

Agenda Item N.I.

Committee Lands

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Kenai Peninsula Borough
Planning department

KPB
CLERK'S OFFICE

Subject: Proposed changes to KPB chapters 21.25,26

Attention: Crista Hippchen , Planner

Per our conversation at the last planning commission meeting, I am forwarding my assessment of deficiencies in the current code and proposed changes. I appreciate your cooperation in considering my comments and hope to get some feedback on their merit. I would make myself available, if you required any further clarification or assistance. The current proposed changes by planning to chapter 21.26 may address specific concerns affecting gravel pit operations, but it does not go far enough to correct other problems in the code, which affect all land users. The code does not clearly define all obvious and major affected activities. There is also no clear delineation between small-scale land uses and large operations. The result is a trickle down affect of requirements for large-scale land uses to smaller operations.

The code also relies primarily on voluntary compliance and is complaint driven. Since the code is inconsistent and minimally describes all land uses, the code is difficult to manage, and more importantly difficult to understand by the public.

Many provisions of the code both in the existing and the latest proposal refer to "commercial uses vs non-commercial uses". I would propose the borough consider revisions to the codes that focus less on 'who or what entity' is extracting materials to the actual extraction or land use itself. For example, how many cubic yards can be excavated before it falls under gravel pit guidelines. A 100cy extraction should not be under the same guidelines as major operations excavating thousands of cubic yards. It is common practice in other boroughs and cities to base permit requirements on quantities and location as well as uses. This is necessary, since any entity including private property owners, businesses, contractors, developers, road builders, and gravel pit operators as a minimal listing, may on a small or large-scale extract materials for commercial, personal, or non-commercial use.

I would propose the following points be considered in possible code revisions:

REGARDING DIRECTION: Any entity seeking advice on land use requirements should be able to access the code for a clear understanding of land uses requiring or not requiring a permit. Direction first comes from **21.25.040-A**, "it shall be unlawful for any person to use land, or to assist another to use land, within the rural district of the KPB for the following uses without first

obtaining a permit from the KPB in accordance with the terms of this ordinance; Commercial sand, gravel or material site pursuant to KPB 21.26.”

According to the above, only commercial users are directed to 21.26 when in fact 21.26 includes many non-commercial provisions. Section 21.25 should be expanded to include as many land uses as possible for both commercial and non-commercial for which the borough specifically wants an entity to obtain a conditional use permit. Conditions not requiring a permit could be spelled out or left silent. Land users should not be directed to go to 21.26 unless they are required to obtain a permit as by chapter title: 21.26 MATERIAL SITE PERMITS, this chapter deals with procedures, standards and exemptions, all of which still require you to go through the application process. This will eliminate unnecessary inquiries and applications.

It is also possible to interpret 21.25.040,A, 2 in a broad manner, whereby any material site, commercial or non commercial is covered under this section. This would mean by 21.25.030 definition, that any entity extracting material from the ground, regardless of quantity or use is required to apply for a permit under 21.26. This interpretation is partly supported by the small exemption clause in 21.26.010,C wherein exemptions are granted for purposes other than commercial gravel extraction. If enforced, this code interpretation would require every entity to get either a counter permit, or conditional use permit by way of application. Consequently, only through the application process could you apply for an exemption even if you were only extracting one cubic yard of gravel.

REGARDING 21.26.010,B,1 & 2 :COUNTER PERMITS & SMALL QUANTITY EXEMPTIONS

The counter permit is unnecessary and should be eliminated from the code. The only condition for which a counter permit is now deemed necessary is **for on site use**. Conditions now required for this permit such as keeping excavation 4 feet above the water table could be spelled out in chapter 25. Entities would only be required to apply for a permit under chapter 26 procedures, if they wanted to excavate below the 4-foot mark

The small quantity exemption is to broadly written and open to interpretation. More questions than direction come from this clause:

1. What is a small quantity?
2. What is meant by exemption from this chapter? Chapter 25 already requires you to fill out a permit. Do you still fill out a permit, pay any fees, and pay for a surveyor's site layout as now being proposed?
3. The second line refers to purposes other than commercial gravel extraction. Are there no restrictions on the size of the gravel pit? Can I dig any size hole understanding that it is not for commercial purposes?

