

Introduced by: Long, Mayor
Date: 08/04/09
Hearing: 09/01/09
Action: Enacted as Amended
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2009-45**

**AN ORDINANCE AUTHORIZING THE BOROUGH TO ENTER INTO A
SUPPLEMENTAL COOPERATIVE AGREEMENT WITH THE NATURAL
RESOURCES CONSERVATION SERVICE REGARDING THE OLD MILL
SUBDIVISION BUYOUT PROGRAM LOCATED IN THE SEWARD AREA**

- WHEREAS,** Ordinance 2008-19-18 (Mayor) Substitute was enacted by the assembly on September 16, 2008, accepting and appropriating a grant of \$1,369,125 from the Natural Resources Conservation Service (NRCS) and \$228,187.50 from the Division of Homeland Security and Emergency Management and providing for a local match and in-kind services for conducting a voluntary buyout program in the Old Mill Subdivision; and
- WHEREAS,** since enactment of that ordinance, the mayor negotiated and executed an agreement with the NRCS as authorized in Section 2 and has negotiated a more detailed cooperative agreement regarding the buyout program; and
- WHEREAS,** this ordinance would approve the more detailed negotiated cooperative agreement which identifies terms and conditions for implementation of the program subject to applicable federal, state, and local laws; and
- WHEREAS,** the negotiated agreement provides that all parcels in the Old Mill Subdivision as described in the agreement are eligible for the project and that notice will be provided to the affected property owners and general public containing a summary of the program; and
- WHEREAS,** any applications received will be prioritized, and Phase 1 environmental site assessments will be conducted on the highest ranked properties; and
- WHEREAS,** the agreement further provides for additional site analysis and review of the higher ranked properties and that the borough will extend an offer to purchase properties at the appraised fair market value to the highest ranked applicants until the available funds are exhausted; and
- WHEREAS,** once purchase agreements have been entered and the land acquired, the borough will retain title to the property and convey to the NRCS a separate easement that is for the purpose of protecting the floodplain while reserving certain rights to the borough, including the right to use the properties to access waterways for purposes of flood mitigation and response; and

WHEREAS, the cooperative agreement approved in September of 2008 included an expiration date of September 30, 2009, provided that such date may be amended by agreement of the parties; and

WHEREAS, the parties have agreed to amend the expiration date to September 30, 2011, subject to assembly approval;

WHEREAS, at its meeting of August 10, 2009, the Planning Commission recommended enactment of this ordinance by unanimous consent; and

WHEREAS, at its meeting of August 17, 2009, the Seward Bear Creek Flood Service Area Board recommended enactment of this ordinance by unanimous consent;

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

SECTION 1. The mayor is authorized to execute a supplemental cooperative agreement with the NRCS regarding the Old Mill Subdivision Buyout Program as described above and substantially in the form dated September 1, 2009 attached hereto. Amendments to this agreement shall be approved by the assembly, which may be done by resolution.

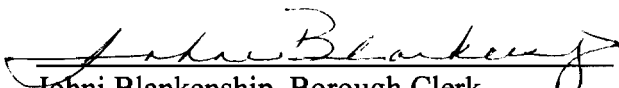
SECTION 2. The mayor is authorized to execute the amendment to the cooperative agreement that would extend the deadline from September 30, 2009, to September 30, 2011, to complete this program.

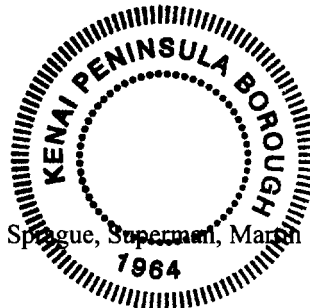
SECTION 3. That this ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 1ST DAY OF SEPTEMBER, 2009.


Milli Martin, Assembly President

ATTEST:


Johni Blankenship, Borough Clerk



Yes: Fischer, Knopp, Long, Pierce, Smalley, Smith, Spague, ~~Superman~~, Martin
No: None
Absent: None

**Supplement to the
Cooperative Agreement #68-0150-8-014
Between the
Natural Resources Conservation Service
And the
Kenai Peninsula Borough**

September 1, 2009

This agreement is entered into upon receipt of the last signature by the Natural Resources Conservation Service herein referred to as NRCS, an agency of the United States Government, and the Kenai Peninsula Borough, herein referred to as the Borough. It supplements the Cooperative Agreement #68-0150-8-014 Between the NRCS and the Borough dated September 22, 2008.

