

Introduced by:	Mayor
Date:	10/14/14
Hearing:	11/25/14
Action:	Postponed as Amended Until 01/20/15
Date:	01/20/15
Action:	Tabled
Vote:	9 Yes, 0 No, 0 Absent
Date:	07/28/15
Action:	Removed from the Table and Postponed to 08/18/15
Vote:	9 Yes, 0 No, 0 Absent
Date:	08/18/15
Action:	Postponed as Amended to 10/13/15
Vote:	8 Yes, 1 No, 0 Absent
Date:	10/13/15
Action:	Postponed to 10/27/15
Vote:	7 Yes, 2 No, 0 Absent
Date:	10/27/15
Action:	Postponed to 11/10/15
Vote:	9 Yes, 0 No, 0 Absent
Date:	11/10/15
Action:	Postponed to 12/08/15
Vote:	9 Yes, 0 No, 0 Absent
Date:	12/08/15
Action:	Amended by Substitute
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2014-32**

**AN ORDINANCE AUTHORIZING AN EXCHANGE WITH PAULA AND TIMOTHY
KEOHANE OF A 4.3 ACRE DRAINAGE EASEMENT AT KARLUK AVENUE FOR A
1.84 ACRE PARCEL OF BOROUGH LAND AT MILE 12.1 K-BEACH ROAD
WHICH SHALL BE SUBJECT TO THE RESERVATION OF A 0.9 ACRE
DRAINAGE OUTLET EASEMENT**

WHEREAS, in the fall of 2013, certain areas along K-Beach road experienced high groundwater and surface water; and

WHEREAS, additional surface outlets to receive collected waters would be advantageous to the road system in the K-Beach area; and

WHEREAS, the Kenai Peninsula Borough, through its Office of Emergency Management, Road Service Area and other departments as well as other State and Federal agencies have been actively engaged in responding to drainage concerns, including the identification of important drainage assets within the borough's authority; and

WHEREAS, Paula and Timothy Keohane own a 9.2 acre parcel of land at the intersection of Karluk Avenue and K-Beach Road ("Keohane parcel") which contains approximately 4.3 acres that is ideally situated to manage drainage waters collected by the Karluk Avenue road ditch system; and

WHEREAS, a borough owned property at Mile 12.1 K-Beach Road ("borough parcel") is classified as "government" to preserve the drainage outlet that runs through the south portion of that property; and

WHEREAS, the borough parcel is 1.84 acres according to assessing records of which approximately 0.9 acres is needed to serve long term drainage purposes and approximately 0.94 acres could be considered for other uses; and

WHEREAS, reserving a 0.9 acre drainage easement on the borough parcel at Mile 12.1 K-Beach Road and conveying the remaining interests in the property to the Keohanes in exchange for a 4.3 acre Karluk Avenue drainage easement will provide two drainage facilities; and

WHEREAS, reserving a 0.9 acre drainage easement at Mile 12.1, and conveying the remaining interests in KPB's 1.84 acre Mile 12.1 parcel to Keohane in consideration of the 4.3 acre drainage easement efficiently provides for identified drainage needs of the area and furthers the drainage management intent of the borough parcel; and

WHEREAS, the borough's parcel, Tax No. 055-360-19, has an assessed value of \$101,700 in its unencumbered condition; and

WHEREAS, the Keohanes' parcel, Tax No. 055-300-07, has an assessed value of \$45,500 in its unencumbered condition; and

WHEREAS, this proposal favors the functional value of the drainage assets for public purposes over the monetary property value of the lands subject to the exchange; and

WHEREAS, the KPB Planning Commission at its regularly scheduled meeting of November 10, 2014 recommended adoption by unanimous consent.

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

SECTION 1. That the Assembly finds that exchanging land interests described below with Paula and Timothy Keohane pursuant to KPB 17.10.100(C) is in the best interest of the Borough:

Property to be conveyed by KPB to Keohane:

The North ½ Government Lot 13 Section 30, T5N, R11W, Seward Meridian, Kenai Recording District, Third Judicial District, State of Alaska containing 1.84 acres more or less, subject to the reservation of a drainage easement thereon encumbering 0.9 acres more or less along with a supporting construction easement encumbering the south 100' of the property; and a vegetative preservation easement along the bluff and inland 50-feet from the bluff-line.

Easement to be granted by Keohane to KPB:

The North 627 Feet of Tract 1 Kingswood Estates Subdivision, Plat No. 76-22, Kenai Recording District, Third Judicial District, State of Alaska encumbering 4.3 acres more or less.

