

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

Thru: Mike Navarre, Mayor ^{MN}
Max Best, Chief of Staff ^{MB}

FROM: Robert Ruffner, Planning Director ^{RR}

DATE: October 13, 2022

SUBJECT: **Administrative Amendment #1** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

[Please note the bold underlined language is new and the strikeout bold language in brackets is to be deleted.]

➤ Amend KPB 21.29.010, as follows:

21.29.010. Applicability.

- A. This chapter applies to all private and public lands in the borough except where the use is prohibited by ordinance within a local option zoning district or exempt under KPB 21.29.015.
- B. This chapter does not apply within the incorporated cities of the Kenai Peninsula Borough.
- C. Earth material extraction within 300 linear feet from riparian wetlands and the seasonal high-water level of naturally occurring open water bodies, such as a lake, pond, river, stream, or ocean, is prohibited. This prohibition does not apply to man-made water bodies or isolated ponds of less than one acre on private property.
- D. All operations must be conducted in accordance with the current publication of the State of Alaska, Alaska DEC User's Manual Best Management Practices for Gravel/Rock Aggregate Extraction Projects. In

Page 2 of 2
October 13, 2022
Re: Administrative Amendment #1

the event a provision of this chapter conflicts with the State of Alaska's manual, this chapter controls.

- E. Up to 5,000 gallons of water per day may be withdrawn from a well. Proof of an ADNR use authorization is required for withdrawal of water in excess of 5,000 gallons per day from a well, as long as there is no open pond with active excavation. Open water is allowed only with an approved settling pond per KPB 21.29.055 or in conjunction with a CLUP approved pursuant to KPB 21.29.057 (earth materials extraction within the water table CLUP).**

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

Thru: Mike Navarre, Mayor ^{MN}
Max Best, Chief of Staff ^{MB}

FROM: Robert Ruffner, Planning Director ^{RR}

DATE: October 13, 2022

SUBJECT: **Administrative Amendment #2** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

[Please note the bold underlined language is new and the strikeout bold language in brackets is to be deleted.]

➤ Amend KPB 21.29.015, as follows:

21.29.015. Material extraction exempt from obtaining a permit.

- A. Material extraction which disturbs an area of less than one acre that is not in a mapped flood plain or subject to 21.29.010(B), does not enter the water table, and does not cross property boundaries, does not require a permit. ~~[There will be no excavation within 32 feet of a lot line.] An owner or operator exempt under this subsection must register with the borough on a form provided by the planning department and must comply with KPB 21.29.010(C).~~
- B. Material extraction taking place on dewatered bars within the confines of the Snow River and the streams within the Seward-Bear Creek Flood Service Area do not require a permit, however, operators subject to this exemption must provide the planning department with the information required by KPB 21.29.030(A)(1), (2), (6), (7) and a current flood plain development permit prior to beginning operations.

Page 2 of 2

October 13, 2022

Re: Administrative Amendment #2

C. A prior existing use **that is in full compliance with all provisions of [under]** KPB 21.29.120 does not require a material extraction permit. **[Notwithstanding the foregoing, on or before January 1, 2026, a prior existing use under KPB 21.29.120 must: (1) provide a reclamation plan under KPB 21.29.060 that is approved by the planning director or designee; and (2) come into compliance with the buffer zone requirements under KPB 21.29.050(A)(1).]**

D. **A 300-foot buffer from riparian and riverine wetlands must be maintained.**

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

Thru: Mike Navarre, Mayor *MN*
Max Best, Chief of Staff *MB*

FROM: Robert Ruffner, Planning Director *RR*

DATE: October 13, 2022

SUBJECT: **Administrative Amendment #3** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

[Please note the bold underlined language is new and the strikeout bold language in brackets is to be deleted.]