I. Authority:

Sec. 216, P.L. 81-516, 33 U.S.C. 701b-1; Sec. 403, P.L. 95-334, as amended, 16 U.S.C. 2203, 5 U.S.C. 301; 7 CFR Part 624. Special Provisions for Grants and Cooperative Agreements Act of 1977 (Attachment A).

Applicant participation in this project is voluntary; therefore, any acquisition made under this project is not subject to the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended.

II. Background and Objective:

The Old Mill Subdivision, located in the Kenai Peninsula Borough, approximately six miles north of Seward, Alaska, experiences annual flooding associated with Lost Creek. Residents of the area are seeking financial and technical assistance to alleviate damages associated with the Lost Creek flooding. The Kenai Peninsula Borough and the NRCS have a mutual interest in implementing a voluntary floodplain acquisition program to restore and enhance the floodplain's functions and values while helping landowners relocate to avoid future damages and potentially to mitigate downstream damages to the floodplain and associated property. This acquisition program is specifically intended to acquire a fee title interest by the Borough from the landowners who choose to participate in the program. Following the acquisition of the fee interest from the landowner, the Borough agrees to convey an easement deed to the NRCS substantially in the form of the deed attached hereto as Attachment B. A map depicting the area is attached as Attachment C.

III. Implementation Plan:

Subject to the stated purposes and other provisions in this agreement, this provision is intended to provide an overall description of how the program will be implemented.

1. All parcels in the Old Mill Subdivision are eligible for this project and will be ranked by the NRCS, with input from the Kenai Peninsula Borough and the the KPB Seward-Bear Creek Service Area Board, based on criteria consistent with the Emergency Watershed Protection Program. This is a pilot project for the Seward area.

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2. Upon execution of this agreement, notice shall be provided to the affected property owners containing a summary of this program, an application form, notice of where applications must be submitted, and the deadline for filing the application. If an incomplete application is submitted before the deadline, the applicant may be contacted and help provided to properly complete the form. If an applicant is not eligible for the program, a letter will be sent informing them of the determination and the reason they are not eligible.
3. The date of postage or of actual receipt shall be considered the filing date.
4. After the deadline has passed and completed applications received, the NRCS, with assistance from the Borough, will determine eligibility and ranking of the applications submitted.
5. All of the highest ranked applicants relative to the available funds will be further evaluated by conducting a Phase I Hazardous Material Assessment (HMA). This assessment, conducted by Borough contractors, will screen for potential environmental hazards on the site and potential for cultural resource issues that may need to be addressed. As this will require access to the property, an appointment will be made with the landowner to conduct this assessment. The application may be withdrawn or rejected if timely access cannot be secured. If evidence from the Phase I HMA suggests the need for a more extensive review, a Phase II HMA shall be conducted, which again will require timely access to the property.
6. If environmental hazards or cultural resource issues exist on a property, these items must be addressed by the landowner to the satisfaction of NRCS and the Borough before further action on that parcel can continue under this program. Criteria for ranking of properties with such site issues will be mutually developed by the Borough and NRCS.
7. The highest ranked applicants with no hazardous waste, cultural resource, or other site issues will then be appraised by a state certified real estate appraiser hired by the Borough. The appraisal shall be in accordance with the federal appraisal standards and regulations under the Uniform Standards of Professional Appraisal Practice (USPAP) and must meet the federal review criteria. The Borough will extend an offer to buy the property at the appraised fair market value to the highest ranked applicants until the funds available for purchasing property are exhausted. Funds needed to remove buildings and other facilities and restore each property to an unimproved state shall be kept in reserve, and not available for purchase of properties. If the property owner would prefer to keep the improvements, then the appraisal shall not include the improvements and the property owner must, as a part of the agreement, remove all such improvements prior to closing, and leave it in "broom clean" condition as defined below. The removal must be to the satisfaction of KPB and NRCS.
8. The property owner will have 30 days to accept or reject the offer unless otherwise agreed by the parties. If it is accepted, the property owner and the Borough will sign a Purchase Agreement substantially similar to the form attached as Attachment D. Once the Purchase Agreement is signed, the closing process will