This finding is based on the following findings of fact:

- a) That securing this 4.3 acre drainage easement is a cost effective means within the borough's authority to provide an effective outlet for the Karluk Avenue road ditch system.
- b) That reserving this 0.9 acre drainage outlet easement at mile 12.1 as set forth in the proposed quitclaim deed accomplishes the intent of the "Government" land classification of the borough parcel in accordance with KPB Resolution 94-055.
- c) That the proposed 0.9 acre reserved easement on parcel No. 055-360-19 would allow for the continuation of existing drainage functions as well as allow for future drainage improvements to be established by the borough, the State of Alaska, or other entity having similar jurisdiction to manage waters.
- d) The unencumbered remainder of the borough parcel provides consideration for the 4.3 acre easement without limiting the borough's management intent of drainage purposes, thereby furthering the management goals for the property.
- e) The proposed exchange has nominal budgetary impact.
- f) The encumbrance created in preserving the drainage management intent for the borough parcel limits its appropriateness for disposition other than by the negotiated exchange subject of this ordinance;
- g) This negotiated exchange mutually benefits both parties, and no monies will be exchanged.

SECTION 2. That the Assembly makes an exception to KPB 17.10.110 requiring notice of a disposition of land. This exception is based on the following findings of facts pursuant to KPB 17.10.230:

1. Special circumstances or conditions exist.
 - a. This ordinance authorizes a land exchange with Paula and Timothy Keohane on a non-competitive basis pursuant to KPB 17.10.100(C).
2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this chapter.
 - a. The purpose of the KPB 17.10.110 advertising requirement is to notify the public of an opportunity to purchase or lease KPB land and advertising this sole source exchange will not serve a useful purpose.
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area.
 - a. This exchange preserves the management intent for the borough owned property and extends that public purpose through the easement being acquired.
 - b. Notice of the disposition is provided through the public process required for the hearing of ordinances.

SECTION 3. That the mayor is authorized to execute the Drainage Easement and Quitclaim Deed with Reservation of Drainage Easement substantially in the form of those accompanying this ordinance and any and all documents necessary to effectuate this ordinance.

SECTION 4. That this ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2015.

Blaine Gilman, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

11/25/14 Vote on motion to postpone as amended to 01/20/15:

Yes: Cooper, Haggerty, Gilman, Johnson, McClure, Ogle, Welles, Wolf, Bagley

No: None

Absent: None

01/20/15 Vote on motion to table as amended:

Yes: Cooper, Haggerty, Gilman, Johnson, McClure, Ogle, Welles, Wolf, Bagley
No: None
Absent: None

07/28/15 Vote on motion to remove from the table:

Yes: Cooper, Haggerty, Gilman, Johnson, McClure, Ogle, Bagley
No: Welles, Wolf
Absent: None

07/28/15 Vote on motion to postpone to 08/18/15:

Yes: Cooper, Haggerty, Gilman, Johnson, McClure, Ogle, Welles, Wolf, Bagley
No: None
Absent: None

08/18/15 Vote on motion to postpone to 10/13/15:

Yes: Cooper, Gilman, Johnson, McClure, Ogle, Welles, Wolf, Bagley
No: Haggerty
Absent: None

10/13/15 Vote on motion to postpone to 10/27/15:

Yes: Cooper, Haggerty, Gilman, Johnson, McClure, Ogle, Welles
No: Bagley, Wolf
Absent: None

10/27/15 Vote on motion to postpone to 11/10/15:

Yes: Bagley, Cooper, Dunne, Holmdahl, Johnson, McClure, Ogle, Welles, Gilman
No: None
Absent: None

11/10/15 Vote on motion to postpone to 12/08/15:

Yes: Bagley, Cooper, Dunne, Holmdahl, Johnson, McClure, Ogle, Welles, Gilman
No: None.
Absent: None.

12/08/15 Vote on motion to amend by substitute:

Yes: Bagley, Cooper, Dunne, Holmdahl, Johnson, McClure, Ogle, Welles, Gilman

No: None

Absent: None

DRAINAGE EASEMENT

PARTIES: Paula N. Keohane and Timothy J. Keohane, whose address is PO Box 1411, Coupeville, WA 98239, hereinafter called GRANTORS, hereby grant to the Kenai Peninsula Borough, a Municipal Corporation, whose address is 144 N. Binkley Street, Soldotna, Alaska 99669, hereinafter called GRANTEE, for ten dollars and other good and valuable consideration, receipt of and sufficiency of which is hereby acknowledged the following described easement subject to the terms and conditions set forth herein.

