

# Kenai Peninsula Borough Planning Department

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## MEMORANDUM

TO: Brent Hibbert, Assembly President  
Kenai Peninsula Borough Assembly Members

THRU: Charlie Pierce, Borough Mayor

FROM: Melanie Aeschliman, Planning Director *MA*

DATE: July 14, 2021

RE: Application for a New Marijuana Cultivation Facility License. Applicant: Leaf & Larf, LLC., dba Purgatory Cannabis; Landowner: Zan Inc.; Parcel ID#: 017-160-41; Location: 43280 Kenai Spur Hwy., Kenai, AK 99611

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The Kenai Peninsula Borough Planning Commission reviewed the subject application during their regularly scheduled July 12, 2021 meeting.

A motion to recommend approval of the. Marijuana cultivation facility license application passed by unanimous vote (10-Yes, 0-No, 1-Absent) subject to the following conditions:

1. The marijuana establishment shall conduct their operations consistent with the site plan submitted to the Kenai Peninsula Borough.
2. There shall be no parking in borough rights-of-way generated by the marijuana establishment.
3. The marijuana establishment shall remain current in all Kenai Peninsula Borough tax obligations consistent with KPB 7.30.020(A).

Attached are the unapproved minutes of the subject portion of the meeting.

July, 12, 2021 Planning Commission Draft Meeting Minutes

as well as the general community benefit from expanded internet connectivity and availability borough-wide. The KPB IT department has evaluated the communication link strategy and determined certain benefits and cost savings would be produced. In the event that communications services are discontinued, the leases would revert to cash rent.

**END OF STAFF REPORT**

Chair Martin opened the meeting for public comment. Hearing no one wishing to comment, public comment was closed and discussion was opened among the commission.

**MOTION:** Commissioner Ruffner moved, seconded by Commissioner Morgan to forward to the Assembly a recommendation to adopt Ordinance 2021-27 authorizing a WISP tower and ground lease agreement at certain locations with SPITWSPOTS Inc.

Seeing and hearing no objection or further discussion, the motion was carried by the following vote.

**MOTION PASSED BY UNANIMOUS VOTE:**

Yes	10	No	0	Absent	1
Yes	Bentz, Brantley, Carluccio, Chesser Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
Absent	Gillham				

**AGENDA ITEM E. NEW BUSINESS**

**8. Marijuana Concentrate Manufacturing Facility License**

**Applicant: Leaf & Larf, LLC dba Purgatory Cannabis**

**Landowner: Zan Inc.**

**Parcel ID#: 017-160-41**

**Location: 43280 Kenai Spur Hwy., Kenai, AK 99611**

**Legal Description: T 6N R 12W SEC 14 SEWARD MERIDIAN KN PORTION OF GOVT LOT 106 LYING EAST OF NORTH KENAI RD**

Staff report given by Bryan Taylor.

Mr. Taylor noted that Commissioner Ecklund has asked for additional information on State licensing requirements and he shared the following information:

**AS 17.38 – Regulation of Marijuana**

*AS 17.38 was passed by citizen's initiative on the November 4, 2014 ballot. The initiative directed the Marijuana Control Board (created by the Alaska Legislature by a bill signed in May, 2015) to adopt regulations governing commercial marijuana establishments and then regulate the newly formed industry. The Marijuana Control Board adopted [regulations](#) in 3 AAC 306 at the end of 2015, and those regulations became effective February 21, 2016.*

**3 AAC 306**

**Regulation of Marijuana Industry**

-Selected Requirements Relevant to Local Government Review-

**Licenses (3 AAC 306.305-110)**

- Types of marijuana establishments: retail store, cultivation facility, product manufacturing facility, testing facility.
- AMCO Board will NOT issue any license if
  - premises is located within **500ft** of school ground, a recreation or youth center, a building in which religious services are regularly conducted, or a correctional facility.
  - Premises is within a liquor license premises.
  - Local government protests on grounds that local ordinance prohibits MJ establishment.

