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March 23, 2009

Ms. Millie Martin
President, Kenai Peninsula Borough Assembly
c/o Shellie Morgan, Deputy Clerk
Kenai Peninsula Borough
144 N. Binkley St.
Soldotna, Alaska 99669

via facsimile to 907-714-2388

Re: KPB Ordinance 2009-09 – Creating the Seward/Bear Creek Flood Service Area


Dear President Martin and Members of the Assembly:

This purpose of this letter is to provide comment from the Alaska Railroad Corporation (ARRC) regarding the proposed Ordinance 2009-09 creating a flood hazard district within the Seward-Bear Creek Flood Service Area. We understand that the ordinance would not apply within the city limits of the City of Seward, which mitigates much of our concern because ARRC's entire Terminal Reserve is within city limits. However, on its face the ordinance would purport to apply to all property within its defined area, including ARRC's track right-of-way (ROW).

ARRC's ROW and any railroad-related "development" within the ROW such as tie and rail replacement are core transportation activities and therefore subject to the exclusive jurisdiction of the federal Surface Transportation Board. We therefore do not believe the ordinance's permitting requirements would apply to railroad-related activities in the ARRC ROW. However, if it were to apply to such activities, the proposed ordinance appears to be overly broad as it would require permitting for any "development" on any portion of any "lot" in the covered area. The existing ordinances define "development" as "any manmade change to improved or unimproved real estate", and the proposed restrictions would apply to the full area of the "lot" regardless of whether the portion of the lot being developed actually is in the flood zone. At the very least, the proposed exception and waiver processes should be clarified so that landowners have a reasonable opportunity to mitigate the burden this expanded permitting will impose.

Thank you for the opportunity to provide comments on this matter. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,


James W. Kubitz
Vice President, Real Estate & Facilities