



Kenai Peninsula Borough

144 North Binkley Street
Soldotna, AK 99669

Meeting Agenda Policies and Procedures Committee

Jesse Bjorkman, Chair
Willy Dunne, Vice Chair
Kenn Carpenter

Tuesday, April 20, 2021

3:45 PM

Betty J. Glick Assembly Chambers

Zoom ID: 938 6524 5999 Passcode: 886199

NEW BUSINESS

1. Resolutions

- *h. [2021-031](#) A Resolution Approving an Intergovernmental Cooperative Fire Protection Agreement between the State of Alaska, Department of Natural Resources, Division of Forestry, and the Kenai Peninsula Borough on behalf of the Western Emergency Service Area (Mayor)

Attachments:

[Resolution 2021-031](#)

[Memo](#)

[WESA - 2020 Forestry CFPA](#)

[WESA - 2021 Forestry AOP](#)

- *i. [2021-032](#) A Resolution Adopting a Policy that the Borough Will Conduct a Pre-Election Security Risk and Vulnerability Assessment and Develop a Security Design for Any Election System Used to Administer Borough Elections (Bjorkman, Elam)

Attachments:

[Resolution 2021-032](#)

[Memo](#)

2. Ordinances for Introduction

- *d. [2021-17](#) An Ordinance Amending KPB 21.06 Floodplain Management to Adopt Flood Depths for Three Neighborhoods in the Seward Mapped Flood Data Area) and to Incorporate the Seward Mapped Flood Data Area into the Minimum National Flood Insurance Standards (Mayor) (Hearing on 05/18/21)

Attachments: [Ordinance 2021-17](#)
[Memo](#)
[Maps](#)
[Reference Copy 2009-09 Sub](#)
[Reference Copy Ordinance 2013-29](#)

- *e. [2021-18](#) An Ordinance Amending Title 4 Regarding Borough Elections and Enacting a New Chapter of Code, KPB 4.60, Election Security and Integrity, to Ensure Borough Elections are Accessible, Reliable and Secure (Bjorkman, Elam) (Hearing on 05/18/21)

Attachments: [Ordinance 2021-18](#)
[Memo](#)

MAYOR'S REPORT

[KPB-3068](#) Mayor's Report Cover Memo

Attachments: [Cover Memo](#)

1. Assembly Requests/Responses- None.

2. Agreements and Contracts

- a. [KPB-3069](#) Authorization to Award a Contract for ITB21-021 North Peninsula Recreation Service Area Nikiski Pool Reroof to Earhart Roofing Co. Inc., Anchorage, AK

Attachments: [Authorization to Award ITB21-021](#)

- b. [KPB-3070](#) Authorization to Award a Contract for RFP21-006 Homer High School Roof Professional Design Service's to K+A designstudios, Kenai, AK

Attachments: [Authorization to Award RFP21-006](#)

3. Other

- a. [KPB-3071](#) Revenue - Expenditure Report - March 2021

Attachments: [Revenue - Expenditure Report - March 2021](#)

- b. [KPB-3072](#) Budget Revisions - March 2021
 Attachments: [Budget Revisions March 2021](#)
- c. [KPB-3073](#) Tax Adjustment Request Approval
 Attachments: [Tax Adjustment Request Approval](#)
- d. [KPB-3074](#) Litigation Status Report - Quarter Ending 03/31/21
 Attachments: [Litigation Status Report - Quarter ending 033221](#)

Introduced by:

Mayor

Date:

04/20/21

Action:

Vote:

**KENAI PENINSULA BOROUGH
RESOLUTION 2021-031**

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL COOPERATIVE FIRE
PROTECTION AGREEMENT BETWEEN THE STATE OF ALASKA, DEPARTMENT
OF NATURAL RESOURCES, DIVISION OF FORESTRY, AND THE KENAI
PENINSULA BOROUGH ON BEHALF OF THE WESTERN EMERGENCY SERVICE
AREA**

WHEREAS, pursuant to AS 41.15.010, *et seq.*, the State of Alaska is responsible for the protection of natural resources and watersheds on all state, private, and municipal lands; and

WHEREAS, pursuant to Title 16 of the Kenai Peninsula Borough Code of Ordinances, the borough is responsible for fire protection within its fire service area boundaries; and

WHEREAS, an intergovernmental cooperative agreement has been negotiated between the borough and the State of Alaska, Department of Natural Resources, Division of Forestry, in order to provide more comprehensive fire protection from wildland fires to protect persons within the service area; and

WHEREAS, Alaska Statute 18.70.150 provides that “A city, other incorporated entity, and other fire protection groups may organize a mutual-aid program by adopting an ordinance or resolution authorizing and permitting their fire department, fire company, emergency relief squad, fire police squad, or fire patrol to go to the aid of another city, incorporated entity, or fire protection group, or territory outside of it; and

WHEREAS, the borough administration has examined the proposed agreement and has concluded that it should be adopted by the assembly; and

WHEREAS, at its regularly scheduled meeting held on April 14, 2021, the Western Emergency Service Area Board recommended _____;

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

SECTION 1. That the Cooperative Fire Protection Agreement between the State of Alaska, Department of Natural Resources, Division of Forestry, and the Kenai Peninsula Borough on behalf of the Western Emergency Service Area is adopted, and the mayor, or his designee, is authorized to enter this agreement.

SECTION 2. That the 2021 Annual Operating Plan format is approved, and the mayor, or his designee, is authorized to executed the 2021 Annual Operating Plan, and authorized to execute future annual operating plans substantially in this format after considering recommendations by service area board.

SECTION 3. That this resolution shall take effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 20TH DAY OF APRIL, 2021.

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Western Emergency Service Area

MEMORANDUM

TO: Brent Hibbert, Assembly Preside
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *JCB*

FROM: Jon Marsh, Fire Chief *JM*
Western Emergency Service Area

DATE: April 8, 2021

RE: Resolution 2021-031, Approving an Intergovernmental Cooperative Fire Protection Agreement between the State of Alaska, Department of Natural Resources, Division of Forestry, and the Kenai Peninsula Borough on behalf of the Western Emergency Service Area (Mayor)

Alaska Statute 41.15.010 provides that it is the intent of AS 41.15.010 - 41.15.170 that the State of Alaska provide protection from wildland fire and other destructive agents, commensurate with the values at risk, on land that is owned privately, by the state, or by a municipality. The Kenai Peninsula Borough ("borough") and its service areas also recognize an obligation to provide protection to life and property from wildland fires within the service areas, subject to available resources, funding, and personnel. Therefore, it is to the mutual advantage of the borough, its service areas, and the state to coordinate efforts in the prevention, detection, and suppression of wildland fires. It is also in the best interests of the borough, its service areas, and the state that wildland fires be suppressed quickly and efficiently to minimize the destruction of natural resources and the threat to life, property, and communities.

On June 20, 2017, the assembly adopted Resolution 2017-045, on behalf of the borough and its service areas, approving an Intergovernmental Cooperative Agreement for the cooperative provision of comprehensive fire protection from wildland fires. The Anchor Point Fire and Emergency Medical Service Area ("APFEMSA") was among the approved service areas in the Resolution. However, since entering into the 2017 Agreement, the APFEMSA has been expanded and renamed the Western Emergency Service Area, necessitating a new agreement. In order to keep it on the same timeframe as the agreements approved by Resolution 2017-045, this resolution is seeking approval of a limited one-year cooperative agreement to include the newly created service area. This will ensure that all of the Agreements retain the same expiration dates and return to the Assembly at the same time for ease of tracking.

Your approval is respectfully requested.

**2021
Cooperative Fire Protection Agreement**

**State of Alaska, Department of Natural Resources, Division of Forestry and
Cooperator Fire Departments**

**Area: Kenai Kodiak Area
42499 Sterling Highway
Soldotna, AK 99669**

**Fire Department: Western Emergency Service Area
72440 Milo Fritz Ave.
Anchor Point, AK 99556**

Components

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- 2. Scope**
- 3. Definitions**
- 4. Appropriate Response**
- 5. Non-Suppression Activities**
- 6. Command of Incident**
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- 13. Worker's Compensation**
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- 15. Fire Stores/Equipment Guidelines**
- 16. Land Use and Facility Agreements**
- 17. Training Standards**
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- 19. Annual Operating Plan (AOP)**
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1. Recitals

It is the intent of AS 41.15.010 that the Alaska Division of Forestry (Forestry) provide protection from wildland fire and other destructive agents, commensurate with the values at risk, on land that is owned privately, by the state, or by a municipality. It is also recognized by the fire department (Cooperator) that an obligation exists to provide protection to life and property from fires within their area of responsibility, subject to available resources, funding, and personnel. Therefore, it is to the mutual advantage of the Cooperator and Forestry to coordinate efforts in the prevention, detection, and suppression of wildland fires.

2. Scope

This agreement outlines the roles and responsibilities for cooperating Fire Departments (FD) when responding to and suppressing Wildland/Urban Interface fires.

3. Definitions

Annual Operating Plan (AOP): Negotiated annually between the FD and Forestry to define operational details: Rate Tables, Required Equipment, Training, Documentation and Administrative responsibilities. The local Area Forester or designee signs the AOP for the Division of Forestry. The AOP may be different for each fire department due to department policy, city ordinance or union contract.

Automatic Aid: The assistance that is dispatched automatically by contract or agreement between two fire departments, communities or fire districts.

Back Fill: When the FD is required to supply a firefighter at their station to comply with Fire Department policy, municipal ordinance, or union contract. Forestry will reimburse backfill overtime costs only. Forestry only pays for the overtime above what the regular salary would have been for the employee(s) deployed

Cooperator: A structural fire department that is in good standing and certified by the State Fire Marshall. For the purpose of this document FD shall be used in all descriptors of a Cooperating Fire Department.

Contained or Containment: When a wildland fire has a natural barrier, dozer line, wet line, roads, scratch line, retardant line, etc. around it to keep the fire from spreading.

Cooperative Fire Protection Agreement (CFPA): The FD establishes a formal relationship with the Division by signing a Cooperative Fire Protection Agreement (CFPA). The agreement is signed by the fire department's Chief or governing official and sent from the Area, through the Region, to the Central Office for the State Foresters and the Department signatures. The CFPA will be the same statewide for all FD's; all cooperating fire departments will have a signed CFPA prior to hire or use of equipment.

Custody: When the operator/personnel remain employees of the FD's, the apparatus remains in operator/personnel custody. When the operator/personnel are hired as Emergency Fire Fighter (EFF), the apparatus remains in Forestry custody during the period of use. During such time, Forestry, as custodian, will exercise ordinary prudence and diligence in the use and care of the apparatus. Control of apparatus and personnel shall follow the Incident Command System.

EERA Equipment: Emergency Equipment Rental Agreement (EERA) Equipment includes equipment rented to Forestry that is not fire apparatus. The EERA equipment is registered into On-

Line Application System (OLAS) using Agency Suggested Rates.

Fire Apparatus: Fire engine, pumper, tender, tanker, brush rig, fire command vehicle, maintenance truck or such other rolling stock as it's typically used by fire departments for fire suppression purposes. Rates for Apparatus are detailed in the AOP.

Fire Response/Service Area: The FD's Fire Service Area or designated area where the FD has primary responsibility for fire protection. This may also include an Auto Response or Mutual Aid Response Area. Mutual Aid Response Area also includes DNR Forestry local Area of responsibility.

Fire Stores: Items as needed to complete required minimum equipment inventory or Nominal Unit Supply (NUS) as specified in AOP.

Incident Command System: An emergency response management system defined by the National Incident Management System (NIMS), and endorsed by the Governor of Alaska via Administrative Order 170.

Incident Business Management Handbook: The AIBMH applies existing State of Alaska administrative, contracting, and financial regulations and Department procedures within the framework of fire business management operations. Chapter 7 of the AIBMH, Cooperator Fire Departments, addresses FD apparatus; this is a separate compartment within the OLAS, "Fire Department". Chapter 6 AIBMH, Equipment Acquisition; addresses FD non-apparatus equipment, this compartment within OLAS is "Vendors".

Land Use and Facility Agreements: Temporary rental of property for fire purposes. Land Use and Facility Agreements (LUA) may include, but are not limited to; potable water sources, apparatus water sources, parking facilities, land line services, meeting and training rooms and restroom facilities. LUA pre-season inspections and Letter of Agreements (LOA) are preferred over actual incident occurrence.

Licenses and Permits and Insurance - The FD is responsible for obtaining at their own expense, carrying a copy of, and showing proof at the time of hire all necessary licenses and permits required by state and federal law/regulation for both the apparatus and operator/personnel.

Mutual Aid: Assistance that is dispatched, upon request, by the responding fire department. Usually it is requested upon the arrival on scene but can be requested in route if circumstances dictate. Mutual aid should be defined by a signed agreement.

OLAS: On-line Application System is used to register, hire, and track FD fire apparatus and EERA equipment. OLAS will be used in the future for entering and tracking the CFPA's and AOPs submitted by FD's.

Order for Service: Upon acceptance of an order for service, either verbally or accepting a Resource Order, a binding contract between the FD and Forestry is created incorporating the terms of the CFPA and the AOP, when the apparatus or equipment passes inspection.

Property: Structures and other property located within a fire response area excluding forested land as defined in AS 41.15.170.

Reporting for Service - The FD is responsible for providing apparatus to Forestry in a good and safe operating condition and will be subject to pre-use inspection at time of hire. If, in the determination of Forestry, the apparatus is not in good, safe operating condition based upon the manufacturer's general safety specifications when it arrives for work, Forestry may reject it. If equipment is rejected, Forestry

will not pay any costs, including transportation costs. The operator/personnel shall keep a copy of the CFPA and AOP documents with the apparatus.

Termination of Order for Service - There is no guaranteed length of hire under any order for service. Forestry may terminate an order for service when it is determined by Forestry that the apparatus is no longer needed. When the order for service is terminated, Forestry shall be liable only for payments in accordance with payment provisions of this contract for services rendered prior to the effective date and time of termination. In the event the FD requires return of apparatus, the FD shall notify Forestry, and the equipment shall be released within eight hours or at the beginning of the next operational period.

Wildland Fire: Uncontrolled burning of grass, brush, timber and other natural vegetative material. Any non-structure fire that occurs in vegetation or natural fuels. Wildland fire includes prescribed fire and wildfire.

4. Appropriate Response

Standard/Initial Response:

A response that a FD undertakes in order to meet its general obligation to protect life and property from fires within its Primary Fire Response/Service Area. A Response in a wildland fire begins at the time of notification and ends when the fire has been contained as determined by the Unified Command and no longer poses a threat to life and property. Unless agreed upon by Forestry Fire Management Officer (FMO) and the FD's Fire Chief, Forestry is not responsible for FD costs. By mutual agreement when *containment* has been reached **if** FD apparatus are requested by Forestry to remain on incident to support Forestry operations, Forestry Dispatch will be notified and Resource Orders for all FD apparatus, personnel and equipment shall be created.

Discretionary Response:

Within the FD Primary Response Area: a response that occurs after a fire has been *contained* and Forestry assumes single command of a wildland fire and requests that the FD remain on scene. Forestry is responsible for FD costs. Resource Orders for all FD apparatus, personnel and equipment shall be created.

Outside of the FD Primary Response Area: a response to a wildland fire at the request of Forestry to a wildland fire outside a FD's Primary Fire Response/Service Area. Forestry is responsible for FD costs. Resource Orders for all FD apparatus, personnel and equipment shall be created, apparatus and equipment shall pass inspection prior to start of service.

Unified Command: A method for all agencies or individuals who have jurisdictional responsibility and in some case those who have functional responsibility at an incident to contribute to:

- Determining overall objectives for the incident
- Selection of a strategy to achieve the objectives
- Joint command of the incident for the first shift during initial attack

5. Non-Suppression Activities

Prescribed fire (RX) and other fire management projects:

Under the direction of Forestry, the AOP may be used for procuring personnel and equipment for other fire management activities such as fuels mitigation and RX projects, inside and outside the FD

jurisdictional area. Project work conducted for federal agencies must be performed under the conditions of agreements specific to their agency specific procurement requirements.

All Risk Assignments:

It is common for wildland fire resources to assist with non-fire incidents. When requested under the authority of the Stafford Act, it is possible for Alaska state and FD resources to assist with these incidents. All such incidents must be handled on a case-by-case basis. FD's should check with the local Division of Forestry (DOF) Area Office, Forester or FMO prior to accepting all risk assignments under the CFPA and AOP agreements.

6. Command of Incident

Standard/Initial Response: The first responder on-scene shall assume functional command of the incident until the arrival of other responders, after which a Unified Command may be established.

Extended Response: By mutual agreement between Forestry and FD's, Forestry will assume single command of the incident once a fire escapes initial attack or is contained. Forestry is fiscally responsible for costs incurred suppressing the wildland fire during extended attack and mop-up when Forestry is in command.

7. Rates, Billing and Status of Employees and Apparatus

- All FD apparatus and EERA equipment will be registered in OLAS. Rate tables for FD apparatus are available in the AOP; for other FD equipment rates review Chapter 6 of the AIBMH..
- Apparatus may be hired unstaffed (apparatus only), Staffed or a mix of FD and Department of Natural Resources (DNR) personnel or staffed by all DNR personnel.
- Rate tables are reviewed annually by DNR.
- The Area Forester or designee has the authority to correct or change the invoice in case of accounting errors or needed additions or subtractions from invoice, or if the FD chose the improper category, type, class or rate in OLAS.
- Billing for fire personnel that will remain FD employees (not EFF) needs to be communicated during the resource ordering process and documented on the Resource Order (RO) prior to hire. During the time of hire FD employee names and position on the apparatus will be documented and manifested.
- Hourly Rates for FD staff by position only, will be established when the AOP is signed. FD's will provide a position qualification list with hourly rates to Forestry. No private information will be included in this list. This list will be used for cross reference at the time of invoice, for FD employee name, position on apparatus and hourly rate.
- If FD personnel will be hired as EFF this needs to be communicated during the resource ordering process and documented in the Resource Ordering and Status System (ROSS) program prior to hire. EFF personnel will get individual resource orders. Rates will be established EFF rates based on position being filled.
- Personnel changes or crew swaps during assignments will be communicated through the home area fire dispatch, regardless of hiring method or management level of fire or location of fire.

- In the event where an AOP has not been signed by Forestry, rates paid for apparatus will not exceed the latest version of the rates listed in the AOP.
- State of Alaska, Division of Forestry employees remain employees of the State whether they work under FD or Forestry command. FD personnel if hired by Forestry as EFF, will become Forestry employee(s), and are subject to the Conditions of Hire for EFF established in the latest version of the Alaska Emergency Firefighter Type 2 Crew Management Guide and the Alaska Single Resource AD/EFF Casual Hire Guide.

