

Introduced by:	Mayor
Date:	9/04/12
Action:	Adopted
Vote:	8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2012-074**

**A RESOLUTION AUTHORIZING AN AMENDMENT TO COOPERATIVE
AGREEMENT #68-0150-8-014 WITH THE NATURAL RESOURCES CONSERVATION
SERVICE REGARDING THE OLD MILL SUBDIVISION
VOLUNTARY BUYOUT PROJECT**

WHEREAS, on September 22, 2008, the Kenai Peninsula Borough and the USDA Natural Resources Conservation Service (NRCS) entered into Cooperative Agreement #68-0150-8-014 establishing the Old Mill Subdivision Voluntary Buyout Project; and

WHEREAS, on September 1, 2009, a supplement to the agreement established the framework for implementing the project; and

WHEREAS, under the guidelines of the agreement, KPB has undertaken the acquisition of six properties within Old Mill Subdivision and has completed the required work to reclaim the properties for floodplain purposes; and

WHEREAS, the agreement required that KPB convey to NRCS a conservation easement as a final step to completing the project; and

WHEREAS, NRCS, in consultation with KPB, has proposed to amend the agreement to replace the conservation easement requirement with a declaration of covenant to achieve similar purposes; and

WHEREAS, a declaration of covenant is advantageous to both parties for administrative purposes; and

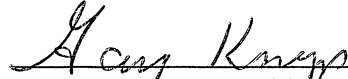
WHEREAS, Section 1 of Ordinance 2009-45 provides that amendments to the agreement shall be approved by the assembly, which may be done by resolution;

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

SECTION 1. That the mayor is authorized to execute an amendment to Cooperative Agreement #68-0150-8-014 with the NRCS regarding the Old Mill Subdivision Voluntary Buyout Project as described above and substantially in the form of the draft attached hereto.

SECTION 2. That this resolution takes effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 4TH DAY OF SEPTEMBER, 2012.



Gary Knopp, Assembly President

ATTEST:



John Blankenship, MMC, Borough Clerk



Yes: Haggerty, Johnson, McClure, Murphy, Smalley, Smith, Tauriainen, Knopp
No: None
Absent: Pierce

AMENDMENT 02
Cooperative Agreement #68-0150-8-014
between the
Natural Resources Conservation Service
and the
Kenai Peninsula Borough

WHEREAS, on September 22, 2008, the Natural Resources Conservation Service ("NRCS") and the Kenai Peninsula Borough ("Borough") entered Cooperative Agreement #68-0150-8-014 ("Agreement") in which the parties agreed to provide funds and perform activities for the purpose of implementing the voluntary acquisition of properties in the Old Mill Subdivision affected by a major flooding event, subject to financial limitations and other terms and conditions in the agreement; and

WHEREAS, NRCS project personnel in consultation with Borough project personnel have evaluated the option of culminating the project by way of restrictive covenants in lieu of the conveyance of easement deeds from the Borough to the NRCS for the acquired six parcels within the Old Mill Subdivision; and

WHEREAS, the NRCS finds that restrictive covenants would serve the fundamental objectives of the agreement while also serving the best interests of the government of the United States of America; and

WHEREAS, the Borough finds that instituting restrictive covenants would serve the fundamental objectives of the agreement while also serving the best interests of the Borough;

NOW THEREFORE, THE AGREEMENT IS HEREBY AMENDED to reflect the following changes:

1. The Borough shall transact and record restrictive covenants against the deeds of the properties acquired as a part of this project; and
2. Said covenants shall be substantially in the form of the document hereto attached as Amendment Attachment A – Land and Management Covenants; and
3. Said covenants shall grant NRCS the rights of access and enforcement in order to assure that the floodplain's functions and values are maintained in perpetuity; and
4. Said covenants shall be done in lieu of transacting individual warranty easement deeds as originally specified in the Agreement and as originally identified as Attachment B - Easement Deed.

Specific terms and conditions in the Supplement to the Cooperative Agreement #68-0150-8-014 are hereby revised as follows:

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 institute and record Land and Management Covenants with enforcement authority granted to the NRCS ~~convey an easement deed to the NRCS~~ substantially in the form of the ~~deed~~ document attached hereto as ~~Attachment B~~ Amendment 02-Attachment A. A map depicting the area is attached as Attachment C.

III. Implementation Plan:

13. All acquired lands will be maintained, in perpetuity, in uses compatible with protecting floodplain values and function. Restrictive covenants substantially in the form of the document attached as Amendment 02-Attachment A will be instituted and recorded by the Borough after the Borough acquires the property. ~~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 restricted by way of the restrictive covenants ~~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:

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 Amendment 02-Attachment A, Land and Management Covenants ~~Attachment B, Easement Deed~~.
8. Institute and record as soon as is practical by the Borough or its agents Land and Management Covenants substantively in the form of the document attached as Amendment 02-Attachment A. ~~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.~~

V. The Natural Resources Conservation Service agrees to:

9. Assist the Borough with monitoring of the subject six parcels ~~Be responsible for monitoring all the acquired easement areas for purposes of flood plain protection.~~

All other terms and conditions of the Agreement remain in full force and effect as supplemented and amended as established on September 22, 2009.

Signatures:

Mike Navarre, Mayor
Kenai Peninsula Borough

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

Date: _____

Date: _____

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

there is no stockpiling or permanent storage on the site.

This declaration is made pursuant to Kenai Peninsula Borough Resolution Number _____ adopted September ___, 2012, by the Kenai Peninsula Borough Assembly.

Signed this _____ day of _____, 2012.

KENAI PENINSULA BOROUGH

ATTEST:

Mike Navarre, Mayor

Johni Blankenship, Borough Clerk

AFTER RECORDING, RETURN TO:

Kenai Peninsula Borough

ATTN: Marcus Mueller, Land Management Officer

144 N. Binkley Street, Soldotna, AK 99669

ACKNOWLEDGEMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

This instrument was acknowledged before me on this _____ day of _____, 2012,
by _____, Mayor of the Kenai Peninsula Borough, a
municipal corporation under the laws of the State of Alaska.

Notary Public for the State of Alaska

My commission expires _____