# Kenai Peninsula Borough

144 North Binkley Street
Soldotna, AK 99669

## Meeting Agenda

## Assembly

*Brent Johnson, President*
*Tyson Cox, Vice President*
*Lane Chesley*
*Richard Derkevorkian*
*Cindy Ecklund*
*Bill Elam*
*Brent Hibbert*
*Peter Ribbens*
*Mike Tupper*

**Tuesday, September 19, 2023** **6:00 PM** **Council Chambers, Homer City Hall**
**https://us06web.zoom.us/j/88473739641?pwd=dW1sY2RYV0F4dURjV25yVW9WUGw3QT09**

**Meeting ID: 884 7373 9641 Passcode: 671108**

## CALL TO ORDER

## PLEDGE OF ALLEGIANCE

## INVOCATION

*Any invocation that may be offered at the beginning of the assembly meeting shall be a voluntary offering of a private person, to and for the benefit of the assembly. No member of the community is required to attend or participate in the invocation.*

[Clerk's Note: The invocation will be offered by Joan Corr.]

## ROLL CALL

## COMMITTEE REPORTS

## APPROVAL OF AGENDA AND CONSENT AGENDA

*(All items listed with an asterisk (*) are considered to be routine and non-controversial by the Assembly and will be approved by one motion. Public testimony will be taken. There will be no separate discussion of these items unless an Assembly Member so requests, in which case the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda.)*

ACTION ITEMS CURRENTLY ON CONSENT AGENDA:
Resolution 2023-058: SPH Leases and Amendment to the Operating Agreement
Resolution 2023-059: Amending the Scope of the Work for Renovation of 4201 Bartlett Street Leased Property
Resolution 2023-060: Recommending an Amendment to Title 14
Ordinance 2023-19-17: Appropriating $5,525.20 for Statewide Exercise Planning
Ordinance 2023-19-18: Appropriating $25,000 to Complete Installation of Mobile Radios, Station Consolettes and Repeater
Ordinance 2023-19-19: Appropriate Funds for Litigation Fees and Costs Related to an Oil and Gas Property Tax Appeal
Ordinance 2023-19-20: Appropriating $250,273 to Replenish Road Maintenance Funding for the Remainder of the Fiscal Year
Ordinance 2023-22: Authorizing the Assessor to Accept One Late-Filed Community Purpose Exemption Application for 2023 and Provide an Exception to KPB 5.12.040(B)
Ordinance 2023-23: Amending KPB 20.30.280 and KPB 21.06 Regarding Floodplain Management to Remain Compliant with the National Flood Insurance Program
KPB-5488: Approval of Election Workers for the October 3, 2023 Borough Election and the October 24, 2023 Mayoral Run-Off Election (if Required)
KPB-5489: Confirming the Appointments to the Voter Turnout Working Group
KPB-5490: Confirming the Appointments to the Advisory Planning Commission
KPB-5491: Confirming the Appointments to the Road Service Area

ACTION ITEMS ELIGIBLE TO BE ADDED TO THE CONSENT AGENDA:
LAYDOWN KPB-5500: September 5, 2023 Regular Assembly Meeting Minutes
Ordinance 2022-19-83: Appropriate Funds for Landfill Leachate Infrastructure Improvement Project
Ordinance 2023-19-15: Appropriate $39,755 for Fire Suppression System at the Records Center
Ordinance 2023-19-16: Appropriate $30,750 to Purchase GIS Equipment
Ordinance 2023-17: Amending KPB 22.40.080 to Place the Mayor's Report Earlier on the Agenda

## APPROVAL OF MINUTES

**1.** KPB-5500 LAYDOWN September 5, 2023 Regular Assembly Meeting Minutes

## COMMENDING RESOLUTIONS AND PROCLAMATIONS

## PRESENTATIONS WITH PRIOR NOTICE

*(20 minutes total)*

1. KPB-5501 Kenai Peninsula Borough School District Quarterly Report, Clayton Holland, Superintendent (10 minutes)

2. KPB-5502 Status Update on Homer Harbor Expansion Study, Brian Hawkins, Homer Harbor Master (10 minutes)

## PUBLIC COMMENTS ON ITEMS NOT APPEARING ON THE AGENDA

*(3 minutes per speaker; 20 minutes aggregate)*

## ITEMS NOT COMPLETED FROM PRIOR AGENDA

## PUBLIC HEARINGS ON ORDINANCES

*(Testimony limited to 3 minutes per speaker)*

Ordinances referred to Finance Committee

2. 2022-19-83 An Ordinance Appropriating General Funds to Provide Interim Funding for the Central Peninsula Landfill Leachate Infrastructure Improvements Project (Mayor)

***Attachments:*** Ordinance 2022-19-83
Memo
Reference Copy O2022-19-13

3. 2023-19-15 An Ordinance Appropriating $39,755 from the General Fund to Replace the Control Panel on the Fire Suppression System at the Records Center (Johnson)

***Attachments:*** Ordinance 2023-19-15
Memo
Reference Copy O2022-19-61

4. 2023-19-16 An Ordinance Appropriating $30,750 from the Seward-Bear Creek Flood Service Area Fund Balance to Purchase GIS Equipment (Mayor)

***Attachments:*** Ordinance 2023-19-16
Memo

Ordinances referred to Lands Committee

**1.** 2022-36 Ordinance 2022-36 (Johnson, Chesley) Substitute: Amending KPB Chapter 21.25 and KPB Chapter 21.29 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley) (Additional Hearing on 10/10/23)

***Attachments:***

Ordinance 2022-36 Substitute

Substitute Memo

Substitute Sectional Analysis

Mayor Amendments #1 - #11

Derkevorkian/Mayor Amendment

090523 Assembly Presentation O2022-36

Permitting Process

Substance Comparisons

Review of Members, Meetings, and Votes

Chesley Amendment #1 Replacement 21.29.050(B)

Johnson Amendment #4 Substitute 21.29.040(A)(3)

Chesley Amendment #9

Chesley Amendment #10 21.29.050(B)(1)

Chesley Substitute Amendment #5

Chesley Amendment #8 Replacement

Derkevorkian Amendment #13 Replacement for 21.29.120(A) and (D)

Derkevorkian Amendments #1-#14

Derkevorkian Substitute Amendment #12

Derkevorkian Amendment #15

Visual Aid for Amendments_Committee of the Whole 6.6.23

Johnson Amendments #1-#6

Chesley Amendments #1-#5

Chesley Amendment #6

Chesley Amendment #7

Chesley Amendment Clerical Edits

Administrative Amendment #10

Tupper Amendments #1-6 (dealt with)

Administrative Amendments #1-#9 (addressed @ 11/15/22 subcommittee)

Public Comment -Tsunami Inudation Zone

Sectional Analysis with Potential Amendments - Planning Department

Memo

Final Material Site Sectional Analysis

Material Site Subcommittee Presentation

Review Notes by Charley Palmer

Takings Overview presentation

Public Comments

102522 Public Comments

111522 Public Comment

121322 Public Comments
010323 Public Comment
062023 Public Comments
071023 Public Comment
071323 Public Comment
090523 Public Comment
090723 Public Comments
091123 Public Comment
091223 Public Comment
Reference Copy R2018-004 SUB
Reference Copy O2019-30
Reference Copy O2021-41
Reference Copy O2021-41 SUB

Ordinances referred to Policies and Procedures Committee

**5.** 2023-17 An Ordinance Amending KPB 22.40.080 to Place the Mayor's Report Earlier on the Agenda (Johnson, Elam)

***Attachments:*** Ordinance 2023-17
Memo
Reference Copy O2019-08
Reference Copy O2019-17

**UNFINISHED BUSINESS**

1. Notices to Consider

Unfinished Business referred to Lands Committee

**a.** 2023-005 A Resolution of Intent by The Kenai Peninsula Borough Assembly Establishing that Financing of Energy and Resilience Improvement Projects through Assessments Serves a Valid Public Purpose and Related Matters (Ecklund) (Referred to Lands Committee) [Tabled on 01/03/23]

[Clerk's Note: Assembly Member Ecklund gave notice to remove Resolution 2023-005 from the table, per KPB 22.40.070.]

***Attachments:*** Resolution 2023-005
Memo
Public Comments

## NEW BUSINESS

1. Resolutions

Resolutions referred to Policies and Procedures Committee

***a.** 2023-058 A Resolution Approving an Increase to the Limitation on the Total Cumulative Annual Cost of Real Property Leases in which South Peninsula Hospital, Inc. is the Sole Lessee, Approving Exhibit A Updates, and Approving a Third Amendment to the Operating Agreement (Mayor)

***Attachments:***
- Resolution 2023-058
- Memo
- Operating Agreement 3rd Amendment
- Reference Copy R2023-019
- South Peninsula Hospital Board Resolution 2023-18
- South Peninsula Hospital Board Resolution 2023-19

***b.** 2023-059 A Resolution Amending the Scope of Work for the Renovation of the 4201 Bartlett Street Leased Property for South Kenai Peninsula Hospital Service Area Purposes (Mayor)

***Attachments:***
- Resolution 2023-059
- Memo
- South Peninsula Hospital Board Resolution 2023-25

Resolutions referred to Legislative Committee

***c.** 2023-060 A Resolution Recommending an Amendment to Title 14 of the Alaska Statutes, Relating to School Boards, to Allow for Term Limits for School Boards (Derkevorkian)

***Attachments:***
- Resolution 2023-060
- Memo

2. Ordinances for Introduction

Ordinances for Introduction and referred to the Finance Committee

***a.** 2023-19-17 An Ordinance Accepting and Appropriating an Additional $5,525.20 from the State of Alaska Department of Military and Veterans Affairs, Division of Homeland Security and Emergency Management for Statewide Exercise Planning (Mayor) (Hearing on 10/10/23)

***Attachments:*** Ordinance 2023-19-17
Memo
Award Amendment

***b.** 2023-19-18 An Ordinance Appropriating $25,000 from the Western Emergency Service Area Operating Fund to Complete Installation of Mobile Radios, Station Consolettes and Repeater (Mayor) (Hearing on 10/10/23)

***Attachments:*** Ordinance 2023-19-18
Memo

***c.** 2023-19-19 An Ordinance Appropriating Funds to the Legal Department for Litigation Fees and Costs Related to an Oil and Gas Property Tax Appeal (Mayor)
(Hearing on 10/10/23)

***Attachments:*** Ordinance 2023-19-19
Memo

***d.** 2022-19-20 An Ordinance Appropriating $100,000 to the Legal Department to Cover Costs of Hiring Hearing Officers for Planning Commission Appeals (Johnson at the Request of the Borough Attorney) (Hearing on 10/25/22)

***Attachments:*** Ordinance 2022-19-20
Memo

***e.** 2023-22 An Ordinance Authorizing the Assessor to Accept One Late-Filed Community Purpose Exemption Application for 2023 and Providing an Exception to KPB 5.12.040(B) (Mayor) (Hearing on 10/10/23)

***Attachments:*** Ordinance 2023-22
Memo
Late File Waiver

Ordinances for Introduction and referred to the Policies and Procedures Committee

***f.** 2023-23 An Ordinance Amending KPB 20.30.280 and KPB 21.06 Regarding Floodplain Management to Adopt Required Changes to Remain Compliant with the National Flood Insurance Program (Mayor) (Hearing on 10/24/23)

***Attachments:*** Ordinance 2023-23
Memo

3. Other

***a.** KPB-5488 Approval of Precinct Boards, Canvass Board, and Absentee Voting Officials for the October 3, 2023 Borough Election and the October 24, 2023 Mayoral Run-Off Election (if Required)

***Attachments:*** Memo

***b.** KPB-5489 Confirming the Appointments to the Voter Turnout Working Group Members

***Attachments:*** Memo

***c.** KPB-5490 Confirming the Appointments to the Advisory Planning Commissions

Cooper Landing
Yvette Galbraith, Seat C, Term to Expire: 09/30/2026
Heather Harrison, Seat D,Term to Expire: 09/30/2026

Funny River
James L. Harping, Seat B, Term to Expire: 09/30/2026

Hope / Sunrise
Dawn Hammond-Sammet, Seat E, Term to Expire: 09/30/2026
Jim Skogstad, Seat G, Term to Expire: 09/30/2026

Moose Pass
Kevin Dunham, Seat B, Term to Expire: 09/30/2026

Nikiski
Tom Coursen, Seat E, Term to Expire: 09/30/2026
Stacy Oliva, Seat B, Term to Expire: 09/30/2026
Jon Harman, Seat F, Term to Expire: 09/30/2025

***Attachments:*** Appointments to Advisory Planning Commissions Memo

***d.** KPB-5491 Confirming the Appointments to the Road Service Area

Kathryn Thomas, West Region Seat, Term to Expire: 09/30/2026
(Areas of North K-Beach, Kasilof & Ninilchik)

Michele Hartline, North Region Seat, Term to Expire: 09/30/2026
(Areas of North Kenai and Nikiski)

***Attachments:*** Appointment to Road Service Area Board Memo

## MAYOR'S REPORT

Mayor's Report Cover Memo

KPB-5492 Mayor's Report to the Assembly

***Attachments:*** Mayor's Report to the Assembly

1. Assembly Requests/Responses - None.

2. Agreements and Contracts

**a.** KPB-5493 Authorization to Award a Contract for ITB23-035 Digital Signage – Western Emergency Services

***Attachments:*** Award Contract for ITB23-035 Digital Signage

**b.** KPB-5494 Authorization to Award a Contract for ITB24-007 Gravel Road Projects FY2024 South Region, Units 5, 7 & 8

***Attachments:*** Award Contract for ITB24-007 Gravel Road Projects FY2024 South Region, Uni

**c.** KPB-5495 Authorization to Award a Contract for ITB24-014 CPL Temporary Cover Purchase & Installation

***Attachments:*** Award a Contract for ITB24-014 CPL Temporary Cover Purchase & Installation

**d.** KPB-5496 Authorization to Award a Contract for RFP24-001 Local Trust Fund Investment Services

***Attachments:*** Award a Contract for RFP24-001 Local Trust Fund Investment Services

**e.** KPB-5497 Barge Services to Nanwalek Sole Source Waiver

***Attachments:*** Barge Services to Nanwalek Sole Source Waiver

3. Other

**a.** KPB-5498 Certification of the 2023 Personal Property Supplemental Assessment Roll

***Attachments:*** Certification of the 2023 Personal Property Supplemental Assessment Roll

**b.** KPB-5499 Tax Adjustment Request Approval

***Attachments:*** Tax Adjustment Request Approval

## PUBLIC COMMENTS AND PUBLIC PRESENTATIONS

*(3 minutes per speaker)*

## ASSEMBLY COMMENTS

## PENDING LEGISLATION

*(This item lists legislation which will be addressed at a later date as noted.)*

**1.** 2022-36 Ordinance 2022-36 (Johnson, Chesley) Substitute: Amending KPB Chapter 21.25 and KPB Chapter 21.29 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley) (Additional Hearing on 10/10/23)

***Attachments:***

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Substitute Sectional Analysis
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090523 Assembly Presentation O2022-36
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Review of Members, Meetings, and Votes
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Derkevorkian Substitute Amendment #12
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Public Comment -Tsunami Inudation Zone
Sectional Analysis with Potential Amendments - Planning Department
Memo
Final Material Site Sectional Analysis
Material Site Subcommittee Presentation
Review Notes by Charley Palmer
Takings Overview presentation
Public Comments
102522 Public Comments
111522 Public Comment

121322 Public Comments
010323 Public Comment
062023 Public Comments
071023 Public Comment
071323 Public Comment
090523 Public Comment
090723 Public Comments
091123 Public Comment
091223 Public Comment
Reference Copy R2018-004 SUB
Reference Copy O2019-30
Reference Copy O2021-41
Reference Copy O2021-41 SUB

**2.** 2023-20 An Ordinance Amending Borough Code KPB 19.30.070 to Update the Definition for Economic Development (Ecklund) (Hearing on 10/10/23)

***Attachments:*** Ordinance 2023-20
Memo

**3.** 2023-21 An Ordinance Amending Borough Code KPB 5.08.025 Regarding Loans from the Borough's General Fund to Borough Service Areas (Cox) (Hearing on 10/10/23)

***Attachments:*** Ordinance 2023-21
Memo

## INFORMATIONAL MATERIALS AND REPORTS

## ASSEMBLY MEETING AND HEARING ANNOUNCEMENTS

1. September 18, 2023 7:00 PM
Sterling Community Meeting
Sterling Community

2. September 21, 2023 5:30 PM
Bear Creek Community Meeting
Bear Creek Fire Station

3. September 23, 2023 11:00 AM
Lowell Point Community Meeting
Penny Hardy Community Center

4. September 23, 2023 1:00 PM
Moose Pass Community Meeting
Moose Pass Community Center

5. September 23, 2023 3:00 PM
Hope Community Meeting
Hope Social Hall

6. September 23, 2023 7:00 PM
Cooper Landing Community Meeting
Cooper Landing Elementary School

7. September 27, 2023 6:00 PM
Anchor Point Community Meeting
Chapman Elementary School

8. September 28, 2023 6:00 PM
Kasilof, Clam Gultch & Cohoe Community Meeting
Tustemena Elementary School

9. September 29, 2023 1:00 PM
Ninilchik Community Meeting
Ninilchik Senior Center

10. September 29, 2023 6:00 PM
Funny River Community Meeting
Funny River Community Center

11. September 30, 2023 10:00 AM
Diamond Ridge, Fox River & Fritz Creek Community Meeting
McNeil Canyon Elementary School

12. October 10, 2023 6:00 PM
Regular Assembly Meeting
Betty J. Glick Assembly Chambers
Remote Participation Available Through Zoom
Meeting ID: 884 7373 9641 Passcode: 671108

**ADJOURNMENT**

*This meeting will be broadcast on KDLL-FM 91.9 (Central Peninsula), KBBI-AM 890 (South Peninsula), K201AO(KSKA)-FM 88.1 (East Peninsula).*

*The meeting will be held through Zoom, the Meeting ID: 884 7373 9641 Passcode: 671108 and in-person from the Betty J. Glick Assembly Chambers, Borough Administration Building, Soldotna, Alaska. To attend the Zoom meeting by telephone call toll free 1-888-788-0099 or 1-877-853-5247 and enter the Meeting ID: 884 7373 9641 Passcode: 671108. Detailed instructions will be posted on at the Kenai Peninsula Borough's main page at www.kpb.us: "Meeting and Public Notices" "Assembly Meeting Calendar".*

*For further information, please call the Clerk's Office at 714-2160 or toll free within the Borough at 1-800-478-4441, Ext. 2160. Visit our website at www.kpb.us for copies of the agenda, meeting minutes, ordinances and resolutions.*

| | |
|---|---|
| Introduced by: | Mayor |
| Date: | 09/05/23 |
| Hearing: | 09/19/23 |
| Action: | |
| Vote: | |

**KENAI PENINSULA BOROUGH**
**ORDINANCE 2022-19-83**

**AN ORDINANCE APPROPRIATING GENERAL FUNDS TO PROVIDE INTERIM FUNDING FOR THE CENTRAL PENINSULA LANDFILL LEACHATE INFRASTRUCTURE IMPROVEMENTS PROJECT**

**WHEREAS,** on April 18, 2022, the Kenai Peninsula Borough ("Borough") received notification that the request for congressionally directed spending for the Central Peninsula Landfill Leachate Infrastructure Improvements Project ("Leachate Project") was funded from the Environmental Protection Agency ("EPA") at the Central Peninsula Landfill; and

**WHEREAS,** Ordinance 2022-19-13 was enacted appropriating $3,360,000 in EPA grant funds for the Leachate Project and related expenditures; and

**WHEREAS,** though the funds have been appropriated, the Borough has not received official award notification and therefore are requesting that the General Fund provide interim funding for the Leachate Project to move forward with construction bidding; and

**WHEREAS,** the EPA has indicated that they are in the process of review, have approved the cost share waiver and the sole source justification request, but do not anticipate providing official award of the grant until possibly October 2023; and

**WHEREAS,** upon official award of the EPA grant and completion of related documents, the grant funds will be effective retroactively allowing the interim funding to be returned to the General Fund;

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

**SECTION 1.** That the sum of $3,360,000 is appropriated from the General Fund balance to be transferred to account 411.32122.LEACH.49999 for the purpose of providing interim funding for the Central Peninsula Landfill Leachate Infrastructure Improvements Project and related expenditures to be reimbursed by the Environmental Protection Agency retroactively effective congressionally directed spending award.

**SECTION 2.** That the appropriations made in this ordinance are of a project length nature and as such do not lapse at the end of any particular fiscal year.

**SECTION 3.** That this ordinance shall be effective retroactively to July 1, 2022.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2023.**

Brent Johnson, Assembly President

ATTEST:

Michele Turner, CMC, Borough Clerk

Yes:

No:

Absent:

DocuSign Envelope ID: AFD987DD-3AB6-4648-8D75-350BDED8A988

# Kenai Peninsula Borough
Finance and Solid Waste Departments

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**THRU:** Peter A. Micciche, Mayor PAM

**FROM:** Lee Frey, Solid Waste Director LF
Brandi Harbaugh, Finance Director BH

**DATE:** August 24, 2023

**RE:** Ordinance 2022-19-83, Appropriating General Funds to Provide Interim Funding for the Central Peninsula Landfill Leachate Infrastructure Improvements Project (Mayor)

On April 18, 2022, the Kenai Peninsula Borough received notification that the request for congressionally directed spending for the Leachate Project was funded from the Environmental Protection Agency (EPA) for the Central Peninsula Landfill (CPL). Ordinance 2022-19-13 was enacted appropriating $3,360,000 in EPA grant funds for the CPL Leachate Infrastructure Improvements Project and related expenditures. Though the funds have been appropriated, we have not received official award notification and therefore are requesting that the General Fund provide interim funding for the Leachate project to move forward for construction bidding without delays.

The new leachate concentrator is completing fabrication and is expected to arrive in October. The EPA has indicated that they are in the process of review, have approved the cost share waiver and the sole source justification request, but do not anticipate providing official award of the grant until possibly October 2023.

Upon official award of the EPA grant and completion of related documents, the grant funds will be effective retroactively allowing the interim funding to be returned to the General Fund.

Your consideration is appreciated.

FINANCE DEPARTMENT
ACCOUNT / FUNDS VERIFIED

Acct. No. 100-27910 GF FB

Amount $3,360,000

By: CJ Date: 8/23/2023

| | |
|---|---|
| Introduced by: | Mayor |
| Date: | 08/23/22 |
| Hearing: | 09/06/22 |
| Action: | Enacted |
| Vote: | 9 Yes, 0 No, 0 Absent |

**KENAI PENINSULA BOROUGH**
**ORDINANCE 2022-19-13**

**AN ORDINANCE ACCEPTING AND APPROPRIATING CONGRESSIONALLY DIRECTED SPENDING GRANT FUNDS FROM THE ENVIRONMENTAL PROTECTION AGENCY, APPROPRIATING THE REQUIRED TWENTY PERCENT MATCH FUNDS FROM THE GENERAL FUND, AND RE-ALLOCATING STATE AND LOCAL FISCAL RECOVERY FUNDS FROM THE SOLID WASTE DEPARTMENT TO SCHOOL PAY-GO AND CYBERSECURITY PROJECTS**

**WHEREAS,** the United States Congress passed the federal budget with congressionally directed spending which allocated $3,360,000; and

**WHEREAS,** on April 18, 2022 the Kenai Peninsula Borough ("Borough") received notification that the request for congressionally directed spending for the Leachate Project was funded from the Environmental Protection Agency at the Central Peninsula Landfill; and

**WHEREAS,** the funds are issued as a grant and require a 20 percent match of $840,000 in local funds which were not previously budgeted for in the Borough's Fiscal Year 2023 (FY23) budget; and

**WHEREAS,** the funds have been verified and are available within the General Fund; and

**WHEREAS,** the Leachate Project previously had State and Local Fiscal Recovery Funds allocated to it that cannot be used as match funds, and an amount equal to the match requirement will need to be re-allocated to other projects; and

**WHEREAS,** previously appropriated American Rescue Plan Act ("ARPA") grant funds equal to the match requirement of $840,000 will be re-allocated to other eligible projects; and

**WHEREAS,** $225,000 in ARPA funds are being redirected for cybersecurity upgrades boroughwide; and

**WHEREAS,** $615,000 in ARPA funds are being redirected for school-based projects for negatively impacted communities, or school-based pay-go projects for school maintenance projects that meet all criteria allowable under the U.S. Department of Treasury's Final Rule for ARPA State and Local Fiscal Recovery Funds Program; and

**WHEREAS,** future distribution to specific school-based project(s) for negatively impacted communities or school-based projects or school-based pay-go projects for school maintenance must be first approved by assembly resolution prior to any use of the appropriated funds;

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

**SECTION 1.** That the mayor is hereby authorized to execute grant agreements and any other documents deemed necessary to expend the funds and to fulfill the intents and purposes of this ordinance.

**SECTION 2.** That the amount of $3,360,000 received from the Environmental Protection Agency for the Central Peninsula Landfill Leachate Project as congressionally directed is appropriated to account 411.32122.LEACH.49999 for the Central Peninsula Landfill Leachate Project and related expenditures.

**SECTION 3.** That the amount of $840,000 is appropriated from the General Fund fund balance to be transferred to account 411.32122.LEACH.49999 to provide match funds for the Central Peninsula Landfill Leachate Project.

**SECTION 4.** That $225,000 in previously appropriated American Rescue Plan Act grant funds are redirected to account 271.11231.SLF06.49999 for boroughwide cybersecurity improvements.

**SECTION 5.** That $615,000 in previously appropriated American Rescue Plan Act grant funds are redirected to account 400.78050.SLF07.49999 for school-based projects for negatively impacted communities or school-based projects or school-based pay-go projects for school maintenance. Funds appropriated to this account for school-based projects may only be distributed and spent upon assembly approval, by resolution, of a specific project or list of projects.

**SECTION 6.** That appropriations made in this ordinance are project length in nature and as such do not lapse at the end of any particular fiscal year.

**SECTION 7.** That Section 1, 2, 3 and 6 of this ordinance shall be effective retroactively to July 1, 2022.

**SECTION 8.** That Sections 4 and 5 of this ordinance shall be effective immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 6TH DAY OF SEPTEMBER, 2022.**

Brent Johnson

Brent Johnson, Assembly President

ATTEST:

John Blankenship

Johni Blankenship, MMC, Borough Clerk

KENAI PENINSULA BOROUGH 1964

| | |
|---|---|
| Yes: | Bjorkman, Chesley, Cox, Derkevorkian, Ecklund, Elam, Hibbert, Tupper, Johnson |
| No: | None |
| Absent: | None |

| | |
|---|---|
| Introduced by: | Johnson |
| Date: | 09/05/23 |
| Hearing: | 09/19/23 |
| Action: | |
| Vote: | |

**KENAI PENINSULA BOROUGH**
**ORDINANCE 2023-19-15**

**AN ORDINANCE APPROPRIATING $39,755 FROM THE GENERAL FUND TO REPLACE THE CONTROL PANEL ON THE FIRE SUPPRESSION SYSTEM AT THE RECORDS CENTER**

**WHEREAS,** on December 13, 2022 the heat went out in the main vault of the Borough Records Center which resulted in the Maintenance Department replacing the heater that generated fumes which set off the fire suppression system; and

**WHEREAS,** Ordinance 2022-19-61 appropriate funds to recharge/refill the fire suppression system to make it operational again; and

**WHEREAS,** during the project to recharge the fire suppression system it was determined that the control panel is not functioning and needs to be replaced; and

**WHEREAS,** an additional $5,000 in contingency is being requested for unanticipated system capital costs based on the age of the system, any unexpended funds will be returned to the General Fund fund balance; and

**WHEREAS,** this project is necessary to ensure an operational fire suppression system at the Records Center;

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

**SECTION 1.** That the amount of $39,755 is appropriated from the General Fund fund balance account 100.27910 to be transferred to account 407.11140.24RCD.49999 to provide funding to replace the control panel of the fire suppression system at the Records Center and related installation and capital costs.

**SECTION 2.** That appropriations made in this ordinance are project length in nature and as such do not lapse at the end of any particular fiscal year.

**SECTION 3.** That this ordinance shall be effective immediately.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2023.**

Brent Johnson, Assembly President

ATTEST:

Michele Turner, CMC, Borough Clerk

Yes:

No:

Absent:

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# Kenai Peninsula Borough
## Office of the Borough Clerk

### MEMORANDUM

**TO:** Members of the Borough Assembly

**THRU:** Brent Johnson, Assembly President BJ
Brandi Harbaugh, Finance Director BH
Tom Nelson, Maintenance Director TN

**FROM:** Michele Turner, Borough Clerk

**DATE:** August 24, 2023

**RE:** Ordinance 2023-19-15, Appropriating $39,755 from the General Fund to Replace the Control Panel on the Fire Suppression System at the Records Center (Johnson)

On December 13, 2022, the heat went out in the main vault of the Records Center. The Maintenance Department suggested the heater be replaced as they were unsure if they could get parts for the old unit. A new heater was installed and as they were powering up the new unit, the fumes set off the fire suppression system. Ordinance 2022-19-61 appropriated funds to recharge/refill the fire suppression system to make it operational again.

It has since been determined that the control panel is not operational and needs to be replaced. When the fire suppression system released the agent, it damaged a component inside the panel's circuitry. It was also determined that the panel is obsolete and it is necessary to update the system in order to be brought up to current code requirements.

Chinook Fire Protection, Inc. is the contractor that recharged the system. They provided pricing of a new panel and a cellular communicator that will allow off premise monitoring in the amount of $34,755. An RFQ was presented to other fire suppression companies with no additional bids received.

Due to the age of the current fire suppression system and its components, this request also includes a $5,000 contingency for any unforeseen items that may be discovered during the project.

This appropriation is necessary to ensure there is an operational fire suppression system, that meets all code requirements, at the Records Center.

Your consideration is appreciated.

**FINANCE DEPARTMENT**
**FUNDS/ACCOUNT VERIFIED**

**Account:** 100.27910

**Amount:** $39,755

By: CJ Date: 8/24/2023

| | |
|---|---|
| Introduced by: | Mayor, Johnson |
| Date: | 04/04/23 |
| Hearing: | On Shortened Time 04/04/23 |
| Action: | Enacted |
| Vote: | 9 Yes, 0 No, 0 Absent |

**KENAI PENINSULA BOROUGH**
**ORDINANCE 2022-19-61**

**AN ORDINANCE APPROPRIATING $33,100 FROM THE GENERAL FUND ON SHORTENED TIME FOR NEEDED MAINTENANCE ON THE FIRE SUPPRESSION SYSTEM AT THE RECORDS CENTER**

**WHEREAS,** through the annual budgetary process, $110,000 was appropriated from the General fund for maintenance of the borough building on Binkley Street and the Records Center on East Park Street; and

**WHEREAS,** on December 13, 2022 the heat went out in the main vault of the Records Center which resulted in the Maintenance Department replacing the heater that generated fumes which set off the fire suppression system; and

**WHEREAS,** it is estimated that $33,100 will be needed to recharge/refill the fire suppression system to make it operational again; and

**WHEREAS,** pursuant to KPB 22.40.100, it is necessary and justified to hear this ordinance on shortened time due to the fact that a properly functioning fire suppression system is vital to protect against a catastrophic risk of loss that could result from a fire at the records center;

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

**SECTION 1.** The amount of $33,100 is appropriated from the General Fund fund balance account 100.27910 to account 100.94910.60000 to provide funding for the refill/recharge of the fire suppression system at the Records Center.

**SECTION 2.** That appropriations made in this ordinance are project length in nature and as such do not lapse at the end of any particular fiscal year.

**SECTION 3.** That this ordinance shall be retroactively effective to March 23, 2023.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 4TH**

Brent Johnson

Brent Johnson, Assembly President

ATTEST:

Michele Turner

Michele Turner, CMC, Acting Borough Clerk

KENAI PENINSULA BOROUGH 1964

| | |
|---|---|
| Yes: | Chesley, Cox, Derkevorkian, Ecklund, Elam, Hibbert, Ribbens, Tupper, Johnson |
| No: | None |
| Absent: | None |

| | |
|---|---|
| Introduced by: | Mayor |
| Date: | 09/05/23 |
| Hearing: | 09/19/23 |
| Action: | |
| Vote: | |

**KENAI PENINSULA BOROUGH**
**ORDINANCE 2023-19-16**

**AN ORDINANCE APPROPRIATING $30,750 FROM THE SEWARD-BEAR CREEK FLOOD SERVICE AREA FUND BALANCE TO PURCHASE GIS EQUIPMENT**

**WHEREAS,** the mission of the Seward Bear Creek Flood Service Area ("SBCFSA") is to provide flood planning, protection, and mitigation services in coordination with appropriate agencies to reduce the risk of flood damage to private and public property through addressing issues that best reflect a fair use of the tax levy for watershed-wide benefit; and

**WHEREAS,** due to the delays and high costs associated with before and after surveys associated with gravel streambed maintenance areas it would save time and money to conduct quantity and location verification while projects progress using Trimble GIS unit R12i-101-60-01; and

**WHEREAS,** the SBCFSA Board at its August 7, 2023, regular meeting recommended approving the purchase of a Trimble GIS unit R12i-101-60-01;

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

**SECTION 1.** That $30,750 is appropriated from the Seward-Bear Creek fund balance account 259.00000.00000.27910 to account 259.21212.24TRM.49999, to purchase a Trimble GIS unit R12i-101-60-01 and cover the admin service fee.

**SECTION 2**. That appropriations made in this ordinance are project length in nature and as such do not lapse at the end of any particular fiscal year.

**SECTION 3.** That this ordinance takes effect immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2023.**

Brent Johnson, Assembly President

ATTEST:

Michele Turner, CMC, Borough Clerk

Yes:

No:

Absent:

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# Kenai Peninsula Borough
Seward-Bear Creek Flood Service Area

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**THRU:** Peter A. Micciche, Mayor PAM
Brandi Harbaugh, Finance Director BH
John Hedges, Purchasing & Contracting Director JH

**FROM:** Nick Chapman, SBCFSA Program Manager NC

**DATE:** August 24, 2023

**RE:** Ordinance 2023-19-16, Appropriating $30,750 from the Seward-Bear Creek Flood Service Area Fund Balance to Purchase GIS Equipment (Mayor)

The mission of the Seward Bear Creek Flood Service Area ("SBCFSA") is to provide flood planning, protection, and mitigation services in coordination with appropriate agencies to reduce the risk of flood damage to private and public property through addressing issues that best reflect a fair use of the tax levy for watershed-wide benefit.

On an annual basis the Seward Bear Creek Flood Service area executes a number of maintenance and improvement projects to fulfill their mission. As part of that effort surveying to measure material quantities for payment and verify completed work is necessary for effective project administration and oversite. Due to the delays and high costs associated with before and after surveys associated with gravel streambed maintenance areas it would save time and money to conduct quantity and location verification while projects progress using Trimble GIS unit R12i-101-60-01.

At its meeting on August 7, 2023, the Seward Bear Creek Flood Service Area Board recommended approving the purchase of the Trimble GIS unit R12i-101-60-01.

Funds are available in the Seward Bear Creek Service Area Fund Balance account 259.27910 for the purchase of this equipment. This request includes the 2.5% administrative service fee.

Your consideration is appreciated.

**FINANCE DEPARTMENT**
**FUNDS/ACCOUNT VERIFIED**

**Account:** 259.27910

**Amount:** $30,750

By: CJ Date: 8/24/2023

| | |
|---|---|
| Introduced by: | Johnson, Chesley |
| Substitute Introduced: | 09/05/23 |
| O2022-36 (Johnson, Chesley) | See Original Ordinance for Prior History |
| Hearing: | 09/09/23 |
| Action: | Postponed to 09/19/23 and Added Additional Hearing on 10/10/23 |
| Vote: | 9 Yes, 0 No, 0 Absent |
| Date: | |
| Action: | |
| Vote: | |

**KENAI PENINSULA BOROUGH**
**ORDINANCE 2022-36**
**(JOHNSON, CHESLEY) SUBSTITUTE**

**AN ORDINANCE AMENDING KPB CHAPTER 21.25 AND KPB CHAPTER 21.29 REGARDING CONDITIONAL LAND USE PERMITS AND MATERIAL SITE PERMITS, UPDATING NOTICE, APPLICABILITY, PERMIT TYPES, APPLICATION REQUIREMENTS, STANDARDS AND PERMITS CONDITIONS**

**WHEREAS,** there are goals and objectives within the 2019 Kenai Peninsula Borough Comprehensive Plan to establish policies that better guide land use to minimize land use conflicts, maintain property values, protect natural systems and support individual land use freedoms, as well as strategy objectives to update the Borough's existing conditional use regulations for gravel extraction and other uses to better address reoccurring land use conflicts; and

**WHEREAS,** under current state law a first or second class borough must provide for planning, platting, and land use regulation on an areawide basis, except where such powers have been delegated to a city within the Borough; and

**WHEREAS,** land use regulation includes zoning powers; and

**WHEREAS,** the Borough has enacted KPB Chapter 21.04, Zoning Districts, and has established two zoning districts: the municipal district and the rural district; and

**WHEREAS,** within the rural district, KPB 21.25.040 requires a permit for the commencement of certain land uses within the rural district of the Kenai Peninsula Borough; and

**WHEREAS,** approximately 243 registered prior existing use material sites and approximately 68 conditional land use permits for material sites have been granted since 1996; and

**WHEREAS,** the assembly established a material site work group by adoption of Resolution 2018-004 (Substitute) to engage in a collaborative discussion involving the public and industry to make recommendations regarding the material site code; and

**WHEREAS,** the ordinance, Ordinance 2019-30, incorporating the final report and work group recommendations, failed enactment following public hearing and a vote during the assembly's October 24, 2019 meeting; and

**WHEREAS,** in late 2021, due to continued conflict including costly administrative and court appeals, the administration brought this land use issue back to the assembly and requested assembly action regarding the permitting process related to earth materials extraction and processing; and

**WHEREAS,** throughout this process the planning department, the material site work group, the planning commission, and the assembly have received many verbal and written public comments from Borough residents, professionals, and site operators; and

**WHEREAS,** the assembly first considered this issue by looking at the same ordinance that failed in 2019, relabeled Ordinance 2021-41; and

**WHEREAS,** Ordinance 2021-41 and a related substitute ordinance were tabled by the assembly at its February 1, 2022 to allow for consideration by the assembly as a committee of the whole, and

**WHEREAS,** the availability of three different types of conditional land use permits for material sites are designed to separate impacts of such uses and tailor applicable conditions and requirements to the associated impacts; and

**WHEREAS,** the Kenai Peninsula Borough recognizes the importance of implementing bonding, as applicable, to ensure neighboring properties and water sources are insured; and

**WHEREAS,** implementing a systematic process to determine a prior-existing use will allow the planning department to better identify the number of and types of pre-existing use sites in existence on the Kenai Peninsula and address complaints regarding nonconforming prior existing material sites; and

**WHEREAS,** requiring all prior-existing use operations to comply with reclamation plan and hours of operation requirements protects public health, safety, and general welfare; and

**WHEREAS,** requiring all prior-existing use operations which extract material below or within two feet of the seasonal highwater table to conduct operations in accordance with the requirements outlined in the relevant sections of code protects public health, safety, and general welfare; and

**WHEREAS,** buffer zones, dust control, hours of operation, and setbacks as mandatory conditions applicable to all permits, along with the discretionary conditions and conditions specific to processing or extraction with the water table, will reduce dust, noise, and attractive nuisances, thereby promoting public health, safety, and general welfare; and

**WHEREAS,** providing the planning director or planning commission the ability to add certain discretionary conditions recognizes the unique challenges material sites on the Kenai Peninsula present and that all conditions appropriate for one material site on one part of the Kenai Peninsula may not be appropriate for another site located on another part of the Kenai Peninsula; and

**WHEREAS,** Ordinance 2022-36 was postponed multiple times in 2022 and 2023 after the Assembly formed a Committee of the Whole to work through the ordinance section by section, amendment by amendment; and

**WHEREAS,** the Committee of the Whole first met on August 23, 2022 and subsequently 20 additional meetings; and

**WHEREAS,** the Committee of the Whole considered and deliberated 63 amendment documents to Ordinance 2022-36, made 107 motions, and voted on 89 separate items; and

**WHEREAS,** Ordinance 2022-36 and this substitute ordinance went before the Planning Commission for review; and

**WHEREAS,** after years of work, public input, and public deliberative process, this substitute ordinance enacts a new notice section to align with notice requirements of Title 20 of Borough code and enacts a new chapter of code related to material sites wherein it establishes a CLUP permit system containing three different endorsement types with standards and conditions applicable to each endorsement, which are intended to encourage responsible development while also protecting and promoting the public health, safety, and general welfare of all residents and visitors of the Kenai Peninsula Borough;

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

**SECTION 1.** That KPB 21.25.050 is hereby amended as follows.

**21.25.050. Permit considerations—Public hearing required.**

A. Within 30 days of receiving an application, the planning director or designee shall review the submitted application for completeness and compliance with this chapter. If it is incomplete or does not meet the requirements of this chapter, the planning director shall notify the applicant in writing. The planning director shall thereafter either return the application to the applicant or schedule the application to be considered by the planning commission at the next appropriate scheduled meeting. Upon receiving an application, the planning director or designee will forward a copy of the application to the Kachemak Bay National Estuarine Research Reserve ("KBNERR") for review and comment. KBNERR will have thirty days to provide its review and comment prior to submission of the application to the planning commission if the application is otherwise complete.

...

**SECTION 2.** That the Kenai Peninsula Borough Code of Ordinances is hereby amended by repealing and reenacting KPB Chapter 21.25.060, Notice, which shall read as follows:

**21.25.060. Notice.**

A. Except for counter permits for material sites issued under KPB 21.29.020(A) or expressly excepted elsewhere in this title, notice of any pending application required under this title will be given in accordance with this section.

B. Required forms of notice are as follows:

1. Notice of the pending application will be published on the borough website.

2. When available, the notice will also be posted on a public bulletin of the impacted community.

3. At the beginning of the notice period a copy of the notice will be sent by First Class U.S. Mail to all owners and leaseholders of record of property located with a radius of one-half mile of the subject property, except for permit applications under KPB 21.29 the notice area is the parcels within a radius of 1000 feet of the subject property.

C. The notice must contain a description of the proposed location, the type of proposed land use or a description of the action requested, as applicable, the applicant's name, where written comments may be submitted, the last deadline for submitting written comments to the planning commission, and the date, time and location of the public hearing.

D. The failure of any person to receive any notice required under this section, where the records of the borough indicate the notice was provided in a timely and proper manner, will not affect the validity of any proceeding under this title or be basis for appeal.

**SECTION 3.** That the Kenai Peninsula Borough Code of Ordinances is hereby amended by repealing and reenacting KPB Chapter 21.29, Material Site Permits, which shall read as follows:

**21.29.005. Intent and Purpose.**

The purpose of this chapter is to provide a land use permitting process to regulate the operation, scope, and duration of earth materials extraction and processing within the borough while promoting the public health, safety, and general welfare of the Kenai Peninsula Borough, including the health of aquatic systems that support salmon. It is the further purpose of this chapter to promote compatible, orderly development.

**21.29.010. Applicability—Prohibitions.**

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, perennial 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 or the construction of waterbodies within the permitted area.

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 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 ADNR use authorization is required for a 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 (Type III CLUP).

**21.29.015. Material extraction exempt from obtaining a permit.**

A. Material extraction limited to one acre per parcel, that is not in a mapped flood plain or subject to 21.29.015(B), does not require a permit. There will be no excavation within 20 feet of a public right-of-way or within 10 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). Material extraction within two feet of seasonal high-water table and all material crushing or screening activities are prohibited under this exemption.

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) and (6), and a current flood plain development permit prior to beginning operations.

C. A prior existing use that is in full compliance with all provisions of KPB 21.29.120 does not require a material extraction permit.

D. Material extraction from public or private property which is necessary for the construction of a public or private development on the same property does not require a material site extraction permit.

**21.29.020. Types of permits available.**

A. Counter permit. A counter permit is required for earth material extraction which disturbs more than one acre and less than 5 cumulative un-reclaimed acres and is limited to one counter permit per parcel. Material conditioning or processing, and material extraction within two feet of the seasonal high-water table is prohibited under a counter permit except, upon request from the applicant, the planning director or designee may issue a one-time processing waiver for screening of materials only. The one-time processing waiver may not exceed sixty consecutive days. The hours of operation under the one-time processing waiver are the same as provided for a Type II Earth Materials Conditioning or Processing Endorsement under 21.29.055. Buffer conditions for a one-time processing waiver must be established consistent with the permit application prior to commencement of processing operations. A counter permit is valid for a period of two years. Upon request from the applicant, the planning director, or designee, may grant one 12-month extension on a counter permit. Counter permits are approved by the planning director, or designees, and are not subject to notice requirements under KPB 21.25.060. The planning director's decision to approve or deny a counter

permit may be appealed to the planning commission, which must act as the hearing officer, in accordance with KPB 21.20.

B. Conditional land use permit. A conditional land use permit (CLUP) is required for earth materials excavation, extraction, and earth materials conditioning or processing, that exceed the limitations for a counter permit in KPB 21.29.020(A) or for activities within two feet of the seasonal high-water table. A CLUP applicant may request the following CLUP endorsements as part of a single application and fee:

1. Type I Endorsement – Earth Materials Extraction. A Type I Endorsement is required for any earth materials excavation or extraction which disturbs 5 or more cumulative acres. Earth materials conditioning or processing activities and excavation or extraction within two feet of the seasonal high-water table is prohibited under this permit. The requirements and conditions in KPB 21.29.050 apply to a Type I Endorsement.

2. Type II Endorsement – Earth Materials Conditioning or Processing. A Type II Endorsement is required for any operation that includes earth materials conditioning or processing activities. The conditions in KPB 21.29.050 and KPB 21.29.055 apply to a Type II Endorsement.

3. Type III Endorsement – Earth Materials Extraction Within Water Table. A Type III Endorsement is required for operations of any size that excavate or extract earth materials within two feet of the seasonal high-water table. The requirements and conditions in KPB 21.29.050 and KPB 21.29.057 apply to a Type III Endorsement. If the application includes earth materials conditioning or processing activities, then the requirements and conditions in KPB 21.29.055 apply.

An applicant may request a CLUP that includes one, two or all three of the above endorsements. A CLUP is valid for a period of five years. A CLUP may be renewed in accordance with KPB 21.29.070. The provisions of KPB Chapter 21.25 are applicable to material site CLUPs and the provisions of KPB 21.25 and 21.29 are to be read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling.

**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);

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 provided by a professional surveyor licensed in the State of Alaska to include the following:

    a. 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. The test holes must be at least two feet below the proposed lowest elevation of excavation depth. Depth of groundwater may also be established by a civil engineer licensed in the State of Alaska using professionally-accepted methods and data.

    b. 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. Identify and label all drainage features entering and exiting the property;

    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. The scale to which the site plan is drawn;

i. Preparer's name and date; and

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 is required by a civil engineer licensed in the State of Alaska. The site plan must include the following:

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 of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;

c. Proposed buffers consistent with KPB 21.29.050(A)(1), or alternate buffer plan;

d. Anticipated haul routes;

e. Location of any processing areas on the parcel, if applicable; and

f. Ground water protection measures for anadromous waters, especially with regard to juvenile salmon, as identified by shallow groundwater flow paths and critical areas of aquifer connectivity, such as recharge, where this information is available.

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.

**21.29.040. Standards for sand, gravel or material sites.**

A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, visual and other impacts of earth materials extraction sites through setbacks, buffer zones, street-level visual screening, and protection of salmon-rearing waters. Prior to granting a counter permit or conditional land use permit under this chapter, the planning director or planning commission, as applicable, must make the following findings:

1. That the use is not inconsistent with the applicable comprehensive plan;

2. That the use will not be harmful to the public's health, safety, and general welfare, or the health of anadromous waters particularly with regard to juvenile salmon;

3. That sufficient setbacks, buffer zones, and other safeguards, including measures to mitigate impacts to groundwater flow paths important for juvenile salmon, are being provided consistent with this chapter;

4. That the use provides for a reclamation plan consistent with this chapter; and

5. That the use will preserve the value and character of the surrounding area.

**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. An Alaska Department of Natural Resources (ADNR) temporary use authorization if the applicant intends for water to leave the site. If water leaves the side, the applicant must adhere to the provisions of the ADNR temporary water use authorization;

2. Mining permit as required by ADNR if extraction activities are to take place on state land;

3. Reclamation plan as required by ADNR, pursuant to A.S. 27.19;

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.

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.

**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 minimum 30-foot buffer zone must be established between the area of excavation and the parcel boundaries. The buffer zone must provide visual, dust, and noise screening. The buffer zone may include one of the following: a six-foot earthen berm with a 2:1 slope; a minimum six-foot foot sight-obscured fence; or an alternative buffer proposal that the planning commission or planning director, as applicable, deems appropriate. There is no requirement to buffer the material site from uses which commence after the approval of the permit. Berms may not alter natural drainage features;

b. Where an easement exists, a buffer must not overlap the easement, unless otherwise conditioned by the planning commission or planning director, as applicable; and

c. This requirement may 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 adjoining another material site or industrial use.

d. Geographic Information System (GIS), Photogrammetry, LIDAR, and other technologies may be utilized in the design of the buffer zone. Using this technology, line-of-site profile drawings may be utilized in the determination of sufficiency of the buffer zone.

e. At its discretion the planning director or planning commission (as applicable) may waive or reduce buffer requirements when screening proves to be not necessary or not feasible.

2. *Water source separation*.

a. Material extraction below or within two feet of the seasonal high-water table is prohibited unless the applicant is issued a Type III Endorsement and the requirements and conditions in KPB 21.29.057 are satisfied;

b. Offsite excavation dewatering is prohibited;

c. All permits will be issued with a condition which prohibits any material extraction within 100 linear feet of any water source as

defined in KPB 21.29.130 existing prior to original permit issuance; and

d. On site movement of water may be permitted pursuant to KPB 21.29.057 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.

e. All permits must include a condition prohibiting material extraction inside the boundaries of a mapped tsunami hazard zone within 500 linear feet of any existing private or public drinking water source except for material sites where the floor is higher than the surrounding ground in at least one direction.

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. *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 up to 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 two 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 existing public school ground, private school ground,

college campus, licensed childcare facility, multi-purpose senior center, assisted living home, and licensed health care facility.

8. *Permit boundaries.* The buffers and any easements or rights-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 a Type II CLUP and the conditions 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*.

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, and include a combination of appropriate buffers, 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 vicinity;

i. An earthen berm with a minimum 2:1 slope may be required. The berm height will be determined by the planning commission or planning director, as applicable, and constructed above preexisting elevation around the excavation area. As the excavation area expands, the berm will move toward negatively-impacted properties in the vicinity until such limits of the permitted area are exhausted. The berm must be maintained at the predetermined height while permitted activity is occurring. This earthen berm may be in addition to other buffer zone conditions imposed upon the permit.

b. All other requirements of KPB 21.29.050(A)(1) apply; and

c. When a buffer area has been denuded less than a year prior to review of the application by the planning commission or planning director revegetation may be required.

2. *Road repair*. In consultation with the Road Service Area Director, 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 suggest 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. *Surface and ground water protection.* Use of surface and ground water protection measures as specified in KPB 21.29.030(A)(8)(a).

5. *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.

6. *Noise suppression*. At the discretion of the planning commission or planning director, as applicable, multi-frequency (white noise) back-up alarms may be required on all equipment and vehicles that have existing state or federal back-up alarm requirements as a condition to help meet the noise impact standard in accordance with and in consideration of existing uses in the vicinity.

7. Special Impacts Zone (SIZ)

   a. The screening of adverse visual, noise, and dust impacts protects public health, safety, and general welfare. General welfare is further served through imposition of this zone. The distance restrictions balance the right to quiet enjoyment of one's property against development rights. Residents within this zone may request screening methods that are objective, measurable, and within the overall regulatory limits set by this chapter by providing substantial evidence to support the request.

b. For counter permits, visual, noise, and dust impacts that cannot be screened as set forth in Subsection 8(a) within 500 horizontal feet of an existing principle residential structure may be grounds for denial. For Type 1, 2, and 3 Endorsements, visual, noise, and dust impacts that cannot be screened as set forth in Subsection 8(a) within 750 horizontal feet of an existing principle residential structure may be grounds for denial. The distances specified in this subsection will be measured from any outer wall of a principle residential structure to the nearest boundary of the proposed material site permitted parcel.

8. *Public campgrounds*. From the last Monday of May through the first Monday of September each year, for operations within 1,000 feet of a campsite within a public campground, the following limitations to operations may be applied:

(a) hours of operation limited to 9:00 am to 6:00 pm;

(b) no excavation, processing, or hauling activity allowed over the Memorial Day and preceding weekend, Independence Day, or Labor Day and preceding weekend; or

(c) if a proposed haul route conflicts with a public campground entrance road, then the planning commission or planning director, as applicable, may designate the haul route to be used, with exceptions allowed for local delivery.

The 1,000-foot distance will be measured from any campsite of the public campground to the outer boundary of the permitted area for which an applicant has requested a counter permit or conditional land use permit under this chapter.

**21.29.055. Type II Endorsement – Earth Materials processing**

In accordance with KPB 21.29.020(B)(2), a Type II Endorsement is required for earth materials conditioning or processing activities. Prior to issuing a permit under this subsection, the planning commission must impose the mandatory conditions 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 Type II CLUP apply:

A. *Setback.* Equipment which conditions or crushes 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.

B. *Hours of operation.*

1. Earth materials crushing equipment and blasting 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 may not exceed 120 days.

3. 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. Notwithstanding, if a settling pond is within two feet of the seasonal high water table, then a Type III Endorsement is required.

**21.29.057. Type III Endorsement - Material extraction below or within two feet of the seasonal high-water table.**

In accordance with KPB 21.29.020(B)(3), a Type III Endorsement is required for material extraction of material below or within two feet of the seasonal high water table. Prior to a permit being issued the planning commission must impose the mandatory conditions set forth in KPB 21.29.050(A) and discretionary conditions as deemed appropriate. In accordance with KPB 21.29.050(A)(2)(b) dewatering is prohibited. The following additional application requirements and permit conditions specific to a Type III Endorsement apply:

A. Prior to application for a Type III Endorsement, the following requirements must be met:

1. Installation of a sufficient number of monitoring wells and test pits, as recommended by a qualified professional, to adequately determine groundwater flow direction, hydraulic gradient, water table and seasonal high-water table elevation Monitoring well and test pit locations must provide the qualified professional with adequate information to characterize the entire property that will be permitted for material extraction. Well casing elevations must be surveyed to a vertical accuracy of 0.01 feet by a registered land surveyor and tied to NAVD 1988.

2. Determination of seasonal high-water table elevation, groundwater flow direction, hydraulic gradient, and water table elevation for the site must be measured under the supervision of a qualified professional.

3. A written report must be completed by a qualified professional that makes a determination about the potential adverse effects to groundwater and surface water body elevation, groundwater and surface water quality, surrounding water users and adjacent properties. The determination must be based on available data, interpretations of the data and knowledge of groundwater processes.

4. The report must be submitted with the CLUP application and must:

    a. Identify existing public water system sources, as identified by the state, that are located within one-half mile of the boundary of the property on which the activity will take place;

    b. Identify actual or presumed private drinking water wells located within one-half mile of the boundary of the property on which the activity will take place and include a copy of the available well logs;

    c. Identify existing regulated potential sources of contamination within at least one-half mile of the boundary of the property on which the activity will take place;

    d. Contain maps at appropriate scales presenting the results of the well search, the setbacks required by subsection (C)(7) of this section, and illustrating wetlands and water bodies; at least one map must show identified potential sources of contamination;

    e. Include the water table elevation monitoring data, monitoring well logs and records of any test pits, and a discussion of the seasonal high-water table determination; and

f. Evaluate subsurface hydrologic conditions and identify potential adverse effects that may occur as a result of material extraction. The evaluation of the hydrologic conditions must include identifying confining layers and ground water flow paths.

B. In addition to the application requirements for a Type I Endorsement, the application for a Type III Endorsement must include:

1. A description of the proposed extent and depth of material extraction beneath the seasonal high-water table.

2. A written report that meets the requirements of subsection (A)(4) of this section, a monitoring plan, and a spill prevention, control, and countermeasures plan as required by this section.

C. *Conditions.* In addition to the requirements of KPB 21.29.050, operating conditions for extraction within or below two feet of the seasonal high-water table are as follows:

1. Implement a monitoring plan that meets the requirements of this chapter. If existing wells will provide sufficient data, no additional wells are required.

2. Implement the spill prevention, control and countermeasures plan in accordance with Environmental Protection Agency's requirements for above ground storage tank operations regardless of the quantity of petroleum products on site.

3. Groundwater flow direction, hydraulic gradient, and groundwater table elevation for the subject parcel must be measured at least monthly during active extraction. Monitoring wells must be maintained or replaced with equivalent monitoring wells.

4. Water elevation monitoring data must be retained for two years following completion of reclamation activities and must be provided to the planning director upon request.

5. A qualified professional must annually submit a report to the department that includes water table elevation monitoring data.

6. Operations must not breach or extract material from a confined aquifer or a confining layer beneath a perched aquifer.

a. If evidence suggests a confined aquifer or confining layer has been breached, or if groundwater or surface water elevation changes rapidly or beyond natural variation, the director must be notified within 24 hours.

i. A hydrologic assessment, conducted by a qualified professional, to determine the affected area and the nature and degree of effects and a description of potential repair or mitigation options must be submitted to the director within 14 calendar days of notification; and

ii. Repair or mitigation sufficient to address identified effects must be initiated as soon as practical, not to exceed 45 calendar days from the date the assessment is received by the director.

7. Operations must maintain the following setbacks:

a. 500 feet from the nearest down-gradient drinking water source;

b. 350 feet from the nearest cross-gradient drinking water source;

c. 200 feet from the nearest up-gradient drinking water source; and

d. Minimum separation distances do not apply to drinking water sources constructed after a permit to extract material below the water table has been issued.

**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.

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

**21.29.063. Decision.**

The planning commission or planning director, as applicable, will approve permit applications whereby standards under KPB 21.29.040 have been met through implementation of conditions set forth in KPB 21.29.050, KPB 21.29.055, and KPB 21.29.057 or will deny applications when the application does not meet the standards in KPB 21.29.040. The decision will include written findings detailing how the conditions under KPB 21.29.050, KPB 21.29.055, and KPB 21.29.057 meet, or do not meet the standards set forth in KPB 21.29.040 and evidence to support those findings. The decision must be distributed to the parties of record before the planning commission, with notice of right to appeal.

**21.29.065. Effect of permit denial.**

A. Absent new evidence or a material change in circumstances that even with due diligence the applicant could not have presented with the original application, no reapplication concerning the same counter permit application may be filed within one calendar year of the date of the planning director's final denial action.

B. Absent new evidence or a material change in circumstances that even with due diligence the applicant could not have presented with the original application, no reapplication concerning the same CLUP may be filed within five calendar years of the date of the final denial action.

C. For the purposes of this section, the applicant bears the burden of proof of demonstrating that new evidence or a material change of circumstances exist and that even with due diligence the applicant could not have presented the information with the original application.

**21.29.070. Permit renewal, modification and revocation.**

A. Conditional land use permittees must submit a renewal application every five years after the permit is issued. A renewal application must be submitted at least 90 days prior to expiration of the CLUP.

B. The planning director may administratively approve a renewal application that meets the following requirements: (i) the permittee is in compliance with all permit conditions and no modification to operations or conditions are proposed; and (ii) the borough did not issue a notice of violation under the permit during the two calendar years preceding the renewal application. If the renewal application does not satisfy the foregoing requirements or if the planning director determines a review by the planning commission is warranted, then the planning commission will hear the renewal application.

C. In the event the renewal application is heard by the planning commission, the planning commission must hold a public hearing on the renewal application. If the applicant is complying with all permit conditions and requirements and is not in violation of borough code, then the renewal must be granted by the planning commission. Notwithstanding the foregoing, if the commission determines, after public hearing, that discretionary conditions are appropriate on renewal then the commission may modify the CLUP by imposing conditions as deemed appropriate under the circumstances. Permit renewal applications will be denied if the permittee is in violation of the original permit requirements and conditions or borough code. The permittee will be given ninety days to correct any violations. If the violations are corrected, the permit will be renewed. A renewal application heard by the planning commission must be processed in accordance with the notice requirements of KPB 21.25.060.

D. A permittee may request a modification of a CLUP or counter permit, as needed. A modification application will be processed pursuant to KPB 21.29.030 through KPB 21.29.050 with public notice given as provided by KPB 21.25.060. A permit modification is required if the permittee's operations are no longer consistent with the original permit application.

E. The fee for a permit renewal or modification is the same as an original permit application in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees.

F. Failure to submit a permit renewal will result in the expiration of the permit. The borough may issue a permit termination document upon expiration pursuant to KPB 21.29.080. Once a permit has expired, a new permit application approval process is required in order to operate the material site.

G. Permits may be revoked pursuant to KPB 21.50.

**21.29.080. Permit Close-out.**

When a permit expires, is revoked, or a permittee requests close-out of their permit, a review of permit conditions and site inspections will be conducted by the planning department to ensure code compliance and verify site reclamation prior to close-out. When the planning director determines that a site qualifies for close-out, a permit close-out document will be issued to the permittee to terminate the permit and associated requirements. Reclamation plans and requirements survive permit expiration and revocation. The planning director is only authorized to close-out a permit following reclamation. A permit close-out determination shall release any bonding associated with the permit.

**21.29.100. Recordation.**

All permits, permit extensions, modified permits, prior existing uses, and terminations will be recorded. Failure to record a material site document does not affect the validity of the documents. The operator or owner of the material site is responsible for all associated permit recording fees.

**21.29.110. Violations.**

Violations of this chapter are governed by KPB 21.50 and this chapter.

**21.29.115. Permit transfers.**

A permit issued under this chapter is transferrable. The planning director will issue a conditional letter of approval upon receipt of a written permit transfer request containing the legal description of the parcel, former owner name, new owner name, and a copy of the approved permit or the legal PEU status and after a site visit. A conditional approval will not be issued if a permittee is in violation of the original permit requirements, conditions, or borough code. A transferring permittee will be given ninety days to correct violations. If the permittee fails to correct the violations within ninety days, the planning director will issue a denial letter. If a permittee is not in violation or if violations are cured within 90 days' notice, the planning director will issue a final letter of approval upon receipt of a recorded conveyance instrument listing the new owner. The requesting party may appeal a denial letter to the planning commission. Permit transfer approvals are not subject to administrative appeal.

**21.29.120. Prior-existing uses.**

A. *Determination.* Prior-existing uses (PEU) in effect on October 1, 2023 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, 2023 and after May 21, 1996, is on the applicant. All other PEUs prior to May 21, 1996, are already recorded with the Borough and are recognized. 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, 2025 will result in suspension of all rights to continued operation as a nonconforming use until 1) the operator applies for a prior-existing use determination; 2) the application is approved; and 3) the operator demonstrates full compliance with all provisions of this chapter relating to PEUs. The operator will have one year from the date of the notice of the planning director's review of an operator's five year renewal to come into full compliance with the provisions of this chapter, otherwise the suspended PEU permit will be terminated.

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 will include a summary of the application, a vicinity map, and a deadline for submitting 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 or evidence regarding the existence of the use. Based on that information, the planning director will classify the PEU based upon the use types set forth 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 five 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 five-year time period. If a prior-existing use is discontinued or abandoned, it may not be recommenced. Any activity such as extraction, excavation, processing, or reclamation is considered valid and a continuance of site use.

D. *Expansion Prohibited.* A prior-existing use may not be increased, intensified, or expanded or moved after October 1, 2023, 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 a Type II Endorsement.

E. *Standards.* In order to qualify as a legal prior-existing use, the use must meet the following standards, on or before October 1, 2023:

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 must 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 two feet of the seasonal highwater table must conduct operations in accordance with the requirements outlined in KPB 21.29.057, except that KPB 21.29.057(C)(7) will not apply.

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 directors decision or beyond the written description of existing operations as set forth by the planning direct under subsection (B) above; (2) increasing the depth of excavation to go within two 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.

**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. *Assisted-living home* means a residential facility to which AS 47.33 applies, as described in AS 47.33.010.

6. *Camp* or *camping* means to use a vehicle, tent, or shelter, or to arrange bedding, or both, with the intent to stay overnight.

7. *Campsite* means any space designated for camping within a public campground.

8. *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.

9. *Conditioning or processing material* means a value-added process including batch plants, asphalt plants, screening, blasting, washing, the use of mechanical hammers, and crushing by use of machinery. It does not include stripping and segregation with excavation equipment.

10. *Earthen berm* means a berm constructed of aggregate or soil not to contain slash or brush that maintains a 2:1 slop. The berm is to be constructed above the preexisting elevation.

11. *Exhausted* means that all material of a commercial quality in a sand, gravel, or material site has been removed.

12. *Groundwater* means, in the broadest sense, all subsurface water, more commonly that part of the subsurface water in the saturated zone.

13. *Inactive site walls* mean a wall with a slope steeper than 1.5:1 where there has been no exaction activity for 180 consecutive days.

14. *Isolated pond* means no surface water inlet or outlet is present at any time of the year.

15. *Person* includes any individual, firm, partnership, association, corporation, cooperative, or state or local government.

16. *Public campground* means an area, developed and maintained by a public entity, that is open to the public and contains one or more campsites.

17. *Qualified professional* means a licensed professional engineer, hydrologist, hydrogeologist, or other similarly-licensed professional.

18. *Quarter or Quarterly* means January through March, April through June, July through September, or October through December;

19. *Reclamation* means the process of restoring land that has been mined to a natural or economically-usable state in order to meet a variety of goals ranging from the restoration of productive ecosystems to the creation of industrial and municipal resources.

20. *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.

21. *Seasonal high groundwater table* means the highest level to which the groundwater rises on an annual basis.

22. *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.

23. *Surface water* means water on the earth's surface exposed to the atmosphere such as rivers, lakes, and creeks.

24. *Topsoil* means material suitable for vegetative growth.

25. *Vicinity* means 1,000 linear feet from permitted boundary.

26. *Waterbody* means any lake, pond, stream, riparian wetland, or groundwater into which stormwater runoff is directed.

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

**SECTION 4.** That this ordinance is effective immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2023.**

Brent Johnson, Assembly President

ATTEST:

Michele Turner, CMC, Borough Clerk

09/05/23 Vote on motion to postpone to 09/19/23and add additional hearing on 10/10/23:

| | |
|---|---|
| Yes: | Chesley, Cox, Derkevorkian, Ecklund, Elam, Hibbert, Ribbens, Tupper, Johnson |
| No: | None |
| Absent: | None |

| | |
|---|---|
| Yes: | |
| No: | |
| Absent: | |

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# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Members, Kenai Peninsula Borough Assembly

**FROM:** Brent Johnson, Assembly President BJ
Lane Chesley, Assembly Member LC

**DATE:** August 24, 2023

**RE:** **SUBSTITUTE** Ordinance 2022-36, Amending KPB Chapter 21.25 and KPB Chapter 21.29 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

In 2021, the Borough administration requested Assembly consideration and action to address the regulatory process related to conditional land use permits issued under KPB Chapter 21.29, Material sites.

After receiving public comment on Ordinance 2021-41, the Assembly ultimately tabled the ordinance and a related substitute ordinance. The Assembly formed a committee of the whole to review the permitting process with a fresh perspective.

This ordinance will repeal and re-enact KPB Chapter 21.29. This ordinance shifts the conditional land use permit (CLUP) process for earth materials extraction and processing away from a "one size fits all" approach and instead establishes a multi-permit structure wherein activities related to materials processing and extraction within the water table require heightened protections for the public good but activities of lesser impact to surrounding properties do not require the same level of protections. This ordinance maintains important mandatory conditions found in current code that are necessary to protect the public health, safety, and general welfare of Borough residents. This ordinance also presents a permitting system that will provide for more flexibility to meet the needs of the particular application through discretionary conditions that may only apply when appropriate under the circumstances.

The Assembly has been working through this process, listening to presentations and testimony, and deliberating amendments borough through the Committee of the Whole for over a year. The Assembly has grappled with the need to promote business uses and activities while also promoting harmony of uses and promoting the Borough's growing residential and recreational use properties. Developing communities need gravel. And gravel businesses need developing communities. As part of reconciling some conflicting uses, the Assembly was asked to sort out some of those issues that address the potential conflict in proximity of uses and attempt to harmonize such uses as far as that is possible under the Borough's limited zoning and mixed use structure. We believe the substitute ordinance strikes a fair balance between regulation to protect public health, safety, and general welfare, and the importance of responsible development of material site resources.

Your consideration is appreciated.

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# Kenai Peninsula Borough
Legal Department

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly
Jeremy Brantley, Planning Commission Chair
Members, Kenai Peninsula Borough Planning Commission

**FROM:** Robert Ruffner, Planning Director RR
Sean Kelley, Borough Attorney SK
A. Walker Steinhage, Deputy Borough Attorney SK

**COPY:** Peter A. Micciche, Mayor

**DATE:** August 24, 2023

**SUBJECT:** Substitute Ordinance 2022-36: Sectional Analysis

The following provides a sectional analysis for Substitute Ordinance 02022-36, An Ordinance Amending KPB Chapter 21.25 and KPB Chapter 21.29 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permit Conditions ("Substitute 02022-36"). Substitute 02022-36 is the final product of over a year of bi-monthly meetings of the Assembly sitting a Committee of the Whole as it considered the original Ordinance 02022-36.

The purpose of this Sectional Analysis is to provide an easy reference to compare present KPB code with Substitute 02022-36. For the quickest summation of the changes in Substitute 02022-06, simply refer to the final column, "Highlighted Changes".

**ORDINANCE 02022-06 SECTIONAL ANALYSIS**

| CODE SECTION | SUBSTITUTE O2022-36 | CURRENT CODE | HIGHLIGHTED CHANGES |
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| **KPB 21.25.050** | 30-day staff review period of an application.<br><br>Copy of application must be forwarded to Kachemak Bay National Estuarine Research Reserve ("KBNERR") for review and comment.<br><br>KBNERR has thirty days to return its review/comment. | 21-day staff review period of an application.<br><br>No review and comment by KBNERR. | Increase from 21 to 30 days.<br><br>Provides for review and comment by KBNERR. |
| **KPB 21.25.060 - Notice** | *Repeals and replaces existing code section, KPB 21.25.060.*<br><br>Notice published on KPB website; public bulletin of impacted community; mailed | Requires notice published two times in newspaper, posted in the post office, copy of the notice sent by regular mail to all owners | Expressly does not apply to counter permits.<br><br>No longer requires newspaper publication but allows for publication on KPB website. |

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| **KPB 21.25.060 - Notice**<br><br>**…continued** | to all owners/leaseholders within ½ mile radius of proposed site.<br><br>Validity of a proceeding not affected, and no basis for appeal, if notice was timely and proper according to KPB records. | and/or leaseholders within one-half mile. | Person may not claim proceeding was invalid or file an appeal based on lack of notice if KPB records show its notice was timely and proper. |
| *The following repeals and replaces existing code chapter, KPB 21.29* | | | |
| **KPB 21.29.005 - Intent and Purpose** | Establishes an intent and purpose section for KPB Chapter 21.29 with focus on public health, safety and general welfare—including health of aquatic systems supporting salmon, and to promote compatible, orderly development. | N/A | New code section.<br><br>Focus on public health, safety and general welfare.<br><br>Promotion of compatible, orderly development. |
| **KPB 21.29.010 - Applicability** | **A.** Applies to all private and public lands, except as preempted by other law;<br><br>**B.** Does not apply within the incorporated cities;<br><br>**C.** Prohibits extraction within 300 feet of riparian wetlands and naturally-occurring open water bodies;<br><br>**D.** Operations must be conducted in accordance with current Alaska DEC Manual for extraction projects.<br><br>**E.** Allows up to 5,000 gallons of water per day to be drawn from well. Anything more requires ADNR use authorization. Open water only if approved settling pond or under Type III CLUP. | N/A | New code section to clarify applicability of chapter and fact that it does apply to both public and private lands outside of the incorporated cities unless otherwise exempt.<br><br>Prohibits earth material extraction within 300 linear feet of wetlands/natural open water bodies.<br><br>Addresses water usage from wells and open water on site. |
| **KPB 21.29.015 -Material extraction** | **A.** Exempts extraction disturbing less than one acre if: | *Currently 21.29.010* | New code section. |

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| **exempt from obtaining a permit** | -Not in floodplain or subject to 21.29.015(B);<br>-Does not enter water table; and<br>-Does not cross property boundaries.<br><br>No excavation within 20 feet of a public right-of-way (ROW) or 32' of lot line.<br><br>Material extraction within two feet of seasonal high-water table/material crushing or screening activities prohibited.<br><br>**B.** Exempts dewatered bars within SBCFSA/Snow River.<br><br>**C.** Exempts PEUs fully compliant with 21.29.120.<br><br>**D.** Exempts extraction necessary for public or private construction on same property. | **A.** Exempts extraction disturbing less than one acre if:<br>-Not in floodplain;<br>-Does not enter water table; and<br>-Does not cross property boundaries.<br><br>No excavation within 20 feet of ROW or 10 feet of lot line.<br><br>**B.** Exempts dewatered bars within SBCFSA/ Snow River.<br><br>**C.** PEUs exempt but floodplain permit required within mapped special flood hazard area. | No excavation within 20 feet of a public right-of-way or 32' of lot line.<br>No crushing, screening or extraction within two feet of the seasonal high-water table.<br><br>PEUs exempt if fully compliant with 21.29.120.<br><br>Extraction necessary for construction on the same property does not require a permit. |
| **KPB 21.29.020- Types of permits available** | **A. Counter permits**<br>-1 to 5 acres<br>-No conditioning or processing, except one-time processing waiver for materials screening only, with conditions.<br>-No extraction within two feet of seasonal high-water table.<br>-Two-year life, with one 12-month extension.<br>-No notice requirement.<br>-Planning Director's decision may be appealed to Planning Commission.<br><br>**B. CLUPs**<br>-Any activities outside counter permit limitations or within two feet of seasonal high-water table.<br>-Valid for five years. | Counter permit and generic CLUP only.<br><br>CLUP application requires all mandatory conditions and covers all uses. | Counter permit and CLUP with three possible endorsements.<br><br>1 to 5 acres eligible for counter permit if no conditioning, processing or extraction within two feet of water table. One-time processing waiver for material screening, with conditions.<br><br>Planning Director's decision on counter permits may be appealed to Planning Commission.<br><br>Notice not required for counter permits<br><br>One CLUP/Three possible endorsements: earth materials |

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| | -Chapter 21.25 provisions applicable.<br>-Applicant may request any or all of following endorsements as part of same application/fee:<br>**1. Type I Endorsement**<br>-Excavation or extraction activities disturbing 5 or more cumulative acres<br>-No conditioning or processing<br>-No extraction within two feet of seasonal high-water table<br>-21.29.050 conditions apply<br><br>**2. Type II Endorsement**<br>-Required for all materials conditioning or processing activities.<br>-21.29.050 and 21.29.055 conditions apply.<br><br>**3. Type III Endorsement**<br>-Required for any materials extraction or excavation within two feet of seasonal high-water table<br>-21.29.050 and 21.29.057 conditions apply<br>-21.29.055 conditions apply if application includes conditioning or processing. | | extraction (five or more acres), earth materials conditioning or processing, and earth materials extraction within two feet of seasonal high-water table.<br><br>Applicant may apply for one, two, or all three CLUP types with one application/fee.<br><br>KPB 21.25 applicable. |
| **KPB 21.29.030-Application procedure** | Breaks apart site map (professional surveyor) from site plan (professional engineer)<br><br>Site map must include, among others, drainage features, location of all private wells of adjacent property owners within 300’ of proposed parcel boundary.<br><br>Site map must include, among others, ground water protection measures for anadromous waters. | -Legal description<br>-Life span<br>-Buffer plan<br>-Reclamation plan<br>-Excavation depth<br>-Type of materials and equipment<br>-Any voluntary permit conditions<br>-Site plan | Requires site map from professional surveyor and site plan from professional engineer, and adds additional requirements for each.<br><br>Application will be deemed incomplete without all items listed. (Not in current code.) |

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| **KPB 21.29.040- Standards for sand, gravel or material sites** | Regulations intended to protect against: aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, visual and other impacts through setbacks, street-level visual screening, and protection of salmon-rearing waters.<br><br>Planning Director (counter permits) or Planning Commission (CLUPs) must find:<br>-Use is not inconsistent with applicable comp plan<br>-Use will not be harmful to public's health, safety and general welfare, or health of anadromous waters<br>-Provides sufficient setbacks, buffer zones, and other safeguards, including for groundwater flowpaths important for juvenile salmon<br>-Reclamation plan<br>-Preservation of value and character of surrounding area. | -Protects against lowering of water sources serving other properties and damage to other properties<br>-Minimizes off-site dust movement, noise disturbance, visual impacts & alternate post-mining land uses | All new standards – "may issue"<br><br>Focus on legitimate public purpose to protect against damage to public roads and adjacent properties as well as dust, noise and other impacts through setbacks, buffer zones, and street-level visual screening, as well as anadromous waters. |
| **KPB 21.29.045** | Applicants required to demonstrate compliance with state and federal law through written documentation from pertinent authorities:<br>-ADNR temporary water use permit if water leaves the site<br>-Mining permit if activities on state land (ADNR)<br>-Permits and plans required by DEC<br>-Permits from USACE, if applicable<br>-Other applicable permits from other regulatory bodies authorized to regulate mining activities or earth materials extraction | N/A | New code section.<br><br>Requires compliance with applicable state/federal agencies prior to approval of KPB permit.<br><br>All activity must comply with state/federal regulations governing air/water quality and hazardous materials.<br><br>Violations subject to enforcement under 21.50. |

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| | Must comply with other regulations such as air and water quality, and hazardous materials<br><br>Violations subject to enforcement under 21.50 | | |
| **KPB 21.29.050** | **NINE MANDATORY CONDITIONS**<br><br>**1. Buffers:**<br>-30-foot buffer/must screen visual, dust and noise.<br>-May include 6-foot fence or berm with a 2:1 slope, or alternative proposal. Berms may not alter natural drainage features<br>-May waive if lot line adjoins another material site or industrial use.<br>-Technology (LIDAR, GIS, etc.) may be used to determine sufficiency of buffer zone.<br>-Planning Director or Commission, as applicable, may waive or reduce if screening unnecessary or not feasible.<br><br>**2. Water source separation:** -No extraction below or within 2' of seasonal high-water table unless new section Type III Endorsement (21.29.057) conditions are met.<br>-No off-site dewatering.<br>-Onsite movement of water permitted with conditions.<br>-No extraction inside boundaries of mapped tsunami hazard zone within 500' of any drinking water source, unless floor higher than surround in at least one direction.<br><br>**3. Roads:** Operations impacting KPB roads must | **Buffers:** 50' of undisturbed natural vegetation, or 6' berm with at least 2:1 slope, or 6' fence. Material from slope may be removed if site plan provides removal timeframe and verification material will be replaced within 30 days. Planning Commission may waive where topography or placement of natural barriers make screening not feasible or unnecessary<br><br>**Water source separation:** No material extraction within 100 horizontal feet of any water source existing prior to permit issuance. Counter permits require four-foot vertical separation from seasonal high-water table. CLUPs require two-foot vertical separation from seasonal high-water table. No dewatering unless PC grants exemption.<br><br>**Roads:** Operations impacting KPB roads must comply with KPB 14.40.175 and subject to remedies in 14.40.<br><br>**Dust control:** Water or calcium chloride on haul roads within boundaries of material site | Allows flexibility to meet demands of a specific application vs. "one size fits all" of current code.<br><br>**Buffers:**<br>-Visual, dust, and noise screening.<br>-Decrease to 30'<br>-Berms may not alter natural drainage features.<br>-Decision-maker may waive if lot line is directly adjacent to another material site, or if otherwise unnecessary or not feasible.<br><br>**Water source separation:**<br>-Operations within 2' of water table governed by 21.29.057/Type III Endorsement.<br>-No offsite dewatering.<br>-On site water movement permitted if qualified independent civil engineer provides statement under seal that dewatering will not lower any known water systems and applicant posts bond for potential accrued damages in amount equivalent to replace each water well within 300-foot radius of site. Rebuttable presumption is each well is minimum of $10,000.<br>-No extraction inside boundaries of mapped tsunami hazard zone within 500' of any drinking water source, with one exception. |

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| | comply with 14.40 and subject to remedies in 14.40.<br><br>**4. Dust control:** Water or calcium chloride on haul roads within boundaries of material site<br><br>**5. Hours of operation**: 6 am-9m but decision-maker may waive for specific seasonal project. Waiver valid for six consecutive months.<br><br>**6. Groundwater elevation:** Requires groundwater monitoring/one well 2' below proposed excavation per ten acres of excavated area.<br><br>**7. Setback:** 250' from school/senior center/child care facility/assisted living home/licensed health care facility etc.<br><br>**8. Boundaries:** Must stake buffers, ROWs, easements at visible intervals by professional land surveyor. Stakes must be placed prior to permit issuance.<br><br>**9. Processing:** Processing, screening, or crushing must comply with conditions in new section 21.29.055 (Type II Endorsement).<br><br>**EIGHT DISCRETIONARY CONDITIONS**<br><br>**1. Setbacks/Buffer Area:**<br>-May be increased up to maximum 100' and may include combination of appropriate buffers if necessary for public health, welfare and safety of vicinity. | **Hours of operation:** Rock crushing equipment shall not be operated between 10 pm and 6 am.<br><br>**Groundwater elevation:** See below.<br><br>**Setback:** Not addressed.<br><br>**Boundaries:** Staked at sequentially visible intervals where boundaries are within 300' of excavation perimeter. Verification and staking by professional land surveyor.<br><br>**Processing:** See below.<br><br>**No provision for discretionary conditions.** | **Roads/Dust control:**<br>Essentially the same.<br><br>**Hours of operation:**<br>For all extraction activities, 6 am to 9 pm but decision-maker can waive or adjust for specific seasonal project for period of six consecutive months.<br><br>**Groundwater elevation:**<br>Requires groundwater monitoring.<br><br>**Setback:** 250' from school/senior center/child care facility/assisted living home/licensed health care facility etc.<br><br>**Boundaries:**<br>Stakes must be placed prior to permit issuance rather than time of application.<br><br>**Processing:**<br>Requires compliance with new section 21.29.055 and Type II Endorsement.<br><br>**EIGHT DISCRETIONARY CONDITIONS**<br><br>Adds discretionary conditions:<br>-Increase setbacks to maximum 100'/may include combination of appropriate buffers for health/welfare/safety.<br>-Rolling berms.<br>-Repair of damaged public right-of-way haul routes.<br>-Suggestion of ingress/egress points.<br>-Surface water protections as set forth in 21.29.030(A)(8)(a). |

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| | -Decision-maker may require a rolling berm.<br>-Decision-maker may require revegetation when buffer area has been denuded prior to review of application.<br><br>**2. Road maintenance and repair:** Permittee may be required to repair public right-of-way haul routes; requires consultation with RSA Director.<br><br>**3. Ingress/egress:** Decision-maker may suggest ingress/egress points. Permittee not required to construct haul routes outside parcel boundaries.<br><br>**4. Surface water protection:** As specified in 21.29.030(A)(8)(a).<br><br>**5. Street-level screening:** Street-level visual screening, noise mitigation, and lighting restrictions as appropriate for the surrounding area and in accordance with 21.29.040 standards set to protect against attractive nuisance issues.<br><br>**6. Noise suppression:** Decision-maker may require white-noise back-up alarms on equipment/vehicles with back-up alarm requirements.<br><br>**7. Special Impacts Zone (SIZ).**<br>-Residents within 500' (counter permit) and 750' (CLUP) of principle residential structure may request objective, measurable screening methods. May be grounds for denial if | | -Street-level screening as appropriate for surrounding area and to protect against attractive nuisances.<br>-White noise back-up alarms for equipment/vehicles with existing back-up alarm requirements.<br>-Special Impacts Zone (SIZ) for residents within SIZ to request visual/noise/dust screening. May be grounds for denial if impacts cannot be screened.<br>-May limit operations within 1,000' of campsites within public campgrounds during the summer. |

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| | visual/noise/dust impacts cannot be screened.<br><br>**8. Public campgrounds.** Decision-maker may limit hours of operation, activities on Memorial and Labor Day weekends, and Independence Day, and designate haul route to be used (if it conflicts with public campground entrance road) for operations within 1,000' of campsites within a public campground, from the last Monday of May through the first Monday of September. | | |
| **KPB 21.29.055. Type II Endorsement – Earth materials processing.** | In addition to mandatory conditions in 21.29.050(A), and any discretionary conditions PC deems appropriate.<br><br>**A.** Conditioning or processing equipment must be operated at least 300' from parcel boundaries. PC may waive or reduce distance requirement in consideration of and in accordance with existing uses of properties in the vicinity.<br><br>**B.** Hours of operation for processing equipment between 8am and 7pm or as PC determines.<br><br>PC may also grant exceptions (not to exceed 120 days) for:<br>-Emergencies<br>-Good cause finding that increase serves public purpose and is not harmful to public health, safety, and general welfare<br><br>Applicant may request waiver (not to exceed six consecutive | 300' setback for conditioning or processing equipment.<br><br>PC may waive or reduce in consideration of and in accordance with existing uses of adjacent property at the time. | New code section.<br><br>PC may waive or reduce in consideration of and in accordance with existing uses of the "properties in the vicinity". Present code is "adjacent property".<br><br>Processing equipment may only be operated between 8am and 7pm, may be increased for emergencies, to serve a public purpose or for specific, seasonal project.<br><br>Allowance for settling pond if no natural water channeled or redirected and not within two feet of seasonal high-water table. |

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| | months) for specific seasonal project. PC must also find waiver is not harmful to the public health, safety and general welfare.<br><br>Settling pond allowed, including for materials washing, if it is not created by channeling or redirecting natural water. Type III Endorsement required if settling pond is within two feet of seasonal high-water table. | | |
| **KPB 21.29.057. Type III Endorsement-Material extraction in water table.** | In addition to mandatory conditions in 21.29.050(A), and any discretionary conditions PC deems appropriate.<br><br>Dewatering prohibited (21.29.050(A)(2)(b)).<br><br>**A.** Applicant must meet the following requirements prior to applying:<br><br>1. Installation of sufficient monitoring wells and test pits to provide qualified professional with adequate information to characterize the entire property that will be permitted for excavation.<br><br>2. Under the supervision of a qualified professional, measurement of seasonal high-water table elevation, groundwater flow direction, hydraulic gradient and water table elevation.<br><br>3. A qualified professional's report determining the potential adverse effects to groundwater and surface water body elevation and quality, surrounding water users and | Excavation within 300' horizontal feet of water source may be permitted based on:<br>-No negative impact to quantity of an aquifer serving existing water sources;<br>-Minimum of three water monitoring tubes or well casings to determine flow direction, flow rate, and water elevation; and<br>-Quarterly measurements of groundwater elevation, flow direction, and flow rate for at least four quarters prior to application. Tubes or wells must be kept in place for duration of excavation in water table.<br>-Operations shall not breach aquifer-confining layer.<br>No extraction activities within 100 linear feet from waterbodies.<br><br>Additional setback from lakes, rivers, anadromous streams and riparian wetlands may be required. | New code section.<br><br>In addition to 21.29.050 conditions, sets forth additional requirements and conditions primarily to protect water quantity.<br><br>Qualified professional must be able to characterize entire property permitted for excavation through sufficient monitoring wells and test pits.<br><br>Qualified professional must supervise measurement of seasonal high-water table elevation, groundwater flow direction, hydraulic gradient and water table elevation. Based upon available data, interpretations of data and knowledge of groundwater processes, qualified professional will report potential detrimental adverse effects to groundwater and surface water body elevation and quality, surrounding water users and adjacent properties. Must be submitted with application and also include extent and depth of extraction beneath seasonal |

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| | adjacent properties. Determination based upon available data, interpretations of data and knowledge of groundwater processes.<br><br>4. Report must be submitted with CLUP application. Subsection lists what must be included in the report.<br><br>**B.** Must also include:<br><br>1. Description of proposed extent and depth of material extraction beneath seasonal high-water table.<br><br>2. Report meeting requirements of 21.29.057(A)(4), monitoring plan and spill prevention/control/ countermeasures plan.<br><br>**C.** Conditions<br><br>1. Implement monitoring plan.<br><br>2. Implement spill prevention/control/ countermeasures plan.<br><br>3. Monthly measurement (during active extraction) of groundwater flow direction, hydraulic gradient and groundwater table elevation<br><br>4. Retain water elevation monitoring data for two years after completion of reclamation activities<br><br>5. Annual report including water table elevation monitoring data from qualified professional | -Permits may contain additional conditions addressing surface water diversion. | high-water table, spill prevention/control/ countermeasures plan.<br><br>Conditions:<br>-Implementation of monitoring and spill prevention/control/ countermeasures plan;<br>-Monthly measurement of groundwater and retention of groundwater data for two years after completion of reclamation activities;<br>-Annual report from qualified professional;<br>-No breach or extraction from a confined aquifer or a confining layer beneath a perched aquifer; and<br>-Setbacks from existing drinking water sources. |

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| | 6. Operations must not breach or extract material from a confined aquifer or a confining layer beneath a perched aquifer. Subsection sets forth what must be done if there is a breach.<br><br>7. Setbacks:<br>-500' from nearest down-gradient drinking water source<br>-350' from nearest cross-gradient drinking water source<br>-200' from nearest up-gradient drinking water source<br>-Do not apply to drinking water sources constructed after permit issued | | |
| **KPB 21.29.060 -Reclamation plan** | **A.** Reclamation with site plan required. 5-year reclamation plan must be submitted with permit renewal request.<br><br>**B.** Applicant may re-vegetate with non-invasive species and must reclaim all disturbed land to stable condition with 2:1 slope within specified time period. $750 per acre bond required unless state bond, or Planning Director accepts qualified professional's estimate of bonding amount. Enforcement under KPB 21.50.<br><br>**C.** Six measures listed must be considered as part of every reclamation plan, including ponding and protection against public nuisance.<br><br>**D.** Plan must list total acreage to be reclaimed as well as identify any drainage features entering or exiting the property. | **A.** Reclamation Plan required.<br><br>**B.** Applicant shall vegetate and reclaim all disturbed land upon exhausting the material site or time determined by plan to leave land in a stable condition.<br>Reclamation must occur for area exceeding 5 acres prior to five-year renewal or as PC specifies.<br><br>**C.** Measures listed must be considered as part of every reclamation plan, 6 reclamation measures including ponding.<br><br>**D.** Plan must list total acreage to be reclaimed each year, a list of equipment and a time schedule for reclamation measures. | "May" rather than "shall" revegetate.<br><br>Bonding required.<br><br>Plan survives permit termination and must list total acreage to be reclaimed, as well as drainage features entering and exiting the property.<br><br>Protection against public nuisance/reclamation in manner that is not harmful to public health, safety, and general welfare.<br><br>Permit close-out requirements, including remedies if permit expires, is terminated or revoked prior to close-out. |

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| | **E.** Close-out – reclamation survives permit expiration, termination or revocation. Planning Director must be provided with adequate proof of reclamation in accord with reclamation plan prior in order to close-out of permit. Remedies under 21.50 apply if permit expires, is terminated or revoked prior to close-out/may hold in abeyance upon finding of active, ongoing reclamation. | | |
| **KPB 21.29.063. Decision.** | Clarifies basis for decisions; i.e., whether or not 21.20.040's standards have or have not been met through implementation of conditions in 21.29.050/055/057.<br><br>Requirement for written findings detailing how conditions meet or do not meet the standards and evidentiary support for those findings. | N/A | New code section.<br><br>Decisions must be based upon findings of whether or not the standards are met through the application of the conditions. Those findings must be supported by evidence and must be in writing. |
| **KPB 21.29.065 -Effect of permit denial** | **A.** Applicant denied counter permit cannot reapply within same calendar year w/out new evidence or circumstances.<br><br>**B.** Applicant denied CLUP permit cannot reapply within same calendar year w/out new evidence or circumstances.<br><br>**C.** Applicant bears burden of proof. | N/A | New code section.<br><br>An applicant cannot immediately reapply for a permit after denial (one year after counter permit denial; five years after CLUP denial). |
| **KPB 21.29.070 -Permit renewal, modification and revocation** | **A.** Renewal by application every 5 years, at least ninety days prior to expiration.<br><br>**B.** Administrative approval if compliance with all conditions, no modification and no violation in prior 2 years. | **A.** Must request permit extension every 5 years, 30 days prior to expiration.<br><br>**B.** If no modification to operations or conditions proposed, a permit extension certificate may be issued by planning director. | Renewal application, not request in writing.<br><br>Possibility for public hearing on renewal and additional discretional conditions on renewal.<br><br>Modifications processed per KPB 21.29.030-.050. |

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| | **C.** Public hearing on renewal required when there is a modification, permit violation, or as determined by planning director. Permit in compliance with no violations must be approved for renewal but the commission can add additional conditions where appropriate. Permittee has ninety days to correct violations<br><br>**D.** Modifications processed per KPB 21.29.030 -.050, including with notice under 21.25.060.<br><br>**E.** Renewal fee is same as original permit fee.<br><br>**F.** Failure to apply for renewal = permit expiration.<br><br>**G.** Permits revoked per KPB 21.50. | **C.** Extension may be denied if: (1) not in compliance with reclamation requirements; (2)non- compliance with permit conditions; (3) permit violation in last 2 years and still in non-compliance.<br><br>**D.** Modification processed per KPB 21.29.030-.050.<br><br>**E.** No fee for permit extensions approved by planning director. The fee for a permit modification processed under KPB 21.29.070(D) requires original permit fee.<br><br>**F.** Failure to apply for renewal = permit expiration.<br><br>**G.** Permits revoked per KPB 21.50. | |
| **KPB 21.29.080 -Permit Close-out** | Requires permittee to request close-out of permit and verification of reclamation compliance.<br><br>Bonding released at close-out. | Current code section is titled "Permit Termination" and provides for a termination document and verification of site reclamation. | Terminology change from permit "termination" to "close-out".<br>Explicit that reclamation requirement survives permit expiration or revocation and that bonds are released upon close-out. |
| **KPB 21.29.100 -Recordation** | Provides for recordation of permits, etc. issued under KPB 21.29.<br>Owner/operator responsible for cost. | Similar recordation requirement. | Owner/operator responsible for recording costs. |
| **KPB 21.29.110 -Violations** | Violations governed by KPB 21.50. | Same but also has subsection (B) which provides for bonding if owner/operator has 3 violations within a 3-year period. | Violations governed by KPB 21.50 remain unchanged.<br>No subsection B related to bonding requirement if there are 3 violations in 3 year period. |
| **KPB 21.29.115 -Permit transfers** | Planning director approves or disapproves permit transfers. | N/A | New section of code. |

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| | Provides process and conditions for conditional approval, time to correct violations, denial, and final approval. Denial letter may be appealed to PC, but transfer approvals not subject to administrative appeal. | | Permits do not run with the land. Governs process for permit transfers. |
| **KPB 21.29.120 -Prior-existing uses** | **A.** Determination – mirrors process under KPB 21.44 (LOZD) for nonconforming-use determination. Sanctions for failure to apply for PEU determination by January 1, 2025. Operator has one year from date of notice of Planning Director's review of operator's five-year renewal to comply, otherwise PEU permit will be terminated.<br><br>**B.** Director provides notice of application and issues decision. Decision can be appealed to the Planning Commission.<br><br>**C.** Establishes five-year period for discontinuance.<br><br>**D.** Prohibits increasing, intensifying, expanding or moving the use. If PEU has been exhausted, it cannot be used for processing without a Type II Endorsement.<br><br>**E.** Establishes standards to guide decision-making process.<br><br>**F.** Requires PEU compliance with KPB 21.29 reclamation plan and hours of operation by January 1, 2026.<br><br>**G.** Requires PEU compliance with code requirements for extraction within water table | **A.** Requires determination that use as a material site commenced or operated after May 21, 1986 and prior to May 21, 1996. Limited subdivision rights. PEU runs with land.<br><br>**B.** Must have applied to be registered as a PEU prior to January 1, 2001.<br><br>**C.** Abandonment if no operation as a material site between 5/21/1996 and 5/21/2011. Owner may protest finding of abandonment and may appeal decision to the Planning Commission. | PEUs allowed to continue if in effect after May 21, 1996, and on October 1, 2023. Burden of proof is on the applicant.<br><br>By 1/1/2025, PEUs required to come into apply for PEU determination.<br><br>Five years of nonuse/ no operations = discontinuance.<br><br>Defines "increased, intensified, or expanded". |

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|---|---|---|---|
| | under KPB 21.29.057, except the water source separation requirements do not apply.<br><br>**H.** Defines "increased, intensified, or expanded" for the purposes of this section. | | |
| **21.29.130. Definitions.** | Adds definitions for: "assisted-living home"; "camp" or "camping"; "campsite"; "earthen berm"; "inactive site walls"; "isolated pond"; "public campground"; "qualified professional"; "reclamation"; and "vicinity".<br><br>Adds to definition of "conditioning or processing material". | | Adds definitions for: "assisted-living home"; "camp" or "camping"; "campsite"; "earthen berm"; "inactive site walls"; "isolated pond"; "public campground"; "qualified professional"; "reclamation"; and "vicinity".<br><br>Adds to definition of "conditioning or processing material". |

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# MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Peter A. Micciche, Mayor

**DATE:** September 7, 2023

**SUBJECT:** **Mayor Micciche Amendment #1** to Substitute 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)

The addition of two additional whereas clauses are necessary to highlight and empathize that material sites are a very important and appreciated component of this Borough. Without material sites, development and economic progress would be stifled. Without affordable borrow, gravel and other materials, the Borough could not continue to grow and prosper.