8. Backfill Reimbursement

Forestry will reimburse backfill overtime costs only. Forestry only pays for the overtime above what the regular salary would have been for the employee(s) deployed. Backfill reimbursement will be approved only when the FD is required to supply a firefighter at their station to comply with Fire Department policy, municipal ordinance, or union contract.

- Backfill reimbursement costs will be billed and segregated from the deployed personnel.
- Rates for backfill reimbursement should be attached as an addendum to this document.

9. Travel, Meals and Lodging

Travel time between the point of hire and the incident is reimbursable, if the incident is outside of a 50-mile radius of FD service area and authorization for per diem and travel is documented on Resource Order. Forestry will either pay per diem at established State of Alaska, Forestry rates or provide meals and lodging for FD employees on assignment away from their Primary Fire Response Service Area.

10. Refurb/Rehab

With the local Area Forester or Fire Management Officer (FMO) approval, FD's are allowed up to 4 hours of refurb for an assignment less than or up to 10 days and up to 8 hours of refurb for an assignment longer than 10 days for refurb and rehab of their equipment.

11. Mutual Aid resources requested for a mutual aid request must be pre-approved by Forestry to be eligible for reimbursement.

12. Automatic Aid resources will not be reimbursed unless otherwise requested by Forestry as outlined in their AOP.

13. Worker's Compensation

The FD's and Forestry are responsible for Worker's Compensation for their own personnel.

14. Liability Insurance

The FD's and Forestry are responsible for their own liability insurance coverage.

15. Fire Stores/Equipment Guidelines

Upon discretionary assignment outside the Fire Response/Service Area, Forestry will issue to the FD fire stores as needed to complete the required minimum equipment inventory as specified in AOP. The FD will maintain the fire equipment issued under this Agreement in an operable condition. Issued equipment will be returned to the issuing Forestry Office upon completion of the assignment. Forestry will not hold the FD accountable for consumable fire supplies. Upon return from fire assignment all stores items will be returned to the local Area Forestry Warehouse.

If non-consumable fire stores become broken, or otherwise unusable, the FD will return the damaged item, along with a statement (or appropriate forms) of how the item was damaged, to Forestry for repair or replacement. If an item becomes lost or damaged as a result of negligence by the FD, the FD will be liable for replacement.

16. Land Use and Facility Agreements

Temporary rental of property for fire purposes requires the same degree of good business judgment, including reasonable price determinations, as any other procurement action. In making the determinations as to price fairness, consideration should be given, but not limited, to the following items:

- Fair market rental rates for the property in the area
- Costs to the property owner, loss of rental fees from other sources, disruption of business
- Alterations needed and who will make them in a written scope of work
- Impacts on the property
- Costs of restoration, and who will do the restoration work
- Duration of the rental, (emphasis should be on weekly or monthly rates), with a limit on total costs

Pre-inspection and post-inspection shall be made of the premises using the forms found in the Forms section of the AIBMH, Chapter 16. The inspections can be documented on separate inspection documents if additional details or information are needed. Pre- and post-inspection photographs are required showing where actual damages occur that may result in a claim. Pre- and post-inspections shall note all improvements and conditions, including items such as fences, buildings, wells, cisterns, road conditions, etc.

Further information can be found in the AIBMH, Chapter 16, Land/Facilities Acquisition.

17. Training Standards

When responding outside its Fire Response/Service Area, all FD employees will be National Wildfire Coordinating Group (NWCG) certified at a minimum of Wildland Firefighter 2, which includes an annual fire line refresher Training and Work Capacity Test. All personnel hired as EFF by Forestry must meet established NWCG physical fitness and training standards for the position hired. Forestry may provide wildfire training material to the FD upon request. Training funds may be available through the Volunteer Fire Assistance (VFA) grants program. For further information see AOP.

18. Investigation and Prevention

See AOP for Investigation and Prevention policy and procedures.

19. Annual Operating Plan (AOP)

As soon as practical after this Agreement is executed and prior to March 15th, then annually thereafter, the FD and the State Forester or his designee shall meet to negotiate an AOP. The subject matter of the AOP shall define the necessary operational details. At a minimum, the AOP should include mobilization procedures; approved rates; staffing; a map or description of response area; training and qualifications; contact information; education, prevention, investigation, and coordination procedures; and radio frequencies (communication coordination).

20. Notification

Notification procedures are outlined in the AOP.

21. Parties Responsible for their own Acts

The Cooperator Fire Departments and the State of Alaska, including but not limited to the Alaska Department of Natural Resources and/or the Alaska Division of Forestry, each agree that they will be responsible for their own acts, omissions, or other culpable conduct and neither shall be responsible for the actions or inactions of the other. Each party agrees to defend itself individually from claims, demands, or liabilities arising out of any activities authorized by this Agreement or the performance thereof. In any claim arising out of the performance of this Agreement, whether sounding in tort, contract, or otherwise, and whether alleging sole liability, joint liability, vicarious liability, or otherwise, each party shall defend itself but may assert comparative fault, the sole liability of another, or any other defense, affirmative defense, or request for relief.

22. Permits and Laws

The parties shall acquire and maintain in good standing all permits, licenses, and other entitlement necessary to the performance under this Agreement. All actions taken by the parties under this Agreement shall comply with all applicable laws, statutes, ordinances, rules and regulations.

23. Non-Waiver

The failure of the FD or Forestry at any time to enforce a provision of this Agreement shall in no way constitute a waiver of any provision in this Agreement, nor shall it in any way affect the validity of this Agreement.

24. Review and Modifications

Forestry and FD agree to review this Agreement at least every five (5) years, but, Forestry and FD may agree to modifications to this agreement at any time. All modifications to the Agreement shall be incorporated by written amendments to this Agreement and signed by Division of Natural Resources and FD prior to becoming effective.

25. Fair Intent

This Agreement has been jointly drafted by the parties following negotiations between them. It shall be construed according to the fair intent of the language as a whole and not for or against any party.

26. Agreement Effective Date and Termination

This Agreement supersedes all other versions of this document. This agreement is effective as of the date of most recent signature and remains in effect until terminated in writing. Either party may terminate this Agreement at any time by giving written notice to the other party at least thirty (30) days before the effective date of such termination.

- **The CFPA is valid for 1 year after signing.**
- **The AOP is valid for 1 year. Every year it shall be reviewed and resigned.**

The State of Alaska is an equal opportunity employer and does not discriminate in employment on the basis of race, color, religion, sex, national origin, age, disability, marital status, changes in marital status, pregnancy, and parenthood. This includes behavior such as making threats, abusive language, slurs, unwelcome jokes, teasing and other such verbal or physical conduct. Creating a hostile work environment will not be condoned. This includes verbal or physical conduct of a sexual nature, making unwelcome sexual advances or requests for sexual favors, and unreasonably interfering with the work of others.

Cooperative Fire Protection Agreement Signatures

For State of Alaska, Department of Natural Resources, Division of Forestry

Area Forester	Date
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State Forester	Date
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DNR Procurement Officer	Date
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For Cooperator Fire Department

Jon Marsh, Chief - Western Emergency Service Area or Designee	Date
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Charlie Pierce, Mayor - Kenai Peninsula Borough or Designee	Date
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ATTEST:

Johni Blankenship, Borough Clerk

2021

Annual Operating Plan

**State of Alaska, Department of Natural Resources, Division of Forestry and
Cooperator Fire Departments**

**Area: Kenai-Kodiak Area Forestry
42499 Sterling Highway
Soldotna, AK 99669**

**Fire Department: Western Emergency Service Area
72440 Milo Fritz Ave.
Anchor Point, AK 99556**

Sections

- A. Fire Response and Notification Procedures in the FD Service Area**
- B. Discretionary Response Procedures**
- C. Communications**
- D. Command**
- E. Fire Reports and Reporting**
- F. Prepositioning**
- G. Investigation Procedures**
- H. Prevention**
- I. Training Standards and Physical Fitness**
- J. Fire Department IMT and National Participation**
- K. Fire Stores/Equipment**
- L. Operating Procedures**

Purpose

The Annual Operating Plan (AOP) is a supplement to the Cooperative Fire Protection Agreement (CFPA) and outlines the procedures to be followed in this agreement. The CFPA implements the intent of AS 41.15.010 - 41.15.170 to provide protection from wildland fire and other destructive agents, commensurate with the values at risk, on forested land that is owned privately, by the state, or by a municipality. It is also recognized by the Cooperator (FD) that an obligation exists to provide protection to life and property from wildland fires within their area of responsibility, subject to available resources, funding, and personnel. Therefore, it is to the mutual advantage of the FD's and the State of Alaska to coordinate efforts in the prevention, detection, and suppression of wildland fires. It is in the best interests of both the FD's and the State of Alaska to suppress wildland fires quickly and efficiently to minimize the destruction of natural resources and threat to life and property.

A. Fire Response and Notification Procedures in the FD Primary Service Area

1. Within a FD's Primary Service Area, State of Alaska Division of Forestry (Forestry) will generally not respond to wildland fires after normal work shift during Low or Moderate Fire Danger Levels listed in the Fire Staffing and Action Guide. This section does not preclude a FD from requesting Forestry assistance on any wildland incident that exceeds the capability of their resources for control.
2. Upon receipt of an incoming call for a wildland fire within State's protection area, the FD's Dispatch Center will contact local Area Forestry Dispatch or the Area Forestry Duty Officer to forward fire information.
3. The FD's Senior Fire Officer (SFO) will notify Forestry, either through the State's primary radio frequency (ALMR) or call local Area Forestry Dispatch for any response to a wildland fire within the FD's primary response area. The FD's SFO may instruct their dispatch center to make this call to Forestry at the time of dispatch.

B. Discretionary Response Procedures

1. Within the FD's Primary Response Area: Forestry is responsible for FD costs after a fire has been contained and Forestry assumes single command of the wildland fire. At that time, specific requests for FD apparatus and personnel to remain on scene by the Incident Commander (IC) will be eligible for compensation. Forestry is responsible for FD costs for fires that go beyond the first operational period, also referred to as extended attack fires. When extended attack fires occur, the Forestry IC will determine apparatus and personnel necessary to complete the objectives of the incident. Only apparatus and personnel determined necessary by the IC will be compensated back from the original time of dispatch.
2. The FD's Fire Chief will be contacted prior to apparatus or staff responding to Discretionary Response inside or outside FD's response area by the Forestry FMO or Area Forester.
3. Outside of the Primary Response Area: When requesting a discretionary response outside the FD's service area, Forestry FMO will contact the Fire Chief who will notify their appropriate dispatch office. The decision of accepting a discretionary response request is at the sole discretion of the Fire Chief. In accordance with their department's policy, the Fire Chief will make all appropriate notifications prior to the acceptance of the discretionary response request. When requesting a FD's discretionary response, Forestry will designate the type and number of apparatus or equipment needed. If available and with FMO and Fire Chief approval, a department SFO may accompany the

unit(s). Forestry is solely responsible for costs associated with Discretionary Responses.

C. Communications

1. For multiple agency response and helicopter communications, Tactical Frequencies are recommended for initial contact only. Incident frequencies will be established and coordinated by responding agencies once on scene and reported back to local Area Forestry Dispatch. Responding units may contact the FD dispatch as a back-up for the communications plan.
2. On scene communications between ground forces and any aircraft will be routed through a single point Forestry contact as designated by the incident commander. The primary frequency for aircraft communication is State Air to Ground channels (A/G1 or A/G2).

D. Command

1. Upon arrival at a wildland fire incident, the first unit on the scene establishes command until it is determined that a unified command is needed.
2. Upon transfer of command by a FD Incident Commander, a Forestry Incident Commander must be established as either Unified or Single Command when Forestry resources remain on scene. This command change must be documented by calling local Area Forestry Dispatch with notification of change.
3. Forestry will maintain control of all Forestry contracted aviation resources.

E. Fire Reports and Reporting

1. FD's will provide Forestry with a copy of:
 - Incident map
 - Alaska National Fire Incident Reporting System (ANFIRS) report with a narrative stating pertinent information and suspected cause.
 - Email ANFIRS report to local Area Forestry Dispatch within 48 hours of the incident being called out.

F. Prepositioning

1. Forestry will provide the FD with a daily fire danger rating and hours of availability during fire season.
2. Forestry Dispatch will always have discretion when assigning Forestry resources and can direct them to a higher priority fire at any time.
3. Local Area Forestry Offices and local FD's may establish different protocols and procedures for prepositioning. Differences in preposition procedures need to be established prior to the start of fire season.

G. Investigation Procedures

1. Upon arrival at a wildland fire incident, the first arriving units on the scene shall establish a chain of custody on scene, secure any suspected fire origin areas from encroachment or tampering, protect evidence in place and identify any potential witnesses and/or suspects prior to the arrival of Forestry. Forestry will provide fire investigators to determine the cause of wildland fires. The request for an investigator must be placed early in the incident and every effort must be made to protect the point of origin of the fire until the investigator arrives on scene to begin a formal investigation.

2. During the established wildland fire season, the FD, if they are the first arriving agency on an incident, will establish and maintain a chain of custody for both escaped or non-escaped fires which may involve any potential violations of State wildland fire protection laws under AS 41.15 and/or 11 AAC 95. This chain of custody shall be maintained until transferred by the FD to Forestry. In the event the FD has insufficient resources to maintain a chain of custody due to fire activity or staffing, they shall be responsible for documenting the incident, both in writing and pictures, prior to departing. Investigation information shall be provided to Forestry as soon as possible.
3. The FD may be requested to assist or provide information to Forestry for both escaped and non-escaped fires that may be in violation of State wildland fire protection laws under AS 41.15 and/or 11 AAC 95. Should criminal or civil legal action be taken by Forestry against a party for violation of State wildland fire protection laws under AS 41.15 and/or 11 AAC 95, the FD may be required to provide additional information and/or be called to testify in court on Forestry's behalf. The FD and Forestry may establish a separate agreement for any costs that would be incurred to either party should this occur.
4. The FD may not enforce, through verbal or written warnings or citation, State wildland fire protection laws under AS 41.15 and/or 11 AAC 95 unless the FD has collateral law enforcement duties and has been granted authority to undertake such actions.

H. Prevention

1. The statewide Wildland Fire Prevention Program Office coordinates all wildland fire public education outreach, engineering, investigation and enforcement efforts on all lands under Forestry's statutory authority. Area specific Wildland Prevention programs are managed by local Area Forestry Offices. The FD may assist Forestry with public education about wildland fire prevention, permitted burning, safe burning practices and providing them with Forestry approved public education materials where available.
2. When requested, Forestry will assist with FD fire prevention programs contingent on staff availability and fire activity.
3. Forestry has authority under Sec. 41.15.060 to establish and maintain burn permit requirements on all State, municipal and private forested lands. FD's under 11 AAC 95.412(d)(4) may implement their own local burn permit program if the requirements are equal to or more stringent than those required by the State.
4. Forestry has established two type of permitted burning during the designated fire season:
 - Small-Scale permitted burning which is limited to one burn barrel of up to 55 gallons in size, one brush pile up to 10 foot in diameter and four feet in height, **or** the burning of up to one acre of maintained lawn no more than four inches in height. This permit does not require a site inspection by Forestry prior to burning.
 - Large-Scale permitted burning that involves operations that are more complex than those allowed under a Small-Scale permit. This permit may require a site inspection by Forestry prior to burning. The Cooperator may assist Forestry in distributing Small-Scale Burn Permits within their Primary Response Area when applicable.
5. Forestry has authority under 11 AAC 95.445. to temporarily suspend Small and Large-Scale permitted burning on all state, municipal and private forested lands. Forestry will announce temporary burn suspensions by notifications on the Division of Forestry's Internet website and by recorded telephone message at local Area Forestry offices. The announcement will specify the area under suspension and the effective dates and time period of the suspension. Forestry will notify the

FD of burning suspensions, wind advisories, closures, and Red Flag Warnings through the Daily Prepositioning Report. Additional information about weather and burning conditions may be found at <http://forestry.alaska.gov/burn>. Telephone notification will be made for emergencies not covered in the Prepositioning Report.

6. The Commissioner of Department of Natural Resources (DNR) may immediately close an area to the setting of fires, smoking, use of specified approved burning devices, entry, or other use on the land when the commissioner determines that these activities would significantly increase the fire danger. (b) An emergency burn closure applies to all activities and on all state, municipal, and private land identified in the closure, including burning conducted under 11 AAC 95.412(d)(4). Forestry will announce an Emergency Burn Closure by notification on the Division of Forestry's Internet website, local radio, and local print media if any exist. Notices will specify the area closed, the activities restricted, and the effective dates of closure.
 - The FD may close open burning in accordance with the provisions of the local fire codes or ordinances.
 - The FD's SFO may request through their local Area Forestry Office to open, suspend or close both permitted and/or non-permitted burning under Forestry's jurisdiction by contacting the Forestry Fire Management Officer (FMO) by email, phone or in person. Requests of this nature will follow Forestry policies and procedures.

I Training Standards and Physical Fitness

1. Forestry and their delegated agencies will issue National Wildfire Coordinating Group (NWCG) Interagency Red Cards after proof of training and physical fitness. Qualifications will be demonstrated by possession of a current, valid Red Card appropriate to the position being hired. All personnel hired as Emergency Fire Fighter (EFF) by Forestry must meet established physical fitness and training standards for the position hired. There will be no exceptions.
2. FD personnel assigned to a Discretionary Response **within the FD's Primary and Mutual Aid Response Area** shall be certified by the FD's Chief or designee as trained and fit for the duty(s) requested. Personnel not possessing NWCG Interagency Red Cards shall remain employees of the FD. They are the liability of the cooperator and are not eligible to be hired as EFF.
3. For other positions, FD's will follow NWCG training and Certification guidelines under PMS 310-1.
4. Consideration for fully qualified NWCG position requires attending appropriate position classroom training, successful performance on assignments and completing an NWCG Position Task Book (PTB).
5. Personnel shall meet all established physical fitness and training standards for these positions.
6. Mutual Aid requests from other FD's follow FD certification process.
7. Forestry may assist in the training of agency personnel in preseason wildland fire protection, refresher and pack test.
8. Red card certification must be made prior to any assignments (preferably at the beginning of wildfire season) for FD personnel assigned to Discretionary Response **outside the FD'S Primary and Mutual Aid Response Area** and sent to the local Area Forestry Training Officer by **May 1st of every year.**

J Fire Department IMT and National Participation

1. Individual FD personnel fulfilling Incident Management Team (IMT) positions, qualified or trainee are not subject to preparedness level thresholds. As such, these resource orders will be filled accordingly through local Area Dispatch Office.
2. Qualified FD personnel will be made available, after mutual consent of Forestry and FD Chief, for assignments by notifying local Area Dispatch
3. In the interest of advancing FD employee experience, "trainees" may be assigned to incidents under this agreement where FD will cover all costs except travel, food, and lodging through prior mutual agreement of Forestry on a case by case basis.
4. On National assignments, all regular full-time FD personnel will be reimbursed at their regular FD rates to include benefits for the hours worked. The FD will not be reimbursed for associated costs for backfill or minimum staffing levels.
5. FD personnel must be self-sufficient; they must have the ability to provide for food, lodging, fuel and miscellaneous maintenance for equipment.