4. A common practice is to excavate pits for extracting materials and then burying the overburden. Any restrictions here?
5. Can I build a road connecting multiple parcels that I own and may or may not sell some day?
6. Does it have to be on my residential site to qualify?
7. Only gravel is referenced. What about other materials such as sand, clay, topsoil, peat?
8. Can I give materials freely to my neighbors?
9. What is commercial gravel extraction? **Per 21.25.030, commercial means any use operated for production of income whether or not income is derived from sales, barter, rental, or trade for services.** If you are any type of business such as a store, contractor, developer and making improvements to your own roads, pads or subdivision property, where is the dividing lines on small quantities. Some day, the business could be sold, developed lots could be sold and so forth. Does this sentence only refer to gravel extraction to be sold and removed off site?
10. Development of multiple contiguous properties of any number of parcels, and owned by a private land owner or business entity creates numerous questions in the small quantity exemption clause. Typically, clearing property and burying overburden requires multiple small excavations throughout the subdivision. Is this covered under this clause? If not, where is this addressed? Construction of 30' wide road profiles within a standard 60' ROW typically requires trenching a deep ditch trench along the road. The material is cast into the road profile as the base or cap material depending on the grade of the material. The overburden from clearing the ROW is deposited in the trench and mixed with leftover material, and then landscaped. Since you only have 15' or less on each side of the road profile, your trench could extend from the ditch line to the property line. Is a permit required for road construction within the ROW? I doubt if this excavation process is allowed under the present guidelines although it is common practice and has no adverse impact and is allowed by the road department.

In summary, the small exemption clause should be deleted from chapter 26 and its guidelines or intent incorporated into chapter 25. All the above questions should be addressed and answered in chapter 25 to determine if a permit is required in the first place. **But, no permit should be required if a land user meets the obvious intent of the clause, which is to not burden the borough and public with a permit process involving non-commercial extraction within specific guidelines.** On site activities, which do not affect adjacent landowners could easily be defined here, thus not requiring a permit and adding an unnecessary admin burden on the planning department. . A complaint would then result in a code search to determine if a permit was required before the start of the question activity.

REGARDING 21.26.020, STANDARDS FOR SAND, GRAVEL, OR MATERIAL SITE

Paragraph A.1 regarding aquifer disturbances is another example where the size and magnitude of the material extraction is not well defined. Trenching along a proposed roadway and excavating below the water table, backfilling the next day is not the same as open pit mining. Guidelines should be established in chapter 25 that if you are a set distance from a neighbors waters source, on your own property, a set distance from a neighbors property line, that a permit is not required, There has to be some obvious protective guidelines established by engineers which would provide a safety net to distant neighbors. Why should a property owner excavating a 20' deep pit in the middle of his 40 acres to extract a 1000cy of gravel have to get a permit, when there is no obvious affect on adjacent properties? **The realty is, he would not apply for a permit anyway.**

REGARDING 21.26.030, PERMIT CONDITIONS

Paragraph A.1 can have the same onerous affects on property owners as above, when the provisions are not co-coordinated or specifically tied to specific guidelines such as excavated quantities, depth of excavation, type of material, proximity to adjacent properties and ownership of contiguous properties. 50' buffers, 2 to 1 slopes, 6' earthen berms or 6 ft fences obviously apply to major pit operations. Why not state under what conditions, these requirements will be required? Removing 1' of material of any kind close to the property line and not affecting neighbors drainage, or water systems should not only not require a permit but also definitely not require any of the stated buffers.

REGARDING CHANGES PROPOSED AS CHAPTER 21.29

The planning commission is proposing a significant number of changes, which are probably being driven by complaints over large-scale gravel operations. Again, as discussed in the previous paragraphs, there is going to be a burdensome trickle down affect on smaller and low impact operations.

1. Permits for excavation in the water table should not be required in all conditions as proposed. There are obvious exceptions, as noted above, where there are no detrimental affects, which can be defined and not require a permit.
2. Dewatering is not an activity to be prohibited in all conditions as proposed. If there is no affect on adjacent properties within certain guidelines- why create an onerous provision, which could be costly to the permittee to appeal?
3. Why mandate a 2' separation above the water table and certification by a civil engineer in all cases. Why not just specify under what conditions, these provisions are necessary to protect adjacent properties. A provision of this magnitude should be based on sound engineering recommendations.
4. The comments included under water bodies are inaccurate and possibly duplicated by the Corps of engineers and the EPA. The Corps does not regulate extraction in the wetlands-only placement of fill. They also do not

identify the wetland perimeter unless processed through an application. The 100' requirement seems unsupported or random, as it could be greater in some instances. Is planning aware of EPA's requirement for storm drain permits, which has specific drainage requirements?

