

Introduced by:	Mayor
Date:	11/17/98
Hearing:	01/05/99
Action:	Enacted
Vote:	8 yes, 1 Abstain

**KENAI PENINSULA BOROUGH
ORDINANCE 98-69**

**AN ORDINANCE AUTHORIZING THE BOROUGH'S ACQUISITION OF LAND
NEXT TO KENAI CENTRAL HIGH SCHOOL IN EXCHANGE
FOR GRANTING LOTS ON THE KENAI RIVER TO
THE STATE OF ALASKA MENTAL HEALTH TRUST (AMHT)**

- WHEREAS,** the City of Kenai will be building a covered, multipurpose recreational facility and seeks a site in proximity to Kenai Central High School upon which to construct the facility; and
- WHEREAS,** the City of Kenai has agreed to provide a site for construction of the Challenger Learning Center of Alaska through a land lease agreement; and
- WHEREAS,** an ideal siting for the Challenger Learning Center of Alaska would also be in close proximity to Kenai Central High School; and
- WHEREAS,** the construction of these two facilities would benefit the citizens of the Kenai Peninsula and the School District; and
- WHEREAS,** the City of Kenai has initiated the process for transferring land to the Kenai Peninsula Borough for siting the Central Peninsula General Hospital Kenai Health Center; and
- WHEREAS,** the Trust Land Office of the Alaska Department of Natural Resources manages the land on behalf of the beneficiaries of the AMHT that is adjacent to Kenai Central High School and capable of siting these facilities; and
- WHEREAS,** the Trust Land Office has agreed to a land exchange as described in the attached memorandum of agreement and Section 1 below; and
- WHEREAS,** the borough land to be conveyed to the Trust Land Office is suitable to meet the trust management principles of behalf of the AMHT beneficiaries; and
- WHEREAS,** the borough received State of Alaska Patent No. 6790 to the subject land; and
- WHEREAS,** the borough land to be conveyed to the Trust Land office is deposited into the land bank; and

WHEREAS, the KPB Planning Commission at its regularly scheduled meeting of November 23, 1998 recommended enactment by unanimous consent; and

WHEREAS, the Kenai Peninsula Borough desires to transfer to the City of Kenai the land acquired in the land exchange for construction of a covered, multipurpose recreational facility and for a lease site for the Challenger Learning Center; and

WHEREAS, shortened hearing is necessary because the public facilities planned for the parcel acquired by the borough are time-sensitive projects which must also be processed through the City of Kenai Planning and Zoning Commission and City Council in order to be available for siting the projects.

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

SECTION 1. That the Assembly finds that exchanging Lots 8B and 8C, Alaska State Section Lot Breakdown Amended, Plat No. KN 1398, Kenai Recording District for that portion of the W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ lying south of the Kenai Spur Highway, R.O.W., Section 33, T6N, R11W, S.M., Alaska as described in the attached MEMORANDUM OF AGREEMENT contingent on approval by the AMHT Board of Trustees is in the best interest of the borough. The borough intends to convey the land to the City of Kenai by separate ordinance with an appropriate classification to be used for public purposes.

SECTION 2. The mayor is authorized, pursuant to KPB 17.10.100 (C) to exchange the land described in Section 1 above with the Trust Land Office. The borough land shall be conveyed by Quitclaim Deed. The authorization is for exchange solely with Trust Land Office, and it may not assign any rights to negotiate or enter an agreement for exchange to any other person or entity.

SECTION 3. Exceptions to KPB 17.10.090, Disposition of borough land, KPB 17.10.110, Notice of disposition, and KPB 17.10.130(D), Conveyance of the land (D), are appropriate based on the following findings:

1. That Special circumstances or conditions exist:

FINDING: Special circumstances exist in that this is a conveyance to another government entity, State of Alaska AMHT, in exchange for land the borough desires in order to convey to the City of Kenai for public facilities benefitting the residents of the borough.

