

Introduced by: Mayor
Date: 07/07/09
Hearing: 08/04/09
Action: Enacted as Amended
Vote: 9 Yes, 0 No, 0

**KENAI PENINSULA BOROUGH
ORDINANCE 2009-38**

AN ORDINANCE 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

WHEREAS, the borough code currently contains two separate chapters governing the disposition of forest resources: Chapters 17.08 and 17.50; and

WHEREAS, some confusion has occurred in construing the two chapters in an attempt to comply with the code; and

WHEREAS, a review of Title 17 has indicated that the code could be clarified by numerous housekeeping amendments as well as substantive amendments that would separate the distinction between the disposition of forest resources for commercial purposes and personal purposes; and

WHEREAS, the code already provides for disposition of sand, gravel, and materials and could be clarified by following the same procedures for the disposition of forest resources; and

WHEREAS, at its meeting of July 20, 2009, the planning commission recommended enactment by unanimous consent;

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

SECTION 1. That KPB 17.08.010(B) is hereby amended as follows:

17.08.010. Authority to dispose of forest resources.

* * *

B. The mayor shall identify [TRACTS] harvest areas of at least 40 acres containing commercially valuable amounts of dead and mature timber [AND SHALL IDENTIFY THOSE TRACTS AS READILY ASCERTAINABLE 40 ACRE PARCELS]. Notice of the parcels proposed for salvage or harvest of dead and mature timber shall be published [TWICE IN A DESIGNATED PUBLICATION OF GENERAL CIRCULATION] per KPB Code 5.08.060 and shall inform prospective purchasers of the size, location and other pertinent information

about the [PARCEL] harvest area. The mayor may request that proposals be submitted by interested parties stating the parcels from which the parties propose to salvage or harvest their timber and the amount which the prospective purchaser would pay to the borough for harvest of timber.

SECTION 2. That KPB 17.10.150(B) is hereby amended as follows:

17.10.150. Lease—Terms and conditions.

* * *

- B. In the case of an agricultural lease, within 90 calendar days of the prospective lessee being notified that [HE/SHE] the applicant is eligible to lease borough lands and prior to executing the lease documents, the prospective lessee must submit a development plan which shall disclose the use, nature of improvements, an estimate of value of the improvements, a range management plan, and a development and construction time table.

SECTION 3. That KPB 17.10.170 is hereby repealed as follows:

[17.10.170. FOREST AND TIMBER RESOURCES.

LANDS TO BE UTILIZED FOR FOREST AND TIMBER RESOURCES SHALL FIRST BE CLASSIFIED AS EITHER "RESOURCE DEVELOPMENT" OR "RESOURCE MANAGEMENT" AND SHALL BE SUBJECT TO THE TERMS AND PROVISIONS OF KPB 17.50.]

SECTION 4. That KPB 17.10.180(A) is hereby amended as follows:

17.10.180. Temporary use of borough land.

- A. A person who wishes to use borough land for a temporary use shall apply for a nonrenewable permit on a form provided by the land management division and accompanied with the appropriate application fee as required by the fee schedule. [A PERMIT SHALL NOT BE ISSUED UNTIL THE APPLICANT HAS COMPLIED WITH SECTION] KPB 17.10.120(F) shall apply.

SECTION 5. That KPB 17.10.200 is hereby amended as follows:

17.10.200. [SAND, GRAVEL, AND M]Materials—Negotiated sale—Small quantities.

- A. Prior to selling material from established material sites or other sites classified as resource [EXTRACTION] development or resource management, a management plan will be developed to provide for its

use, reclamation, and eventual closure.

- B. The land management officer is authorized to sell material from established material sites or other sites classified as [RESOURCE EXTRACTION] resource development or resource management at the current market value. Each contract shall permit removal of a stated amount of material not to exceed 300 cubic yards per applicant per year from the date of execution of the contract.
- C. Application shall be submitted on the form provided by the land management division and accompanied by the appropriate fee.
- D. [APPLICANT SHALL COMPLY WITH SECTION] KPB 17.10.120(F) shall apply.
- E. The applicant may be required to file a mining plan. The plan may consist of cross-section survey of uplands, methodology for site clearings, stripping and stockpiling of overburden, site restoration, provisions for drainage ditching and development of access, and other information as may be required.
- F. Material sale contracts shall not be extended in time [N] or in quantity.
- G. Full payment shall be made at the time the sale contract[ED] is executed.
- H. A bond may be required at the time the sale contract is executed. The bond shall be at least [ONE HUNDRED DOLLARS (\$100.00) OR TEN PERCENT (10%)] \$100 or 10 percent of the negotiated price whichever is more. The bond shall be retained until such time as site restoration and all other requirements are met and completed and accepted by the borough.
- I. Liability insurance or additional requirements may be required if deemed necessary in the best interests of the borough.

