

Introduced by: Assembly  
Date: 09/04/01  
Action: Adopted as Amended  
Vote: 9 Yes, 0 No

**KENAI PENINSULA BOROUGH  
RESOLUTION 2001-096**

**A RESOLUTION STRONGLY SUPPORTING THE ADMINISTRATION'S  
EFFORTS TO OBTAIN CERTAIN BOROUGH-SELECTED LANDS FROM THE  
STATE OF ALASKA WITH NO ENCUMBRANCES OR CONDITIONS  
ATTACHED**

- WHEREAS,** on June 30, 2000 the Kenai Peninsula Borough, in good faith, settled its appeal of the State of Alaska Kenai Area Plan pursuant to a Settlement Agreement; and
- WHEREAS,** the settlement was based in part upon the understanding that vacant, unappropriated and unreserved lands following adoption of the Kenai Area Plan would be available for borough selection; and
- WHEREAS,** the Kenai Peninsula Borough recently submitted municipal entitlement selections for approximately 12,524 acres of state land located within the borough pursuant to Alaska Statute 29.65.010 et seq.; and
- WHEREAS,** the Department of Natural Resources Division of Mining, Land, and Water, Resource Assessment and Development Section has submitted a preliminary finding and decision in response to the municipal entitlement selection application; and
- WHEREAS,** one selection was a parcel identified as ADL 32145, Seldovia-Gray Cliffs containing approximately 12.1 acres that the Kenai Area Plan designates as a material site, which, according to the Kenai Area Plan means it is available for conveyance to municipalities after material on the site is no longer required for state purposes; and
- WHEREAS,** Alaska Statute 29.65.130 defines vacant, unappropriated and unreserved lands as including lands classified for 'material' purposes and, accordingly, such lands should be available for immediate, unconditional selection by the borough absent a specific finding that the public interest in retaining state ownership of the land outweighs the municipality's interest in obtaining the land; and
- WHEREAS,** in its preliminary decision, the state imposed upon this selection a condition requiring that a successful land exchange be completed between the borough and the Seldovia Native Association for the Seldovia landfill site prior to transferring this parcel to the Kenai Peninsula Borough; and

**WHEREAS,** the state also retains a reservation of the mineral estate including sand, stone, gravel, pumice, and common clay, as defined in AS 38.05.965(10) as to this parcel, but has provided no evidence in support of the state's need to retain this site for state purposes; and

**WHEREAS,** in support of its decision the state cites Alaska Statute 38.05.810(a), a statute which relates to conveyance of state land for public and charitable use and has no application to the municipal land entitlement program; and

**WHEREAS,** the property described as ADL 227965, Juneau Creek, was selected and the state postponed the decision on this application pending a determination by the DOTPF regarding the highway bypass right-of-way location; and

**WHEREAS,** under the Kenai Area Plan this property is designated as "settlement" and available for municipal selection, and the state lacks authority to postpone this decision as AS 29.65.050 (c) requires the state to approve or disapprove each selection for patent within nine months of its selection; and

**WHEREAS,** the property described as ADL 227937, Kustatan Ridge, is designated resource management, high value in the Kenai Area Plan which means it may not be transferred to the borough unless the management intent states otherwise; and

**WHEREAS,** while the state transferred 9,381 acres of the Kustatan Ridge to the borough, it also retained 1,620 acres which includes significant acreage and, due to its location, largely prevents the borough from accessing many desirable features of the approved selected lands, such as lakes and rivers; and

**WHEREAS,** the Kenai Peninsula Borough Assembly finds all of the above conditions and rejections are extraneous in that they exceed the scope and bounds of the Kenai Area Plan, Alaska Statutes, and the spirit and intent of the settlement agreement;

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

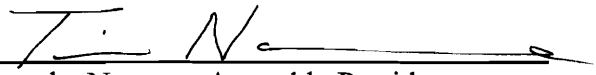
**SECTION 1.** That the Kenai Peninsula Borough Assembly unanimously objects to and rejects all of the above conditions and rejections proposed by the State of Alaska Department of Natural Resources.

**SECTION 2.** That the administration is authorized and strongly encouraged to oppose with all due diligence and all available resources, by any legal mechanisms, all of the above-described conditions on approvals, and rejections Kenai Peninsula Borough selected lands.

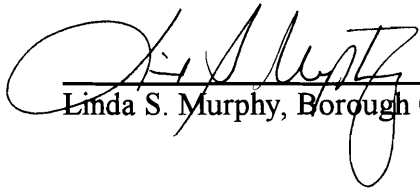
**SECTION 3.** That copies of this resolution shall be sent to Governor Tony Knowles, Senator John Torgerson, Senator Jerry Ward, Senator Georgianna Lincoln, Representative Mike Chenault, Representative Ken Lancaster, Representative Drew Scalzi, Representative Carl Morgan, and Department of Natural Resources Commissioner Pat Pourchot.

**SECTION 4.** That this resolution shall take effect immediately upon its adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 4TH DAY OF SEPTEMBER, 2001.**

  
Timothy Navarre, Assembly President

ATTEST:

  
Linda S. Murphy, Borough Clerk

