

**Kenai Peninsula Borough**

# ***Economic Development Powers Criteria & Guidelines Committee***



## **Final Report and Recommendations February 4, 1999**

**Committee Members:**

**Bill Popp - Chair, Grace Merkes, Lisa Parker, Colette Thompson, Jeff Sinz**

**Advisors and Staff:**

**Jim Lawyer, John Czarnezki and Bonnie Golden**

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**Kenai Peninsula Borough**

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### **FINAL REPORT AND RECOMMENDATIONS**

**February 4, 1999**

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In February 1998, a committee was created to develop criteria and guidelines for economic development expenditures. The need for such a committee became apparent when requests were made for borough support of "economic development projects", but there was no basis for evaluating such requests. To address these concerns, the assembly adopted Resolution 98-011 establishing the Economic Development Powers Criteria and Guidelines Committee. [See Appendix A.]

The following committee members were appointed in May 1998: Grace Merkes (Assembly Member), Lisa Parker (Planning Director), Bill Popp (Assembly Member), Colette Thompson (Borough Attorney) and Jeff Sinz (Finance Director). Mayor Navarre offered staff assistance through his office. The committee members elected Bill Popp as chair of the committee. In early November, Jim Lawyer (Borough Assessor) and John Czarnezki (Borough Planner) were asked by the Chair to join the committee as advisors. The committee met a minimum of once a month, sometimes twice a month, in an effort to complete their appointed task prior to the February 1999 sunset date. All committee meetings were well attended. In fact, only once was there an absent member. At the invitation of the committee, Kurt Eriksson, Vice President, Soldotna Branch, National Bank of Alaska, attended the December meeting to provide insight on NBA's evaluation process for determining viability of funding proposals.

The organizational meeting of the committee was held on July 29, 1998, to establish committee goals and to identify projects or issues to be addressed. The initial list of topics to be reviewed, and how they related to the expenditure of borough funds for economic development, included: EDD contract; amending the borough code regarding tax exemptions for economic development; use of land bank assets; and discretionary funding expenditures. At a subsequent

meeting, it was decided not to address the EDD contract unless the administration specifically requested the committee's involvement. Before considering any of the other topics, the committee focused on defining "economic development" and how that definition would apply to expenditure of general funds, use of land bank assets, and the tax code.

**DEFINITION OF ECONOMIC DEVELOPMENT.** The committee studied extensive research materials in an effort to define "economic development". Statutes and case law do not provide any clear definition of economic development; however, the exercise of economic powers does come under legal constraints. Expenditures must be for a public purpose and must be for economic development. [See Appendix B- *Legal constraints on exercise of economic development powers.*] After reviewing municipal codes, state and federal agency guidelines, and having several intensive discussions, the following definitions were developed:

**Economic development is private sector expansion that creates permanent jobs, adds to the borough's long-term tax base, and results in enhanced economic activity and quality of life for borough residents.**

**Permanent jobs:** Jobs means full-time equivalent jobs for five continuous years, excluding construction jobs, which are tied directly to the economic development project.

**Adds to long-term tax base:** The estimated property tax revenues to be received by the borough from the project will be equal to or exceed the value of tax credits or investment made by the borough.

**Enhanced economic activity:** Increases job opportunities and otherwise encourages the economic growth of the borough, including the development of its natural resources, through the establishment and expansion of manufacturing, industrial, export, small business, and business enterprises and other facilities.

**Quality of life:** Improvement of community characteristics affecting lifestyles within the borough, based upon community standards as determined by the borough assembly with input from the community at large.

**PROJECT EVALUATION.** To be eligible for borough assistance, a project must first meet the definition of economic development. All projects meeting that definition would be eligible to receive *indirect* borough support. Projects that would have a significant impact on the borough economy and a high probability of long-term success would be eligible for *direct* borough support. "Significant economic impact" means an increase of at least \$10 million to the borough property tax base and/or the creation of at least 25 full-time permanent jobs. The project must also reduce imports or increase exports, and not take market share away from any

business operating in the borough. The criteria established for project evaluation applies only to projects whose main purpose is economic development, whether non-profit or for-profit corporations propose them. Projects with other primary purposes would not be subject to the economic development criteria.

All projects would be referred to a screening agency for evaluation and, if necessary, assistance in project development. The screening agency would review proposals for compliance with the basic definition, determine if the project qualifies for direct support, act as a provider for borough indirect services, and refer projects to other appropriate agencies. If a project is determined to be eligible for direct borough support, the screening agency would forward a written project assessment and a copy of the project's bank-ready business plan to the borough mayor. At his request, an external review committee would further assess the project's viability. The review committee would be composed of three members from the private sector. Within a reasonable amount of time, they would submit to the mayor their findings and recommendations. The mayor then determines whether or not the proposal should be submitted to the assembly for their consideration and issues a written report stating his reasons for his decision. Upon receipt of a project proposal from the mayor, the assembly would conduct a public hearing before making a final determination as to the level and form of direct support from the borough. [See *Appendix C - Project Evaluation Flow Chart.*]

Borough assistance or project support for the proposal can be in various forms, such as a lease or sale of land, property tax exemption, etc. A detailed listing of these options can be found in *Appendix D*. Use of any public asset must satisfy the public purpose doctrine - the project must primarily benefit the public at large. [See *Appendix B and Appendix F regarding public purpose doctrine.*]

**USE OF LAND BANK ASSETS.** The primary purpose of the borough land bank is to make land available for public purpose and/or sale. Kenai Peninsula Borough land is a public resource and should be regarded as a long-term asset. It is managed for the purposes of development, sale or exchange to other municipalities, putting it into private ownership, or public purpose. In addition to meeting the criteria for an economic development project, and satisfying the public purpose doctrine, other considerations should be taken into account when deciding to dispose of borough land for an economic development project. These questions include: (1) Is the proposed use compatible with the borough's comprehensive plan and overall community needs? (2) Is other borough land available to meet public needs? (3) Does the proposal compete with private land owners? (4) Is the proposed use determined to be of the highest and best use? (5) Are other parties interested in the property? (6) What are the adverse impacts, if any, on other borough resources or natural environment? (7) What are the terms of the sale or lease? (8) What are the costs that may be incurred by the borough to complete the transaction? Pursuant to KPB 17.10.070, the final determination of any land bank disposal rests with the assembly. [See *Appendix E - Suggested criteria for use of borough land for major economic development projects.*]

Many Alaskan municipalities have land trust funds and use those funds for schools, roads, and other capital projects. The borough's land trust fund was established to receive, disburse, and account for all moneys accruing to the borough in lieu of lands or from the use or sale of borough lands. Disbursement from said fund shall be for the acquisition of property and expenses related to the borough land management operations or such other purposes as the assembly may authorize. [KPB 5.20.080]. If the borough's land trust fund is to be used for economic development, a percentage of the trust should be set aside for this purpose and assurances made that the fund will receive a return on its investment. Consideration should be given to (1) authorizing a project to receive only a percentage of the funds available for appropriation; (2) ensuring the fund does not drop below an established amount; and (3) identification of the type of organizations eligible to receive funds from the account. [See *Appendix F - Proposed uses for land bank assets and land trust fund.*]

**RECOMMENDATIONS:** Based upon the review of comprehensive research materials, information and opinions provided the borough's finance, legal and planning departments, and many in-depth discussions, the committee formed the following recommendations:

1. Establish a policy of the borough to support, either indirectly or directly, responsible economic development.
2. Accept the committee's definition of "economic development" and evaluation process as a basis for determining borough support for an economic development project.
3. Adopt a project evaluation process as follows [*Appendix C*]:
  - a. Project must meet the definition of "economic development".
  - b. Evaluation of project conducted by screening agency.
  - c. Projects ineligible for direct borough support are referred to other agencies for guidance and/or assistance.
  - d. Projects seeking direct borough support must satisfy the general criteria for borough-assisted economic development projects as identified in the flow chart.
  - e. Upon satisfactory completion of evaluation process by the screening agency, project is submitted to the mayor along with a written project assessment and the project's business plan.
  - f. Proposal is submitted to a public review committee for further assessment of the project's viability. The review committee submits their findings to the mayor.
  - g. Based upon all the information available to him, the mayor determines whether or not to forward the proposal to the assembly for final review and determination.
  - h. In addition to the above, projects involving a borough land transaction must:
    - i. Satisfy the public purpose doctrine as established in the Alaska Constitution, Article IX, Section 6.
    - ii. Meet the criteria set out in paragraph 3 of the memorandum from the Legal and Planning Departments to the committee dated January 6, 1999. [*Appendix E*]
4. Enact a borough ordinance codifying the committee's recommendations.



