

Introduced by:	Mayor
Date:	02/19/19
Hearing:	03/05/19
Action:	Postponed as Amended to 04/02/19
Vote:	8 Yes, 0 No, 1 Absent
Date:	04/02/19
Action:	Tabled
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-05**

**AN ORDINANCE AUTHORIZING A MEMORANDUM OF AGREEMENT AND
COOPERATIVE SALE AND EXCHANGE OF INTERESTS IN LANDS WITH THE
STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC
FACILITIES REGARDING CERTAIN BOROUGH AND STATE MAINTAINED
ROADS**

- WHEREAS,** to promote logical efficiencies that would benefit the Kenai Peninsula Borough’s (the “borough”) Road Service Area (“RSA”) and the State of Alaska Department of Transportation and Public Facilities (“DOT&PF”), the DOT&PF has proposed the transfer of regulatory and maintenance authority of certain state-maintained roads in exchange for the transfer of a borough maintained road; and
- WHEREAS** the DOT&PF has requested the RSA accept 4.7 miles of roads within the Central, North and South Regions in exchange for the DOT&PF acceptance of Nikiski Escape Route Road, being 4.7 miles in the North Region; and
- WHEREAS,** the DOT&PF has committed to this endeavor by performing numerous upgrades and paving the DOT&PF maintained roads that are offered in this exchange; and
- WHEREAS,** the RSA Director and staff reviewed and recommended approval of the DOT&PF proposal; and
- WHEREAS,** AS 19.20.060 authorizes the DOT&PF and the borough to enter into agreements for establishing, maintaining, and regulating use of public ways within their respective jurisdictions; and
- WHEREAS,** the parties will enter into a Memorandum of Agreement that sets the terms and conditions of the proposed transfer of responsibility, control, and maintenance of DOT&PF and borough maintained roads; and
- WHEREAS,** the borough holds a deeded land interest to Nikiski Escape Route Road and therefore intends to convey Nikiski Escape Route Road by deed to DOT&PF to accomplish the transfer; and

WHEREAS, this transfer of responsibility, control, and maintenance of DOT&PF and borough maintained roads will serve the public interest, result in cost savings and efficient use of public resources, and enhance the quality of life for the residents of, and visitors to, the borough; and

WHEREAS, the RSA board unanimously recommended approval of the road swap proposal at its meeting held January 15, 2019; and

WHEREAS, the Planning Commission at its regularly scheduled meeting of February 25, 2019, reviewed this ordinance and recommended approval by unanimous consent;

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

SECTION 1. That the assembly finds that a cooperative sale and exchange of interests in lands described below with DOT&PF pursuant to KPB 17.10.100 (C) & (D) is in the best interest of the borough:

Interests to be conveyed to the DOT&PF as cooperative sale:

ROAD NAME	C/L LENGTH	CONDITION	REGION
Nikiski Escape Route	24,300' +/-	Gravel Road	North 4
TOTAL FOOTAGE	24,300' +/- +/-		
MILEAGE	4.602 +/-		

Interests to be conveyed by DOT&PF in exchange:

DOT&PF ROAD NAME	C/L LENGTH	CONDITION	REGION
Alta Loop	3,052' +/-	SOA to upgrade in 2019	South 3
Cohoe Beach Road	3,860' +/-	Upgraded by 2018	West 3
Dolores Drive	1,056' +/-	Paved 2017	North 4
Marhenke Street	1,531' +/-	Paved 2017	North 4
Murray Lane	2,830' +/-	Paved 2016	Central 10
Longmere Way	1,783' +/-	Paved 2016	Central 10
Lakeshore Drive	2,524' +/-	Paved 2016	Central 10
Pollard Loop	8,173' +/-	Upgraded in 2018	West 1
Secret Road	211' +/-	Paved 2016	Central 10
TOTAL FOOTAGE	25,043 +/-		
MILEAGE	4.743 +/-		

The finding that this exchange is in the best interest of the borough is based on the following findings of fact:

- a) That the roads proposed to be accepted by the RSA are short segments contiguous to existing borough maintained roads, and conversely the Nikiski Escape Route Road is a thoroughfare route consistent with the character of roads more commonly serviced by DOT&PF.
- b) That following the upgrade of Alta Loop road in 2019, the roads that DOT&PF will transfer to the borough have all been upgraded and improved in the last three years.
- c) As part of the transfer DOT&PF warrants that it shall be responsible for all required road repairs, improvements, or reconstruction of the roads transferred to the borough for a period of three (3) years so long as the need for such repairs, improvements, or reconstruction was not caused solely by the borough's RSA maintenance.

SECTION 2. That pursuant to KPB 17.10.230, the assembly hereby authorizes exceptions to KPB 17.10.090 (requiring classification prior to transfer), KPB 17.10.110 (that notice of this sale be published four times in the thirty-day period immediately prior to the date), and KPB 17.10.120(A) (terms of a land sale and requiring the date of sale be listed in the ordinance) based upon the following findings of fact:

1. That special circumstances or conditions exist:
 - A. The land proposed for transfer is entirely occupied by roadway features, consistent with the purpose for which the land was acquired and also consistent with the purpose of the proposed transfer;
 - B. The publication of a sale without a general opportunity to purchase does not serve a useful purpose;
 - C. The establishment of a "sale date" without a general sale event does not serve a useful purpose.
2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical means of complying with the intent of KPB Chapter 17.10:
 - A. An exception to classification is not necessary for the preservation or enjoyment of a property right but is a practical means of complying with the intent of classification which is carried out through the cooperative sale as an appropriate use of the land.
 - B. Stating a date of sale for cooperative sale is not necessary as during the process of transfer there may be unforeseen delays and this is only directed to a single buyer. Waiving the classification and date of sale requirements

are consistent with the intent of KPB Chapter 17.10 in that no other interest would be damaged by waiving these requirements;

- C. The purchasing of an ad giving notice to the public of this pending cooperative sale, would serve no practical purpose as this is not a competitive sale.
3. That granting of the exception will not be detrimental to the public welfare or injurious to other property in the area:
- A. The public will receive notice of the pending sale through the ordinance notification process.
 - B. An exception to the specific sale date requirement for the cooperative sale does not affect public welfare or other property.
 - C. There is no proposed change in use proposed as all the roads transferred will continue to function as public roads just with a different governmental agency being responsible for the maintenance of the roads.

SECTION 3. That the mayor is authorized to convey Nikiski Escape Route Road for \$1.00 as a cooperative sale in exchange for DOT&PF conveying its interest in the roads listed in Section 1 above and to execute and any and all documents necessary to effectuate this ordinance.

SECTION 4. That the mayor is authorized to execute a Memorandum of Agreement that sets the terms and conditions of the transfer of responsibility, control, and maintenance of DOT&PF and borough maintained roads.

SECTION 5. That this ordinance shall become effective upon enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2019.

Wayne H. Ogle, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

03/05/19 Vote on motion to postpone to 04/02/19:

Yes: Bagley, Blakeley, Carpenter, Cooper, Fischer, Hibbert, Smalley, Ogle

No: None

Absent: Dunne

04/02/19 Vote on motion to table:

Yes: Bagley, Blakeley, Carpenter, Cooper, Dunne, Fischer, Hibbert, Smalley, Ogle

No: None

Absent: None