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

- **Add a new second and third whereas clause as follows:**

**WHEREAS,** **material sites and material site operators are vital to the development and improvement of the borough; and**

**WHEREAS,** **the Kenai Peninsula Borough supports material sites and recognizes that without material sites there would not be economic development; and**

Your consideration is appreciated.

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# MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Peter A. Micciche, Mayor

**DATE:** September 7, 2023

**SUBJECT:** **Mayor Micciche Amendment #2** to Substitute 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)

This amendment is brought forward in response to a very reasonable request from the Kenai Peninsula Aggregate and Contractors Association request that the 60-day waiver be changed to 30 days for each year of the two years that a counter permit is in effect.

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

- **Amend KPB 21.29.050(B) as follows:**

**21.29.050. Permit conditions applicable to all permits.**

A. Counter permit. A counter permit is required for earth material extraction which disturbs more than one acre and less than 5 cumulative un-reclaimed acres and is limited to one counter permit per parcel. Material conditioning or processing, and material extraction within two feet of the seasonal high-water table is prohibited under a counter permit except, upon request from the applicant, the planning director or designee may issue a [~~one-time~~] **limited** processing waiver for screening of materials only. [~~The one-time~~] **This** processing waiver may not exceed [~~sixty~~]**thirty** consecutive days **per year**. The hours of operation under the one-time processing waiver are the same as provided for a Type II Earth Materials Conditioning or Processing Endorsement under 21.29.055. Buffer conditions for a one-time processing waiver must be established consistent with the permit application prior to commencement of processing operations. A counter permit is valid for a period of two years. Upon request from the applicant, the planning director, or designee, may grant one 12-month extension on a counter permit. Counter permits are approved by the planning director, or designees, and are not subject to notice requirements under KPB 21.25.060. The planning director's decision to approve or deny a counter permit may be appealed to the planning commission, which must act as the hearing officer, in accordance with KPB 21.20.

Your consideration is appreciated.

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# MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Peter A. Micciche, Mayor

**DATE:** September 7, 2023

**SUBJECT:** **Mayor Micciche Amendment #3** to Substitute 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)

These amendments address concerns within the KPB 21.29.040 section related to standards. This amendment removes the term "visual" within the standards section. My recommendation is that the term should not be used within the standards. Removing the term will not change the intent of the chapter or any of the regulations therein. Next, this amendment will change references to "salmon" or "juvenile salmon" to "anadromous waters". The final amendment will remove the fifth standard relating to preserving the "value and character" of the surrounding area. The term is not appropriate when reading this chapter and Borough Code as a whole. Value and character of an area is subjective, not measurable, and will only serve to drive a wedge between home owners and commercial operators.

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

➢ **Amend KPB 21.29.040 as follows:**

**21.29.040. Standards for sand, gravel or material sites.**

A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, [~~visual~~] and other impacts of earth materials extraction sites through setbacks, buffer zones, street-level [~~visual~~] screening, and protection of [~~salmon-rearing~~]**anadromous waters**. Prior to granting a counter permit or conditional land use permit under this chapter, the planning director or planning commission, as applicable, must make the following findings:

1. That the use is not inconsistent with the applicable comprehensive plan;
2. That the use will not be harmful to the public's health, safety, and general welfare, or the health of anadromous waters [~~particularly with regard to juvenile salmon~~];

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3. That sufficient setbacks, buffer zones, and other safeguards, including measures to mitigate impacts to groundwater flow paths [~~important for juvenile salmon~~], are being provided consistent with this chapter; **and**
4. That the use provides for a reclamation plan consistent with this chapter[;]**.** [~~and~~
~~5. That the use will preserve the value and character of the surrounding area~~.]

Your consideration is appreciated.

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# MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Peter A. Micciche, Mayor

**DATE:** September 7, 2023

**SUBJECT:** **Mayor Micciche Amendment #4** to Substitute 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)

This amendment removes the word "visual" from KPB 21.29.050(A).

[Please note the bold underlined language is new and the strikeout 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 minimum 30-foot buffer zone must be established between the area of excavation and the parcel boundaries. The buffer zone must provide [~~visual,~~] dust~~,~~ and noise screening. The buffer zone may include one of the following: a six-foot earthen berm with a 2:1 slope; a minimum six-foot foot sight-obscured fence; or an alternative buffer proposal that the planning commission or planning director, as applicable, deems appropriate. There is no requirement to buffer the material site from uses which commence after the approval of the permit. Berms may not alter natural drainage features;

…

Your consideration is appreciated.

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# MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Peter A. Micciche, Mayor

**DATE:** September 7, 2023

**SUBJECT:** **Mayor Micciche Amendment #5** to Substitute 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)

These amendments remove the word "visual" from KPB 21.29.050(B)(5) and (B)(7).

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

➢ **Amend KPB 21.29.050(B) as follows:**

**21.29.050. Permit conditions applicable to all permits.**

B. [~~Discretionary~~]**Site Specific** 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:

…

5. *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.

…

7. *Special Impacts Zone (SIZ)*

a. The screening of adverse [~~visual,~~] noise, dust, [~~and dust~~] **or other** impacts protects public health, safety, and general welfare. General welfare is further served through imposition of this zone. The distance restrictions balance the right to quiet enjoyment of one's property against development rights. Residents within this zone may request screening methods that are objective, measurable, and within the overall regulatory limits set by this chapter by providing substantial evidence to support the request.

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b. For counter permits, [~~visual,~~] noise, dust, [~~and dust~~] **or other** impacts that cannot be screened as set forth in Subsection 8(a) within 500 horizontal feet of an existing principle residential structure may be grounds for denial. For Type 1, 2, and 3 Endorsements, [~~visual,~~] noise, dust, [~~and dust~~] **or other** impacts that cannot be screened as set forth in Subsection 8(a) within 750 horizontal feet of an existing principle residential structure may be grounds for denial. The distances specified in this subsection will be measured from any outer wall of a principle residential structure to the nearest boundary of the proposed material site permitted parcel.

Your consideration is appreciated.

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# MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Peter A. Micciche, Mayor

**DATE:** September 7, 2023

**SUBJECT:** **Mayor Micciche Amendment #6** to Substitute 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)

These amendment removes the annual report. The applicant will still need to provide the required plan and if necessary, the Planning Director can obtain necessary elevation monitoring data. Following consultation with the Planning Director, an annual report is not necessary.

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

- **Amend KPB 21.29.050(B) as follows:**

**21.29.057. Type III Endorsement - Material extraction below or within two feet of the seasonal high-water table.**

…

C. Conditions. In addition to the requirements of KPB 21.29.050, operating conditions for extraction within or below two feet of the seasonal high-water table are as follows:…

[~~5. A qualified professional must annually submit a report to the department that includes water table elevation monitoring data.~~]

[6]**5.** Operations must not breach or extract material from a confined aquifer or a confining layer beneath a perched aquifer.

Your consideration is appreciated.

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# MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Peter A. Micciche, Mayor

**DATE:** September 7, 2023

**SUBJECT:** **Mayor Micciche Amendment #7** to Substitute 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)

This amendment changes the "cooling off" period after a possible permit denial from five years to two years in the event there is no new evidence or a material change in circumstances that would allow for re-application following denial.

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

- **Amend KPB 21.29.065(B) as follows:**

**21.29.065. Effect of permit denial.**

A. Absent new evidence or a material change in circumstances that even with due diligence the applicant could not have presented with the original application, no reapplication concerning the same counter permit application may be filed within one calendar year of the date of the planning director's final denial action.

B. Absent new evidence or a material change in circumstances that even with due diligence the applicant could not have presented with the original application, no reapplication concerning the same CLUP may be filed within [~~five~~]**two** calendar years of the date of the final denial action.

Your consideration is appreciated.

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# MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Peter A. Micciche, Mayor

**DATE:** September 7, 2023

**SUBJECT:** **Mayor Micciche Amendment #8** to Substitute 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)

This amendment changes the two year look-back for any violations on review to one calendar year.

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

- **Amend KPB 21.29.070(B) as follows:**

**21.29.070. Permit renewal, modification and revocation.**

A. Conditional land use permittees must submit a renewal application every five years after the permit is issued. A renewal application must be submitted at least 90 days prior to expiration of the CLUP.

B. The planning director may administratively approve a renewal application that meets the following requirements: (i) the permittee is in compliance with all permit conditions and no modification to operations or conditions are proposed; and (ii) the borough did not issue a notice of violation under the permit during the [~~TWO~~] calendar year[~~S~~] preceding the renewal application. If the renewal application does not satisfy the foregoing requirements or if the planning director determines a review by the planning commission is warranted, then the planning commission will hear the renewal application.

Your consideration is appreciated.

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# MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Peter A. Micciche, Mayor

**DATE:** September 7, 2023

**SUBJECT:** **Mayor Micciche Amendment #9** to Substitute 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)

This amendment provides that the borough will pay to record the permit by using funds from the permit application fee.

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

- **Amend KPB 21.29.100 as follows:**

**21.29.100. Recordation.**

All permits, permit extensions, modified permits, prior existing uses, and terminations will be recorded. Failure to record a material site document does not affect the validity of the documents. The [~~operator or owner of the material site is responsible for all associated~~] **borough will use funds from the application fee to pay** the permit recording fees.

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# MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Peter A. Micciche, Mayor

**DATE:** September 7, 2023

**SUBJECT:** **Mayor Micciche Amendment #10** to Substitute 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)

This amendment addresses and clarifies prior existing uses. The amendment clarifies that prior existing uses that existed prior to 1996 are recognized PEUs and an owner or operator of a PEU site does not need to apply with the Borough to be recognized. This amendment will eliminate confusion surrounding PEU status, concerns with regarding the expansion prohibition language in the current substitute, and serves to effectuate the intent of the Assembly and Administration regarding prior existing uses.

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

- **Amend KPB 21.29.120 as follows:**

**21.29.120. Prior-existing uses.**

A. ***Recognized status*. A prior existing use (PEU) is a use that existed prior to May 21, 1996, and still in effect as of October 1, 2024. A PEU is recognized and is allowed to continue operation subject to the requirements of this section. A permitted material site is not considered a prior existing use.** ~~[PRIOR-EXISTING USES (PEU) IN EFFECT ON OCTOBER 1, 202 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, 2023 AND AFTER MAY 21, 1996, IS ON THE APPLICANT.][ ALL [OTHER] PEUS PRIOR TO MAY 21, 1996 ARE [ALREADY RECORDED WITH THE BOROUGH AND ARE] RECOGNIZED. [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, 2025 WILL RESULT IN SUSPENSION OF ALL RIGHTS TO CONTINUED OPERATION AS A NONCONFORMING USE UNTIL 1) THE OPERATOR APPLIES FOR A PRIOR-EXISTING USE DETERMINATION; 2) THE APPLICATION IS APPROVED; AND 3) THE OPERATOR DEMONSTRATES FULL COMPLIANCE WITH ALL~~

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~~PROVISIONS OF THIS CHAPTER RELATING TO PEUS. THE OPERATOR WILL HAVE ONE YEAR FROM THE DATE OF THE NOTICE OF THE PLANNING DIRECTOR'S REVIEW OF AN OPERATOR'S FIVE YEAR RENEWAL TO COME INTO FULL COMPLIANCE WITH THE PROVISIONS OF THIS CHAPTER, OTHERWISE THE SUSPENDED PEU PERMIT WILL BE TERMINATED.]~~

B. ***Classification*. The planning department will review PEUs to determine the established use by classifying a PEU based upon the use types set forth in KPB 21.29.020, and provide a written description of the existing operations and classification determination. The PEU classification determination is only for the use that was established prior to October 1, 2024. The classification determination runs with the land and applies to the entire parcel or lot. The PEU classification determination must state whether or not the PEU is within the water table. The planning director's decision will also set forth the reclamation plan as required by subsection (D) below. The planning director's decision may be appealed by the applicant to the planning commission within 15 days of distribution of the decision. If a parcel is subdivided, the PEU 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.** [~~*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 WILL INCLUDE A SUMMARY OF THE APPLICATION, A VICINITY MAP, AND A DEADLINE FOR SUBMITTING 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 OR EVIDENCE REGARDING THE EXISTENCE OF THE USE. BASED ON THAT INFORMATION, THE PLANNING DIRECTOR WILL CLASSIFY THE PEU BASED UPON THE USE TYPES SET FORTH 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 PEU which has ceased by discontinuance for an uninterrupted period of five 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 five-year time period. If a PEU is discontinued or abandoned, it may not be recommenced. Any activity such as extraction, excavation, processing, or reclamation is considered valid and a continuance of site use. **The planning director will determine in writing whether a PEU has ceased by discontinuance. The planning director's decision may be appealed to the planning commission within 15 days of distribution of the decision**

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[D. *EXPANSION PROHIBITED*. A PRIOR-EXISTING USE MAY NOT BE INCREASED, INTENSIFIED, OR EXPANDED OR MOVED AFTER OCTOBER 1, 2023, 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 A TYPE II ENDORSEMENT.]

**D.**[F.] In accordance with 21.29.015, on or before January 1, 2026, all legal PEU extraction operations must 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 TWO FEET OF THE SEASONAL HIGHWATER TABLE MUST CONDUCT OPERATIONS IN ACCORDANCE WITH THE REQUIREMENTS OUTLINED IN KPB 21.29.057, EXCEPT THAT KPB 21.29.057(C)(7) WILL NOT APPLY. ]

[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 DIRECTORS DECISION OR BEYOND THE WRITTEN DESCRIPTION OF EXISTING OPERATIONS AS SET FORTH BY THE PLANNING DIRECT UNDER SUBSECTION (B) ABOVE; (2) INCREASING THE DEPTH OF EXCAVATION TO GO WITHIN TWO 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.]

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Kenai Peninsula Borough
Assembly

# MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Peter A. Micciche, Mayor

**DATE:** September 7, 2023

**SUBJECT:** **Mayor Micciche Amendment #11** to Substitute 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)

This amendment changes the effective date to October 1, 2024, in order to provide time for planning and implementation.

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

- **Amend SECTION 4 as follows:**

**SECTION 4.** That this ordinance [~~is effective immediately upon enactment~~] **shall become effective on October 1, 2024.**

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# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Peter A. Micciche, Mayor
Richard Derkevorkian, Assembly Member

**DATE:** September 7, 2023

**SUBJECT:** **Derkevorkian Amendment** to Substitute 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 language in brackets is to be deleted.]

➢ Amend KPB 21.29.050(A) as follows:

**21.25.050. Permit considerations—Public hearing required.**

A. Within **30** days of receiving an application, the planning director or designee shall review the submitted application for completeness and compliance with this chapter. If it is incomplete or does not meet the requirements of this chapter, the planning director shall notify the applicant in writing. The planning director shall thereafter either return the application to the applicant or schedule the application to be considered by the planning commission at the next appropriate scheduled meeting. [~~UPON RECEIVING AN APPLICATION, THE PLANNING DIRECTOR OR DESIGNEE WILL FORWARD A COPY OF THE APPLICATION TO THE KACHEMAK BAY NATIONAL ESTUARINE RESEARCH RESERVE ("KBNERR") FOR REVIEW AND COMMENT. KBNERR WILL HAVE THIRTY DAYS TO PROVIDE ITS REVIEW AND COMMENT PRIOR TO SUBMISSION OF THE APPLICATION TO THE PLANNING COMMISSION IF THE APPLICATION IS OTHERWISE COMPLETE.~~]

Your consideration is appreciated.

# O2022-36 (SUB) Material site permitting process overview

Updated 9-5-2023

1

# Section 1
# KPB 21.25.050. – Permit considerations

- Increased review time of application for permit from 21 days to 30 days.

# Section 2
# KPB 21.25.060

- New notice section applicable to Conditional Land Use Permits (CLUPs) under Title 21
- 1000 feet notice radius for KPB 21.29 CLUPs (Material Sites)
- Provides for notice via borough website

# Section 3
# New Chapter KPB 21.29, Material Site Permits

- Establishes a multi-permit stratification system intended to increase decision-making flexibility while protecting against uses that carry with them potentially negative impacts to public health, safety, and general welfare.
- Two permits,  3 endorsement types
  - Counter Permit (CP): anything from over 1 acre to 5 acres, no processing, no extraction in water table.
  - Conditional Land Use Permit (CLUP), with three endorsements types:
    - Type I: extraction activity disturbs more than 5 acres, no processing, no extraction w/in 2 feet of  water table.
    - Type II: required for all on-site materials processing (including crushing, screening, etc).
    - Type III: provides for additional monitoring and a professional report for uses within water table.

# KPB Chapter 21.29

- KPB 21.29.005 – Intent and Purpose
- KPB 21.29.010 – Applicability
- KPB 21.29.015 – Material extraction exempt
- KPB 21.29.020 – Types of permits available
- KPB 21.29.030 – Application procedure
- KPB 21.29.040 – Standards for sand, gravel or material sites
- KPB 21.29.045 – Required compliance with State / Federal laws
- KPB 21.29.050 – Permit conditions applicable to all permits
- KPB 21.29.055 – Earth materials processing (Type II)
- KPB 21.29.057 – Material extraction in water table (Type III)
- KPB 21.29.060 – Reclamation plan
- KPB 21.29.063 – Decision
- KPB 21.29.065 – Effect of permit denial
- KPB 21.29.070 – Permit renewal, modification, revocation
- KPB 21.29.080 – Permit close-out
- KPB 21.29.100 – Recordation
- KPB 21.29.110 – Violations
- KPB 21.29.115 – Permit transfers
- KPB 21.29.120 – Prior existing uses
- KPB 21.29.130 – Definitions

# Section 3
# KPB 21.29.005 – Intent and Purpose

- Sets forth intent and purpose for chapter in borough code regulating material sites.
- General purpose:
  - Promotes the public health, safety, and general welfare of KPB residents and visitors.
  - Promotes compatible, orderly development.

# KPB 21.29.010 – Applicability

- Chapter applies to all private and public lands in the borough, unless otherwise exempt by law.
- Does not apply within the incorporated cities.
  - Zoning powers have been delegated by the borough to all incorporated cities within the borough
- Prohibits earth materials extraction within 300 feet of riparian wetlands or naturally-occurring open water bodies.
- References State of Alaska, DEC Best Management Practices.

# KPB 21.29.015 – Material extraction exempt

- Exempts extraction disturbing less than one acre under circumstances set out
- Exempts dewatered bars within SBCFSA
- PEUs exempt
- Exempts extraction activities on private or public property necessary for development of the same property.

# KPB 21.29.020 – Types of permits available.

- Current code: counter permit and CLUP. CLUP application requires all mandatory conditions and covers all uses.
- KPB 21.29.020
  - Counter Permit (CP): anything from over 1 acre to 5 acres, no crushing limited screening, no extraction w/in 2 feet of water table. Only the conditions set forth in KPB 21.29.050 apply.
  - Conditional Land Use Permit (CLUP) types:
    - Type I - Earth Materials Extraction : extraction activity disturbs more than 5 acres, no processing, no extraction w/in 2 feet of water table, only the conditions set forth in KPB 21.29.050 apply.
    - Type II - Earth Materials Processing: required for all on-site processing, screening, or crushing. Conditions set forth in KPB 21.29.050 + conditions set forth in KPB 21.29.055 apply.
    - Type III - Earth Materials Extraction within Water Table : Required for any earth materials extraction within water table. Conditions set forth in KPB 21.29.050 + conditions set forth in KPB 21.29.057 apply.
  - A CLUP applicant may request all three types at the time of application for a single fee.

# KPB 21.29.030 – Application procedure

- Similar to current code application procedure
- Breaks apart a site map (professional surveyor) from site plan (professional engineer)
- Adds identification on site plan of groundwater protections measures for anadromous waters.

# KPB 21.29.040 – Standards for sand, gravel or material sites

- All new standards.
- Regulations serve legitimate public purpose to protect against damage of public roads, physical damage to adjacent properties, dust, noise and other impacts through setbacks, buffer zones, and street-level visual screening.
- In granting a permit the Planning Director or Planning Commission must find:
  - Use is not inconsistent with applicable comp plan.
  - Use will not be harmful to public's health, safety, and general welfare.
  - Sufficient setbacks, buffer zones, and other safeguards are provided.
  - Use provides for a reclamation plan.
  - Use will preserve the value and character of the surrounding area.

# KPB 21.29.045 – Required compliance with State and Federal laws

- Requires evidence of compliance with applicable state/federal agency prior to approval of KPB permit.
- Requires all activity conducted in manner that complies with state/federal protections including but not limited to air quality, water quality, hazardous materials.

# KPB 21.29.050 – Permit conditions applicable to all permits

- In lieu of current exhaustive conditions in borough code that apply as a “one size fits all” this section establishes 9 mandatory conditions and provides 8 potentially applicable discretionary conditions.
- Allows for flexibility to meet the demands of a specific application.
- Is a move away from the “one size fits all” system.
- Promotes flexibility

# KPB 21.29.050 – Permit conditions …Continued

- 9 mandatory conditions:
  1. Buffer Zone: 30 feet, 6 foot berm or fence, 2:1 slope, buffer zone can only be waived when site is next to adjacent pit.
  2. Water source separation: extraction within 2 feet of water table is prohibited unless requirements of KPB 21.29.057 are met; dewatering off site is prohibited; material extraction within 100 feet of any private well is prohibited.
  3. Roads: Operations that impact KPB roads must be in accordance with KPB Chapter 14.40.
  4. Dust control: Dust suppression required within material site haul roads.
  5. Hours of operation: Applicable to all operations, 6am to 9pm, but can be adjusted by decision-maker and/or waived for seasonal project.
  6. Groundwater elevation: Requires monitoring of groundwater.
  7. Setback: 250 ft from school, senior center, child care facility, etc.
  8. Permit boundaries: Must stake buffers, ROWs.
  9. Processing: Requires compliance with KPB 21.29.050 conditions and KPB 21.29.055.

# KPB 21.29.050 – Permit conditions …Continued

- 8 discretionary conditions:
  1. Setbacks/Buffer Areas: Up to a maximum of 100 feet based on circumstances, potential for "rolling berms".
  2. Road maintenance and repair: Permittee may be required to maintain/repair damaged public haul routes.
  3. Ingress/Egress: May be suggested by PC/Planning Director.
  4. Surface water protection: Use of surface water protection measures specified in KPB 21.29.030(A)(8)(a).
  5. 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 to protect against attractive nuisance issues.
  6. Noise suppression: discretionary white noise reverse alarms.
  7. Special Impacts Zone (SIZ): Residents within 500' (counter permit) and 750' (CLUP) of principle residential structure may request objective, measurable screening methods. May be grounds for denial if visual/noise/dust impacts cannot be screened.
  8. Public Campgrounds: Within 1000 feet of campsite, from Memorial Day through Labor Day, 9am -6pm limited hours, no excavation during listed holidays, PC/Planning Director may designate haul route.

# KPB 21.29.055 – Earth materials processing

- In addition to KPB 21.29.050 conditions, this new Section sets forth 2 additional conditions:
  1. Setback – must process 300 feet from parcel boundaries, or lesser distance as appropriate.
  2. Hours of operation: 8am to 7pm, or as determined by the PC.
     - Provides for exceptions for emergency or good-cause findings.
     - Seasonal, project-based waiver available.

# Section 3
# KPB 21.29.057 – Material extraction in water table

- In addition to KPB 21.29.050 conditions sets forth additional requirements & conditions aimed primarily at protecting water quantity:
  - 21.29.057(A): establishes 6 additional application requirements when applicant requests to extract within the water table.
    - Requires groundwater study and report from a professional to characterize and monitor the condition of groundwater at the permitted site. Elevations of groundwater will be tied to real-world elevation datum. Focuses on water quantity concern over water quality concerns
  - 21.29.057(C): establishes 7 additional conditions applicable when applicant requests to extract within the water table.
    - Setback: up to 500 feet setback required related to proximity to drinking water source.

# KPB 21.29.060 – Reclamation plan

- Similar to current code. Requires reclamation plan. Must be submitted with renewal application as well.
- Requires reclamation of site to leave land in stable condition with 2:1 slopes and presumably revegetation.
- Requires $750 per acre bond.
- Reclamation plan and bond survives close-out, expiration, termination or revocation of permit.

# KPB 21.29.065 - .115

- KPB 21.29.063 – Decision, permit applications that meet standards will be approved, applications that do not meet standards will be denied.
- KPB 21.29.065 – Effect of permit denial: no reapplication within 1 year without new evidence.
- KPB 21.29.070 – Permit renewal, modification, revocation: renewal required every 5 years, administrative if no changes, violations or complaints; public hearing otherwise.
- KPB 21.29.080 – Permit close-out: adds formal close-out process.
- KPB 21.29.100 – Recordation
- KPB 21.29.110 – Violations
- KPB 21.29.115 – Permit is transferrable.

# KPB 21.29.120 – Prior existing uses (PEU)

- Must apply for PEU status. Determination by Planning Director appealable to Planning Commission (similar to LOZD nonconforming use process).
- Abandonment after 5 years of non-use; expansion prohibited.
- BY JANUARY 1, 2026 – PEU must:
  - Comply with KPB 21.29.060 (reclamation plan)
  - Comply with KPB 21.29.057 (extraction within water table, except setbacks don't apply)
  - Comply with applicable hours of operation requirements

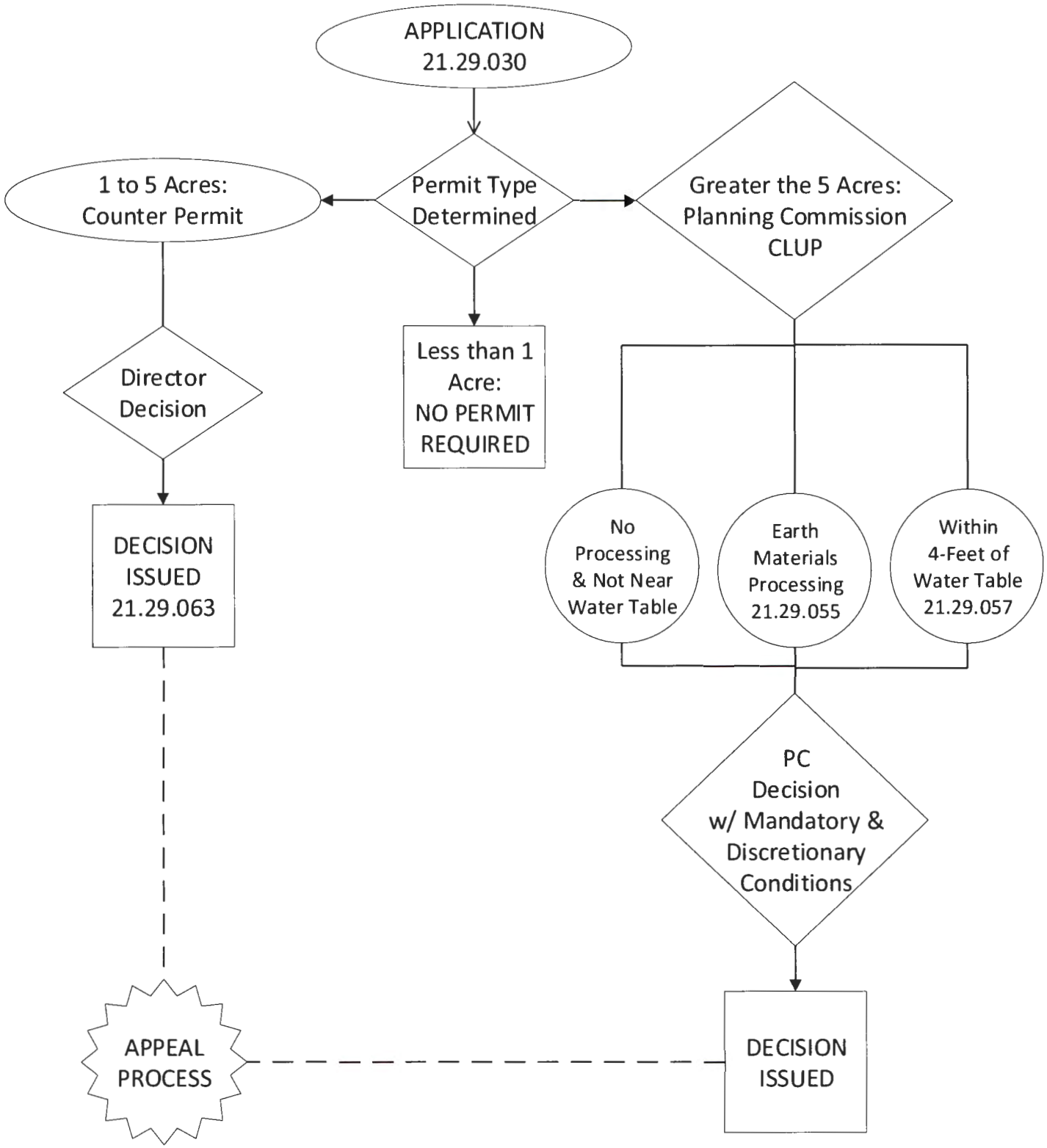
# ISSUES TO CONSIDER

- KPB 21.29.040 Standards
- Prior Existing Use (PEU) – Needs clarification. In fact, section may require substantial revisions to clarify body's intent: is idea that both the pre-1996 PEUs and CLUPs permitted between 1996 and 2023 are all considered PEU status moving forward  OR  only pre-1996 PEU are recognized, classified, PEU?

02022-36

Presented By:
Robert Ruffner
Planning Director

# Permitting Process
# KPB 21.29 Material Sites
# As Proposed



02022-36

Presented By:
President Brent Johnson

Material Site Ordinance 2018-19 rewrite, Ordinance 2019 Mayor's Substitute review: Substance Comparisons

• Increased buffer by 26 feet. Former buffer could be up to 74-feet (50-foot buffer of undisturbed vegetation + six foot berm with 2:1 slope + six foot fence). New buffer would be 100-feet, unless reduces by special circumstances.

• No disturbing vegetation or ground within 200 feet of water bodies. (formerly 100 feet)

• Set noise limits at the property boundary of the gravel pit parcel. The noise limits were specific decibels (75 with variations for certain durations). [For reference, OSHA limit for acceptable noise before ear protection is 85 decibels. In addition, Bruce Wall tested during the summer and didn't find pits that were exceeding the limits].

• Set requirements for "white noise" new technology back up alarms.

• Increased vertical separation from water table to 4 feet from 2 feet

• Retained the "purchase to development" concept. In other words, if a pit operator buys a piece of property, meets all the criteria for a material site, the Planning Commission has no choice but to approve the permit. For adjacent property owners, this is like holding an election in China or Russia. These property owners and many members of the Planning Commission voiced a desire to have the option to turn down a permit if they think a specific potential pit is in an area that is too residential or too near a campground, park or other considerations.

On the other hand, pit developers pointed out the need to have clear, defined rules so they could know that if they bought a piece of property and met all the permit requirements, a permit would be granted. The Legal Department pretty much shied away from giving the Planning Commission power to decide cases apart from specific language.

• Required bonding for the developed area of a pit, for the purpose of reclamation. A 5 year site plan for reclamation is required.

• Did not address visual considerations for elevated adjacent private home owners.

• 2:1 slope on pit sidewalls. Material from the 2:1 slope may be removed if replaced with stable material within 30 days.

• Buffers can't overlap easements

• Buff area may be reduced by Planning Director or Planning Commission or they can be waivered. There is no requirement for a buffer zone when neighboring uses commence after approval of permit.

•No processing between 7:00 pm – 6:00 am, but exceptions may be granted

• Planning Director or Planning Commission may determine the points of ingress and egress.

• Dust suppression shall be required.

• Surface water protection measures need to be approved by a licensed civil engineer.

• 250-foot setback from the property boundaries of any local option zoning district, public or private school ground, college campus, child care facility, senior center, assisted living home, and licensed health care facility.

2022-36

Presented By:
President Brent Johnson

Material Site Working Group established by Resolution 2018-004 (Substitute).
Review of Members, Meetings and Votes

• 1-31-18 Working Group first met. Members were:
2 from Assembly, Norm Blakeley and Wayne Ogle
2 from Planning Commission, Robert Ruffner and Jim Isham
2 from Industry, Tom Clark and Larry Smith
2 home-owners, Stacy Crouse and Brent Johnson
Ruffner elected chairman, Ogle vice-chairman.
Planning Director Max Best, Planner Bruce Wall, and Deputy Attorney Holly Montague assisted.

• After five, 2-hour meetings of the Working Group, public hearings were held. One in Soldotna and One in Anchor Point.

•5-15-18 Assembly extended deadline for final report.

• After the 5-23-18 meeting the Group broke for summer, having met ten times (9 with a quorum). By this time the Group had agreed to 13, non-controversial changes.

• Jim Isham passed away Aug 15, 2018. (attendance record 5 of 8)
• Stacy Crouse resigned due to other commitments. (attendance 7 of 8)

• 10-10-18 Working group begin meeting again. Syverine Abrahamson-Benz replaced Jim Isham for his Planning Commission seat.

• 10-24-18 Robin Davis replaced Stacy Crouse for the home-owner seat. Public hearings begin, limited to the first half hour and to the end of each meeting.

• 2-13-19 after conducting eight, 2-hour meetings since reconvening from summer break, the length of meetings begin, at this meeting, to be set for 3 hours.

• Group held two all-day (9-5) meetings in April 2019, in addition to a three-hour meeting. the Group's final meeting was for 15 minutes to vote on the final product. It passed 7-1 with Smith opposing.
• Since reconvening, attendance was: Benz 12 of 16, Blakeley 14 of 16, Clark 13 of 16, Davis 15 of 15 (he was appointed after the first meeting), Johnson 15 of 16, Ogle 16 of 16, Ruffner 14 of 16, Smith 14 of 16.

• 7-15-19 Planning Commission held a work session on the Material Site Permits amendments.
• 8-26-19 Planning Commission expressed considerable dissatisfaction with the proposed ordinance. An illustration is Commissioner Ernst's comments: "... He felt the Assembly should be in charge of material site extractions. They obviously do not empower the Planning Commission to use their own judgement to determine whether it is appropriate. This has been going on since he joined the

Planning Commission." Believing they needed more time to develop some more restrictive options, the Planning Commission postponed the Ordinance by a vote of 8 Yes – 1 No – 3 Absent.

• 9-9-19 The Planning Commission made 22 motions to amend the Material site Ordinance and passed 14 of them. The amendments that passed generally put further restrictions on pit operators. The Planning Commission then requested a joint work session with the Assembly on the Ordinance.

• 11-5-19 The Assembly and Planning Commission held a joint work session on Ordinance 2019-30. In attendance were: Assembly members Jesse Bjorkman, Norm Blakeley, Ben Carpenter, President Kelly Cooper, Tyson Cox, Willy Dunn, Brent Hibbert, Brent Johnson, and Vice president Hal Smalley. Planning Commissioners Jeremy Brantley, Rick Foster, Blair Martain, and on Zoom: Cindy Ecklund, Virginia Morgan, Syverine Abrahamson-Benz, and Franco Venuti. Borough Mayor Charlie Pierce, Chief of Staff James Baisden, Planning Director Max Best, Planner Bruce Wall.

• 12-3-19 The Assembly Amended Ordinance 2019-30 with Ordinance 2019-30 Mayor's Substitute. In answer to a question, the Legal Department said clear rules are easier to defend then rules that offer the Planning Commission latitude. Ordinance 2019-30 failed 3-6. Voting Yes were Cooper, Dunn and Johnson.

• 1-7-20 The Assembly took public testimony on Reconsideration of Ordinance 2019-30 Mayor's Substitute. Reconsideration failed on a 4-5 vote. Voting Yes were: Bjorkman, Cox, Dunn, and Johnson.

# MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Lane Chesley, Assembly member

**DATE:** August 15, 2023

**SUBJECT:** **Chesley Amendment #1 Replacement** 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 language in brackets is to be deleted.]

- Amend KPB 21.29.050(B), as follows:

21.29.050. Permit conditions applicable to all permits.

….

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.

…

**9.** ***Public campgrounds*. From the last Monday of May through the first Monday of September each year, for operations within 1,000 feet of a campsite within a public campground, the following limitations to operations may be applied:**

**(a) hours of operation limited to 9:00 am to 6:00 pm;**
**(b) no excavation, processing, or hauling activity allowed over the Memorial Day, Independence Day, or Labor Day Holiday; or**
**(c) if a proposed haul route conflicts with a public campground entrance road, then the planning commission or planning director, as applicable, may designate the haul route to be used, with exceptions allowed for local delivery.**

**The 1,000 foot distance will be measured from any campsite of the public campground to the outer boundary of a parcel for which an applicant has requested a counter permit or conditional land use permit under this chapter.**

Your consideration is appreciated.

DRAFT

# MEMORANDUM

**TO:** Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Brent Johnson, Assembly President

**DATE:** August 1, 2023

**SUBJECT:** **Johnson Amendment #4 Substitute** 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 21.29.040, as follows:

21.29.040. Standards for sand, gravel or material sites.

A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise and other impacts of earth materials extraction to properties in the vicinity through setbacks, buffer zones, street-level visual screening, and protection of salmon-rearing waters. Prior to granting a counter permit or conditional land use permit under this chapter, the planning director or planning commission, as applicable, must make the following findings:

….

3. That sufficient setbacks, buffer zones, and other safeguards**, including measures to mitigate impacts to groundwater flowpaths important for juvenile salmon,** are being provided consistent with this chapter; and

….

Your consideration of this amendment is appreciated.

**MEMORANDUM**

**TO:** Members, Kenai Peninsula Borough Assembly

**FROM:** Lane Chesley, Assembly Member

**DATE:** August 1, 2023

**SUBJECT:** **Chesley 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:

…

*Conditioning or processing material* means a value-added process including batch plants, asphalt plants, screening, blasting, washing, **the use of hydraulic hammers,** and crushing by use of machinery. It does not include stripping and segregation with excavation equipment.

…

Your consideration is appreciated.

**MEMORANDUM**

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Lane Chesley, Assembly Member

**DATE:** August 1, 2023

**SUBJECT:** **LAYDOWN Chesley Amendment #10** 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(B), as follows:

21.29.050. Permit conditions applicable to all permits.

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.

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, **and include a combination of appropriate buffers**, 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 vicinity;

….

Your consideration is appreciated.

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# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Lane Chesley, Assembly Member LC

**DATE:** June 20, 2023

**SUBJECT:** **Chesley Substitute 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 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:

…

***Camp or camping*** **means to use a vehicle, tent, or shelter, or to arrange bedding, or both, with the intent to stay overnight.**

***Campsite*** **means any space designated for camping within a public campground.**

…

***Public campground*** **means an area, developed and maintained by a public entity, that is open to the public and contains one or more campsites.**

…

***Reclamation*** **means the process of restoring land that has been mined to a natural or economically-usable state in order to meet a variety of goals ranging from the restoration of productive ecosystems to the creation of industrial and municipal resources.**

…

Your consideration is appreciated.

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# Kenai Peninsula Borough
Assembly

**MEMORANDUM**

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Lane Chesley, Assembly Member LC

**DATE:** June 20, 2023

**SUBJECT:** **Chesley Amendment #8 Replacement** 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(B), as follows:

21.29.050. Permit conditions applicable to all permits.

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:
…

8. **[*~~Visual exclusion~~*] *Special Impacts Zone* (SIZ)**.

a. **The screening of adverse visual, noise, and dust protects public health, safety, and general welfare. General welfare is further served through imposition of this zone. The distance restrictions balance the right to quiet enjoyment of one's property against development rights. Residents within this zone may request screening methods that are objective, measurable, and within the overall regulatory limits set by this chapter by providing substantial evidence to support the request.**

b. For counter permits, visual, noise, and dust impacts that cannot be **[~~reasonably mitigated~~] screened as set forth in Subsection 8(a)** within 500 **horizontal** feet of an existing principle residential structure may be grounds for denial. For Type 1, 2, and 3 **[~~CLUP~~] Endorsements**, visual, noise, and dust impacts that cannot be **[~~reasonably mitigated~~] screened as set forth in Subsection 8(a)** within 750 **horizontal** feet of an existing principle residential structure may be grounds for denial. **The distances specified in this subsection will be measured from any outer wall of a principle residential structure to the nearest boundary of the proposed material site parcel.**

Your consideration is appreciated.

**MEMORANDUM**

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Richard Derkevorkian, Assembly Member

**DATE:** July 11, 2023

**SUBJECT:** **Derkevorkian Amendment #13 Replacement for KPB 21.29.120(A) and (D)** 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 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~~]** **2023** are allowed to continue operation subject to the requirements of this section. The burden of proof that the prior-existing use existed prior to October 1, **[~~2022~~]** **2023 and after May 21, 1996,** is on the applicant. **All other PEUs prior to May 21, 1996, are already recorded with the borough and are recognized.** 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~~]** **2025**, will result in **[~~termination~~]** **suspension** of all rights to continued operation as a nonconforming use **until 1) the operator applies for a prior-existing use determination; 2) the application is approved; and 3) the operator demonstrates full compliance with the provisions of this chapter relating to PEUs [~~and require full compliance with all provisions of this chapter~~]. The operator will have one year from the date of the notice of the planning director's review of an operator's five-year-renewal to come into full compliance with the provisions of this chapter, otherwise the suspended PEU permit will be terminated.**

…

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.

…

Your consideration is appreciated.

# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Richard Derkevorkian, Assembly member RD

**DATE:** September 20, 2022

**SUBJECT:** **LAYDOWN Derkevorkian 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, **fish-bearing** stream, or ocean, is prohibited. This prohibition does not apply to **existing** man-made water bodies or isolated ponds of less than one acre on private property **or the construction of waterbodies within the permitted area.**

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

Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Richard Derkevorkian, Assembly member RD

**DATE:** September 20, 2022

**SUBJECT:** **LAYDOWN Derkevorkian 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~~]10** feet of a lot line.

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.

C. A prior existing use 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. Material extraction from a public or private property which is necessary for the construction of a public or private development on the same property does not require a material extraction permit.**

Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Richard Derkevorkian, Assembly member RD

**DATE:** September 20, 2022

**SUBJECT:** **LAYDOWN Derkevorkian 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 21.29.020, as follows:

21.29.020. Types of permits available.

A. Counter permit. A counter permit is required for earth material extraction which disturbs more than one acre and less than **[~~10~~]2.5** cumulative un-reclaimed acres. Material **[~~processing,~~]** screening **over 500 cubic yards per day, [~~or~~]** crushing, **[~~and material extraction within four feet of the seasonal high-water table~~]** **and excavation within two feet of a confining layer** is prohibited under a counter permit. **A maximum of five feet excavation, and 7,500 square feet below seasonal high-water table is allowed. The excavation below water table must be 200 feet from the nearest potable water well.** A counter permit is valid for a period of two years. Upon request from the applicant, the planning director, or designee, may grant one 12-month extension on a counter permit. Counter permits are approved by the planning director, or designees, and are not subject to notice requirements under KPB 21.25.060. The planning director's decision to approve or deny a counter permit may be appealed to the planning commission, which must act as the hearing officer, in accordance with KPB 21.20. **The limited excavation within two feet of the seasonal high-water table included in this permit is exempt from KPB 21.29.057.**

B. Conditional land use permit. A conditional land use permit (CLUP) is required for the following types of earth material extraction or uses:

1. **[~~Earth Materials Extraction CLUP. An Earth Materials Extraction CLUP is required for any material extraction which disturbs 10 or more cumulative acres. Material processing, screening or crushing, or extraction within four feet of the seasonal high-water table is prohibited under this permit. The standard conditions set out in KPB 21.29.050 are applicable to this type of CLUP.~~]** **A Type 1 CLUP. A Type 1 CLUP permit is required for earth material extraction which disturbs more than 2.5 cumulative un-reclaimed acres. Material screening over 500 cubic yards per day, or crushing, is prohibited under a type 1 permit. A maximum of five feet excavation below seasonal high-water table is allowed. The excavation below water table must be 200 feet from the nearest potable water well. Excavation within two feet of a confining layer is prohibited. No more than ten percent of the parcels total acreage may be in the water table. The conditions set forth in KPB 21.29.050 plus the conditions set out in KPB 21.29.055 for material extraction processing area applicable to this type of CLUP. The limited excavation within two feet of seasonal high-water table included in this permit is exempt from KPB 21.29.057.**

2. **[~~Earth materials processing~~]** **A Type 2 CLUP. A [~~n Earth Materials Processing~~] Type 2** CLUP is required for any operation that includes earth materials **[~~processing,~~]** screening **over 500 cubic yards per day,** or crushing activities. **A maximum of eight feet excavation below seasonal high-water table is allowed. The excavation below water table must be 200 feet from the nearest potable water well. Excavation within two feet of a confining layer is prohibited. No more than ten percent of the parcels total acreage may be in the water table.** The conditions set forth in KPB 21.29.050 plus the conditions set out in KPB 21.29.055 for material extraction processing area applicable to this type of CLUP. **The limited excavation within two feet of seasonal high-water table included in this permit is exempt from KPB 21.29.057.**

3. **[~~Earth Materials Extraction Within Water Table~~]** **A Type 3** CLUP. A **[~~n Earth Materials Extraction Within Water Table~~] Type 3** CLUP is required for material extraction and operations of any size within **[~~four~~] two** feet of the seasonal high-water table **unless specified exempt from KPB 21.29.057. The excavation below water table must be 200 feet from the nearest**

**potable water well. Excavation within two feet of a confining layer is prohibited. Screening and crushing is allowed.** The conditions set forth in KPB 21.29.050 plus the requirements and conditions set forth in KPB 21.29.057 for material extraction within **[~~four~~] two** feet of the seasonal high-water table are applicable to this type of CLUP.

An applicant may request a CLUP that includes one, two or all three of the above permit types. A CLUP is valid for a period of five years. A CLUP may be renewed in accordance with KPB 21.29.070. The provisions of KPB Chapter 21.25 are applicable to material site CLUPs and the provisions of KPB 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling.

Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Richard Derkevorkian, Assembly member RD

**DATE:** September 20, 2022

**SUBJECT:** **LAYDOWN Derkevorkian 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 21.29.030, 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);

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;
   b. Proposed buffers consistent with KPB 21.29.050(A)(1), or alternate buffer plan;
   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. Location of any processing areas on the parcel, if applicable;
   g. North arrow;
   h. The scale to which the site plan is drawn;
   i. Preparer's name and date; and
   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:

   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 **unless proposed depth is deeper than conventional equipment can dig without stage excavation**;
   c. Location of all private wells of adjacent property owners within 300 feet of the proposed parcel boundary; and
   d. Location of any water body on the parcel, including the location of any riparian wetland as determined by best available data.

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.

# MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Richard Derkevorkian, Assembly member RD

**DATE:** September 20, 2022

**SUBJECT:** **LAYDOWN Derkevorkian 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;]~~ The buffer zone for counter permits and CLUPs shall be of sufficient height, density, and setback to provide noise screening of the proposed use to parcels in the vicinity as deemed appropriate by the planning commission or planning director. Buffer requirements shall be made in consideration of and in accordance with existing uses of properties in the vicinity at the time of approval of the permit. There is no requirement to buffer the material site from uses which commence after the approval of the permit.**

b. **A buffer zone shall be established between the area of excavation and the parcel boundaries. The buffer zone for a Type 1 CLUP shall consist of one of the following in any geographical area: fifty feet of natural vegetation, a minimum six-foot fence, or a minimum six-foot earthen berm with a 2:1 slope. The buffer zone for a Type 2 or Type 3 CLUP shall consist of one of the following in any geographical area: fifty feet of natural vegetation, a minimum eight-foot fence, or a minimum ten-foot earthen berm with a 2:1 slope. If the minimum buffers are insufficient to approve the permit, the applicant may modify the proposed buffers with evidence to a sufficient size in consideration of, and in accordance with the existing uses of properties in the vicinity for approval of a permit.**

**[~~b.~~]c.** 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 the timeframe for removal and verification that suitable, stabilizing material will replace the removed material within 30 days of removal;

**[~~c.~~]d.** 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.~~]e.** 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.

**f. GIS, LIDAR, and photogrammetry may be utilized in the design of the buffer zone when differing elevations exist between the proposed site and properties in the vicinity. Using this technology's line of sight profile drawings from the uppermost inhabitable level of existing properties located in the vicinity may be utilized in the determination of sufficiency of the buffer zone.**

**g. At its discretion the planning director or planning commission (as applicable) may waive or reduce buffer requirements when screening proves to be not necessary or not feasible.**

2. *Water source separation.*

a. Material extraction below or within [**~~four~~**] **two** 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 **or the depth and**

**size of excavation is exempt from KPB 21.29.057 as specified in the permit;**

b. Dewatering either by pumping, ditching or some other form of draining that removes **more than 5,000 gallons of** water **per day** from the site or causes water to leave the site is prohibited **unless permitted by State of Alaska, Department of Natural Resources;**

c. All permits shall be issued with a condition which prohibits any material extraction within 100 linear feet of any private well or **applicable** 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 **CLUP** 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 **up to** 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, **licensed** 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.*

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 **less than a year** 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~~] suggest** 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~~] haul routes within permit boundaries**.

5. *Surface water protection*. Use of surface water protection measures as specified in KPB 21.29.030(A)(8)(a).

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 these amendments is appreciated.

Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Richard Derkevorkian, Assembly member RD

**DATE:** September 20, 2022

**SUBJECT:** **LAYDOWN Derkevorkian 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(B), as follows:

21.29.055. Earth materials processing.

**[~~In accordance with KPB 21.29.020(B)(2), an Earth Materials Processing CLUP is required for earth materials processing activities, such as material screening or crushing.~~]** **Prior to issuing a Type 2 CLUP** [~~**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 **a Type 2 CLUP** [~~**an Earth Materials Processing CLUP**~~] apply:

...

B. *Hours of operation.*
   1. Processing equipment may only be operated between **[~~8:00~~]** **7:00** a.m. and 7:00 p.m. AKST, or as determined by the planning commission.

...

Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Richard Derkevorkian, Assembly member RD

**DATE:** September 20, 2022

**SUBJECT:** **LAYDOWN Derkevorkian 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 21.29.057, as follows:

21.29.057. Material extraction below or within **[~~four~~] two** feet of the seasonal high-water table.

In accordance with KPB 21.29.020(B)(3), a CLUP is required for material extraction of material below or within **[~~four~~] two** feet of the seasonal high water table. Prior to a permit being issued the planning commission must impose the mandatory conditions set forth in KPB 21.29.050(A) and discretionary conditions as deemed appropriate. In accordance with KPB 21.29.050(A)(2)(b) dewatering **over 5,000 gallons per day** is prohibited **unless permitted by the State of Alaska, Department of Natural Resources.** The following additional application requirements and permit conditions specific to a Material Extraction within the Water Table CLUP apply:

....

Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Richard Derkevorkian, Assembly member RD

**DATE:** September 20, 2022

**SUBJECT:** **LAYDOWN Derkevorkian 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 21.29.060 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. **All acreage planned for a post-mining use is exempt from reclamation.**

B. The applicant may revegetate and must reclaim all disturbed land within the time period approved with the reclamation plan **if the planned resource extraction has been exhausted and no post-mining use is planned,** 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.

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.

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 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:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Richard Derkevorkian, Assembly member

**DATE:** September 20, 2022

**SUBJECT:** **LAYDOWN Derkevorkian 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 Chapter 21.29 by adding Section 21.29.063, as follows:

**21.29.063. Decision.**

**The planning commission or planning director, as applicable, shall approve permit applications whereby mandatory standards under KPB 21.29.040 have been met through implementation of conditions set forth in KPB 21.29.050, KPB 21.29.055, and KPB 21.29.057 or shall deny applications when conditions do not meet the mandatory standards in KPB 21.29.040. The decision shall include written findings detailing how the conditions under KPB 21.29.050, KPB 21.29.055, and KPB 21.29.057 meet, or do not meet the mandatory standards set forth in KPB 21.29.040 and evidence to support those findings. The decision shall be distributed to the parties of record before the planning commission, with notice of right to appeal.**

Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Richard Derkevorkian, Assembly member 

**DATE:** September 20, 2022

**SUBJECT:** **LAYDOWN Derkevorkian Amendment #10** 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 Chapter 21.29 by removing Section 21.29.065 in its entirety, as follows:

**~~[21.29.065. Effect of permit denial.~~**

**~~A. No reapplication concerning the same counter permit application may be filed within one calendar year of the date of the planning director's final denial action except in the case where new evidence or circumstances exist that were not available or present when the original application was filed.~~**

**~~B. No reapplication concerning the same CLUP may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original application was filed.~~**

**~~C. For the purposes of this section, the applicant bears the burden of proof of demonstrating that new evidence or circumstances exist and that they were not available or present with the original application was filed.]~~**

Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Richard Derkevorkian, Assembly member

**DATE:** September 20, 2022

**SUBJECT:** **LAYDOWN Derkevorkian Amendment #11** 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 21.29.070, as follows:

21.29.070. Permit renewal, modification and revocation.

A. Conditional land use permittees must submit a renewal application every five years after the permit is issued. A renewal application must be submitted at least 90 days prior to expiration of the CLUP.

B. The planning director may administratively approve a renewal application that meets the following requirements: (i) the permittee is in compliance with all permit conditions and no modification to operations or conditions are proposed; and (ii) the borough did not issue a notice of violation under the permit during the two calendar years preceding the renewal application. If the renewal application does not satisfy the foregoing requirements or if the planning director determines a review by the planning commission is warranted, then the planning commission will hear the renewal application.

C. In the event the renewal application is heard by the planning commission, the planning commission must hold a public hearing on the renewal application. If the applicant is complying with all permit conditions and requirements and is not in violation of borough code, then the renewal must be granted by the planning commission. ~~**[Notwithstanding the foregoing, if the commission determines, after public hearing, that discretionary**~~

~~**conditions are appropriate on renewal then the commission may modify the CLUP by imposing conditions as deemed appropriate under the circumstances.**~~] Permit renewal applications will be denied if the permittee is in violation of the original permit requirements and conditions or borough code. **The permittee will be given ninety days to correct violations. If the corrections are met, the permit will be renewed.** A renewal application heard by the planning commission must be processed in accordance with the notice requirements of KPB 21.25.060.

D. A permittee may request a modification of a CLUP or counter permit, as needed. A modification application will be processed pursuant to KPB 21.29.030 through KPB 21.29.050 with public notice given as provided by KPB 21.25.060. A permit modification is required if the permittee's operations are no longer consistent with the original permit application.

E. The fee for a permit renewal or modification is the same as an original permit application in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees.

F. Failure to submit a permit renewal will result in the expiration of the permit. The borough may issue a permit termination document upon expiration pursuant to KPB 21.29.080. Once a permit has expired, a new permit application approval process is required in order to operate the material site.

G. Permits may be revoked pursuant to KPB 21.50.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Richard Derkevorkian, Assembly member

**DATE:** September 20, 2022

**SUBJECT:** **LAYDOWN Derkevorkian Amendment #12** 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 21.29.115, as follows:

21.29.115. Permit transfers.

**~~[Permits issued under this chapter do not automatically transfer upon a conveyance or transfer of the applicable real property. The planning director will issue a letter of approval or disapproval upon receipt of the following: (1) a written permit transfer request is provided to the planning department that includes: legal description of the parcel, former owner name, new owner name, and a copy of the approved permit or the legal PEU status; and (2) a recorded conveyance instrument listing the new owner. The requesting party may appeal a disapproval letter to the planning commission. Permit transfer approvals are not subject to administrative appeal.~~]** **Permits must transfer with the sale or transfer of the real property unless the permittee is currently in violation of the original permit requirements and conditions or borough code. The permittee will be given ninety days to correct violations.**

Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Richard Derkevorkian, Assembly member

**DATE:** September 20, 2022

**SUBJECT:** **LAYDOWN Derkevorkian Amendment #13** 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 **and after May 21, 1996,** is on the applicant. **All other PEUs prior to May 21, 1996, are already recorded with the borough and are recognized.** 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 comments,~~]** or evidence regarding the existence of the use. 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 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~~]** **five-year** time period. If a prior-existing use is discontinued or abandoned, it may not be recommenced. **Any activity such as extraction, excavation, processing, or reclamation is considered valid and a continuance of site use.**

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.~~]** **The prior-existing use may not be moved to a parcel that 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.

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.

**[~~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.~~]**

**[~~H. For the purposes of this section, "increased, intensified, or expanded" means: (1) enlarging the area of excavation; (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:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Richard Derkevorkian, Assembly member RD

**DATE:** September 20, 2022

**SUBJECT:** **LAYDOWN Derkevorkian Amendment #14** 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:

...

**8. Earthen berm means a berm constructed of aggregate or soil not to contain slash or brush that maintains a 2:1 slope. The berm is to be constructed above the preexisting elevation.**

...

**21. Vicinity means 1,000 linear feet from permitted boundary.**

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough
Assembly

# MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Richard Derkevorkian, Assembly member

**DATE:** April 18, 2023

**SUBJECT:** **LAYDOWN Derkevorkian Substitute Amendment #12** 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 language in brackets is to be deleted.]

➢ Amend KPB 21.29.115, as follows:

21.29.115. Permit transfers.

A permit issued under this chapter is transferrable.

[~~Permits issued under this chapter do not automatically transfer upon a conveyance or transfer of the applicable real property.~~] **A permit issued under this chapter is transferrable.** The planning director will issue a **conditional** letter of approval [~~or disapproval~~] upon receipt of [~~the following: [(1)] a written permit transfer request is provided to the planning department~~] ~~that includes: the legal description of the parcel, former owner name, new owner name, and a copy of the approved permit or the legal PEU status;~~] **a written permit transfer request containing the legal description of the parcel, former owner name, new owner name, and a copy of the approved permit or the legal PEU status and after a site visit. A conditional approval will not be issued if a permittee is in violation of the original permit requirements, conditions, or borough code. A transferring permittee will be given ninety days to correct violations. If the permittee fails to correct the violations within ninety days, the planning director will issue a denial letter. If a permittee is not in violation or if violations are cured within 90 days' notice, the planning director will issue a final letter of approval upon receipt of** [~~and (2)~~] a recorded conveyance instrument listing the new owner. The requesting party may appeal a denial letter to the planning commission. Permit transfer approvals are not subject to administrative appeal.

Your consideration is appreciated.

**MEMORANDUM**

**TO:** Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Richard Derkevorkian, Assembly Member

**DATE:** April 6, 2023

**SUBJECT:** **Derkevorkian #15** 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 language in brackets is to be deleted.]

- Amend KPB 21.25.060(B)(3) as follows:

**21.25.060. Notice.**

A. Except for counter permits for material sites issued under KPB 21.29.020(A) or expressly excepted elsewhere in this title, notice of any pending application required under this title shall be given in accordance with this section.

B. Required forms of notice are as follows:

1. Notice of the pending application will be published on the borough website.

2. When available, the notice will also be posted on a public bulletin of the impacted community.

3. At the beginning of the notice period a copy of the notice will be sent by First Class U.S. Mail to all owners and[~~/or~~] leaseholders of record of property located with**in** a radius of one-half mile of the subject property, **except for permit applications under KPB 21.29 the notice area is the parcels within a radius of 1000 feet of the subject property**.

C. The notice must contain a description of the proposed location, the type of proposed land use or a description of the action requested, as applicable, the applicant's name, where written comments may be submitted, the last deadline for submitting written comments to the planning commission, and the date, time and location of the public hearing.

D. The failure of any person to receive any notice required under this section, where the records of the borough indicate the notice was provided in a timely and proper manner, shall not affect the validity of any proceeding under this title or be basis for appeal.

Your consideration is appreciated.

FOR VISUAL AID PURPOSES ONLY

# DERKEVORKIAN AMENDMENTS
# ORDINANCE 2022-36

# 21.29.060. Reclamation plan.

ORDINANCE AS AMENDED TO-DATE

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.

DERKEVORKIAN #8

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. All acreage planned for a post-mining use is exempt from reclamation.

B. The applicant may revegetate and must reclaim all disturbed land within the time period approved with the reclamation plan if the planned resource extraction has been exhausted and no post-mining use is planned, 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 KPB21.50.

# 21.29.060. Reclamation plan.

ORDINANCE AS AMENDED TO-DATE

...

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:

...

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.

DERKEVORKIAN #8 (CONT'D)

...

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:

...

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.

# 21.29.063. Decision.

ORDINANCE AS AMENDED TO-DATE

[*The Ordinance as amended to-date does not include this Section.]*

DERKEVORKIAN #9

21.29.063. Decision.

The planning commission or planning director, as applicable, shall approve permit applications whereby mandatory standards under KPB 21.20.040 have been met through implementation of conditions set forth in KPB 21.20.050, KPB 21.29.055, and KPB 21.29.057 or shall deny applications when conditions do not meet the mandatory standards in KPB 21.29.040. The decision shall include written findings detailing how the conditions under KPB 21.29.050, KPB 21.29.055, and KPB 21.29.057 meet, or do not meet the mandatory standards set forth in KPB 21.29.040 and evidence to support those findings. The decision shall be distributed to the parties of record before the planning commission, with notice of right to appeal.

# 21.29.065. Effect of permit denial.

ORDINANCE AS AMENDED TO-DATE

21.29.065. Effect of permit denial.

A. No reapplication concerning the same counter permit application may be filed within one calendar year of the date of the planning director's final denial action except in the case where new evidence or circumstances exist that were not available or present when the original application was filed.

B. No reapplication concerning the same CLUP may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original application was filed.

C. For the purposes of this section, the applicant bears the burden of proof of demonstrating that new evidence or circumstances exist and that they were not available or present with the original application was filed.

DERKEVORKIAN #10

[~~21.29.065. Effect of permit denial.~~

~~A. No reapplication concerning the same counter permit application may be filed within one calendar year of the date of the planning director's final denial action except in the case where new evidence or circumstances exist that were not available or present when the original application was filed.~~

~~B. No reapplication concerning the same CLUP may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original application was filed.~~

~~C. For the purposes of this section, the applicant bears the burden of proof of demonstrating that new evidence or circumstances exist and that they were not available or present with the original application was filed.~~]

# 21.29.070. Permit renewal, modification and revocation.

ORDINANCE AS AMENDED TO-DATE

...

C. In the event the renewal application is heard by the planning commission, the planning commission must hold a public hearing on the renewal application. If the applicant is complying with all permit conditions and requirements and is not in violation of borough code, then the renewal must be granted by the planning commission. Notwithstanding the foregoing, if the commission determines, after public hearing, that discretionary conditions are appropriate on renewal then the commission may modify the CLUP by imposing conditions as deemed appropriate under the circumstances. Permit renewal applications will be denied if the permittee is in violation of the original permit requirements and conditions or borough code. A renewal application heard by the planning commission must be processed in accordance with the notice requirements of KPB 21.25.060.

DERKEVORKIAN #11

...

C. In the event the renewal application is heard by the planning commission, the planning commission must hold a public hearing on the renewal application. If the applicant is complying with all permit conditions and requirements and is not in violation of borough code, then the renewal must be granted by the planning commission. [~~Notwithstanding the foregoing, if the commission determines, after public hearing, that discretionary conditions are appropriate on renewal then the commission may modify the CLUP by imposing conditions as deemed appropriate under the circumstances.~~] Permit renewal applications will be denied if the permittee is in violation of the original permit requirements and conditions or borough code. The permittee will be given ninety days to correct violations. If the corrections are met, the permit will be renewed. A renewal application heard by the planning commission must be processed in accordance with the notice requirements of KPB 21.25.060.

# 21.29.115. Permit transfers.

ORDINANCE AS AMENDED TO-DATE

Permits issued under this chapter do not automatically transfer upon a conveyance or transfer of the applicable real property. The planning director will issue a letter of approval or disapproval upon receipt of the following: (1) a written permit transfer request is provided to the planning department that includes: legal description of the parcel, former owner name, new owner name, and a copy of the approved permit or the legal PEU status; and (2) a recorded conveyance instrument listing the new owner. The requesting party may appeal a disapproval letter to the planning commission. Permit transfer approvals are not subject to administrative appeal.

DERKEVORKIAN #12

~~[Permits issued under this chapter do not automatically transfer upon a conveyance or transfer of the applicable real property. The planning director will issue a letter of approval or disapproval upon receipt of the following: (1) a written permit transfer request is provided to the planning department that includes: legal description of the parcel, former owner name, new owner name, and a copy of the approved permit or the legal PEU status; and (2) a recorded conveyance instrument listing the new owner. The requesting party may appeal a disapproval letter to the planning commission. Permit transfer approvals are not subject to administrative appeal.~~] Permits must transfer with the sale or transfer of the real property unless the permittee is currently in violation of the original permit requirements and conditions or borough code. The permittee will be given ninety days to correct violations.

# 21.29.115. Permit transfers.

ORDINANCE AS AMENDED TO-DATE

Permits issued under this chapter do not automatically transfer upon a conveyance or transfer of the applicable real property. The planning director will issue a letter of approval or disapproval upon receipt of the following: (1) a written permit transfer request is provided to the planning department that includes: legal description of the parcel, former owner name, new owner name, and a copy of the approved permit or the legal PEU status; and (2) a recorded conveyance instrument listing the new owner. The requesting party may appeal a disapproval letter to the planning commission. Permit transfer approvals are not subject to administrative appeal.

DERKEVORKIAN #12 SUBSTITUTE

[~~Permits issued under this chapter do not automatically transfer upon a conveyance or transfer of the applicable real property.~~] Unless the permittee is currently in violation of the original permit requirements and conditions or borough code, [~~T~~]the planning director will issue a conditional letter of approval [~~or disapproval~~] after a site visit and upon receipt of the following: [~~(1)~~] a written permit transfer request [~~is provided to the planning department~~] that includes: the legal description of the parcel, former owner name, new owner name, and a copy of the approved permit or the legal PEU status.[~~;~~] The planning director will issue a final letter of approval upon receipt of [~~and (2)~~] a recorded conveyance instrument listing the new owner. If the permittee is currently in violation of the original permit requirements and conditions or borough code, the permittee will be given ninety days to correct violations. If permittee fails to correct the violations within ninety days, the planning director will issue a denial letter. The requesting party may appeal a disapproval letter to the planning commission. Permit transfer approvals are not subject to administrative appeal.

# 21.29.120. Prior-existing uses.

ORDINANCE AS AMENDED TO-DATE

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.

DERKEVORKIAN #13

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 and after May 21, 1996, is on the applicant. All other PEUs prior to May 21, 1996, are already recorded with the borough and are recognized. 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.

# 21.29.120. Prior-existing uses.

ORDINANCE AS AMENDED TO-DATE

...

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 comments, or evidence regarding the existence of the use. Based on that information, the planning directory will classify the PEU based upon the use types set forth 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.

DERKEVORKIAN #13 (CONT'D)

...

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 comments,~~] or evidence regarding the existence of the use. 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.

# 21.29.120. Prior-existing uses.

ORDINANCE AS AMENDED TO-DATE

...

*C. Discontinuance.* Any prior-existing use which has ceased by discontinuance for an uninterrupted period of 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 five (5) year 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 a Type II Endorsement.

DERKEVORKIAN #13 (CONT'D)

...

C. *Discontinuance.* Any prior-existing use which has ceased by discontinuance for an uninterrupted period of [~~365 days~~] five 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~~] five-year time period. If a prior-existing use is discontinued or abandoned, it may not be recommenced. Any activity such as extraction, excavation, processing, or reclamation is considered valid and a continuance of site use.

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.~~] The prior-existing use may not be moved to a parcel that 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.

# 21.29.120. Prior-existing uses.

ORDINANCE AS AMENDED TO-DATE

...

G. Materials extraction operations with legal prior-existing use status which extract material below or within two 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.

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 directors decision or beyond the written description of existing operations as set forth by the planning direct under subsection (B) above; (2) increasing the depth of excavation to go within two 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.

DERKEVORKIAN #13 (CONT’D)

...

[~~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.~~

~~H. For the purposes of this section, “increased, intensified, or expanded” means: (1) enlarging the area of excavation; (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.~~]

# 21.29.130. Definitions.

ORDINANCE AS AMENDED TO-DATE

[*The Ordinance as amended to-date does not include a definition for "earthen berm"*.]

DERKEVORKIAN #14

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

...

*Earthen berm* means a berm constructed of aggregate or soil not to contain slash or brush that maintains a 2:1 slope. The berm is to be constructed above the preexisting elevation.

# 21.25.060. Notice.

ORDINANCE AS AMENDED TO-DATE

A. Except for counter permits for material sites issued under KPB 21.29.020(A) or expressly excepted elsewhere in this title, notice of any pending application required under this title shall be given in accordance with this section.

...

B. Required forms of notice are as follows:

...

3. At the beginning of the notice period a copy of the notice will be sent by First Class U.S. Mail to all owners and/or leaseholders of record of property located with a radius of one-half mile of the subject property.

DERKEVORKIAN #15

A. Except for counter permits for material sites issued under KPB 21.29.020(A) or expressly excepted elsewhere in this title, notice of any pending application required under this title shall be given in accordance with this section.

...

B. Required forms of notice are as follows:

...

3. At the beginning of the notice period a copy of the notice will be sent by First Class U.S. Mail to all owners and[~~/or~~] leaseholders of record of property located within a radius of one-half mile of the subject property, except for permit applications under KPB 21.29 the notice area is the parcels within a radius of 1000 feet of the subject property.

# JOHNSON AMENDMENTS
# ORDINANCE 2022-36

# 21.25.050. Permit considerations—Public hearing required.

ORDINANCE AS AMENDED TO-DATE

Within 30 days of receiving an application, the planning director or designee shall review the submitted application for completeness and compliance with this chapter. If it is incomplete or does not meet the requirements of this chapter, the planning director shall notify the applicant in writing. The planning director shall thereafter either return the application to the applicant or schedule the application to be considered by the planning commission at the next appropriate scheduled meeting.

Johnson #1

Within 30 days of receiving an application, the planning director or designee shall review the submitted application for completeness and compliance with this chapter. If it is incomplete or does not meet the requirements of this chapter, the planning director shall notify the applicant in writing. The planning director shall thereafter either return the application to the applicant or schedule the application to be considered by the planning commission at the next appropriate scheduled meeting. Upon receiving an application, the planning director or designee will forward a copy of the application to the Kachemak Bay National Estuarine Research Reserve ("KBNERR") for review and comment. KBNERR will have thirty days to provide its review and comment prior to submission of the application to the planning commission if the application is otherwise complete.

# 21.29.005. Intent and Purpose.

ORDINANCE AS AMENDED TO-DATE

The purpose of this chapter is to provide a land use permitting process to regulate the operation, scope, and duration of earth materials extraction and processing within the borough while promoting the public health, safety, and general welfare of the Kenai Peninsula Borough. It is the further purpose of this chapter to promote compatible, orderly development.

Johnson #2

The purpose of this chapter is to provide a land use permitting process to regulate the operation, scope, and duration of earth materials extraction and processing within the borough while promoting the public health, safety, and general welfare of the Kenai Peninsula Borough, including the health of aquatic systems that support salmon. It is the further purpose of this chapter to promote compatible, orderly development.

# 21.29.030. Application procedure.

ORDINANCE AS AMENDED TO-DATE

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:

...

8. A site plan, prepared by a qualified independent civil engineer licensed and active in the State of Alaska to include the following:

...

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.

Johnson #3

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:

...

8. A site plan, prepared by a qualified independent civil engineer licensed and active in the State of Alaska to include the following:

...

d. Location of any water body on the parcel, including the location of any riparian wetland as determined by best available data[.];*

e. Ground water protection measures for anadromous streams, especially with regard to juvenile salmon, as identified by shallow groundwater flowpaths and critical areas of aquifer connectivity, such as recharge, where this information is available.

**This Subsection now appears in 21.29.030(A)(7)(f)*.

# 21.29.040. Standards for sand, gravel or material sites.

ORDINANCE AS AMENDED TO-DATE

A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, visual and other impacts of earth materials extraction sites through setbacks, buffer zones, and street-level visual screening. Prior to granting a counter permit or conditional land use permit under this chapter, the planning director or planning commission, as applicable, must make the following findings:

...

2. That the use will not be harmful to the public's health, safety, and general welfare;

3. That sufficient setbacks, buffer zones, and other safeguards are being provided consistent with this chapter;

...

Johnson #4

A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise and other impacts of earth materials extraction to properties in the vicinity through setbacks, buffer zones, [~~and~~] street-level visual screening[~~.~~], and protection of salmon-rearing waters. Prior to granting a counter permit or conditional land use permit under this chapter, the planning director or planning commission, as applicable, must make the following findings:

...

2. That the use will not be harmful to the public's health, safety, [~~and~~] general welfare[~~,~~], and the health of anadromous streams, particularly with regard to juvenile salmon;

3. That sufficient setbacks, buffer zones, and other safeguards such as avoidance of critical groundwater flowpaths and recharge areas are being provided consistent with this chapter; and

...

# 21.29.050. Permit conditions applicable to all permits.

ORDINANCE AS AMENDED TO-DATE

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:

...

5. *Surface water protection.* Use of surface water protection measures as specified in KPB 21.29.030(A)(8)(a).

Johnson #5

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:

...

5. *Surface water <u>and groundwater</u> protection.* Use of surface <u>and ground</u> water protection measures as specified in KPB 21.29.030(A)(8)(a).

# 21.29.057. Material extraction below or within two feet of the seasonal high-water table.

ORDINANCE AS AMENDED TO-DATE

A. Prior to application for a Type III Endorsement, the following requirements must be met:

...

4. The report must be submitted with the CLUP application and must:

...

f. Evaluate subsurface hydrologic conditions and identify potential adverse effects that may occur as a result of material extraction. The evaluation of the hydrologic conditions must include identifying confining layers.

Johnson #6

A. Prior to application for a water table extraction permit, the following requirements must be met:

...

4. The report must be submitted with the CLUP application and must:

...

f. Evaluate subsurface hydrologic conditions and identify potential adverse effects that may occur as a result of material extraction. The evaluation of the hydrologic conditions must include identifying confining layers and shallow ground water flowpaths.

# CHESLEY AMENDMENTS
# ORDINANCE 2022-36

# 21.29.010. Applicability—Prohibitions.

ORDINANCE AS AMENDED TO-DATE

21.29.010. Applicability.

...

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 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 ADNR use authorization is required for a 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 (Type I Endorsement).

Chesley #1

21.29.010. Applicability—Prohibitions.

...

D. Earth materials excavation, extraction, hauling, conditioning or processing, within 1,000 feet of the main entrance to a public campground is prohibited from the last Monday of May through the first Monday of September each year. The distance will be measured from the entrance of the public campground to the outer boundary of a parcel for which an applicant has requested a counter permit or conditional land use permit under this chapter.

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

[E] F. 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).

# 21.29.015. Material extraction exempt from obtaining a permit.

ORDINANCE AS AMENDED TO-DATE

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. 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).

Chesley #2

A. Material extraction limited to one acre per parcel [~~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 20 feet of a public right-of-way or within 10 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). Material extraction within four feet of seasonal high-water table and all material crushing or screening activities is prohibited under this exemption.

# 21.29.020. Types of permits available.

ORDINANCE AS AMENDED TO-DATE

A. Counter permit. A counter permit is required for earth material extraction which disturbs more than one acre and less than 5 cumulative un-reclaimed acres. Material conditioning or processing, and material extraction within two feet of the seasonal high-water table is prohibited under a counter permit except, upon request from the applicant, the planning director or designee may issue a one-time processing waiver for screening of materials only. A one-time processing waiver will not exceed sixty consecutive days. The hours of operation under the one-time processing waiver are the same as provided for a Type II Earth Materials Conditioning or Processing Endorsement under 21.29.055. Buffer conditions for a one-time processing waiver must be established consistent with the permit application prior to commencement of processing operations. A counter permit is valid for a period of two years. Upon request from the applicant, the planning director, or designee, may grant one 12-month extension on a counter permit. Counter permits are approved by the planning director, or designees, and are not subject to notice requirements under KPB 21.25.060. The planning director's decision to approve or deny a counter permit may be appealed to the planning commission, which must act as the hearing officer, in accordance with KPB 21.20. The limited excavation within two feet of the seasonal high-water table included in this permit is exempt from KPB 21.29.057.

Chesley #3

A. Counter permit. A counter permit is required for earth material extraction which disturbs more than one acre and less than 5 cumulative unreclaimed acres and is limited to one counter permit per parcel. Material processing, screening, or crushing, and material extraction within four feet of the seasonal high-water table is prohibited under a counter permit. A counter permit is valid for a period of two years. Upon request from the applicant, the planning director, or designee, may grant one 12-month extension on a counter permit. Counter permits are approved by the planning director, or designees, and are not subject to notice requirements under KPB 21.25.060. The planning director's decision to approve or deny a counter permit may be appealed to the planning commission, which must act as the hearing officer, in accordance with KPB 21.20.

# 21.29.065. Effect of permit denial.

ORDINANCE AS AMENDED TO-DATE

A. No reapplication concerning the same counter permit application may be filed within one calendar year of the date of the planning director's final denial action except in the case where new evidence or circumstances exist that were not available or present when the original application was filed.

B. No reapplication concerning the same CLUP may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original application was filed.

C. For the purposes of this section, the applicant bears the burden of proof of demonstrating that new evidence or circumstances exist and that they were not available or present with the original application was filed.

Chesley #4

A. Absent new evidence or a material change in circumstances that even with due diligence the applicant could not have presented with the original application, [~~N~~] no reapplication concerning the same counter permit application may be filed within one calendar year of the date of the planning director's final denial action. [~~except in the case where new evidence or circumstances exist that were not available or present when the original application was filed.~~]

B. Absent new evidence or a material change in circumstances that even with due diligence the applicant could not have presented with the original application, [~~N~~] no reapplication concerning the same CLUP may be filed within [~~one~~] five calendar years of the date of the final denial action. [~~except in the case where new evidence or circumstances exist that were not available or present when the original application was filed.~~]

C. For the purposes of this section, the applicant bears the burden of proof of demonstrating that new evidence or a material change of circumstances exist and that [~~they were not available or present,~~] even with due diligence the applicant could not have presented the information with the original application. [~~was filed.~~]

# 21.29.130. Definitions.

ORDINANCE AS AMENDED TO-DATE

[*The Ordinance as amended to-date does not include a definition for "camp or camping", "campsite", or "public campground"*.]

CHESLEY AMENDMENT #5

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

...

5. *Camp or camping* means to use a vehicle, tent, or shelter, or to arrange bedding, or both, with the intent to stay overnight.

6. *Campsite* means any space designated for camping within a public campground.

...

12. *Public campground* means an area, developed and maintained by a public entity, that is open to the public and contains one or more campsites.

# ADMINISTRATIVE AMENDMENTS ORDINANCE 2022-36

# 21.29.130. Definitions.

ORDINANCE AS AMENDED TO-DATE

[*The Ordinance as amended to-date does not include a definition for "excavation dewatering"*.]

ADMINISTRATIVE AMENDMENT #11

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

...

8. *Excavation dewatering* means the practice of dewatering excavation areas through the use of pumps placed within the excavation or well pumps in adjacent dewatering wells which lower the water table to provide a relatively dry working area.

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# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Brent Johnson, Assembly Presider BJ

**DATE:** October 25, 2022

**SUBJECT:** **LAYDOWN Johnson 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 21.25.050, as follows:

21.25.050. Permit considerations—Public hearing required.

Within 30 days of receiving an application, the planning director or designee shall review the submitted application for completeness and compliance with this chapter. If it is incomplete or does not meet the requirements of this chapter, the planning director shall notify the applicant in writing. The planning director shall thereafter either return the application to the applicant or schedule the application to be considered by the planning commission at the next appropriate scheduled meeting. **Upon receiving an application, the planning director or designee will forward a copy of the application to the Kachemak Bay National Estuarine Research Reserve ("KBNERR") for review and comment. KBNERR will have thirty days to provide its review and comment prior to submission of the application to the planning commission if the application is otherwise complete.**

Your consideration of this amendment is appreciated.

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# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Brent Johnson, Assembly Presiden BJ

**DATE:** October 25, 2022

**SUBJECT:** **LAYDOWN Johnson 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 21.29.005, as follows:

21.29.005. Intent and Purpose.

The purpose of this chapter is to provide a land use permitting process to regulate the operation, scope, and duration of earth materials extraction and processing within the borough while promoting the public health, safety, and general welfare of the Kenai Peninsula Borough, **including the health of aquatic systems that support salmon.** It is the further purpose of this chapter to promote compatible, orderly development.

Your consideration of this amendment is appreciated.

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# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Brent Johnson, Assembly Presiden BJ

**DATE:** October 25, 2022

**SUBJECT:** **LAYDOWN Johnson 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);

4. Reclamation plan consistent with KPB 21.29.060;

5. The depth of excavation;

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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;
   b. Proposed buffers consistent with KPB 21.29.050(A)(1), or alternate buffer plan;
   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. Location of any processing areas on the parcel, if applicable;
   g. North arrow;
   h. The scale to which the site plan is drawn;
   i. Preparer's name and date; and
   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:

   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;
   c. Location of all private wells of adjacent property owners within 300 feet of the proposed parcel boundary; and
   d. Location of any water body on the parcel, including the location of any riparian wetland as determined by best available data **[.]** ;

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**e. Ground water protection measures for anadromous streams, especially with regard to juvenile salmon, as identified by shallow groundwater flowpaths and critical areas of aquifer connectivity, such as recharge, where this information is available.**

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.

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# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Brent Johnson, Assembly Presiden BJ

**DATE:** October 25, 2022

**SUBJECT:** **LAYDOWN Johnson 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 21.29.040, as follows:

21.29.040. Standards for sand, gravel or material sites.

A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise and other impacts of earth materials extraction to properties in the vicinity through setbacks, buffer zones, **[~~and~~]** street-level visual screening **[~~.~~] ,and protection of salmon-rearing waters.** Prior to granting a counter permit or conditional land use permit under this chapter, the planning director or planning commission, as applicable, must make the following findings:

1. That the use is not inconsistent with the applicable comprehensive plan;

2. That the use will not be harmful to the public's health, safety, **[~~and~~]** general welfare **[~~.~~] ,and the health of anadromous streams, particularly with regard to juvenile salmon;**

3. That sufficient setbacks, buffer zones, and other safeguards **such as avoidance of critical groundwater flowpaths and recharge areas** are being provided consistent with this chapter; and

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4. That the use provides for a reclamation plan consistent with this chapter.

Your consideration of this amendment is appreciated.

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# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Brent Johnson, Assembly Presiden BJ

**DATE:** October 25, 2022

**SUBJECT:** **LAYDOWN Johnson 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.

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.*

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

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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* ***and groundwater*** *protection.* Use of surface **and ground** water protection measures as specified in KPB 21.29.030(A)(8)(a).

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.

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# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Brent Johnson, Assembly Presiden BJ

**DATE:** October 25, 2022

**SUBJECT:** **LAYDOWN Johnson 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 21.29.057, as follows:

21.29.057(A). Material extraction below or within four feet of the seasonal high-water table.

In accordance with KPB 21.29.020(B)(3), a CLUP is required for material extraction of material below or within four feet of the seasonal high water table. Prior to a permit being issued the planning commission must impose the mandatory conditions set forth in KPB 21.29.050(A) and discretionary conditions as deemed appropriate. In accordance with KPB 21.29.050(A)(2)(b) dewatering is prohibited. The following additional application requirements and permit conditions specific to a Material Extraction within the Water Table CLUP apply:

A. Prior to application for a water table extraction permit, the following requirements must be met:
   1. Installation of a sufficient number of monitoring wells and test pits, as recommended by a qualified professional, to adequately determine groundwater flow direction, hydraulic gradient, water table and seasonal high-water table elevation Monitoring well and test pit locations must provide the qualified professional with adequate information to characterize the entire property that will be permitted for material extraction. Well casing elevations must be surveyed to a

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vertical accuracy of 0.01 feet by a registered land surveyor and tied to NAVD 1988.

2. Determination of seasonal high-water table elevation, groundwater flow direction, hydraulic gradient, and water table elevation for the site must be measured under the supervision of a qualified professional.
3. A written report must be completed by a qualified professional that makes a determination about the potential adverse effects to groundwater and surface water body elevation, groundwater and surface water quality, surrounding water users and adjacent properties. The determination must be based on available data, interpretations of the data and knowledge of groundwater processes.
4. The report must be submitted with the CLUP application and must:
   a. Identify existing public water system sources (i.e., wells, springs, surface water intakes), as identified by the state, that are located within one-half mile of the boundary of the property on which the activity will take place;
   b. Identify actual or presumed private drinking water wells located within one-half mile of the boundary of the property on which the activity will take place and include a copy of the available well logs;
   c. Identify existing regulated potential sources of contamination within at least one-half mile of the boundary of the property on which the activity will take place;
   d. Contain maps at appropriate scales presenting the results of the well search, the setbacks required by subsection (C)(7) of this section, and illustrating wetlands and water bodies; at least one map must show identified potential sources of contamination;
   e. Include the water table elevation monitoring data, monitoring well logs and records of any test pits, and a discussion of the seasonal high-water table determination;
   f. Evaluate subsurface hydrologic conditions and identify potential adverse effects that may occur as a result of material extraction. The evaluation of the hydrologic conditions must include identifying confining layers **and shallow ground water flowpaths.**

Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Lane Chesley, Assembly member LC

**DATE:** January 26, 2023

**SUBJECT:** **Chesley 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 language in brackets is to be deleted.]

➢ Amend KPB 21.29.010, as follows:

21.29.010. Applicability**—Prohibitions.**

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. Earth materials excavation, extraction, hauling, conditioning or processing, within 1,000 feet of the main entrance to a public campground is prohibited from the last Monday of May through the first Monday of September each year. The distance will be measured from the entrance of the public campground to the outer boundary of a parcel for which an applicant has requested a counter permit or conditional land use permit under this chapter.**

[~~D.~~] **E.** 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 the event a provision of this chapter conflicts with the State of Alaska's manual, this chapter controls.

[~~E.~~] **F.** 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 is appreciated.

# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Lane Chesley, Assembly member

**DATE:** January 26, 2023

**SUBJECT:** **Chesley 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 language in brackets is to be deleted.]

- Amend KPB 21.29.015(A), as follows:

21.29.015. Material extraction exempt from obtaining a permit.

A. Material extraction **limited to one acre per parcel** [~~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 20 feet of a public right-of-way or within 10 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). **Material extraction within four feet of seasonal high-water table and all material crushing or screening activities is prohibited under this exemption.**

Your consideration is appreciated.

# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Lane Chesley, Assembly member

**DATE:** January 26, 2023

**SUBJECT:** **Chesley 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 language in brackets is to be deleted.]

- Amend KPB 21.29.020(A), as follows:

21.29.020. Types of permits available.

A. Counter permit. A counter permit is required for earth material extraction which disturbs more than one acre and less than 5 cumulative unreclaimed acres **and is limited to one counter permit per parcel.** Material processing, screening, or crushing, and material extraction within four feet of the seasonal high-water table is prohibited under a counter permit. A counter permit is valid for a period of two years. Upon request from the applicant, the planning director, or designee, may grant one 12-month extension on a counter permit. Counter permits are approved by the planning director, or designees, and are not subject to notice requirements under KPB 21.25.060. The planning director's decision to approve or deny a counter permit may be appealed to the planning commission, which must act as the hearing officer, in accordance with KPB 21.20.

Your consideration is appreciated.

# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Lane Chesley, Assembly member LC

**DATE:** January 26, 2023

**SUBJECT:** **Chesley 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 language in brackets is to be deleted.]

➢ Amend KPB 21.29.010, as follows:

**21.29.065. Effect of permit denial.**

A. **Absent new evidence or a material change in circumstances that even with due diligence the applicant could not have presented with the original application,** ~~[N]~~ **n**o reapplication concerning the same counter permit application may be filed within one calendar year of the date of the planning director's final denial action. ~~[except in the case where new evidence or circumstances exist that were not available or present when the original application was filed.]~~

B. **Absent new evidence or a material change in circumstances that even with due diligence the applicant could not have presented with the original application,** ~~[N]~~ **n**o reapplication concerning the same CLUP may be filed within ~~[one]~~ **five** calendar year**s** of the date of the final denial action. ~~[except in the case where new evidence or circumstances exist that were not available or present when the original application was filed.]~~

C. For the purposes of this section, the applicant bears the burden of proof of demonstrating that new evidence or **a material change of**

circumstances exist and that ~~[they were not available or present,]~~ **even with due diligence the applicant could not have presented the information** with the original application. ~~[was filed.]~~

Your consideration is appreciated.

# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Lane Chesley, Assembly member

**DATE:** January 26, 2023

**SUBJECT:** **Chesley 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 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. *Camp or camping* means to use a vehicle, tent, or shelter, or to arrange bedding, or both, with the intent to stay overnight.**

**6. *Campsite* means any space designated for camping within a public campground.**

[~~5.~~] **7.** *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.~~] **8.** *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.~~] **9.** *Exhausted* means that all material of a commercial quality in a sand, gravel, or material site has been removed.

[~~8.~~] **10.** *Groundwater* means, in the broadest sense, all subsurface water, more commonly that part of the subsurface water in the saturated zone.

[~~9.~~] **11.** *Person* shall include any individual, firm, partnership, association, corporation, cooperative, or state or local government.

**12. *Public campground* means an area, developed and maintained by a public entity, that is open to the public and contains one or more campsites.**

[~~10.~~] **13.** *Quarter or Quarterly* means January through March, April through June, July through September, or October through December;

[~~11.~~] **14.** *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.~~] **15.** *Seasonal high groundwater table* means the highest level to which the groundwater rises on an annual basis.

[~~13.~~] **16.** *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.~~] **17.** *Surface water* means water on the earth's surface exposed to the atmosphere such as rivers, lakes, and creeks.

[~~15.~~] **18.** *Topsoil* means material suitable for vegetative growth.

[~~16.~~] **19.** *Waterbody* means any lake, pond, stream, riparian wetland, or groundwater into which stormwater runoff is directed.

[~~17.~~] **20.** *Water source* means a well, spring or other similar source that provides water for human consumptive use.

Your consideration is appreciated.

Kenai Peninsula Borough
Assembly

# MEMORANDUM

**TO:** Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Lane Chesley, Assembly Member (VM.) for L.C.

**DATE:** January 26, 2023

**SUBJECT:** **Chesley 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 language in brackets is to be deleted.]

➢ Amend KPB 21.29.020(B), as follows:

21.29.020. Types of permits available.

B. Conditional land use permit. A conditional land use permit (CLUP) is required for the following types of earth material extraction or uses:

A. Conditional land use permit. A conditional land use permit (CLUP) is required for the following types of earth material extraction or uses:

1. **Type I CLUP – Earth Materials Extraction. A Type I CLUP is required for any earth materials excavation or extraction which disturbs 5 or more cumulative acres. Earth materials conditioning or processing activities and excavation or extraction within four feet of the seasonal high-water table is prohibited under this permit. The requirements and conditions in KPB 21.29.050 apply to a Type I CLUP.**
~~[Earth Materials Extraction CLUP. An Earth Materials Extraction CLUP is required for any material extraction which disturbs 10 or more cumulative acres. Material processing, screening or crushing, or extraction within four feet of the seasonal high water table is prohibited under this permit. The standard conditions set out in KPB 21.29.050 are applicable to this type of CLUP.]~~

2. **Type II CLUP – Earth Materials Conditioning or Processing. A Type II CLUP is required for any operation that includes earth materials**

**conditioning or processing activities. The conditions in KPB 21.29.050 and KPB 21.29.055 apply to a Type II CLUP.**
~~[Earth Materials Processing CLUP. An Earth Materials Processing CLUP is required for any operation that includes earth materials processing, screening, or crushing activities. The conditions set forth in KPB 21.29.050 plus the conditions set out in KPB 21.29.055 for material extraction processing area applicable to this type of CLUP.]~~

3. **Type III CLUP – Earth Materials Extraction Within Water Table. A Type III CLUP is required for operations of any size that excavate or extract earth materials within four feet of the seasonal high-water table. The requirements and conditions in KPB 21.29.050 and KPB 21.29.057 for a Type III CLUP. If the application includes earth materials conditioning or processing activities, then the requirements and conditions in KPB 21.29.055 apply.**
~~[Earth Materials Extraction Within Water Table CLUP. An Earth Materials Extraction within Water Table CLUP is required for material extraction and operations of any size within four feet of the seasonal high-water table. The conditions set forth in KPB 21.29.050 plus the requirements and conditions set forth in KPB 21.29.057 for material extraction within four feet of the seasonal high-water table are applicable to this type of CLUP.]~~

An applicant may request a CLUP that includes one, two or all three of the above permit types. A CLUP is valid for a period of five years. A CLUP may be renewed in accordance with KPB 21.29.070. The provisions of KPB Chapter 21.25 are applicable to material site CLUPs and the provisions of KPB 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling.

Your consideration is appreciated.

# MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Lane Chesley, Assembly Member

**DATE:** March 14, 2023

**SUBJECT:** **Chesley 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 language in brackets is to be deleted.]

➢ Amend KPB 21.29.050(A)(1)(a), 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 **minimum** 32 feet must be established between the area of excavation and the parcel boundaries **that provides sufficient noise and street-level visual screening**. The buffer area may include one or more of the following: undisturbed natural vegetation **[~~that provides sufficient noise and street-level visual screening~~]**; a**[~~n~~]** minimum eight-foot earthen berm with a 2:1 slope; or a minimum eight-foot fence. Berms **[~~should~~] will** not alter natural drainage features.

Your consideration is appreciated.

Kenai Peninsula Borough
Assembly

# MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Lane Chesley, Assembly member (CMC) for L.C.

**DATE:** February 7, 2023

**SUBJECT:** **LAYDOWN Chesley Motion Re Clerical Edits to** 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 language in brackets is to be deleted.]

- Motion:

  To authorize the Borough Legal Department to make necessary non-substantive wording or clerical edits for the purposes of consistency and readability as subcommittee amendments are incorporated into a Substitute Ordinance to bring back for public hearing and Assembly consideration.

Your consideration is appreciated.

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# MEMORANDUM

**TO:** Brent Johnson, 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:** February 9, 2023

**SUBJECT:** **Administrative Amendment #10** 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 language in brackets is to be deleted.]

➢ Amend KPB 21.29.020(B), as follows:

21.29.020. Types of permits available.

….

B. Conditional land use permit. A conditional land use permit (CLUP) is required for [~~the following types of~~] earth materials **excavation**, extraction, **and earth materials conditioning or processing, that exceed the limitations for a counter permit in KPB 21.29.020 or for activities within four feet of the seasonal high-water table. A CLUP applicant may request the following CLUP endorsements as part of a single application and fee**:

1. **Type I Endorsement – Earth Materials Extraction. A Type I Endorsement is required for any earth materials excavation or extraction which disturbs 5 or more cumulative acres. Earth materials conditioning or processing activities and excavation or extraction within four feet of the seasonal high-water table is prohibited under this permit. The requirements and conditions in KPB 21.29.050 apply to a Type I Endorsement**.
[~~Earth Materials Extraction CLUP. An Earth Materials Extraction CLUP is required for any material extraction which disturbs 10 or more cumulative acres. Material processing, screening or crushing, or extraction within four feet of the seasonal high-water table is prohibited under this permit. The standard conditions set out in KPB 21.29.050 are applicable to this type of CLUP.~~]

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2. **Type II Endorsement– Earth Materials Conditioning or Processing. A Type II Endorsement is required for any operation that includes earth materials conditioning or processing activities. The conditions in KPB 21.29.050 and KPB 21.29.055 apply to a Type II Endorsement**. ~~[Earth Materials Processing CLUP. An Earth Materials Processing CLUP is required for any operation that includes earth materials processing, screening, or crushing activities. The conditions set forth in KPB 21.29.050 plus the conditions set out in KPB 21.29.055 for material extraction processing area applicable to this type of CLUP.]~~

3. **Type III Endorsement – Earth Materials Extraction Within Water Table. A Type III Endorsement is required for operations of any size that excavate or extract earth materials within four feet of the seasonal high-water table. The requirements and conditions in KPB 21.29.050 and KPB 21.29.057 for a Type III Endorsement If the application includes earth materials conditioning or processing activities, then the requirements and conditions in KPB 21.29.055 apply.**
~~[Earth Materials Extraction Within Water Table CLUP. An Earth Materials Extraction within Water Table CLUP is required for material extraction and operations of any size within four feet of the seasonal high-water table. The conditions set forth in KPB 21.29.050 plus the requirements and conditions set forth in KPB 21.29.057 for material extraction within four feet of the seasonal high-water table are applicable to this type of CLUP.]~~

An applicant may request a CLUP that includes one, two or all three of the above [~~permit types~~] **endorsements**. A CLUP is valid for a period of five years. A CLUP may be renewed in accordance with KPB 21.29.070. The provisions of KPB Chapter 21.25 are applicable to a material site CLUP[~~s~~] and the provisions of KPB 21.25 and 21.29 are **to be** read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling.

- Amend the remaining provisions of Ordinance 2022-36 as follows:

  Motion to: authorize staff to edit, update, and amend necessary provisions or sections of Ordinance 2022-36 to incorporate the change from three different CLUP permit types to a single CLUP permit with three different endorsements. Staff is authorized to make all necessary changes to effectuate this endorsement amendment and bring back a substitute ordinance that will incorporate this endorsement amendment along with all other amendments passed during the subcommittee processes .

Your consideration is appreciated.

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# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Mike Tupper, Assembly Member MT

**DATE:** October 13, 2022

**SUBJECT:** **Tupper 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 21.29.020(A), as follows:

21.29.020. Types of permits available.

A. Counter permit. A counter permit is required for earth material extraction which disturbs more than one acre and less than **2.5** cumulative unreclaimed acres. Material processing, screening, or crushing, and material extraction within four feet of the seasonal high-water table is prohibited under a counter permit. A counter permit is valid for a period of two years. Upon request from the applicant, the planning director, or designee, may grant one 12-month extension on a counter permit. Counter permits are approved by the planning director, or designees, and are not subject to notice requirements under KPB 21.25.060. The planning director's decision to approve or deny a counter permit may be appealed to the planning commission, which must act as the hearing officer, in accordance with KPB 21.20.

