



## **KENAI PENINSULA BOROUGH**

PLANNING DEPARTMENT

144 North Binkley Street • Soldotna, Alaska 99669-7520

**PHONE:** (907) 714-2200 • **FAX:** (907) 714-2378

*Toll-free within the Borough: 1-800-478-4441, Ext. 2200*

[www.borough.kenai.ak.us](http://www.borough.kenai.ak.us)

**DAVID R. CAREY  
BOROUGH MAYOR**

### **MEMORANDUM**

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

**THRU:** *DR Carey* David R. Carey, Borough Mayor

**FROM:** *MB* Max J. Best, Planning Director

**DATE:** July 23, 2009

**SUBJECT:** Ordinance 2009-37 enacting KPB 17.10.185 to provide authority to enter into agreements that provide for third party management of public trails on borough land

The Planning Commission reviewed the subject ordinance during their regularly scheduled July 20, 2009 meeting. A motion to recommend enactment of the ordinance passed by unanimous consent.

Draft, unapproved minutes of the subject portion of the meeting are attached.

AGENDA ITEM F. PUBLIC HEARINGS

3. Ordinance 2009-37 enacting KPB 17.10.185 to provide authority to enter into agreements that provide for third party management of public trails on borough land

Memorandum reviewed by Marcus Mueller

PC Meeting: 7/20/09

The land management division has struggled with how to approach the management of public trails on borough land. This division does not allocate funds for trail management and lacks the resources to actively engage in day-to-day management of trails. Trails exist on borough land in all corners of the borough. Many are informal and managed entirely by appropriate public use. A number of trails or trail systems are more formal and have associated user groups or government agencies that have an interest in managing the trails for public use.

In some of these cases the borough has been able to connect the user groups to the trails through lease or land use permit. The borough has found general benefit in doing so, but land management is not satisfied with using these tools to achieve third party management and recognizes the benefit of a suitable process to achieve an appropriate delegation of management.

This ordinance would rely heavily on a Trail Management Plan that would be developed by the applicant. It would allow through that trail management agreement which would go through the public process and would authorize an agreement with a third party to delegate the management of the trails to that third party as provided in that agreement.

The ordinance would enact KPB 17.10.185 to provide for trail management agreements through approval by assembly ordinance with recommendation by the Planning Commission. Consideration of this ordinance is greatly appreciated.

END OF MEMORANDUM

Chairman Bryson opened the meeting for public comment.

1. Adam Reimer, Tsalteshi Trails Association board member  
Mr. Reimer is a resident of Funny River and represented himself and the Tsalteshi Trails Board. It is quite an honor to him because the Board and the Tsalteshi Trails Association is something he truly believes in.

Mr. Reimer stated the trails have been in existence for 20 years. In that time, he has skied on the trails for 16 years. Over the years, the trails have been improved immeasurably to where they used to be substandard compared to what was in Anchorage. The trails are maintained by volunteers. The Association has received some grants in the past but it was mostly with sweat equity that have maintained and improved the trails.

The trails are community based with a lot of community activities. There are ski trials in the winter and running and biking trails in the summer. Mr. Reimer also stated there are school races and events, both cross country and skiing that are held on these trails. There are competitive races that bring top notched skiers from as far away as Fairbanks and at times bring in collegiate level skiers. A Junior Nordic program was started last year and a Masters Ski program was started this year. He stated there was a lot going on with a lot of community involvement which is something the Borough should be proud of.

Mr. Reimer felt the Borough should be commended for trying to formalize this process. He expressed the following concerns when reading the ordinance.

1. The board has been led to believe that this ordinance carries with it some transition from leasing plats of land to a trail association to, instead a concept, where a core of land was permitted to be managed which would be some boundary either side of the trail. He was not at the meeting to argue against the merits of the corridor concept. Mr. Reimer asked the commission to consider that their trail system has a 20 year history. Those trails have been developed with the concept of a parcel in mind. It was not specifically addressed in the ordinance so he asked for clarity on if that was the plan for the future. He asked everyone to consider flexibility where some agreement could be associated with plats of land and others could be associated with corridors. That would provide flexibility and maintain the best product for everyone.
2. Another concern was the terms of the agreements. The Association has been successful in obtaining grants. They have put in some great infrastructure where many of the trails are lighted; maintained and new trails have been created with the grant money. That is a commodity that the Borough has. Mr. Reimer stated that a condition of many of the grants is having a long term commitment that the land would be available for public use. As he understands it the Trail Association's leases have been on 10 year terms. The term in this ordinance is rather vague.
3. Mr. Reimer felt the Borough was trying to formalize this trail process. He felt the ordinance was progressing well until Letter F which states, "*Nothing contained herein shall prevent the mayor from authorizing trail use or management on borough lands by other lawful means.*" Mr. Reimer and the Board felt that it would be better to stick with it and not have this kind of escape clause.