- Application for license must include an **Operating Plan** that includes plans for security; inventory tracking of all MJ and MJ products; employee qualification and training; waste disposal; transportation and delivery of MJ and MJ products; signage and advertising. Board may application if the operating plan does not adequately demonstrate applicant will comply with regulations.
- Within 60 days of notice of an application, a local government may offer protest or conditional protest.
  - If the Board imposes a condition that a local government recommends, the local government shall assume responsibility for monitoring compliance with the condition unless the Board approves otherwise.
  - The Board may hold a public hearing of its own initiative or in response to protest to ascertain the reaction of the public or local government to an application.

### **Operating Requirements for all Marijuana Establishments (3 AAC 306.700-770)**

- Handler Permit: Each employee must take a basic education course to receive a handler permit good for three years.
- Operations: Must operate in accordance with the operating plan approved by the Board.
- Licensed Premise: Each license is issued for a specific premises. Premises for two MJ licenses may overlap with regard to office, employee breakroom, bathroom, non-MJ storage rooms.
- Restricted Access: Access must be restricted to any area where a marijuana product is grown, processed, tested, stored, or stocked.
- Security Systems: Must have ID badges for employees; security lighting, alarms; continuous video monitoring.
- Video Surveillance: must have continuous video surveillance and keep records for a minimum of 40 days.
- Inspections: Premises must be available to inspection upon request from director, employee or agent of Board, or officer enforcing this chapter.
- Inventory Tracking: Must use an inventory tracking system capable of sharing information with the Board's tracking system.
- Health and Safety Standards: Marijuana establishment is subject to inspection by local fire department, building inspector, or code enforcement officer *to confirm that health and safety concerns are not present*.
- Waste Disposal: Marijuana waste must be rendered unusable before it leaves the MJ establishment.
- Standardized Scales: MJ establishment shall use scales in compliance with state Weights and Measures Act (AS 45.75.080).
- Transportation: All transport of MJ or MJ products must be tracked in inventory system.
- Signs, Merchandise, Advertisements, Promotions: Not more than three signs visible to the general public from ROW. Two of three must be placed in window or attached to exterior of premises. Each sign must not exceed 4,800 square inches (roughly 5.5'X6').

### **Marijuana Product Manufacturing Facilities (3 AAC 306.500-570)**

- Must demonstrate establishment will operate in compliance with local ordinances.
- Must apply for a food safety permit from the ADEC
- Operating plan must include: equipment and solvents, gases, chemicals, and processes used to create concentrates; list of each product that will be processed in premises; packaging to be used for each product type; sample labels for products; plan for waste disposal.
- Each product to be manufactured must receive approval.
- Laboratory testing of random samples of products is required.
- Potency limits may not exceed five milligrams of active tetrahydrocannabinol (THC) per serving and not more than 10 serving per packaged unit for consumption.
- Labeling and packaging requirement including not targeting individuals under 21 years of age.

**Purgatory Cannabis application background information:** On October 26, 2020, the borough received notification from the Alcohol and Marijuana Control Office (AMCO) that the applicant had initiated the application to the state for a Marijuana Concentrate Manufacturing Facility license. On October 29, 2020, the applicant supplied the borough with a signed acknowledgement form and a site plan of the proposed

manufacturing facility on the above-described parcel. The AMCO notified the borough that the application was complete on June 4, 2021. Staff has reviewed the completed license that has been submitted to the state and the site plan submitted to the borough and has found the following concerning the standards contained in KPB 7.30.020:

1. The Borough finance department has been notified of the complete application and they report that the applicant is in compliance with the borough tax regulations.
2. Borough planning department staff has evaluated the application and has determined that the proposed facility will be located greater than 1,000 feet from any school.
3. Borough planning department staff has evaluated the application and has determined that the proposed facility will be located greater than 500 feet from all recreation or youth centers, and all buildings in which religious services are regularly conducted, and all correctional facilities.
4. The proposed facility is not located within a local option zoning district.
5. The proposed facility is located where there is sufficient ingress and egress for traffic to the parcel.
  - The site plan indicates that the approach is or will be constructed to a minimum width of 24 feet where it accesses the right-of-way.
  - The signed acknowledgement form indicates that there will not be any parking in borough rights-of-way.
  - The site plan indicates a clear route for delivery vehicles which allows vehicles to turn safely.
  - On-site parking and loading areas are designated at a location that would preclude vehicles from backing out into the roadway.
6. The signed acknowledgement form indicates that the proposed facility will not conduct any business on, or allow any consumer to access, the retail marijuana store's licensed premises, between the hours of 2:00 a.m. and 8:00 a.m.