K. Fire Stores/Equipment

1. Discretionary assignment outside the Fire Response/Service Area, Forestry will issue to the FD additional supplies as needed to complete the required minimum equipment inventory. The FD will maintain the fire equipment issued under this Agreement in an operable condition. Issued equipment will be returned to the issuing Forestry Office upon completion of the assignment. Forestry will not hold the FD accountable for consumable fire supplies. Upon return from fire assignment all stores items will be returned to the local Area Forestry Warehouse.
2. FD's will outfit apparatus based on Minimum Required Equipment and Supply Table. Wildland fire issued from FD supplies that are lost or damaged can be replaced through the State Fire Warehouse, with appropriate Resource Order (RO) and fire number. Any lost or damaged supplies or equipment may also be replaced by filling out the appropriate Property Loss Damage Report and submitting with Finance Packet.
3. All personnel responding to wildland fire shall be equipped with proper personal protective equipment as stipulated in the Division of Forestry (DOF) Policy and Procedures Manual Section 2120. This includes a fire-retardant shirt and jeans or coveralls, helmet (non-metal), eye protection, heavy-duty leather gloves, 8" tall lace up leather boots, and a fire shelter for each person.

L. Operating Procedures

1. **Timekeeping:** The start of the rental period begins upon passing inspection and receiving a completed Pre-use inspection form (OF-296). Time shall be documented on the initial shift ticket. Each service call will be documented via shift tickets to an Emergency Equipment Use Invoice, OF-286, or equivalent. Crew Time Reports (CTR) and Equipment Shift Tickets must be signed by Fireline Supervisor.
2. Crew Time Reports (CTR) should be started for apparatus staff once equipment is inspected and placed in service.
3. **Apparatus Staffing:** The FD shall furnish the required staffing as listed in Tables 1-6, for each apparatus. The FD will ensure that the personnel provided are qualified to staff the apparatus.
 - Additional FD personnel above minimum staffing levels listed in the rate table may staff the

apparatus. Variations from staffing levels listed in the AOP rate tables must be mutually agreed upon by Area Forestry FMO and the FD and adjustments must be noted on the RO and documented daily with the Equipment Shift Tickets (OF-297).

- Apparatus may be staffed below recommended minimums with approval from FMO. If staffed below minimum it will be noted on RO at the time of hire and the rate will be reduced proportionately from Combined Rate amount listed.
- At the end of rental agreement, the release inspection portion of the OF-286 must be performed and completed.
- **All personnel staffing apparatus will be listed legibly daily on Equipment Shift Ticket's (OF-297) with FD status next to each name and position filled on the apparatus. (i.e. FFT1, FFT2, ENOP) (example: Jane Smith FFT1)**

4. Transportation of Apparatus: Apparatus shall be delivered, at Forestry's expense, from point of hire to the work site (incident) and returned to the point of hire.

5. Performance and Direction of Work: The FD staff are always responsible for the safe and efficient operation of apparatus and may refuse to work in a situation:

- exceeding FD staff ability
- that exceeds the capability of the apparatus
- that may result in damage to the apparatus

The FD staff receive work assignments from and perform work under the general direction of Forestry. In the event Forestry terminates an operator for cause, replacement FD staff may be requested from the FD. A performance evaluation will be completed for each operator/apparatus.

6. Servicing and Repairs: The FD is responsible for the cost of all servicing to include providing and maintaining the apparatus with fuel, oil, lubricants, filters, and other operating supplies to maintain the apparatus in a safe operating condition. It is the responsibility of the FD staff to determine that the fuel used is the proper fuel for the apparatus. Forestry will provide fuel or reimburse fuel receipts once apparatus is placed on RO. Fuel receipts should be submitted during invoice process.

7. Tools, Spares, and Accessories: The FD staff are responsible, always, for tools, spares, and accessories belonging to the FD and shall secure them in the apparatus if possible. Items that cannot be so secured may be placed in a Forestry-designated storage area, if available.

8. Required Equipment: The FD agrees to furnish apparatus, except command vehicles, with the following equipment:

- All apparatus listed in the Online Application System (OLAS) will be accompanied by a complete vehicle inventory in hard copy format.
- All fire apparatus resource ordered as part of an Engine Task Force/Strike Team are required to carry structural firefighting equipment necessary to conform with FD Standard Operating Procedures and are required to carry the following minimum equipment upon leaving for the incident. These items will be supplied by Forestry upon request of the FD and shall be returned to the same Area Forestry Warehouse upon completion of the assignment.

Minimum Equipment and Supply Tables

3 ea. 100' length of 1½" hose (Forestry)	1 ea. Fire Shelter per seat
2 ea. 1" nozzles to fit 1" hose	1 ea. EFF bag per Firefighter
2 ea. 1½" nozzle to fit 1 ½" hose	1 ea. Radio w/Clam Shell & Batteries
3 ea. 100' length of 1" hose (Forestry)	24 ea. AA battery
1 ea. Shovel	3 ea. Pulaski
1 ea. 1½" NHx1½ NH double female	1 ea. First Aid Kit, Crew, Belt Type
1 ea. 1½" NHx1½ NH double male	2 ea. Backpack pump (FEDCO) (empty)
2 ea. 1½" NHx1" NPSH (female-male)	2 ea. Cases MRE's
1 ea. 1" NPSH x1½" NH (female/male)	2 ea. Cubitainer Water
2 ea. 1½" NH x 1 ½" NH x 1 ½" NH	2 ea. Pack of fusees (10 ea./pk) OR
1 ea. Hose clamp for 1" and 1½" hose	1 ea. Drip torch w/5 gallons drip torch fuel
1 ea. Portable Tank, 1500 gallons or larger (Water Tenders only, all types)	

9. Apparatus Loss, Damage or Destruction: Equipment furnished under a contractual agreement with Forestry may be subject to extreme environmental and/or strenuous operating conditions which could include, but are not limited to, unimproved roads, steep, rocky, brushy, hilly terrain, dust, heat, and smoky conditions. Thus, what is considered normal wear and tear under any agreement with the State for fire suppression or other all-risk incident actions is more than what equipment is subjected to under normal highway operations. Wear and tear include worn or cracked tire tread on the running surfaces, chips and scratches to the vehicles painted and other surfaces; small dings and scratches to the bumpers, and surface chips and scratches to the vehicle's windshield, glass, and mirrors.
- If the FD wishes to file a claim for non-Forestry provided equipment, a State Property Loss/Damage Report documenting lost, stolen, or damaged equipment not arising from the above conditions or as the result of negligence on the part of Forestry must be completed and submitted to the State within thirty days of demobilization. Incomplete or unsupported claims will be returned to the FD for further information and/or documentation.
 - In the event damage or destruction occurs because of negligence on the part of the State, Forestry's liability is limited to the lesser of the actual repair costs or market value. Forestry is not responsible for the costs of loss or physical damage to FD's equipment due to negligence on the part of FD's personnel, for indirect damages such as loss of use or lost profits, or for wear and tear.
 - State Property Loss/Damage Report forms and claims procedures may be found in the Alaska Incident Business Management Handbook (AIBMH), Chapter 11, Contractor and Employee Property Claims.
 - Loss, Damage or Destruction claims will **not be accepted** without Post Inspection documentation from the incident.

10. Accessories for Apparatus: All apparatus must have seat belts for all occupants, three portable emergency reflectors, one 5-lb. functional ABC fire extinguisher, and any additional accessories as specified in the AOP.

11. Travel, Meals and Lodging: Travel time between the point of hire and the incident is reimbursable. Forestry will either pay per diem at established State of Alaska, rates or provide meals and lodging for FD employees on assignment away from their Primary Fire Response Service Area.

Compensable meal periods - Personnel assigned to the fire may be compensated for their meal period if all the following conditions are met:

The fire is not controlled, and

- The Operations Section Chief decides that it is critical to the effort of controlling the fire that personnel remain at their post of duty and continue to work as they eat, and
- The compensable meal break is approved by the supervisor and documented on the CTR and/or Shift Ticket at the next level.
- ½ hour lunch must be taken while in travel status over eight hours (unless superseded by the FD'S collective bargaining agreement.)
- In those situations, where incident support personnel cannot be relieved from performing work and must remain at a post of duty, a meal period may be recorded as time worked for which compensation shall be allowed and documented on the CTR/Shift Ticket in "Remarks" section as "No lunch taken due to uncontrolled fire line". If a meal break is not documented on the CTR or Shift ticket, the break will be automatically deducted by the State. (unless superseded by the FD'S collective bargaining agreement.)

12. Fatigue Management: FD personnel hired as EFF or FD staff will follow SOA work rest guidelines. To maintain safe and productive incident activities, personnel must appropriately manage work and rest periods, assignment duration and shift length.

Personnel should receive adequate time off to safely perform the essential functions of their positions. The following is established to promote safety, limit fatigue, and reduce work- related injuries while adhering to specific bargaining unit contract provisions.

- 2 to 1 Work-Rest Ratio
- Requires at least 1 calendar day off in 14 Days or 2 calendar days off in 21 days
- Provide for Meal Breaks (unless superseded by FD'S collective bargaining agreement)
- On travel days, employees should be at home or in a hotel for the night by 22:00 HRS.
- Drivers are limited to driving 10 hours/day in a 16-hour shift.

For complete Fatigue Management Policy Reference: Dept. Natural Resources, Division of Forestry, Policy and Procedures Manual, 2100 Wildland Fire Safety.

13. Rate Definitions: FD's may choose between two options for rates, **Standard** or **Combined Daily Rate**. **Standard Daily Rate** (Apparatus and personnel are invoiced separately).

Standard Daily Rate is commonly used for assignments with minimal personnel rotation or long

duration (up to 14 days away from home station). The Standard Daily Rate has separate rates for apparatus and personnel, (see Tables 1 through 3).

- Firefighter pay rates are based on actual FD pay rate or EFF skill-based pay rate.
- Administrative fees may be assessed for FD personnel.

Combined Daily Rate (Apparatus with Personnel in one rate):

Combined Daily Rate is commonly used for FD's that rotate personnel frequently (daily) on apparatus. This is tracked using the Emergency Shift Ticket (OF-297) only. The Combined Daily Rate includes a single established rate for both the apparatus and personnel, (See Tables 4 through 6).

- All apparatus personnel remain FD employees, as single rate for both apparatus and personnel. The FD shall furnish the required minimum staffing as listed in the Combined Daily Rate tables. The FD will ensure that the operator/personnel are qualified to operate the apparatus.
- FD's will not be allowed to invoice for administrative fees when using the Combined Daily Rate.
- Under the Combined Daily Rate, all FD resources will be tracked on the Emergency Shift Ticket (OF-297) and paid via the Emergency Equipment Use Invoice (OF-286)

- 14. Personnel Pay Rates:** FD staff will be paid for all hours they are on-shift at the appropriate hourly rate of pay. Note: personnel may be on a shorter or longer shift than the apparatus to which they are assigned. The number of FD staff listed on the rate charts is the minimum required staffing. Any changes to standard staffing will be agreed to in the AOP and document on RO's. No additional personnel will be paid by Forestry unless resource ordered.

Hourly Rates for FD employees by position only, will be established when the AOP is signed. FD's will provide a position qualification list with hourly rates to Forestry. No private information will be included in this list. This list will be used for cross reference at the time of invoice, for FD employee name, position on apparatus and hourly rate.

Example:

Position	Hourly Rate	Backfill Overtime Hourly Rate
Non-Supervisory, Structural Firefighter, Advanced	\$27.82/Hour	\$35.42/Hour
Driver/Operator/Engineer	\$33.14/Hour	\$41.23/Hour

- 15. Backfill:** Forestry will reimburse backfill overtime costs only. Forestry only pays for the overtime above what the regular salary would have been for the employee(s) deployed. Backfill reimbursement will be approved only when the FD is required to supply a firefighter at their station to comply with Fire Department policy, municipal ordinance, or union contract.
- 16. Administrative Rate:** Forestry will not pay administrative fees more than **13.5%**.
- The administrative rate is only applied to the personnel cost, not the total invoice. As a cost containment measure, higher paid FD's shall be considered for release first.
- 17. Apparatus Pay Rates:** Apparatus rates have been determined by Forestry for all categories, types, and classes of Apparatus and are included in the OLAS. OLAS is used by the FD to register or list their

apparatus and by the dispatcher and others to search for and hire Apparatus. Any FD using rates that are non-compliant with Forestry specified rates will normally be the last hired and the first released. The link to OLAS is <https://dnr.alaska.gov/olas/>. Rates are also listed in Tables 1 through 6.

- Non-apparatus equipment rates have been determined by Forestry for all categories, types, and classes of equipment and are included in the OLAS. Any equipment or vehicle owned by the FD and not reflected in the Apparatus Rate Tables, will be paid at the rates shown in Chapter 6 of the AIBMH and OLAS. Any FD using rates that are non-compliant with Forestry specified rates will normally be the last hired and the first released.
- Non-apparatus equipment needs to be registered on the “Vendor” entry tab of OLAS prior to hire. Non-apparatus includes but not limited to heavy equipment, tracked vehicles, ATV/UTV, sedans or trucks, boats, generators, aviation crash and rescue trucks, chainsaws, portable pumps, light towers and Ambulances.
- Each shift for apparatus or equipment must be documented on an Equipment Shift Ticket (OF-297) and must be signed by the FD’s personnel and the supervisor on the incident as the duly authorized representative for certification as to the number of hours or other units of pay earned. Hours shall consist of the period working (assigned), ordered standby, or compensable travel time.
- **All personnel staffing apparatus will be listed legibly daily on Equipment Shift Ticket’s (OF-297) with FD status next to each name and position filled on the apparatus. (i.e. FFT1, FFT2, ENOP) (example: Jane Smith FFT1)**
- Apparatus pay rates will be based on resource type ordered. If agreed to by both the FMO and Fire Chief prior to hire and documented on RO at the time of hire as a change, a different apparatus may be substituted.
- All apparatus pre and post inspections can be performed at local Area Forestry Office or on incident if apparatus leaves directly from station directly to assignment.
- A Mobilization Finance packet will be given to each apparatus at the start of the hiring process. Upon completion of an assignment a Demobilization Finance Packet will need to be submitted to the local Area Administrative staff.

The incident or dispatch office will compile the amount earned on the Emergency Equipment Use Invoice (OF-286) which both parties will sign to show concurrence of the amount due the FD at the time of release from assignment. OF-288s will be posted for FD staff by the incident or Area.

- 18. Rate Calculations:** The rates are calculated for Interagency use based on the Consumer Price Index (CIP) for Anchorage. The rates are fair and reasonable for apparatus or equipment in generally new and good operating condition. Rates are effective pending any modifications resulting from the previous fiscal year, directives, and/or changes in the applicable Service Contract Act Wage Determination (SCA) or marketplace realities.

- Rates are reviewed annually for OLAS, CFPA, AOP and the AIBMH.
- Rates are reviewed by SOA and Federal Interagency partners. A fair market rate that is allowable under all (State of Alaska & Federal partners) agency procurement policies is adopted.
- Daily rates may fluctuate between annual changes.

Invoice Matrix

Invoice Matrix: Apparatus and Personnel Billing				
Use TABLE's for specific rates	Invoice for Apparatus	Invoice for FD Staff	Invoice for DOF Technicians or EFF Personnel	Additional Invoice Billable Documentation Items***
Apparatus Only	YES	NO	NO	Refurb** and incidentals
Apparatus w/FD Staff only	YES	YES	NO*	Refurb** and incidentals, FD staff @ Dept rates and Admin Fees
Apparatus w/Mixed FD and DOF/EFF Personnel	YES	YES, For FD staff only	NO*	Refurb** and incidentals, FD staff @ Dept rates and Admin Fees
Apparatus w/All DOF/EFF Personnel	YES	NO	NO*	Refurb** and incidentals
Non-apparatus equipment or vehicles	YES, Equipment Shift Tickets	NO	NO	Incidentals.
Federal Excess Personal Property (FEPP) Apparatus Only	YES, @ 66% of Daily Rate	****	****	Refurb** and incidentals
Combined Daily Rate	YES, invoice includes personnel	NO, personnel cost included in rate	NO	Refurb**, incidentals Equipment Shift Tickets (OF-297), Emergency Equipment Use Invoice (OF-286)

*EFF are managed by SOA, no invoice from FD is needed.

**Refurb rate based on length of time on assignment, 4 hours for an assignment of 10 days or less, 8 hours for an assignment greater than 10 days.

*** Not all inclusive, additional documentation may be required. Claims packets need to be included but not invoiced. (i.e. Per Diem if approved, fuel, maintenance)

**** For FEPP Staffing follow procedures in all non-FEPP Apparatus categories in the matrix.

Apparatus rental rates include routine maintenance; normal wear and tear (minor scratches, chips and scratches in windshield, punctured or flat tires etc.); insurance; and other pertinent overhead expenses. Rental rates will not exceed the rates listed below (Tables 1-6). Federal Excess Personal Property (FEPP) apparatus provided by a FD will be paid 66% of the normal rate.

19. For fractional days at the beginning and ending time under hire, payment will be based on 50 percent of the Daily Rate for periods less than eight hours. To clarify, apparatus initially hired after 1600 (4:00 pm) shall receive half the daily rate for the first day of hire, and apparatus released back to the point of hire before 0800 (8:00 am) on the last day of hire shall receive half the daily rate for the final day of hire.
20. For shifts under hire or assignment between the first and last, the FD shall be paid at the daily rate, if the apparatus is operable and available the entire shift. A shift is the hours worked as stated by the Incident Action Plan and/or as determined by the dispatching office.
21. If the apparatus is inoperable or unavailable during an on-shift period, this will be considered down time and charges will not accrue. Payment will be based on the hours the apparatus was operational during the assigned shift as documented on the shift ticket versus the designated shift times shown on the Incident Action Plan (IAP). If the apparatus was not operational for the full shift, the deduction from the daily rate is calculated by converting the length of shift from the IAP to determine the hourly rate and deducting pay for the total hours the apparatus was non-operational, i.e., $\text{daily rate} \div \# \text{ hours of shift in IAP} = \text{hourly rate to be deducted}$.
22. Invoicing: For invoicing include apparatus and FD staff on the same invoice. If a new RO is created to transfer assignments, a separate invoice should be done.

Examples for apparatus under both **Standard** and **Combined** Daily Rates:

- Example #1 - The apparatus spends 7 days on Incident A and is then transferred to Incident B with a new RO for 7 days. Two separate invoices need to be submitted in one package.
- Example #2 - If the apparatus stays on one incident the whole time, one invoice with personnel and apparatus may be submitted.
- Example #3 - The apparatus goes to Incident C for ten days and returns home for a break in service. If the apparatus is then RO to the same or a different incident, separate invoices need to be submitted.