**MEETING NOTES AND RESEARCH MATERIALS.** Meeting notes and research materials not included with this final report are available in the committee files located in the Borough Clerk's office. These materials include the meeting notes for meetings held from July 12, 1998, through January 28, 1999, and research materials as listed below.

## **RESEARCH MATERIALS**

Alaska Industrial Development and Export Authority -  
Creation and Organization (AS 44.88.010), Purpose of the Authority  
(AS 88.070).  
Alaska Statute 29.35.210(a)(8), Second Class Borough Powers  
Anchorage Municipal Code, Chapter 6.120 - Economic Expansion Fund  
Anchorage Municipal Code, Chapter 12.35 - Economic Development Property Tax  
Exemption  
City of Anchorage and Anchorage Economic Development Corporation - Contract  
for Professional Services (1998)  
Heritage Land Bank Advisory Commission - Staff report dated September 9, 1998  
Homer City Code, Chapter 1.78, Economic Development Advisory Commission  
Kenai Peninsula Borough Code, Chapter 19.30 - Exercise of Economic Development  
Power  
KPB Planning Department: Land Bank Assets - Questions, Proposals, Opportunities  
dated November 23, 1998  
KPB Assessing Department: Memorandum on proposed amendments to KPB  
5.12.116, economic development tax exemption.  
City of Kenai, Economic Development Committee Purpose  
Ketchikan Gateway Code, Chapter 10.10.005 - Economic Development Authorized;  
Scope  
Kodiak Borough Code, Chapter 2.42 - Kodiak Economic Development Commission  
Matanuska-Susitna Borough Code, Chapter 1.10.240, Economic Development Power  
Matthews Municipal Ordinances  
Economic development commission, §30.42.10  
Economic development commission, §30.128  
Business and economic development, §39.03  
Economic development incentive plan, §39.04  
City of Pekin, Illinois, Ordinance No. 1568-OA12, Creating a New Zoning  
Classification District Entitled ED-1 (Economic Development)  
Presentation by Ronald G. Seeber at the 1996 IMLA Mid-Year Seminar in  
Washington, D.C., entitled "Use of Public Funding to Attract Industry: How  
Far May a Local Government Go?"  
Rural Development Initiative Fund (RDIF) - Loan Requirements; Eligibility

**Appendices to Final Report and Recommendations  
of Economic Development Powers Criteria and Guidelines Committee**

| <b><u>APPENDIX</u></b> | <b><u>TITLE</u></b>  |
|------------------------|--|
| Appendix A             | KPB Resolution 98-011 Establishing a Committee to Develop Criteria and Guidelines for Exercising Economic Development Powers, adopted February 17, 1998                            |
| Appendix B             | Legal Constraints Regarding the Exercise of Economic Development Powers - Memorandum to the committee from Borough Attorney dated August 27, 1998                                  |
| Appendix C             | Project Evaluation Flow Chart depicting process for proposals to be reviewed and considered for Borough support  |
| Appendix D             | Economic Development Options - Memorandum to the committee from Borough Attorney and Finance Director dated October 20, 1998   |
| Appendix E             | Suggested Criteria for Use of Borough Land for Major Economic Development Projects - Memorandum to the committee from Borough Attorney and Planning Director dated January 6, 1999 |
| Appendix F             | Kenai Peninsula Borough Land Bank - Memorandum to the committee from Borough Planning Director dated September 28, 1998  |

# APPENDIX

## A



Introduced

Merkes, Home

Date:

February 17, 1998

Action:

Amended, Adopted

Vote:

7 Yes, 2 No

**KENAI PENINSULA BOROUGH  
RESOLUTION 98-011**

**A RESOLUTION ESTABLISHING A COMMITTEE TO DEVELOP CRITERIA AND  
GUIDELINES FOR EXERCISING ECONOMIC DEVELOPMENT POWERS**

**WHEREAS**, in Ordinance 97-01, the Kenai Peninsula Borough adopted economic development powers in the area of the borough outside the cities; and

**WHEREAS**, there are no criteria or guidelines established for exercising these powers; and

**WHEREAS**, the borough has received a request for support by the North Pacific Volcano Learning Center with the stated justification that it will provide economic development and the assembly anticipates that many other such requests may be received;

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

**SECTION 1.** That the Assembly President and Mayor shall appoint a committee comprised of two Assembly Members, the Finance Director, the Planning Director and the Borough Attorney, or appropriate representatives, to develop proposed criteria and guidelines for economic development expenditures.

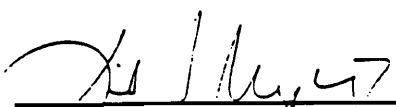
**SECTION 2.** That the committee shall conduct numerous public hearings, as it deems appropriate, to assist it in developing these guidelines and criteria.

**SECTION 3.** That within six months of the effective date of this resolution, the committee shall present the proposed criteria and guidelines to the assembly for approval.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 17TH DAY OF FEBRUARY, 1998.**

  
\_\_\_\_\_  
Jack Brown, Assembly President

ATTEST:

  
\_\_\_\_\_  
Linda S. Murphy, Borough Clerk


# APPENDIX B

**MEMORANDUM  
KENAI PENINSULA BOROUGH  
LEGAL DEPARTMENT**

144 N. Binkley Street  
Soldotna, Alaska 99669

Tel. (907) 262-8609  
Fax (907) 262-8686

**TO:** Members, Economic Development Task Force

**FROM:**  Colette G. Thompson  
Borough Attorney

**DATE:** August 27, 1998

**SUBJECT:** Legal constraints regarding the exercise of economic development powers

This memorandum summarizes some legal constraints imposed on the exercise of economic powers by the Kenai Peninsula Borough. Briefly, there are two primary legal constraints on the exercise of this power: (1) Any expenditure must satisfy the constitutional requirement that any expenditure of public funds or property be for a public purpose; and (2) there must be a reasonable basis in fact to conclude that the project is for economic development. Other issues may arise depending upon the type of project and the scope of borough involvement. For example, if it is to be financed with general obligation bonds then voter approval of the bond issue is also required. Following is a more detailed discussion of the two primary constraints.

**1. Public Purpose or Loan of Credit.**

One primary constraint on exercising economic development power is that the expenditure of any funds or property by the borough must satisfy the constitutional "public purpose" requirement:

**"Public purpose.** No tax shall be levied, or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose." Alaska Const. Art. IX, §6.

The term "public purpose" has not been clearly defined in Alaska. In *DeArmond v. Alaska State Development Corporation*, 376 P.2d 717 (Alaska 1962) the Alaska supreme court stated:

"We believe that it would be a disservice to future generations for this court to attempt to define it. It is a concept which will change as changing conditions create changing public needs. Whether a public purpose is being served must be decided as each case arises and in light of the particular facts and circumstances of each case." *Id.* at 721.

To determine whether a particular project satisfies the public purpose requirement, courts

examine the entire factual and governmental context. Generally, funds are considered to be used for a public purpose where the general public will primarily benefit from the expenditure, and the private advantage is only incidental to carrying out the public purpose. See *DeArmond v. Alaska State Dev. Corp.*, 376 P.2d 717 (Alaska 1962).<sup>1</sup>

In discussing whether a project had a legitimate public purpose, the Alaska supreme court in *Wright v. City of Palmer*, 468 P.2d 326 (Alaska 1970), concluded that a general obligation bond issued for the purpose of acquiring property which would be leased to a private corporation was valid. *Wright* noted there was significant evidence demonstrating a serious pattern of economic problems which the City of Palmer was seeking to overcome.<sup>2</sup> The proposed project was to acquire and construct a manufacturing and processing facility to be used by Huskey Manufacturing Corporation which manufactures and assembles industrial housing, low cost residential housing and mobile homes. As a part of the agreement, the corporation would lease and occupy the building to be constructed for a period of not less than 20 years, to keep its raw materials within the city limits in order to render it subject to personal property taxes, to employ not less than 80 percent of its personnel from the Palmer area, to maintain training facilities for its employees, and to maintain on-the-job training programs under federal and state auspices. It also agreed to use the city's public utilities and that the paved parking lot adjacent to the building would be available at all reasonable times for public recreational uses. The court felt that the proposal satisfied the public purpose doctrine because, although the benefits of the proposal may be enjoyed more by some individuals than others, the collective advantage to the community at large was readily foreseeable. Although there was some risk involved in the venture, the plan did not violate the requirement that public funds and assets be used for a public purpose.