Your consideration of this amendment is appreciated.

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# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Mike Tupper, Assembly Member MT

**DATE:** October 13, 2022

**SUBJECT:** **Tupper 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 21.29.020(B), as follows:

21.29.020. Types of permits available.

B. Conditional land use permit. A conditional land use permit (CLUP) is required for the following types of earth material extraction or uses:

1. **[~~Earth Materials Extraction CLUP. An Earth Materials Extraction CLUP is required for any material extraction which disturbs 10 or more cumulative acres. Material processing, screening or crushing, or extraction within four feet of the seasonal high-water table is prohibited under this permit. The standard conditions set out in KPB 21.29.050 are applicable to this type of CLUP.~~]** **Type 1 CLUP. Earth Materials Extraction with Restricted Processing CLUP. An Earth Materials Extraction with Restricted Processing CLUP is required for any material extraction which disturbs 2.5 or more cumulative acres. Processing is restricted to one portable two-deck screen capable of screening or classifying material, limited to a maximum of 500 cubic yards per day. Extraction within four feet of the seasonal high-water able is prohibited under this permit. The conditions set out in KPB 21.29.050 and .055 are applicable to this type of CLUP.**

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2. **~~[Earth materials processing]~~ Type 2 CLUP. A ~~[n Earth Materials Processing]~~ Type 2** CLUP is required for any operation that includes earth materials processing, screening or crushing activities. The conditions set forth in KPB 21.29.050 plus the conditions set out in KPB 21.29.055 for material extraction processing area applicable to this type of CLUP.

3. **~~[Earth Materials Extraction Within Water Table]~~ A Type 3** CLUP. A **~~[n Earth Materials Extraction Within Water Table]~~ Type 3** CLUP is required for material extraction and operations of any size within four feet of the seasonal high-water table. The conditions set forth in KPB 21.29.050 plus the requirements and conditions set forth in KPB 21.29.057 for material extraction within four feet of the seasonal high-water table are applicable to this type of CLUP.

An applicant may request a CLUP that includes one, two or all three of the above permit types. A CLUP is valid for a period of five years. A CLUP may be renewed in accordance with KPB 21.29.070. The provisions of KPB Chapter 21.25 are applicable to material site CLUPs and the provisions of KPB 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling.

Your consideration of this amendment is appreciated.

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# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Mike Tupper, Assembly Member MT

**DATE:** October 13, 2022

**SUBJECT:** **Tupper 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 21.29.040, as follows:

21.29.040. Standards for sand, gravel or material sites.

A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, **visual,** and other impacts of earth materials extraction to properties in the vicinity through setbacks and buffer zones. Prior to granting a counter permit or a conditional land use permit under this chapter, the planning director or planning commission, as applicable, must make the following findings:

1. That the use is not inconsistent with the applicable comprehensive plan;

2. That the use will not be harmful to the public's health, safety, and general welfare;

3. That sufficient setbacks, buffer zones, and other safeguards are being provided consistent with this chapter; **[~~and~~]**

4. That the use provides for a reclamation plan consistent with this chapter**[~~.~~]** **; and**

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5. **That the use will preserve the value and character of the surrounding area.**

Your consideration of this amendment is appreciated.

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# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Mike Tupper, Assembly Member MT

**DATE:** November 15, 2022

**SUBJECT:** **Tupper Amendment #4 Replacement** 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(A)(1) and (2), 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;]~~ The buffer zone for counter permits and CLUPs shall be of sufficient height, density, and setback to provide visual and noise screening of the proposed use to parcels in the vicinity as deemed appropriate by the planning commission or planning director. Buffer requirements shall be made in consideration of and in accordance with existing uses of properties in the vicinity at the time of approval of the permit. There is no requirement to buffer the material site from uses which commence after the approval of the permit.**

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b. **A buffer zone shall be established between the area of excavation and the parcel boundaries. The buffer zone for a Counter Permit and a Type 1 CLUP shall consist of one or any combination of the following: Fifty feet of natural vegetation, a minimum six-foot fence, a minimum six-foot earthen berm with a minimum 2:1 slope. The buffer zone for a Type 2 or a Type 3 CLUP shall consist of one of the following: Minimum eight-foot fence, or a minimum fifty feet of natural vegetation and a minimum ten-foot earthen berm with a minimum 2:1 slope.**

**[~~b.~~]c.** 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 the timeframe for removal and verification that suitable, stabilizing material will replace the removed material within 30 days of removal;

**[~~c.~~]d.** 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.~~]e.** 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~~]** **adjoining** another material site **or industrial use**.

**f. Geographic Information System (GIS), photogrammetry, or LIDAR may be utilized in the design of the buffer zone when differing elevations exist between the proposed site and properties in the vicinity. Using this technology, line of sight profile drawings from the uppermost inhabitable level of existing properties located in the vicinity may be utilized in the determination of sufficiency of the buffer zone.**

**g. At its discretion the planning director or planning commission (as applicable) may waive or reduce buffer requirements when screening proves to be not necessary or not feasible.**

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;

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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.
**e. All permits shall be issued with a condition which prohibits any material extraction inside the boundaries of a mapped tsunami hazard zone within 500 linear feet of any existing private well or water source.**

Your consideration of these amendments is appreciated.

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# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Mike Tupper, Assembly Member MT

**DATE:** October 13, 2022

**SUBJECT:** **Tupper 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(B), as follows:

21.29.050. Permit conditions applicable to all permits.

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.*

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~~]** **vicinity**;

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~~**

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**~~boundary until such limits of the permitted area are exhausted. The berm must be maintained at eight-foot height while permitted activity is occurring.~~] The planning commission may require that an earthen berm with a minimum 2:1 slope of the height determined by the planning commission under KPB 21.29.050 shall be constructed above preexisting elevation around the excavation area. As the excavation area expands, the berm shall be moved toward negatively-impacted properties in the vicinity until such limits of the permitted area are exhausted. The berm must be maintained at the predetermined height while permitted activity is occurring. This earthen berm may be in addition to other buffer zone conditions imposed by the planning commission, or required by KPB 21.29.050.**

b. All other requirements of KPB 21.29.050(A)(1) apply; and
c. When a buffer area has been denuded **less than a year** 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~~] suggest** 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~~] haul routes within permit boundaries**.

5. *Surface water protection.* Use of surface water protection measures as specified in KPB 21.29.030(A)(8)(a).

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~~***[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.]***~~

**7.** ***Noise suppression*. At the discretion of the planning commission or planning director, as applicable, multi-frequency (white noise) back-up alarms may be required on all equipment and vehicular traffic on site as a condition to help meet the noise impact standard in accordance with and in consideration of existing uses in the vicinity.**

Your consideration of these amendments is appreciated.

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# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Mike Tupper, Assembly Member MT

**DATE:** October 13, 2022

**SUBJECT:** **Tupper 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 21.29.050 by adding KPB 21.29.050(C), as follows:

21.29.050. Permit conditions applicable to all permits.

**C. Volunteered Permit Conditions. Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission or planning director, as applicable. Such conditions must be consistent with the standards set forth in KPB 21.29.040. Planning commission approval of such conditions shall be contingent upon a finding that the condition will be in the best interest of the borough and surrounding property owners. Volunteered permit conditions apply to the subject parcel and operation, regardless of a change in ownership. A change in volunteered conditions may be proposed at permit renewal.**

Your consideration of this amendment is appreciated.

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# 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

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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.

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# 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.

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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.

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# 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);

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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
   **~~[j.~~] 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:

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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~~**
**~~[d. 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.

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# 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;

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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.

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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.

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# 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

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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

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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*.

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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).

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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.

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# 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.

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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.

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# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Assembly President
Members, Kenai Peninsula Borough Assembly

**Thru:** Mike Navarre, Mayor MN
Max Best, Chief of Staf 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.

DocuSign Envelope ID: 98B2D05C-4FC5-4904-A93F-A03F34F817A8



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

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

Your consideration of this amendment is appreciated.

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# 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

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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.

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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.

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# 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.

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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.

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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.

# TSUNAMI INUNDATION ZONE

This document is intended to assist the Kenai Peninsula Borough Assembly members in understanding the tsunami inundation risks to water wells in the Cook Inlet region.

While studying the relationship between groundwater and nearby water wells the question was asked “how would a tsunami affect that relationship”.

Being unfamiliar with the science Dr. Mark Rains, was contacted. He is a national groundwater expert with years of experience in Alaska and the head scientist for the State of Florida. Dr. Rains and his students have been working with the Kachemak Bay Research Reserve over the past 15+ years studying groundwater in the southern Kenai Lowlands. Mark was asked him if there was information available that might help answer the question of how a tsunami could affect water wells.

Dr. Rains responded that it is a problem worldwide where a tsunami has pushed saltwater inland during an event and then is trapped in low lying areas outside of estuaries. He was asked what might happen in a gravel pit scenario and his answer was somewhat surprising. Mark explained that saltwater is heavier than freshwater and would sink to the bottom of any depression (such as a gravel pit) or pond. It then could contaminate nearby water wells with salinization for anywhere from several months to a couple of years as the salt worked its way into the groundwater.

A quick internet search of the University of Alaska Earthquake Center tells us “**coastal Alaska communities live with the most serious tsunami risk in the United States**”.

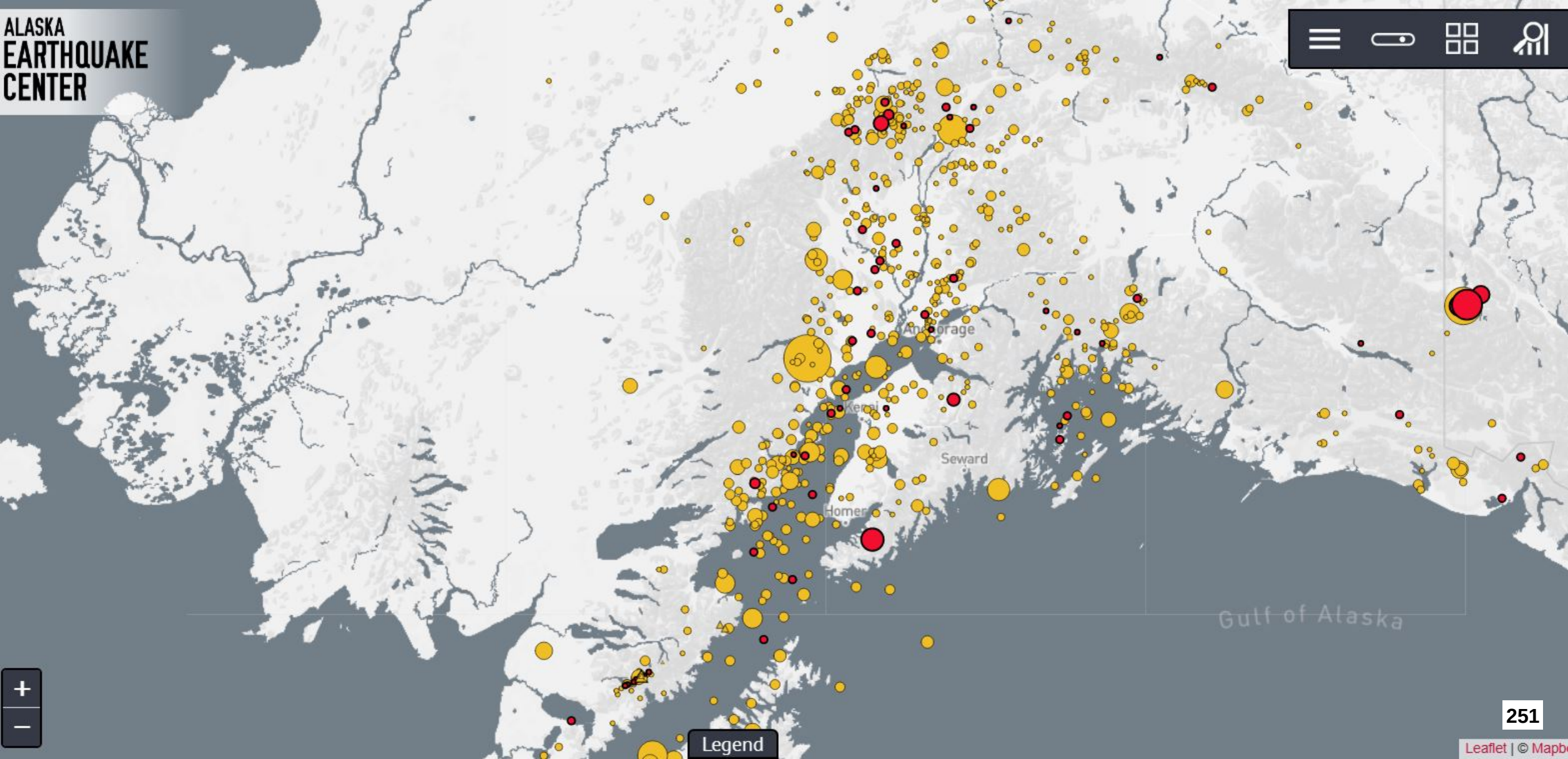
Attached is the State of Alaska Tsunami Hazard Maps and a map reflecting earthquakes near Cook Inlet, both from the Alaska Earthquake Center.

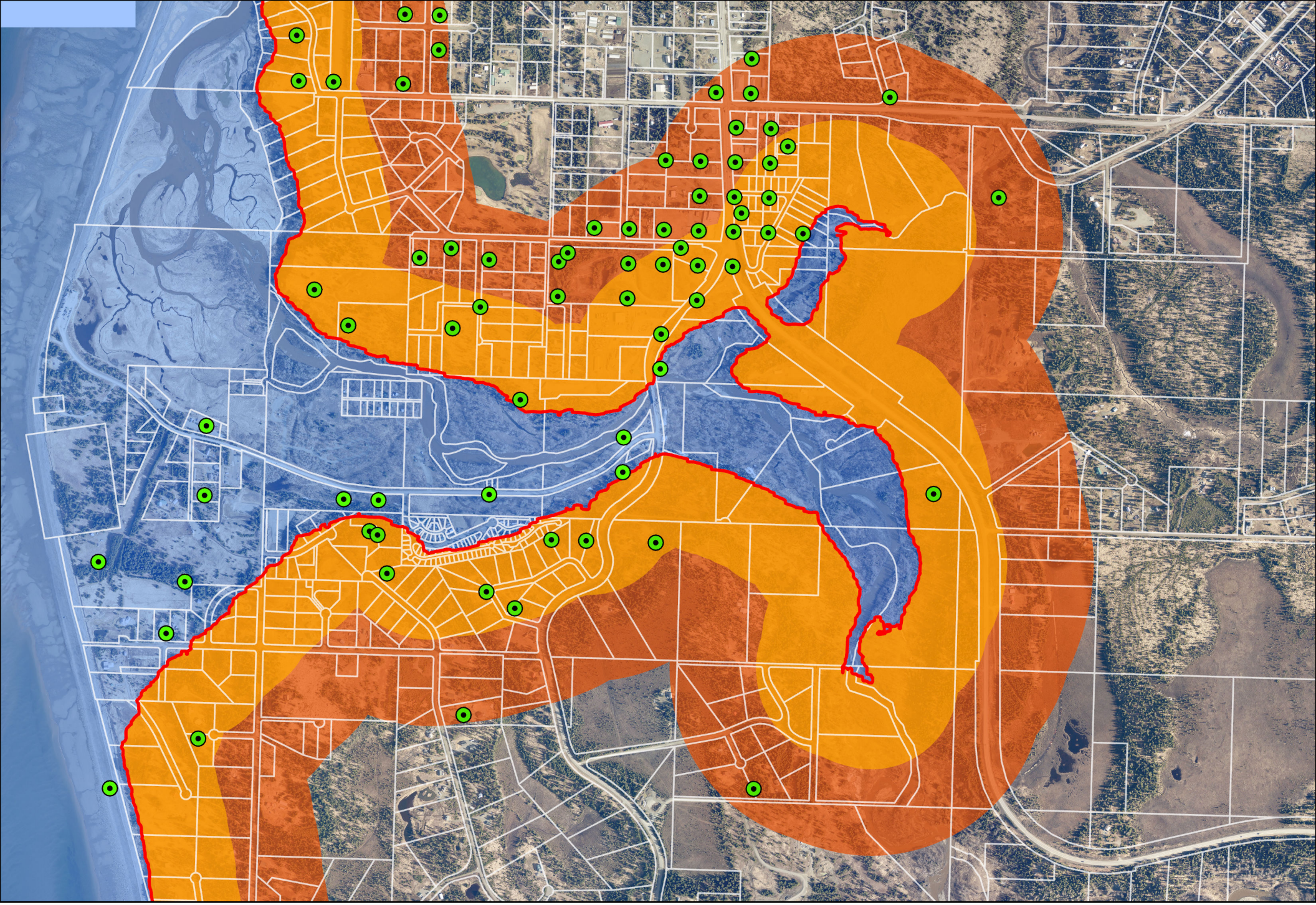
Three additional attachments are included to reflect mapping done by the State of Alaska Division of Geological and Geophysical Surveys. These are Cook Inlet Tsunami Hazard Maps of Port Graham, Anchor Point and Nanwalek.

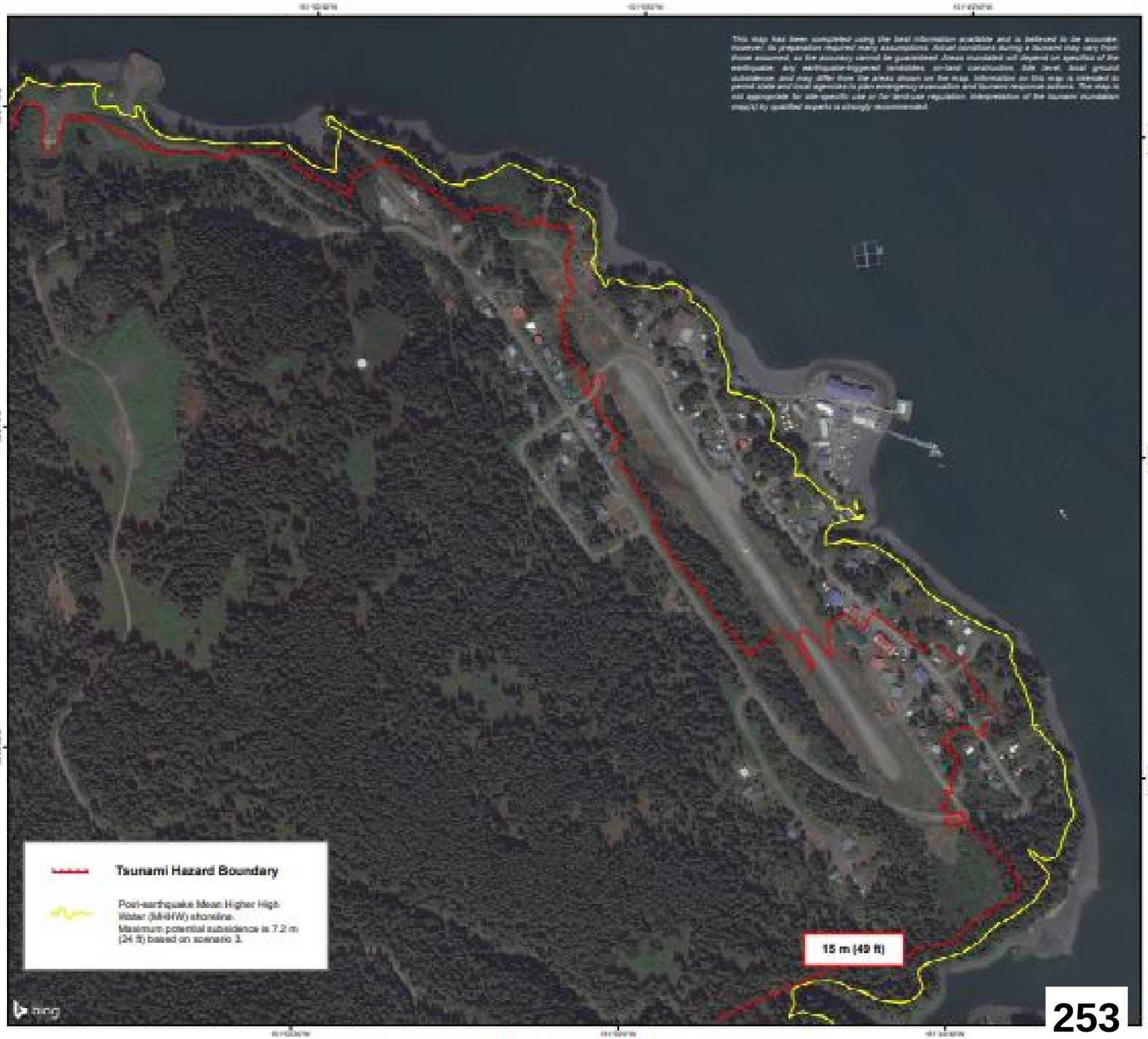
Also included is a tsunami map indicating “at risk” wells near the Anchor Point estuary. There are six other communities on the Kenai Peninsula that fall within the tsunami hazard zone: Homer, Anchor Point, Jakalof Bay, Kachemak Selo, Nanwalek, Port Graham and Seldovia. It could be assumed there would be “at risk” water wells in those communities as well.

***There have been 207 earthquakes in Alaska in the first three days of February this year. Two of those nearby Earthquakes in the last week were 5.0 or larger.***

To say this area is prone to earthquakes is an understatement.


ALASKA
EARTHQUAKE
CENTER
Anchorage
Seward
Homer
Gulf of Alaska
Legend
251
Leaflet | © Mapb


N
0
250
500
1,000 Meters
Tsunami Inundation Zone
Parcels
250 Meters
500 Meters
Well Logs - At Risk




# TSUNAMI HAZARD MAP OF PORT GRAHAM, ALASKA

Regional tsunami hazard assessment for Kenai Peninsula, Alaska

REPORT OF INVESTIGATION 2019-5
Sulaimani and others, 2019
SHEET 1 OF 3
*Explanatory text accompanies map*




# TSUNAMI HAZARD MAP OF ANCHOR POINT, ALASKA

Regional tsunami hazard assessment for Kenai Peninsula, Alaska




# TSUNAMI HAZARD MAP OF NANWALEK, ALASKA

Regional tsunami hazard assessment for Kenai Peninsula, Alaska

| Code Section | ORD 2022-36 | Current Code | Highlighted Changes | Potential amendments Planning Director |
|---|---|---|---|---|
| **KPB 21.25.050** | 30-day staff review period of an application. | 21-day staff review period of an application. | Increase from 21 to 30 days. | |
| **KPB 21.25.060 - Notice** | Notice published on KPB website; public bulletin; mailed to all owners/leaseholders within ½ mile radius of proposed site. | Requires notice published two times in newspaper, posted in the post office, copy of the notice sent by regular mail to all owners and/or leaseholders within one-half mile. | Expressly does not apply to counter permits.<br><br>No longer requires newspaper publication but allows for publication on KPB website. | |
| **KPB 21.29.005 - Intent and Purpose** | Establishes an intent and purpose section for KPB Chapter 21.29 with focus on public health, safety and general welfare, and to promote compatible, orderly development. | N/A | New code section. | |
| **KPB 21.29.010 - Applicability** | **A.** Applies to all private and public lands, except as preempted by other law;<br><br>**B.** Does not apply within the incorporated cities;<br><br>**C.** Prohibits extraction within 300 feet of riparian wetlands and naturally-occurring open water bodies; | N/A | New code section to clarify applicability of chapter and fact that it does apply to both public and private lands outside of the incorporated cities unless otherwise exempt. | |

| Code Section | ORD 2022-36 | Current Code | Highlighted Changes | Potential amendments Planning Director |
|---|---|---|---|---|
| | **D.** Operations must be conducted in accordance with current Alaska DEC Manual for extraction projects. | | | |
| **KPB 21.29.015 -Material extraction exempt from obtaining a permit** | **A.** Exempts extraction disturbing less than one acre if:<br>-Not in floodplain;<br>-Does not enter water table; and<br>-Does not cross property boundaries.<br><br>No excavation within 32' of lot line.<br><br>**B.** Exempts dewatered bars within SBCFSA/Snow River.<br><br>**C.** Exempts PEUs but by 2026 must:<br>-Provide reclamation plan<br>-Comply with buffer zone requirements | Currently 21.29.010<br><br>**A.** Exempts extraction disturbing less than one acre if:<br>-Not in floodplain;<br>-Does not enter water table; and<br>-Does not cross property boundaries.<br><br>No excavation within 20 feet of ROW or 10 feet of lot line.<br><br>**B.** Exempts dewatered bars within SBCFSA/ Snow River.<br><br>**C.** PEUs exempt but floodplain permit required within mapped special flood hazard area. | New code section.<br><br>No excavation within 32' of lot lines.<br><br>PEUs exempt but must provide reclamation plan & comply with buffer zone requirements by 2026. | Require registration of excavation <1 acre. Addresses the concern of how can KPB state no permit required yet stipulate buffer requirements, clarify that the buffer is not part of the 1 acre limitation. |

| Code Section | ORD 2022-36 | Current Code | Highlighted Changes | Potential amendments Planning Director |
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| **KPB 21.29.020- Types of permits available** | **Counter permit**<br>-1 to 10 acres<br>-No processing<br>-No water table extraction<br>-Only 21.29.050 conditions apply.<br><br>**Earth Materials Extraction CLUP**<br>-Activity disturbing more than 10 acres<br>-No processing<br>-No water table extraction<br>-Only 21.29.050 conditions apply<br><br>**Earth Materials Processing CLUP**<br>-Required for all on-site processing, screening, or crushing<br>-21.29.050 and 21.29.055 conditions apply<br><br>**Earth Materials Extraction within Water Table CLUP**<br>-Required for all earth materials extraction within water table<br>-21.29.050 and | Counter permit and generic CLUP only.<br><br>CLUP application requires all mandatory conditions and covers all uses. | Counter permit and three types of CLUPs.<br><br>1 to 10 acres eligible for counter permit if no processing or water table extraction.<br><br>Three different CLUP categories: earth materials extraction (more than ten acres), earth materials processing, and earth materials extraction within water table.<br><br>Applicant may apply for one, two, or all CLUP types. | **Counter Permits and Earth Materials Extraction CLUP** - Allow for up to 5k gallons of water withdrawal/ day, from well. Require proof of ADNR water withdrawal for amount in excess of 5k/ gallons/ day from a well, not create open pond with active excavation. Open water allowable, but requires water CLUP<br><br>Allow for up to 500 cubic yards of processing material between hours of 8AM to 6PM.<br><br>**Earth Materials Processing CLUP**<br>Add blasting as a type of processing. Clarify processing does not mean striping and |

| Code Section | ORD 2022-36 | Current Code | Highlighted Changes | Potential amendments Planning Director |
|---|---|---|---|---|
| | 21.29.057 conditions apply | | | segregation with excavation equipment. |
| **KPB 21.29.030- Application procedure** | Very similar to current procedure. Requires site map from professional surveyor and site plan from professional engineer | -Legal description<br>-Life span<br>-Buffer plan<br>-Reclamation plan<br>-Excavation depth<br>-Type of materials and equipment<br>-Any voluntary permit conditions<br>-Site plan | Breaks apart site map (professional surveyor) from site plan (professional engineer)<br><br>Application will be deemed incomplete without all items listed. (Not in current code.) | Revise to stipulate that Survey function is limited to existing site conditions prior to any activity.<br><br>Require engineer w/seal for all future site lay out plans |
| **KPB 21.29.040- Standards for sand, gravel or material sites** | Planning Director (counter permits) or Planning Commission (CLUPs) must find:<br><br>-Use is not inconsistent with applicable comp plan<br>-Use will not be harmful to public's health, safety and general welfare<br>-Provides sufficient setbacks, buffer zones, and other safeguards<br>-Reclamation plan | -Protects against lowering of water sources serving other properties and damage to other properties<br>-Minimizes off-site dust movement, noise disturbance, visual impacts & alternate post-mining land uses | All new standards/"may issue"<br><br>Focus on legitimate public purpose to protect against damage to public roads and adjacent properties as well as dust, noise and other impacts through setbacks, buffer zones, and street-level visual screening. | Amount of visual screening, if any, is a significant question, which we recognize from public testimony. Significant policy call with legal input. |
| **KPB 21.29.045** | Applicants required to demonstrate compliance with state and federal law through written | N/A | New code section.<br><br>Requires compliance with applicable | |

| Code Section | ORD 2022-36 | Current Code | Highlighted Changes | Potential amendments Planning Director |
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| | documentation from pertinent authorities:<br>-Mining license (AK Dept of Revenue)<br>-Mining permit (ADNR)<br>-Permits and plans required by DEC<br>-Permits from USACE, if applicable<br>-Other applicable permits from other regulatory bodies authorized to regulate mining activities or earth materials extraction<br><br>Must comply with other regulations such as air and water quality, and hazardous materials<br><br>Violations subject to enforcement under 21.50 | | state/federal agencies prior to approval of KPB permit.<br><br>All activity must comply with state/federal regulations governing air/water quality and hazardous materials.<br><br>Violations subject to enforcement under 21.50. | Explicitly add ADNR for temporary water withdrawals |
| **KPB 21.29.050** | **NINE MANDATORY CONDITIONS**<br><br>**1. Buffers:** 32-foot buffer/may include natural vegetation for street-level visual and noise screening; 8-foot fence or berm with a 2:1 | **Buffers:** 50' of undisturbed natural vegetation, or 6' berm with at least 2:1 slope, or 6' fence. Material from slope may be removed if site plan provides removal timeframe and verification material will | Allows flexibility to meet demands of a specific application vs. "one size fits all" of current code.<br><br>**Buffers:**<br>-Street-level noise and visual screening (as | Berm height needs to be more flexible if screening requirements are to consider more 8' above elevation at property boundaries. |

| Code Section | ORD 2022-36 | Current Code | Highlighted Changes | Potential amendments Planning Director |
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| | slope; 2:1 slope between buffer zone and floor on all inactive site walls. Material from slope may be removed if site plan provides removal timeframe and verification material will be replaced within 30 days.<br><br>**2. Water source separation:** No extraction below or within 4' of seasonal high-water table unless new section 21.29.057 conditions are met (Material Extraction within Water Table CLUP/see below); no off-site dewatering; no extraction within 100 feet of private well.<br><br>**3. Roads:** Operations impacting KPB roads must comply with 14.40 and subject to remedies in 14.40.<br><br>**4. Dust control:** Water or calcium chloride on haul | be replaced within 30 days. Planning Commission may waive where topography or placement of natural barriers make screening not feasible or unnecessary<br><br>**Water source separation:** No material extraction within 100 horizontal feet of any water source existing prior to permit issuance. Counter permits require four-foot vertical separation from seasonal high water table. CLUPs require two-foot vertical separation from seasonal high water table. No dewatering unless PC grants exemption.<br><br>**Roads:** Operations impacting KPB roads must comply with KPB 14.40.175 and subject to remedies in 14.40. | opposed to generic "noise and visual screening/impacts<br>-Decrease from 50' vegetation to 32'<br>-Increase from 6' to 8' minimum<br>-Decision-maker may waive if lot line is directly adjacent to another material site<br><br>**Water source separation:**<br>-Operations within water table governed by new section, 21.29.057 (see below) and require Material Extraction within Water Table CLUP<br>-On site water movement permitted if qualified independent civil engineer provides statement under seal that dewatering will not lower any known water systems and applicant posts bond for potential accrued | Clarify that street level means elevation at property boundaries.<br><br>"Note adjacent means adjoining in this instance, not separated by a ROW" |

| Code Section | ORD 2022-36 | Current Code | Highlighted Changes | Potential amendments Planning Director |
|---|---|---|---|---|
| | roads within boundaries of material site<br><br>**5. Hours of operation**: 6 am-9m but decision-maker may waive for specific seasonal project. Waiver valid for six consecutive months.<br><br>**6. Groundwater elevation:** Requires groundwater monitoring/one well 4' below proposed excavation per ten acres of excavated area.<br><br>**7. Setback:** 250' from LOZD/school/senior center/child care facility/etc.<br><br>**8. Boundaries:** Must stake buffers, ROWs, easements at visible intervals by professional land surveyor. Stakes must be placed prior to permit issuance. | **Dust control:** Water or calcium chloride on haul roads within boundaries of material site<br><br>**Hours of operation:** Rock crushing equipment shall not be operated between 10 pm and 6 am.<br><br>**Boundaries:** Staked at sequentially visible intervals where boundaries are within 300' of excavation perimeter. Verification and staking by professional land surveyor.<br><br>**Processing:** See below. | damages in amount equivalent to replace each water well within 300-foot radius of site. Rebuttable presumption is each well is minimum of $10,000.<br><br>**Roads/Dust control:** Essentially the same.<br><br>**Hours of operation:** For all extraction activities, 6 am to 9 pm but decision-maker can waive or adjust for specific seasonal project for period of six consecutive months.<br><br>**Groundwater elevation:** Requires groundwater monitoring.<br><br>**Setback:** 250' from LOZD/school/senior center/child care facility/etc. | |

| Code Section | ORD 2022-36 | Current Code | Highlighted Changes | Potential amendments Planning Director |
|---|---|---|---|---|
| | **9. Processing:** Must comply with conditions in new section 21.29.055 (Earth Materials Processing CLUP/see below.)<br><br>**SIX DISCRETIONARY CONDITIONS**<br><br>**1. Setbacks/Buffer Areas:** Up to maximum of 100' if PC finds based on substantial evidence that increase is necessary for public health, welfare, and safety; potential for rolling berms instead.<br><br>**2. Road maintenance and repair:** Permittee may be required to maintain/repair damaged public roads; requires consultation with RSA Director.<br><br>**3. Ingress/egress:** Decision-maker may require driveway authorization. | | **Boundaries:** Stakes must be placed prior to permit issuance rather than time of application.<br><br>**Processing:** Requires compliance with new section 21.29.055 and Earth Materials Processing CLUP.<br><br>Adds discretionary conditions:<br>-Additional setbacks or rolling berms<br>-Maintenance and repair of damaged public roads<br>-Driveway authorization<br>-Dust suppression on public ROWs<br>-Surface water protections as set forth in 21.29.030(A)(8)(a)<br>-Street-level screening as appropriate for surrounding area and | |

| Code Section | ORD 2022-36 | Current Code | Highlighted Changes | Potential amendments Planning Director |
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| | **4. Dust suppression:** On public ROWs when natural precipitation inadequate to suppress dust generated by material site traffic.<br><br>**5. Surface water protection:** As specified in 21.29.030(A)(8)(a).<br><br>**6. Street-level screening:** Street-level visual screening, noise mitigation, & lighting restrictions as appropriate for the surrounding area and in accordance with 21.29.040 standards set to protect against attractive nuisance issues. | | to protect against attractive nuisances | |
| **KPB 21.29.055- Earth materials processing** | In addition to mandatory conditions in 21.29.050(A).<br><br>**A.** Conditioning or processing equipment must be operated at least 300' from parcel boundaries. PC may waive or reduce distance | 300' setback for conditioning or processing equipment.<br><br>PC may waive or reduce in consideration of and in accordance with existing uses of adjacent property at the time. | New code section.<br><br>PC may waive or reduce in consideration of and in accordance with existing uses of the "properties in the vicinity". Present code | |

| Code Section | ORD 2022-36 | Current Code | Highlighted Changes | Potential amendments Planning Director |
|---|---|---|---|---|
| | requirement in consideration of and in accordance with existing uses of properties in the vicinity.<br><br>**B.** Hours of operation for processing equipment between 8am and 7pm or as PC determines.<br><br>PC may also grant exceptions (not to exceed 120 days) for:<br>-Emergencies<br>-Good cause finding that increase serves public purpose and is not harmful to public health, safety, and general welfare<br><br>Applicant may request waiver (not to exceed six consecutive months) for specific seasonal project. PC must also find waiver is not harmful to the public health, safety and general welfare. | | is "adjacent property".<br><br>Processing equipment may only be operated between 8am and 7pm, may be increased for emergencies, to serve a public purpose or for specific, seasonal project. | |

| Code Section | ORD 2022-36 | Current Code | Highlighted Changes | Potential amendments Planning Director |
|---|---|---|---|---|
| **KPB 21.29.057- Material extraction in water table** | In addition to mandatory conditions in 21.29.050(A).<br><br>Dewatering prohibited (21.29.050(A)(2)(b)).<br><br>**A.** Applicant must meet the following requirements prior to applying:<br><br>1. Installation of sufficient monitoring wells and test pits to provide qualified professional with adequate information to characterize the entire property that will be permitted for excavation.<br><br>2. Under the supervision of a qualified professional, measurement of seasonal high-water table elevation, groundwater flow direction, hydraulic gradient and water table elevation. | Excavation within 300' horizontal feet of water source may be permitted based on:<br>-No negative impact to quantity of an aquifer serving existing water sources;<br>-Minimum of three water monitoring tubes or well casings to determine flow direction, flow rate, and water elevation; and<br>-Quarterly measurements of groundwater elevation, flow direction, and flow rate for at least four quarters prior to application. Tubes or wells must be kept in place for duration of excavation in water table.<br>-Operations shall not breach aquifer-confining layer.<br>No extraction activities within 100 linear feet from waterbodies. | New code section.<br><br>In addition to 21.29.050 conditions, sets forth additional requirements and conditions primarily to protect water quantity.<br><br>Qualified professional must be able to characterize entire property permitted for excavation through sufficient monitoring wells and test pits.<br><br>Qualified professional must supervise measurement of seasonal high-water table elevation, groundwater flow direction, hydraulic gradient and water table elevation. Based upon available data, interpretations of data and knowledge of groundwater | |

| Code Section | ORD 2022-36 | Current Code | Highlighted Changes | Potential amendments Planning Director |
|---|---|---|---|---|
| | 3. A qualified professional's report determining the potential adverse effects to groundwater and surface water body elevation and quality, surrounding water users and adjacent properties. Determination based upon available data, interpretations of data and knowledge of groundwater processes.<br><br>4. Report must be submitted with CLUP application. Subsection lists what must be included in the report.<br><br>**B.** Must also include:<br><br>1. Description of proposed extent and depth of material extraction beneath seasonal high-water table.<br><br>2. Report 21.29.057(A)(4) report, monitoring plan | Additional setback from lakes, rivers, anadromous streams and riparian wetlands may be required.<br><br>-Permits may contain additional conditions addressing surface water diversion. | processes, qualified professional will report potential detrimental adverse effects to groundwater and surface water body elevation and quality, surrounding water users and adjacent properties. Must be submitted with application and also include extent and depth of extraction beneath seasonal high-water table, spill prevention/control/ countermeasures plan.<br><br>Conditions:<br>-Implementation of monitoring and spill prevention/control/ countermeasures plan;<br>-Monthly measurement of groundwater and retention of groundwater data for two years after | |

| Code Section | ORD 2022-36 | Current Code | Highlighted Changes | Potential amendments Planning Director |
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| | and spill prevention/control/ countermeasures plan.<br><br>**C.** Conditions<br>1. Implement monitoring plan<br>2. Implement spill prevention/control/ countermeasures plan<br><br>3. Monthly measurement (during active extraction) of groundwater flow direction, hydraulic gradient and groundwater table elevation<br><br>4. Retain water elevation monitoring data for two years after completion of reclamation activities<br><br>5. Annual report including water table elevation monitoring data from qualified professional<br><br>6. Operations must not breach or extract material from a confined | | completion of reclamation activities;<br>-Annual report from qualified professional;<br>-No breach or extraction from a confined aquifer or a confining layer beneath a perched aquifer; and<br>-Setbacks from existing drinking water sources. | |

| Code Section | ORD 2022-36 | Current Code | Highlighted Changes | Potential amendments Planning Director |
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| | aquifer or a confining layer beneath a perched aquifer. Subsection sets forth what must be done if there is a breach.<br><br>7. Setbacks:<br>-500' from nearest down-gradient drinking water source<br>-350' from nearest cross-gradient drinking water source<br>-200' from nearest up-gradient drinking water source<br>-Do not apply to drinking water sources constructed after permit issued | | | |
| **KPB 21.29.060 -Reclamation plan** | **A.** Reclamation with site plan required. 5 year reclamation plan must be submitted with permit renewal request.<br><br>**B.** Applicant may re-vegetate and reclaim all disturbed land upon exhausting the material site or time determined | **A.** Reclamation Plan required.<br><br>**B.** Applicant shall vegetate and reclaim all disturbed land upon exhausting the material site or time determined by plan to leave land in a stable condition. | "May" rather than "shall" revegetate.<br><br>Bonding required.<br><br>Plan survives permit termination and must list total acreage to be reclaimed. | |

| Code Section | ORD 2022-36 | Current Code | Highlighted Changes | Potential amendments Planning Director |
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| | by plan to leave land in a stable condition. 2:1 slope must be maintained. $750 per acre bond required unless state bond. Enforcement under KPB 21.50.<br><br>**C.** Measures listed must be considered as part of every reclamation plan, 6 reclamation measures including ponding and protection against public nuisance.<br><br>**D.** Plan must list total acreage to be reclaimed.<br><br>**E.** Close-out – reclamation survives permit expiration, termination or revocation. | Reclamation must occur for area exceeding 5 acres prior to 5 year renewal or as PC specifies.<br><br>**C.** Measures listed must be considered as part of every reclamation plan, 6 reclamation measures including ponding.<br><br>**D.** Plan must list total acreage to be reclaimed each year, a list of equipment and a time schedule for reclamation measures. | Protection against public nuisance. | |
| **KPB 21.29.065 -Effect of permit denial** | **A.** Applicant denied counter permit cannot reapply within same calendar year w/out new evidence or circumstances. | N/A | An applicant cannot immediately reapply for a permit after denial. | |

| Code Section | ORD 2022-36 | Current Code | Highlighted Changes | Potential amendments Planning Director |
|---|---|---|---|---|
| | **B.** Applicant denied CLUP permit cannot reapply within same calendar year w/out new evidence or circumstances.<br><br>**C.** Applicant bears burden of proof. | | | |
| **KPB 21.29.070 -Permit renewal, modification and revocation** | **A.** Renewal by application every 5 years.<br><br>**B.** Administrative approval if compliance with all conditions, no modification and no violation in prior 2 years.<br><br>**C.** Public hearing on renewal required when there is a modification, permit violation, or as determined by planning director. Permit in compliance with no violations must be approved for renewal but the commission can add additional conditions where appropriate. | **A.** Must request permit extension every 5 years, 30 days prior to expiration.<br><br>**B.** If no modification to operations or conditions proposed, a permit extension certificate may be issued by planning director.<br><br>**C.** Extension may be denied if: (1) not in compliance with reclamation requirements; (2)non-compliance with permit conditions; (3) permit violation in last 2 years and still in non-compliance. | Renewal application not request in writing.<br><br>Possibility for public hearing on renewal and additional discretional conditions on renewal. | |

| Code Section | ORD 2022-36 | Current Code | Highlighted Changes | Potential amendments Planning Director |
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| | **D.** Modifications processed per KPB 21.29.030 -.050<br><br>**E.** Renewal fee is same as original permit fee.<br><br>**F.** Failure to apply for renewal = permit expiration.<br><br>**G.** Permits revoked per KPB 21.50. | **D.** Modification processed per KPB 21.29.030-.050.<br><br>**E.** No fee for permit extensions approved by planning director. The fee for a permit modification processed under KPB 21.29.070(D) requires original permit fee.<br><br>**F.** Failure to apply for renewal = permit expiration.<br><br>**G.** Permits revoked per KPB 21.50. | | |
| **KPB 21.29.080 -Permit Close-out** | Requires permittee to request close-out of permit and verification of reclamation compliance.<br><br>Bonding released at close-out. | Current code section is titled "Permit Termination" and provides for a termination document and verification of site reclamation. | Terminology change from permit "termination" to "close-out". Explicit that reclamation requirement survives permit expiration or revocation & that bonds are released upon close-out. | |

| Code Section | ORD 2022-36 | Current Code | Highlighted Changes | Potential amendments Planning Director |
|---|---|---|---|---|
| **KPB 21.29.100 -Recordation** | Provides for recordation of permits, etc. issued under KPB 21.29. Owner/operator responsible for cost. | Similar recordation requirement. | Owner/operator responsible for recording costs. | |
| **KPB 21.29.110 -Violations** | Violations governed by KPB 21.50. | Same but also has subsection (B) which provides for bonding if owner/operator has 3 violations within a 3-year period. | Violations governed by KPB 21.50 remain unchanged.<br>No subsection B related to bonding requirement if there are 3 violations in 3 year period. | |
| **KPB 21.29.115 -Permit transfers** | Planning director approves or disapproves permit transfers. Permits do not run with the land. | N/A | New section of code. | |
| **KPB 21.29.120 -Prior-existing uses** | **A.** Determination – mirrors process under KPB 21.44 (LOZD) for nonconforming-use determination<br><br>**B.** Director provides notice of application and issues decision. Decision can be appealed to the Planning Commission.<br><br>**C.** Establishes 365-day period for abandonment. | **A.** Requires determination that use as a material site commenced or operated after May 21, 1986 and prior to May 21, 1996. Limited subdivision rights. PEU runs with land.<br><br>**B.** Must have applied to be registered as a PEU prior to January 1, 2001. | By 1/1/2026, PEUs required to come into compliance with:<br>-Reclamation requirements;<br>-Hours of operation; &<br>-Buffer area.<br><br>365 period of nonuse/ no operations = Abandonment | Modify 365 days of no use to: 5years=abandonment |

| Code Section | ORD 2022-36 | Current Code | Highlighted Changes | Potential amendments Planning Director |
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| | **D.** Prohibits increasing, intensifying or expanding or moving the use.<br><br>**E.** Establishes standards to guide decision-making process.<br><br>**F.** Requires PEU compliance with KPB 21.29 reclamation plan and hours of operation by January 1, 2026.<br><br>**G.** Requires PEU compliance with code requirements for extraction within water table under KPB 21.29.057, except the water source separation requirements do not apply. | **C.** Abandonment if no operation as a material site between 5/21/1996 and 5/21/2011. Owner may protest finding of abandonment and may appeal decision to the Planning Commission. | | F. ADD some flexibility to the acceptable reclamation plans for PEUs that can demonstrate hardship in achieving standards.<br><br>i.e.:<br>Topsoil requirements<br>*Sites that have not planned for this may have undue hardship.* |

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# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Members, Kenai Peninsula Borough Assembly

**FROM:** Brent Johnson, Assembly President BJ
Lane Chesley, Assembly Member (LC)

**DATE:** July 28, 2022

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

In 2021, the Borough administration brought the issue of land use conflicts related to earth material extraction and processing sites back before the Assembly and requested Assembly consideration and action to address the regulatory process related to conditional land use permits issued under KPB Chapter 21.29, Material sites.

After receiving public comment on Ordinance 2021-41, the Assembly ultimately tabled the ordinance and a related substitute ordinance. The Assembly formed a committee of the whole to review the permitting process with a fresh perspective.

This ordinance will repeal and re-enact KPB Chapter 21.29. This ordinance shifts the conditional land use permit (CLUP) process for earth materials extraction and processing away from a "one size fits all" approach and instead establish a multi-permit structure wherein activities related to materials processing and extraction within the water table require heightened protections for the public good but activities of lesser impact to surrounding properties do not require the same level of protections. This ordinance maintains important mandatory conditions found in current code that are necessary to protect the public health, safety, and general welfare of Borough residents. This ordinance also presents a permitting system that will provide for more flexibility to meet the needs of the particular application through discretionary conditions that may only apply when appropriate under the circumstances.

Your consideration of the ordinance is appreciated.

# Kenai Peninsula Borough
Legal Department

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly
Blair Martin, Planning Commission Chair
Members, Kenai Peninsula Borough Planning Commission

**FROM:** Robert Ruffner, Planning Director
Sean Kelley, Borough Attorney
A. Walker Steinhage, Deputy Borough Attorney

**COPY:** Charlie Pierce, Mayor

**DATE:** August 30, 2022

**SUBJECT:** Ordinance 2022-36: Sectional Analysis

The following provides a sectional analysis for Ordinance 02022-36, An Ordinance Amending KPB Chapter 21.25 and KPB Chapter 21.29 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permit Conditions ("Ordinance 02022-36").

The purpose of this Sectional Analysis is to provide an easy reference to compare present KPB code with Ordinance 02022-36. Ideally it will supplement and cement the presentation to the Committee of the Whole on August 23, 2022. For the quickest summation of the changes proposed in Ordinance 02022-06, simply refer to the final column, "Highlighted Changes".

Finally, many of the features in Ordinance 02022-36—especially dimensional or durational descriptions like the 365-day period for prior-existing use abandonment—are intended to act as "springboards" for Assembly legislative policy decisions.

**ORDINANCE 02022-36 SECTIONAL ANALYSIS**

| Code Section | O2022-36 | Current Code | Highlighted Changes |
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| **KPB 21.25.050** | 30-day staff review period of an application. | 21-day staff review period of an application. | Increase from 21 to 30 days. |
| **KPB 21.25.060 - Notice** | Notice published on KPB website; public bulletin; mailed to all owners/leaseholders within ½ mile radius of proposed site. | Requires notice published two times in newspaper, posted in the post office, copy of the notice sent by regular mail to all owners | Expressly does not apply to counter permits.<br><br>No longer requires newspaper publication but allows |

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| | | and/or leaseholders within one-half mile. | for publication on KPB website. |
| **KPB 21.29.005 - Intent and Purpose** | Establishes an intent and purpose section for KPB Chapter 21.29 with focus on public health, safety and general welfare, and to promote compatible, orderly development. | N/A | New code section. |
| **KPB 21.29.010 - Applicability** | **A.** Applies to all private and public lands, except as preempted by other law;<br><br>**B.** Does not apply within the incorporated cities;<br><br>**C.** Prohibits extraction within 300 feet of riparian wetlands and naturally-occurring open water bodies;<br><br>**D.** Operations must be conducted in accordance with current Alaska DEC Manual for extraction projects. | N/A | New code section to clarify applicability of chapter and fact that it does apply to both public and private lands outside of the incorporated cities unless otherwise exempt. |
| **KPB 21.29.015 -Material extraction exempt from obtaining a permit** | **A.** Exempts extraction disturbing less than one acre if:<br>-Not in floodplain;<br>-Does not enter water table; and<br>-Does not cross property boundaries.<br><br>No excavation within 32' of lot line.<br><br>**B.** Exempts dewatered bars within SBCFSA/Snow River. | Currently 21.29.010<br><br>**A.** Exempts extraction disturbing less than one acre if:<br>-Not in floodplain;<br>-Does not enter water table; and<br>-Does not cross property boundaries.<br><br>No excavation within 20 feet of ROW or 10 feet of lot line.<br><br>**B.** Exempts dewatered bars within SBCFSA/ | New code section.<br><br>No excavation within 32' of lot lines.<br><br>PEUs exempt but must provide reclamation plan & comply with buffer zone requirements by 2026. |

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| | **C.** Exempts PEUs but by 2026 must:<br>-Provide reclamation plan<br>-Comply with buffer zone requirements | Snow River.<br><br>**C.** PEUs exempt but floodplain permit required within mapped special flood hazard area. | |
| **KPB 21.29.020- Types of permits available** | **Counter permit**<br>-1 to 10 acres<br>-No processing<br>-No water table extraction<br>-Only 21.29.050 conditions apply.<br><br>**Earth Materials Extraction CLUP**<br>-Activity disturbing more than 10 acres<br>-No processing<br>-No water table extraction<br>-Only 21.29.050 conditions apply<br><br>**Earth Materials Processing CLUP**<br>-Required for all on-site processing, screening, or crushing<br>-21.29.050 and 21.29.055 conditions apply<br><br>**Earth Materials Extraction within Water Table CLUP**<br>-Required for all earth materials extraction within water table<br>-21.29.050 and 21.29.057 conditions apply | Counter permit and generic CLUP only.<br><br>CLUP application requires all mandatory conditions and covers all uses. | Counter permit and three types of CLUPs.<br><br>1 to 10 acres eligible for counter permit if no processing or water table extraction.<br><br>Three different CLUP categories: earth materials extraction (more than ten acres), earth materials processing, and earth materials extraction within water table.<br><br>Applicant may apply for one, two, or all three CLUP types. |
| **KPB 21.29.030- Application procedure** | Very similar to current procedure. Requires site map from professional surveyor and site plan | -Legal description<br>-Life span<br>-Buffer plan<br>-Reclamation plan | Breaks apart site map (professional surveyor) |

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| | from professional engineer | -Excavation depth<br>-Type of materials and equipment<br>-Any voluntary permit conditions<br>-Site plan | from site plan (professional engineer)<br><br>Application will be deemed incomplete without all items listed. (Not in current code.) |
| **KPB 21.29.040- Standards for sand, gravel or material sites** | Planning Director (counter permits) or Planning Commission (CLUPs) must find:<br><br>-Use is not inconsistent with applicable comp plan<br>-Use will not be harmful to public's health, safety and general welfare<br>-Provides sufficient setbacks, buffer zones, and other safeguards<br>-Reclamation plan | -Protects against lowering of water sources serving other properties and damage to other properties<br>-Minimizes off-site dust movement, noise disturbance, visual impacts & alternate post-mining land uses | All new standards/"may issue"<br><br>Focus on legitimate public purpose to protect against damage to public roads and adjacent properties as well as dust, noise and other impacts through setbacks, buffer zones, and street-level visual screening. |
| **KPB 21.29.045** | Applicants required to demonstrate compliance with state and federal law through written documentation from pertinent authorities:<br>-Mining license (AK Dep't of Revenue)<br>-Mining permit (ADNR)<br>-Permits and plans required by DEC<br>-Permits from USACE, if applicable<br>-Other applicable permits from other regulatory bodies authorized to regulate mining activities or earth materials extraction<br><br>Must comply with other regulations such as air | N/A | New code section.<br><br>Requires compliance with applicable state/federal agencies prior to approval of KPB permit.<br><br>All activity must comply with state/federal regulations governing air/water quality and hazardous materials.<br><br>Violations subject to enforcement under 21.50. |

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| | and water quality, and hazardous materials<br><br>Violations subject to enforcement under 21.50 | | |
| **KPB 21.29.050** | **NINE MANDATORY CONDITIONS**<br><br>**1. Buffers:** 32-foot buffer/may include natural vegetation for street-level visual and noise screening; 8-foot fence or berm with a 2:1 slope; 2:1 slope between buffer zone and floor on all inactive site walls. Material from slope may be removed if site plan provides removal timeframe and verification material will be replaced within 30 days.<br><br>**2. Water source separation:** No extraction below or within 4' of seasonal high-water table unless new section 21.29.057 conditions are met (Material Extraction within Water Table CLUP/see below); no off-site dewatering; no extraction within 100 feet of private well.<br><br>**3. Roads:** Operations impacting KPB roads must comply with 14.40 and subject to remedies in 14.40.<br><br>**4. Dust control:** Water or calcium chloride on haul | **Buffers:** 50' of undisturbed natural vegetation, or 6' berm with at least 2:1 slope, or 6' fence. Material from slope may be removed if site plan provides removal timeframe and verification material will be replaced within 30 days. Planning Commission may waive where topography or placement of natural barriers make screening not feasible or unnecessary<br><br>**Water source separation:** No material extraction within 100 horizontal feet of any water source existing prior to permit issuance. Counter permits require four-foot vertical separation from seasonal high water table. CLUPs require two-foot vertical separation from seasonal high water table. No dewatering unless PC grants exemption.<br><br>**Roads:** Operations impacting KPB roads must comply with KPB 14.40.175 and subject to remedies in 14.40. | Allows flexibility to meet demands of a specific application vs. "one size fits all" of current code.<br><br>**Buffers:**<br>-Street-level noise and visual screening (as opposed to generic "noise and visual screening/impacts"<br>-Decrease from 50' vegetation to 32'<br>-Increase from 6' to 8' minimum<br>-Decision-maker may waive if lot line is directly adjacent to another material site<br><br>**Water source separation:**<br>-Operations within water table governed by new section, 21.29.057 (see below) and require Material Extraction within Water Table CLUP<br>-On site water movement permitted if qualified independent civil engineer provides statement under seal that dewatering will not lower any known water systems and applicant posts bond for potential accrued |

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| | roads within boundaries of material site<br><br>**5. Hours of operation**: 6 am-9m but decision-maker may waive for specific seasonal project. Waiver valid for six consecutive months.<br><br>**6. Groundwater elevation:** Requires groundwater monitoring/one well 4' below proposed excavation per ten acres of excavated area.<br><br>**7. Setback:** 250' from LOZD/school/senior center/child care facility/etc.<br><br>**8. Boundaries:** Must stake buffers, ROWs, easements at visible intervals by professional land surveyor. Stakes must be placed prior to permit issuance.<br><br>**9. Processing:** Must comply with conditions in new section 21.29.055 (Earth Materials Processing CLUP/see below.)<br><br>**SIX DISCRETIONARY CONDITIONS**<br><br>**1. Setbacks/Buffer Areas:** Up to maximum of 100' if PC finds based on substantial evidence that increase is necessary for | **Dust control:** Water or calcium chloride on haul roads within boundaries of material site<br><br>**Hours of operation:** Rock crushing equipment shall not be operated between 10 pm and 6 am.<br><br>**Groundwater elevation:** See below.<br><br>**Setback:** Not addressed.<br><br>**Boundaries:** Staked at sequentially visible intervals where boundaries are within 300' of excavation perimeter. Verification and staking by professional land surveyor.<br><br>**Processing:** See below.<br><br>**No provision for discretionary conditions.** | damages in amount equivalent to replace each water well within 300-foot radius of site. Rebuttable presumption is each well is minimum of $10,000.<br><br>**Roads/Dust control:** Essentially the same.<br><br>**Hours of operation:** For all extraction activities, 6 am to 9 pm but decision-maker can waive or adjust for specific seasonal project for period of six consecutive months.<br><br>**Groundwater elevation:** Requires groundwater monitoring.<br><br>**Setback:** 250' from LOZD/school/senior center/child care facility/etc.<br><br>**Boundaries:** Stakes must be placed prior to permit issuance rather than time of application.<br><br>**Processing:** Requires compliance with new section 21.29.055 and Earth Materials Processing CLUP. |

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| | public health, welfare, and safety; potential for rolling berms instead.<br><br>**2. Road maintenance and repair:** Permittee may be required to maintain/repair damaged public roads; requires consultation with RSA Director.<br><br>**3. Ingress/egress:** Decision-maker may require driveway authorization.<br><br>**4. Dust suppression:** On public ROWs when natural precipitation inadequate to suppress dust generated by material site traffic.<br><br>**5. Surface water protection:** As specified in 21.29.030(A)(8)(a).<br><br>**6. Street-level screening:** Street-level visual screening, noise mitigation, & lighting restrictions as appropriate for the surrounding area and in accordance with 21.29.040 standards set to protect against attractive nuisance issues. | | Adds discretionary conditions:<br>-Additional setbacks or rolling berms<br>-Maintenance and repair of damaged public roads<br>-Driveway authorization<br>-Dust suppression on public ROWs<br>-Surface water protections as set forth in 21.29.030(A)(8)(a)<br>-Street-level screening as appropriate for surrounding area and to protect against attractive nuisances |
| **KPB 21.29.055-Earth materials processing** | In addition to mandatory conditions in 21.29.050(A).<br><br>**A.** Conditioning or processing equipment must be operated at | 300' setback for conditioning or processing equipment.<br><br>PC may waive or reduce in consideration of and in accordance with | New code section.<br><br>PC may waive or reduce in consideration of and in accordance with existing uses of the |

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| | least 300' from parcel boundaries. PC may waive or reduce distance requirement in consideration of and in accordance with existing uses of properties in the vicinity.<br><br>**B.** Hours of operation for processing equipment between 8am and 7pm or as PC determines.<br><br>PC may also grant exceptions (not to exceed 120 days) for:<br>-Emergencies<br>-Good cause finding that increase serves public purpose and is not harmful to public health, safety, and general welfare<br><br>Applicant may request waiver (not to exceed six consecutive months) for specific seasonal project. PC must also find waiver is not harmful to the public health, safety and general welfare. | existing uses of adjacent property at the time. | "properties in the vicinity". Present code is "adjacent property".<br><br>Processing equipment may only be operated between 8am and 7pm, may be increased for emergencies, to serve a public purpose or for specific, seasonal project. |
| **KPB 21.29.057- Material extraction in water table** | In addition to mandatory conditions in 21.29.050(A).<br><br>Dewatering prohibited (21.29.050(A)(2)(b)).<br><br>**A.** Applicant must meet the following requirements prior to applying: | Excavation within 300' horizontal feet of water source may be permitted based on:<br>-No negative impact to quantity of an aquifer serving existing water sources;<br>-Minimum of three water monitoring tubes or well casings to determine flow direction, flow rate, | New code section.<br><br>In addition to 21.29.050 conditions, sets forth additional requirements and conditions primarily to protect water quantity.<br><br>Qualified professional must be able to characterize entire |

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| | 1. Installation of sufficient monitoring wells and test pits to provide qualified professional with adequate information to characterize the entire property that will be permitted for excavation.<br><br>2. Under the supervision of a qualified professional, measurement of seasonal high-water table elevation, groundwater flow direction, hydraulic gradient and water table elevation.<br><br>3. A qualified professional's report determining the potential adverse effects to groundwater and surface water body elevation and quality, surrounding water users and adjacent properties. Determination based upon available data, interpretations of data and knowledge of groundwater processes.<br><br>4. Report must be submitted with CLUP application. Subsection lists what must be included in the report.<br><br>**B.** Must also include:<br><br>1. Description of proposed extent and depth of material extraction beneath | and water elevation; and<br>-Quarterly measurements of groundwater elevation, flow direction, and flow rate for at least four quarters prior to application. Tubes or wells must be kept in place for duration of excavation in water table.<br>-Operations shall not breach aquifer-confining layer.<br>No extraction activities within 100 linear feet from waterbodies.<br><br>Additional setback from lakes, rivers, anadromous streams and riparian wetlands may be required.<br><br>-Permits may contain additional conditions addressing surface water diversion. | property permitted for excavation through sufficient monitoring wells and test pits.<br><br>Qualified professional must supervise measurement of seasonal high-water table elevation, groundwater flow direction, hydraulic gradient and water table elevation. Based upon available data, interpretations of data and knowledge of groundwater processes, qualified professional will report potential detrimental adverse effects to groundwater and surface water body elevation and quality, surrounding water users and adjacent properties. Must be submitted with application and also include extent and depth of extraction beneath seasonal high-water table, spill prevention/control/ countermeasures plan.<br><br>Conditions:<br>-Implementation of monitoring and spill prevention/control/ countermeasures plan; |

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| | seasonal high-water table.<br><br>2. Report 21.29.057(A)(4) report, monitoring plan and spill prevention/control/ countermeasures plan.<br><br>**C.** Conditions<br><br>1. Implement monitoring plan<br><br>2. Implement spill prevention/control/ countermeasures plan<br><br>3. Monthly measurement (during active extraction) of groundwater flow direction, hydraulic gradient and groundwater table elevation<br><br>4. Retain water elevation monitoring data for two years after completion of reclamation activities<br><br>5. Annual report including water table elevation monitoring data from qualified professional<br><br>6. Operations must not breach or extract material from a confined aquifer or a confining layer beneath a perched aquifer. Subsection sets forth what must be done if there is a breach.<br><br>7. Setbacks: | | -Monthly measurement of groundwater and retention of groundwater data for two years after completion of reclamation activities;<br>-Annual report from qualified professional;<br>-No breach or extraction from a confined aquifer or a confining layer beneath a perched aquifer; and<br>-Setbacks from existing drinking water sources. |

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| | -500' from nearest down-gradient drinking water source<br>-350' from nearest cross-gradient drinking water source<br>-200' from nearest up-gradient drinking water source<br>-Do not apply to drinking water sources constructed after permit issued | | |
| **KPB 21.29.060 -Reclamation plan** | **A.** Reclamation with site plan required. 5-year reclamation plan must be submitted with permit renewal request.<br><br>**B.** Applicant may re-vegetate and reclaim all disturbed land upon exhausting the material site or time determined by plan to leave land in a stable condition. 2:1 slope must be maintained. $750 per acre bond required unless state bond. Enforcement under KPB 21.50.<br><br>**C.** Measures listed must be considered as part of every reclamation plan, 6 reclamation measures including ponding and protection against public nuisance.<br><br>**D.** Plan must list total acreage to be reclaimed. | **A.** Reclamation Plan required.<br><br>**B.** Applicant shall vegetate and reclaim all disturbed land upon exhausting the material site or time determined by plan to leave land in a stable condition. Reclamation must occur for area exceeding 5 acres prior to 5 year renewal or as PC specifies.<br><br>**C.** Measures listed must be considered as part of every reclamation plan, 6 reclamation measures including ponding.<br><br>**D.** Plan must list total acreage to be reclaimed each year, a list of equipment and a time schedule for reclamation measures. | "May" rather than "shall" revegetate.<br><br>Bonding required.<br><br>Plan survives permit termination and must list total acreage to be reclaimed.<br><br>Protection against public nuisance. |

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| | **E.** Close-out – reclamation survives permit expiration, termination or revocation. | | |
| **KPB 21.29.065 -Effect of permit denial** | **A.** Applicant denied counter permit cannot reapply within same calendar year w/out new evidence or circumstances.<br><br>**B.** Applicant denied CLUP permit cannot reapply within same calendar year w/out new evidence or circumstances.<br><br>**C.** Applicant bears burden of proof. | N/A | An applicant cannot immediately reapply for a permit after denial. |
| **KPB 21.29.070 -Permit renewal, modification and revocation** | **A.** Renewal by application every 5 years.<br><br>**B.** Administrative approval if compliance with all conditions, no modification and no violation in prior 2 years.<br><br>**C.** Public hearing on renewal required when there is a modification, permit violation, or as determined by planning director. Permit in compliance with no violations must be approved for renewal but the commission can add additional conditions where appropriate. | **A.** Must request permit extension every 5 years, 30 days prior to expiration.<br><br>**B.** If no modification to operations or conditions proposed, a permit extension certificate may be issued by planning director.<br><br>**C.** Extension may be denied if: (1) not in compliance with reclamation requirements; (2)non-compliance with permit conditions; (3) permit violation in last 2 years and still in non-compliance.<br><br>**D.** Modification processed per | Renewal application, not request in writing.<br><br>Possibility for public hearing on renewal and additional discretional conditions on renewal. |

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| | **D.** Modifications processed per KPB 21.29.030 -.050<br><br>**E.** Renewal fee is same as original permit fee.<br><br>**F.** Failure to apply for renewal = permit expiration.<br><br>**G.** Permits revoked per KPB 21.50. | KPB 21.29.030-.050.<br><br>**E.** No fee for permit extensions approved by planning director. The fee for a permit modification processed under KPB 21.29.070(D) requires original permit fee.<br><br>**F.** Failure to apply for renewal = permit expiration.<br><br>**G.** Permits revoked per KPB 21.50. | |
| **KPB 21.29.080 -Permit Close-out** | Requires permittee to request close-out of permit and verification of reclamation compliance.<br><br>Bonding released at close-out. | Current code section is titled "Permit Termination" and provides for a termination document and verification of site reclamation. | Terminology change from permit "termination" to "close-out".<br>Explicit that reclamation requirement survives permit expiration or revocation & that bonds are released upon close-out. |
| **KPB 21.29.100 -Recordation** | Provides for recordation of permits, etc. issued under KPB 21.29. Owner/operator responsible for cost. | Similar recordation requirement. | Owner/operator responsible for recording costs. |
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| **KPB 21.29.120 -Prior-existing uses** | **A.** Determination – mirrors process under KPB 21.44 (LOZD) for nonconforming-use determination<br><br>**B.** Director provides notice of application and issues decision. Decision can be appealed to the Planning Commission.<br><br>**C.** Establishes 365-day period for abandonment.<br><br>**D.** Prohibits increasing, intensifying, expanding or moving the use.<br><br>**E.** Establishes standards to guide decision-making process.<br><br>**F.** Requires PEU compliance with KPB 21.29 reclamation plan and hours of operation by January 1, 2026.<br><br>**G.** Requires PEU compliance with code requirements for extraction within water table under KPB 21.29.057, except the water source separation requirements do not apply. | **A.** Requires determination that use as a material site commenced or operated after May 21, 1986 and prior to May 21, 1996. Limited subdivision rights. PEU runs with land.<br><br>**B.** Must have applied to be registered as a PEU prior to January 1, 2001.<br><br>**C.** Abandonment if no operation as a material site between 5/21/1996 and 5/21/2011. Owner may protest finding of abandonment and may appeal decision to the Planning Commission. | By 1/1/2026, PEUs required to come into compliance with:<br>-Reclamation requirements;<br>-Hours of operation; &<br>-Buffer area.<br><br>365 period of nonuse/ no operations = Abandonment |

# O2022-36
# Material site permitting process overview

# Section 1
# KPB 21.25.050

- Increased review time of application for permit from 21 days to 30 days.

# Section 2
# KPB 21.25.060

- New notice section applicable to CLUPs
- Tracks Title 20 notice and maintains ½ mile notice radius.
- Provides for notice via borough website

# Section 3
# New Chapter KPB 21.29, Material Site Permits

- Establishes a multi-permit stratification system intended to increase decision-making flexibility while protecting against uses with highest impacts on public health, safety, and general welfare.
- Four permit types
  - Counter Permit (CP): anything from over 1 acre to 10 acres, no processing, no extraction in water table.
  - 3 Conditional Land Use Permit (CLUP) types:
    - Earth Materials Extraction CLUP: extraction activity disturbs more than 10 acres, no processing, no extraction in water table.
    - Earth Materials Processing CLUP: required for all on-site processing, screening, or crushing.
    - Earth Materials Extraction within Water Table CLUP: provides for heightened protections for uses within water table.

# KPB Chapter 21.29
# (as proposed in O2022-36)

- KPB 21.29.005 – Intent and Purpose
- KPB 21.29.010 – Applicability
- KPB 21.29.015 – Material extraction exempt
- KPB 21.29.020 – Types of permits available
- KPB 21.29.030 – Application procedure
- KPB 21.29.040 – Standards for sand, gravel or material sites
- KPB 21.29.045 – Required compliance with State/Federal laws
- KPB 21.29.050 – Permit conditions applicable to all permits
- KPB 21.29.055 – Earth materials processing
- KPB 21.29.057 – Material extraction in water table
- KPB 21.29.060 – Reclamation plan
- KPB 21.29.065 – Effect of permit denial
- KPB 21.29.070 – Permit renewal, modification, revocation
- KPB 21.29.080 – Permit close-out
- KPB 21.29.100 – Recordation
- KPB 21.29.110 – Violations
- KPB 21.29.115 – Permit transfers
- KPB 21.29.120 – Prior existing uses
- KPB 21.29.130 – Definitions

# Section 3
# KPB 21.29.005 – Intent and Purpose

- Sets forth intent and purpose for chapter in borough code regulating material sites.
- General purpose:
  - Promotes the public health, safety, and general welfare of KPB residents and visitors.
  - Promotes compatible, orderly development.

# Section 3
# KPB 21.29.010 – Applicability

- Chapter applies to all private and public lands in the borough, unless otherwise exempt by law.
- Does not apply within the incorporated cities.
  - Zoning powers have been delegated by the borough to all incorporated cities within the borough
- Prohibits earth materials extraction within 300 feet of riparian wetlands or naturally-occurring open water bodies.
- References State of Alaska, DEC Best Management Practices.

# Section 3
# KPB 21.29.015 – Material extraction exempt

- Exempts extraction disturbing less than one acre under circumstances set out
- Exempts dewatered bars within SBCFSA
- PEUs exempt BUT
  - Requires that by 2026, a legally established PEU:
    - 1. Provide a reclamation plan per KPB 21.29.060
    - 2. come into compliance with buffer zone requirements under KPB 21.29.050(A)(1)
    - Note: KPB 21.29.120 also requires PEUs to come into compliance with hours of operation requirements – this Section could be amended to include that as well.

# Section 3
# KPB 21.29.020 – Types of permits available.

- Current code: counter permit and CLUP. CLUP application requires all mandatory conditions and covers all uses.
- Proposed KPB 21.29.020 = 4 permit types
  - Counter Permit (CP): anything from over 1 acre to 10 acres, no processing, no extraction in water table. Only the conditions set forth in KPB 21.29.050 apply.
  - 3 Conditional Land Use Permit (CLUP) types:
    - Earth Materials Extraction CLUP: extraction activity disturbs more than 10 acres, no processing, no extraction in water table, only the conditions set forth in KPB 21.29.050 apply.
    - Earth Materials Processing CLUP: required for all on-site processing, screening, or crushing. Conditions set forth in KPB 21.29.050 + conditions set forth in KPB 21.29.055 apply.
    - Earth Materials Extraction within Water Table CLUP: Required for any earth materials extraction within water table. Conditions set forth in KPB 21.29.050 + conditions set forth in KPB 21.29.057 apply.
  - A CLUP applicant may request 1, 2 or all three CLUP types at the time of application.

# Section 3
# KPB 21.29.030 – Application procedure

- Very similar to current code application procedure
- Breaks apart a site map (professional surveyor) from site plan (professional engineer)

# Section 3
# KPB 21.29.040 – Standards for sand, gravel or material sites

- All new standards.
- Regulations serve legitimate public purpose to protect against damage of public roads, physical damage to adjacent properties, dust, noise and other impacts through setbacks, buffer zones, and street-level visual screening.
- In granting a permit the Planning Director or Planning Commission must find:
  - Use is not inconsistent with applicable comp plan.
  - Use will not be harmful to public's health, safety, and general welfare.
  - Sufficient setbacks, buffer zones, and other safeguards are provided.
  - Use provides for a reclamation plan.

# Section 3
# KPB 21.29.045 – Required compliance with State and Federal laws

- Requires evidence of compliance with applicable state/federal agency prior to approval of KPB permit.
- Requires all activity conducted in manner that complies with state/federal protections including but not limited to air quality, water quality, hazardous materials.

# Section 3
# KPB 21.29.050 – Permit conditions applicable to all permits

- In lieu of current exhaustive conditions in borough code that apply as a "one size fits all" this section establishes 9 mandatory conditions and provides 6 potentially applicable discretionary conditions.
- Allows for flexibility to meet the demands of a specific application.
- Is a move away from the "one size fits all" system.

# Section 3
# KPB 21.29.050 – Permit conditions …Continued

- 9 mandatory conditions:
  1. Buffer Zone: 32 feet, 8 foot berm or fence, 2:1 slope, buffer zone can only be waived when site is next to adjacent pit.
  2. Water source separation: extraction within water table is prohibited unless requirements of KPB 21.29.057 are met; dewatering off site is prohibited; material extraction within 100 feet of any private well is prohibited.
  3. Roads: Operations that impact KPB roads must be in accordance with KPB Chapter 14.40.
  4. Dust control: Dust suppression required within material site haul roads.
  5. Hours of operation: Applicable to all operations, 6am to 9pm, but can be adjusted by decision-maker and/or waived for seasonal project.
  6. Groundwater elevation: Requires monitoring of groundwater.
  7. Setback: 250 ft from LOZD, school, senior center, child care facility, etc.
  8. Permit boundaries: Must stake buffers, ROWs.
  9. Processing: Requires compliance with KPB 21.29.050 conditions and KPB 21.29.055.

# Section 3
# KPB 21.29.050 – Permit conditions …Continued

- 6 discretionary conditions:
  1. Setbacks/Buffer Areas: Up to a maximum of 100 feet based on circumstances, potential for "rolling berms".
  2. Road maintenance and repair: Permittee may be required to maintain/repair damaged roads.
  3. Ingress/Egress: As determined by decision-makers, driveway authorization required.
  4. Dust Suppression: May be required on public ROWs.
  5. Surface water protection: Use of surface water protection measures specified in KPB 21.29.030(A)(8)(a).
  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 to protect against attractive nuisance issues.

# Section 3
# KPB 21.29.055 – Earth materials processing

- In addition to KPB 21.29.050 conditions, this new Section sets forth 2 additional conditions:
  1. Setback – must process 300 feet from parcel boundaries, or lesser distance as appropriate.
  2. Hours of operation: 8am to 7pm, or as determined by the PC.
     - Provides for exceptions for emergency or good-cause findings.
     - Seasonal, project-based waiver available.

# Section 3
# KPB 21.29.057 – Material extraction in water table

- In addition to KPB 21.29.050 conditions sets forth additional requirements & conditions aimed primarily at protecting water quantity:
  - 21.29.057(A): establishes 6 additional application requirements when applicant requests to extract within the water table.
    - Requires groundwater study and report from a professional to characterize and monitor the condition of groundwater at the permitted site. Elevations of groundwater will be tied to real-world elevation datum. Focuses on water quantity concern over water quality concerns
  - 21.29.057(C): establishes 7 additional conditions applicable when applicant requests to extract within the water table.
    - Setback: up to 500 feet setback required related to proximity to drinking water source.

# Section 3
# KPB 21.29.060 – Reclamation plan

- Similar to current code. Requires reclamation plan. Must be submitted with renewal application as well.
- Requires reclamation of site to leave land in stable condition with 2:1 slopes and presumably revegetation.
- Requires $750 per acre bond.
- Reclamation plan and bond survives close-out, expiration, termination or revocation of permit.

# Section 3
# KPB 21.29.065 - .115

- KPB 21.29.065 – Effect of permit denial: no reapplication within 1 year without new evidence.
- KPB 21.29.070 – Permit renewal, modification, revocation: renewal required every 5 years, administrative if no changes, violations or complaints; public hearing otherwise.
- KPB 21.29.080 – Permit close-out: adds formal close-out process.
- KPB 21.29.100 – Recordation
- KPB 21.29.110 – Violations
- KPB 21.29.115 – Permit transfers: permits do not run with land, transfers must be approved.

# Section 3
# KPB 21.29.120 – Prior existing uses

- Recognizes "grandfather" rights, also known as non-conforming uses or prior existing uses (PEU).
- Must apply for PEU status. Determination by Planning Director appealable to Planning Commission (similar to LOZD nonconforming use process).
- Abandonment after 365 days of non-use; expansion prohibited.
- MAJOR CHANGE - BY JANUARY 1, 2026 – PEU must:
  - Comply with KPB 21.29.060 (reclamation plan)
  - Comply with KPB 21.29.057 (extraction within water table)
  - Comply with applicable hours of operation requirements

# Issues that O2022-36 addresses to move the conversation forward

- One Size Fits All = rigid, not flexible to meet needs of application
  - Exhaustive list of mandatory conditions, no discretionary conditions, no room for adjustment
- Clarifies standards, and private vs. public viewshed concerns
- Provides for heightened requirements, conditions and protective measures for uses that could have highest detrimental impact on public health, safety, and general welfare.
- Address PEU issues, provides for formal process to establish use and status; requires eventual compliance with reclamation plan, hours of operation, and extraction within water table.

**21.29.010. Applicability.**

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

**21.29.020. Types of permits available.**

B. Conditional land use permit. A conditional land use permit (CLUP) is required for the following types of earth material extraction or uses:

3. Earth Materials Extraction Within Water Table CLUP. An Earth Materials Extraction within Water Table CLUP is required for material extraction and operations of any size within four feet of the seasonal high-water table. The conditions set forth in KPB 21.29.050 plus the requirements and conditions set forth in KPB 21.29.057 for material extraction within four feet of the seasonal high-water table are applicable to this type of CLUP**.**

May want to define "water table" and how this level fluctuates. May also want to differentiate it from a "potentiometric water level", or the water level expressed by a "confined aquifer".

**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:

8. A site plan, prepared by a qualified independent civil engineer licensed and active in the State of Alaska to include the following:

**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:

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;

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:

2. *Water quality*. EPA or ADEC regulations controlling spills, spill reporting, storage and disposal of oil, anti-freeze and hydrocarbons.

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.

**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:

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

Does this include PWS sources??

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.

Re "…any known water systems…" - Does this include PWS sources?? If so, clarify.

6. *Groundwater elevation.* All material sites must maintain one monitoring well four feet below the proposed excavation per ten acres of excavated area.

Should this be clarified to mean one monitoring well *in the same aquifer*?

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.

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.*

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;

5. *Surface water protection.* Use of surface water protection measures as specified in KPB 21.29.030(A)(8)(a).

**21.29.057. Material extraction below or within four feet of the seasonal high-water table.**
In accordance with KPB 21.29.020(B)(3), a CLUP is required for material extraction of material below or within four feet of the seasonal high water table. Prior to a permit being issued the planning commission must impose the mandatory conditions set forth in KPB 21.29.050(A) and discretionary conditions as deemed appropriate. In accordance with KPB 21.29.050(A)(2)(b) dewatering is prohibited. The following additional application requirements and permit conditions specific to a Material Extraction within the Water Table CLUP apply:

A. Prior to application for a water table extraction permit, the following requirements must be met:

1. Installation of a sufficient number of monitoring wells and test pits, as recommended by a qualified professional, to adequately determine groundwater flow direction, hydraulic gradient, water table and seasonal high-water table elevation Monitoring well and test pit locations must provide the qualified professional with adequate information to characterize the entire property that will be permitted for material extraction. Well casing elevations must be surveyed to a vertical accuracy of 0.01 feet by a registered land surveyor and tied to NAVD 1988.

   Seems to conflict with 21.29.050(A)(6) that says "…one monitoring well…per ten acres…". Perhaps add "at least" to 21.29.050(A)(6) and reference this section for more details.

2. Determination of seasonal high-water table elevation, groundwater flow direction, hydraulic gradient, and water table elevation for the site must be measured under the supervision of a qualified professional.

3. A written report must be completed by a qualified professional that makes a determination about the potential adverse effects to groundwater and surface water body elevation, groundwater and surface water quality, surrounding water users and adjacent properties. The determination must be based on available data, interpretations of the data and knowledge of groundwater processes.

4. The report must be submitted with the CLUP application and must:

   a. Identify existing public water system sources (i.e., wells, springs, surface water intakes), as identified by the state, that are located within one-half mile of the boundary of the property on which the activity will take place;

      - Recommend changing to "Identify where the property boundary on which the activity will take place intersects a public water system (PWS) Drinking Water Protection Area, as identified by the state."
      - See interactive public web map, titled "Alaska DEC Drinking Water Protection Areas", at https://www.arcgis.com/home/item.html?id=13ed2116e4094f9994775af9a62a1e85.
      - The link could be part of a supplemental fact sheet?

   b. Identify actual or presumed private drinking water wells located within one-half mile of the boundary of the property on which the activity will take place and include a copy of the available well logs;

   c. Identify existing regulated potential sources of contamination within at least one-half mile of the boundary of the property on which the activity will take place;

d. Contain maps at appropriate scales presenting the results of the well search, the setbacks required by subsection (C)(7) of this section, and illustrating wetlands and water bodies; at least one map must show identified potential sources of contamination;

e. Include the water table elevation monitoring data, monitoring well logs and records of any test pits, and a discussion of the seasonal high-water table determination; and

f. Evaluate subsurface hydrologic conditions and identify potential adverse effects that may occur as a result of material extraction. The evaluation of the hydrologic conditions must include identifying confining layers.

B. In addition to the application requirements for a CLUP for earth materials extraction, the application for a water table extraction permit must include:

1. A description of the proposed extent and depth of material extraction beneath the seasonal high-water table.

2. A written report that meets the requirements of subsection (A)(4) of this section, a monitoring plan, and a spill prevention, control, and countermeasures plan as required by this section.

C. *Conditions.* In addition to the requirements of KPB 21.29.050, operating conditions for extraction within or below four feet of the seasonal high-water table are as follows:

1. Implement a monitoring plan that meets the requirements of this chapter. If existing wells will provide sufficient data, no additional wells are required.

2. Implement the spill prevention, control and countermeasures plan in accordance with Environmental Protection Agency's requirements for above ground storage tank operations regardless of the quantity of petroleum products on site.

3. Groundwater flow direction, hydraulic gradient, and groundwater table elevation for the subject parcel must be measured at least monthly during active extraction. Monitoring wells must be maintained or replaced with equivalent monitoring wells.

4. Water elevation monitoring data must be retained for two years following completion of reclamation activities and must be provided to the planning director upon request.

5. A qualified professional must annually submit a report to the department that includes water table elevation monitoring data.

6. Operations must not breach or extract material from a confined aquifer or a confining layer beneath a perched aquifer.

Define "confined aquifer", "confining layer", and "perched aquifer".

a. If evidence suggests a confined aquifer or confining layer has been breached, or if groundwater or surface water elevation changes rapidly or beyond natural variation, the director must be notified within 24 hours.

i. A hydrologic assessment, conducted by a qualified professional, to determine the affected area and the nature and degree of effects and a description of potential repair or mitigation options must be submitted to the director within 14 calendar days of notification; and

ii. Repair or mitigation sufficient to address identified effects must be initiated as soon as practical, not to exceed 45 calendar days from the date the assessment is received by the director.

7. Operations must maintain the following setbacks:

a. 500 feet from the nearest down-gradient drinking water source;

b. 350 feet from the nearest cross-gradient drinking water source;

c. 200 feet from the nearest up-gradient drinking water source; and

d. Minimum separation distances do not apply to drinking water sources constructed after a permit to extract material below the water table has been issued.

**21.29.060. – Reclamation plan.**

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

Is this a good place to include requirements for decommissioning any monitoring wells? See Section 9.2.12 Well Decommissioning of the DEC Gravel Extraction BMP Manual, https://dec.alaska.gov/water/wastewater/stormwater/gravel/.

# TAKINGS OVERVIEW

## INTRODUCTION

# TAKINGS OVERVIEW

## BACKGROUND PRINCIPLES

# Federal Constitution's Fifth Amendment

"Takings Clause" or "Just Compensation Clause"

- Gov't cannot take "private property…for public use, without just compensation."
  - Gov't's power to take property (or lesser interests in property) = "eminent domain"
    - Exercise of eminent domain also called "condemnation"
  - "Just compensation" has been interpreted to mean FMV for property taken
- **Fundamental principle: Avoid unfairly burdening some individuals with expense of accomplishing public purposes**

# Alaska Constitution's Article 1, Section 18

- "Private property shall not be taken or damaged for public use without just compensation."

# Background Principles

(cont'd)

- A taking can only occur where a private property interest exists.
- People own property subject to government's reserved power to reasonably regulate
- Nonetheless, a regulation of property still can go too far and become an indirect taking
  - Excessive government regulation of property can amount to compensable taking (i.e. "**Regulatory taking**" / "inverse condemnation")

# TAKINGS

## DOES A REGULATION AMOUNT TO AN ACT OF EMINENT DOMAIN REQUIRING COMPENSATION?

# Significant "Takings" Cases

- ***Pennsylvania v. Mahon* (1922):** Excessive gov't regulation could amount to a compensable taking.
- ***Penn Central Transportation v. New York City* (1978):** Delineated factors determining when gov't regulation evolve into a taking: (1) the regulations economic impact on the property, (2) the extent to which the regulation has interfered with distinct investment-backed expectations and (3) the character of the government's action. ("Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law." … "where State "reasonably conclude[s] that 'the health, safety, morals, or general welfare' would be promoted by prohibiting particular contemplated uses of land," compensation need not accompany prohibition.")
- ***Nollan v. California Coastal Commission* (1987):** an excessive exaction amounts to taking if there is no nexus between the condition and the purpose of the restriction/exaction. ("Our cases have not elaborated on the standards for determining what constitutes a 'legitimate state interest[,]' [but] [t]hey have made clear … that a broad range of governmental purposes and regulations satisfy these requirements")
- ***Lucas v. South Carolina Coastal Council* (1992):** Total deprivation of productive or economically beneficial use of land requires compensation. ("regulations that leave the owner of land without economically beneficial or productive options for its use—typically, as here, by requiring land to be left substantially in its natural state—carry with them a heightened risk that private property is being pressed into some form of public service under the guise of mitigating serious public harm")
- ***Dolan v. City of Tigard* (1994):** excessive exaction (green space dedication and pedestrian plan required for permit approval) gov't may not condition a permit on certain requirements unless those requirements have a "rough proportionality" to the proposed development's impacts.

# Types of "Takings"

- A Plaintiff seeking to challenge a government regulation as an uncompensated taking of private property must allege one of the following:

- 1) A "Physical" taking
- 2) A "*Lucas*-type" total regulatory taking
- 3) A "*Penn Central* taking"
- 4) A land-use exaction violating Nollan and Dolan "*per se* physical taking"

# Excessive regulation = Compensatory Taking

- Regulation requires property owner to submit to **physical invasion of land/permanent physical occupation** of real/personal property
  - Right to exclude others is fundamental to private property ownership
- (Case is *Loretto*)

- Regulation deprives property owner of **all economically beneficial/productive** use of the land
- Even if it is, still may be justified by background principles of property law/nuisance law
- (Case is *Lucas*)

# *Nollan* & *Dolan's* Unique Circumstances: Exactions

- "**Exaction**" = conditioning approval of development on dedication of property to public use, and they also can include conditioning development approval, e.g., permit subdivision plat, etc., upon developer making some financial commitment, such as requiring construction of public street, this is known as a "monetary exaction".
- The term "**exaction**" encompasses both requirements that land be dedicated for street rights-of-way, parks, or utility easements and requirements that developers pay "impact" or "facility" fees reflecting their respective prorated shares of the cost of providing new roads, utility systems, parks, and similar facilities serving the entire area.

# *Nollan*

- Gov't conditioned development request on condition the owner give the gov't unrelated property interest
- U.S. Supreme Court:
  - Exaction is unconstitutional if it doesn't somehow mitigate public harms that would justify outright denial of permission
    - *Dolan* calls this the "nexus" requirement

# *Dolan*

- Exaction required property owner to dedicate land to the public for a bike and pedestrian path in order to obtain permission to expand owner's store
- Explained *Nollan* as an application of "unconstitutional conditions doctrine":
  - Gov't can't require property owner to surrender constitutional right in exchange for discretionary public benefit
- U.S. Supreme Court said an exaction must:
  1. Mitigate harms of the proposed development (the "nexus" requirement from *Nollan*); **and**
  2. Condition must also be roughly proportional to public harms threatened by proposed development.

## *Otherwise, there's no definite line.*

Difficulty is determining when a regulation is "excessive", requiring compensation

- Requires complex consideration of various factors
- "Ad hoc" / case-by-case determination
- But, the **greater the negative economic impact of the regulation, the more likely courts will consider it a taking**

# How will courts analyze a regulation that's not so clearly defined?

- *Penn Central's* balancing test:
  - **The character of the governmental action involved in the regulation**;
    - Remember, if the government's action is a physical action, rather than a "regulatory invasion", then the action is almost certainly a taking.
  - **The extent to which the regulation has interfered with the owner's reasonable investment-backed expectations for the parcel as a whole**; and
  - **The regulation's economic impact on the affected property owner**.

# A FINAL CONSIDERATION: THE "NOXIOUS USE" TEST

- If a regulation adopted under the police power to protect the public health, safety or welfare, courts have said it is not a taking, even if the taking reduces the value of the property.

# TAKINGS OVERVIEW

## CONCLUSION/QUESTIONS

KPAC
KENAI PENINSULA
AGGREGATE AND CONTRACTORS
ASSOCIATON

To whom it may concern:

The Kenai Peninsula Aggregate and Contractors Association does not support ordinance 2022-36. We feel that it is flawed in many ways, and in some respects, impossible to follow.

Below is a detailed list of our grievances with this document and reasons why. This includes, but is not limited to our concerns at this time. Our members are still digesting all applied situations applicable.

21.29.010 (c) This regulation gives us no access to any waterbody. It has been common in sites and mining to access non fish bearing streams and creeks within the state and even sometimes divert them for access to a commodity such as gravel or precious metals.

21.29.015 (a) This regulation went from 10ft to 32ft. 32ft buffer on a parcel less than 1 acre does not leave enough land to produce much at all. It would be extremely hard to operate in that space. Renders the exception almost useless.

(c) This regulation imposes current reclamation plans and buffers to PEU sites. While some consideration may be achieved on reclamation plans, the buffers of 32ft are likely impossible to achieve and considerably over-reaching. These PEU sites have been active or existing for sometimes longer than the KPB itself and have buffers less than 32ft. The material needed to comply may not be available and the work and cost associated to place 32ft of earth is enormous. Also, it is unbecoming of the KPB to change the deal struck years ago with the site operator or their successors.

21.29.020 (a) This regulation enlarged total acres from 2.5 to 10 acres, raised the floor 2 more feet, yet prohibits processing, screening, and crushing. This renders the permit useless as by definition, processing is what we do. 95% of our members or site operators screen material. Most have a small plant that makes very little dust or noise. Almost no complaints have been filed from this activity. Most small operations produce less than 750cu yds of material per day. The loss of 2 ft of material from the water table is unsubstantiated, and unnecessary. Not only does it create a loss of opportunity to the operator, but it takes a valuable commodity out of circulation and decreases the life of a site. This will only cause more contention with the public as more CLUP's will need to be applied for more frequently and in more areas. We feel this is going the wrong direction and we should be allowed to dig in the water table a minimum distance with standard conditions to extend the life of sites. Only if a major dig beyond the minimum distance, would a water table permit be needed.

(b) (1) Same grievance and reasoning as above.

(b) (2) Processing CLUP. This should not apply to small operations.

21.29.030 (a)(7)(e) This regulation sort of sheds the government's responsibility to construct and maintain standard roads and puts that responsibility on the site operator. All roads in the KPB should be up to KPB or State of AK standard. We pay taxes too.

(8)(b) This regulation demands we dig test holes 4 ft below proposed elevation. Some areas have deposits of gravel or peat that are deeper than common equipment can dig. It will commonly be an impossible or unnecessary task.

(9)(b) This regulation suggests the planning director may provide additional information. This information should be specifically specified as we may not always have a director that is as knowledgeable as our current director, as written, this promotes possible conflict of process.

21.29.040 (a) You have all heard my testimony on the lawfulness of viewshed rights and the few ways they are regulated or transferred. “Street-level visual screening” is just as unlawful as before, just a different angle of repose. There is no need for this language in the code, as if the operator is complying with the buffers, they will absolutely, inadvertently, achieve the screening.

21.29.050 (a)(1)(a) This regulation imposes 32ft buffer. We proposed a larger berm, and thus a buffer, but with access granted in the water table to offset the loss. One requirement without the other allowance is again, costing the operator, removing a valuable commodity from circulation with the public, and promoting more contention with the public as the frequency of new sites will surely increase because the need is naturally going to increase. The Street-level visual screening is the same as previously explained. The use of Undisturbed natural vegetation is unlawful. Please research Tigard v. Dolyn. Without giving the operator a alternative use for the property, it is a takings without just compensation.

(a)(1)(b) This regulation allows for the use of, and replacement of, the buffer slopes. We accept the idea, but 30 days is too short a time frame as material to replace the excavation may need to be hauled in as waste material from construction projects. 90 days is more suitable. Onsite material will surely be needed for reclamation since there is no provision in this document for the average pit to dig shallow ponds, thus shrinking the total area needed to reclaim.

(a)(2) This regulation prohibits use of any on site water. How are we to do any dust suppression? How do we make septic rock with a wash plant? Calcium chloride uses water to apply it as well. Traditionally we have used ponds in our sites to fill water trucks to suppress dust, run a wash plant, or obtain compaction on job sites. Without this availability, we would need outside sources, and truck it in. this goes against the intent of protecting the public safety, health, and welfare, by imposing unnecessary truck traffic. Also, the availability of outside sources is extremely small, as we can not pump out of any fish bearing source, and would not want to as responsible operators. A small pond or minimum dig in the water table should be allowed with every CLUP. Major or deep digs should be looked at with a separate permit and requirements. A minimum amount of dewatering should be allowed with each CLUP. 75,000 gallons per day should suffice. A water truck is 4,000 gal. We have been operating at this level on the KPB for 50 plus years and have no record of incident. The bonding of wells should only apply if the well is close horizontally or vertically to proposed excavation. If the dig is 15ft and the nearest well is 80ft….they are in two different aquifer formations and not connected. No need to burden the operator as we have no record of wells being damaged by a material site.

(a)(4) As explained before, this goes against the intent of this ordinance without access to a water source. May in some areas be an impossible task, as we will not be able to haul water fast enough to keep up.

(a)(6) How are we to install a monitor well if we are not allowed to excavate within 4ft of the water table? Even a drill excavates material by definition.

(a)(7) When will the setback not overlap? So this is really 282ft. Also, child care facility needs to be licensed.

(a)(9) As explained before, a permit without processing is useless. We process material by definition. We would simply be not able to operate.

(b)(1)(a),(i) Giving the planning commission discretion to 100ft eliminates any standard. How are we to speculate a suitable site if we do not have a standard that wont more than triple? Plannings discretion should not be over 300% of the standard. It should be less than 50%. "an eight-foot-high berm above the preexisting elevation may be constructed" may needs to be changed to must.

(b)(2) Roads should be kept to standard by the government. Maintenance is included in the gov. responsibility's. If we damage a road, its on the operator to repair it. Government should not shed it's responsibility. We pay taxes too.

(b)(3) ingress and egress. There is no need for this regulation. No one knows the best choice for placement than the operator. This is sort of a double regulation as we are already regulated to conform to all applicable agencies.

(b)(4) This regulation imposes operators to operate outside their ownership. Some operators don't have equipment designed for work outside the site boundary. Certain accesses may have restrictions or other permits required for activity within their ownership. A site operator can not control outside influences.

(b)(6) As stated before, any visual language should be struck from any ordinance. Viewshed rights don't allow for it.

21.29.055(b)(1) Processing hours have been limited from 6am-10pm to 8am-7pm. This is commonly not enough time to get the necessary projects done in the construction season. 7am-7pm is more appropriate as discussed with our members.

21.29.057 This regulation does not allow for any dewatering. As stated before, we need the tools to do the job. A minimum dig for a water source should be allowed with a maximum dewatering of 75,000gal. in all permits to comply with dust mitigation, wash plants for septic rock and other uses, and to be in harmony with the intent of this ordinance and not create unnecessary truck traffic.

