

Introduced by:	Mayor at request of Road Service Area Board
Date:	05/06/03
Hearing:	06/03/03
Action:	Enacted
Vote:	9 Yes, 0 No

**KENAI PENINSULA BOROUGH
ORDINANCE 2003-16**

**AN ORDINANCE AMENDING KPB 14.40.060(B) REGARDING MANDATORY
CONDITIONS ON ALL RIGHT-OF-WAY PERMITS**

WHEREAS, the assembly approved Ordinance 2000-57 on December 12, 2000, authorizing the road service area ("RSA") to administer permitted activities within borough rights-of-way; and

WHEREAS, revisions to the right-of-way permit conditions will promote public convenience and efficient enforcement of the right-of-way regulations; and

WHEREAS, references to KPB 14.14 are deleted as this chapter of the code has been repealed;

WHEREAS, the RSA board approved these amendments at its April 8, 2003 board meeting;

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

SECTION 1. KPB 14.40.060 is hereby amended as follows:

14.40.060. Permit application and conditions.

The following application procedures and conditions must be met for right-of-way construction permits:

A. Application form. A right-of-way construction permit may be obtained by filing an application on a form provided by the borough, which contains the information required by KPB 14.40.050(C). The construction activity shall be conducted only in accordance with the issued permit conditions.

B. Mandatory conditions. All permits shall be subject to the following conditions:

1. The permittee has responsibility to properly locate the proposed facility within the named right-of-way and to coordinate its construction activity with utilities in the same right-of-way [PURSUANT TO KPB 14.14.030].
2. Driveways or roads crossing utility installations shall cross as nearly perpendicular as possible to the utility line. The line locator phone number shall be included on the permit form by the borough.

3. The Kenai Peninsula Borough disclaims any warranty or liability regarding location or coordination with utility companies.
4. Materials or trees shall not be used or removed except to the extent necessary to construct the road or driveway and provide adequate snow storage areas. Gravel may not be mined from any borough right-of-way unless the permittee has specific prior written approval by RSA staff.
5. The permittee must agree to comply with the terms, conditions and requirements of KPB Chapter 14.[14]40, and any regulations adopted pursuant to this chapter.
6. [UPON COMPLETION OF construction THE PERMITTEE SHALL PROVIDE AN AS-BUILT DRAWING PREPARED BY A PROFESSIONAL LAND SURVEYOR REGISTERED TO PRACTICE IN ALASKA UNDER AS 8.48 TO THE BOROUGH NOT LATER THAN A DATE DETERMINED BY THE PLANNING DIRECTOR UPON PERMIT APPROVAL.] All permits shall contain an expiration date determined by the roads director.
7. Upon completion, permittee shall agree not to restrict the flow of traffic, place traffic signs, or prevent use by the public unless prior approval has been received from the borough.
8. The permittee shall indemnify, defend, and hold and save the borough, its elected and appointed officers, agents and employees harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys fees. The permittee shall be responsible under this clause for any and all legal actions or claims of any character [RESULTING FROM INJURIES, DEATH, ECONOMIC LOSS, DAMAGES, VIOLATION OF STATUTES, ORDINANCES, CONSTITUTIONS OR OTHER LAWS, RULES OR REGULATIONS, CONTRACTUAL CLAIMS, OR ANY OTHER KIND OF LOSS, TANGIBLE OR INTANGIBLE, SUSTAINED BY ANY PERSON, OR PROPERTY] arising from applicant or applicant's agents' performance or failure to perform this permit in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions of the borough or its agents, which are said to have contributed to the losses, failure, violations, or damages.
9. Permittee is responsible for determining the need for any other local, state, or federal permits and acquiring the same. Permittee must abide by all applicable local, state, and federal laws.
10. Violation of the permit's terms may result in its termination and/or an assessment of penalties against the permittee. The borough reserves the right to revoke the permit at any time for its convenience.

11. Construction of rights-of-way for motor vehicle use within the Kenai Peninsula Borough Road Service Area under a seasonal permit shall meet the borough road standards set forth in KPB 14.06. All other construction projects are subject to either a driveway or a project-specific permit, and may be required to meet road construction standards pursuant to road service area board policies approved by the mayor. Construction shall not damage the right-of-way, adjacent properties, or adjacent water bodies.

C. Discretionary conditions. The director may impose the following discretionary conditions:

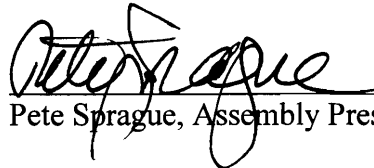
1. The permit may be subject to additional conditions to protect and manage borough rights-of-way by preventing damage to the rights-of-way and adjacent public and private property or water bodies.
2. The posting of a bond in favor of the borough or other security may be required for permits involving right-of-way construction, except driveway construction permits. The amount of bond shall be based on the length of right-of-way subject to construction. The bond shall be released upon the receipt of the as-built survey and the borough's determination that the construction has been performed in compliance with permit requirements, within the boundaries of the right-of-way, and does not pose a threat to the right-of-way or adjacent lands and water bodies. The bond warrants the permittee will faithfully observe the terms and conditions of the permit and may be used to defray any costs for restoration and rehabilitation of the property, including without limitation environmental damage and cleanup. The bond may be in the form of a certificate of deposit ("CD") of a term specified by the borough appropriate to the period of time it will take to complete construction. The certificate of deposit shall be in the borough's name, deposited with a duly licensed commercial bank having a branch office in Soldotna, Alaska. Principal and interest may be applied to defray any costs incurred by the borough in rehabilitation and restoration of the right-of-way. Upon satisfactory compliance with all permit conditions and termination of the permit, any balance remaining, including any remaining accrued interest, will be returned to the permittee. The security, bond or CD shall not be the borough's exclusive monetary remedy if the costs of restoration and cleanup exceed the amount of the CD.
3. A right-of-way construction permit may be denied if conditions cannot be placed on it to prevent damage to the rights-of-way, adjacent public or private property, or water bodies. Dedication of right-of-way alone does not mean a construction permit will be issued if issuance may damage the right-of-way, adjacent private or public property, or watercourses and water bodies.

4. Upon completion of construction, the permittee shall provide an as-built drawing prepared by a professional land surveyor registered to practice in Alaska under AS 8.48, if deemed necessary by the roads director.

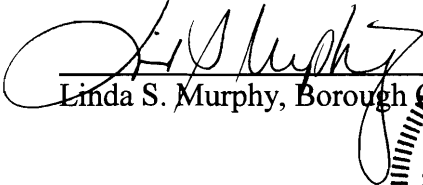
D. Water bodies. Permits will not be issued to construct any part of a road or driveway within the right-of-way where the driveway or road will be parallel and within 50 feet of a bank of a watercourse or shore of a lake unless necessary for access to a lot where no reasonable alternative access exists or unless the road is for access to a bridge or public facility, water body or watercourse.

SECTION 2. This ordinance shall take effect immediately upon its adoption.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 3RD DAY OF JUNE, 2003.


Pete Sprague, Assembly President

ATTEST:


Linda S. Murphy, Borough Clerk