In discussing whether or not the project fits within the public purpose doctrine, the court in

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<sup>1</sup>This does not mean that public funds may not be spent on a facilities with private uses. See *Western Alaska Building & Construction Trades Council v. Inn-vestment Associates of Alaska*, 909 P.2d 330 n. 8, (Alaska 1996) ("Zickuhr, 53 Ill.Dec. at 69, 423 N.E.2d at 261 "While it seems clear that the city ... will publicly benefit from the employment opportunities afforded by the presence of the new warehouse, and while it is also clear that the provisions of the Bond Act are for a public purpose and benefit, it is just as clear that the actual use of the project is private in nature."); *Erie*, 465 N.Y.S.2d at 306 ("The public purpose of the financing scheme must not be confused with the purely private purpose of the venture itself, its structure and its operation.").

<sup>2</sup>This included evidence that, over the course of the last several years, the economic growth in Palmer had been nil and that there was virtually no manufacturing in the City of Palmer. There was also evidence presented describing the elimination of previously existing industry and the economic result of those changes. Also, Palmer had been declared a depressed area by the federal government. There was information provided that estimated the proposed project, when fully operational, would employ approximately 65 to 110 persons on a full-time basis.

*Wright* stated:

The test which we must apply is whether than plan is so unreasonable as to transgress the limitations of our constitution. If the plan of action were plainly foolhardy, or if it amounted to the pledging of credit or the giving away of assets without any corresponding discernible benefit, we might be persuaded to strike down the plan.

Thus, in determining whether a public purpose is served, the courts will find a public purpose if there is a reasonable basis for concluding that the community at large would receive a discernible benefit from the transaction and the plan is not simply foolhardy. Evidence showing a need for economic development also appeared to influence the court in *Wright*.

An additional constraint within the public purpose constitutional provision is that the borough may not lend its credit except for a public purpose. In furtherance of this, Alaska Statute 37.10.085 provides in part:

**Financial aid to corporations by state or political subdivision.** (a) Except as provided in (c) or (d) of this section, neither the state nor political subdivision of the state may

- (1) make a subscription to the capital stock of a corporation;
- (2) lend its credit for the use of a corporation; or
- (3) borrow money for the use of a corporation.

(b) This section does not apply to debt issued by a municipality or a municipal joint insurance arrangement under AS 21.76.120.

(c) To the extent that the political subdivision is authorized to acquire, own, or operate a public utility, it may exercise that power by acquiring and owning, in a manner consistent with law, all of the capital stock of a corporation that owns or operates a public utility. The political subdivision's authority with respect to lending its credit and borrowing money for the use of the corporation is the same as if the political subdivision had acquired the assets of the corporation.

(d) This section does not apply to

- (1) the financial assistance program established under > AS 37.17.200 - > 37.17.390; or
- (2) investments of the assets of the public employees' retirement system established under AS 39.35 or the teachers' retirement system established under AS 14.25, to the extent the investments are made in the stocks, bonds, and other securities of

- (A) a corporation licensed under AS 10.13; or
- (B) a corporation attempting to become licensed under AS 10.13 if the corporation intends to use the

proceeds to fulfill the tasks necessary to become  
licensed under AS 10.13.

AS 37.10.085 prohibits the municipal corporation from lending its credit to a private corporation. To date, the supreme court has not specifically ruled on what constitutes lending of credit by a municipality. The court in *Wright* only lightly touched on the issue of public credit and concluded that because the city was neither handing the borrowed money directly to a corporation nor pledging its taxing powers to guarantee the private corporation's indebtedness, the project was legitimate. The borough should evaluate any proposal to ensure it does not run afoul of this limitation.

It is important to note that the prohibitions in AS 37.10.085 do not apply to the issuance of revenue bonds. AS 29.47.260. The borough is authorized to issue revenue bonds for a public enterprise or a public corporation of the borough, or to finance the purchase of residential mortgage loans. However, revenue bonds are only secured by the revenue of the public enterprise or corporation, or the principal and interest of the mortgage loans and other pledged amounts. They are not a general obligation of the borough. AS 29.47.240.

## **2. The exercise of economic development powers.**

The Kenai Peninsula Borough is a second class general law borough. As such, it may by ordinance provide for economic development on a non-areawide basis. AS 29.35.210(a). The borough adopted economic development powers on a nonareawide basis in KPB 19.30. Economic development powers are liberally construed, AS 29.35.400, and unless otherwise limited, the borough "...may exercise all powers and functions *necessarily or fairly implied in or incident to* the purpose of [economic development]". AS 29.35.410.

Statutes and case law do not provide any clear definition of economic development. It is generally understood that economic development means a project that the borough could show would improve the economic health of the municipality. In order to show that the borough is exercising its economic development power, as opposed to another power, there needs to be some rational basis for concluding that the proposed project is reasonably likely to improve the local economy. Specific facts showing the potential economic benefit of any proposal to the municipality would significantly strengthen the reasonableness of any conclusion that a project comports with the economic development power of the borough. Factors that the court examined in the *Wright* case, above, may serve as examples of the type of information needed to show that a project is an economic development project.

It should also be noted that the borough also has the power, "subject to other provisions of law," to "acquire, manage, control, use, and dispose of real and personal property, whether this property is situated inside or outside the municipal boundaries." AS 29.35.010(8). In my opinion, projects involving the purchase and sale of land must still qualify as an exercise of the borough's economic development powers. I do not believe that the borough could, under the

Memo re economic development

August 27, 1998

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guise of acquiring and disposing of real property, exercise a power that it otherwise lacks. Thus, the borough project must still qualify as an exercise of the borough's economic development powers.

In conclusion, at a minimum, any proposed project must satisfy both the public purpose doctrine by demonstrating that it primarily benefits the public and be a legitimate exercise of the borough's economic development powers. Restrictions on the expenditure of borough funds or use of borough assets ensuring continued public benefit may satisfy the public purpose requirement, and the borough should be cautious to avoid lending funds in violation of the law. Facts and evidence showing economic feasibility of the project and how it would economically benefit the borough are needed to show that the project is a legitimate exercise of the borough's power to provide for economic development. Each project should be separately evaluated in light of these restrictions, and to ascertain whether other limitations may apply.



# APPENDIX C

# PROPOSED ECONOMIC DEVELOPMENT PROJECT OR IDEA

KPB

## DIRECT SUPPORT

### Screening Organization (EDD)

PROJECT REJECTED

## INDIRECT SUPPORT

Refer To  
Appropriate  
External  
Agency

EDD

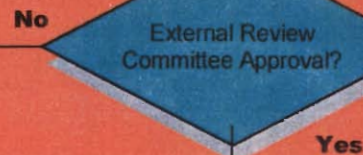
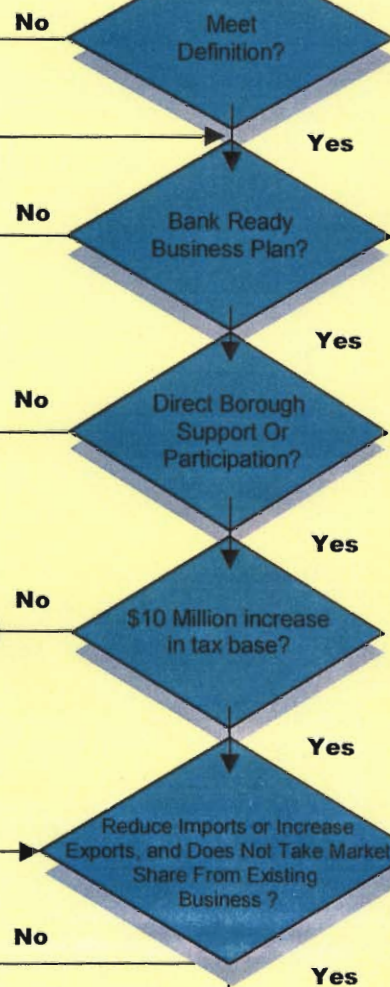
RCD

Other

### Office of the Mayor

### Assembly

Borough Land, Taxes, Other



# APPENDIX D



**MEMORANDUM  
KENAI PENINSULA BOROUGH  
LEGAL DEPARTMENT**

144 N. Binkley  
Soldotna, AK 99669

Phone: (907) 262-8609

FAX: (907) 262-8686

**To:** Bill Popp, Chairperson  
Members, Economic Development Task Force

**From:**  Colette Thompson, Borough Attorney  
 Jeff Sinz, Finance Director

**Date:** October 20, 1998

**Subject:** Economic Development Options

This memorandum responds to the request that we generate a list of economic development options available under the existing powers of this borough. Following the flow chart developed by Jeff, a copy of which is attached, we focused on options available for supporting large projects, which appears to be the focus of this group. Following are the primary options we developed as a starting point for discussion:

