

E. NEW BUSINESS

3. Ordinance 2022-46: Amending KPB 21.02.230 to modify the boundaries of the Nikiski Advisory Planning Commission.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Members, Kenai Peninsula Borough Assembly

FROM: Brent Johnson, Assembly President *BJ*
Cindy Ecklund, Assembly Member *CE*

DATE: December 1, 2022

SUBJECT: Ordinance 2022-46, Amending KPB 21.02.230 to Modify the
Boundaries of the Nikiski Advisory Planning Commission (Johnson,
Ecklund)

Prior to the enactment of Ordinance 2022-41 the assembly discussed concerns regarding the size of the proposed Nikiski Advisory Planning Commission ("APC"). The Nikiski APC encompasses 3,500,000 acres, which is 13 times larger than the other existing APCs within the Borough.

The Tyonek Native Corporation and the Village of Tyonek object to inclusion within the boundaries. No applicant residing outside of the new boundaries proposed in this ordinance have applied to be on the Nikiski APC.

Your consideration is appreciated.

Introduced by: Johnson, Ecklund
Date: 12/13/22
Hearing: 01/17/23
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-46**

**AN ORDINANCE AMENDING KPB 21.02.230 TO MODIFY THE BOUNDARIES OF
THE NIKISKI ADVISORY PLANNING COMMISSION**

- WHEREAS,** the assembly has previously created local advisory planning commissions (“APCs”) within the Kenai Peninsula Borough (the “Borough”) for the purpose of providing recommendations to the Borough Planning Commission on land use planning and public land management issues which may affect the existing and/or future character of their communities; and
- WHEREAS,** Goal 2 of the 2019 Borough Comprehensive Plan is to “Proactively manage growth to provide economic development opportunities on the Kenai Peninsula Borough while preserving what residents and visitors value about the area’s natural features”; and
- WHEREAS,** Goal 2, Objective E states, “Actively work with interested communities outside of the incorporated cities to help develop locally-driven community plans and Strategy 4: Near-Term: Encourage unincorporated communities to engage with their established local Advisory Planning Commission (“APC”) and encourage establishment of new APCs for communities not currently represented”; and
- WHEREAS,** at its regular meeting on September 20, 2022, the assembly enacted Ordinance 2022-41, which established the Nikiski APC; and
- WHEREAS,** since the Nikiski APC’s establishment, there have been no applicants outside of the new boundaries proposed in this ordinance; and
- WHEREAS,** the Nikiski APC encompasses 3,500,000 acres, which is 13 times larger than the other existing APCs within the Borough; and
- WHEREAS,** the Tyonek Native Corporation and the Native village of Tyonek object to inclusion within the boundaries;

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

SECTION 1. That the Kenai Peninsula Borough Code of Ordinances is hereby amended by adding a new section to be numbered 21.02.230, which shall read as follows:

21.02.230. Nikiski Advisory Planning Commission.

An advisory planning commission is established for the community of the borough known as Nikiski with boundaries as follows:

[COMMENCING AT THE TOWNSHIP LINE BETWEEN T5N AND T6N R17W S.M.,
AND THE MEAN HIGH WATER LINE ON THE WESTERLY SHORE OF COOK INLET;

THENCE WESTERLY ALONG THE TOWNSHIP LINE BETWEEN T5N AND T6N TO
THE WESTERLY BOUNDARY OF THE KENAI PENINSULA BOROUGH;

THENCE NORTHERLY AND EASTERLY ALONG THE BOUNDARY OF THE KENAI
PENINSULA BOROUGH THROUGH COOK INLET TO THE PROTRACTED
NORTHEAST CORNER OF T11N R5W IN TURNAGAIN ARM;

THENCE SOUTHEASTERLY TO THE INTERSECTION OF THE SOUTHERLY MEAN
HIGH WATER LINE OF TURNAGAIN ARM AND THE 150TH MERIDIAN WEST OF
GREENWICH WITHIN T10N R4W S.M.;

THENCE SOUTHERLY ALONG THE 150TH MERIDIAN TO THE TOWNSHIP LINE
BETWEEN T8N AND T9N R4W;

THENCE WESTERLY ALONG THE TOWNSHIP LINE BETWEEN T8N AND T9N TO
THE NORTHWEST CORNER OF T8N R9W S.M.;