2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this chapter;

FINDING: The property surrounding lots 8B and 8C is already owned by AMHT; classifying only two lots as required by KPB 17.10.090 and imposing deed restrictions as required by KPB 17.10.130(D) within an area solely owned by AMHT will not facilitate effective management which would be best served by managing the lots in conjunction with the surrounding parcels owned by AMHT. KPB 17.10.110. Notice of Disposition, requires publishing notice of the sale four times in the 30-day period immediately preceding the date of the sale. This notice requirement is intended to make the public aware of an opportunity to purchase borough land and will not serve a useful purpose in this situation because the grantee is already identified. It is not practical to expend resources in classifying, giving public notice, and placing deed restrictions on this unique government-to-government exchange.

3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area.

FINDING: Conveying the land will not be injurious to other property in the area as AMHT owns the surrounding property. The public welfare is benefitted as conveying the land to AMHT will facilitate a public purpose in providing public facilities within the City of Kenai for use of borough residents.

SECTION 4. The mayor is authorized to sign any documents necessary to effectuate this ordinance.

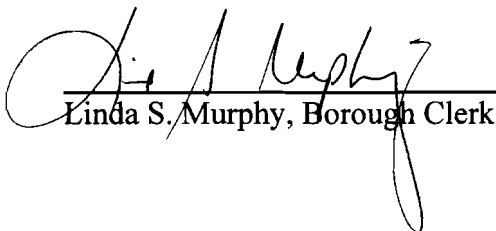
SECTION 5. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 5TH DAY OF JANUARY, 1999.

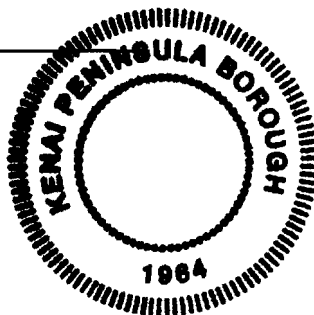


Ronald Wm. Drathman, Assembly President

ATTEST:



Linda S. Murphy, Borough Clerk



MEMORANDUM OF AGREEMENT

DRAFT #3 November 5, 1998

This Memorandum of Agreement (MOA) between the Kenai Peninsula Borough (KPB) and the Trust Land Office ("TLO") of the Alaska Department of Natural Resources, on behalf of the Alaska Mental Health Trust ("Trust"), is made this _____ day of _____, 1998.

Applicable Authority

This MOA is entered into pursuant to AS 38.05.801 and AS 38.50 and KPB Ordinance 98- _____. The undersigned TLO and KPB representative have the necessary authority to execute this MOA on behalf of their respective organizations.

Recitals

- A. Alaska Mental Health Trust Land ("Trust Land") is managed to serve the best interest of the Trust and its beneficiaries, consistent with trust management principles provided for in 11 AAC 99.020.
- B. KPB lands are managed in the public best interest consistent with the provisions of KPB Chapter 17.10 Borough Lands and Resources.
- C. The TLO and KPB have identified an opportunity to facilitate the achievement of their respective land use and management objectives through the completion of an equal-value land exchange.
- D. The purpose of the MOA is to provide public facilities for the benefit of residents of the borough. It has been indicated by the City of Kenai that this land may be used for a covered multipurpose recreation facility and the Challenger Learning Center of Alaska.
- E. The Alaska Mental Health Trust Authority ("Trust Authority") and KPB Assembly have been consulted on this matter and have agreed to proceed in accordance with the terms and conditions provided for in this MOA. Records of Trust Authority and KPB decisions on this matter are attached as Attachment A to this document.

Agreements

1. Subject to agreement on the appraised value of the Trust Land parcel, the TLO will convey to the KPB, or other parties designated by the KPB, the surface estate, including sand and gravel, to the following described parcel of land ("Trust Property"). The conveyance will be made by quit claim deed and will be subject to any and all valid

A ATTACHMENT 7

existing rights that exist at the time this MOA is executed. The TLO will make a good faith effort to convey the Trust Property to the KPB within thirty (30) days of agreement .

Property Description

That portion of the W½SW¼SE¼ lying south of the Kenai Spur Highway, R.O.W., Section 33, T6N, R11W, S.M., Alaska. Kenai Peninsula Borough Assessor Parcel No. 045-010-06

2. The KPB will convey to the Trust Authority, as trustee, the surface estate, including sand and gravel, to the following described parcel of land ("KPB Property"). The conveyance will be made by quit claim deed and will be subject to any and all valid existing rights that exist at the time this MOA is executed. The KPB will make a good faith effort to convey the KPB Property to the TLO within thirty (30) days of agreement.