1. Land:
  - a. Lease borough land.
  - b. Sell borough land.
  - c. Trade borough land for other land.
  - d. Transfer borough land to municipalities within the borough.
  - e. Transfer borough land to nonprofit corporations within the borough.
  - f. Develop land transfer programs designed to give incentives to certain industries to locate in the borough, including offering favorable purchase terms or tax terms as discussed below.
2. Taxes:
  - a. Economic development tax exemption.
  - b. Tax exemption for increased value of improvements primarily designed to improve aesthetic quality of land or structure, for up to 4 years. (Would need code change, and subject to limitations in AS 29.45.050(f)).
  - c. Tax exemption for increase in value of improvements to single family dwelling where purpose is to increase space for occupancy for up to 2 years. (Would need code change, and subject to limitations in AS 29.45.050(g)).
  - d. Exempt pollution control facilities for up to 5 years. (Would need voter

- approval, code change, and subject to limitations in AS 29.45.050(k).
  - e. Exempt property used in processing timber after it has been delivered to the processing site from up to 75% of taxes levied on other property in the same taxing unit. (Would need voter approval, code change, is up to 5 years, and subject to AS 29.45.050(j).
  - f. Classify as to type and increase exemption on personal property. (AS 29.45.(b)(2).
  - g. Exempt land of a non-profit organization used for agricultural purposes if rights to subdivide the land are conveyed to the state, and subject to other restrictions in AS 29.45.050(b)(1)(c).
3. Other:
- a. Bond or in-house financing of structures designed to support economic development projects.
  - b. Urban renewal projects.
  - c. Loans (May require adoption of power).
  - d. Grants (subject to legal limitations of public purpose doctrine).

# APPENDIX E

**MEMORANDUM  
KENAI PENINSULA BOROUGH  
LEGAL DEPARTMENT**

144 N. Binkley Street  
Soldotna, Alaska 99669

Tel. (907) 262-8609  
Fax (907) 262-8686

TO: Economic Development Task Force

FROM: ~~Colette G. Thompson~~, Borough Attorney  
~~Lisa Parker~~, Planning Director

DATE: January 6, 1999

SUBJECT: Suggested criteria for use of borough land for major economic development projects

This memorandum responds to the task force request that we suggest criteria for the use of borough land in economic development projects. The task force has discussed the use of borough land both at fair market value and at less than fair market value for economic development purposes. Following are some initial considerations and criteria for your review.

1. If land is to be provided, the proposed use must first satisfy the public purpose doctrine.<sup>1</sup> Briefly, the constitutional public purpose requirement is as follows:

**Public purpose.** No tax shall be levied, or appropriation of money made, or public property transferred, nor shall the public credit be used, except for a public purpose. Alaska Const. Art. IX, Sec. 6.

Generally, the courts will find that the public purpose doctrine is satisfied if there is a reasonable basis for concluding that the community at large would receive a discernable benefit from the transaction and the plan is not simply foolhardy.<sup>2</sup> The general public must primarily benefit from the expenditure and any private advantage must be only incidental to carrying out the public purpose.<sup>3</sup> Generally, the decision to transfer the land will probably meet this requirement if the project satisfies the task force's definition of economic development. However, if we consider providing land at less than fair market value, the act of providing public assets for no direct return must also satisfy the public purpose doctrine.

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<sup>1</sup>Please see my memo of August 27, 1998 which discusses the public purpose doctrine in more detail.

<sup>2</sup>See, e.g., *Wright v. City of Palmer*, 468 P.2d 326 (Alaska 1970).

<sup>3</sup>*DeArmond v. Alaska State Development Corporation*, 376 P.2d 717 (Alaska 1962).




2. The project must also satisfy the general criteria for borough-assisted economic development projects as established in the flow chart.
3. Following are some proposed criteria for considering borough property:
  - A. Compatibility of the proposed use with the comprehensive plan and overall community needs.
  - B. Compatibility of the proposed use with adjacent and surrounding land uses.
  - C. Is other borough land available in the nearby community? If not, is there adequate public land available to provide foreseeable public needs such as utilities, schools, emergency centers, solid waste disposal sites, etc.
  - D. Is other private land available or that would be appropriate for the proposed use? If so, would this use inappropriately compete with private land owners?
  - E. Examine the highest and best use of this parcel compared with the proposed use of the parcel.
  - F. Determine whether other parties are likely to be interested in the same parcel of land. If so, consider the best option available for the borough and the community.
  - G. Consider whether the project would have an adverse impact on other borough resources or the natural environment.
  - H. Consider the effect of the proposed transfer on both the land bank and the land trust fund.
  - I. The proposed terms of the transfer should be evaluated with all available options considered, including sale or lease at fair market value, sale or lease at less than fair market value, favorable initial terms to help with startup financing to be repaid later.
  - J. Consider borough land costs associated with the proposal such as payment of surveying, platting, appraisal, and closing costs.

# APPENDIX

## F

To: Economic Development Powers Committee Members

From:  Lisa Parker, Planning Director

Date: September 28, 1998

Subj.: Kenai Peninsula Borough Land Bank

The Economic Development Powers Committee has requested information to assist in establishing guidelines for the management and dispersion of the Kenai Peninsula Borough's Land Bank and Land Trust Fund. In addition to the information outlined below I have attached relevant portions of borough codes from Fairbanks North Star and Matanuska Susitna Boroughs.

The thoughts expressed below are given to stimulate discussion with respect to the use of the land bank and land trust fund.

KPB17.10.050. Land Bank-Establishment-Purpose.

There is hereby established a land bank for the purpose of holding appropriately classified lands or interests in lands or resources which have been requested for sale or lease. Said lands shall be held in the land bank until authorized for disposition pursuant to Section 17.10.070.

In many cases, local governments acquire, manage, control, use and dispose of real property. Acquisition can be by purchase, lease, donation, partial donation, dedication, exchange, eminent domain or other means permitted by law.

Land can be managed to:

1. Exemplify good land and water stewardship practices.
2. Minimize adverse environmental impact.
3. Maximize revenue consistent with the borough's financial goals.
4. Implement a land and/or resource management plan.
5. Made available for development.
6. Be utilized for siting of public facilities.

The Kenai Peninsula Borough land is a public asset and should be managed as a long-term asset. Prior to utilizing borough land for economic development the following questions and/or criteria should be answered.

1. What is the purpose of the project?
2. Will the project generate jobs?
3. What other requests will be made of the borough? I.e. road construction, utility expansion, new schools, other land acquisitions?

4. Is the borough competing with other private landowners by providing the land?
5. Is the land being offered competitively or at other than fair market value?
6. Does the overall purpose fit with the borough's long term goals and objectives?
7. What are the overall benefits to the borough?
8. Will the project have an adverse impact on other borough resources or the natural environment?

KPB 5.20.080. Land Trust Fund.

The land trust fund is established to receive, disburse, and account for all moneys accruing to the borough in lieu of lands or from the use or sale of lands. Disbursement from said fund shall be for the acquisition of property and expenses related to the borough land management operations or such other purposes as the assembly may authorize.

Other borough's with land trust funds use the fund for capital improvements (schools, trails, roads, streets, buildings, property acquisition) and administration of the program.

If the borough is to use the land trust fund for economic development projects then the fund should receive a return on its investment. Similar questions, which were identified above with respect to utilization of land, should also be considered for disbursement from the land trust fund.

Further, if the land trust fund is to be used for economic development projects then consideration should be given to: (1) only authorizing a project to receive a percentage of the funds available for appropriation; (2) ensuring the fund does not drop below an established amount; and (3) identification of the type of organization(s) available to receive funds from the account.

Other consideration should be given to having land management personnel funded through general fund appropriations.