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- commence, including the title search, land survey as needed, map preparation, title insurance for the benefit of the Borough, and any other required work.
9. The property owner must convey title to the Borough by warranty deed, free and clear of all encumbrances, and shall be required to vacate the property, remove all personal property, and leave it in a "broom clean" condition before the closing date. "Broom clean" means that all personal items not attached to the land or improvements shall be removed by the property owner, including furniture, appliances, personal belongings, paints and other household chemicals, trash, hazardous materials, and other such items. Old lumber and firewood can be left on the property.
 10. If the offer to purchase is rejected, the applicant shall be withdrawn from the project and, if possible, processing can begin on the next priority applicant(s) who accept the offer to purchase.
 11. Following closing of the sale, the Borough will contract for demolition/salvage and site restoration of all acquired property. All remaining improvements will be sold for salvage, demolished, and removed or decommissioned. The site will be graded, as needed, and revegetated with native plants compatible with the planned floodplain use.
 12. Bridges, driveways, or culverts that may induce flooding elsewhere or limit the movement of aquatic species should receive priority for removal or modification.
 13. All acquired lands will be maintained, in perpetuity, in uses compatible with protecting floodplain values and function. A separate easement deed document substantially in the form of the deed attached as Attachment B will be executed by the Borough and NRCS after the Borough acquires the property. All property acquired through this project will be encumbered with the easement deed. The Borough will own the property subject to at least the following rights and prohibitions identified below in this agreement. Exceptions may be agreed upon in writing signed by both parties.

IV. The Kenai Peninsula Borough agrees to:

1. In coordination with NRCS, conduct public meetings in the Seward area to explain the program, including benefits and other attributes to the affected landowners and the general public.
2. In consultation with NRCS, provide public notice of program sign-up dates and eligible applicants by advertising at least once in a newspaper of general circulation in the Seward area and providing notice directly to the affected property owners by first class mail, return receipt requested. Affected property owners shall include all owners of record of all parcels in the Old Mill Subdivision, Plat No. 740205, located in the Seward Recording District, Third Judicial District, State of Alaska. At the option of the Borough, additional notice may be provided by email, in person, or by any other means reasonably designed to provide the affected property owner with notice of the program and application deadline. Such notice

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shall be provided up to 30 days prior to the beginning of application/program sign up.

3. With NRCS concurrence and cooperation, acquire appraisal, land survey if needed, hazardous material assessment, closing agent services, and other related professional services for all approved applications. Funding for these tasks may be advanced or reimbursed from the program funds listed in part V, or may be used as part of the local match at the discretion of the Borough.
4. Contract for structure demolition and site cleanup. Funding for these tasks will be advanced or reimbursed from the program funds listed in part V. The proceeds of the Borough's sale of structures, materials, or contents, if any, will be reinvested into the floodplain acquisition program and included as a part of the local match.
5. Be responsible for making all payments associated with the acquisition to landowners as appropriate. Funding for these tasks will be advanced or reimbursed from the program funds listed in part V.
6. Be responsible for acquiring all needed federal, state, and local permits required by law and making all payments for costs associated with their acquisition. Applicable permits will be identified by the Borough and the NRCS prior to the initiation of the acquisition phase of the program. Funding for these tasks will be advanced or reimbursed from the program funds listed in part V.
7. Be responsible for managing, as long as the parcel is owned by the Borough, all fee acquisitions deeded to the Borough as part of the voluntary acquisition process. Management will be in accordance with Attachment B, Easement Deed.
8. Convey to the NRCS as soon as is practical after acquisition by the Borough or its agents, Easement Deeds in the format described in Attachment B.
9. Reserve to itself the following rights of ownership:
 - A. Title: Record title, along with Borough's right to convey, transfer and otherwise alienate title to these reserved rights;
 - B. Quiet Enjoyment: The right of quiet enjoyment of the rights reserved on the easement area, including the right to grant public access to the easement area that is compatible with floodplain protection;
 - C. Vegetative Management. The right to establish, restore and maintain native vegetation and to control invasive species;
 - D. Floodplain Management. The right to take other appropriate measures to protect the floodplain, including the right to demolish or remove existing structures and or improvements, but not to construct any buildings or structures intended for human occupancy;

