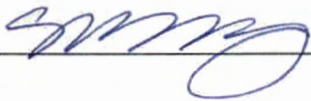


Kenai Peninsula Borough
Seward-Bear Creek Flood Service Area

MEMORANDUM

TO: Charlie Pierce, Borough Mayor
THRU: Clerk
FROM: Stephanie Presley, Service Area Program Lead
Signature: 
DATE: August 3, 2022
RE: Routing for revisions to SBCFSA Board approved: By-Laws, Emerging Situation Policy & Permit Policy Review

The above referenced documents are submitted for review and signature as follows:

	Date	Initials
1. SBCFSA to Mayor's Office	<u>8/3/22</u>	<u>SP</u>
2. Mayor's Office to Clerk's Office	<u> </u>	<u> </u>
3. Clerk to SBCFSA (originals)	<u> </u>	<u> </u>

**BY-LAWS OF THE
Seward – Bear Creek Flood Service Area
Board of Directors
A Service Area Board of the Kenai Peninsula Borough**

Preamble

The Seward – Bear Creek Flood Service Area Board of Directors shall provide flood protection, planning and mitigation services within the Seward – Bear Creek Flood Service Area.

**ARTICLE I.
SERVICE AREA ESTABLISHMENT – GOVERNMENT**

- SECTION 1. Establishment:**
The Seward – Bear Creek Flood Service Board was established by Kenai Peninsula Borough Ordinance 2003-30 (KPB 16.50).
- SECTION 2. Government:**
The operations of the Seward – Bear Creek Flood Service Area are governed by Alaska Statutes, particularly Title 29; and the Kenai Peninsula Borough Code of Ordinances, particularly chapters 16.04 and 16.50.

**ARTICLE II.
BOARD OF DIRECTORS**

- SECTION 1.** The Board of Directors shall be composed of seven members who shall be elected by the qualified voters of the Service Area. Seats shall be filled by residents of the service area.
- SECTION 2.** Each member of the Board shall be elected for a term of three years and shall serve thereafter until his or her successor has been elected or appointed, qualified and sworn to assume the duties of the office.
- SECTION 3.** Vacancies on the Board are created upon declaration of vacancy by the Board for the reasons listed in KPB 16.50.070.
- SECTION 4.** Vacancies on the Board shall be filled by appointment by the mayor and confirmed by the assembly until the next regular election of the Borough at which time a new member shall be elected to fill the unexpired term or for a three-year term if no unexpired term remains. The Board may provide a recommendation to the mayor and assembly. The clerk shall provide at least twenty-one days' advance notice before filling the vacancy. Public notice may be provided by publication through newspaper or via radio,

posting at the Service Area Office, at the Borough Administration Building, Seward City Hall, Seward Harbor Master's, and the Seward Post Office.

SECTION 5. To qualify for an excused meeting absence under Article II, Section 3 a Board Member must notify the Board Chair or Administrative Assistant of the intended absence prior to the meeting at which the member will be absent unless unable to do so for reasons beyond the member's control. If that is the case the member must notify the Board Chair or Administrative Assistant as soon as possible after the missed meeting.

ARTICLE III. MEETINGS

SECTION 1. The regular business meetings of the Service Area Board shall be held on the first Monday of each month. The meetings shall commence at 6:00 p.m. at the Bear Creek Multi-Use Facility, unless otherwise noted. Either a regular business meeting or a work session shall be held on the third Monday of each month. The meetings shall commence at 6:00 p.m. at the Seward Community Library unless otherwise noted.

SECTION 2. Special meetings of the Board may be called by the Chair of the Board or by any two Members upon reasonable notice thereof published in a newspaper or via radio, posted on the service area web page and posting at the Service Area Office, at the Borough Administration Building, Seward City Hall, Seward Harbor Master's, and the Seward Post Office. At a minimum reasonable notice shall be at least five days before the meeting unless an emergency exists that requires shorter notice or the meeting is called solely to discuss routine administrative matters not subject to the Open Meetings Act. All notice shall satisfy applicable requirements of the Alaska Open Meetings Act. The notice shall set forth the time and place of the meeting and shall be electronically mailed or telephoned to each Board Member. Only the business stated in the notice may be transacted.