5. The application procedures are being modified to require a site plan and field verification by a professional surveyor. This is not only onerous and excessive, but also costly. KPB fees and surveyor's fees could end up costing \$1000 or more. Both the Corps of Engineers and EPA do not require professional assistance for wetland and storm drain permits. Both their permit processes are lengthy, but well laid out on how to prepare a site plan and description. The planning department can easily mandate their site plan requirement and reject any non-conformity. I am sure that voluntary compliance is already at a minimum for material sites, especially if the code is broadly interpreted to include all excavation. Requiring a surveyor to perform a site layout which can be accomplished by most laymen will only discourage permit participation.

In summary, this is an opportunity to better define when permits are required, eliminate unnecessary permit requirements and provide better guidelines for their management to encourage compliance.

1. The two chapters should be separated wherein chapter 25 defines in detail what land uses requires a permit. Chapter 26 should focus strictly on application guidelines after an applicant is directed to this chapter.
2. The counter permit should be eliminated. It is a management tool to cover exceptions, which should be defined and not require a permit in the first place. The planning department should not be tasked with the administration of permits for exceptions to the code. If an entity is given an OTC permit for land uses not covered by the conditional land use permit, what purpose does it serve? There is no meaningful oversight and only increases the departments admin burden.
3. A major goal of the revision process should be to review the specific land uses, which necessitate a permit and require oversight. Exemptions, and uses not requiring oversight should be identified up front in the code to eliminate unnecessary application. For example, the code could read:
“ a person or entity shall be required to obtain a permit from the KPB under any land use involving the following conditions or activities:
 - a. **Extraction of materials to be sold or bartered regardless of quantity**
 - b. **Extraction of materials within (feet???) of a well or water source on property not owned by the land user.**
 - c. **Extraction of material for onsite use within (feet???) of an adjacent parcel not owned by the land user property**

There are obviously many land uses, which are non-controversial and have no adverse impact on neighbors or the environment. These could be eliminated from the permit process by carefully wording the above guidelines.

TERRY COWART
283-0491

Material Site Task Force Report to the Assembly

Overview of the Material Site Task Force

MSTF Purpose and Origin

The Material Site Task Force (MSTF) was established by the Kenai Peninsula Borough Assembly on November 18, 1997 to review KPB Chapter 21.13 regulating land use permits for Sand, Gravel and Material sites. The purpose of the MSTF was to provide recommendations to the Planning Commission and Borough Assembly for amendments to KPB 21.13.

The MSTF consisted of eleven citizens of the following affiliations: three material site/gravel pit operators, three borough residents, and one representative from each of the following: a village/regional corporation, and engineer, a hydrologist, a Soil and Water Conservation District representative, and a Planning Commission member. After appointment and confirmation, the task force was given four months to deliver their recommendations to the Borough Assembly, Planning Commission and Borough Administration.

The following individuals were appointed to the MSTF by the Mayor in December, 1997.

Operators

Paul Simonds
Terry Best
Buzz Kyllonen

Property Owners

Ann Bayes
Dave Donald
Duane Christensen

Engineer

Mike Tauriainen

Hydrologist

Robert Ruffner

Village/Regional Corporation

Mike Franger**
(replaced by Dean Kvasnikoff)

Planning Commission

Bob Clutis

Soil/Water Conservation District

Mike Swan

MSTF Meetings

The MSTF first met on January 14, 1998, and weekly thereafter with few exceptions. All meetings were open to public participation, with scheduled time for member and public comments. A total of 11 meetings were held in Soldona, Ninilchik and Anchor Point.

Administrative Rules

Lisa Parker, KPB Planning Director chaired MSTF meetings with staff support from Rachel Clark, Planner. At the first meeting, members decided to forward all recommendations to the Borough Assembly which had full consensus of the group, defined as no more than two dissenting members. The dissenting members would have the option of presenting their views to the Assembly.

Action by the Material Site Task Force

Items Reviewed

The MSTF reviewed many items in an attempt to research relevant data, including:

1. Alaska Case Law on gravel ordinances.
2. Alaska DNR Statutes and Administrative Code relating to material sites.
3. Other municipal gravel ordinances (Alaska and lower 48 states).
4. Maps showing assessing categories for gravel and state categories.
5. Pertinent sections of the Borough Comp Plan.
6. Borough Code on Variances, Enforcement and Hearings and Appeals.
7. Technical documents on reclamation, setbacks, groundwater quality, and general land use planning.
8. Working documents and recommendations by the previous MSTF.