The fund has been used to acquire property for expansion of government facilities (Poppy Lane, school sites) but not for construction of public facilities. It is recommended if the fund is used for public facility construction that it be on a percentage match basis not full funding.

|                |   |
|----------------|---|
| Introduced by: | Popp, Merkes                              |
| Date:          | 03/02/99                                  |
| Hearing:       | 04/06/99                                  |
| Action:        | <i>Passed by unanimous consent 4-6-99</i> |
| Vote:          |   |

**KENAI PENINSULA BOROUGH****ORDINANCE 99-14****AN ORDINANCE ENACTING PROVISIONS IN KPB CHAPTER 19.30 ESTABLISHING PROCEDURES, CRITERIA AND GUIDELINES FOR THE EXERCISE OF ECONOMIC DEVELOPMENT POWERS**

**WHEREAS**, in Ordinance 97-01, the Kenai Peninsula Borough adopted economic development powers in the area of the borough outside the cities but did not establish any criteria or guidelines for exercising such powers; and

**WHEREAS**, in Resolution 98-011, the assembly established a committee to develop criteria and guidelines for exercising economic development powers; and

**WHEREAS**, during the July 14, 1998, assembly meeting, the assembly passed a motion to extend the reporting date for the committee to February 16, 1999; and

**WHEREAS**, the committee has filed a report with the assembly including proposed procedures, guidelines, and criteria for support of economic development projects within the borough; and

**WHEREAS**, the borough contracts with the Economic Development District, Inc. to provide economic development services on a nonareawide basis and planning services on an areawide basis; and

**WHEREAS**, Goal 2.1 of the Comprehensive Plan is "[t]o increase employment and investment in the Kenai Peninsula Borough," with supporting objectives and actions including investigating and recommending new public policies and programs which will facilitate economic development; and

**WHEREAS**, the borough's best interests would be served by adopting such procedures, guidelines, and criteria to provide a systematic mechanism for responding to economic development proposals for borough support;

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

**SECTION 1.** That existing KPB 19.30. Exercise of economic development power, shall be renumbered as KPB 19.30.010, and the following new provisions shall be enacted:

**19.30.020. Purpose and scope.**

The purpose of this chapter is to provide criteria, guidelines, and procedures for borough support of responsible economic development projects on a nonareawide basis. Nothing in this chapter shall be construed to create any right whatsoever to borough support of any proposal, and the borough reserves the right to reject any and all such proposals. Consistent with the above, this ordinance does not apply to borough consideration of projects with primary purposes other than economic development; consideration of such projects shall be within the scope of other applicable borough powers.

**19.30.030. Policy.**

It is the policy of the Kenai Peninsula Borough to support responsible economic development within the borough, subject to applicable legal and fiscal constraints. The borough will provide indirect support to all economic development projects, as defined in this chapter, by establishing policies and regulations that facilitate business activity. The borough may also provide direct support for major economic development projects determined to have a significant impact on the borough economy and a high probability of long-term success.

**19.30.040. Initial evaluation procedure and criteria.**

All proposals for borough support of an economic development project shall initially be evaluated by an organization as may be designated by the mayor ("screening agency"). Such initial evaluation shall identify whether the project satisfies the following minimum requirements for direct borough support under this chapter:

1. The project must provide "economic development" as defined in this chapter;
2. The project must be supported by a "bank-ready business plan" as defined in this chapter;
3. The project must be situated in the area of the borough outside of the cities; and
4. The business plan must demonstrate that the proposed borough participation in the project as planned will
  - a. provide either a \$10 million increase in the borough property tax base, or a minimum of 25 permanent full-time jobs in the area of the borough outside the cities; and
  - b. either reduce imports or increase exports from the borough; and
  - c. not take market share from existing businesses within the borough.
5. The project will meet the above criteria within a reasonable time period as defined by standard business practices.

The burden is on the project applicant throughout this process to demonstrate that the project, as



proposed, satisfies the requirements of this chapter.

Projects satisfying all five of the above criteria shall be referred to the office of the borough mayor for evaluation, along with a written analysis prepared by the screening agency. Projects not satisfying all five of the above criteria shall not be eligible for direct borough support under this chapter, and may be referred to an agency other than the borough for assistance.

#### **19.30.050. Evaluation by borough mayor.**

a. Evaluation Committee. The mayor shall appoint, and the assembly confirm, a standing committee of ten persons from the private sector with business and technical expertise, from which three persons shall be selected and appointed by the mayor to evaluate each economic development project referred to the borough by the screening agency. The three persons shall assess the project's viability and submit a written report to the mayor including written findings, and recommending the level and form of direct borough support, if any. The office of the mayor shall provide administrative support for any such committee.

b. Fee: Prior to borough evaluation of a project under this paragraph, the applicant may be required to submit an application fee, as may be established by assembly resolution, to help defray administrative costs.

c. Procedure: Based upon the recommendations of this committee and such other information as the mayor considers appropriate, the mayor shall issue a written report recommending that the proposal either be considered by the assembly for direct borough support or that it not be presented to the assembly. This report shall be presented to the assembly within sixty days of the borough mayor's receipt of a referred proposal, and fee when applicable, or by such later date as may be authorized by the assembly by motion or resolution. An ordinance setting forth the proposed direct support shall be submitted for introduction simultaneously with the report, for projects recommended for direct support.

d. Projects not recommended for direct support: Projects not recommended for direct borough support may be referred back to the screening agency for further evaluation and possible referral to any appropriate external agency other than the borough. Any such project shall not be presented to the mayor's office for reconsideration for a minimum of six months after disapproval absent significant, substantial, and compelling changes to the proposal.

#### **19.30.060. Forms of direct borough support.**

Direct support from the borough for economic development projects may include the use or transfer of borough land, tax credits, and other forms of support as approved by the assembly. Assembly approval by ordinance is required for direct borough support of an economic development project.

##### **A. Land.**

In determining whether to make borough land available for the project, and on what terms, the following criteria shall be considered:

1. Compatibility of the proposed use with the comprehensive plan and overall community needs.
2. Compatibility of the proposed use with adjacent and surrounding land uses.



3. Whether other borough land is available for the project in the nearby community. If not, whether there is adequate public land available to provide foreseeable public needs such as utilities, schools, emergency centers, solid waste disposal sites, and other foreseeable public needs.
4. Whether other private land is available that would be appropriate for the proposed use. If so, whether the proposed use would inappropriately compete with private land owners.
5. Examine the highest and best use of this parcel compared with the proposed use of the parcel.
6. Determine whether other parties are likely to be interested in the same parcel of land. If so, consider the best option available for the borough and the community.
7. The extent of any adverse impact the project may have on other borough resources or the natural environment.
8. Consider the effect of the proposal on both the land bank and the land trust fund.
9. The proposed terms of the transfer should be evaluated with all available options considered, including sale or lease at fair market value, sale or lease at less than fair market value, and favorable initial terms to help with startup financing to be repaid later.
10. Consider borough land costs associated with the proposal such as payment of surveying, platting, appraisal, and closing costs.

#### B. Tax Credits.

Tax credits available for economic development projects shall include the economic development tax exemption to the extent the project qualifies for that exemption, and any other exemptions that are allowable under state statute and borough code.

#### C. Other.

The assembly may consider other forms of direct support of qualifying economic development projects, provided that direct monetary contributions, either in the form of loans or grants, to applicants for direct borough support for economic development purposes, shall not be available through this process. This shall not be construed to prohibit access to tax exempt financing for such purposes.

### **19.30.070. Definitions.**

For purposes of this chapter, the following terms shall have the following meanings.

"Adds to long-term tax base" means an increase in the assessed valuation of taxable property in the borough.

"Bank-ready business plan" means a business plan typically required by banks for loan applicants containing, at a minimum:

- 1) a detailed description of the company and proposed project;

- 2) a detailed description of the product or service to be rendered;
- 3) a feasibility study including market opportunity, competition, trends, research and promotional strategies, management strategies including job creation, job descriptions, key personnel, and long- and short-term employment projections, detailed financial projections for the next five years;
- 4) résumés of all managerial and significant technical personnel;
- 5) financial statements of the company, including the current year and up to five previous years for any such years the company has been in business; and
- 6) an analysis of how this project qualifies for direct borough support under this chapter, and a detailed description of the requested borough support.

"Economic development" means private sector expansion that creates permanent jobs, adds to the borough's long-term tax base, and results in enhanced economic activity and quality of life for borough residents.

"Enhanced economic activity" means an activity which increases job opportunities and otherwise encourages the economic growth of the borough including the development of its natural resources through the establishment and expansion of manufacturing, industrial, export, small business, and business enterprises and other facilities.

"Enhanced quality of life" means an improvement of community characteristics affecting lifestyles within the borough, based upon community standards as determined by the borough assembly with input from the community at large.

"Permanent jobs" means full-time equivalent jobs for five continuous years excluding construction jobs which are tied directly to the economic development project.

**SECTION 2.** That this ordinance shall take effect July 1, 1999.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS \*  
DAY OF \*, 1999.**

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Ronald Wm. Drathman, Assembly President

ATTEST:

---

Linda S. Murphy, Borough Clerk

**M E M O R A N D U M**  
**KENAI PENINSULA BOROUGH**  
**LEGAL DEPARTMENT**

144 N. Binkley  
Soldotna, AK 99669

Phone: (907) 262-8609  
FAX: (907) 262-8686

**To:** Ronald Wm. Drathman, Assembly President  
Members, Kenai Peninsula Borough Assembly

**From:** Colette Thompson, Borough Attorney

**Date:** February 18, 1999

**Subject:** Ordinance 99- 14  
Economic development procedures, criteria and guidelines.

This ordinance was prepared at the request of the sponsoring assembly members and pursuant to the committee established by resolution 98-011 to develop guidelines for exercising economic development powers. If enacted, it would implement the recommendations contained in the report submitted by the committee to the assembly on February 16, 1999.

