

Introduced by: Mayor
Date: 04/03/12
Hearing: 05/01/12
Action: Enacted as Amended
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2012-10**

**AN ORDINANCE AUTHORIZING A LAND EXCHANGE TO FACILITATE A JOINT
PLAN OF SUBDIVISION WITH COOK INLET REGION, INC. FOR WIDGEON
WOODS PHASE 2 SUBDIVISION**

WHEREAS, the Kenai Peninsula Borough has relocated one-half mile of Woods Drive in the Ciechanski area onto borough land; and

WHEREAS, a joint plan of subdivision has been developed in cooperation with Cook Inlet Region, Inc (CIRI) to meet land management objectives of both parties; and

WHEREAS, under the joint plan of subdivision, six lots would be created that contain both KPB and CIRI land; and

WHEREAS, it is planned for three of these lots to be owned by the KPB and the other three lots are to be owned by CIRI as an equal exchange; and

WHEREAS, the KPB Planning Commission at its regularly scheduled meeting of April 23, 2012 recommended enactment by unanimous consent;

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

SECTION 1. That the Assembly finds that exchanging property interests within Section 13 T5N, R11W S.M., State of Alaska, as further described below pursuant to KPB 17.10.100 (C) is in the best interest of the borough:

Property to be conveyed to CIRI:

Lots 3, 4, and 6 Block 4 Widgeon Woods Phase 2 Subdivision according to preliminary plat KPB No. 2008-254 subject to the recordation of said plat

Property to be conveyed to the Kenai Peninsula Borough:

Lots 1 and 5 Block 4 and Lot 7 Block 1 Widgeon Woods Phase 2 Subdivision according to preliminary plat KPB No. 2008-254 subject to the recordation of said plat

SECTION 2. That the best interest of the borough finding is based on the following facts:

- a) The exchange of property interests is necessary to reconsolidate ownership interests under a joint plan of subdivision.
- b) The joint plan of subdivision achieves contiguous right-of-way dedication for the realigned Woods Drive.
- c) The joint plan of subdivision creates marketable residential lots that can be made available for future disposal.
- d) The exchange will add value to each party's landholdings for their respective purposes.
- e) This negotiated exchange benefits both parties fairly.

SECTION 3. That the Assembly makes an exception to KPB 17.10.110 requiring notice of a disposition of land. This exception is based on the following findings of fact pursuant to KPB 17.10.230:

1. Special circumstances or conditions exist.
 - A. This ordinance authorizes a land exchange with CIRI on a non-competitive basis pursuant to KPB 17.10.100(c).
2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this chapter.
 - A. The purpose of the KPB 17.10.110 advertising requirement is to notify the public of an opportunity to purchase or lease KPB land, and advertising this sole source exchange will not serve a useful purpose.
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area.
 - A. This exchange is consistent with the land's "Residential" classification and the management intent for the Widgeon Woods Subdivision project.

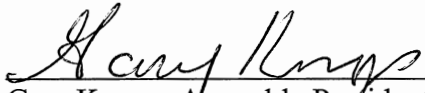
SECTION 4. That the mayor is authorized to execute the Joint Subdivision and Exchange Agreement substantially in the form of the one accompanying this ordinance and any and all documents necessary to effectuate this ordinance.

SECTION 5. That the land interest acquired by the borough through this exchange shall be classified "Residential" consistent with KPB Resolution 2007-053.

SECTION 6. That the exchange of property interests is substantially equal in value and no additional monetary consideration is required. For the borough's financial recording purposes, the value of the land interests acquired shall be noted as \$35,000 and the value of the land interests disposed shall be noted as \$35,000. Recording costs and any other closing costs shall be charged to the Land Trust Fund in the FY12 budget.


SECTION 7. That this ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 1ST DAY OF MAY, 2012.

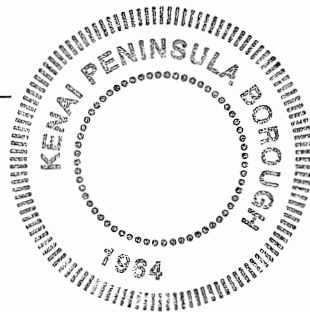


Gary Knopp, Assembly President

ATTEST:



Johni Blankenship, Borough Clerk



Yes: Haggerty, Johnson, McClure, Murphy, Pierce, Smalley, Smith, Tauriainen, Knopp
No: None
Absent: None

JOINT SUBDIVISION AND EXCHANGE AGREEMENT

This Agreement (“Agreement”) is made this _____ of _____, 2012, by and between the KENAI PENINSULA BOROUGH, an Alaska municipal corporation, whose address is 144 North Binkley Street, Soldotna, Alaska 99669 (hereinafter referred to as "KPB"), pursuant to KPB Ordinance 2012-___ enacted _____, and COOK INLET REGION, INC whose address is P.O. Box 93330, Anchorage, Alaska 99509-3330 (hereinafter referred to as “CIRI”), with CIRI and KPB collectively referred to as “the Parties” herein.

Recitals

- A. CIRI and KPB own adjoining lands within the proposed Widgeon Woods Phase II Subdivision, KPB Preliminary Plat No. 2008-2541;
- B. The proposed subdivision was designed in cooperation by the parties;
- C. Upon approval and recordation of the plat by the parties, certain lots created by the subdivision would be in joint ownership of the parties;
- D. The parties have negotiated an exchange of lands within the subdivision that would preserve the interests of each party; and
- E. The parties desire to finalize the subdivision plat and implement the land exchange.

