



## **KENAI PENINSULA BOROUGH**

PLANNING DEPARTMENT

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**DAVID R. CAREY  
BOROUGH MAYOR**

### **MEMORANDUM**

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

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

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

**DATE:** August 12, 2009

**SUBJECT:** Ordinance 2009-42; Authorizing the Mayor to enter into an agreement to transfer artifacts to the Native Village of Tyonek and to authorize the mayor to execute the Programmatic Agreement under section 106 of the National Historic Preservation Act related to the Chuitna Coal Project

The Planning Commission reviewed the subject ordinance during their regularly scheduled August 10, 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

Mr. Best introduced Mr. Bruce Richards, Land Management Project Manager for the Ladd Project. He presented the staff overview on this ordinance for recommendation to the Assembly.

1. Ordinance 2009-42; Authorizing the Mayor the enter into an agreement to transfer artifacts to the Native Village of Tyonek and to authorize the mayor to execute the Programmatic Agreement under section 106 of the National Historic Preservation Act related to the Chuitna Coal Project

Staff Report given by Bruce Richards

PC Meeting: 8/10/09

In compliance with federal permitting regulations and the National Historic Preservation Act, archeological and cultural field studies were conducted on borough land in the Ladd Landing area. These studies identified just under 5,000 of Dena'ina cultural artifacts that have been discovered. As the landowner, the Kenai Peninsula Borough (KPB) is also the owner of the artifacts. Completed studies indicate the Native Village of Tyonek has the most immediate cultural and religious ties to the Dena'ina artifacts which date back to the early 1500's.

A Programmatic Agreement developed between state and federal agencies, PacRim Coal, KPB, Native governments and other stakeholders has identified processes to avoid, minimize, and mitigate any disturbance of historic properties.

This ordinance would authorize the Mayor to enter into an agreement to transfer the artifacts severed from KPB-owned lands related to the Chuitna Coal Project to the Native Village of Tyonek. The ownership transfer would occur upon delivery of artifacts to the University of Alaska Fairbanks Museum.

Additionally, this ordinance would authorize the Mayor to execute the Programmatic Agreement that has been drafted under Section 106 of the National Historic Preservation Act related to the Chuitna Coal Project.

END OF STAFF REPORT

Chairman Bryson read the rules by which public testimony was taken.

Chairman Bryson opened the meeting for public comment noting no members of the public were present. Seeing and hearing no one wishing to speak, Chairman Bryson closed the public comment period and opened discussion among the Commission.

**MOTION:** Commissioner McClure moved, seconded by Commissioner Carluccio to recommend enactment of Ordinance 2009-42.

Chairman Bryson asked what the procedure would be if, for instance, Captain Cook's lifeboat was found. Mr. Richards replied there was not directly any agreement at this point. He thought that could be discussed when they begin the final talks with the Native Village of Tyonek. Chairman Bryson thought the items found were through trade.

Mr. Richards stated there were 77 artifacts that were radiocarbon data. The interesting part is that these house pits that were discovered were used in the early 1500's. There were other pieces of artifacts from these same house pits that may have been 150-200 years old which shows that people kept coming back to them. They have found multiple different timeframes where people had occupied the house pits. He believed the items being discussed were objects of trade. Mr. Richards was not anticipating any more discoveries. He stated the project was moved across the road where the transport terminal for Ladd Landing was as a result of these discoveries. The whole operation was moved across Pan Am Road which is still Borough property.

Commissioner Foster asked if someone from the Tyonek Tribe was working on the project so that if something was found then it was not buried or passed over. Mr. Richards replied the enforcement of the Programmatic Agreement was jointly held by the Army Corp of Engineers, the Environmental Protection

Agency and the State of Alaska Division of Mining who will be on site.

Commissioner Carluccio stated the City of Seldovia was in the process of redoing the water and sewer lines. They had to have an archeologist on site as they were digging up the ground. There was one spot where they found items so they had to treat that area very carefully. She asked what would happen if the names of the individuals changed that were listed on the agreement. Mr. Richards stated the programmatic agreement was in draft form at this point and many names have changed already. All the changes are in the margin which was not printed on the form. He stated all the names will be changed on the final agreement.

There being no further discussion or comments, the commissioner 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 ABSENT	PETERSEN YES	TAURIAINEN YES	11 YES 2 ABSENT

Mr. Richards clarified the document book listing the artifacts was confidential information because it showed the locations of the findings. The book will remain in the possession of Land Management and is not for public distribution.

**AGENDA ITEM F. PUBLIC HEARINGS**

- Ordinance 2009-45; Authorizing the Borough to Enter into a Supplemental Cooperative Agreement with the Natural Resources Conservation Service Regarding the Old Mill Subdivision Buyout Program Located in the Seward Area

Staff Report given by Max Best

PC Meeting: 8/10/09

In September 2008, the Assembly passed an ordinance that appropriated a grant of \$1,369,125 that required a 25% local match of \$456,375 for conducting a voluntary buyout in the Seward area. This is through the Natural Resource Conservation Service (NRCS) administered by the Emergency Watershed Protection program on state, tribal and private lands by providing technical and financial assistance to local sponsoring authorities.

This ordinance presents for assembly consideration and approval a supplement to the cooperative agreement approved in September 2008 regarding the proposed buyout of certain properties in the Old Mill Subdivision located in the Seward vicinity. The Old Mill Subdivision has repeatedly been flooded over the years causing extensive damage to structure and property. The agreement is for the purpose of restoring and enhancing the floodplain's functions and values while helping landowners relocate to avoid future damages. The supplemental agreement spells out the process including notifying the eligible property owners and public, holding a public meeting to discuss the project and assist the property owners in obtaining the appropriate paperwork, ensuring that the subject property is appropriate for acquisition by conducting Phase 1 and possibly Phase 2 (hazardous material assessments), and clarifying that the purchases would be for fair market value. This is a voluntary program so those wishing to sell their properties would have a certain amount of time to submit application for sale and through criteria set up by NCRS and the Borough who would apply the criteria to determine which properties the Borough can acquire and minimize flood damage. After the properties are acquired there would be conservation easements put on the property so that no new buildings could be constructed. The old buildings would be demolished and wells would be abated per statutory requirements as well as septic systems. Most of the match money would be utilized to remove any infrastructure off the property.

The borough would then be the owner of the property but would convey to the NRCS an easement preserving the floodplain attributes but allowing the borough to have limited use of the properties as the underlying owner.