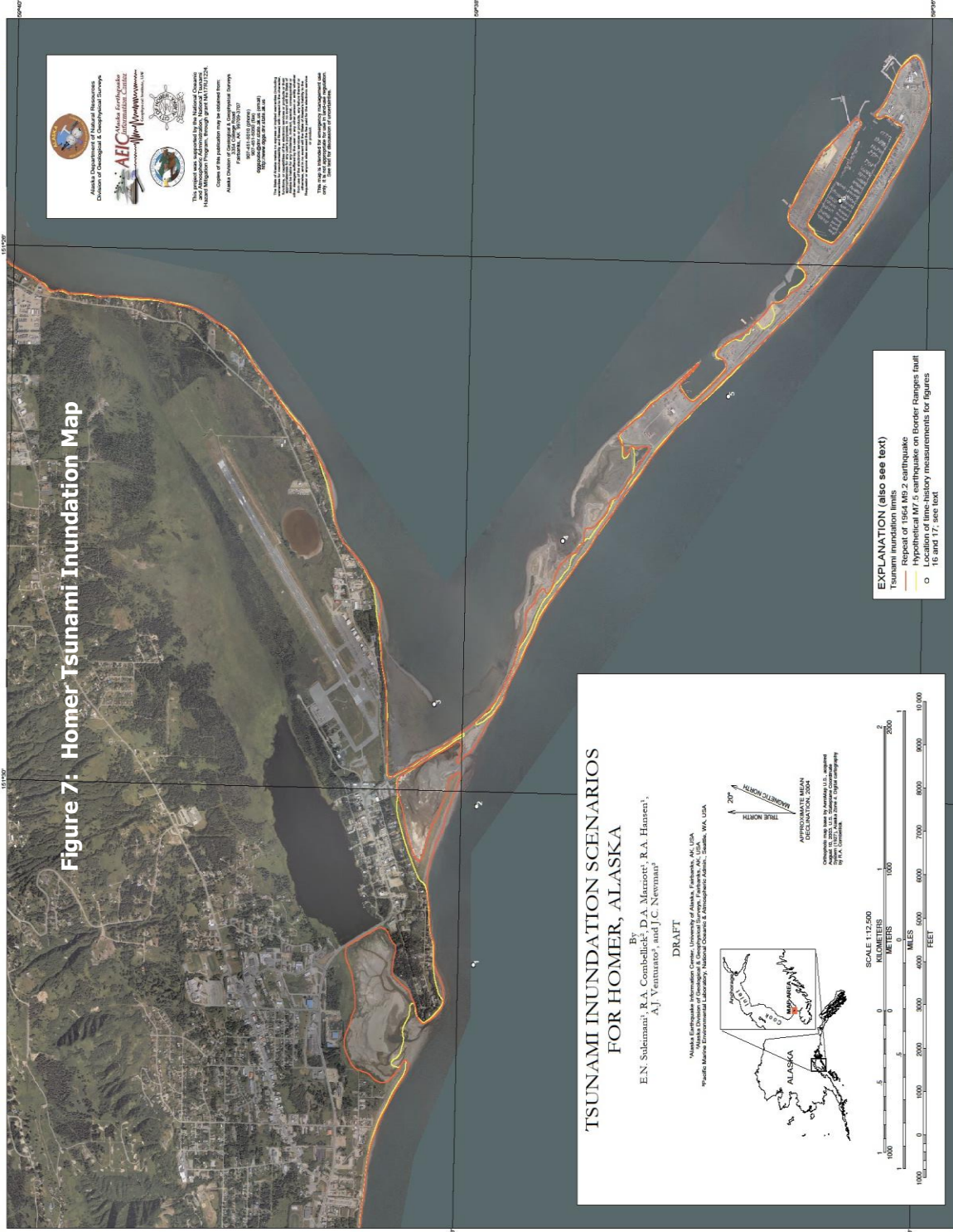
Impact

The impact to Homer proper would be “Negligible” with less than 10 percent severely damaged property. However, the Homer spit may experience “Catastrophic” damage, with more than 50% severely damaged property and many serious injuries (Table 2).

Probability

Referencing the local earthquake history and Table 1, it is “Credible” an earthquake generated tsunami could impact the Homer community.

Probability	Impact	Warning Time	Duration	Calculated Risk
2 x .45	1 x .30	4 x .15	1 x .10	1.9



I. Volcanoes

Alaska is home to over 50 active volcanoes stretching across the entire southern portion of the State from the Wrangell Mountains to the far Western Aleutians. An average of 1-2 eruptions per year occurs in Alaska. In 1912, the largest eruption of the 20th century occurred at Novarupta and Mount Katmai, located in what is now Katmai National Park and Preserve on the Alaska Peninsula.

Homer has been impacted by volcanic ash events, Mt. Spurr in 1992, Mt. Augustine in 1986 and Mt. Redoubt in 1989-90.

Volcanic Hazards

As stated, other than the disruption of air traffic into and out of Alaska, the only danger from Cook Inlet Volcano in Homer is ash fall.

Volcanic Ash

Volcanic ash is fine fragments of solidified lava ejected into the air by an explosion or rising hot air. The fragments range in size, with the larger falling nearer the source. Ash is a problem because the weight of the ash can cause structural collapses. Further away, the primary hazard to humans is decreased visibility and inhaling the fine ash. Ash will also interfere with the operation of mechanical equipment including aircraft. In Alaska, this is a



major problem as many of the major flight routes are near historically active volcanoes. Ash accumulation may also interfere with the distribution of electricity due to shorting of transformers and other electrically components (ash can conduct electricity).

Historic Volcanic Activity

The largest volcanic eruption of the 20th century occurred at Novarupta Volcano in June 1912. Ash fell on Kodiak, darkening the city. It became hard to breathe because of the ash and sulfur dioxide gas. The water became undrinkable and unable to support aquatic life. Roofs collapsed under the weight of the ash. Some buildings were destroyed by ash avalanches while others burned being struck by lightning from the ash cloud. Similar conditions could be found all over the area. Some villages ended up being abandoned, including Katmai and Savonoski villages. The ash acid rain also negatively affected animal and plant life. Large animals were blinded and many starved because their food was eliminated.

Figure 8 shows ash fall from this eruption was significantly greater than the recent eruptions of Redoubt, Spurr and Augustine Volcanoes. Fourteen earthquakes of magnitude 6 to 7 were associated with this event. At least 10 Alaskan volcanoes are capable of this type of event.

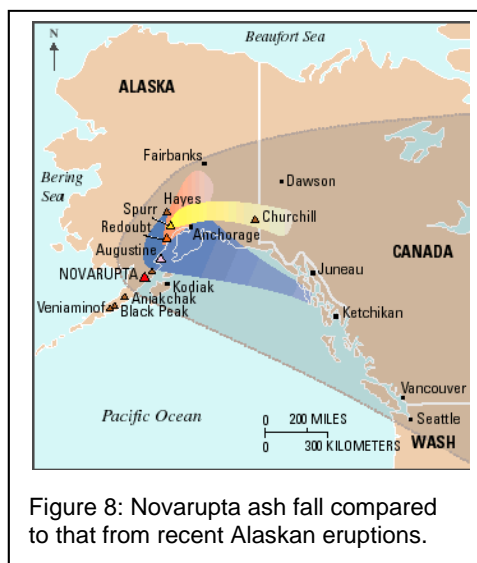


Figure 8: Novarupta ash fall compared to that from recent Alaskan eruptions.

after
and
life.

Hazard Identification and Assessment

The responsibility for hazard identification and assessment for the active volcanic centers of Alaska falls to the Alaska Volcano Observatory (AVO) and its constituent organizations (USGS, DNR/DGGS, and UAF/GI). The AVO publishes a report that describes volcanic history and the hazards they pose and the likely effects of future eruptions on populations, facilities, and ecosystems.

AVO has the primary responsibility to monitor all of Alaska's potentially active volcanoes and to issue timely warnings of activity to authorities and the public. During episodes of volcanic unrest or eruption, AVO is also the agency responsible for characterizing the immediate hazards and describing likely scenarios for an evolving volcanic crisis. AVO uses a 4-color Level of Concern Color Code to succinctly portray its interpretations of the state of activity and likely course of unrest at a given volcano.

Basic information about vulnerable assets and populations are identified in these assessments. However, Department of Commerce, Community and Economic Development (DCCED) and other State agencies could work with AVO map data to integrate quantitative, current information regarding communities and other at-risk elements to improve our analysis of vulnerability.

Extent

The entire Kenai Peninsula is subject to volcanic ash fallout. Referencing Figure 9, there are three active volcanoes within 150 miles of the City of Homer.

Impact

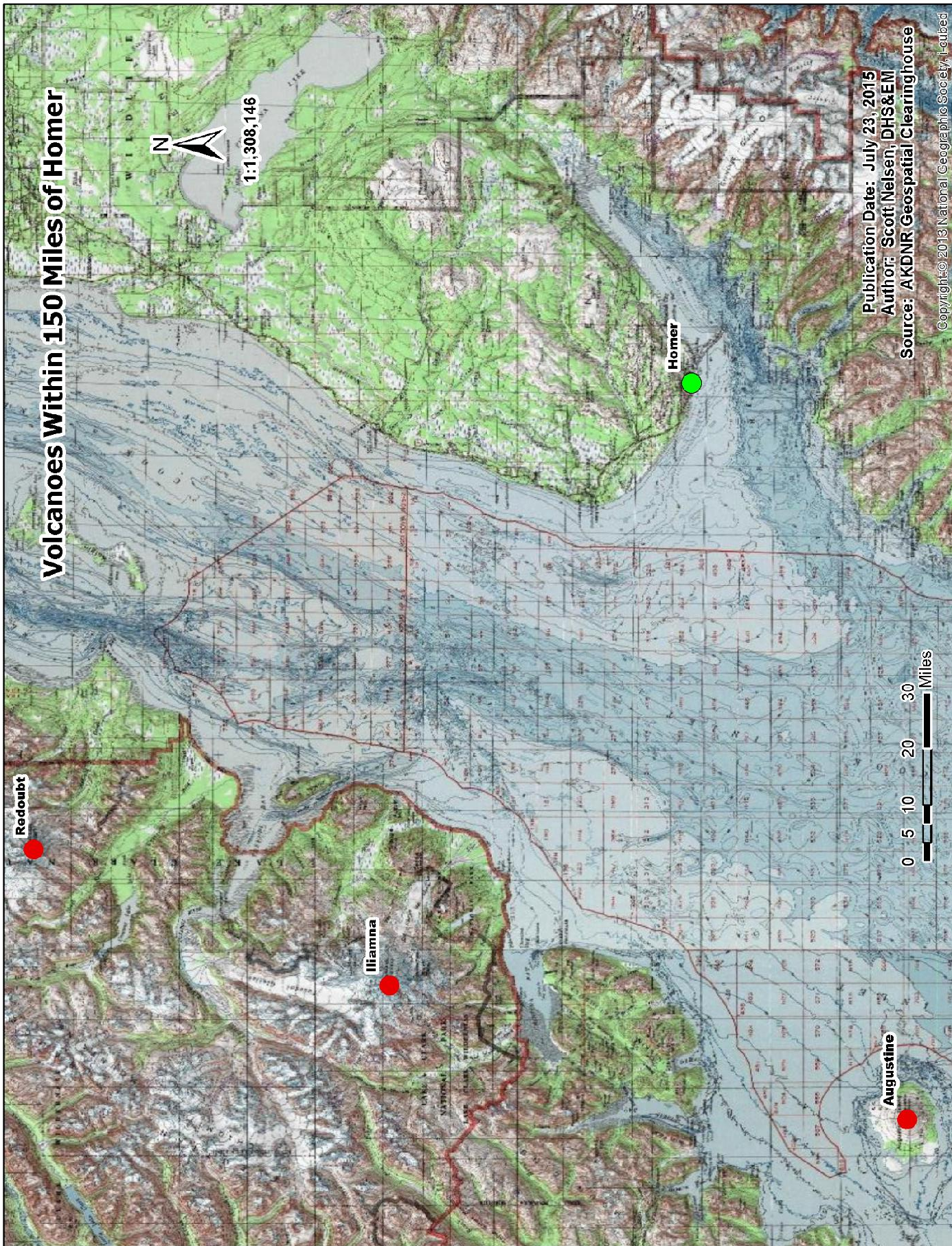
Volcanic ash is a public health hazard. Therefore, volcanic eruptions may require the greater Homer area to evacuate. The total impact would be “Negligible”, with minor injuries treatable with first aid, shutdown of critical facilities and services for 24 hours or less, and less than 10 percent severely damaged property.

Probability

Referencing the local volcanic eruption history and Table 1, it is “Credible” an ash fallout event could impact the Homer community.

Probability	Impact	Warning Time	Duration	Calculated Risk
2 x .45	1 x .30	1 x .15	4 x .10	1.75

Volcanoes Within 150 Miles of Homer



J. Man-Made/Technological Disasters

The potential for man-made or technological disasters, while less than for natural disaster, for Homer is none-the-less of increasing potential, especially as the population grows more dependent on technology in daily activities. Man-made disasters include, but are not limited to:

1. **Hazardous Material Incidents.** Hazardous Materials are routinely transported across the Kenai Peninsula by ship, barge, vehicle, and rail (only on the Eastern Kenai Peninsula). Quantities of hazardous materials primarily include fuels and gases for local use and distribution, but also occasionally include explosives for shipment out of the Port of Homer, or other materials being shipped overseas. Hazardous materials are stored in terminals, when present for distribution, or in processing facilities for use locally (ammonia used in the ice houses). Hazardous materials are used every day across the entire Kenai Peninsula, including households and pose little danger unless released by spill or accident. As the ability to control hazardous materials is limited throughout the entire Kenai Peninsula (no Level A response team), we must rely on the State of Alaska Hazardous Materials Response Team from Anchorage to respond to local events requiring technician level support. Local responders are trained and certified for initial response at the Operations Level only. There is a Hazardous Materials Decontamination Trailer, provided by the Kenai Peninsula Borough, available locally through the fire department.
2. **Radiological Incident.** A radiological incident is one in which potentially dangerous radioactive materials have been released, either accidentally, or on purpose. The release may be in the form of a cloud or plume that could affect the health and safety of anyone in its path. Radiological materials are used in healthcare settings and in industrial applications for materials testing purposes. Though limited in use in Homer, these materials could still be found in incidental use, or be used in the creation of a so called “Dirty” bomb.
3. **Bombings.** Bombings are the purposeful detonation of explosive materials for criminal purposes, including terrorism. Even the threat of a bomb can disrupt businesses and schools as they are required to evacuate. Various types of explosive devices can be easily manufactured through instructions readily available on the internet.
4. **Civil Disturbance.** In most instances, civil disturbances are peaceful but may require some response. In some cases, civil disturbances can escalate to rioting and looting, resulting in property damage, injury and loss of life.
5. **Power Failure.** A power failure can be isolated to a specific critical business, or wide-spread. While power can fail due to many natural causes, human error is often attributed to this disaster. Loss of power, for any reason, can disrupt commerce, and be life-threatening.

Chapter IV– Risk Analysis

A risk analysis is divided into six steps:

- 4.1. Asset Inventory
- 4.2. Risk Analysis Methodology
- 4.3. Data Limitations
- 4.4. Risk Assessment Summaries
- 4.5. NFIP and Repetitive Loss Properties
- 4.6. Land Use and Development Trends

Asset Inventory

Population

Population data for Homer was obtained from the 2010 U.S. Census and the State of Alaska Department of Labor (AKDOL) 2014 Certified Figures. The U.S. Census compares Homer’s population for 2010 and 2013. (Table 4-1).

Table 4-1 Estimated Population and Housing Inventory

Population		Residential Buildings	
2010 Census	AKDOL 2013	Total Building Count	Total Value of Buildings
5,020	5,100	2,692	\$706,380,800

Source: U.S. Census 2010, listed the median housing value at \$262,400.

Estimated replacement values for residential structures were obtained from the 2010 U.S. Census, (Table 4-1). A total of 2,692 single-family residential buildings were considered in this analysis. The value was determined using the median value provided by the U.S. Census. Table 4-1 does not include estimates for special materials, shipping, or labor.

Community Assets

Critical Facilities: Table 4-2 is a list of critical facilities in the City of Homer. Losing these facilities would seriously impact not only the quality of life in Homer but also the sustainability and survivability of Homer residents.

Table 4-2: Critical Facilities	Economy	Flood	Wild fire	Weather	Land slides	Erosion	Earthquake	Tsunami	Volcano	Manmade	Tech	Biologic
Airport	X		X	X			X		X	X	X	X
Banking	X			X			X		X	X	X	X
Churches	X			X			X		X	X	X	X
City Hall	X			X			X		X	X	X	X
Fire Dept.	X	X	X	X			X		X	X	X	X
Fuel System	X	X		X		X	X	X	X	X	X	X
Groceries	X	X		X			X		X	X	X	X
HEA	X	X	X	X	X	X	X	X	X	X	X	X
Landfill	X		X	X			X		X	X	X	X
Library	X			X			X		X	X	X	X
Police Dept	X			X			X		X	X	X	X
Port & Harbor	X	X		X		X	X	X	X	X	X	X
Post Office	X			X			X		X	X	X	X
Public Works	X	X	X	X	X	X	X	X	X	X	X	X
Reservoir		X	X	X	X	X	X		X	X	X	X
Roads		X	X	X	X	X	X	X	X	X	X	
Schools	X		X	X			X		X	X	X	X
Senior Ctr	X			X			X		X	X	X	X
Sewer System	X	X	X	X			X		X	X	X	X
SP Hospital	X	X		X	X		X		X	X	X	X
Telephone	X	X	X	X	X		X	X	X	X	X	X
Water System	X	X	X	X	X	X	X	X	X	X	X	X

4.3 Data Limitations: Vulnerability Overview: Reviewed every 5 years.

The entire City of Homer and the Kenai Peninsula experience floods, earthquakes, and wildfires. Any one of these hazards could impact any part of Homer or isolate it from the rest of the State.

Other hazards are tsunamis, landslides, and erosion. The “Homer bench” is created by bluffs, some steeper than others, but all bluffs have the potential to create landslides.

Table 4-3 Vulnerability Overview for Homer

Hazard	Percent of Geographic area	Percent of Population	Percent of Building Stock	Percent of Community Facilities and Utilities
Earthquake	100%	100%	100%	100%
Erosion	10%	10%	10%	5%
Flood	10%	10%	10%	10%
Landslides	10%	10%	10%	10%
Tsunami	10%	10%	5%	5%
Weather	100%	100%	100%	100%
Wildland Fire	100%	100%	100%	100%

Risk Analysis Methodology

The planning team referenced the State’s Critical Facility Inventory and local knowledge to inventory their critical facilities and evaluate their vulnerability to each hazard (Table 4-4).

Table 4-4 Critical Infrastructure in Alaska

Fire Stations	Airports	Cemeteries
Police Stations	Schools	Stores
Emergency Operations Centers	Telecommunications Structures & Facilities	Service Maintenance Facilities
Hospitals, Clinics, & Assisted Living Facilities	Satellite Facilities	Critical Bridges
Water & Waste Water Treatment Facilities	Public restrooms	Radio Transmission Facilities
Fuel Storage Facilities	Harbors / Docks / Ports	Reservoirs & Water Supply Lines
	Landfills & Incinerators	Community Freezer Facilities
	Power Generation Facilities	
	Oil & Gas Pipeline Structures & Facilities	

Table 4-4 Source: State of Alaska Hazard Mitigation Plan, 2013

Replacement structure and contents value estimates were provided by the U.S. Census and the planning team. They conducted an exposure analysis for each physical asset located within a

hazard area. A similar analysis was used to evaluate the proportion of the population at risk. However, the analysis simply represents the number of people at risk; no casualty estimates were prepared.

Data Limitations

The vulnerability estimates provided herein use the best data currently available, and are designed to approximate risk. Results are limited to the exposure of the built environment. It is beyond the scope of this Hazard Mitigation Plan to estimate the range of injuries, or the value of improvements and the contents. The Homer Spit is a classic example where a variety of land uses have evolved over time that include fish processing, the port and harbor, the marine highway terminal and fuel storage. Only the new Harbor Master Office is included in the Table 6 and 7. The Harbor Master Office is included in the category of “City Main Buildings.”

Facility Replacement Values

Tables 4-5 and Table 4-6 estimate the total replacement value of dwellings, critical facilities, and infrastructure. Structure values were obtained during the asset data inventory during the summer of 2015. The estimated structure and content values are grouped by HAZUS-MH occupancy classification (Table 4-6). HAZUS-MH is a geographic information system which models **Multi Hazards**: flooding, hurricanes, coastal surge and earthquakes. HAZUS also calculates the potential losses in terms of economic losses and structural damage.

Table 4-5 HAZUS Building Occupancy Classes

Occupancy Class	Description	Contents Value %
Residential		
Single Family Dwelling	House	50
Mobile Home	Mobile Home	50
Multi Family Dwelling	Apartment / Condominium	50
Temporary Lodging	Hotel / Motel / Hostel	50
Institutional Dormitory	Group Housing (military, college, jails)	50
Nursing Home	Nursing Home	50

Cont. Table 4-5 HAZUS Building Occupancy Classes

Commercial	Description	Content Value %
Retail Trade	Store	100
Wholesale Trade	Warehouse	100
Personal and Repair Services	Service Station / Shop	100
Professional / Technical Services	Offices	100
Banks	Banks	100
Hospital/Medical Office / Clinic	Medical Facilities	150
Hospital	Medical Facilities	150
Entertainment & Recreation	Restaurants / Bars	100
Theaters	Theaters	100
Industrial		
Heavy	Factory	150
Light	Factory	150
Construction	Office	100
Agriculture		
Agriculture	Agriculture	100
Religion / Non-Profit		
Church / Non-Profit	Church / Non-Profit	100
Government		
General Services	Office	100
Emergency Response	Police / Fire Station / EOC	150
Education		
Schools and University	K-12 and KPC	100

Table 4-6 Facility and Content Value Estimates

Type	Total Count	Estimated Value	HAZUS Contents Value (%) by Occupancy	Estimated Value of Contents
Residential	2692	\$706,380,800	50%	\$353,190,400
Hospital	1	\$49,000,000	150%	\$73,500,000
City Main Buildings	6	\$19,350,497	100%	\$19,350,497
Educational	5	\$80,657,700	50%	\$40,328,850
Natural Gas	94 miles	\$20,000,000	NA	NA
Homer Electric		\$2,663,028	\$22,681,363	\$25,344,391
Total	2704	\$875,388,997	NA	\$511,714,138

The facility values in tables 4-6 and 4-7 are not intended to be considered the actual total value of facilities in Homer. Due to the magnitude of the task of tabulating every discrete commercial, industrial, agricultural, religious, non-profit, governmental and educational facility these tables serve as a reference point for what the total value of Homer facilities might be.