Mr. Reimer thanked the commission for their time.

Chairman Bryson asked if there were questions for Mr. Reimer.

Commissioner Foster asked if he knew if there have been any conflicts with the neighboring land owners or with other user groups in the past 20 years. To his knowledge, Mr. Reimer replied there have been no conflicts regarding neighbors or with the use of the land. There have been user group conflicts between the skiing community and the Biathlon community. Mr. Bennett replied he has been involved with Tsalteshi Trails for 15 years and to his knowledge there have not been any conflicts with neighbors or any other user group. He stated there were issues with the biathlons but that has been resolved. Mr. Reimer stated he has been on the board for one year and felt the board was open to work with the Biathlon for use.

There being no further questions, the public hearing continued.

2. James Bennett

Mr. Bennett hoped this ordinance didn't have anything do with any sort of relationship they had with a Biathlon Club. He stated the Tsalteshi Trails Association was the one of the largest trail organizations on the Peninsula. They have been in existence for over 20 years.

Every time the Association has had a development plat, they have submitted it to staff where sometimes it was approved right away and other times they asked for modification where each and every time the Association has been 100% cooperative. There has never been any issue with the Borough. He felt the relationship between the Borough and the Tsalteshi Trails Association has been nothing more than very professional and a positive and asked that, that be continued.

Mr. Bennett asked that the Association be part of the process of formulating this trail use

agreement. There are probably a few other things that are not too clear that they would like to make a little more clear. They would like to be on the working committee that develops these things. The association has between 300-400 active, paid members. He stated the Association would like to cooperate with the Borough as much as possible.

Chairman Bryson asked if there were questions for Mr. Bennett.

Commissioner Lockwood stated that his family has been involved in skiing and cross country running and he has been involved with this same group over the years. Anything that was perceived as a conflict between the Biathlon and the other groups was not necessarily a conflict between groups. It was primarily since 911 that it has been more liability oriented as far as firearms on school property.

Seeing and hearing no one else wishing to speak, Chairman Bryson closed the public comment period and opened discussion among the Commission.

**MOTION:** Commissioner Murphy moved, seconded by Commissioner McClure to recommend enactment of Ordinance 2009-37.

Commissioner Gross asked for clarification regarding term limits and asked if staff was open longer time frames. Mr. Mueller stated there were not a lot of specifics related to the term limits. When approaching this ordinance they recognize that there is potential for these trail agreements to take many different shapes and forms. There may be some that don't have much depth because the trail system may be very small and may be very limited in its type of use. He stated there will be a broad spectrum. The other part of it is for these trail agreements to go forward but in order for it to go forward it will require an ordinance. That ordinance that follows under this ordinance will lay out those terms with one of them being the duration. Mr. Mueller felt that some may be for shorter terms and others may be for longer terms. He stated one of the objectives was to make sure that those trail groups that want to receive grants and are relying on something of a 10 year term are afforded that. Staff envisioned a more sophisticated trail system and group that would actively searching for grants was probably going to be seeking and receiving longer term agreements. Commissioner Gross asked if a 20 year agreement was a possibility. Mr. Mueller replied that was correct.

Commissioner Murphy stated she did not have the same concerns that the testifiers had. She asked if there was any plan to do away with the agreement that the Tsalteshi Trails Association has with the Borough because now the Borough was looking at different ways to manage trails. Mr. Mueller replied that this ordinance was based on their history with Tsalteshi Trails. He envisioned that the administration of these agreements to be very similar to administration of the Tsalteshi lease.

Commissioner Murphy understood that Section F would give the Mayor the authority to enter into an agreement like the one that Tsalteshi Trails currently has which would be different from the corridor type agreements anticipated under this ordinance. Mr. Mueller replied that was correct.

Commissioner Foster asked for comments regarding Mr. O'Meara's written comments. Mr. Mueller replied he did not have any particular comments on that but appreciated his comments. This ordinance is open ended in terms in what it provides for and would really rely on those agreements that come about under this ordinance. He was particularly interested in the comments regarding the need to address any conflicts that arise.

Chairman Bryson asked if there would be any committee reviews at the Assembly level. Mr. Mueller stated the Assembly has scheduled two public hearings for August 4 & 18 on this particular ordinance. Chairman Bryson asked if the public was allowed to give input at the Lands Committee meeting. Mr. Mueller replied it was up to the Lands Committee Chairman. He pointed out that all the ordinance information was sent to the trail user groups.