SECTION 3. All meetings shall be open to the public as provided by law.

SECTION 4. Four Board Members shall constitute a quorum; however, an action, including appropriation of funds, shall require the affirmative vote of four Board Members.

SECTION 5. The board may go into executive session upon compliance with, and for reasons listed in, the Alaska Open Meetings Act (AS 44.62.310-312).

SECTION 6. An agenda for the regular business meetings shall be emailed to all Board Members. Meeting notice shall be posted on the website with meeting information link, posted at the Service Area Office, at the Borough Administration Building, Seward City Hall, Seward Harbor Master's, and the Seward Post Office. The notice of the meeting shall provide the date, time and location of the meeting. Such notices shall be published a reasonable amount of time before the scheduled meeting.

Business shall be conducted as follows:

- A. CALL TO ORDER
- B. ROLL CALL
- C. APPROVAL OF AGENDA
- D. APPROVAL OF MINUTES
- E. REPORTS & PRESENTATIONS
- F. PUBLIC COMMENTS
- G. BOARD RESPONSE TO PUBLIC COMMENTS
- H. CORRESPONDENCE
- I. PERMITS FOR REVIEW
- J. UNFINISHED BUSINESS
- K. NEW BUSINESS
- L. INFORMATIONAL ITEMS AND REPORTS
- M. PUBLIC COMMENTS
- N. BOARD COMMENTS
- O. ADJOURNMENT

"Robert's Rules of Order" shall be the guide used in conducting business.

SECTION 7. All proceedings of the Board Meetings will be permanently recorded in print and distributed to each Board Member for approval during a meeting of the board. After the minutes are approved, a signed, electronic copy shall be provided to the Borough Clerk for filing and distribution to the Borough Mayor and Assembly.

SECTION 8. Approved minutes will be posted on the Seward – Bear Creek Flood Service Area website and a hard copy will be available for public reading at the administrative office. Public requests for hard copies will be submitted via a "Public Records Request" through the Kenai Peninsula

Borough Clerk's office. Meeting audio files will be posted on the service area website.

ARTICLE IV. DUTIES

- SECTION 1.** The Board of Directors is established to oversee the operations of the Service Area and shall have the power to provide flood protection, planning and mitigation services subject to Assembly approval and appropriation of funds.
- SECTION 2.** The Board shall be responsible for developing, implementing, and updating a mitigation plan for furnishing flood protection services, and for determining the level of such services to be provided by the service area, subject to assembly approval.
- SECTION 3.** The Board of Directors shall develop criteria for determining service area involvement in future flood control projects, and shall coordinate with the State of Alaska, the Kenai Peninsula Borough, the City of Seward and other appropriate agencies to ensure there is no duplication or contradiction in flood control projects and services provided.
- SECTION 4.** The Board shall annually elect by majority vote of the Board Members, and from the Board Members, a Chair and a Vice Chair. Election of officers shall be held at the Board's first meeting in November or as soon thereafter as practical. The duties of officers and board members are defined in the Board Member Handbook.
- SECTION 5.** The Board shall make a complete annual report to the Mayor within one month after the close of the fiscal year pursuant to KPB 16.50.160.
- SECTION 6.** Annually the Board shall make a report and recommendations to the Assembly regarding mitigation projects to be undertaken. The report may be included in the annual budget documents. In making the Board's recommendation, the following criterion supports consideration of a mitigation project:
- A. Whether there is available Service Area funding;
 - B. Whether there are funding sources in addition to Service Area funds available for the project; and

- C. The overall benefits to public and private lands.

**ARTICLE V.
SERVICE AREA PERSONNEL**

SECTION 1. The job duties and responsibilities of the Service Area staff shall be set out in job descriptions, as recommended by the Board, approved by the mayor, and maintained by the borough personnel office.

**ARTICLE VI.
AMENDMENTS**

SECTION 1. The Board may adopt, amend, or repeal bylaws at any regular or special meeting of the Board provided that no bylaw shall be inconsistent with Alaska Statutes or Kenai Peninsula Borough Ordinances or Resolutions.