The *Residential*, *City Main Buildings* and *Education* property values are based on the Kenai Peninsula Borough assessed values. The *City’s Main Buildings* include: City Hall, Police Station, Fire Hall, Library, Harbor and Public Works. The *Education* buildings include: Homer High, West Homer, Paul Banks Elementary, Homer Middle School and the Kachemak Bay Campus of Kenai Peninsula College. The *Natural Gas* and *Homer Electric* values were provided by the utilities companies. The *Natural Gas* estimate includes a 22.5 miles of an underground trunk line, 85 miles of distribution lines with approximately 1,400 new service lines. The *Homer Electric* values include the land, structures, substations, electrical facilities and their fleet. The *Hospital* value was provided by South Peninsula Hospital.

Other major facilities include, but are not limited to, Islands and Ocean Visitor Center, Pratt Museum, Safeway, Ulmer’s Drug and Hardware, Spenard Builders Supply, many medical and dental offices, retail stores, art galleries, gas stations, non-profit agencies, boat yards, and numerous other buildings. A realistic estimate of the actual functional value of facilities is much more than the total value indicated in Table 4-7.

The functional value is calculated by adding the structure value to the contents value. The functional value is the sum of structure and content value.

Table 4-7 Facility Functional Value Estimates

Type of Structure (Occupancy Class)	Total Count	Estimated Value of Infrastructure	Estimated Value of Contents	Functional Value
Residential	2692	\$706,380,800	\$353,190,400	\$1,059,571,200
Hospital	1	\$49,000,000	\$73,500,000	\$122,500,000
City Main Buildings	6	\$19,350,497	\$19,350,497	\$38,700,994
Educational	5	\$80,657,700	\$40,328,850	\$120,986,550
Natural Gas	94 miles	\$20,000,000	\$0	\$20,000,000
Homer Electric		\$2,663,028	\$22,681,363	\$25,344,391
Total	2704	\$878,052,025	\$509,051,110	\$1,387,103,135

4.4 Risk Assessment Summaries

Earthquake:

The City of Homer and surrounding area may experience mild to significant earthquake movement sufficient to damage infrastructure. Although all structures are exposed to earthquakes, buildings constructed of wood exhibit more flexibility than those composed of unreinforced masonry, (URM).

The entire population, residential structures and critical facilities are vulnerable to an earthquake. All 5,100 people in 2,692 residences plus the community facilities for a total functional value of \$1.317 Billion are all vulnerable. Table 4-7.

Erosion:

In 2004, the City contracted with the Kachemak Bay Research Reserve (KBRR) to conduct a coastal erosion study. KBRR acquired historical aerial photos, and drew a line at the top of the bluff for each photograph set. Then, the researchers calculated the average rate of erosion for each part of the Homer shoreline.

Parcels along the shoreline where the erosion rates are highest are certainly vulnerable especially when high tides and high winds coincided. In all, about 10% of the population is vulnerable to erosion, 261 residential structures are vulnerable. Table 4-3.

Flood: Parcels along the shoreline are certainly vulnerable to flooding, especially when weather conditions create high velocity wave, high tides and high winds. In all, about 10% of the population is vulnerable to flooding, 261 residential structures valued are vulnerable. Table 4-3.

Subsidence:

About 10 percent of Homer's population is vulnerable to subsidence. This represents 510 people, and 261 residential structures are vulnerable. Table 4-8.

Severe Weather:

The entire population of Homer, residential structures and community facilities are vulnerable to severe weather. The total functional value of the structures in Homer is \$1.317 Billion. Table 4-7.

Wildland Fire:

The entire population of Homer, residential structures and community facilities are vulnerable to wildland fires. The total functional value of the structures in Homer is represented on Table 4-7.

Economic and Development Trends

The City has several zoning districts ranging from Conservation to Commercial-Industrial zones. In 2003 the City received the right to regulate development in the Bridge Creek Watershed Protection District (BCWPD) which surrounds the City’s water supply. In 2010 the City adopted the 2008 Homer’s Comprehensive Plan which also includes the 2010 Homer Spit Comprehensive Plan.

To reduce the effects of fire hazards, all new and the remodel of existing commercial and commercial residential buildings must be certified by the State Fire Marshal Office per Homer City Code (HCC) 21.70. To reduce the effects of flood and tsunami hazards, all new projects in the Flood zone must be elevated one foot or more above the Base Flood Elevation (BFE), HCC 21.41. The chart below shows the building trends from 2010 to 2014.

Zoning Permits Analysis 2010-2014

Year	Residential Zoning Permits		Commercial Zoning Permits		Total
	New Construction	Additions/Remodels/Accessory	New Construction	Additions/Remodels/Accessory	
2010	26	16	3	1	46
2011	28	12	5	1	46
2012	23	14	1	4	42
2013	36	14	11	3	64
2014	37	10	10	5	62

Alaska Risk MAP Program

The City of Homer is a participant in the Risk MAP Study of the Homer Spit which includes:

- A detailed coastal flood hazard analysis including storm surge (coastal hydrology) and overland wave height analysis (coastal hydraulics) near Beluga Lake and Beluga Slough
- A regulatory Flood Insurance Study (FIS) Report document for the Community. A FIS contains flood information for a community and is developed in conjunction with the Flood Insurance Rate Maps (FIRM). The FIS, also known as a flood elevation study, frequently contains a narrative of the community’s flood history and explains the engineering methods used to develop the FIRM. The study also contains flood profiles for studied flooding sources and may be used to determine Base Flood Elevations for some areas.
- Preparation of a regulatory Flood Insurance Rate Map (FIRM) map for all panels within the Community which identifies the Community's flood zones, base flood elevations, and floodplain boundaries. This map is used to determine areas requiring flood insurance for properties with federally-backed mortgages.

Table 4-8 estimates damage values from the vulnerability assessment, and the population affected by each hazard.											
Hazard	Pop.	Residential Structures				Community Facilities				Total	
		No.	Structure Value	Contents Value	Functional Value	No.	Structure Value	Contents Value	Functional Value	No.	Functional Value
Earthquake	5100	2,692	\$706,380,800	\$353,190,400	\$1,059,571,200	72	\$135,256,597	\$149,343,646	\$284,600,243	2,764	\$1,344,171,443
Erosion	510	269	\$70,638,080	\$35,319,040	\$105,957,120	8	\$13,525,660	\$14,934,365	\$28,460,024	276	\$134,417,144
Flooding	510	269	\$70,638,080	\$35,319,040	\$105,957,120	8	\$13,525,660	\$14,934,365	\$28,460,024	276	\$134,417,144
Climate Change	510	269	\$70,638,080	\$35,319,040	\$105,957,120	8	\$13,525,660	\$14,934,365	\$28,460,024	276	\$134,417,144
Subsidence	510	269	\$70,638,080	\$35,319,040	\$105,957,120	8	\$13,525,660	\$14,934,365	\$28,460,024	276	\$134,417,144
Severe Weather	5100	2,692	\$706,380,800	\$353,190,400	\$1,059,571,200	72	\$135,256,597	\$149,343,646	\$284,600,243	2,764	\$1,344,171,443

V. City of Homer Mitigation Goals

The City of Homer All-Hazard Disaster Mitigation Planning Team identified 10 goals related to this revision of the plan. These far-reaching goals are based upon the current risk analysis conducted by the team and were determined to be achievable under certain conditions of staff and funding support over the next 3-5 years.

Table V-1 Mitigation Goals

No.	City of Homer Goal Description
1	Promote recognition and mitigation of all hazards that affect the City of Homer to all Extents Possible
2	Apply existing City Planning Department requirements and design mechanisms when appropriate to mitigation efforts.
3	Reduce the potential for loss from all hazards that may impact the City of Homer.
4	Reduce the city's vulnerability to potential damage due to flooding.
5	Reduce the possibility of damage and loss from wildland fires in the community.
6	Reduce the community's vulnerability to loss resulting from earthquake.
7	Reduce the potential for loss resulting from transmitted or local tsunami.
8	Reduce the potential for property loss and damage due to volcanic ash fall.
9	Reduce the potential for impact of a technological failure on city infrastructure and the community.
10	Reduce the potential damage to the community from a biological, chemical or other hazardous material.

The City of Homer did not previously use a City of Homer Mitigation Action Plan Matrix as in V-4. The mitigation action plan was reformatted in order to comply with FEMA Best Practices. The team reviewed the 2010 HMP and revised to reflect progress and changes in local mitigation efforts where it is most appropriate. The changes in priorities are noted in V-4 with particular items highlighted (grayed cells). Mitigation prioritization was completed based on a combination of historical knowledge of events over the previous 10 years, the likelihood of reoccurrence, and the limited expectation of financial aid and lack of local landowner support for acquiring flood prone, erosion prone or other vulnerable private property.

Projects Completed or Deleted from the 2010 Plan:

- A. Public Education Goals (Completed)
 - a. Projects completed and ongoing through continues public outreach.
- B. Tsunami Goals (Completed)
 - a. Objectives completed and ongoing
 - i. Maintaining Tsunami Ready Community Status/2017 submission of renewal
 - ii. Tsunami signage being maintained by Homer Public Works
 - iii. Zoning and Planning has updated flood mapping and has implemented action items identified in Plan
- C. Wildfire Goals
 - a. Defensible space projects are ongoing with some completed around the Homer Reservoir. (Completed)
 - b. All open burning within city limits requires permits year round (Completed)
 - c. Burn suspension and bans coordinated with the Division of Forestry (Completed)
 - d. Alternate means of disposal issues not address by city or borough (Deleted, no funding)

- D. Earthquake Goals
 - a. On-going through community outreach (Completed)
 - b. Other goals dropped for local introduction and enforcement/no capacity for regulation (Deleted)
- E. Flood Goals
 - a. Continued participation in National Flood Insurance Program (Completed)
 - b. Flood mapping/updating ongoing. (Completed)
 - c. Zoning requirements for flood prone areas incorporated into City Code (Completed)
- F. Volcanic Ash (Completed)
 - a. Continued through community education and outreach by public events and presentations
- G. Technological Hazards (Completed)
 - a. Continued through community education and outreach
- H. Biological/Chemical/Hazardous Materials (Completed)
 - a. Promote safe disposal of hazardous materials by posting borough drop-off dates at various facilities.
- I. Economic
 - a. Continued outreach to community for development of resiliency programs/education

Mitigation Actions for the City of Homer

A mitigation action is defined by FEMA as being “. . . a specific action, project, activity, or process taken to reduce or eliminate long-term risk to people and property from hazards and their impact”. The City of Homer has identified the following actions that may be incorporated across the entire risk analysis spectrum of potential community threats.

Table V-2 City of Homer Goals and Actions

No.	Goals Descriptions	ID	Action Descriptions
1	Promote the recognition and mitigation of all hazards that affect the City of Homer to all extents possible.	A	Conduct a biennial Public Disaster Preparedness Conference to provide information to the community about risks identified by the risk assessment for the City of Homer

		B	Produce or obtain and distribute information regarding local risks including preparedness and mitigation information in key city locations: City Hall, Fire Station, and Public Library.
		C	Maintain staff awareness and proficiency in identifying all-hazards risk and currency in mitigation practices by attending training when available.
		D	Seek public funding or available grants to finance public outreach campaigns.
2	Apply existing City Planning Department requirements and design mechanisms when appropriate to mitigation efforts.	A	Review all City Planning and Zoning policies and ordinances to determine when existing plan/policy may be applicable to mitigation efforts.
		B	Develop a "cross-walk" document that identifies planning efforts applicable to mitigation.
		C	Support staff efforts to incorporate an all-hazards mitigation approach to city planning efforts.
		D	Target areas of development in hazard prone areas such as the Homer Spit, and steep slopes to mitigate future loss due to coastal erosion, tsunami or landslide.
3	Reduce the potential for loss from all hazards that may impact the City of Homer.	A	Conduct a biennial Public Disaster Preparedness Conference to provide information to the community about risks identified by the risk assessment for the City of Homer
		B	Maintain contact with planning team members from the stakeholder community to retain established relationships and to foster new relationships when stakeholder representation changes.
4	Reduce the city's vulnerability to potential damage due to flooding events.	A	Maintain the city's participation in the NFIP
		B	Update the Flood Hazard Maps and complete mapping of the City's watershed and drainage patterns.

		C	Review flooding events to determine potential mitigation strategies to prevent repetitive losses.
		D	Manage development in flood hazard areas.
		E	Insure that flood reduction measures minimize the need for rescue and relief efforts associated with flooding.
		F	Insure that flood reduction methods are consistent with retaining natural flood functions.
		G	Acquire land in high-hazard areas, such as the Bridge Creek Watershed, Homer Spit and Kachemak Bay Shoreline to limit residential or commercial development in flood prone areas.
5	Reduce the possibility of damage and loss from wildland fires in the community.	A	Encourage property owners to create "defensible space" around their property to reduce wildfire propagation to buildings.
		B	Discourage homeowners and builders from using flammable products on the outside and roofs of structures located in the wildland interface zone.
		C	Control and direct open burning within the city limits of Homer by requiring year-round open burning permits.
		D	Establish alternative debris disposal methods to allow property owners to safely dispose of organic debris without burning.
		E	Prohibit open burning during high hazard weather conditions identified by the Division of Forestry or local forecasts.
		F	Develop wildfire fuel reduction projects identified in the Community Wildfire Protection Plan.
6	Reduce the community's vulnerability to loss resulting from earthquake.	A	Protect existing critical infrastructure from earthquake damage by promoting seismic retrofits.

		B	Promote the adoption of local seismic building codes based on national standards.
		C	Encourage property owners to conduct seismic mitigation upgrades on existing structures.
7	Reduce the potential for loss resulting from transmitted or local tsunami.	A	Maintain the community's participation in the Tsunami Ready program.
		B	Maintain adequate signage identifying evacuation routes from hazard areas.
		C	Encourage the City of Homer Planning Department to incorporate tsunami risk areas when granting land-use permits.
8	Reduce the potential for property loss and damage due to volcanic ash fall following an eruption.	A	Maintain public awareness regarding the risk of volcanic ash during an eruption.
		B	Advise the public to limit travel and to prevent damage to machinery during ash alerts.
		C	Reduce non-essential travel.
		D	Remove ash from roofs if level of fall poses a load hazard.
9	Reduce the potential for impact of a technological failure on city infrastructure and the community.	A	Encourage development of Continuity of Operations Planning (COOP) for all critical city functions.
		B	Encourage the private sector development of COOP.
10	Reduce the potential damage to the community from a biological, chemical, or other hazardous material.	A	Maintain the relationship between the city and the State Department of Health, Public Health Department to ensure the rapid deployment of vaccines and other medications during a pandemic or other health emergency.
		B	Monitor the storage of all hazardous materials identified by Tier II reporting to the City.
		C	Encourage the public to safely store, use and dispose of hazardous materials in the home.
		D	Advertise when the Kenai Peninsula Borough conducts hazardous materials collections throughout the year.

The City of Homer All-Hazard Disaster Mitigation Planning Team reviewed, evaluated and prioritized each mitigation goal based on the threat analysis for the jurisdiction during the review of the plan. The team compiled goals and potential actions based on a presumption of local, borough, state and federal support including but not limited to the: City of Homer, Kenai Peninsula Borough, State of Alaska Department of Transportation, Alaska Division of Homeland Security and Emergency Management, Alaska Division of Public Health, and U.S. Department of Homeland Security/FEMA Region X.

During the planning process the team reviewed the Simplified Social, Technical, Administrative, Political, Legal, Economic, and Environmental (STAPLEE) criteria in consideration of the development of these actions items related to mitigation. The planning team also considered common impediments to mitigation, the foremost of which is lack of available funding. Other impediments include denial of a potential problem in light of little historical record of catastrophic events locally; lack of political will to impose unfunded mandates on a local population; and simply lack of will to address a particular problem.

Table V-3 STAPLEE Evaluation Criteria for Mitigation Actions

Evaluation Category	Discussion of Important Points	Considerations
Social	The public support for the overall mitigation strategy and specific mitigation efforts	Community acceptance Adversely affects population
Technical	If the mitigation action is technically feasible and if it is a whole or partial solution	Technical feasibility Long-term solutions Secondary impacts
Administrative	If the community has the personnel and administrative capabilities necessary to implement the action or whether outside help will be necessary	Staffing Funding allocation Maintenance/operations
Political	What the community and its members feel about issues related to the environment, economic development, safety, and emergency management	Political support Local champion Public support
Legal	Whether the community has the legal authority to implement the action, or whether the community must pass new regulations/ordinances	Local, State, and Federal authority Potential legal challenges

<p style="text-align: center;">Economic</p>	<p>If the action can be funded with current or future internal and external sources, if the costs seem reasonable for the size of the project, and if enough information is available to complete a FEMA Benefit-Cost Analysis</p>	<p>Benefit/cost of action Contributes to other economic goals Outside funding required FEMA Cost/Benefit Analysis</p>
<p style="text-align: center;">Environmental</p>	<p>The impact of the environment because of public desire for a sustainable and environmentally healthy community</p>	<p>Effect of local ecosystems Consistent with community environmental goals Consistent with local, state and federal laws</p>

During the review of the Homer All-Hazard Disaster Mitigation Plan in 2015/2016 the Planning Team updated and prioritized each mitigation action that was selected to be included in the actionable items listed. The Planning Team reviewed the local history of identified hazards, the extent of the hazard and risk of low frequency hazards identified in the risk assessment. The probability of each identified hazard was rates high, medium or low. The highest priority was given to events with historical records of occurring or which have a moderate potential of occurring but a high potential for damage and loss of life. Medium priority was given to hazards the impact the community less frequently or that poses less risk to loss of life. Low priority events are those that have historically resulted in community impact to people or property.

Table V-4 City of Homer Mitigation Action Plan Matrix

Action ID	Description	Priority	Responsible Agency/Department(s)	Potential Funding	Time Frame	Action Item Status New (N), Carry-Over (C)	Feasibility
1A	Conduct biennial Public Disaster Preparedness Conference (Even Year)	Medium	City of Homer, KPB- OEM, ADHSEM	Existing Fire Department Budget	Biennially	N	Very likely to continue, may require more advertising through community stakeholders
1B	Produce or obtain and distribute information regarding local risks including preparedness and mitigation information in key city locations (Objective A.1.1 in previous plan)	Medium	Fire Department, Library, City Hall, Port & Harbor	Existing Fire Department Budget	On-going, annually	C	Will require locations to monitor information and request additional when supply runs low
1C	Maintain staff awareness and proficiency in identifying all- hazards risk and currency in mitigation practices by attending training when available	High	City of Homer, KPB- OEM, ADHSEM	City of Homer, KPB OEM, ADHSEM, FEMA	1-4 years	N	Continued funding of courses through Homeland Security/EMI is necessary
1D	Seek public funding or available grants to finance public outreach campaigns	Medium	City of Homer	City of Homer, ADHSEM, FEMA	1-4 years	N	Homeland Security grants through ADHSEM are sometimes available to fund public information programs
2A	Review all City Planning and Zoning policies and ordinances to determine when existing plan/policy may be applicable to mitigation efforts (Objective B.3.1 in previous plan)	Medium	Planning Department, Fire Department	City of Homer	1-4 years	C	Will require staff time and access to applicable plan and policies
2B	Develop a "cross-walk" document that identifies planning efforts applicable to mitigation	Low	Planning Department, Fire Department	City of Homer	1-2 years	N	Will require staff time and access to applicable plan and policies

2C	Support staff efforts to incorporate an all-hazards mitigation approach to city planning efforts	Medium	Planning Department, Fire Department	City of Homer	1-5 years	N	This is a policy recommendation only
2D	Target areas of development in hazard prone areas such as the Homer Spit, and steep slopes to mitigate future loss due to coastal erosion, tsunami or landslide (Objective B.3.1 in previous plan)	Medium	Planning Department	City of Homer	1-5 years	C	This is an on-going process, along with flood plain management and steep slope development policies
3A	Conduct biennial Public Disaster Preparedness Conference	Medium	City of Homer, KPB- OEM, ADHSEM	City of Homer, KPB OEM, ADHSEM, FEMA	1-5 years	N	Very likely to continue, may require more advertising through community stakeholders
3B	Maintain contact with planning team members from the stakeholder community to retain established relationships and to foster new relationships when stakeholder representation changes	High	City of Homer	City of Homer	1-5 years	N	This is a necessary component of plan maintenance
4A	Maintain the city's participation in the NFIP (Objective E.1.1 in previous plan)	High	Planning Department	City of Homer	1-5 years	C	On-going since adoption
4B	Update the Flood Hazard Maps and complete mapping of the City's watershed and drainage patterns (Objective E.2.1 in previous plan)	High	Planning Department, FEMA	City of Homer	1-2 years	C	Currently all flood hazard mapping is being updated. Additional staff time will be required to complete watershed and drainage pattern mapping
4C	Review flooding events to determine potential mitigation strategies to prevent repetitive losses (Objective E.3 in previous plan)	Medium	Planning Department, Public Works, Fire Department	City of Homer	1-3 years	C	Will require additional staff time and commitment to accomplish

4D	Manage development in flood hazard areas (Objective E.4 in previous plan)	Medium	Planning Department	City of Homer	1-5 years	C	Continued development of planning and zoning policies in hazard areas is essential for this action to succeed
4E	Insure that flood reduction measures minimize the need for rescue and relief efforts associated with flooding (Objective E.4.2 in previous plan)	High (Medium)	Planning Department, Fire Department	City of Homer	1-3 years	C	Flood reduction efforts proposed by zoning and planning efforts should be reviewed by the emergency manager to ensure reduction of unintended consequences
4F	Insure that flood reduction methods are consistent with retaining natural flood functions	Low	Planning Department, Department of Natural Resources, Department of Environmental Conservation	City of Homer	1-5 years	N	Flooding is recognized as being a naturally occurring event that can result in positive outcomes, when property and live are not in jeopardy
4G	Acquire land in high-hazard areas, such as the Bridge Creek Watershed, Homer Spit and Kachemak Bay shoreline to limit residential or commercial development in flood prone areas	Medium	City of Homer, ADHSEM, FEMA	City of Homer, ADHSEM, FEMA	1-4 years	N	Possible funding through pre-disaster mitigation program funding. Assist in reducing repetitive loss from flood
5A	Encourage property owners to create "defensible space" around their properties to reduce wildfire propagation to buildings (Objective C.1.1 in previous plan)	High	City of Homer, KPBB- OEM	City of Homer	1-5 years	C	Continued support of programs such as "Firewise" have reduced the impact of wildfire on the community