Following these examples will speed up the payment cycle and reduce billing errors.

23. **The Area Forester or designee has the authority to correct or change the invoice in case of accounting errors or needed additions or subtractions from invoice, or if the FD chose the improper category, type, class or rate in OLAS.**
24. Insurance: The FD must carry and maintain motor vehicle liability insurance as required by AS 28.22.01. In the case of the FD staff being hired by the State as an EFF, the State covers Worker's Compensation and potential liability based on apparatus operations in response to and operation on a wildland fire. In the case of the FD's staff remaining an employee of the FD, the FD must carry and maintain Worker's Compensation coverage as required by AS 23.30.045.
25. Evaluations: All FD Engines will be evaluated by the incident supervisor and the evaluation form will be included in the documentation packet upon release from the incident.
26. Refurb/Rehab: With the local Area Forester's approval, FD's are allowed up to 4 hours of refurb for an assignment less than or up to 10 days and up to 8 hours of refurb for an assignment longer than 10 days for refurb and rehab of their equipment.
27. Documentation Requirements for Assignments

One (1) copy of each of the following documents is required for Out-of-Area Assignments.

- Mobilization packets will be created at the local Area Dispatch office.
- Prior to inspection Documentation package will be reviewed with Area Dispatch and FD.

Finance Packet Matrix

Mobilization Finance Package	Demobilization Finance Package
<i>Packet received upon successful inspection. Maintained for duration of assignment.</i>	<i>Turn completed packet in at completion of assignment.</i>
This Finance Packet needs to stay with apparatus and used at check-in on the incident.	This Finance Packet needs to be turned in at the end of an assignment to the local Area Administrative staff.
*Fire Department Position Rates Sheet	*Fire Department Position Rates Sheet
*Apparatus Inventory Sheet (FD Equipment)	*Apparatus Inventory Sheet (FD Equipment)
Resource Order	Resource Order: Multiple RO's will be needed when re-assigned to different Incidents
Billing Type (Standard Daily Rate w/FD, EFF or Mixed personnel: Or Combined Daily Rate)	Billing Type (Standard Daily Rate w/FD, EFF or Mixed personnel: Or Combined Daily Rate)
Emergency Equipment Rental Agreement (OF-284):	Emergency Equipment Rental Agreement (OF-284):
Current Annual Operating Plan - AOP	Current Annual Operating Plan - AOP
Current Cooperator Fire Protection Agreement - CFPA	Current Cooperator Fire Protection Agreement - CFPA
Pre-Hire Inspection Checklist (OF-296)	Pre & Post Hire Inspection Checklist (OF-296)
Initial Equipment Shift Ticket Book (OF-297)	Completed Equipment Shift Tickets (OF-297)
Blank Contractor Evaluation	Completed Contractor Evaluation
Crew Time Report Book (SF-261)	Completed OF-288, Emergency Firefighter Time Report
*Crew Manifest with Contact information	*Crew Manifest with Contact information
	Emergency Equipment Use Invoice (OF-286):
	Claims Documentation, if applicable
	Any additional receipts/documentation for reimbursable expense accrued on assignment.

*Responsibility of FD to provide at the time of hire to the local Area Dispatch.

28 Rate Tables.

- **Standard Daily Rate:** tables 1-2 are for FD Apparatus only. Table 3 is Command Vehicle rate.
- **Combined Daily Rate:** tables 4-5 are for FD Apparatus and Personnel combined rate. Table 6 is Command Vehicle rate.

Table 1- **STANDARD DAILY RATE:** Table for Water Tender Types, Rates & Minimum Requirements

Rates & Components <i>(excludes personnel costs)</i>	Water Tender Types				
	Support			Tactical	
	S1	S2	S3	T1	T2
Daily Rate	\$1,950	\$1,630	\$1,300	\$1,630	\$1,300
Hourly Rate for refurb	\$170	\$145	\$120	\$170	\$145
Tank Capacity (gal)	4000	2500	1000	2000	1000
Pump Min. Flow (GPM)	300	200	200	250	250
At Rates Pressure (psi)	50	50	50	150	150
Max. Refill Time (minutes)	30	20	15	-	-
Pump and roll	-	-	-	Yes	Yes
Personnel minimum	1	1	1	2	2

Table 2- **STANDARD DAILY RATE**: Table for Engine Types, Rates & Minimum Staffing Requirements

Rates & Components <i>(excludes personnel costs)</i>	Structure Apparatus		Wildland Apparatus				
	1	2	3	4	5	6	7
Daily Rate	\$2,840	\$2,680	\$1,785	\$1,545	\$1,265	\$1,070	\$860
Hourly Rate for refurb	\$285	\$275	\$180	\$165	\$145	\$130	\$115
Tank minimum capacity (gal)	300	300	500	750	400	150	50
Pump Min Flow (GPM)	1000	500	150	50	50	30	10
Rated pressure (psi)	150	150	250	100	100	100	100
Hose (feet) 2 1/2 inch	1200	1000	-	-	-	-	-
Hose (feet) 1 1/2 inch	400	500	1000	300	300	300	-
Hose (feet) 1 inch	-	-	500	300	300	300	200
Ladders per NFPA 1901	Yes	Yes	-	-	-	-	-
Master Stream 500 GPM Min	Yes	-	-	-	-	-	-
4-Wheel Drive Required	-	-	Yes	Yes	Yes	Yes	Yes
Personnel (minimum)	3	3	3	2	2	2	2

Table 3- **STANDARD DAILY RATE**: Table for Command Vehicles & Minimum Staffing Requirements

COMMAND VEHICLE RATE <i>(Excludes personnel costs)</i>	
Daily Rate	\$545
Hourly Refurb	\$70
Personnel	1, may be hired as vehicle only

Table 4- **COMBINED DAILY RATE:** Tables for Water Tender Types & Minimum Staffing Requirements

Rates & Components <i>(includes personnel costs)</i>	Water Tender Types				
	Support			Tactical	
	S1	S2	S3	T1	T2
Daily Rate	\$2,365	\$2,045	\$1,715	\$2,370	\$2,040
Hourly Rate for refurb	\$170	\$145	\$120	\$170	\$145
Tank Capacity (gal)	4000	2500	1000	2000	1000
Pump Min. Flow (GPM)	300	200	200	250	250
At Rates Pressure (psi)	50	50	50	150	150
Max. Refill Time (minutes)	30	20	15	-	-
Pump and roll	-	-	-	Yes	Yes
Personnel minimum	1	1	1	2	2

Table 5- **COMBINED DAILY RATE:** Tables for Engine Types, Rates & Minimum Staffing Requirements

Rates & Components <i>(includes personnel costs)</i>	Structure Apparatus		Wildland Apparatus				
	1	2	3	4	5	6	7
Daily Rate	\$4,005	\$3,845	\$2,525	\$2,285	\$2,005	\$1,810	\$1,600
Hourly Rate for refurb	\$285	\$275	\$180	\$165	\$145	\$130	\$115
Tank minimum capacity (gal)	300	300	500	750	400	150	50
Pump Min Flow (GPM)	1000	500	150	50	50	30	10
Rated pressure (psi)	150	150	250	100	100	100	100
Hose (feet) 2 1/2 inch	1200	1000	-	-	-	-	-
Hose (feet) 1 1/2 inch	400	500	1000	300	300	300	-
Hose (feet) 1 inch	-	-	500	300	300	300	200
Ladders per NFPA 1901	Yes	Yes	-	-	-	-	-
Master Stream 500 GPM Min	Yes	-	-	-	-	-	-
4-Wheel Drive Required	-	-	Yes	Yes	Yes	Yes	Yes
Personnel (minimum)	3	3	3	2	2	2	2

Table 6- **COMBINED DAILY RATE:** Tables for Command Vehicles & Minimum Staffing Requirements

COMMAND VEHICLE RATE <i>(includes personnel costs)</i>	
Daily Rate	\$960
Hourly Refurb	\$70
Personnel	1

29. Command Vehicles: When ordered by Forestry, command vehicle rates will be applicable when an individual in any of the following positions uses the vehicle. Command Vehicles must meet the following criteria and come equipped with the following equipment:

- Four Wheel Drive
- Seating for 3 Persons
- First Aid Kit
- Fire Extinguisher
- Emergency Lighting
- Field Programmable Radio

When ordered by Forestry, command vehicle rates will be applicable when an individual in any of the following positions uses the vehicle:

- Incident Commander
- Branch Director
- Water Handling Specialist
- Operations Section Chief
- Division/Group Supervisor
- Fire Chief/Designee
- Structure Protection Specialist
- Strike Team/Task Force

30. Ambulance: There are two Types of ambulances: Basic Life Support (BLS) and Advanced Life Support (ALS). The ambulances are owned and staffed by a Fire Departments, Emergency Response agency, vendor or sometimes large hospitals. The difference between BLS and ALS ambulances is the ALS ambulance is equipped with higher trained medical personnel, an EMT and a paramedic as a minimum certification level. The BLS ambulance is staffed with two EMTs as a minimum certification level. The price of the personnel is included in the ambulance daily rate. Both types of ambulances are required to be staffed with a minimum of two personnel and one will serve as a driver. The State provides fuel for the ambulance and the owner or sponsoring agency will provide all medical supplies. The ambulances are listed under the Other Support Items in OLAS.

- All vendor ambulance service personnel must have meet State of Alaska specific certifications or reciprocity requirements.
- All ambulance personnel must meet all scope of practice requirements (medical sponsorship may be required for highly trained and qualified medical personnel)
- Daily Rates are based on one 24-hour period of hire. Personnel changes during this 24-hour period are the fiscal responsibility of ambulance owner.
- FD ambulances are not considered “apparatus”, they are list on the non-FD or Vendor side of OLAS.
- Refurb Rates used for FD equipment only. Refurb Rate requirements follow the same policy as FD apparatus.

Table 7 - Ambulance Daily Rate

AMBULANCE DAILY RATE (with staff and fully supplied)		
Type	Advanced Life Support (ALS)	Basic Life Support (BLS)
Daily Rate	\$3500	\$2500
Hourly Refurb	\$125	\$125

- 31. Workplace Conduct:** *The State of Alaska is an equal opportunity employer and does not discriminate in employment on the basis of race, color, religion, sex, national origin, age, disability, marital status, changes in marital status, pregnancy, and parenthood.* This includes behavior such as making threats, abusive language, slurs, unwelcome jokes, teasing and other such verbal or physical conduct. Creating a hostile work environment will not be condoned. This includes verbal or physical conduct of a sexual nature, making unwelcome sexual advances or requests for sexual favors, and unreasonably interfering with the work of others.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION (49 CFR Part 29): The bidder/offeror certifies, by submission of this proposal or acceptance of this contract/agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by signature on this agreement to include this clause without modification in all lower tier transactions, solicitation, proposals, contracts and subcontracts. Where the bidder/offeror/contractor or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this agreement.

I certify that I have read and agree to the conditions and rates contained on this form.

This document supersedes all prior versions of this agreement. Earlier versions must be deleted/destroyed and replaced with this document.

**Annual Operating Plan
Signatures**

For State of Alaska, Department of Natural Resources, Division of Forestry

Area Forester

Date

Fire Management Officer

Date

For Cooperator Fire Department

Jon Marsh, Fire Chief - Western Emergency Service Area

Date

Charlie Pierce, Mayor - Kenai Peninsula Borough

Date

ATTEST:

Johni Blankenship, Borough Clerk

Introduced by: Bjorkman, Elam
Date: 04/20/21
Action:
Vote:

**KENAI PENINSULA BOROUGH
RESOLUTION 2021-032**

**A RESOLUTION ADOPTING A POLICY THAT THE BOROUGH WILL CONDUCT A
PRE-ELECTION SECURITY RISK AND VULNERABILITY ASSESSMENT AND
DEVELOP A SECURITY DESIGN FOR ANY ELECTION SYSTEM USED TO
ADMINISTER BOROUGH ELECTIONS**

WHEREAS, the peoples' confidence in the integrity of election results is reliant on their confidence in the security of the election equipment, election workers, and infrastructure that make elections possible; and

WHEREAS, free and fair elections play a vital and integral role in a democratic society; and

WHEREAS, all election equipment must be independently validated as secure and accountable in order to prove its reliability; and

WHEREAS, a policy providing for a pre-election security risk and vulnerability assessment of the borough's election infrastructure, a security design, where needed, and a post-implementation audit of any new election system, equipment or software used by the borough to administer elections is in the best interests of the borough;

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

SECTION 1. To the extent authorized by law and within available resources, a policy is hereby adopted that the borough, with the assistance of an independent third party cybersecurity professional, will conduct a security risk and vulnerability assessment, and develop a security design for the election system used to administer borough elections.

SECTION 2. That, within available resources, the borough will conduct an election security risk and vulnerability assessment, carried out by a provider of cybersecurity services, prior to the October 2021 borough election.

SECTION 3. That, within available resources, a security design, developed by a provider of cybersecurity services in coordination with the borough's information technology department, will be in place prior to the October 2021 borough election.

SECTION 4. That, within available resources, a security audit, performed by a provider of cybersecurity services in coordination with the borough's information technology

department, will be performed immediately after the initial implementation of any election system used to administer borough elections.

SECTION 5. That this resolution shall become effective immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2021.

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:



No:

Absent:

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Brent Hibbert, Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Jesse Bjorkman, Assembly Member 
Bill Elam, Assembly Member 

DATE: April 13, 2021

RE: Resolution 2021- 032, Adopting a Policy that the Borough Will Conduct a Pre-Election Security Risk and Vulnerability Assessment and Develop a Security Design for Any Election System Used to Administer Borough Elections (Bjorkman, Elam)

This resolution would establish a borough policy providing for a pre-election security risk and vulnerability assessment of the borough's election infrastructure, a security design, where needed, and a post-implementation audit of any new election system, equipment or software used by the borough to administer elections is in the best interests of the borough.

The security and vulnerability assessment and security design would be conducted and developed by an independent third party professional IT security provider prior to the October 2021 borough election.

Your consideration is appreciated.

Introduced by:	Mayor
Date:	04/20/21
Action:	05/18/21
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2021-17**

**AN ORDINANCE AMENDING KPB 21.06 FLOODPLAIN MANAGEMENT TO ADOPT
FLOOD DEPTHS FOR THREE NEIGHBORHOODS IN THE SEWARD MAPPED
FLOOD DATA AREA AND TO INCORPORATE THE SEWARD MAPPED FLOOD
DATA AREA INTO THE MINIMUM NATIONAL FLOOD INSURANCE STANDARDS**

WHEREAS, since 1988 the Kenai Peninsula Borough has had an accredited floodplain management program under the National Flood Insurance Program (NFIP) which makes federal disaster insurance, federal hazard mitigation grants, federal subsidized mortgages, and affordable individual homeowner flood insurance available within the borough; and

WHEREAS, continued participation in the NFIP is contingent upon continued good standing in that program by meeting the minimum requirements set forth by the Federal Emergency Management Agency (FEMA); and

WHEREAS, the Seward Bear Creek Flood Service Area (SBCFSA) was created in 2003 to provide flood planning, protection, and mitigation services for flooding within the service area; and

WHEREAS, the Seward Mapped Flood Data Area (SMFDA) was established in 2009 by Ordinance 2009-09 to regulate areas of known riverine and alluvial flood hazards outside the FEMA mapped flood hazard areas; and

WHEREAS, the SMFDA was scheduled to sunset in 2013 when FEMA updated the Flood Insurance Study for the Seward-Bear Creek area; and

WHEREAS, in 2013, the FEMA mapping update of the Seward-Bear Creek area only included riverine flood zones and did not include known flood hazard areas on alluvial fans as delineated in the SMFDA; and

WHEREAS, on August 6, 2013, the assembly voted to enact Ordinance 2013-29 to continue the administration of KPB 21.06.045 as it pertained to the SMFDA; and

WHEREAS, the SBCFSA contracted with Alaska Water Resources (AWR) Engineering to acquire a flood risk assessment and hydraulic and hydrologic report of three flood-prone neighborhoods within the SMFDA; and

WHEREAS, the borough is required by FEMA, and through its floodplain ordinances, to utilize

the best available data; and

WHEREAS, this ordinance will clarify and define different flood protection elevation standards based on minimum NFIP regulations; and

WHEREAS, each flood protection elevation standard will be integrated into code using a new term, "Flood Protection Elevation"; and

WHEREAS, the borough and its residents' best interests will be served by adopting the 2021 Flood Risk Assessment and Hydrologic & Hydraulic Report prepared by AWR Engineering and amending its floodplain management ordinance; and

WHEREAS, the Seward-Bear Creek Flood Service Area Board, at its regular meeting of April 5, 2021, recommended approval; and

WHEREAS, the Kenai Peninsula Borough Planning Commission, at its regular meeting of April 26, 2021, recommended _____;

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

SECTION 1. That KPB 21.06.030 is hereby amended as follows:

21.06.030. General provisions.

- A. *Lands to Which this Chapter Applies.* This chapter shall apply to all flood hazard areas within the Kenai Peninsula Borough exclusive of the cities of Homer, Kenai, Seward, and Soldotna.
- B. *Basis for Establishing Flood Hazard Areas.* Flood hazard areas are identified as follows:
 - 1. By the areas of special flood hazard identified by the Federal Insurance Administration in the scientific and engineering report entitled "Flood Insurance Study" (FIS) for the Kenai Peninsula Borough, Alaska dated May 19, 1981, revised on July 5, 1983, December 6, 1999, [AND] September 27, 2013, and October 20, 2016. These areas are depicted on the effective [F]Flood Insurance Rate Map (FIRM) and Digital Flood Insurance Rate Map (DFIRM) Panels. The map panels numbered 020012-1350 and 1700 have been deleted and the areas depicted by these panels are not subject to the terms of this chapter. Excluding these panels, the [FLOOD INSURANCE RATE MAPS]FIRMs are adopted by reference and declared to be a part of this chapter. The [FLOOD INSURANCE RATE MAPS]FIRMs are on file at the planning department. The best available information for flood hazard as outlined in KPB

21.06.040(C)(3) shall be the basis for regulation until a new FIRM or DFIRM is issued which incorporates the base flood plain data obtained pursuant to that section.