SECTION 2. No Bylaw may be adopted, amended or repealed except by affirmative vote of four of the seven board members.

APPROVED AND ADOPTED ON THIS 6th DAY OF June, 2022.



David Hettick, Chairman, Seward Bear Creek Flood Service Area Board

Attest:



Heather Cinereski, Service Area Administrative Assistant

Seward – Bear Creek Flood Service Area Emerging Situations Policy

Review May 16, 2022

Mission

The mission of the Seward – Bear Creek Flood Service Area is to provide flood planning, protection, and mitigation services in coordination with the appropriate agencies, to reduce the risk of flood damage to private and public property, through addressing issues that best reflect a fair use of the tax-levy for watershed-wide benefit.

Program Description

The Flood Service Area is responsible for providing flood planning, protection and mitigation services to the Seward – Bear Creek community. The Board is tasked to determine flood planning needs and to advise and facilitate flood hazard reduction measures.

Reason and Criteria for Policy Implementation and Activation:

An emerging situation is an unanticipated developing situation that appears likely to result in significant flood damage within the immediate future if no actions are promptly taken. It may or may not be on the SBCFSA Mitigation Projects & Priorities List. An emerging situation would be likely to benefit from SBCFSA actions before conditions deteriorate to an emergency or disaster level event, generally at a lower cost than a response delayed until post emergency/disaster occurrence.

Service Area Jurisdiction:

The proposed action must fall outside of the Road Service Area (RSA) responsibility and within the jurisdiction of the flood service area. If it is not possible to simply make this distinction, at OEM's request, both service areas shall work with a contractor to perform requested work, while accounting for work in a manner that allows Finance to distinguish the amount for which each service area is responsible.

Permits and Access:

Best efforts will be made to obtain required permits and private property access documentation prior to any action. The SBCFSA maintains these private property permissions on file. Regulatory agency permits are renewed for maintenance sites or obtained after-action as applicable. .

Budgeting and Use of Funds:

The SBCFSA board may choose to establish an annual budget for emerging situations. In emerging situations, funds already appropriated by the Assembly during the annual budget process may be expended based on criteria from the SBCFSA Board or at the discretion of the KPB Mayor. Under KPB 5.04.095 and .100, the KPB Mayor has the authority to transfer unencumbered balances between major budget classifications.

Example of Assembly Appropriation/Approval of Funds with proposed change:

Budget Section 43011 Contractual Services: Channel and embankment maintenance (\$15,000), flood restoration/ repair (\$15,000), bank stabilization/ revetment projects (\$15,000), cooperative project with City of Seward (\$50,000), establishing benchmarks (\$10,000), sediment management plan (\$20,000), *Emerging situations* (\$10,000).

Communication of Need to Respond:

In the event of an emerging situation, the SBCFSA Program Lead advises the Emergency Manager and the Board Chair (or, if unavailable, the Vice-Chair or next available senior member) of the situation and conditions, or vice versa. KPB Emergency Manager, RSA Director, SBCFSA Program Lead and qualified local contractor determine appropriate scope of work, estimated costs and jurisdictional responsibility for said work. The contractor will proceed under a "not to exceed amount" within Borough Purchasing criteria and will require invoices to identify agency, cost, scope and site. OEM will coordinate any outstanding permit needs with SBCFSA, RSA and River Center. SBCFSA Program Lead will confirm private property access documents and obtain any not on hand. Regular reports will be provided verbally or in writing (email) to the KPB Mayor and Emergency Manager, the Board Chair (or, if unavailable, the Vice-Chair or next available senior member). OEM will update other departments/agencies as necessary (i.e. State EOC, permit agencies, Solid Waste, ADOT&PF, City of Seward, emergency responders, etc.). OEM may establish a teleconference to discuss options. If consensus on jurisdictional responsibility cannot be reached, the KPB Mayor retains the responsibility to make a final decision.

Scope of Work:

The Board will be apprised of "not to exceed costs" and any options that may be available to recoup funds. In an effort to minimize costs and reduce the likelihood of extensive repairs or re-configuration later, scopes of work should be closely aligned with stated mitigation and flood protection goals, and the mission of the SBCFSA.

