

# **KETCHIKAN GATEWAY BOROUGH**

Office of the Borough Attorney • 344 Front Street • Ketchikan, Alaska 99901

Scott A. Brandt-Erichsen  
Borough Attorney  
(907) 228-6635  
Fax: (907) 247-6625  
E-Mail: boroatty@ktn.net

## MEMORANDUM

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TO: Gary Paxton  
Interim Borough Manager

FROM: Scott A. Brandt-Erichsen *SBE*  
Borough Attorney

RE: Section by Section of KPC/Borough Agreement

DATE: June 24, 2002

The following is a section by section discussion of the proposed KGB/KPC agreement.

**Recitals** - These generally recognize facts which one party or the other want to acknowledge relating to how we got where we are.

**Section 1** - Designation of parties.

- Defines Borough and collectively refers to people that the Borough leases or sells to later as "Borough entities".

- This section clarifies that people (buyers) are no longer responsible for property once they sell it off except for things they cause.

**Section 2** - Definitions.

**Section 3** - Identifies the property covered by the Agreement. Essentially all property in Ward cove plus those parcels outside the cove which are collateral for the Borough.

**Section 4** - Describes the treatment of F & F-1.

- F & F-1 go away for properties the Borough will receive.

- F & F-1 will remain for properties the Borough doesn't receive.

- On the properties on the water side of North

Tongass that the Borough is receiving, F & F-1 will be replaced by an easement with conditions, the "Borough Easement".

- On the other properties (generally the land side of North Tongass) F & F-1 will go away.

Differences between F & F-1; the "Borough Easement" and property with neither.

1. F & F-1 → KPC has access for testing and remediation; approach has holder of property indemnifying KPC (if EPA requires action the holder pays); has cross-parcel indemnity.
2. Proposed easement → KPC has access for testing and remediation; approach has holder releasing KPC for disclosed contaminants (e.g. no claims against KPC that the property is worth less because of the condition); KPC responsible for undisclosed things they knew of and caused; KPC is responsible if EPA requires further remediation of what is there; no cross-parcel indemnity.
3. If there were neither, KPC would not automatically have access for testing and remediation; KPC would be responsible for any contamination they caused; the Borough would be responsible for things occurring during its ownership.

**Section 5** - Lists those properties covered by F & F-1; those covered by the new easement and those subject to neither. Clarifies that if the Borough gets other properties later (i.e. Lot 51) the new easement would apply and replace F & F-1.

**Section 6** - EPA access and the restrictive covenants still apply (property affected is limited to industrial use).

**Section 7** - KPC Access Easement - Describes the scope and application of the new easement which replaces F & F-1 for access and staging. Access and staging is to be done in a way that doesn't unreasonably interfere with Borough or tenant use of property. KPC will get access rights across any easements put in on USS 1056, Lot 3.

**Section 8** - Capping materials.

- Provides that the Borough will fix the cap if the Borough or any of its tenants damage it. The Borough agrees to have this requirement apply to subsequent purchasers as well.

- If a third party damages the cap, it is between KPC and that 3<sup>rd</sup> party.
- If EPA requires more to be done in the cove, it is KPC's responsibility.
- KPC is responsible for ongoing EPA testing and monitoring costs and reporting.

**Section 9 - Institutional controls.**

- Borough and successors cooperate and comply with future restrictions EPA might require regarding use of the property.

**Section 10 -KPC and Borough bear costs of any EPA oversight.**

**Section 11 - Disclosure of conditions.**

- This section identifies what information KPC has provided regarding the condition of the properties.

- Borough and its successors release KPC for diminished value of property or other damages based on condition information that is disclosed. If there is contamination which is regulated by DEC as a hazardous substance, KPC knows about the contamination and did not disclose it, they are liable.

**Section 12 - The obligations of release, etc., continue on to successors in interest. The Borough must put specific language in sale and lease documents.**

**Section 13 - Development Fund.**

- The concept is that those portions of the DIP loan collateral which the Borough or KPC are not wanting to take for their own uses would be sold or leased with the net value obtained being used to help pay for cleanup of the former pulp mill site.

- The Borough and KPC would seek grant funds to help pay for redevelopment of the pulp mill site.

**Section 14 - KPC will release its current water use site rights and get replacement water use site rights at another location on the current USS 1056, Lot 3.**

**Section 15 - KPC and the Borough will share the costs of maintaining the required NPDES permit.**

**Section 16** - KPC releases its 30-year office lease and takes in its place a lease on the helicopter hangar running to the end of 2005.

**Section 17** - The parties share utility costs proportionately.

**Section 18** - The Mud Bight tidelands. The Borough will request transfer of the tidelands lease.

**Section 19** - This section acknowledges that the dam and pipeline are KPC's to do with as they wish.

**Section 20** - There is a 3-acre area along the pipeline which was contaminated. KPC remediated the site. It is part of the Borough's entitlement land selections. KPC has paid for the survey of the parcel. These 3 acres would go to KPC.

**Sections 21-35** - These are largely boilerplate. Of note, however, jurisdiction for disputes would be Alaskan courts, but any jury issues would be heard outside of Ketchikan.

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**Appendix 1** lists some of the prior agreements between Gateway And KPC which affect the property.

**Appendix 2** describes the property affected by this agreement. The property is broken into industrial, non-industrial, and non-Ward Cove groupings.

**Appendix 3** is the form new easement which will apply to certain properties which are generally on the water side of North Tongass.

**Appendix 4** is the document to vacate KPC's existing F & F-1.

**Appendix 5** describes the new location for KPC's water use site.

**Appendix 6** is the cost sharing agreement for the costs of maintaining the NPDES permit.

cc: Borough Clerk

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