5B	Discourage homeowners and builders from using flammable products on the outside and roofs of structures located in the wildland interface zone	Medium	Fire Department, Division of Forestry	City of Homer, Department of Natural Resources, ADHSEM	1-5 years	N	The most dangerous period of a wildland fire is when it is in close proximity to structures. Using less flammable products to side and roof building reduces the likelihood of fire spreading to these areas from a wildfire
5C	Control and direct open burning within the city limits of Homer by requiring year-round open burning permits (Objective C.2.1 in previous plan)	High	Fire Department	City of Homer	On-going, annually	C	Homer adopted year-round open burn permits to better control the use of open burning beyond that addressed by the Division of Forestry's seasonal permitting
5D	Establish alternative debris disposal methods to allow property owners to safely dispose of organic debris without burning (Objective C.3.1 in previous plan)	Medium (High)	Fire Department, KPB- OEM, Division of Forestry	City of Homer, Department of Natural Resources, ADHSEM	1-4 years	C	Homeowners require a method to easily and economically dispose of yard debris and slash without burning. Use of tub grinders, chippers etc. may reduce the reliance on open burning
5E	Prohibit open burning during high hazard weather conditions identified by the Division of Forestry or local forecasts (Objective C.4.1 in previous plan)	High	Fire Department, Division of Forestry	City of Homer	On-going, annually	C	Open burning restrictions have dramatically reduced the incidence of escaped burn piles in Homer

5F	Develop wildfire fuel reduction projects identified in the Community Wildfire Protection Plan (CWPP) (Objective C.5.1 in previous plan)	High	Fire Department, KPB- OEM, Division of Forestry	City of Homer Department of Natural Resources, ADHSEM	2-4 years	C	The CWFP is out of date and needs to be updated. The City of Homer has issued a letter of support for an area-wide grant to update the plans across the entire borough
6A	Protect existing critical infrastructure from earthquake damage by promoting seismic retrofits (Objective D.1 in previous plan)	Medium	City of Homer	City of Homer, FEMA	2-10 years	C	Critical infrastructure designed under less strict seismic protection methods may not be sufficiently protected from earthquake. The cost of engineering and installing seismic upgrades may be funded through mitigation grants
6B	Promote the adoption of local seismic building codes based on national standards (Objective D.2 in previous plan)	Low	City of Homer, State Fire Marshal's Office	City of Homer, State of Alaska	2-4 years	C	No residential building code is adopted statewide. Local jurisdictions may adopt a more strict code than the state. Homer is a non-deferred jurisdiction, meaning that it relies on the State Fire Marshal's office to conduct new building plan review and fire inspections

6C	Encourage property owners to conduct seismic mitigation upgrades on existing structures	Medium	City of Homer	City of Homer	1-4 years	N	Private structures may have been constructed without the consideration of earthquake. Private property owners should be encouraged to address the dangers of earthquake in their home and small businesses
7A	Maintain the community's participation in the Tsunami Ready program (Objective B.1 in previous plan)	High	City of Homer, National Weather Service	City of Homer, NOAA	1-4 years	C	Tsunami Ready designation indicates that the community is prepared to receive and disseminate hazard information to its residents through redundant methods when and if necessary
7B	Maintain adequate signage identifying evacuation routes from hazard areas (Objective B.2.1 in previous plan)	High	City of Homer, Department of Transportation, Public Works	City of Homer, ADHSEM	On-going, annually	C	Identification of evacuation routes is essential during a tsunami event. Signage is vandalized and stolen for various reasons and must be replaced when indicated
7C	Encourage the City of Homer Planning Department to incorporate tsunami risk areas when granting land-use permits (Objective B.3 in previous plan)	Medium	Planning Department	City of Homer	On-going, annually	C	Like flood plain management, construction and land use in tsunami prone areas needs to be regulated with loss reduction in mind

8A	Maintain public awareness regarding the risk of volcanic ash during an eruption	Medium	City of Homer, KPB- OEM, ADHSEM	City of Homer, KPB OEM, ADHSEM, FEMA	On-going, annually	N	Media releases prior to and during an eruption can adequately distribute critical information to the public during an event. Informational brochures should be available at key locations across the city
8B	Advise the public to limit travel and to prevent damage to machinery during ash alerts (Objective F.1.1 in previous plan)	Medium	City of Homer, KPB- OEM, ADHSEM	City of Homer, KPB OEM, ADHSEM, FEMA	On-going, annually	C	Individual mitigation is essential to limit the damage from ash following an eruption. Dissemination of critical information will be provided via available media
8C	Reduce non-essential travel	Medium	All	City of Homer	On-going, annually	N	Advise all non-essential travel be delayed until after the ash has been eliminated to reduce the impact to air quality and damage to vehicles
8D	Remove ash from roofs if level of fall poses a local hazard	Medium	All	City of Homer	On-going, annually	N	Disseminate information regarding risk of accumulated ash on roofs and buildings

9A	Encourage development of COOP for all city functions	Medium	City of Homer, ADHSEM, FEMA	City of Homer, ADHSEM, FEMA	On-going, annually	N	All city departments, essential to operations during a disaster or during recovery should have a COOP in place. Resources for COOP assistance are readily available on line
9B	Encourage private sector development of COOP	Medium	City of Homer, ADHSEM, FEMA	City of Homer, ADHSEM, FEMA	On-going, annually	N	Direct private sector to available resources for COOP development
10A	Maintain the relationship between the city and the State Department of Health, Public Health Department to ensure the rapid deployment of vaccines and other medications during a pandemic or other health emergency	High	City of Homer, Alaska Department of Health/Public Health	City of Homer, Alaska Department of Health/Public Health	On-going, annually	N	Existing relationships between the local public health office and the city are the result of cooperation during the H1N1 POD development and assisting with the Swine Flu vaccination program
10B	Monitor the storage of all hazardous materials identified by Tier II reporting to the city	Medium	City of Homer, KPBL LEPC	City of Homer, KPBL LEPC	On-going, annually	N	Locations that store reportable quantities of hazardous materials are required to report to the local jurisdiction each year. The Fire Department maintains these records. For locations outside the city the KPBL OEM maintains those records

10C	Encourage the public to safely store, use, and dispose of hazardous materials in the home	High	City of Homer, DEC	City of Homer, DEC	On-going, annually	N	The KPB offers residents several opportunities each year to safely dispose of hazardous materials at collection point around the Borough. There is no cost to keep the public informed of these events to the city
10D	Advertise when the KPB conducts hazardous materials collections throughout the year	Medium	City of Homer, KPB OEM	City of Homer, KPB OEM	Quarterly	N	Disseminate information to the public when collection date are each quarter

Works Cited

South Peninsula Hospital. *Rock and a Hard Plan: After-Action Report/Improvement Plan*, 2015

FEMA. *Community Rating System (CRS)*, 2013.

Foster, Rick A. *Erosion Responses for Property Owners*. Kachemak Bay Research Reserve Coastal Training Program, 2006.

FEMA. *Higher Regulatory Standards*, 2006.

Scheer, David, and Allegra Bukojemsky. *Landscape Suitability Map*. Rep. Homer: Homer Soil and Water Conservation District, 2008.

Smith, Orson P. *Coastal Erosion Responses for Alaska*. University of Alaska Fairbanks: Alaska Sea Grant College Program, 2006.

MEMORANDUM

TO: Kelly Cooper, Assembly President
Kenai Peninsula Borough Assembly Members

THRU: Charlie Pierce, Borough Mayor *CP*

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

DATE: January 8, 2020

RE: Ordinance 2019-05, An Ordinance Amending the Kenai Peninsula Borough Hazard Mitigation Plan by Deleting Existing Annex A, 2015 City of Homer All Hazards Mitigation Plan Update, and Adopting the City of Homer All Hazards Mitigation Plan 2018 Update as the New Annex A.

The Kenai Peninsula Borough Planning Commission reviewed the subject Ordinance during their regularly scheduled January 6, 2020 meeting.

A motion passed by unanimous consent to recommend approval of the subject Ordinance.

In the Ordinance, please make the following amendment to the last WHEREAS statement:

WHEREAS, the borough Planning Commission at its regularly scheduled meeting of January 06, 2020 recommended approval by unanimous consent of the City of Homer All Hazards Mitigation Plan 2018 Update.

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

8. Minutes*a. December 16, 2019 Planning Commission Meeting**

****Approved with the adoption of the consent agenda.***

MOTION: Commissioner Carluccio moved, seconded by Commissioner Ecklund, to approve the consent and regular agenda.

The consent agenda items were read. Chairman Martin asked if anyone present wanted to speak or had concerns about any of the items on the consent agenda. Seeing and hearing no one, Chairman Martin returned the discussion to the Commission.

MOTION PASSED: Seeing and hearing no discussion or objection, the motion passed by unanimous consent.

PUBLIC COMMENT / PRESENTATIONS / COMMISSIONERS


Chairman Martin opened the meeting for public comment for items not on the agenda. Seeing and hearing no one wishing to comment, public comment was closed and the meeting continued.

UNAPPROVED

Kenai Peninsula Borough
Planning Department

MEMORANDUM

TO: Kelly Cooper, Assembly President
Kenai Peninsula Borough Assembly Members

FROM: Max Best, Planning Director 

DATE: January 8, 2020

RE: Vacate the 50-foot-wide pedestrian and maintenance easement adjoining the high-water mark of the Kenai River within the south-easterly portion of Lot 1A, Block 6, Kenai River Keys Subdivision (Plat KN 84-126) for approximately 23 feet in width as granted on Kenai River Keys Subdivision, Lot 1A, Block 6, Stephenkie Subdivision No 2, Lot 9A1, Block 2 (Plat KN 84-126). The pedestrian and maintenance easement being vacated is unconstructed and located within the NE 1/4 of Section 35, Township 5 North, Range 8 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2019-148V. Petitioner: Frank G. Turpin III and Jacqueline A. Turpin of Sterling, AK.

In accordance with AS 29.40.140, no vacation of a Borough right-of-way and/or easement may be made without the consent of the Borough Assembly.

During their regularly scheduled meeting of January 6, 2020, the Kenai Peninsula Borough Planning Commission granted approval of the proposed pedestrian and maintenance easement vacation by unanimous consent based on the means of evaluating public necessity established by KPB 20.70. This petition is being sent to you for your consideration and action.

Draft, unapproved minutes of the pertinent portion of the meeting and other related materials are attached.

**Kenai Peninsula Borough
Petition to Vacate Public Right-of-Way/Easement/Platted Public Area**



- \$500 non-refundable fee
- City Advisory Planning Commission
- Name of public right-of-way proposed to be vacated is dedicated by the plat of Kenai River Keys Subdivision, Lot 1A, Block 6 and Stephenkie Subdivision No. 2 Lot 9A1, Block 2 filed as Plat No. 84-77 and 84-126 in Kenai Recording District.
- Are there associated utility easements to be vacated? Yes No
- Are easements in use by any utility company? If so, which company Not in use
- Easement for public road or right-of-way as set out in (specify type of document) only on plats as recorded in Book _____ Page _____ of the _____ Recording District. (Copy of recorded document must be submitted with petition.) Copy of plats provided.
- Submit three copies of plat or map showing area proposed to be vacated. In the case of public right-of-way, the submittal must include a sketch showing which parcels the vacated area will be attached to.
 - Has right-of-way been fully or partially constructed? Yes No
 - Is right-of-way used by vehicles / pedestrians / other? Yes No
 - Is alternative right-of-way being provided? Yes No

The petitioner must provide reasonable justification for the vacation. Reason for vacating:

1. A 50 ft pedestrian and maintenance easement along the high water mark of the Kenai River was established for Stephenkie Alaska Subdivision on Plat 79-83 KRD, prepared by the Alaska Division of Lands as State Land Survey No. 73-146. This plat showed the easement extending to the section line common to sections 35 and 36, but not west of that section line within Kenai River Keys Subdivision. In 1984, as part of the Section Line Easement Vacation Plat (Plat 84-77 KRD) and the Vacation Plat for a portion of the right-of-way for Humpy Road (Plat 84-126 KRD), this easement was mistakenly depicted as extending beyond the section line and into Kenai River Keys Subdivision. Upon approval of the vacation by the State of Alaska and the Kenai Peninsula Borough Planning Commission, 23 ft of the former Section Line Easement and Humpy Road was attached to Lot 1 which then became Lot 1A. The 50' pedestrian and maintenance easement then extended that 23 ft into Lot 1A. Vacation of this portion of the 50' pedestrian and maintenance easement corrects the mistake made by the surveyor on the vacation plats.
2. The 50 ft pedestrian and maintenance easement through Lots 9-A, 10-B and 10-A, Block 2, Stephenkie Subdivision No. 2 (Plat 81-96 KRD), immediately east of the section line easement, was vacated by Kenai Peninsula Borough Planning Commission Resolution 89-30.
3. The portion of the section line easement and Humpy Road that was not vacated is 20 ft wide and extends from Humpy Road to the Kenai River between Lots 1A and 9-A. This portion remains available for public access.


Petition to Vacate Public Right-of-Way/Easement/Platted Public Area
Submitted by Frank G. Turpin III
November 19, 2019

The petition must be signed (written signature) by owners of the majority of land fronting the right-of-way, easement, or platted public area proposed to be vacated. Each petitioner must include address and legal description of his/her property.

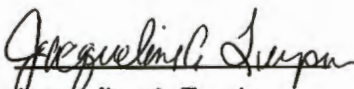
Submitted By:

Name Frank G. Turpin III
Address PO Box 1113
Sterling, AK 99672
Phone 907-953-9775

Petitioners:

Signature 
Name Frank G. Turpin III
Address PO Box 1113
34505 Chinook Run Drive
Sterling, AK 99672

Owner of T 5N R 8W SEC 35 Seward Meridian KN 0840126 KENAI RIVER KEYS SUB
VACATION & R EPLAT LOT 1A BLK 6

Signature 
Name Jacqueline A. Turpin
Address PO Box 1113
34505 Chinook Run Drive
Sterling, AK 99672

Owner of T 5N R 8W SEC 35 Seward Meridian KN 0840126 KENAI RIVER KEYS SUB
VACATION & R EPLAT LOT 1A BLK 6

AGENDA ITEM F. PUBLIC HEARINGS

4. Vacate the 50-foot-wide pedestrian and maintenance easement adjoining the high-water mark of the Kenai River within the south-easterly portion of Lot 1A, Block 6, Kenai River Keys Subdivision (Plat KN 84-126) for approximately 23 feet in width as granted on Kenai River Keys Subdivision, Lot 1A, Block 6, Stephenkie Subdivision No 2, Lot 9A1, Block 2 (Plat KN 84-126). The pedestrian and maintenance easement being vacated is unconstructed and located within the NE 1/4 of Section 35, Township 5 North, Range 8 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2019-148V.

Staff Report given by Scott Huff

PC Meeting: 1/6/20

Purpose as stated in petition: A 50-foot-wide pedestrian and maintenance easement along the high water mark of the Kenai River was established for Stephenkie Alaska Subdivision on Plat KN 79-83, prepared by the Alaska Division of Lands as State Land Survey No 73-146. This plat showed the easement extending to the section line common to sections 35 and 36, but not west of that section line within Kenai River Keys Subdivision. In 1984, as part of the Section Line Easement Vacation Plat (Plat KN 84-77) and the Vacation Plat for a portion of the right-of-way for Humpy Road (Plat KN 84-126), this easement was mistakenly depicted as extending beyond the section line and into Kenai River Keys Subdivision. Upon approval of the vacation by the State of Alaska and the Kenai Peninsula Borough Planning Commission, 23 feet of the former Section Line Easement and Humpy Road was attached to Lot 1, which then became Lot 1A. The 50-foot-wide pedestrian and maintenance easement then extended that 23 feet into Lot 1A. Vacation of this portion of the 50-foot-wide pedestrian and maintenance easement corrects the mistake made by the surveyor on the vacation plats. The 50-foot-wide pedestrian and maintenance easement through lots 9-A, 10-B and 10-A, Block 2 Stephenkie Subdivision No 2 (Plat KN 81-96), immediately east of the section line easement, was vacated by Kenai Peninsula Borough Planning Commission Resolution 89-30. The portion of the section line easement and Humpy Road that was not vacated is a 20-foot-wide corridor and extends from Humpy Road to the Kenai River between Lots 1A and 9-A. This portion remains available for public access.

Petitioners: Frank G. Turpin III and Jacqueline A. Turpin of Sterling, AK.

Notification: Public notice appeared in the December 26, 2019 issue of the Peninsula Clarion as a separate ad. The public hearing notice was published in the January 2, 2020 issue of the Peninsula Clarion as part of the Commission's tentative agenda.

13 certified mailings were sent to owners of property within 300 feet of the proposed vacation. 12 receipts had been returned when the staff report was prepared.

Public hearing notices were sent by regular mail to 19 owners within 600 feet of the proposed vacation.

22 public hearing notices were emailed to agencies and interested parties.

Public hearing notices were made available to 6 KPB staff/Departments via a shared database.

Notices were mailed to the Sterling Post Office and Soldotna Public Library with a request to be posted in public locations.

The notice and maps were posted on the Borough bulletin board and Planning Department public hearing notice web site.

Comments Received:

ACS: No objections.

ENSTAR: No comments, recommendations or objections.

Homer Electric Association: Comments not available when the staff report was prepared.

KPB Addressing: no changes.

KPB Planning: This property is not affected by local option zoning or material site issues.

KPB River Center: This property is within the floodway and within the habitat protection district. No other comments.

KPB Roads Department: no comment.

State Parks: No comment.

Staff Discussion: Lot 1A adjoins the west side and Lot 9A adjoins the east side of Humpy Road where it meets the Kenai River.

Plat KN 79-83 granted a 50-foot pedestrian easement along the ordinary high way line of any water frontage lots. This easement affected the lots up river of Lot 1A.

Plat KN 81-96 carried forward the 50-foot pedestrian and maintenance easement along the high water mark of the Kenai River within Lot 9A1.

Plat KN 84-77 vacated 23 feet of the section line easement within Lot 1A and 40 feet of the section line easement within Lot 9A1. The plat noted the existing pedestrian and maintenance easement within Lot 9A, KN 81-96. From the letter dated march 1, 1984, the depiction of the 50-foot pedestrian access and maintenance easement was at the request of the State of Alaska Department of Natural Resources. The 50-foot pedestrian access and maintenance easement is under State of Alaska DNR jurisdiction and will require State approval to be vacated.

Plat KN 84-126 vacated 23 feet of the Humpy Road right-of-way within Lot 1A and a portion of the Humpy Road right-of-way within Lot 9A1. Plat KN 84-126 carried forward the 50 foot pedestrian and maintenance easement of record.

The owners of Lot 1A signed both Plat KN 84-77 and KN 84-126.

The 50-foot pedestrian and maintenance easement within the lots 9A, 10A and 10B, Block 2 Stephenkie Subdivision No. 2 show as being vacated by KPB Planning Commission Resolution 89-30, leaving only the portion of easement underlying Humpy Road and within Lot 1A. The vacation of the easement, as shown in Planning Commission Resolution 89-30 may not be valid as the easement did not go through the State DNR vacation process.

The remaining 50-foot pedestrian and maintenance easement extends 23' into Lot 1A and underlies the section line easement and Humpy Road right-of-way between Lots 1A and 9A.

If approved, the vacation will need to be finalized through the State's vacation process.

KPB 20.70 – Vacation Requirements.

Platting staff comments: Staff reviewed the vacation and all the items required by 20.70 were met, unless otherwise noted below:

20.70.050. Petition—Information required.

- B. Persons listed on the borough assessor's tax roll shall be deemed the legal owners for purposes of the vacation petition. **The petition shall include a statement containing the reasons in support of the vacation** and be accompanied by a minimum of three copies of a sketch clearly indicating the proposed vacation, submitted to the planning department at least 30 calendar days

in advance of the meeting at which it will be considered. In cases where encroachments on public rights-of-way are in question, an as-built survey, sealed by a surveyor, is required showing the improvements, existing travelways, amount of encroachment, and any other submittal as requested by the planning commission. **The burden of proof shall lie with the petitioner to support the vacation.**

Petitioner Comments: A 50-foot-wide pedestrian and maintenance easement along the high water mark of the Kenai River was established for Stephenkie Alaska Subdivision on Plat KN 79-83, prepared by the Alaska Division of Lands as State Land Survey No 73-146. This plat showed the easement extending to the section line common to sections 35 and 36, but not west of that section line within Kenai River Keys Subdivision. In 1984, as part of the Section Line Easement Vacation Plat (Plat KN 84-77) and the Vacation Plat for a portion of the right-of-way for Humpy Road (Plat KN 84-126), this easement was mistakenly depicted as extending beyond the section line and into Kenai River Keys Subdivision. Upon approval of the vacation by the State of Alaska and the Kenai Peninsula Borough Planning Commission, 23 feet of the former Section Line Easement and Humpy Road was attached to Lot 1, which then became Lot 1A.

The 50-foot-wide pedestrian and maintenance easement then extended that 23 feet into Lot 1A. Vacation of this portion of the 50-foot-wide pedestrian and maintenance easement corrects the mistake made by the surveyor on the vacation plats. The 50-foot-wide pedestrian and maintenance easement through lots 9-A, 10-B and 10-A, Block 2 Stephenkie Subdivision No 2 (Plat KN 81-96), immediately east of the section line easement, was vacated by Kenai Peninsula Borough Planning Commission Resolution 89-30.

The portion of the section line easement and Humpy Road that was not vacated is a 20-foot-wide corridor and extends from Humpy Road to the Kenai River between Lots 1A and 9-A. This portion remains available for public access.

20.70.170. Vehicular Access. The planning commission shall not approve the vacation of a right-of-way unless an equal or superior right-of-way for vehicular access exists or will be provided in exchange. Where two or more access points are necessary for large vacant or semi-vacant areas of land, the commission shall consider density, use, projected development, and maintain sufficient rights-of-way to serve potential use.

Platting Staff Comments: Per the petition, the easement is unconstructed and not used for vehicular access. Per aerial imagery, the portion of Lot 1A the easement affects is a lawn fronting the Kenai River. The easement is a pedestrian easement that does not permit vehicular uses.