2. The 1986, 1995, and 2006 KPB GIS mapped the Seward ~~[M]Mapped~~ ~~[F]Flood~~ ~~[D]Data~~ ~~[A]Area~~ (SMFDA) within the Seward-Bear Creek Flood Service Area ~~[(SMFDA)]~~ outside the city limits of Seward, not including any Special Flood Hazard Area identified in a current, effective FIRM or DFIRM. A map showing this floodplain and flood data and a list of properties represented by this map shall be retained by the planning department and made available to the public. If any portion of a lot is included in the flood data mapped area, the entire lot shall be subject to ~~[THE PROVISIONS OF THIS CHAPTER]~~the permit application review process set forth in 21.06.040(A). ~~[SPECIAL PROVISIONS FOR DEVELOPMENT PERMITS IN THE KPB MAPPED FLOOD DATA AREA ARE SET FORTH IN KPB 21.06.045.]~~Data available from other federal, state or other sources shall be reviewed and reasonably utilized including but not limited to the following:
 - a. "Flood of October 1986 at Seward Alaska," USGS Water-Resources Investigation Report 87-4278. Jones, S.H., and Zenone, Chester. (1988).
 - b. "Hydrologic Reconnaissance near Fourth of July Creek, Seward, Alaska." USGS Water Resources Investigations 81-21. Nelson, G.L. (1981).
 - c. "Flood Hazard Analyses Seward Mapped Flood Data Area," Flood Risk Assessment and Hydrologic & Hydraulic Report, AWR Engineering: 1% annual exceedance probability, flood depths, embankment failure, and aggradation. (2021).

C. *Basis for Establishing Flood Protection Elevation.* The Flood Protection Elevation (FPE) shall be the elevation to which structures and utilities must be raised as required in the building standards in KPB .21.06.050.

1. Base Flood Elevation (BFE). In Special Flood Hazards Areas of the Kenai Peninsula Borough, the Flood Protection Elevation shall be the Base Flood Elevation delineated on the 100-year flood profiles in the Flood Insurance Study.
2. Base Flood Depth (BFD)

- a. In any AH or AO zone, the Flood Protection Elevation shall be the depth delineated on the FIRM or DFIRM (at least two (2) feet if no number is specified).
- b. In areas of the SMFDA where a Base Flood Depth has been calculated, the Flood Protection Elevation shall be the Base Flood Depth, which will be measured from the highest adjacent grade.

3. No Elevation Data

- a. In the SMFDA where no Base Flood Elevation or Base Flood Depth is available, the Flood Protection Elevation shall be at minimum two (2) feet above the highest adjacent grade. When data is available, the Flood Protection Elevation shall be determined locally by the criteria set out in KPB 21.06.040(C)(3) and KPB 21.06.050(A)(5).
- b. In any unnumbered A zone where the Flood Protection Elevation has not been determined, it shall be determined locally when data is available, and by the criteria set out in KPB 21.06.040(C)(3) and KPB 21.06.050(A)(5). A minimum of two (2) feet above highest adjacent grade may result in a lower insurance premium.

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

[D]E. *Noncompliance—Enforcement.* Structures and activities which are not permitted or allowed by this chapter are prohibited. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violation of the provisions of this chapter by failure to comply with any of its requirements shall be enforced by the remedies set forth in KPB 21.50. Each day a violation continues is a separate violation.

...

SECTION 2. That KPB 21.06.045. - KPB GIS mapped flood data area, is hereby repealed. :

SECTION 3. That KPB 21.06.050 is hereby amended as follows:

21.06.050. Standards.

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

1. *Anchoring.*

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

2. *Construction Materials and Methods.*

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

3. *Utilities.*

- a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;

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

4. *Subdivision Proposals.*

- a. All subdivision proposals shall be consistent with the need to minimize flood damage.
- b. All proposed improvements such as water, sewer, natural gas, telephone and electrical facilities shall be located and constructed in a manner which will minimize damage in the event of a flood.
- c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
- d. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals which contain 50 lots or 5 acres, whichever is less. The floodplain requirements for subdivision plats, detailed in KPB 20.30.280, apply to all subdivision proposals.
- e. It is the responsibility of the subdivider to provide all necessary information regarding flood protection measures at the time the preliminary plat is presented for consideration by the planning commission.

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

B. *Specific Standards.* In all flood hazard areas, [WHERE BASE FLOOD ELEVATION DATA HAS BEEN PROVIDED]as set forth in KPB 21.06.030(B), the following provisions are required:

1. *Residential Construction.*

- a. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above the [BASE FLOOD ELEVATION] Flood Protection Elevation.
- b. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
 - i. A minimum of two openings located on separate walls and having a total net area of not less than 1 square inch for every square foot of enclosed space subject to flooding shall be provided.
 - ii. The bottom of all openings shall be no higher than 1 foot above grade.
 - iii. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
 - iv. Enclosed areas below the [BASE FLOOD ELEVATION]Flood Protection Elevation must be unfinished and usable only for parking, access or storage of materials easily moved during a flood event.
 - v. Before a final floodplain development permit is issued by the planning department for a residential structure with enclosed areas below the base flood elevation, the owners shall sign a non-conversion agreement stating that the enclosed space shall remain in compliance with KPB 21.06.050(B)(1)(b)(iv). The non-conversion agreement shall be recorded by the Kenai Peninsula Borough placing future buyers of properties on notice of the hazards of enclosed spaces below the [BASE FLOOD ELEVATION]Flood Protection

Elevation and the requirements to keep the permitted structure compliant with KPB floodplain regulations.

- c. For zones AH₂ [AND]AO, and areas of the SMFDA, drainage paths are required around structures on slopes to drain floodwaters away from proposed structures.
- d. A garage attached to a residential structure, constructed with the garage floor slab below the Flood Protection Elevation, must be designed to allow for the automatic entry and exit of flood waters. See KPB 21.06.050(B)(1)(b).

2. *Nonresidential Construction.* New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the [BASE FLOOD ELEVATION]Flood Protection Elevation; or, together with attendant utility and sanitary facilities, shall:

- a. Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
- b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
- c. Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the official as set forth in KPB 21.06.040(C)(4)(b).
- d. Nonresidential structures that are elevated, not floodproofed, must meet the same standard for space below the lowest floor as described in KPB 21.06.050(B)(1)(b).

e. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are 1 foot below the floodproofed level (e.g. a building constructed to the base flood level will be rated as 1 foot below that level).

- f. For zones AH₂ [AND]AO, and areas of the SMFDA, drainage paths are required around structures on slopes to drain floodwaters away from proposed structures.

...

- D. Coastal High Hazard Areas. Where FEMA has identified coastal high hazard areas (Zones V, VE, and V1-V30) on the FIRM or DFIRM, construction shall meet the following requirements in addition to all other provisions in this chapter:
1. All new construction shall be located landward of the reach of mean high tide and shall be anchored to prevent unintended lateral movement, floatation or collapse.
 2. All new construction, manufactured homes, and substantial improvements within coastal high hazard areas shall be elevated on adequately anchored pilings or columns such that:
 - a. The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the [BASE FLOOD LEVEL]Flood Protection Elevation; and
 - b. The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall each have a 1 percent chance of being equaled or exceeded in any given year (100-year or 1-percent annual [EXCEEDENCE]exceedance probability mean recurrence interval); and
 - c. A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction and shall provide a certification that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of subdivisions (2)(a) and (2)(b) of this subsection. The certification and related records will be maintained in the planning department permit files in perpetuity.
 3. All new construction and substantial improvements shall have the space below the lowest floor free of obstructions or constructed with breakaway walls. Such enclosed space shall not be used for human habitation and must be in compliance with the residential construction standards in KPB 21.06.050(B)(1)(b)(iv) and (v). For the purpose of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a

design safe loading resistance of 20 pounds per square foot (either by design or when so required by local or State codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

- a. Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and
 - b. The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Maximum wind and water loading values to be used in this determination shall each have a 1 percent chance of being equaled or exceeded in any given year (100-year or 1-percent annual [EXCEEDENCE]exceedance probability mean recurrence interval).
4. The use of fill for structural support of buildings within coastal high hazard areas on the FIRM or DFIRM is prohibited.
 5. Manufactured Homes. All manufactured homes to be placed or substantially improved within coastal high hazard areas shall meet the requirements for new and substantial improvement construction.

...

SECTION 4. That KPB 21.06.060 is hereby amended as follows:

21.06.060. Exceptions procedure.

...

B. *Conditions for Exceptions.*

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

2. Exceptions may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in this section.
3. Exceptions shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.
4. Exceptions shall only be issued upon a determination that the exception is the minimum necessary, considering the flood hazard, to afford relief.
5. Exceptions shall only be issued upon:
 - a. A showing of good and sufficient cause;
 - b. A determination that failure to grant the exception would result in exceptional hardship to the applicant;
 - c. A determination that the granting of an exception will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
6. Exceptions, or variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, or to economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, exceptions from the flood elevations should be quite rare.
7. Exceptions may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-flood proofing where it can be determined that such action will have low damage potential, complies with all other exception criteria except subsection (B)(1) of this section, and otherwise complies with KPB 21.06.060(A) and (B).
8. Any applicant to whom an exception is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

SECTION 5.. That KPB 21.06.070 is hereby amended as follows:

21.06.070. Definitions.

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

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

...

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

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

"Flood Protection Elevation (FPE)" is the elevation to which new and substantially improved structures within the flood hazard areas defined in KPB 21.06.030(B) must be elevated to be protected from flood damage.

...

["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 6. That this ordinance shall become effective immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY
OF *, 2021.**

Brent Hibbert, Assembly President

ATTEST:

Johani Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

MEMORANDUM

TO: Brent Hibbert, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *JCB*
Melanie Aeschliman, Planning Director *MA*
Stephanie Presley, SBCFSA Program Lead *SP*
Dan Nelson, Emergency Manager *DN*

FROM: Samantha Lopez, Acting River Center Manager *SL*

DATE: April 8, 2021

RE: Ordinance 2021-17, Amending KPB 21.06 Floodplain Management to Adopt Flood Depths for Three Neighborhoods in the Seward Mapped Flood Data Area) and to Incorporate the Seward Mapped Flood Data Area into the Minimum National Flood Insurance Standards (Mayor)

Since 1988, the borough has participated in the National Flood Insurance Program (NFIP), making federal disaster assistance, federal hazard mitigation grants, federal subsidized mortgages, and individual homeowner insurance available within the borough. The Federal Emergency Management Agency (FEMA) oversees the NFIP and provides participating communities with the minimum regulations and regulatory flood maps for each community to enforce.

The borough established the Seward Mapped Flood Data Area (SMFDA) in 2009 to regulate areas of known riverine and alluvial flood hazards outside the FEMA regulatory maps. The SMFDA was scheduled to sunset when FEMA provided an updated flood insurance study with new regulatory flood maps for the service area. In 2013, FEMA mapped some of the service area, but not many areas of known flood hazard, so the SMFDA was kept as a minimum regulatory tool to continue to protect residents against flood hazards.

The SMFDA was designed to be a short-term regulatory tool, and was based on anecdotal flooding evidence from three floods of record in 1986, 1995, and 2006. In 2020, the SBCFSA contracted with Alaska Water Resources Engineering to create hydraulic and hydrologic models for three neighborhoods in the SMFDA, providing flood hazard boundaries and flood depths for the 100-year flood event. These additional data provide the flood protection elevation necessary to regulate development within the SMFDA to the minimum NFIP standards.

This ordinance will integrate development within the SMFDA into the same minimum NFIP standards as the FEMA flood hazard areas. The ordinance will also

clarify and define the different flood protection elevation standards based on minimum NFIP regulations.

At its April 5, 2021 regular meeting, the SBCFSA Board of Directors recommended approval of this ordinance.

The Planning Commission will review this ordinance at the April 12, 2021 meeting, and their recommendation will be provided to the assembly prior to the scheduled hearing on this ordinance.

Your consideration of this ordinance is appreciated.

FLOOD HAZARD ANALYSES SEWARD MAPPED FLOOD DATA AREA

Flood Risk Assessment and
Hydrologic & Hydraulic Report

January 2021

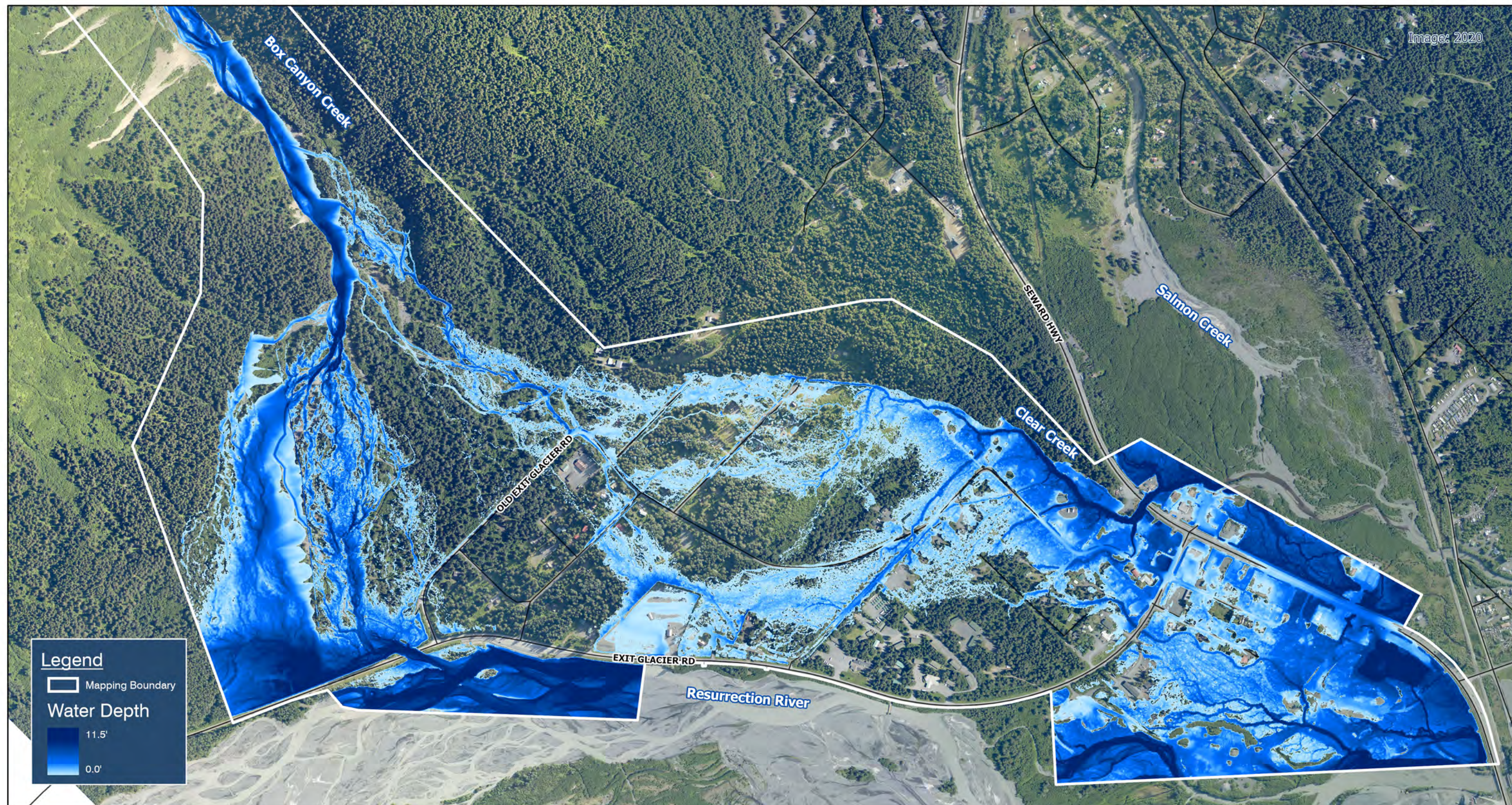


Prepared For:
Kenai Peninsula Borough
Seward-Bear Creek Flood Service Area

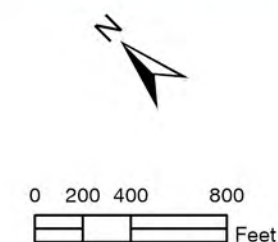
Prepared By:
AWR Engineering, LLC



4011 Arctic Blvd, Suite 106
Anchorage, AK 99501:58

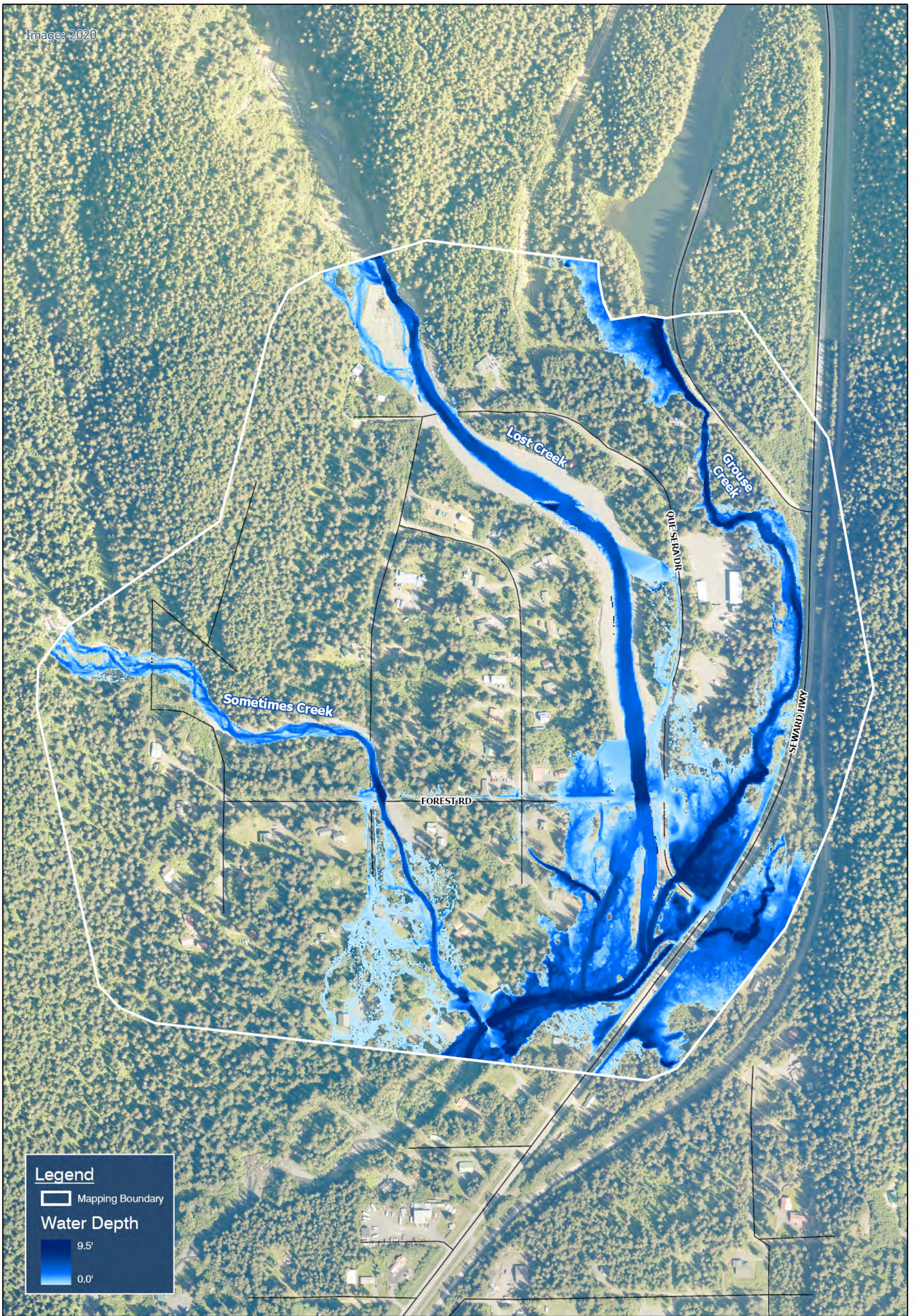


Map 08 Flood Hazard Analyses Project
Old Exit Glacier Subdivision
Embankment Failure & Aggradation 1% AEP Flood Depths
 January 2021