SECTION 6. That KPB 17.10.210 is hereby amended as follows:

17.10.210. [SAND, GRAVEL, AND M]Materials and forest resources—Commercial quantities.

- A. The mayor is authorized to negotiate at the current market value the sale of material and forest resources from lands classified as resource [EXTRACTION] development or resource management.
- B. Application shall be submitted on the form provided by the land management division and accompanied by the appropriate fee.

- C. [A CONTRACT SHALL NOT BE ISSUED UNTIL THE APPLICANT HAS COMPLIED WITH SECTION] KPB 17.10.120(F) shall apply.
- D. A successful buyer of materials may be required to file a mining plan as required by land management, [BUT NOT LIMITED TO,] AS 27.19, and any other law or regulation. The plan may consist of cross-section survey of uplands, methodology for site clearings, stripping and stockpiling of overburden, site restoration, provisions for drainage ditching and development of access, and other information as may be required.
- E. A successful buyer of commercial quantities of forest resources shall be required to file a detailed plan of operations as required by AS 41.17.090.
- [E]F. A payment schedule shall be set and made a part of the contract.
- [F]G. A bond shall be required at the time the sale contract is executed. The bond shall be a minimum of [TEN] 10 percent [(10%)] of the sale price. The bond shall be retained until such time as site restoration and all other requirements are met, completed and accepted by the borough.
- [G]H. Liability insurance or additional requirements may be required if deemed necessary in the best interests of the borough.
- I. All successful buyers shall comply with all applicable local, state, and federal laws.

SECTION 7. That KPB 17.10.250(EE) - (PP) is hereby amended to read as follows:

17.10.250. Definitions.

In this chapter, unless the context otherwise requires:

* * *

- EE. "Resource" as used in this chapter means sand, gravel, timber, peat, turf, soil, rock, shale, water, or such other natural material having value.
- FF. "Resource Development" means land containing resources of sufficient volume and quality and located so that on-going development or production of those resources would yield an overall net economic return. Lands so classified may be sold or leased subject to appropriate restrictions concerning operations or future reclamation. Lands so classified may be retained by the borough and

resources on those lands may be sold or permitted for use.

GG. "Resource Management" means land having resources which may be extracted as an interim use in manner which will not create a negative impact on the most appropriate use of the land. This classification is not exclusive and may overlap any other classification thereby allowing other non-conflicting uses. Resources on these lands may be sold or permitted for use.

HH. "Rural" means lands which are located in a remote area. This classification will have no restrictions.

[FF]II. "Short term lease" means the lease of borough land for a period not to exceed five years.

[GG]JJ. "Subdivision":

1. Means the division of a parcel of land into two or more lots or other division for the purpose of sale or building development, includes resubdivision, and relates to the process of subdividing or to the land subdivided.
2. Does not include cadastral plats, cadastral control plats, open-to-entry plats, or remote parcel plats created by or on behalf of the state regardless of whether these plats include easements or other public dedications.

[HH]KK. "Temporary use" means a use of borough land that is either exclusive or nonexclusive, but the use is not pursuant to an authorized lease, easement, extraction license, or commercial sale of borough sand, gravel, or green wood timber sources. Examples of a temporary use are the use of borough land for temporary access or a construction easement, one day only events, staging areas, or annual civic events.

[II]LL. "Trespass" means the unauthorized use or possession of borough land.

[JJ]MM. "Unapproved selection" or "unapproved lands" means those lands selected under the borough's general land grant entitlement for which approval has not been obtained from the State.

NN. "Unintentional trespass" means the inadvertent location of a structure on borough land.

[KK]OO. "Utility/Transportation" (not including oil and gas and electricity generation or production facilities) means lands which may be of value for airports, port and harbor facilities, power lines, pipelines, utility services, rights-of-way, easements and related activities but does not

include general and production facilities for oil and gas and electricity.