21.29.060 There is no consideration here for post mining uses. We should be promoting post mining uses.

21.29.070 This regulation says if you meet all requirements, the planning commission MUST renew permit…but then says they may impose additional requirements and therefore, would deny the permit, in essence, if the operator did not agree with the new requirements. Government should not make a deal and then change the goal posts! Very unbecoming of the KPB to do so.

21.29.115 This regulation is probably the most egregious. Many PEU's were here before the KPB was. Many came from homesteads. Many have been passed down as a last wish of a generation to ensure the next had a form of value. Also, many sites, PEU and CLUP, have been operated for years, with the sweat equity of the operator, with the intention of someday selling the operation and retiring. This regulation almost guarantees that the value is lost. The site would immediately turn from an asset to a liability as the loss of the PEU or CLUP would initiate immediate reclamation, whether the commodity was exhausted or not. It would go against the Alaska constitution to use our resources to the fullest extent. The reality is that almost surely, the site was there before any surrounding residents were and if the site was forced to reapply for a permit, the half mile radius of opinions would not be in favor. Very unbecoming of the KPB to suggest this.

21.29.120(b) There needs to be clarification and standards in which the director would make a decision to approve or deny. We reserve our grievance on this portion of code until more information is provided.

(c) This regulation is the second most concerning. 365 days is not near enough time. This code also goes against the intent of this ordinance as it, like the lack of water, will create unnecessary truck traffic, dust,

noise, and general activity. Many larger sites sit dormant for very good reasons. Many are reserved quantities of resources for major state projects. Not unlike the four-lane connection between Soldotna and sterling. It is finally scheduled and there's a few sites that have been waiting years for it to happen. It is not uncommon for an operator to get sick or hurt for a year and skip a construction season. The residents around some of the sites that have been dormant have enjoyed a reprieve from any activity. This regulation would end that enjoyment, and guarantee activity every year. Also, this is another case that the government is changing the deal struck with operators years ago. A longer time frame may be manageable. Our members have discussed 10 years.

(f) As these are old sites, and deals were struck years ago, it will almost surely be hard or impossible for these sites to conform to the new reclamation requirements. The material may not be there to do so. If ponding or post mining uses aren't allowed, it will make it even harder to accomplish. Also, the hours of operation and reclamation plan requirements is again, the government moving the goal posts. Unbecoming.

(h) This needs to be clarified as "permitted excavation" it reads as a cease and desist order as written.

Thank you for your consideration,

Ed Martin III, President, KPACA.

| | |
|---|---|
| **From:** | Blankenship, Johni |
| **To:** | Warner, Avery |
| **Cc:** | Turner, Michele |
| **Subject:** | FW: <EXTERNAL-SENDER>Fwd: Proposed KPB ordinance 2022-36 regarding CLUPs and MSPs |
| **Date:** | Tuesday, August 23, 2022 6:08:09 PM |

**From:** Katharine M. Tongue <kmtongue@icloud.com>
**Sent:** Tuesday, August 23, 2022 5:51 PM
**To:** Blankenship, Johni <JBlankenship@kpb.us>
**Subject:** <EXTERNAL-SENDER>Fwd: Proposed KPB ordinance 2022-36 regarding CLUPs and MSPs

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Hi, Johni. I sent this to Mr. Johnson and Mr. Chesley on the 12th. Didn't hear anything back - of course they're super busy - but realized I should've cc'd you. Thanks very much. Enjoy the meeting. Katie

Begin forwarded message:

> **From:** Katharine Tongue <kmtongue@icloud.com>
> **Date:** August 12, 2022 at 12:20:13 PM AKDT
> **To:** bjohnson@kpb.us, lchesley@kpb.us
> **Cc:** John & Katie <jbandkt@gmail.com>
> **Subject: Proposed KPB ordinance 2022-36 regarding CLUPs and MSPs**
>
> Dear Mr. Johnson and Mr. Chesley,
>
> I'm writing with regard to proposed KPB ordinance **2022-36** regarding CLUPs and MSPs**.**
>
> We are a small Kasilof operation, extracting our material in stages, over the long term, conscious of the wildlife, scenery, and reasonable use of all materials involved. We engage with our neighbors in the years we operate the pit and have very good relationships. While we have sold to large highway projects in the past, we prefer to limit our sales to individual contractors and neighbors.
>
> I'm still working my way through your document, but 3 concerns are immediately apparent:

Under 21.29.120. *Prior-existing uses,* Clause D, *Expansion Prohibited* of your proposed ordinance, it sounds like you are asking that we clarify our footprint prior to October 1st in order to protect our PEU status. Do you mean that our entire PEU property must be cleared of trees? of topsoil? While beetle kill will soon render that suggestion somewhat less ridiculous, stripping our property in order to preserve our pre-existing right to extract our material strikes me as completely contrary to the goals of this amendment process. What is wrong with using current mapped parcel parameters? We can bulldoze our property/forrest but that seems counter to good sense. I think you are trying to prevent adjacent property purchasers from being offended after they did not look at a map when they purchased their land. That seems to be coddling at our expense (as well as current neighbors' when we are forced to clear a current visual and auditory barrier). Give thought to how you can achieve your goals without causing more neighborhood problems - as this directive will. We will be obliged to clear right to property lines which we have avoided thus far.

My second objection regards Clause C, *Discontinuance*. Again, given our historic and long term plan for extraction of material, there have been and may be years where there is no extraction. Why is that a problem? If you are looking to prevent operators from reopening old pits, consider a 3-5 or 10 year 'fallow' rule as opposed to one. One year is too draconian.

Third, regarding A. *Determination* and B. *Decision*, we went through this to comply with 21.29.120. (Prior existing uses. B. Owners of sites must have applied to be registered as a prior existing use prior to January 1, 2001.) Why do you need to impose this burden again? If it is intended to weed out the pits whose owners are no longer engaged, then please make the application process simple for those of us you are imposing this burden upon.

Thank you for your consideration.

Katie Tongue.
Owner, JBKT, LLC

McLANE Consulting Inc

DATE: August 30, 2022

TO: KPB Assembly

SUBJECT: Ordinance 2022-36 Amending 21.25 & 21.29
Regarding CLUP & Material Site Permits

RE: Technical Recommendations

The proposed ordinance does a good job in laying out and addressing different aspects material site permitting and the areas that need improvement regarding material site permitting and management.

After initial review of the proposed ordinance, there are two sections that I am submitting written comment on currently.

**21.29.030.A.7 & 21.29.030.A.8**
The Application Procedure section designates which parts of site map and site plan should be prepared by a professional surveyor versus a professional engineer. As written, these sections do not properly differentiate responsibilities of the two disciplines. Recommended amendments are as follows:

Part 7 Subsection a. Separated into both professional qualifications as follows: areas of existing excavation should be shown on Surveyor's map & areas of proposed excavation & reclamation should be part of Part 8 Engineering.

Part 7 Subsection b. Proposed buffers should be included in Part 8 Engineering.

Part 7 Subsection d. Separated into both professional qualifications as follows: areas of existing ingress/egress should be shown on Surveyor's map & areas of proposed ingress/egress should be part of Part 8 Engineering.

Part 7 Subsection e. Anticipated haul routes should be included in Part 8 Engineering.

Part 7 Subsection f. Should be separated into both professional qualifications as follows: areas of existing processing should be shown on Surveyor's map & areas of proposed processing should be part of Part 8 Engineering.

Part 8 Subsection b. Locations of test holes and depth to groundwater should be included in Part 7 Surveying.

Part 8 Subsection c. Locations of private wells of adjacent property owners should be included in Part 7 Surveying.

Part 8 Subsection d. Locations of any waterbody on the parcel should be included in Part 7 Surveying.



P.O. Box 468 Soldotna, Alaska 99669 (907) 283-4218 Fax (907) 283-3265
Email ginadebar@mclanecg.com

Basically, any existing conditions should be included Part 7 Surveying and planning related items should be included in Part 8 Engineering.

**21.29.055 Earth Material Processing**
The Borough needs to add in a reference to blasting. While blasting to mine or process material isn't very common in the Borough there are areas of the borough where hard-rock mining is taking place and should be covered in permitting. Blasting will also become more prevalent in the Borough as the high-quality riverbend deposited gravels are exhausted.

Please feel free to contact me if you have any questions or comments.

Sincerely,

Gina DeBardelaben, P.E.
Vice President



P.O. Box 468 Soldotna, Alaska 99669 (907) 283-4218 Fax (907) 283-3265
Email ginadebar@mclanecg.com

**From:** Blankenship, Johni
**To:** Warner, Avery
**Subject:** FW: <EXTERNAL-SENDER>Material site 2022-36
**Date:** Thursday, September 1, 2022 1:25:43 PM

Laydown public comment

**From:** Greg Turner <prudhoedude@gmail.com>
**Sent:** Thursday, September 1, 2022 1:25 PM
**To:** G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
**Subject:** <EXTERNAL-SENDER>Material site 2022-36

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Unregulated or grandfathered Material Sites and Gravel Pits have a long history of causing harm and pollution in KPB.
We taxpayers need to be protected with regulations and control to work permits and monitoring. Helping to prevent on going problems and issues created by these uncontrolled sites doing what is now illegal in controlled sites. Some examples in my area Kobuk between Spruce and Big Eddy are mining gravel below the aquifer level. Not having proper site slopes adjacent to roads, and high pressure gas transmission lines. Dumping on site of organic or nor organic material. Non functioning Junk heavy equipment and big trucks, pickups and other items, Atco trailers, RV's equipment shops and buildings. These new regulations can help prevent problems.

Recent 8/23/22 unpermitted water release by Glen Martin's Gravel Pit doing business as Northern Enterprises from three large ponds, created by digging 30' below the waters surface that is the exposed aquifer level. This is the natural aquifer level in the area 35-40 ft below Kobuk Rd between Spruce and Big Eddy Road. The surface of those ponds are 12'-15' above Greenridge St, my neighborhood and they are 25-30 feet deep. The released water flowed through Doug Norris's Gravel Pit off of Joplin Ct and Greenridge St covering Greenridge St.
In the past Glen Martin has breached the artisan aquifer twice that we know of in the last seven years. Once resulting in flooding of Greenridge St neighborhood and home crawl spaces yards similar to what we are experiencing now.
If you dig deeply 30' below the natural aquifer level to extract gravel to sell you end up with big deep ponds that are always going to be there. Open exposed deep water ponds are dangerous to humans and animals. Creating hazards for money that could possibly cause harm to citizens from flooding or drowning or impact water quality of the local wells.
This gravel pit has a low side 5' above the pond water level of exposed sand adjacent tp Doug Norris's Pit that looks like a dike separating and containing these elevated ponds. Not ideal as it looks more like a dam.

Filling a pond with beetle kill trees and slash or dirt will displace the water resulting in overflow of the ponds. The water has to go someplace.

Water containment, Junk equipment, miscellaneous scrap and metal, older shop buildings.

Truly amazing to look at the new regulated material sites compared to the older uncontrolled sites. Help to keep the KPB clean, vote to regulate and control these older unregulated sites and pits.

**From:** Blankenship, Johni
**To:** Warner, Avery
**Subject:** FW: <EXTERNAL-SENDER>Visual Screening of a Material Site
**Date:** Thursday, September 1, 2022 9:57:11 AM

For laydown packet

**From:** Hans Bilben <catchalaska@alaska.net>
**Sent:** Wednesday, August 31, 2022 10:43 AM
**To:** Blankenship, Johni <JBlankenship@kpb.us>
**Subject:** <EXTERNAL-SENDER>Visual Screening of a Material Site

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Hi Johni,

Please forward this to all Assembly members and copy to Legal and the Planning Director

Assembly Members,

As you are likely aware, the author/authors of the proposed material site ordinance rewrite have purposely removed visual screening (other than street level, whatever that means) from the ordinance. The result of this action would be that a large number of borough residents will not have equal protection under the law. If you live at street level in a one story structure you're possibly protected, but any multi story dwellings, and all houses at higher elevations will be left totally unprotected from negative visual impact. If the author(s) have a legitimate and legal reason to deny this basic protection, please have them explain it in public. KPB code currently requires visual screening for material sites, marijuana operations, and animal feed lots. MatSu code, which seems to be the foundation for the proposed rewrite, requires visual screening. When a buffer zone is properly designed visual screening and noise screening are both dependent upon visual line of sight. To write the Standard for visual screening out of the ordinance would be a huge step backwards for the residents of this borough.

Please take a couple minutes to read the following information concerning visual

screening and its relevance to the KPB Comprehensive Plan, and please ensure that any new ordinance will continue to provide this basic protection to ALL residents of the borough.

Thank You,

Hans Bilben

The standards and conditions relating to the operation of a material site are to avoid certain land uses which may be potentially damaging to the public health, safety and welfare (21.25.020). Restrictions must be rationally related to a legitimate government objective, and ensuring protection of the public health, safety and welfare is a legitimate objective.

Standards and conditions to "minimize visual impacts" certainly shield surrounding property owners from actually seeing the material site activities. But they also do more – they mitigate against devaluing surrounding land values (a public welfare issue); they mitigate against noise (public health); they mitigate against dust (public health); they mitigate against the potential that a material site turns into an attractive nuisance (which is a dangerous condition on a landowner's property that may

particularly attract children onto the land and pose a risk to their safety) as essentially what is being created appear to neighboring (public safety); they mitigate against the negative impacts such sites have on preservation of the scenic beauty and furtherance of the tourism industry (public welfare) (Per comprehensive plan, tourism and hospitality are major parts of the Kenai region's economy and represent the second-largest private employment sector after healthcare)

The guiding principals to better regulate land use are
Balance and integrate multiple interests in land use: the right to use land as you choose; the right to not be excessively impacted by neighbors who exercise that freedom; and the shared value in protecting the underlying health of borough natural systems
Develop regulations that will minimize conflicts between adjoining uses, maintain property values, maintain and improve neighborhoods, communities and natural systems
Develop an improved set of Borough land use regulations to reduce reoccurring conflicts on the same narrow set of issues such as gravel pits.
The Comprehensive Plan specifically calls for consideration of establishing conditions that require larger setbacks, safety and visual screening, control on access routes, control on hours of operation, and address

environmental concerns.
Consideration of updating the list of topics that staff and Planning Commission may consider when setting conditions of approval. Incorporate safety, visual quality, environmental impacts and traffic impacts.

**From:** Blankenship, Johni
**To:** Warner, Avery
**Subject:** FW: <EXTERNAL-SENDER>Fwd: Gravel pit in back of 50-51 Greenridge Drive causing flooding and eroding my property. Ordinance 2022-36
**Date:** Thursday, September 1, 2022 12:22:41 PM

## Laydown public comment

**From:** DR Lee <dr.lee@live.com>
**Sent:** Thursday, September 1, 2022 12:09 PM
**To:** G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
**Subject:** <EXTERNAL-SENDER>Fwd: Gravel pit in back of 50-51 Greenridge Drive causing flooding and eroding my property. Ordinance 2022-36

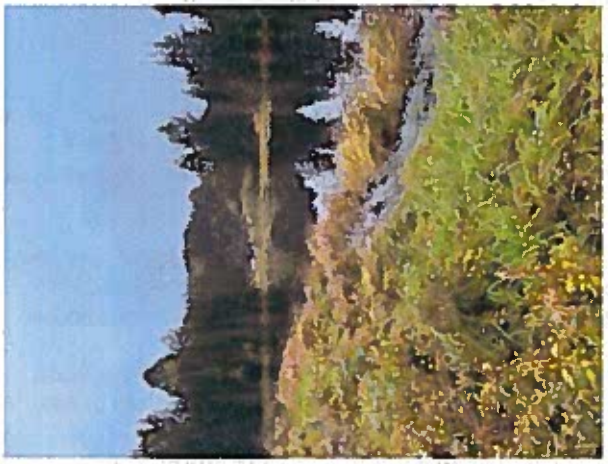
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Sent from my iPhone

Begin forwarded message:

> **From:** DR Lee <dr.lee@live.com>
> **Date:** September 1, 2022 at 12:07:34 PM AKDT
> **To:** assemblyclerk@kpb.com
> **Cc:** Ohare Russ <ro_ua@live.com>, Soldotna Neighbors Elena Staab <elena-joy@hotmail.com>
> **Subject: Gravel pit in back of 50-51 Greenridge Drive causing flooding and eroding my property. Ordinance 2022-36**





Sent from my iPhone

We have owned lots 50-51 Greenridge Street in Ridgeway for over 12 years; and, we have never seen the pond in back of the property overflow or be even high. The pond is usually very low. For the past week the pond has overflowed and it's now eroding our property. Greenridge Street is flooded.

If you drive and observe the pit that is adjacent to Kobuk Street and Spruce Ave E and that now surrounds this area, you will see that the topography and drainage resulting from the pit overreach is changed and flooding; thus, ruining the residential property in the area. This overreach must stop.

Thank you for a quick resolution to this problem.

Sincerely,

Drs Cynthia Lee and Russell James O'Hare
907-3782987

2022-36

From Gary and Eileen D Sheridan, Anchor Point, AK

**For State of Alaska residents and tourists health, safety, and sight, Please Add this Amendment to the new KPB Regulations for Gravel Pits Under 21.29.040. Add B. Gravel Pits will not be allowed in a residential area, close to recreational State Parks and Rivers, due to the Silica that can be inhaled and cause Silicosis and other fatal conditions.**

Notice in the following articles, what other illnesses the silica dust can cause.

What is Silicosis? Please read the following articles.

https://www.stopthegravelpit.com/post/crystalline-silica-dust-the-invisible-killer
**attached.**

Also, From MedlinePlus - part included

https://medlineplus.gov/ency/article/000134.htm

"Causes - Silica is common, naturally-occurring crystal. It is found in most rock bed. Silica dust forms during mining, quarrying, tunneling, and working with certain metal ores. Silica is a main part of sand, glass workers and sand-blasters are also exposed to silica.Three types of silicosis occur:

Chronic silicosis, which results from long-term exposure (more than 20 years) to low amounts of silica dust. The silica dust causes swelling in the lungs and chest lymph nodes. This disease may cause people to have trouble breathing. This is the most common form of silicosis.

Accelerated silicosis, which occurs after exposure to larger amounts of silica over shorter period of time (5-15 years). Welling in the lungs and symptoms occur faster than in simple silicosis.

Acute silicosis, which results from short-term exposure to very large amounts of silica. The lungs become very inflamed and can fill with fluid, causing sever shortness of breath and a low blood oxygen level....Intense exposure to silica can cause disease within a year. But it usually takes at least 10 - 15 years of exposure before symptoms occur. Silicosis has become less common since the Occupational Safety and Health Administration (OSHA) created regulations requiring the use of protective equipment, which limits the amount of silica dust workers inhale....."click on the reference above to finish reading.

Also read please
https://www.sciencedirect.com/topics/medicine-and-dentistry/silicosis

The noise even a block away can cause such noise to disturbances as it did me this summer after a busy day and needing sleep. Can you imagine being a visitor coming to enjoy the State camp ground on the Anchor River for a week's or holiday vacation and having to deal with the noise of the machines working the gravel pit and trucks.

I don't know how the KPB can possibly agree to have a gravel pit and mining that may cause such illnesses to our families, grandchildren, and tourists. I'm now scared for my grandchildren that came this summer to fish and vacation with grandpa and grandma and enjoyed running around in our yard, riding the bikes grandpa had fixed up for them. Have we unknowingly allowed them to have the start of Silicosis from the gravel pit which was denied but then given 2.5 acres to work? We built a "Beachy Built Home" with an air system never expecting to have

From Gary and Eileen D Sheridan, Anchor Point, AK

a gravel pit being put in 15 years later. That fine dust gets in everything. Look at the different types of cancer that has been shown to be causes of gravel pits and mining. I know what it is like to fight cancer. I had just started treatments in Soldotna when we first found out there was a plan to have a gravel pit in our neighborhood. Our rivers help bring our tourist businesses, and we should protect those businesses, too.

Respectfully submitted to the work group of KPB to update regulations for Gravel Pits,
Eileen and Gary Sheridan

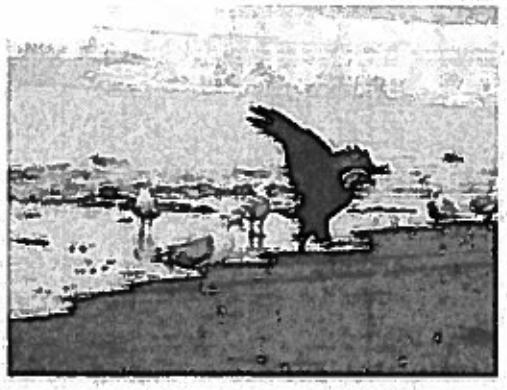


Photo by friend of ours who visits us almost every year.

# Crystalline Silica Dust — The Invisible Killer

**How a *Totally Unnecessary* Gravel Mine Would Create**

## Widely Known Deadly Health Issues

**That Would Harm Hundreds of Benzie County Residents**

Developed for and Presented to the

**Homestead Inland Joint Planning Commission**

December 6, 2019

prepared by

Friends of the
**Platte River**
**Watershed**

# Crystalline Silica Dust — The Invisible Killer


## Summary

The proposal of an open pit gravel mine in a district zoned Rural Residential creates numerous very serious consequences. This report primarily examines the devastating heath issues created by crystalline silica dust, an unavoidable byproduct produced when mining gravel.

Until recently, few understood the dangers created by crystalline silica dust. Unlike normal sand, crystalline silica dust has razor sharp edges and is microscopic in size. When inhaled, it bypasses the body's natural defenses and become *permanently* lodged in the deepest parts of the lungs. It has proven links to diseases that lead to death including silicosis, lung cancer, COPD, renal failure, and kidney disease as well as causing auto-immune diseases like rheumatoid arthritis. These health issues are so grave that OSHA and MIOSHA have recently adopted new safety standards to deal with crystalline silica dust. Both agencies are involved in a massive educational drive to warn workers about the dangers.

Not only is crystalline silica dust deadly, it is difficult to control. Clouds of it can easily be swept up and carried by the wind for tens of miles. Even in what weather experts call 'calm' winds, this deadly dust can travel for miles settling in the yards and on the homes and innocent bystanders in Inland Township, its three neighboring townships, and even further.

All of the related diseases crystalline silica dust is widely known to cause serve as sufficient proof of a 'very serious consequence' health based issue as required under MCL 125.3205 Sec. 205 (5)(e). Denying the requested special use permit for this totally unnecessary gravel mine at parcel 08-006-007-00 is the only logical, fair, and humane course of action the HIJPC can take.

## Table of Contents


Sand's Tiny Secrets – Size, Material, & Shape ..... 1

Figure 1 – 'Sand' ( 300x Magnification ) ..... 1

Figure 2 – Crystalline Silica Dust ( 5,000x Magnification ) ..... 1

Crystalline Silica Dust *IS* Deadly ..... 1

Why is Crystalline Silica Dust So Deadly? ..... 2

Think You're Safe? — Wrong! ..... 3

I'm Nowhere Near Silica Dust — Really? ..... 3

Figure 3 – Distance Traveled by Particulate Size ..... 3

How Far Will Silica Dust Spread Here? ..... 4

Figure 4 – Crystalline Silica Dust Wind Distribution ..... 4

Figure 5 – Likely Spread of Crystalline Silica Dust ..... 4

Where's the Problem? – You Can't Be Serious! ..... 5

But It's Just a Small Operation – Yeh, Right! ..... 5

Figure 6 – Crystalline Silica Dust *Inside* a Home ..... 6

Don't Tell Us It Can't Happen Here! ..... 6

Figure 7 – Bohne Road Gravel Mine, Grass Lake Township, Michigan ..... 7

Conclusion ..... 8

5,000x Images of Crystalline Silica Dust ..... Appendix A

MAA Notice to Member ..... Appendix B

Wind Roses (Direction & Speed) ..... Appendix C

Bohne Road Gravel Mine Memorandum ..... Appendix D



Direct any questions
about this report to:

**Jim Brouwer**
Friends of the Platte River Watershed
jim@platteriverwatershed.org

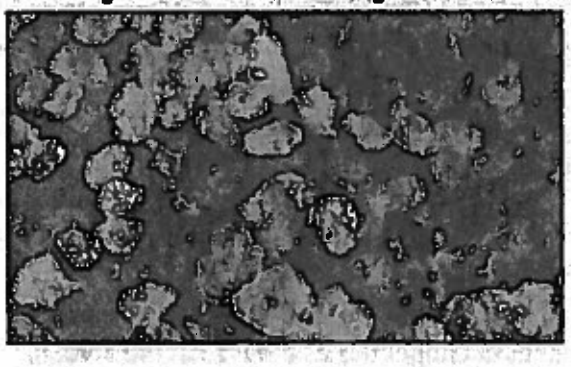
**Sand's Tiny Secrets – Size, Material, & Shape**

Sand holds some interesting secrets. We think we know what it is, but do we? Technically, 'sand' is any sediment whose particles are 60µm (microns or micrometers) or larger. Granules smaller than 60µm down to 2µm are considered 'silt.' For a point of reference, the hairs on your head are typically 10µm thick.

Sand is often referred to as 'silica.' Most sand deposits are primarily made up of quartz, but other minerals are usually found. Quartz is *crystalline silica*, a silicate mineral made of silicon dioxide ($SiO_2$), silicon and oxygen. It is the most abundant mineral found in sand.

Figure 1 shows a typical sample of sand, not unlike that which is found all around northern Michigan. It is comprised mostly of crystalline silica (quartz), with some epidote, garnet, potassium feldspar, and a few other minerals.

**Figure 1 – 'Sand' ( 300x Magnification )**

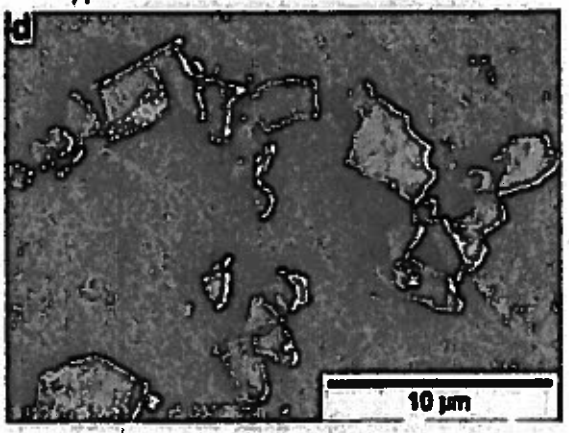


Different types of sands are put to work in a wide range of useful applications including: road construction, concrete, filtration, glass, ceramics, and computer chips. They also vary considerably in their marketable value.

Most sand with which we are familiar is heavily weathered. It has the familiar shape of stones washed up along the Lake Michigan shoreline. While their sizes may vary a bit, they all have nicely rounded, smooth edges.

Digging into the earth when mining for gravel, the size and shape of these unweathered common sand granules change dramatically.

**Figure 2 – Crystalline Silica Dust ( 5,000x Magnification )**
Appendix A shows three even smaller sizes.




Note the 10µm graphic in Figure 2. That's the width of a typical human hair. Anything smaller than 5µm is invisible to the naked eye, unless there are billions of particles — as in crystalline silica dust clouds (see Appx. D p.4).

These jagged microscopic sub-10µm particles are as sharp as a stone-age flint knife — and they can kill you![1]

**Crystalline Silica Dust *IS* Deadly**

Unlike beach sand which is just annoying when it sticks to your skin and swimsuit, crystalline silica dust *is* a killer. Don't take our word for it, just take OSHA's.[2]

> *"[Those inhaling] these very small crystalline silica particles are at increased risk of developing serious silica-related diseases."*

[1] Silica...It's Not Just Dust: Silica Dust Causes Silicosis - What rock drillers can do to protect their lungs from silica dust, Center for Disease Control and Prevention, National Institute for Occupational Safety and Health, NIOSH Publications, 97-118, July 1998

[2] *Respirable Crystalline Silica*, Occupational Safety and Health Administration, United States Department of Labor, osha.gov/dsg/topics/silicacrystalline/

In 2017, OSHA completely revamped their requirements for worker safety when engaged in activities where crystalline silica is present.

Plastered all over OSHA's website and materials is the warning graphic shown here.




So, what exactly are those 'serious silica-related diseases?" They include (but are not limited to):

- **Silicosis**
- **Lung Cancer**
- **COPD (Chronic Obstructive Pulmonary Disease)**
- **Kidney Disease**

Silicosis is an *incurable* lung disease that leads to disability and death. We've all heard of 'black lung disease.' Black lung expert, Dr. Robert Cohen, has recently warned that

> *"[Crystalline] Silica could be even more dangerous to workers than coal dust.*
>
> *[Crystalline] Silica is actually a lung carcinogen. And it causes renal disease, it causes other auto-immune diseases like rheumatoid arthritis and other things, so silica exposure is a huge problem.*[3]

So serious is this issue that even the Michigan Aggregate Association (the lobbying organization behind the totally discredited MDOT *Michigan Aggregates Market Study Ph I & Ph II Reports*) is actively encouraging its member supporters to attend OSHA approved silica training![4] Why does the MAA promote this you ask?

> *"To increase workers' **awareness of the serous health hazards of silica dust** and provide the knowledge necessary for employee protections."*

**Why is Crystalline Silica Dust So Deadly?**
Mother Nature provided our respiratory tracts with a host of protective mechanisms to 'filter out' most of the junk that *naturally* occurs in our air. Since most of what nature throws at us is over 10µm in size, we do a pretty good job of keeping the bad stuff out of our bodies.

However, breathing crystalline silica dust is the equivalent of inhaling millions of microscopic razor blades. As shown in Appendix A, these dust particles can be as small as .01µm.

These invisible particles pass all body defense mechanisms and become embedded in the deepest reaches of the lungs. This is where the greatest danger lies as they reach the alveoli, the finest branches of the lungs where the oxygen/carbon dioxide exchange takes place.[5]

When inhaled, particulate matter larger than 5µm usually gets trapped and expelled before it reaches the lung's gas-exchange zone. Particles smaller than 5µm are considered to be 'respirable,' meaning they can reach the deepest parts of the human lungs.

---

[3] *Silica safety urged in QLD*, OHS Career, March 21, 2017, ohscareer.com.au
[4] *Protecting and Promoting Your Interests*, Michigan Aggregate Association, November 16, 2019 See Appendix B
[5] A. Voss and S. Alfano, *The Body's Defenses Against Breathing Dirty Air*, ProRemodler, June 23, 2016

Mother Nature never planned on us being exposed to crystalline silica dust, certainly not in the quantities produced by our many industrial activities. Silicosis can develop very quickly and (short of an entire lung transplant) is completely untreatable.

**Think You're Safe? — Wrong!**

OSHA is making a tremendous push to raise worker awareness of the real hazards created by crystalline silica dust. Wearing adequate dust protection, respirators, and controlling the dust in the first place will save countless lives. How about those who don't work around this stuff?

Non-occupational exposure to crystalline silica dust is even greater cause for concern. As this 'killer dust' spreads miles past its place of origin it not only lingers in the air but settles everywhere — including *inside* homes.

We spend the majority of our time at home. Depending on our job and lifestyle that can be 70%-100% of our time. Unlike a protected work environment, exposure at home is unprotected and constant. Home settings also includes children and the elderly who are more vulnerable than able bodied workers. Not only do children breath more deeply than adults, their smaller body mass means their comparable exposure risk is much higher.[6]

Exposure limits for crystalline silica differ considerably between work and non-occupational exposure. OSHA's permissible exposure limit is 50 micrograms per cubic meter during an 8-hour workday.[7] Michigan follows these guidelines which includes an 'action level' set at 25 micrograms per cubic meter. Michigan also requires employers to safeguard employees from exposure, provide them with respiratory protection, maintain medical surveillance, engage in hazard communication, and keep good records.[8]

For those who spend all their time at home, equivalent exposure limits would fall below 12 micrograms per cubic meter for exposure and 6 micrograms per cubic meter for action.

**I'm Nowhere Near Silica Dust — Really?**

Turns out, size really does matter. For crystalline silica dust, the smaller it is the more threatening it becomes. Not only is this invisible dust respirable, it easily becomes airborne, stays airborne for extended periods of time, and travels incredible distances.[9]

Particles typically need to be under 200µm in size to become airborne. Those smaller than 10µm are invisible and smaller than 5µm penetrate our immune system. As shown in Figure 3, dangerous crystalline silica dust easily travels for miles. It not only affects people at the source but those in surrounding neighborhoods. In some measured cases as far away as 50 miles.[10]

**Figure 3 – Distance Traveled by Particulate Size**

| Wind Speed (mph) | Miles Traveled 10µm | 5µm |
|---|---|---|
| 3.1 | 0.55 | 2.2 |
| 6.2 | 1.1 | 4.5 |
| 12.4 | 2.3 | 9 |
| 24.8 | 4.6 | 18 |
| 37.3 | 6.9 | 27 |
| 49.7 | 9.2 | 36.1 |

[6] J. Warren, *Silica Monitoring*, Public Lab, publiclab.org, February 22, 2018
[7] C.A. Epstein, *Everything You Need to Know About OSHA's Respirable Crystalline Silica Final Rule*, February 2, 2018, oshaonline.com
[8] *Crystalline Silica Exposure*, MIOSHA Fact Sheet, CSH Fact Sheet - #109, Revised October 12, 2017
[9] *Silica Dust Particle Size Causes Problems*, BossTek, 2019, bosstek.com/silica-dust-compliance/silica-particle-size-behavior
[10] *How Far Can Respirable dust Actually Travel?*, Insider News, NeSilex, September 24, 2019

## How Far Will Silica Dust Spread Here?

The only available historic 'local' wind measurements are those taken at the Frankfort and Traverse City airports. Appendix C contains the diagrams of the wind history at both airports for the months of May – October (the busiest times for gravel production).

Roughly one-third of the time the wind is calm (less than 5.8mph). Calm doesn't mean 'dead calm.' Shown as red in Figure 5, at 5.8mph respirable silica would still travel 4.2 miles from the proposed 150-acre gravel mine.

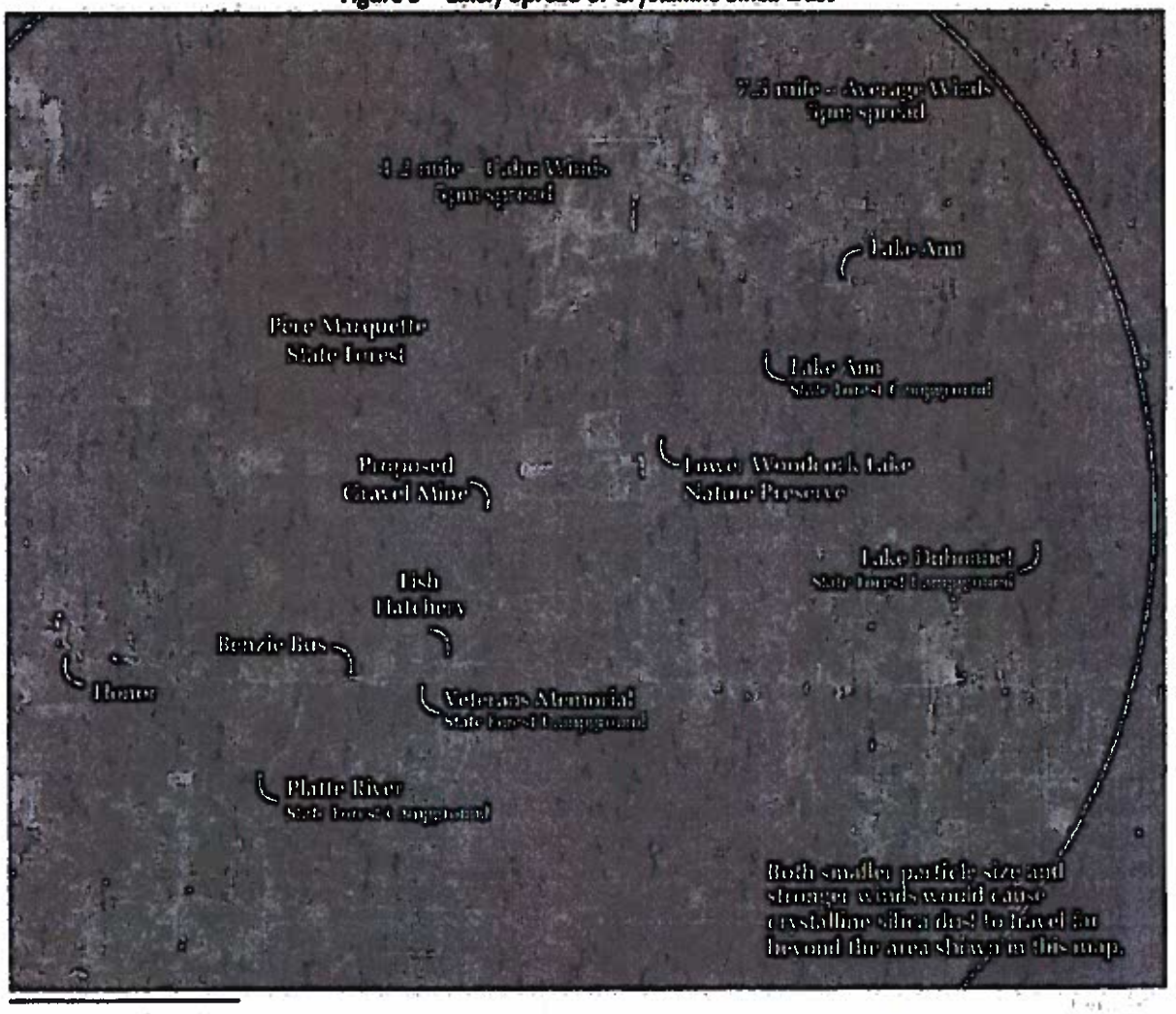
This area's Average windspeed over the past three years for May – October, the average Maximum sustained winds, and average Gusts are shown in Figure 4. The miles that silica dust can be spread relates to particulate size.[11]

**Figure 4 – Crystalline Silica Dust Wind Distribution**

| | Wind Speed (mph) | Miles Traveled 10µm | 5µm |
|---|---|---|---|
| Calm | <5.8 | <1.0 | <4.2 |
| Average | 10.3 | 1.9 | 7.5 |
| Maximum | 23.9 | 4.4 | 17.4 |
| Gusts | 39.8 | 7.4 | 28.9 |

Note: Silica Dust smaller than 5µm travels even further!

**Figure 5 – Likely Spread of Crystalline Silica Dust**




[11] While wind data was pulled from the Weather Underground, all data originates from the National Centers for Environmental Information, National Oceanic and Atmospheric Administration.

It's easy to understand how these microscopic razor blades carry so far in gentle winds. Strong gusts can carry crystalline silica dust all the way to Traverse City or Frankfort. As duly noted in the Homestead Inland Townships Master Plan, this truly is an issue of "Greater Than Local Concern."

**Where's the Problem? – You Can't Be Serious!**
Mr. Leman has done little to instill confidence that he understands the consequences of his desire to have a hobby gravel mine. In a September 12, 2019, TV 7&4 News interview, Mr. Leman states

> *"There's no production things we processes that we would do here which would pollute the ground in any way. That sand and gravel is already in the ground."*

Seriously? It is obvious he doesn't understand the environmental impact of gravel mining or the dangerous release of crystalline silica dust which mining causes.

Mr. Leman is also quoted in that interview and in papers saying he's only going to work on 4–acres at a time. Yet all of the plans submitted to and described at HIJPC meetings clearly show sections of 6+ acres. If he is so inattentive to these and other details, how can he ever be trusted to understand or look after what's necessary to run a gravel mine safely?

Crystalline silica dust is a serious health issue. Given Mr. Leman's lack of responsiveness to providing a complete and timely application, let alone his inconsistency within those plans, many believe he's not taking things seriously. If that's the case and if his special use permit is granted, many wonder if he would ever follow safety precautions or take any laws seriously.

Given there appears to be no statutory value to the gravel as defined under MCL 125.3205 Sec. 205 (3) and there are considerable health risks, in the opinion of neighboring residents the risks completely outweigh the non-benefit.

Having focused on the harm silica dust does to humans, the same needs to be noted about the local wildlife. Further, local organic farming would also be disrupted as the strict protocols of being organic are unavoidably, unfairly, and unjustifiably violated. Even on a 'calm' day, over 55-square miles are put at risk. Kick the wind up to 'average' speed and the number jumps to over 176-square miles.

It is abundantly obvious that allowing the operation of an open pit gravel mine would create uncontrolled crystalline silica dust.

Beyond the flood of studies readily discoverable online and the recently adopted push by OSHA to protect workers, this report clearly outlines the very serious consequence that would result from granting the requested special use permit. It fulfills the requirement of defining a 'very serous consequence' under MCL 125.3205 Sec. 205 (5)(e)

> *"The impact on other identifiable health, safety, and welfare interests in the local unit of government."*

**But It's Just a Small Operation – Yeh, Right!**
Getting one's foot in the door appears to be a standard ploy. There are dozens (if not hundreds) of stories about little mining operations that were never supposed to grow much bigger — but did — and did so quickly. Here's just one of those stories.

Downstate in Grass Lake Township, just 25 miles west of Ann Arbor, the Bohne Road Gravel Mine started as a little operation.

The local farmer was granted a special use permit to mine sand on his land for his own use on his farm. No big deal, right?

Then the farmer sells his farm to a company that expands the mine's operation into gravel extraction — hey, the special use permit said sand and gravel, not 'just sand.' The mine grew quickly. So did the problems.

In addition to the quality of life disruption and property devaluation experienced by the gravel mine's neighbors, crystalline silica dust became problematic. As some residents shared with their planning commission[12]

*"...the dust issue is a HUGE factor here."*

*"The gravel pit is a serious health risk."*

*"...my windows haven't been open since the mine was started."*

*"There is dust all over the plants and trees in the yard as well as the house and car on a daily basis."*

*"The dust is a nightmare!! It's constantly in the air..."*

*"We are concerned for the health of our family, my daughter and I have sever asthma ... we will have to continue to wear our masks to try and keep the contaminants out of our lungs. Why do we have to suffer?"*

*"There is overwhelming evidence regarding longterm silica dust exposure and respiratory disease. Residents near Bohne Road gravel pit testified they now suffer form respiratory diseases such as asthma and COPD."*

*"Why should the residents be subjected to all these issues from this gravel pit?"*

The last comment raises a great question.

**Figure 6 – Crystalline Silica Dust *Inside* a Home**
**( near the Bohne Road Gravel Mine )**



As the years passed, the gravel mine was sold to its new owner who now wants to expand operations even further. What was once a 'little private sand mine' has turned a community upside down with a full-blown gravel mining as shown in the pictures of Figure 7 on the next page.

**Don't Tell Us It Can't Happen Here!**
It could. Far too easily it could. Need or benefit of this gravel mine does not exist. The damage to the community would be devastating and permanent. The HIJPC has evidence of very serious consequences which it can utilize to equitably and justifiably deny the requested special use permit. Crystalline silica dust is perhaps the most compelling of all very serious consequences.

[12] Excerpts from a private Memorandum from Dr. Sandra McCoy, December 3, 2019, full memorandum in Appendix D

**Figure 7 – Bohne Road Gravel Mine, Grass Lake Township, Michigan**



What started as a small private sand mine grew into a sprawling gravel mine that damaged the lives of hundreds of neighbours.

**Conclusion**

To the communities' knowledge, Mr. Leman has failed to provide credible evidence that there is a need for more gravel production in Benzie County. With over a dozen-and-a-half gravel mines within 2 – 12 miles with at least two being major operators, supply far exceeds demand.

To underscore Mr. Leman's apparent lack of market awareness, in his September 12, 2019, TV 7&4 News interview, he states

> *"People want to move to our area and the demand for construction materials is certainly there. Sand and gravel from our community means you don't waste fuel and truck this stuff in from a long ways away. They can get it right down the street."*

First, as noted in the newly formed Inland Township Planning Commission's November 27, 2019 draft Master Plan, as reported by the official U.S. Census, Inland's population has fallen 8.6% since 2010. People certainly may *want* to move here, but the official numbers suggest they aren't doing so. "Demand for construction materials is certainly [here]" — and it is being more than sufficiently met by existing operators. More gravel mines in our area *are not* needed.

Second, there isn't much building going on 'right down the street' from this 150-acre Rural Residential parcel. Even with the horrible milage a gravel truck gets, given the close proximity of existing gravel mines, any theoretical savings on 'wasted fuel' is meaningless.

Mr. Leman's hasn't and likely can't justify that mining at this Rural Residential property would produce revenue of a sufficient enough level that he could reasonably expect to operate at a profit, a requirement under Michigan's Zoning Enabling Act, MCL 125.3205 Sec. 205 (3). In the opinion of many, under this act, this lack of profitability precludes finding value in the gravel on that property.

Even if there were valuable minerals to be found there — a hypothetical, not an acknowledgement — the HIJPC must, as required under Michigan's Zoning Enabling Act, balance that value against the very real health issues extracting it would create.

Clearly stated in MCL 125.3205 Sec. 205 (5)(e) and supported by OHSA, MIOSHA, scores of other reputable organizations, and health experts worldwide, the dangers of crystalline silica dust definitely creates a 'very serious consequence' that would

> *"impact on other identifiable health, safety, and welfare interests in the local unit of government."*

The residents of Inland Township and Benzie County would be unduly and unnecessarily punished if the special use permit for parcel 08-006-007-00 were approved.

For the negative financial impacts it would impose on local property values, granting a special use permit would be unfair. For the unavoidable health problems it would unleash, such a decision would be downright cruel.



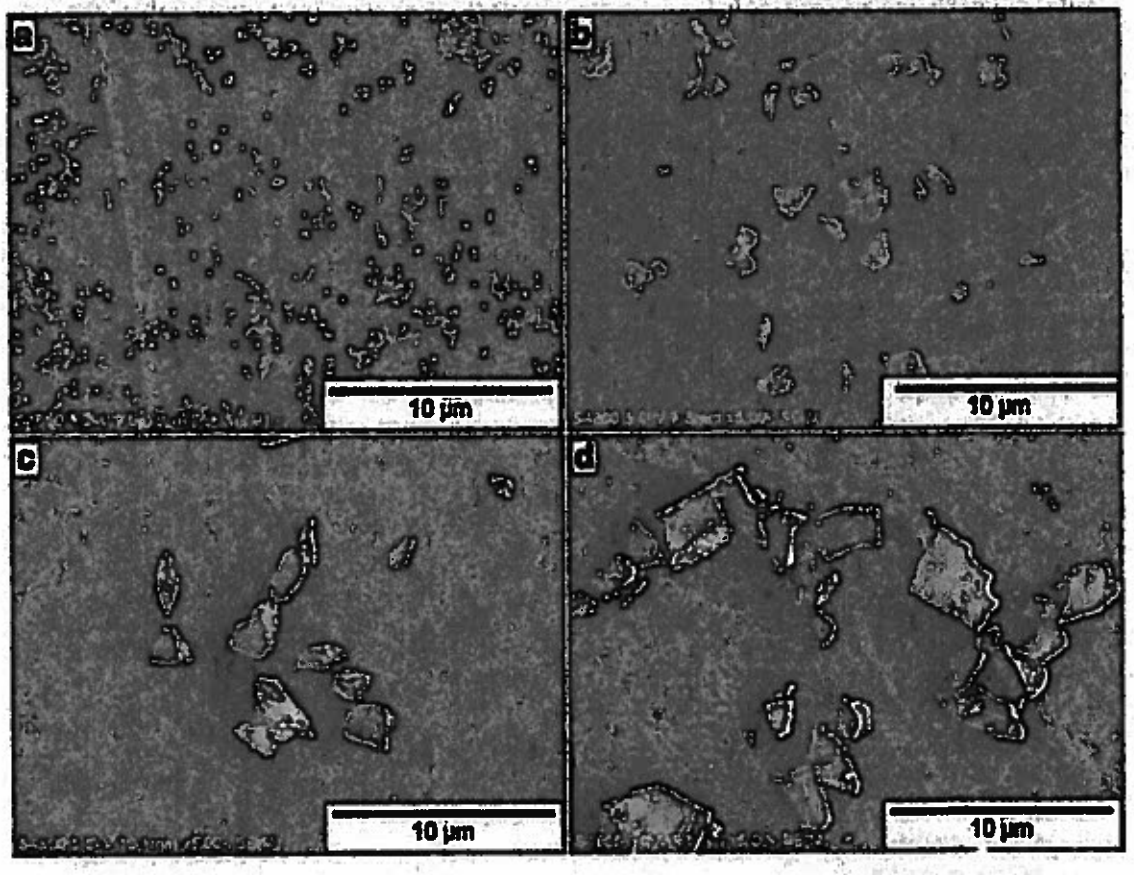
**Appendix A**

## 5,000x Images of Crystalline Silica Dust

These electron microscope images of the crystalline silica dust sort their sizes from 'ultra-fine' (as small as 0.01µm) to 'course' (up to 7µm). For reference, 10µm is the typical width of a human hair, represented here as the graphic insert of each image.

At sizes of 5µm and smaller, these microscopic razor blades are not only invisible, they are respirable. That is, when inhaled, they bypass all immune system defenses and can travel all the way to the deepest parts of the human lungs. There they *permanently* imbed themselves and begin creating their havoc on one's health.

As reported here and recognized by the medical community around the world, crystalline silica dust is deadly. It causes silicosis (an *incurable lung disease* that leads to disability and death), lung cancer, COPD (Chronic Obstructive Pulmonary Disease), kidney disease, renal disease, and auto-immune diseases such as rheumatoid arthritis.




Comparison of SEM images of the four sizes of crystalline silica particles used for this study. (a) Ultrafine (UF), (b) Submicron (S), (c) Respirable (R), and (d) Coarse (C). Images are all at the same magnification (5,000x)

SOURCE: S.E. Mischler et al, *Differential activation of RAW 264.7 macrophages by size-segregated crystalline silica*, Journal of Occupational Medicine and Toxicology, DOI 10.1186/s12995-016-0145-2, December 15, 2016

## OSHA Approved Silica Training



MAA and MITA has partnered with Wayne State University to offer Respirable Crystalline Silica training.

This program was developed though an OSHA Susan Harwood Training Grant and is designed for the construction industry (construction professionals including but not limited to workers, site superintendents, project managers, safety managers) to increase workers' awareness of the serious health hazards of silica dust and provide the knowledge necessary for employee protections.

The training covers the new OSHA Standard on Respirable Crystalline Silica (29 CFR 1926.1153) and it aims to increase workers' awareness on the serious health hazards associated with silica exposure and provide the knowledge necessary to perform work safely when there is silica exposure and ways to limit silica exposure.

Trainees who complete all the training steps will be eligible to receive a certification.

The cost for the training is provided by funds from the grant but space is limited (max 30), so if you are interested please contact the MAA office to register. Space will be filled on first come basis.

Training dates and locations are as follows:

All training times will be from 10:00 am to 12:00 pm.

December 17, 2019
Michigan CAT
Grand Rapids, MI

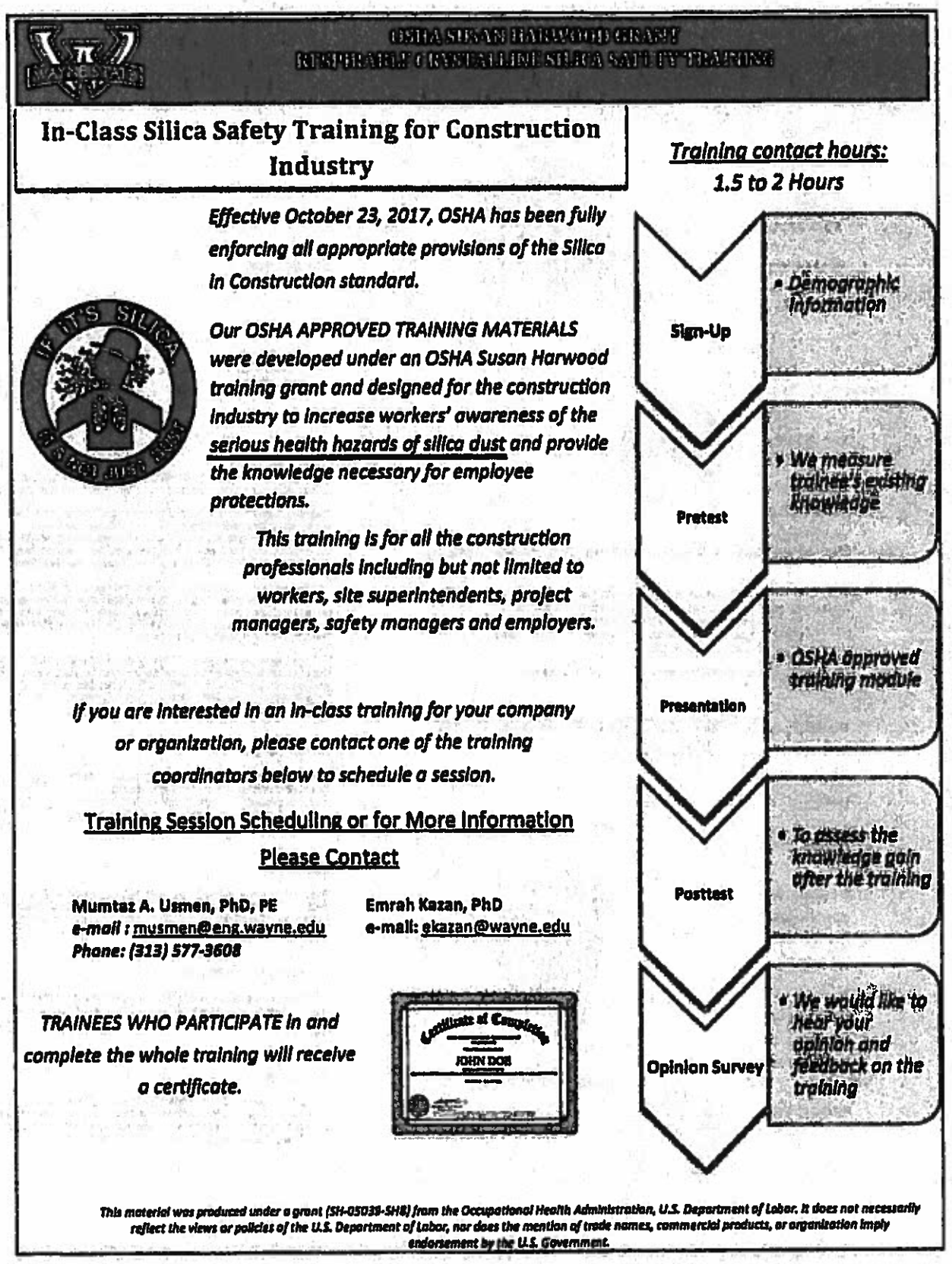
December 18, 2019
AIS Construction Equipment - Lansing
3600 N Grand River Ave
Lansing, MI 48906

For more information about these sessions, please click here.
(https://gallery.mailchimp.com/d250bd5a823dc5dd5e1625052/files/f6fc3d95-753e-44ad-9b3a-b1ae46de08bf/SH_Silica_Training_Marketing_Flyer.pdf)

If you have any questions, please contact the MAA office at 517-381-1732

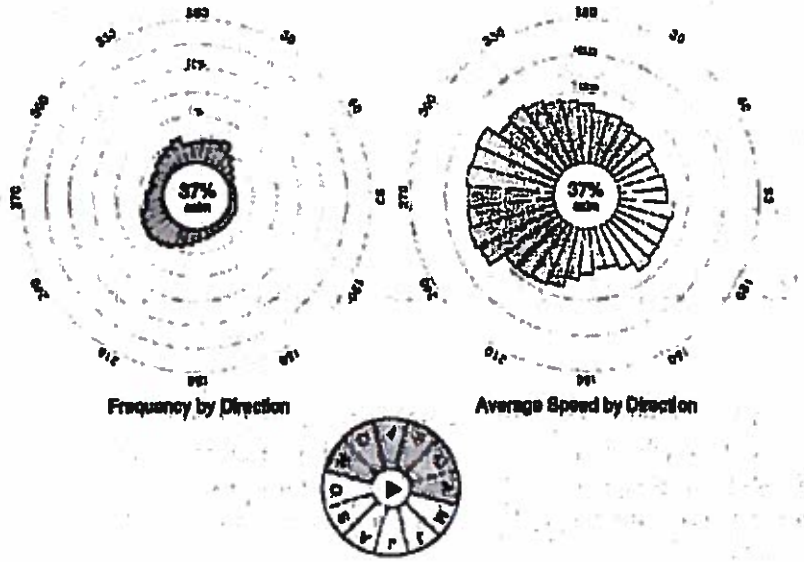
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Appendix B (p.2)




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## KTVC: Cherry Capital Airport



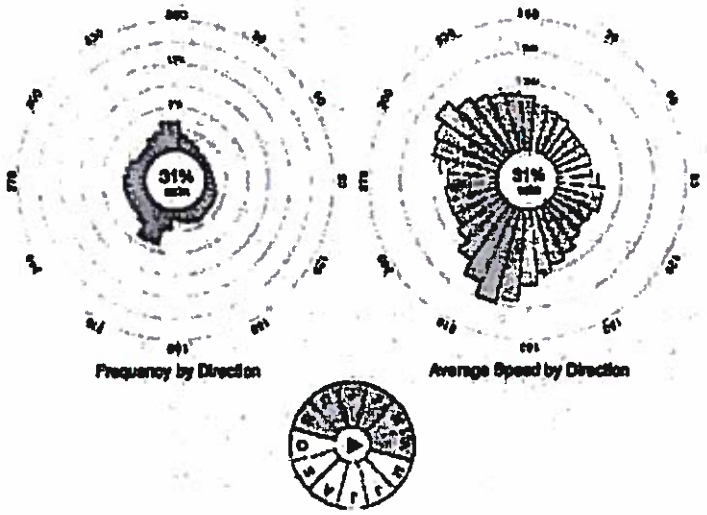

Frequency by Direction  Average Speed by Direction

44.7439, -85.649  WeatherSpark  Wunderground  VFRMap  RunwayFinder  NavMaster

A diagram of the prevailing winds at KTVC: Cherry Capital Airport. The blue diagram at left is a wind rose: the bar length shows the frequency of winds from each direction, in the red diagram at right the bar length shows the average speed of winds when they come from that direction. For more information, see about this site.

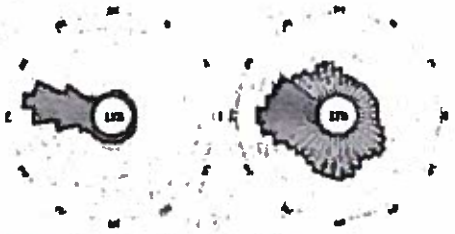
Wind History. Copyright © 2011 Sheddium Bits, LLC. All rights reserved.

## KFKS: Frankfort, Frankfort Dow Memorial Field Airport




Frequency by Direction  Average Speed by Direction

### Station view



The station view shows the prevailing winds for a single weather station. Above is an example image for KSFO, San Francisco airport.

The blue diagram at left is a classic Wind Rose. The length of each bar is proportional to the frequency the wind comes from each direction and the colour is proportional to the average speed. At KSFO the wind is pretty much always from the west. The most common direction is 280°, 10% of the time with an average speed of 19kts.

The red diagram at right shows the same data as the wind rose but emphasizes wind speed. Bar length is proportional to average speed and colour is proportional to frequency. At KSFO northeast winds are rare, and when they come they tend to be light. The strongest winds come from 270°, 15kts 11% of the time.

You may hover the mouse over a bar to see exact textual data. In both diagrams the percentage in the middle indicates how often the winds are less than 3 knots (13% at KSFO). There are links on the station page for further information: WeatherSpark is a particularly nice complementary site showing historical weather.

### Month filter

The month filter allows you to display prevailing winds for specific months. Click the calendar wedges to toggle each specific month on and on. Click the play button in the middle to animate your selection through the year.



### Data

The source data for these graphs is the NOAA archive. METARs from 2008 to 2010 were parsed and crunched to calculate average winds for each weather station. Reporting variance and data processing errors mean these diagrams are not true statistical samples.

### Browser compatibility

This site makes extensive use of SVG for graphics. It should work fine in modern versions of Firefox, Safari, Mobile Safari, Chrome, and Microsoft Internet Explorer 9. It will not work in IE 6, 7, or 8 and never will.

### Feedback

This site is a labour of love: feedback and suggestions are most welcome. Please mail comments@windhistory.com with any thoughts you have. Some planned enhancements include showing winds for specific months and showing more detailed histograms.

SOURCE: Weather Underground wundergoumd.com reported data from NOAA (National Centers for Environmental Information) National Oceanic and Atmospheric Administration

Appendix D (p1)

**MEMORANDUM**

TO: Jim Brouwer, Friends of Platte River Watershed

FROM: Sandra McCoy, Ph.D.

DATE: December 3, 2019

RE: Bohne Rd Gravel Mine, Grass Lake, Michigan

Jim,

I moved to Grass Lake Township, Michigan 1-1/2 years ago. Grass Lake is a small town, about 25 minutes West of Ann Arbor. It has a delightful "rural" character and that is what draws many people to settle here. Grass Lake Township has been embroiled in conflicts for many years concerning the incursion of gravel mining into residential areas in our community.

I am pleased to provide some excerpts from letters written by the residents of Grass Lake Township to their Township government over the past several years concerning the Bohne Rd gravel mine which has operated since 2003. These letters were obtained through a FOIA request. Also included are excerpts from Grass Lake Planning Commission meeting minutes. Many of the comments illustrate the negative effects of dust and health concerns related to mining operations in close proximity to residential areas.

> "We purchased 5-1/2 acres of land... in 1999 to build our final dream home. Since the start of the sand extraction operation... in August, 2003, our lives have been totally disrupted and our land value has definitely gone down." "Needless to say the dust issue is a HUGE factor here. The day they were doing this our whole house and deck were covered with dust and still is. I can't even open my windows. These big earth movers were coming by our property every 10 minutes and the noise and dust was unbearable."
>
> "Gravel pits in residential areas undoubtedly cause health and safety concerns and much disturbance for surrounding residents... The gravel pit on Bohne Road as currently operating provides no benefit to Grass Lake Township.... We need to consider the more than 200 people that live within a 2 mile radius of the gravel pit with many living within 50-100 feet of pit operations. These people have stated they now must close their windows due to the dust created by gravel pit operations. This certainly is not a desirable condition for them and we can and must protect the value of our homes, the environment and keep our township a safe place to live in."

"The gravel pit is a serious health risk. There are no six foot trees on the berm to eliminate dust. Many people have not been able to walk in the area as a result of the extreme dust and probable air-borne, dangerous silica. There is no monitoring for silica contamination in the air and in the well water." "There has been no MDEQ study done prior to the original SUP to check for environmental health hazards and issues, including acquifer and water table contamination (well water contamination) and negative wildlife issues."

"I would have my windows open to let the fresh air in... Now my windows haven't been open since the mine (then called gravel pit to make it sound smaller and unobtrusive) was started. There is dust all over the plants and trees in the yard as well as the house and car on a daily basis. Inside my house, a layer of dust accumulates within a few days. I don't work in the yard anymore or hang my clothes outside... I've become a prisoner in my home which is supposed to be an enjoyable, safe haven and an investment."

"We live in a log home on Sager road that we built in 2000 and it was supposed to be our dream home." "We couldn't even open our windows at all and still can't. The dust is a nightmare!! It's constantly in the air... and it's destroyed the finish on our home & decks and we have to clean it multiple times in a year now versus every 4-5 years." The biggest and closest to me is being diagnosed with a blood cancer called Multiple Myeloma. I went thru chemo for 9 months twice a week and had a stem cell collection. It's been the hardest 2 years of my life!!! I asked my dr. at the UofM cancer center what is the cause of Multiple Myeloma?? He said there is a connection from diesel fumes in the air. There are diesel trucks running all day long right behind my house since they opened this sand mine around 2001 or 2002. So this has been going on for around 17 years now."

"We are concerned for the health of our family, my daughter and I have severe asthma and are worried over the silica dust among other gravel pit issues that has caused our asthma to be in a constant state of flux. We are concerned with the location of the gravel pit being so close to our property and our well that we use for water. We don't want our well to be contaminated... We unfortunately are not in a position to move, so we will continue to keep our doors and windows shut, continue to have our house vents, ac and heat checked for contaminants that the gravel pit puts upon us, we are not able to enjoy sitting outside on our deck, swimming in our pool and we will have to continue to wear our masks to try and keep the contaminants out of our lungs. Why do we have to suffer?"

"There is overwhelming evidence regarding longterm silica dust exposure and respiratory disease. Residents near Bohne Road gravel pit testified they now suffer from respiratory diseases such as asthma and COPD."

"The site alone is appalling with the noise, dust, contamination of the stream near the gravel pit, the pond, wildlife absent and natural resources. Why is this gravel pit still in operation, from failing to comply with the agreement from 21 March 2018?" "Why should the residents be subjected to all these issues from this gravel pit".

"8/15/19 1.33pm to 1.40pm, while my husband and I were driving along Bohne Rd, Grass Lake, right near the Bohne Rd Gravel Pit. The dust was so bad we had to pull over on to the side of the road because we couldn't see in front of us." "No only is this mine dangerous to any vehicle who happens to travel along Bohne Rd, the health issues caused by the dust and diesel fumes are catastrophic."

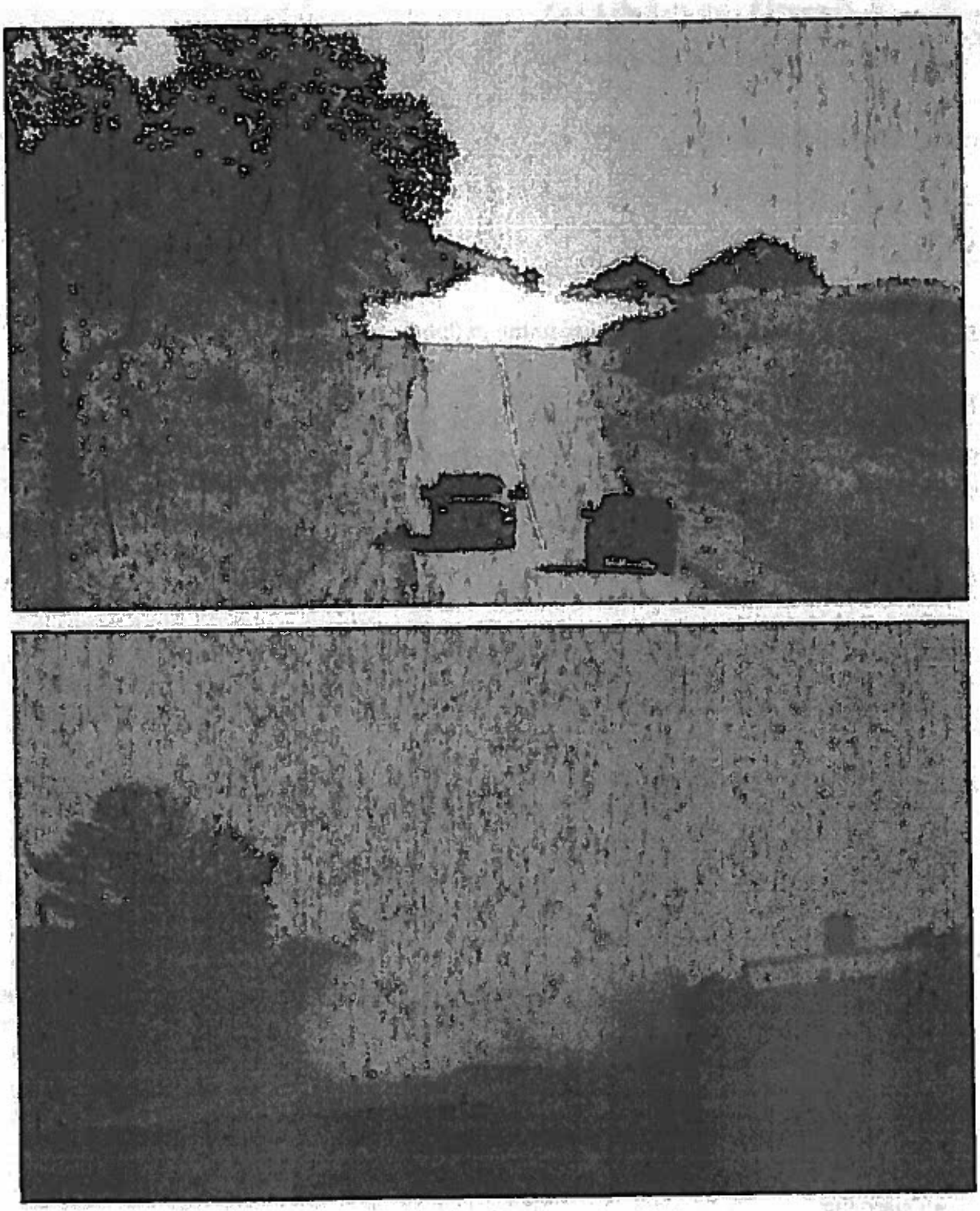
I think the issue is best summed up by one Bohne Road resident in a letter to the Township, urging them not to renew the mine permit:

"The residents need to be able to open their windows, sit outside, children need to play outside, they need sleep, they need peace and quiet, most importantly, they need to breathe, be healthy, and they need to smile and dream again."

A2 McCoy



**Appendix D (p4)**



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URL of this page: //medlineplus.gov/ency/article/000134.htm

# Silicosis

Silicosis is a lung disease caused by breathing in (inhaling) silica dust.

## Causes

Silica is a common, naturally-occurring crystal. It is found in most rock beds. Silica dust forms during mining, quarrying, tunneling, and working with certain metal ores. Silica is a main part of sand, so glass workers and sand-blasters are also exposed to silica.

Three types of silicosis occur:

- Chronic silicosis, which results from long-term exposure (more than 20 years) to low amounts of silica dust. The silica dust causes swelling in the lungs and chest lymph nodes. This disease may cause people to have trouble breathing. This is the most common form of silicosis.
- Accelerated silicosis, which occurs after exposure to larger amounts of silica over a shorter period of time (5 to 15 years). Swelling in the lungs and symptoms occur faster than in simple silicosis.
- Acute silicosis, which results from short-term exposure to very large amounts of silica. The lungs become very inflamed and can fill with fluid, causing severe shortness of breath and a low blood oxygen level.

People who work in jobs where they are exposed to silica dust are at risk. These jobs include:

- Abrasives manufacturing
- Glass manufacturing
- Mining
- Quarrying
- Road and building construction

- Sand blasting
- Stone cutting

Intense exposure to silica can cause disease within a year. But it usually takes at least 10 to 15 years of exposure before symptoms occur. Silicosis has become less common since the Occupational Safety and Health Administration (OSHA) created regulations requiring the use of protective equipment, which limits the amount of silica dust workers inhale.

## Symptoms

Symptoms include:

- Cough
- Shortness of breath
- Weight loss

## Exams and Tests

Your health care provider will take a medical history. You'll be asked about your jobs (past and present), hobbies, and other activities that may have exposed you to silica. The provider will also do a physical exam.

Tests to confirm the diagnosis and rule out similar diseases include:

- Chest x-ray
- Chest CT scan
- Pulmonary function tests
- Tests for tuberculosis (TB)
- Blood tests for connective tissue diseases

## Treatment

There is no specific treatment for silicosis. Removing the source of silica exposure is important to prevent the disease from getting worse. Supportive treatment includes cough medicine, bronchodilators, and oxygen if needed. Antibiotics are prescribed for respiratory infections as needed.

Treatment also includes limiting exposure to irritants and quitting smoking.

People with silicosis are at high risk for developing TB. Silica is believed to interfere with the

body's immune response to the bacteria that cause TB. Skin tests to check for exposure to TB should be done regularly. Those with a positive skin test should be treated with anti-TB drugs. Any change in the appearance of the chest x-ray may be a sign of TB.

People with severe silicosis may need to have a lung transplant.

## Support Groups

Joining a support group where you can meet other people with silicosis or related diseases can help you understand your disease and adapt to its treatments.

## Outlook (Prognosis)

Outcome varies, depending on the amount of damage to the lungs.

## Possible Complications

Silicosis can lead to the following health problems:

- Connective tissue disease, including rheumatoid arthritis, scleroderma (also called progressive systemic sclerosis), and systemic lupus erythematosus
- Lung cancer
- Progressive massive fibrosis
- Respiratory failure
- Tuberculosis

## When to Contact a Medical Professional

Call your provider if you suspect that you have been exposed to silica at work and you have breathing problems. Having silicosis makes it easier for you to develop lung infections. Talk to your provider about getting the flu and pneumonia vaccines.

If you've been diagnosed with silicosis, call your provider right away if you develop a cough, shortness of breath, fever, or other signs of a lung infection, especially if you think you have the flu. Since your lungs are already damaged, it's very important to have the infection treated promptly. This will prevent breathing problems from becoming severe, as well as further damage to your lungs.

## Prevention

If you work in a high-risk occupation or have a high-risk hobby, always wear a dust mask and do not smoke. You might also want to use other protection recommended by OSHA, such as a

respirator.

## Alternative Names

Acute silicosis; Chronic silicosis; Accelerated silicosis; Progressive massive fibrosis; Conglomerate silicosis; Silicoproteinosis

## References

Go LHT, Cohen RA. Pneumoconioses. In: Broaddus VC, Ernst JD, King TE, et al, eds. *Murray and Nadel's Textbook of Respiratory Medicine.* 7th ed. Philadelphia, PA: Elsevier; 2022:chap 101.

Tarlo SM. Occupational lung disease. In: Goldman L, Schafer AI, eds. *Goldman-Cecil Medicine.* 26th ed. Philadelphia, PA: Elsevier; 2020:chap 87.

## Review Date 5/30/2021

Updated by: Denis Hadjiliadis, MD, MHS, Paul F. Harron, Jr. Associate Professor of Medicine, Pulmonary, Allergy, and Critical Care, Perelman School of Medicine, University of Pennsylvania, Philadelphia, PA. Also reviewed by David Zieve, MD, MHA, Medical Director, Brenda Conaway, Editorial Director, and the A.D.A.M. Editorial team

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**From:** Blankenship, Johni
**To:** Warner, Avery
**Subject:** FW: <EXTERNAL-SENDER>Amendments to Material Site Ordinance
**Date:** Tuesday, September 6, 2022 9:03:27 AM
**Attachments:** Bilben Amendments (dragged) 2.pdf
Definitions Amendment 96.pdf
Decision.pdf
Standards Amendment.pdf
Delete Effect of Denial.pdf
type of CLUP Amendment 96.pdf
Tsunami Zone Amendment.pdf
Buffer Zone Amendments 06.pdf
Conditions Amendments 96.pdf

## Public comment

**From:** Hans Bilben <catchalaska@alaska.net>
**Sent:** Monday, September 5, 2022 8:18 PM
**To:** Blankenship, Johni <JBlankenship@kpb.us>
**Subject:** <EXTERNAL-SENDER>Amendments to Material Site Ordinance

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Hi Johni,

Please forward these amendments to assembly members, legal, and planning director. Also, please plan to project attachments in sequence to the screen as I am speaking to the Committee of the Whole tomorrow. Let me know if there is any technical issues in doing that, and I will try to adjust accordingly..

Thanks,

Hans Bilben

# Does Visual Impact really matter??



**21.29.050 (A)(1) Buffer Zone (5 amendments)**

**1st amendment is to replace (1)(a) with:**

a. The buffer zone for counter permits and CLUPs shall be of sufficient height, density, and setback to provide visual and noise screening of the proposed use to parcels in the vicinity as deemed appropriate by the planning commission or planning director (as applicable). Buffer requirements shall be made in consideration of and in accordance with existing uses of properties in the vicinity at the time of approval of the permit. There is no requirement to buffer the material site from uses which commence after the approval of the permit.

**2nd amendment would replace 21.29.050(A)(1)(b) Existing (b) becomes (c) etc.**

b. A buffer zone shall be established between the area of excavation and the parcel boundaries. The buffer zone for a Counter Permit and a Type 1 CLUP shall consist of one or any combination of the following: Fifty feet of natural vegetation, a minimum six-foot fence, a minimum six-foot earthen berm with a minimum 2/1 slope. The buffer zone for a Type 2 or a Type 3 CLUP shall consist of the following: Minimum

eight-foot fence, or fifty feet of natural vegetation and a minimum ten-foot earthen berm with a minimum 2/1 slope.

**3rd** amendment would change wording in existing 21.29.050(A)(1)(d) (now e.) to:

e. 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] adjoining another material site or industrial use.

**4th amendment is to add a new paragraph 21.29.050)A)(1)(f).**

f. Geographic Information System (GIS), Photogrammetry, and LIDAR technology may be utilized in the design of the buffer zone when differing elevations exist between the proposed site and properties in the vicinity. Using this technology, line of sight profile drawings from the uppermost inhabitable level of existing properties located in the vicinity may be utilized in the determination of sufficiency of the buffer zone.

**5th** amendment is to add another new paragraph to 21.29.050(A)(1)(g).

g. At its discretion the planning director or planning commission, as applicable, may waive or reduce buffer requirements when screening proves to be not necessary or not feasible.

Four amendments to amend **21.29.050. Permit Conditions**

**1st** — Deleting **Discretionary Conditions 21.29.050(B)(1)(a).**

If GIS and LIDAR technology is utilized the buffer zone will be defined under (A)(1). Setting a maximum of 100 feet would deny protections laid out in Standards in some cases. One size does not fit all!!

***Justification for this amendment is that if the buffer zone is designed correctly by using evidence and technology there is no need for this discretionary condition. The tools, and the discretion, for the correct design are spelled out in amendments which I have written to the buffer zone language.

**2nd** — Amend 21.29.050(B)(1)(i) to read:

i. Upon request of the applicant [IN LIEU OF ANY ADDITIONAL BUFFER AREA THIS SUBSECTION DESIGNED TO SEPARATE THE USE OF MATERIAL SITE ACTIVITIES FROM NEIGHBORING PARCEL BOUNDARIES, AN EIGHT-FOOT-BERM ABOVE THE PREEXISTING ELEVATION MAY BE CONSTRUCTED PRIOR TO EXCAVATION, AROUND THE EXCAVATION AREA.] an earthen berm with a minimum 2:1 slope of the height determined by the planning commission under KPB 21.29.050 shall be constructed above preexisting elevation around the excavation area. If the excavation site area expands, the berm may move toward [THE PERMITTED BOUNDARY] negatively impacted properties in the vicinity

until such limits of the permitted area are exhausted. The berm must be maintained at [EIGHT-FOOT HEIGHT] the predetermined height while permitted activity is occurring. This earthen berm may be in addition to other buffer zone conditions imposed by the planning commission, or required by KPB 21.29.050.

**3rd** — **21.29.050(B)(6)** should be deleted. If enacted, only borough residents living at street level or below will be protected from visual, noise, and dust impacts.

**4th** —Amend **21.29.050(2) Discretionary Conditions** to add:

6. *Noise suppression*. At the discretion of the planning commission or planning director (as applicable) multi frequency (white noise) back-up alarms may be required on all equipment and vehicular traffic on site as a condition to help meet the noise impact standard in accordance with and in consideration of existing uses in the vicinity.

Amendment to add new section **KPB 21.29.063. Decision.**

**21.29.063. Decision.**

The planning commission or planning director, as applicable, shall approve permit applications whereby mandatory standards under KPB 21.29.040 have been met through implementation of conditions as set forth in KPB 21.29.050, or shall disapprove applications when the conditions do not meet the mandatory standards in KPB 21.29.040. The decision shall include written findings detailing how the conditions under KPB 21.29.050 meet, or do not meet the mandatory standards set forth in KPB 21.29.040 and evidence to support those findings. The decision shall be distributed to the parties of record before the planning commission, with a notice of right to appeal.

*** Justification is to give the Planning Commission and the Planning Director direction as they approve, modify, or disapprove an application based upon its compliance with the requirements of the ordinance as currently spelled out in KPB 21.25.050(B). This new paragraph is based upon **"21.29.055. Decision"** as taken from the material site working group document.

Amending **21.29.130 Definitions** to add **two** items:

1. **Vicinity means 1,000 horizontal feet from the parcel boundary of the proposed earth materials site**.

***Justification for this is that in the past the word "adjacent" was often used to determine the extent of protecting neighbors. An adjacent property might be as small as a quarter acre, in which case the property owners further out might be left without adequate protection. An adjacent property might be eighty acres which leaves the applicant at risk because of the planning commission's interpretation of the ordinance. By having a stated distance it protects both the applicant, and neighboring property owners. The material site working group defined "vicinity" as the notification area meaning 1/2 mile or 2,640 feet. This is a compromise distance.

2. **Earthen Berm means a berm constructed above the preexisting elevation, consisting of topsoil or aggregate, suitable for revegetation, not to contain more than 10% organic material, and maintaining a 2:1 slope on both sides.**

***Justification for this is to aid the compliance officer in determining if berms are constructed in a fashion that will meet the standards. A pile of brush with a couple inches of dirt on top is not an adequate protection for properties in the vicinity. A properly constructed berm could provide sufficient noise, visual, and some dust screening for the duration of the project, plus it would aid in the reclamation process.

Section **21.29.065 Effect of permit denial** amended by **DELETION** of entire section.

***Justification: There is currently a process in place that allows either party to **appeal** a decision that they feel is unjust. This process may proceed all the way to the Alaska Supreme Court and the final decision rendered, whether it is approval or denial of a permit, should be adhered to. To subject neighboring property owners and KPB to the costs, both in dollars and time spent on a first appeal, only to restart the cycle again in one year or less is ludicrous. In the 16 year history of the current ordinance there has never been a denial that stood up on appeal—**ZERO**—so just who is this written for? Certainly not for the benefit of the vast majority of Borough residents!

Including this section in the ordinance undermines the credibility of the planning commission, the planning director, the entire appeal process, and is the ultimate slap in the face to the residents of this borough who may have successfully (and legally) defended their neighborhood as spelled out in the ordinance.

If the Assembly really thinks that a reapplication is warranted, then the rule for denial should be the same as the rule for approval. If approved a counter permit is good for two years and a CLUP for five years. If denied a counter permit reapplication should not be allowed for two years, and for a CLUP no reapplication for five years. Any reapplication even then should only be allowed if the applicant can prove that new evidence or circumstances exist that were not available or present with the first application.

Amend **21.29.040 Standards for sand , gravel, or material sites.** **Two amendments**:

**1st**— In **21.29.040(A)** rewrite (A) to include visual impact and to delete reference to street-level screening.

A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, visual, and other impacts of earth materials extraction to properties in the vicinity through setbacks and buffer zones. Prior to granting a counter permit or a conditional land use permit under this chapter, the planning director or planning commission, as applicable, must make the following findings:

*** Justification would be that by only requiring street level visual screening this ordinance will eliminate protections for a segment of the borough population—again going back to the one-size-fits-all model that didn't work in the past.

**2nd**— Include the omitted MatSu standard #2 into **21.29.040**.

2. That the use will preserve the value, spirit, character, and integrity of the surrounding area;

***Justificationis that this standard (currently in the MarSu ordinance) helps to define just where a material site should and/or should not be located. It is critical if the ordinance is really meant to comply with the Comprehensive Plan.

Amend **21.29.050(A)(2) Permit Conditions applicable to all permits** to read:

**2. Water source separation.** (New paragraph after letter c.)

**d. All permits shall be issued with a condition which prohibits any material extraction within 500 linear feet of any existing private well or water source when located within the boundaries of a mapped tsunami hazard zone**

***Justification is to include mapped tsunami Hazard Zones as defined by Alaska DNR, in partnership with the Alaska Earthquake Center and the Alaska Division of Homeland Security and Emergency Management. There are seven such zones in the Kenai Borough. Any excavation in a tsunami hazard zone demands scrutiny because of the potential to turn a material site into a saltwater lake thereby contaminating any wells or water sources in that zone.

**1st** Amend **21.29.020(A) Types of permits available** to return Counter permit to current 2.5 acre size, and to retain new language concerning two year time period with one 12 month extension.

***Justification: To allow a material site greater than 2.5 acres that would have multiple negative impacts to properties in the vicinity without any prior public input is a great disservice to the residents of the borough and not in accordance with the Comprehensive Plan.

**2nd** Amend **21.29.020(B)(1)(2)(3)** to read:

Type 1 CLUP. Type 2 CLUP. Type 3 CLUP.

****Justification: Makes for cleaner reference in remainder of ordinance.

**3rd** Amend **21.29.020(B)(1)** to read:

1. Type 1 CLUP. Earth Materials Extraction with Restricted Processing CLUP. An Earth Materials Extraction with Restricted Processing CLUP is required for any material extraction which disturbs 2.5 or more cumulative acres. Processing is restricted to one portable two deck screen capable of screening or classifying material, limited to a maximum of 500 cubic yards per day. Extraction within four feet of the seasonal high-water table is prohibited under this permit. The conditions set out in KPB 21.29.050 and .055 are applicable to this type of CLUP.

**4th** Amend **21.29.020(B)(2)** to add language dealing with water-table separation.

2. ...or crushing activities. Extraction or processing within four feet of the seasonal high-water table is prohibited under this permit. The conditions set forth....

**5th** Amend the The Type 3 CLUP **21.29.020(B)(3) (Earth Materials Extraction within Water Table)** to include processing in its language. Why wouldn't it??????

**From:** Blankenship, John
**To:** Warner, Avery
**Subject:** FW: New Public Comment to Assembly Members
**Date:** Tuesday, September 6, 2022 6:10:37 PM

**From:** Kenai Peninsula Borough <webmaster@borough.kenai.ak.us>
**Sent:** Tuesday, September 6, 2022 5:46 PM
**To:** BoroughAssembly <Borough-Assembly@kpb.us>; Mayor's Department <MayorDepartmental@kpb.us>
**Subject:** New Public Comment to Assembly Members

**Your Name:** Elena Staab

**Your Email:** Elena-joy@hotmail.com

**Subject:** Ordinance 2022-36

**Message:**

To the KPB Assembly:
This is to show my support for Ordinance 2022-36. As a property owner that is adjacent to 2 gravel pits that have grandfather rights (Kobuk & Big Eddy/Spruce St. and Greenridge St & Joplin), I am acutely affected by their unregulated operations. I have experienced flooding multiple times in the last 10 years due to their uncontrolled release of water and the absence of ditches and driveway culverts on my road. I live on Greenridge Street.
After reviewing the ordinance, I noticed the lack of a contingency plan for catastrophic failure of their coffer dams. This is my biggest fear, that a wall of water from those dams will make my home unlivable and render me homeless. I have flood insurance, but that only covers flooding from the river in an "act of god" happenstance.
When these gravel pits were granted grandfather rights this was a rural area, only 3 people homesteading. The current and coming population density calls for re-evaluation and an SWPP at the very least. I have discussed these things with my neighbors and we are all in agreement with your ordinance, plus upgrades to our road for flood management are necessary. I appreciate your time and consideration.
Sincerely,
Elena J. Staab

Kenai Peninsula Borough Assembly
144 N. Binkley Street,
Soldotna, Alaska 99669

Re: Comments Regarding Proposed KPB Ordinance 2022-36

Dear Assembly Members:

We are writing to you regarding the new proposed Ordinance 2022-36, amending KPB Chapter 21.25 and Chapter 21.29. There are certain truths related to gravel pits:

1) No one really wants one as a neighbor
2) They are for the most part noisy and dusty
3) They have a negative visual impact to surrounding homes and neighborhoods
4) We all need gravel and sand for our lives we enjoy on the Peninsula
5) We all want our families and children to be safe from gravel pit operations
6) We all know, to be safe, we need reasonable Borough regulations that protect both the public welfare while helping the gravel industry sustain their businesses.
7) We all want gravel and sand at a fair price

The key takeaway from these truths is, "reasonable Borough regulations" for gravel pit operations.

The new proposed Ordinance 2022-36 does move us in the right direction, however, some of the above truths we can agree on have been overlooked or not given the weight they should have.

For example, 21.29.015 (C) now allows a Counter Permit to be 10 acres. A square 10 acre gravel pit would be about 14, 150 foot square residential lots. By any standard, this would be a huge gravel pit. It should be left at 2.5 acres. This new regulation also strips out any public safeguards from all the concerns listed in 1) thru 3) above. Delete this amended version and add back the current language under 21.29.020 (B). But add that Counter Permits must meet public notice requirements of 21.25.060. Also, delete exception given to public notice for Counter Permits under this section.

The public should have the right to examine any proposed gravel pit in their area and be able to discuss it with the Planning Commission.

In the new regs 21.29.040 "Standards for sand, gravel, or material sites", the new amendment is striped of any meaningful language that would allow the Planning Commission to exert their authority in denying a gravel permit. In fact, under this section, and others similar, the Planning Commission will almost have to approve any and all gravel pit applications. The new amendment as written, fails to address most of the above truths we all share about the need for the public's protections from gravel pit operations. The current, existing section of 21.29.040 in its entirety should be left in place as written.

Regarding item 3) above, about visual impact, the amendment 21.29.040 has set the limit of visual impact to only "street-level visual screening". This restriction of the height of screening to protect properties surrounding a proposed gravel pit does not take into account screening for two story homes, much less, homes on a hill side above a proposed gravel pit. Delete "street-level screening" from this section. And, address visual screening by adding back the current standards in the existing regulations under 21.29.040 (A) (1 thru 6).

Under item. 2) above, regarding dust from gravel pit operations, Eileen Sheridan will be offering an Amendment to 21.29.040 related to dust from quartz and silica that is found in all types of rock and sand mined on the Kenai Peninsula. I took a shovelful of gravel that came from a known gravel pit source in Anchor Point and found it laced with minute particles of silica. The winds pick up the fine silica particles from gravel pit operations and they are blown into surrounding areas. Silica is a known cause of silicosis, respiratory illnesses, cancer and death for humans if breathed in for long periods of time. I urge you all to listen to Eileen's presentation and take time to read the material she's gathered on this important subject. Please pay particular attention to the table on Page 3 of "Crystalline Silica Dust-The Invisible Killer" section. It shows that small silica dust, small enough to enter our immune system can travel 4.5 miles in a 6.2 mph wind. Most gravel people don't seem to understand the long term effects of working around gravel operations and fail to take any precautions themselves. OSHA has issued strong warnings and advisories for people who work around silica dust. Its time we take notice too, and adjust our materials regulations to protect our residents and the public.

There's much more that needs to be addressed in the proposed amendments and we hope to have another chance to do so. This is a big deal for not only the residents and public but very important for our gravel producing neighbors on the Peninsula as well. So, we hope you will take time to weigh all the pros and cons carefully to arrive at fair and workable regulations for us all.

Lastly, we want to encourage you to carefully review and act on Hans Bilben's amendments he has submitted. Hans is a very honest, fair-minded man. He has been working closely with Ed Martin, one of the gravel interest leaders to try to work out language in the proposed new amendments that would work for all of us, both residents and the pubic, and the folks with gravel interests. We support Mr. Bilben's amendments.

Thank you for considering our views.

Gary and Eileen Sheridan

PO Box 661,
Anchor Point, Alaska 99556

KPB Ord. 2022-36

| | |
|---|---|
| **From:** | Blankenship, Johni |
| **To:** | Warner, Avery |
| **Subject:** | FW: <EXTERNAL-SENDER>Cline response - Kenai Peninsula Borough Ordinance 2022-36 |
| **Date:** | Monday, September 12, 2022 5:00:09 PM |

## Public comment on Material Site Ordinance

**From:** Ann Cline <anndotcalm@gmail.com>
**Sent:** Monday, September 12, 2022 4:48 PM
**To:** Blankenship, Johni <JBlankenship@kpb.us>
**Cc:** Hans and Jeanne Bilben <Catchalaska@alaska.net>
**Subject:** <EXTERNAL-SENDER>Cline response - Kenai Peninsula Borough Ordinance 2022-36

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Good afternoon,

At last week's KPB Assembly meeting, the ordinance regarding CLUPs was discussed. After I spoke at the meeting, I gave my name and phone number to you and several of the Assembly to offer my assistance in the ordinance's revision. Johni, please forward this to all Assembly members and Planning Department.

I have several clarifying points which hopefully will result in a clear, easy to follow document to assist landowners and the public regarding land use and material site permits with protections. I am using the amended Ordinance 2022-36 with the new text. Please let me know if I may be of further assistance.

[1]. I was unable to locate where the ordinance stipulates how many acres can be permitted per parcel. What is to prevent a landowner from having 1 acre permitted, another acre permitted a year later, another acre permitted the following year, and so on till he/she has excavated all the acres they would like? Should the ordinance stipulate 1 acre **per parcel**? If the Borough allows short platting, then that's another loophole that needs to be addressed. Otherwise, a landowner could shortplatt his/her parcel into 1 acre parcels and permit them individually.

[2] I don't see the necessity of KPB offering a Counter Permit. It seems to me that a CLUP is sufficient. I didn't see any difference In the 21.29.020 A. Counter Permit description. What am I missing?

[3]. Under 21.29.020 B. Conditional Land Use Permit, 1. states "an Earth Materials Extraction CLUP is required for any material extraction which disturbs 10 or more cumulative acres." My Anchor Point neighbors and I respectfully exhort you to replace the number 10 with 1 to read:

"an Earth Materials Extraction CLUP is required for any material extraction which disturbs more than 1 acre."

[4] I was unable to find the requirements of a public hearing for any CLUP request in excess of 1 acre. A public hearing is very important to ensure that affected Kenai Peninsula Borough residents have an

opportunity to inform planners and stakeholders of concerns regarding health, safety, and welfare of the surrounding residents, tourists, and business owners.

[5] Regarding 21.29.030. Application procedure A:
Delete “a counter permit or” if you determine that only a CLUP is sufficient.

[6] Regarding 21.29.040. A:
Delete “street level” and replace with “visual screening from all affected surrounding areas within 1/2 mile.”

[7] Regarding 21.29.060 - Reclamation plan:
Asking for a bonding requirement of $750 per acre for reclamation is completely unrealistic. Just to bring in the equipment necessary to do the work far exceeds that price! I suggest you speak with local excavators to obtain an accurate bid on the actual cost to reclaim property and proceed. Remember that unscrupulous landowners will do the least of your demands so you must be diligent and realistic with your legal requirements.

[8] Regarding 21.29.065 A:
A can be deleted if you decide to remove counter permits from the ordinance.

The most important aspect to any ordinance is whether or not it will be enforced. If there are no real consequences for disobedience, then the ordinance is moot. If you are concerned that the KPB planners will have a difficult time bringing landowners into legal compliance with ordinances, then it’s imperative that you change your wording from “may” to “must” in your ordinance.

Part of the KPB Planning and Assembly personnel job descriptions should include making a physical visit to the locations of the permits under review. For example, our Anchor Point neighbors have no doubt that if the Assembly and borough Planners had come to our neighborhood to witness for themselves, our lawsuit would have been unnecessary. The Beachcombers LLC gravel pit was/is in full view of, and carcinogenic dust exposure to, our surrounding hillside homes.

As I expressed at the open KPB meeting last week, I believe we all need to be able to sleep each night knowing that we have been honorable and have made righteous decisions not only for our neighbors, businesses, and ourselves but also for **posterity.** We will become dust, but our actions should carry lasting goodness to those we leave behind.

Respectfully,

Ann Cline
34926 Danver
PO Box 121
Anchor Point, AK. 99556
(425) 449-3540

## Warner, Avery

**From:** Blankenship, Johni
**Sent:** Monday, October 3, 2022 9:55 AM
**To:** Warner, Avery
**Cc:** Turner, Michele
**Subject:** FW: <EXTERNAL-SENDER>Gravel pits- to be forwarded, thanks

---

**From:** laura sievert <laurasievert@hotmail.com>
**Sent:** Monday, September 26, 2022 8:03 PM
**To:** G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
**Subject:** <EXTERNAL-SENDER>Gravel pits- to be forwarded, thanks

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

To the Borough Assembly:

I admit that I haven't been keeping up on Assembly progress on regulating gravel pits.

Listening to Nikiski candidates on the KDLL assembly candidate forum tonight, I gather that most residents have concerns about gravel pits because of the normal nuisances and lowering of adjacent property values, which I agree are problems. However, my primary concern (my property value is forever lowered) is the way that gravel pit operators are trusted to run their pits after they have been approved. The two operators that surround my property - Great Northern and QAP- have bulldozed a salmon stream, stacked up old asphalt on shorelines, dumped derelict machinery, run a batch plant without a permit, and otherwise ignored what is allowed by the Borough.

Below, find my previous letter. I still have the same concerns, which are not being addressed when you only look at residents' common concerns like dust, jake brakes, and unsightly views. My concerns are violations that have repercussions that will last decades and beyond. I am not asking you to address my two gravel pit problems- since it's too late- only that you consider the future.

Thank you - Laura Sievert

I live on Beaver Loop, home to several gravel pits. We live between the Quality Asphalt Pit and the Great Northern pit. Both were old gravel pits that came back into production for the Spur Highway project.

As part of your discussion going forward, I beg you to consider two things: first, how to enforce the rules that pit operators are required to follow, new rules as well as those already in effect such as the Anadromous Stream Ordinance. Also, what is to be the relationship between city and Borough regulations regarding gravel pits? Apparently the regulations vary.

Our experience with Quality Asphalt & Paving in 2020 is an example of what can go wrong. Since 2020 we have tried to get the Borough and the City of Kenai to fix QAP's violation of the Anadromous Stream Ordinance in a stream that originates on our property and then runs through their gravel pit and into the Kenai River.

Just prior to the violation, we had been working with a former Borough biologist who studied our property and made some suggestions as to how we might enhance the coho run up our stream. This was part of a project he was working on to help property owners enhance privately owned habitat.

While extracting gravel for the Spur highway project, QAP bulldozed the stream on their property, cut all trees and vegetation along the bank, built two roads over the stream, and installed two culverts. I found out later that the City of Kenai knew of this plan and approved it. This was apparently due to a difference between City and Borough regulations.

I objected- after the fact- but the repercussions were slight. QAP denied knowing it was an anadromous stream despite having installed an expensive fish culvert on that very stream a couple of hundred yards downstream, under Beaver Loop road.

