

Introduced Wiley
Date: 09/02/97
Action: Defeated
Vote: 4 Yes, 5 No

**KENAI PENINSULA BOROUGH
RESOLUTION 97-062**

**A RESOLUTION AUTHORIZING THE ADMINISTRATION TO
DETERMINE DAMAGES AND MOVE FOR FINAL JUDGMENT
IN THE COOPER LANDING EJECTMENT ACTIONS**

- WHEREAS,** in Kenai Peninsula Borough vs. Edward D. Martin, et al., Case No. 3KN-95-759, the Borough sought to eject the defendant from a structure he had built on a mining claim and to have that structure removed; and
- WHEREAS,** in that case the borough administration obtained two orders for partial summary judgment and an order of ejectment; and
- WHEREAS,** the administration has not yet filed for final judgment in that case because it does not yet know its damages, which amount it will incorporate in the motion for final judgment; and
- WHEREAS,** until a final judgment is issued, the defendant cannot file an appeal; and
- WHEREAS,** the defendant has stated he intends to appeal on the ground that, among other possibilities, he is entitled to have a structure on the mining claim and live in it because as a resident of the State of Alaska he is a beneficiary of a trust, the corpus of which is alleged to include the property upon which he has asserted a mining claim; and
- WHEREAS,** to support the trust assertion and resulting claimed entitlement, it appears the defendant relies upon AS 38.05.502, adopted by initiative in 1982, which states in part that: "all land in the state and all minerals not previously appropriated are the exclusive property of the people of the State and the State holds title to the land and minerals in trust for the people of the State."; and
- WHEREAS,** to further support this assertion, it appears the defendant relies upon Public Law 85-508 (July 7, 1958), better known as the Alaska Statehood Act, which in Sec. 6(I) requires the State to reserve all mineral rights out of any conveyance of lands received pursuant to the Statehood Act; and
- WHEREAS,** to further support this assertion, it appears the defendant relies upon AS 38.05.125 which provides in part: "(a) Each contract for the sale, lease or grant of state land, and

each deed to state land, properties or interest in state land, ... is subject to the following reservations: "The party of the first part, Alaska, hereby expressly saves, excepts and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals, [etc.] ... and to occupy as much of said land as may be necessary or convenient for such purposes ..."

WHEREAS, the defendant has alleged other grounds upon which he would appear to rely in support of his apparent assertion that a trust has been created which includes his mining claim, and that as a beneficiary of the trust he is entitled to have and live in a structure upon the mining claim; and

WHEREAS, the administration is issuing a request for proposals to determine the cost of removing all structures on the mining claims and then will proceed to move for final judgment;

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

SECTION 1. That the administration is hereby authorized and requested to proceed expeditiously to determine its damages and move for final judgment in the above case.

SECTION 2. That this resolution shall take effect immediately upon its adoption.

DEFEATED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 2ND DAY OF SEPTEMBER, 1997.

Jack Brown, Assembly President

ATTEST:

Linda Murphy, Borough Clerk