

Introduced by:	Long
Substitute Introduced:	02/17/09
O2009-09 (Long):	See Original for Prior History
Hearings:	02/17/09 and 03/24/09
Action:	Postponed Until 03/24/09
Date	03/24/09
Action:	Enacted as Amended
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2009-09  
(LONG) SUBSTITUTE**

**AN ORDINANCE CREATING A FLOOD HAZARD DISTRICT, OUTSIDE THE  
FLOOD INSURANCE RATE MAP AREA, WITHIN THE SEWARD-BEAR CREEK  
FLOOD SERVICE AREA TO INCLUDE THE 1986, 1995, AND 2006 KPB GIS MAPPED  
FLOOD DATA AREAS**

- WHEREAS,** flooding has occurred in the Seward-Bear Creek Flood Service Area (SBCFSA) repeatedly; and
- WHEREAS,** a federal disaster has been proclaimed within SBCFSA three times since 1986; and
- WHEREAS,** the Flood Insurance Rate Maps (FIRMs) are outdated and inaccurate; and
- WHEREAS,** the Federal Emergency Management Agency (FEMA) is in the process of preparing new FIRMs; and
- WHEREAS,** there have been millions of dollars in damage to private properties and public infrastructure caused by flooding events in the area; and
- WHEREAS,** flooding places the public health and safety at risk; and
- WHEREAS,** gravel deposits are steadily and rapidly increasing in SBCFSA streams, and the risk of flooding and related loss increases; and
- WHEREAS,** subdivision and development in SBCFSA has increased dramatically since 1996, increasing flood loss potential; and
- WHEREAS,** FEMA Disaster Assistance only provides a minimal amount of funding to repair damages to a home not covered by flood insurance to return it to a safe, sanitary, and functioning condition, but not to rebuild the home to current codes; and
- WHEREAS,** merely returning the structures to their preexisting condition results in potential for repeated flood damage and destruction to the same properties; and

**WHEREAS,** according to the 2005 KPB comprehensive plan, enforcement of floodplain requirements is primarily through voluntary compliance and assistance from mortgage companies since the borough does not require building permits or inspections; and

**WHEREAS,** the City of Seward has permitting regulations in place to assist with flood issues in the area of the SBCFSA within city limits; and

**WHEREAS,** KPB Chapter 21.06 contains the minimal regulations required by FEMA for floodplain management, and these regulations alone have not proved an effective tool for mitigating flood damage in the SBCFSA; and

**WHEREAS,** goal 6.7, objective 1, implementation action G of the comprehensive plan is to identify wetlands, floodplains, and erosion areas and minimize adverse impacts of flooding or erosion on neighboring properties; and

**WHEREAS,** goal 6.7, objective 2, of the comprehensive plan is to increase local participation in decisions regarding development in floodplains and wetlands; and

**WHEREAS,** goal 6.7, objective 3, implementation action A of the comprehensive plan is to improve the borough's floodplain ordinance; and

**WHEREAS,** a one year sunset clause is appropriate as FEMA is the process of developing new FIRM maps; and

**WHEREAS,** at its March 2, 2009, meeting, the SBCFSA board recommended enactment; and

**WHEREAS,** at its March 9, 2009, meeting, the Kenai Peninsula Borough Planning Commission recommended enactment by majority consent;

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

**SECTION 1.** That KPB 21.06.020 is hereby amended by adding the following definitions:

Q. “SMFDA” means the Seward Mapped Flood Data Area which includes the 1986, 1995, and 2006 KPB GIS mapped flood data area within the Seward-Bear Creek Flood Service Area outside the FIRM and city limits of Seward.

R. “Primary structure” means a dwelling, a building suitable for commercial use, or any structure which will be served by water or wastewater disposal systems or a fuel storage tank. This definition is applicable only in the SMFDA.