To summarize, the ordinance establishes criteria and processes for borough support of economic development projects. It is anticipated that most support would be indirect using policies and regulations, and through the use of external organizations such as the Economic Development District ("EDD"). Forms of direct support could include the use of borough lands, tax incentives, tax exempt bond financing, and other mechanisms.

The ordinance also establishes a process for considering direct borough support of certain major projects. An external agency such as the EDD will screen applicants for the borough. To be considered for direct borough support, in addition to meeting certain preliminary criteria, the business plan must show

1. Either a \$10 million increase in the property tax base or the addition of 25 full-time permanent jobs; and
2. The business will either reduce imports or increase exports; and
3. It will not take market share from existing businesses in the borough.

Businesses meeting the necessary criteria will be referred to the mayor's office, where an external review committee of three will review the project and make a recommendation to the assembly within 60 days of receipt by the mayor's office.

Introduced by: Popp, Merkes  
Date: March 2, 1999  
Hearing:  
Action:  
Vote:

**KENAI PENINSULA BOROUGH  
ORDINANCE 99- 14**

**AN ORDINANCE ENACTING PROVISIONS IN KPB CHAPTER 19.30  
ESTABLISHING PROCEDURES, CRITERIA AND GUIDELINES FOR THE  
EXERCISE OF ECONOMIC DEVELOPMENT POWERS**

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**WHEREAS**, the committee has filed a report with the assembly including proposed procedures, guidelines, and criteria for support of economic development projects within the borough; and

**WHEREAS**, the borough contracts with the Economic Development District, Inc. to provide economic development services on a nonareawide basis and planning services on an areawide basis; and

**WHEREAS**, Goal 2.1 of the Comprehensive Plan is “[t]o increase employment and investment in the Kenai Peninsula Borough”, with supporting objectives and actions including investigating and recommending new public policies and programs which will facilitate economic development; and

**WHEREAS**, the borough’s best interests would be served by adopting such procedures, guidelines, and criteria to provide a systematic mechanism for responding to economic development proposals for borough support;

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#### **19.30.030. Policy.**

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  - c. not take market share from existing businesses within the borough
- 5. The project will meet the above criteria within a reasonable time period as defined by standard business practices.**

The burden is on the project applicant throughout this process to demonstrate that the project,

as proposed, satisfies the requirements of this chapter.

Projects satisfying all five of the above criteria shall be referred to the office of the borough mayor for evaluation, along with a written analysis prepared by the screening agency. Projects not satisfying all five of the above criteria shall not be eligible for direct borough support under this chapter, and may be referred to an agency other than the borough for assistance.

#### **16.30.050. Evaluation by borough mayor.**

a. Evaluation Committee. **The mayor shall appoint, and the assembly confirm, a standing committee of ten persons from the private sector with business and technical expertise,** from which three persons shall be selected and appointed by the mayor to evaluate each economic development project referred to the borough by the screening agency. The three persons shall assess the project's viability and submit a written report to the mayor including written findings, and recommending the level and form of direct borough support, if any. The office of the mayor shall provide administrative support for any such committee. **Such committee members [shall/shall not??] be reimbursed for travel expenses on the same basis as borough employees for attendance at committee meetings and other related trips as may be authorized by the borough mayor for purposes of evaluating a referred proposal. Meetings of the committee shall be conducted in accordance with applicable provisions of the Open Meetings Act, AS 44.62.310, provided that proprietary, financial and technical matters which would, if released, provide a competitive advantage to any person or corporation engaged in similar or related activities, shall be discussed in executive session.** (Committee members: The underlined *italicized* bold text was not previously discussed. Please let me know what you would prefer here. It would save problems later to address these issues now.)

b. Fee: Prior to borough evaluation of a project under this paragraph, the applicant may be required to submit an application fee, **as may be established by assembly resolution,** to help defray administrative costs.

c. Procedure: Based upon the recommendations of this committee and such other information as the mayor considers appropriate, the mayor shall issue a written report recommending that the proposal either be considered by the assembly for direct borough support or that it not be presented to the assembly. **This report shall be presented to the assembly within sixty days of the borough mayor's receipt of a referred proposal, and fee when applicable, or by such later date as may be authorized by the assembly by motion or resolution. An ordinance setting forth the proposed direct support shall be submitted for introduction simultaneously with the report, for projects recommended for direct support.**

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### **19.30.060. Forms of direct borough support.**

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#### **A. Land.**

In determining whether to make borough land available for the project, and on what terms, the following criteria shall be considered:

1. Compatibility of the proposed use with the comprehensive plan and overall community needs.
2. Compatibility of the proposed use with adjacent and surrounding land uses.
3. Whether other borough land is available for the project in the nearby community. If not, whether there is adequate public land available to provide foreseeable public needs such as utilities, schools, emergency centers, solid waste disposal sites, and other foreseeable public needs.
4. Whether other private land is available that would be appropriate for the proposed use. If so, whether the proposed use would inappropriately compete with private land owners.
5. Examine the highest and best use of this parcel compared with the proposed use of the parcel.
6. Determine whether other parties are likely to be interested in the same parcel of land. If so, consider the best option available for the borough and the community.
7. The extent of any adverse impact the project may have on other borough resources or the natural environment.
8. Consider the effect of the proposal on both the land bank and the land trust fund.
9. The proposed terms of the transfer should be evaluated with all available options considered, including sale or lease at fair market value, sale or lease at less than fair market value, and favorable initial terms to help with startup financing to be repaid later.
10. Consider borough land costs associated with the proposal such as payment of surveying, platting, appraisal, and closing costs.



B. Tax Credits.

Tax credits available for economic development projects shall include the economic development tax exemption to the extent the project qualifies for that exemption, and any other exemptions that are allowable under state statute and borough code.

C. Other.

The assembly may consider other forms of direct support of qualifying economic development projects, provided that direct monetary contributions, either in the form of loans or grants, to applicants for direct borough support for economic development purposes, shall not be available through this process. This shall not be construed to prohibit access to tax exempt financing for such purposes.

**19.30.070. Definitions.**

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- 1) a detailed description of the company and proposed project;
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- 6) an analysis of how this project qualifies for direct borough support under this chapter, and a detailed description of the requested borough support.

“Economic development” means private sector expansion that creates permanent jobs, adds to the borough’s long-term tax base, and results in enhanced economic activity and quality of life for borough residents.

“Enhanced economic activity” means an activity which increases job opportunities and otherwise encourages the economic growth of the borough including the development of its natural resources through the establishment and expansion of manufacturing, industrial, export, small business, and business enterprises and other facilities.

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“Permanent jobs” means full-time equivalent jobs for five continuous years excluding construction jobs which are tied directly to the economic development project.

**SECTION 2.** That this ordinance shall take effect July 1, 1999.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS**  
**\_\_\_\_\_ DAY OF \_\_\_\_\_, 1999.**

\_\_\_\_\_  
Ronald Wm. Drathman, Assembly President

ATTEST:

\_\_\_\_\_  
Linda S. Murphy, Borough Clerk

Introduced by: Popp, Merkes  
Date: *March 2* February 16, 1999  
Hearing:  
Action:  
Vote:

S:\WPFILES\FILES\ASSEMBLY\T19.30\O99-criteria

**KENAI PENINSULA BOROUGH  
ORDINANCE 99-**

**AN ORDINANCE ENACTING PROVISIONS IN KPB CHAPTER 19.30  
ESTABLISHING PROCEDURES, CRITERIA AND GUIDELINES FOR THE  
EXERCISE OF ECONOMIC DEVELOPMENT POWERS**

**WHEREAS**, in Ordinance 97-01, the Kenai Peninsula Borough adopted economic development powers in the area of the borough outside the cities but did not establish any criteria or guidelines for exercising such powers; and

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**WHEREAS**, the committee has filed a report with the assembly including proposed procedures, guidelines, and criteria for support of economic development projects within the borough; and

**WHEREAS**, the borough contracts with the Economic Development District, Inc. to provide economic development and planning services to the borough ~~on a boroughwide basis~~; and

*WHEREAS, comp. plan in §*  
**WHEREAS**, the borough's best interests would be served by adopting such procedures, guidelines, and criteria to provide a systematic mechanism for responding to economic development proposals for borough support;

*whereas, threshold applies to projects whose purpose is econ development - projects w/ a diff main purpose w/ not be governed by this act.*  
**NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:**

**SECTION 1.** That existing KPB 19.30. Exercise of economic development power, shall be renumbered as KPB 19.30.010, and the following new provisions shall be enacted:

**19.30.020. Purpose.**

The purpose of this chapter is to provide criteria, guidelines, and procedures for borough support of responsible economic development projects. Nothing in this chapter shall be construed



to create any right whatsoever to borough support of any proposal, and the borough reserves the right to reject any and all such proposals.