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- E. Existing Grants or Easements. The right to take appropriate action, including granting public utility easements and/or dedicating public rights-of-way required for the maintenance, upgrade and/or realignment of existing road and utilities (including the Seward Highway) servicing properties not acquired by this project. The Borough agrees to notify the NRCS of any grant anticipated under either paragraph E or F of this section.
- F. Other Management Rights. The right to grant temporary recreational uses such as camping, and other uses as long as those uses do not include the erection of any permanent structures and are consistent with the protection of the floodplain.
- G. Flood Protection Measures. The right to use, or contract for the use of the property to access flooded or flood prone areas for the purpose of flood mitigation and response activities as required. This includes, without limitation, moving gravel and other materials within the streambeds, provided there is no permanent stockpiling on the property. Temporary stockpiling is only authorized during response to a flooding event, provided any stockpiled materials are removed from the property as quickly as reasonably possible. Moving gravel within a braided stream bed that is a part of the property, where there is no vegetation, is authorized for flood mitigation and response activities.
10. Encourage through reasonable efforts, all landowners living in the floodplain to purchase flood insurance if they do not participate in the floodplain acquisition project.
11. Continue to participate in and comply to the best of the Borough's knowledge and ability with applicable federal floodplain management and flood insurance programs in the Old Mill Subdivision area.
12. Coordinate with NRCS in the fieldwork related to the services identified in Sections IV and V.
13. In cooperation with NRCS, arrange for and conduct final inspection of all completed measures and ensure that all work was performed in accordance with all applicable local, state, and federal laws and regulations and with all contractual requirements.
14. Submit to NRCS, not more frequently than monthly, not less frequently than quarterly, Form SF-270, Request for Advance or Reimbursement, with documentation to support reimbursement for work completed.

V. The Natural Resources Conservation Service agrees to:

1. Provide a local NRCS staff person in the Kenai Peninsula Borough to work with program applicants/participants;

2. In coordination with the Borough, conduct public meetings in the Lost Creek/Seward area to explain program benefits and other attributes to the affected landowners;
3. Provide input and cooperation to the Borough for the duties in part IV.3. Complete the implementation requirements as set forth in this agreement and hazardous material assessment for the Lost Creek Floodplain Acquisition Project in the Old Mill Subdivision near Seward, Alaska;
4. In coordination with the Borough, accept, prioritize, and select applications for program participation, provided that if agreement cannot be reached after reasonable efforts, NRCS shall make the final prioritization decision;
5. Cooperate with the Borough's efforts to conduct field work, such as, but not limited to, coordinating contractual services, such as environmental assessments, decommissioning wells, fuel tanks and septic systems, disconnecting utilities, demolition of buildings, interact and communicate with landowners and other members of the public interested in or affected by this project;
6. Upon receipt of a request for advance or reimbursement, (SF 270) reimburse or advance the Borough in the amount not to exceed \$1,369,125 for all of the project related expenses.
7. Cooperate with the borough's efforts to extend and secure Option to Purchase Agreements from all program participants.
8. In a timely fashion, approve the closing documents including those that are to be recorded.
9. Be responsible for monitoring all the acquired easement areas for purposes of flood plain protection.
10. Participate in final inspections mentioned in Section IV.13, above.
11. Agree to indemnify and defend the Borough against all claims that may be made against the Borough asserting that the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended, is applicable to activities authorized by this agreement.

VI. It is mutually agreed:

1. The total amount of funds provided by the NRCS under this agreement is \$1,369,125 and the total amount of local match provided by the KPB shall be

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\$456,375. This agreement shall be in effect on the date appearing in the first paragraph and shall continue in effect until September 30, 2011.

2. The local match provided by KPB shall include all labor and equipment costs associated with the project, whether in-house or contracted labor and equipment, any proceeds or assets received from the sale of Borough-acquired salvage used for the project, cash from any agency or entity, and any other in-kind contributions qualifying as a local match under applicable law or within the discretion of the NRCS official with authority to exercise such discretion.
3. This agreement may be modified or extended by mutual consent. Termination of this agreement will be in accordance with section VI.12 of this agreement.
4. Advance payments can be made for immediate disbursement needs up to the maximum of 30 days (Treasury Circular 1075). These shall be requested on a SF-270 with documentation supporting anticipated costs to be incurred within the 30-day period. Advances will only be provided once the Borough has demonstrated;
 - a. Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the Borough, and
 - b. A financial management system that meets the standards for fund control and accountability as described in 7 CFR 3015, Subpart H Section 3015.61.
5. Billing documents must reference this agreement number and shall be directed to the NRCS at the following address:

USDA, NRCS
State Administrative Officer
800 West Evergreen Suite 100
Palmer AK 99645
6. It is the intent of both the NRCS and the borough to fulfill their obligations under this agreement. However, the NRCS cannot make commitments in excess of the \$1,369,125 appropriated funds obligated on this agreement, and the borough cannot make commitments in excess of the \$465,375 appropriated funds obligated in this agreement.
7. The Borough will retain all records dealing with the award and administration of the agreement for three (3) years from the date of the last submission for the final request for disbursement or until final audit findings have been resolved or if any litigation is started before the expiration of the three-year period, whichever is longer. All records must be made available to the Comptroller General of the United States or his duly authorized representative and accredited representatives

