

AMENDMENT 02-ATTACHMENT A
Kenai Peninsula Borough
Old Mill Subdivision – Lost Creek Flood Acquisition Project
Land and Management Covenants

The Kenai Peninsula Borough, a municipal corporation under the laws of the State of Alaska whose address is 144 North Binkley Street, Soldotna, Alaska 99669, being the owner of that certain real property having been acquired under the federally-funded Old Mill Subdivision - Lost Creek Voluntary Flood Acquisition Project, described as:

Parcel 1

Lot 1, Block 3, Old Mill Subdivision, Plat S-93, filed as Document 2011-000767 in the records of the Seward Recording District, Third Judicial District, State of Alaska;

Parcel 2

Lot 2, Block 3, Old Mill Subdivision, Plat S-93, filed as Document 2011-001231 in the records of the Seward Recording District, Third Judicial District, State of Alaska;

Parcel 3

Lot 1A, Block 1, Old Mill Subdivision, Plat 96-31, filed as Document 2011-001268 in the records of the Seward Recording District, Third Judicial District, State of Alaska;

Parcel 4

Lot 1, Block 2, Old Mill Subdivision, Plat S-93, filed as Document 2011-000447 in the records of the Seward Recording District, Third Judicial District, State of Alaska;

Parcel 5

Lot 2, Block 2, Old Mill Subdivision, Plat S-93, filed as Document 2011-000448 in the records of the Seward Recording District, Third Judicial District, State of Alaska;

Parcel 6

Lot C-1, Vandeusen Addition, Old Mill Subdivision, Plat 84-17, filed as Document 2011-000766 in the records of the Seward Recording District, Third Judicial District, State of Alaska;

does hereby declare and impose these restrictive covenants for the benefit of the public upon said real property, which shall constitute a servitude upon the land so encumbered: shall run with the land in perpetuity; and shall bind the Kenai Peninsula Borough, its heirs, successors in interest, assigns, lessees, and any other person claiming or acquiring title or interest under/from the Kenai Peninsula Borough:

- I. Prohibited Activities. Unless authorized by United States Department of Agriculture, Natural Resources Conservation Service (NRCS) as a compatible use hereunder, it is expressly understood that the following activities and uses are prohibited:

- a. Constructing or placing any building, structure, or facility intended to remain for more than 30 days and that cannot be readily and completely removed from the site by way of its attached skids or wheels and axles;
 - b. Dumping or storing any refuse, wastes, sewage, gravel, or other debris; and
 - c. Initiating any activity in which a reasonable expectation would be that the floodplain values and functions would be compromised.
- II. Activities Requiring Concurrence. All other landuse activities not expressly discussed herein require NRCS concurrence. Only those activities consistent with the conservation and protection of the functions and values of the floodplain of Lost Creek are eligible for consideration and concurrence by NRCS.
- III. Rights of the United States of America. On behalf of the interests of the government of the United States of America, the enforcement rights of these restrictive covenants by NRCS or its assigns, agents, or successors in interest are as follows:
 - a. Public Access. NRCS shall have the right to prohibit public access to the property upon its determination that such use is injurious to the land or incompatible with protection of the floodplain;
 - b. Government Access. NRCS has a right of reasonable ingress and egress to the property for the exercise of any of the rights of the United States under this restrictive covenant, and the authorized representatives of NRCS may use vehicles and other reasonable modes of transportation for access purposes;
 - c. Delegation of Duty. The Secretary of Agriculture, by and through the NRCS Alaska State Conservationist, may delegate all or part of the monitoring or enforcement responsibilities under this restrictive covenant to any entity authorized by law that he or she determines to have the appropriate authority, expertise and resources necessary to carry out such delegated responsibilities; and
 - d. Violations and Remedies – Enforcement. The Parties hereto agree that this restrictive covenant may be introduced in any enforcement proceeding as the stipulation of the Parties. If there is any failure of the Kenai Peninsula Borough to comply with any of the provision of this restrictive covenant, the United States shall have any legal or equitable remedy provided by law, including the right to:
 - i. Enter upon the subject properties to perform necessary monitoring for the intended prevention of damage to floodplain protection values; and
 - ii. Reasonable attorney fees and costs for enforcing this restrictive covenant.
- IV. Reservations to the Kenai Peninsula Borough: The Kenai Peninsula Borough reserves:
 - a. Title. Record title, along with Kenai Peninsula Borough 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 property, including the right to grant public access 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, but not to construct any buildings or structures; and
 - e. Flood Protection Measures. The right to use or contract for the use of the property to access flooded areas for the purpose of flood mitigation and response activities as required, provided