The only access the easement provides is to the 23' of riverfront west of Humpy Road. The easement within Lot 1A adjoins the 20' wide Humpy Road right-of-way and a 20' wide section line easement. Per aerial imagery, the portion of Humpy Road adjoining Lot 1A is partially constructed north of the subject easement and extends north to a fully constructed portion of Humpy Road that provides access to Lot 1A. The adjoining Humpy Road right-of-way and section line easement provide equal or superior access from the constructed portion of Humpy Road to the Kenai River.

Staff recommendation: *Concur that equal or superior right-of-way for vehicular access exists within the 20' width Humpy Road right-of-way and section line easement.*

20.70.180. Other access. Other lawful uses that exist or are feasible for the right-of-way shall be considered when evaluating a vacation request. When such uses exist or could exist within rights-of-way which are not suited for general road use, the commission shall not approve the vacation request, unless it can be demonstrated that equal or superior access is or will be available. The planning commission shall consider whether alternate uses present public safety issues which support approval of the vacation.

Platting Staff Comments: Per the submittal, no other uses exist within the easement.

Per KPB four foot contours, the easement is generally flat. However, the easement within Lot 1A is not suited for general road use. This portion of Lot 1A is located within Flood Hazard Zone A3, the floodway, and the Anadromous Habitat Protection District.

The only other uses permitted within the easement are pedestrian and maintenance uses. While the easement is not in use for other uses, the easement could feasibly be used by pedestrians. However, the

easement only provides pedestrian access to the 23' of waterfront west of the Humpy Road right-of-way. As noted, above the adjoining Humpy Road right-of-way and section line easement provide equal or superior access from the constructed portion of Humpy Road to the Kenai River.

Staff recommendation: *Concur that equal or superior access for other uses exists within the 20' width Humpy Road right-of-way and section line easement.*

20.70.190. Utility provisions. All existing and future utility requirements shall be considered when evaluating a vacation request. Rights-of-way which are utilized by a public utility or which logically would be required by a public utility shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists, the commission may approve the vacation and require that a public utility easement be granted in place of the right-of-way.

Platting Staff Comments: Per the petition, the easement is not utilized by a public utility. The pedestrian and maintenance easement on its face does not permit use by a public utility.

20.70.200. Waterfront access provisions. A right-of-way which serves to provide access to public waters shall not be vacated unless such a right-of-way is wholly impractical to all modes of transport including pedestrian or the use of such right-of-way causes damage to the right-of-way, adjacent properties, the waterbody or the watercourse, or threatens public safety which cannot otherwise be corrected and where such continued damage or threat would be contrary to the public interest.

Platting Staff Comments: Vacation of this pedestrian and maintenance easement would not limit public access to the Kenai River. As noted above, public access to the Kenai River is provided by the adjoining Humpy Road right-of-way and section line easement.

Staff recommendation: *Concur that adjoining access to the public waters of the Kenai River via the Humpy Road right-of-way and section line easement will be retained even if this vacation is approved.*

20.30.220. Section line easement vacations.

Section line easement vacation petitions must comply with the requirements of KPB 20.70.040, 20.70.050 and 20.70.060. A fee is required in compliance with KPB 20.70.060. Public hearing and notice must comply with the requirements of KPB 20.70.070, 20.70.080, 20.70.100, 20.70.110 and 20.70.120. The mail notice required in KPB 20.70.090 may be by regular mail. Publication on the planning commission agenda, advertised once in local papers, posted in public areas and on the borough website prior to the meeting will satisfy the publishing requirements. The petitioner is responsible for all submittals required by the State of Alaska Department of Natural Resources (DNR) in compliance with their procedures. The petition must be reviewed and approved by the planning commission but final authority for approval and platting of the vacation rests with DNR. The petitioner is responsible for coordination with DNR and submittals to DNR.

Platting Staff Comments: Although this is not a section line easement vacation it is still an easement vacation where jurisdiction is with the State of Alaska DNR. The petitioner is responsible for coordination with DNR and submittal to DNR to obtain approval of the vacation.

Staff recommendation: *Comply with KPB 20.30.220.*

STAFF RECOMMENDATION: The petition must be reviewed and either approved or denied by the planning commission but final authority for approval of the vacation rests with the State of Alaska DNR. Based on the above means of evaluating public necessity established by KPB 20.70, the merits of the proposed vacations, and staff comments, staff recommends approval of the vacations as petitioned, subject to:

1. Approval by the State of Alaska DNR.
2. Submittal of a State Easement Vacation plat for plat committee review within two years of vacation approval.
3. Compliance within any State requirements for the 50-foot pedestrian and maintenance easement.

KPB 20.70.110:

A vacation of a street right-of-way, public area, or public easement within the borough outside of the limits of cities may not be made without the consent of the borough assembly.

The assembly shall have 30 calendar days from the date of approval in which to veto the planning commission decision. If no veto is received by the planning director within the specified period, the borough shall be considered to have given consent to the vacation.

KPB 20.70.120:

- A. Denial of a vacation petition is a final act for which no further consideration shall be given by the Kenai Peninsula Borough.
- B. Upon denial by the planning commission, no reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.

KPB 20.70.130:

THE FINAL PLAT MUST BE RECORDED WITHIN ONE YEAR OF THE VACATION CONSENT IN KPB 20.70.110.

END OF STAFF REPORT

Mr. Huff added that the owner has submitted some comments and is going to attempt to obtain a letter of non-objection from the State of Alaska. If the State of Alaska releases their jurisdiction and an easement vacation plat is not required than the vacation, if approved by the Planning Commission, can be completed by recording a resolution. If that happens staff will bring the resolution before the Planning Commission for review and approval.

Chairman Martin asked if the applicant or a representative for the applicant wished to comment on this item.

1. Frank Turpin, PO Box 1113, Sterling

Mr. Turpin is the petitioner and lives at the property being discussed. The pedestrian and maintenance easement was created in 1984 as part of a section line vacation process. When the section line easement was vacated this easement remained and he is trying to clear it up. He agrees with staff's recommendations. He does realize he needs to work with DNR to get a letter. He will attempt to get a letter that states they do not have the jurisdiction over this easement. Once they get the letter he will come back to get the resolution approved. If DNR says they do have jurisdiction he will have to get their approval to vacate the easement.

Chairman Martin asked if anyone else wished to comment. Seeing and hearing no one wishing to comment, Chairman Martin closed public comment and opened discussion among the Commission.

Mr. Huff wanted to clarify that the approval should be for four years.

MOTION: Commissioner Ruffner moved, seconded by Commissioner Foster, to vacate a 50-foot wide pedestrian and maintenance easement in the Sterling area as petitioned by Frank Turpin III.

Commissioner Ruffner asked if Fish and Game commented on this request. Mr. Huff said that they did not comment on this current application only in the past.

Commissioner Ecklund asked if Mr. Huff could clarify a statement made in the staff report. The Planning Commission has vacated similar easements in the area but the follow through process with DNR did not occur. Mr. Huff referred to page 193 of the packet, which is a subdivision plat. Lots 9A, 10B and 10A petitioned the borough to have the maintenance easement vacated. The borough approved it and recorded the resolution but it did not go through the state review process. It may be invalid. The state requested the easement be put in place so they should review if it should be vacated.

Commissioner Ecklund said since the state required the easement she was surprised it was coming to the Planning Commission first. She wanted to know since it is within the borough if the Planning Commission

is making a recommendation to DNR. Mr. Huff said that was correct. The petitioner believes the plat mistakenly carried over the easement onto his lot when the section line and right-of-way was vacated. In doing some research, staff discovered a letter in records that said the State of Alaska requested the easement to be placed on there. It was not a mistake it was purposely added. With that information, the applicant needs to go to the state and get their approval.

Commissioner Ruffner wanted to know if the state requested or required the easement. Mr. Huff said that when the previous plats were trying to vacate the section line easement the state denied the vacations until this easement was put in place. Commissioner Ruffner said it was a tradeoff, section line easement for pedestrian easement. Mr. Huff said that was correct. Commissioner Ruffner asked if Humpy Road and the pedestrian easement are still part of the section line easement. Mr. Huff said that the right-of-way and section line easement were vacated but they retained the pedestrian and maintenance easement where the section line easement use to be.

Commissioner Ruffner was looking at the map on page 200 of the packet in review of the equal or better access. Humpy Road will still provide public access to the river. Mr. Huff said that was correct.

Commissioner Ecklund stated that the state vacated the section line easement as long as the pedestrian and maintenance easement was approved. She wanted to know if the pedestrian and maintenance easement was no longer needed because Humpy Road still provides access. Mr. Huff said that would be a question for the state since they asked for that easement when the section line easement was vacated. Staff supports the request and recommends approval but the state may have a different opinion.

Commissioner Ecklund wanted to know any comments or objections were received by those that received notice. Mr. Huff said no comments were received.

Chairman Martin allowed Mr. Turpin to return to add to the discussion. Mr. Turpin said the letter from the state in 1984 said that the easement would be within the Humpy Road vacation. It did not say it had to extend all the way across. Prior to 1984, it did not extend all the way across. It just extended to the center to the section line. The letter was interpreted to extend it all the way across. He is going to the state to clarify what they meant in their comment in 1984. The state did not require it but the wording in the letter led it to be implied to be as a new easement on his property. It was not there before 1984. That is why he thought it was an error on the plat.

Commissioner Ruffner noted that part of the correspondence talks about erosion control and money spent on riprap. He asked if Mr. Turpin could add some information regarding that. Mr. Turpin said they had a portion of the section line easement vacated to be able to install root wads along the riverbank. It was eroding badly. The state vacated 23 feet on his side of the section line and 40 feet on the other side. He and the property owner on the other side paid to have root wads across whole thing. Commissioner Ruffner said they paid for what was then on public property. Mr. Turpin said yes and the River Center allowed it. Mr. Best asked what year the root wads were put in. Mr. Turpin said maybe 2006.

Commissioner Ruffner said he was going to go with staff's recommendation. There is equal access but he is surprised that Fish and Game did not comment. Knowing the process as going forward this will be run through the state.

MOTION PASSED: Seeing and hearing no discussion or objection, the motion passed by unanimous consent.

F. PUBLIC HEARINGS

- 4. Vacate a 50-foot pedestrian and maintenance easement in the Sterling area.**

KPB File 2019-148V

**Petitioners: Frank G. Turpin III and
Jacqueline A. Turpin**

AGENDA ITEM F. PUBLIC HEARINGS

4. Vacate the 50-foot-wide pedestrian and maintenance easement adjoining the high-water mark of the Kenai River within the south-easterly portion of Lot 1A, Block 6, Kenai River Keys Subdivision (Plat KN 84-126) for approximately 23 feet in width as granted on Kenai River Keys Subdivision, Lot 1A, Block 6, Stephenkie Subdivision No 2, Lot 9A1, Block 2 (Plat KN 84-126). The pedestrian and maintenance easement being vacated is unconstructed and located within the NE 1/4 of Section 35, Township 5 North, Range 8 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2019-148V.

STAFF REPORT

PC Meeting: 1/6/20

Purpose as stated in petition: A 50-foot-wide pedestrian and maintenance easement along the high water mark of the Kenai River was established for Stephenkie Alaska Subdivision on Plat KN 79-83, prepared by the Alaska Division of Lands as State Land Survey No 73-146. This plat showed the easement extending to the section line common to sections 35 and 36, but not west of that section line within Kenai River Keys Subdivision. In 1984, as part of the Section Line Easement Vacation Plat (Plat KN 84-77) and the Vacation Plat for a portion of the right-of-way for Humpy Road (Plat KN 84-126), this easement was mistakenly depicted as extending beyond the section line and into Kenai River Keys Subdivision. Upon approval of the vacation by the State of Alaska and the Kenai Peninsula Borough Planning Commission, 23 feet of the former Section Line Easement and Humpy Road was attached to Lot 1, which then became Lot 1A. The 50-foot-wide pedestrian and maintenance easement then extended that 23 feet into Lot 1A. Vacation of this portion of the 50-foot-wide pedestrian and maintenance easement corrects the mistake made by the surveyor on the vacation plats. The 50-foot-wide pedestrian and maintenance easement through lots 9-A, 10-B and 10-A, Block 2 Stephenkie Subdivision No 2 (Plat KN 81-96), immediately east of the section line easement, was vacated by Kenai Peninsula Borough Planning Commission Resolution 89-30. The portion of the section line easement and Humpy Road that was not vacated is a 20-foot-wide corridor and extends from Humpy Road to the Kenai River between Lots 1A and 9-A. This portion remains available for public access.

Petitioners: Frank G. Turpin III and Jacqueline A. Turpin of Sterling, AK.

Notification: Public notice appeared in the December 26, 2019 issue of the Peninsula Clarion as a separate ad. The public hearing notice was published in the January 2, 2020 issue of the Peninsula Clarion as part of the Commission's tentative agenda.

13 certified mailings were sent to owners of property within 300 feet of the proposed vacation. 12 receipts had been returned when the staff report was prepared.

Public hearing notices were sent by regular mail to 19 owners within 600 feet of the proposed vacation.

22 public hearing notices were emailed to agencies and interested parties.

Public hearing notices were made available to 6 KPB staff/Departments via a shared database.

Notices were mailed to the Sterling Post Office and Soldotna Public Library with a request to be posted in public locations.

The notice and maps were posted on the Borough bulletin board and Planning Department public hearing notice web site.

Comments Received:

ACS: No objections.

ENSTAR: No comments, recommendations or objections.

Homer Electric Association: Comments not available when the staff report was prepared.

KPB Addressing: no changes.

KPB Planning: This property is not affected by local option zoning or material site issues.

KPB River Center: This property is within the floodway and within the habitat protection district. No other comments.

KPB Roads Department: no comment.

State Parks: No comment.

Staff Discussion: Lot 1A adjoins the west side and Lot 9A adjoins the east side of Humpy Road where it meets the Kenai River.

Plat KN 79-83 granted a 50-foot pedestrian easement along the ordinary high way line of any water frontage lots. This easement affected the lots up river of Lot 1A.

Plat KN 81-96 carried forward the 50-foot pedestrian and maintenance easement along the high water mark of the Kenai River within Lot 9A1.

Plat KN 84-77 vacated 23 feet of the section line easement within Lot 1A and 40 feet of the section line easement within Lot 9A1. The plat noted the existing pedestrian and maintenance easement within Lot 9A, KN 81-96. From the letter dated march 1, 1984, the depiction of the 50-foot pedestrian access and maintenance easement was at the request of the State of Alaska Department of Natural Resources. The 50-foot pedestrian access and maintenance easement is under State of Alaska DNR jurisdiction and will require State approval to be vacated.

Plat KN 84-126 vacated 23 feet of the Humpy Road right-of-way within Lot 1A and a portion of the Humpy Road right-of-way within Lot 9A1. Plat KN 84-126 carried forward the 50 foot pedestrian and maintenance easement of record.

The owners of Lot 1A signed both Plat KN 84-77 and KN 84-126.

The 50-foot pedestrian and maintenance easement within the lots 9A, 10A and 10B, Block 2 Stephenkie Subdivision No. 2 show as being vacated by KPB Planning Commission Resolution 89-30, leaving only the portion of easement underlying Humpy Road and within Lot 1A. The vacation of the easement, as shown in Planning Commission Resolution 89-30 may not be valid as the easement did not go through the State DNR vacation process.

The remaining 50-foot pedestrian and maintenance easement extends 23' into Lot 1A and underlies the section line easement and Humpy Road right-of-way between Lots 1A and 9A.

If approved, the vacation will need to be finalized through the State's vacation process.

KPB 20.70 – Vacation Requirements.

Platting staff comments: Staff reviewed the vacation and all the items required by 20.70 were met, unless otherwise noted below:

20.70.050. Petition—Information required.

- B. Persons listed on the borough assessor's tax roll shall be deemed the legal owners for purposes of the vacation petition. **The petition shall include a statement containing the reasons in**

support of the vacation and be accompanied by a minimum of three copies of a sketch clearly indicating the proposed vacation, submitted to the planning department at least 30 calendar days in advance of the meeting at which it will be considered. In cases where encroachments on public rights-of-way are in question, an as-built survey, sealed by a surveyor, is required showing the improvements, existing travelways, amount of encroachment, and any other submittal as requested by the planning commission. **The burden of proof shall lie with the petitioner to support the vacation.**

Petitioner Comments: A 50-foot-wide pedestrian and maintenance easement along the high water mark of the Kenai River was established for Stephenkie Alaska Subdivision on Plat KN 79-83, prepared by the Alaska Division of Lands as State Land Survey No 73-146. This plat showed the easement extending to the section line common to sections 35 and 36, but not west of that section line within Kenai River Keys Subdivision. In 1984, as part of the Section Line Easement Vacation Plat (Plat KN 84-77) and the Vacation Plat for a portion of the right-of-way for Humpy Road (Plat KN 84-126), this easement was mistakenly depicted as extending beyond the section line and into Kenai River Keys Subdivision. Upon approval of the vacation by the State of Alaska and the Kenai Peninsula Borough Planning Commission, 23 feet of the former Section Line Easement and Humpy Road was attached to Lot 1, which then became Lot 1A.

The 50-foot-wide pedestrian and maintenance easement then extended that 23 feet into Lot 1A. Vacation of this portion of the 50-foot-wide pedestrian and maintenance easement corrects the mistake made by the surveyor on the vacation plats. The 50-foot-wide pedestrian and maintenance easement through lots 9-A, 10-B and 10-A, Block 2 Stephenkie Subdivision No 2 (Plat KN 81-96), immediately east of the section line easement, was vacated by Kenai Peninsula Borough Planning Commission Resolution 89-30.

The portion of the section line easement and Humpy Road that was not vacated is a 20-foot-wide corridor and extends from Humpy Road to the Kenai River between Lots 1A and 9-A. This portion remains available for public access.

20.70.170. Vehicular Access. The planning commission shall not approve the vacation of a right-of-way unless an equal or superior right-of-way for vehicular access exists or will be provided in exchange. Where two or more access points are necessary for large vacant or semi-vacant areas of land, the commission shall consider density, use, projected development, and maintain sufficient rights-of-way to serve potential use.

Platting Staff Comments: Per the petition, the easement is unconstructed and not used for vehicular access. Per aerial imagery, the portion of Lot 1A the easement affects is a lawn fronting the Kenai River. The easement is a pedestrian easement that does not permit vehicular uses.

The only access the easement provides is to the 23' of riverfront west of Humpy Road. The easement within Lot 1A adjoins the 20' wide Humpy Road right-of-way and a 20' wide section line easement. Per aerial imagery, the portion of Humpy Road adjoining Lot 1A is partially constructed north of the subject easement and extends north to a fully constructed portion of Humpy Road that provides access to Lot 1A. The adjoining Humpy Road right-of-way and section line easement provide equal or superior access from the constructed portion of Humpy Road to the Kenai River.

Staff recommendation: *Concur that equal or superior right-of-way for vehicular access exists within the 20' width Humpy Road right-of-way and section line easement.*

20.70.180. Other access. Other lawful uses that exist or are feasible for the right-of-way shall be considered when evaluating a vacation request. When such uses exist or could exist within rights-of-way which are not suited for general road use, the commission shall not approve the vacation request, unless it can be demonstrated that equal or superior access is or will be available. The planning commission shall consider whether alternate uses present public safety issues which support approval of the vacation.

Platting Staff Comments: Per the submittal, no other uses exist within the easement.

Per KPB four foot contours, the easement is generally flat. However, the easement within Lot 1A is not suited for general road use. This portion of Lot 1A is located within Flood Hazard Zone A3, the floodway, and the Anadromous Habitat Protection District.

The only other uses permitted within the easement are pedestrian and maintenance uses. While the easement is not in use for other uses, the easement could feasibly be used by pedestrians. However, the easement only provides pedestrian access to the 23' of waterfront west of the Humpy Road right-of-way. As noted, above the adjoining Humpy Road right-of-way and section line easement provide equal or superior access from the constructed portion of Humpy Road to the Kenai River.

Staff recommendation: Concur that equal or superior access for other uses exists within the 20' width Humpy Road right-of-way and section line easement.

20.70.190. Utility provisions. All existing and future utility requirements shall be considered when evaluating a vacation request. Rights-of-way which are utilized by a public utility or which logically would be required by a public utility shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists, the commission may approve the vacation and require that a public utility easement be granted in place of the right-of-way.

Platting Staff Comments: Per the petition, the easement is not utilized by a public utility. The pedestrian and maintenance easement on its face does not permit use by a public utility.

20.70.200. Waterfront access provisions. A right-of-way which serves to provide access to public waters shall not be vacated unless such a right-of-way is wholly impractical to all modes of transport including pedestrian or the use of such right-of-way causes damage to the right-of-way, adjacent properties, the waterbody or the watercourse, or threatens public safety which cannot otherwise be corrected and where such continued damage or threat would be contrary to the public interest.

Platting Staff Comments: Vacation of this pedestrian and maintenance easement would not limit public access to the Kenai River. As noted above, public access to the Kenai River is provided by the adjoining Humpy Road right-of-way and section line easement.

Staff recommendation: Concur that adjoining access to the public waters of the Kenai River via the Humpy Road right-of-way and section line easement will be retained even if this vacation is approved.

20.30.220. Section line easement vacations.

Section line easement vacation petitions must comply with the requirements of KPB 20.70.040, 20.70.050 and 20.70.060. A fee is required in compliance with KPB 20.70.060. Public hearing and notice must comply with the requirements of KPB 20.70.070, 20.70.080, 20.70.100, 20.70.110 and 20.70.120. The mail notice required in KPB 20.70.090 may be by regular mail. Publication on the planning commission agenda, advertised once in local papers, posted in public areas and on the borough website prior to the meeting will satisfy the publishing requirements. The petitioner is responsible for all submittals required by the State of Alaska Department of Natural Resources (DNR) in compliance with their procedures. The petition must be reviewed and approved by the planning commission but final authority for approval and platting of the vacation rests with DNR. The petitioner is responsible for coordination with DNR and submittals to DNR.

Platting Staff Comments: Although this is not a section line easement vacation it is still an easement vacation where jurisdiction is with the State of Alaska DNR. The petitioner is responsible for coordination with DNR and submittal to DNR to obtain approval of the vacation.

Staff recommendation: Comply with KPB 20.30.220.

STAFF RECOMMENDATION: The petition must be reviewed and either approved or denied by the planning commission but final authority for approval of the vacation rests with the State of Alaska DNR. Based on the above means of evaluating public necessity established by KPB 20.70, the merits of the proposed vacations, and staff comments, staff recommends approval of the vacations as petitioned, subject to:

1. Approval by the State of Alaska DNR.
2. Submittal of a State Easement Vacation plat for plat committee review within two years of vacation approval.
3. Compliance within any State requirements for the 50-foot pedestrian and maintenance easement.