**Seward-Bear
 Creek Flood
 Service Area**

Image: 2020



Legend

Mapping Boundary

Water Depth

9.5'
0.0'

Map 21

Flood Hazard Analyses Project

Old Mill Subdivision

Embankment Failure & Aggradation 1% AEP Flood Depths

January 2021

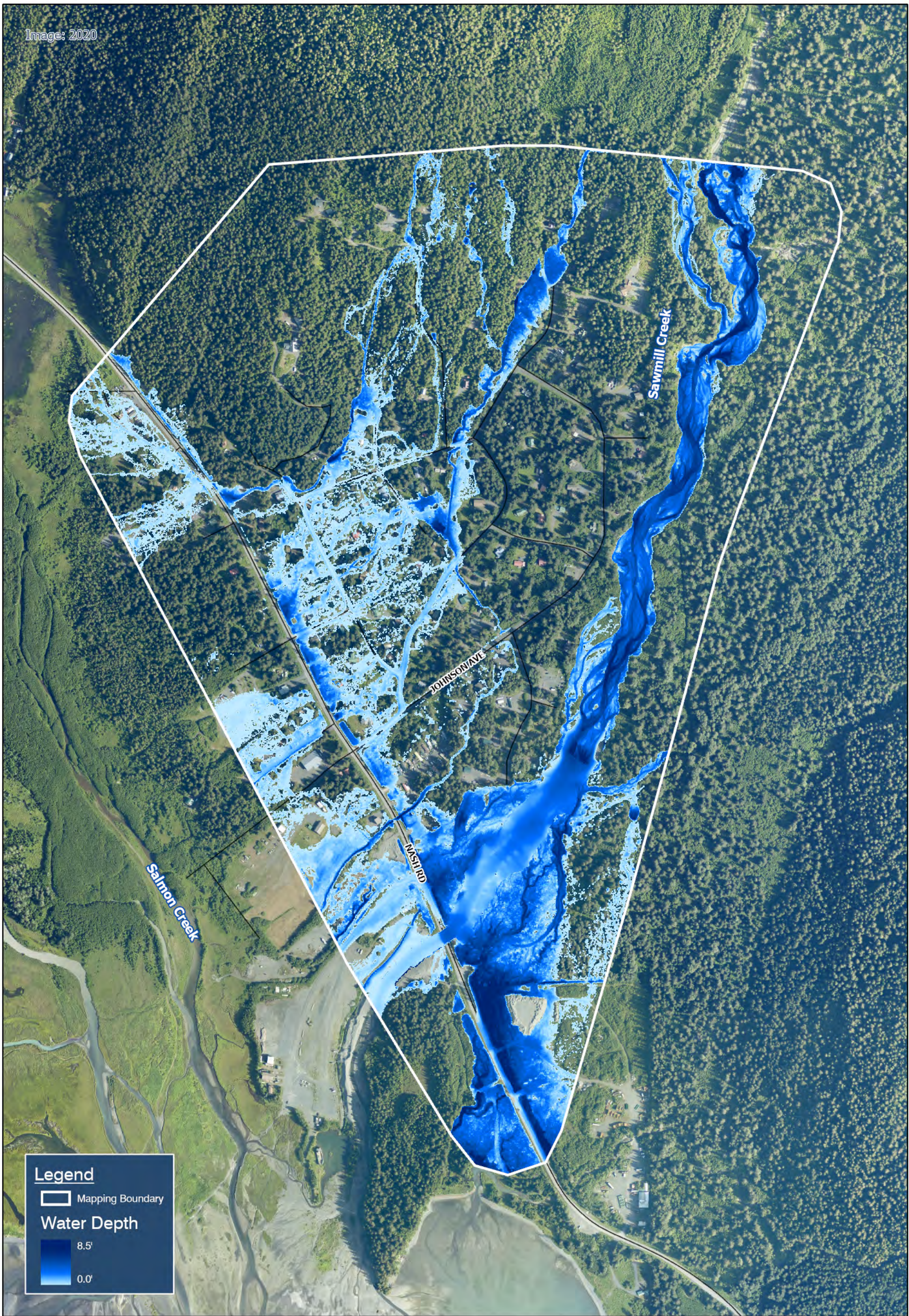


0 100 200 400
Feet



**Seward-Bear
Creek Flood
Service Area**

Image: 2020



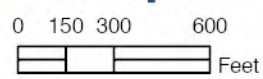
Map 33

Flood Hazard Analyses Project

Nashwoods Subdivision

Embankment Failure & Aggradation 1% AEP Flood Depths

January 2021



**Seward-Bear
Creek Flood
Service Area**

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 or other sources shall be reviewed and reasonably utilized including but not limited to the following:
 - a. **“Flood of October 1986 at Seward Alaska,”** USGS Water-Resources Investigation Report 87-4278. Jones, S.H., and Zenone, Chester. (1988).
 - b. **“Hydrologic Reconnaissance near Fourth of July Creek, Seward, Alaska.”** USGS Water Resources Investigations 81-21. Nelson, G.L. (1981).

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

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

**KENAI PENINSULA BOROUGH
ORDINANCE 2013-29**

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 1. That KPB 20.20.260 is hereby amended as follows:

20.20.260. Flood plain requirements.

A. All subdivision plats which are within areas where the flood plain has been identified by FEMA, and which involve 50 lots or five acres whichever is lesser, shall include base flood elevation data and delineate the area involved within the flood plain on the plat. This plat notation shall be consistent with the effective flood insurance study (FIS) and any current effective FIRM or DFIRM.

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

FLOOD PRONE NOTICE: Some or all of the property shown on this plat has been designated by FEMA or the Kenai Peninsula Borough as a flood hazard area district as of the date this plat is filed with the district recorder's office. Prior to development, the Kenai Peninsula Borough floodplain administrator should be contacted for current information and regulations.

C. Each plat within a city which has met the requirements of this section shall contain the following statement: "The first finished and habitable floor of a building constructed within a flood plain shall be built at or above the base flood elevation for 100-year or 1-percent annual exceedence probability flood level."

D. This section applies to all cities which adopt a resolution requesting participation in the program and which are subsequently recognized by the state as participants.

E. A city which wishes greater restrictions than those contained in subsection A may do so by passing a more restrictive ordinance as a part of their building code.

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

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

20.24.010. Exceptions to regulations—Procedure—Commission authority.

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

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

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

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

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

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

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

21.06.030. General provisions.

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

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

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

RATE MAPS WITH AN EFFECTIVE DATE OF]May 19, 1981, revised on July 5, 1983,[AND]December 6, 1999, and September 27, 2013. These areas are depicted on the effective flood FIRM and DFIRM Panels. The map panels numbered 020012-1350 and 1700 have been deleted and the areas depicted by these panels are not subject to the terms of this chapter. Excluding these panels, the flood insurance rate maps are adopted by reference and declared to be a part of this chapter. The flood insurance rate maps are on file at the planning department. The best available information for flood hazard as outlined in KPB 21.06.040(C)(3) shall be the basis for regulation until a new FIRM or DFIRM is issued which incorporates the base flood plain data obtained pursuant to that section.

2. The 1986, 1995, and 2006 KPB GIS mapped flood data area within the Seward-Bear Creek Flood Service Area (SMFDA) outside the city limits of Seward, not including any Special Flood Hazard Area identified in a current, effective FIRM or DFIRM. A map showing this floodplain and flood data and a list of properties represented by this map shall be retained by the planning department and made available to the public. If any portion of a lot is included in the flood data mapped area, the entire lot shall be subject to the provisions of this chapter. Special provisions for development permits in the KPB mapped flood data area are set forth in KPB 21.06.045. Data available from other federal, state or other sources shall be reviewed and reasonably utilized including but not limited to the following:

- a. "Flood of October 1986 at Seward Alaska," USGS Water-Resources Investigation Report 87-4278. Jones, S.H., and Zenone, Chester. (1988).
- b. "Hydrologic Reconnaissance near Fourth of July Creek, Seward, Alaska." USGS Water Resources Investigations 81-21. Nelson, G.L. (1981).

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

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

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

21.06.040. Administration.

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

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

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

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

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

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

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

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

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

4. Information to be Obtained and Maintained.

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

b. For all new or substantially improved floodproofed structures:

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

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

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

5. Alteration of Watercourses.

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

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

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

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

SECTION 6. That KPB 21.06.045 is hereby amended as follows:

21.06.045. KPB GIS mapped flood data area.

A. *Base flood elevation in the SMFDA district.* Based upon a digital elevation model provided by the borough, base flood elevation in the SMFDA district, which does not include any area of the Special Flood Hazard Area represented in an effective FIRM or DFIRM, is established by a [LICENSED] professional [REGISTERED] land surveyor licensed in the State of Alaska or professional [CIVIL] engineer licensed in the State of Alaska at the highest point within the lot measured downslope from the specific construction site.

B. *Exemption from application of SMFDA district.*

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

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

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

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

2. Foundations shall have an erosion resistant design; and

3. Where applicable, including for attached garages and similar construction, the standards for the permit is subject to the standards set forth in KPB 21.06.050; and

4. The permitted activity shall not increase the risk of flood damage to downstream or adjacent properties.

D. Currently active channels within the SMFDA district. All development in the SMFDA district in the minimum flood corridor within the Resurrection River watershed, Spruce and Sawmill Creeks, shall require a permit that is based on best management practices to minimize adverse impacts to properties in the vicinity of the subject activity.

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

F. [WAIVERS]Exceptions. The [VARIANCE]exception procedure in KPB 21.06.060 only applies to permitting in Special Flood Hazard Area of the current effective [THE] FIRM or DFIRM area. For the SMFDA area, [A]a project-specific design prepared by a licensed professional [CIVIL] engineer may be submitted for consideration to the planning commission in lieu of meeting the conditions set forth in KPB 21.06.045(C). Based upon written findings of fact, the planning commission may grant or deny the permit and place conditions on the permit it grants in order that the risk of flood damage to downstream or adjacent property or flood damage to public infrastructure will not be increased. The grant or denial of a permit may be appealed to the board of adjustment within 15 days of distribution of the planning commission's written decision.

SECTION 7. That KPB 21.06.050 is hereby amended as follows:

21.06.050. Standards.

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

1. Anchoring.

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

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

2. Construction Materials and Methods.

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

3. Utilities.

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

4. Subdivision Proposals.

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

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

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

1. Residential Construction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 8. That KPB 21.06.055 is hereby repealed.

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

21.06.060. [VARIANCE] Exceptions procedure.

A. Appeal Board.

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

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

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

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

- a. The danger that materials may be swept onto other lands to the injury of others;
 - b. The danger to life and property due to flooding or erosion damage;
 - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - d. The importance of the services provided by the proposed facility to the community;
 - e. The necessity to the facility of a waterfront location, where applicable;
 - f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - g. The compatibility of the proposed use with the existing and anticipated development;
 - h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - j. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
5. Upon consideration of the factors of subsection (A)(4) of this section and the purposes of this chapter, the planning commission may attach such conditions to the granting of [VARIANCES]exceptions as it deems necessary to further the purposes of this chapter,
6. The planning department shall maintain the records of all appeal actions and report any [VARIANCES]exceptions to the Federal Insurance Administration upon request.
- B. Conditions for [VARIANCES]Exceptions.
1. Generally, the only condition under which an [VARIANCE]exception from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of ½ acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing subparagraphs (a) through (k) of subsection (A)(4) of this

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

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

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

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

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

a. A showing of good and sufficient cause;

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

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

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

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

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

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

21.06.070. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21.29.010. Material extraction exempt from obtaining a permit.

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

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

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

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

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

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

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

Linda Murphy, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

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

No: None

Absent: None

Introduced by: Bjorkman, Elam
Date: 04/20/21
Hearing: 05/18/21
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2021-18**

**AN ORDINANCE AMENDING TITLE 4 REGARDING BOROUGH ELECTIONS AND
ENACTING A NEW CHAPTER OF CODE, KPB 4.60, ELECTION SECURITY AND
INTEGRITY, TO ENSURE BOROUGH ELECTIONS ARE ACCESSIBLE, RELIABLE
AND SECURE**

WHEREAS, the peoples' confidence in the integrity of election results is reliant on their confidence in the security of the election equipment, election workers, and infrastructure that make elections possible; and

WHEREAS, free and fair elections play a vital and integral role in a democratic society; and

WHEREAS, all election equipment must be publicly tested, secure, and accountable in order to prove its reliability; and

WHEREAS, poll watchers must be able to closely observe elections; and

WHEREAS, voters must show proper identification to an election official before voting; and

WHEREAS, any absentee by-mail ballots must be witnessed and the voter's identity verified; and

WHEREAS, any reasonable suspicion of election fraud should be forwarded to the Alaska Attorney General; and

WHEREAS, this ordinance enacts a new chapter in borough code to establish election security and publicity procedures to protect the integrity of local elections;

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

SECTION 1. That KPB 4.50.110 is hereby amended as follows:

4.50.110. Closing of the polls.

- A. Fifteen minutes before the closing of the polls, and at the time of closing the polls, an election official shall announce both the designated closing time and the actual time at which the announcement is made. Failure to make the announcement at 15 minutes before closing time shall not in any way invalidate the election or extend the time for closing of the polls. After

closing, no person will be allowed to enter the polling place for purposes of voting. Every qualified voter present and in line at the time prescribed for closing the polls may vote.

- B. When the polls are closed and the last vote has been cast, the election board shall account for all ballots by completing a ballot statement containing, in a manner prescribed by the clerk, the number of official ballots supplied.
- C. The election board shall count the number of questioned ballots and shall compare that number to the number of questioned voters in the register. Discrepancies shall be noted on the ballot statement.
- D. The election board shall announce the total vote tally and sign the final results tape. No less than two members of the election board shall transport the election tabulator and election materials to the election supervisor in accordance with KPB 4.60.050.

SECTION 2. That KPB Chapter 4.60. - Election Integrity and Security is enacted as follows:

4.60.010. Purpose; Scope.

The purpose of this chapter is to ensure borough elections are secure and reliable, and to provide added public trust in the integrity of borough election results. This chapter only applies to local elections administered by the borough.

4.60.020. - Elections security.

- A. A ballot printer who prepares ballots for use at a borough election will be provided a certificate to sign indicating that any overruns have been destroyed and that all official ballots ordered by the borough have been delivered to the election supervisor. Upon receipt of the official ballots from the printer, the election supervisor shall secure the ballots. A locked room with access limited to election personnel will be provided wherever possible.
- B. When voted absentee ballots begin to arrive in the election supervisor's office, the ballots will be secured and access limited to personnel of the clerk's office and the Canvass Board. The absentee ballots will be bundled, date stamped by bundle, and processed according to the date stamped for the bundle. The information contained on the affidavit envelope will be compared to the master list of registered voters. The register may be reviewed by interested persons at any time during the election process at the election supervisor's offices.
- C. The security of the polling place and electronic voting equipment must be maintained by the election board during the hours when election equipment is present at the polling place. The election board shall inspect the tamper-evident seal on electronic voting equipment upon receipt and before the

polls open on the day of the election and shall immediately report any evidence of tampering to the election supervisor.

- D. After the counting of voted ballots has been completed in a precinct, the election board shall seal the ballots in the envelopes provided and place their initials across the seal.
- E. The central ballot counting center is located in Soldotna at the Borough Administration Building in the Clerk's Office. Access into the central ballot counting center is restricted to those persons approved by the election supervisor. The election supervisor will prepare the listing of persons who will have access to the restricted area and provide those persons with the appropriate identification.
- F. Following the counting of absentee and questioned ballots at the central ballot counting center, the ballot containers must be sealed. The election supervisor shall prepare a receipt indicating the number of containers of ballots. When the count is completed, the ballots must be transported to the arranged secured storage areas previously determined by the election supervisor.

4.60.030. Ballot tabulator tests and security.

- A. The automatic tabulating equipment used for counting ballots (tabulator) at voting places shall be tested publically three times for each election: before the election, immediately before the counting of ballots, and immediately after the counting of ballots.
- B. Before an election, the tabulator must be tested as follows:
 - 1. The election coordinator board is responsible for performing and certifying the initial logic and accuracy test of the ballot counting program and memory cards;
 - 2. The election review board is responsible for performing a second logic and accuracy test of the ballot counting program memory cards and preparing the memory cards for election use.
- C. Before the opening of the polls on election day at locations where there is a tabulator, the election board is responsible for certifying that the precinct tabulator prints a zero totals report. In addition, before counting absentee or questioned ballots, the Canvass Board will verify that a zero totals report is printed before each memory card is used; if the same memory card is used in a subsequent count, the board will print a totals report before resuming count, and verify that it matches the totals report from the subsequent count.

- D. Upon completion of the automatic count, the tabulator shall again be tested, and if the initial test is successful the automatic count is valid for the purpose of certifying the election returns. Otherwise, the automatic ballot count is void.
- E. A test is successful if a perfect count of the test ballots is obtained and the tabulator otherwise functions properly during the counting of the test ballots. The testing authorities shall determine whether a test is successful.
- F. Tabulator tests are open to the public. The borough clerk shall provide public notice of the election and testing calendar as follows:
1. By publication in a newspaper of general circulation at least one week prior to the scheduled election;
 2. By posting on the borough's website; and
 3. By physically posting at the borough administration building in Soldotna.
- G. In addition to the public notice required under subsection F, the borough clerk shall provide notice, via e-mail if known and if not known by U.S. mail delivery, to all candidates and interested parties. For the purposes of this subsection the term "interested parties" shall mean any initiative or referendum sponsors.

4.60.040. Security of Test Materials.

- A. On completing each test, the testing authority shall place the test ballots and other test materials in a container provided for that purpose and seal the container so it cannot be opened without breaking the seal. The election supervisor, election coordinators, and not more than two watchers, if one or more watchers are present, shall sign the seal. The watchers must be of opposing interests if such watchers are present.
- B. The test materials shall remain sealed for the period for preserving the precinct election records.
- C. The container may not be unsealed unless the contents are necessary to conduct a test under this subchapter, a criminal investigation, election contest, or other official proceeding under this code. If the container is unsealed, the authority in charge of the proceeding shall reseal the contents when not in use.