TERM: This Easement is granted in perpetuity to GRANTEE, its successors, assigns, licensees, and permittees, FOREVER.

PURPOSE: This easement is for the purpose of storm water collection and drainage located within the following described parcel, to wit:

LEGAL DESCRIPTION:

Tract One (1) Kingswood Estates Subdivision, Plat KN 76-22, Kenai Recording District, within Section 30, Township 5 North, Range 11 West, Seward Meridian, Alaska in the Kenai Recording District, Third Judicial District, State of Alaska.

The land constituting the easement is within the above-described land and is more particularly described as follows:

The north 627 feet of said Tract 1

TERMS AND CONDITIONS: The GRANTORS and GRANTEE agree that the use of the easement for storm water collection and drainage shall be construed broadly to include but not limit the GRANTEE'S right to manage the land to optimize water collection and drainage functions through excavation, re-contouring, installation of drains, pipes, pumps and filters, construction of related facilities, maintenance, operation and repair of the same, in, under, and across the premises as may from time to time be necessary or desirable for the use and enjoyment of this drainage easement, including the right to excavate, remove soils, or place fill on said premises, and the right to cut and clear all trees, shrubbery, and undergrowth, to landscape the area, enjoy, use, and to remove any obstructions within the easement as may be reasonably required for the construction, reconstruction, relocation, installation, operation, and maintenance of such drainage uses.

In order to maintain the character of the land GRANTEE shall minimize disturbance of a 30-foot-wide treed buffer along the perimeter and within the easement, shall not create slopes in excess of 12.5% (8:1), shall preserve an existing island feature, and shall utilize natural or forage quality vegetation for ground cover as a preferred best management practice where practicable in

order to support use for livestock pastures, fencing, crop cultivation, and hay harvest and to preserve aesthetic and wildlife values as long as such uses do not conflict with GRANTEE'S primary use of the easement area for drainage purposes. (Exhibit A, attached hereto and incorporated by reference illustrates GRANTEE'S intent.)

GRANTORS agree that no improvements may be constructed or installed on the above-described easements by or for GRANTORS or their successors, assigns, licensees, and permittees, without the written permission of GRANTEES.

GRANTORS covenant that they will not interfere with the lateral support of the easement and will not excavate or fill in any portion of the above-described easement without written approval of GRANTEE.

RESERVATIONS: GRANTORS reserve other uses within the easement which are compatible with and shall not conflict with managing the land for water collection and drainage purposes, including maintenance of a 30-foot treed buffer for screening and aesthetic purposes along the easement perimeter, livestock pasturing and fencing, harvesting of hay, and cultivating crops.

HOLD HARMLESS: To the extent allowed by law and subject to assembly appropriation, the GRANTEE shall indemnify, hold harmless, and defend the GRANTORS from and against any claims of, or liability for, any wrongful or negligent act, error, or omission of the GRANTEE or any subcontractor with regards to GRANTEE'S use of this easement. The GRANTEE shall not be required to defend or indemnify the GRANTORS for any claims of, or liability for, any wrongful or negligent act, error, or omission solely due to the independent negligence of the GRANTORS. If there is a claim of, or liability for, the joint negligence of GRANTEE and the independent negligence of GRANTORS, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. Apportionment shall be determined upon final determination of percentage of fault. If any such determination is by settlement, the percentage of fault attributed to each party for purposes of this indemnification provision shall only be binding upon the parties included in the settlement agreement. "GRANTEE" and "GRANTORS" as used in this article include the employees, agents, officers, directors, and other contractors who are directly responsible, respectively, to each.

GRANTORS:

Paula Keohane

Date

Timothy J. Keohane

Date

GRANTEE:

KENAI PENINSULA BOROUGH

Mike Navarre, Mayor

ATTEST:

Approved as to form and legal sufficiency:

Johni Blankenship, Borough Clerk

Deputy Borough Attorney

MAYOR'S (GRANTEE) NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____
2014 by Mike Navarre, Mayor of the Kenai Peninsula Borough,
an Alaska municipal corporation, for and on behalf of the corporation.