KPB 20.70.110:

A vacation of a street right-of-way, public area, or public easement within the borough outside of the limits of cities may not be made without the consent of the borough assembly.

The assembly shall have 30 calendar days from the date of approval in which to veto the planning commission decision. If no veto is received by the planning director within the specified period, the borough shall be considered to have given consent to the vacation.

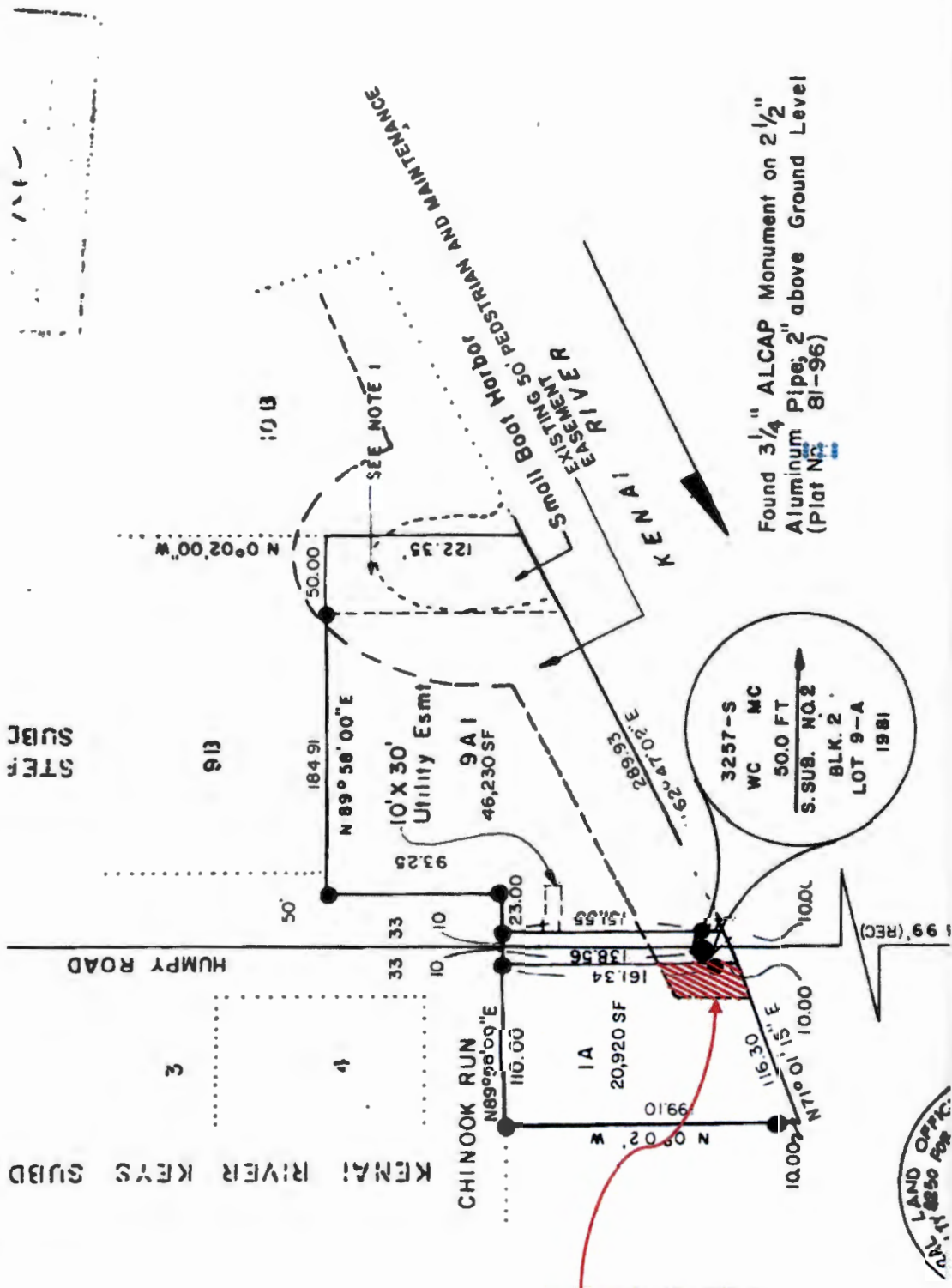
KPB 20.70.120:

- A. Denial of a vacation petition is a final act for which no further consideration shall be given by the Kenai Peninsula Borough.
- B. Upon denial by the planning commission, no reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.

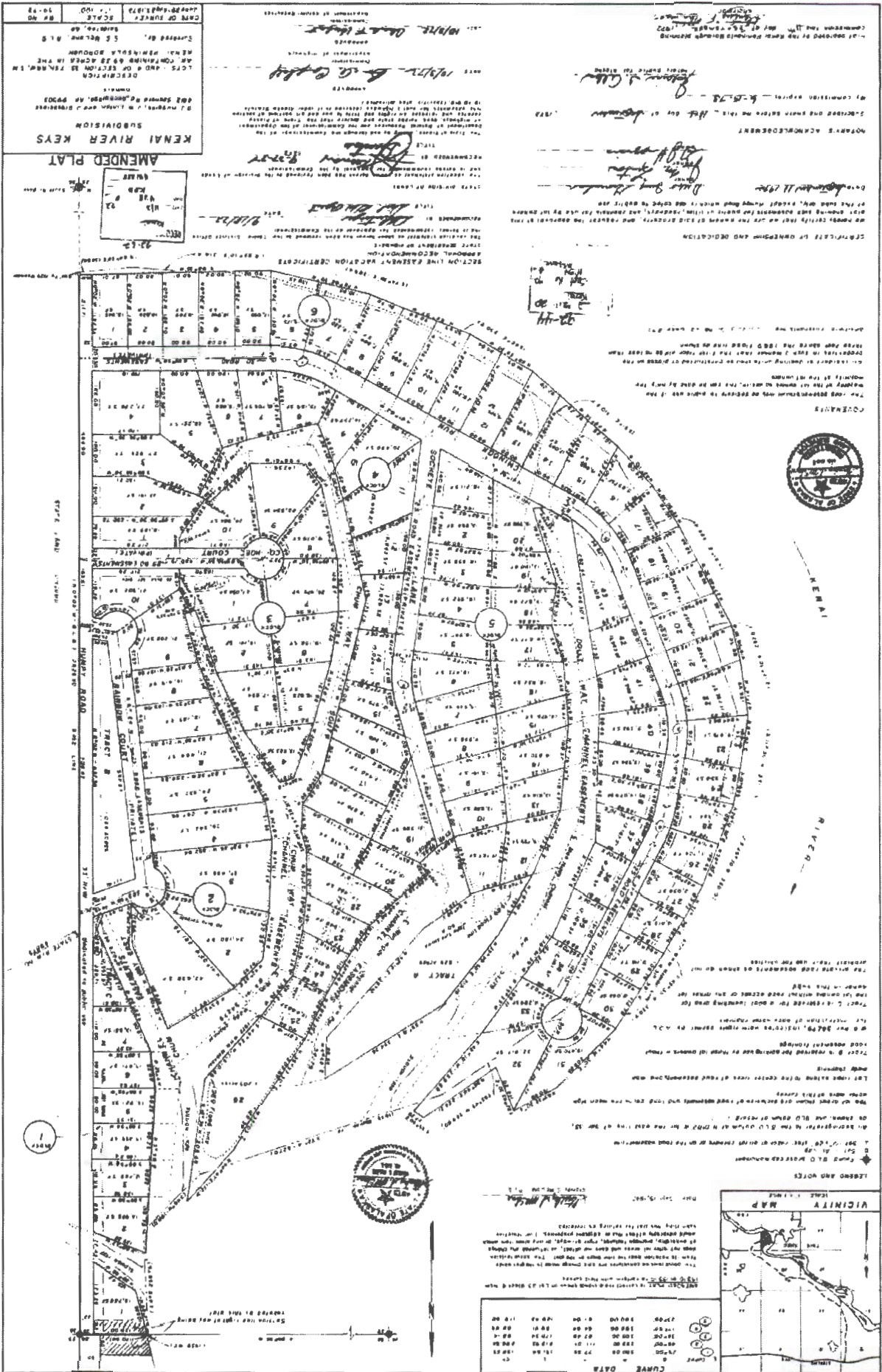
KPB 20.70.130:

THE FINAL PLAT MUST BE RECORDED WITHIN ONE YEAR OF THE VACATION CONSENT IN KPB 20.70.110.

END OF STAFF REPORT



KPB 2019-148V



OWNERS
 CLARE K. WHITE
 (LOT 9A1)
 RURAL ROUTE 2
 STEENAK, AK 99872

FRANK & NOPE L. TURPIE
 (LOT 1A)
 13540 REEF PLACE
 ANCHORAGE, AK 99502

ALFRED THOLON SMITH
 (LOT 1A)
 487 HANCOCK DRIVE
 ANCHORAGE, AK 99504

WE HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE PROPERTY SHOWN
 AND DESCRIBED HEREON AND THAT WE HEREBY ADAPT THE PLAN OF
 THIS SURVEY TO THE PUBLIC USE AND GRANT ALL EASEMENTS TO THE USE SHOWN

DATE: 4/30/84 BY: Stanley B. Smith (Registrar)
 DATE: 4/30/84 BY: Frank & Nope L. Turpie
 DATE: 4/30/84 BY: Alfred Tholon Smith

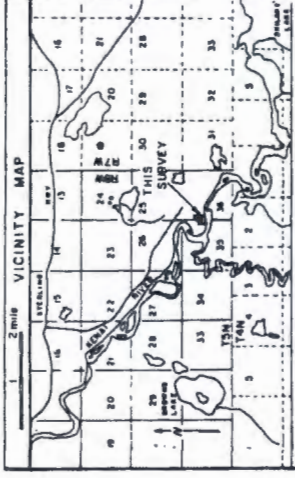
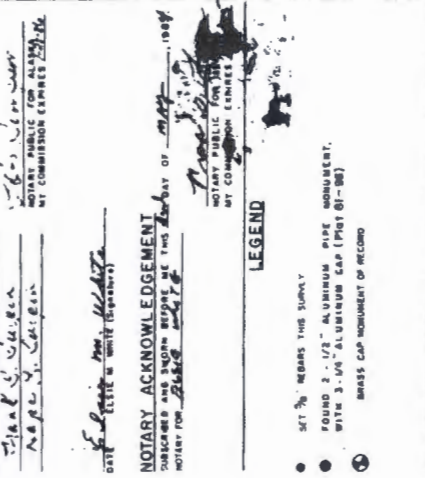
NOTARY ACKNOWLEDGEMENT
 SUBSCRIBED AND SIGNED BEFORE ME THIS 3RD DAY OF APRIL, 1984
 BY: CLARE K. WHITE
NOTARY PUBLIC FOR THE STATE OF ALASKA
STANLEY B. SMITH
 MY COMMISSION EXPIRES 12/31/86

NOTARY ACKNOWLEDGEMENT
 SUBSCRIBED AND SIGNED BEFORE ME THIS 3RD DAY OF APRIL, 1984
 BY: Frank & Nope L. Turpie
NOTARY PUBLIC FOR THE STATE OF ALASKA
STANLEY B. SMITH
 MY COMMISSION EXPIRES 12/31/86

NOTARY ACKNOWLEDGEMENT
 SUBSCRIBED AND SIGNED BEFORE ME THIS 3RD DAY OF APRIL, 1984
 BY: Alfred Tholon Smith
NOTARY PUBLIC FOR THE STATE OF ALASKA
STANLEY B. SMITH
 MY COMMISSION EXPIRES 12/31/86

LEGEND

- SET 7/8" REBAR THIS SURVEY
- FOUND 2 - 1/2" ALUMINUM PIPE MONUMENT, WITH 3 - 1/8" ALUMINUM CAP (PIST #1-88)
- BRASS CAP MONUMENT OF RECORD



**KENAI RIVER KEYS SUBDIVISION, LOT 1A, BLOCK 8
 STEPHEMKE SUBDIVISION NO. 2 LOT 9A1, BLOCK 2**

A PORTION OF THE RIGHT OF WAY OF A PORTION OF HUMPY ROAD SOUTH OF
 CHINOOK RUN IS A REPART OF LOT 1, BLOCK 8, KENAI RIVER KEYS SUBDIVISION & LOT 9A,
 BLOCK 2, STEPHEMKE SUBDIVISION NO. 2, SECTION 36, T. 53 N., R. 8 W., S. 4 E.,
 SECTION 36, T. 53 N., R. 8 W., S. 4 E.,
 ENGINEERS -- PLANNERS -- SURVEYORS
 STANLEY B. SMITH & ASSOCIATES
 1610 SARDINE DRIVE
 ANCHORAGE, ALASKA 99507

SP10	SCALE	DATE	BOOK	PAGE
	1" = 100'	4/13/84		
DRAPP & BERRY	FILE NO.	93-2	NO. NO. 93-2	1

NOTES

- RESTRICTED USE EASEMENT RESERVED FOR THE EXCLUSIVE USE OF LOTS 9A, 9B, 9C, 9D, 10A, 10B, 10C, & 10D THE SMALL BOAT WAREHOUSE IS RESERVED FOR EXCLUSIVE USE OF LOTS 9A1, 9B, 9C, 9D, 10A, 10B, 10C, & 10D
- BUILDING SETBACK -- A SETBACK OF 20 FEET IS REQUIRED FROM ALL STREET RIGHT-OF-WAYS UNLESS A LESSEER STANDARD IS APPROVED BY RESOLUTION OF THE APPROPRIATE PLANNING COMMISSION
- TOPOGRAPHY OF AREA COVERED BY THESE LOTS IS FLAT WITH LITTLE VARIATION IN ELEVATION
- ALL LOTS LIE WITHIN THE CORPS OF ENGINEERS 100 YEAR FLOODPLAIN
- THE NATURAL BOUNDS OF THE HIGH WATER MARK OF THE KENAI RIVER FORM THE BOUNDS FOR ALL LOTS ADJOINING THE RIVER. THE CORNER MONUMENTS AS SET ARE WITNESS EVIDENCE OF THE CORNER CORNER, WHICH IS THE EXTENSION OF THE CORNER CORNER.
- THE DIAGONAL HATCHED AREA BELOW INDICATES THAT PORTION OF HUMPY ROAD TO BE VACATED BY THE KENAI PENINSULA BOROUGH



**DETAILS OF VACATION
 BY KENAI PENINSULA BOROUGH**

PLAT APPROVAL

THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING
 COMMISSION AT THE MEETING OF October 23, 1984

BY: Stanley B. Smith
 REGISTERED LAND SURVEYOR

DATE: 4/30/84 REGISTRATION NO. 3852-5

SURVEYORS CERTIFICATE

WE HEREBY CERTIFY THAT I AM PROPERLY REGISTERED AND LICENSED TO
 PRACTICE LAND SURVEYING IN THE STATE OF ALASKA, AND THAT THIS
 PLAT REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECT
 SUPERVISION, AND THE MONUMENTS, SHOWN THEREON ACTUALLY EXIST
 AS DESCRIBED, AND THAT ALL DIMENSIONS AND DETAILS ARE
 CORRECT

84-126
 S.E. 4
 6-1
 3:51
 KPB

Found 2 1/2" Brass Cap Monument on Galv Pipe
 on South Bank of River, W/C 3" 1/4" Cop Brass Cap was
 12" above ground and tipped slightly north

Found 3/4" Alumin. Pipe, 2" above Ground Level
 (Pist No. 81-96)

Found 2 1/2" Brass Cap Monument on Galv Pipe
 on South Bank of River, W/C 3" 1/4" Cop Brass Cap was
 12" above ground and tipped slightly north

SP10	SCALE	DATE	BOOK	PAGE
	1" = 100'	4/13/84		
DRAPP & BERRY	FILE NO.	93-2	NO. NO. 93-2	1

NOTES

1. SHADOWN HATCHED AREA INDICATES THAT PORTION OF THE SECTION LINE EASEMENT TO BE LOCATED WITHIN SECTIONS 33 AND 36 BY THE WHITE.

2. IT IS NOT THE INTENT OF THIS PLAT TO INDICATE ANY OTHER DELINEATED PORTION OF THE EASEMENT.

SECTION LINE EASEMENT VACATION CERTIFICATE

APPROVAL - RECOMMENDATION

BEFORE ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES THE VACATION STATEMENT AS SHOWN HEREON HAS BEEN RECEIVED BY THE CENTRAL RECORDS OFFICE AND IS HEREBY RECORDED FOR APPROVAL BY THE COMMISSIONER.

RECOMMENDED BY: *James R. Anderson* DATE: *4/14/84*
 TITLE: DIRECTOR - RECORDS & COMBINATIONS

STATE OF ALASKA DEPARTMENT OF TECHNICAL SERVICES
 THE VACATION STATEMENT AS SHOWN HEREON HAS BEEN RECEIVED BY THE CENTRAL RECORDS OFFICE AND IS HEREBY RECORDED FOR APPROVAL BY THE COMMISSIONER.

RECOMMENDED BY: *James R. Anderson* DATE: *4/14/84*
 TITLE: DIRECTOR - RECORDS & COMBINATIONS

THE STATE OF ALASKA, ACTING BY AND THROUGH THE COMMISSIONER OF THE DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, DOES HEREBY STATE AND DECLARE THAT THE VACATION STATEMENT AS SHOWN HEREON HAS BEEN RECEIVED BY THE CENTRAL RECORDS OFFICE AND IS HEREBY RECORDED FOR APPROVAL BY THE COMMISSIONER. I RESERVE AREA DELINEATED BY SHADOWN HATCHING (INDICATED) IT UNDER A.S. 39.010. I RESERVE AREA DELINEATED BY SHADOWN HATCHING (INDICATED) IT UNDER A.S. 39.010.

APPROVED: *James R. Anderson*
 COMMISSIONER
 DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

APPROVED: *James R. Anderson*
 REGISTERED SURVEYOR
 DEPARTMENT OF NATURAL RESOURCES

DATE: *4/14/84*

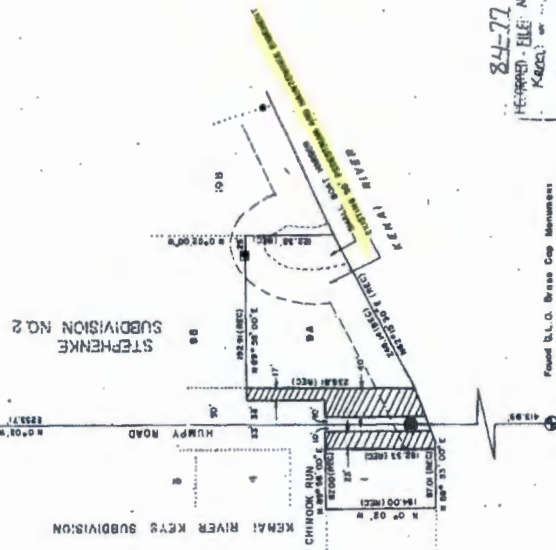
SURVEYORS' CERTIFICATE

I HEREBY CERTIFY THAT I AM PROPERLY REGISTERED AND LICENSED TO PRACTICE LAND SURVEYING IN THE STATE OF ALASKA, AND THAT THIS SECTION LINE EASEMENT VACATION STATEMENT HAS BEEN RECEIVED BY THE CENTRAL RECORDS OFFICE AND IS HEREBY RECORDED FOR APPROVAL BY THE COMMISSIONER. I RESERVE AREA DELINEATED BY SHADOWN HATCHING (INDICATED) IT UNDER A.S. 39.010.

DATE: *4/14/84*
 REGISTRATION NO. *1000*
 REGISTERED LAND SURVEYOR
James R. Anderson



SECTION LINE EASEMENT VACATION PLAT



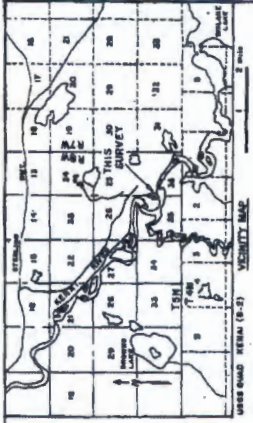
MEMBER - FILE: N/C
 KAC/201
 APR 14 1984
 12:11
 4/10/84

Found R.L.O. Brass Cap Monument on South Bank of River W.C.M.C. IV Coy.

PLAT APPROVAL

THIS PLAT HAS BEEN APPROVED BY THE COMMISSIONER OF THE ALASKA DEPARTMENT OF NATURAL RESOURCES AT THE MEETING OF APRIL 14, 1984.

SERIAL PERIMETER RECORD
 BY: *James R. Anderson*
 AUTHORIZED OFFICIAL



LEGEND

1. BOUNDARY OF RECORD
 2. S.L.O. BRASS CAP MONUMENTARY OF RECORD
 3. SCALE
 4. 1 METER = 3.28084 U.S. SURVEY FEET
 5. 1.25 INCH = 0.0417 METERS

OWNERS

Edwin M. White
 KETIE M. WHITE (WIFE)

NOTARY ACKNOWLEDGEMENT

SUBSCRIBED AND SIGNED BEFORE ME THIS 21st DAY OF February 1984.
 NOTARY FOR: *Richard D. Brown*
 BY COMMISSION EXPIRES: *2-27-87*

CLARE M. WHITE (LOT 6A)
 DONALD ROUTE 2
 BOX 2884
 STEVENAGE, AK 99083

FRANK S. & HOPE L. TUPPIN
 (LOT 1)
 4827 HANFORD DRIVE
 ANCHORAGE, AK 99504

ALFRED TOLON SMITH
 (LOT 1)
 4827 HANFORD DRIVE
 ANCHORAGE, AK 99504

OWNERSHIP CERTIFICATE
 THE STATE OF ALASKA, ACTING BY AND THROUGH THE COMMISSIONER OF THE DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, DOES HEREBY STATE AND DECLARE THAT THE VACATION STATEMENT AS SHOWN HEREON HAS BEEN RECEIVED BY THE CENTRAL RECORDS OFFICE AND IS HEREBY RECORDED FOR APPROVAL BY THE COMMISSIONER. I RESERVE AREA DELINEATED BY SHADOWN HATCHING (INDICATED) IT UNDER A.S. 39.010.