4.60.050. - Transportation and receipt of ballots.

- A. In locations where an automatic tabulating equipment used for counting ballots (tabulator) is used, the voted ballots counted by the tabulator must be transported on election night to a secured storage area prearranged by the election supervisor.
- B. On the day following the election the ballots described in (a) of this section that were not transported to the central ballot counting center will be transported by ground by an election official, if transported by air the container must be secured with tamper proof seal. The ballots must be accompanied from the secured storage area to the airport of departure, and from the airport of destination to a designated secured storage area by an election official.
- C. A chain of custody document will accompany each ballot shipment. Access to the secured area will be limited to election personnel.
- D. On each day after the election designated by the clerk for the counting of absentee and questioned ballots and after the completion of the counting by Canvass Board, the counted absentee and questioned ballots will be secured in a locked room as determined by the election supervisor.

4.60.060. - Questioned and absentee facsimile ballots.

- A. The procedures in this section apply to a voted questioned or absentee ballot that has been received at central office for a determination as to whether the ballot is eligible for counting. Board members shall temporarily set aside a questioned ballot, and therefore not immediately count the questioned ballot, for a eligibility determination if:

 - 1. The voted ballot cannot be counted by the tabulator because

 - (A) the voter marked the ballot in a manner that causes the tabulator to reject the ballot; or
 - (B) the ballot is otherwise damaged; and
 - 2. The board members determined that the ballot contains clear and convincing evidence of the voter's intent.
- B. The board members shall make an exact copy of a voted ballot described in subsection A above, for substitution as a facsimile ballot.
- C. The original of a voted ballot for which a facsimile ballot is prepared under this section must be clearly labeled "original." A facsimile ballot prepared under this section must be clearly labeled "facsimile." After completion of

the counting process, the original and the facsimile of a voted ballot must be placed in envelopes and the envelopes must be sealed.

- D. In this section, "board members" means members of the Canvass Board, designated by the election supervisor and confirmed by the assembly to perform the functions described in this section.

4.60.070. Uncounted ballots at tabulator precincts.

- A. The procedures set out in this section apply to a voted ballot that was unable to be counted by the automatic tabulating equipment used for counting ballots (tabulator) and subsequently reviewed by the Canvass Board for a determination as to whether the ballot is eligible for counting.
- B. The Canvass Board shall instruct voters to place the voter's ballot in the emergency compartment of the tabulator ballot box if the voted ballot cannot be counted in the tabulator because:
1. The tabulator is unable to accept ballots due to a malfunction or power loss;
 2. The voter marked the ballot in a manner that causes the tabulator to reject the ballot and the voter does not wish to correct the ballot; or
 3. The tabulator rejects the ballot for an unknown reason.
- C. When the polls have closed and all eligible voters have voted, the Canvass Board shall remove all ballots from the emergency compartment and feed the ballots through the tabulator. If there are any ballots that are unable to be counted by the tabulator, the election board shall place those ballots in an envelope labeled "uncounted ballot envelope" and seal the envelope in a manner that the envelope cannot be opened without breaking the seal and the seal must be signed by two members of the Canvas Board. The envelope will then be placed inside the precinct register.
- D. The Canvass Board will conduct its review and count ballots that have been sent in the uncounted ballot envelope, described in subsection B above, using the rules specified in KPB 4.90.030 or KPB Chapter 4.70

4.60.080. Poll Watcher.

- A. Each candidate may appoint a poll watcher for each voting place.
- B. A poll watcher shall have the right to
1. Observe the conduct of the election.

2. Monitor the preliminaries of opening the polls.
 3. Remain at the polling place through the election until the results of the election have been posted and the voting machines sealed, as provided by law.
 4. Observe the ballots as they are counted.
 5. Observe absentee ballots when they are called during the count.
 6. See, at a distance of normal reading ability, all oaths administered and signed, the record of assisted voters, the list of qualified voters, the poll list, and any and all records made in connection with the election.
- C. Each poll watcher shall be sworn to faithfully observe the rule of law prescribed for the conduct of elections. Poll watchers may be present to be sworn in with the precinct election officials, or as time allows, but so as not to interfere with the election. Each poll watcher shall be a resident and qualified voter of the State of Alaska and the Kenai Peninsula Borough. Election officials, including returning officers, may not serve as poll watchers. Poll watchers are not permitted to take pictures or make copies of any ballot, list, or record provided in accordance with subsection B above.
- D. A poll watcher shall not disturb voters, attempt to influence voters, campaign at the polling place, nor display or wear any campaign material or buttons while inside any polling place.

SECTION 3. That KPB 4.80.070 is amended as follows:

4.80.070. Absentee voting—By mail.

- A. A qualified voter may apply for an absentee ballot by mail if postmarked not earlier than the first of the year in which the election is to be held nor less than seven days before an election. A voter may request ~~[HIS]~~their name be placed on permanent absentee by mail status. The application shall include the address to which the absentee ballot is to be returned, the applicant's full Alaska residence address, and the applicant's signature.
- B. After receipt of an application by mail, the borough clerk shall send the absentee ballot and other absentee voting material to the applicant by first class mail. The materials shall be sent as soon as they are ready for distribution. The return envelope sent with the materials shall be addressed to the borough clerk.
- C. Upon receipt of an absentee ballot by mail, the voter[, IN THE PRESENCE OF A NOTARY PUBLIC, COMMISSIONED OFFICER OF THE ARMED FORCES INCLUDING THE NATIONAL GUARD, DISTRICT

JUDGE OR MAGISTRATE, UNITED STATES POSTAL OFFICIAL, OR OTHER PERSON QUALIFIED TO ADMINISTER OATHS,] may proceed to mark the ballot in secret, to place the ballot in the small envelope, to place the small envelope in the larger envelope, and to sign the voter's certificate on the back of the larger envelope in the presence of an official[LISTED IN THIS SUBSECTION] who shall sign as attesting official and shall date [HIS]their signature. Officials recognized to attest to the veracity of signatures listed in this subsection are: a notary public, a commissioned officer of the armed forces including the National Guard, state court judge, United States postal official, or other person qualified to administer oaths. If none of the officials listed in this subsection are reasonably accessible, an absentee voter shall have the ballot witnessed by a person over the age of 18 years.

- D. An absentee ballot must be marked and attested on or before the date of the election. If the voter returns the ballot by mail, he shall use the most expeditious mail service and mail the ballot not later than the day of the election to the borough clerk. It must be postmarked on or before midnight of election day and received by the clerk no later than the Tuesday following the election. Ballot envelopes received after that time shall not be opened but shall be marked "invalid", with the date of receipt noted thereon, and shall be preserved with other ballots of the election.
- E. The clerk [MAY]shall require a voter casting an absentee ballot by mail to provide proof of identification, including one of three unique pieces of personal identification data which shall include the voter's date of birth, last four digits of the voter's social security number, or the voter's voter identification number[, OR OTHER INFORMATION]to aid in the establishment of [HIS]the voter's identity. These unique identifiers shall be provided by the voter on the ballot package and sworn to be the voter's signature and the signature of an official as described in subsection C above.
- F. The clerk shall maintain a record of the name of each voter to whom an absentee ballot is sent by mail. The record must list the date on which the ballot is mailed and the date on which the ballot is received by the borough clerk and the dates on which the ballot was executed and postmarked.
- G. Upon reasonable suspicion of fraud, misconduct, or plural voting by a registered voter, the clerk shall notify the attorney general and request that the matter be prosecuted to the fullest extent of the law.

SECTION 4. That KPB 4.90.020(A) is amended as follows:

4.90.020. Canvass of returns.

- A. No later than the Monday following each election, the election canvass board shall meet in public session and canvass all election returns. In full view of those present, and in accordance with the procedures set forth in

KPB Chapter 4.60, the election canvass board shall judge the applicability of absentee and questioned ballots, shall open and tally those accepted, and shall compile the total votes cast in the election. The canvass of the ballot vote counted by the precinct election boards shall be accomplished by reviewing the tallies of the recorded vote to check for mathematical error by comparing totals with the precinct's certificate of results. All obvious errors found by the election canvass in the transfer of totals from the precinct tally sheets to the precinct certificate of results shall be corrected by the canvass board. A mistake which has been made in precinct returns that is not clearly an error in the transfer of the results from the tallies to the certificate of results empowers the canvassing board to recommend a recount of the results of the precinct or precincts for that portion of the returns in question.

- B. Upon completion of the canvass, the canvassing board shall prepare a final certificate of the results of votes cast by absentee, questioned and challenged ballots and of votes cast by regular ballot, and shall prepare a written report of the results to be submitted to the assembly.
- C. If election materials have not been received from a precinct prior to completion of the canvass, but election results have been transmitted by telephone, telegram, radio or electronic transmission, the canvassing board shall count the election results received. If the borough clerk has reason to believe that a missing precinct certificate, if received, would affect the result of the election, the clerk shall await the receipt of the certificate until 2:00 p.m. on the Tuesday following the election. If the certificate is not received by the clerk by 2:00 p.m., Tuesday, then the certificate shall not be counted nor included in the final certification of the canvassing board.

SECTION 5. That this ordinance is effective immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS *
DAY OF * 2021.**

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk


Yes:

No:

Absent:

MEMORANDUM

TO: Brent Hibbert, Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Jesse Bjorkman, Assemblyman 

DATE: April 8, 2021

RE: Ordinance 2021-18, Amending Title 4 Regarding Borough Elections and Enacting a New Chapter of Code, KPB 4.60, Election Security and Integrity, to Ensure Borough Elections are Accessible, Reliable and Secure (Bjorkman)

The purpose of this ordinance is to ensure public confidence in the integrity of election results.

Section 1 of this ordinance amends KPB 4.50.110, -Closing of the polls, to state that results will be announced at the polling location and that the signed results tape along with the election equipment and materials will be transported by two members of the election board to the election supervisor (the borough clerk).

Section 2 enacts a new chapter of borough election code to clarify and codify borough election practices by providing code provisions that address:

- security of election equipment (KPB 4.60.020),
- chain of custody procedures for voting equipment (KPB 4.60.020, 4.60.030);
- public testing of ballot tabulators (KPB 4.60.030);
- chain of custody for transportation and receipt of ballots (KPB 4.60.050);
- procedures for questioned or uncounted ballots (KPB 4.60.070); and
- a process for candidates appointing poll watchers (KPB 4.60.080);

Section 3 amends KPB 4.80.070 to provide a list of officials recognized to attest to signature verification on absentee ballots and establishes that at least one of three unique pieces of personal identification data shall be required for absentee ballots. The unique identifiers are a voter's voter identification number, date of birth, and last four digits of the voter's social security number. A new subsection G is added that addresses suspected voter fraud, misconduct and/or plural voting.

Section 4 amends KPB 4.90.020(A) for cross-reference and consistency purposes.

Your consideration is appreciated.

Kenai Peninsula Borough
Office of the Borough Mayor

MAYOR'S REPORT TO THE ASSEMBLY

TO: Brent Hibbert, Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Charlie Pierce, Kenai Peninsula Borough Mayor

DATE: May 4, 2021



Assembly Request / Response

None

Agreements and Contracts

- a. Authorization to Award a Contract for ITB21-021 North Peninsula Recreation Service Area Nikiski Pool Reroof to Earhart Roofing Co. Inc., Anchorage, Alaska.
- b. Authorization to Award a Contract for RFP21-006 Homer High School Roof Professional Design Service's to K+A designstudios, Kenai AK.

Other

- a. Revenue – Expenditure Report – March 2021
- b. Budget Revisions – March 2021
- c. Tax Adjustment Request Approval
- d. Litigation Status Report – Quarter Ending 03/31/21

Kenai Peninsula Borough

Purchasing and Contracting Department

MEMORANDUM

TO: Charlie Pierce, Mayor

THRU: John Hedges, Purchasing & Contracting Director JH

FROM: Carmen Vick, Project Manager CV

DATE: March 23, 2021

RE: Authorization to Award a Contract for ITB21-021
North Peninsula Recreation Service Area Nikiski Pool Reroof

The Purchasing and Contracting Office formally solicited and received bids for ITB21-021 North Peninsula Recreation Service Area Nikiski Pool Reroof. Bid packets were released on February 10, 2021 and the Invitation to Bid was advertised in the Peninsula Clarion and the Anchorage Daily News on February 10, 2021.

The project consists of providing all labor and materials to remove and replace the roof assemblies and associated work indicated / specified in the Contract Documents for the Nikiski Pool Reroof, 55525 Poolside Avenue, Kenai, Alaska 99611.

On the due date of March 16, 2021 four (4) bids were received and reviewed to ensure that all the specifications and delivery schedules were met. The low bid of \$436,000.00 was submitted by Earhart Roofing Co., Inc., Anchorage, Alaska.

Your approval for this bid award is hereby requested. Funding for this project is in account number 459.61110.21451.49101.

Charlie Pierce
Charlie Pierce, Mayor

3/25/2021

Date

NOTES:

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No.	459.61110.21451.49101
Amount	\$436,000.00
By: PP BH	Date: 3/24/2021

**KENAI PENINSULA BOROUGH
PURCHASING & CONTRACTING**

BID TAB FOR: ITB21-021 Earhart Roofing Co., Inc.

CONTRACTOR	LOCATION	BASE BID
Earhart Roofing Co., Inc	Anchorage, AK	\$436,000.00
RPR, Inc., dba Rain Proof Roofing	Anchorage, AK	\$446,250.00
Anchorage Roofing and Contracting Inc.	Anchorage, AK	\$479,440.00
Orion Construction Inc.	Wasilla, AK	\$620,000.00

DUE DATE: March 16, 2021

KPB OFFICIAL:


John Hedges, Purchasing & Contracting Director

Kenai Peninsula Borough

Purchasing and Contracting Department

MEMORANDUM

TO: Charlie Pierce, Mayor

THRU: John Hedges, Purchasing & Contracting Director *JH*

FROM: Carmen Vick, Project Manager *CV*

DATE: April 6, 2021

RE: Authorization to Award a Contract for RFP21-006
Homer High School Roof Professional Design Services

The Purchasing and Contracting Office formally solicited and received proposals for RFP21-006 Homer High School Roof Professional Design Services. Proposal packets were released and the Request for Proposal was advertised in the Peninsula Clarion and the Anchorage Daily News on February 24, 2021 and the Homer News on February 25, 2021.

The project consists of professional architectural and engineering design and CA services for the purpose of preparing comprehensive construction documents to be used for soliciting bids for construction to replace part of the roof at Homer High School.

On the due date of March 23, 2021 two (2) proposals were received and ranked by a review committee as follows:

<u>FIRM</u>	<u>LOCATION</u>	<u>TOTAL SCORE</u>
K+A designstudios	Kenai, Alaska	350
BDS Archiects, Inc.	Anchorage, Alaska	340

The highest ranking proposal, which includes a cost factor, was submitted by K+A designstudios with a lump sum cost proposal of \$156,215.00. The proposal review committee recommends award of a contract to K+A designstudios. Your approval for this award is hereby requested.

Funding for this project is in account number 401.72010.22SCH.49311.



Charlie Pierce, Mayor

4/6/2021

Date

NOTES:


FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No.	401.72010.22SCH.49311
Amount	\$156,215.00
By: <i>PP BH</i>	Date: 4/6/2021


Kenai Peninsula Borough


Finance Department

MEMORANDUM

TO: Brent Hibbert, Assembly President
Members of the Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Borough Mayor 

THRU: Brandi Harbaugh, Finance Director 

FROM: Sarah Hostetter, Payroll Accountant 

DATE: April 6, 2021

RE: Revenue-Expenditure Report – March 2021

Attached is the Revenue-Expenditure Report of the General Fund for the month of March 2021. Please note that 75.00% of the year has elapsed, 82.98% of budgeted revenues have been collected, and 64.76% of budgeted expenditures have been made.

KENAI PENINSULA BOROUGH

Revenue Report

For the Period

March 1 through March 31, 2021

ACCOUNT NUMBER	DESCRIPTION	ESTIMATED REVENUE	YEAR TO DATE RECEIPTS	MONTH TO DATE RECEIPTS	VARIANCE	% COLLECTED
31100	Real Property Tax	\$ 31,332,188	\$ 30,867,654	\$ 299,101	\$ (464,534)	98.52%
31200	Personal Property Tax	1,814,997	2,159,841	25,057	344,844	119.00%
31300	Oil Tax	7,019,116	7,025,200	-	6,084	100.09%
31400	Motor Vehicle Tax	676,400	294,975	31,215	(381,425)	43.61%
31510	Property Tax Penalty & Interest	590,931	526,794	77,911	(64,137)	89.15%
31610	Sales Tax	27,431,594	19,995,726	845,775	(7,435,868)	72.89%
33110	In Lieu Property Tax	3,600,000	-	-	(3,600,000)	0.00%
33117	Other Federal Revenue	160,000	69,988	38,467	(90,012)	43.74%
34221	Electricity & Phone Revenue	155,000	-	-	(155,000)	0.00%
34222	Fish Tax Revenue Sharing	500,000	(50,616)	1,222	(550,616)	-10.12%
34210	Revenue Sharing	312,893	312,893	312,893	-	100.00%
37350	Interest on Investments	352,913	434,111	33,792	81,198	123.01%
39000	Other Local Revenue	275,000	237,042	34,059	(37,958)	86.20%
290	Solid Waste	802,000	383,021	2,190	(418,979)	47.76%
Total Revenues		\$ 75,023,032	\$ 62,256,630	\$ 1,701,680	\$ (12,766,402)	82.98%

KENAI PENINSULA BOROUGH
Expenditure Report
For the Period
March 1 through March 31, 2021

DESCRIPTION	REVISED BUDGET	YEAR TO DATE EXPENDED	MONTH TO DATE EXPENDED	AMOUNT ENCUMBERED	AVAILABLE BALANCE	% EXPENDED
Assembly:						
Administration	\$ 484,528	\$ 335,592	\$ 38,374	\$ 17,344	\$ 131,592	69.26%
Clerk	579,316	380,796	42,839	8,841	189,680	65.73%
Elections	182,920	129,720	24	314	52,886	70.92%
Records Management	327,678	216,762	23,403	11,491	99,425	66.15%
Mayor Administration	792,424	493,789	60,263	417	298,218	62.31%
Purch/Contracting/Cap Proj	648,943	397,360	47,852	3,869	247,715	61.23%
Human Resources:						
Administration	700,918	473,927	52,983	3,245	223,746	67.62%
Print/Mail	204,217	100,059	8,753	22,959	81,199	49.00%
Custodial Maintenance	95,548	80,349	9,579	39	15,160	84.09%
Information Technology	2,093,923	1,286,085	125,516	68,963	738,875	61.42%
Emergency Management	933,183	668,106	56,489	48,526	216,551	71.59%
Legal Administration	1,120,116	618,285	66,078	148,825	353,005	55.20%
Finance:						
Administration	505,711	358,661	41,138	2,006	145,044	70.92%
Services	1,072,179	709,092	72,536	595	362,492	66.14%
Property Tax	1,141,576	643,675	59,875	75,691	422,210	56.38%
Sales Tax	901,144	644,745	61,023	3,748	252,650	71.55%
Assessing:						
Administration	1,350,530	882,573	84,974	3,825	464,132	65.35%
Appraisal	1,993,482	1,125,851	109,668	7,641	859,990	56.48%
Resource Planning:						
Administration	1,261,643	660,937	80,026	15,952	584,754	52.39%
GIS	499,590	346,198	26,001	1,013	152,379	69.30%
River Center	675,967	404,092	37,146	16,415	255,460	59.78%
Senior Citizens Grant Program	719,494	409,085	-	310,409	-	56.86%
School District Operations	55,004,255	38,033,681	-	-	16,970,574	69.15%
Solid Waste Operations	9,102,389	4,262,640	675,001	1,339,889	3,499,860	46.83%
Economic Development	360,000	158,085	17,296	154,248	47,667	43.91%
Non-Departmental	3,683,109	2,152,494	20,480	371	1,530,245	58.44%
Total Expenditures	\$ 86,434,783	\$ 55,972,637	\$ 1,817,314	\$ 2,266,636	\$ 28,195,509	64.76%

Kenai Peninsula Borough

Finance Department

MEMORANDUM

TO: Brent Hibbert, Assembly President
Members of the Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Borough Mayor *CH*

THRU: Brandi Harbaugh, Finance Director *BH*

FROM: Sarah Hostetter, Payroll Accountant *SH*

DATE: April 6, 2021

RE: Budget Revisions – March 2021

Attached is a budget revision listing for March 2021. The attached list contains budget revisions between major expenditure categories (i.e., maintenance & operations and capital outlay). Other minor transfers were processed between object codes within major expenditure categories.