KPB 7.30.020(E) allows the recommendation of additional conditions on a license to meet the following standards:

- protection against damage to adjacent properties,
- protection against offsite odors,
- protection against noise,
- protection against visual impacts,
- protection against road damage,
- protection against criminal activity, and
- protection of public safety.

The Alaska Marijuana Control Board will impose a condition that a local government recommends unless the board finds the recommended condition is arbitrary, capricious, and unreasonable (3 ACC 306.060b). If the Planning Commission recommends additional conditions, additional findings must be adopted to support the conditions.

**PUBLIC NOTICE:** Notice of the application was mailed on June 23, 2021, to the 19 landowners of the parcels within 300 feet of the subject parcel. Public notice of the hearing on the application was published in the July 1, 2021 & July 8, 2021 issues of the Peninsula Clarion.

#### STAFF RECOMMENDATION

Staff recommends that the planning commission forward this application to the assembly with the findings contained in this staff report and with the recommendation that the following conditions be placed on the state license pursuant to 3 AAC 306.060(b):

1. The marijuana establishment shall conduct their operation consistent with the site plan submitted to the Kenai Peninsula Borough.
2. There shall be no parking in borough rights-of-way generated by the marijuana establishment

3. The marijuana establishment shall remain current in all Kenai Peninsula Borough tax obligations consistent with KPB 7.30.020(A).

**END OF STAFF REPORT**

Chair Martin opened the meeting for public comment. Hearing no one wishing to comment, public comment was closed and discussion was opened among the commission.

**MOTION:** Commissioner Ruffner moved, seconded by Commissioner Venuti to forward to the Assembly the application for a marijuana cultivation facility license for Leaf & Larf, LLC., dba Purgatory Cannabis with staff's findings and recommending the three conditions be placed on the state license.

Commissioner Fikes noted there have been an increase in new marijuana businesses like this in the area. She asked staff if there is any way to gather information on the health effects of edible marijuana products. Mr. Taylor replied he could not answer that but h could contact AMCO and see if they have any data on this topic.

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

**MOTION PASSED BY UNANIMOUS VOTE:**

Yes	10	No	0	Absent	1
Yes	Bentz, Brantley, Carluccio, Chesser Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
Absent	Gillham				

AGENDA ITEM E            NEW BUSINESS

9. **Conditional Land Use Permit Modification; PC Resolution 2021-26**  
**Applicant: Cook Inlet Region Inc. / Land Owner: Cook Inlet Region**  
**Parcel ID#: 06508118**  
**Sterling Area**

Staff report given by Bryan Taylor.

GENERAL OVERVIEW: On June 22, 2021, the applicant submitted payment and a modification application for a material site. The applicant wishes to modify the existing conditional land use permit for material extraction on the above property, approved by the planning commission on March 27, 2017, and extended on May 4, 2021. The modification is to expand the permitted extraction area by approximately 61 acres as shown on the site plan submitted with the application. The application states that the expanded area is to support an Alaska Department of Transportation improvement project for the Sterling Highway. A copy of the application is included as **Attachment A**. Vicinity, aerial, topography, land use and ownership maps are included here as **Attachments B – F**.

KPB 21.29.030(A) REQUIRED APPLICATION ITEMS

- 1) **Location of modification:** The applicant seeks to excavate and an additional area of approximately 61 acres in an area bounded by the Sterling Highway to the north, Kenai Keys Road to the east, Deniigi Way to the south, and Tikahtnu Road to the west (see Attachment A).
- 2) **Lifespan:** The original permit application stated an expected lifespan of 15 years. No change is proposed.
- 3) **Buffers:** In addition to buffers in the original permit, the proposed 61-acre expansion area would be buffered on all sides by 50 feet of natural vegetation and 6-foot earthen berms.
- 4) **Reclamation:** No modification to the reclamation plan is proposed. The original application indicated that 5-25 acres would be reclaimed each year before the end of September using a loader.