MEMORANDUM

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

FROM: John J. Williams, Kenai Peninsula Borough Mayor

DATE: January 10, 2008

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

Please find an ordinance which addresses paramount issues regarding waterbody approaches and crossings within the borough.

Proposed KPB 14.40.061(A) is a repeal and reenactment of current KPB 14.40.060(D). That provision, which restricts construction of roads parallel and within 50 feet of a waterbody has been law since 1996; however, if the remaining sections of the proposed ordinance are adopted, this section is more appropriately placed with other provisions governing construction within rights-of-way adjacent to waterbodies. Proposed KPB 14.40.061(A) increases the distance to 100 feet in order to be consistent with KPB 14.40.061(C) discussed below.

Proposed KPB 14.40.061(B) addresses the issues raised at the November 20, 2007 assembly meeting. It is proposed that any time a borough right-of-way crosses an anadromous waterbody that the crossing and approaches, as necessary, be constructed to withstand a 100-year flood event. The provision requires a civil engineer to design the crossing and certify that the construction meets the requirement of withstanding a 100-year flood event. This approach was preferred over an approach setting forth specific standards for anadromous waterbody crossings because conditions vary substantially throughout the borough, and what may be an adequate crossing for one waterbody may not be suitable for another. The ordinance requires construction not only be adequate for fish passage but to withstand flooding in order to avoid the negative impacts caused by debris entering anadromous streams and the cost of rebuilding crossings in the event of a flood. Approaches must also be constructed to assist the crossing in withstanding the 100-year flood event. Again, a specific length for the construction of approaches is not recommended because 50 feet may be adequate in some cases, and 250 feet in others. The state has a catalogue of anadromous waterbodies which is referenced in the ordinance, and this list would be used to determine the applicability of this section to a particular stream crossing. (All stream crossings, regardless of whether they are anadromous, currently require a State DNR Habitat Division permit for fish passage purposes.)

Proposed KPB 14.40.061(C) applies to all waterbodies, not just anadromous waterbodies. This provision requires a finding of public interest prior to allowing activity in KPB rights-of-way. The purposes of the provision are to better protect the rights-of-way accessing waterbodies, as well as protecting fish habitat, and properties adjacent to the right-of-way and waterbody. The borough has experienced use of rights-of-way adjacent to waterbodies for private recreational or commercial purposes which may result in negative impacts to the right-of-way, waterbody and surrounding habitat, and adjacent property owners. The current permitting standards are drafted to address only the construction of roads within a right-of-way and not other types of uses. As an example, an application to use a right-of-way as a boat launch access should address issues such as parking and ongoing maintenance. However, not all proposed uses of a right-of-way adjacent to a waterbody would have negative impacts, and there are cases where a construction project that would actually protect habitat or direct users away from trespass on private land would be permitted.

Proposed KPB 20.16.045 is a companion piece to proposed KPB 14.40.061(B). This section requires the same design and construction of anadromous crossings as required by KPB 14.40.061(B) for rights-of-way being dedicated through the platting process. Additionally, the section authorizes the planning commission to require additional right-of-way or slope easements in order to effect a design and construction that would withstand a 100-year flood event.