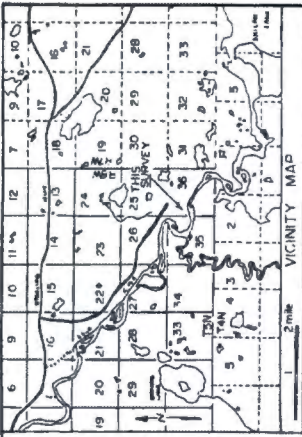
DATE: *3-7-84*
 BY: *James R. Anderson*
 COMMISSIONER
 DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

DATE: *3-7-84*
 BY: *James R. Anderson*
 REGISTERED SURVEYOR
 DEPARTMENT OF NATURAL RESOURCES

NOTARY ACKNOWLEDGEMENT

SUBSCRIBED AND SIGNED BEFORE ME THIS 21st DAY OF February 1984.
 NOTARY FOR: *Richard D. Brown*
 BY COMMISSION EXPIRES: *2-27-87*

DATE OF SURVEY: NO FIELD SURVEY PERFORMED	NAME OF SURVEYOR: JAMES R. ANDERSON ANCHORAGE, ALASKA 99507
DEPARTMENT OF NATURAL RESOURCES DIVISION OF TECHNICAL SERVICES ANCHORAGE, ALASKA	
SECTION LINE EASEMENT VACATION PLAT ASSOCIATED WITH LOT 1, SERIAL PERIMETER RECORD AND LOT 94, VACATION STATEMENT	
LOCATED WITHIN SECTIONS 23 & 34, T 5 N., R 14 E., 4TH PRINCIPAL MERIDIAN	
SCALE BY: <i>James R. Anderson</i>	FILE NO. <i>1000</i>
DATE: <i>4-14-84</i>	REGISTERED SURVEYOR
SCALE: 1" = 100'	COMMISSION EXPIRES: <i>2-27-87</i>



SURVEYORS CERTIFICATE:

I hereby certify that I am properly registered and licensed to practice land surveying in the State of Alaska, and that this plat represents a survey made by me or under my direct supervision, and the monuments shown thereon actually exist as described, and that all dimensions and details are correct.

5/18/81
 Date
 Stanley Frost
 Registered Land Surveyor

3257-S
 Registration No.
 Date of plat preparation 5/18/81

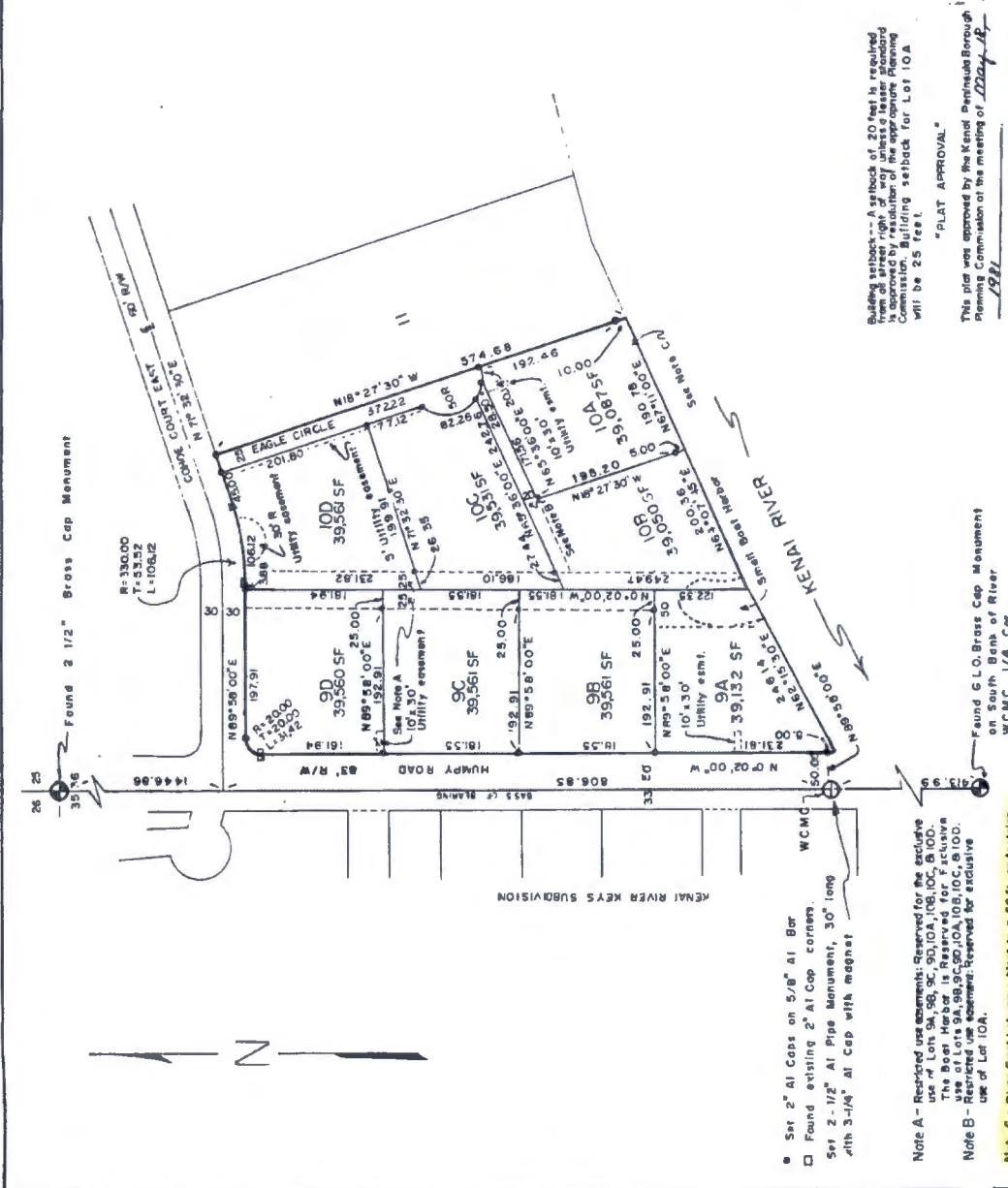
OWNERSHIP CERTIFICATE:

I hereby certify that I am the owner of the property shown and described herein and that I hereby adopt this plan of subdivision, and dedicate all right of ways to public use and grant all easements in the use shown.

Elaine White
 1919 Diamond Drive
 Anchorage, Alaska 99507

NOTARY'S ACKNOWLEDGMENT

Subscribed and sworn before me this 21 day of May 1981
 Notary Public for Alaska
 My Commission expires 1-12-1985



Found 2 1/2" Brass Cap Monument
 R=330.00
 T=53.52
 L=108.12

Found G.L.O. Brass Cap Monument
 on South Bank of River
 W.C.M.C. 1/4 Cor

Found 2" Al Caps on 5/8" Al Bar
 Found existing 2" Al Cap corners.
 Set 2-1/2" Al Pipe Monument, 30' long
 with 3-1/4" Al Cap with magnet

Note A - Restricted use easements reserved for the exclusive use of Lots 9A, 9B, 9C, 9D, 10A, 10B, 10C, 10D.
 The Boat Harbor is Reserved for Fishermen
 Note B - Use of Lots 9A, 9B, 9C, 9D, 10A, 10B, 10C, 10D.
 Note C - River Front Lots are subject to a 50 ft. pedestrian/boat easement along the high water mark of the Kenai River.

ADDITIONAL NOTES
 1. Topography of area covered by these lots is flat with little variation in elevation.
 2. All lots lie within the Corps of Engineers 100 year floodline.
 3. The natural meanders of the high water mark of the Kenai River form the bounds for all lots adjoining the river. The corner monuments on east and west corners to the meander corner, which is the extension of the lot line.

Building setback - A setback of 20 feet is required from all street right of way unless a lesser standard is approved by the Planning Commission. Building setback for Lot 10A will be 25 feet.

"PLAT APPROVAL"

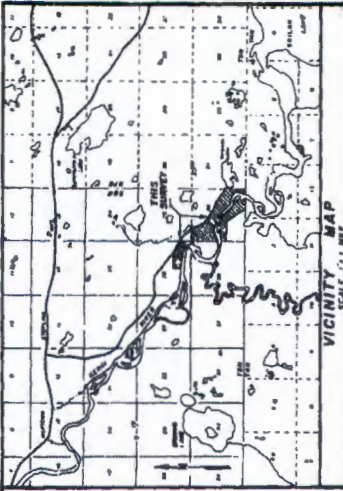
This plat was approved by the Kenai Peninsula Borough Planning Commission at the meeting of May 8, 1981.

KENAI PENINSULA BOROUGH
 By: [Signature]
 Authorized Official

8-1-96
 FILED 100
 Kenai, AK
 DATE 7-20-1981
 TIME 5:48 P.M.
 [Signature]



STEPHENKIE SUBDIVISION NO.2, A RESUBDIVISION OF LOTS 9 & 10, BLOCK 2 CONTAINING 7.5 ACRES SECTION 36, T5N, R8W, S.W. 1/4 LOCATED IN NW 1/4 ELSE WHITE, OWNER 1919 DIAMOND DRIVE ANCHORAGE, ALASKA 99507	
STANLEY BRUST & ASSOCIATES ENGINEERS - SURVEYORS ANCHORAGE ALASKA	
Date: May 18, 1981	Scale: 1"=100'
Drawn: S.B.	Sheet 1 of 1
Checked: S.B.	



VICINITY MAP
SCALE 1:100,000

DEFINITIONS

1. The unimproved, heavily wooded land to the north, north-east, south-east and south-west of the subdivision and the small area to the west of the subdivision and south of the subdivision.



DATE OF FIELD WORK August 12, 1979

DEVELOPER

1. The unimproved, heavily wooded land to the north, north-east, south-east and south-west of the subdivision and the small area to the west of the subdivision and south of the subdivision.

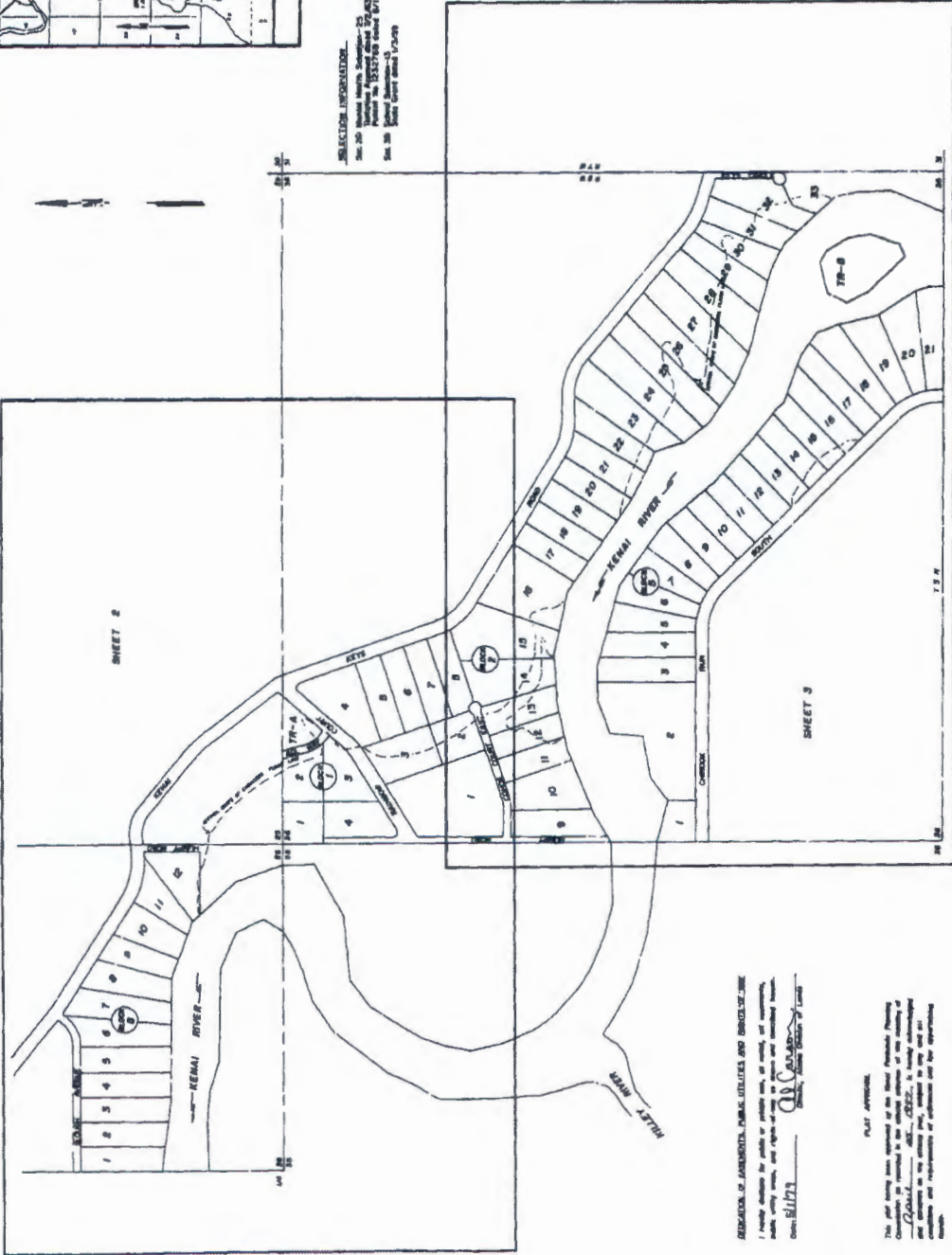
NAME OF SURVEY	STEPHENKIE ALASKA SUBDIVISION
SECTION	25
TOWNSHIP	57N
RANGE	15W
SECTION	25
TOWNSHIP	57N
RANGE	15W
SECTION	25
TOWNSHIP	57N
RANGE	15W
SECTION	25

SELECTION INFORMATION

1. All lands shown on the map are subject to the provisions of the Alaska State Land Survey Act, AS 38.05.01, and the rules and regulations of the Department of Land Use.

DEVELOPER

1. The unimproved, heavily wooded land to the north, north-east, south-east and south-west of the subdivision and the small area to the west of the subdivision and south of the subdivision.



SHEET 2

SHEET 3

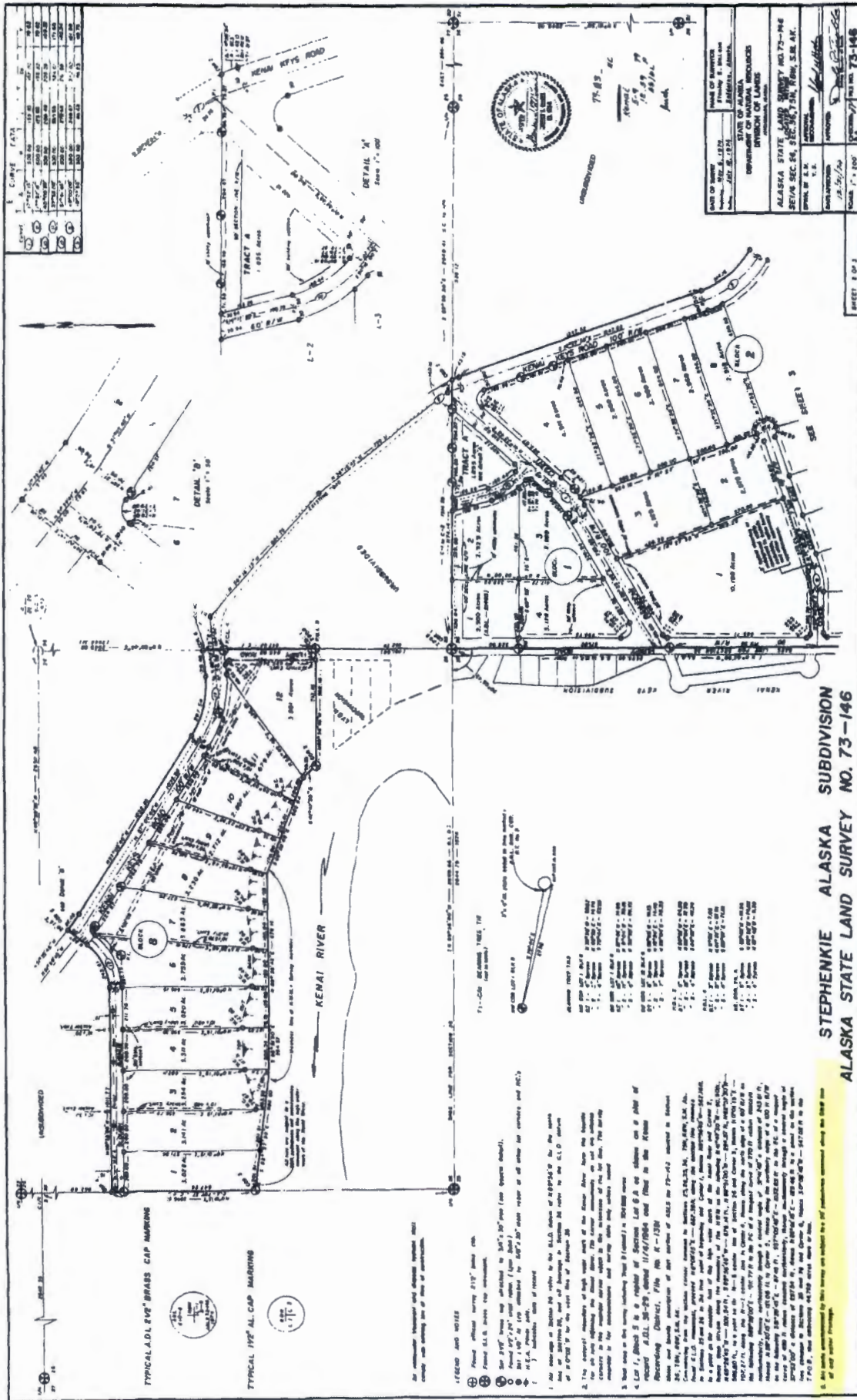
SECTION OF JURISDICTION, TERMS, UTILITIES AND SURVEY LINE

1. All lands shown on the map are subject to the provisions of the Alaska State Land Survey Act, AS 38.05.01, and the rules and regulations of the Department of Land Use.

STATE APPROVAL

The plat being here approved by the State of Alaska, Department of Land Use, and the State of Alaska, Department of Natural Resources, and the State of Alaska, Department of Transportation, and the State of Alaska, Department of Public Safety.

**STEPHENKIE ALASKA SUBDIVISION
ALASKA STATE LAND SURVEY NO. 73-146**



NAME OF SURVEY	STEPHENIE ALASKA SUBDIVISION
DATE OF SURVEY	JULY 2, 1953
BY	JAMES H. JAMES, JR.
FOR	STATE OF ALASKA
SECTION	SECTION 34, T. 12 N., R. 10 W., S. 4 E.
COMMISSIONER	J. H. JAMES, JR.
APPROVED	[Signature]
DATE	JULY 2, 1953
FILE NO.	73-146

**STEPHENIE ALASKA SUBDIVISION
ALASKA STATE LAND SURVEY NO. 73-146**

UNDESIGNED

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TYPICAL 1/4" AL CAP MARKING

TYPICAL 1/4" BRASS CAP MARKING

1. All acreages in Section 34 refer to the G.L.D. values of 8,872,500 for the north half of Section 34, and all bearings in Section 34 refer to the G.L.D. station of 41,000.00 for the north line of Section 34.

2. The corner monuments of high water mark of the Kenai River along the boundary of the subdivision are shown in the plan view of the subdivision. The survey was made in accordance with the plan view of the subdivision.

3. The plan view of the subdivision is shown in the plan view of the subdivision.

4. The plan view of the subdivision is shown in the plan view of the subdivision.

5. The plan view of the subdivision is shown in the plan view of the subdivision.

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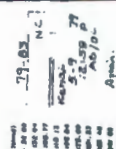
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4. The plan view of the subdivision is shown in the plan view of the subdivision.

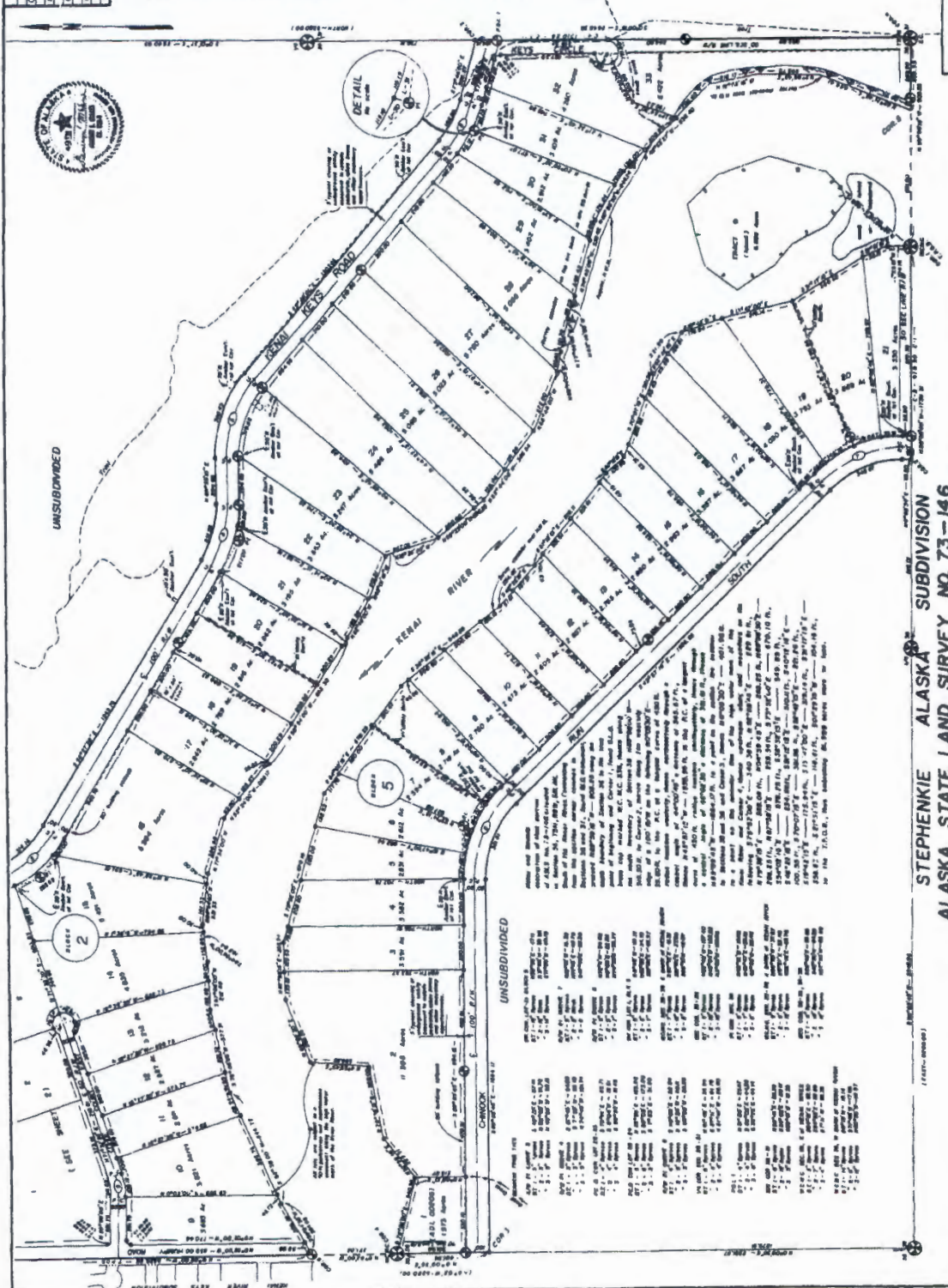
5. The plan view of the subdivision is shown in the plan view of the subdivision.