Presentations were heard by the group from the KPB Code Compliance Officer, group hydrologist, and internal subcommittees formed to develop recommendations on groundwater protection and reclamation.

Areas of Contention

The MSTF identified the following subsections of KPB 21.13 as non-controversial: 21.13.010, 21.13.020, 21.13.030, 21.13.040, 21.13.040A, 21.13.040B, and 21.13.140. 21.13.030F with the addition of the word "federal" between "or" and "state".

All other portions of 21.13 relating to Sand, Gravel and Material sites (as opposed to Community Correctional Residential Centers) was deemed in need of review.

Recommendations by the Material Site Task Force

Concepts Discussed

The MSTF discussed who they intended to regulate, how to regulate, and what standards would offer the most protection to property owners and the environment, while still protecting the private property rights of material site operators.

Through general consensus, a three-tiered permitting hierarchy evolved, although consensus was never reached on all issues. The three-tiered process involved the following general concepts:

1. **Exemptions** ~ define a lower limit through either size or activity which should be exempt from the provisions of the ordinance.

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WAS NOT GIVEN TO DEFINE THOSE
NOT REQUIRED TO OBTAIN A PERMIT

RESULT:
1.26.010, 8, 1
N SITE USE
SEPARATION TO
WATER TABLE

2. Counter Permits - define specific instances where a full land use would not be required. Generally this was thought to be excavations either occurring on remote (excavation perimeter greater than 1/2 mile from other parcels) sites, of limited duration (project specific) or where the material would be used entirely on-site. Limited standards would apply to counter permits (e.g. reclamation, buffers and distance to groundwater), although consensus was never reached on the distance of vertical separation from groundwater

MAIN FOCUS
COMMERCIAL

3. Full Permits - Required for all other excavations, with Planning Commission hearing and public notice. The group reached consensus in this area, with only minor revisions to the existing Code in the standards for reclamation and buffers.

The group discussed at length only regulating commercial sites, and eventually added this to the definition of material site. The MSTF was clear in its desire to see actual commercial material sites regulated, rather than excavations incidental to other work (e.g. building foundations, installation of septic systems, or development of driveways) even if materials were then sold, meeting the technical definition of "commercial". Consensus was reached to add this exemption to the ordinance.

ROADS
ON SITE
SEPARATIONS

Many other topics were proposed, without consensus, including:

1. Hours of operation.
2. Sunset clause to prior existing uses.
3. Standards for noise, dust and traffic.
4. Vertical separation from groundwater.

Consensus Items

The MSTF reached consensus on the following items:

1. Delete "stockpiling" from definition of Sand, Gravel or Material site. (8 yes, 1 no)
2. Delete "sand, rock, peat, pumicite, cinders, clay, sod, topsoil or other similar resources" and substitute "substances from the ground that are not applied for through the location (mining claim) system (e.g. gold, silver, and other metals) or leasing (e.g. energy minerals such as coal, oil and gas). (9 yes)
3. Add "Commercial means for buy, sale, trade or barter" to definitions. (9 yes, 1 no)

4. Add "On-site use means material used entirely within the boundaries of the parcel it was extracted from, or when development of the parcel requires disposal of the material off-site through bartering" to definitions. (10 yes)
5. "Project-specific use means material used for a single specific use such as road or building construction" to definitions. (10 yes)
6. For buffers, delete all reference of fences, berms and 50 setback and substitute "10 feet natural vegetation plus a 2:1 slope thereafter to the excavation floor. If an operator excavates into the area designated for the 2:1 slope, the slope must be restored within two calendar years." (10 yes)
7. For reclamation, require all sites to follow state reclamation provisions, with the exception of bonding for those less than five acres or 50,000 cubic yards annually. (9 yes, 1 no)
8. Define small quantity exemption as "If materials are extracted primarily for purposes other than commercial gravel extraction, such as when preparing a building site, installation of septic systems or development of driveways, the requirements of this chapter do not apply, even if the materials are sold commercially." (8 yes, 1 no)
9. Require the operator to obtain three well depths within ¼ mile of the site, where available. (8 yes, 1 no)
10. Require permanent storage of fuel in lined dikes. (9 yes)