➤ Amend KPB 21.29.030, as follows:

21.29.030. Application procedure.

A. In order to obtain a counter permit or CLUP under this chapter, an applicant must first complete and submit to the borough planning department a permit application, along with the fee listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. The planning director may determine that certain contiguous parcels are eligible for a single permit. The application must include the following items, without which the application will be deemed incomplete:

1. Legal description of the parcel, KPB tax parcel ID number, and identification of whether the permit is for the entire parcel, or a specific location within a parcel;
2. Expected life span of the material site;
3. A buffer plan consistent with KPB 21.29.050(A)(1);

Page 2 of 3

October 13, 2022

Re: Administrative Amendment #3

4. Reclamation plan consistent with KPB 21.29.060;
5. The depth of excavation;
6. Type of material to be extracted;
7. A site map professional surveyor licensed in the State of Alaska to include the following:
 - a. ~~Location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase~~ Location and elevation of test holes, and depth of groundwater, based on the seasonal high-water table. At least one test hole per ten acres of excavated area is required to be dug. The test holes must be at least four feet below the proposed lowest elevation of excavation depth;
 - b. ~~Proposed buffers consistent with KPB 21.29.050(A)(1), or alternate buffer plan~~ Location of all private wells of adjacent property owners within 300 feet of the proposed parcel boundary;
 - c. Identification of all encumbrances, including but not limited to, easements;
 - d. Points of ingress and egress. Driveway permits must be acquired from either the state or borough as appropriate prior to submitting the application;
 - ~~e. Anticipated haul routes, contingent on approval from the governmental agency with regulatory jurisdiction over the road;~~
 - ~~f.] e. Location of any processing areas on the parcel, if applicable~~ Identify and label all drainage features entering and exiting property;
 - ~~g.] f. Location of any water body on the parcel, including the location of any riparian wetland as determined by best available data;~~
 - g. North arrow;
 - ~~h.] h. The scale to which the site plan is drawn;~~
 - ~~i.] i. Preparer's name and date; and~~
 - ~~i.] j. Field verification must include staking the boundary of the parcel at sequentially visible intervals. The planning director may grant an exemption in writing to the staking requirements if the parcel boundaries are obvious or staking is unnecessary.~~
8. A site plan, prepared by a qualified independent civil engineer licensed and active in the State of Alaska to include the following:

Page 3 of 3

October 13, 2022

Re: Administrative Amendment #3

- a. Surface water protection measures, if any, for adjacent properties, including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence;
 - b. ~~Location and elevation of test holes, and depth of groundwater, based on the seasonal high-water table. At least one test hole per ten acres of excavated area is required to be dug. The test holes must be at least four feet below the proposed lowest elevation of excavation depth;~~ Location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;
 - c. ~~Location of all private wells of adjacent property owners within 300 feet of the proposed parcel boundary;~~ Proposed buffers consistent with KPB 21.29.050(A)(1), or alternate buffer plan; and
 - ~~Location of any water body on the parcel, including the location of any riparian wetland as determined by best available data.;~~
 - d. Anticipated haul routes, contingent on approval from the governmental agency with regulatory jurisdiction over the road; and
 - e. Location of any processing areas on the parcel, if applicable.
9. A statement by the operator of the site that the requirements of KPB 21.29.045 have been satisfied.
- B. In order to aid the planning commission or planning director's decision-making process, the planning director may provide vicinity, aerial, land use, and ownership maps for each application and may include additional information.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

Thru: Mike Navarre, Mayor *MN*
Max Best, Chief of Staff *MB*

FROM: Robert Ruffner, Planning Director *RR*

DATE: October 13, 2022

SUBJECT: **Administrative Amendment #4** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

[Please note the bold underlined language is new and the strikeout bold language in brackets is to be deleted.]