THENCE SOUTHERLY ALONG THE RANGE LINE BETWEEN R9W AND R10W TO
THE SOUTHEAST CORNER OF T6N R10W S.M.;

THENCE WESTERLY ALONG THE TOWNSHIP LINE BETWEEN T5N AND T6N TO
THE SOUTHEAST CORNER OF SECTION 32 T6N R10W;

THENCE NORTHERLY ALONG THE SECTION LINE BETWEEN SECTIONS 32 AND
33 TO THE NORTHEAST CORNER OF SECTION 32;

THENCE WESTERLY ALONG THE SECTION LINE TO THE NORTHWEST CORNER OF
SECTION 31 T6N R10W ON THE CORPORATE BOUNDARY OF THE CITY OF
KENAI;

THENCE NORTHERLY AND WESTERLY ALONG THE CORPORATE BOUNDARY OF
THE CITY OF KENAI TO THE INTERSECTION WITH THE MEAN LOW WATER LINE
OF COOK INLET AND THE SECTION LINE BETWEEN SECTIONS 23 AND 26 T6N
R12W S.M.;

THENCE WESTERLY ALONG THE SECTION LINE EXTENDED THREE MILES INTO
COOK INLET;

THENCE SOUTHWESTERLY TO THE PROTRACTED SOUTHEAST CORNER OF T6N
R14W IN COOK INLET;

THENCE WESTERLY ALONG THE PROTRACTED TOWNSHIP LINE BETWEEN T5N AND T6N TO THE MEAN HIGH WATER LINE ON THE WESTERLY SHORE OF COOK INLET THE TRUE POINT OF BEGINNING.]

Beginning at the intersection of the southerly mean high water line of Turnagain Arm and the 150th meridian west of Greenwich within T10N R4W S.M.;

Thence southerly along the 150th meridian to the township line between T8N and T9N R4W;

Thence westerly along the township line between T8N and T9N to the northwest corner of T8N R9W S.M.;

Thence southerly along the range line between R9W and R10W to the southeast corner of T6N R10W S.M.;

Thence westerly along the township line between T5N and T6N to the southeast corner of Section 32 T6N R10W;

Thence northerly along the section line between Sections 32 and 33 to the northeast corner of Section 32;

Thence westerly along the section line to the northwest corner of Section 31 T6N R10W on the corporate boundary of the city of Kenai;

Thence northerly and westerly along the corporate boundary of the city of Kenai to the intersection with the mean high water line of Cook Inlet and the section line between Sections 23 and 26 T6N R12W S.M.;

Thence northerly and easterly along the mean high water line on the easterly shore of Cook Inlet, and easterly along the southerly mean high water line of Turnagain Arm, to the point of beginning.

SECTION 2. That this ordinance shall be effective immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY
OF *, 2023.**

Brent Johnson, Assembly President

ATTEST:

Michele Turner, CMC, Acting Borough Clerk



October 6, 2022

Kenai Peninsula Borough Assembly
144 N. Binkley Street
Soldotna, Alaska 99669

Re: Approval of "Nikiski Area" Advisory Planning Commission

Dear Assembly Members:

Tyonek Native Corporation (TNC) is writing on behalf of the community of Tyonek to express its disapproval of the Kenai Peninsula Borough (KPB) Assembly recent decision to approve the "Nikiski Area" Advisory Planning Commission (APC) under Ordinance 2022-41. Tyonek is the largest community on the West Side of Cook Inlet. As the largest private landowner in the Tyonek area, TNC was not contacted nor invited to comment on a decision that directly affects its interests and the traditional lands of both our shareholders and the Tribal members of the Native Village of Tyonek. Moreover, the record demonstrates a complete lack of—let alone meaningful—West Side input and involvement. Nikiski and Tyonek are separate and distinct people, cultures, and businesses – not the basis for uniform planning.

Tyonek Tribal members and TNC shareholders have been independent from the Kenai Peninsula—and Nikiski—since before Alaska became a territory. Our ancestors used and occupied the Tyonek area for generations. Formal use and occupancy was not only recognized but established as early as 1915 when President Woodrow Wilson created the 25,000-acre Moquawkie Reservation. In 1971, the Alaska Native Claims Settlement Act extinguished the Moquawkie Reservation and made these lands available for selection by TNC. TNC received the surface estate of most of those lands. Both TNC and the Native Village of Tyonek have a long history of involvement with oil and gas activities and timber harvesting. Our people have been promoting and protecting our resources while pursuing economic development far earlier than the establishment of Nikiski or any of the area homesteads. In other words, we have been exercising self-determination and planning functions independently for centuries. We have been performing our own land use planning, land management, and economic development – the same functions as APCs. These efforts are current, proactive, and impactful to our community.