S. “Substantial Evidence” means evidence a reasonable mind might accept to support a conclusion.

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

**SECTION 2.** That KPB 21.06.030(B) is hereby amended as follows:

- B. Basis for establishing flood hazard areas. Flood hazard areas are identified as follows:
1. By the flood insurance rate maps with an effective date of May 19, 1981, revised on July 5, 1983 and December 6, 1999. The map panels numbered 020012-1350 and 1700 have been deleted and the areas depicted by these panels are not subject to the terms of this chapter. Excluding these panels, the flood insurance rate maps are adopted by reference and declared to be a part of this chapter. The flood insurance rate maps are on file at the planning department.
  2. The 1986, 1995, and 2006 KPB GIS mapped flood data area within the Seward-Bear Creek Flood Service Area (SMFDA) outside the city limits of Seward. A map showing this floodplain and flood data and a list of properties represented by this map shall be retained by the planning department and made available to the public. If any portion of a lot is included in the flood data mapped area, the entire lot shall be subject to the provisions of this chapter. Special provisions for development permits in the KPB mapped flood data area are set forth in KPB 21.06.045. Data available from other Federal, State of other sources shall be reviewed and reasonably utilized including but not limited to the following:
    - a. “Flood of October 1986 at Seward Alaska,” USGS Water-Resources Investigation Report 87-4278. Jones, S.H., and Zenone, Chester. (1988).
    - b. “Hydrologic Reconnaissance near Fourth of July Creek, Seward, Alaska.” USGS Water Resources Investigations 81-21. Nelson, G.L. (1981).

**SECTION 3.** That KPB 21.06.045 is hereby enacted as follows:

**21.06.045. KPB GIS mapped flood data area.**

- A. Base flood elevation in the SMFDA district. Based upon a digital elevation model provided by the borough base flood elevation in the SMFDA district is established by a licensed professional registered land surveyor or professional civil engineer at the highest point within the lot measured downslope from the specific construction site.
- B. Exemption from application of SMFDA district. A property owner may request an exemption for application of SMFDA to his proposed

development upon a showing by substantial evidence that his property was not inundated by flood waters in the 1986, 1995, or 2006 floods; adverse bank erosion has not occurred during the property owner's ownership, erosion can not be determined by analysis of KPB aerial photos beginning in 1986; the property is not a Corps of Engineers regulated wetland; or adjacent property owners concur there has been no adverse impact to their properties by flooding from the property of ownership making the request for SMFDA exemption. Staff shall verify whether the application for exemption meets the criteria and shall issue a written determination regarding the same. This determination may be appealed to the planning commission within 15 days of issuance.

C. Conditions. Only primary structures, substantial improvements to primary structures, and development in the minimum flood corridor in the SMFDA district require a development permit. The permits in the SMFDA district are subject to the following conditions:

1. Primary structures in the SMFDA district shall be a minimum of two feet above base flood elevation. Below-grade supports shall be at a two-to-one ratio as compared to the support above grade;
2. Foundations shall have an erosion resistant design; and
3. Where applicable, the standards for the permit is subject to the standards set forth in KPB 21.06.050; and
4. The permitted activity shall not increase the risk of flood damage to downstream or adjacent properties.

D. Currently active channels within the SMFDA district. All development in the SMFDA district in the minimum flood corridor within the Resurrection River watershed, Spruce and Sawmill Creeks, shall be subject to the permitting requirements of KPB 21.06.050(C).

E. If review of the permit application by staff indicates that the conditions set forth in KPB 21.06.045(C) cannot be met, staff shall deny the application. The applicant may apply for a permit from the planning commission by submitting a project-specific design under the waiver provisions of KPB 21.06.045(F).

F. Waivers. The variance procedure in KPB 21.06.060 only applies to permitting in the FIRM area. A project-specific design prepared by a licensed professional civil engineer may be submitted for consideration to the planning commission in lieu of meeting the conditions set forth in KPB 21.06.045(C). Based upon written findings of fact, the planning commission may grant or deny the permit and place conditions on the permit it grants in order that the risk of flood damage to downstream or adjacent property or

flood damage to public infrastructure will not be increased. The grant or denial of a permit may be appealed to the Board of Adjustment within 15 days of distribution of the planning commission's written decision.

**SECTION 4.** That this ordinance shall automatically expire on March 24, 2010 unless the assembly by ordinance alters or extends that date.

**SECTION 5.** That this ordinance is effective on the date of its enactment. The ordinance is not applicable to parcels where the "actual start of construction" has commenced as defined by KPB 21.06.020(M) prior to the date of enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 24TH DAY OF MARCH, 2009.**

\_\_\_\_\_  
Milli Martin, Assembly President

ATTEST:

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

Yes: Fischer, Knopp, Long, Pierce, Smalley, Smith, Sprague, Superman, Martin

No: None

Absent: None