After Action Review and Reporting:

The Program Lead will inform the Board via email as soon as practical following an event of work done, associated costs, how work coincides with service area mission and how or whether funds may be recovered. OEM, RSA and others involved will assist SBCFSA in identifying effects of these responses as part of an after-action review, as these findings may benefit future grant applications with documentation of successful work supporting SBCFSA mission areas.

**Selected KPB Chapter 16.50 Code Sections Governing the
Seward – Bear Creek Flood Service Area**

16.50.090. - Board—Powers and duties. Pursuant to the provisions of AS 29.35.460 the board of directors of the service area, subject to KPB 16.04.001, assembly approval and appropriation of funds, shall have the power to provide flood protection, planning and mitigation services. Additionally, subject to assembly approval, the board shall be responsible for developing, implementing, and updating a development plan for furnishing flood protection services, and for determining the level of such services to be provided by the service area. Services shall only be provided that primarily address service area flood issues and that reflect fair use of the tax levy for watershed-wide benefit.

16.50.120. - Budget and fiscal control. The formulation of a budget and fiscal control of expenditures of public moneys of the Seward-Bear Creek Flood Service Area are under the supervision and direction of the mayor and the assembly.

16.50.150. - Policies—Formulation and authority—Approval required. The board, or its designee, shall formulate policies to govern the operation of the service area departments, and shall be responsible to the mayor for the personnel, morale, and general efficiency of the department. Prior to implementation, such policies shall be approved by the assembly by resolution.

16.50.160. - Annual reports required.

The board shall make a complete annual report to the mayor within one month after the close of the fiscal year, such report to include the information specified by the rules and regulations of the borough, together with comparative data for previous years and recommendations for improving the service to the service area.

16.50.140. - Chief administrative officers—Accountability. Administrative officers of the service area shall be held accountable to the mayor and the board only, and they shall make written and verbal reports to the mayor and the board as required by the mayor and the board. All other service area employees below the staff level shall be accountable to such administrative officers as are designated by the mayor and the board.

16.50.200. - Fiscal procedures. The service area shall abide by the fiscal policies and procedures applicable to the borough general government budget.

Seward – Bear Creek Flood Service Area Permit Review Policy

Purpose:

The SBCFSA Board can only provide comments to regulatory, permit-issuing agencies, most commonly the KPB Floodplain Administration, Alaska Fish & Game, and the US Army Corps of Engineers. The SBCFSA has two particular advantages over most other non-agency reviewers. First, board members have a continuing interest in matters related to flood and erosion risks in the service area. Second, board members, in the course of their duties, have ready access to detailed local knowledge of flood and erosion-related circumstances within the service area. Board comments on permit applications should emphasize local knowledge regarding flood and erosion risks.

Federal Regulations:

The National Flood Insurance Policy regulations (Title 44 CFR, Section 60.3(a)(3)) states that a community shall: "...review all permit applications to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall...(ii) be constructed with materials resistant to flood damage..."

This language forms a basis for the following board policy regarding permit review.

Policy 1:

If a proposed development site is in a flood- or erosion-prone area, the SBCFSA Board will apply local knowledge to determine if the proposed development is to be constructed with features resistant to flood or erosion damage.

No Adverse Impact:

"No Adverse Impact" (NAI) floodplain management is a managing principle developed by the Association of State Floodplain Managers. NAI floodplain management is an approach that intends to ensure that the action of any community or property owner, public or private, does not adversely impact the property and rights of others. For example, an alteration of a stream or floodplain at one point may cause increased flood damage risk to downstream property.

Policy 2:

The SBCFSA Board will apply local knowledge in review of permit applications to determine whether a proposed development in a flood- or erosion-prone area may lead to adverse impacts on neighboring property and, if so, whether adequate mitigation measures are included.

Once the board has applied these two policies in its review of a permit application, the board will communicate recommendations to permit-issuing agencies. The following policy will define alternative board recommendations.

Policy 3:

The SBCFSA Board will provide one of the following recommendations to permit-issuing agencies after review of a permit application:

1. Recommended without comment
2. Recommended with comments related to policies above
3. Not recommended with comments related to policies above