Agreement

1. Joint Subdivision. The parties agree to execute a subdivision plat in a form identical in all material respects to Exhibit A, Widgeon Woods Phase II Subdivision, KPB Preliminary Plat No. 2008-254. KPB shall be responsible for all surveying and recording fees.
2. KPB Conveyance. KPB agrees to convey and CIRI agrees to accept all interest it has, if any, in Lots 3, 4, & 6, Block 4 Widgeon Woods Phase II Subdivision, KPB Preliminary Plat No. 2008-254 (the “KPB Property”)¹, to CIRI upon the terms and conditions set forth in this Agreement. The KPB Property is more particularly described and depicted on Exhibit A attached hereto. The KPB Property will be conveyed by quitclaim deed in a form identical in all material respects to Exhibit B attached hereto.
3. CIRI Conveyance. CIRI agrees to convey and KPB agrees to accept all surface estate interest it has, if any, excluding the reservation of mineral, sand, and gravel interests, in

¹ The parcels subject to the exchange agreement are currently legally described as being located within Tract A Widgeon Woods Phase One, Plat No. 207-84 and the NE1/4 SE1/4 of Section 13 T5N, R11W S.M., Kenai Recording District, Third Judicial District, State of Alaska.

Lots 1 and 5 Block 4 and Lot 7 Block 1 Widgeon Woods Phase II Subdivision, KPB Preliminary Plat No. 2008-254 (the "CIRI Property")¹, upon the terms and conditions set forth in this Agreement. The CIRI Property is more particularly described and depicted on Exhibit A hereto. The CIRI Property will be conveyed by quitclaim deed in a form identical in all material respects to Exhibit C attached hereto. CIRI covenants and agrees that it will not exercise its reservation of mineral, sand, and gravel interests in a manner that will interfere with residential development.

4. Consideration. The Parties agree that the exchanged property rights are substantially equivalent in value and that said exchanged property rights represent the entire compensation due each party for the respective property rights being exchanged.
5. Valid Existing Rights. The Easement will be granted and KPB Property conveyed subject to valid existing rights.
6. CIRI Subsurface Rights. KPB hereby affirms its understanding that CIRI reserves its rights to explore for and develop any and all subsurface resources underlying the CIRI Property, as more specifically described in Exhibit C attached hereto.
7. Property Taxes. CIRI acknowledges that the portion of its Alaska Native Claims Settlement Act ("ANCSA") land embraced by the Widgeon Woods Subdivision will be subject to real property tax recapture pursuant to 43 U.S.C. § 1636 (d) (5). KPB acknowledges that the portion of CIRI's ANCSA lands outside of the Widgeon Woods Subdivision shall not be deemed to be "developed" or "leased", as those terms are used in the Alaska Native Claims Settlement Act (43 U.S.C. § 1601).
8. Escrow and Closing Costs. Unless agreed otherwise, KPB and CIRI will share closing costs, if any, on an equal basis.
9. Closing. Unless otherwise agreed in writing, closing ("Closing") will occur at a time and place mutually agreed by the Parties, but in no event later than 180 days after execution of recordation of the subdivision plat. At the Closing:
 - (a) KPB shall execute and deliver to CIRI the deed to the KPB Property in the form attached as Exhibit B;
 - (b) CIRI shall execute and deliver to KPB the deed to the CIRI Property in the form attached as Exhibit C.
10. No Material Changes. As of the date of Closing, there shall have been no material adverse changes related to or connected with the property rights of either Party.
11. Possession. Possession of the KPB Property and the CIRI Property shall be delivered at time of recording, which will occur simultaneously.
12. Representations and Warranties. The KPB Property and the CIRI Property will be conveyed without warranties of any kind, express or implied, and neither CIRI nor KPB shall assume any liability whatsoever regarding the CIRI Property or KPB Property

respectively. This mutual disclaimer of warranties shall include, without limitation, title matters, the presence or absence of hazardous materials on the properties, soil conditions, water drainage, access, natural or artificial hazards that may exist, or the merchantability, profitability or fitness of the CIRI Property or of the KPB Property for any particular purpose. The Parties will accept the conveyance respectively after having had a full opportunity to inspect the condition of the CIRI Property and the KPB Property, as well as associated title records, and having determined them suitable for the purposes addressed by this Agreement.

13. Hazardous Materials. Notwithstanding anything to the contrary herein, the Parties covenant and agree that no hazardous substances or wastes shall be located on or stored on the KPB Property or the CIRI Property, nor shall any such substance be stored, used, or disposed of on the KPB Property or the CIRI Property by either Party, their agents, employees, contractors, or invitees, between the time of execution of this Agreement and the Closing.
14. Assignments. This Agreement may not be assigned by one Party without prior written approval by the other Party.
15. Notice. All notices required or permitted to be given shall be in writing and shall be deemed given and received upon personal service or deposit in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

To CIRI: Attn: Land & Resources Dept.
Cook Inlet Region, Inc. (CIRI)
P.O. Box 93330
Anchorage, AK 99509-3330
Fax: 907-263-5559
Telephone: 907-263-5140

To KPB: Land Management
Kenai Peninsula Borough
144 North Binkley Street
Soldotna, AK 99669
Fax: 907.714.2378
Telephone: 907.714.2200

16. Miscellaneous

- a. Residential Real Property Transfers Act. The parties mutually agree that this transfer of property rights provided for herein will not be covered by the Residential Real Property Transfers Act, AS 34.70.010 et seq.
- b. Time. Time is of the essence in performance of this Agreement.
- c. Construction. This Agreement shall be deemed to have been jointly drafted by both Parties. It shall be constructed according to the fair intent of the language as a whole, not for or against any party. The interpretation and enforcement of this Agreement shall be governed by the laws of the State of Alaska. The titles of sections in this Agreement are not to be construed as limitations of definitions but are for identification purposes only.
- d. Entire Agreement. This Agreement and the documents referred to herein contain the entire Agreement of the Parties with respect to the subject matter hereof. Any changes additions or deletions hereto must be made in writing and signed by KPB