- [LL]PP. "Waste Handling" means land with suitable characteristics and location for the express purpose of providing facilities to handle solid waste, recyclable materials, transfer stations, junked or wrecked vehicles, demolition refuse, septic and sewage waste and industrial waste. Disposal or use of any tract so classified will be subject to determination of the tract being suitable for a particular proposed activity.
- [MM. "UNAPPROVED SELECTION" OR "UNAPPROVED LANDS" MEANS THOSE LANDS SELECTED UNDER THE BOROUGH'S GENERAL LAND GRANT ENTITLEMENT FOR WHICH APPROVAL HAS NOT BEEN OBTAINED FROM THE STATE.
- NN. "RESOURCE DEVELOPMENT" MEANS LAND CONTAINING RESOURCES OF SUFFICIENT VOLUME AND QUALITY AND LOCATED SO THAT ON-GOING DEVELOPMENT OR PRODUCTION OF THOSE RESOURCES WOULD YIELD AN OVERALL NET ECONOMIC RETURN. LANDS SO CLASSIFIED MAY BE SOLD OR LEASED SUBJECT TO APPROPRIATE RESTRICTIONS CONCERNING OPERATIONS OR FUTURE RECLAMATION. LANDS SO CLASSIFIED MAY BE RETAINED BY THE BOROUGH AND RESOURCES ON THOSE LANDS MAY BE SOLD OR PERMITTED FOR USE.
- OO. "RESOURCE MANAGEMENT" MEANS LAND HAVING RESOURCES WHICH MAY BE EXTRACTED AS AN INTERIM USE IN MANNER WHICH WILL NOT CREATE A NEGATIVE IMPACT ON THE MOST APPROPRIATE USE OF THE LAND. THIS CLASSIFICATION IS NOT EXCLUSIVE AND MAY OVERLAP ANY OTHER CLASSIFICATION THEREBY ALLOWING OTHER NON-CONFLICTING USES. RESOURCES ON THESE LANDS MAY BE SOLD OR PERMITTED FOR USE.
- PP. "RESOURCE" AS USED IN THIS CHAPTER MEANS SAND, GRAVEL, TIMBER, PEAT, TURF, SOIL, ROCK, SHALE, WATER, OR SUCH OTHER NATURAL MATERIAL HAVING VALUE.]

SECTION 8. That KPB 17.50.010 is hereby amended as follows:

17.50.010. Forest management plan.

- A. The forest management plan shall include the following: the borough's most current inventory of forest resources on borough patented lands and final approved lands; the borough patented lands and final approved lands; the terms, conditions, and limitations of permits and contracts for disposal of forest resources; cooperative management agreements; forest management guidelines including fish, wildlife, and habitat policies and appropriate silvicultural practices; identification of areas for disposal of forest resources; and information on other areas relevant to forest management in the Kenai Peninsula Borough.

B. The mayor or [HIS] designee shall publish a timber management report [EVERY YEAR] biennially commencing November [1991] 2009. The report shall include all borough timber activities for [THAT PREVIOUS YEAR] the reporting period, and the borough's most current inventory of all patented and selected approved lands for that [PREVIOUS YEAR] reporting period. The [ANNUAL] timber management report shall be provided to the borough planning commission and the borough assembly [BY THEIR LAST REGULAR MEETING OF NOVEMBER]. The planning commission shall review the report and make recommendations to the assembly on the need to update the forest management plan [BY THE FIRST REGULAR ASSEMBLY MEETING IN JANUARY]. [IF THE ASSEMBLY DETERMINES AN UPDATE TO BE NECESSARY, IT SHALL BE COMPLETED AND PUT INTO OPERATION NO LATER THAN NOVEMBER OF THAT SAME YEAR.]

[B. THE PLAN SHALL INCLUDE THE FOLLOWING: THE BOROUGH'S MOST CURRENT INVENTORY OF FOREST RESOURCES ON BOROUGH PATENTED LANDS AND FINAL APPROVED LANDS; THE BOROUGH PATENTED LANDS AND FINAL APPROVED LANDS; THE TERMS, CONDITIONS, AND LIMITATIONS OF PERMITS AND CONTRACTS FOR DISPOSAL OF FOREST RESOURCES; COOPERATIVE MANAGEMENT AGREEMENTS; FOREST MANAGEMENT GUIDELINES INCLUDING FISH, WILDLIFE, AND HABITAT POLICIES AND APPROPRIATE SILVICULTURAL PRACTICES; IDENTIFICATION OF AREAS FOR DISPOSAL OF FOREST RESOURCES; AND INFORMATION ON OTHER AREAS RELEVANT TO FOREST MANAGEMENT IN THE KENAI PENINSULA BOROUGH.]

C. The forest management plan shall be approved by resolution of the assembly after public hearing, review, and recommendations by the planning commission.

SECTION 9. That KPB 17.50.030 is hereby amended as follows:

17.50.030. Forest resources disposal.

A. Forest resources [SHALL] may be disposed of [BY PERMIT OR CONTRACT] pursuant to this title for the following uses as provided in the forest management plan by:

1. Personal use [FIREWOOD] permit for wood products limited to a maximum of [10] 15 cords of wood per household per [ANNIVERSARY] calendar year, for which no fee shall be charged;
- [2. PERSONAL USE LOGS LIMITED TO A MAXIMUM OF 10,000 BOARD FEET PER HOUSEHOLD PER ANNIVERSARY YEAR;
3. COMMERCIAL USE FIREWOOD LIMITED TO A MAXIMUM OF 25 CORDS OF WOOD PER OPERATOR PER CUTTING SEASON;]

[4] 2. [COMMERCIAL TIMBER AND/OR COMMERCIAL USE FIREWOOD OPERATIONS;] Contract for commercial forest resources with fees established by contract.