Notary Public, State of Alaska
My commission expires: _____

QUITCLAIM DEED WITH RESERVATION OF DRAINAGE EASEMENT

The Grantor, KENAI PENINSULA BOROUGH, an Alaska municipal corporation, whose address is 144 North Binkley Street, Soldotna, Alaska 99669, for ten dollars (\$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, and pursuant to Assembly Ordinance 2014-32 enacted _____, 2015, conveys and quitclaims unto the Grantees, PAULA N. KEOHANE AND TIMOTHY J. KEOHANE whose address of record is P.O. Box 1411, Coupeville, Washington, 98239, all interest it has, if any, in the following described real property:

North One-half Government Lot 13 Section 30 Township 5 North, Range 11
West, Seward Meridian, in the Kenai Recording District, Third Judicial District,
State of Alaska

TOGETHER WITH all the improvements thereon, if any, and all rights of the Grantor to any and all hereditaments and appurtenances hereto, and

SUBJECT TO any taxes and assessments, exceptions, reservations, restrictions, conditions, covenants, easements, rights-of-way, encroachments either of record or ascertainable by physical inspection.

FURTHER SUBJECT TO a drainage easement reserved herein by Grantor for use by the Kenai Peninsula Borough, the State of Alaska, or other governmental entity having jurisdiction to manage drainage of area waters. The easement area is described more particularly by Record of Survey recorded as 2015-xxxxxxx Kenai Recording District. Said easement is for the construction, maintenance, and operation of drainage improvements on, over, under, through and across the easement area including but not limited to the right to clear, excavate, fill, ditch, embank, reinforce, armor; install structures, pipes, valves, outlets, outfalls, gauges and other improvements; receive, manage, and discharge waters; and to make such uses that may be necessary and convenient for drainage purposes with quiet enjoyment thereof. Grantee may make ancillary uses of the easement area which do not conflict with Grantor's reserved rights and particularly provided that Grantee's uses do not impede drainage functions, operations, or maintenance and are removable from the easement area by Grantee within a two week notice period for which Grantor shall have no duty to compensate for the loss, damage, or inconvenience thereof resulting from Grantor's exercise of its reserved rights.

To the extent allowed by law and subject to assembly appropriation, the GRANTOR shall indemnify, hold harmless, and defend the GRANTEES from and against any claims of, or liability for, any wrongful or negligent act, error, or omission of the GRANTOR or any subcontractor for GRANTOR'S use of the drainage easement vested by this deed. The GRANTORS shall not be required to defend or indemnify the GRANTEES for any claims of, or liability for, any wrongful or negligent act, error, or omission solely due to the independent negligence of the GRANTEE. If there is a claim of, or liability for, the joint negligence of GRANTOR and the independent negligence of GRANTEES, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. Apportionment shall be determined upon final determination of percentage of fault. If any such determination is by settlement, the percentage of fault attributed to each party for purposes of this indemnification provision shall only be binding upon the parties included in the settlement agreement. "GRANTEES" and "GRANTOR" as used in this article include the employees, agents, officers, directors, and other contractors who are directly responsible, respectively, to each.

FURTHER SUBJECT TO a vegetative preservation easement along and 50 feet inland of the bluff line except to the extent the easement area is required for drainage purposes.

The easements set forth above are subject to GRANTEES' access and other compatible uses by the GRANTEES which are removeable upon 30 days notice for GRANTOR'S construction activities related to the drainage easement set forth herein.

FURTHER SUBJECT TO a public access easement in accordance with A.S. 38.05.127 along the mean high water line (MHWL) of the Cook Inlet extending 50 feet upland of the MHWL which may be secondarily accessed along the south 50 feet of the reserved drainage easement.

Dated this _____ day of _____, 2015.

KENAI PENINSULA BOROUGH:

Mike Navarre, Mayor

Dated: _____

ATTEST:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Johni Blankenship,
Borough Clerk

Holly B. Montague,
Deputy Borough Attorney

ACCEPTANCE:

Paula N. Keohane

Timothy J. Keohane

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015 by Mike Navarre, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for and on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____

NOTARY ACKNOWLEDGMENT

STATE OF WASHINGTON)
)ss.
 _____ COUNTY)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015 by Paula N. Keohane.

Notary Public in and for Washington
My commission expires: _____

NOTARY ACKNOWLEDGMENT

STATE OF WASHINGTON)
)ss.
 _____ COUNTY)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015 by Timothy J. Keohane.

Notary Public in and for Washington
My commission expires: _____

Please return to: GRANTEES
Paula & Timothy Keohane
PO Box 1411
Coupeville, WA 98239