



KENAI PENINSULA BOROUGH

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MEMORANDUM

JOHN J. WILLIAMS
MAYOR

TO: Grace Merkes, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: John J. Williams, Kenai Peninsula Borough Mayor

[Signature] Agenda Item N. 2.

FROM: Gary Davis, Roads Director

Committee Lands

DATE: February 15, 2008

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SUBJECT: Ordinance 2008-03, amending KPB 14.40 and KPB 20.16 to require special permit conditions for the design and construction of anadromous waterbody crossings and rights-of-way accessing waterbodies

The Road Service Area Board reviewed the subject ordinance during their regularly scheduled February 12, 2008, meeting.

- ◆ Please amend the last whereas clause as follows:

WHEREAS, at its meeting of [JANUARY] February 12, 2008, the road service area board recommended amendment and postponement;

- ◆ The RSA Board first passed a motion to support an amendment to the ordinance deleting two sentences in 14.06.061(B) and deleting 14.06.061(C)(3) as follows.

B. Stream crossing permit conditions. A project-specific permit issued pursuant to KPB 14.40.040-.060 is required for stream crossings where a dedication crosses a waterbody catalogued as important to the protection of anadromous fish under AS 41.14.870(a). Crossings and approaches as necessary shall be designed to withstand a 100-year flood event as defined by KPB 21.06.020(K). [THE CROSSING SHALL BE DESIGNED BY A LICENSED PROFESSIONAL CIVIL ENGINEER.] The design shall be presented to the RSA board for review and approval prior to construction. [THE ENGINEER SHALL CERTIFY THAT THE CROSSING AND APPROACHES ARE CONSTRUCTED TO WITHSTAND A 100-YEAR FLOOD EVENT.]

C. Development conditions for rights-of-way accessing water bodies. No development within 100 feet of the high water mark of a waterbody within a right-of-way providing access to the waterbody may occur without a permit. All permits issued under

this section shall be submitted to the RSA board for its consideration. A written RSA staff report shall be provided to the RSA board with every permit application. The RSA board shall make written findings to support denial or issuance of the permit. There must be facts which support the following standards in order to issue a waterbody public access permit.

1. Any development in the right-of-way will not be detrimental to the waterbody, or any potential detriment is mitigated by conditions placed on the permit;
2. Any development in the right-of-way will not be detrimental to adjacent public or private property; and
- [3. THE PUBLIC INTEREST IN ANY DEVELOPMENT IN THE RIGHT-OF-WAY OUTWEIGHS ANY DETRIMENT TO THE PUBLIC INTEREST CAUSED BY THE DEVELOPMENT, AND ANY DETRIMENT TO THE PUBLIC INTEREST CAN BE MITIGATED THROUGH PERMIT CONDITIONS.]

The RSA board recommended these deletions because of a concern that if compliance required the costs of engineering services, too many people might simply choose to ignore the law. Additionally, the RSA board found that C.3 did not provide sufficient guidance to the RSA staff as written.

The board then passed by unanimous consent a motion to recommend to the Mayor to postpone a decision on the ordinance until the board had time to consider some alternative language that provided an alternative to engineering at their next board meeting on March 4. The RSA board wanted standards to be developed that could be implemented without the need of an engineer that the RSA inspectors could inspect and certify without special training.