In addition to the KPB's failure to ensure reasonable and complete input into this decision, the expansive APC boundaries prove problematic and bear no relationship to

the actual “area of influence” of the petition organizers and the community of Nikiski. Furthermore, the boundary standards at KPB Code Section 21.02.040 fail to contain any meaningful standards whatsoever. A passing reference to “the area of influence” is arbitrary and capricious, and gives no guiding standards to consider and evaluate. Here, the result is an expansive and unprecedented area that goes so far beyond the “area of influence” of the Nikiski organizers. Thus, the APC should have been rejected immediately or drastically reduced in scope. References to the fire service area, senior service area, and recreation area are hollow references of support. The services provided to the West Side and Tyonek pale in comparison to the resources and services provided to Nikiski.

Given that the history and seeming intent of APCs is to give a community a local voice for planning decisions, Chapter 21.02 does not require any diversity of membership or residency within the boundaries of an APC – it merely requires that a nominee: (A) physically reside within the APC boundaries; and (2) be registered to vote in a precinct within the APC. Given that none of the petitioners are from the West Side, it is likely that none of the Commission members of the APC will reside in the West Side. Again, an arbitrary standard when applied to a region—not a community—like the “Nikiski Area” APC.

Through an August 11, 2022 Memorandum, the KPB Director of Planning identified concern raised at a community meeting about “the ability to meaningfully represent such a large area, particularly the west side of Cook Inlet.” The only other APCs represent distinct communities. These include Moose Pass, Hope, Cooper Landing, Anchor Point, Funny River, and others; not entire regions encompassing diverse areas and communities. Here, as evinced by the petition signatories (none of whom reside in Tyonek or the West Side) the imbalance of residents and political power rests entirely in Nikiski proper, leaving out the West Side of Cook Inlet to meaningfully participate in decisions affecting planning and zoning in Tyonek.

The August 11 memorandum also highlights that the Nikiski Area APC was 10 times larger than the size of the alternative proposal (3,500,000 acres vs. 307,400 acres). But even at 307,400 acres, that would be the largest APC in the Borough. In fact, the average size is just over 99,000 acres, with the smallest at a mere 1,505 acres for Hope. The adopted APC for the “Nikiski Area” is 35 times larger than the average APC. The record contains no justification for this egregious anomaly. In fact, it suggests what can only be viewed as an intentional effort to avoid the voice of the Tyonek area.

In consideration of the arbitrary and capricious inclusion of the West Side of Cook Inlet in Nikiski’s APC, TNC requests immediate reconsideration of the Assembly approval of the “Nikiski Area” APC. Given the significant shortcomings of the process, boundaries, and establishment of the Nikiski Area APC, TNC urges the Assembly, Administration, and Planning Commission to consider the problematic nature of the APC when applied to the West Side of Cook Inlet and community of Tyonek. Tyonek was not asked, and does not

October 6, 2022
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support, the Nikiski petition and KPB adoption of the "Nikiski Area" APC. It stands against reason and logic to approve such an ill-conceived and underinformed planning area.

Sincerely,

TYONEK NATIVE CORPORATION

NATIVE VILLAGE OF TYONEK



Stephen Peskosky
Chief Executive Officer



Johann Bartels
President

cc: Mayor Charlie Pierce
Sean Kelley, Borough Attorney
KPB Planning Commission



Boundary
of the Nikiski
Advisory
Planning
Commission

Map Date: 09/23/2022



0 5 10 Miles

The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map



Introduced by:	Mayor
Date:	08/23/22
Hearing:	09/20/22
Action:	Enacted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-41**

**AN ORDINANCE AMENDING KPB CHAPTER 21.02 TO ESTABLISH AN ADVISORY
PLANNING COMMISSION IN THE NIKISKI AREA**

WHEREAS, the assembly has previously created local advisory planning commissions (“APCs”) within the Kenai Peninsula Borough (“KPB”) for the purpose of providing recommendations to the KPB Planning Commission on land use planning and public land management issues which may affect the existing and/or future character of their communities; and