The biologist who had been helping us negotiated two ways that QAP could begin to make up for damaging the stream: planting trees (which they did- maybe 20 alders, which in our lifetimes will not shade the stream), and removing an old culvert further upstream on their property. Too little, too late. Photo of clear cut stream:



There's more. QAP dumped broken-up used approach asphalt in their pit, near the stream- I believe it is still there. They installed a batch plant in the gravel pit (gone now). There was no permitting or public hearing for that plant. On the other side of our property, Great Northern pushed dirt into the pond (right at our property line) that is the origin of the
anadromous stream I refer to. Photo of asphalt dumped in the QAP pit:



Rules and regulations are good, but please consider if and how they will be enforced.

No one is watching these pits. We got the Kenai City planner out a couple of times, first on Day One, when QAP clear-cut the 200 foot buffer zones around the pit, a violation of their conditional use permit. No repercussions- the trees are gone, nothing to be done.

I could go on. I can send more photos How will you make sure pit operators follow the rules? How do they make amends when they violate the rules? Perhaps by posting large bonds? No one can stand out there and monitor them, and the damage can happen really fast. The cutting of the buffer took a few hours. And money doesn't bring back our streams, salmon or buffer zones.

Thanks for your work on this. We need gravel, but I hope you can balance that need with a consideration for the long term health of our water, people, land and wildlife.

Laura Sievert
3329 Beaver Loop, Kenai

## Warner, Avery

2022-36

**From:** Blankenship, Johni
**Sent:** Thursday, October 6, 2022 8:47 AM
**To:** Warner, Avery
**Subject:** FW: <EXTERNAL-SENDER>gravel pit

Public comment on O2022-36

-----Original Message-----
From: Supercub Inalaska <sw69313@yahoo.com>
Sent: Wednesday, October 5, 2022 4:56 PM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>gravel pit

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Hello,
I just spoke with Ryan Raidmae on the phone.
This email is how i am showing support
FOR
the proposed code rewrite of the conditional land use dewatered bar material site permits.

I live within 1/2 mile of several pits in seldovia alaska

i may be reached

loren rhyeer
2837 glacier street
anc ak 99508 in the winter.

907-227-8480
for comment or confirmation.

thank you

loren

**Warner, Avery** 2022-36

**From:** Blankenship, Johni
**Sent:** Monday, October 10, 2022 2:06 PM
**To:** Warner, Avery
**Subject:** FW: <EXTERNAL-SENDER>Public Comment - Conditional Land Use Permits, Material Site Permits and Fees regarding applications, conditions, and Procedures

Ordinance 2022-36 public comment

**From:** Greg Barclay <gbearclaw52@gmail.com>
**Sent:** Sunday, October 9, 2022 6:21 PM
**To:** G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
**Subject:** <EXTERNAL-SENDER>Public Comment - Conditional Land Use Permits, Material Site Permits and Fees regarding applications, conditions, and Procedures

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Dear Madam Clerk,

We are not opposed to gravel pits as we realize they are part of building construction and keeping roads safe. We live in Lakewood Subdivision, at Mile 86 of the Sterling Hwy, across the road from an active gravel pit and do notice a lot more noise from the equipment and material being moved in the summer season. Would more pavement close to intersections help or some type of dust treatment applied on the access road?

There is quite an increase in dust in the area, our yards and houses during the construction season from the gravel pit. Is it possible for some type of dust prevention such as water application in certain gravel pit activities?

We like to see our community to be safe and also grow.

Thank you,

Greg and Linda Barclay
38403 Breezewood Dr.
Sterling, AK 99672
907-262-1400

**From:** Blankenship, Johni
**To:** Warner, Avery
**Subject:** FW: <EXTERNAL-SENDER>material assembly site meeting, to be held October 25th, 2022
**Date:** Tuesday, October 11, 2022 12:19:47 PM

---

**From:** patricia gross <plgross293@gmail.com>
**Sent:** Tuesday, October 11, 2022 12:14 PM
**To:** G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
**Subject:** <EXTERNAL-SENDER>material assembly site meeting, to be held October 25th, 2022

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

To whom this concerns;

I am a resident close to a conditional land use area. I am against you renewing their permit, because they have to drive thru a residential area. The roads are maintained by the subdivision residents, in order to get to the main road, or go partway down the subdivision road onto a state road which the heavy trucks tear up too, then to the main road. There are several small children that play in or close to the road in the neighborhood. Thank You .

Pat Gross

**Warner, Avery** 2022-36

**From:** Blankenship, Johni
**Sent:** Tuesday, October 11, 2022 12:24 PM
**To:** Warner, Avery
**Subject:** FW: <EXTERNAL-SENDER>Public Hearing 10/25/22

**From:** D Garske <ddgarske@gmail.com>
**Sent:** Tuesday, October 11, 2022 12:24 PM
**To:** G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
**Subject:** <EXTERNAL-SENDER>Public Hearing 10/25/22

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Hi Johnny!
My husband and I can't make the scheduled KPB Material Site Assembly Meeting, so please consider this our written statement in regards to the gravel pits near our house:

We don't have any issues with gravel pits in general, however, when people think they can trespass and use them to sight in or practice shooting their pistols and/or rifles, especially late at night, we tend to bristle. Perhaps a security provision could be added to future permits. Must have locking gates, or something similar.

Thank you for your time,
Diane & Hugh Garske

**From:** Blankenship, Johni
**To:** Warner, Avery
**Subject:** FW: <EXTERNAL-SENDER>Kenai Peninsula Borough Material Site Assembly Conditional Land Use
**Date:** Friday, October 14, 2022 10:43:16 AM

---

-----Original Message-----
From: toni.swearingen@gmail.com <toni.swearingen@gmail.com>
Sent: Friday, October 14, 2022 10:40 AM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>Kenai Peninsula Borough Material Site Assembly Conditional Land Use

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

To Assembly Clerk:
I would like at make a comment concerning the Conditional Land Permits, regarding Conditions and Procedures.
We own a house in Soldotna, 45037 Big Eddy Rd on the corner of Kobuk and Big Eddy roads. A huge gravel pit is on two sides of our property. We would like to be assured that they will not be able to disturb our well water level or they quality of our water. Currently we have very clear and delightful water.
We want make sure they can not disturb our well. Please include protection of Quality and Quantity to the land use permits.

Thank you for your attention to this matter.
Sincerely,
Toni Swearingen

Toni Swearingen
3201 Rosalind Loop
Anchorage, AK 99607
907-242-3367

**From:** Blankenship, Johni
**To:** Warner, Avery
**Subject:** FW: <EXTERNAL-SENDER>2022-36 changes for material sites
**Date:** Monday, October 17, 2022 9:06:05 AM

## Public comment

**From:** mamabear Roderick <ak_mamabear@yahoo.com>
**Sent:** Monday, October 17, 2022 7:37 AM
**To:** G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
**Subject:** <EXTERNAL-SENDER>2022-36 changes for material sites

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

I am a small business owner in Anchor Point, Alaska. I have owned R/C Land Improvement since 1993. Three years ago, my husband Marc Roderick was killed in a trucking accident, and I was forced to down-size the business in order to keep my business running and for me to support my family.
I went from personal loss, to COVID, to the current struggling economy and now you want to force changes in a short time frame.

I have many concerns and questions regarding the proposed changes, here are a few:

Why are you not allowing the PEU status to transfer from landowner to landowner? This devalues my assets and hurts my small businesses value. Do I get compensation?

It is not economically feasible for small business to be forced to work PEU pits every year. Could there is a better solution? Why not 3 or 5 years?

Are you going to pay for fixing my buffer zones? They were made according to the rules at the time.

Digging in water tables, now I would have to put in monitoring wells and pay surveyors and others for services. The expense would put me out of business or make my prices so high customers will buy from someone else. I feel like you're trying to kill the small business operators and reduce the number of active gravel pits. What percentage is KPB going to be paying for the monitoring wells?

Wording is vague and confusing, "to minimize"," in the vicinity"….who then makes the call on what that means? MSHA is already vague, and every inspector has their own opinion on what the regulations mean. Please don't make it worse. Clarify your statement in exact terms so there will be no disputes later. This shouldn't be left up for interpretation.

If I understand correctly, the new changes will go into effect in a few years, for me that is not enough time, I am in the middle of contracts with set prices. I don't have the budget to switch to the new changes in just a few years. Can we work on the timeline in which this will take effect?

Why would I need to pay for fixing public roads? Truckers are already taxed high, registration fees by the state, 2290 taxes by the feds, isn't that supposed to be for road repairs? Small business can't be expected to take on all the burden for public roads.
I do not support the changes. I do not support you changing my PEU status to a permit.

Thank you for your time,
Shanna Roderick

owner of R/C Land Improvement

**Warner, Avery** 2022-32

**From:** Blankenship, Johni
**Sent:** Monday, October 24, 2022 10:38 AM
**To:** Warner, Avery
**Subject:** Fwd: <EXTERNAL-SENDER>Gravel pit Ordinance

Sent from my iPhone

Begin forwarded message:

**From:** Janet Simons <ibjanetsimons@gmail.com>
**Date:** October 24, 2022 at 3:29:34 AM AKDT
**To:** G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
**Subject: <EXTERNAL-SENDER>Gravel pit Ordinance**

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Good morning!

I strongly recommend that ALL gravel pit permits be reviewed every 5 years and the owner be required to justify it's renewal and that the site location is suitable for a commercial business and compatible with the surrounding neighborhood. It must be in full compliance with all applicable state and borough ordnance's concerning public safety,noise,operating hours,dust control and road maintenance on roads used to access the sight. They should also be in full compliance with OSHA and the EPA and ensure they do not effect ground water levels to adjacent properties.

Thank you,
Janet Simons

Sent from my iPhone

**Warner, Avery** 2022-36

**From:** Blankenship, Johni
**Sent:** Monday, October 24, 2022 10:38 AM
**To:** Warner, Avery
**Subject:** Fwd: <EXTERNAL-SENDER>Gravel Pit Ordnance Update

Sent from my iPhone

Begin forwarded message:

> **From:** David Weber <weber@xyz.net>
> **Date:** October 24, 2022 at 5:55:57 AM AKDT
> **To:** G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
> **Subject: <EXTERNAL-SENDER>Gravel Pit Ordnance Update**
>
> CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.
>
> Having lived in Upper Deitz Estates for 20 + years and having endured a active sand pit in our subdivision in past years I highly recommend that the borough adopt a plan that reviews all permits every 5 years and revokes permits that are not actively used and not in full compliance with all State,Borough, E P A and OSHA regulations.
>
> David Weber
> 58875 Deitz Ln
> Homer Ak 99603
> 907 299 2204
> Sent from my iPhone

2022-36

Deborah Anderson
41140 China Poot St
Homer, AK 99603
(414)335-9396
paragondeb@gmail.com

October 21, 2022

Kenai Peninsula Borough

**Re: Conditional Land Use Permits, Material Site Permits & Fees regarding Applications, Conditions, and Procedures**

The gravel pit at the top of our road is inactive and has been for at least 10 years well past the 365-day requirement. When the gravel pit was last active, we did not have as many houses in our subdivision as we do now (28 out of 40 lots); or as many children and grandchildren in the neighborhood either. We do **not** have a Borough maintained roads through our subdivision, they are owner maintained from road dues collected with matched grants from the Borough. If the gravel pit at the top of the road would start operating again like it did back at the beginning stages of our subdivision, our road as we know it now would not survive the brutal abuse of the constant traffic of trucks all day, every day. Your notice of decision seems to be for property owners within 100 ft of pit operation, however, trucks impact every property owner in our subdivision (there is only one way in and out on our roads not maintained by the Borough - China Poot St & Deitz Lane). I want to see clear and concise rules for how road groups on roads not maintained by the Borough would be able recover costs incurred from the Gravel Pit, or would the Gravel Pit be responsible for the maintenance directly? If this gravel pit would reopen, is the current owner responsible for reclamation of past problems whether they were responsible at the time of damage?

I strongly recommend that ALL gravel pit permits be reviewed every 5 years and the owner be required to justify its renewal and that the site location is suitable for a commercial business and compatible with the surrounding neighborhood. The location should be in full compliance with all applicable state and borough ordnance's concerning public safety, noise (gravel pit & trucking/J-braking), operating hours, use of rock crusher, dust control (in the gravel pit, trucking) and road maintenance on roads used to access the site. They should also be in full compliance with OSHA and the EPA and ensure they do not affect ground water levels/tables to adjacent properties. In our case, the gravel pit sits at the top of China Poot, above all the other lots, on a downward sloping hill. If they were to disrupt the water table by their operation, that would affect everyone downhill that has water rights. Please inform me of any future meeting on this subject!

Sincerely,

Deborah Anderson
Property Owner

## Warner, Avery

**From:** Blankenship, Johni
**Sent:** Monday, October 24, 2022 11:44 AM
**To:** Warner, Avery
**Subject:** FW: <EXTERNAL-SENDER>gravel pit rules

**From:** Dan Anderson <paragondan58@gmail.com>
**Sent:** Sunday, October 23, 2022 2:22 PM
**To:** G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
**Subject:** <EXTERNAL-SENDER>gravel pit rules

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

This note comes to you about how gravel pit rules and how they affect my neighborhood. I live on China Poot Street in Homer. At the top of China Poot Street a once operated gravel pit sits. When I built on my property 15 years ago, which is situated down hill from the pit, I remember loaded trucks rumbling down the road only to return empty to repeat over again. At the time I was building there were several lot's along the uphill road that weren't improved at the time, they since have had improvements on them. Our neighborhood has a very active road group that maintains China Poot Street. This is accomplished with road dues and grant's. Several of the neighbors have equipment that jump in when a poor spot in the road appears, which isn't very often any more as the neighborhood as a whole over time made China Poot Street a very good gravel road, with care, time and money. All the meetings/conversations about China Poot Street have borne fruit, in the way of a good road. Over the years several of the neighbors down hill from the pit have installed high tunnel greenhouses. Most use some sort of ground water collection system to water their greenhouses. Personally, we have filled long ago for our water rights, along with most if not all of the others. A few like myself have dug out holding ponds to retain water to supply our greenhouses, during the dry months. I even put in a cistern tank as backup. One of the fears is that, if the pit was to reactivate, the flow of the groundwater may be disrupted.
With the aforementioned snapshot of our China Poot neighborhood while considering anything with the said pit at the top of our road. Also keep in focus the impact of heavy repeated loads on our road, the noise and dust it creates, and a posible disruption of the water flow that the greenhouses desperately rely on. Our personal greenhouse produces many meals of healthy vegetables and fruits. Not only for my family but for others that are less fortunate than our family. During harvest times we encourage several other families to come and pick what they can use, some I know for sure don't have the capital to purchase these items in the store, or the time and means to grow thier own. Thank You Ahead of Time for taking time to read this and most importantly keeping the above in the discussion about any future decisions reguarding the gravel pit at the top of China Poot Street.

Dan Anderson
41140 China Poot Street
Homer, Alaska 99603
(414)788-5197

2022 - 36

**From:** curt wilcox <curtwilcox@hotmail.com>
**Sent:** Saturday, October 22, 2022 11:52 AM
**To:** G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us> **Subject:** <EXTERNAL-SENDER>Gravel pit ordinance comments

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

To whom it concerns:
I'd like to title this comment "My next door neighbor, a gravel pit."
In the summer of 2019 the construction company QAP took possession of the old Cone gravel pit next door to my residence on Beaver Loop. The first activity to announce their presence was to dig up the buffer zone. The previous owner Chester Cone had left the buffer zone intact and QAP saw this as an opportunity to mine some easy gravel. I alerted the city of Kenai to no avail. I have the correspondence via email available.

Since there was no enforcement of the city code this gravel pit operator apparently thought anything goes within the city and Borough of Kenai. They cleared the anadromous stream on their property and placed culverts to construct driveways to access the asphalt batch plant they didn't have a special use permit for. They hauled old asphalt from their road project and buried it with other debris that has drainage into the Kenai River. I have photos of this all and have contacted the city and borough on several occasions asking for enforcement to no avail. I thinK QAP was eventually fined $200 and had to plant some alders along the anadromous stream they cleared. I would have thought operating an asphalt batch plant without a special use permit would have had some consequences. I would like to say to those proposing new gravel pit ordinances is there has to be enforcement of those ordinances or you'll get a neighbor just like mine. Mine seems to say we'll do what we want and in our location anyway, we don't care about the Kenai River as well.
Curt Wilcox 3329 Beaver Loop Rd, Kenai, AK



412

CIRI

October 24, 2022

Johni Blankenship
Kenai Peninsula Borough Clerk
144 N. Binkley Street
Soldotna, Alaska, 99669

RE: Public Comment on Proposed Ordinance 2022-36 Amending KPB Chapter 21.25 and KPB Chapter 21.29 Regarding Conditional Use Permits and Material Site Permits

To Whom it May Concern:

Cook Inlet Region, Inc. (CIRI) is writing to provide comments regarding Proposed Ordinance 2022-36 (PO 2022-36) which repeals and rewrites Kenai Peninsula Borough Code of Ordinances chapters 21.25 and 21.29 regarding conditional land use permits and material site permits. CIRI is an Alaska Native corporation which owns over 300,000 acres of land within the Kenai Peninsula Borough (KPB), including a significant amount of sand and gravel resources. CIRI works with local sand and gravel operators to responsibly develop these resources, and currently has two active sand and gravel pits within the KPB.

Many of CIRI's sand and gravel operators are small, local businesses which often implement a flexible business model that involves rotating between multiple sand and gravel pits based on project demand. Because each gravel site contains unique grades of material, operators need to be able to cycle between sites in order meet the specific demands of each project. Given this business model and the operators' need for flexibility, CIRI is concerned that the 365-day discontinuance period for prior existing uses contained in PO 2022-36 is too short. CIRI believes that PO 2022-36 should be amended to extend the discontinuance period to five years, which would match the length of a CLUP.

CIRI understands and appreciates KPB's interest in updating its process for conditional land use and material site permits, as well as its efforts to ensure the implementation of appropriate environmental and monitoring requirements. However, to the extent that PO 2022-36 imposes additional regulatory and compliance costs on sand and gravel operations, that cost will be passed through to the end user of the resources. This will result in higher costs for construction projects within the KPB, including public projects like road construction and maintenance. In addition, an extended permitting timeline may impact the timely completion of projects that are already restricted by short construction windows.

P.O. Box 93330, Anchorage, AK 99509-3330 • P: 907-274-8638 • F: 907-279-8836 • www.ciri.com

Thank you for your consideration and the opportunity to provide comments on PO 2022-36.

Cook Inlet Region, Inc.

S. Settle

Suzanne Settle
Vice President, Energy, Land and Resources

October 23, 2022

Upper Dietz Road Group

41140 China Poot St., Homer AK 99603

Kenai Peninsula Borough

assemblyclerk@kpb.us

RE: 21.29.120 Proposed changes

KPB Council & Staff,

Thank you Kenai Peninsula Borough professionals, who are updating standards and practices across the Borough on many issues. This letter is addressing gravel pit permitting, monitoring, reclamation and all phases of Conditional Land Use Permits -CLUPs or over the counter permitting for gravel pits.

Upper Dietz Road Group was formed by private land owners for the purpose of maintaining the roads in our neighborhood which are not Borough-maintained directly, but rather by using matching road grants to road groups funneled through, and administered by Kachemak City. Because we directly pay for our road maintenance and coordinate as neighbors to contract services, we see the impact that commercial use had on our roads.

The history of our steep street includes a gravel pit operation at the top of China Poot Street that has not been operating for many years. When this gravel pit was in use, it created considerable disruption to the neighborhood which included, but was not limited to Jake Braking noise, operation noise, dust issues, child safety concerns and damage to our roads due to weight of the trucks up and down the road. We are also concerned about our water table and surface water issues that a gravel pit operation is in danger of creating.

It seems that these are some of the issues being addressed by the current process to update KPB ordinances and rules. Please be sure to include concise language that requires all projects are in compliance with OSHA and EPA standards relating to protection of all water. Also protect all adjacent property individual landowner rights including noise and road damage concerns. CLUP's need to be re-evaluated every five years to be sure they are operating within standards and subject to new standards when appropriate. Reclamation is an important issue for thorough rules and oversight.

Sincerely submitted by Upper Dietz Road Group,

Kary Adkins 58835 Buds Ct

Dan & Deborah Anderson 41140 China Poot St

Eric & Tracie Brown 41145 China Poot St

Thomas Brown Home & Lot

Jay & Amanda Cherok 58865 Deitz Ln

Matt Dickerson 40852 China Poot St

Mark Dickson & Ann Oberlitner 58987 Deitz Ln

Mannfried Funk & Marcia Kuszmaul 40963 China Poot St

Ty & Christie Gates 41102 China Poot St

Jaime A. Hernandez & Rhema Smith 40656 China Poot St

Judith James 40951 China Poot St.

Ron & Sherry Johnson 40667 China Poot St

Daniel & Susan LaPlant 40941 China Poot St

Anthony Maurer 40921 China Poot St

Neil McArthur 58953 Deitz Ln

Rodney & Sandee McLay 40872 China Poot St

Ka Mulky 40657 China Poot St

Jackie Norvell 40989 China Poot St

Ben Park & Mary Tricamo-Park 40944 China Poot St

Sherman Peterson 40871 China Poot St

Larry & Kathi Rappuhn 58850 Deitz Ln

Dennis & Sandy Rollins 40670 China Poot St

John & Cynthia Shankel Lot Owner

Janet & Les Simons 41272 China Poot St

Craig Sutphin 41089 China Poot St

Burl & Kristen Tonga 58825 Deitz Ln

Charlie & Beth Trowbridge 40710 China Poot St

Dave & Melanie Webb 40762 China Poot St

Dave & Maxine Weber 58875 Dietz Ln

**Warner, Avery**

**From:** Blankenship, Johni
**Sent:** Monday, October 24, 2022 1:20 PM
**To:** Warner, Avery
**Subject:** FW: <EXTERNAL-SENDER>Re: proposed gravel pit ordnance changes

**From:** Deborah Anderson <paragondeb@gmail.com>
**Sent:** Monday, October 24, 2022 1:14 PM
**To:** G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
**Subject:** <EXTERNAL-SENDER>Re: proposed gravel pit ordnance changes

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Deborah Anderson
41140 China Poot St
Homer, AK 99603
(414)335-9396

paragondeb@gmail.com

October 21, 2022

Kenai Peninsula Borough
**Re: Conditional Land Use Permits, Material Site Permits & Fees regarding Applications, Conditions, and Procedures**

The gravel pit at the top of our road is inactive and has been for at least 10 years well past the 365-day requirement. When the gravel pit was last active, we did not have as many houses in our subdivision as we do now (28 out of 40 lots); or as many children and grandchildren in the neighborhood either. We do **not** have a Borough maintained roads through our subdivision, they are owner maintained from road dues collected with matched grants from the Borough. If the gravel pit at the top of the road would start operating again like it did back at the beginning stages of our subdivision, our road as we know it now would not survive the brutal abuse of the constant traffic of trucks all day, every day. Your notice of decision seems to be for property owners within 100 ft of pit operation, however, trucks impact every property owner in our subdivision (there is only one way in and out on our roads not maintained by the Borough - China Poot St & Deitz Lane). I want to see clear and concise rules for how road

groups on roads not maintained by the Borough would be able recover costs incurred from the Gravel Pit, or would the Gravel Pit be responsible for the maintenance directly? If this gravel pit would reopen, is the current owner responsible for reclamation of past problems whether they were responsible at the time of damage?

I strongly recommend that ALL gravel pit permits be reviewed every 5 years and the owner be required to justify its renewal and that the site location is suitable for a commercial business and compatible with the surrounding neighborhood. The location should be in full compliance with all applicable state and borough ordnance's concerning public safety, noise (gravel pit & trucking/J-braking), operating hours, use of rock crusher, dust control (in the gravel pit, trucking) and road maintenance on roads used to access the site. They should also be in full compliance with OSHA and the EPA and ensure they do not affect ground water levels/tables to adjacent properties. In our case, the gravel pit sits at the top of China Poot, above all the other lots, on a downward sloping hill. If they were to disrupt the water table by their operation, that would affect everyone downhill that has water rights. Please inform me of any future meeting on this subject!

Sincerely,

Deborah Anderson
Property Owner

--
Sent from Gmail Mobile

## Warner, Avery

**From:** Blankenship, Johni
**Sent:** Monday, October 24, 2022 4:10 PM
**To:** Warner, Avery
**Subject:** FW: <EXTERNAL-SENDER>Comment on gravel pit ordinance

-----Original Message-----
From: laura sievert <laurasievert@hotmail.com>
Sent: Monday, October 24, 2022 3:11 PM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>Comment on gravel pit ordinance

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

To the Assembly:

Over the last year or so I have commented on and sent photo evidence of violations of existing gravel pit regulations in the Cone pit and Glen Martin's pit that abut my property on Beaver Loop.

Before finalizing the ordinance currently being considered, I would urge you to go out and walk around those pits in order to see the need not only for regulations, but also for enforcement of those regulations. As I've stated before, the violations are both long term- dumped asphalt, kiddie pool oil catchers under leaking vehicles, junked equipment, etc, and also short term- such as removal of required buffer zones. That violation was done in a couple of hours and the city of Kenai could do nothing.

I hope that you can craft an ordinance that prevents such activity. I would also propose that very large monetary bonds be posted before mining commences, and that the pits undergo periodic inspection by the Borough.

Thank you.

Laura Sievert 3329 Beaver Loop, Kenai

**Warner, Avery**

**From:** Blankenship, Johni
**Sent:** Monday, October 24, 2022 5:01 PM
**To:** Warner, Avery
**Subject:** FW: <EXTERNAL-SENDER>Public Comment on KPB Ordinance 2022-36

-----Original Message-----
From: Kaitlin Vadla <kaitlinvadla@gmail.com>
Sent: Monday, October 24, 2022 4:55 PM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>Public Comment on KPB Ordinance 2022-36

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

I support the introduction and further discussion of KENAI PENINSULA BOROUGH ORDINANCE 2022-36: AN ORDINANCE AMENDING KPB CHAPTER 21.25 AND KPB CHAPTER 21.29 REGARDING CONDITIONAL LAND USE PERMITS AND MATERIAL SITE PERMITS, UPDATING NOTICE, APPLICABILITY, PERMIT TYPES, APPLICATION REQUIREMENTS, STANDARDS AND PERMITS CONDITIONS.

As chair of Soldotna's Planning and Zoning Commission, I have seen multiple conflicting land-use and property value issues over the years. The city's geographic purview is quite small compared to the borough's and we look to the assembly's discussion and passage of this ordinance as we seek to incorporate best practices when updating our municipal code regarding material site permits in the near future.

I hope the borough retains measures in this ordinance that help level the playing field for all current and future entrepreneurs who wish to provide KPB residents with much needed materials like gravel. Currently, pits that have been allowed to operate under outdated rules have an unfair advantage. My hope is that this ordinance will retain these grandfathered pets ability to operate, while bringing them gradually into compliance with at least the bare minimum safety and environmental standards.

Kaitlin Vadla
Clam Gulch

# Kenai Peninsula Borough
## Material Site Subcommittee

**Public Comment Submitted 2022-10-24 22:34:55**

| **Name** |
| --- |
| Joshua Ross |
| **Email Address** |
| rocky@legacyak.net |
| **Subject** |
| O2022-36 |
| **Message** |
| Based on a quick review of who is in favor of and who is opposed to this ordinance, I will be sending in a letter in opposition of proposed changes.<br><br>I believe these changes are unnecessary, don't solve any issues (if there are any) and will dramatically increase aggregate costs on the southern peninsula. Rarely is more government involvement the best answer to any issue. Should issues with the current ordinance/permitting process exist, at a minimum, the assembly must seek professional input from local aggregate handling businesses.<br><br>Increasing costs associated with handling aggregates WILL eliminate many smaller businesses, make land development more difficult and expensive, and further increase building expenses for homeowners and builders alike. The trickle down impacts of increasing cost of litteral foundations are impossible to estimate. |

Good evening.

My name is Dan DeRaeve. I am the owner and President of Peninsula Sand & Gravel. We have a PEU gravel pit a couple miles east of Sterling.

First of all I'd like to say that I feel for the people in Anchor Point that have the problem with their home sites. I think they may have a legitimate complaint and if so, I hope they get their issues resolved.

On the other hand I don't understand why the assembly is considering lumping all gravel pits together and taking away our PEU status. It seems that because of a few isolated incidents and bad actors a great many will suffer. It makes more sense to me to deal with the individual problems and leave the pit owners that are not involved out of it.

I am also concerned about the water table restrictions. This greatly reduces the gravel resources for pit owners and in some cases will put some smaller pit owners out of business. For the others it will drive the cost of operations up substantially and ultimately drive the cost of gravel up. As gravel pit owners, we cannot shoulder the burden of the cost of the added restrictions. All we can do is raise the cost of our products which will affect everyone. Everyone uses the material that comes out of these gravel pits in one form or another. Whether it be gravel, sand, concrete, brick, and block for our homes or pavement, concrete and many forms of gravel products for our roads, bridges, buildings and airports.

So I am asking the KPB assembly members to carefully consider these things before you make your decisions. I thank you for your time and considerations.

Sincerely,

Dan DeRaeve

## Warner, Avery

**From:** Blankenship, Johni
**Sent:** Tuesday, October 25, 2022 8:49 AM
**To:** Warner, Avery
**Subject:** FW: <EXTERNAL-SENDER>public hearing Oct 25,2022 for Conditional Land Permits

**From:** Steve Ruther <Steve.Ruther@outlook.com>
**Sent:** Monday, October 24, 2022 5:51 PM
**To:** G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
**Subject:** <EXTERNAL-SENDER>public hearing Oct 25,2022 for Conditional Land Permits

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

We have received notice that we may comment on proposed amendments to Conditional Land Use Permits as we are a land owner within 2,640 feet of an existing material site. It is most disruptive to our business when trucks hauling gravel or other such material drive by our location and use their gears to slow down for the stop light at East Poppy Lane and Kalifornsky Beach Road. By downshifting in this manner their trucks emit a loud rumbling engine noise that can actually interrupt normal personal and phone conversations in our office. We would appreciate an advisory that all trucks within business or residential area be forbidden to create this noise pollution.

Thank you,

Steve & Karen Rutherford

FLOOR-EVER, INC.
47201 EAST POPPY LANE
SOLDOTNA, AK 99669
907-260-9270 office
907-953-9270 cell

# Kenai Peninsula Borough
## Material Site Subcommittee

**Public Comment Submitted 2022-10-24 17:31:32**

| **Name** |
| --- |
| Mark Tornai |
| **Email Address** |
| mdtornai@gmail.com |
| **Subject** |
| Amendments to material site ordinance |
| **Message** |
| The Counter Permit should remain no more than 2.5 acre size and retain a new language concerning a 2 year time with one 12 month extension.<br><br>Justification: To allow a material site greater than 2.5 acres would have multiple negative impacts to the properties in the vicinity. Without any prior public input, this change is irresponsible and will be a great disservice to the residents of the borough. Also, it would not be in accordance with the Comprehensive Plan. |

## Warner, Avery

**From:** Blankenship, Johni
**Sent:** Tuesday, October 25, 2022 9:50 AM
**To:** Warner, Avery
**Subject:** FW: <EXTERNAL-SENDER>02022-36 Material site Permitting

**From:** Douglas B Schade <dougschade50@gmail.com>
**Sent:** Tuesday, October 25, 2022 9:10 AM
**To:** G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
**Subject:** <EXTERNAL-SENDER>02022-36 Material site Permitting

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

To the Mayor, President and Members of the Kenai Peninsula Borough Assembly

RE: Opposition to Proposed Ordinance 2022-36

In regard to the upcoming ordinance 02022-36, I believe this ordinance if in acted is going to cause the general public undo (significant) harm. As Stated in the Memorandum from the Planning Director Robert Ruffner: (especially dimensional or durational descriptions like the 365-day period for the prior-existing use abandonment are intended to act as "springboards" for the Assembly) In effects this gives the KPB the right to cancel the PEU permits.

By doing so the cost for new homes, upgrading roads and current roads are going to skyrocket. When you take the little "guy" out of the system and only allow the big producers with the capital to conform with the new requirements, you are limiting competing, and the remaining operator will need to pass the cost on to the customer. For an example: In 2011 the cost for gravel delivered in the Homer area was around $105.00 for 10 yards. This summer (2022) the same load, from the same pit, was around $225.00, an increase way above the standard cost of living increases. On average, the current cost of a new home start is going to run around $30,000 to $50,000 for the driveway, sewer and foundation. The new ordinance can be expected to increase a new home start by at least 30%. That is a increase of $9,000.00 to $15,000.00 per home start. It also stands to reason that this ordinance will increase the cost to build and maintain our current and new road system, but by how much is really undetermined at this time.

I understand the assembly is responding to complaints from the general public about the noise and dust of the pits, many of which have been in use for years. However, it should be noted that due to the increased need of housing, many of these people bought in subdivisions which had been built around the gravel source; largely in order to keep the cost down. The new homeowners are now complaining that the gravel pit is disturbing them, but they were able to afford the new home because of the gravel pit. There are better ways for the KPB and its citizens to work on being better neighbors, without the significant economic costs.

Please remember these operators have been keeping the PEU pits in operation, which gives a constant supply of affordable gravel to the general public. In these difficult economic times, where people are struggling to make ends meet, this is not a prudent measure.

Thank you for your time and consideration.

Douglas B Schade

34705 Lusky Rd

Homer Ak 99603

907-235-8939

907-399-8734

Sent from Mail for Windows

## Warner, Avery

**From:** Blankenship, Johni
**Sent:** Tuesday, October 25, 2022 10:14 AM
**To:** Warner, Avery
**Subject:** FW: <EXTERNAL-SENDER>Proposed Ordinance 2022-36

**From:** Natasha Schade <schade@horizonsatellite.com>
**Sent:** Tuesday, October 25, 2022 10:12 AM
**To:** G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
**Subject:** <EXTERNAL-SENDER>Proposed Ordinance 2022-36

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

To the Mayor, President and Members of the Kenai Peninsula Borough Assembly

RE: Opposition to Proposed Ordinance 2022-36

In regard to the upcoming ordinance 02022-36, this ordinance if enacted will cause the general public substantial undo economic harm. As Stated in the Memorandum from the Planning Director Robert Ruffner: (especially dimensional or durational descriptions like the 365-day period for the prior-existing use abandonment are intended to act as "springboards" for the Assembly) In effects this gives the KPB the right to cancel the PEU permits.

By doing so the cost for new homes, upgrading current roads and development of new roads will skyrocket, thus effecting small business and consumer alike. Even to the point of forcing smaller businesses out of the market. When you take the little "guy" out of the system and only allow the big producers with the capital to conform with the new requirements, you are limiting competition, and the remaining operator will need to pass the cost on to the customer. For an example: In 2011 the cost for gravel delivered in the Homer area was around $105.00 for 10 yards. This summer (2022) the same load, from the same pit, was around $225.00, an increase way above the standard cost of living increases. On average, the current cost of a new driveway, sewer, and foundation will run approximately $30,000 to $50,000. The new ordinance can be expected to increase a that same work by at least 30%. That is an increase of $9,000.00 to $15,000.00 per home start, just for the groundwork. It also stands to reason that this ordinance will increase the cost to build and maintain our current and road system, but by how much is really undetermined at this time.

From my understanding, the assembly is responding to complaints from the general public about the noise and dust of the pits, many of which have been in use for years and even decades prior to the public encroachment. It should be noted that due to the increased demand and cost of housing, many people purchased in subdivisions and built around these gravel sources in order to keep their own purchase and build costs down. The new homeowners are now complaining that the gravel pit is disturbing them. However, it is because of that gravel pit, they were able to afford the land and new home. There are better ways for the KPB and its citizens to work on being better neighbors without the significant economic costs that will result from this proposed ordinance.

Please remember these operators have been keeping the PEU pits in operation, which gives a constant supply of affordable gravel to the general public. In these difficult economic times, when people are struggling to make ends meet, this is not a prudent measure.

Thank you for your time and consideration.

Natasha Schade
34705 Lusky Rd.
Homer, AK 99603
(907)235-2695
(907)399-1065

**Warner, Avery**

**From:** Blankenship, Johni
**Sent:** Tuesday, October 25, 2022 11:11 AM
**To:** Warner, Avery
**Subject:** FW: <EXTERNAL-SENDER>Materials Site Assembly Public Comment for 10/25/22 Meeting: Please forward for reading at tonight's meeting

**From:** ullr 907 <ullr907@yahoo.com>
**Sent:** Tuesday, October 25, 2022 10:53 AM
**To:** G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
**Subject:** <EXTERNAL-SENDER>Materials Site Assembly Public Comment for 10/25/22 Meeting: Please forward for reading at tonight's meeting

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

To the Kenai Borough Materials Site Subcommittee:

My name is Daniel Hawksworth. I am a permanent resident of Hope, Alaska and have resided near the KPB Materials Site adjacent to the Hope Airstrip for over 20 years.

For the entire duration of my residency here, the KPB has allowed flagrant and continuous violations of it's permitted use agreement with one particular contractor, AG & Building Supply, Owned by Robert Davidson of Hope, Alaska.

I have submitted volumes of documentation over the years to Julie Dennison at the Land Management division of the KPB. Julie has been a champion of perpetually attempting to bring this contractor into compliance, but unfortunately, a lack of funding and resources means there are no "teeth" so to speak, to enforce permit agreements and violations of the terms of use agreements made with the KPB to operate at this site.

A great example of this would be the numerous pieces of dilapidated heavy equipment like bulldozers that have been allowed to occupy this Materials Site as a personal equipment storage space for AG & Building Supply. Despite not being used or relating to any permitted work, these relics have and continue to leak copious amounts of oils directly onto the ground without any attempt to contain them at whatever location within the Materials Site the contractor chooses to park them.

Another example would be the same contractor, AG & Building Supply, routinely operating in violation of the permit agreement, the posted regulations and standards the KPB requires to operate on the site as well as Alaska OSHA and M-SHAW regulations regarding slope angle and benching of excavation work. Vertical excavation is not allowed, yet the contractor repeatedly engages in such unsafe practices without penalty. It is only after repeated requests are made to the KPB, and even then, very infrequently, is the contractor required to restore the excavated slope into compliance with regulations. A 30 foot vertical fall hazard without any attempt to delineate the area is simply gross negligence and carelessness by the part of the contractor.

The Land Management division clearly lacks the resources needed to oversee the proper operating procedures of it's permitted users. So similarly, we see a lack of resources to correct other site related issues. And I am only speaking to one site, so i imagine this to be quite a common and widespread issue on the Kenai Peninsula.

No enforcement of site hours of operation. No enforcement of improper activities on the site such as camping or target shooting. No attempts to maintain or replace signage around the site. No gates or securing of access of the site. No enforcement of dumping of prohibited materials. No method of accurately reporting the amount of materials being removed from the site. These are all issues I routinely witness at the Hope Materials Site.

To the Subcommittee, I ask you to please listen to what KPB residents that live near your Materials Sites are telling you. I ask you to please take actions that will allow for and fund the enforcement of Site Use Agreement violations. I ask you to take actions that have consequence to the violator. I ask that you take actions that show you acknowledge the concerns of neighbors of these Materials Sites, such as noise, hours of operation, dust control, unauthorized usage such as shooting, partying, and driving of off road vehicles. I ask you to limit access to all of the Materials Sites after hours by the use of locking gates, I ask you to hold contractors accountable for repeated bad behavior at these Materials Sites by terminating permits and contractual agreements (ie for road maintenance contracts) and not entering into any future agreements with repeat Site violators.

As the saying goes, KPB Materials Site Subcommittee members, it's time to grow a pair.

Sincerely,

Daniel Hawksworth
Hope, AK

.

## Warner, Avery

**From:** Blankenship, Johni
**Sent:** Tuesday, October 25, 2022 9:10 PM
**To:** Warner, Avery
**Subject:** FW: New Public Comment to Assembly Members

**From:** Kenai Peninsula Borough <webmaster@borough.kenai.ak.us>
**Sent:** Tuesday, October 25, 2022 4:32 PM
**To:** BoroughAssembly <Borough-Assembly@kpb.us>; Mayor's Department <MayorDepartmental@kpb.us>
**Subject:** New Public Comment to Assembly Members

**Your Name:** Buck Allen Jones

**Your Email:** eastrdsv@hotmail.com

**Subject:** Gravel Pit Ordinance

**Message:**

Increasing regulation on material source sites drives up the cost of gravel, asphalt, and concrete. This drives up the cost of all new development and infrastructure maintenance, public and private. As older pits are exhausted, new ones need to take their place or gravel must be trucked from farther and farther away. This is the primary reason borough CIP's are running over budget in the Homer area. Gravel is currently being trucked from Stariski. All new regulation comes with an increased cost to be paid by the customer.

## Warner, Avery

**From:** Blankenship, Johni
**Sent:** Tuesday, October 25, 2022 9:10 PM
**To:** Warner, Avery
**Subject:** FW: <EXTERNAL-SENDER>Material site public hearings

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**From:** kristine shine <kboenisch@hotmail.com>
**Sent:** Tuesday, October 25, 2022 5:30 PM
**To:** G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
**Subject:** <EXTERNAL-SENDER>Material site public hearings

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Hello,

You sent a letter in the mail to me regarding being a landowner within 2640 feet of a Permitted material site. I won't be attending the meeting but am wondering is this in reference to something across the river from me or the sand site near me on Lou Morgan? If it's in regards to the sand site which seems purposely hidden within our neighborhood, I'd like to say those heavy trucks traveling down Harbin and Panoramic View have done a huge amount of damage to those dirt roads. I'm sure car repairs are necessities for those of us who have to travel those roads to get to the Sterling Hwy. These outfits doing this digging of natural resources should have to use the paved roads. And if found to be taking side dirt roads should have to pay some fine to contribute to the resurfacing of the dirt roads. It was a rainy Fall. Harbin and Panoramic View were hellacious to travel on. And the road only got resurfaced with dirt and rock a couple times.

Lastly, what is this digging doing to our aquifer? How far down are you allowing these outfits to dig? I'll email back to see what these answers are unless you are sending letters out to us regarding the summary of these public hearings.
Thank you for your attention to these matters.

Sincerely,
Kristine Shine
37520 Polo Alto Ct. (Morgan's Landing State Park)
Sterling, AK

## Warner, Avery

**From:** Blankenship, Johni
**Sent:** Tuesday, October 25, 2022 3:50 PM
**To:** Warner, Avery
**Subject:** FW: <EXTERNAL-SENDER>Comments on KPB Ordinance 2022-36 regarding Material Site Permits, Applications, Conditions and Procedures

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**From:** Nancy Pease <nancypease2@gmail.com>
**Sent:** Tuesday, October 25, 2022 3:47 PM
**To:** G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
**Cc:** Thomas Pease <thomaspease@alaskan.net>; David Pease <peased907@gmail.com>
**Subject:** <EXTERNAL-SENDER>Comments on KPB Ordinance 2022-36 regarding Material Site Permits, Applications, Conditions and Procedures

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

# TO: Borough Assembly and Staff Planners

Re: Assembly Ordinance 2022-36 Amending KPB Chapter 21.25 and KPB Chapter 21.29 regarding Conditional Land Use Permits and Material Site Permits

My family owns property in Seldovia near Kenai Peninsula Borough (KPB) property that has materials resources. We generally support the efforts to develop a permitting system for materials sites in order to protect surrounding property values and land uses, as well as air and water quality.

Regarding the specifics of proposed KPB Ordinance 2022-36:

1. Amend the Standards Section of 21.29.040.A to expressly acknowledge adjoining property values and existing uses:

> A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise and other impacts of earth materials extraction sites through setbacks, buffer zones, and street-level visual screening **adequate <u>to maintain adjoining property values and existing land uses</u>** . Prior to granting a counter permit or conditional land use permit under this chapter, the planning director or planning commission, as applicable, must make the following findings: ...

*<u>This language is necessary to consider the measurable effect of any protection measures. Protection measures should not be mere tokens.</u>*

2. Amend the Buffer Zone section, 21.29.050.A.1 to ensure an effective buffer zone:

*1. Buffer Zone.*

A buffer area of ~~32.~~ **60** feet must be established between the area of excavation and the parcel boundaries, except the minimum shall be 100 feet adjoining residential land uses. The buffer area ~~may~~ **shall** 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;

*This language is necessary to ensure that the buffer minimizes noise and vibrations as well as visual impacts. 32 feet is only half a standard road Right-of-Way. No one should have a materials extraction site closer than "just across the road". And at least one type of the physical screening/buffering elements should be mandated. Otherwise, a strip of bare earth would be permitted: and that has no buffer effect.*

3. Amend 21.29.B.1.c to ensure visual screening:

2. When a buffer area has been denuded prior to review of the application by the planning commission or planning director revegetation may be required **and an 8-foot high berm or fence shall be required until the vegetation has achieved a screening effect**.

*This language provides that a denuded buffer will have an effective manmade visual screen until vegetation re-grows.*

4. Amend 21.29.057.C.7.d to protect simple drinking water systems:

d. Minimum separation distances do not apply to drinking water sources constructed after a permit to extract material below the water table has been issued. **Protected drinking water sources include surface collection points that are in use prior to the permit application.**

*This language protects springs, small creeks, and seeps that residents tap for drinking water, not just drilled wells.*

Thank you for this opportunity to comment on protection measures for lands and waters adjoining potential materials extraction sites.

Nancy Pease and family

Property owners in the Seldovia area

nancypease2@gmail.com

October 25, 2022

Kenai Peninsula Borough Planning Department

We are writing to oppose the proposed ordinance change that would allow permits for gravel pits up to 10 acres. The Counter Permit should remain at no more than 2.5 acres in size and retain a new language of a 2-year time period with one 12 month extension.

This is very much a noise, visual, and quality of life issue for neighborhood homes and residents in the borough. These gravel pits have a grave negative impact on water and wildlife as well.

My husband and I live in New York but purchased our land in Anchor Point as a retirement destination. We have been to many places in Alaska but were always charmed by the areas of Homer and Anchor Point. We purposely purchased in a subdivision with the hope that our retirement home would be within a lovely residential area with other houses and neighbors. It is disheartening to see the proliferation of these gravel pits that make the area seem like a construction zone. A 10-acre gravel pit would literally be 5 times the size of my lot! I cannot imagine any family wanting to live so close to a noisy, dusty gravel pit. The noise and pollution of all the heavy equipment is not conducive to healthy living.

We understand the need for building, maintenance, and expansion, but those needs have to be balanced with preservation of Alaska's natural resources and quality of life for residents. Would any of you be pleased with a noisy, dirty, loud gravel pit close to your family's house? Would you feel safe with your children and pets next door to one?

We implore you to seriously consider the devastating consequences if this ordinance is passed.

Sincerely,

Edward J. and Denise Burgin

213 N. 4th Street, Bethpage, NY 11714

(owners of property at Creekside Heights)

516 938 8013

## Warner, Avery

**From:** Blankenship, Johni
**Sent:** Wednesday, October 26, 2022 10:22 AM
**To:** Warner, Avery
**Subject:** FW: <EXTERNAL-SENDER>2022-36 regulations to the pits

---

**From:** Victoria Chase <victoria.chase@LIVE.COM>
**Sent:** Wednesday, October 26, 2022 10:11 AM
**To:** G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
**Subject:** <EXTERNAL-SENDER>2022-36 regulations to the pits

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Regarding the new regulations to the pits. I have lived near them majority of my life and do not have a problem living near them. It has never bothered me. But also I think The borough does not maintain the roads properly, I think with new regulations and things putting in place within pits I think it will make things much worse.

Get Outlook for iOS

## Warner, Avery

**From:** Blankenship, Johni
**Sent:** Friday, October 28, 2022 4:52 PM
**To:** Warner, Avery
**Subject:** FW: <EXTERNAL-SENDER>KPB Ordinance 2019-30 / 2019-30 SUB

---

**From:** Larry Smith <dlconst.smith@gmail.com>
**Sent:** Friday, October 28, 2022 4:34 PM
**To:** Blankenship, Johni <JBlankenship@kpb.us>
**Subject:** Re: <EXTERNAL-SENDER>KPB Ordinance 2019-30 / 2019-30 SUB

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Madam Clerk,
Here we are nearly three years later and my comments still apply to the pending gravel pit Ordinance. Please forward my comments to all Assembly members once again. Thank you.

On Mon, Jan 6, 2020 at 11:52 AM Blankenship, Johni <JBlankenship@kpb.us> wrote:

> Larry, your comments will be distributed to the Assembly for consideration.
>
> Thank you, Johni

---

**From:** Larry Smith [mailto:dlconst.smith@gmail.com]
**Sent:** Sunday, January 05, 2020 8:59 PM
**To:** G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
**Subject:** <EXTERNAL-SENDER>KPB Ordinance 2019-30 / 2019-30 SUB

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Madam Clerk,

Please forward my comments on this Ordinance to the Mayor and all Assembly members. Thank you.

My name is Larry Smith. My brother and I own a construction company and three gravel pits in the KPB. I was a contractor / gravel pit owner member of the KPB Material Site Working Group. I was the only member of that group to vote NO on the changes forwarded to the Planning Commission and the Assembly. I oppose this Ordinance and urge you to vote NO on these new and unnecessary regulations.

I oppose this Ordinance for some of the following reasons;

1) It attempts to regulate "viewshed" and there is no right to a viewshed. Viewshed is "feel good" language and you will not be able to enforce it;

2) Mining noise (equipment noise) is already regulated by the Mining Safety & Health Administration and both Federal and State OSHA. The decibel level proposed is not reasonable for heavy equipment and trucks and you will not be able to enforce it;

3) If you pass this ordinance how do you propose to enforce it and what will it cost KPB taxpayers? I asked this question of the Planning Director at the MSWG meeting(s) and was told it would not require any more money or staff.

There are already over 350 material sites and this just seems an unreasonable number to regulate with these new regulations and your existing staff and funding;

4) The State of Alaska has a number of material sites in the KPB that have no reclamation. How do you propose to enforce these new regulations with regards to these sites? And, if you can not, how can you then enforce them against private material site owners?;

5) Material site owners are not the only ones who make noise and create dust. Aren't you discriminating against material site owners if you do not impose these regulations against every other entity who makes noise and dust? For example, airplanes operating off gravel runways, garbage trucks when picking up large dumpsters and when backing up, maintenance equipment under contract to the KPB Roads department when maintaining KPB roads;

5) During the MSWG meetings it was determined that the Planning Commission was improperly administering the buffers relative to material sites. The Planning Commission was stacking buffer zones, six foot high berms and fences when the existing and proposed Ordinance specifically says "OR" relative to these. Will the Planning Commission continue to stack?;

Please vote NO on this Ordinance.

--

Larry Smith

President

D & L Construction Co., Inc.

(907) 262-6160

(907) 262-6163 Fax

(907) 398-4284 Cell

--
Larry Smith

President
D & L Construction Co., Inc.
(907) 262-6160
(907) 262-6163 Fax
(907) 398-4284 Cell

RECEIVED

OCT 2 8 2022

Borough Clerk's Office
Kenai Peninsula Borough

TO: Assembly Clerk

Soldotna, Ak.

October 25, 2022

SUBJECT: Kenai Peninsula Borough (KPB) Material Site Assembly

As a twenty-five-year property owner within 2,640 feet of a Prior Existing Use, Conditional Land Use, Dewater Bar or Counter Permitted material site, of Homer and a forty-year Alaskan I wish to present concerns I have regarding relevant sections of KPB code 21.29, 21.25, 21.50.055.

My concerns follow:

1) Extensive and expensive building in Homer of both commercial and residential, secondary homes, and retirement homes are increasing at a rapid pace. How will this fit with gravel pits?

2) Designate gravel pits in specific areas, not vast unspecified places

3) Traffic and truck frequency, hauling size and weight, and timing constraints must be considered. Also, driveways and traffic impact. Adapt State of Alaska DOT regulations. Require permits and design controls

4) Insertion and consideration of wildlife corridors must be included.

5) Visual enhancement and screening ordinances need to be designated.

6) Step back from wells of at least 500 feet must be required for clean safe water.

7) Noise ordinances implemented.

8) Monitoring of water quality in wells for metals, contamination, and turbidity, plus the lowering of all water levels must be implemented.

9) No permit required for pits of one acre but less than 2.5 acres??? Permits required for each pit regardless of size.

10) Place a tax on materials withdrawn. The tax will be used for public purposes, so materials are just not "taken" from the resident population

Please keep me informed of all future action regarding this topic. Please mail all correspondence to 1800 Parkside Dr, Anchorage, AK 99501.

Sincerely,

Barbara N. Reilly

Barbara N Reilly

40963 Heather St

Homer, Alaska 99603

**Warner, Avery**

**From:** Blankenship, Johni
**Sent:** Wednesday, November 9, 2022 3:39 PM
**To:** Warner, Avery
**Subject:** FW: <EXTERNAL-SENDER>MATERIAL SITE AMENDMENTS

Public comment for O2022-36 material site

---

**From:** Hans Bilben <catchalaska@alaska.net>
**Sent:** Wednesday, November 9, 2022 3:35 PM
**To:** Blankenship, Johni <JBlankenship@kpb.us>
**Subject:** <EXTERNAL-SENDER>MATERIAL SITE AMENDMENTS

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Hi Johni,
Would you please forward this to Assembly members and Planning.. Thanks

Assembly Members,

At the onset of the process to create a new material site ordinance it became apparent that the wishes of gravel operators and neighboring property owners were miles apart on just what this document might look like. There seemed to be consensus among you that if the two sides could reach common ground on at least some of the sections it would benefit and streamline the process. Ed Martin III (president of KPAC Association) and I agreed to work toward that end. After 4 1/2 years of involvement with the current ordinance, as well as participating in the former material site working group meetings and the current proceedings, I see the ordinance through the eyes of a property owner next to a proposed material site. Ed and I spent many hours discussing, negotiating, and trying to come up with language that could benefit both sides—obviously we don't agree on everything, but we put together a document. That document is now in the agenda as the "Derkevorkian Amendments" and within it are **18 sections** that we both agreed upon as beneficial. The attachment below details which sections that Ed and I agreed upon.

We sincerely hope that you will use this as a starting point, adopt these amendments, and then get on with the process of completing the remainder of the ordinance.

Hans Bilben
Anchor Point

Amendments within the Derkevorkian proposal which were agreed upon by are designated by ++ **OK.**

Amendments partially agreed upon are designated by +++ with desired changes noted.

**21.29.010(C)**
++ OK

**21.29.015(D)**
++ OK

**21.29.050(A)(1)(a)** +++ Agreement except should read "…provide **visual** and noise screening…"

**(A)(1)(f)**
+++ OK
Change and to or and change technology's to technology.

**(A)(1)(g)**
++ OK

**(A)(2)(b)**
++ OK

**(A)(2)(c)**
++ OK

**(A)(4)**
++ OK

**(A)(5)(a)**
++ OK

**(B)(1)(c)**
**++ OK**

**(B)(4)**
**++ OK**

**21.29.055(A)**
**++ OK**

**(B)**
**++ OK**

**21.29.057**
**++ OK**

**21.29.063**
++ OK

**21.29.065**
++ OK

**21.29.130**
**Definitions**

**(A)(8)**
++ OK

**(A)(21)**
++ Ok

## Warner, Avery

**From:** Blankenship, Johni
**Sent:** Thursday, November 10, 2022 1:15 PM
**To:** Warner, Avery
**Subject:** FW: <EXTERNAL-SENDER>Kachemak Bay State Parks Citizen's Advisory Board Comments
**Attachments:** KBSP CAB RESOLUTION 2022 - 3 .pdf

Avery, please see the attached public comment for O2022-36.

Thank you, Johni

---

**From:** Robert Archibald <robert.e.archibald@gmail.com>
**Sent:** Thursday, November 10, 2022 1:05 PM
**To:** G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
**Subject:** <EXTERNAL-SENDER>Kachemak Bay State Parks Citizen's Advisory Board Comments

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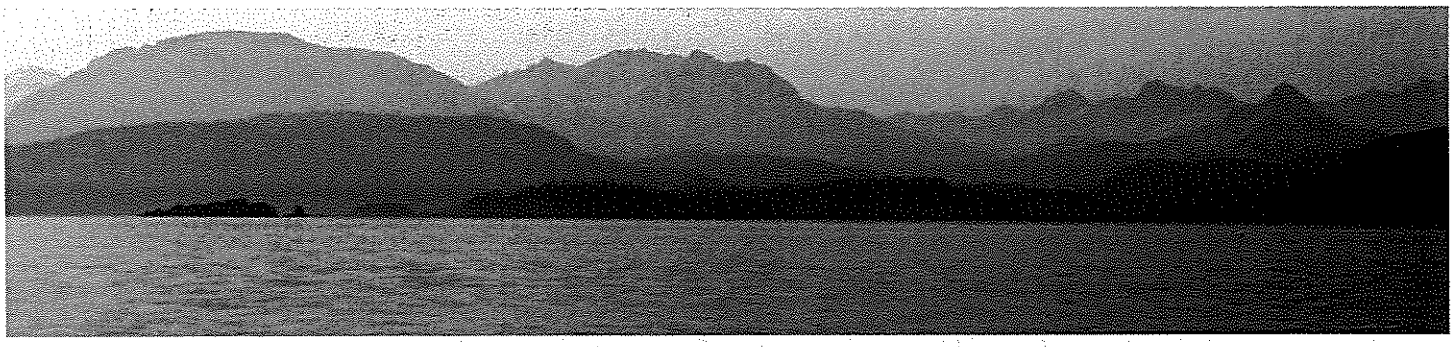
Dear Borough Clerk,

Attached is Resolution 200-3 passed by The Kachemak Bay State Parks and Kachemak Bay State Wilderness Park Citizens Advisory Board, (KBSP & KBWP CAB) on November 9, 2022 concerning updating Ordinance 2022-36, Amending KPB Chapter 21.25 and KPB Chapter 21.29 Regarding Conditional Land Use Permits and Material Site Permits and Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions.

Please pass the attached resolution on to members of the Borough Assembly and Committees dealing with updating these regulations.

Respectfully,

Robert Archibald. Chair
KBSP & KBSWP CAB



**Kachemak Bay State Parks and Kachemak Bay State Wilderness Park Volunteer Citizen's Advisory Board**
**95 Sterling Hwy, Suite 2, Homer, AK 99603**

To
Kenai Peninsula Assembly Members
Filed Electronically
assemblyclerk@kpb.us

Resolution 2022 - 3

A RESOLUTION OF THE KACHEMAK BAY STATE PARKS AND KACHEMAK BAY STATE WILDERNESS PARK VOLUNTEER CITIZEN'S ADVISORY BOARD REQUESTING A SET BACK FROM ALASKA STATE PARK BOUNDRIES

WHEREAS, The Alaska Legislature created the Kachemak Bay State Park and the Kachemak Bay State Wilderness Park, (KBSP & KBSWP) in 1970 to "...protect and preserve [the park's] unique and exceptional scenic value"; and

WHEREAS, KBSP & KBSWP were formed and designated as a special purpose site under the Alaska Constitution article 8, section 7; and

WHEREAS, The Kachemak Bay State Park and Kachemak Bay State Wilderness Park Volunteer Citizen's Advisory Board was created in 1982 to provide a forum for the collection and expression of opinions and recommendations on matters relating to the Kachemak Bay State Park and Kachemak Bay State Wilderness Park to promote thereby the protection of the resources of the Kachemak Bay State Park and Kachemak Bay State Wilderness Park including its scenery, vegetation, wildlife, soils, waters, historic features, and wilderness core and outdoor recreational opportunities; and to promote therefore communication between the public, state, and local government and the administrators of the Kachemak Bay State Park and Kachemak Bay State Wilderness Park; and

WHEREAS, Kachemak Bay State Park and Kachemak Bay State Wilderness Park provide important recreational and economic opportunities for local residents and attracts tens of thousands of visitors each year who support a broad range of local businesses and jobs; and

WHEREAS, The Kenai Peninsula Borough is in the process of updating Ordinance 2022-36, Amending KPB Chapter 21.25 and KPB Chapter 21.29 Regarding Conditional Land Use Permits and Material Site Permits and Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions; and

WHEREAS, The Kachemak Bay State Park Citizen's Advisory Board supports the value of an enjoyable environment in Alaska State Parks; and

WHEREAS, The conclusive effects of Material Site operations to adjoining State Parks have not been in the discussion; and

WHEREAS, Citizens and tourists who visit Alaska State Parks deserve to have a unique experience not affected by industrial operations such as Material Extraction Sites; and

WHEREAS, It is a known fact that Material Extraction Sites create noise, air pollution and truck traffic which affect nearby areas, and

WHEREAS, The water quality to adjoining PARK LANDS and streams can be adversely affected.

NOW, THEREFORE, BE IT RESOLVED THAT THE KACHEMAK BAY STATE PARKS AND KACHEMAK BAY STATE WILDERNESS PARK VOLUNTEER CITIZEN'S ADVISORY BOARD

**DOES SUPPORT A SET BACK OF 1,000 FEET FROM THE BOUNDARY LINE OF AN ALASKA STATE PARK, RECREATION SITE OR RECREATION AREA FOR THE PURPOSE OF MATERIAL EXTRACTION**

**FURTHERMORE**

**THIS SET BACK SHOULD INCLUDE NATIVE VEGATATION TO REDUCE NOISE, AND AIR POLLUTION FROM STATE PARK LANDS**

PASSED BY THE KACHEMAK BAY STATE PARK AND KACHEMAK BAY STATE WILDERNESS PARK VOLUNTEER CITIZEN'S ADVISORY BOARD

ON THIS THE 9th DAY OF NOVEMBER 2022

Respectfully Submitted,

Robert E.Archibald

Robert E. Archibald

Chair
Kackemak Bay State Park and
Kachemak Bay Wilderness Park Volunteer Citizen's Advisory Board

VOTE
Yes – 11
No - 0
Absent - 1

CC.

## Warner, Avery

**From:** Blankenship, Johni
**Sent:** Monday, November 14, 2022 12:44 PM
**To:** Warner, Avery
**Subject:** FW: New Public Comment to Assembly Members

**From:** Kenai Peninsula Borough <webmaster@borough.kenai.ak.us>
**Sent:** Monday, November 14, 2022 12:38 PM
**To:** BoroughAssembly <Borough-Assembly@kpb.us>; Mayor's Department <MayorDepartmental@kpb.us>
**Subject:** New Public Comment to Assembly Members

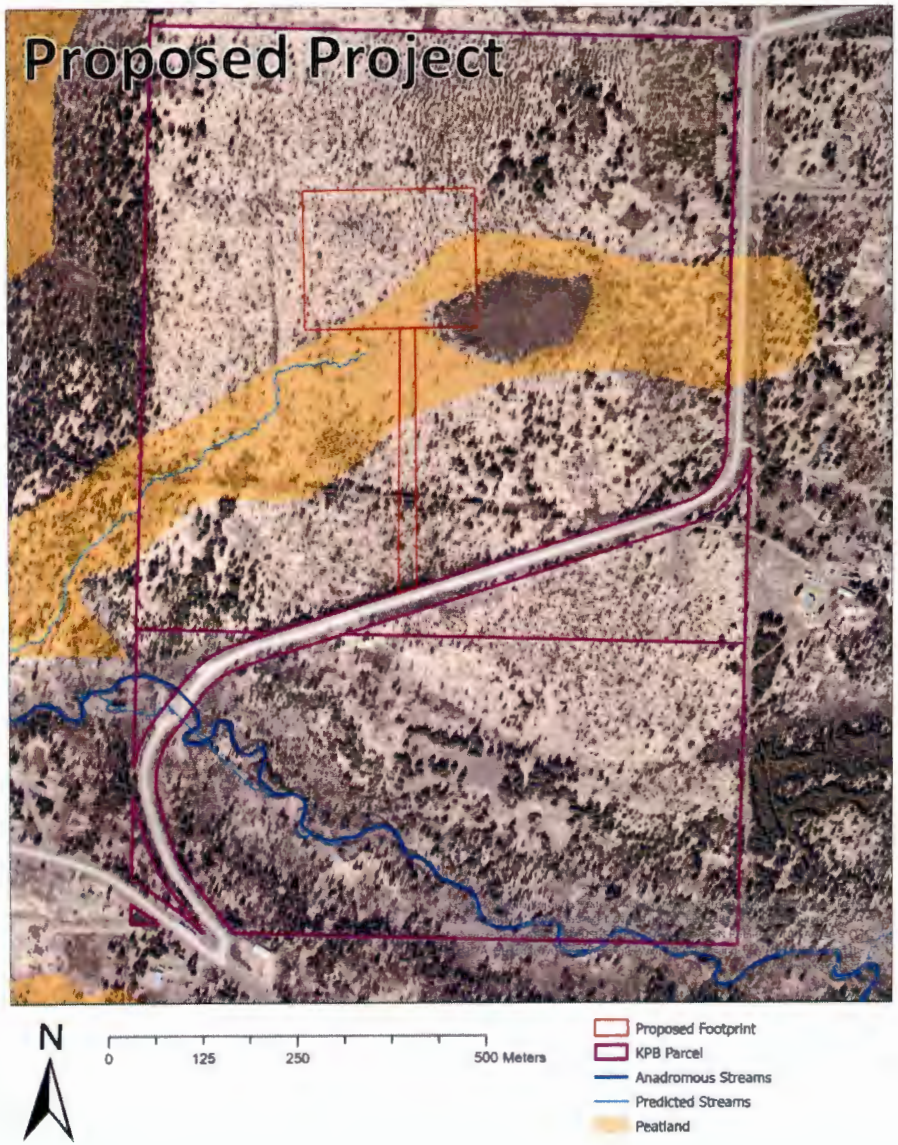
**Your Name:** Gordon and Sonja Nisler

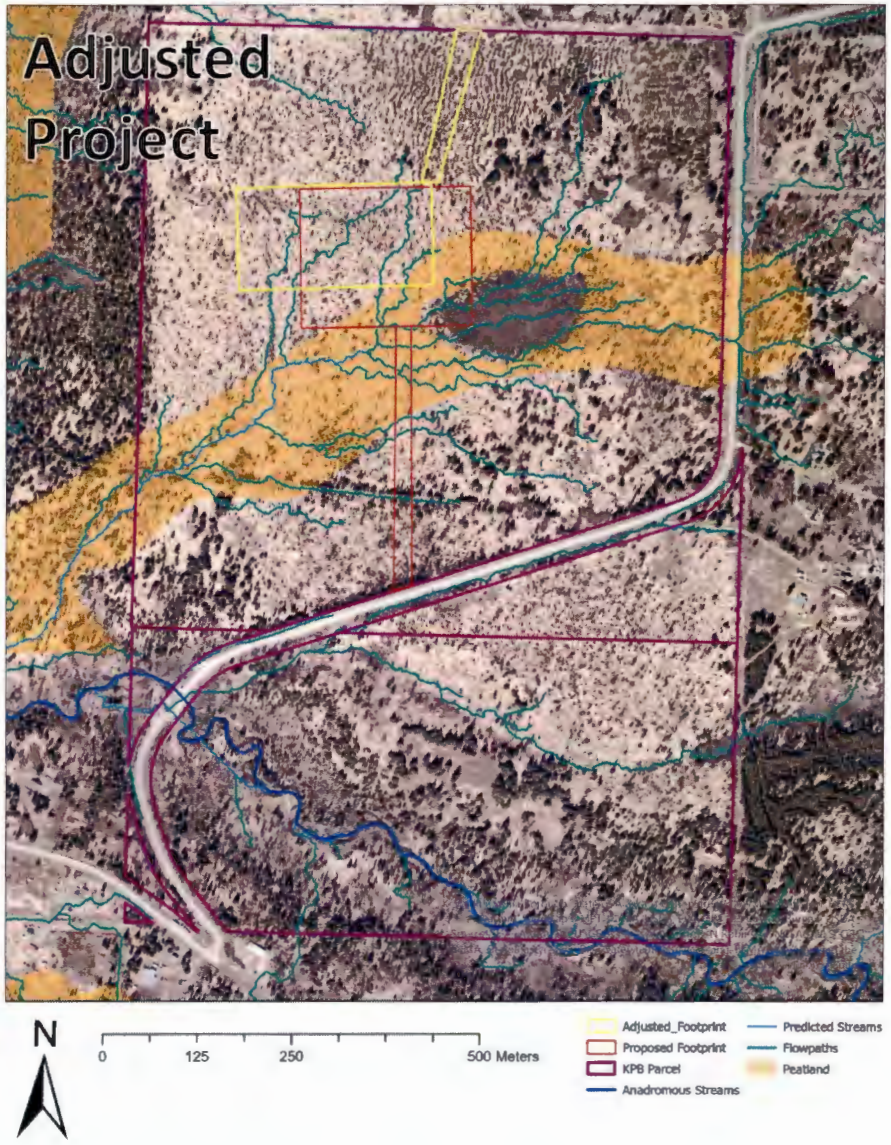
**Your Email:** gs2aa@yahoo.com

**Subject:** 2022-057

**Message:**

We would like to express our support for this resolution not only because the state should not go into competition with existing private businesses but also because of the the negative impact on the neighborhood ( Coal Creek Subdivision) that a state take out would have. We are worried about extra traffic, safety, road destruction,trash accumulation, no state law enforcement on site as well as many other issues that will destroy the current fabric of the neighborhood. Thanks for your consideration. By the way, we live in this neighborhood.


Proposed Project
N
0
125
250
500 Meters
Proposed Footprint
KPB Parcel
Anadromous Streams
Predicted Streams
Peatland


Adjusted Project
N
0
125
250
500 Meters
Adjusted_Footprint
Proposed Footprint
KPB Parcel
Anadromous Streams
Predicted Streams
Flowpaths
Peatland





# Developing a peatland carbon project for the Kenai Peninsula

Decembeer 9, 2022

Mr. Brent Johnson, President,
Kenai Peninsula Borough Assembly
and Assembly members

Dear Mr. Johnson and Assembly Members,

Reading about the wish of the Assembly to review the Gravel Pit Ordinance, reminded me of my years if involvement with this.

Drew Scalzi wrote the first one, which the Gravel folks hatted, they did not feel it was necessary to control their businesses, and deeply resented the efforts. I got involved thanks to Ann Byes of Anchor Point, who lives near a prime example of gravel pit abuse, where a house stands totally isolated by the deep extractions all around it. She and I were concerned that future extraction would not affect residents nearby, and had asked for at least a 300 ft. distance from a busy gravel pit just outside the quiet subdivision, and those folks are not happy about it. They can get local option zoning within the subdivision, but no protection outside the subdivision.

It is time for the Assembly to consider zoning certain areas as residential, that would not allow gravel pits, or commercial businesses. It is the only way to ensure established subdivisions will be protected from commercial disturbances.

In the past there has been a huge outcry against zoning, but I think the time has come. I see the planning committee listening to impassioned cries against proposed gravel pits, and I can empathize. It is impossible to create an ordinance that will protect them, unless there is zoning.

And somehow we have to recognize there is a need for gravel in order to build anything, roads, homes, etc. That is a vital business on the Peninsula.

I do not envy you what lies ahead. I wish you the best in your endeavors.

Sincerely,

Milli Martin
P.O. Box 2652
Homer, Al;aska 99603

**Warner, Avery**

**Subject:** FW: <EXTERNAL-SENDER>Gravel Pit Ordinance 2022-36

**From:** Kathryn Carssow <kcarssow@live.com>
**Sent:** Friday, December 9, 2022 3:21 PM
**To:** G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
**Subject:** <EXTERNAL-SENDER>Gravel Pit Ordinance 2022-36

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Dear Assemblymembers,

Gravel pits, if not designed thoughtfully and developed carefully, pose a serious risk to underground drinking water and aboveground salmon streams, especially damaging to salmon fry habitat. As one whose income was dependent on salmon sportfishing in the Kenai Peninsula Borough, I am concerned that this ordinance be consistent with wise water management. Please incorporate the following considerations into the ordinance:

- Keep surface and groundwater provisions in the ordinance to protect our drinking water and salmon streams from pollution.
- Keep the fairness provision in the ordinance that requires not only new pits but also Prior Existing Use (PEU) pits to file an application and reclamation plan before digging into surface or groundwater.
- Follow the recommendations of the hydrology experts for 1000ft buffers on all sides for drinking water, rather than only requiring a 500ft buffer on one side.

Thank you for your work on this important ordinance.

Sincerely, Kathryn Carssow, Homer

Sent from Mail for Windows

Kachemak Bay Conservation Society
3734 Ben Walters Ln, Homer, AK 99603
907 235.8214
kbayconservation@gmail.com

December 12, 2022

**Comments on KPB Proposed Ordinance 2022-36**

**To**

KBP Assembly and Mayor,

The Kachemak Bay Conservation Society, (KBCS) has the following concerns and questions regarding ordinance 2022-36:

1. Page 5, Section 21.29.010-C. Provide backup or refer to regulation on how the 300-foot linear distance was derived. Provide similar reference on rule or regulation for all other specific buffers mentioned in the document. Furthermore, we want to request a **1000 ft. Buffer** of natural vegetation from the boundary line of any state or federal recreation lands.

2. Pages 7, Section 21.29.030, the Site Plan needs to identify any EPA (and Alaska DEH) Wellhead Protection areas.

3. Page 8, Section 21.29.040, A2 add to the end "...and will protect known surface water, groundwater sources and salmon habitats."

4. Page 8, Section 21.29.040, A3, what are "sufficient" setbacks, buffer zones, and other safeguards? Please provide specifics. ( See # 1)

5. Page 11, Section 21.29.050. 6 – correct: "4 feet below the proposed excavation" to "4 feet below the lowest elevation of the proposed excavated area"

6. Page 15, Section 21.29.057, 4f. Specify acceptable hydrologic techniques, methods or models for evaluation of subsurface and groundwater hydrology.

KBCS also has grave concerns regarding noise, traffic, air pollution, and safety in neighborhoods.

Respectively Submitted

Roberta Highland, President

Kachemak Bay Conservation Society



The Kachemak Bay Conservation Society's mission is to protect the environment of the Kachemak Bay region and greater Alaska by encouraging sustainable use and stewardship of natural resources through advocacy, education, information, and collaboration.

**Warner, Avery**

**Subject:** FW: <EXTERNAL-SENDER>Ordinance 2022-36 Commentss

**From:** Harold Shepherd <halshepherdwpc@gmail.com>
**Sent:** Monday, December 12, 2022 12:00 PM
**To:** G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
**Subject:** <EXTERNAL-SENDER>Ordinance 2022-36 Commentss

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Water Policy Consulting, LLC (WPC) provides consultation and advisory services to conservation organizations and Alaska Native Villages throughout the state including the Kachemak Bay Watershed related to: Climate Change, water and natural resource management and protection, fish and wildlife protection, human rights, sovereignty, fund raising and environmental justice issues.

Please accept the following comments regarding the Kenai Peninsula Borough material site ordinance (gravel pit rules; Ordinance 2022-36) . Groundwater is critically important for people living on the Kenai Peninsula Lowlands as it is the primary source of water for most homes and businesses in this area. In the Lowlands region for example, most residents use domestic wells or developed springs as their water supply which are dependent upon limited groundwater resources, and which is therefore, vulnerable to changes in weather, climate, and/or water use.

Domestic water supply in some areas of the Lowlands, relies on regional reservoirs including the Bridge Creek Reservoir in the Anchor River Watershed which serves as the water supply for the City of Homer. The reservoir relies at least in part on the groundwater that emerges first from springs and thereafter flows through streams and into the Bridge Creek Reservoir.

Groundwater in the lowland also directly affects Salmon because it is critical for adequate stream flow, stream temperatures, and stream nutrients. Approximately half of summer stream flow begins by emerging from seeps and springs, which are sourced from groundwater. This groundwater is cooler than ambient stream water in the summer and warmer than ambient stream water in the winter, providing important thermal refugia for salmonids.

Similarly, groundwater comes into contact with soils and biota as it flows to streams. Alder are particularly important, having a symbiotic relationship with bacteria living in root nodules. The bacteria harvest gaseous nitrogen in the atmosphere, converting it to dissolved nitrogen that can be passed to the alder. The alder then use that nitrogen to build proteins and chlorophyll, the latter essential for the photosynthesis that creates sugars that can then passed back to the bacteria. As groundwater passes beneath alder, it emerges enriched in nitrogen, which can then enhance productivity in the streamside wetlands and the streams themselves.
In order to ensure clean water and healthy salmon in the region we must protect streams and groundwater. Gravel pits – if not designed thoughtfully and developed carefully – can pose a serious risk to salmon streams, especially baby salmon.

WPC therefore supports the following sections of and amendments to Ordinance 2022-36 which should be adopted in it's entirety:

- Keep surface and groundwater provisions in the ordinance to protect our drinking water and salmon streams from pollution;

- Keep the fairness provision in the ordinance that requires not only

new pits but also Prior Existing Use (PEU) pits to file an application and reclamation plan before digging into surface or groundwater;

- At the last hearing, hydrology experts recommended 1000ft buffers

on all sides for drinking water, but the ordinance only requires a 500ft buffer on one side.

These provisions in and changes to the Ordinance will help to ensure that gravel, salmon and our clean water resources are all valued in the discussion.

**Conclusion**

Groundwater in the Kenai lowlands is directly affected by gravel pits and is hydrologically connected to water needed by people and salmon. The Borough has a responsibility to protect this delicate balance of groundwater as a limited resource in relation to humans and salmon on Alaska's Kenai Peninsula Lowlands.

Please let me know if you have any questions regarding these comments. Thank you.

Hal Shepherd, Principal

Water Policy Consulting, LLC

P.O. Box 15332

Fritz Creek, AK 99603

halshepherdwpc@gmail.com

www.waterpolicyconsulting.com

(907)491-1355

*WPC is located in Homer, Alaska on the traditional lands of the Dena'ina, Alutiiq and Sugpiaq people of Alaska's southcentral region which have been in community here long before the occupations of settler culture, past and present.*

**COMMENTS FROM LYNNDA KAHN ON Ordinance 2022-36**

**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.*

Comment – There can be a lot of variability in the water table depending on the time of year you dig the test holes, and the substrate being affected, so a gravel operator can conceivably use this to their advantage. How does the Borough know whether or not a gravel operator ever enters the GW table during the permit term? Is this self-reported or does the Borough make occasional site inspections to ensure extraction never reaches the water table?

Also, what criteria have been used to justify 32-ft? Depending on the depth of excavation at 32-ft from any lot line, if one accounts for the very real likelihood of erosion over time, 32-ft does not appear adequate.

*C. A prior existing use 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).*

Comment - Requiring a Reclamation Plan is not an onerous request, and the deadline of 2026 seems unwarranted. Since we are only just now approaching Jan. 2023, I recommend a more reasonable deadline of Jan. 1, 2025, which is ample time for any prior existing use operator to develop a Plan.

**21.29.020. Types of permits available.**

*A. Counter permit. A counter permit is required for earth material extraction which disturbs more than one acre and less than 10 cumulative un-reclaimed acres. Material processing, screening, or crushing, and material extraction within four feet of the seasonal high-water table is prohibited under a counter permit.*

Comment - What steps would be required to ensure any authorized activities remain at least 4-ft or more above the seasonal high-water table? How would the Borough know, at any given time, whether or not this requirement is not being violated throughout the permit term? Is this self-reported or would the Borough make occasional site inspections to ensure extraction never reaches the 4-ft mark?

*B. Conditional land use permit. A conditional land use permit (CLUP) is required for the following types of earth material extraction or uses:*

*1. Earth Materials Extraction CLUP. An Earth Materials Extraction CLUP is required for any material extraction which disturbs 10 or more cumulative acres. Material processing, screening or crushing, or extraction within four feet of the seasonal high-water table is prohibited under this permit. The standard conditions set out in KPB 21.29.050 are applicable to this type of CLUP.*

Comment - What steps would be required to ensure any authorized activities remain at least 4-ft or more above the seasonal high-water table? How would the Borough know, at any given time, whether or not this requirement is not being violated throughout the permit term? Is this self-reported or would the Borough make occasional site inspections to ensure extraction never reaches the 4-ft mark?

*8. A site plan, prepared by a qualified independent civil engineer licensed and active in the State of Alaska to include the following:*

*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.*

*2. Water quality. EPA or ADEC regulations controlling spills, spill reporting, storage and disposal of oil, anti-freeze and hydrocarbons.*

Comment – KPB should be more explicit and cite exactly which regulations they are referring to, e.g. chapters/sections, so there is no confusion.

*3. Hazardous Materials. Use and storage of hazardous materials, waste and explosives.*

*a. EPA regulations controlling use of hazardous materials must be followed;*

Comment – KPB should be more explicit and cite exactly which regulations they are referring to, e.g. chapters/sections, so there is no confusion.

---

**One final comment – As you are aware, Arsenic is present in many areas on the Kenai Peninsula. As such, exposing buried soils to a different environment could result in oxidation and transport of Arsenic. Minerals, such as arsenic, could oxidize when exposed, and could change the chemistry in the water. Groundwater chemistry can greatly influence the mobility of Arsenic in groundwater.**

Resolution 2022-2

Recommendations Regarding

Kenai Peninsula Borough Ordinance 2022-36

**Whereas**, the Kenai River Special Manage Area Advisory Board was created by the Legislature for the purpose of advising the Alaska Department of Natural Resources, Division of Parks, other state and federal agencies, the Kenai Peninsula Borough and other municipalities regarding matters affecting the Kenai River Special Management Area, and

**Whereas**, the Kenai Peninsula Borough is enacting Kenai Peninsula Borough Ordinance 2022-36 pertaining to earth materials extraction and processing sites, and

**Whereas,** the Board has reviewed and considered the current draft and proposed amendments offered by members of the Assembly and public comments:

**Therefore**, the Board respectfully offers the following comments for consideration:

**21.29.029.** This section allows an applicant to get a Counter permit without public notice for parcels up to 10 acres. The Board opposes that amount as being too large and believes 2 and one-half acres is appropriate.

**Ground Water**. In considering handling of water on the sites, the regulation should include surface water and surface water drainage as well as underground water levels.

**Treatment of Existing Pits**. The Board is concerned about exempting existing pits. The Board recommends that the Borough undertake the active management of these pits to ensure the owners implement a reclamation plan and conform to standards. The State of Alaska does not have an adequate budget to ensure existing pit owners comply with reasonable standards.

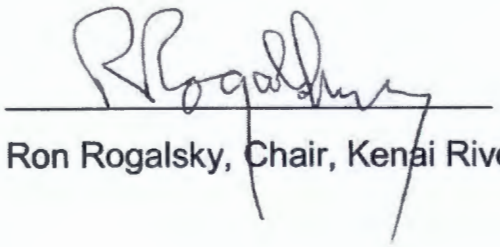
**Buffer Zones**. The Board believes the proposed 32 foot buffer from edge of the applicant's property boundary to adjacent properties should be increased to 100 feet.

In addition, the Board specifically recommends a buffer of 1,000 feet from any existing developed facility within KRSMA. A developed facility means any campground, boat launch, parking facility, signage or access roads developed or built by State Parks. This distance will better alleviate dust and noise.

**Hours of Operation for Pits and Processing Plants.** The hours of operation should be limited to 8:00 a.m. to 5:00 p.m. for six days per week so no activity takes place on Sunday.

**Necessary Monitoring and Further Research.** The Board recommends sufficient budget be allocated for supervision of newly permitted and existing pits. Moreover, the Board recommends the Borough fund necessary scientific research to better assess ground water flows and potential solutions to prevent pollution.

**Approved: December 8, 2022**



Ron Rogalsky, Chair, Kenai River Special Management Area Board

## Warner, Avery

**Subject:** FW: <EXTERNAL-SENDER>Gravel pits

Dear Assembly members,

I am a lifelong Alaskan resident, I own a local business and home in Sterling, Alaska. I am very concerned about the proposed changes to the gravel pit rules.

The proposed changes go against both science and common sense. The changes clearly make the financial success of gravel pit owners a priority far and above the safety of all our residents drinking water and the health of our rivers and fish. The livelihood of the entire peninsula and my community relies on fishing and unspoiled natural beauty- not gravel development. My partner is a fishing guide, I am an artist. We live here because of the beautiful scenery and world renowned fishing, it's also why we have millions of tourists every year-they don't come for the gravel pits and they won't keep coming back if we poison the ground water and river and destroy the natural beauty. This is a tourism economy. Land should be developed very carefully here. This place is incredibly special, it's your job as representatives of the people and communities here to keep it that way.

Please keep the surface and groundwater provisions we have in place.

Keep the fairness provision in the ordinance. Small communities need a voice, not to be silenced by the wealthiest residents (the largest house in my whole neighborhood is owned by a gravel pit owner, he lives in a gated mansion with a full runway and a lawn that looks like a golf course).

Please keep a drinking water safety buffer of at least 1000ft on all sides- as is very clearly required for safety by scientific studies. Allowing for only a 500ft buffer on one side (when this is a clear known risk and twice that amount is required) foolishly threatens the health and safety of our community.

The new ordinance allows for careless, unsafe and unsightly land development without community input-for no other reason than simple greed. Please vote against the new gravel pit ordinance.

Thank you for your time,
Laura Dewey

Sent from my iPhone

## Warner, Avery

**Subject:** FW: <EXTERNAL-SENDER>Public Comment Letter Re: An Ordinance Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures

**Attachments:** KP-CISMA Comment Letter Gravel Ordinances_12.13.2022.pdf

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**From:** Katherine Schake <katherine@homerswcd.org>
**Sent:** Tuesday, December 13, 2022 9:44 AM
**To:** G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
**Cc:** KP-CISMA <kenaipeninsula.invasives@gmail.com>
**Subject:** <EXTERNAL-SENDER>Public Comment Letter Re: An Ordinance Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

To Whom It May Concern,

Please accept this public comment letter on behalf of the Kenai Peninsula Cooperative Invasive Species Management Area regarding the ordinances amending material extraction site permits and related activities.

This is specifically for the KPB Assembly and Lands Committee, who is meeting tonight (Dec. 13th) to review the ordinance amending: KPB 21.29, KPB 21.25, and KPB 21.50.055.

Thank you,
Katherine
--

Katherine Schake
Invasive Species Program Manager
**Homer Soil & Water Conservation District**
www.homerswcd.org
**432 E. Pioneer Ave**
**Homer, AK 99603**
**(907) 205-0235**

KPCISMA
kenaiinvasives.org

## Warner, Avery

**From:** Turner, Michele
**Sent:** Tuesday, December 13, 2022 6:18 PM
**To:** Warner, Avery
**Subject:** FW: New Public Comment to Assembly Members

Public comment for O2022-36. Please also update the subcommittee webpage. Thank you!

**From:** Kenai Peninsula Borough <webmaster@borough.kenai.ak.us>
**Sent:** Tuesday, December 13, 2022 5:08 PM
**To:** BoroughAssembly <Borough-Assembly@kpb.us>; Mayor's Department <MayorDepartmental@kpb.us>
**Cc:** Turner, Michele <MicheleTurner@kpb.us>
**Subject:** New Public Comment to Assembly Members

**Your Name:** Mike Patrick

**Your Email:** mlpatrick335@yahoo.com

**Subject:** Screening vs crusher noise levels

**Message:**

https://www.cdc.gov/niosh/mining/userfiles/works/pdfs/naosa.pdf , this link will give the assembly some observation data as to the actual noise levels of crushers and screeners. According to these observations there is not a great deal of difference between the two when noise levels are measured. At you work session on zoom someone claimed a significant difference. 12/13/2022.

# Noise assessment of stone/aggregate mines: six case studies

E.R. BAUER AND D.R. BABICH

## Abstract

*The U.S. National Institute for Occupational Safety and Health (NIOSH) is conducting a cross-sectional survey of equipment sound levels and worker noise exposures in the stone/aggregate mining industry. Six stone/aggregate mines (three surface and three underground) were recently surveyed, and the findings are presented here. The surveys consisted of sound-level measurements conducted around various equipment and machinery (including stone processing and crushing equipment) and full-shift dose measurements to determine worker noise exposures. The findings identify the equipment and machinery that are likely to cause worker overexposures and identify the workers found to be experiencing overexposures. In addition, the benefit of cabs in reducing mobile equipment operator noise exposure is discussed.*

## Introduction

Exposure to noise and noise-induced hearing loss (NIHL) continues to be problematic for the U.S. mining industry. The problem is particularly severe because large, noisy equipment dominates the industry. Studies have shown that 70 percent to 90 percent of all miners have NIHL great enough to be classified as a hearing disability (NIOSH, 1996). To address the issue, the U.S. Mine Safety and Health Administration (MSHA) published Health Standards for Occupational Noise Exposure (*Federal Register*, 1999). The new regulations include the adoption of a hearing-conservation program similar to that of the U.S. Occupational Safety and Health Administration (OSHA), with an "Action Level" of 85 dB(A) eight-hour time weighted average (TWA8) and a permissible exposure level (PEL) of 90 dB(A) TWA8. The regulations also state that a miner's noise exposure shall not be adjusted because of the use of personal hearing protection, and that all feasible engineering and administrative controls must be used for noise exposure reduction.

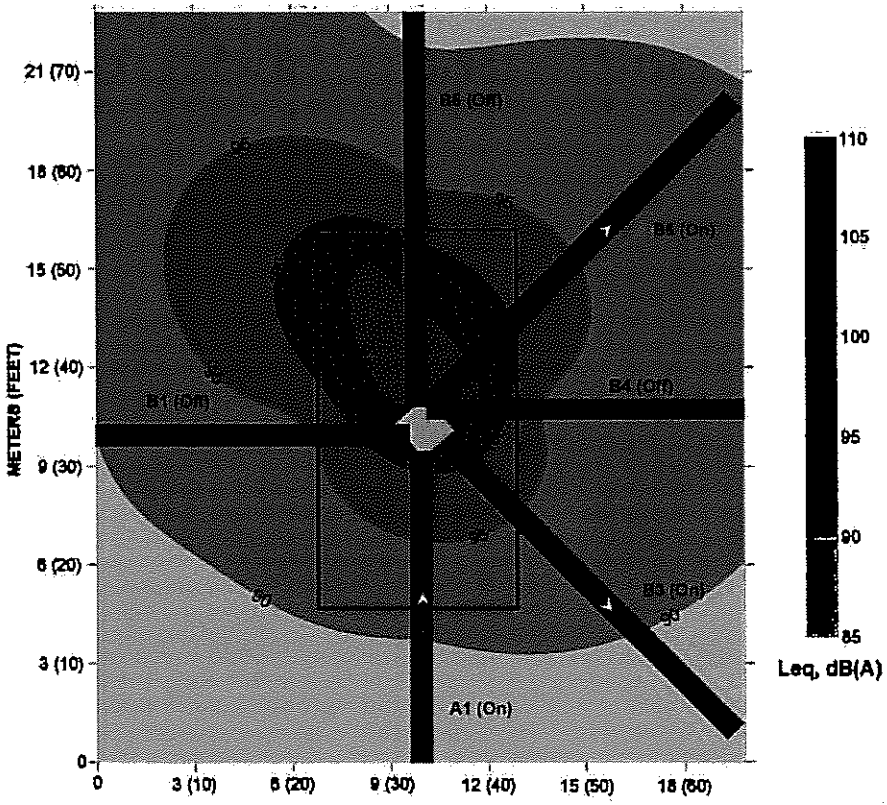
The U.S. National Institute for Occupational Safety and Health (NIOSH) has responded to this problem in a number of ways, including conducting a cross-sectional survey of noise sources and worker noise exposures in the mining industry. Initially, these surveys were conducted in surface and underground (continuous and longwall) coal mines, in coal preparation plants and in sand and gravel mines. Recently, this has included surveying stone (aggregate) mining and crushing and processing facilities. The mine sites were selected primarily through personal contacts within the mining industry. Participation in the surveys was voluntary for the mine sites, but 100 percent of the mines contacted participated. All the surveys were completed between May and October 2005. The surveys are designed to monitor worker dose, to measure equipment sound levels and to understand the noise source/worker dose relationship. This is accomplished through full-shift dosimetry readings, equipment noise profiles and, where possible, worker task observations.

## Instrumentation and data collection

Sound levels in the mines and processing facilities were measured using a Quest Model 2900 sound level meter (SLM) and Brüel & Kjær 2260 Investigator. The instruments were mounted side by side on a tripod, with the microphones 1.5 m (5 ft) from the floor (approximately ear height), angled at 70° from horizontal (in accordance with manufacturers' recommendations) and facing the noise source. An A-weighted equivalent sound pressure level (Leq) and one-third linear octave band frequencies were recorded at each location. Leq, which for these studies was the parameter of interest, is the average integrated sound level accumulated during a specified measurement period using a 3-dB exchange rate. The 3-dB exchange rate is the method most firmly supported by scientific evidence for assessing hearing impairment as a function of noise level and duration (NIOSH, 1998). A slow response rate with an averaging time (length of measurement) of 30 seconds was also employed. Measurements were made around the fans, stationary equipment and processing facilities. Both near and far field measurements were recorded. The term "near" describes measurements made

**FIGURE 1**

**Sound profile plot for the primary screening tower.**




within 1 to 2 m (3 to 6 ft) of the noise source while the "far" measurements were those taken farther than 2 m (6 ft) from the source.

Worker noise exposure was monitored using Quest Q-400 noise dosimeters. The dosimeters were set to monitor an MSHA permissible exposure level (PEL) of 100 percent or an eight-hour time-weighted average (TWA8) of 90 dB(A). (Specific parameters of this setting include: A-weighting, 90 dB Threshold and Criterion Levels, 5-dB Exchange Rate, Slow Response and a 140 dB Upper Limit.) Where possible, noise dose was recorded inside and outside mobile equipment to determine efficiency of cabs to prevent operator noise exposure from engine and operational noise.

## Case studies

### Case study No. 1 — surface limestone mine

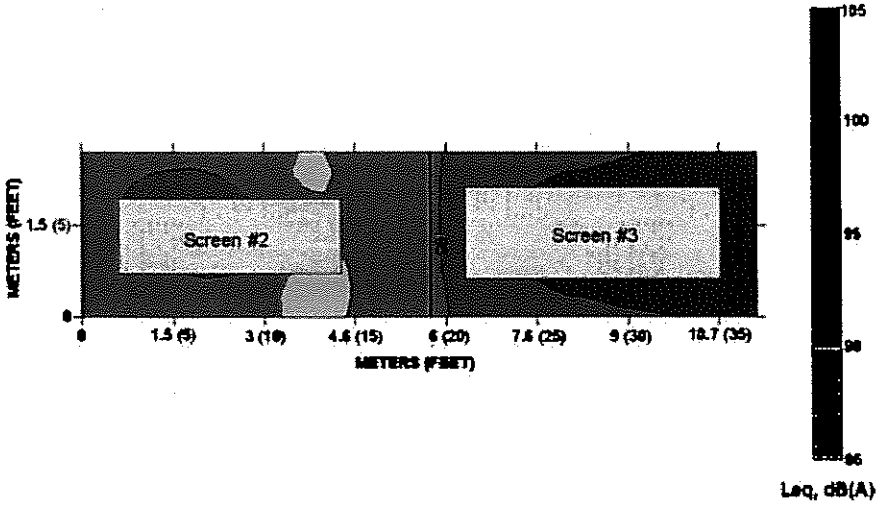
**Mine characteristics:** This study site consisted of one surface pit and accompanying rock processing facilities that mine and process approximately 1.13 Mt (1.25 million st) annually of crushed stone and lime products. Mining consists of bench drilling and blasting (by a contractor), and mining the limestone rock. The blasted rock is mined using front-end loaders (FELs) loading into 45.4-, 49.9- or 54.4-t- (50-, 55- or 60-st-) capacity haul trucks for removal from the pit. The haul trucks dump into a primary crusher located near the pit entrance. After passing through the primary crusher, the rock is transported by belt to the crushing and screening facilities, resulting in the desired product sizes. The daily mining and processing operations average 5.44 to 6.35 kt (6,000 to 7,000 st) of rock. Approximately 25 workers are located in the surface quarry, and 10 are located in the plant (crushing facilities). The worker classifications include FEL operator, haul-truck operator, primary crusher operator, control-room operator, plant operator, plant helper laborer and water-truck operator.

**Equipment and plant sound levels:** Table 1 lists the range of sound levels measured around various processing equipment and indicates that the sound levels varied greatly throughout the plants. The highest sound levels were recorded at the primary screening tower, surge tunnel, secondary crusher, secondary screening tower and the fourth level of the agricultural lime crusher. Most of the recorded readings were 93 dB(A) or less. A sound profile plot for the primary screening tower is illustrated in Fig. 1. The measurements ranged from 87 to 96 dB(A) outside the building and 105 to 107 dB(A) inside the screening tower.

**Worker exposure:** Worker noise exposure was collected using dosimeters worn by the workers for the full (10-hr) shift. Six occupations that were surveyed included the operators of haul trucks, front-end loaders, primary crusher and the control rooms. Plant helpers and operators were also monitored. Results of the worker dose measurements are shown in Table 2. In addition to worker dose, a dosimeter was placed outside the cab on the front

**FIGURE 2**

**Sound profile plot for Telsman screens 2 and 3.**



end loaders (FEL) and on the haulage trucks. This provided the exposure that would occur without the protection of cabs. Although the mining and processing equipment sound level measurements suggest that there were areas that are noisy and workers could be over-exposed to noise, because the workers are in cabs or control rooms, all the workers that were monitored experienced doses well below the MSHA PEL of 100 percent (or a TWA of 90 dB(A)).

## Case studies No. 2 and No. 3 — surface granite mines

**Mine characteristics:** This complex consisted of two surface pits and rock processing facilities that mine and process approximately 1.36 Mt (1.5 million st) annually of crushed stone products. Mining consists of contractor-completed bench drilling and blasting, and mining of the granite gneiss rock. The blasted rock is mined using front-end loaders (FELs) loading into 36.3-t- (40-st-) capacity haul trucks for removal from the pit. The haul trucks dump into a primary crusher located near each pit. After passing through the primary crusher, the rock is transported by conveyor belt to the crushing and screening facilities, resulting in the desired product sizes. Approximately 33 workers are located at the combined surface quarries and crushing facilities. The worker classifications involved in the mining and processing operations include operators of FELs, haul trucks, primary crusher and processing plant.

