

Introduced by:	Mayor
Date:	08/16/11
Hearing:	09/20/11
Action:	Enacted as Amended
Vote:	8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2011-31**

**AN ORDINANCE AUTHORIZING THE TSALTESHI TRAILS ASSOCIATION LEASE
TO BE AMENDED TO INCLUDE ADDITIONAL LAND ADJACENT TO SKYVIEW
HIGH SCHOOL FOR EXPANSION OF THE TSALTESHI TRAIL SYSTEM**

WHEREAS, the Tsalteshi Trails Association (TTA) manages the Tsalteshi Trail System located adjacent to the Skyview High School pursuant to a lease authorized by KPB Assembly Ordinance 99-19, Ordinance 2005-33, and 2009-51; and

WHEREAS, TTA desires to expand the trail system to include certain additional borough lands between Skyview High School and Isaak Road; and

WHEREAS, the trail expansion will be incorporated into the existing trails and will be beneficial for a wide range of public trail users and school events; and

WHEREAS, a lease amendment would allow Tsalteshi Trails Association to pursue grants to support trails improvements on these lands; and

WHEREAS, the KPB Planning Commission at its regularly scheduled meeting of September 12, 2011, recommended enactment by unanimous consent;

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

SECTION 1. That amending that certain lease dated July 13, 2000, to include an additional 52 acres, more or less, described as: that portion of the S1/2NE1/4 and that portion of the S1/2N1/2NE1/4 Section 12, T4N, R11W, S.M., Alaska lying northwest of the Sterling Highway and lying north of Isaak Road excluding Tract 1, Central Peninsula High School Subdivision Amended, to the Tsalteshi Trails Association at other than fair market value, pursuant to KPB 17.10.100(I) and 17.10.120(D) is in the best interest of the borough based on the following findings of facts:

- A. That Tsalteshi Trails Association has demonstrated the ability to effectively develop and manage multi-use trails for the benefit of the public.
- B. That expansion of trails system on the above described lands is compatible with surrounding uses, the lands "government" classification, and is beneficial to the adjacent public school use.

- C. That the expansion of trails provides numerous benefits to the health, welfare, economics and quality of life of the community and borough residents.

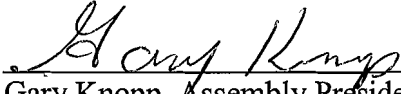
SECTION 2. The Assembly additionally makes an exception to KPB 17.10.110 (notice of disposition). This exception is based on the following findings of facts pursuant to KPB 17.10.230:

- 1. Special circumstances or conditions exist.
 - 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 lease amendment to the Tsalteshi Trails Association will not serve a useful purpose.
- 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. This exception to the notice requirement is not necessary to preserve a substantial property right, and the assembly hereby authorizes exception to that finding requirement. For this negotiated lease, the notice requirement is impractical, and compliance is not in the best interests of the borough due to the delay and unnecessary expense it would cause.
- 3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area.
 - A. The planned use for public trail system expansion is compatible with the site and surrounding uses.
 - B. The proposed disposition is advertised by publication of the ordinance in newspapers of general circulation and on the borough's Web page. Notice of the proposed disposition is also published by the planning commission agenda in newspapers of general circulation, and a public hearing is held at the planning commission level. Additional notice is not necessary to comply with the intent of KPB 17.10 or to protect the public welfare.

SECTION 3. The mayor is authorized to negotiate and execute a lease amendment substantially similar to the one attached to this ordinance to revise the legal description of the lands embraced by the lease to include those lands described in Section 1 above. All other terms and conditions of the lease agreement shall remain in full force and effect.

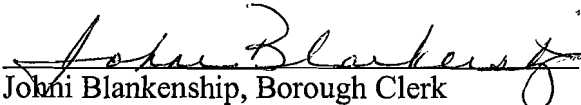
SECTION 4. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS
20TH DAY OF SEPTEMBER, 2011.



Gary Knopp, Assembly President

ATTEST:



Johni Blankenship, Borough Clerk



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

LEASE AMENDMENT

RECITALS:

WHEREAS, Ordinance 99-19 authorized the lease of certain real property owned by the Kenai Peninsula Borough (KPB) to Tsalteshi Trails Association (TTA); and

WHEREAS, the KPB (Lessor) and the TTA (Lessee) entered a lease dated July 31, 2000; and

WHEREAS, the lease was previously amended pursuant to Ordinance 2005-33 on October 17, 2005, and Ordinance 2009-51 on January 14, 2010; and

WHEREAS, TTA is in good standing with the lease as amended; and

WHEREAS, Ordinance 2011-__ authorized an amendment to the legal description of the lease to include an additional 52 acres, more or less;

The Lessor and Lessee agree to amend the lease as follows:

1. AMENDMENT OF LEGAL DESCRIPTION

The subject lease contains the following legal description:

Tract 1, Central Peninsula High School Subdivision Amended, and Government Lots 1 & 2 and the S $\frac{1}{2}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ excluding City of Soldotna Reservoir 2 Tract A and Kenai Peninsula Food Bank Subdivision and the West 40 feet of the SE $\frac{1}{4}$ of Section 1, T4N, R11W, S.M., Alaska

AND

NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ excluding Tract 1, Central Peninsula High School Subdivision Amended, Section 12, T4N, R11W, S.M., Alaska.

The legal description of the subject lease is amended by adding the following additional real property:

That portion of the S1/2NE1/4 and that portion of the S1/2N1/2NE1/4 lying northwest of the Sterling Highway and lying north of Isaak Road excluding Tract 1, Central Peninsula High School Subdivision Amended, Section 12, T4N, R11W, S.M., Alaska.

All other terms and conditions of the lease dated July 31, 2000, as amended by agreements dated October 17, 2005, and January 14, 2010, remain in full force and effect. If there is a conflict between

this amendment and the original lease agreement including the prior amendments this amendment shall be controlling.

Dated this _____ day of _____ 2011.

KENAI PENINSULA BOROUGH:

TSALTESHI TRAILS ASSOCIATION, INC.

David R. Carey, Mayor

Adam Reimer, President

Kristine Moerlein, Treasurer

ATTEST:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

Johni Blankenship, Borough Clerk

Holly B. Montague
Deputy Borough Attorney

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by David R. Carey, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for and on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by Adam Reimer, President of Tsalteshi Trails Association, Inc. on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by Kristine Moerlein, Treasurer of Tsalteshi Trails Association, Inc. on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____