



KENAI PENINSULA BOROUGH

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DAVE CAREY
BOROUGH MAYOR

MEMORANDUM

TO: Milli Martin, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Dave Carey, Borough Mayor *W. Carey*

FROM: Max Best, Planning Director *MB*
Colette Thompson, Borough Attorney *CT*
Marcus Mueller, Land Management Officer *MM*

DATE: November 18, 2008

SUBJECT: Ordinance 2008-31, authorizing an addendum to the Option to Lease Ladd Landing

During the introduction of Ordinance 2008-31, the question was raised as to whether or not the proposed elimination of the proposed 90-day option period could be a one-time waiver as opposed to a permanent amendment to the option. The administration believes that a temporary waiver would work. The following language would create a one-time waiver rather than amending the option.

➤ Change the title as follows:

AN ORDINANCE AUTHORIZING THE MAYOR TO WAIVE THE 90-DAY NOTICE REQUIREMENT FOR EXERCISING [AN ADDENDUM TO] THE OPTION TO LEASE LADD LANDING BETWEEN THE KENAI PENINSULA BOROUGH AND PACRIM COAL, LP [TO REMOVE THE NINETY DAY NOTICE REQUIREMENT FOR EXERCISE OF THE OPTION]

➤ Amend the third, fourth, and fifth whereas clauses as follows:

WHEREAS, in order to allow an additional 90 days to negotiate a new option and lease, the administration recommends waiving the 90-day notice requirement in

Section 3.1 of the current option; [THE OPTION CONTAINS A NINETY (90) DAY NOTICE REQUIREMENT TO EXERCISE THE OPTION IN SECTION 3.1 WHICH EFFECTIVELY REDUCES THE OPTION PERIOD BY THAT AMOUNT OF TIME;] and

[WHEREAS, THE BOROUGH ADMINISTRATION INTENDS TO BRING FORWARD A REVISED FORM OF "OPTION TO LEASE" FOR THE ASSEMBLY'S CONSIDERATION PRIOR TO THE CURRENT EXPIRATION DATE OF THE OPTION; AND]

WHEREAS, the [NINETY (90)] 90-day notice requirement in Section 3.1 of the current Option has no practical application, and deleting it would provide both parties the best opportunity to evaluate the Option; and

➤ Amend Section 1 as follows:

SECTION 1. That the Mayor is authorized to execute **an agreement for a one-time waiver of the 90-day notice requirement contained in** the "Option to Lease Ladd Landing" **originally** dated March 10, 1987, as amended and extended, with PacRim Coal, LP. The **authorization would waive the 90-day** [MODIFICATION AUTHORIZED IS TO DELETE THE NINETY (90) DAY] notice requirement from Section 3.1 of the **current version of the** Option **on a one-time basis.**