**Equipment and plant sound levels — Case study No. 2:** The processing facilities consisted of three stationary plants (A, B and C). Measurements were taken around transfer points, belts, crushers and screens, control rooms, miscellaneous buildings and at the primary crusher. Table 3 lists the results of the sound-level measurements around the stationary equipment and indicates that the sound levels varied greatly throughout the plants. The locations where high sound levels (greater than 90 dB(A)) were recorded included the screens and crushers in Plant A, the screening tower and primary crusher in Plant B and the screen, crusher and tunnel in Plant C. An example of

Table 1

**Sound level measurements, case study No. 1, surface limestone.**

| Plant | Equipment | Location | Range Leq, dB(A) |
|---|---|---|---|
| Primary | Screening tower B(N) | Inside | 105-107 |
| Primary | Screening tower B(N) | Outside | 87-96 |
| Primary | Surge tunnel, surge to sec. crusher | In tunnel | 88-101 |
| Secondary | Secondary crusher | Ground level | 89-93 |
| Secondary | Secondary crusher | Upper level | 97-99 |
| Secondary | Compressor bldg. | Inside, door open | 89 |
| Secondary | Compressor bldg. | Inside, door closed | 90 |
| Secondary | Compressor bldg. | Outside | 91 |
| Secondary | 152.4 cm (60 in.) hydrocyclone crushers | Ground level | 82-90 |
| Secondary | 152.4 cm (60 in.) hydrocyclone crushers | Upper level | 84-95 |
| Secondary | Control room | Inside control room | 72 |
| Secondary | Screening tower E(N) | Inside | 100-106 |
| Ag Lime | Screening tower and control room | Second level | 86-99 |
| Ag Lime | Screening tower and control room | Third level | 90-93 |
| Ag Lime | Screening tower and control room | Fourth level | 91-93 |
| Ag Lime | Screening tower and control room | Inside control room | 65 |
| Ag Lime | Screening tower and control room | Fifth level | 91-92 |
| Ag Lime | Screening tower and control room | Sixth level | 91-93 |
| Ag Lime | Screening tower and control room | Seventh level | 91 |
| Ag Lime | Crusher | Ground level outside | 76-90 |
| Ag Lime | Crusher | Second level | 87-89 |
| Ag Lime | Crusher | Third level | 88-89 |
| Ag Lime | Crusher | Fourth level | 81-102 |
| Ag Lime | C3 belt tunnel | Inside | 77-88 |
| Quarry | Primary crusher | Inside control room | 67 |
| Quarry | Primary crusher | Outside | 72-95 |
| Primary | Primary plant | Area (No. 71,72,74) | 74-79 |
| Secondary | Secondary plant | Area (No. 64-70,83,84) | 72-81 |
| Ag Lime | Ag lime plant | Area (No. 73,75-82) | 67-83 |

Table 2

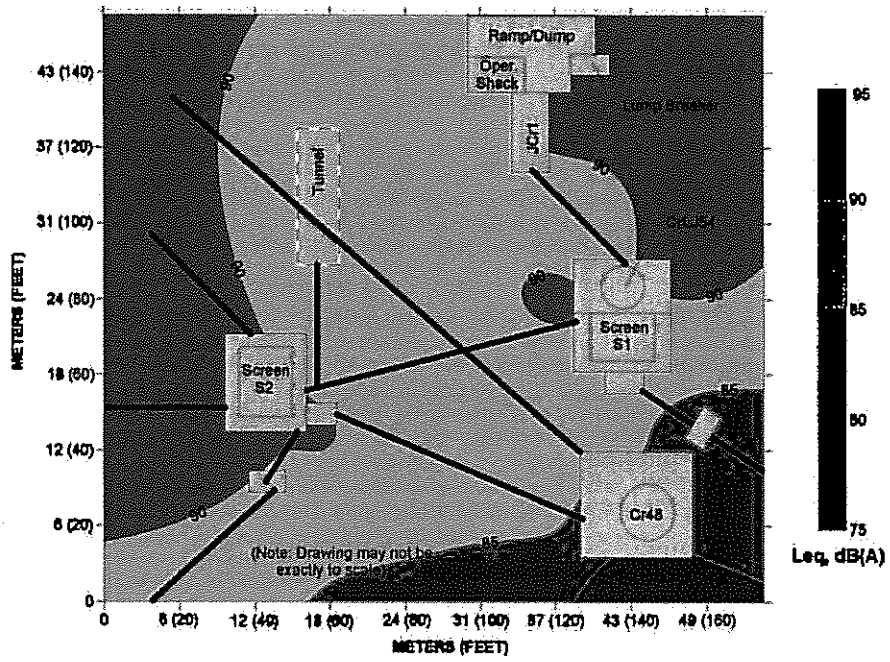
**Worker exposure, case study No. 1.**

| Occupation | Number of recorded doses | Worker range MSHA PEL dose, % | Outside cab range MSHA PEL dose, % |
|---|---|---|---|
| Haul truck operator | 3 | 2.7-14.8 | 65.9-114.1 |
| FEL operator | 3 | 0.7-41.3 | 59.0-65.6 |
| Primary crusher operator | 1 | 13.4 | NA |
| Plant operator | 1 | 0.9 | NA |
| Plant helper | 3 | 17.5-33.4 | NA |
| Ag lime control room operator | 1 | 8.2 | NA |

NA = not applicable

**FIGURE 3**

**Sound profile plot for portable plant.**




the sound levels measured is illustrated in Fig. 2, which is the sound profile plot for screens 2 and 3 in Plant A. Sound levels from 88 to a little more than 100 dB(A) were recorded.

**Worker exposure – Case study No. 2:** Workers wore dosimeters for a full shift (10 to 10.5 hrs) to provide noise-exposure data. Dosimeters were also placed outside the cabs of the mobile equipment. Table 4 lists the worker doses for the employees at the site. No worker experienced a dose above the MSHA PEL of 100 percent. Table 4 illustrates that for the mobile equipment operators, a reasonable amount of protection from the exterior noise generated by the engines and equipment operation is provided by the cabs. Only the operator of Truck 68 had a dose near 100 percent (98 percent), which was the result of the truck's outside dose of 396 percent and some unknown engine, transmission or exhaust noise problem that was able to enter the cab.

**Equipment and plant sound levels – Case study No. 3:** Measurements were taken in the plant known as the portable plant. Forty-six sound level measurements were taken around the transfer points, belts, crushers and screens, the control room and the primary pit crusher. Table 5 lists and Fig. 3 illustrates the results of the sound-level measurements around the stationary equipment. The data indicate that the sound levels varied greatly throughout the portable plant. The locations where high sound levels (greater than 90 dB(A)) were recorded included Screens S1 and S2 and Crushers JCr1 and CrLJ54.

**Worker exposure – Case study No. 3:** Workers wore dosimeters for a full shift (9.5 to 10.5 hrs) to provide noise exposure data. Table 6 lists the worker doses for the employees at the site. No worker experienced a dose above the MSHA PEL of 100 percent. Table 6 illustrates that, for the mobile equipment operators, the cabs are providing sufficient protection from the exterior noise generated by the engines and equipment operation.

Table 3

**Sound level measurements, case study No. 2, surface granite.**

| Plant | equipment | Location | Range Leq, dB(A) |
|---|---|---|---|
| A | Belts, transfer points, bins | Ground level | 78-91 |
| | Crusher CrT57 | Outside | 94-97 |
| | Crusher CrLJ45, Eljay | Outside | 98-99 |
| | Screen #S2, Telsman | Outside | 88-99 |
| | Screen #S3, AEI | Inside | 100-102 |
| | Ortner wash plant, W1 | Outside | 81-85 |
| | Control room | Inside | 74 |
| | Control room | Outside | 93 |
| B | Belts, transfer points, bins | Ground level | 72-88 |
| | Screening tower, screen #S1 | Inside | 98-112 |
| | Primary jaw crusher, B JCr1 | Outside control room | 93 |
| | Primary jaw crusher, B JCr1 | Inside control room | 75 |
| | Primary jaw crusher, B JCr1 | Lower levels | 88-105 |
| | Electric room | Inside | 58 |
| | Oil and pump room | Inside | 64 |
| C | Belts, transfer points, bins | Ground level | 75-96 |
| | Crusher CrT52 | Outside | 99-102 |
| | Screen #S6 | Outside | 85-94 |
| | Electric room | Inside | 68 |
| | Tunnel, C10B belt | Inside tunnel | 85-97 |

## Case studies No. 4 and No. 5 — underground limestone/sandstone mines

**Mine characteristics:** This operation consists of two underground mines and a common rock processing facility. Mining consists of face drilling, shooting and mining the main limestone bench, followed by drilling, shooting and removing the limestone floor rock. In addition, in some areas, the sandstone below the limestone is also mined. The blasted rock is loaded by front-end loader into 45.4- or 54.4-t- (50- or 60-st-) capacity haul trucks for removal from the mine. The haul trucks dump into one of two primary crushers, which are located midway between the two mines' portals. After passing through

the primary crusher, the rock moves by conveyor belt either to the secondary crushing facilities or directly to a stockpile for loading and sale to end users. Rock sent to the secondary crushing facility passes through a series of crushers and screens, resulting in the desired product sizes. The combined annual production from both mines is about 1.36 Mt (1.5 million st) of mostly crushed limestone and some sandstone. A total of 43 workers are located at the site, working two shifts per day. The worker classifications include operators of FELs, haul trucks, jaw crusher, drill, scaler, plant and water truck. Other classifications include supervisor, mechanic, blaster and blaster helper, laborer and utility man.

Table 4

**Worker exposure, case study No. 2.**

| Occupation | Number of recorded doses | Worker range MSHA PEL dose, % | Outside cab range MSHA PEL dose, % |
|---|---|---|---|
| Haul truck operator (65,66,68) | 3 | 3.0-98.0 | 111.0-396.1 |
| FEL operator (27,32,34) | 3 | 0.4-28.3 | 33.0-284.8 |
| Primary crusher operator (B J Cr1) | 1 | 2.0 | NA |
| Bin truck operator (7) | 1 | 10.2 | 22.2 |

NA = not applicable

**Equipment and plant sound levels:** Measurements were taken around the main and auxiliary fans, primary jaw crushers (old and new), semi-stationary equipment and near the crushers and screens located at the secondary crushing facilities. Table 7 lists the results of the sound level measurements around the stationary and semi-stationary equipment and indicates that in most locations, sound levels greater than 90 dB(A) were present. The highest sound levels were recorded near the fans and the No. 1 cone crusher located in the secondary crushing plant. The only locations where sound levels were consistently less than 90 dB(A) were in the primary crusher operator's control booth, in the secondary crusher operator's control room, in the electrical room below the secondary crusher control room and above the sand plant.

The underground face equipment included a Tamrock floor drill and Cannon face drill (both diesel) and a Gradall scaler. Sound levels around these three pieces of equipment were high, ranging from 89 to 103 dB(A). However, the sound level measured inside the enclosed cab of the Cannon face drill was only 83 dB(A). Figures 4 and 5 include a photograph and a sound profile plot of a JOY Axivane 18.8 kw (25-hp) fan. The sound levels near the fan ranged from 90 to 106 dB(A). Another example is illustrated in Figs. 6 and 7, which are a photograph and sound contour plot for a Tamrock Ranger 500 floor drill. Figure 7 illustrates that sound levels up to 102 dB(A) were recorded near the drill.

**Worker exposure:** Workers at the mine wore dosimeters for a full shift (10 to 10.5 hrs) to provide noise exposure data. Table 8 lists the worker doses for both surface and underground employees. In all cases, except one of the laborers, no worker experienced a dose above the MSHA PEL of 100 percent. The one laborer experienced a dose above 100 percent because he was operating an air wrench while installing sheet metal on the protective canopy at the entrance to mine No. 2. His exposure resulted from a combination of noise sources that included the air wrench, compressor and

**FIGURE 4**

**JOY Axivane 18.6 kw (25-hp) fan (Bauer and Babich,**



Table 5

**Sound level measurements, case study No. 3, surface granite.**

| Plant | Equipment | Location | Range Leq, dB(A) |
|---|---|---|---|
| Portable | Belts, transfer points, bins | Ground level | 77-94 |
| | Crusher Cr1,J55, El-Jay | Outside | 92-97 |
| | Screen #S1 | Outside | 88-91 |
| | Screen #S2 | Outside | 97-104 |
| | Primary crusher, P JCr1 | Outside | 88-92 |
| | Control room | Inside | 71 |

Table 6

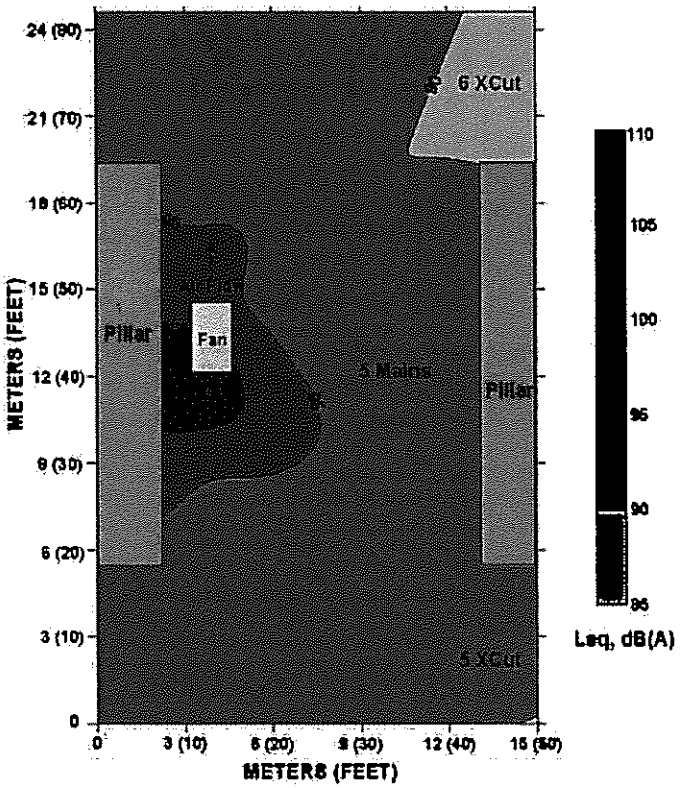
**Worker exposure, case study No. 3.**

| Occupation | Number of recorded doses | Worker range MSHA PEL dose, % | Outside cab range MSHA PEL dose, % |
|---|---|---|---|
| Haul truck operator (69) | 1 | 11.7 | 118.2 |
| FEL operator (24, 25) | 2 | 13.5-25.4 | 154.4-159.0 |
| Primary crusher operator (P J Cr1) | 1 | 20.4 | NA |

NA = not applicable

**FIGURE 5**

**Sound profile plot for Joy Axivane 25-hp fan.**




mobile equipment entering and exiting the mine. Table 8 also illustrates that for the mobile equipment operators the cabs are providing a reasonable amount of protection from the exterior noise generated by the engines and equipment operation.

## Case study No. 6 — underground limestone mine

**Mine characteristics:** This operation consists of an underground mine and surface rock-processing facilities. Mining consists of face drilling, shooting and mining the main bench, with some mining of the floor rock. Using front-end loaders, the blasted rock is loaded into 31.8-t- (35-st-) capacity haul trucks for transport from the mine to the primary crusher. After passing through the primary crusher, the rock is transferred by belt to the crushing facility consisting of a shaker, screen and/or cone crusher to obtain the desired product sizes. Annual production for this operation is about 317.5 kt (350,000 st). From 10 to 12 workers are located at the site, working one shift per day. The worker classifications include the operators of FELs, haul trucks, crusher, drills, scaler and water truck. Other classifications include mechanic and blaster and blaster helper.

**Equipment and plant sound levels:** Measurements were taken around the primary jaw crusher, semi-stationary equipment and near the crushers and screens located at the crushing facilities. Table 9 lists the results of the sound-level measurements. The results indicate that a wide range of sound levels were present. In the mine, the sound levels were consistently less than 90 dB(A) around

Table 7

**Sound level measurements, case study No. 4 and No. 5, underground limestone and sandstone.**

| Mine | Equipment | Location | Range Leq, dB(A) |
|---|---|---|---|
| No. 1 | Fan systems 66HPAV2S, 1.5 m (5 ft) aux. fan | 15 mains at 25 XCut | 88-104 |
| No. 1 | Main fan (1.5 m (5 ft exhaust)) | 17 XCut in B mains | 75-84 |
| No. 1 | Joy M96-50D exhaust fan | G mains at 24 XCut | 86-109 |
| No. 1 | Tamrock ranger 500 floor drill | 19 XCut in 9 mains | 91-102 |
| No. 2 | Main fan (3.7 m (12 ft intake)) | 7 Mains | 95-101 |
| No. 2 | Main fan (2.4 m (8 ft exhaust)) | 1 XCut, in 1 main | 84-109 |
| No. 2 | Joy Axivane M36-26-1770 fan | 5 Main at 5 XCut | 90-106 |
| No. 2 | Oldenburg cannon face drill | 9 XCut in 7 mains | 93-103 |
| No. 2 | Gradall 5110 scaler | 8 Mains at 5 XCut | 89-98 |
| Surface | Old jaw crusher (outside) | Outside control booth | 83-102 |
| Surface | Old jaw crusher (inside control booth) | Inside control booth | 82 |
| Surface | New jaw crusher (outside) | Outside control booth | 84-102 |
| Surface | New jaw crusher (inside control booth) | Inside control booth | 74 |
| Sec. Crusher | No. 1 cone crusher (2.4 m (8 ft Nordberg)) | Bottom of main belt | 101-107 |
| Sec. Crusher | No. 2 cone crusher (2.4 m (8 ft)) | Below main screen | 99-101 |
| Sec. Crusher | No. 3 cone crusher (Symons portable) | Adjacent to No. 2 crusher | 95-98 |
| Sec. Crusher | No. 4 lower crusher (1.8 m (6 ft)) | Middle of sec. crush. plant | 90-96 |
| Sec. Crusher | Main 2.4 x 6.1 m (8 x 20 ft) screen | Above No. 2 crusher | 90-99 |
| Sec. Crusher | No. 1 & 2 double screens | Middle of sec. crush. plant | 86-98 |
| Sec. Crusher | Sand plant | Bottom of sec. crush. plant | 77-98 |
| Sec. Crusher | Control room (outside) | Outside control room | 83 |
| Sec. Crusher | Control room (inside) | Inside control room | 69 |
| Sec. Crusher | Electrical room (inside) | Below control room | 75 |

the bucket truck and more than 90 dB(A) near the water pump, scaler and face drill. The face drill had the highest measured sound levels, ranging from 86 to 105 dB(A) (Fig. 8). In the processing facilities, sound levels above 90 dB(A) were recorded nearly everywhere except in the jaw crusher control room and at the belt drives (Fig. 9).

**Worker exposure:** Workers at the mine wore dosimeters for a full shift (9.5 to 10.5 hrs) to provide noise exposure data. Table 10 lists the worker doses for both surface and underground employees. In all cases, no worker experienced a dose above the MSHA PEL of 100 percent. Table 10 also illustrates for the mobile equipment operators that the cabs are providing a reasonable amount of protection from the exterior noise generated by the engines and equipment operation.

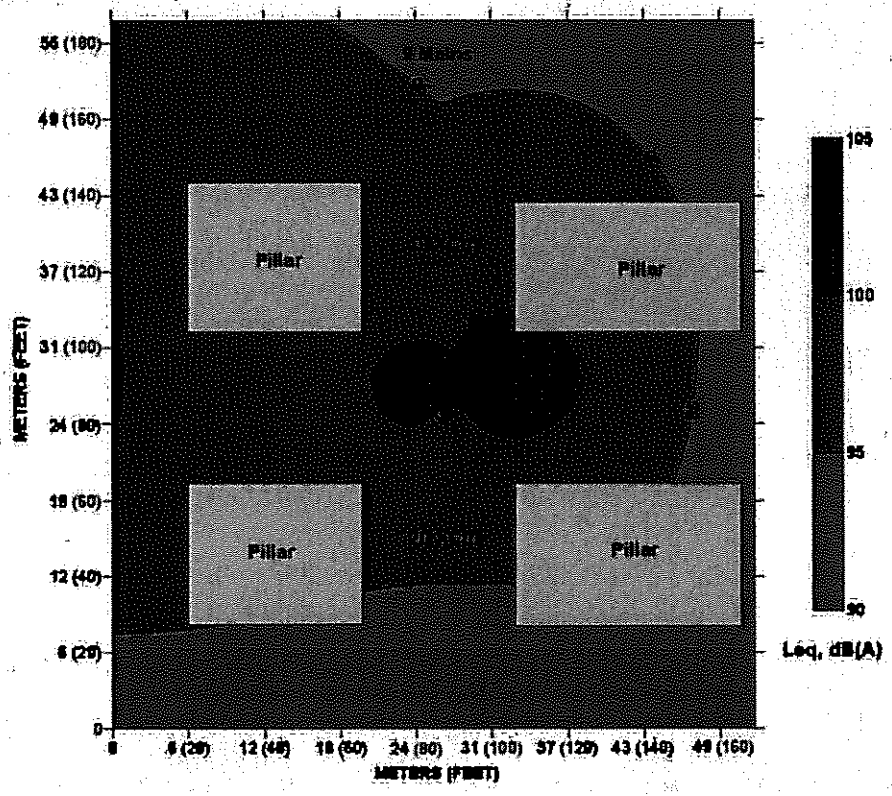
**FIGURE 6**

Tamrock floor drill.



**FIGURE 7**

Sound profile plot for Tamrock floor drill.




## Implications for exposure reduction

The sound level measurements suggest that there are areas that are noisy and could subject workers to overexposure to noise. Nearly all workers monitored experienced doses well below the MSHA PEL of 100 percent (or a TWA of 90 dB(A)), even though equipment sound levels were generally above 90 dB(A). These exposure results do not suggest that the workers are "safe" from noise-induced hearing loss, only that the workers are limiting their time of exposure near these high noise sources. Health surveillance of hearing by use of audiometry and exposure monitoring is essential, both base-line and after noise exposure if NIHL is to be reduced in the mining industry.

One laborer experienced a dose of 119 percent while using an air wrench to install a protective canopy at the portal of an underground mine. Mobile equipment and crusher operators were protected from overexposure to noise as illustrated by the results of the dose measurements because the cabs and control rooms had sufficient acoustical treatments to prevent equipment sound levels from reaching the operators. Although only one worker was overexposed, the prevalence of noisy equipment suggests that engineering and administrative noise controls could be used to reduce sound levels and noise ex-

Table 8

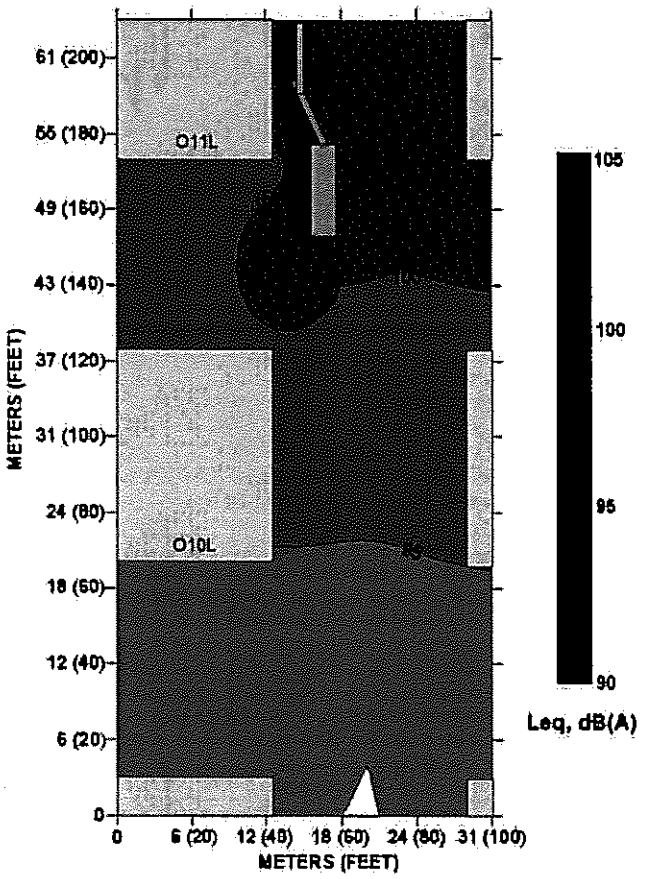
**Worker exposure, case studies No. 4 and No. 5.**

| Occupation | Number of recorded doses | Worker range MSHA PEL dose, % | Outside cab range MSHA PEL dose, % |
|---|---|---|---|
| Haul truck operator | 6 | 0.6-9.5 | 81.6-187.5 |
| FEL operator | 4 | 2.9-64.2 | 141.7-262.8 |
| Drill operator | 2 | 26.8-31.4 | 293.7-487.3 |
| Scaler | 2 | 1.1-1.20 | 187.8-209.0 |
| Crusher operator | 1 | 5.9 | ND |
| Blaster/blaster helper | 2 | 27.3-28.6 | ND |
| Water truck operator | 1 | 35.8 | ND |
| Laborer | 2 | 59.0-119.3 | NA |
| Sec. crush. plant oper. | 1 | 32.3 | NA |
| Mechanic | 1 | 8.9 | NA |

ND = not determined
NA = not applicable

**FIGURE 8**

**Sound profile plot for Gardner Denver MK45H face drill.**




posures. The use of acoustic material inside cabs, control rooms, screening towers and compressor buildings should be considered. Crushers and other stationary equipment may be addressed using mass-loaded barrier curtains and enclosures. Screen modifications can include acoustically treated decking and new suspension screens, as well. Underground fan systems should be equipped with silencers, muffler ducts, treated fan vanes and quiet motor technology (MSHA, 1999). Administrative controls such as job rotation, worker relocation and improved equipment operation can limit exposure to high sound levels and reduce worker noise exposures.

It would be prudent to restrict time spent in and around the crushing and screening facilities because sound levels as high as 112 dB(A) were recorded. Mobile and semi-mobile (such as drills) equipment operators should be required to keep all doors and windows closed while the equipment is in operation because outside doses up to 487 percent were measured.

All workers should be made aware of the sound levels around all equipment and in the processing plants and be instructed to utilize hearing protection based on NIOSH's recommended exposure limit (REL) of 85 dB, A-weighted, as an 8-hour time-weighted average (TWA8). Exposures at or above this REL are hazardous, creating an excess risk of developing occupational NIHL. For workers whose noise exposures equal or exceed 85 dB(A), NIOSH recommends proper use of hearing protection, among other assessment, training and prevention approaches. Any area that has a sound level of 85 dB(A) or higher has the potential to exceed the NIOSH REL depending on the exposure time (NIOSH, 1998). Because the length of exposure can vary and/or is not known prior to entering a high sound area, the potential adverse ef-

Table 9

**Sound level measurements, case study No. 6, undergound limestone.**

| Mine/surface | Equipment | Location | Range Leq, dB(A) |
|---|---|---|---|
| Mine | Blaster's bucket truck | Adjacent to and around | 76-81 |
| Mine | Gorman-Rupp diesel water pump | Adjacent to and around | 89-98 |
| Mine | Gardner Denver MK45H face drill | Adjacent to and around | 86-109 |
| Mine | Gradall XL4300 II scaler | 6.1-12.2 m (20-40 ft) away | 89-94 |
| Surface | Jaw crusher (upper level) | Outside control booth | 91-99 |
| Surface | Jaw crusher (lower level) | Below control room | 89-93 |
| Surface | Jaw crusher (control booth) | Inside control booth | 73 |
| Surface | Small Tyler double shaker screen | Adjacent to and around | 104-111 |
| Surface | Large Tyler screen | Adjacent to and around | 94-103 |
| Surface | Hazemag cone crusher | Adjacent to and around | 96-102 |
| Surface | Tunnel | Just inside by belt | 93 |
| Surface | No. 1 belt drive | Next to drive motor | 89 |
| Surface | No. 2 belt drive | Next to drive motor | 101 |
| Surface | No. 4 belt drive | Next to drive motor | 85 |
| Surface | No. 6 belt drive | Next to drive motor | 94 |
| Surface | No. 8 belt drive | Next to drive motor | 85 |
| Surface | No. 9 belt drive | Next to drive motor | 81 |
| Surface | No. 11 belt drive | Next to drive motor | 82 |
| Surface | Ground level | On ground | 89-101 |

fects on a worker's hearing are also not known, and thus it makes sense to use hearing protection when in areas where the sound levels are 85 dB(A) or greater.

Finally, workers should realize that any exposure that results in an MSHA PEL dose above zero percent indicates that during their shift they encountered sound levels above 90 dB(A). Because each individual reacts differently to high noise, there is no assurance that a dose below the MSHA PEL of 100 percent is safe and will not cause hearing loss. In addition, when the TWA of a worker exceeds 85 dB(A), the MSHA Action Level is exceeded and the worker must be enrolled in a hearing conservation program. Therefore, wearing hearing protection is a good idea at all times while operating equipment or working in the crushing and screening facilities.

Table 10

**Worker exposure, case study No. 6.**

| Occupation | Number of recorded doses | Worker range MSHA PEL dose, % | Outside cab range MSHA PEL dose, % |
|---|---|---|---|
| Haul truck operator | 2 | 38.5 and 49.7 | 168.7 and 175.3 |
| FEL operator (inside) | 1 | 0.3 | 89.4 |
| FEL operator (outside) | 1 | 14.3 | 107.2 |
| Drill operator | 1 | 24.6 | 437.3 |
| Scaler operator | 1 | 50.2 | 162.3 |
| Crusher operator | 1 | 9.7 | 219.4 |
| Blaster/Blaster helper | 2 | 13.3 and 15.2 | 0.7 |

## Summary

Stone (aggregate) mining can be noisy and can subject workers to overexposures if they are not in cabs or control rooms. Sound-level measurements indicted that screens, crushers, drills, fans and mobile equipment generate sound levels high enough to be potential sources of worker overexposure depending on time of exposure. Fortunately, exposure measurements revealed that nearly all workers were avoiding exposures as revealed by doses under the MSHA PEL of 100 percent. Only one laborer was overexposed, a result of operating an air wrench for much of his shift. It can be concluded that mine operators and workers are successfully avoiding noise exposures through a combination of training, hazard awareness, engineering noise controls and administrative noise controls. ■

## References


Bauer, E.R., and Babich, D.R., 2006, "Limestone mining: Is it noisy or not?" *Mining Engineering*, Vol. 58, No. 10, October, pp. 37-42.

*Federal Register*, 1999, "Health Standards for Occupational Noise Exposure: Final Rule," Department of Labor, Mine Safety and Health Administration, 30 CFR Parts 56 and 57 et al., Vol. 64, No. 176, Sept. 13, pp. 49548-49634.

MSHA, 1999, "Noise Control Resource Guides: Surface Mining; Underground Mining; Mills and Preparation Plants," Dept. of Labor, Mine Safety and Health Administration, http://www.msha.gov/1999noise/noiseresources.htm.

NIOSH, 1996, "Analysis of Audiograms for a Large Cohort of Noise-Exposed Miners," John Franks, National Institute for Occupational Safety and Health, Cincinnati, OH, Internal Report, 7 p.

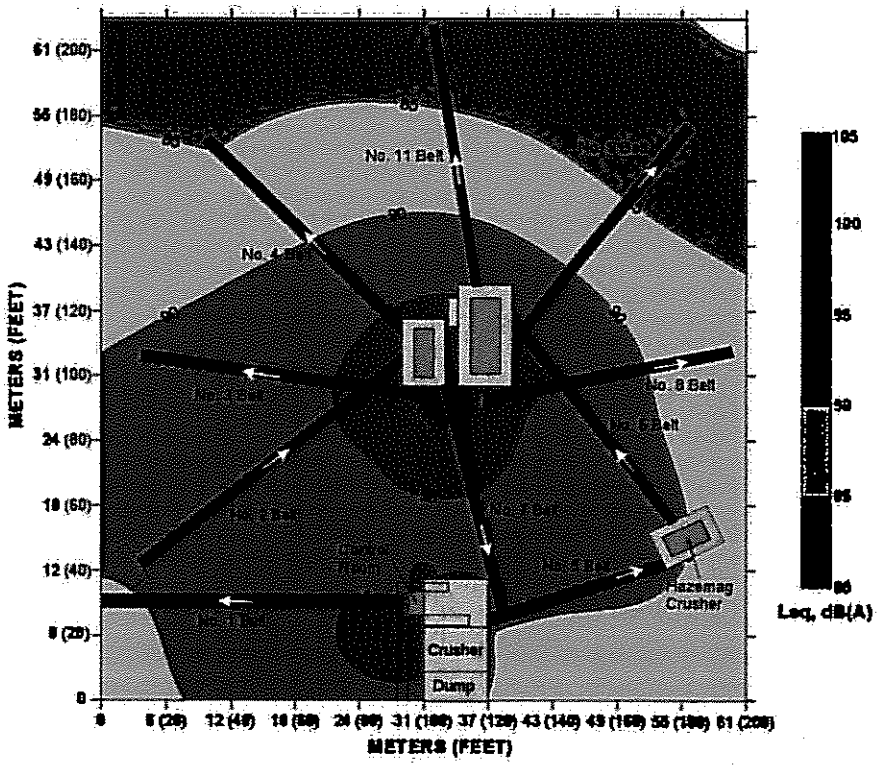
NIOSH, 1998, "Criteria for Recommended Standard, Occupational Noise Exposure, Revised Criteria 1998," National Institute for Occupational Safety and Health, Cincinnati, OH, DHHS (NIOSH) Publication 98-126, 105 p.


## Disclaimer

The findings and conclusions in this report have not been formally disseminated by the National Institute for Occupational Safety and Health and should not be construed to represent any agency determination or policy.

**FIGURE 9**

**Sound profile plot of processing facilities (Bauer and Babich, 2006).**



KENAI SOIL & WATER CONSERVATION DISTRICT

02022-36

110 Trading Bay Suite 150 | Kenai, Alaska 99611 | (907) 283-8732 ext. 5 | www.kenaisoilandwater.org

To:
Kenai Peninsula Borough Assembly and Committee Members

From:
Tiffany Brand - District Manager
Kenai Soil and Water Conservation District

RE: Gravel Pit Code Revisions

As a proud resident of the Kenai Peninsula since 1996 and land owner for the last 20 years I have watched our communities grow, flourish, and struggle. As a volunteer and professional with many hours and miles spent on our lands, I have also seen the challenge and harm of that development. I foresee the Borough and its encompassed municipalities facing further costly challenges if simple preventative measures are not taken to address the rising issue of noxious non-native(invasive) plant presence and spread. Therefore this letter is written to encourage the Assembly and pertaining Committees to consider adding provisions addressing this issue to the developing Gravel Pit/Material Site Code revision.

The Kenai Soil and Water Conservation District is a long acting public entity with a purpose to promote success and sustainability in our area. In recent years we have operated a successful program entitled "Weed Free Gravel". This certification program involves gravel pits being inspected by a field expert and receiving advice for eliminating any high priority noxious non-native(invasive) plant life present. A Weed Free Gravel Certification is required for some contact work, for example that done near or within federal parks. This program therefore helps qualify those companies for said contracts when they come about. A vital purpose for this requirement is due to the extreme harm and cost that arises from the introduction of invasive plant species. While we are not suggesting the Borough require all pit owners to obtain a certification from this program; we are strongly advising and encouraging provisions be written into code that require pits be inspected, and high priority invasive species be dealt with to prevent inevitable spread.

The Kenai Peninsula, and Alaska as a whole, is unique in many ways; something we are all proud of. In that, operators on the Peninsula travel hundreds of miles, often in one day, from site to site. In addition, our residents also cover a broad area traveling on lands and roadways; not to mention that our highest traffic times on the Peninsula are during the summer season when invasive plant species are at their most viable to spread. Our habitats on the Peninsula are vital to not only our own sustainability, but to the revenue producing industries that thrive here. Invasive plant species threaten those habitats. It is therefore vital that we take action to address and prevent further harm.

One of the most successful measures to prevent the spread of harmful invasive plant species and reduce costly eradications in the future is to target material sites that are moving not only material, but also equipment in and out. This can be done simply and effectively with little effort.

Example Steps for Prevention:

1) Have existing and new material sites inspected at the beginning of the season and at least once during mid season depending on the duration of use. Have invasive species identified and eradication methods advised.
2) Eradicate invasive plants identified before material is transferred offsite. Examples of simple eradication include burning, burying, and pesticide application. Until invasive plants are eradicated avoid equipment travel and material transfer in the area.
3) Survey worksites for invasive plants when bringing equipment and material in or out to avoid transferring back to a main material site. If invasives are discovered contractors may choose to deal with them themselves or request the land owner do so before moving forward.

The damage and spread of invasive plant species is not new to our area, however it is a concern that is rapidly becoming more prevalent as the damage quickly had on a habitat and the costs incurred in the process are substantial. It demands attention and action. The Borough is a vital entity of leadership with the opportunity to instill positive change to address this threat. The Kenai Soil and Water Conservation District and collaborating agencies such as Kenai Watershed Forum and the Kenai Peninsula Cooperative Invasive Species Management Area (KP-CISMA) are available to answer questions and offer assistance in the committee's efforts. At Kenai Soil and Water we have a long time local expert in the field that is also available for consultation. With great merit and in effort to preserve the integrity of the lands governed by the Kenai Peninsula Borough I urge the Assembly and its appointed Committees to add provisions to address the threat of invasive plant species into the current Gravel Pit/Material Site Code revisions.

Thank you for your time.

-Tiffany Brand
District Manager
Kenai Soil and Water Conservation District
110 Trading Bay Suite 160
Kenai, AK 99611
(907) 741-7923

Borough Assembly Members,

I strongly urge you to protect the residents of the KPB by adopting an ordinance to oversee prior existing material sites.

Your role as an Assemblyman is to protect the residents as well as the land within the KPB.

Your job is similar to a fathers, we just celebrated Fathers Day, we honor fathers who raise children by teaching proper values and integrity, leading by example protecting the family and home. I expect all "Assemblymen" to protect us, your family are the residents of KPB from the known and unknown deeds of unmonitored pre-existing gravel pit operations.

You are currently responsible for; not protecting us from the abuse of unregulated material sites. These abuses have long term effects for the land and community. Instead of a site being left usable after reasonable gravel extraction leaving land for homes or ball fields or parks, they are now dumping grounds for worn out excavation equipment, and any junk the owner wants to dump and park in their pit.

In my neighborhood we have been flooded twice in the last ten years. Water covering Greenridge Street for more than two weeks at a time. No roadside ditches to drain water away from homes. This Gravel pit operator knowly dumped water using buried piping last summer. They continue to dig into the aquifer sixty plus feet below Kobuk Road and the neighboring residential homes why? Now the permeable layer has been compromised and water is being drained into a lower adjacent PEU gravel pit creating a huge puddle that never dries up. The higher up PEU pit drains water down through the sand embankment and has created standing water for months in the adjacent PEU. I am sure this is illegal moving water off site by draining through the sand embankment to a lower adjacent property owned by a different PEU gravel pit.
For money, this greed and attitude "I can do what I want" is jeopardizing neighborhoods and property values.

Enstar's high pressure natural gas pipeline transiting the PEU material site near me and the Big Eddy state road ROW also is impacted. No standards for material removal digging to close to right of way, no monitoring, no standards for excavation and sloping adjacent to state and borough roads and high pressure pipeline ROW's. Within the PEU gravel pit Enstar had to shut down recent excavation activity next to their ROW, no borough standards or notification procedure or plan for gravel excavation. Excavated slopes are filled with trees and slash and dirt instead of being left safe and secure with naturally compacted gravel.

How many times in the last ten or fifteen years has the Borough Assembly voted to control the Prior-Existing Material sites? At least three times an ordinance has lost by one vote. This is an ongoing issue that can no longer be swept under the rug and ignored.

So in summary, if you are interested in a "PEU" dump near you full of old junk heavy equipment, scrapers, bulldozers, excavators, tanker trucks and trailers, scrap semi trucks and dump trailers and vans, pickups and cars. Old atco trailers, motorhomes, old tires, old oilfield

piping and pumps, lots of scrap steel. And of course none of this old equipment leaks oil or fuel. After being abandoned for years with no renovation or remediation plan.
If unmonitored, digging into the water table is good for the surrounding neigborhood's well water. If dumping trees and stumps into these excavation ponds, of course that water will prevent the trees being able to biodegrade and become dirt again. That's what lumber mills do is sink logs into water to prevent degradation of the tree until it's needed for lumber.

Too bad the PEU materials site can't be a subdivision, baseball or soccer fields, or a park with walking and bike trails. Instead it's a dumpsite for junk equipment. The land has been molested and raped of any and all usable material for the $ buck and then becomes a nice convient dumping place and future hazadours materials waste site.

Please vote to protect your community and family. I urge you to support an Ordinance to properly regulate Prior Existing Material sites, many need oversite. All need a plan for the future.

If you would like to see what's happening in my neighborhood please contact me for a short visit.

Thank you for your consideration of an Ordinance to regulate and oversee  Prior Existing Use material sites, gravel pits.

Greg Turner
36055 Greenridge Street
Soldotna Ak 99669

**From:** Turner, Michele
**To:** Ward, Tamera
**Subject:** FW: Greenridge Street
**Date:** Tuesday, June 20, 2023 2:13:46 PM

---

Public Comment Ordinance 2022-36.

Begin forwarded message:

> **From:** DR Lee <dr.lee@live.com>
> **Date:** June 20, 2023 at 1:36:54 PM AKDT
> **To:** assemblyclerk@kpb.us
> **Cc:** Soldotna Neighbors Elena Staab <elena-joy@hotmail.com>
> **Subject: Greenridge Street**
>
> To whom it May Concern ,
> I have had property on Greenridge Street lot 50 and 51 Rainbow Subdivision for over ten years and my property is eroding every year because of the increased overflow of the adjoining gravel pit. The pit water erodes all surrounding land in our neighborhood and so much that our road becomes flooded and closed. This pit must be closed or closely monitored or soon we will have no useful property on our land or no useful road.
> sincerely,
> Drs. Cynthia and Russell O'Hare
> Lots 50/51 Greenridge Street
> 359 Porcupine Ct 2
> Soldotna AK 99779
> 9073782987
> Sent from my iPhone

## Turner, Michele

**From:** Kenai Peninsula Borough <webmaster@borough.kenai.ak.us>
**Sent:** Monday, July 10, 2023 2:14 PM
**To:** BoroughAssembly; Mayor's Department
**Cc:** Turner, Michele
**Subject:** New Public Comment to Assembly Members

**Your Name:** Eero Schultz

**Your Email:** eeroschultz@gmail.com

**Subject:** Qap Gravel Yard Mile 18 Seward Highway Excessive Noise

**Message:**

Kenai Penisula Borough assembly,

Please address my concerns outlined below.

Incessant and exceeding loud warning signals of imminent danger are being broadcast onto my private property and guest cabins by QAP heavy machinery backing up at all hours on their gravel yard on mile 19 of the Seward highway. It was misleadingly promised by QAP that this would not be an issue at the preliminary hearing that granted conditional permit 2022-21 to QAP to operate their gravel yard in my residential community. Any clause forbidding this noise was consequentially omitted from the conditional permit. Any sound abatement at the gravel yard is totally ineffective. The gravel yard is in a residential community and is on a totally inappropriate site that is too small.

How does the Kenai Peninsula Borough propose to put a stop to this ongoing untenable and unaddressed situation?

It would be advisable that contracts written by the Borough for future conditional permits for privately owned gravel yards operating in residential areas would include a clause forbidding the use of back up warning beepers in an effort to safeguard inhabitants of the Kenai Peninsula from having to endure the living hell of living next a gravel yard. Better yet don't allow gravel yards in residential communities.

I'm quite sure none of the people involved in granting the conditional permit would sign off on a gravel yard in their own back yard. What gives?

Faithfully yours,

Eero Schultz
Kenai Peninsula
27181 Seward Highway The Cabins on Kenai Lake

**Turner, Michele**

**Subject:** FW: <EXTERNAL-SENDER>Qap Gravel yard Mile 19 Seward Highway Noise

**From:** Eero Schultz <eeroschultz@gmail.com>
**Sent:** Monday, July 10, 2023 2:05 PM
**To:** Ecklund, Cindy <CEcklund@kpb.us>; Ruffner, Robert <RRuffner@kpb.us>; Mayor's Department <MayorDepartmental@kpb.us>; Mayor Peter Micciche <pmicciche@kpb.us>
**Cc:** Jan-Ake Schultz <jaischultz2@yahoo.com>; alex.beattie@gateway240.com
**Subject:** <EXTERNAL-SENDER>Qap Gravel yard Mile 19 Seward Highway Noise

**CAUTION**: This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Kenai Penisula Borough assembly,

I write to you again, please respond to my concerns.

Incessant and exceeding loud warning signals of imminent danger are being broadcast onto my private property and guest cabins by QAP heavy machinery backing up at all hours on their gravel yard on mile 19 of the Seward highway. It was misleadingly promised by QAP that this would not be an issue at the preliminary hearing that granted conditional permit 2022-21 to QAP to operate their gravel yard in my residential community. Any clause forbidding this noise was consequentially omitted from the conditional permit. Any sound abatement at the gravel yard is totally ineffective. The gravel yard is in a residential community and is on a totally inappropriate site that is too small.

# How does the Kenai Peninsula Borough propose to put a stop to this ongoing untenable and unaddressed situation?

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I'm quite sure none of the people involved in granting the conditional permit would sign off on a gravel yard in their own back yard. What gives?

Faithfully yours,

Eero Schultz
Kenai Peninsula
27181 Seward Highway The Cabins on Kenai Lake

929-575-3402

## Ward, Tamera

**Subject:** FW: New Public Comment to Assembly Members

**From:** Kenai Peninsula Borough <webmaster@borough.kenai.ak.us>
**Sent:** Thursday, July 13, 2023 11:59 AM
**To:** BoroughAssembly <Borough-Assembly@kpb.us>; Mayor's Department <MayorDepartmental@kpb.us>
**Cc:** Turner, Michele <MicheleTurner@kpb.us>
**Subject:** New Public Comment to Assembly Members

**Your Name:** Rick Smeriglio

**Your Email:** foth@arctic.net

**Subject:** KPB ordinance 2022-36 material extraction

**Message:**

I live in the mountainous part of KPB next to a rock quarry on a KPB parcel. The existing permit under KPB current ordinance, does not protect my interest as an adjointing landowner. I see nothing in the proposed changes to the ordinance that would protect me as the quarry inevitably applies for permits to expand. The proposed changes seem geared to digging gravel on flat land. They do not address the case of blasting rock on steep terrain. Certainly for extraction on its own public land, distinguished from extraction on private parcels, KPB can afford greater restrictions to protect private interests.

## Ward, Tamera

**Subject:** FW: <EXTERNAL-SENDER>Re: [EXTERNAL] ReRe: Copy of ordinance substitute and Sectional analysis

**From:** K, E, & E Martin <keeconstructionllc@yahoo.com>
**Sent:** Tuesday, September 5, 2023 9:06 AM
**To:** Derkevorkian, Richard S. <RSDerkevorkian@Marathonpetroleum.com>
**Cc:** Mayor Peter Micciche <pmicciche@kpb.us>; Elam, Bill <belam@kpb.us>; Hibbert, Brent <bhibbert@kpb.us>; Johnson, Brent <bjohnson@kpb.us>; Ecklund, Cindy <CEcklund@kpb.us>; Chesley, Lane <lchesley@kpb.us>; Tupper, Mike <MTupper@kpb.us>; Cox, Tyson <tysoncox@kpb.us>; Ribbens, Peter <pribbens@kpb.us>; Kelley, Sean <skelley@kpb.us>
**Subject:** <EXTERNAL-SENDER>Re: [EXTERNAL] ReRe: Copy of ordinance substitute and Sectional analysis

**CAUTION**: This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

To All, NO Amendments needed! Vote it down.

First this ordinance is an abomination, it's an attack on Private property rights using unauthorized powers to spot ZONE one industry ,with overly restrictive regulation, It disregards individual liberties , opportunism grounded in Free Enterprise, works to create less competition by unequal application across the borough, It disregards the Estoppel Doctrine protecting PEU ownership.
It takes jurisdiction over water usage & access, only in both the Federal & State powers!
The real world result of passing this Ordinance is forcing Property / Business owners to sue to get justice from takings of rights.
The most Visual hideousness is it's actual portion addressing Visual restriction which attempt to divide us Citizens by what looks good to one but not to another!

This ordinance should go down in flames!

Edward & Kathleen Martin
907-252-7857 , 907-252-8163

KEE Construction, LLC

On Tuesday, September 5, 2023 at 07:22:42 AM AKDT, Derkevorkian, Richard S. <rsderkevorkian@marathonpetroleum.com> wrote:

All,

I just want to echo Ed's point that the most important testimony is tonight and that it's going to take an overwhelming amount of support and continuity from you all on specific items to get them amended. Many of these things were already discussed and attempted to be improved by Bill or I and they were voted down by the rest of the assembly.

Suggestions for testimony tonight,

-Start with name, and the company you own operate if you're comfortable with that.

-What specific area of the ordinance needs amended.

-why does that area need changed

Ed's done a tremendous amount of work on this over the past year improving it where he can, without some support from you over the next two weeks I'm concerned that this document won't change much.

Richard Derkevorkian

Get Outlook for iOS

---

**From:** Robert T Peterkin II <robert.peterkin@rocketmail.com>
**Sent:** Saturday, September 2, 2023 11:51:10 PM
**To:** dirttco@yahoo.com <dirttco@yahoo.com>; d.merkes@alaska.net <d.merkes@alaska.net>; matt.hampton@gcinc.com <matt.hampton@gcinc.com>; mkorynta@colaska.com <mkorynta@colaska.com>; office@dibblecreekrock.com <office@dibblecreekrock.com>; office@eastroadservices.com <office@eastroadservices.com>; jakedenbrock@hotmail.com <jakedenbrock@hotmail.com>; drosssxq@gmail.com <drosssxq@gmail.com>; ajzjf@aol.com <ajzjf@aol.com>; alpineexc@yahoo.com <alpineexc@yahoo.com>; clarkshore@gmail.com <clarkshore@gmail.com>; ddbbrown@msn.com <ddbbrown@msn.com>; dlconst.smith@gmail.com <dlconst.smith@gmail.com>; agbld_rd@yahoo.com <agbld_rd@yahoo.com>; emmitttrimble@gmail.com <emmitttrimble@gmail.com>; hteinc@hotmail.com <hteinc@hotmail.com>; louexcavate@gmail.com <louexcavate@gmail.com>; mbrown@salamatof.com <mbrown@salamatof.com>; metcoak@gmail.com <metcoak@gmail.com>; mikearno@lppowersports.com <mikearno@lppowersports.com>; pavingalaska@hotmail.com <pavingalaska@hotmail.com>; pearseconstruction@yahoo.com <pearseconstruction@yahoo.com>; pjkgravel@gmail.com <pjkgravel@gmail.com>; robbynlmichel@gmail.com <robbynlmichel@gmail.com>; seancude@yahoo.com <seancude@yahoo.com>; jack.nspci@alaska.net <jack.nspci@alaska.net>; steamonwheelsllc@alaska.net <steamonwheelsllc@alaska.net>; loren@nnai.net <loren@nnai.net>; gbfowler@alaska.net <gbfowler@alaska.net>; lwiley@gci.net <lwiley@gci.net>; yragui@acsalaska.net <yragui@acsalaska.net>; krogseng@acsalaska.net <krogseng@acsalaska.net>; axtelent@acsalaska.net <axtelent@acsalaska.net>; wwong@chumleycorp.com <wwong@chumleycorp.com>; cwittmer@chumleycorp.com <cwittmer@chumleycorp.com>; stegerenterprises@outlook.com <stegerenterprises@outlook.com>; marklangfitt@yahoo.com <marklangfitt@yahoo.com>; jtmahan@yahoo.com <jtmahan@yahoo.com>; 907danbrown@gmail.com <907danbrown@gmail.com>; gcodyb@gmail.com <gcodyb@gmail.com>; lee.ulmen@gmail.com <lee.ulmen@gmail.com>; aknuggets@gmail.com <aknuggets@gmail.com>; bmohr@ciri.com <bmohr@ciri.com>; cicincalaska@gmail.com <cicincalaska@gmail.com>; tsfg213@hotmail.com <tsfg213@hotmail.com>; coursen@acsalaska.net <coursen@acsalaska.net>; ray@summitexcavation.org <ray@summitexcavation.org>; pencon@alaska.net <pencon@alaska.net>; kbalaska@comcast.net <kbalaska@comcast.net>; sdavis@davisblock.com <sdavis@davisblock.com>; cdavis@davisblock.com <cdavis@davisblock.com>; sstub1812@gmail.com <sstub1812@gmail.com>;

josh@specialtyexcavating.com <josh@specialtyexcavating.com>; rverba@hotmail.com <rverba@hotmail.com>; cap@dibblecreekrock.com <cap@dibblecreekrock.com>; randy@alconstructionak.com <randy@alconstructionak.com>; ssettle@ciri.com <ssettle@ciri.com>; akdander@gmail.com <akdander@gmail.com>; ak_mamabear@yahoo.com <ak_mamabear@yahoo.com>; arnocon@xyz.net <arnocon@xyz.net>; terry@tsrmobile.com <terry@tsrmobile.com>; kirkh@lynden.com <kirkh@lynden.com>; littt1@yahoo.com <littt1@yahoo.com>; Matt Letzring <mattletzring@gmail.com>; KEE Construction <keeconstructionllc@yahoo.com>; Eshlem Rc <eshlemrc@yahoo.com>; JB/KT <jbandkt@gmail.com>; Joseph Ross <smokeross@alaska.net>; Sean McKeown <seanm@lynden.com>; Gregoire Construction <gregoireconstruction@gmail.com>; Cole Petersen <cole@metcoalaska.com>; steve@fosterconstructionak.com <steve@fosterconstructionak.com>; dnorris1136@gmail.com <dnorris1136@gmail.com>; Bill Elam <belam@kpb.us>; Derkevorkian, Richard S. <rsderkevorkian@marathonpetroleum.com>; Kpac Association <kpacassociation@yahoo.com>
**Subject:** [EXTERNAL] ReRe: Copy of ordinance substitute and Sectional analysis

Ed,

Great work, Didn't mean to be short at the meeting just trying to Keep us focused, I feel all and all it was productive too bad there wasn't 50 members there. Defiantly share tis with the membership, we should also ask for a minimum dues of $100.00 per member. I am glad to help be treasure if you want me to start an account.

Robert
907-252-7482

> On Saturday, September 2, 2023 at 09:01:42 PM AKDT, Kpac Association <kpacassociation@yahoo.com> wrote:
>
> Hello everyone!
> So this is what we came up with as things needed to be corrected in the ordinance substitute.
> 1. The Kachemak Bay Estuarine Research Reserve should be struck from any involvement in material sites.
> 2. The mention of health, safety, and general welfare should be struck from the ordinance substitute. There have been no studies to show that any of the codes written effect the aforementioned.
> 3. 21.29.015 No excavation within 32' of a lot line needs to be changed back to 10'. There is no evidence for this restriction other than "more must be better".
> 4. The exemption for Seward and vicinity from this ordinance should be nullified. Equal protection of the law.
> 5. The processing waiver of 60 days for a counter permit should be changed to 30 days per year.
> 6. The Type 1 CLUP permit should be deleted. It is useless and no one will apply for a permit without processing.
> 7. The mention of an engineer or hydrologist to make reports for the application or maintenance of permits is wasteful spending on our part if the Planning Director and Code compliance officer do not have the same credentials. How can we rely on them to decipher such a report if they do not have equal education?
> 8. 21.29.040 Standards. This whole section has no standards. Nothing is measurable, thus opens discretion. Mitigation of groundwater flow paths for juvenile salmon is unproven and capricious to say the least. There is no possible way to install a material site in an area without changing the "Character" of the surrounding area.
> 9. They are requiring us to mitigate dust without giving us any access to water. A well will not do to fill a water truck before it dries out and becomes dusty again. If we are to take on dust control, we need the tools to do the job.

10. 21.29.050 (B) Discretionary Conditions should be deleted entirely. The planning commission does not want or need Discretionary Conditions. They need strict measurable standards.
11. View should be deleted from Special impacts zone. View needs to be defined as the ability to view the operation from a public roadway directly adjoining the parcel boundaries. Not from a private property or residence.
12. Qualified Professional must be defined.
13. Annual reports and reporting two years after closeout of a Type III material site is overreaching.
14. Reclamation needs to be defined as all disturbed areas unless a post mining use is applied. Then it should be reduced to finishing slopes to a 2:1 and seeding them. Leaving the floor of the site for other post mining uses.
15. 21.29.065 should be deleted. If strict measurable standards are used and met, there will be no confusion. If the situation changes for the application, the applicant should not have to wait for the government to exercise the applicant's right to the use of the resources.
16. 21.29.070 If the permit is currently not in violation, it should be approved by the administration. The two year probation period should be deleted. Additional discretionary conditions should also be deleted. The standards must be strict and measurable.
17. 21.29.100 Should be deleted or defined as to the exact cost of recordation.
18. 21.29.120 (D) needs better definition. It reads as if the PEU is restricted to its current working area. It should read PEU permitted boundaries.

Let me know if you have anything else! Also, I will need people to speak on some of these issues. We all will have 3 minutes each and might get time to speak on 3 issues each. So to cover 18 issues, we need 6 people to speak minimum.

Next Tuesday is the only public comment that will matter. The following meeting will be in Homer and they will vote to adopt there. So any amendments will be spoke on Tuesday and prepared for vote on the following meeting.

Thanks, Ed.
(907)252-2554
On Friday, September 1, 2023 at 07:55:59 PM AKDT, Kpac Association <kpacassociation@yahoo.com> wrote:

If you all have a hard time finding them, I figured out how to download and send them. Meeting tomorrow at my shop. Noon.
Ed Martin III
(907)252-2554

**Ward, Tamera**

**Subject:** FW: <EXTERNAL-SENDER>Kpac association 18 grievances 2023-36
**Attachments:** 9-5 greivences.docx

**From:** Kpac Association <kpacassociation@yahoo.com>
**Date:** September 6, 2023 at 9:58:07 AM AKDT
**To:** G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
**Subject: <EXTERNAL-SENDER>Kpac association 18 grievances 2023-36**

**CAUTION**: This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Please forward to all assembly members.

Attached is a list of our 18 grievances with the ordinance. I'm hoping this informational meeting being scheduled is for the public and more importantly the industry, to bring you information, rather than the assembly to try to explain and sell this piece of legislation to the public. If I learned anything from last night's assembly meeting, it is that the public, the industry, and the planning commission, DOES NOT want discretion in code!!!

I will make myself available to the assembly publicly to explain in detail why each grievance has merit. I think it is important I do so, to the fullest extent, so the assembly understands the cause and effect of each piece of code. Understandably, some of the grievances on the list are there because of inconsistencies between the substitute and the sectional analysis or typo's in either. Thus, proving the rush these documents were constructed to present to the public. I appreciate the additional meetings to scrutinize the documents and the process.

The list is in order of importance as best as it can be, however, all listed are extremely important to the industry. For example, #12 may be more important to one operator than # 5 is to another operator. This list may be modified as our members have time to decipher this legislation.

Thank you all for your time invested in this.
Ed Martin III
President
Kenai Peninsula Aggregate and Contractors Association

(907)252-2554

1. The Kachemak Bay Estuarine Research Reserve should be struck from any involvement in material sites. They are not a government agency, their science is flawed and not tested by another source. Extreme bad form to have them in code, this is discriminating to the public at large.
2. 21.29.040 Standards. This whole section has no standards. Nothing is measurable, thus opens discretion. Mitigation of groundwater flow paths for juvenile salmon is unproven and capricious to say the least. There is no possible way to install a material site in an area without changing the "Character" of the surrounding area.
3. 21.29.050 (B) Discretionary Conditions should be deleted entirely. The planning commission does not want or need Discretionary Conditions. They need strict measurable standards.
4. 21.29.120 (D) needs better definition. It reads as if the PEU is restricted to its current working area. It should read PEU permitted boundaries.
5. View should be deleted from Special impacts zone. View needs to be defined as the ability to view the operation from a public roadway directly adjoining the parcel boundaries. Not from a private property or residence, or deleted from entire ordinance.
6. They are requiring us to mitigate dust without giving us any access to water. A well will not do, to fill a water truck before it dries out and becomes dusty again. If we are to take on dust control, we need the tools to do the job. A 100’x100’x4’ pond should do.
7. Qualified Professional must be defined in code.
8. Reclamation needs to be defined as all disturbed areas unless a post mining use is applied. Then it should be reduced to finishing slopes to a 2:1 and seeding them. Leaving the floor of the site for other post mining uses.
9. The processing waiver of 60 days for a counter permit should be changed to 30 days per year.
10. 21.29.065 should be deleted. If strict measurable standards are used and met, there will be no confusion. If the situation changes for the application, the applicant should not have to wait for the government to exercise the applicant's right to the use of the resources.
11. 21.29.070 If the permit is currently not in violation, it should be approved by the administration. The two-year probation period should be deleted. Additional discretionary conditions should also be deleted. The standards must be strict and measurable.
12. Annual reports and reporting two years after closeout of a Type III material site is overreaching.
13. The mention of health, safety, and general welfare should be struck from the ordinance substitute. There have been no studies to show that any of the codes written affects the aforementioned.
14. 21.29.015 No excavation within 32' of a lot line needs to be changed back to 10'. There is no evidence for this restriction other than "more must be better". This is in sectional analysis, but not substitute, so there is a discrepancy.
15. The mention of an engineer or hydrologist making reports for the application or maintenance of permits is wasteful spending on our part if the Planning Director and Code compliance officer do not have the same credentials. How can we rely on them to decipher such a report if they do not have equal education? The state does not require an engineer to do site plans for mining. Operators have the education to construct site plans. We are professionals in our field.

16. 21.29.100 Should be deleted or defined as to the exact cost of recordation.
17. The exemption for Seward and vicinity from this ordinance should be nullified. Equal protection of the law.
18. The Type 1 CLUP permit should be deleted. It is useless and no one will apply for a permit without processing.

## Ward, Tamera

**Subject:** FW: <EXTERNAL-SENDER>Borough Ordinance 2022 - 36

**From:** "K, E, & E Martin" <keeconstructionllc@yahoo.com>
**Date:** September 6, 2023 at 10:04:35 AM AKDT
**To:** "Turner, Michele" <MicheleTurner@kpb.us>, Mayor Peter Micciche <pmicciche@kpb.us>, "Kelley, Sean" <skelley@kpb.us>
**Subject: <EXTERNAL-SENDER>Borough Ordinance 2022 - 36**
**Reply-To:** "K, E, & E Martin" <keeconstructionllc@yahoo.com>

**CAUTION**: This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Michele, please add our comments to the public record on Ordinance 2022-36 Dated 9/7/2023 as it was emailed to all of the Assembly yesterday, prior to last nights meeting.

To All, NO Amendments needed! Vote it down.

First this ordinance is an abomination, it's an attack on Private property rights using unauthorized powers to spot ZONE one industry ,with overly restrictive regulation, It disregards individual liberties , opportunism grounded in Free Enterprise, works to create less competition by unequal application across the borough, It disregards the Estoppel Doctrine protecting PEU ownership.
It takes jurisdiction over water usage & access, only in both the Federal & State powers!
The real world result of passing this Ordinance is forcing Property / Business owners to sue to get justice from takings of rights.
The most Visual hideousness is it's actual portion addressing Visual restriction which attempt to divide us Citizens by what looks good to one but not to another!

This ordinance should go down in flames!

Edward & Kathleen Martin
907-252-7857 , 907-252-8163

KEE Construction, LLC

## Ward, Tamera

**Subject:** FW: <EXTERNAL-SENDER>Input on Ordinance 2022-36

**From:** Mary Trimble <maryetrimble@gmail.com>
**Sent:** Thursday, September 7, 2023 2:57 PM
**To:** Turner, Michele <MicheleTurner@kpb.us>
**Subject:** <EXTERNAL-SENDER>Input on Ordinance 2022-36

**CAUTION**: This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Michele,

Please submit my letter into the record so it is part of the packet for the next assembly meeting.

Thank you,

Mary

--
Mary Trimble, Broker
Coastal Realty
maryetrimble@gmail.com
907.299.2677

From: Mary Trimble, Beachcomber LLC

RE: 2022-36

To: Assembly Members and Planning Staff

The following are my main objections to this ordinance:

- 21.29.050 Water Source Separation section e: If Beachcomber does not get its permit under the current code through the courts this section would entirely disqualify Beachcombers 27+ acres from ever becoming permitted which was the intent by Bilben and friends when they convinced an assembly member to make such an amendment. It is specifically targeting Beachcomber and is not justified. Please reconsider. We have already spent 5 years and a lot of time and energy and if this section is left in it will mean we may have to sue the borough, which we would rather not do.
- 21.29.050 B. Discretionary Conditions 7. SIZ: First "visual" should not be in there. Under counter permits – the 500' from any principal residence seems too much and even though it is discretionary it seems unreasonable as one person with a 3-story house that could not be screened would be grounds for denial.
- Delete review by the KBNERR: Not necessary.
- Delete verbiage "Public health, safety and general welfare: Under 21.29.040 Standards: Is this a comprehensive plan or a material site ordinance? You have not defined "general welfare" which opens up for a lot of confusion and potential for misunderstandings. I do not see this ordinance as written to be easier for the Planning Commission to interpret. How do you say the use of any of these permits will "preserve the value and character of the surrounding area"? The reason you have many pit owners/operators wanting the whole thing scrapped is because of this type of language. It could be the reason that many or most applications could be denied. The reason there are neighborhoods around gravel pits either before or after the fact is that good ground is where people want to build and live! As Borough attorney, Holly Montague stated in a brief to a hearing officer in a Beachcomber appeal supporting approval of the CLUP "Given the wealth of gravel deposits in the Anchor Point area it should not be surprising that this parcel would be used for a material site".
- 21.29.040 Standards A: Street level visual screening – is this not what buffers are for? I do not approve of any visual language. We live in Alaska! There are eyesores far worse than a material site! This ordinance is discriminatory against one industry.
- Substitute Ordinance Whereas: The first whereas says "maintain property values". As we heard at the Sept 5 meeting 2 testifiers erroneously talked about lowering of property values in Anchor Point. As this ordinance is now proposed, the property value on our total 42ac would be the only property that would significantly decrease in value without a permit.
- 21.29.050 Permit Conditions – A. It says the following mandatory conditions "must" be imposed on all permits and then under Buffer Zone section e. GIS LiDar it says this "may" be utilized. Confusing verbiage. LiDar does not take into account vegetation so is not accurate for determining sufficiency of buffers.
- No economic study has been done or considered. People are moving to the Peninsula and along with the young people who will eventually build a home or cabin are not being represented. The cost of buying a home or building is already very high. Limiting gravel sources by restricting or denying permits will only drive up costs. The folks opposing pits already have their homes and have no or very little need for gravel. As has been acknowledged, the needs of the borough for gravel affects every taxpayer. There is a finite amount of gravel on the peninsula so eventually all of it will need to be mined.
- Any proposed ordinance must outlive Robert Ruffner, the current Assembly and current Planning Commission. Another reason to stick with the current code that is already known.
- Even though many years have been spent on this endeavor, it has many significant flaws and for that reason I do not support it. I believe this proposed ordinance will create more appeals and legal costs for the borough.

To KPB Assembly and Mayor Micciche September 9, 2023

Let me introduce myself. My name is Grace Merkes. My husband and I homesteaded in Sterling in the early 1960's. I have been serving in the public sector most of my adult life, first as a Board member of the Sterling Volunteer Fire Dep. (now CES) then on the KPB Planning Commission for at least 5 years, elected member of the Kenai Borough Assembly for about 17 years. We owned a gravel pit in Sterling for over 25 yrs. but sold to our son.

My purpose for this letter is to be an advocate for implementing a cohesive, sustainable, sensible Land Use Plan (may have to call it ZONONG). Goal should be rules that balance multiple interests in land use such as: the right to use land as you choose; the right to not be excessively impacted by neighbors who exercise that freedom; and the shared value in protecting the underlying health of borough residents, natural resources and property values. Must have an appropriate balance between all stakeholders.

At this time, I oppose the Substitute Ordinance 2022-36 (Gravel Operators Ordinance) for the following reasons.

Here are some points I want to make regarding the past 25 yrs. regarding Land Use;

- Gravel pits, crushing plants & hauling gravel have been one of the most complained about problems in the KPB for as long as I have been involved in politics of the borough. Other complaints by residents' have been about noise from airplanes, motorized vehicle trails and junk cars & yards, dog teams, animal control & hazardous waste.
- About every 10 years the KPB has approved a KPB Comprehensive Plan which includes many pages of land use issues
- Most populated areas have their own Comp Plans such as Homer, Soldotna, Seward, Seldovia, Kenai, Kachemak City, Redoubt Bay, and I believe Cooper Landing & Moose Pass also have one.

- The **2005 KPB Comprehensive Plan** states; "expand Borough Land Use management".

- The **2010 KPB Comprehensive Plan** states there has been lack of implementation of Land Use Management, little has been done because of limited resources available to the KPB staff.
- **2010 Phone Polls** showed that 40% borough residents are "mostly Positive" to land Use Regulations.
- However; when asked about the "**Current** Level of Land use Regulations" it said 35% too much and 10% too little. The 2010 Comp Plan suggests most residents would support regulations that affect protection of water quality in wells, preservation of the health of salmon, but do not support more intrusive rules that interfere with private property rights. The polls also suggest that regulations need to provide clear benefits for support.

- The **2010 KPB Comp Plan** recommended that there should be “some growth guided by a few good rules” for land use such as;
    1. Adopt limited specific areas and uses (Regional Land Use); Example, residential, commercial, industrial, set -backs, height limits, buffer areas, lot sizes (This would protect property values).

I tried to find the **2020 Updated Plan** but it was not on the KPB web site.

So, after all this reflection of the past and the information from the KPB Comp Plans here is my opinion and support the following ideas;

1. Vote to “OPPOSE” Substitute Ordinance 2022-36
2. Continue to use the current Gravel Pit Ordinance and permitting update process.
3. Put a moratorium on issuing any new gravel pits or operations until a Regional Land Use Plan is implemented. (There are currently about 300 permitted gravel pits and I realize this will probably raise the price of a yard of gravel from existing permitted gravel pits.)
4. Hire one new employee in the Planning Dept.
5. Establish a Comprehensive Regional Land Use Plan.

Thank you for listening and would be happy to answer any questions.

Kachemak Bay National Estuarine Research Reserve
Alaska Center for Conservation Science
University of Alaska Anchorage
2181 Kachemak Drive Homer, Alaska 99603 (907) 235-4799

September 11, 2023

President Brent Johnson
Kenai Peninsula Borough Assembly
144 North Binkley Street
Soldotna, Alaska 99669

Re: Proposed amendments to KPB 21.25.050 regarding Material Site Permits, Applications, Conditions, and Procedures. Specific legislation to be considered - Ordinance 2021-41 and Ordinance 2021-41 (Elam, Derkevorkian) Substitute as well as proposed amendments.

Dear Kenai Peninsula Borough Assembly,

On behalf of the Kachemak Bay National Estuarine Research Reserve (KBNERR), please accept this letter of clarification regarding the proposed amendment 21.25.050. Permit considerations:

> "...Upon receiving an application, the planning director or designee will forward a copy of the application to the Kachemak Bay National Estuarine Research Reserve ("KBNERR") for review and comment. KBNERR will have thirty days to provide its review and comment prior to submission of the application to the planning commission if the application is otherwise complete."

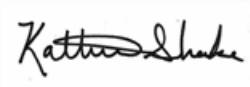
KBNERR appreciates the KPB Assembly's effort to involve scientific information from our organization; this amendment, however, may have unintended consequences in misleading the public about the role of the Reserve. The amendment does not clearly define what is being asked of the Reserve. KBNERR does not have regulatory authority and should not appear to be directly involved in management decisions. The Reserve is a partnership between the University of Alaska Anchorage (UAA) and the National Oceanic and Atmospheric Administration (NOAA), and our mission is to enhance understanding and appreciation of Alaska's coastal ecosystems to ensure they remain healthy and productive. We do this by providing technical and scientific data as a public service. In the case of groundwater mapping, KBNERR and partner researchers have produced spatial models of groundwater flow paths that recharge salmon streams and drinking water sources (https://nerrssciencecollaborative.org/project/Walker17). Research staff work with partners to make data accessible to decision makers and any member of the public, as requested. We look forward to working with the KPB Planning Department to make KBNERR data available as a tool for their own review of material extraction permits.

Below is a suggested alternative wording of Amendment 21.25.050. Permit considerations:

> "...Upon receiving an application, the planning director or designee will incorporate an analysis of impacts to groundwater, using the best available hydrology information for the Kenai Peninsula."

Thank you for your consideration and the work the KPB Assembly is doing regarding best land management practices for the people, economies, fish and natural resources of the Kenai Peninsula.

Sincerely,



Katherine Schake
Reserve Manager
Kachemak Bay National Estuarine Research Reserve
University of Alaska Anchorage
(907) 235-1593 / kschake@alaska.edu

| | |
|---|---|
| Introduced by: | Mayor |
| Substitute Introduced: | 01/16/18 |
| Resolution 2018-004 (Mayor) | See Original for Prior History |
| Action: | Adopted |
| Vote: | 8 Yes, 0 No, 1 Absent |

**KENAI PENINSULA BOROUGH**
**RESOLUTION 2018-004**
**(MAYOR) SUBSTITUTE**

**A RESOLUTION ESTABLISHING A MATERIAL SITE WORK GROUP**

**WHEREAS,** KPB 21.25.040(A)(2) requires a permit for the commencement of commercial sand, gravel or material sites within the rural district of the Kenai Peninsula Borough; and

**WHEREAS,** KPB 21.29 provides for a permit process to extract material from the ground; and

**WHEREAS,** with the exception of one minor change relating to floodplain permits, the material site code was last updated in 2006; and

**WHEREAS,** the assembly, administration, planning department and the planning commission have recognized that certain provisions of the material site ordinance can be clarified for the operators, public, and staff; and;

**WHEREAS,** the public has expressed many concerns about dust, noise, water, and negative secondary impacts of material sites; and

**WHEREAS,** it is the intent of the assembly and administration to involve the public and industry in a collaborative discussion designed to incorporate possible changes to the material site code;

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

**SECTION 1.** That a work group is established for the purpose of examining the current material site permit process and potentially recommending amendments to the material site code provisions.

**SECTION 2.** That the work group shall consist of at least two assembly members; two planning commissioners; two members of the public; and, two material site industry members. The group shall elect from among its members a chair and a vice-chair who may serve in the absence of the chair. The two members of the assembly shall be appointed by the assembly. The remaining members shall be appointed by the mayor.

**SECTION 3.** That each meeting time and place shall be advertised, open to the public and subject to the Open Meetings Act.

**SECTION 4.** The material site work group shall have no authority to act on behalf of the assembly or the administration or communicate on the borough's behalf other than to make recommendations to the planning commission, administration and assembly.

**SECTION 5.** The work group shall provide a final report to the planning commission, administration and assembly by June 5, 2018, and then discontinue unless extended by the assembly.

**SECTION 6.** That this resolution shall take effect immediately upon its adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 16TH DAY OF JANUARY, 2018.**

Wayne H. Ogle, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

KENAI PENINSULA BOROUGH 1964

| | |
|---|---|
| Yes: | Bagley, Blakeley, Carpenter, Dunne, Fischer, Hibbert, Smalley, Ogle |
| No: | None |
| Absent: | Cooper |

| | |
|---|---|
| Introduced by: | Mayor |
| Substitute Introduced: | 12/03/19 |
| Ordinance 2019-30 (Mayor): | See Original Ordinance for Prior History |
| Hearing: | 12/03/19 |
| Action: | Failed to Enact |
| Vote: | 3 Yes, 6 No, 0 Absent |
| Action: | Reconsideration Filed by Bjorkman |

**KENAI PENINSULA BOROUGH**
**ORDINANCE 2019-30**
**(MAYOR) SUBSTITUTE**

**AN ORDINANCE AMENDING KPB 21.29, KPB 21.25, AND KPB 21.50.055 REGARDING MATERIAL SITE PERMITS, APPLICATIONS, CONDITIONS, AND PROCEDURES**

**WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A of the 2019 Kenai Peninsula Borough Comprehensive Plan is to establish policies that better guide land use to minimize land use conflicts, maintain property values, protect natural systems and support individual land use freedoms; and

**WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A, Strategy 1 of the 2019 Comprehensive Plan is to adopt limited development standards for specific areas and uses to reduce potential off site impacts of development on adjoining uses and the natural environment; and

**WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A, Strategy 2 of the 2019 Comprehensive Plan is to update the Borough's existing conditional use regulations for gravel extraction and other uses to better address reoccurring land use conflicts; and

**WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A, Strategy 2a of the 2019 Comprehensive Plan is to clarify the broad purpose of the conditional use process and clear parameters for allowable conditional uses that include reasonable, project-specific conditions that reduce impacts on surrounding uses, and if/when a conditional use permit can be denied and consider establishing conditions that require larger setbacks, safety and visual screening, control on access routes, control on hours of operation, and address environmental concerns; and

**WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A, Strategy 2d of the 2019 Comprehensive Plan is to complete improvements to the rules guiding gravel extraction, with the goal of providing an appropriate balance between providing access to affordable materials for development and protecting quality of life for borough residents; and

**WHEREAS,** Goal 1 of the Mining and Minerals Processing section of the 1990 Kenai Peninsula Borough Coastal Management Program is to provide opportunities to explore, extract and process minerals, sand and gravel resources, while protecting environmental quality and other resource users; and

**WHEREAS,** an assembly subcommittee was formed in 2005 to review the material site code; and

**WHEREAS,** Ordinance 2006-01 (Substitute) codified as KPB 21.29 was adopted in 2006 after consideration of the subcommittee's report; and

**WHEREAS,** the planning department has been administering Ordinance 2006-01 (Substitute), codified as KPB 21.29 for 13 years; and

**WHEREAS,** KPB 21.25.040 requires a permit for the commencement of certain land uses within the rural district of the Kenai Peninsula Borough; and

**WHEREAS,** the planning department has recognized that certain provisions of the material site ordinance could be better clarified for the operators, public, and staff; and

**WHEREAS,** the planning commission and planning department received comments expressing concerns about dust, noise, safety, and aesthetics; and

**WHEREAS,** approximately 253 registered prior existing use material sites and approximately 99 conditional land use permits for material sites have been granted since 1996;

**WHEREAS,** the planning department receives numerous complaints regarding unreclaimed parcels registered as nonconforming prior existing material sites which have not been regulated by KPB; and

**WHEREAS,** the assembly established a material site work group by adoption of resolution 2018-004 (Substitute) to engage in a collaborative discussion involving the public and industry to make recommendations regarding the material site code; and

**WHEREAS,** assembly resolution 2018-025 extended the deadline for the final report to be submitted to the assembly, administration and planning commission to April 30, 2019; and

**WHEREAS,** certain additional conditions placed on material site permits would facilitate a reduction in the negative secondary impacts of material sites, e.g. dust, noise, safety, and unsightliness of material sites; and

**WHEREAS,** at its regularly scheduled meeting of November 12, 2019, the Planning Commission recommended approval by unanimous consent;

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

**SECTION 1.** That KPB 21.25.030 is hereby amended, as follows:

**21.25.030. - Definitions.**

Unless the context requires otherwise, the following definitions apply to CLUPs:

*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.

*Animal feeding operation* means a lot or facility (other than an aquatic animal production facility) where animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period.

a. The same animals need not remain on the lot for 45 days or more; rather, some animals are fed or maintained on the lot 45 days out of any 12-month period, and

b. Animals are "maintained" for purposes of this ordinance when they are confined in an area where waste is generated and/or concentrated or are watered, cleaned, groomed, or medicated in a confined area, even if the confinement is temporary.

c. Two or more animal feeding operations under common ownership are considered, for the purposes of these regulations, to be a single animal feeding operation if they adjoin each other.

d. Slaughterhouses are animal feeding operations.

*Animal unit* means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighting [weighing] over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

*Animal waste* means animal excrement, animal carcasses, feed wasted, process wastewaters or any other waste associated with the confinement of animals from an animal feeding operation.

*Animal waste management system* means a combination of structures and nonstructural practices serving an animal feeding operation that provides for the collection, treatment, disposal, distribution, storage and land application of animal waste.

*Aquifer* means a subsurface formation that contains sufficient water-saturated permeable material to yield economical quantities of water to wells and springs.

*Aquifer-confining layer* means that layer of relatively impermeable soil below an aquifer, typically clay, which confines water.

*Assisted living home* means a residential facility that serves three or more adults who are not related to the owner by blood or marriage, or that receives state or that receives state or federal payment for service of the number of adults served. The services and activities may include, but are not limited to, housing and food services to its residents, assistance with activities of daily living, and personal assistance, and that complies with Alaska Statutes 47.32.0101 – 47.60.900, as amended.

*Child care facility* means a place where child care is regularly provided for children under the age of 12 for periods of time that are less than 24 hours in duration and that is licensed pursuant to AS 47.35.005 et seq., excluding child care homes and child care group homes, as currently written or hereafter amended.

*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.

*Concentrated animal feeding operation (CAFO)* means an animal feeding operation confining at least: (1) 1,000 swine weighing at least approximately 55 pounds; (2) 1,000 slaughter and feeder cattle; (3) 700 mature dairy cattle; (4) 500 horses; (5) 10,000 sheep or lambs; (6) 55,000 turkeys; (7) 100,000 laying hens or broilers (if the facility has continuous overflow watering); (8) 30,000 laying hens or broilers (if the facility has a liquid manure system); (9) 5,000 ducks; (10) 1,000 animal units; or (11) a combination of the above resulting in at least 1,000 animal units. Each individual parcel upon which a CAFO is located is a separate CAFO unless they adjoin each other.

*Conditioning or processing material* means a value-added process including batch plants, asphalt plants, screening, washing, and crushing by use of machinery.

*Correctional community residential center (CCRC)* means a community residential center, other than a correctional institution, for the short-term or temporary detention of prisoners in transition from a correctional institution, performing restitution, or undergoing rehabilitation or recovery from a legal infirmity. CCRCs may not be used for detention of prisoners who pose a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four-hour physical supervision. The determination of whether a prisoner poses a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four-hour physical supervision shall be made by the commissioner of corrections for state prisoners and the United States Attorney General, or the U.S. Director of Bureau of Prisons for federal prisoners.

*Correctional institution* means a facility other than a correctional community residential center providing for the imprisonment or physical confinement or detention of prisoners under guard or twenty-four-hour physical supervision, such as prisons, prison farms, jails, reformatories, penitentiaries, houses of detention, detention centers, honor camps, and similar facilities.

*Development plan* means a plan created to describe a proposed development on a specific building site excluding material sites under KPB 21.29.020.

*Disturbed* includes active excavation and all areas necessary to use a parcel as a material site including but not limited to berms, stockpiles, and excavated areas excluding all areas reclaimed for alternate post mining land uses.

[*EXHAUSTED* MEANS THAT ALL MATERIAL OF A COMMERCIAL QUALITY IN A SAND, GRAVEL, OR MATERIAL SITE HAS BEEN REMOVED.]

*Federal prisoners* means offenders in the custody or control or under the care or supervision of the United States Attorney General or the Bureau of Prisons.

*Groundwater* means, in the broadest sense, all subsurface water, more commonly that part of the subsurface water in the saturated zone.

*Haul route* includes the roads used to haul materials from the permit area to a roadway designated as collector, arterial or interstate by the Alaska Department of Transportation & Public Facilities.

*Liquid manure* or *liquid animal waste system* means any animal waste management system which uses water as the primary carrier of such waste into a primary retention structure.

*Multi-purpose senior center* is a facility where persons 60 years of age or older are provided with services and activities suited to their particular needs. The

services and activities may include, but are not limited to, health examinations, legal assistance, recreation programs, general social activities, telephone reassurance programs, nutrition classes, meals at minimum cost, counseling, protective services, programs for shut-ins and education programs, and that complies with Alaska Statutes 47.60.010—47.60.090, as currently written or hereafter amended.

*Permit area* includes all excavation, processing, buffer and haul route areas of a CLUP or counter permit.

*Person* shall include any individual, firm, partnership, association, corporation, cooperative, or state or local government.

*Prisoner* means:

a. a person held under authority of state law in official detention as defined in AS 11.81.900;

b. includes a juvenile committed to the custody of the Alaska Department of Corrections Commissioner when the juvenile has been charged, prosecuted, or convicted as an adult.

*Private school* is a school comprised of kindergarten through 12th grade, or any combination of those grades, that does not receive direct state or federal funding and that complies with either Alaska Statute 14.45.030 or 14.45.100—14.45.130, as currently written or hereafter amended.

*Public school* is a school comprised of kindergarten through 12th grade, or any combination of those grades, that is operated by the State of Alaska or any political subdivision of the state.

*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.

*Seasonal high groundwater table* means the highest level to which the groundwater rises on an annual basis.

*Senior housing project* means senior housing as defined for purposes of construction or operation in 15 Alaska Administrative Code 151.950(c), as currently written or hereafter amended.

*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.

*Surface water* means water on the earth's surface exposed to the atmosphere such as rivers, lakes, and creeks.

*Topsoil* means material suitable for vegetative growth.

*Vicinity* means the same as the area of notification.

*Waterbody* means any lake, pond, stream, riparian wetland, or groundwater into which storm water runoff is directed.

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

**SECTION 2.** That KPB 21.29 is hereby amended, as follows:

**CHAPTER 21.29. MATERIAL SITE PERMITS**

**21.29.010. 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 20 feet of a right-of-way or within ten feet of a lot line.

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 does not require a permit, however, operators subject to this exemption shall 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.

C. A prior existing use under KPB 21.29.120 does not require a material extraction permit, but a floodplain development permit is required for all activities within any mapped special flood hazard area.

D. Material extraction incidental to site development does not require a permit when an approved site development plan is on file with the planning department. Site development plans are approved by the planning director and are valid for one year. The site development plan may be renewed on an annual basis subject to the planning director's approval.

**21.29.020. Material extraction and activities requiring a permit.**

A. *Counter permit.* A counter permit is required for material extraction which disturbs no more than 2.5 cumulative acres and does not enter the water table. Counter permits are approved by the planning director, and are not subject to the notice requirements or planning commission approval of KPB 21.25.060. A counter permit is valid for a period of 12 months, with a possible 12-month extension.

B. *Conditional land use permit.* A conditional land use permit (CLUP) is required for material extraction which disturbs more than 2.5 cumulative acres, or material extraction of any size that enters the water table. A CLUP is required for materials processing. A CLUP is valid for a period of five years. The provisions of KPB Chapter 21.25 are applicable to material site CLUPS and the provisions of KPB 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling.

**21.29.030. Application procedure.**

A. In order to obtain a counter permit or CLUP, an applicant shall 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 shall include the following items:

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)(2);

4. Reclamation plan consistent with KPB 21.29.060;

5. The depth of excavation;

6. Type of material to be extracted and type of equipment to be used;

7. Any voluntary permit conditions the applicant proposes. Failure to include a proposed voluntary permit condition in the application does not preclude the applicant from proposing or agreeing to voluntary permit conditions at a later time;

8. Surface water protection measures, if any, for adjacent properties designed by a civil engineer, including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence;

9. A site plan and field verification prepared by a professional surveyor licensed and registered in the State of Alaska, including the following information:

   a. Location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;

   b. Proposed buffers consistent with KPB 21.29.050(A)(2), or alternate buffer plan;

   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 the issuance of the material site permit;

   e. Anticipated haul routes;

   f. Location and [DEPTH] elevation of test holes, and depth of groundwater, if encountered between May and December. At least one test hole per ten acres of excavated area is required to be dug. The test holes shall be at least four feet below the proposed depth of excavation;

   g. Location of wells of adjacent property owners within 300 feet of the proposed parcel boundary;

   h. Location of any water body on the parcel, including the location of any riparian wetland as determined by "Wetland Mapping and Classification of the Kenai Lowland, Alaska" maps created by the Kenai Watershed Forum;

   [I. SURFACE WATER PROTECTION MEASURES FOR ADJACENT PROPERTIES, INCLUDING THE USE OF DIVERSION CHANNELS, INTERCEPTION DITCHES, ON-SITE COLLECTION DITCHES, SEDIMENT PONDS AND TRAPS, AND SILT FENCE; PROVIDE DESIGNS FOR SUBSTANTIAL STRUCTURES; INDICATE WHICH

STRUCTURES WILL REMAIN AS PERMANENT FEATURES AT THE CONCLUSION OF OPERATIONS, IF ANY;]

[J]i. Location of any processing areas on parcel, if applicable;

[K]j. North arrow;

[L]k. The scale to which the site plan is drawn;

[M]l. Preparer's name, date and seal;

[N]m. Field verification shall 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.

B. In order to aid the planning commission or planning director's decision-making process, the planning director shall provide vicinity, aerial, land use, and ownership maps for each application and may include additional information.

**21.29.040. Standards for sand, gravel or material sites.**

A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, and visual impacts. Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:

1. Protects against the lowering of water sources serving other properties;

2. Protects against physical damage to [OTHER] adjacent properties;

3. [MINIMIZES] Protects against off-site movement of dust;

4. [MINIMIZES] Protects against noise disturbance to other properties;

5. [MINIMIZES] Protects against visual impacts of the material site; [AND]

6. Provides for alternate post-mining land uses[.];

7. Protects Receiving Waters against adverse effects to fish and wildlife habitat;

8. Protects against traffic impacts; and

9. Provides consistency with the objectives of the Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents.

**21.29.050. Permit conditions.**

A. The following mandatory conditions apply to counter permits and CLUPs issued for sand, gravel or material sites:

1. [*PARCEL]Permit boundaries.* [ALL BOUNDARIES OF THE SUBJECT PARCEL] The buffers and any easements or right-of-way abutting the proposed permit area shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter. Field verification and staking will require the services of a professional land surveyor. Stakes shall be in place [AT TIME OF APPLICATION] prior to issuance of the permit.

[2. *BUFFER ZONE.* A BUFFER ZONE SHALL BE MAINTAINED AROUND THE EXCAVATION PERIMETER OR PARCEL BOUNDARIES. WHERE AN EASEMENT EXISTS, A BUFFER SHALL NOT OVERLAP THE EASEMENT, UNLESS OTHERWISE CONDITIONED BY THE PLANNING DIRECTOR OR PLANNING COMMISSION.

A. THE BUFFER ZONE SHALL PROVIDE AND RETAIN A BASIC BUFFER OF:

I. 50 FEET OF UNDISTURBED NATURAL VEGETATION, OR

II. A MINIMUM SIX-FOOT EARTHEN BERM WITH AT LEAST A 2:1 SLOPE, OR

III. A MINIMUM SIX-FOOT FENCE.

B. A 2:1 SLOPE SHALL 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 SUITABLE, STABILIZING MATERIAL IS REPLACED WITHIN 30 DAYS FROM THE TIME OF REMOVAL.

C. THE PLANNING COMMISSION OR PLANNING DIRECTOR SHALL DESIGNATE ONE OR A COMBINATION OF THE ABOVE AS IT DEEMS APPROPRIATE. THE VEGETATION AND FENCE SHALL BE OF SUFFICIENT HEIGHT AND DENSITY TO PROVIDE VISUAL AND NOISE SCREENING OF THE PROPOSED USE AS DEEMED

APPROPRIATE BY THE PLANNING COMMISSION OR PLANNING DIRECTOR.

D. BUFFERS SHALL NOT CAUSE SURFACE WATER DIVERSION WHICH NEGATIVELY IMPACTS ADJACENT PROPERTIES OR WATER BODIES. SPECIFIC FINDINGS ARE REQUIRED TO ALTER THE BUFFER REQUIREMENTS OF KPB 21.29.050(A)(2)(A) IN ORDER TO MINIMIZE NEGATIVE IMPACTS FROM SURFACE WATER DIVERSION. FOR PURPOSES OF THIS SECTION, SURFACE WATER DIVERSION IS DEFINED AS EROSION, FLOODING, DEHYDRATION OR DRAINING, OR CHANNELING. NOT ALL SURFACE WATER DIVERSION RESULTS IN A NEGATIVE IMPACT.

E. AT ITS DISCRETION, THE PLANNING COMMISSION MAY WAIVE BUFFER REQUIREMENTS WHERE THE TOPOGRAPHY OF THE PROPERTY OR THE PLACEMENT OF NATURAL BARRIERS MAKES SCREENING NOT FEASIBLE OR NOT NECESSARY. BUFFER REQUIREMENTS SHALL BE MADE IN CONSIDERATION OF AND IN ACCORDANCE WITH EXISTING USES OF ADJACENT PROPERTY AT THE TIME OF APPROVAL OF THE PERMIT. THERE IS NO REQUIREMENT TO BUFFER THE MATERIAL SITE FROM USES WHICH COMMENCE AFTER THE APPROVAL OF THE PERMIT.]

2. *Buffer Area*. Material sites shall maintain buffer areas in accord with this section.

a. A buffer area of a maximum of 100 feet shall 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, a minimum six-foot fence, a minimum six-foot berm or a combination thereof.

b. A 2:1 slope shall 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 suitable, stabilizing material is replaced within 30 days from the time of removal.

c. Where an easement exists, a buffer shall not overlap the easement, unless otherwise conditioned by the planning commission or planning director, as applicable.

d. The buffer area may be reduced where the planning commission or planning director, as applicable, has approved an alternate buffer plan. The alternate buffer plan must consist of natural undisturbed vegetation, a minimum six-foot berm,

or a minimum six-foot fence or a combination thereof; unless the permittee proposes another solution approved by the planning commission or planning director, as applicable, to meet this condition.

e. The buffer requirements may be waived by the planning commission or planning director, as applicable, where the topography of the property or the placement of natural barriers makes screening not feasible or unnecessary.

f. There is no requirement to buffer a material site from uses that commence after approval of the permit.

g. When a buffer area has been denuded prior to review of the application by the planning commission or planning director revegetation may be required.

3. *Processing.* 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 [OF ADJACENT PROPERTY AT THE TIME] the properties in the vicinity at the time of approval of the permit.

4. *Water source separation.*

a. All permits shall be issued with a condition which prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance.

b. All counter permits shall be issued with a condition which requires that a four-foot vertical separation [FROM]between extraction operations and the seasonal high water table be maintained.

c. All CLUPS shall be issued with a condition which requires that a [TWO] four-foot vertical separation [FROM]between extraction operations and the seasonal high water table be maintained.

d. There shall be no dewatering either by pumping, ditching or some other form of draining unless an exemption is granted by the planning commission. The exemption for dewatering may be granted if the operator provides a statement under seal and supporting data from a duly licensed and qualified impartial

civil engineer, that the dewatering will not lower any of the surrounding property's water systems and the contractor posts a bond for liability for potential accrued damages.

5. *Excavation in the water table.* Excavation in the water table greater than 300 horizontal feet of a water source may be permitted with the approval of the planning commission based on the following:

   a. Certification by a qualified independent civil engineer or professional hydrogeologist that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources.

   b. The installation of a minimum of three water monitoring tubes or well casings as recommended by a qualified independent civil engineer or professional hydrogeologist adequate to determine flow direction, flow rate, and water elevation.

   c. Groundwater elevation, flow direction, and flow rate for the subject parcel, measured in three-month intervals by a qualified independent civil engineer or professional hydrogeologist, for at least one year prior to application. Monitoring tubes or wells must be kept in place, and measurements taken, for the duration of any excavation in the water table.

   d. Operations shall not breach an aquifer-confining layer.

6. *Waterbodies.*

   a. An undisturbed buffer shall be left and no earth material extraction activities shall take place within [100] 200 linear feet from excavation limits and the ordinary high water level of surface water bodies such as a lake, river, stream, [OR OTHER WATER BODY, INCLUDING] riparian wetlands and mapped floodplains as defined in KPB 21.06. This regulation shall not apply to man-made waterbodies being constructed during the course of the materials extraction activities. In order to prevent discharge, diversion, or capture of surface water, an additional setback from lakes, rivers, anadromous streams, and riparian wetlands may be required.

   b. Counter permits and CLUPS may contain additional conditions addressing surface water diversion.

7. *Fuel storage.* Fuel storage for containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.

8. *Roads.* Operations shall be conducted in a manner so as not to damage borough roads as required by KPB 14.40.175 and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.

9. *Subdivision.* Any further subdivision or return to acreage of a parcel subject to a conditional land use or counter permit requires the permittee to amend their permit. The planning director may issue a written exemption from the amendment requirement if it is determined that the subdivision is consistent with the use of the parcel as a material site and all original permit conditions can be met.

10. *Dust control.* Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.

11. *Hours of operation.* [ROCK CRUSHING EQUIPMENT SHALL NOT BE OPERATED BETWEEN 10:00 P.M. AND 6:00 A.M.]

    a. Processing equipment shall not be operated between 7:00 p.m. and 6:00 a.m.

    b. The planning commission may grant exceptions to increase the hours of operation and processing based on surrounding land uses, topography, screening the material site from properties in the vicinity and conditions placed on the permit by the planning commission to mitigate the noise, dust and visual impacts caused by the material site.

12. *Reclamation.*

    a. Reclamation shall be consistent with the reclamation plan approved by the planning commission or planning director as appropriate in accord with KPB 21.29.060.

    b. [AS A CONDITION OF ISSUING THE PERMIT, THE APPLICANT SHALL SUBMIT A RECLAMATION PLAN AND POST A BOND TO COVER THE ANTICIPATED RECLAMATION COSTS IN AN AMOUNT TO BE DETERMINED BY THE PLANNING DIRECTOR. THIS BONDING REQUIREMENT SHALL NOT APPLY TO SAND, GRAVEL

OR MATERIAL SITES FOR WHICH AN EXEMPTION FROM STATE BOND REQUIREMENTS FOR SMALL OPERATIONS IS APPLICABLE PURSUANT TO AS 27.19.050.] The applicant shall operate the material site consistent with the approved reclamation plan and provide bonding pursuant to 21.29.060(B). This bonding requirement shall not apply to sand, gravel or material sites for which an exemption from state bond requirements for small operations is applicable pursuant to AS 27.19.050.