➤ Amend KPB 21.29.045, as follows:

21.29.045. Required compliance with State and Federal laws

- A. All applicants for permits for earth materials extraction are required to demonstrate compliance with state and federal law. Prior to final approval of the permit, the applicant or agent must provide written documentation from the permitting agency of compliance with the following:
- ~~1. [Mining license as required by the Alaska State Department of Revenue, pursuant to AS 43.65] An Alaska State Department of Natural Resources (ADNR) temporary water use authorization if the Applicant intends for water to leave the site. If water leaves the site, the applicant must adhere to the provisions of the ADNR temporary water use authorization;~~
 2. Mining permit as required by ~~[the Alaska State Department of Natural Resources (] ADNR [)]~~ if extraction activities are to take place on state land;
 3. Reclamation plan as required by ADNR, pursuant to A.S. 27.19;

Page 2 of 3

October 13, 2022

Re: Administrative Amendment #4

4. Notice of intent for construction general permit or multi-sector general permit and storm water pollution prevention plan, and other associated permits or plans required by the Department of Environmental Conservation (DEC) pursuant to the Alaska Pollutant Discharge Elimination System (APDES) requirements;
 5. United States Army Corps of Engineers (USACE) permit pursuant to Section 404 of the Clean Water Act, 33 U.S.C. 1344, if material extraction activity requires USACE approval; and
 6. Any other applicable state or federal agency with regulatory authority of mining activities or earth materials extraction.
- B. In addition to the requirements in subsection (A) of this section, all activity must be conducted in compliance with state or federal regulations governing the items listed below. Written documentation of compliance with these regulations is not required. Complaints received by the borough of violations of requirements within this section will be forwarded to the appropriate agency for enforcement, this includes but is not limited to:
1. Air quality.
 - a. EPA air quality control permit is required for asphalt plants and crushers;
 - b. ADNR burn permit is required for brush or stump burning. Combustibles must be stockpiled separate from noncombustibles, and burn permit requirements must be followed; and
 - c. ADEC dust control and air quality regulations pertaining to burning activities must be followed.
 2. Water quality. EPA or ADEC regulations controlling spills, spill reporting, storage and disposal of oil, anti-freeze and hydrocarbons.
 3. Hazardous Materials. Use and storage of hazardous materials, waste and explosives.
 - a. EPA regulations controlling use of hazardous materials must be followed; and
 - b. U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives regulations must be followed when storing or using explosives.

Page 3 of 3

October 13, 2022

Re: Administrative Amendment #4

C. Failure to comply with any of the requirements in subsections (A) and (B) of this section is a violation of the permit, and is subject to enforcement pursuant to KPB Chapter 21.50.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

Thru: Mike Navarre, Mayor ^{MN}
Max Best, Chief of Staff ^{MB}

FROM: Robert Ruffner, Planning Director ^{RR}

DATE: October 13, 2022

SUBJECT: **Administrative Amendment #5** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

[Please note the bold underlined language is new and the strikeout bold language in brackets is to be deleted.]

➤ Amend KPB 21.29.050, as follows:

21.29.050. Permit conditions applicable to all permits.

A. The planning commission or planning director, as applicable, must impose the following mandatory conditions prior to approval of a permit under this chapter:

1. Buffer Zone.

a. A buffer area of 32 feet must be established between the area of excavation and the parcel boundaries. The buffer area may include one or more of the following: undisturbed natural vegetation that provides sufficient noise and street-level visual screening; an eight-foot earthen berm with a 2:1 slope; or a minimum eight-foot fence.

Berms should not alter natural drainage features;

b. A 2:1 slope must be maintained between the buffer zone and excavation floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if the site plan provides

Page 2 of 5

October 13, 2022

Re: Administrative Amendment #5

- the timeframe for removal and verification that suitable, stabilizing material will replace the removed material within 30 days of removal;
- c. Where an easement exists, a buffer must not overlap the easement, unless otherwise conditioned by the planning commission or planning director, as applicable; and
 - d. This requirement may only be waived upon a finding by the planning director or planning commission, as applicable, that a lot line where the waiver is requested is directly adjacent to another material site.
2. Water source separation.
- a. Material extraction below or within four feet of the seasonal high-water table is prohibited unless the applicant is issued a CLUP Material Extraction Within Water Table Permit and the requirements and conditions set forth in KPB 21.29.057 are satisfied;
 - b. Dewatering either by pumping, ditching or some other form of draining that removes water from the site or causes water to leave the site is prohibited;
 - c. All permits shall be issued with a condition which prohibits any material extraction within 100 linear feet of any private well or water source existing prior to original permit issuance; and
 - d. On site movement of water may be permitted pursuant to KPB 21.29.057 and if: (i) the operator provides a statement under seal and supporting data from a qualified independent civil engineer licensed and active in the State of Alaska that the dewatering will not lower any known water systems; and (ii) the applicant posts a bond for liability for potential accrued damages in an amount equivalent to the cost to replace each water wells within a 300-foot radius of the site. The rebuttable presumption is that the cost per well is a minimum of \$10,000.
3. Roads. Operations that impact borough roads must be conducted in accordance with the requirements and remedies of KPB Chapter 14.40.
4. Dust control. Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
5. Hours of operation. Material extraction activities, including equipment operation, may only occur between the hours of 6:00 a.m. and 9:00 p.m. Alaska Standard Time (AKST), or as determined by the planning