CURVE DATA	
STATION	DATA
1+00	100.00
2+00	200.00
3+00	300.00
4+00	400.00
5+00	500.00
6+00	600.00
7+00	700.00
8+00	800.00
9+00	900.00
10+00	1000.00

Plan and Section description of this portion of 73-146...
 1. 100.00' x 100.00' = 10000.00 sq. ft.
 2. 100.00' x 100.00' = 10000.00 sq. ft.
 3. 100.00' x 100.00' = 10000.00 sq. ft.
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 9. 100.00' x 100.00' = 10000.00 sq. ft.
 10. 100.00' x 100.00' = 10000.00 sq. ft.



STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES DIVISION OF LANDS	ALASKA STATE LAND SURVEY NO. 73-146 SEAFAC SEC. 28, 1/4, 2/4, 3/4, 4/4, 5/4, 6/4, 7/4, 8/4, 9/4, 10/4, 11/4, 12/4, 13/4, 14/4, 15/4, 16/4, 17/4, 18/4, 19/4, 20/4, 21/4, 22/4, 23/4, 24/4, 25/4, 26/4, 27/4, 28/4, 29/4, 30/4, 31/4, 32/4, 33/4, 34/4, 35/4, 36/4, 37/4, 38/4, 39/4, 40/4, 41/4, 42/4, 43/4, 44/4, 45/4, 46/4, 47/4, 48/4, 49/4, 50/4, 51/4, 52/4, 53/4, 54/4, 55/4, 56/4, 57/4, 58/4, 59/4, 60/4, 61/4, 62/4, 63/4, 64/4, 65/4, 66/4, 67/4, 68/4, 69/4, 70/4, 71/4, 72/4, 73/4, 74/4, 75/4, 76/4, 77/4, 78/4, 79/4, 80/4, 81/4, 82/4, 83/4, 84/4, 85/4, 86/4, 87/4, 88/4, 89/4, 90/4, 91/4, 92/4, 93/4, 94/4, 95/4, 96/4, 97/4, 98/4, 99/4, 100/4
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STEPHENKIE ALASKA SUBDIVISION
ALASKA STATE LAND SURVEY NO. 73-146

Plan and Section description of this portion of 73-146...
 1. 100.00' x 100.00' = 10000.00 sq. ft.
 2. 100.00' x 100.00' = 10000.00 sq. ft.
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 9. 100.00' x 100.00' = 10000.00 sq. ft.
 10. 100.00' x 100.00' = 10000.00 sq. ft.

KENAI PENINSULA BOROUGH
PLANNING COMMISSION
RESOLUTION 89-30

BCC# 0355 PAGE 453

VACATING A FIFTY FOOT PEDESTRIAN AND MAINTENANCE EASEMENT ALONG HIGHWATER MARK OF KENAI RIVER WITHIN LOTS 9-A, 10-B AND 10-A, BLOCK 2, STEPHENKIE SUBDIVISION NO. 2 (PLAT 81-96 KR); WITHIN SECTION 36, TOWNSHIP 5 NORTH, RANGE 8 WEST, SEWARD MERIDIAN, KENAI RECORDING DISTRICT, ALASKA

WHEREAS, a request has been received to vacate the 50 foot wide pedestrian and maintenance easement along highwater mark of the Kenai River within Lots 9-A, 10-B and 10-A, Stephenkie Subdivision No. 2; and

WHEREAS, on September 25, 1989, a public hearing was held by the Kenai Peninsula Borough Planning Commission to address all concerns about this proposed vacation; and

WHEREAS, the Planning Commission has found that vacating the pedestrian and maintenance easement will not be detrimental to the public interest; and

WHEREAS, 20.28.120 of the Kenai Peninsula Borough Code of Ordinances authorizes the Planning Commission to accomplish vacations by Resolution.

NOW THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH:

Section 1. That the fifty foot pedestrian and maintenance easement along highwater mark of the Kenai River within Lots 9-A, 10-B and 10-A, Block 2, Stephenkie Subdivision No. 2 is hereby vacated.

Section 2. That this Resolution is eligible for recording after approval of the vacation by the Assembly of the Kenai Peninsula Borough; and will be void if not recorded within 90 days of adoption.

Section 3. That this Resolution is void if the vacation approval is vetoed by the Assembly of the Kenai Peninsula Borough within 30 calendar days of adoption.

Section 4. That this Resolution becomes effective upon being properly recorded; with petitioner being responsible for payment of recording fees.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON THIS 25 DAY OF Sept., 1989.

Colleen Denbrock
Colleen Denbrock, Chairperson

ATTEST:

Nancy Jungmann
Nancy Jungmann, Planning Secretary

Return to: Kenai Peninsula Borough
Planning Department
144 No. Binkley Street
Soldotna, AK 99669

89-008254
KENAI REC 10-
DISTRICT
REQUESTED BY Auhia
595348

'89 OCT 19 AM 11 37

AGENDA ITEM F. PUBLIC HEARINGS

3. Resolution 89-30; vacate 50 ft. pedestrian and maintenance easement within Lots 9A, 10A, and 10B, Block 2, Stephenkie Subdivision No. 2 KPB File 89-089

Staff Report as read by Dick Troeger:

Vacation of pedestrian and maintenance easement adjacent to Kenai River within Lots 9-A, 10-A and 10-B, Block 2, Stephenkie Subdivision.

Public Notice appeared in the September 11 and 18, 1989 issues of the Peninsula Clarion. Seventeen certified mailings were sent to owners of property within 300 feet; and to other interested parties. All receipts have been returned.

Petitioner(s): Alfred and Elsie White; Will and Glen Josey of Sterling, Alaska; and, Frank and Hope Turpin; Stanley and Helene J. Brust of Anchorage, Alaska.

Purpose as stated in petition: Purpose is to protect erosion control rip-rap, which is being damaged by fishermen and boats. Property owners went to great expense to construct this rip-rap to prevent rapid erosion of the property.

Statement of non-objection: 1) Homer Electric Association; 2) Alaska DNR, Division of Parks and Recreation partially states:

" After reviewing Mr. White's request, we have determined that there is adequate public access to the Kenai Keys State Recreation Site by road or boat. There are areas of Mr. White's bank stabilization project where increased foot traffic may accelerate the sluffing of material into the Kenai River and could contribute to project failure. Conflicts between Mr. White and the public are inevitable along the easement adjacent to his private property.

The Division has considered all these factors and has no objection to the easement being vacated."

Supporting Statements: 1) Randy Super, Lot 10C, Block 2, Stephenkie Subdivision - letter partially states:

"It is essential to all property owners in the area that the erosion control improvements constructed by those property owners be maintained so as to protect the property of all in the area. The erosion control rip-rapping will not effectively prevent erosion when used as a pedestrian easement. The only viable solution to protecting the riverbank and the property owners in the area is to grant the requested petition."

2) Ted Wellman, Lot 9C, Block 2, Stephenkie Subdivision - letter partially states:

"As an adjacent property owner, I am aware of the tremendous expense the property owners have made to stabilize the river bank. This work is being undone by pedestrian misuse.

The area in question is not an area productively used by fishermen and the easement tends to serve to promote trespassing on private property. Easy access to the river

may be had through adjacent State land and the easement is an unnecessary burden on the property. The easterly portion of the easement is showing damage as the people climb up and down the specially constructed bank. Since this bank stabilization serves to protect all of the property in the area it is vital that destruction be prevented. This can be done most effectively by granting the subject petition."

No statements of objection received.

Findings of Fact

No surrounding properties will be denied access.
There is alternate access to river usage.
Erosion control protection is necessary.
Vacation is being accomplished by Resolution. Plat is not required.

STAFF RECOMMENDATIONS: Approve vacation of pedestrian and maintenance easement within Lots 9-A, 10-B, and 10-A, Block 2, Stephenkie Subdivision No. 2 as requested subject to the following conditions:

1. Filing of Planning Commission Resolution 89-30 in the appropriate Recording District.
 2. The Kenai Peninsula Borough Assembly has thirty days in which they may veto Planning Commission approval of the vacation.
- END OF STAFF REPORT

Referring to the statement in the staff report that no statements of objection were received, Mr. Troeger stated he should modify that statement as a letter was received late Friday, September 22, 1989, from State of Alaska, Division of Fish and Game and signed by Philip Bryna, a Habitat Biologist. For the record, Mr. Troeger read a portion of the letter which was addressed to the Planning Department, Kenai Peninsula Borough:

"The Alaska Department of Fish and Game has reviewed your request for comments on a proposed vacation of a 50 foot pedestrian and maintenance easement along the highwater mark of the Kenai River. The Alaska Department of Fish and Game recommends that the requested easement vacation be denied. It is our policy not to recommend approval of easement vacations if the easements provide access to public resources or rivers, lakes or streams; even if an easement does not receive public use at the present time, such easements may become important to the public in the future. If the applicants are having a problem with protection of their erosion control project, we recommend that alternatives to the easement vacation be considered. These could include posting a sign asking people to stay off the rip-rap, placement of a short fence at the top of the rip-rap or, planting vegetation would discourage access to the rip-rap."

Chairperson Denbrock opened the public hearing for testimony.

Mr. Al White: Mr. White stated he was in attendance in the event the commission had any questions. He commented he and his wife had spent in excess of \$55,000 installing the rip-rap to help prevent bank erosion.

As there was no one else wishing to provide testimony, the public hearing was closed and opened for discussion among the commissioners.

MOTION: Commissioner Brickey, seconded by Commissioner Hursh, moved to adopt Resolution 89-30 thereby accomplishing the 50 ft. vacation of pedestrian and maintenance easement within Lots 9A, 10A and 10B, Block 2, Stephenkie Subdivision No. 2.

VOTE: A roll call vote was taken with all commissioners present voting yes. The motion carried.



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



Aerial View



 Pedestrian and Maintenance Easement

PClementsI, KPB
Date: 12/4/2019
Imagery: 2010 Kenai River

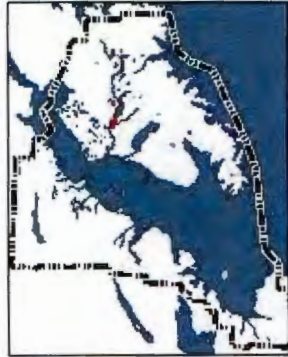




Geographic Information Systems

144 North Dimick Street, Soldotna, Alaska 99669

Map Title



Legend

- Township Lines
- Section Lines
- Parcels
- Elevation - Seward
 - High : 2600
 - Low : 0
- Elevation
 - High : 2600
 - Low : 0
- Hillshade
 - High : 254
 - Low : 0
- Hillshade Seward
 - High : 254
 - Low : 0
- HillshadeEast
 - High : 254
 - Low : 0



Notes



0.0 0 0.02 0.0 Miles



Coordinate System: NAD_1983_StatePlane_Alaska_4_FIPS_5004_Feet

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

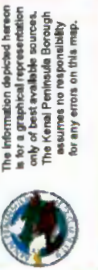


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FLOOD PLAIN

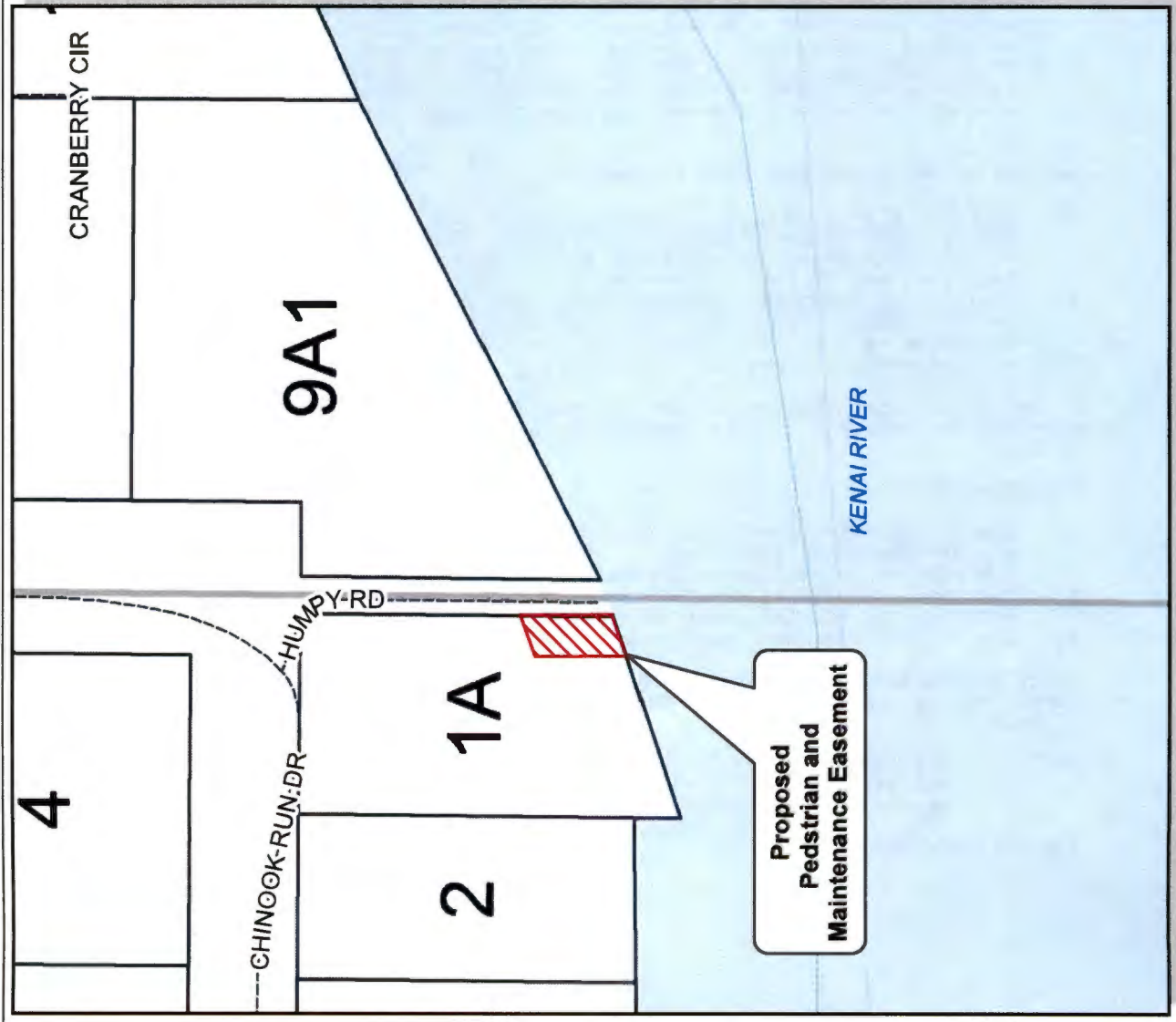
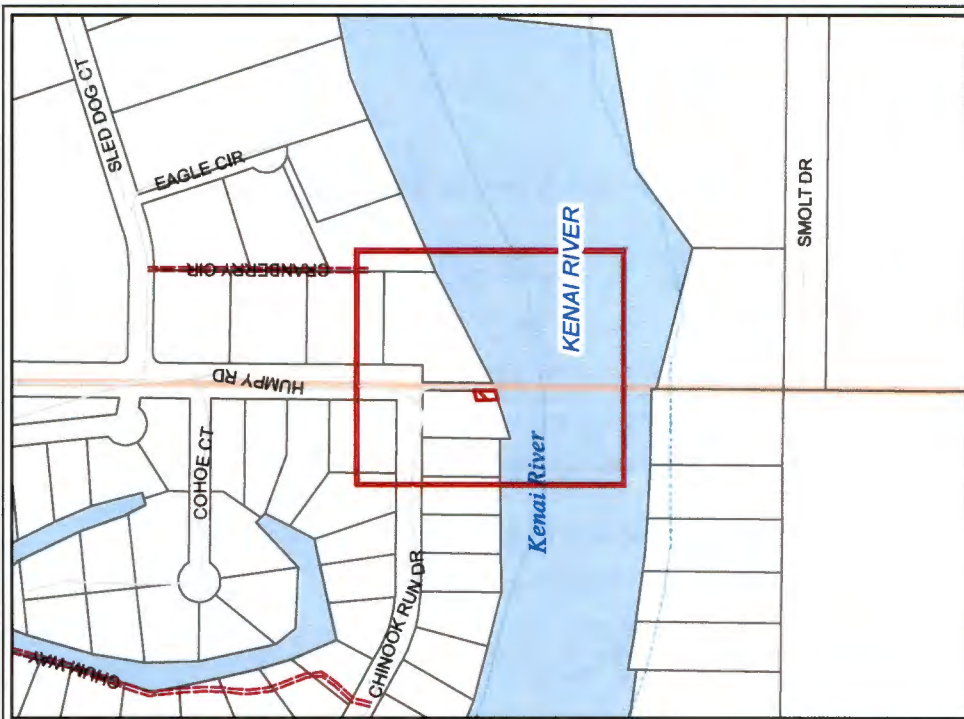
Date: 12/6/2019



The information depicted hereon is for a graphical representation only of best available sources. The Federal Penitentiary Borough hereby disclaims any liability for any errors on this map.

FLOODWAY

Date: 12/6/2019



**KPB 2019-148V
T05N R08W S35
STERLING**



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



PClements, KPB
Date: 12/4/2019

MINUTES

Meeting of the Planning Commission
September 12, 1983
Page 2

AGENDA ITEM F: PUBLIC HEARINGS

Vice-Chairman Warfle read the rules by which a public hearing is to be conducted.

1. Vacation of Portion of Humpy Road & Portion of Underlying Sectionline Easement of Sec. 35 & 36 South of Chinook Run.

STAFF REPORT STATED:

Purpose: To allow abutting property owners to implement erosion control measures along the eroding bank. There is also an existing house that is within the building setback. This vacation would eliminate the encroachment.

Public notice was published in the Peninsula Clarion on August 24 and 31, 1983.

21 certified letters were sent. 20 receipts were returned.

Letters of non-objection have been received from:

1. Randall & Susan Super - "We believe that it is in the best interest of the majority of the property owners of the area that proposed erosion control measures be implemented to protect the riverbank."
2. Cynthia Wallman, Lot 9C, Stephenkie Subd. states the area is currently being unused because of the river and the existing house within the setback. Any further development could become hazardous to persons using the road as well as people living in the area.
3. Willie & Glen Josey, Lot 10C, Blk 2, Stephenkie S/D believes the bank should be rip-rapped to help stop the erosion. The parties involved have assured us that they will rip-rap the bank in order to protect it.

Letters of objection have been received:

1. Dept. of Fish & Game, William Donaldson states ADF&G are opposed to the vacation of a portion of Humpy Road. "The present and potential recreational effort on the Kenai River requires maintaining public corridors and trails to the river."
2. Division of Technical Services & Division of Land & Water Management, Paul Gallamore states proposed vacation eliminates public access to navigable waters. The vacation of the easement is not a requisite to erosion control along the river bank.

It was also stated that the 50 ft. ROW was on the survey plat when White acquired the property. This department recommends that the vacation be denied.

Findings of fact:

1. Due to objection from State agencies, staff feels that this ROW should not be vacated at this time.
2. ROW provides access to public waters.
3. ROW being vacated is feasible as access for pedestrians, off road vehicles, or similar modes of transportation.
4. The 50' ROW was shown on the survey plat filed May 1979.

Staff Recommendation: Disapprove the vacation of a portion of Humpy Road and the underlying section line easement of Sections 35 & 36.

NOTE: The Borough Assembly has thirty (30) days in which they may veto a vacation within the Borough which has been approved by the Planning Commission.

END OF STAFF REPORT

1. **Humpy Road Vacation cont.**

Mr. Leser read the staff report outlining the background and staff recommendations. He stated a phone call was received today from Don Miessner, elected president of Kensi Keys Lot Owners Assoc., who stated he is totally in favor of the proposed vacation for the following reasons:

1. Fish & Wildlife has a well and a cabin for a biologist 800 ft. upland, so they have access from that point.
2. If a boat landing is ever made at this location, there would be no parking area for cars and trailers. The surrounding land is all private.
3. The State Parks has proposed a campsite with more public access about 3/4 mile up from this proposed vacation.
4. Main reason for this request is to prevent further erosion which really is a problem.

Mr. Miessner stated it has been a long time since the State has checked this part of the river out.

Vice-Chairman Warfle opened the public hearing.

Testimony #1: Petitioner Alfred White passed out some pictures of the area involved. He stated the house is not actually on the right-of-way; the corner of the shop is. He pointed out on the pictures that 2 1/2 years ago when they surveyed, the trail was on the river side of the logs; he stated you can see how bad it is eroding. He indicated the other picture shows the erosion that has happened in that time. He went on to say, according to engineer's measurements, from the time it was surveyed the bank has gone almost 7 feet. He indicated he intended to rip-rap, which he can't do if it belongs to the State. He pointed out another picture that showed exactly what they are requesting to have vacated. He stated the road makes a 90° turn right before the requested vacation. He commented there's no private property almost 1000 feet on either side of that, so if they were going to use it to build a boat landing, they'd have to cut the bank down 12 feet. In that area you have to have almost a 4 to 1 slope in order to hold it and keep it from erosion. If they cut it down 12' they'd have to have 48' on each side; that would give them 96' and there's only 83' to begin with. So if they cut a V ditch they couldn't do it. He doesn't see how they intend to use it. And if they got boats in there, he doesn't know where they'd park because everything there is private land. But up the river 738 feet from that point they have their own land and they're using his road to get to it; and adjacent to that they have two other lots.