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- of the Department of Agriculture or cognizant audit agency for the purpose of performing an audit, examination, excerpts and transcriptions.
8. No NRCS grant funds shall be used for indirect overhead. For purposes of this agreement, "indirect overhead" includes operating costs that are incurred by the Borough in its performance of this agreement, but are not unique to the project. .
 9. Personal property purchased by the Borough under this agreement shall be for the primary purpose of accomplishing the objectives of this agreement, and shall remain the property of the Borough upon completion.
 10. This agreement shall be enforced and interpreted in accordance with the applicable Federal laws and regulations, directives, circulars, or other guidance. When signed, this agreement will become binding on all parties in accordance with 7 CFR part 3015 (Uniform Federal Assistance Regulations) and Part 3016 (Uniform Administrative Requirements for Grants and Cooperative Agreements and sub-awards to nonprofit organizations).
 11. Upon execution of this agreement, contact the National Finance Center (NFC) Miscellaneous Payments Section at 1-800-421-0323 or 1-504-255-4647 to obtain the Electronic Funds Transfer (EFT) enrollment package. The enrollment package will contain specific instructions, as well as the assigned nine-digit Vendor Identification Number, and forward to the completed package to NFC. The EFT enrollment package may also be obtainable at the following web address: <http://www.nfc.usda.gov/dcia/index.html>. Disregard if the Vendor Identification Number is already obtained.
 12. All parties may terminate this agreement in whole or in part when it is determined that one party has failed to comply with any of the provisions of this agreement or that it is clear that the program is not achieving its stated objectives. The terminating party shall promptly notify the other party in writing of the determination, and reasons for termination, together with the effective date. In the event that this agreement is terminated for any reason, the financial obligations of the parties will be those set forth in 7 CFR Parts 3015 and 3016.
 13. This agreement may be temporarily suspended by either party if it is determined that corrective action is needed to meet the provisions of the agreement. Further, all parties may suspend this agreement if it is evident that a determination is pending.
 14. As a condition of this agreement, the parties agree and certify that they are in compliance with all and will comply in the course of this agreement with all OMB Circulars for grants and cooperative agreements awarded under this agreement.

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15. Employees of the Kenai Peninsula Borough and of the United States shall not be considered employees or agents of the other entity for any purpose under this agreement.
16. It is agreed that this is not a contract subject to the contract disputes Act 41 USC 601 et seq.
17. Implementation of this agreement by the Borough is subject to appropriation and availability of the above-mentioned funds by the Kenai Peninsula Borough.
18. Any funds generated by the sale of the real property, a grant of easement, or any highway or utility rights-of-way realignments, and the salvage value of property participating in the program and purchased by the Borough shall belong to the Borough.
19. The program or activities conducted under this agreement will be in compliance with the nondiscrimination provisions as contained in Titles VI and VII of the Civil Rights Act of 1964, as amended, the Civil Rights Restoration Act of 1987 (Public Law 100-259) and other nondiscrimination statutes, namely, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and in accordance with the regulations of the Secretary of Agriculture (7 CFR 15, Subparts A & B), which provide that no person in the United States shall, on the grounds of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance from the Department of Agriculture or any agency thereof.

VII. Technical and Administrative Contact:

Philip B. Naegele
Conservationist, Operations
800 West Evergreen, Suite 100
Palmer, AK 99645
(907) 764-7758

Julie Hopkins, State Admin Officer
800 West Evergreen, Suite 100
Palmer, AK 99645
(907) 761-7776

The above aforementioned employees of NRCS shall participate in efforts under this agreement solely as representatives of the United States. To this end, they shall not participate as directors, officers' employees, or otherwise serve or hold themselves out as representatives of the state. They also shall not assist either party, or any member, with efforts to lobby Congress, or to raise money through fund raising efforts. Further, NRCS employees shall report to their immediate supervisor any negotiations with either party, or any member, concerning future employment and shall refrain from participation in efforts regarding such party until approved by the agency.

VIII. Sponsor Point of Contact:

Program

Financial

Max Best
Director, Planning Department
Kenai Peninsula Borough
144 N. Binkley Street
Soldotna, Alaska 99669

Craig Chapman
Chief Financial Officer
Kenai Peninsula Borough
144 N. Binkley Street
Soldotna, Alaska 99669

IX. Signatures:

David R. Carey, Mayor
Kenai Peninsula Borough

Date

Robert N. Jones, State Conservationist
United States Department of Agriculture
Natural Resources Conservation Service

Date