There being no further discussion or questions, the commission proceeded to vote.

**VOTE:** The motion passed by unanimous consent.

BRYSON YES	CARLUCCIO YES	COLLINS YES	FOSTER YES	GROSS YES	ISHAM YES	JOHNSON ABSENT
LOCKWOOD YES	MARTIN YES	MCCLURE YES	MURPHY YES	PETERSEN YES	TAURIAINEN ABSENT	11 YES 2 ABSENT

**AGENDA ITEM F. PUBLIC HEARINGS**

- 4. Ordinance 2009-38: Amending KPB Chapters 17.08, 17.10, and 17.50 to Clarify Procedures for Planning and Disposition of Forest Resources for Commercial and Personal Uses

Memorandum reviewed by Marcus Mueller

PC Meeting: 7/20/09

This review and subsequent amendments is the work product of a collaborative effort between the Planning Department, the Land Management Division, the Spruce Bark Beetle Program and the Legal Department. Many hours of research and cross-referencing of other ordinances have led to the proposed changes.

Many of the changes are edits of a grammatical nature with no major policy adjustments; others attempt to set forth a clear difference between uses of land resources for personal consumption versus those of a commercial nature.

Section 1 - KPB 17.08.010

The use of the phrase harvest areas is substituted for tracts and parcels for areas to be harvested. This change is consistent with U.S. Forest Service and State of Alaska Forestry Division jargon.

Section 2 - KPB 17.1 0.150(B)

Removes gender reference.

Section 3 - KPB 17.10.170

Deletes this section as it is redundant.

Section 4 - KPB 17.10.180(A)

The referenced KPB 17.1 0.120(F) reads: "The mayor shall not sell, lease or authorize any other use or disposition of borough land to a person who is delinquent in the payment of any tax, debt or obligation owed to the borough."

This change is merely rearranging the sentence to be consistent with tense of the code. The responsibility for ensuring tax compliance is placed on the mayor, as described above, rather than the applicant. No change in the intended result is anticipated.

New language will read: "KPB 17.10.120(F) shall apply."

Section 5 - KPB 17.10.200

Title change recognizes the definition of Materials in KPB 17.10.250 as including sand and gravel.

- A. The land classification named resource extraction was replaced with resource development and resource management. This change is consistent with Ordinance 94-16.
- B. Same as above.
- D. Syntax change only - same as Section 4.
- H. Clarifies that the bond amount shall be the greater of \$100 or 10 percent of the negotiated price.

COOPER LANDING ADVISORY PLANNING COMMISSION  
SPECIAL MEETING  
JULY 8, 2009, 6 P.M.  
COOPER LANDING COMMUNITY HALL

UNAPPROVED MINUTES

1. CALL TO ORDER. Chair Painter called the meeting to order at 6:00 P.M.
2. ROLL CALL. Present Painter, Holsten, Bear, Romig, Corbin. Unexcused Absence Williams
- 3.
4. APPROVAL OF AGENDA. Agenda approved as read
5. APPROVAL OF MINUTES: May 6, 2009 Approved
6. CORRESPONDENCE. None
7. PUBLIC COMMENT/PRESENTATION WITHOUT PREVIOUS NOTICE. None
8. REPORT FROM BOROUGH: Marcus Mueller represented the Borough and discussed Ordinance 2009-41 and Ordinance 2009-37. Mueller also discussed the Cooper Landing gravel pit on Snug Harbor Road and explained that this was likely the last expansion. He asked the CLAPC to discuss future uses of the pit to help determine reclamation requirements. CLAPC agreed to provide their recommendation at a later date and after public input. The area is currently in a "Light Industrial" land classification.
9. Muller continued by explaining the "Trails Ordinance" (Ordinance 2009-37). He explained that non profit user groups/community organizations have applied in the past to build/manage/maintain trails on Borough Lands. The Borough does not have "trails powers" so had no instrument for allowing this uses to be authorized. Ordinance 2009-37 would give the Borough power to issue trail management to groups without obligating Borough funds. This permit would allow a legal mechanism for groups to manage trails. He asked CLAPC to submit our comments. It was agreed we would develop comments at the August 5 meeting.
10. OLD BUSINESS. None
11. NEW BUSINESS
  - A. Cooper Landing Senior request to standardize deed language: (Text of proposed ordinance is available on the Borough's website: <http://www.borough.kenai.ak.us>). Romig moved that the CLAPC support the passage of the ordinance as written. Holsten seconded. It passed unanimously.
12. PLAT REVIEW. None
13. ANNOUNCEMENTS
  - A. NEXT REGULAR MEETING, August 5, 2009
14. COMMISSIONERS' COMMENTS
15. ADJOURNMENT