Property Description

Lots 8B and 8C, Alaska State Section Lot Breakdown Amended, Plat No. KN 1398, Kenai Recording District

3. The TLO and KPB make no warranties, express or implied, nor assume any liability whatsoever, regarding the social, economic, or environmental aspects of the Exchange Properties, including, without limitation, the soil conditions, water drainage, access, natural or artificial hazards that may exist, or the merchantability, profitability or fitness of the properties for any particular purpose. The TLO and KPB represent that they accept title to the Exchange Properties after having had a full opportunity to inspect the Exchange Properties and associated title records, and have determined them suitable for the purposes addressed by this MOA.
4. If it is discovered that any hazardous substance or substances came to be located on or discharged from a parcel of land exchanged pursuant to this MOA, such that the affected parcel is not in compliance with any federal, state or local environmental law, the issue shall be resolved as follows:
 - a. If the hazardous substance came to be located on or discharged from a parcel being exchanged pursuant to this MOA prior to the exchange being completed, the issue shall be resolved in a manner as the TLO and KPB mutually agree. If the TLO and KPB cannot reach agreement, the party receiving the affected parcel in the exchange, in its discretion may elect to retain the affected parcel or tender it back. If such an affected parcel is tendered back, the sole remedy is that the party that sought to exchange the affected parcel and to whom it was tendered back, in its discretion shall either cause such affected parcel to be remediated to

comply with such environmental law or laws or exchange the affected parcel for other land (or interests in land) of equal value without the hazardous substance. If such replacement exchange occurs, the affected parcel shall be reconveyed to the party to whom it was tendered. If an affected parcel is tendered under this subsection, the party that sought to exchange the parcel and to whom it was tendered, shall at its expense, appear for, defend, and hold harmless the other party from any claim or action asserted by a third party based on the presence of any hazardous substance located on the affected parcel prior to its remediation or the replacement exchange of such land.

- b. If the hazardous substance came to be located on or discharged from a parcel of land after its exchange pursuant to this MOA, responsibility shall be allocated between the TLO and KPB as provided by applicable law.
 - c. Nothing in this section is intended to limit the TLO's or KPB's rights to assert any claims or defenses available to them with respect to third parties.
5. Except as provided for otherwise herein, the TLO and KPB will maintain the Exchange Properties in the condition that existed on the day this MOA is executed, until such time that the terms and conditions of this MOA are fulfilled.
 6. The transaction costs associated with this MOA will be shared equally by the TLO and KPB. Neither the TLO or KPB will commit to the expenditure of funds in excess of \$5,000.00 without the written agreement of the other party. There are no anticipated costs other than recording conveyance documents. However, other costs may include appraisals, public notice, survey, subdivision platting, and title search. It is anticipated that total costs to be shared by the TLO and KPB will not exceed \$5,000.00. The TLO and KPB will be individually responsible for the cost of title insurance and environmental audits, if obtained.
 7. TLO and KPB representatives are authorized to enter upon the Exchange Properties for the purpose of completing due diligence inspections, including environmental audits.
 8. Where reasonable to do so, the TLO and KPB will coordinate public relation actions on this transaction, including, but not limited to press releases and media interviews.
 9. The TLO and KPB agree to use their best efforts to resolve any disputes arising under this MOA, fairly, efficiently, and promptly. Potential methods for achieving such dispute resolution may include cost sharing for additional appraisals, informal and formal mediation, arbitration, and any other dispute resolution mechanism as may be appropriate or necessary under the circumstances.
 10. The TLO and Alaska Mental Health Trust Authority will defend, indemnify and hold harmless the KPB and its respective officers, directors, employees, agents, successors,

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY THAT ON THIS _____ day of _____,
1998 before me personally appeared Mike Navarre, Mayor of the Kenai Peninsula Borough,
who executed the foregoing Memorandum of Agreement in the above stated capacity.

Notary Public in and for Alaska
My Commission Expires: _____