- B. Nothing contained in this title shall be deemed to limit the authority of the mayor to dispose of forest resources in any manner deemed necessary [IN HIS DISCRETION], with or without consideration or other payment, in emergency situations requiring action before assembly approval could be reasonably obtained.
- C. Nothing contained in this title shall limit the authority of the mayor to dispose of forest resources in any manner deemed necessary [IN HIS/HER DISCRETION], whether or not for cash or other consideration[, ON LAND CLASSIFIED AS GOVERNMENT, INSTITUTIONAL, UTILITY/TRANSPORTATION, OR WASTE HANDLING], where the [TRACT OF LAND] harvest area is less than 40 acres.
- D. Nothing contained in this title shall limit the authority of the mayor to dispose of forest resources in any manner deemed necessary [IN HIS /HER DISCRETION], whether or not for cash or other consideration where the primary purpose for removing forest resources is to remove hazard trees that are a direct threat to people or facilities. [KPB 17.10.170 SHALL NOT APPLY TO THE REMOVAL OF HAZARD TREES ON BOROUGH LANDS].

SECTION 10. That KPB 17.50.035(A) is hereby amended as follows:

17.50.035. Forest management sale report.

- A. Prior to disposal of forest resources the mayor or [HIS] designee shall prepare a forest management sale report which shall set the terms and conditions for each sale as set forth in [SECTION] KPB 17.50.040 and additional terms as deemed necessary for specific site conditions.

* * *

SECTION 11. That KPB 17.50.040 is hereby amended as follows:

17.50.040. Notice of forest resource disposal.

The mayor or [HIS] designee shall give public notice for disposal of forest resources by [PERMIT OR] contract by legal advertisement [IN A NEWSPAPER OF GENERAL CIRCULATION IN EACH LOCALITY OF] published once in a publication of general circulation in the borough. Public notice shall be advertised a minimum of 30 days prior to the disposal of forest resources and shall include the following:

- A. Type of [PERMIT OR] contract;

- B. Location of proposed disposals;
- C. Minimum acceptable bid, if applicable;
- D. Method of bidding;
- E. Time and place of [PERMIT ISSUANCE OR] bidding;
- F. Duration of [PERMIT OR] contract; and
- G. Location of detailed information on the disposal.

SECTION 12. That KPB 17.50.050 is hereby amended as follows:

17.50.050. Qualifications for application for [PERMITS OR] contracts.

- A. Subject to KPB 17.10.210, [A]a household, organization or firm is qualified [TO APPLY FOR A PERMIT OR] to bid if they are:
 - 1. Represented by individual at least 18 years of age;
 - 2. Legally competent and/or authorized to carry out the provisions of a [PERMIT OR] contract;
 - 3. Licensed to do business in the borough and state, if the [PERMIT OR] contract is for commercial purposes; [AND]
 - 4. Not in violation of current permits or contracts and performed satisfactorily on previous permits or contracts, if applicable[.] ; and
 - 5. In compliance with the borough code provisions with respect to tax compliance requirements.
- B. In addition to the threshold requirements for application as set out in subsection A of this section, criteria for award or selection of [PERMITS OR] contracts shall include any additional conditions or terms set out in the borough forest management plan or as established by the mayor for any specific individual sale or disposal.

SECTION 13. That KPB 17.50.060 is hereby amended as follows:

17.50.060. Over-the-counter sale of forest resources.

If no qualifying bids or proposals are received in response to requests for bids or proposals for the disposition of forest resources advertised pursuant to KPB 17.50.040, the mayor or [HIS] designee is authorized to sell such forest resources over-the-counter on the same terms and conditions as advertised except that

minimum bid, insurance, and tract size requirements where larger parcels have been through the detailed plan of operations review process may be modified as the mayor deems in the best interests of the borough. For properties of ten acres or less for which there are no qualifying bids or proposals, the mayor is authorized to open the properties for personal use timber disposal pursuant to KPB 17.50.030(A)(1) and (2).

SECTION 14. That this ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 4TH DAY OF AUGUST, 2009.



Milli Martin, Assembly President

ATTEST:



Johni Blankenship, Borough Clerk



Yes: Fischer, Knopp, Long, Pierce, Smalley, Smith, Sprague, Superman, Martin
No: None
Absent: None