WHEREAS, Goal 2 of the 2019 KPB Comprehensive Plan is to “Proactively manage growth to provide economic development opportunities on the Kenai Peninsula Borough while preserving what residents and visitors value about the area’s natural features”; and

WHEREAS, Goal 2, Objective E states, “Actively work with interested communities outside of the incorporated cities to help develop locally-driven community plans and Strategy 4: Near-Term: Encourage unincorporated communities to engage with their established local Advisory Planning Commission (“APC”) and encourage establishment of new APCs for communities not currently represented”; and

WHEREAS, a petition, signed by over 20 qualified voters who are residents within the proposed boundaries of the Nikiski APC, has been received by the KPB Clerk requesting the formation of an APC in the Nikiski community; and

WHEREAS, on July 19, 2022, the KPB Planning Director held a community meeting to discuss the proposed boundaries of the Nikiski APC; and

WHEREAS, the petitioned area of interest is 3,500,000 acres as the proposed boundaries of the Nikiski APC and the KPB Planning Department has indicated that additional community input is needed for the effective management of these lands; and

WHEREAS, at its meeting held on August 22, 2022, the KPB Planning Commission recommended approval as amended;

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

SECTION 1. That the Kenai Peninsula Borough Code of Ordinances is hereby amended by adding a new section to be numbered 21.02.230, which shall read as follows:

21.02.230. Nikiski Advisory Planning Commission.

An advisory planning commission is established for the community of the borough known as Nikiski with boundaries as follows:

Commencing at the township line between T5N and T6N R17W S.M., and the mean high water line on the westerly shore of Cook Inlet;

Thence westerly along the township line between T5N and T6N to the westerly boundary of the Kenai Peninsula Borough;

Thence northerly and easterly along the boundary of the Kenai Peninsula Borough through Cook Inlet to the protracted northeast corner of T11N R5W in Turnagain Arm;

Thence southeasterly to the intersection of the southerly mean high water line of Turnagain Arm and the 150th meridian west of Greenwich within T10N R4W S.M.;

Thence southerly along the 150th meridian to the township line between T8N and T9N R4W;

Thence westerly along the township line between T8N and T9N to the northwest corner of T8N R9W S.M.;

Thence southerly along the range line between R9W and R10W to the southeast corner of T6N R10W S.M.;

Thence westerly along the township line between T5N and T6N to the southeast corner of Section 32 T6N R10W;

Thence northerly along the section line between Sections 32 and 33 to the northeast corner of Section 32;

Thence westerly along the section line to the northwest corner of Section 31 T6N R10W on the corporate boundary of the city of Kenai;

Thence northerly and westerly along the corporate boundary of the city of Kenai to the intersection with the mean low water line of Cook Inlet and the section line between Sections 23 and 26 T6N R12W S.M.;

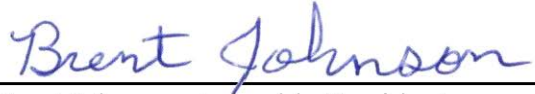
Thence westerly along the section line extended three miles into Cook Inlet;

Thence southwesterly to the protracted southeast corner of T6N R14W in Cook Inlet;

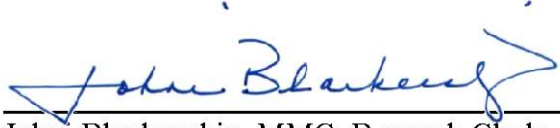
Thence westerly along the protracted township line between T5N and T6N to the mean high water line on the westerly shore of Cook Inlet the true point of beginning.

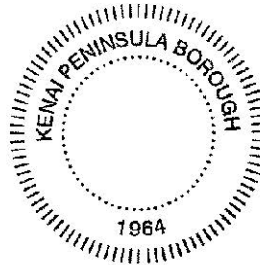
SECTION 2. That this ordinance shall be effective immediately upon enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 20TH DAY OF SEPTEMBER, 2022.


Brent Johnson, Assembly President

ATTEST:


John Blankenship, MMC, Borough Clerk



Yes: Bjorkman, Chesley, Cox, Derkevorkian, Ecklund, Elam, Hibbert, Tupper, Johnson
No: None
Absent: None