13. *Other permits.* Permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC air and water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives. Any violation of these regulations or permits reported to or observed by borough personnel will be forwarded to the appropriate agency for enforcement.

14. [*VOLUNTARY]Volunteered permit conditions.* Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission for CLUPs or the planning director for counter permits. Such conditions must be consistent with the standards set forth in KPB 21.29.040(A). Planning commission approval of such conditions shall be contingent upon a finding that the conditions will be in the best interest of the borough and the surrounding property owners. [VOLUNTARY] Volunteered permit conditions apply to the subject parcel and operation, regardless of a change in ownership. A change in [VOLUNTARY] volunteered permit conditions may be proposed [AT] by permit [RENEWAL OR AMENDMENT] modification.

15. *Signage.* For permitted parcels on which the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit, the permittee shall post notice of intent on parcel corners or access, whichever is more visible. Sign dimensions shall be no more than 15" by 15" and must contain the following information: the phrase "Permitted Material Site" along with the permittee's business name and a contact phone number.

16. A*ppeal.* No clearing of vegetation shall occur within the 100-foot maximum buffer area from the permit boundary nor shall the permit be issued or operable until the deadline for the appeal, pursuant to KPB 21.20, has expired.

17. *Sound level.*

    a. No sound resulting from the materials extraction activities shall create a sound level, when measured at or within the property boundary of the adjacent land, that exceeds 75 dB(A).

    b. For any sound that is of short duration between the hours of 7 a.m. and 7 p.m. the levels may be increased by:

        i. Five dB(A) for a total of 15 minutes in any one hour; or

        ii. Ten dB(A) for a total of five minutes in any hour; or

        iii. Fifteen db(A) for a total of one and one-half minutes in any one-hour period.

    c. At its discretion, the planning commission or planning director, as applicable, may reduce or waive the sound level requirements on any or all property boundaries. Sound level requirements shall be made in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.

    d. Mandatory condition KPB 21.29.050(A)(17) shall expire 365 days from adoption of KPB 21.29.050(A)(17) unless extended or modified by the assembly.

18. *Reverse signal alarms*. Reverse signal alarms, used at the material site on loaders, excavators, and other earthmoving equipment shall be more technically advanced devices; such as, a multi-frequency "white noise" alarms rather than the common, single (high-pitch) tone alarms. At its discretion, the planning commission or planning director, as applicable, may waive this requirement or a portion of this requirement. The waiver of this requirement shall be made in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.

19. *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 a borough road service area as appropriate, prior to issuance of a material site permit when accessing a public right-of-way.

20. *Dust suppression*. Dust suppression shall be required when natural precipitation is not adequate to suppress the dust generated by the material site traffic on haul routes. Based on surrounding land uses the planning commission or planning director, as applicable, may waive or reduce the requirement for dust suppression on haul routes.

21. *Surface water protection.* Use of surface water protection measures as specified in KPB 21.29.030(A)(8) must be approved by a licensed civil engineer.

22. *Groundwater elevation.* All material sites must maintain one monitoring tube per ten acres of excavated area four feet below the proposed excavation.

23. *Setback.* Material site excavation areas shall be 250-feet from the property boundaries of any local option zoning district, existing public school ground, private school ground, college campus, child care facility, multi-purpose senior center, assisted living home, and licensed health care facility. If overlapping, the buffer areas of the excavation shall be included in the 250-foot setback.

**21.29.055. Decision.**

The planning commission or planning director, as applicable, shall approve permit applications meeting the mandatory conditions or shall disapprove permit applications that do not meet the mandatory conditions. The decision shall include written findings supporting the decision, and when applicable, there shall be written findings supporting any site-specific alterations to the mandatory condition as specifically allowed by KPB 21.29.050(A)(2)(a), (2)(c), (2)(d), (2)(e), (2)(g), (3), (4)(d), (5), (11)(b), (12), (14), (17)(c), (18), (19), and (20) and as allowed for the KPB 21.29.060 reclamation plan.

**21.29.060. Reclamation plan.**

A. All material site permit applications require an overall reclamation plan along with a five-year reclamation plan. A site plan for reclamation shall be required including a scaled drawing with finished contours. A five-year reclamation plan must be submitted with a permit extension request.

B. The applicant shall revegetate with a non-invasive plant species and reclaim all disturbed land [UPON EXHAUSTING THE MATERIAL ON-SITE, OR WITHIN A

PRE-DETERMINED TIME PERIOD FOR LONG-TERM ACTIVITIES, SO AS TO LEAVE THE LAND IN A STABLE CONDITION. RECLAMATION MUST OCCUR FOR ALL EXHAUSTED AREAS OF THE SITE EXCEEDING FIVE ACRES BEFORE A FIVE-YEAR RENEWAL PERMIT IS ISSUED, UNLESS OTHERWISE REQUIRED BY THE PLANNING COMMISSION. IF THE MATERIAL SITE IS ONE ACRE OR LESS IN SIZE AND HAS BEEN GRANTED A CLUP DUE TO EXCAVATION IN THE WATER TABLE, RECLAMATION MUST BE PERFORMED AS SPECIFIED BY THE PLANNING COMMISSION OR PLANNING DIRECTOR IN THE CONDITIONAL USE OR COUNTER PERMIT] within the time period approved with the reclamation plan so as to leave the land in a stable condition. Bonding shall be required at $2,000.00 per acre for all acreage included in the current five-year reclamation plan. In the alternative, the planning director may accept a civil engineer'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 shall be enforced under KPB 21.50.

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

1. Topsoil that is not promptly redistributed to an area being reclaimed will be separated and stockpiled for future use. [THIS MATERIAL WILL BE PROTECTED FROM EROSION AND CONTAMINATION BY ACIDIC OR TOXIC MATERIALS AND PRESERVED IN A CONDITION SUITABLE FOR LATER USE.]

2. The area will be backfilled, graded and recontoured using strippings, overburden, and topsoil [TO A CONDITION THAT ALLOWS FOR THE REESTABLISHMENT OF RENEWABLE RESOURCES ON THE SITE WITHIN A REASONABLE PERIOD OF TIME. IT WILL BE STABILIZED TO A CONDITION THAT WILL ALLOW SUFFICIENT MOISTURE FOR REVEGETATION] so that it will be stabilized to a condition that will allow for the revegetation as required by KPB 21.29.060(B).

3. [SUFFICIENT QUANTITIES OF STOCKPILED OR IMPORTED TOPSOIL WILL BE SPREAD OVER THE RECLAIMED AREA TO A DEPTH OF FOUR INCHES TO PROMOTE NATURAL PLANT GROWTH THAT CAN REASONABLY BE EXPECTED TO REVEGETATE THE AREA WITHIN FIVE YEARS. THE APPLICANT MAY USE THE EXISTING NATURAL ORGANIC BLANKET REPRESENTATIVE OF THE PROJECT AREA IF THE SOIL IS FOUND TO HAVE AN ORGANIC CONTENT OF 5% OR MORE AND MEETS THE SPECIFICATION OF CLASS B TOPSOIL REQUIREMENTS AS SET BY ALASKA TEST METHOD (ATM) T-6.] The [MATERIAL] topsoil used for reclamation shall 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 a licensed engineer.

4. Exploration trenches or pits will be backfilled. Brush piles and unwanted vegetation shall 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.

5. [PEAT AND T]Topsoil mine operations shall ensure a minimum of [TWO] four inches of suitable growing medium is left or replaced on the site upon completion of the reclamation activity (unless otherwise authorized).

6. Ponding may be used as a reclamation method as approved by the planning commission.

D. The five-year reclamation plan shall describe the total acreage to be reclaimed [EACH YEAR, A LIST OF EQUIPMENT (TYPE AND QUANTITY) TO BE USED IN RECLAMATION, AND A TIME SCHEDULE OF RECLAMATION MEASURES] relative to the total excavation plan.

**21.29.070. Permit extension and revocation.**

A. Conditional land use permittees must submit a request in writing for permit extension every five years after the permit is issued. Requests for permit extension must be made at least 30 days prior to permit expiration. Counter permittees must submit any request for a 12-month extension at least 30 days prior to the expiration of the original 12-month permit period.

B. A permit extension certificate for a CLUP may be granted by the planning director after 5 years, and after one year for a counter permit where no modification to operations or conditions are proposed.

C. Permit extension may be denied if: (1) reclamation required by this chapter and the original permit has not been performed; (2) the permittee is otherwise in noncompliance with the original permit conditions; or (3) the permittee has had a permit violation in the last two years and has not fulfilled compliance requests.

D. A modification application shall be processed pursuant to KPB 21.29.030-050 with public notice given as provided by KPB 21.25.060 when operators request modification of their permit conditions based on changes in operations set forth in the modification application.

E. There shall be no fee for permit extensions approved by the planning director. The fee for a permit modification processed under KPB

21.29.070(D) will be the same as an original permit application in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees.

F. Failure to submit a request for extension will result in the expiration of the permit. The borough may issue a permit termination document upon expiration pursuant to KPB 21.29.080. Once a permit has expired, a new permit application approval process is required in order to operate the material site.

G. Permits may be revoked pursuant to KPB 21.50. 21.29.080. - Permit termination.

When a permit expires, is revoked, or a permittee requests termination of their permit, a review of permit conditions and site inspections will be conducted by the planning department to ensure code compliance and verify site reclamation prior to termination. When the planning director determines that a site qualifies for termination, a termination document shall be issued to the permittee.

**21.29.090. Permit modifications.**

If a permittee revises or intends to revise operations (at a time other than permit extension) so that they are no longer consistent with the original application, a permit modification is required. The planning director shall determine whether the revision to operations requires a modification. Permit modification shall be processed in the same manner as original permits.

**21.29.100. Recordation.**

All permits, permit extensions, modified permits, prior existing uses, and terminations shall be recorded. Failure to record a material site document does not affect the validity of the documents.

**21.29.110. Violations.**

A. Violations of this chapter shall be governed by KPB 21.50.

B. In addition to the remedies provided in KPB 21.50, the planning director may require bonding in a form and amount adequate to protect the borough's interests for an owner or operator who has been cited for three violations of KPB 21.50, 21.25, and 21.29 within a three-year period. The violations need not be committed at the same material site. Failure to provide requested bonding may result in permit revocation proceedings.

**21.29.120. Prior existing uses.**

A. Material sites are not held to the standards and conditions of a CLUP if a prior existing use (PEU) determination was granted for the parcel in accordance with KPB 21.29.120(B). To qualify as a PEU, a parcel's use as a material site must have commenced or have been operated after May 21, 1986, and prior to May 21, 1996, provided that the subject use continues in the same location. In no event shall a prior existing use be expanded beyond the smaller of the lot, block, or tract lines as they existed on May 21, 1996. If a parcel is further subdivided after May 21, 1996, the pre-existing use may not be expanded to any lot, tract, or parcel where extraction had not occurred before or on February 16, 1999. If a parcel is subdivided where extraction has already occurred, the prior existing use is considered abandoned, and a CLUP must be obtained for each parcel intended for further material site operations. The parcel owner may overcome this presumption of abandonment by showing that the subdivision is not inconsistent with material site operation. If a parcel subject to a prior existing use is conveyed, the prior existing use survives the conveyance.

B. Owners of sites must have applied to be registered as a prior existing use prior to January 1, 2001.

C. [ANY PRIOR EXISTING USE THAT HAS NOT OPERATED AS A MATERIAL SITE BETWEEN MAY 21, 1996, AND MAY 21, 2011, IS CONSIDERED ABANDONED AND MUST THEREAFTER COMPLY WITH THE PERMIT REQUIREMENTS OF THIS CHAPTER. THE PLANNING DIRECTOR SHALL DETERMINE WHETHER A PRIOR EXISTING USE HAS BEEN ABANDONED. AFTER GIVING NOTICE TO THE PARCEL OWNER THAT A PEU IS CONSIDERED ABANDONED, A PARCEL OWNER MAY PROTEST THE TERMINATION OF THE PEU BY FILING WRITTEN NOTICE WITH THE PLANNING DIRECTOR ON A FORM PROVIDED BY THE PLANNING DEPARTMENT. WHEN A PROTEST BY A PARCEL OWNER IS FILED, NOTICE AND AN OPPORTUNITY TO MAKE WRITTEN COMMENTS REGARDING PRIOR EXISTING USE STATUS SHALL BE ISSUED TO OWNERS OF PROPERTY WITHIN A ONE-HALF MILE RADIUS OF THE PARCEL BOUNDARIES OF THE SITE. THE OWNER OF THE PARCEL SUBJECT TO THE PRIOR EXISTING USE MAY SUBMIT WRITTEN INFORMATION, AND THE PLANNING DIRECTOR MAY GATHER AND CONSIDER ANY INFORMATION RELEVANT TO WHETHER A MATERIAL SITE HAS OPERATED. THE PLANNING DIRECTOR MAY CONDUCT A HEARING IF HE OR SHE BELIEVES IT WOULD ASSIST THE DECISION-MAKING PROCESS. THE PLANNING DIRECTOR SHALL ISSUE A WRITTEN DETERMINATION WHICH SHALL BE DISTRIBUTED TO ALL PERSONS MAKING WRITTEN COMMENTS. THE PLANNING DIRECTOR'S DECISION REGARDING TERMINATION OF THE PRIOR EXISTING USE STATUS MAY BE APPEALED TO THE PLANNING COMMISSION WITHIN 15 DAYS OF THE DATE OF THE NOTICE OF DECISION.]

<u>The owner of a material site that has been granted a PEU determination shall provide proof of compliance with AS 27.19.030 – 050 concerning</u>

reclamation to the planning department no later than July 1, 2021. The proof shall consist of an Alaska Department of Natural Resources (DNR) approved reclamation plan and receipt for bonding or a letter of intent filed with DNR.

1. The planning department may request proof of continued compliance with AS 27.19.030 – 050 on an annual basis.

2. Pursuant to KPB 21.29.110 the enforcement process and remedies set forth in KPB 21.50 shall govern if the proof that the statutory requirements contained in AS 27.19.030-050 is not provided to the planning department.

**SECTION 3.** That KPB 21.50.055 is hereby amended, as follows:

**21.50.055. Fines.**

A. Following are the fines for violations of this title. Each day a violation occurs is a separate violation. Violations begin to accrue the date the enforcement notice is issued and continue to the date the enforcement is initially set for hearing. The fine for a violation may not be reduced by the hearing officer to less than the equivalent of one day's fine for each type of violation.

| Code Chapter & Section | Violation Description | Daily Fine |
|---|---|---|
| KPB 20.10.030(A) | Offering land for sale without final plat approval | $300.00 |
| KPB 20.10.030(B) | Filing/recording unapproved subdivision/plat | $300.00 |
| KPB 20.10.030(C) | Violation of subdivision code or condition | $300.00 |
| KPB 21.05.040(C) | Violation of variance conditions | $300.00 |
| KPB 21.06.030(D) | Structure or activity prohibited by KPB 21.06 | $300.00 |
| KPB 21.06.040 | Failure to obtain a Development Permit/Floodplain Management | $300.00 |
| KPB 21.06.045 | Failure to obtain a SMFDA Development Permit/Violation of SMFDA permit conditions/Floodplain Management | $300.00 |
| KPB 21.06.050 | Violation of permit conditions/Floodplain Management | $300.00 |

| | | |
|---|---|---|
| KPB 21.18.071 | Failure to obtain staff permit/Violation of staff permit/Anadromous Streams Habitat Protection | $300.00 |
| KPB 21.18.072 | Failure to obtain limited commercial activity permit/Violation of permit conditions/Anadromous Streams Habitat Protection | $300.00 |
| KPB 21.18.075 | Prohibited use or structure/Anadromous Streams Habitat Protection | $300.00 |
| KPB 21.18.081 | Failure to obtain Conditional Use Permit/Violation of Conditional Use Permit Condition/Anadromous Streams Habitat Protection | $300.00 |
| KPB 21.18.090 | Failure to obtain prior existing use/structure permit/Violation of permit conditions/Anadromous Streams Habitat Protection | $300.00 |
| KPB 21.18.135(C) | Violation of emergency permit conditions/anadromous stream habitat protection | $300.00 |
| KPB 21.25.040 | Failure to Obtain a Permit/Material Site/Correctional community residential center/Concentrated Animal Feeding Operation | $300.00 |
| KPB 21.28.030 | Violation of permit conditions/Concentrated Animal Feeding Operations | $300.00 |
| KPB 21.29.020 | Failure to Obtain a counter permit/Material Site Permits | $300.00 |
| KPB 21.29.050 | Violation of Conditional Land Use Permit Conditions/Material Site Permits<br>Also applies to KPB 21.26 material site permits | $300.00 |
| KPB 21.29.060 | Violation of Reclamation Plan/Material Site Permits<br>Also applies to KPB 21.26 material site permits | $300.00 |
| <u>KPB 21.29.120</u> | <u>Failure to Provide Reclamation Plan and Proof of Bonding or Letter of Intent</u> | <u>$300.00</u> |
| KPB 21.44.100 | Violation of Pre-existing structures/Local Option Zoning | $300.00 |
| KPB 21.44.110(D) | Prohibited expansion of nonconforming use/Local Option Zoning | $300.00 |

| | | |
|---|---|---|
| KPB 21.44.110(E) | Prohibited Change in Use/Local Option Zoning | $300.00 |
| KPB 21.44.110(G) | Violation of Conditions on Nonconforming Use/Local Option Zoning | $300.00 |
| KPB 21.44.130(C)(D) | Violation of Home Occupation Standards and Conditions/Local Option Zoning | $300.00 |
| KPB 21.44.130(F) | Disallowed Home Occupation/Local Option Zoning | $300.00 |
| KPB 21.44.135 | Failure to file development notice | $300.00 |
| KPB 21.44.160(A)(B) | Prohibited use | $300.00 |
| KPB 21.44.160(C) | Violation of Development Standards/Single Family Zoning/Local Option Zoning | $300.00 |
| KPB 21.44.165(A)(B) | Prohibited use | $300.00 |
| KPB 21.44.165(C) | Violation of Development Standards/Small Lot Residential Zoning/Local Option Zoning | $300.00 |
| KPB 21.44.170(A)(B) | Prohibited use | $300.00 |
| KPB 21.44.170(C) | Violation of Development Standards/Rural Residential District/Local Option Zoning | $300.00 |
| KPB 21.44.175(B)(C) | Prohibited Use | $300.00 |
| KPB 21.44.175(D) | Violation of Development Standards/Residential Waterfront | $300.00 |
| KPB 21.44.180(A)(B) | Prohibited Use | $300.00 |
| KPB 21.44.180(C) | Violation of Development Standards/Multi-Family Residential District/Local Option Zoning | $300.00 |
| KPB 21.44.190(A)(B) | Prohibited Use | $300.00 |
| KPB 21.44.190(C) | Violation of Development Standards/Industrial District/Local Option Zoning | $300.00 |

| | | |
|---|---|---|
| KPB 21.46.030(b) | Failure to maintain bear-resistant garbage cans/Local option zone/Birch and Grove Ridge subdivisions Rural Residential District | $300.00 |
| KPB 21.50.100(F) | Removal of posted enforcement notice | $300.00 |
| KPB 21.50.100(G) | Violation of enforcement notice | $1,000.00 |
| KPB 21.50.130(I) | Violation of an enforcement order | $1,000.00 |

**SECTION 4.** That this ordinance shall become effective upon its enactment.

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

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

| | |
|---|---|
| Yes: | Dunne, Johnson, Cooper |
| No: | Bjorkman, Blakeley, Carpenter, Cox, Hibbert, Smalley |
| Absent: | None |

| | |
|---|---|
| Introduced by: | Mayor, Johnson |
| Date: | 12/07/21 |
| Hearing: | 01/18/22 |
| Action: | Postponed as Amended to 02/01/22 |
| Vote: | 5 Yes, 3 No, 1 Absent |
| Date: | 02/01/22 |
| Action: | Tabled |
| Vote: | 9 Yes, 0 No, 0 Absent |

**KENAI PENINSULA BOROUGH**
**ORDINANCE 2021-41**

**AN ORDINANCE AMENDING KPB 21.29, KPB 21.25, AND KPB 21.50.055 REGARDING MATERIAL SITE PERMITS, APPLICATIONS, CONDITIONS, AND PROCEDURES**

**WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A of the 2019 Kenai Peninsula Borough Comprehensive Plan is to establish policies that better guide land use to minimize land use conflicts, maintain property values, protect natural systems and support individual land use freedoms; and

**WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A, Strategy 1 of the 2019 Comprehensive Plan is to adopt limited development standards for specific areas and uses to reduce potential off site impacts of development on adjoining uses and the natural environment; and

**WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A, Strategy 2 of the 2019 Comprehensive Plan is to update the Borough's existing conditional use regulations for gravel extraction and other uses to better address reoccurring land use conflicts; and

**WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A, Strategy 2a of the 2019 Comprehensive Plan is to clarify the broad purpose of the conditional use process and clear parameters for allowable conditional uses that include reasonable, project-specific conditions that reduce impacts on surrounding uses, and if/when a conditional use permit can be denied and consider establishing conditions that require larger setbacks, safety and visual screening, control on access routes, control on hours of operation, and address environmental concerns; and

**WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A, Strategy 2d of the 2019 Comprehensive Plan is to complete improvements to the rules guiding gravel extraction, with the goal of providing an appropriate balance between providing access to affordable materials for development and protecting quality of life for borough residents; and

**WHEREAS,** Goal 1 of the Mining and Minerals Processing section of the 1990 Kenai Peninsula Borough Coastal Management Program is to provide opportunities to explore, extract and process minerals, sand and gravel resources, while protecting environmental quality and other resource users; and

**WHEREAS,** an assembly subcommittee was formed in 2005 to review the material site code; and

**WHEREAS,** Ordinance 2006-01 (Substitute) codified as KPB 21.29 was adopted in 2006 after consideration of the subcommittee's report; and

**WHEREAS,** the planning department has been administering Ordinance 2006-01 (Substitute), codified as KPB 21.29 for 13 years; and

**WHEREAS,** KPB 21.25.040 requires a permit for the commencement of certain land uses within the rural district of the Kenai Peninsula Borough; and

**WHEREAS,** the planning department has recognized that certain provisions of the material site ordinance could be better clarified for the operators, public, and staff; and

**WHEREAS,** the planning commission and planning department received comments expressing concerns about dust, noise, safety, and aesthetics; and

**WHEREAS,** approximately 253 registered prior existing use material sites and approximately 99 conditional land use permits for material sites have been granted since 1996;

**WHEREAS,** the planning department receives numerous complaints regarding unreclaimed parcels registered as nonconforming prior existing material sites which have not been regulated by KPB; and

**WHEREAS,** the assembly established a material site work group by adoption of Resolution 2018-004 (Substitute) to engage in a collaborative discussion involving the public and industry to make recommendations regarding the material site code; and

**WHEREAS,** assembly Resolution 2018-025 extended the deadline for the final report to be submitted to the assembly, administration and planning commission to April 30, 2019; and

**WHEREAS,** certain additional conditions placed on material site permits would facilitate a reduction in the negative secondary impacts of material sites, e.g. dust, noise, safety, and unsightliness of material sites; and

**WHEREAS,** at its regularly scheduled meeting of November 12, 2019, the planning commission recommended approval by unanimous consent;

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

**SECTION 1.** That KPB 21.25.030 is hereby amended, as follows:

**21.25.030. - Definitions.**

Unless the context requires otherwise, the following definitions apply to CLUPs:

*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.

*Animal feeding operation* means a lot or facility (other than an aquatic animal production facility) where animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period.

a. The same animals need not remain on the lot for 45 days or more; rather, some animals are fed or maintained on the lot 45 days out of any 12-month period, and

b. Animals are "maintained" for purposes of this ordinance when they are confined in an area where waste is generated and/or concentrated or are watered, cleaned, groomed, or medicated in a confined area, even if the confinement is temporary.

c. Two or more animal feeding operations under common ownership are considered, for the purposes of these regulations, to be a single animal feeding operation if they adjoin each other.

d. Slaughterhouses are animal feeding operations.

*Animal unit* means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighting [weighing] over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

*Animal waste* means animal excrement, animal carcasses, feed wasted, process wastewaters or any other waste associated with the confinement of animals from an animal feeding operation.

*Animal waste management system* means a combination of structures and nonstructural practices serving an animal feeding operation that provides for the collection, treatment, disposal, distribution, storage and land application of animal waste.

*Aquifer* means a subsurface formation that contains sufficient water-saturated permeable material to yield economical quantities of water to wells and springs.

*Aquifer-confining layer* means that layer of relatively impermeable soil below an aquifer, typically clay, which confines water.

*Assisted living home* means a residential facility that serves three or more adults who are not related to the owner by blood or marriage, or that receives state or federal payment for service of the number of adults served. The services and activities may include, but are not limited to, housing and food services to its residents, assistance with activities of daily living, and personal assistance, and that complies with Alaska Statutes 47.32.0101 – 47.60.900, as amended.

*Child care facility* means a place where child care is regularly provided for children under the age of 12 for periods of time that are less than 24 hours in duration and that is licensed pursuant to AS 47.35.005 et seq., excluding child care homes and child care group homes, as currently written or hereafter amended.

*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.

*Concentrated animal feeding operation (CAFO)* means an animal feeding operation confining at least: (1) 1,000 swine weighing at least approximately 55 pounds; (2) 1,000 slaughter and feeder cattle; (3) 700 mature dairy cattle; (4) 500 horses; (5) 10,000 sheep or lambs; (6) 55,000 turkeys; (7) 100,000 laying hens or broilers (if the facility has continuous overflow watering); (8) 30,000 laying hens or broilers (if the facility has a liquid manure system); (9) 5,000 ducks; (10) 1,000 animal units; or (11) a combination of the above resulting in at least 1,000 animal units. Each individual parcel upon which a CAFO is located is a separate CAFO unless they adjoin each other.

*Conditioning or processing material* means a value-added process including batch plants, asphalt plants, screening, washing, and crushing by use of machinery.

*Correctional community residential center (CCRC)* means a community residential center, other than a correctional institution, for the short-term or temporary detention of prisoners in transition from a correctional institution, performing restitution, or undergoing rehabilitation or recovery from a legal infirmity. CCRCs may not be used for detention of prisoners who pose a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four-hour physical supervision. The determination of whether a prisoner poses a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four-hour physical supervision shall be made by the commissioner of corrections for state prisoners and the United States Attorney General, or the U.S. Director of Bureau of Prisons for federal prisoners.

*Correctional institution* means a facility other than a correctional community residential center providing for the imprisonment or physical confinement or detention of prisoners under guard or twenty-four-hour physical supervision, such as prisons, prison farms, jails, reformatories, penitentiaries, houses of detention, detention centers, honor camps, and similar facilities.

*Development plan* means a plan created to describe a proposed development on a specific building site excluding material sites under KPB 21.29.020.

*Disturbed* includes active excavation and all areas necessary to use a parcel as a material site including but not limited to berms, stockpiles, and excavated areas excluding all areas reclaimed for alternate post mining land uses.

[*EXHAUSTED* MEANS THAT ALL MATERIAL OF A COMMERCIAL QUALITY IN A SAND, GRAVEL, OR MATERIAL SITE HAS BEEN REMOVED.]

*Federal prisoners* means offenders in the custody or control or under the care or supervision of the United States Attorney General or the Bureau of Prisons.

*Groundwater* means, in the broadest sense, all subsurface water, more commonly that part of the subsurface water in the saturated zone.

*Haul route* includes the roads used to haul materials from the permit area to a roadway designated as collector, arterial or interstate by the Alaska Department of Transportation & Public Facilities.

*Liquid manure* or *liquid animal waste system* means any animal waste management system which uses water as the primary carrier of such waste into a primary retention structure.

*Multi-purpose senior center* is a facility where persons 60 years of age or older are provided with services and activities suited to their particular needs. The

services and activities may include, but are not limited to, health examinations, legal assistance, recreation programs, general social activities, telephone reassurance programs, nutrition classes, meals at minimum cost, counseling, protective services, programs for shut-ins and education programs, and that complies with Alaska Statutes 47.60.010—47.60.090, as currently written or hereafter amended.

*Permit area* includes all excavation, processing, buffer and haul route areas of a CLUP or counter permit.

*Person* shall include any individual, firm, partnership, association, corporation, cooperative, or state or local government.

*Prisoner* means:

a. a person held under authority of state law in official detention as defined in AS 11.81.900;

b. includes a juvenile committed to the custody of the Alaska Department of Corrections Commissioner when the juvenile has been charged, prosecuted, or convicted as an adult.

*Private school* is a school comprised of kindergarten through 12th grade, or any combination of those grades, that does not receive direct state or federal funding and that complies with either Alaska Statute 14.45.030 or 14.45.100—14.45.130, as currently written or hereafter amended.

*Public school* is a school comprised of kindergarten through 12th grade, or any combination of those grades, that is operated by the State of Alaska or any political subdivision of the state.

*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.

*Seasonal high groundwater table* means the highest level to which the groundwater rises on an annual basis.

*Senior housing project* means senior housing as defined for purposes of construction or operation in 15 Alaska Administrative Code 151.950(c), as currently written or hereafter amended.

*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.

*Surface water* means water on the earth's surface exposed to the atmosphere such as rivers, lakes, and creeks.

*Topsoil* means material suitable for vegetative growth.

*Vicinity* means the same as the area of notification.

*Waterbody* means any lake, pond, stream, riparian wetland, or groundwater into which storm water runoff is directed.

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

**SECTION 2.** That KPB 21.29 is hereby amended, as follows:

**CHAPTER 21.29. MATERIAL SITE PERMITS**

**21.29.010. 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 20 feet of a right-of-way or within ten feet of a lot line.

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 does not require a permit, however, operators subject to this exemption shall 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.

C. A prior existing use under KPB 21.29.120 does not require a material extraction permit, but a floodplain development permit is required for all activities within any mapped special flood hazard area.

D. Material extraction incidental to site development does not require a permit when an approved site development plan is on file with the planning department. Site development plans are approved by the planning director and are valid for one year. The site development plan may be renewed on an annual basis subject to the planning director's approval.

**21.29.020. Material extraction and activities requiring a permit.**

A. *Counter permit.* A counter permit is required for material extraction which disturbs no more than 2.5 cumulative acres and does not enter the water table. Counter permits are approved by the planning director, and are not subject to the notice requirements or planning commission approval of KPB 21.25.060. A counter permit is valid for a period of 12 months, with a possible 12-month extension.

B. *Conditional land use permit.* A conditional land use permit (CLUP) is required for material extraction which disturbs more than 2.5 cumulative acres, or material extraction of any size that enters the water table. A CLUP is required for materials processing. A CLUP is valid for a period of five years. The provisions of KPB Chapter 21.25 are applicable to material site CLUPS and the provisions of KPB 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling.

**21.29.030. Application procedure.**

A. In order to obtain a counter permit or CLUP, an applicant shall 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 shall include the following items:

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)(2);

4. Reclamation plan consistent with KPB 21.29.060;

5. The depth of excavation;

6. Type of material to be extracted and type of equipment to be used;

7. Any voluntary permit conditions the applicant proposes. Failure to include a proposed voluntary permit condition in the application does not preclude the applicant from proposing or agreeing to voluntary permit conditions at a later time;

8. Surface water protection measures, if any, for adjacent properties designed by a civil engineer, including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence;

9. A site plan and field verification prepared by a professional surveyor licensed and registered in the State of Alaska, including the following information:

   a. Location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;

   b. Proposed buffers consistent with KPB 21.29.050(A)(2), or alternate buffer plan;

   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 the issuance of the material site permit;

   e. Anticipated haul routes;

   f. Location and [DEPTH] elevation of test holes, and depth of groundwater, if encountered between May and December. At least one test hole per ten acres of excavated area is required to be dug. The test holes shall be at least four feet below the proposed depth of excavation;

   g. Location of wells of adjacent property owners within 300 feet of the proposed parcel boundary;

   h. Location of any water body on the parcel, including the location of any riparian wetland as determined by ["WETLAND MAPPING AND CLASSIFICATION OF THE KENAI LOWLAND, ALASKA" MAPS CREATED BY THE KENAI WATERSHED FORUM] best available data;

   [I. SURFACE WATER PROTECTION MEASURES FOR ADJACENT PROPERTIES, INCLUDING THE USE OF DIVERSION CHANNELS, INTERCEPTION DITCHES, ON-SITE COLLECTION DITCHES, SEDIMENT PONDS AND TRAPS, AND SILT FENCE; PROVIDE DESIGNS FOR SUBSTANTIAL STRUCTURES; INDICATE WHICH

STRUCTURES WILL REMAIN AS PERMANENT FEATURES AT THE CONCLUSION OF OPERATIONS, IF ANY;]

[J]i. Location of any processing areas on parcel, if applicable;

[K]j. North arrow;

[L]k. The scale to which the site plan is drawn;

[M]l. Preparer's name, date and seal;

[N]m. Field verification shall 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.

B. In order to aid the planning commission or planning director's decision-making process, the planning director shall provide vicinity, aerial, land use, and ownership maps for each application and may include additional information.

**21.29.040. Standards for sand, gravel or material sites.**

A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, and visual impacts. Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:

1. Protects against the lowering of water sources serving other properties;

2. Protects against physical damage to [OTHER] adjacent properties;

3. [MINIMIZES] Protects against off-site movement of dust;

4. [MINIMIZES] Protects against noise disturbance to other properties;

5. [MINIMIZES] Protects against visual impacts of the material site; [AND]

6. Provides for alternate post-mining land uses[.];

7. Protects Receiving Waters against adverse effects to fish and wildlife habitat;

8. Protects against traffic impacts; and

9. Provides consistency with the objectives of the Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents.

**21.29.050. Permit conditions.**

A. The following mandatory conditions apply to counter permits and CLUPs issued for sand, gravel or material sites:

1. [*PARCEL]Permit boundaries.* [ALL BOUNDARIES OF THE SUBJECT PARCEL] The buffers and any easements or right-of-way abutting the proposed permit area shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter. Field verification and staking will require the services of a professional land surveyor. Stakes shall be in place [AT TIME OF APPLICATION] prior to issuance of the permit.

[2. *BUFFER ZONE.* A BUFFER ZONE SHALL BE MAINTAINED AROUND THE EXCAVATION PERIMETER OR PARCEL BOUNDARIES. WHERE AN EASEMENT EXISTS, A BUFFER SHALL NOT OVERLAP THE EASEMENT, UNLESS OTHERWISE CONDITIONED BY THE PLANNING DIRECTOR OR PLANNING COMMISSION.

A. THE BUFFER ZONE SHALL PROVIDE AND RETAIN A BASIC BUFFER OF:

I. 50 FEET OF UNDISTURBED NATURAL VEGETATION, OR

II. A MINIMUM SIX-FOOT EARTHEN BERM WITH AT LEAST A 2:1 SLOPE, OR

III. A MINIMUM SIX-FOOT FENCE.

B. A 2:1 SLOPE SHALL 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 SUITABLE, STABILIZING MATERIAL IS REPLACED WITHIN 30 DAYS FROM THE TIME OF REMOVAL.

C. THE PLANNING COMMISSION OR PLANNING DIRECTOR SHALL DESIGNATE ONE OR A COMBINATION OF THE ABOVE AS IT DEEMS APPROPRIATE. THE VEGETATION AND FENCE SHALL BE OF SUFFICIENT HEIGHT AND DENSITY TO PROVIDE VISUAL AND NOISE SCREENING OF THE PROPOSED USE AS DEEMED

APPROPRIATE BY THE PLANNING COMMISSION OR PLANNING DIRECTOR.

D. BUFFERS SHALL NOT CAUSE SURFACE WATER DIVERSION WHICH NEGATIVELY IMPACTS ADJACENT PROPERTIES OR WATER BODIES. SPECIFIC FINDINGS ARE REQUIRED TO ALTER THE BUFFER REQUIREMENTS OF KPB 21.29.050(A)(2)(A) IN ORDER TO MINIMIZE NEGATIVE IMPACTS FROM SURFACE WATER DIVERSION. FOR PURPOSES OF THIS SECTION, SURFACE WATER DIVERSION IS DEFINED AS EROSION, FLOODING, DEHYDRATION OR DRAINING, OR CHANNELING. NOT ALL SURFACE WATER DIVERSION RESULTS IN A NEGATIVE IMPACT.

E. AT ITS DISCRETION, THE PLANNING COMMISSION MAY WAIVE BUFFER REQUIREMENTS WHERE THE TOPOGRAPHY OF THE PROPERTY OR THE PLACEMENT OF NATURAL BARRIERS MAKES SCREENING NOT FEASIBLE OR NOT NECESSARY. BUFFER REQUIREMENTS SHALL BE MADE IN CONSIDERATION OF AND IN ACCORDANCE WITH EXISTING USES OF ADJACENT PROPERTY AT THE TIME OF APPROVAL OF THE PERMIT. THERE IS NO REQUIREMENT TO BUFFER THE MATERIAL SITE FROM USES WHICH COMMENCE AFTER THE APPROVAL OF THE PERMIT.]

2. *Buffer Area*. Material sites shall maintain buffer areas in accord with this section.

a. A buffer area of a maximum of 100 feet shall 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, a minimum six-foot fence, a minimum six-foot earthen berm with at least a 2/1 slope or a combination thereof.

b. A 2:1 slope shall 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 suitable, stabilizing material is replaced within 30 days from the time of removal.

c. Where an easement exists, a buffer shall not overlap the easement, unless otherwise conditioned by the planning commission or planning director, as applicable.

d. The vegetation and fence shall be of sufficient height and density to provide visual and noise screening of the proposed

use as deemed appropriate by the planning commission or the planning director.

e. The buffer area may be reduced where the planning commission or planning director, as applicable, has approved an alternate buffer plan. The alternate buffer plan must consist of natural undisturbed vegetation, a minimum six-foot berm, or a minimum six-foot fence or a combination thereof; unless the permittee proposes another solution approved by the planning commission or planning director, as applicable, to meet this condition.

f. The buffer requirements may be waived by the planning commission or planning director, as applicable, where the topography of the property or the placement of natural barriers makes screening not feasible or unnecessary.

g. There is no requirement to buffer a material site from uses that commence after approval of the permit.

h. When a buffer area has been denuded prior to review of the application by the planning commission or planning director revegetation may be required.

3. *Processing.* 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 [OF ADJACENT PROPERTY AT THE TIME] the properties in the vicinity at the time of approval of the permit.

4. *Water source separation.*

a. All permits shall be issued with a condition which prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance.

b. All counter permits shall be issued with a condition which requires that a four-foot vertical separation [FROM]between extraction operations and the seasonal high water table be maintained.

c. All CLUPS shall be issued with a condition which requires that a [TWO] four-foot vertical separation [FROM]between

extraction operations and the seasonal high water table be maintained.

d. There shall be no dewatering either by pumping, ditching or some other form of draining unless an exemption is granted by the planning commission. The exemption for dewatering may be granted if the operator provides a statement under seal and supporting data from a duly licensed and qualified impartial civil engineer, that the dewatering will not lower any of the surrounding property's water systems and the contractor posts a bond for liability for potential accrued damages.

5. *Excavation in the water table.* Excavation in the water table greater than 300 horizontal feet of a water source may be permitted with the approval of the planning commission based on the following:

a. Certification by a qualified independent civil engineer or professional hydrogeologist that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources.

b. The installation of a minimum of three water monitoring tubes or well casings as recommended by a qualified independent civil engineer or professional hydrogeologist adequate to determine flow direction, flow rate, and water elevation.

c. Groundwater elevation, flow direction, and flow rate for the subject parcel, measured in three-month intervals by a qualified independent civil engineer or professional hydrogeologist, for at least one year prior to application. Monitoring tubes or wells must be kept in place, and measurements taken, for the duration of any excavation in the water table.

d. Operations shall not breach an aquifer-confining layer.

6. *Waterbodies.*

a. An undisturbed buffer shall be left and no earth material extraction activities shall take place within [100] 200 linear feet from excavation limits and the ordinary high water level of surface water bodies such as a lake, river, stream, [OR OTHER WATER BODY, INCLUDING] riparian wetlands and mapped floodplains as defined in KPB 21.06. This regulation shall not apply to man-made waterbodies being constructed during the course of the materials extraction activities. In order to prevent

discharge, diversion, or capture of surface water, an additional setback from lakes, rivers, anadromous streams, and riparian wetlands may be required.

b. Counter permits and CLUPS may contain additional conditions addressing surface water diversion.

7. *Fuel storage.* Fuel storage for containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.

8. *Roads.* Operations shall be conducted in a manner so as not to damage borough roads as required by KPB 14.40.175 and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.

9. *Subdivision.* Any further subdivision or return to acreage of a parcel subject to a conditional land use or counter permit requires the permittee to amend their permit. The planning director may issue a written exemption from the amendment requirement if it is determined that the subdivision is consistent with the use of the parcel as a material site and all original permit conditions can be met.

10. *Dust control.* Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.

11. *Hours of operation.* [ROCK CRUSHING EQUIPMENT SHALL NOT BE OPERATED BETWEEN 10:00 P.M. AND 6:00 A.M.]

a. Processing equipment shall not be operated between 7:00 p.m. and 6:00 a.m.

b. The planning commission may grant exceptions to increase the hours of operation and processing based on surrounding land uses, topography, screening the material site from properties in the vicinity and conditions placed on the permit by the planning commission to mitigate the noise, dust and visual impacts caused by the material site.

12. *Reclamation.*

    a. Reclamation shall be consistent with the reclamation plan approved by the planning commission or planning director as appropriate in accord with KPB 21.29.060.

    b. [AS A CONDITION OF ISSUING THE PERMIT, THE APPLICANT SHALL SUBMIT A RECLAMATION PLAN AND POST A BOND TO COVER THE ANTICIPATED RECLAMATION COSTS IN AN AMOUNT TO BE DETERMINED BY THE PLANNING DIRECTOR. THIS BONDING REQUIREMENT SHALL NOT APPLY TO SAND, GRAVEL OR MATERIAL SITES FOR WHICH AN EXEMPTION FROM STATE BOND REQUIREMENTS FOR SMALL OPERATIONS IS APPLICABLE PURSUANT TO AS 27.19.050.] <u>The applicant shall operate the material site consistent with the approved reclamation plan and provide bonding pursuant to 21.29.060(B). This bonding requirement shall not apply to sand, gravel or material sites for which an exemption from state bond requirements for small operations is applicable pursuant to AS 27.19.050.</u>

13. *Other permits.* Permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC <u>air and</u> water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives. Any violation of these regulations or permits reported to or observed by borough personnel will be forwarded to the appropriate agency for enforcement.

14. [*VOLUNTARY]<u>Volunteered</u> permit conditions.* Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission for CLUPs or the planning director for counter permits. Such conditions must be consistent with the standards set forth in KPB 21.29.040(A). Planning commission approval of such conditions shall be contingent upon a finding that the conditions will be in the best interest of the borough and the surrounding property owners. [VOLUNTARY] <u>Volunteered</u> permit

conditions apply to the subject parcel and operation, regardless of a change in ownership. A change in [VOLUNTARY] volunteered permit conditions may be proposed [AT] by permit [RENEWAL OR AMENDMENT] modification.

15. *Signage.* For permitted parcels on which the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit, the permittee shall post notice of intent on parcel corners or access, whichever is more visible. Sign dimensions shall be no more than 15" by 15" and must contain the following information: the phrase "Permitted Material Site" along with the permittee's business name and a contact phone number.

16. *Appeal.* No clearing of vegetation shall occur within the 100-foot maximum buffer area from the permit boundary nor shall the permit be issued or operable until the deadline for the appeal, pursuant to KPB 21.20, has expired.

17. *Sound level.*

    a. No sound resulting from the materials extraction activities shall create a sound level, when measured at or within the property boundary of the adjacent land, that exceeds 75 dB(A).

    b. For any sound that is of short duration between the hours of 7 a.m. and 7 p.m. the levels may be increased by:

        i. Five dB(A) for a total of 15 minutes in any one hour; or

        ii. Ten dB(A) for a total of five minutes in any hour; or

        iii. Fifteen db(A) for a total of one and one-half minutes in any one-hour period.

    c. At its discretion, the planning commission or planning director, as applicable, may reduce or waive the sound level requirements on any or all property boundaries. Sound level requirements shall be made in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.

    d. Mandatory condition KPB 21.29.050(A)(17) shall expire 365 days from adoption of KPB 21.29.050(A)(17) unless extended or modified by the assembly.

18. *Reverse signal alarms*. Reverse signal alarms, used at the material site on loaders, excavators, and other earthmoving equipment shall be more technically advanced devices; such as, a multi-frequency "white noise" alarms rather than the common, single (high-pitch) tone alarms. At its discretion, the planning commission or planning director, as applicable, may waive this requirement or a portion of this requirement. The waiver of this requirement shall be made in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.

19. *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 a borough road service area as appropriate, prior to issuance of a material site permit when accessing a public right-of-way.

20. *Dust suppression*. Dust suppression shall be required when natural precipitation is not adequate to suppress the dust generated by the material site traffic on haul routes. Based on surrounding land uses the planning commission or planning director, as applicable, may waive or reduce the requirement for dust suppression on haul routes.

21. *Surface water protection.* Use of surface water protection measures as specified in KPB 21.29.030(A)(8) must be approved by a licensed civil engineer.

22. *Groundwater elevation.* All material sites must maintain one monitoring tube per ten acres of excavated area four feet below the proposed excavation.

23. *Setback.* Material site excavation areas shall be 250-feet from the property boundaries of any local option zoning district, existing public school ground, private school ground, college campus, child care facility, multi-purpose senior center, assisted living home, and licensed health care facility. If overlapping, the buffer areas of the excavation shall be included in the 250-foot setback.

**21.29.055. Decision.**

The planning commission or planning director, as applicable, shall approve permit applications meeting the mandatory conditions or shall disapprove permit applications that do not meet the mandatory conditions. The decision shall include written findings supporting the decision, and when applicable, there shall be written findings supporting any site-specific alterations to the mandatory condition as

specifically allowed by KPB 21.29.050(A)(2)(a), (2)(c), (2)(d), (2)(e), (2)(g), (3), (4)(d), (5), (11)(b), (12), (14), (17)(c), (18), (19), and (20) and as allowed for the KPB 21.29.060 reclamation plan.

**21.29.060. Reclamation plan.**

A. All material site permit applications require an overall reclamation plan along with a five-year reclamation plan. A site plan for reclamation shall be required including a scaled drawing with finished contours. A five-year reclamation plan must be submitted with a permit extension request.

B. The applicant shall revegetate with a non-invasive plant species and reclaim all disturbed land [UPON EXHAUSTING THE MATERIAL ON-SITE, OR WITHIN A PRE-DETERMINED TIME PERIOD FOR LONG-TERM ACTIVITIES, SO AS TO LEAVE THE LAND IN A STABLE CONDITION. RECLAMATION MUST OCCUR FOR ALL EXHAUSTED AREAS OF THE SITE EXCEEDING FIVE ACRES BEFORE A FIVE-YEAR RENEWAL PERMIT IS ISSUED, UNLESS OTHERWISE REQUIRED BY THE PLANNING COMMISSION. IF THE MATERIAL SITE IS ONE ACRE OR LESS IN SIZE AND HAS BEEN GRANTED A CLUP DUE TO EXCAVATION IN THE WATER TABLE, RECLAMATION MUST BE PERFORMED AS SPECIFIED BY THE PLANNING COMMISSION OR PLANNING DIRECTOR IN THE CONDITIONAL USE OR COUNTER PERMIT] within the time period approved with the reclamation plan so as to leave the land in a stable condition. Bonding shall be required at $2,000.00 per acre for all acreage included in the current five-year reclamation plan. In the alternative, the planning director may accept a civil engineer'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 shall be enforced under KPB 21.50.

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

1. Topsoil that is not promptly redistributed to an area being reclaimed will be separated and stockpiled for future use. [THIS MATERIAL WILL BE PROTECTED FROM EROSION AND CONTAMINATION BY ACIDIC OR TOXIC MATERIALS AND PRESERVED IN A CONDITION SUITABLE FOR LATER USE.]

2. The area will be backfilled, graded and recontoured using strippings, overburden, and topsoil [TO A CONDITION THAT ALLOWS FOR THE REESTABLISHMENT OF RENEWABLE RESOURCES ON THE SITE WITHIN A REASONABLE PERIOD OF TIME. IT WILL BE STABILIZED TO A CONDITION THAT WILL ALLOW SUFFICIENT MOISTURE FOR

REVEGETATION] so that it will be stabilized to a condition that will allow for the revegetation as required by KPB 21.29.060(B).

3. [SUFFICIENT QUANTITIES OF STOCKPILED OR IMPORTED TOPSOIL WILL BE SPREAD OVER THE RECLAIMED AREA TO A DEPTH OF FOUR INCHES TO PROMOTE NATURAL PLANT GROWTH THAT CAN REASONABLY BE EXPECTED TO REVEGETATE THE AREA WITHIN FIVE YEARS. THE APPLICANT MAY USE THE EXISTING NATURAL ORGANIC BLANKET REPRESENTATIVE OF THE PROJECT AREA IF THE SOIL IS FOUND TO HAVE AN ORGANIC CONTENT OF 5% OR MORE AND MEETS THE SPECIFICATION OF CLASS B TOPSOIL REQUIREMENTS AS SET BY ALASKA TEST METHOD (ATM) T-6.] The [MATERIAL] topsoil used for reclamation shall 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 a licensed engineer.

4. Exploration trenches or pits will be backfilled. Brush piles and unwanted vegetation shall 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.

5. [PEAT AND T]Topsoil mine operations shall ensure a minimum of [TWO] four inches of suitable growing medium is left or replaced on the site upon completion of the reclamation activity (unless otherwise authorized).

6. Ponding may be used as a reclamation method as approved by the planning commission.

D. The five-year reclamation plan shall describe the total acreage to be reclaimed [EACH YEAR, A LIST OF EQUIPMENT (TYPE AND QUANTITY) TO BE USED IN RECLAMATION, AND A TIME SCHEDULE OF RECLAMATION MEASURES] relative to the total excavation plan.

**21.29.070. Permit extension and revocation.**

A. Conditional land use permittees must submit a request in writing for permit extension every five years after the permit is issued. Requests for permit extension must be made at least 30 days prior to permit expiration. Counter permittees must submit any request for a 12-month extension at least 30 days prior to the expiration of the original 12-month permit period.

B. A permit extension certificate for a CLUP may be granted by the planning director after 5 years, and after one year for a counter permit where no modification to operations or conditions are proposed.

C. Permit extension may be denied if: (1) reclamation required by this chapter and the original permit has not been performed; (2) the permittee is otherwise in noncompliance with the original permit conditions; or (3) the permittee has had a permit violation in the last two years and has not fulfilled compliance requests.

D. A modification application shall be processed pursuant to KPB 21.29.030-050 with public notice given as provided by KPB 21.25.060 when operators request modification of their permit conditions based on changes in operations set forth in the modification application.

E. There shall be no fee for permit extensions approved by the planning director. The fee for a permit modification processed under KPB 21.29.070(D) will be the same as an original permit application in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees.

F. Failure to submit a request for extension will result in the expiration of the permit. The borough may issue a permit termination document upon expiration pursuant to KPB 21.29.080. Once a permit has expired, a new permit application approval process is required in order to operate the material site.

G. Permits may be revoked pursuant to KPB 21.50. 21.29.080. - Permit termination.

When a permit expires, is revoked, or a permittee requests termination of their permit, a review of permit conditions and site inspections will be conducted by the planning department to ensure code compliance and verify site reclamation prior to termination. When the planning director determines that a site qualifies for termination, a termination document shall be issued to the permittee.

**21.29.090. Permit modifications.**

If a permittee revises or intends to revise operations (at a time other than permit extension) so that they are no longer consistent with the original application, a permit modification is required. The planning director shall determine whether the revision to operations requires a modification. Permit modification shall be processed in the same manner as original permits.

**21.29.100. Recordation.**

All permits, permit extensions, modified permits, prior existing uses, and terminations shall be recorded. Failure to record a material site document does not affect the validity of the documents.

**21.29.110. Violations.**

A. Violations of this chapter shall be governed by KPB 21.50.

B. In addition to the remedies provided in KPB 21.50, the planning director may require bonding in a form and amount adequate to protect the borough's interests for an owner or operator who has been cited for three violations of KPB 21.50, 21.25, and 21.29 within a three-year period. The violations need not be committed at the same material site. Failure to provide requested bonding may result in permit revocation proceedings.

**21.29.120. Prior existing uses.**

A. Material sites are not held to the standards and conditions of a CLUP if a prior existing use (PEU) determination was granted for the parcel in accordance with KPB 21.29.120(B). To qualify as a PEU, a parcel's use as a material site must have commenced or have been operated after May 21, 1986, and prior to May 21, 1996, provided that the subject use continues in the same location. In no event shall a prior existing use be expanded beyond the smaller of the lot, block, or tract lines as they existed on May 21, 1996. If a parcel is further subdivided after May 21, 1996, the pre-existing use may not be expanded to any lot, tract, or parcel where extraction had not occurred before or on February 16, 1999. If a parcel is subdivided where extraction has already occurred, the prior existing use is considered abandoned, and a CLUP must be obtained for each parcel intended for further material site operations. The parcel owner may overcome this presumption of abandonment by showing that the subdivision is not inconsistent with material site operation. If a parcel subject to a prior existing use is conveyed, the prior existing use survives the conveyance.

B. Owners of sites must have applied to be registered as a prior existing use prior to January 1, 2001.

C. [ANY PRIOR EXISTING USE THAT HAS NOT OPERATED AS A MATERIAL SITE BETWEEN MAY 21, 1996, AND MAY 21, 2011, IS CONSIDERED ABANDONED AND MUST THEREAFTER COMPLY WITH THE PERMIT REQUIREMENTS OF THIS CHAPTER. THE PLANNING DIRECTOR SHALL DETERMINE WHETHER A PRIOR EXISTING USE HAS BEEN ABANDONED. AFTER GIVING NOTICE TO THE PARCEL OWNER THAT A PEU IS CONSIDERED ABANDONED, A PARCEL OWNER MAY

PROTEST THE TERMINATION OF THE PEU BY FILING WRITTEN NOTICE WITH THE PLANNING DIRECTOR ON A FORM PROVIDED BY THE PLANNING DEPARTMENT. WHEN A PROTEST BY A PARCEL OWNER IS FILED, NOTICE AND AN OPPORTUNITY TO MAKE WRITTEN COMMENTS REGARDING PRIOR EXISTING USE STATUS SHALL BE ISSUED TO OWNERS OF PROPERTY WITHIN A ONE-HALF MILE RADIUS OF THE PARCEL BOUNDARIES OF THE SITE. THE OWNER OF THE PARCEL SUBJECT TO THE PRIOR EXISTING USE MAY SUBMIT WRITTEN INFORMATION, AND THE PLANNING DIRECTOR MAY GATHER AND CONSIDER ANY INFORMATION RELEVANT TO WHETHER A MATERIAL SITE HAS OPERATED. THE PLANNING DIRECTOR MAY CONDUCT A HEARING IF HE OR SHE BELIEVES IT WOULD ASSIST THE DECISION-MAKING PROCESS. THE PLANNING DIRECTOR SHALL ISSUE A WRITTEN DETERMINATION WHICH SHALL BE DISTRIBUTED TO ALL PERSONS MAKING WRITTEN COMMENTS. THE PLANNING DIRECTOR'S DECISION REGARDING TERMINATION OF THE PRIOR EXISTING USE STATUS MAY BE APPEALED TO THE PLANNING COMMISSION WITHIN 15 DAYS OF THE DATE OF THE NOTICE OF DECISION.]

The owner of a material site that has been granted a PEU determination shall provide proof of compliance with AS 27.19.030 – 050 concerning reclamation to the planning department no later than July 1, 2022. The proof shall consist of an Alaska Department of Natural Resources (DNR) approved reclamation plan and receipt for bonding or a letter of intent filed with DNR.

1. The planning department may request proof of continued compliance with AS 27.19.030 – 050 on an annual basis.

2. Pursuant to KPB 21.29.110 the enforcement process and remedies set forth in KPB 21.50 shall govern if the proof that the statutory requirements contained in AS 27.19.030-050 is not provided to the planning department.

**SECTION 3.** That KPB 21.50.055 is hereby amended, as follows:

**21.50.055. Fines.**

A. Following are the fines for violations of this title. Each day a violation occurs is a separate violation. Violations begin to accrue the date the enforcement notice is issued and continue to the date the enforcement is initially set for hearing. The fine for a violation may not be reduced by the hearing officer to less than the equivalent of one day's fine for each type of violation.

| CODE CHAPTER & SECTION | VIOLATION DESCRIPTION | DAILY FINE |
|---|---|---|
| KPB 20.10.030(A) | Offering land for sale without final plat approval | $300.00 |
| KPB 20.10.030(B) | Filing/recording unapproved subdivision/plat | $300.00 |
| KPB 20.10.030(C) | Violation of subdivision code or condition | $300.00 |
| KPB 21.05.040(C) | Violation of variance conditions | $300.00 |
| KPB 21.06.030(D) | Structure or activity prohibited by KPB 21.06 | $300.00 |
| KPB 21.06.040 | Failure to obtain a Development Permit/Floodplain Management | $300.00 |
| KPB 21.06.045 | Failure to obtain a SMFDA Development Permit/Violation of SMFDA permit conditions/Floodplain Management | $300.00 |
| KPB 21.06.050 | Violation of permit conditions/Floodplain Management | $300.00 |
| KPB 21.18.071 | Failure to obtain staff permit/Violation of staff permit/Anadromous Streams Habitat Protection | $300.00 |
| KPB 21.18.072 | Failure to obtain limited commercial activity permit/Violation of permit conditions/Anadromous Streams Habitat Protection | $300.00 |
| KPB 21.18.075 | Prohibited use or structure/Anadromous Streams Habitat Protection | $300.00 |
| KPB 21.18.081 | Failure to obtain Conditional Use Permit/Violation of Conditional Use Permit Condition/Anadromous Streams Habitat Protection | $300.00 |
| KPB 21.18.090 | Failure to obtain prior existing use/structure permit/Violation of permit conditions/Anadromous Streams Habitat Protection | $300.00 |
| KPB 21.18.135(C) | Violation of emergency permit conditions/anadromous stream habitat protection | $300.00 |

| CODE CHAPTER & SECTION | VIOLATION DESCRIPTION | DAILY FINE |
|---|---|---|
| KPB 21.25.040 | Failure to Obtain a Permit/Material Site/Correctional community residential center/Concentrated Animal Feeding Operation | $300.00 |
| KPB 21.28.030 | Violation of permit conditions/Concentrated Animal Feeding Operations | $300.00 |
| KPB 21.29.020 | Failure to Obtain a counter permit/Material Site Permits | $300.00 |
| KPB 21.29.050 | Violation of Conditional Land Use Permit Conditions/Material Site Permits<br>Also applies to KPB 21.26 material site permits | $300.00 |
| KPB 21.29.060 | Violation of Reclamation Plan/Material Site Permits<br>Also applies to KPB 21.26 material site permits | $300.00 |
| KPB 21.29.120 | Failure to Provide Reclamation Plan and Proof of Bonding or Letter of Intent | $300.00 |
| KPB 21.44.100 | Violation of Pre-existing structures/Local Option Zoning | $300.00 |
| KPB 21.44.110(D) | Prohibited expansion of nonconforming use/Local Option Zoning | $300.00 |
| KPB 21.44.110(E) | Prohibited Change in Use/Local Option Zoning | $300.00 |
| KPB 21.44.110(G) | Violation of Conditions on Nonconforming Use/Local Option Zoning | $300.00 |
| KPB 21.44.130(C)(D) | Violation of Home Occupation Standards and Conditions/Local Option Zoning | $300.00 |
| KPB 21.44.130(F) | Disallowed Home Occupation/Local Option Zoning | $300.00 |
| KPB 21.44.135 | Failure to file development notice | $300.00 |
| KPB 21.44.160(A)(B) | Prohibited use | $300.00 |

| CODE CHAPTER & SECTION | VIOLATION DESCRIPTION | DAILY FINE |
|---|---|---|
| KPB 21.44.160(C) | Violation of Development Standards/Single Family Zoning/Local Option Zoning | $300.00 |
| KPB 21.44.165(A)(B) | Prohibited use | $300.00 |
| KPB 21.44.165(C) | Violation of Development Standards/Small Lot Residential Zoning/Local Option Zoning | $300.00 |
| KPB 21.44.170(A)(B) | Prohibited use | $300.00 |
| KPB 21.44.170(C) | Violation of Development Standards/Rural Residential District/Local Option Zoning | $300.00 |
| KPB 21.44.175(B)(C) | Prohibited Use | $300.00 |
| KPB 21.44.175(D) | Violation of Development Standards/Residential Waterfront | $300.00 |
| KPB 21.44.180(A)(B) | Prohibited Use | $300.00 |
| KPB 21.44.180(C) | Violation of Development Standards/Multi-Family Residential District/Local Option Zoning | $300.00 |
| KPB 21.44.190(A)(B) | Prohibited Use | $300.00 |
| KPB 21.44.190(C) | Violation of Development Standards/Industrial District/Local Option Zoning | $300.00 |
| KPB 21.46.030(b) | Failure to maintain bear-resistant garbage cans/Local option zone/Birch and Grove Ridge subdivisions Rural Residential District | $300.00 |
| KPB 21.50.100(F) | Removal of posted enforcement notice | $300.00 |
| KPB 21.50.100(G) | Violation of enforcement notice | $1,000.00 |
| KPB 21.50.130(I) | Violation of an enforcement order | $1,000.00 |

**SECTION 4.** That this ordinance shall become effective upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2022.**

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

01/18/22 Vote on motion to postpone to 02/01/22:

| | |
|---|---|
| Yes: | Bjorkman, Derkevorkian, Elam, Tupper, Johnson |
| No: | Chesley, Cox, Ecklund |
| Absent: | Hibbert |

02/01/22 Vote on motion to table:

| | |
|---|---|
| Yes: | Bjorkman, Chesley, Cox, Derkevorkian, Ecklund, Elam, Hibbert, Tupper, Johnson |
| No: | None |
| Absent: | None |

| | |
|---|---|
| Introduced by: | Elam, Derkevorkian |
| Substitute Introduced: | 02/01/22 |
| O2021-41 (Mayor, Johnson) | See Original Ordinance for Prior History |
| Action: | Tabled |
| Vote: | 9 Yes, 0 No, 0 Absent |

**KENAI PENINSULA BOROUGH**
**ORDINANCE 2021-41**
**(ELAM, DERKEVORKIAN) SUBSTITUTE**

**AN ORDINANCE AMENDING KPB 21.29, KPB 21.25, AND KPB 21.50.055 REGARDING MATERIAL SITE PERMITS, APPLICATIONS, CONDITIONS, AND PROCEDURES**

**WHEREAS,** Goal 2, Focus Area: Land Use, Objective A of the 2019 Kenai Peninsula Borough Comprehensive Plan is to establish policies to minimize land use conflicts, protect natural systems, and support individual land use freedoms; and

**WHEREAS,** Goal 2, Focus Area: Land Use, Objective A, Strategy 2 of the 2019 Comprehensive Plan is to update the Borough's existing conditional use regulations for material extraction to better address reoccurring land use conflicts; and

**WHEREAS,** Goal 2, Focus Area: Land Use, Objective A, Strategy 2a of the 2019 Comprehensive Plan is to clarify the broad purpose of the conditional use process and clear parameters for allowable conditional uses that include reasonable, project-specific conditions that reduce impacts on surrounding use; and

**WHEREAS,** Goal 2, Focus Area: Land Use, Objective A, Strategy 2d of the 2019 Comprehensive Plan is to complete improvements to the rules guiding gravel extraction, with the goal of providing an appropriate balance between providing access to affordable materials for development and quality of life for borough residents; and

**WHEREAS,** Goal 1 of the Mining and Minerals Processing section of the 1990 Kenai Peninsula Borough Coastal Management Program is to provide opportunities to explore, extract and process minerals, sand and gravel resources, while protecting environmental quality and other resource users; and

**WHEREAS,** an assembly subcommittee was formed in 2005 to review the material site code; and

**WHEREAS,** Ordinance 2006-01 (Substitute) codified as KPB 21.29 was adopted in 2006 after consideration of the subcommittee's report; and

**WHEREAS,** the planning department has been administering Ordinance 2006-01 (Substitute), codified as KPB 21.29 for 13 years; and

**WHEREAS,** KPB 21.25.040 requires a permit for the commencement of certain land uses within the rural district of the Kenai Peninsula Borough; and

**WHEREAS,** the planning department has recognized that certain provisions of the material site ordinance could be better clarified for the operators, public, and staff; and

**WHEREAS,** the planning commission and planning department received comments expressing concerns about dust, noise, safety; and

**WHEREAS,** approximately 253 registered prior existing use material sites and approximately 99 conditional land use permits for material sites have been granted since 1996;

**WHEREAS,** the planning department receives numerous complaints regarding unreclaimed parcels registered as nonconforming prior existing material sites which have not been regulated by KPB; and

**WHEREAS,** the assembly established a material site work group by adoption of resolution 2018-004 (Substitute) to engage in a collaborative discussion involving the public and industry to make recommendations regarding the material site code; and

**WHEREAS,** at its regularly scheduled meeting of November 12, 2019, the planning commission recommended approval by unanimous consent;

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

**SECTION 1.** That KPB 21.25.030 is hereby amended, as follows:

**21.25.030. Definitions.**

Unless the context requires otherwise, the following definitions apply to CLUPs:

*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.

*Animal feeding operation* means a lot or facility (other than an aquatic animal production facility) where animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period.

a. The same animals need not remain on the lot for 45 days or more; rather, some animals are fed or maintained on the lot 45 days out of any 12-month period, and

b. Animals are "maintained" for purposes of this ordinance when they are confined in an area where waste is generated and/or concentrated or are watered, cleaned, groomed, or medicated in a confined area, even if the confinement is temporary.

c. Two or more animal feeding operations under common ownership are considered, for the purposes of these regulations, to be a single animal feeding operation if they adjoin each other.

d. Slaughterhouses are animal feeding operations.

*Animal unit* means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighting [weighing] over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

*Animal waste* means animal excrement, animal carcasses, feed wasted, process wastewaters or any other waste associated with the confinement of animals from an animal feeding operation.

*Animal waste management system* means a combination of structures and nonstructural practices serving an animal feeding operation that provides for the collection, treatment, disposal, distribution, storage and land application of animal waste.

*Aquifer* means a subsurface formation that contains sufficient water-saturated permeable material to yield economical quantities of water to wells and springs.

*Aquifer-confining layer* means that layer of relatively impermeable soil below an aquifer, typically clay, which confines water.

*Assisted living home* means a residential facility that serves three or more adults who are not related to the owner by blood or marriage, or that receives state or that receives state or federal payment for service of the number of adults served. The services and activities may include, but are not limited to, housing and food services to its residents, assistance with activities of daily living, and personal assistance, and that complies with Alaska Statutes 47.32.0101 – 47.60.900, as amended.

*Child care facility* means a place where child care is regularly provided for children under the age of 12 for periods of time that are less than 24 hours in duration and that is licensed pursuant to AS 47.35.005 et seq., excluding child care homes and child care group homes, as currently written or hereafter amended.

*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.

*Concentrated animal feeding operation (CAFO)* means an animal feeding operation confining at least: (1) 1,000 swine weighing at least approximately 55 pounds; (2) 1,000 slaughter and feeder cattle; (3) 700 mature dairy cattle; (4) 500 horses; (5) 10,000 sheep or lambs; (6) 55,000 turkeys; (7) 100,000 laying hens or broilers (if the facility has continuous overflow watering); (8) 30,000 laying hens or broilers (if the facility has a liquid manure system); (9) 5,000 ducks; (10) 1,000 animal units; or (11) a combination of the above resulting in at least 1,000 animal units. Each individual parcel upon which a CAFO is located is a separate CAFO unless they adjoin each other.

*Conditioning or processing material* means a value-added process including batch plants, asphalt plants, screening, washing, and crushing by use of machinery.

*Correctional community residential center (CCRC)* means a community residential center, other than a correctional institution, for the short-term or temporary detention of prisoners in transition from a correctional institution, performing restitution, or undergoing rehabilitation or recovery from a legal infirmity. CCRCs may not be used for detention of prisoners who pose a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four-hour physical supervision. The determination of whether a prisoner poses a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four-hour physical supervision shall be made by the commissioner of corrections for state prisoners and the United States Attorney General, or the U.S. Director of Bureau of Prisons for federal prisoners.

*Correctional institution* means a facility other than a correctional community residential center providing for the imprisonment or physical confinement or detention of prisoners under guard or twenty-four-hour physical supervision, such as prisons, prison farms, jails, reformatories, penitentiaries, houses of detention, detention centers, honor camps, and similar facilities.

*Development plan* means a plan created to describe a proposed development on a specific building site excluding material sites under KPB 21.29.020.

*Disturbed* includes active excavation and all areas necessary to use a parcel as a material site including but not limited to berms, stockpiles, and excavated areas excluding all areas reclaimed for alternate post mining land uses.

[*EXHAUSTED* MEANS THAT ALL MATERIAL OF A COMMERCIAL QUALITY IN A SAND, GRAVEL, OR MATERIAL SITE HAS BEEN REMOVED.]

*Federal prisoners* means offenders in the custody or control or under the care or supervision of the United States Attorney General or the Bureau of Prisons.

*Groundwater* means, in the broadest sense, all subsurface water, more commonly that part of the subsurface water in the saturated zone.

*Liquid manure* or *liquid animal waste system* means any animal waste management system which uses water as the primary carrier of such waste into a primary retention structure.

*Multi-purpose senior center* is a facility where persons 60 years of age or older are provided with services and activities suited to their particular needs. The services and activities may include, but are not limited to, health examinations, legal assistance, recreation programs, general social activities, telephone reassurance programs, nutrition classes, meals at minimum cost, counseling, protective services, programs for shut-ins and education programs, and that complies with Alaska Statutes 47.60.010—47.60.090, as currently written or hereafter amended.

*Permit area* includes all excavation, processing, buffer ~~and haul route~~ areas of a CLUP or counter permit.

*Person* shall include any individual, firm, partnership, association, corporation, cooperative, or state or local government.

*Prisoner* means:

a. a person held under authority of state law in official detention as defined in AS 11.81.900;

b. includes a juvenile committed to the custody of the Alaska Department of Corrections Commissioner when the juvenile has been charged, prosecuted, or convicted as an adult.

*Private school* is a school comprised of kindergarten through 12th grade, or any combination of those grades, that does not receive direct state or federal funding and that complies with either Alaska Statute 14.45.030 or 14.45.100—14.45.130, as currently written or hereafter amended.

*Public school* is a school comprised of kindergarten through 12th grade, or any combination of those grades, that is operated by the State of Alaska or any political subdivision of the state.

*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.

*Seasonal high groundwater table* means the highest level to which the groundwater rises on an annual basis.

*Senior housing project* means senior housing as defined for purposes of construction or operation in 15 Alaska Administrative Code 151.950(c), as currently written or hereafter amended.

*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.

*Surface water* means water on the earth's surface exposed to the atmosphere such as rivers, lakes, and creeks.

*Topsoil* means material suitable for vegetative growth.

*Waterbody* means any lake, pond, stream, riparian wetland, or groundwater into which storm water runoff is directed.

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

**SECTION 2.** That KPB 21.29 is hereby amended, as follows:

**CHAPTER 21.29. MATERIAL SITE PERMITS**

**21.29.010. 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 20 feet of a right-of-way or within ten feet of a lot line.

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 does not require a permit, however, operators subject to this exemption shall 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.

C. A prior existing use under KPB 21.29.120 does not require a material extraction permit, but a floodplain development permit is required for all activities within any mapped special flood hazard area.

D. Material extraction incidental to site development does not require a permit when an approved site development plan is on file with the planning department. Site development plans are approved by the planning director and are valid for one year. The site development plan may be renewed on an annual basis subject to the planning director's approval.

**21.29.020. Material extraction and activities requiring a permit.**

A. *Counter permit.* A counter permit is required for material extraction which disturbs no more than 2.5 cumulative acres and does not enter the water table. Counter permits are approved by the planning director, and are not subject to the notice requirements or planning commission approval of KPB 21.25.060. A counter permit is valid for a period of 12 months, with a possible 12-month extension.

B. *Conditional land use permit.* A conditional land use permit (CLUP) is required for material extraction which disturbs more than 2.5 cumulative acres, or material extraction of any size that enters the water table. [A CLUP IS REQUIRED FOR MATERIALS PROCESSING.] A CLUP is valid for a period of five years. The provisions of KPB Chapter 21.25 are applicable to material site CLUPS and the provisions of KPB 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling

**21.29.030. Application procedure.**

A. In order to obtain a counter permit or CLUP, an applicant shall 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 shall include the following items:

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)(2);

4. Reclamation plan consistent with KPB 21.29.060;

5. The depth of excavation;

6. Type of material to be extracted and type of equipment to be used;

7. Any voluntary permit conditions the applicant proposes. Failure to include a proposed voluntary permit condition in the application does not preclude the applicant from proposing or agreeing to voluntary permit conditions at a later time;

8. Surface water protection measures, if any, for adjacent properties designed by a SWPPP certified individual, including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence;

9. A site plan prepared by the site operator and field verification prepared by a professional surveyor licensed and registered in the State of Alaska, including the following information:

   a. Location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;

   b. Proposed buffers consistent with KPB 21.29.050(A)(2), or alternate buffer plan;

   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 the issuance of the material site permit;

   e. Anticipated haul routes;

   f. Location and [DEPTH] elevation of test holes, and depth of groundwater, if encountered between May and December. At least one test hole per ten acres of excavated area is required to be dug.

g. Location of wells of adjacent property owners within [300] 200 feet of the proposed parcel boundary;

h. Location of any water body on the parcel,

[I. SURFACE WATER PROTECTION MEASURES FOR ADJACENT PROPERTIES, INCLUDING THE USE OF DIVERSION CHANNELS, INTERCEPTION DITCHES, ON-SITE COLLECTION DITCHES, SEDIMENT PONDS AND TRAPS, AND SILT FENCE; PROVIDE DESIGNS FOR SUBSTANTIAL STRUCTURES; INDICATE WHICH STRUCTURES WILL REMAIN AS PERMANENT FEATURES AT THE CONCLUSION OF OPERATIONS, IF ANY;]

[J]i. Location of any processing areas on parcel, if applicable;

[K]j. North arrow;

[L]k. The scale to which the site plan is drawn;

[M]l. Preparer's name, date

[N]m. Field verification shall 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.

B. In order to aid the planning commission or planning director's decision-making process, the planning director shall provide vicinity, aerial, land use, and ownership maps for each application and may include additional information.

**21.29.040. Standards for sand, gravel or material sites.**

A. These material site regulations are intended to Minimize aquifer disturbance, road damage, physical damage to adjacent properties, dust, and noise. Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:

1. [PROTECTS AGAINST] Minimizes the lowering of water sources serving other properties;

2. [PROTECTS AGAINST] Minimizes physical damage to [OTHER] adjacent properties;

3. Minimizes off-site movement of dust;

4. Minimizes noise disturbance to other properties;

5. [MINIMIZES VISUAL IMPACTS] Provides for alternate post-mining land uses.

**21.29.050. Permit conditions.**

A. The following mandatory conditions apply to counter permits and CLUPs issued for sand, gravel or material sites:

1. [*PARCEL]Permit boundaries.* [ALL BOUNDARIES OF THE SUBJECT PARCEL] The buffers and any easements or right-of-way abutting the proposed permit area shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter. Field verification and staking will require the services of a professional land surveyor. Stakes shall be in place [AT TIME OF APPLICATION] prior to issuance of the permit.

[2. *BUFFER ZONE.* A BUFFER ZONE SHALL BE MAINTAINED AROUND THE EXCAVATION PERIMETER OR PARCEL BOUNDARIES. WHERE AN EASEMENT EXISTS, A BUFFER SHALL NOT OVERLAP THE EASEMENT, UNLESS OTHERWISE CONDITIONED BY THE PLANNING DIRECTOR OR PLANNING COMMISSION.

A. THE BUFFER ZONE SHALL PROVIDE AND RETAIN A BASIC BUFFER OF:

I. 50 FEET OF UNDISTURBED NATURAL VEGETATION, OR

II. A MINIMUM TEN FOOT EARTHEN BERM WITH AT LEAST A 2:1 SLOPE, OR

III. A MINIMUM SIX-FOOT FENCE.

B. A 2:1 SLOPE SHALL 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 SUITABLE, STABILIZING MATERIAL IS REPLACED WITHIN 90 DAYS FROM THE TIME OF REMOVAL.

C. THE PLANNING COMMISSION OR PLANNING DIRECTOR SHALL DESIGNATE ONE OR A COMBINATION OF THE ABOVE AS IT DEEMS APPROPRIATE. THE VEGETATION AND FENCE SHALL BE OF SUFFICIENT HEIGHT AND DENSITY TO PROVIDE VISUAL AND NOISE SCREENING OF THE PROPOSED USE AS DEEMED

APPROPRIATE BY THE PLANNING COMMISSION OR PLANNING DIRECTOR.

D. BUFFERS SHALL NOT CAUSE SURFACE WATER DIVERSION WHICH NEGATIVELY IMPACTS ADJACENT PROPERTIES OR WATER BODIES. SPECIFIC FINDINGS ARE REQUIRED TO ALTER THE BUFFER REQUIREMENTS OF KPB 21.29.050(A)(2)(A) IN ORDER TO MINIMIZE NEGATIVE IMPACTS FROM SURFACE WATER DIVERSION. FOR PURPOSES OF THIS SECTION, SURFACE WATER DIVERSION IS DEFINED AS EROSION, FLOODING, DEHYDRATION OR DRAINING, OR CHANNELING. NOT ALL SURFACE WATER DIVERSION RESULTS IN A NEGATIVE IMPACT.

E. AT ITS DISCRETION, THE PLANNING COMMISSION MAY WAIVE BUFFER REQUIREMENTS WHERE THE TOPOGRAPHY OF THE PROPERTY OR THE PLACEMENT OF NATURAL BARRIERS MAKES SCREENING NOT FEASIBLE OR NOT NECESSARY. BUFFER REQUIREMENTS SHALL BE MADE IN CONSIDERATION OF AND IN ACCORDANCE WITH EXISTING USES OF ADJACENT PROPERTY AT THE TIME OF APPROVAL OF THE PERMIT. THERE IS NO REQUIREMENT TO BUFFER THE MATERIAL SITE FROM USES WHICH COMMENCE AFTER THE APPROVAL OF THE PERMIT.]

2. *Buffer Area*.

a. A 2:1 slope shall 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 suitable, stabilizing material is replaced within 90 days from the time of removal.

b. The buffer area may be reduced where the planning commission or planning director, as applicable, has approved an alternate buffer plan introduced by the applicant. The alternate buffer plan must consist of natural undisturbed vegetation, or a minimum ten foot berm, or a minimum six-foot fence or a combination thereof, consisting of only one option in a single geographical location; unless the permittee proposes another solution approved by the planning commission or planning director, as applicable, to meet this condition.

c. The buffer requirements may be waived by the planning commission or planning director, as applicable, where the topography of the property or the placement of natural barriers makes screening not feasible or unnecessary.

d. There is no requirement to buffer a material site from uses that commence after approval of the permit.

3. *Processing.* 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 adjacent properties at the time.

4. *Water source separation.*

a. All permits shall be issued with a condition which prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance.

b. All counter permits shall be issued with a condition which requires that a four-foot vertical separation [FROM THE SEASONAL HIGH WATER TABLE BE MAINTAINED] an excavation distance a maximum of 15 feet below the seasonal high-water table must be maintained under these conditions:

1. No dewatering is allowed.
2. The edge of any water body must be 200 feet from any DEC septic or well.
3. A spill response kit must be maintained onsite.
4. Operations shall stay 2 foot above an aquifer-confining layer.
5. A 200-foot separation from any water body and any stored hazardous material.

[C. ALL CLUPS SHALL BE ISSUED WITH A CONDITION WHICH REQUIRES THAT A TWO-FOOT VERTICAL SEPARATION FROM THE SEASONAL HIGH WATER TABLE BE MAINTAINED.]

c. There shall be no dewatering either by pumping, ditching or some other form of draining unless an exemption is granted by the planning commission. The exemption for dewatering may be granted if the operator provides a statement under seal and supporting data from a duly licensed and qualified impartial civil engineer, that the dewatering will not lower any of the surrounding property's water systems and the contractor posts a bond for liability for potential accrued damages.

5. *Excavation in the water table.* Excavation in the water table greater than [300]200 horizontal feet of a water source and 15 feet below water table may be permitted with the approval of the planning commission based on the following:

   a. Certification by a qualified independent civil engineer or professional hydrogeologist that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources.

   b. The installation of a minimum of three water monitoring tubes or well casings as recommended by a qualified independent civil engineer or professional hydrogeologist adequate to determine flow direction, flow rate, and water elevation.

   c. Groundwater elevation, flow direction, and flow rate for the subject parcel, measured in three-month intervals by a qualified independent civil engineer or professional hydrogeologist, for at least one year prior to application. Monitoring tubes or wells must be kept in place, and measurements taken, for the duration of any excavation in the water table.

   d. Operations shall not breach an aquifer-confining layer.

6. *Waterbodies.*

   a. An undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet [FROM] of excavation limits and the ordinary high water level of surface water bodies such as a lake, river, stream, [OR OTHER WATER BODY, INCLUDING] riparian wetlands [AND MAPPED FLOODPLAINS AS DEFINED IN KPB 21.06]. This regulation shall not apply to ponds less than one acre on private land, man-made waterbodies being constructed during the course of the materials extraction activities. In order to prevent discharge, diversion, or capture of surface water, an additional setback from lakes, rivers, anadromous streams, and riparian wetlands may be required.

   b. Counter permits and CLUPS may contain additional conditions addressing surface water diversion.

7. *Fuel storage.* Fuel storage for containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for

uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface. Double wall tanks are also acceptable.

8. *Roads.* Operations shall be conducted in a manner so as not to damage borough roads as required by KPB 14.40.175 and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.

9. *Subdivision.* Any further subdivision or return to acreage of a parcel subject to a conditional land use or counter permit requires the permittee to amend their permit. The planning director may issue a written exemption from the amendment requirement if it is determined that the subdivision is consistent with the use of the parcel as a material site and all original permit conditions can be met.

10. *Dust control.* Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.

11. *Hours of operation.* [ROCK CRUSHING EQUIPMENT SHALL NOT BE OPERATED BETWEEN 10:00 P.M. AND 6:00 A.M.]

    a. Processing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.

    b. The planning commission may grant exceptions to increase the hours of operation and processing based on surrounding land uses, topography, screening the material site from properties in the vicinity and conditions placed on the permit by the planning commission to mitigate the noise, dust and ~~visual impacts~~ caused by the material site.

12. *Reclamation.*

    a. Reclamation shall be consistent with the reclamation plan approved by the planning commission or planning director as appropriate in accord with KPB 21.29.060.

    b. [AS A CONDITION OF ISSUING THE PERMIT, THE APPLICANT SHALL SUBMIT A RECLAMATION PLAN AND POST A BOND TO COVER THE ANTICIPATED RECLAMATION COSTS IN AN AMOUNT TO BE DETERMINED BY THE PLANNING DIRECTOR. THIS BONDING REQUIREMENT SHALL NOT APPLY TO SAND, GRAVEL OR MATERIAL SITES FOR WHICH AN EXEMPTION FROM STATE BOND REQUIREMENTS FOR SMALL OPERATIONS IS APPLICABLE

PURSUANT TO AS 27.19.050.] The applicant shall operate the material site consistent with the approved reclamation plan and provide bonding pursuant to 21.29.060(B). This bonding requirement shall not apply to sand, gravel or material sites for which an exemption from state bond requirements for small operations is applicable pursuant to AS 27.19.050.

13. *Other permits.* Permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC air and water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives. Any violation of these regulations or permits reported to or observed by borough personnel will be forwarded to the appropriate agency for enforcement.

14. [*VOLUNTARY]Volunteered permit conditions.* Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission for CLUPs or the planning director for counter permits. Such conditions must be consistent with the standards set forth in KPB 21.29.040(A). Planning commission approval of such conditions shall be contingent upon a finding that the conditions will be in the best interest of the borough and the surrounding property owners. [VOLUNTARY] Volunteered permit conditions apply to the subject parcel and operation, regardless of a change in ownership. A change in [VOLUNTARY] volunteered permit conditions may be proposed [AT] by permit [RENEWAL OR AMENDMENT] modification.

15. *Signage.* For permitted parcels on which the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit, the permittee shall post notice of intent on parcel corners or access, whichever is more visible. Sign dimensions shall be no more than 15" by 15" and must contain the following information: the phrase "Permitted Material Site" along with the permittee's business name and a contact phone number.

16. A*ppeal.* No clearing of vegetation shall occur within the 50 ~~100~~-foot maximum buffer area from the permit boundary nor shall the permit be issued or operable until the deadline for the appeal, pursuant to KPB 21.20, has expired.

17. *Reverse signal alarms*. Reverse signal alarms, used at the material site on loaders, excavators, and other earthmoving equipment may be more technically advanced devices; such as, a multi-frequency "white noise" alarms rather than the common, single (high-pitch) tone alarms. At its discretion, the planning commission or planning director, as applicable, may waive this requirement or a portion of this requirement. The waiver of this requirement shall be made in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.

19. *Dust suppression*. Dust suppression may ~~shall~~ be required when natural precipitation is not adequate to suppress the dust generated by the material site traffic on haul routes within property boundaries. Based on surrounding land uses the planning commission or planning director, as applicable, may waive or reduce the requirement for dust suppression on haul routes within property boundaries.

21. *Surface water protection.* Use of surface water protection measures as specified in KPB 21.29.030(A)(8) must be approved by a licensed civil engineer or SWPPP certified individual.

22. *Setback.* Material site excavation areas shall be 250-feet from the property boundaries of any local option zoning district, existing public school ground, private school ground, college campus, child care facility, multi-purpose senior center, assisted living home, and licensed health care facility. If overlapping, the buffer areas of the excavation shall be included in the 250-foot setback. At the time of application.

**21.29.060. Reclamation plan.**

A. All material site permit applications require an overall reclamation plan.

B. The applicant may revegetate with a non-invasive plant species and reclaim all disturbed land [UPON EXHAUSTING THE MATERIAL ON-SITE, OR WITHIN A PRE-DETERMINED TIME PERIOD FOR LONG-TERM ACTIVITIES, SO AS TO LEAVE THE LAND IN A STABLE CONDITION. RECLAMATION MUST OCCUR FOR ALL EXHAUSTED AREAS OF THE SITE EXCEEDING FIVE ACRES BEFORE A FIVE-YEAR RENEWAL PERMIT IS ISSUED, UNLESS OTHERWISE REQUIRED BY THE PLANNING COMMISSION. IF THE MATERIAL SITE IS ONE ACRE OR LESS IN SIZE AND HAS BEEN GRANTED A CLUP DUE TO EXCAVATION IN THE WATER TABLE,

RECLAMATION MUST BE PERFORMED AS SPECIFIED BY THE PLANNING COMMISSION OR PLANNING DIRECTOR IN THE CONDITIONAL USE OR COUNTER PERMIT] within the time period approved with the reclamation plan so as to leave the land in a stable condition. Bonding shall be required at $750.00 per acre for all acreage included in the current five-year reclamation plan. In the alternative, the planning director shall accept a civil engineer'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 shall be enforced under KPB 21.50.

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

1. The area will be backfilled, graded and recontoured using strippings, overburden, and topsoil [TO A CONDITION THAT ALLOWS FOR THE REESTABLISHMENT OF RENEWABLE RESOURCES ON THE SITE WITHIN A REASONABLE PERIOD OF TIME. IT WILL BE STABILIZED TO A CONDITION THAT WILL ALLOW SUFFICIENT MOISTURE FOR REVEGETATION] so that it will be stabilized to a condition that will allow for the revegetation as required by KPB 21.29.060(B).

2. [SUFFICIENT QUANTITIES OF STOCKPILED OR IMPORTED TOPSOIL WILL BE SPREAD OVER THE RECLAIMED AREA TO A DEPTH OF FOUR INCHES TO PROMOTE NATURAL PLANT GROWTH THAT CAN REASONABLY BE EXPECTED TO REVEGETATE THE AREA WITHIN FIVE YEARS. THE APPLICANT MAY USE THE EXISTING NATURAL ORGANIC BLANKET REPRESENTATIVE OF THE PROJECT AREA IF THE SOIL IS FOUND TO HAVE AN ORGANIC CONTENT OF 5% OR MORE AND MEETS THE SPECIFICATION OF CLASS B TOPSOIL REQUIREMENTS AS SET BY ALASKA TEST METHOD (ATM) T-6.] The [MATERIAL] topsoil used for reclamation shall 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 a licensed engineer.

4. Exploration trenches or pits will be backfilled. Brush piles and unwanted vegetation shall 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.

5. [PEAT AND T] Topsoil mine operations shall ensure a minimum of [TWO] four inches of suitable growing medium is left or replaced on the site upon completion of the reclamation activity (unless otherwise authorized).

6. Ponding may be used as a reclamation method as approved by the planning commission.

[D. THE PLAN SHALL DESCRIBE THE TOTAL ACREAGE TO BE RECLAIMED EACH YEAR, A LIST OF EQUIPMENT (TYPE AND QUANTITY) TO BE USED IN RECLAMATION, AND A TIME SCHEDULE OF RECLAMATION MEASURES.]

**21.29.070. Permit extension and revocation.**

A. Conditional land use permittees must submit a request in writing for permit extension every five years after the permit is issued. Requests for permit extension must be made at least 30 days prior to permit expiration. Counter permittees must submit any request for a 12-month extension at least 30 days prior to the expiration of the original 12-month permit period.

B. A permit extension certificate for a CLUP may be granted by the planning director after 5 years, and after one year for a counter permit where no modification to operations or conditions are proposed.

C. Permit extension may be denied if: (1) reclamation required by this chapter and the original permit has not been performed; (2) the permittee is otherwise in noncompliance with the original permit conditions; or (3) the permittee has had a permit violation in the last two years and has not fulfilled compliance requests.

D. A modification application shall be processed pursuant to KPB 21.29.030-050 with public notice given as provided by KPB 21.25.060 when operators request modification of their permit conditions based on changes in operations set forth in the modification application.

E. There shall be no fee for permit extensions approved by the planning director. The fee for a permit modification processed under KPB 21.29.070(D) will be the same as an original permit application in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees.

F. Failure to submit a request for extension will result in the expiration of the permit. The borough may issue a permit termination document upon expiration pursuant to KPB 21.29.080. Once a permit has expired, a new permit application approval process is required in order to operate the material site.

G. Permits may be revoked pursuant to KPB 21.50.

**21.29.080. Permit termination.**

When a permit expires, is revoked, or a permittee requests termination of their permit, a review of permit conditions and site inspections will be conducted by the planning department to ensure code compliance and verify site reclamation prior to termination. When the planning director determines that a site qualifies for termination, a termination document shall be issued to the permittee.

**21.29.090. Permit modifications.**

If a permittee revises or intends to revise operations (at a time other than permit extension) so that they are no longer consistent with the original application, a permit modification is required. The planning director shall determine whether the revision to operations requires a modification. Permit modification shall be processed in the same manner as original permits.

**21.29.100. Recordation.**

All permits, permit extensions, modified permits, prior existing uses, and terminations shall be recorded. Failure to record a material site document does not affect the validity of the documents.

**21.29.110. Violations.**

A. Violations of this chapter shall be governed by KPB 21.50.

B. In addition to the remedies provided in KPB 21.50, the planning director may require bonding in a form and amount adequate to protect the borough's interests for an owner or operator who has been cited for three violations of KPB 21.50, 21.25, and 21.29 within a three-year period. The violations need not be committed at the same material site. Failure to provide requested bonding may result in permit revocation proceedings.

**21.29.120. Prior existing uses.**

A. Material sites are not held to the standards and conditions of a CLUP if a prior existing use (PEU) determination was granted for the parcel in accordance with KPB 21.29.120(B). To qualify as a PEU, a parcel's use as a material site must have commenced or have been operated after May 21, 1986, and prior to May 21, 1996, provided that the subject use continues in the same location. In no event shall a prior existing use be expanded beyond the smaller of the lot, block, or tract lines as they existed on May 21, 1996. If a parcel is further subdivided after May 21, 1996, the pre-existing use may not be expanded to any lot, tract, or parcel where extraction had not occurred before or on February 16, 1999. If a parcel is subdivided where extraction has already occurred, the prior existing use is considered

abandoned, and a CLUP must be obtained for each parcel intended for further material site operations. The parcel owner may overcome this presumption of abandonment by showing that the subdivision is not inconsistent with material site operation. If a parcel subject to a prior existing use is conveyed, the prior existing use survives the conveyance.

B. Owners of sites must have applied to be registered as a prior existing use prior to January 1, 2001.

C. [ANY PRIOR EXISTING USE THAT HAS NOT OPERATED AS A MATERIAL SITE BETWEEN MAY 21, 1996, AND MAY 21, 2011, IS CONSIDERED ABANDONED AND MUST THEREAFTER COMPLY WITH THE PERMIT REQUIREMENTS OF THIS CHAPTER. THE PLANNING DIRECTOR SHALL DETERMINE WHETHER A PRIOR EXISTING USE HAS BEEN ABANDONED. AFTER GIVING NOTICE TO THE PARCEL OWNER THAT A PEU IS CONSIDERED ABANDONED, A PARCEL OWNER MAY PROTEST THE TERMINATION OF THE PEU BY FILING WRITTEN NOTICE WITH THE PLANNING DIRECTOR ON A FORM PROVIDED BY THE PLANNING DEPARTMENT. WHEN A PROTEST BY A PARCEL OWNER IS FILED, NOTICE AND AN OPPORTUNITY TO MAKE WRITTEN COMMENTS REGARDING PRIOR EXISTING USE STATUS SHALL BE ISSUED TO OWNERS OF PROPERTY WITHIN A ONE-HALF MILE RADIUS OF THE PARCEL BOUNDARIES OF THE SITE. THE OWNER OF THE PARCEL SUBJECT TO THE PRIOR EXISTING USE MAY SUBMIT WRITTEN INFORMATION, AND THE PLANNING DIRECTOR MAY GATHER AND CONSIDER ANY INFORMATION RELEVANT TO WHETHER A MATERIAL SITE HAS OPERATED. THE PLANNING DIRECTOR MAY CONDUCT A HEARING IF HE OR SHE BELIEVES IT WOULD ASSIST THE DECISION-MAKING PROCESS. THE PLANNING DIRECTOR SHALL ISSUE A WRITTEN DETERMINATION WHICH SHALL BE DISTRIBUTED TO ALL PERSONS MAKING WRITTEN COMMENTS. THE PLANNING DIRECTOR'S DECISION REGARDING TERMINATION OF THE PRIOR EXISTING USE STATUS MAY BE APPEALED TO THE PLANNING COMMISSION WITHIN 15 DAYS OF THE DATE OF THE NOTICE OF DECISION.]