commission or planning director, as applicable, to be appropriate based on information presented.

- a. Seasonal, project-based waiver. An applicant may request a seasonal, project-based waiver of the hours of operation requirements under this subsection. A waiver granted under this subsection is valid for six consecutive calendar months. To grant a waiver under this subsection, the commission must find that the waiver is necessary for a specific project, and that the waiver is not harmful to the public health, safety, and general welfare of borough residents.
6. Groundwater elevation. All material sites must maintain one monitoring well four feet below the proposed excavation per ten acres of excavated area.
7. Setback. Material site excavation areas must be 250 feet from the property boundaries of any **[local option zoning district]** existing public school ground, private school ground, college campus, childcare facility, multi-purpose senior center, assisted living home, and licensed health care facility. If overlapping, the buffer areas of the excavation must be in addition to the 250-foot setback.
8. Permit boundaries. The buffers and any easements or right-of-way abutting the proposed permit area must be staked at sequentially visible intervals. Field verification and staking will require the services of a professional land surveyor. Stakes must be in place prior to issuance of the permit.
9. Processing. Material extraction of any size that includes processing, screening, or crushing activities is prohibited unless the applicant is issued an Earth Materials Processing CLUP and the conditions set forth in KPB 21.29.055 are imposed on the permit.
- B. Discretionary Conditions. The planning commission or planning director, as applicable, may set conditions of approval for issuance of a counter permit or CLUP, as appropriate for the area in which the development is sited, for the following:
 1. Setbacks/Buffer Area.

Page 4 of 5

October 13, 2022

Re: Administrative Amendment #5

- a. The mandatory buffer area condition in subsection (A) above may be increased, up to a maximum of 100 feet between the area of excavation and the parcel boundaries, if the planning commission finds based on substantial evidence presented that increasing the buffer area is necessary for the public health, welfare and safety of the surrounding community;
 - i. Upon request of the applicant, in lieu of any additional buffer area under this subsection designed to separate the use of material site activities from neighboring parcel boundaries, an eight-foot-high berm above the preexisting elevation may be constructed, prior to excavation, around the excavation area. If the excavation site area expands, the berm may move toward the permitted boundary until such limits of the permitted area are exhausted. The berm must be maintained at eight-foot height while permitted activity is occurring.
 - b. All other requirements of KPB 21.29.050(A)(1) apply; and
 - c. When a buffer area has been denuded prior to review of the application by the planning commission or planning director revegetation may be required.
2. Road maintenance and repair. In consultation with the Road Service Area Director, road maintenance or repair of public right-of-way haul routes may be required of the permittee.
 3. Ingress and egress. The planning commission or planning director may determine the points of ingress and egress for the material site. The permittee is not required to construct haul routes outside the parcel boundaries of the material site. Driveway authorization must be acquired, from either the state through an "Approval to Construct" or the borough road service area, as appropriate, prior to issuance of a material site permit when accessing a public right-of-way.
 4. Dust suppression. Dust suppression may be required when natural precipitation is not adequate to suppress the dust generated by the material site traffic on public right-of-way haul routes.
 5. Surface water protection. Use of surface water protection measures as specified in KPB 21.29.030(A)(8)(a).