Testimony #2: Alfred Toulon Smith, co-owner of the property adjacent to the section line easement on the downstream side, stated the river comes down and makes a turn at this property so the power of the river is against that upstream bank just above his property. He stated they are watching with dismay the erosion that is occurring to the bank at the section line easement because the natural erosion caused by the force of the river itself, inevitably if something isn't done, will take a good portion of the front of his property in the downstream lot. He stated he would like to rip-rap that area against the power of the river. He commented it was his understanding that there is access being planned that will be useable access rather than theoretical access. He commented this section line is completely surrounded by developed, subdivided property; to wait a few years to see how things develop is what will cause the downstream property to disappear. He urged the Commission not to accept the recommendation in response to the objections from the Department of Natural Resources and the State Department of Fish & Game.

Commissioner Bryson asked if the State has rejected any request for erosion control; have the property owners asked the State for permission.

Mr. Smith answered he had not asked the State for anything. His understanding was that the private property owner should go in on State land and rip-rap that land to protect the downstream property.

Mr. Best pointed out that whether the vacation is approved or not, a permit from the Corps of Engineers will be required.

1. Humpy Road Vacation cont.

Testimony #3: Dave Bunnell, owner of lot downstream, expressed concern over the amount of erosion that is taking place. He estimated, since he bought the property in 1978, that 8-10 feet of the bank has washed away. He thinks the vacation should be approved and people allowed to fix the property and rip-rap or do whatever is necessary to stop the erosion.

Testimony #4: Marle Eiben, Box 727, Sterling who lives in the adjacent area, stated he has attended several meetings on bank erosion held by the Kenai River Task Force and DNR and ADP&G were against improvements for erosion control and everything else to do with controls on the river. He stated he thinks this is something the State or the Corps should take care of; it shouldn't have to come out of the private property owner's pocket. He sees no reason not to proceed with the vacation; he is in favor of it.

Hearing no further testimony, Vice-Chairman Warfle closed the public hearing.

Commissioner Hursh asked Mr. Best when Kenai Keys was created, what was the flood plain projection, 5 or 10 years? Mr. Best wasn't sure of the frequency they expected.

MOTION: Commissioner Mumma, seconded by Commissioner Grabaugh, made a motion to approve the vacation of portion of Humpy Road & portion of underlying section line easement of Section 35 & 36 south of Chinook Run.

Hearing no further discussion, a roll call vote was taken and the motion failed on a 2 yes, 5 no vote with Commissioners Mumma and Warfle voting yes.

2. Vacation of Fisherman's Court & Fisherman's Circle of Fisherman's Haven Subdivision

STAFF REPORT STATED:

Purpose: Reversion back to acreage to enable the State of Alaska to manage this area as one single parcel.

Public notice was published in the Homer Weekly News on August 25 and September 1, 1983.

11 certified letters were sent, 11 receipts were received.

No comments have been received from any interested government agency or public utility company.

Findings of fact:

1. Sufficient ROWs have been dedicated to properly serve this area.
2. No surrounding property will be denied access.
3. Easement is not presently being utilized for public utilities.

Staff Recommendation: Approve the vacation of Fisherman's Court and Fisherman's Circle subject to the following:

1. Final approval and filing of plat showing ROW vacation.
2. Plat Committee standard statements as set forth in KPB Planning Commission Resolution 78-6.

NOTE: The Borough Assembly has thirty (30) days in which they may veto a vacation within the Borough which has been approved by the Planning Commission.

END OF STAFF REPORT

Mr. Lazer read the staff report outlining the background and staff recommendations.

Vice-Chairman Warfle opened the public hearing. Hearing no testimony, the hearing was closed.

MOTION: Commissioner Mickey, seconded by Commissioner Grabaugh, made a motion to approve the vacation of Fisherman's Court & Fisherman's Circle of Fisherman's Haven Subdivision per staff recommendations.

Hearing no discussion or objections, the motion carried unanimously.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF TECHNICAL SERVICES

BILL SHEFFIELD, GOVERNOR

POUCH 7035
ANCHORAGE, ALASKA 99510-7035
PHONE: (907) 276-2653

March 1, 1984

Stanley Brust & Associates
1610 Diamond Drive
Anchorage, Alaska 99507

File: EV-2-254 (Humpy Road)
Subject: Vacation of a Portion of Humpy Road and the Section Line
Easement Plat Review

Dear Mr. Brust:

This office has reviewed the above vacation plat and copies were transmitted to the Southcentral District Office of Land and Water Management. The District stated that, "Pursuant to the agreement reached with Mr. Stanley Brust at our meeting on February 27, 1984 the 50' public access easement will be graphically depicted. Because this easement will be shown around the small boat harbor and also within the Humpy Road vacation, the Southcentral District has no problems with the Deputy Commissioner's decision to approve this vacation."

If you have any questions, please feel free to contact this office.

Yours truly,

Ed Yarmak
Survey Operations Supervisor


By: Paul Gallamore
Special Projects Supervisor

EY:PG:CE:ao

cc: Vacation Files
Rick Thompson
Bob Arnold, Deputy Commissioner
Joseph C. Burch, Deputy Director
Elsie White
Alfred Smith
Frank Turpin
Hope Turpin
Frank Lazer

Huff, Scott

From: Huff, Scott
Sent: Monday, January 06, 2020 8:50 AM
To: 'Frank Turpin'
Subject: RE: Vacation of 50-ft Pedestrian and Maintenance Easement

Frank,

Per KPB 20.25.110 – preliminary plats, any plat requiring State of Alaska review and approval will be granted a 4 year initial approval. I will correct this when I give the staff report. No time extensions are allowed for right of way vacation approvals, so it will have a 4 year time frame.

KPB staff would be agreeable to approve the vacation if DNR submits a letter stating that they do not have any interest, or jurisdiction, in the easement and an easement vacation plat is not required. If this happens, we will bring the item back to the Planning Commission to approve the resolution that will be recorded to finalize the easement vacation. The commission will not review the vacation again, but they will only be reviewing, and approving, the resolution document to be recorded.

No additional fees will be charged. It is a one time petition fee.

I will discuss the above items at the meeting tonight, but feel free to ask for clarification or add any additional information during the public comment period.

Thanks,

Scott

From: Frank Turpin [mailto:fgturpin@gmail.com]
Sent: Sunday, January 05, 2020 12:14 PM
To: Huff, Scott <shuff@kpb.us>
Subject: Vacation of 50-ft Pedestrian and Maintenance Easement

Scott, staff recommends approval by the planning commission subject to:

1. Approval by the State of Alaska DNR.
2. Submittal of a State Easement Vacation plat for plat committee review within two years of vacation approval.
3. Compliance within any State requirements for the 50-foot pedestrian and maintenance easement.

Three comments:

One, does the two year clock start with approval by the planning commission or by DNR? Given the staff statement that final authority for approval rests with DNR, I'm reading the two years as being from DNR approval – which gets to be many more years than two if DNR doesn't approve or says they don't need to approve. Would I then have a vacation without a formal resolution by the planning commission? I'm fine with that, but is this part of Max's deep state conspiracy?

Two, I will attempt to get a DNR letter saying the Borough has final authority for approval because the easement is not a public highway or RS 2477 right-of-way. That would resolve the 1989 vacation and eliminate need for a State Easement Vacation plat. Any chance items 1 and 2 above could be conditioned on whether DNR approval and/or a State Easement Vacation plat is required?

Three, if DNR says their approval is not necessary, I'm not real keen on returning to the planning commission with another \$500. Would they be able to adopt a resolution without going thru the hearing process again? Or, should we delay action by the planning commission until DNR advises one way or the other? I'm in no hurry, and have no problem handling the coordination with DNR – but I'd rather spend another \$500 on my grandkids.

Frank

Huff, Scott

From: Frank Turpin <fgturpin@gmail.com>
Sent: Monday, January 06, 2020 8:53 AM
To: Huff, Scott
Subject: Vacation of 50' Pedestrian Easement

Scott, I should have been more explicit in suggesting that DNR does not have approval authority in vacating the pedestrian easement on my property. The State did not hold fee title on my side of the section line easement when the pedestrian easement was platted in 1984, they just held the section line easement overlaying this land. The land had been dedicated to public use on subdivision Plat 72-62 by land owners Huggins, Linton and Groseclose. Title for streets created by dedication is held by Kenai Peninsula Borough in trust for the public. It's a short leap from there to say that the Borough has authority to vacate this easement.

That's my premise. See you tonight,

Frank

Kenai Peninsula Borough
Office of the Borough Mayor

MAYOR'S REPORT TO THE ASSEMBLY

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Charlie Pierce, Kenai Peninsula Borough Mayor

DATE: January 21, 2020



Assembly Request / Response

None

Agreements and Contracts

- a. Vote by Mail Project Analysis Sole Source Waiver; **Resource Data**
- b. Purchasing Request for CES Fire Apparatus. Purchasing will be through the Houston-Galveston Area Council (HGAC Buy) purchasing co-op contract #FS12-19
- c. Purchasing Request for an Ambulance. Purchasing will be through the Houston-Galveston Area Council (HGAC Buy) purchasing co-op contract #AM10-18
- d. Purchasing Request for Ambulance Gurney System through **Stryker**

Other

- a. Litigation Status Report – Quarter Ending 12/31/19

Kenai Peninsula Borough
Purchasing & Contracting Department

MEMORANDUM

TO: Charlie Pierce, Borough Mayor
THRU: Johni Blankenship, Borough Clerk (JB)
FROM: John Hedges, Purchasing & Contracting Director [Signature]
DATE: December 20, 2019
RE: Vote by Mail Project Analysis Sole Source Waiver

The Clerk's Office is seeking help in preparing a feasibility study and cost analysis for Vote by Mail System (VBMS). The best route is to engage project management and consulting assistance in comparing the pros and cons, including costs, of the current system to a VBMS implementation and operation.

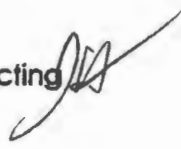
Resource Data played an instrumental role in assisting the Municipality of Anchorage with the implementation (and subsequent enhancement) of its Vote by Mail System. In addition to the original implementation in 2016, Resource Data provided onsite project management and support during the Municipality's April 2018 regular election, August 2018 special election, and this year's April regular election. This vast experience gives Resource Data a unique position to assist the KPB with performing a Vote by Mail feasibility study. Resource Data is the only consultant with this unique experience and expertise in the State of Alaska.

Approved: [Signature] 12/27/2019
Charlie Pierce, Mayor Date

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No.	<u>100.11130.00000.43011</u>
Amount	<u>\$18,855</u>
By: <u>[Signature]</u>	Date: <u>12/23/19</u>

Kenai Peninsula Borough
Central Emergency Services

MEMORANDUM

TO: Charlie Pierce, Borough Mayor
THRU: John Hedges, Purchasing and Contracting 
FROM: Roy Browning, CES Chief *RCB*
DATE: December 26, 2019
RE: Purchasing Request for CES Fire Apparatus

On December 3, 2019, Ordinance 2019-19-19 authorized the appropriating Phase Two Bond proceeds for purchasing Emergency response vehicles. CES is requesting authorization for the purchase of two fire apparatus: a fire engine and a pumper/tanker. The purchase of the two fire trucks will be in accordance with Kenai Peninsula Ordinance 2016-17 Standardization Policy for Fire Service Areas, through Hughes Fire Equipment, Pierce Manufacturing.


The purchasing will be through the Houston-Galveston Area Council (HGAC Buy) purchasing co-op contract # FS12-19. The price quoted is as follows:

1. Fire Engine:	\$696,452.00
2. Pumper/Tanker:	<u>\$641,786.00</u>
Total:	\$1,338,238.00

Please consider and approve the above request to purchase the two fire apparatus, for the total purchase amount of \$1,338,238.00

Funding for this purchase is available in account 443.51610.20CES-48310

Approved:  Date: 12/30/19
Charlie Pierce,
Borough Mayor

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No. 443.51610.20CES-48310	_____
Amount \$ 1,338,238.00	_____
By: 	Date: <u>12/30/19</u>

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Kenai Peninsula Borough
Central Emergency Services

MEMORANDUM

TO: Charlie Pierce, Borough Mayor
THRU: John Hedges, Purchasing and Contracting *JH*
FROM: Roy Browning, CES Chief *REB*
DATE: December 26, 2019
RE: Purchasing request for an Ambulance

On December 3, 2019, Ordinance 2019-19-19 authorized the appropriating Phase Two Bond proceeds for the purchase of Emergency response vehicles. CES is requesting authorization to purchase an Ambulance in accordance with Kenai Peninsula Borough Ordinance 2016-17, Standardization Policy for Fire Service Areas, from Braun-Northwest Inc.

The purchasing will be through the Houston-Galveston Area Council (HGAC) purchasing co-op contract # AM10-18. The price quoted is \$213,636.00

Please consider and approve the above request to purchase the Ambulance from Braun-Northwest, Inc. for the amount of \$213,636.00

Funding for this purchase is available in account 443.51610.20CES-48310

Approved: *ch* Date: 12/30/19
Charlie Pierce,
Borough Mayor

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No. 443.51610.20CES-48310	_____
Amount \$213,636.00	_____
By: <u><i>pp</i></u>	Date: <u>12/30/19</u>

**Kenai Peninsula Borough
Central Emergency Services**

MEMORANDUM

TO: Charlie Pierce, Borough Mayor
THRU: John Hedges, Purchasing and Contracting *JH*
FROM: Roy Browning, CES Chief *REB*
DATE: December 26, 2019
RE: Purchasing Request for Ambulance Gurney System

This is a request to purchase an ambulance gurney system for Central Emergency Service Area. Funds were appropriated in the CES Phase Two Bond proceeds for the purchase of an ambulance. The gurney system, a power cot and power loader will be purchased under KPB Ordinance 2016-071, authorizing an Ambulance Gurney & Load Systems Standardization Policy for the Fire Service Areas.

The purchase will be from Stryker, price quoted \$37,331.70

Please consider and approve the above request to purchase the Stryker Ambulance Gurney System for \$37,331.70

Funding for this purchase is available in account 443-51610-20CES-48310

Approved: *CP* Date: 12/30/19
Charlie Pierce,
Borough Mayor

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No. 443.51610.20CES-48310	_____
Amount \$ 37,331.70	_____
By: <u><i>RP</i></u>	Date: <u>12/30/19</u>

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Legal Department

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2120 • (907) 714-2379 Fax

Charlie Pierce
Borough Mayor

LITIGATION STATUS REPORT

TO: Kelly Cooper, Assembly President
Penny Vadla, President, Board of Education
Members, Kenai Peninsula Borough Assembly
Members, Kenai Peninsula Borough School District

THRU: Charlie Pierce, Mayor *ch*

FROM: Colette Thompson, Borough Attorney *CT*
Sean Kelley, Deputy Borough Attorney *SK*

DATE: January 9, 2020

RE: Litigation Status Report – Quarter Ending 12/31/19

This report includes brief descriptions of pending non-routine court cases, as well as administrative appeals and code compliance enforcement actions set for hearing before the administrative hearing officer.

- A. Following is a summary of the non-routine litigation in which the borough and school district are involved. This list does not include the real property tax foreclosures and numerous standard tax collection cases pursued by the borough:

1. Walden v. Kenai Peninsula Borough School District – Case No. 3KN-17-00741CI. A former student, Trevor Walden, brought suit against the school district for personal injuries allegedly suffered during a weightlifting class at Soldotna High School on February 25, 2015. This case was settled through mediation conducted in November, 2019.
2. John Does 1–3 v. Kenai Peninsula Borough School District et al– Case No. 3KN-18-00155CI. Three former students sued the school district, the Kenai Peninsula Hockey Association and former coach Bradley Elliott for

damages stemming from alleged sexual abuse of minors, alleged negligent hiring and alleged vicarious liability. Discovery is in process. Discovery is continuing. The parties have filed cross-motions for summary judgment on the question of which statute of limitations governs the claims against the school district and hockey association for vicarious liability for Mr. Elliott's criminal actions. The Superior Court recently issued an order granting the school district's and hockey association's motions. Trial is currently scheduled to begin the week of November 2, 2020. The parties have tentatively agreed to attempt to resolve the case through mediation.

3. Halstead v. Jeremy T. Anderson and Kenai Peninsula School District, Case No. 3KN-18-00744CI. Plaintiff has sued Mr. Anderson and the Kenai Peninsula Borough School District for damages relating to Mr. Anderson's alleged sexual abuse of her as a minor. The complaint against the school district claims it failed to protect her from Mr. Anderson and seeks damages and actual attorney fees. The district has filed an answer and discovery is in process. The district also recently filed a motion for summary judgment against the plaintiff's claims for punitive damages against the district. Trial call is currently scheduled for July 8, 2020 and trial for the week of July 20, 2020.

4. Kinneen v. Kenai Peninsula Borough, Case No. 3HO-18-00243CI. The borough was dismissed with prejudice from this case on October 30, 2019.

5. Kane County, Utah v. The United States of America, Case Nos. 17-739C; 17-1991C. This is a class action lawsuit for the underpayment of PILT funds for fiscal years 2015-2017, in which the borough is a party. The court entered judgment for the plaintiffs in the amount of \$16,322,574 on November 16, 2018 and allocated a total of \$112,175 to the borough for underpayment of PILT monies for the years of 2015 and 2016 and \$6,294 for 2017. This amount was to be reduced by the borough's share of costs and attorney fees. Payment to the borough in the amount of \$78,795 was received on October 21, 2019 and the case is closed.

6. Diamond Willow Homeowner's Association v. Kenai Peninsula Borough and Consolidated Development & Management, LLC, Case No. 3KN-19-00355CI. An appeal of an approved plat was filed and a hearing held before the administrative hearing officer on March 1, 2019. On

March 20, 2019 the hearing officer issued a decision upholding the plat approval. Appellant, Diamond Willow Homeowner's Association, filed an appeal of the hearing officer's decision on April 18, 2019, in the Kenai Superior Court. Appellee, Consolidated Development & Management LLC filed a motion to dismiss the appeal which appellant opposed. The borough did not oppose the motion to dismiss. Briefing has been completed by all parties. The court's decision is now pending.

7. Kenai Peninsula Borough School District v. Fischer, Case No. 3KN-19-00185Cl. This case was filed against a school district employee for the reimbursement of substantial health care costs paid by the health care plan ("Plan"). The Plan requires that employees who receive medical care paid by the Plan, for injuries caused by a third party, must reimburse the Plan out of any recovery received from the party at fault. Reimbursement is owed because the employee received enough insurance funds from the party who caused the injuries to fully reimburse the Plan for its costs. Defendant has failed to pay the amount owed. Discovery is in process, Plaintiff filed a motion to compel defendant to provide disclosures which the court granted, and awarded Plaintiff's attorneys' fees relating to that motion. Defendant has filed a Partial Motion to Dismiss, and numerous other motions and oppositions have been filed. The scheduled trial week is currently July 6, 2020.

8. Back v. Kenai Peninsula Borough and Charlie Pierce, Case No. 3KN-19-00385Cl. This is an administrative appeal to the superior court of the assessor's determination that Mr. Back's property is taxable. The court granted the borough's motion to dismiss, awarded attorney's fees to the borough, and entered an order applying the bond on appeal to the award of attorney's fees.

- B. Following are recently resolved or open cases for matters enforced pursuant to KPB 21.50, Violations and Enforcement, which were set for hearing before an administrative hearing officer:

1. Case No. 2018-19. A material site was operated in violation of its material site permit by destroying the required buffer area of the pit. An enforcement agreement was entered. Time has passed for compliance with the enforcement agreement and further enforcement action is being pursued.

C. Following are open or recently resolved administrative appeals from Planning Commission decisions:

1. Case No. 2019-01-PCA. Appellant appealed a planning commission decision approving applicant's material site conditional land use permit. Following the hearing in the case, the hearing officer issued a decision upholding the planning commission's decision. The Appellant filed a motion for reconsideration which the hearing officer denied in a decision dated December 12, 2019.

2. Case No. 2019-02-PCA. Appellant appealed a planning commission decision approving the vacation of a drainage easement on Lot24-A, AA Mattox Peggi's Addition, KPB file no. 2019-048V. A hearing before the assembly is currently scheduled for February 25, 2020 at 10:00 a.m. However, a motion has been filed by the Appellant to continue the hearing to April 7, 2020.

Kenai Peninsula Borough Assembly Committees 2019 – 2020

ASSEMBLY COMMITTEES

- **Finance Committee**
Brent Hibbert, Chair
Tyson Cox, Vice Chair
Brent Johnson
- **Lands Committee**
Brent Johnson, Chair
Kenn Carpenter, Vice Chair
Norm Blakeley
- **Policies & Procedures Committee**
Willy Dunne, Chair
Hal Smalley, Vice Chair
Kenn Carpenter
- **Legislative Committee**
Hal Smalley, Chair
Jesse Bjorkman, Vice Chair
Willy Dunne
- **President Pro Tem**
Brent Hibbert
- **OTHER BOROUGH COMMITTEES**
- **School Board**
Tyson Cox
Brent Johnson, Alternate

SERVICE AREA BOARD LIAISONS

- **Anchor Point Fire & EMS** – Willy Dunne
- **Bear Creek Fire** – Kenn Carpenter
- **CES/CPEMS** – Norm Blakeley
- **Kachemak Emergency Service Area** – Willy Dunne
- **KPB Roads** – Kelly Cooper
- **Nikiski Seniors** – Jesse Bjorkman
- **Nikiski Fire** – Jesse Bjorkman
- **North Peninsula Recreation** – Jesse Bjorkman
- **Seldovia Recreational** – Willy Dunne
- **Seward/Bear Creek Flood** – Kenn Carpenter
- **South Kenai Peninsula Hospital** - Kelly Cooper, Willy Dunne
- **NON-BOROUGH COMMITTEES**
- **Cook Inlet Aquaculture**
Dale Bagley
- **Cook Inlet R.C.A.C.**
Grace Merkes, term expires April 2020
- **Kenai Peninsula Economic Development District**
Hal Smalley, term expires with office
- **Kenai Peninsula College Council**
VACANT, term expires with office
- **Kenai River Special Management Area Advisory Board**
Brent Hibbert, term expires with office
- **Prince William Sound R.C.A.C.**
Mako Haggerty, term expires May 2019
- **Kachemak Bay Research Reserve Community Council**
Willy Dunne, term expires with office