### 19.30.030. Policy.

It is the policy of the Kenai Peninsula Borough to support ~~responsible economic development~~ <sup>of all</sup> projects within the borough, subject to applicable legal and fiscal constraints. <sup>by establishing policies & regulations that facilitate</sup> ~~and~~ <sup>see Jeff's</sup>

### 19.30.040. Initial evaluation procedure and criteria.

All proposals for borough support of an economic development project shall initially be evaluated by the ~~Economic Development District, Inc. ("EDD") or such other~~ <sup>may be</sup> organization as may be designated by the assembly by resolution <sup>screening agency</sup> ("screening agency"). Such initial evaluation shall identify whether the project satisfies the following minimum requirements for direct borough support under this chapter:

1. The project must provide "economic development" as defined in this chapter;
2. The project must be supported by a "bank-ready business plan" as defined in this chapter;
3. The project must be situated in the area of the borough outside of the cities; and
4. The business plan must demonstrate that <sup>try</sup> ~~within one year~~ of the proposed borough participation the project as planned will
  - a. provide either a \$10 million increase in the borough property ~~or sales~~ tax base, or a minimum of 25 permanent full-time jobs in the area of the borough outside the cities; and
  - b. either reduce imports or increase exports from the borough; and
  - c. not take market share from existing businesses within the borough.

5. ~~the project will meet the above criteria within~~

The burden is on the project applicant throughout this process to demonstrate that the project, as proposed, satisfies the requirements of this chapter <sup>for direct borough support</sup> ~~and will be delivered within a reasonable time period as defined by standard business practices~~

Projects satisfying all four of the above criteria shall be referred to the office of the borough mayor for evaluation. Projects not satisfying all four of the above criteria shall not be eligible for direct borough support under this chapter, and may be referred to an agency other than the borough for assistance.

### 16.30.050. Evaluation by borough mayor.

Prior to borough evaluation of a project under this section, the applicant ~~must~~ <sup>may be required to</sup> submit an application fee of ~~\$10,000~~ <sup>an administrative fee, applied by</sup> to help defray administrative costs. Within sixty days of receipt of a proposal referred to the office of the borough mayor pursuant to this chapter, accompanied by the application fee, the mayor shall appoint, and the assembly confirm, three persons from the private

sector with applicable expertise to assess the project's viability and recommend the level and form of direct borough support, if any. The committee shall prepare written findings and recommendations to the mayor based upon its evaluation of the proposal. The office of the mayor shall provide administrative support for any such committee.

*w/in 60 days of receipt of project or upon such later time period as may be okayed by assy.*  
Based upon the recommendations of this committee and such other information as the mayor considers appropriate, the mayor shall issue a written report recommending that the proposal either be considered by the assembly for direct borough support or that it not be presented to the assembly. An ordinance shall be prepared for assembly consideration of proposed direct borough support of projects recommended by the mayor for consideration.

Projects not recommended for direct borough support may be referred back to the screening agency for further evaluation and possible referral to any appropriate external agency other than the borough.

*okay.*  
A disapproved proposal shall not be presented to the mayor's office for reconsideration for a minimum of six months after disapproval absent significant, substantial, and compelling changes to the proposal.

*19.30.0 committee of 3 from standing comm. of 10*  
**19.30.060. Forms of direct borough support.**

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4. Whether other private land is available that would be appropriate for the proposed use. If so, whether the proposed use would inappropriately compete with private land owners.
5. Examine the highest and best use of this parcel compared with the proposed use



of the parcel.

6. Determine whether other parties are likely to be interested in the same parcel of land. If so, consider the best option available for the borough and the community.
7. The extent of any adverse impact the project may have on other borough resources or the natural environment.
8. Consider the effect of the proposal on both the land bank and the land trust fund.
9. The proposed terms of the transfer should be evaluated with all available options considered, including sale or lease at fair market value, sale or lease at less than fair market value, and favorable initial terms to help with startup financing to be repaid later.
10. Consider borough land costs associated with the proposal such as payment of surveying, platting, appraisal, and closing costs.

B. Tax Credits.

Tax credits available for economic development projects shall include the economic development tax exemption to the extent the project qualifies for that exemption, and any other exemptions that are allowable under state statute and borough code.

C. Other.

The assembly may consider other forms of direct support of qualifying economic development projects, provided that direct monetary contributions, either in the form of loans or grants, to applicants for direct borough support for economic development purposes, shall not be available through this process. This shall not be construed to prohibit ~~the use of revenue bonds~~ for such purposes.

*access to tax exempt financing*

19.30.070. Definitions.

For purposes of this chapter, the following terms shall have the following meanings.

*taxable real property*  
"Adds to long-term tax base" means *an increase in the assessed valuation of property* ~~the estimated property and/or sales tax revenues to be received by the borough from the project will equal or exceed tax credits or investments made by the borough.~~ *in the borough*

"Bank-ready business plan" means a business plan typically required by banks for loan applicants containing, at a minimum, a detailed description of the proposed project, a feasibility study, résumés of all managerial and significant technical personnel, financial statements of the company, including the current year and up to five previous years for any

*see Planning*

such years the company has been in business, detailed financial projections for the next five years, an analysis of how this project qualifies for direct borough support under this chapter, and a detailed description of the requested borough support.

“Economic development” means private sector expansion that creates permanent jobs, adds to the borough’s long-term tax base, and results in enhanced economic activity and quality of life for borough residents.

“Enhanced economic activity” means an activity which increases job opportunities and otherwise encourages the economic growth of the borough including the development of its natural resources through the establishment and expansion of manufacturing, industrial, export, small business, and business enterprises and other facilities.

“Enhanced quality of life” means an improvement of community characteristics affecting lifestyles within the borough, based upon community standards as determined by the borough assembly with input from the community at large.

“Permanent jobs” means full-time equivalent jobs for five continuous years excluding construction jobs which are tied directly to the economic development project.

**SECTION 2.** That this ordinance shall take effect July 1, 1999.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS**  
**\_\_\_\_\_ DAY OF \_\_\_\_\_, 1999.**

\_\_\_\_\_  
Ronald Wm. Drathman, Assembly President

ATTEST:

\_\_\_\_\_  
Linda S. Murphy, Borough Clerk

Introduced by: Popp, Merkes??  
Date: February 16, 1999??  
Hearing:  
Action:  
Vote:

S:\WPFILES\FILES\ASSEMBLY\T19.30\O99-criteria

**KENAI PENINSULA BOROUGH  
ORDINANCE 99-**

**AN ORDINANCE ENACTING PROVISIONS IN KPB CHAPTER 19.30  
ESTABLISHING PROCEDURES, CRITERIA AND GUIDELINES FOR THE  
EXERCISE OF ECONOMIC DEVELOPMENT POWERS**

**WHEREAS,** in Ordinance 97-01, the Kenai Peninsula Borough adopted economic development powers in the area of the borough outside the cities but did not establish any criteria or guidelines for exercising such powers; and

**WHEREAS,** in Resolution 98-011, the assembly established a committee to develop criteria and guidelines for exercising economic development powers; and

**WHEREAS,** during the July 14, 1998, assembly meeting, the assembly passed a motion to extend the reporting date for the committee to February 16, 1999; and

**WHEREAS,** the committee has filed a report with the assembly including proposed procedures, guidelines, and criteria for support of economic development projects within the borough; and

**WHEREAS,** the borough contracts with the Economic Development District, Inc. to provide economic development and planning services to the borough on a nonareawide basis; and

**WHEREAS,** the borough's best interests would be served by adopting such procedures, guidelines, and criteria to provide a systematic mechanism for responding to economic development proposals for borough support;

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

**SECTION 1.** That existing KPB 19.30. Exercise of economic development power, shall be renumbered as KPB 19.30.010, and the following new provisions shall be enacted:

**19.30.020. Purpose.**

The purpose of this chapter is to provide criteria, guidelines, and procedures for borough support of responsible economic development projects. Nothing in this chapter shall be construed



to create any right whatsoever to borough support of any proposal, and the borough reserves the right to reject any and all such proposals.