Page 5 of 5

October 13, 2022

Re: Administrative Amendment #5

6. Street-level screening. Street-level visual screening, noise mitigation, and lighting restrictions as appropriate for the surrounding area and in accordance with the standards set forth in KPB 21.29.040.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

Thru: Mike Navarre, Mayor *MN*
Max Best, Chief of Staff *MB*

FROM: Robert Ruffner, Planning Director *RR*

DATE: October 13, 2022

SUBJECT: **Administrative Amendment #6** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

[Please note the bold underlined language is new and the strikeout bold language in brackets is to be deleted.]

➤ Amend KPB 21.29.055, as follows:

21.29.055. Earth materials processing.

In accordance with KPB 21.29.020(B)(2), a n Earth Materials Processing CLUP is required for earth materials processing activities, such as material screening or crushing. Prior to issuing a permit under this subsection, the planning commission must impose the mandatory conditions set forth in KPB 21.29.050(A) and discretionary conditions as the planning commission deems appropriate. In addition, the following requirements and permit conditions specific to an Earth Materials Processing CLUP apply:

A. Setback. In the case of a CLUP, any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries. At its discretion, the planning commission may waive the 300-foot processing distance requirement, or allow a lesser distance in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.

Page 2 of 2

October 13, 2022

Re: Administrative Amendment #6

B. Hours of operation.

1. Processing equipment may only be operated between 8:00 a.m. and 7:00 p.m. AKST, or as determined by the planning commission.
2. The planning commission may grant exceptions to increase the hours of operation and processing in the event of an emergency or a good-cause finding that the increased hours of operation serve a public purpose and are not harmful to the public health, safety, and general welfare of borough residents. Such an exception shall not exceed 120 days.
2. Seasonal, project-based waiver. An applicant may request a seasonal, project-based waiver of the hours of operation requirements under this section. A waiver granted under this subsection is valid for six consecutive calendar months. To grant a waiver under this subsection, the commission must find that the waiver is necessary for a specific project, and that the waiver is not harmful to the public health, safety, and general welfare of borough residents.

C. Onsite retention of settling pond water is allowed, including for the washing of materials, provided that the settling pond is not created by channeling or redirecting natural water bodies or natural drainage. However, if the settling pond is within four feet of the seasonal high water table, then an earth materials extraction within water table CLUP under KPB 21.29.057 is also required.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

Thru: Mike Navarre, Mayor *MN*
Max Best, Chief of Staff *MB*

FROM: Robert Ruffner, Planning Director *RR*

DATE: October 13, 2022

SUBJECT: **Administrative Amendment #7** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

[Please note the bold underlined language is new and the strikeout bold language in brackets is to be deleted.]

➤ Amend KPB 21.29.060, as follows:

21.29.060. Reclamation plan.

- A. All material site permit applications require an overall reclamation plan. A site plan for reclamation must be required including a scaled drawing with finished contours. A five-year reclamation plan must be submitted with a permit renewal request.
- B. The applicant may revegetate and must reclaim all disturbed land within the time period approved with the reclamation plan so as to leave the land in a stable condition wherein a 2:1 slope is maintained. Any revegetation must be done with a non-invasive plant species. Bonding must be required at \$750.00 per acre for all acreage included in the current five-year reclamation plan. In the alternative, the planning director may accept a qualified professional's estimate for determining the amount of bonding. If the applicant is bonded with the state, the borough's bonding requirement is waived. Compliance with reclamation plans will be enforced under KPB 21.50.

Page 2 of 3

October 13, 2022

Re: Administrative Amendment #7

C. The following measures must be considered in the preparation, approval and implementation of the reclamation plan, although not all will be applicable to every reclamation plan:

1. The area will be backfilled, graded and re-contoured using strippings, overburden, and topsoil so that it will be stabilized to a condition that will allow for revegetation under KPB 21.29.060(B).
2. The topsoil used for reclamation must be reasonably free from roots, clods, sticks, and branches greater than 3 inches in diameter. Areas having slopes greater than 2:1 require special consideration and design for stabilization by an independent, professional civil engineer licensed and active in the State of Alaska.
3. Exploration trenches or pits will be backfilled. Brush piles and unwanted vegetation must be removed from the site, buried or burned. Topsoil and other organics will be spread on the backfilled surface to inhibit erosion and promote natural revegetation.
4. Topsoil mine operations must ensure a minimum of four inches of suitable growing medium is left or replaced on the site upon completion of the reclamation activity (unless otherwise authorized).
5. Ponding may be used as a reclamation method as approved by the planning commission.
6. The area will be reclaimed in a manner that screens the site from becoming a public attractive nuisance and in a manner that is not harmful to public health, safety, and general welfare.