CENTRAL EMERGENCY SERVICES

Moving funds to cover a janitorial services contract, services were previously performed by Borough custodians.

211-51610-00000-60000 (Charges (to) from Other Departments)		\$1,566.30
211-51610-00000-43011 (Contract Services)	\$1,566.30	

CLERK'S OFFICE - ASSEMBLY

To purchase Extron equipment for the Assembly chambers podium.

100-11110-00000-43215 (Travel Out of State)		\$1,360.00
100-11110-00000-48710 (Minor Office Equipment)	\$1,360.00	

CLERK'S OFFICE - RECORDS MANAGEMENT

To purchase parts to fix a scanner.

100-11140-00000-43720 (Equipment Maintenance)		\$403.00
100-11140-00000-42310 (Repair & Maintenance Supplies)	\$403.00	

LEGAL DEPARTMENT

To purchase a sit-to-stand unit and replace a monitor and sound bar.

100-11310-00000-40120 (Temporary Wages)		\$1,700.00
100-11310-00000-48710 (Minor Office Equipment)	\$1,700.00	

MAINTENANCE DEPARTMENT

Moving funds to cover additional snow removal expense.

241-41010-00000-42310 (Repair & Maintenance Supplies)		\$100,000.00
241-41010-00000-43764 (Snow Removal)	\$100,000.00	

PLANNING - ADMINISTRATION

To purchase new iPads for Planning Commissioners that are compatible with their new Granicus Meeting Software.

100-21110-00000-43210 (Transportation & Subsistence)		\$4,007.40
100-21110-00000-48710 (Minor Office Equipment)	\$4,007.40	

SEWARD BEAR CREEK FLOOD SERVICE AREA

To replace old printer/copier.

259-21212-00000-42120 (Computer Software)		\$51.00
259-21212-00000-48710 (Minor Office Equipment)	\$51.00	

SOLID WASTE - LANDFILL & ADMINISTRATION

To cover expense for the Leachate Management design study.

290-32010-00000-50411 (Trfs Solid Waste Cap Proj Fund)		\$39,500.00
290-32010-00000-43600 (Project Management)		\$2,000.00
290-32122-21LEA-43011 (Contract Services)	\$37,500.00	
290-32122-21LEA-49999 (Contingency)	\$2,807.55	
290-32122-21LEA-40110 (Regular Wages)	\$676.96	
290-32122-21LEA-40210 (FICA)	\$51.09	
290-32122-21LEA-40221 (PERS)	\$148.92	
290-32122-21LEA-40321 (Health Insurance)	\$210.41	
290-32122-21LEA-40322 (Life Insurance)	\$1.66	
290-32122-21LEA-40410 (Leave)	\$63.53	
290-32122-21LEA-43110 (Communications)	\$12.19	
290-32122-21LEA-43220 (Car Allowance)	\$27.69	

SOLID WASTE - ADMINISTRATION & MISC LANDFILLS

To cover temp wages for Solid Waste Admin position.

290-32570-00000-40120 (Temporary Wages)		\$1,500.00
290-32010-00000-40120 (Temporary Wages)	\$1,500.00	

SOLID WASTE - ADMINISTRATION & LANDFILL

Moving funds to cover Landfill communication expense.

290-32010-00000-43110 (Communications)		\$3,500.00
290-32122-00000-43110 (Communications)	\$3,500.00	

WESTERN EMERGENCY SERVICES

Moving funds to cover a VFA grant match requirement.

209-51410-00000-43780 (Building & Grounds Maintenance)		\$279.22
209-51410-00000-48760 (Minor Fire Fighting Equipment)	\$279.22	

Kenai Peninsula Borough
Assessing Department

MEMORANDUM


TO: Charlie Pierce, Borough Mayor
FROM: Adeena Wilcox, Director of Assessing
DATE: April 6, 2021
RE: Tax Adjustment Request Approval

Attached is a spreadsheet of tax adjustment requests required by changes to the assessment roll. These adjustments are being submitted to the Finance Department for processing.

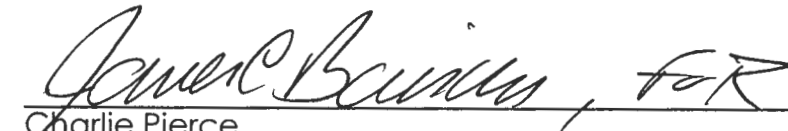
Borough code 5.12.119 (D) authorizes the mayor to approve tax adjustment requests prepared by the borough assessor.

I hereby certify that I have reviewed the tax adjustment requests submitted for your signature and I find them to be proper and correct.

DATED: April 6, 2021


Adeena Wilcox
Director of Assessing

APPROVED


Charlie Pierce
Borough Mayor

APRIL TARS

	2020	2019	2018	2017	2016
TAG 10 (assessed)					
(taxable)					
TAG 11 (assessed)					
(taxable)					
TAG 20 (assessed)					
(taxable)					
TAG 21 (assessed)					
(taxable)					
TAG 30 (assessed)					
(taxable)	(\$50,000)	(\$50,000)	(\$50,000)		
TAG 40 (assessed)					
(taxable)					
TAG 41 (assessed)					
(taxable)					
TAG 42 (assessed)					
(taxable)					
TAG 43 (assessed)					
(taxable)					
TAG 52 (assessed)					
(taxable)					
TAG 53 (assessed)					
(taxable)					
TAG 54 (assessed)					
(taxable)					
TAG 55 (assessed)					
(taxable)					
TAG 57 (assessed)					
(taxable)					
TAG 58 (assessed)					
(taxable)	(\$241,200)				
TAG 61 (assessed)					
(taxable)					
TAG 63 (assessed)					
(taxable)					
TAG 64 (assessed)					
(taxable)					
TAG 65 (assessed)					
(taxable)					
TAG 67 (assessed)					
(taxable)					
TAG 68 (assessed)					
(taxable)					
TAG 70 (assessed)					
(taxable)					
TAG 80 (assessed)					
(taxable)					
TAG 81 (assessed)					
(taxable)					
TOTAL ASSESSED	\$0	\$0	\$0	\$0	\$0
TOTAL TAXABLE	(\$291,200)	(\$50,000)	(\$50,000)	\$0	\$0
KPB FLAT TAX					

APRIL TARS CITY VALUES

	2020	2019	2018	2017	2016
TAG 10 (assessed)					
(taxable)					
Seldovia Flat Tax					
TAG 20 (assessed)					
(taxable)					
Homer Flat Tax					
TAG 21 (assessed)					
(taxable)					
TAG 30 (assessed)					
(taxable)					
Disability Tax Credit					
TAG 40 (assessed)					
(taxable)					
TAG 41 (assessed)					
(taxable)					
TAG 70 (assessed)					
(taxable)					
Soldotna Flat Tax					
TAG 80 (assessed)					
(taxable)					

TAX ADJUSTMENT REQUEST

ROLL/YEAR 2020 TAR NUMBER 30-20-008

PARCEL ID 043-040-30

PRIMARY OWNER PENROD, DINELLE

	CURRENT VALUE	CORRECTED VALUE
TAG	<u>30</u>	<u>30</u>
CLASS CODE	<u>110</u>	<u>110</u>
LAND ASSESSED (VT4)	<u>13,800</u>	<u>13,800</u>
IMPROVEMENT ASSESSED (VT5)	<u>113,200</u>	<u>113,200</u>
KPB ASSESSED (VT 1001)	<u>127,000</u>	<u>127,000</u>
KPB TAXABLE (VT 1003)	<u>127,000</u>	<u>77,000</u>
CITY ASSESSED (VT 1011)	<u>127,000</u>	<u>127,000</u>
CITY TAXABLE (VT 1013)	<u>127,000</u>	<u>127,000</u>

EXPLANATION CLERICAL ERROR - EXEMPTION APPROVED IN 2018 AND NEVER ENTERED.

OWNER WOULD LIKE REFUND OF ANY AMOUNT OVERPAID.

CHANGE SUMMARY

DATE	<u>03/19/21</u>	KPB ASSESSED	<u>\$0</u>
SUBMITTED BY	<u>SGUZMAN</u>	KPB TAXABLE	<u>(\$50,000)</u>
VERIFIED BY	<u>C. FINLEY</u>	CITY ASSESSED	<u>\$0</u>
		CITY TAXABLE	<u>\$0</u>
		KPB FLAT TAX	<u></u>
		CITY FLAT TAX	<u></u>

TAX ADJUSTMENT REQUESTROLL/YEAR 2019TAR NUMBER 30-19-009PARCEL ID 043-040-30PRIMARY OWNER PENROD DINELLE

	CURRENT VALUE	CORRECTED VALUE
TAG	<u>30</u>	<u>30</u>
CLASS CODE	<u>110</u>	<u>110</u>
LAND ASSESSED (VT4)	<u>13,800</u>	<u>13,800</u>
IMPROVEMENT ASSESSED (VT5)	<u>113,500</u>	<u>113,500</u>
KPB ASSESSED (VT 1001)	<u>127,300</u>	<u>127,300</u>
KPB TAXABLE (VT 1003)	<u>127,300</u>	<u>77,300</u>
CITY ASSESSED (VT 1011)	<u>127,300</u>	<u>127,300</u>
CITY TAXABLE (VT 1013)	<u>127,300</u>	<u>127,300</u>

EXPLANATION CLERICAL ERROR - EXEMPTION WAS NOT ENTERED IN 2018 WHEN IT WAS APPROVED
OWNER REQUESTS A REFUND.

CHANGE SUMMARY

DATE	<u>03/19/21</u>	KPB ASSESSED	<u>\$0</u>
SUBMITTED BY	<u>SGUZMAN</u>	KPB TAXABLE	<u>(\$50,000)</u>
VERIFIED BY	<u>C. FINLEY</u>	CITY ASSESSED	<u>\$0</u>
		CITY TAXABLE	<u>\$0</u>
		KPB FLAT TAX	<u></u>
		CITY FLAT TAX	<u></u>

TAX ADJUSTMENT REQUESTROLL/YEAR 2018TAR NUMBER 30-18-006PARCEL ID 043-040-30PRIMARY OWNER PENROD DINELLE

	CURRENT VALUE	CORRECTED VALUE
TAG	<u>30</u>	<u>30</u>
CLASS CODE	<u>110</u>	<u>110</u>
LAND ASSESSED (VT4)	<u>13,800</u>	<u>13,800</u>
IMPROVEMENT ASSESSED (VT5)	<u>113,300</u>	<u>113,300</u>
KPB ASSESSED (VT 1001)	<u>127,100</u>	<u>127,100</u>
KPB TAXABLE (VT 1003)	<u>127,100</u>	<u>77,100</u>
CITY ASSESSED (VT 1011)	<u>127,100</u>	<u>127,100</u>
CITY TAXABLE (VT 1013)	<u>127,100</u>	<u>127,100</u>

EXPLANATION CLERICAL ERROR - EXEMPTION WAS NOT ENTERED IN 2018 WHEN IT WAS APPROVED -
OWNER REQUESTED A REFUND

CHANGE SUMMARY

DATE	<u>03/19/21</u>	KPB ASSESSED	<u>\$0</u>
SUBMITTED BY	<u>SGUZMAN</u>	KPB TAXABLE	<u>(\$50,000)</u>
VERIFIED BY	<u>C. FINLEY</u>	CITY ASSESSED	<u>\$0</u>
		CITY TAXABLE	<u>\$0</u>
		KPB FLAT TAX	<u></u>
		CITY FLAT TAX	<u></u>

TAX ADJUSTMENT REQUEST

ROLL/YEAR 2020 TAR NUMBER 58-20-049

PARCEL ID 055-430-42

PRIMARY OWNER COLLEGE HEIGHTS BAPTIST CHURCH

	CURRENT VALUE	CORRECTED VALUE
TAG	<u>58</u>	<u>58</u>
CLASS CODE	<u>840</u>	<u>840</u>
LAND ASSESSED (VT4)	<u>365,400</u>	<u>365,400</u>
IMPROVEMENT ASSESSED (VT5)	<u>1,449,500</u>	<u>1,449,500</u>
KPB ASSESSED (VT 1001)	<u>1,814,900</u>	<u>1,814,900</u>
KPB TAXABLE (VT 1003)	<u>241,200</u>	<u>0</u>
CITY ASSESSED (VT 1011)	<u>0</u>	<u>0</u>
CITY TAXABLE (VT 1013)	<u>0</u>	<u>0</u>

EXPLANATION CLERICAL ERROR-ADMIN ASSISTANT DID NOT CHANGE PROVAL PERCENTAGE

CALCULATION TO REFLECT FULL EXEMPTION TIMELY.

CHANGE SUMMARY

DATE	<u>03/31/21</u>	KPB ASSESSED	<u>\$0</u>
SUBMITTED BY	<u>P. DOMBOVY</u>	KPB TAXABLE	<u>(\$241,200)</u>
VERIFIED BY	<u>C. FINLEY</u>	CITY ASSESSED	<u>\$0</u>
		CITY TAXABLE	<u>\$0</u>
		KPB FLAT TAX	<u></u>
		CITY FLAT TAX	<u></u>



Legal Department

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2120 • (907) 714-2379 Fax

Charlie Pierce
Borough Mayor

LITIGATION STATUS REPORT

TO: Brent Hibbert, Assembly President
Zen Kelly, President, Board of Education
Members, Kenai Peninsula Borough Assembly
Members, Kenai Peninsula Borough School District

THRU: Charlie Pierce, Mayor *JCB*

FROM: Colette Thompson, Borough Attorney *CT*
Sean Kelley, Deputy Borough Attorney *SK*
Patty Burley, Deputy Borough Attorney *PB*

DATE: April 8, 2021

RE: Litigation Status Report – Quarter Ending 03/31/21

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. John Does 1–3 v. Kenai Peninsula Borough School District, 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. Mediations were held individually with each plaintiff on March 25, 26 and 27, 2020. Doe 1 settled at mediation and has been dismissed from the lawsuit. Mediation attempts with Does 2 and 3 were unsuccessful. The School District has filed two summary judgment motions that are pending. One seeks a ruling that the statute of limitations bars plaintiffs' cases and the other requests a ruling that the district may not be held vicariously liable for plaintiffs' claimed damages. Oral argument on the

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 Re: Litigation Status Report

statute of limitations motion was held on January 19, 2021 and the court issued a confidential order. The trial is scheduled for the week of November 8, 2021. Discovery is continuing.

2. 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 filed a motion for summary judgment against the plaintiff's claims for punitive damages against the district that was granted by the court. This means plaintiff may not seek punitive damages from the district. Trial is scheduled for the week of October 18, 2021. Discovery is continuing.
3. Kenai Peninsula Borough School District v. Fischer, Case No. 3KN-19-00185CI. 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. Defendant filed a Partial Motion to Dismiss which was denied. Numerous other motions are pending. On March 9, 2021, this case was referred to mediation. Trial is scheduled for the week of November 1, 2021.
4. Fischer v. KPBSD, Case No. 3KN-20-00495CI. This case was filed on July 14, 2020 by Matthew Fischer on behalf of his minor child. The complaint alleges the minor sustained damages while using the pull-up bars at Skyview Middle School on November 13, 2015. The district filed its answer to plaintiffs' complaint on August 18, 2020. Trial is scheduled for the week of February 14, 2022. Discovery is continuing.
5. Nelson v. KPB, Case No. 3AN-20-07408CI. Mark Nelson filed this case on August 26, 2020 against a laundry list of defendants including the borough. The complaint seeks quiet title to a parcel of land in Seward, Alaska. The crux of the complaint is that Mr. Nelson purchased land only to discover that the land has a number of liens for unpaid monies owed by the

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previous owner. Mr. Nelson wants to have those liens extinguished without having to pay for them. The borough has timely filed an answer and affirmative defenses. As discovery has not commenced due to the early stages of this case, no meaningful evaluation can be made at this time. Discovery has not yet commenced in this case due to Covid related delays.

6. Bilben, et al. v. KPB PC, Beachcomber LLC, et al., Case No. 3KN-20-00034CI. This case involves an appeal of a planning commission conditional land use permit (CLUP) approval. The borough is currently not participating in this appeal because only private interests are at stake. Briefing has been completed and oral argument was held on March 1, 2021. The court has taken the matter under advisement and will issue a written decision in due course.

B. Following are open or recently resolved administrative appeals from Planning Commission decisions:

1. Case No. 2020-01 PCA. Neighboring property owners appealed a planning commission's decision approving a modification of a conditional land use permit. The borough filed a notice of non-participation in the matter and is not a party to the appeal. This case is stayed until a decision is issued in Case No. 3KN-20-34CI, discussed above at (A)(6).
2. Case No. 2020-03 PCA. A neighboring property owner appealed a planning commission's decision approving a conditional land use material site permit in the Soldotna/Sterling area on a parcel off Pine Street. The hearing officer granted the Applicant's Motion to Dismiss on March 15, 2021, citing the Appellant's failure to submit an opening statement as required by KPB 21.20.280(A), and dismissed the case. This case is currently within the 30-day period in which a party could appeal the hearing officer's decision to superior court.