#### **19.30.030. Policy.**

It is the policy of the Kenai Peninsula Borough to support responsible economic development within the borough, subject to applicable legal and fiscal constraints.

#### **19.30.040. Initial evaluation procedure and criteria.**

All proposals for borough support of an economic development project shall initially be evaluated by the Economic Development District, Inc. ("EDD") or such other organization as may be designated by the assembly by resolution ("screening agency"). Such initial evaluation shall identify whether the project satisfies the following minimum requirements for direct borough support under this chapter:

1. The project must provide "economic development" as defined in this chapter;
2. The project must be supported by a "bank-ready business plan" as defined in this chapter;
3. The project must be situated in the area of the borough outside of the cities; and
4. The business plan must demonstrate that within one year of the proposed borough participation the project as planned will
  - a. provide either a \$10 million increase in the borough property or sales tax base, or a minimum of 25 permanent full-time jobs in the area of the borough outside the cities; and
  - b. either reduce imports or increase exports from the borough; and
  - c. not take market share from existing businesses within the borough.

The burden is on the project applicant throughout this process to demonstrate that the project, as proposed, satisfies the requirements of this chapter.

Projects satisfying all four of the above criteria shall be referred to the office of the borough mayor for evaluation. Projects not satisfying all four of the above criteria shall not be eligible for direct borough support under this chapter, and may be referred to an agency other than the borough for assistance.

#### **16.30.050. Evaluation by borough mayor.**

Prior to borough evaluation of a project under this section, the applicant must submit an application fee of \$\_\_\_\_\_ to help defray administrative costs. Within sixty days of receipt of a proposal referred to the office of the borough mayor pursuant to this chapter, accompanied by the application fee, the mayor shall appoint, and the assembly confirm, three persons from the private

sector with applicable expertise to assess the project's viability and recommend the level and form of direct borough support, if any. The committee shall prepare written findings and recommendations to the mayor based upon its evaluation of the proposal. The office of the mayor shall provide administrative support for any such committee.

Based upon the recommendations of this committee and such other information as the mayor considers appropriate, the mayor shall issue a written report recommending that the proposal either be considered by the assembly for direct borough support or that it not be presented to the assembly. An ordinance shall be prepared for assembly consideration of proposed direct borough support of projects recommended by the mayor for consideration.

Projects not recommended for direct borough support may be referred back to the screening agency for further evaluation and possible referral to any appropriate external agency other than the borough.

A disapproved proposal shall not be presented to the mayor's office for reconsideration for a minimum of six months after disapproval absent significant, substantial, and compelling changes to the proposal.

#### **19.30.060. Forms of direct borough support.**

Direct support from the borough for economic development projects may include the use or transfer of borough land, tax credits, and other forms of support as approved by the assembly. Assembly approval by ordinance is required for direct borough support of an economic development project.

##### **A. Land.**

In determining whether to make borough land available for the project, and on what terms, the following criteria shall be considered:

1. Compatibility of the proposed use with the comprehensive plan and overall community needs.
2. Compatibility of the proposed use with adjacent and surrounding land uses.
3. Whether other borough land is available for the project in the nearby community. If not, whether there is adequate public land available to provide foreseeable public needs such as utilities, schools, emergency centers, solid waste disposal sites, and other foreseeable public needs.
4. Whether other private land is available that would be appropriate for the proposed use. If so, whether the proposed use would inappropriately compete with private land owners.
5. Examine the highest and best use of this parcel compared with the proposed use

of the parcel.

6. Determine whether other parties are likely to be interested in the same parcel of land. If so, consider the best option available for the borough and the community.
7. The extent of any adverse impact the project may have on other borough resources or the natural environment.
8. Consider the effect of the proposal on both the land bank and the land trust fund.
9. The proposed terms of the transfer should be evaluated with all available options considered, including sale or lease at fair market value, sale or lease at less than fair market value, and favorable initial terms to help with startup financing to be repaid later.
10. Consider borough land costs associated with the proposal such as payment of surveying, platting, appraisal, and closing costs.

B. Tax Credits.

Tax credits available for economic development projects shall include the economic development tax exemption to the extent the project qualifies for that exemption, and any other exemptions that are allowable under state statute and borough code.

C. Other.

The assembly may consider other forms of direct support of qualifying economic development projects, provided that direct monetary contributions, either in the form of loans or grants, to applicants for direct borough support for economic development purposes, shall not be available through this process. This shall not be construed to prohibit the use of revenue bonds for such purposes.

**19.30.070. Definitions.**

For purposes of this chapter, the following terms shall have the following meanings.

“Adds to long-term tax base” means the estimated property and/or sales tax revenues to be received by the borough from the project will equal or exceed tax credits or investments made by the borough.

“Bank-ready business plan” means a business plan typically required by banks for loan applicants containing, at a minimum, a detailed description of the proposed project, a feasibility study, résumés of all managerial and significant technical personnel, financial statements of the company, including the current year and up to five previous years for any

Introduced by:  
Date:  
Hearing (shortened)  
Action:  
Vote:

Mayor  
Nov. 17, 1998  
Dec. 8, 1998

**KENAI PENINSULA BOROUGH  
ORDINANCE 98-xx**

**AN ORDINANCE AMENDING THE TAX CODE REGARDING  
THE PARTIAL EXEMPTION OF ASSESSED VALUATION OF PROPERTY  
USED FOR ECONOMIC DEVELOPMENT**

**WHEREAS**, Kenai Peninsula Borough Code 5.12.116, Economic Development Property Exemption, was enacted to provide an incentive for businesses to locate within the Kenai Peninsula Borough; and

**WHEREAS**, KPB 5.12.116 needs clarification for consistent administration and enforcement of the code; and

**WHEREAS**, state statutes are less restrictive than Borough code and therefore KPB 5.12.116 should be amended to bring it into compliance with AS 29.45.050;

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

**SECTION 1.** That KPB 5.12.116 shall be amended as follows:

**5.12.116. Economic development property exemption.**

A. The assessed value of property used for economic development, as defined in this section, is partially exempt from borough property taxes, under the conditions listed in this section.

B. "Property used for economic development", as used in this section, means that part of real or personal property, as determined by the borough assessor, that:

1. Has not previously been taxed as real or personal property by the borough;
2. Does not compete with an existing business in goods or services produced;
3. Has not been used in the same trade or business in another municipality for at least six months before the application for exemption is filed. This paragraph does not apply if the property was used in the same trade or business in an area that has been annexed to the



municipality within six months before the application for deferral or exemption is filed [;  
AND THIS PARAGRAPH] and does not apply to inventories;

and

4[2]. Is used in a trade or business in a way that

- a. Creates employment in the borough; [AND]
- b. Generates sales outside of the borough of goods or services produced in the borough;  
or [MATERIALLY REDUCES THE IMPORTATION OF GOODS OR SERVICES  
FROM OUTSIDE THE MUNICIPALITY;]
- c. Materially reduces the importation of goods or services from outside the  
municipality.

C. The exemption shall be for fifty percent (50%) of the assessed value of the property, for up to five consecutive years with no renewals. No business shall receive the exemption beyond five years from the first date of application for real or personal property. The exemption ends after the five years regardless of the year of acquisition or construction of the property.

D. The exemption applies only to new structures or additions to existing structures.

E. The following improvements are not eligible for the exemption: Remodeling or renovation to existing structures, or site preparation or excavation

E. [D]. [ANY PROPOSAL] Before an exemption can be granted, it must be approved by assembly resolution after public hearing.

G. [E]. In order to qualify for this exemption, an applicant must file, with the borough assessor, a written application for the exemption no later than January 15 of each assessment year for which the exemption is sought. The application shall be on a form prescribed by the borough assessor, and shall include all information determined to be necessary by the assessor to determine eligibility of the property for the exemption. If the applicant fails or refuses to provide information required or requested by the assessor, within the time period set by the assessor, the exemption shall be denied. The assessor may make an independent investigation of the application or property in making a determination under this section. The assessor shall notify the applicant, in writing, of the assessor's determination on the application for exemption.

H. [F]. An applicant delinquent in the registration for, filing of a return for, or payment of, any borough or city property or sales tax, or borough special assessment, may not be granted an exemption under this section.

**SECTION 2.** That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS \_\_\_\_\_  
DAY OF \_\_\_\_\_, 1998.

\_\_\_\_\_  
Ronald Wm. Drathman, Assembly President

ATTEST:

\_\_\_\_\_  
Linda S. Murphy, Borough Clerk