D. The five-year reclamation plan must describe the total acreage to be reclaimed relative to the total excavation plan. **The five-year reclamation plan must also identify any drainage features which enter or exit the property.**

E. Close-out. Reclamation plans and requirements survive expiration, termination, or revocation of a permit granted under this chapter. In order to close-out a permit, the planning director must be provided adequate proof that reclamation has been conducted in accordance with the reclamation plan. If a permit expires, terminates, or is revoked prior to permit close-out, the remedies under KPB 21.50 apply and the planning director

Page 3 of 3

October 13, 2022

Re: Administrative Amendment #7

may hold applicable fines and remedies in abeyance upon a finding that reclamation is actively ongoing.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

Thru: Mike Navarre, Mayor *MN*
Max Best, Chief of Staff *MB*

FROM: Robert Ruffner, Planning Director *RR*

DATE: October 13, 2022

SUBJECT: **Administrative Amendment #8** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

[Please note the bold underlined language is new and the strikeout bold language in brackets is to be deleted.]

➤ Amend KPB 21.29.120, as follows:

21.29.120. Prior-existing uses.

- A. Determination. Prior-existing uses (PEU) in effect on October 1, 2022 are allowed to continue operation subject to the requirements of this section. The burden of proof that the prior-existing use existed before October 1, 2022 is on the applicant. If the planning director denies prior-existing use status, the applicant must comply with the permit requirements of this chapter. Failure to apply for a prior-existing use determination by January 1, 2024 will result in termination of all rights to continued operation as a nonconforming use and require full compliance with all provisions of this chapter.
- B. Decision. The planning director will give notice of the application for a prior-existing use determination to property owners within 100 feet of the subject parcel boundaries. The notice shall include a summary of the application, a vicinity map, and a deadline for submitting written comments or evidence regarding the existence of the use prior to the planning director issuing a decision. The planning director will issue a decision regarding the prior-existing use status based on the written application, written

Page 2 of 3

October 13, 2022

Re: Administrative Amendment #8

comments, or evidence regarding the existence of the use. **Based on that information, the planning director will classify the PEU based upon the types defined in KPB 21.29.020 and will provide a written description of the existing operations. The planning director's decision will also set forth the reclamation plan as required by subsection (F) below.** The planning director's decision may be appealed by the applicant or affected property owners to the planning commission within 15 days of distribution of the decision.

- C. Discontinuance. Any prior-existing use which has ceased by discontinuance for an uninterrupted period of ~~365 days~~ **five (5) years** must thereafter conform to the permit requirements of this chapter. Lack of intent to cease use or abandon the use does not suspend the 365-day time period. If a prior-existing use is discontinued or abandoned, it may not be recommenced.
- D. Expansion Prohibited. A prior-existing use may not be increased, intensified, or expanded or moved to any other part of the lot, tract, or parcel it occupies after October 1, 2022, nor may the prior-existing use be moved to a parcel which is subject to this chapter. If a parcel is subdivided, the pre-existing use may not be expanded to any lot, tract, or parcel where material extraction or processing had not previously occurred or was not lawfully established in accordance with this section. **If a PEU material site has been exhausted as determined by the planning director, it cannot be used for earth materials processing without an earth materials processing CLUP.**
- E. Standards. In order to qualify as a legal prior-existing use, the use must meet the following standards, on or before October 1, 2022:
1. A use must have been legally established under prior law.
 2. A use must be operational in accordance with the type of use.
- F. In accordance with 21.29.015, on or before January 1, 2026, all legal prior-existing-use extraction operations shall comply with KPB 21.29.060 (reclamation plan) and applicable hours of operation requirements under this chapter. **The planning director may waive or modify any or all of the reclamation plan requirements set forth in KPB 21.29.060 as appropriate.**
- G. Materials extraction operations with legal prior-existing use status which extract material below or within four feet of the seasonal highwater table shall conduct operations in accordance with the requirements outlined in KPB 21.29.057, except that KPB 21.29.057(C)(7) will not apply.

Page 3 of 3

October 13, 2022

Re: Administrative Amendment #8

H. For the purposes of this section, "increased, intensified, or expanded" means: (1) enlarging the area of excavation **beyond the classification set forth in the planning director's decision or beyond the written description of existing operations as set forth by the planning director under subsection (B) above**; (2) increasing the depth of excavation to go within four feet of the seasonal high-water table; or (3) adding a use that was not in existence as of the date of the PEU status determination, to include adding earth materials processing to a use that did not previously include processing.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

Thru: Mike Navarre, Mayor *MN*
Max Best, Chief of Staff *MB*

FROM: Robert Ruffner, Planning Director *RR*

DATE: October 13, 2022

SUBJECT: **Administrative Amendment #9** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

[Please note the bold underlined language is new and the strikeout bold language in brackets is to be deleted.]

➤ Amend KPB 21.29.130, as follows:

21.29.130. Definitions.

A. Unless the context requires otherwise, the following definitions apply to material site permits and activities:

1. *Abandon* means to cease or discontinue a use without intent to resume, but excluding short-term interruptions to use or activity during periods of remodeling, maintaining, or otherwise improving or rearranging a facility or during normal periods of vacation or seasonal closure. An "intent to resume" can be shown through continuous operation of a portion of the facility, maintenance of utilities, or outside proof of continuance, e.g., bills of lading or delivery records. Abandonment also means the cessation of use, regardless of voluntariness, for a specified period of time.
2. *Aggrieved Party* means a party of record adversely impacted by the decision of the hearing officer who participated before the hearing officer either by written or oral presentation.

3. Aquifer means a subsurface formation that contains sufficient water-saturated permeable material to yield economical quantities of water to wells and springs.
4. Aquifer-confining layer means that layer of relatively impermeable soil below an aquifer, typically clay, which confines water.
5. Commercial means any provision of services, sale of goods, or use operated for production of income whether or not income is derived, including sales, barter, rental, or trade of goods and services.
6. Conditioning or processing material means a value-added process including batch plants, asphalt plants, screening, **blasting**, washing, and crushing by use of machinery. **It does not include stripping and segregation with excavation equipment.**
7. Exhausted means that all material of a commercial quality in a sand, gravel, or material site has been removed.
8. Groundwater means, in the broadest sense, all subsurface water, more commonly that part of the subsurface water in the saturated zone.
9. Person shall include any individual, firm, partnership, association, corporation, cooperative, or state or local government.
10. Quarter or Quarterly means January through March, April through June, July through September, or October through December;
11. Sand, gravel or material site means an area used for extracting, quarrying, or conditioning gravel or substances from the ground that are not subject to permits through the state location (mining claim) system (e.g., gold, silver, and other metals), nor energy minerals including but not limited to coal, oil, and gas.
12. Seasonal high groundwater table means the highest level to which the groundwater rises on an annual basis.
13. Stable condition means the rehabilitation, where feasible, of the physical environment of the site to a condition that allows for the reestablishment of renewable resources on the site within a reasonable period of time by natural processes.
14. Surface water means water on the earth's surface exposed to the atmosphere such as rivers, lakes, and creeks.
15. Topsoil means material suitable for vegetative growth.
16. Waterbody means any lake, pond, stream, riparian wetland, or groundwater into which stormwater runoff is directed.

Page 3 of 3
October 13, 2022
Re: Administrative Amendment #9

17. Water source means a well, spring or other similar source that provides water for human consumptive use.

Your consideration of this amendment is appreciated.