<u>The owner of a material site that has been granted a PEU determination shall provide proof of compliance with AS 27.19.030 – 050 concerning reclamation to the planning department no later than</u> ~~July 1, 2021~~<u>. The proof shall consist of an Alaska Department of Natural Resources (DNR) approved reclamation plan and receipt for bonding or a letter of intent filed with DNR.</u>

<u>1. The planning department may request proof of continued compliance with AS 27.19.030 – 050 on an annual basis.</u>

<u>2. Pursuant to KPB 21.29.110 the enforcement process and remedies set forth in KPB 21.50 shall govern if the proof that the statutory requirements contained in AS 27.19.030-050 is not provided to the planning department.</u>

**SECTION 3.** That KPB 21.50.055 is hereby amended, as follows:

**21.50.055. Fines.**

A. Following are the fines for violations of this title. Each day a violation occurs is a separate violation. Violations begin to accrue the date the enforcement notice is issued and continue to the date the enforcement is initially set for hearing. The fine for a violation may not be reduced by the hearing officer to less than the equivalent of one day's fine for each type of violation.

| CODE CHAPTER & SECTION | VIOLATION DESCRIPTION | DAILY FINE |
|---|---|---|
| KPB 20.10.030(A) | Offering land for sale without final plat approval | $300.00 |
| KPB 20.10.030(B) | Filing/recording unapproved subdivision/plat | $300.00 |
| KPB 20.10.030(C) | Violation of subdivision code or condition | $300.00 |
| KPB 21.05.040(C) | Violation of variance conditions | $300.00 |
| KPB 21.06.030(D) | Structure or activity prohibited by KPB 21.06 | $300.00 |
| KPB 21.06.040 | Failure to obtain a Development Permit/Floodplain Management | $300.00 |
| KPB 21.06.045 | Failure to obtain a SMFDA Development Permit/Violation of SMFDA permit conditions/Floodplain Management | $300.00 |
| KPB 21.06.050 | Violation of permit conditions/Floodplain Management | $300.00 |
| KPB 21.18.071 | Failure to obtain staff permit/Violation of staff permit/Anadromous Streams Habitat Protection | $300.00 |
| KPB 21.18.072 | Failure to obtain limited commercial activity permit/Violation of permit conditions/Anadromous Streams Habitat Protection | $300.00 |
| KPB 21.18.075 | Prohibited use or structure/Anadromous Streams Habitat Protection | $300.00 |

| CODE CHAPTER & SECTION | VIOLATION DESCRIPTION | DAILY FINE |
|---|---|---|
| KPB 21.18.081 | Failure to obtain Conditional Use Permit/Violation of Conditional Use Permit Condition/Anadromous Streams Habitat Protection | $300.00 |
| KPB 21.18.090 | Failure to obtain prior existing use/structure permit/Violation of permit conditions/Anadromous Streams Habitat Protection | $300.00 |
| KPB 21.18.135(C) | Violation of emergency permit conditions/anadromous stream habitat protection | $300.00 |
| KPB 21.25.040 | Failure to Obtain a Permit/Material Site/Correctional community residential center/Concentrated Animal Feeding Operation | $300.00 |
| KPB 21.28.030 | Violation of permit conditions/Concentrated Animal Feeding Operations | $300.00 |
| KPB 21.29.020 | Failure to Obtain a counter permit/Material Site Permits | $300.00 |
| KPB 21.29.050 | Violation of Conditional Land Use Permit Conditions/Material Site Permits<br>Also applies to KPB 21.26 material site permits | $300.00 |
| KPB 21.29.060 | Violation of Reclamation Plan/Material Site Permits<br>Also applies to KPB 21.26 material site permits | $300.00 |
| KPB 21.29.120 | Failure to Provide Reclamation Plan and Proof of Bonding or Letter of Intent | $300.00 |
| KPB 21.44.100 | Violation of Pre-existing structures/Local Option Zoning | $300.00 |
| KPB 21.44.110(D) | Prohibited expansion of nonconforming use/Local Option Zoning | $300.00 |
| KPB 21.44.110(E) | Prohibited Change in Use/Local Option Zoning | $300.00 |
| KPB 21.44.110(G) | Violation of Conditions on Nonconforming Use/Local Option Zoning | $300.00 |

| CODE CHAPTER & SECTION | VIOLATION DESCRIPTION | DAILY FINE |
|---|---|---|
| KPB 21.44.130(C)(D) | Violation of Home Occupation Standards and Conditions/Local Option Zoning | $300.00 |
| KPB 21.44.130(F) | Disallowed Home Occupation/Local Option Zoning | $300.00 |
| KPB 21.44.135 | Failure to file development notice | $300.00 |
| KPB 21.44.160(A)(B) | Prohibited use | $300.00 |
| KPB 21.44.160(C) | Violation of Development Standards/Single Family Zoning/Local Option Zoning | $300.00 |
| KPB 21.44.165(A)(B) | Prohibited use | $300.00 |
| KPB 21.44.165(C) | Violation of Development Standards/Small Lot Residential Zoning/Local Option Zoning | $300.00 |
| KPB 21.44.170(A)(B) | Prohibited use | $300.00 |
| KPB 21.44.170(C) | Violation of Development Standards/Rural Residential District/Local Option Zoning | $300.00 |
| KPB 21.44.175(B)(C) | Prohibited Use | $300.00 |
| KPB 21.44.175(D) | Violation of Development Standards/Residential Waterfront | $300.00 |
| KPB 21.44.180(A)(B) | Prohibited Use | $300.00 |
| KPB 21.44.180(C) | Violation of Development Standards/Multi-Family Residential District/Local Option Zoning | $300.00 |
| KPB 21.44.190(A)(B) | Prohibited Use | $300.00 |
| KPB 21.44.190(C) | Violation of Development Standards/Industrial District/Local Option Zoning | $300.00 |

| CODE CHAPTER & SECTION | VIOLATION DESCRIPTION | DAILY FINE |
|---|---|---|
| KPB 21.46.030(b) | Failure to maintain bear-resistant garbage cans/Local option zone/Birch and Grove Ridge subdivisions Rural Residential District | $300.00 |
| KPB 21.50.100(F) | Removal of posted enforcement notice | $300.00 |
| KPB 21.50.100(G) | Violation of enforcement notice | $1,000.00 |
| KPB 21.50.130(I) | Violation of an enforcement order | $1,000.00 |

**SECTION 4.** That this ordinance shall become effective upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2022.**

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

02/01/22 Vote on motion to table:

Yes: Bjorkman, Chesley, Cox, Derkevorkian, Ecklund, Elam, Hibbert, Tupper, Johnson

No: None

Absent: None

| | |
|---|---|
| Introduced by: | Johnson, Elam |
| Date: | 08/15/23 |
| Hearing: | 09/19/23 |
| Action: | |
| Vote: | |

**KENAI PENINSULA BOROUGH**
**ORDINANCE 2023-17**

**AN ORDINANCE AMENDING KPB 22.40.080 TO PLACE THE MAYOR'S REPORT EARLIER ON THE AGENDA**

**WHEREAS,** the Mayor's Report is important as it is an opportunity for the public to hear more details about the work of the Borough administration, and often contains vital information; and

**WHEREAS,** the report contains numerous matters that affect Borough residents and therefore it seems appropriate to have the report earlier on the agenda;

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

**SECTION 1.** KPB 22.40.080 is hereby amended as follows:

**22.40.080. Agenda—Order of business.**

The order of business shall be:

Call to order;

Pledge of allegiance;

Invocation;

Roll call;

Committee reports;

Vacancy, designation or seating members (only when needed);

Approval of agenda and consent agenda;

Approval of minutes;

Commending resolutions and proclamations;

Presentations with prior notice (20 minutes total);

Public comments on items not appearing on the agenda (three minutes per speaker; 20 minutes aggregate);

Mayor’s Report;

Items not completed from prior agenda;

Public hearings on ordinances (Testimony limited to 3 minutes per speaker);

Unfinished business

1. Postponed items

2. Notices to reconsider/rescind;

New business;

1. Bid awards

2. Resolutions

3. Ordinances for introduction

4. Other (including addition of late items);

[MAYOR'S REPORT;]

Public comments and public presentations (Limited to 3 minutes per speaker);

Assembly comments;

Pending legislation;

Informational materials and reports;

Assembly meeting and hearing announcements;

Adjournment

**SECTION 2.** That this ordinance shall take effect immediately.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS * DAY OF * 2023.**

Brent Johnson, Assembly President

ATTEST:

Michele Turner CMC, Borough Clerk

Yes:

No:

Absent:

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Kenai Peninsula Borough
Assembly

# MEMORANDUM

**TO:** Members, Kenai Peninsula Borough Assembly

**FROM:** Brent Johnson, Assembly President BJ

**DATE:** August 3, 2023

**RE:** Ordinance 2023- 17 , Amending KPB 22.40.080 to Place the Mayor's Report Earlier on the Agenda (Johnson)

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The Mayor is ultimately responsible for the management and administration of each department of the Borough with the exception of the Clerk's office (which the Assembly manages). Daily activities for recreation service areas, a flood service area, the road service area, Fire and Emergency Services, Assessing, Finance, Hospitals, IT, 911, Legal, Planning, Purchasing and Contracting, HR, Maintenance, Roads, and Solid Waste are among the direct responsibilities of the Mayor. So is setting the budget for the School District and maintaining school buildings. In addition, the Mayor deals with City, State and Federal officials on a myriad network of issues. The Assembly provides legislative for all these responsibilities, but the day-to-day management and administration falls to the Mayor.

Ordinance 2019-08 moved the Mayor's report to the end of the agenda before the Assembly's closing comments. Subsequently, Ordinance 2019-17 moved the Mayor's Report up on the agenda a couple positions before public comments.

I think it would be better to have the Mayor's Report earlier on the agenda as it was prior to the enactment of the ordinances mentioned above.

Your consideration is appreciated.

| | |
|---|---|
| Introduced by: | Bagley, Cooper |
| Date: | 04/16/19 |
| Hearing: | 05/21/19 |
| Action: | Enacted |
| Vote: | 6 Yes, 3 No, 0 Absent |

**KENAI PENINSULA BOROUGH**
**ORDINANCE 2019-08**

**AN ORDINANCE AMENDING KPB 22.40.080 TO HAVE THE MAYOR'S REPORT HEARD LATER ON THE AGENDA**

**WHEREAS,** the Mayor's Report is currently scheduled near the beginning of the agenda; and

**WHEREAS,** the Mayor's Report typically contains after action items and serves to inform the assembly; and

**WHEREAS,** this amendment would afford the assembly the opportunity to address action items earlier in the meeting to maximize public participation;

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

**SECTION 1.** KPB 22.40.080 is hereby amended as follows:

**22.40.080. Agenda – Order of business.**
The order of business shall be:

A. Call to order;
B. Pledge of allegiance;
C. Invocation;
D. Roll call;
E. Committee reports;
F. Vacancy, designation or seating members (only when needed);
G. Approval of agenda and consent agenda;
H. Approval of minutes;
I. Commending resolutions and proclamations;
J. Presentations with prior notice (20 minutes total);
K. Public comments on items not appearing on the agenda (three minutes per speaker; 20 minutes aggregate);
[L. MAYOR'S REPORT;]
[M]L. Items not completed from prior agenda;
[N]M. Public hearings on ordinances (Testimony limited to 3 minutes per speaker);
[O]N. Unfinished business
    1. Postponed items
    2. Notices to reconsider/rescind;
[P]O. New business;
    1. Bid awards

2. Resolutions
3. Ordinances for introduction
4. Other (including addition of late items);

[Q]P. Public comments and public presentations (Limited to 3 minutes per speaker);

Q. Mayor's Report;

[R. ASSEMBLY MEETING AND HEARING ANNOUNCEMENTS;]

[S] R. Assembly comments;

[T] S. Pending legislation;

[U]T. Informational materials and reports;

U. Assembly meeting and hearing announcements;

V. [NOTICE OF THE NEXT MEETING AND] [A]Adjournment.

**SECTION 2.** That this ordinance shall take effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 21ST DAY OF MAY, 2019.**

Wayne H. Ogle, Assembly President

ATTEST:

John Blankenship, MMC, Borough Clerk

KENAI PENINSULA BOROUGH 1964

| | |
|---|---|
| Yes: | Bagley, Cooper, Dunne, Fischer, Hibbert, Smalley |
| No: | Blakeley, Carpenter, Ogle |
| Absent: | None |

| | |
|---|---|
| Introduced by: | Fischer, Blakeley |
| Date: | 07/02/19 |
| Hearing: | 08/06/19 |
| Action: | Introduced and Set for Public Hearing |
| Vote: | 9 Yes, 0 No, 0 Absent |
| Date: | 08/06/19 |
| Action: | Enacted as Amended |
| Vote: | |

**KENAI PENINSULA BOROUGH**
**ORDINANCE 2019-17**

**AN ORDINANCE AMENDING KPB 22.40.080 TO PLACE THE MAYOR'S REPORT EARLIER ON THE AGENDA**

**WHEREAS,** following the recent approval of Ordinance 2019-08 the mayor's report is scheduled at the end of the assembly meetings; and

**WHEREAS,** since that ordinance was enacted public testimony has supported moving the mayor's report early enough in the meeting to allow public comment on it; and

**WHEREAS,** the mayor's report is important as it is an opportunity for the public to hear more details about the work of the borough administration, often contains vital information, and the public's best interest would be better served by moving it up to before the final public comment to give the public a chance to comment on it; and

**WHEREAS,** removing the lettering of each agenda item would avoid confusion when future changes may be made to the agenda;

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

**SECTION 1.** KPB 22.40.080 is hereby amended as follows:

**22.40.080. Agenda—Order of business.**

The order of business shall be:

[A.] Call to order;
[B.] Pledge of allegiance;
[C.] Invocation;
[D.] Roll call;
[E.] Committee reports;
[F.] Vacancy, designation or seating members (only when needed);
[G.] Approval of agenda and consent agenda;

[H.] Approval of minutes;
[I.] Commending resolutions and proclamations;
[J.] Presentations with prior notice (20 minutes total);
[K.] Public comments on items not appearing on the agenda (three minutes per speaker; 20 minutes aggregate);
[L.] Items not completed from prior agenda;
[M.] Public hearings on ordinances (Testimony limited to 3 minutes per speaker);
[N.] Unfinished business
1. Postponed items
2. Notices to reconsider/rescind;
[O] New business;
1. Bid awards
2. Resolutions
3. Ordinances for introduction
4. Other (including addition of late items);

Mayor's Report

[P.] Public comments and public presentations (Limited to 3 minutes per speaker);
[Q. MAYOR'S REPORT;]
[R.] Assembly comments;
[S.] Pending legislation;
[T.] Informational materials and reports;
[U.] Assembly meeting and hearing announcements;
[V.] Adjournment

**SECTION 2.** That this ordinance shall take effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS 6TH DAY OF AUGUST, 2019.**

Wayne H. Ogle

Wayne H. Ogle, Assembly President

ATTEST:

John Blankenship

Johni Blankenship, MMC, Borough Clerk

KENAI PENINSULA BOROUGH 1964

| | |
|---|---|
| Yes: | Bagley, Carpenter, Cooper, Dunne, Hibbert, Smalley, Ogle |
| No: | Blakeley, Fischer |
| Absent: | None |

| | |
|---|---|
| Introduced by: | Ecklund |
| Date: | 01/03/23 |
| Action: | Tabled |
| Vote: | 9 Yes, 0 No, 0 Absent |

**KENAI PENINSULA BOROUGH**
**RESOLUTION 2023-005**

**A RESOLUTION OF INTENT BY THE KENAI PENINSULA BOROUGH ASSEMBLY ESTABLISHING THAT FINANCING OF ENERGY AND RESILIENCE IMPROVEMENT PROJECTS THROUGH ASSESSMENTS SERVES A VALID PUBLIC PURPOSE AND RELATED MATTERS (PACER PROGRAM)**

**WHEREAS,** the Alaska State Legislature enacted the Municipal Property Assessed Clean Energy and Resilience Act ("PACER Act"), Alaska Statutes 29.55, as amended, restated, supplemented or otherwise modified from time-to-time, authorizing local governments to establish an energy and resilience improvement assessment program; and

**WHEREAS,** the PACER Act allows local governments to finance the installation or modification of permanent improvements, fixed to existing privately owned commercial or industrial property, to achieve reduced energy consumption or demand in areas designated by local governments; and

**WHEREAS,** installation or modification by property owners of energy and resilience improvement upgrades to commercial or industrial property in the Kenai Peninsula Borough will serve a public purpose by reducing energy costs, stimulating the economy, improving property valuation, reducing greenhouse gas emissions and creating jobs; and

**WHEREAS,** the Kenai Peninsula Borough, finds that it is convenient and advantageous to establish a program under the PACER Act and designate the geographic area on an areawide basis within the Kenai Peninsula Borough's jurisdiction as an area within which Kenai Peninsula Borough and the record owners of qualified real property may participate under a program established by the PACER Act and enter into financing arrangements in connection therewith;

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

**SECTION 1.** The recitals to this resolution are true and correct and are incorporated into this resolution for all purposes.

**SECTION 2.** For purposes of this resolution, "PACER assessment" shall mean those assessments authorized by the PACER Act.

**SECTION 3.** The Kenai Peninsula Borough hereby determines that establishing a property assessed clean energy and resilience program and financing energy and resilience improvement projects through PACER assessment serves a valid public purpose by reducing energy costs, stimulating the economy, improving property valuation, reducing greenhouse gas emissions, and creating jobs.

**SECTION 4.** The Kenai Peninsula Borough intends to allow privately owned commercial or industrial property owners to make contractual PACER assessment to repay financing for qualified energy and resilience improvement projects under, and pursuant to, the terms of a municipal property assessed clean energy and resilience program subject to, and pursuant to, the PACER Act ("PACER Program").

**SECTION 5.** Qualified energy and resilience new construction or improvement projects under the PACER Program will include those projects which are fixed to new construction or existing privately owned commercial or industrial property and that (1) are energy improvement projects designed to reduce energy consumption or demand, energy costs, or emissions affecting local air quality, including a product, device, or interacting group of products or devices that use energy technology to generate electricity, provide thermal energy, or regulate temperature; or (2) improve building resilience; resilience improvement projects include projects for seismic improvements, storm water management, flood mitigation and protection, fire hardening, fire or wind resistance, erosion management, snow load management, micro grids for energy storage and backup power generation, water or wastewater efficiency including reuse and energy recovery, electric vehicle charging stations, retrofitting that improves the envelope, structure, or systems of the building, and any other improvement project approved by a municipality as a resilience improvement project.

PACER assessment may not be imposed to repay financing of facilities for undeveloped lots or lots undergoing development at the time of an assessment.

**SECTION 6.** To the extent permitted by law, the entire geographic area within Kenai Peninsula Borough's jurisdiction may be available for energy and resilience improvement projects under the PACER Program.

**SECTION 7.** Financing for qualified energy and resilience new construction and improvement projects under the PACER Program will be provided by third-party capital providers under a written contract with property owners. The contracts will provide for capital providers to advance funds to property owners on such terms as are agreed between the capital providers and property owners for installation or modification of energy improvement projects, and service the debt secured by PACER assessment through the Kenai Peninsula Borough. The proposed arrangements for financing energy improvement projects may authorize property owners to (1) purchase directly the related equipment and materials for energy improvement and resilience projects; and (2) contract directly, including through

lease, a power purchase agreement, or other service contract, for energy and resilience improvement projects.

The Kenai Peninsula Borough does not intend to finance or fund any loan under the PACER Program, rather, the Kenai Peninsula Borough intends to serve only as a Program sponsor to facilitate loan repayment by including PACER assessment on real property tax bills for the improved property, and shall incur no liability for the loan.

Benefited property owners will execute written contracts with the Kenai Peninsula Borough to impose a PACER Program assessment to repay financing of an energy improvement project located on such property. The contract between a property owner and the Kenai Peninsula Borough will authorize Kenai Peninsula Borough to service the debt by PACER assessment for the benefit of the capital provider and enforce the PACER assessment lien as provided in AS 29.45.320 - 29.45.470 for enforcement of property tax liens. In the case of third-party capital financing of energy improvement project(s), an agreement will be entered into by the Kenai Peninsula Borough and the third-party capital provider.

A person or entity that acquires property subject to an assessment under the PACER Program will assume the obligation to pay such PACER assessment.

**SECTION 8.** Subject to law, the Kenai Peninsula Borough shall collect, and enforce PACER assessments in the same manner as other property tax liens.

**SECTION 9.** The report on the proposed PACER Program, as required by AS 29.55.110, will be available for public inspection on the Internet website of www.kpb.us and in the Borough's Finance Department at 144 N. Binkley Street, Soldotna, AK 99669.

**SECTION 10.** The local official administering the PACER Program is the Borough Assessor, or designee, and the appropriate assigned assessor, who will collect the proposed PACE assessment with property taxes imposed on the assessed property.

**SECTION 11.** The Kenai Peninsula Borough will hold a public hearing on the proposed PACER Program and report.

**SECTION 12.** That this resolution takes effect immediately upon adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 3RD DAY OF JANUARY 2023.**

Brent Johnson, Assembly President

ATTEST:

Michele Turner, CMC, Acting Borough Clerk

Vote on motion to table:

| | |
|---|---|
| Yes: | Bjorkman, Chesley, Cox, Derkevorkian, Ecklund, Elam, Hibbert, Tupper, Johnson |
| No: | None |
| Absent: | None |

Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Cindy Ecklund, Assembly Member (CM) for CE

**DATE:** December 21, 2022

**SUBJECT:** Resolution 2023-005, Resolution of Intent by The Kenai Peninsula Borough Assembly Establishing that Financing of Energy and Resilience Improvement Projects through Assessments Serves a Valid Public Purpose and Related Matters (PACER Program) (Ecklund)

The Alaska State Legislature enacted the Municipal Property Assessed Clean Energy and Resilience Act, Alaska Statutes 29.55, as amended, restated, supplemented or otherwise modified from time to time ("PACER Act"), authorizing local governments to establish an energy and resilience improvement assessment program.

The PACER Act allows local governments to finance the installation or modification of permanent improvements, fixed to new construction or existing privately owned commercial or industrial property, to achieve reduced energy consumption or demand in areas designated by local governments.

Installation or modification by property owners of energy and resilience improvement upgrades to commercial or industrial property in the Kenai Peninsula Borough will serve a public purpose by reducing energy costs, stimulating the economy, improving property valuation, reducing greenhouse gas emissions and creating jobs.

The Resolution of Intent includes a finding by Kenai Peninsula Borough Assembly that it is convenient and advantageous to establish a program under the PACER Act and designate the geographic area on an areawide basis within the Kenai Peninsula Borough's jurisdiction as an area within which Kenai Peninsula Borough and the record owners of qualified real property may participate under a program established by the PACER Act and enter into financing arrangements in connection therewith.

Your consideration is appreciated.

**Warner, Avery**

**From:** Cindy Ecklund
**Sent:** Tuesday, January 3, 2023 1:08 PM
**To:** Turner, Michele
**Subject:** Fwd: <EXTERNAL-SENDER>CPACE legislation

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

---------- Forwarded message ---------
From: **Willy Dunne** <wdunne907@gmail.com>
Date: Wed, Dec 28, 2022 at 8:31 AM
Subject: <EXTERNAL-SENDER>CPACE legislation
To: Tupper, Mike <mtupper@kpb.us>, Lane Chesley <lchesley@kpb.us>, Ecklund, Cindy <cecklund@kpb.us>
CC: Johnson, Brent <bjohnson@kpb.us>, Scott Waterman <scottwaterman.rsac@gmail.com>, Navarre Mike <mnavarre@kpb.us>

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Dear Assembly Members,

I am very glad to see the CPACE (aka PACER) program moving forward via KPB Resolution 2023-005. This program has proved beneficial in other Alaska municipalities as well as many states around the US. My participation in CPACE workshops over the past few years has convinced me that it is a valuable program worthy of being adopted here.

Thanks to Cindy Ecklund for sponsoring this and the RSAC for promoting the idea. It will benefit business owners and the Borough. I look forward to seeing enabling ordinances soon.

Willy Dunne
--
Cindy L. Ecklund
907-362-2276

**Warner, Avery**

**From:** Cindy Ecklund
**Sent:** Tuesday, January 3, 2023 1:07 PM
**To:** Turner, Michele
**Subject:** <EXTERNAL-SENDER>Fwd: PACER resolution of intent

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

---------- Forwarded message ---------
From: **Peter Crimp** <petercrimp@gmail.com>
Date: Sun, Jan 1, 2023 at 1:22 PM
Subject: Re: PACER resolution of intent
To: Cindy Ecklund <ecklundc@gmail.com>
CC: Hig Higman <hig314@gmail.com>, Lori Landstrom <ljlandstrom81@gmail.com>, Scott Waterman <scottwaterman.rsac@gmail.com>

Here's the comment that I just submitted to the KPB.
-Peter

> Dear Assembly President Johnson,
> As a 20-year energy professional and 40-year Alaska resident, I support the establishment of a program under the State PACER Act for the Kenai Peninsula Borough. At negligible cost to the Borough the program has the potential to save business owners money, improve Borough property values and market competitiveness, protect property from earthquakes and other hazards, and create construction and engineering jobs. I am impressed with the innovative program's approach--including reducing risk to lenders and extending the period for businesses to capture benefits--through attaching the debt for improvements to the property and repaying through property taxes. It has been my experience that properly planned energy projects usually realize savings above debt service starting at year one.
> Thank you for your consideration.
> Peter Crimp, Principal
> Crimp Energy Consulting, Homer, AK
> petercrimp@gmail.com :: ph 907-440-6709

> On Dec 29, 2022, at 9:54 PM, Hig <hig314@gmail.com> wrote:
>
> Thanks Cindy - sounds good.
>
> -Hig
>
> On Thu, Dec 29, 2022 at 9:06 PM Cindy Ecklund <ecklundc@gmail.com> wrote:
> Hig,

The State Statute section the new legislation is under is Chapter 55 - Municipal Programs. The KPB resolution mirrors the Mat-Su Resolution of intent except where it uses the new term Pacer. I think were good. Hopefully the rest of the Assembly thinks so too.

Cindy

On Thu, Dec 29, 2022 at 4:53 PM Hig <hig314@gmail.com> wrote:

What I'm seeing is this first Whereas:
"the Alaska State Legislature enacted the Municipal Property Assessed Clean Energy and Resilience Act ("PACER Act"), Alaska Statutes 29.55, as amended, restated, supplemented or otherwise modified from time-to-time, authorizing local governments to establish an energy and resilience improvement assessment program;"

specifically mentions municipal properties rather than commercial properties,

However, down lower there's this clause:
"The Kenai Peninsula Borough intends to allow privately owned commercial or industrial property owners to make contractual PACER assessment to repay financing for qualified energy and resilience improvement projects under, and pursuant to, the terms of a municipal property assessed clean energy and resilience program subject to, and pursuant to, the PACER Act ("PACER Program")."

I'm not totally sure what that means, but maybe this implies that the definition of "municipal" will be extended to include eligible commercial properties, thus PACER would be like C-PACE but with "resiliency" and also applying to what would conventionally be called municipal properties?

Or am I misreading "municipal" entirely? I generally think of that as publicly owned property, but maybe I've got that wrong?

-Hig

On Thu, Dec 29, 2022 at 12:18 PM Cindy Ecklund <ecklundc@gmail.com> wrote:

Hig,

The new state plan documents are not out yet but as I understand the amended State statute they included the word resilience into the statute and will call the program PACER now instead of C-PACE. I called the state a month ago and they don't expect the new documents to be out until January or February. In Washington the program is called C-PACER but for now PACER is what the state said on the phone.

Peter please correct me if you know of other info.

Cindy

On Thu, Dec 29, 2022 at 11:40 AM Hig <hig314@gmail.com> wrote:

Hi Cindy and Peter,

Looking at the PACER resolution (here) it looks like this is not C-PACE, and that PACER is a separate program that is similar but allows municipal properties rather than commercial

properties to apply for loans like this. Peter - are you up on how PACER and C-PACE relate?

I have someone in Homer (Nancy Hillstrand) who sounds pretty game to comment, but just realized I'm not clear on this detail, so I'd like to get it straightened out before I respond to her with more details.

-Hig

On Wed, Dec 28, 2022 at 8:16 PM Hig <hig314@gmail.com> wrote:
That's great Cindy,

I'll see if I can find someone else...

-Hig

On Wed, Dec 28, 2022 at 11:10 AM Lori Landstrom <ljlandstrom81@gmail.com> wrote:
Good news, I think I've found a Seward small business owner willing to speak on 1/3. Cindy has been apprised and is in contact with Kellyann.
let's do this.

Lori

"Diversity is being invited to the party. Inclusion is being asked to dance."

-Verna Myers

On Wed, Dec 28, 2022 at 9:39 AM Cindy Ecklund <ecklundc@gmail.com> wrote:
Peter,

It's been awhile since you presented to the Assembly. A short email in support that includes your experience in the area would be a good reminder.

Hopefully a business somewhere on KPB has been following the program and has some interest already. We can only try!

Thanks again,
Cindy L. Ecklund

On Wed, Dec 28, 2022 at 9:13 AM Peter Crimp <petercrimp@gmail.com> wrote:
Hi Cindy.
Looks great. I'm available to write a letter of support or help someone else do so. Since Hig and I spoke at the Assembly meeting earlier this year, would it be better for the message to come from someone else?

Agreed that it would be best for a commercial property owner to express interest, but it's a very short timeline. I'll check with a friend who owns a business in Homer and see if he would be willing.

Peter

On Dec 27, 2022, at 2:08 PM, Cindy Ecklund <ecklundc@gmail.com> wrote:

Hi,

This will be on the agenda 1/3/23. It would be helpful for some positive communication to the Assembly prior to that date. Even better would be finding someone who would be interested in applying for the program to communicate their interest.

Soon,
Cindy L. Ecklund

---------- Forwarded message ---------
From: **Kelley, Sean** <skelley@kpb.us>
Date: Tue, Dec 27, 2022 at 10:35 AM
Subject: PACER resolution of intent
To: Ecklund, Cindy <CEcklund@kpb.us>
CC: Turner, Michele <MicheleTurner@kpb.us>, Cindy Ecklund <ecklundc@gmail.com>

Hi Cindy,

Sorry to include both of your emails but this is a bit time sensitive. Michele is going to hold packet until we know if you want to go forward with the resolution of intent.

I have attached a PDF version of both the resolution and accompanying memo. If you approve, you can either click through the Docusign buttons to initial and complete OR you can respond to this email or call Michele and give her approval to initial for you. Whatever you prefer works for us.

Thank you,

Sean

--

**Sean Kelley**

Borough Attorney

Kenai Peninsula Borough

(907)714-2120

***This message, and any attachments, is private and may contain information that is confidential and subject to the Attorney-Client privilege or protected as Attorney Work Product. If you are not the person for whom this message is intended, please delete it and notify me immediately. Please do not copy or send this message to anyone else. Any unauthorized use by others is prohibited. Thank you.***

--
Cindy L. Ecklund
907-362-2276

<PACER Reso of Intent RESO & MEMO.pdf>

--
Cindy L. Ecklund
907-362-2276

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Hig (Bretwood Higman, PhD)
hig314@gmail.com
907 290 6992
Ground Truth Alaska (www.groundtruthalaska.org)
Nuka Research (www.nukaresearch.com)

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Nuka Research (www.nukaresearch.com)

--
Cindy L. Ecklund
907-362-2276

Introduced by: Mayor
Date: 09/19/23
Action:
Vote:

**KENAI PENINSULA BOROUGH**
**RESOLUTION 2023-058**

**A RESOLUTION APPROVING AN INCREASE TO THE LIMITATION ON THE TOTAL CUMULATIVE ANNUAL COST OF REAL PROPERTY LEASES IN WHICH SOUTH PENINSULA HOSPITAL, INC. IS THE SOLE LESSEE, APPROVING EXHIBIT A UPDATES, AND APPROVING A THIRD AMENDMENT TO THE OPERATING AGREEMENT**

**WHEREAS,** the Kenai Peninsula Borough ("Borough") has entered into an Operating Agreement with South Peninsula Hospital, Inc. ("SPHI") for operation of South Peninsula Hospital ("SPH") and other medical facilities, and to provide other healthcare programs and services, on a nonprofit basis in order to ensure the continued availability to the service area residents; and

**WHEREAS,** under the Operating Agreement, Section 14, Paragraph (b), the total cumulative annual cost of such leases cannot exceed $400,000 without prior approval by the Assembly, or Assembly approval of an increase, by resolution, above that limitation; and

**WHEREAS,** Resolution 2023-019 approved an increase of the total cumulative annual cost to the revised limitation of $550,000 for real property leases in which SPHI is the sole lessee under the Operating Agreement, Section 14, Paragraph (b); and

**WHEREAS,** Resolution 2023-019 approved an amendment to the operating agreement amending Section 10(d) and 14(b) of the Operating Agreement, to state that the annual reported Property Lease List will include a category of contract labor housing leases, but that those leases will not count toward the annual cap under 14(b);

**WHEREAS,** SPHI administration has recommended that an increase to the limitation on the total cumulative annual cost of real property leases in which SPH, Inc. is the sole lessee to $650,000, due to continued growth and anticipated additional space needs in FY24, which will likely bring the total annual costs for leases near the maximum limitation under the operating agreement; and

**WHEREAS,** the SPHI administration and Borough administration have also identified a need to update Exhibit A of the Operating Agreement which identifies medical facilities that are managed and operated by SPHI pursuant to the Operating Agreement; and

**WHEREAS,** Exhibit A updates are clerical in nature to correct square footage and identify properties that have changed or been added since the Operating Agreement was signed; and

**WHEREAS,** the SPHI Board of Directors, at its June 28, 2023, meeting, approved the recommendation of SPHI administration; and requested that the Borough Assembly, in the best interest of the Borough's Service Area and the residents that SPHI serves, approve the Exhibit A updates and approve by resolution an increase of the total cumulative annual cost to the revised limitation of $650,000 for real property leases in which SPHI is the sole lessee under the Operating Agreement, Section 14, Paragraph (b); and

**WHEREAS,** at its meeting on _____, 2023, the South Kenai Peninsula Hospital Service Area Board recommended _____ of this resolution;

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

**SECTION 1.** That the Assembly finds that it is the best interest of the Borough's Service Area and the residents that SPHI serves to approve an increase in the total cumulative annual cost of real property leases in which SPHI is the sole lessee under the Operating Agreement, Section 14, Paragraph (b).

**SECTION 2.** That the Assembly approves an increase of the total cumulative annual cost to the revised limitation of $650,000 for real property leases in which SPHI is the sole lessee under the Operating Agreement, Section 14, Paragraph (b).

**SECTION 3.** That the Assembly approves an amendment to the operating agreement amending Section 10(d) and 14(b) of the Operating Agreement, to state that the annual reported Property Lease List will include a category of contract labor housing leases, but that those leases will not count toward the annual cap under 14(b).

**SECTION 4.** That the Assembly approves an amendment to the operating agreement to update Exhibit A to Operating Agreement in a form substantively similar to the accompanying Third Amendment to the Operating Agreement.

**SECTION 5.** That this resolution takes effect immediately upon adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 19TH DAY OF SEPTEMBER, 2023.**

Brent Johnson, Assembly President

ATTEST:

Michele Turner, CMC, Borough Clerk

Yes:

No:

Absent:

DocuSign Envelope ID: A0C80C6B-FA57-441A-B3A8-9BBE13744FFA

# Kenai Peninsula Borough
## Office of the Borough Mayor

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Peter A. Micciche, Mayor PAM

**DATE:** September 7, 2023

**RE:** Resolution 2023-058, Approving an Increase to the Limitation on the Total Cumulative Annual Cost of Real Property Leases in which SPH, Inc. is the Sole Lessee, Approving Exhibit A Updates, and Approving a Third Amendment to the Operating Agreement (Mayor)

---

The Kenai Peninsula Borough ("Borough") has entered into an Operating Agreement with South Peninsula Hospital, Inc. ("SPHI") for the operation of the South Peninsula Hospital and other medical facilities, on a not-for- profit basis, to provide healthcare services to the service area residents.

Resolution 2023-019 amended Section 14(b) of the Operating Agreement and approved an increase of the $400,000 annual cumulative cost limitation to $550,000 for real property leases, in which SPHI is the sole lessee, and provided that the contract housing leases reported annually in the Property Lease List will be excluded from the annual cap under Section 14(b) of the Operating Agreement.

The SPHI administration has recommended an increase of the limitation on the total cumulative annual cost of real property leases to $650,000 based on SPHI's continued growth and additional space requirements for FY24 anticipated to increase the total annual costs for leases in excess of the current maximum allowable limitation of $550,000. This resolution would approve SPHI's recommendation for the increase and amend the Operating Agreement accordingly.

In addition, this resolution will approve an amendment to make necessary updates or clerical edits to the facilities described on Exhibit A to the Operating Agreement.

Your consideration is appreciated.

**THIRD AMENDMENT TO THE OPERATING AGREEMENT FOR SOUTH PENINSULA HOSPITAL**

This Third Amendment to the Operating Agreement for South Peninsula Hospital ("Second Amendment to the Operating Agreement") is by and between South Peninsula Hospital, Inc., an Alaska nonprofit corporation, of 4300 Bartlett, Home, Alaska 99603, hereinafter referred to as "SPHI" and the Kenai Peninsula Borough, an Alaska municipal corporation of 144 N. Binkley, Soldotna, Alaska 99669, hereinafter referred to as "Borough," collectively referred to as the parties.

WHEREAS, effective January 1, 2020, the parties entered into an operating agreement for South Peninsula Hospital (the "operating agreement"); and

WHEREAS, the SPHI Board of Directors requested an increase to the total cumulative annual cost of real property leases in which SPHI is the sole lessee under the Operating Agreement, Section 14, Paragraph (b) as well as an amendment to the operating agreement amending Section 10(d) and 14(b) of the Operating Agreement, to state that the annual reported Property Lease List will include a category of contract labor housing leases, but that those leases will not count toward the annual cap under Section 14, Paragraph (b) of the operating Agreement; and

WHEREAS, South Kenai Peninsula Hospital Service Area Board approved the requested amendments to the Operating Agreement and recommended approval by the Borough Assembly; and

WHEREAS, Resolution 2023-019 was adopted by the Borough Assembly on February 21, 2023, approving the requests to an increase to the annual cumulative lease total and a Third Amendment to the Operating Agreement; and

WHEREAS, the Third Amendment document did not get executed by the parties and SPHI has subsequently requested an additional increase in the cumulative lease total; and

WHEREAS, Resolution 2023-____, was adopted by the by the Borough Assembly on September 19, 2023, approving the requests to an increase to the annual cumulative lease total, Exhibit A updates, and a Third Amendment to the Operating Agreement;

NOW THEREFORE, in consideration of the mutual covenants contained herein the parties agree as follows:

1. That Section 10, paragraph (d) of the Operating Agreement is hereby amended to read as follows:

d. Property Lease List. The *Property Lease List* shall include a list of all real property leases, regardless of term length or cost, and of all other operating and capital leases with terms greater than one year. This shall apply to all leases entered into by SPHI as lessee or lessor. At a minimum, the list must identify the leased property (including the address or legal property description), lessor/lessee, term, and cost. This list will include all leases SPHI has entered into for the purposes of contract labor housing. SPHI shall provide copies of any leases related to the services provided under the terms of this Agreement upon request by the Borough Contract Administrator.

2. That Section 14, paragraph (b) of the Operating Agreement is hereby amended to read as follows:

b. Leases in Which SPHI is the Lessee. Leases in the name of SPHI in which SPHI is the Lessee and no obligation whatsoever is imposed upon the Borough, either express or implied, are not subject to the requirements in subparagraph 14.a. of this agreement. Under no circumstances shall such leases obligate the Borough in any way whatsoever without advance Borough Assembly approval. All such leases shall contain a clause stating: "In the event that the Operating Agreement between SPHI and the Kenai Peninsula Borough is terminated and not renewed or extended, and the Kenai Peninsula Borough either assumes operation of the Medical Facilities or contracts with another entity to continue such operation, the continuation of this lease with the Borough or a subsequent operator is subject to Borough Assembly approval and the availability and appropriation of funds." In any event, written approval by the Borough contract Administrator is required for all such leases costing $100,000 or more annually. Total cumulative annual costs of such leases shall not exceed $650,000. This total annual cost ceiling for leases does not include leases entered into by SPHI for the purposes of providing contract labor housing. Increases to the cumulative annual limitation must be approved by the Borough Assembly by resolution.

3. That Exhibit A of the Operating Agreement is hereby amended to read as follows:

**EXHIBIT A**
**DESCRIPTION OF MEDICAL FACILITIES**

SPHI manages and operates following described property on behalf of the Borough's South Kenai Peninsula Hospital Service Area (hereinafter the "Medical Facilities") for the term of this Agreement and any extension thereof:

a. The South Peninsula Hospital and its grounds, located at 4300 Bartlett Street, Homer, Alaska, owned by the City of Homer, more particularly described as:

DRAFT

Tract A-2, South Peninsula Hospital Subdivision 2008 Addition, filed under Plat No. 2008-92, Homer Recording District, Third Judicial District, State of Alaska.

b. The hospital parking lot property and buildings owned by the Borough, more particularly described as:

Lots 3, 4, 5 and 6, Block 7; Lot 4, Block 8, Lot 6, Block 9, Fairview Subdivision Plat No. HM 56-2936 Volume 8, Page 196, Homer Recording District, Third Judicial District, State of Alaska.

c. The following leased property located at 4251 Bartlett Street, Homer, Alaska, owned by Mark Halpin and B. Isabel Halpin subject to the terms and conditions of the lease, more particularly described as:

L2-A Block 8 Fairview Subdivision Halpin Addition, according to Plat No. 2009-43, Homer Recording District, Third Judicial District, State of Alaska,

d. 10,520 square ft. of office space located at 4136 Bartlett Street, Homer, Alaska 99603 owned by the Kenai Peninsula Borough, more particularly described as:

Lot 2-A, Block 5, Fairview Subdivision No. 11, as shown on Plat No. 85-28, Homer Recording District, Third Judicial District, State of Alaska.

e. Approximately 1,500 square feet of the office space owned by Westwing LLC located at 4117 Bartlett Street, Homer, Alaska 99603 subject to the terms and conditions of the lease, more particularly described as:

Lot 4, Block 10, Fairview Subdivision, as shown on Plat No. 56-2936, Homer Recording District, Third Judicial District, State of Alaska.

f. 5,500 square feet of office space and 5,500 square feet of basement office space both within the Kachemak Bay Professional Building, 4201 Bartlett Street, Homer, Alaska 99603 subject to the terms and conditions of the lease more particularly described as:

Lot 1-A Block 9, Fairview Subdivision 2003 Addition, as shown on Plat No. 2004-101, Homer Recording District, Third Judicial District, State of Alaska.

DRAFT

g. Intentionally Deleted

h. Office space owned by the Kenai Peninsula Borough located at 348 Cityview Avenue, Homer, Alaska 99603, more particularly described as:

> Lot 4, Block 8, Fairview Sub., Section 18, T6N, R13W, Seward Meridian, Plat 1956-2936, Homer Recording District, Third Judicial District, State of Alaska.

i. Office space owned by the Kenai Peninsula Borough located at 347 Cityview Avenue, Homer, Alaska 99603, more particularly described as:

> Lot 6, Block 9, Fairview Sub., Section 18, T6N, R13W, Seward Meridian, Plat 1956-2936, Homer Recording District, Third Judicial District, State of Alaska.

j. Office building owned by the Kenai Peninsula Borough located at 4135 Hohe Street, Homer, Alaska 99603, more particularly described as:

> Lot 1 Block 5 Fairview Subdivision, as shown on Plat No. 56-2936, Homer Recording District, Third Judicial District, State of Alaska.

k. Office building owned by the Kenai Peninsula Borough located at 203 Pioneer Avenue, Suite 1, Homer, Alaska 99603, more particularly described as:

> Tract A, Chamberlain & Watson Sub Plat of Tract A, Section 19, T6S, R13W, S.M., Plat 075063, Homer Recording District, Third Judicial District, State of Alaska.

l. 1,008 square feet of office space located at 4252 Hohe St. Suite B owned by Homer Health Professional Building LLC, Homer, Alaska 99603, more particularly described as:

> Lot 9 Block 1, Fairview Subdivision, according to Plat filed in Book 8, Page 196, Homer Recording District, Third Judicial District, State of Alaska.

m. 1,500 square feet of office space and residential housing located at 263 W. Fairview Ave owned by Red Raven LLC, Homer, Alaska 99603, more particularly described as:

DRAFT

Tract 6S R 1 3W Section 19, Seward Meridian HM 0562936, Fairview Subdivision Lot 12 Block 4, Homer Recording District, Third Judicial District, State of Alaska.

n. Such other Borough-owned or leased facilities, if any, as are authorized by the Borough pursuant to this Agreement for SPHI to sublease and operate pursuant to this Agreement.

4. All remaining terms and conditions of the Operating Agreement shall remain in full force and effect.

KENAI PENINSULA BOROUGH

_____
Peter A. Micciche
Borough Mayor

ATTEST:

_____
Michele Turner, CMC
Borough Clerk

Approved as to Form
and Legal Sufficiency:

_____
Sean Kelley, Borough Attorney

SOUTH PENINSULA HOSPITAL, INC.

_____
Kelly Cooper
SPHI Board President

ATTEST:

_____
Board Secretary

DRAFT

| | |
|---|---|
| Introduced by: | Mayor |
| Date: | 02/21/23 |
| Action: | Adopted |
| Vote: | 8 Yes, 0 No, 0 Absent, 1 Abstained |

**KENAI PENINSULA BOROUGH**
**RESOLUTION 2023-019**

**A RESOLUTION APPROVING AN INCREASE TO THE LIMITATION ON THE TOTAL CUMULATIVE ANNUAL COST OF REAL PROPERTY LEASES IN WHICH SPH, INC. IS THE SOLE LESSEE AND APPROVING A THIRD AMENDMENT TO THE OPERATING AGREEMENT REGARDING LEASES FOR CONTRACT LABOR HOUSING**

**WHEREAS,** the Kenai Peninsula Borough ("Borough") has entered into an Operating Agreement with South Peninsula Hospital, Inc. ("SPHI") for operation of South Peninsula Hospital ("SPH") and other medical facilities, and to provide other healthcare programs and services, on a nonprofit basis in order to ensure the continued availability to the service area residents; and

**WHEREAS,** under the Operating Agreement, Section 14, Paragraph (b), the total cumulative annual cost of such leases cannot exceed $400,000 without prior approval by the Assembly, or Assembly approval of an increase, by resolution, above that limitation; and

**WHEREAS,** the total cumulative annual costs for leases where SPHI is the sole lessee is $358,000; and

**WHEREAS,** SPHI intends to enter into a new lease for approximately $40,000 per year to meet current SPH needs; and

**WHEREAS,** SPHI administration has recommended that an increase of $550,000 to the limitation on the total cumulative annual cost of real property leases in which SPH, Inc. is the sole lessee, to the revised limitation of $550,000 under the Operating Agreement, Section 14, Paragraph (b), is in the best interest of the Borough's Service Area and the residents that SPHI serves; and

**WHEREAS,** SPHI also enters into temporary leases not to exceed one year to assist with traveling and new hire employee housing, and SPHI considers these leases separate from conducting standard operations; and

**WHEREAS,** SPHI and the Borough want to clarify that contract labor leases are excluded from the aggregate lease total in the operating agreement; and

**WHEREAS,** the SPHI Board of Directors, at its January 25, 2023, meeting, approved the recommendation of SPHI administration; and requested that the Borough Assembly, in the best interest of the Borough's Service Area and the residents that SPHI serves, approve by resolution an increase of the total cumulative annual cost to the revised limitation of $550,000 for real property leases in which SPHI is the sole lessee under the Operating Agreement, Section 14, Paragraph (b); and

**WHEREAS,** at its meeting on February 9, 2023, the South Kenai Peninsula Hospital Service Area Board recommended approval of this resolution;

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

**SECTION 1.** That the Assembly finds that it is the best interest of the Borough's Service Area and the residents that SPHI serves to approve an increase in the total cumulative annual cost of real property leases in which SPHI is the sole lessee under the Operating Agreement, Section 14, Paragraph (b).

**SECTION 2.** That the assembly approves an increase of the total cumulative annual cost to the revised limitation of $550,000 for real property leases in which SPHI is the sole lessee under the Operating Agreement, Section 14, Paragraph (b).

**SECTION 3.** That the assembly approves an amendment to the operating agreement amending Section 10(d) and 14(b) of the Operating Agreement, to state that the annual reported Property Lease List will include a category of contract labor housing leases, but that those leases will not count toward the annual cap under 14(b).

**SECTION 4.** That this resolution takes effect immediately upon adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 21ST DAY OF FEBRUARY, 2023.**

Brent Johnson

Brent Johnson, Assembly President

ATTEST:

Michele Turner

Michele Turner, CMC, Acting Borough Clerk

KENAI PENINSULA BOROUGH 1964

| | |
|---|---|
| Yes: | Cox, Derkevorkian, Ecklund, Elam, Hibbert, Ribbens, Tupper, Johnson |
| No: | None |
| Absent: | None |
| Abstained: | Chesley |

Introduced by: Administration
Date: June 28, 2023
Action: Approved
Vote: Y-8, N-0, Exc.-2, Abstain-1

**SOUTH PENINSULA HOSPITAL**
**BOARD RESOLUTION**
**2023-18**

**A RESOLUTION OF THE SOUTH PENINSULA HOSPITAL BOARD OF DIRECTORS REQUESTING A THIRD AMENDMENT TO THE KENAI PENINSULA BOROUGH AND SOUTH PENINSULA HOSPITAL OPERATING AGREEMENT AMENDMENT A TO INCLUDE UPDATES TO THE LISTED MEDICAL FACILITIES**

**WHEREAS**, , the Kenai Peninsula Borough ("Borough") has entered into an Operating Agreement, effective January 1, 2020, with South Peninsula Hospital, Inc. ("SPHI") for operation of the South Peninsula Hospital and other medical facilities, and to provide other healthcare programs and services, on a nonprofit basis in order to ensure the continued availability to the South Kenai Peninsula Hospital Service Area (SKPHSA) residents; and

**WHEREAS**, Exhibit A of the operating agreement describes the property that SPHI operates and manages on behalf of the Borough; and

**WHEREAS**, South Peninsula Hospital has updated some of its footprint through lease amendments and building expansions and the square footage of the following properties has changed:

- Kenai Peninsula Borough owned property at 4136 Bartlett St square footage has increased from 4,904 square feet to 10,520 square feet
- Leased Property at 4201 Bartlett St square footage has increased from 3,780 square feet of office space to 5,500 square feet and has increased 3,225 square feet of basement office space to 5,500 square feet of basement office space

**WHEREAS**, it would be appropriate to list the above referenced acquired property in the operating agreement to clarify that such properties are operated and managed by SPHI; and

**WHEREAS**, Ordinance 2021-19-17 authorized a first amendment to the operating agreement;

**WHEREAS**, Ordinance 2021-19-20 authorized a second amendment to the operating agreement;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF SOUTH PENINSULA HOSPITAL:**

1. That the South Peninsula Hospital, Inc. Board of Directors requests, supports, and hereby approves a third amendment to the Operating Agreement between the Kenai Peninsula Borough and South Peninsula Hospital, Inc. to update Exhibit A to the Operating Agreement in a form substantively similar to the accompanying Third Amendment to the Operating Agreement for South Peninsula Hospital document.

2. That the South Peninsula Hospital, Inc. Board of Directors will forward this resolution to the KPB Administration as support of updating the Operating Agreement between South Peninsula Hospital and the Kenai Peninsula Borough.

**PASSED AND ADOPTED BY THE BOARD OF DIRECTORS OF SOUTH PENINSULA HOSPITAL THIS 28th DAY of JUNE, 2023.**

ATTEST:

Kelly Cooper, Board President

Julie Woodworth, Secretary

| | |
|---|---|
| Introduced by: | Administration |
| Date: | June 28, 2023 |
| Action: | Approved |
| Vote: | Y-8, N-0, Exc.-2, Abstain-1 |

**SOUTH PENINSULA HOSPITAL**
**BOARD RESOLUTION 2023-19**

**A RESOLUTION OF THE SOUTH PENINSULA HOSPITAL BOARD OF DIRECTORS APPROVING AN INCREASE TO THE LIMITATION ON THE TOTAL CUMULATIVE ANNUAL COST OF REAL PROPERTY LEASES IN WHICH SPH, INC. IS THE SOLE LESSEE**

**WHEREAS,** the Kenai Peninsula Borough ("Borough") owns and provides for the operation of South Peninsula Hospital ("Hospital") through the South Kenai Peninsula Hospital Service Area, ("Service Area"); and

**WHEREAS,** the Borough has entered into an operating agreement with South Peninsula Hospital, Inc. ("SPHI") for the lease and operation of the Hospital and other medical facilities, to operate these medical facilities on a nonprofit basis in order to ensure the continued availability of the medical services to the service area residents and visitors; and

**WHEREAS,** under the Operating Agreement, Section 14, Paragraph (b), the total cumulative annual cost of such leases shall not exceed $550,000 without prior approval of by the Borough Assembly by resolution of any increases above that limitation; and

**WHEREAS,** the total cumulative annual costs for leases where SPHI is the sole lessee will be $405,985 in FY24; and

**WHEREAS,** SPHI continues to grow and anticipates additional space needs in FY24, which will likely bring the total annual costs for leases near the maximum limitation under the operating agreement; and

**WHEREAS,** SPHI is requesting the annual lease maximum be increased to $650,000; and

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF SOUTH PENINSULA HOSPITAL:**

**1.** That South Peninsula Hospital finds that it is the best interest of the Borough's Service Area and the residents that SPH serves to approve an increase in the total cumulative annual cost of real property leases in which South Peninsula Hospital, Inc. (SPHI) is the sole lessee under the Operating Agreement, Section 14, Paragraph (b).

**2.** That the South Peninsula Hospital Board of Directors approve an increase of the total cumulative annual cost to the revised limitation of $650,000 for real property leases in which SPHI is the sole lessee under the Operating Agreement, Section 14, Paragraph (b).

**3.** That the South Peninsula Hospital Board of Directors requests amendments to Section 10(d) and 14(b) of the Operating Agreement, to state that the annual reported Property Lease List will include a category of contract labor housing leases, but that those leases will not count toward the annual cap under 14(b).

**PASSED AND ADOPTED BY THE BOARD OF DIRECTORS OF SOUTH PENINSULA HOSPITAL THIS 28th DAY of JUNE, 2023.**

ATTEST:

Julie Woodworth, Board Secretary

Kelly Cooper, Board President

Introduced by: Mayor
Date: 09/19/23
Action:
Vote:

**KENAI PENINSULA BOROUGH**
**RESOLUTION 2023-059**

**A RESOLUTION AMENDING THE SCOPE OF WORK FOR THE RENOVATION OF THE 4201 BARTLETT STREET LEASED PROPERTY FOR SOUTH KENAI PENINSULA HOSPITAL SERVICE AREA PURPOSES**

**WHEREAS,** the Kenai Peninsula Borough ("Borough") has entered into an Operating Agreement with South Peninsula Hospital, Inc. ("SPHI") for operation of South Peninsula Hospital ("SPH") and other medical facilities, and to provide other healthcare programs and services, on a nonprofit basis in order to ensure the continued availability to the service area residents; and

**WHEREAS,** during the FY2021 annual budget process $500,000.00 was appropriated for the renovation of the first floor of the leased facility at 4201 Bartlett Street for the purpose of housing medical offices, Specialty Physician Services and Behavioral Health; and

**WHEREAS,** since that time the hospital has found other facilities to house the Specialty Physicians Services and the Behavioral Health needs and the need for additional medical offices still exists; and

**WHEREAS,** some design and minor work have taken place leaving $450,187.60 available for completing other needed renovations; and

**WHEREAS,** in order to address these needs SPH would like to amend the scope of the project to include renovations that support clinical services and additional administrative office spaces; and

**WHEREAS,** at its meeting on August 23, 2023, the SPHI Board approved Resolution 2023-25 recommending approval of this resolution; and

**WHEREAS,** at its meeting on September 14, 2023, the South Peninsula Hospital Service Area Board Road Service Area Board recommended _____;

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

**SECTION 1.** That the Assembly hereby approves amending the scope of Project 21SHB Remodel of Kachemak Professional Building to allow for renovations for clinical services and support services.

**SECTION 2.** That this resolution takes effect immediately.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 19TH DAY OF SEPTEMBER, 2023.**

Brent Johnson, Assembly President

ATTEST:

Michele Turner, CMC, Borough Clerk

Yes:

No:

Absent:

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# Kenai Peninsula Borough
## Purchasing and Contracting Department

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**THRU:** Peter A. Micciche, Mayor PAM
Brandi Harbaugh, Finance Director BH

**FROM:** John Hedges, Purchasing and Contracting Director JH

**DATE:** September 7, 2023

**RE:** Resolution 2023-059. Amending the Scope of Work for the Renovation of 4201 Bartlett Street Leased Property for South Kenai Peninsula Hospital Service Area Purposes (Mayor)

During the FY2021 annual budget process $500,000.00 was appropriated for the renovation of the first floor of the leased facility at 4201 Bartlett Street for the purpose of housing medical offices, Specialty Physician Services and Behavioral Health. Since that time the hospital has found other facilities to house the Specialty Physicians Services and the Behavioral Health needs. The need for additional medical offices still exists.

Some design and minor work have taken place leaving $450,187.60 available for completing other needed renovations. In order to address these needs, SPH would like to amend the scope of the project to include renovations that support clinical services and additional administrative office spaces.

Your consideration is appreciated.

**FINANCE DEPARTMENT**
**ACCOUNT / FUNDS VERIFIED**

Acct. No.: 491.81210.21SHB.49125

Amount: $450,187.60

By: CJ Date: 9/8/2023

DocuSign Envelope ID: C8DE439D-A399-4AFF-8228-9A38BD2FCBF7

| | |
|---|---|
| Introduced by: | Administration |
| Date: | 08/23/2023 |
| Action: | Approved |
| Vote: | Yes - 7, No - 0, Exc - 4 |

**SOUTH PENINSULA HOSPITAL**
**BOARD RESOLUTION**
**2023-25**

# A RESOLUTION OF THE SOUTH PENINSULA HOSPITAL BOARD OF DIRECTORS APPROVING A MINOR ALTERATION OF SCOPE TO PROJECT 21SHB REMODEL OF KACHEMAK PROFESSIONAL BUILDING

**WHEREAS,** South Peninsula Hospital Board of Directors approved resolution 2020-01 in January 2020 approving project 21SHB; and

**WHEREAS,** the established scope of the project was to approve $500,000 in lease renovations to the 4201 Bartlett St leased property to collocate Medical Staff offices and to provide a one-stop shop for Specialty Physician Services and Behavioral Health; and

**WHEREAS,** Project 21SHB has $451,703 remaining, as the majority of work has not commenced; and

**WHEREAS,** South Peninsula Hospital has purchased property on Hohe Street since the passing of the Resolution 2020-01 to locate Behavioral Health; and

**WHEREAS,** South Peninsula Hospital has since leased additional clinical space to locate General Surgery and has been able to accommodate other specialty providers in already established clinic space at 4201 Bartlett; and

**WHEREAS,** the needs for space for Behavioral Health and Specialty Providers has been solved, South Peninsula Hospital would like to amend the scope of project 21SHB to complete leasehold improvements to the 4201 Bartlett St property to provide clinical services and support offices to meet the needs of the organization; and

**WHEREAS,** the resolution to amend the scope of project 21SHB Remodel Kachemak Professional Building was discussed at Finance Committee on August 17, 2023.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF SOUTH PENINSULA HOSPITAL:**

1. That the South Peninsula Hospital Board of Directors approves amending the scope of Project 21SHB Remodel of Kachemak Professional Building to allow for renovations for clinical services and support offices.

**PASSED AND ADOPTED BY THE BOARD OF DIRECTORS OF SOUTH PENINSULA AT ITS MEETING HELD ON THIS 24th DAY OF AUGUST, 2023.**

ATTEST:

DocuSigned by:
Julie Woodworth
40F15ADB220F4CF...
Julie Woodworth, Board Secretary

DocuSigned by:
Kelly Cooper
552FEAD016F54B4...
Kelly Cooper, Board President

Introduced by: Derkevorkian
Date: 09/19/23
Action:
Vote:

**KENAI PENINSULA BOROUGH**
**RESOLUTION 2023-060**

**A RESOLUTION RECOMMENDING AN AMENDMENT TO TITLE 14 OF THE ALASKA STATUTES, RELATING TO SCHOOL BOARDS, TO ALLOW FOR TERM LIMITS FOR SCHOOL BOARDS**

**WHEREAS,** Alaska Statutes, AS 14.12.030 - 14.12.080, do not authorize either a local governing body or a local board of education ("school board") to set term limits for school board members; and

**WHEREAS,** AS 29.40.140(d) authorizes local adoption of term limits for Kenai Peninsula Borough ("Borough") Assembly members; and

**WHEREAS,** the Borough has established term limits for Assembly members and the Borough Mayor; and

**WHEREAS,** the decision to adopt term limits for local school board members should be allowable under Alaska Statutes and should be a matter of local choice; and

**WHEREAS,** a recently filed ballot measure would set term limits for lawmakers serving in the Alaska Legislature; and

**WHEREAS,** term limits may help combat incumbents' name recognition advantage, and allow for new, fresh perspectives;

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

**SECTION 1.** That the Kenai Peninsula Borough Assembly hereby recommends that the Alaska Legislature enact legislation to allow for term limits for school boards.

**SECTION 2.** A copy of this resolution will be sent to all members of the Alaska State Legislature.

**SECTION 3.** This resolution is effective immediately upon adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 19TH DAY OF SEPTEMBER, 2023.**

Brent Johnson, Assembly President

ATTEST:

Michele Turner, CMC, Borough Clerk

Yes:

No:

Absent:

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# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Richard Derkevorkian, Assembly Member

**DATE:** September 7, 2023

**SUBJECT:** Resolution 2023-060, Recommending an Amendment to Title 14 of the Alaska Statutes, Relating to School Boards, to Allow for Term Limits for School Boards (Derkevorkian)

Implementing term limits for the school board would bring alignment with other political offices in the borough, such as the Assembly and Mayor. This consistency in term limits across various branches of local government ensures a fair and equitable system. Research, including a study published in the *Journal of Politics* in 2017, has shown that term limits can lead to increased representation among elected officials, both in terms of demographics and ideas. This representation is crucial for fostering innovation in policymaking and preventing the consolidation of power.

Furthermore, term limits prevent the concentration of power in the hands of a few entrenched incumbents. A study by the National Conference of State Legislatures found that without term limits, some politicians can accumulate extensive influence and become less responsive to their constituents. By limiting the number of terms an individual can serve, we ensure that power is more evenly distributed, promoting a healthier democracy.

Lastly, term limits enhance accountability. When elected officials know they have a limited time in office, they are more likely to focus on their constituents' needs and prioritize long-term benefits over short-term political gains. This can lead to more effective governance and reduced corruption, as suggested by studies conducted by the Brookings Institution and the Cato Institute.

In summary, implementing term limits for the school board in alignment with other political offices in the Borough, such as the Assembly and Mayor, is a valuable tool for promoting increased representation, preventing power concentration, and increasing accountability in local politics, as supported by various studies and evidence.

Your considera tion is appreciated.

| | |
|---|---|
| Introduced by: | Mayor |
| Date: | 09/19/23 |
| Hearing: | 10/10/23 |
| Action: | |
| Vote: | |

**KENAI PENINSULA BOROUGH**
**ORDINANCE 2023-19-17**

**AN ORDINANCE ACCEPTING AND APPROPRIATING AN ADDITIONAL $5,525.20 FROM THE STATE OF ALASKA DEPARTMENT OF MILITARY AND VETERANS AFFAIRS, DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT FOR STATEWIDE EXERCISE PLANNING**

**WHEREAS**, the State of Alaska Department of Military and Veterans Affairs, Division of Homeland Security & Emergency Management (the "DHS&EM") provides funds to enhance the capability of local governments to prevent, deter, respond to and recover from all-hazard incidents and to enhance regional preparedness efforts; and

**WHEREAS,** the DHS&EM State Homeland Security Program is a federal grant pass through program with the Federal Emergency Management Agency which provides funding for planning, equipment, training and exercises; and

**WHEREAS**, DHS&EM approved the Kenai Peninsula Borough's ("Borough") request for additional funding to participate in the planning meetings for the 2024 Alaska Statewide Exercise through an amendment increase of $5,525.20 under the 2020 State Homeland Security Grant Program award; and

**WHEREAS,** it is in the best interest of the Borough to accept the grant funds;

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

**SECTION 1.** That the Mayor is authorized to accept $5,525.20 from the DHS&EM and to execute a grant agreement and any other document deemed necessary to accept and to expend the grant funds and to fulfill the intents and purposes of this ordinance.

**SECTION 2.** That grant funds in the amount of $5,525.20 are appropriated to account 271.94910.21HSP.49999 to provide for exercise planning related grant expenditures.

**SECTION 3:** That the appropriations made in this ordinance are project length in nature and as such do not lapse at the end of any particular fiscal year.

**SECTION 4.**This ordinance shall be effective retroactively to September 7, 2023.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2023.**

Brent Johnson, Assembly President

ATTEST:

Michele Turner, CMC, Borough Clerk

Yes:

No:

Absent:

DocuSign Envelope ID: CD3A25DC-27A3-4045-B706-2D4C058CE228

# Kenai Peninsula Borough
## Office of Emergency Management

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**THRU:** Peter A. Micciche, Mayor PAM
Brandi Harbaugh, Finance Director BH

**FROM:** Brenda Ahlberg, Emergency Manager

**DATE:** September 7, 2023

**SUBJECT:** Ordinance 2023-19-17, Accepting and Appropriating an Additional $5,525.20 from the State of Alaska Department of Military and Veteran Affairs, Division of Homeland Security and Emergency Management for Statewide Exercise Planning (Mayor)

The Alaska Division of Homeland Security and Emergency Management ("DHS&EM") approved an amendment increase to the 2020 State Homeland Security Program award in the amount of $5,525.20. The amendment increase will supplement emergency management staff's travel costs to participate in planning meetings scheduled in Valdez and Cordova. The intent of these planning meetings is to finalize objectives for the statewide, full-scale exercises scheduled among participating boroughs in April of 2024.

Brenda Ahlberg, Emergency Manager, is the project manager; the grant performance period ends March 2024.

Your consideration is appreciated.

FINANCE DEPARTMENT
FUNDS/ACCOUNT VERIFIED

Acct. No. 271-94910-21HSP-49999

Amount $ 5,525.20

By: CJ Date: 9/7/2023

Attachment: 20SHSP-GY20.A07 Amendment Increase Letter.

THE STATE of ALASKA
GOVERNOR MIKE DUNLEAVY

**Department of Military and Veterans Affairs**

Division of Homeland Security and Emergency Management

P.O. Box 5750
JBER, AK 99505-0800
Main: 907.428.7000
Fax: 907.428.7009
ready.alaska.gov

September 5, 2023

The Honorable Peter A. Micciche, Mayor
Kenai Peninsula Borough
144 N Binkley St
Soldotna, AK 99669

RE: 2020 State Homeland Security Program, EMW-2020-SS-00012-S01
State Program No.: 20SHSP-GY20
Amendment 7, Effective May 31, 2023

Mayor Micciche:

Enclosed is the Award Amendment for the Kenai Peninsula Borough's 2020 State Homeland Security Program. This amendment extends the performance period to March 31, 2024. This amendment also obligates $5,525.20 to the Exercise category for a total award amount of $458,062.58. All previous Grant Terms and Conditions, Grant Requirements, and Assurances and Agreements still apply.

A pre-signed Obligating Award Document (OAD) is attached. Please print the document, sign the OAD, and send a scanned copy to mva.grants@alaska.gov within 30 days of subrecipient receipt. Keep the hard copy for your records.

If you have any questions, please contact the Division Project Manager for this grant, Tiffany Peltier at (907) 428-7026 or by email at tiffany.peltier@alaska.gov.

Sincerely,

William A. Dennis
Administrative Operations Manager

Enclosure(s): Obligating Award Document
Project Budget Details Report

cc: Brenda Ahlberg, Jurisdiction Project Manager
Brandi Harbaugh, Jurisdiction Chief Financial Officer

# State of Alaska
# Division of Homeland Security and Emergency Management

Under
US Department of Homeland Security
Federal Emergency Management Agency
Grant Programs Directorate



FEDERAL AWARD DATE: August 19, 2020

FEDERAL GRANT PROGRAM: 2020 State Homeland Security Program

## OBLIGATING AWARD DOCUMENT

FEDERAL GRANT NUMBER: EMW-2020-SS-00012-S01

CFDA: 97.067

| RECIPIENT NAME AND ADDRESS | PERFORMANCE PERIOD | | AMENDMENT | | AWARD AMOUNT |
|---|---|---|---|---|---|
| Kenai Peninsula Borough<br>144 N. Binkley St.<br>Soldotna, AK 99669 | FROM: | October 01, 2020 | AMENDMENT #: | 7 | $458,062.58 |
| | TO: | March 31, 2024 | EFFECTIVE DATE: | May 31, 2023 | |
| | STATE PROGRAM NUMBER | | | | 20SHSP-GY20 |

| | | | | | |
|---|---|---|---|---|---|
| SAMs UE ID | LFJ1BSEYK6H3 | FUNDING ALLOCATION | | | |
| EIN | 92-0030894 | PLANNING | $5,525.20 | EXERCISE | $18,800.00 |
| METHOD OF PAYMENT | Electronic | TRAINING | | EQUIPMENT | $433,737.38 |

PURPOSE OF AWARD

This amendment extends the performance period to March 31, 2024. This amendment also obligates $5,525.20 to the Exercise category for a new total award of $458,062.58.

**Final Report Due: May 15, 2024**

GRANT REQUIREMENTS AND PROGRAM TERMS AND CONDITIONS

The acceptance of a grant from the United States government creates a legal duty on the part of the grantee to use the funds or property made available in accordance with the conditions of the grant. [GAO Accounting Principles and Standards for Federal Agencies, Chapter 2, Section 16.8(c)]

All previous Grant Requirements and Program Terms and Conditions still apply

SPECIAL CONDITIONS **(Grant funds cannot be expended until these conditions have been met. See Obligating Award for details)**

None

AGENCY INFORMATION

| | | | |
|---|---|---|---|
| ADDRESS | **Division of Homeland Security and Emergency Management**<br>**PO Box 5750**<br>**JBER, AK 99505-5750** | WEBSITE | **http://ready.alaska.gov** |
| | | EMAIL | **mva.grants@alaska.gov** |
| | | PHONE | **907-428-7000** |
| | | FAX | **907-428-7009** |

| STATE PROJECT MANAGER | PHONE | FAX | EMAIL |
|---|---|---|---|
| Tiffany Peltier | (907) 428-7026 | (907) 428-7009 | tiffany.peltier@alaska.gov |

| AGENCY APPROVAL | | RECIPIENT ACCEPTANCE | |
|---|---|---|---|
| NAME AND TITLE OF APPROVING AGENCY OFFICIAL | | NAME AND TITLE OF AUTHORIZED RECIPIENT OFFICIAL | |
| *William A. Dennis, Administrative Operations Mgr.* | | The Honorable Peter A. Micciche, Mayor | |
| SIGNATURE OF APPROVING AGENCY OFFICIAL | | SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL | |
| | **DATE** 9-6-2023 | | **DATE** |

**FOR STATE USE ONLY**

| GAE: | 210002423 | Division File Number: | | Date Returned | |
|---|---|---|---|---|---|

# Project Budget Details
# 2020 State Homeland Security Program
# Kenai Peninsula Borough
# Reported Revision 4

| PBD # | Expense Category | Solution Area | Discipline | | Budgeted Cost | PBD Amount Spent | PBD Balance |
|---|---|---|---|---|---|---|---|
| 1 | Equipment | Intervention | Public Safety Communications | State: | $0.00 | $0.00 | $0.00 |
| ☑EHP | 3/12/2021 | ☐Canceled | | Federal: | $381,737.38 | $381,737.38 | $0.00 |
| Item: | Areawide Warning Siren Upgrades | | | | | | |
| Description: | Design, engineer, purchase and installation of upgrades to the Kenai Peninsula Borough siren broadcast system. This project includes new siren controllers, voice audio storage, as well as communications for activation and maintenance to a satellite/VHF radio based combination for increased resiliency. | | | | | | |
| Investment: | 05. Strengthen Whole Community Preparedness | | | | | | |
| 2 | Exercise | Prog: Des,Dev,Cond,Eval | Emergency Management | State: | $0.00 | $0.00 | $0.00 |
| ☐EHP | | ☐Canceled | | Federal: | $18,800.00 | $18,800.00 | $0.00 |
| Item: | Incident Management Team Table Top Exercise | | | | | | |
| Description: | Hiring of an independent contractor to design, facilitate, and evaluate a table top exercise for KPB's incident management team to simulate large scale, moderate impact incident that requires significant coordination and response. | | | | | | |
| Investment: | 05. Strengthen Whole Community Preparedness | | | | | | |
| 3 | Equipment | Inspect.Screen | Fire Service | State: | $0.00 | $0.00 | $0.00 |
| ☐EHP | | ☐Canceled | | Federal: | $52,000.00 | $52,000.00 | $0.00 |
| Item: | Ninilchik Fire EMS Breathing Air Compressor | | | | | | |
| Description: | Purchase and installation of a breathing air compressor for the Ninilchik Fire/ Emergency Services to refill SCBA breathing air bottles. | | | | | | |
| Investment: | 05. Strengthen Whole Community Preparedness | | | | | | |
| 4 | Exercise | Prog: Des,Dev,Cond,Eval | Emergency Management | State: | $0.00 | $0.00 | $0.00 |
| ☐EHP | | ☐Canceled | | Federal: | $5,525.20 | $0.00 | $5,525.20 |
| Item: | AlaskaEX Planning meetings | | | | | | |
| Description: | Travel, Lodging, and Per Diem costs to attend the Alaska EX24 for 2 people to attend the course in Valdez and 2 to attend in Cordova | | | | | | |
| Investment: | 05. Strengthen Whole Community Preparedness | | | | | | |

| | Adjusted Grant Total | Total PBD Allocations | Total Expenses | Summary Balance |
|---|---|---|---|---|
| State: | **$0.00** | **$0.00** | **$0.00** | **$0.00** |
| Federal: | **$458,062.58** | **$458,062.58** | **$452,537.38** | **$5,525.20** |
| Grand Total: | **$458,062.58** | **$458,062.58** | **$452,537.38** | **$5,525.20** |

| | |
|---|---|
| Introduced by: | Mayor |
| Date: | 09/19/23 |
| Hearing: | 10/10/23 |
| Action: | |
| Vote: | |

**KENAI PENINSULA BOROUGH**
**ORDINANCE 2023-19-18**

**AN ORDINANCE APPROPRIATING $25,000 FROM THE WESTERN EMERGENCY SERVICE AREA OPERATING FUND TO COMPLETE INSTALLATION OF MOBILE RADIOS, STATION CONSOLETTES AND REPEATER**

**WHEREAS,** Western Emergency Service Area ("WES") began work on a capital project in FY2023 to replace all mobile radios, station consolettes, and repeater; all of the necessary equipment has been purchased and received but still needs to be installed.; and

**WHEREAS,** the Kenai Peninsula Borough ("Borough") fire service areas and Office of Emergency Management entered into a contract with Articom last year using a combination of grant funding and service area funding originally anticipated to cover the installation of the radios, however the contract expired at the end of FY23 and the radio installations were not completed; and

**WHEREAS,** WES has received a quote for $37,000 to complete the remaining requires installations; and

**WHEREAS,** WES has available funding of $15,059 and is requesting an additional appropriation of $25,000 from the WES Operating Fund to support the remaining required installations;

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

**SECTION 1.** That $25,000 is appropriated from the Western Emergency Service Area Operating Fund fund balance account 209.00000.00000.27910 to be transferred to account 444.51410.23441.49999, to provide for the remaining required installation of communication equipment.

**SECTION 2**. That appropriations made in this ordinance are project length in nature and as such do not lapse at the end of any particular fiscal year.

**SECTION 3.** That this ordinance shall take effect immediately

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2023.**

Brent Johnson, Assembly President

ATTEST:

Michele Turner, CMC, Borough Clerk

Yes:

No:

Absent:

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# Kenai Peninsula Borough
## Western Emergency Services

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**THRU:** Peter A. Micciche, Mayor PAM
Brandi Harbaugh, Finance Director BH

**FROM:** Jon Marsh, WES Fire Chief JM

**DATE:** August 31, 2023

**RE:** Ordinance 2023-19-18, Appropriating $25,000 from the Western Emergency Service Area Operating Fund to Complete Installation of Mobile Radios, Station Consolettes and Repeater (Mayor)

Western Emergency Service Area ("WES") began work on a capital project in FY2023 to replace all mobile radios, station consolettes, and repeater. All of the necessary equipment has been purchased and received but still needs to be installed. The Borough fire service areas and Office of Emergency Management entered into a contract with Articom last year using a combination of grant funding and service area funding that we had originally thought would cover the installation of the radios. The contract expired at the end of FY23 and the radio installations were not completed.

WES' funding of $10,363 that was appropriated for the contract in FY2023 was never spent and lapsed into fund balance at June 30, 2023. There is $7,429 in remaining grants funds that can be used towards installation. There is also $7,630 remaining in our capital project fund that is available for installation. The total cost of the installation based on the lowest quotes received is approximately $37,000. In order to complete installation for all of the communication equipment an additional $25,000 is being requested.

This ordinance appropriates $25,000 from the Western Emergency Service Area Operating Fund fund balance to provide for communication equipment installation. Your consideration is appreciated.

FINANCE DEPARTMENT
FUNDS/ACCOUNT VERIFIED

Acct. No. 209.27910

Amount $25,000

By: CJ Date: 9/7/2023

| | |
|---|---|
| Introduced by: | Mayor |
| Date: | 09/19/23 |
| Hearing: | 10/10/23 |
| Action: | |
| Vote: | |

**KENAI PENINSULA BOROUGH**
**ORDINANCE 2023-19-19**

**APPROPRIATING FUNDS TO THE LEGAL DEPARTMENT FOR LITIGATION FEES AND COSTS RELATED TO AN OIL AND GAS PROPERTY TAX APPEAL**

**WHEREAS,** on June 23, 2021, Furie Operating Alaska, LLC ("Furie) filed an appeal in the Anchorage Superior Court of the State Assessment Review Board's Certificate of Determination dated May 24, 2021, regarding Furie's appeal of the assessed tax value of oil and gas production property within the borough for the 2021 assessment year ("Furie Appeal");

**WHEREAS,** the assessment of oil and gas production property is a State of Alaska function under the State's Department of Revenue;

**WHEREAS,** the Kenai Peninsula Borough ("Borough") is a party to the appeal because the property is within the Borough's boundaries; and

**WHEREAS,** the Borough retained the law firm of Dillon & Findley, PC to represent it in the Furie Appeal; and

**WHEREAS,** subsequently Furie appealed the 2022 assessed tax value of its oil and gas production property; and

**WHEREAS**, the Superior Court consolidated the 2021 and 2022 appeals into a single case; and

**WHEREAS**, this case involves complex legal and property valuations issues with numerous out-of-state experts; and

**WHEREAS**, an eight day trial was held in Anchorage commencing on July 24, 2023 requiring the continued services and expertise of Dillon & Findley to adequately represent the Borough's interest in this matter; and

**WHEREAS**, funds in the amount of $56,419.01 are needed to pay for the legal services and costs through conclusion of this matter incurred by outside counsel on behalf of the Borough;

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

**SECTION 1.** The sum of $56,419.01 is hereby appropriated from the General Fund's fund balance to account number 100.11310.22FUR.49999 for fees and expenses associated with hiring outside counsel and necessary experts for the Furie Appeal.

**SECTION 2.** That the appropriations made in this ordinance are of a project length nature and as such do not lapse at the end of any particular fiscal year.

**SECTION 3.** This ordinance shall be effective retroactively to July 1, 2023.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2023.**

Brent Johnson, Assembly President

ATTEST:

Michele Turner, CMC, Borough Clerk

Yes:

No:

Absent:

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# Kenai Peninsula Borough
## Legal Department

**MEMORANDUM**

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**THRU:** Peter A Micciche, Mayor PM
Brandi Harbaugh, Finance Director BH
Adeena Wilcox, Borough Assessor aw

**FROM:** Sean Kelley, Borough Attorney SK

**DATE:** September 7, 2023

**RE:** Ordinance 2023-19-19, Appropriating Funds to the Legal Department for Litigation Fees and Costs Related to an Oil and Gas Property Tax Appeal (Mayor)

On June 23, 2021, Furie Operating Alaska, LLC (Furie), the owner of oil and gas production property, filed an appeal of the State Assessment Review Board's (SARB) Certificate of Determination dated May 24, 2021, in the Anchorage Superior Court. The SARB decision upheld the State of Alaska's assessment of the oil and gas production property under appeal.

The assessment of oil and gas production property is a State of Alaska function under the State's Department of Revenue. The Kenai Peninsula Borough (Borough) is a party to the appeal because the property is within the Borough's boundaries. The Borough retained the law firm of Dillon & Findley, PC to represent it in the Furie Appeal. Subsequently, Furie appealed the 2022 assessed tax value of its oil and gas production property. A second SARB decision upheld the 2022 assessment. The Superior Court consolidated the 2021 and 2022 appeals into a single case and set a non-jury trial for July 24, 2023.

The trial concluded after eight days and the matter has been taken under advisement. Invoices for costs and fees, including expert fees, through the conclusion of trial have been received and an additional appropriation of $56,419.01 is being sought to cover the final invoices.

Your consideration is appreciated.

**FINANCE DEPARTMENT**
**ACCOUNT / FUNDS VERIFIED**

Acct. No. 100.27910

Amount: $56,419.01

By: CJ Date: 9/7/2023

| | |
|---|---|
| Introduced by: | Johnson at the Request of the Borough Attorney |
| Date: | 10/11/22 |
| Hearing: | 10/25/22 |
| Action: | Enacted |
| Vote: | 9 Yes, 0 No, 0 Absent |

**KENAI PENINSULA BOROUGH**
**ORDINANCE 2022-19-20**

**AN ORDINANCE APPROPRIATING $100,000 TO THE LEGAL DEPARTMENT TO COVER COSTS OF HIRING HEARING OFFICERS FOR PLANNING COMMISSION APPEALS**

**WHEREAS,** in effort to provide for added consistency and professionally trained administrative law judges, the Kenai Peninsula Brough transitioned in 2021 to engaging the State of Alaska, Office of Administrative Hearings to serve as the hearing officer to adjudicate all administrative appeals from decisions of the planning commission; and

**WHEREAS,** the cost of these appeal hearings varies depending upon the complexity of the issues and the number of parties involved; and

**WHEREAS,** the cost of hearing officers are paid from the legal department's Legal Services account which is also used to pay for hiring of outside counsel in cases where a conflict of interest may exist; and

**WHEREAS,** it would be a conflict of interest for the Borough's Legal Department to serve as the hearing officer; and

**WHEREAS,** the unencumbered balance available in the legal department's Legal Services account is currently $21,000;

**WHEREAS,** there are currently pending three appeals to a hearing officer from planning commission decisions; and

**WHEREAS,** it is estimated that additional funds of $100,000 may be needed for appeals to the hearing officer from planning commission decisions; and

**WHEREAS,** moving forward it is anticipated that either the Borough's Legal Department or Planning Department will include estimated hearing officer costs in the annual budget; and

**WHEREAS,** in the interim is necessary to appropriate funds to retain a hearing officer in order provide due process for adjudication of administrative appeals from planning commission decisions;

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

**SECTION 1.** The sum of $100,000 is hereby appropriated from the General Fund, fund balance to account 100.11310.23HOA.43034 Legal Services to fund the services of hearing officers in appeals from planning commission decisions and the hiring of outside counsel in situations where a conflict of interest may exist.

**SECTION 2.** That the appropriations made in this ordinance are of a project length nature and as such do not lapse at the end of any particular fiscal year.

**SECTION 3.** That upon enactment this ordinance is effective retroactive to July 1, 2022.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 25TH DAY OF OCTOBER, 2022.**

Brent Johnson

Brent Johnson, Assembly President

ATTEST:

John Blankenship

Johni Blankenship, MMC, Borough Clerk

KENAI PENINSULA BOROUGH 1964

| | |
|---|---|
| Yes: | Bjorkman, Chesley, Cox, Derkevorkian, Ecklund, Elam, Hibbert, Tupper, Johnson |
| No: | None |
| Absent: | None |

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# Kenai Peninsula Borough
Legal Department

## MEMORANDUM

**TO:** Members, Kenai Peninsula Borough Assembly

**THRU:** Brent Johnson, Assembly President BJ
Brandi Harbaugh, Finance Director BH

**FROM:** Sean Kelley, Borough Attorney SK

**DATE:** October 11, 2022

**RE:** Ordinance 2022-19-20, Appropriating $100,000 to the Legal Department to Cover Costs of Hiring Hearing Officers for Planning Commission Appeals (Johnson)

In FY2021, the Kenai Peninsula Borough (Borough) transitioned from hiring outside counsel on a case-by-case basis to utilizing the State of Alaska, Office of Administrative Hearings to serve as the hearing officer to adjudicate planning commission appeals. Currently, there are three pending appeals from planning commission decisions.

Ordinance 2021-19-15 appropriated $150,000 for the payment of services of hearing officers in appeals from planning commission decisions and for the hiring of outside counsel in conflict cases. Of the $150,000 appropriated in FY22, $44,215 is encumbered for payment of two of the current pending appeals which were filed in FY22, and approximately $19,600 lapsed back to the General Fund on July 1, 2022. With the final costs of the two ongoing appeals unknown, approximately 88 percent of the funds appropriated for hearing officers in FY22 were utilized.

While it is difficult to predict in any one given year how many appeals or conflict cases will require the services of a hearing officer or outside counsel, recent history suggests that the majority of the Planning Commission's conditional land use permit decisions will result in an appeal to the hearing officer.

It is currently estimated that an additional $100,000 will be required to pay for hearing officers to adjudicate planning commission appeals.

Your consideration of the ordinance is appreciated.

**FINANCE DEPARTMENT**
**ACCOUNT / FUNDS VERIFIED**

Acct. No. 100.27910

Am [illegible]00,000

By: CJ Date: 9/26/2022

| | |
|---|---|
| Introduced by: | Mayor |
| Date: | 09/19/23 |
| Hearing: | 10/10/23 |
| Action: | |
| Vote: | |

**KENAI PENINSULA BOROUGH**
**ORDINANCE 2023-22**

**AN ORDINANCE AUTHORIZING THE ASSESSOR TO ACCEPT ONE LATE-FILED COMMUNITY PURPOSE EXEMPTION APPLICATION FOR 2023 AND PROVIDING AN EXCEPTION TO KPB 5.12.040(B)**

**WHEREAS,** KPB 5.12.100(A) provides that a property of an organization not organized for business or profit-making purposes and used exclusively for community purposes is exempt from taxation; and

**WHEREAS,** in accordance with KPB 5.12.119(A), the Mayor has the authority to grant extensions of time to file for property tax exemptions*;* and

**WHEREAS,** title to the property in question transferred on January 6, 2022, resulting in the removal of the previous community purpose exemption; and

**WHEREAS,** the new owner is actively involved with the previous entity that had the exemption in place; and

**WHEREAS,** the Assembly finds there was a good cause basis that resulted in the failure to apply timely for the community purpose exemption; and

**WHEREAS**, this ordinance authorizes an exception to KPB 5.12.040(B) to allow the Assessor to make a change to the assessment roll after June 1 due to a tax exemption status change should the Assessor otherwise find that the application meets the exemption requirements;

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

**SECTION 1.** Upon reviewing the non-profit exemption application, the Assembly hereby waives the March 31 deadline for filing an application for the 2023 community purpose exemption based upon a finding that the applicant, Funny River Community Association, was unable to comply with that deadline due to a serious condition or extraordinary event beyond their control.

**SECTION 2.** That the Assessor will process the application in accordance with standard assessing department procedures for processing such applications.

**SECTION 3.** Notwithstanding KPB 5.12.040(B), in the event the Assessor finds that the late-filed community purpose exemption application should be otherwise approved, the Assessor is hereby authorized to make a change to the assessment roll after June 1, 2023 to reflect the approved exemption.

**SECTION 4**. The Assessor is authorized to waive any late fees for the late-filed community purpose exemption and no interest may be added to any tax refund due to the after processing this late-filed community purpose exemption.

**SECTION 5.** That this ordinance shall be effective immediately.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2023.**

Brent Johnson, Assembly President

ATTEST:

Michele Turner, CMC, Borough Clerk

Yes:

No:

Absent:

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# Kenai Peninsula Borough
## Assessing Department

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**THRU:** Peter A. Micciche, Mayor PAM

**FROM:** Adeena Wilcox, Borough Assessor aw

**DATE:** September 7, 2023

**RE:** Ordinance 2023-22, Authorizing the Assessor to Accept One Late-Filed Community Purpose Exemption Application for 2023 and Providing an Exception to KPB 5.12.040(B) (Mayor)

One Community Purpose exemption applicant, Funny River Community Association, has requested the assembly allow the assessor to accept a late-filed Community Purpose Exemption Application received after March 31, 2023. KPB 5.12.100(A) provides that a property of an organization not organized for business or profit-making purposes and used exclusively for community purposes is exempt from taxation.

Funny River Community Association took ownership from Funny River Chamber of Commerce on January 6, 2022. The community purpose exemption was properly ended during the title transfer. The Funny River Community Association, being housed in the same location which previously had been approved for a community purpose exemption, did not apply for an additional exemption for the newly transferred ownership until August 28, 2023.

The failure to apply for a community purpose exemption was a result of several unforeseen circumstances. All staff are volunteers, the community was involved in the Funny River Community Association Festival, many staff are seniors who are retired, and they held elections and seated new board members. These events resulted in the failure to notice that no exemption was in place for the Funny River Community Association.

This ordinance seeks assembly approval to allow the mayor to grant an extension of time and accept the late-filed community purpose exemption application of Funny River Community Association pursuant to KPB 5.12.119(A).

This ordinance also seeks approval for the assessor to adjust the assessment roll to make changes in the taxable status of the property on the roll after June 1, 2023 pursuant to KPB 5.12.040(B). Any late fees will be waived and if there is a tax refund it will include zero percent interest.

Your consideration is appreciated.

# EXEMPTION LATE FILE WAIVER

Parcel #__066-460-02___

☐ $50K Resident/Homeowner ☐ Disabled Resident
☐ $10K Volunteer EMS/Firefighter ☒ Non Profit

I WILLIAM POON request an extension for filing the attached application for exemption.

**5.12.119. Real property tax--Exemptions--Borough mayor--Authority to grant extensions of time--Approve TAR.**

A. *Mayor authority to grant extension of time.* To the extent allowed by law, the borough mayor is delegated the authority to grant extensions of time for filing any of the various exemptions permitted by statute or ordinance in accordance with this section.

B. *Exemption for current year--Exception.* This authority to grant extensions cannot be exercised so as to allow acceptance of an exemption application for years prior to the current year. An exemption may not be granted beyond one year from the current tax year. However, the application, whether timely filed or filed after a grant of extension of time to file, may be held open for consideration through the following year in the event eligibility for the exemption is contingent upon a determination by another entity. If the extension is granted, notwithstanding the foregoing, the application must be filed with the assessor and this filing must occur within the year for which the exemption is sought.

C. *Inability to comply.* The request for a finding of inability to comply must be based upon a serious condition or event beyond the taxpayers control that resulted in the inability to timely file the application. For purposes of this subsection, a serious condition or event may include a serious medical condition or other similar serious condition or event that prevented the applicant from timely filing the application. Absent extraordinary circumstances, a failure to pick up or read mail or to make arrangements for an appropriate and responsible person to pick up or read mail or a failure to timely provide a current address to the Department of Assessing will not be deemed to result in an inability to comply.

**Failure to meet the deadline is based on the following reason(s):**

*see attached*

**Requested by:** William Poon FILCA Treasurer

**Applicant's Signature** **Date 08/27/2023**

**********

Reviewed by: _____ A.WILCOX AUG 29 2023

Borough Assessor Date

Comments: _____

Assessor's Recommendation: ☐ Approved ☐ Denied

_____

Borough Mayor Date ☐ Approved ☐ Denied

RECEIVED
AUG 28 2023
T.ECKERT

**FUNNY RIVER COMMUNITY ASSOCIATION**
**35850 PIONEER ACCESS ROAD**
**SOLDOTNA, AK 99669**
**(907) 262-0879 or 748-5620**

**August 27, 2023,**

Kenai Peninsula Borough
144 N. Binkley Street
Soldotna, AK 99669
Cc: Taylor Eckert

RE: **REQUEST FOR 2023 TAX ABATEMENT ON OUR CURRENT TAX BILL $3,949.78: PIN 06646002**

**Both Funny River Community Association FRCA) and Funny River Chamber of Commerce and Community Association (FRCCCA) are both located in the same building and are both Non Profits. Most of our funding now comes from the Kenai Borough under the Community Assistance Program (CAP). Additional monies paid out would create a hardship to the community if we had to pay property taxes back to the Kenai Borough. All people involved in the community center are all volunteers and sometime it takes longer to get things done as most are retired seniors and or still working. In July I stopped by the borough tax office to discuss the abatement of the property taxes and was told to write a letter and was given the application for the 2024 tax exemption. I am just now getting this letter to you as we were involved with the Funny River Community Association Festival until August 18 & 19th. We have a limited number volunteer people that get the work done for the center so it has taken time to respond to things that happen. The center did not know we had to refile for tax exemption once the assets were transferred over to FRCA. We are now requesting a 2023 Community Purpose Exemption if it is not too late. Attached also is FRCA 2024 Community Purpose Exemption that would be the same for the 2023 year.**

**FRCCCA EIN: 92-0121326: ORGANIZED IN 1987, OPRERATES AS A NON-PROFIT UNDER 501©6 CHARTER. THIS IS FOR GAMING ONLY (BINGO, RAFFLES & SPLITT THE POT). All building assets and equipment were transferred to FRCA at the end of 2021 tax year. Prior to the transfer of all assets FRCCCA was exempt from paying property taxes.**

**FRCA EIN: 82-4366071: ORGANIZED ON FEBRUARY 16,2018 & OPERATES AS A NON-PROFIT UNDER 501©3 CHARTER. THIS WAS SETUP FOR THE COMMUNITY'S NON-GAMING ACTIVITIES AND OPERATIONS OF THE CENTER. ALL THE FIXED ASSETS UNDER FRCCCA WERE TRANSFERRED TO FRCA AT END OF 2021 TAX YEAR.**

**Thank-You for your consideration and I hope we do not have to pay the additional monies to the borough.**

**Sincerely**

William Poon

**William Poon**
**FRCA & FRCCCA Treasurer**

640

# Assessing Department

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2230 • (907) 714-2393 fax

RECEIVED
AUG 28 2023
T.ECKERT

## 2024 COMMUNITY PURPOSE EXEMPTION

DUE ON OR BEFORE MARCH 31ST OF THE EXEMPTION YEAR

**Parcel ID (PIN):** 06646007

**Legal Description:** T 5N R 9W SEC 27 Seward Meridian KN 0820019 Whitcomb SUB ADDN NO3 TRACT A 35850 Pioneer Access Rd

**Owner of Record as of January 1, 2024:** Funny River Community Association

**Organization Name:** Funny River Community Association

**Name of Officer or Official Representative:** William Poon : Treasurer

**Email:** frca.35850@gmail.com

**Mailing Address:** 35850 Pioneer Access Rd **Physical Address:** 35850 Pioneer Access Rd

**City:** Soldotna **State:** AK **Zip:** 99669 **City:** Soldotna **State:** AK **Zip:** 99669

**Primary Phone:** [redacted] **Secondary Phone** [redacted]

### QUALIFYING INFORMATION

**Non-profit/non-business:** ✓ YES ____ NO

**Does non-profit/non-business generate income in excess of actual cost:** ____ YES ✓ NO

**Property ownership as of January 1, 2024 in applicant's name:** ✓ YES ____ NO

**Actively being used exclusively for community purpose*:** ✓ YES ____ NO

***Membership use or participation must be open to, and not limited or restricted to, anyone within the scope of the community***

### REQUIRED DOCUMENTATION

- ✓ Current copy of Articles of Incorporation.
- ✓ Latest copy of the Constitution and By-laws.
- ✓ Copy of your federal tax exempt status (current 501(c)(3)).
- ✓ Kenai Peninsula Borough sales tax license or exemption determination.
- ✓ A detailed statement regarding the nature of the organization and current use of the property.
- ✓ An explanation of any grants or reimbursements from any government agency.
- ✓ Current schedule of fees.
- ✓ An operating statement showing income and operating expenses.

### CERTIFICATION

I HEREBY APPLY FOR EXEMPTION ON THE ABOVE DESCRIBED PROPERTY AS PROVIDED IN AS.45.030 (b)(1)(A) AND KPB.12.100 CERTIFICATION: I HEREBY CERTIFY THAT THE ANSWERS GIVEN ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I UNDERSTAND THAT WILLFUL MISSTATEMENT IS PUNISHABLE BY A FINE OR IMPRISONMENT UNDER AS11.56.210.

**Signature of Officer or Official Rep.** William Poon **Date** 8/27/2023

****** ASSESSOR'S USE ONLY ******

| APPROVED | DENIED | VERIFIED BY: | ENTERED BY: |
|---|---|---|---|
| A.WILCOX | | | |

Comments: AUG 29 2023

See reverse side for additional information

**Please return completed form and requested information to:**

**Kenai Peninsula Borough Assessor**
**144 North Binkley Street**
**Soldotna, AK 99669**

**(907) 714-2230 or 1-800-478-4441 Fax (907) 714-2393**

**KPB 5.12.100. Community Purpose Exemptions**

A. Property of an organization not organized for business or profit-making purposes and used exclusively for community purposes is exempt from taxation under this chapter. Property or a part of the property from which rentals or income are derived is not exempt from taxation unless the income derived from the rentals does not exceed the actual cost to the owner of the use by the renter.

B. No exemption under this section may be granted except upon written application on a form prescribed by the assessor. The applicant/owner must file the application no later than March 31 of the tax year for which the exemption is sought.

C. The assessor may from time to time require such information as is reasonably necessary to determine the character of the organization and the nature of uses made. The exemption provided in this section is not applicable unless the required information is provided to the assessor.

D. Definitions.

1. For purposes of this section "community purpose" means the exclusive use of property within the borough based upon the culture and demographics of a particular area and which benefits the general public in a manner that enhances the quality of life through programs, public facilities, or services.

2. For purposes of this section "used exclusively for a community purpose" means the property benefits the borough community and does not confer more than a de minimus private benefit to the non-profit organization that owns it or to the individuals who control that organization. "Exclusive use" includes a requirement for spatial apportionment if the property is used for both exempt and nonexempt purposes.

# Assessing Department

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2230 • (907) 714-2393 Fax

## 2023 AW WP ~~2024~~ COMMUNITY PURPOSE EXEMPTION

DUE ON OR BEFORE MARCH 31ST OF THE EXEMPTION YEAR

**Parcel ID (PIN):** 066-460-02

**Legal Description:** T 5N R 9W SEC 27 Seward Meridian KN 0820019 WHITCOMB SUB ADDN NO 3 TRACT A

**Owner of Record as of January 1, 2024:** FUNNY RIVER COMMUNITY ASSOCIATION

**Organization Name:** FUNNY RIVER COMMUNITY ASSOCIATION

**Name of Officer or Official Representative:** WILLIAM POON - TREASURER

**Email:** FRCA35850@GMAIL.COM

**Mailing Address:** 35850 PIONEER ACCESS RD

**City:** SOLDOTNA **State:** AK **Zip:** 99669

**Physical Address:** 35850 PIONEER ACCESS RD

**City:** SOLDOTNA **State:** AK **Zip:** 99669

**Primary Phone:** [redacted]

**Secondary Phone:** [redacted]

### QUALIFYING INFORMATION

**Non-profit/non-business:** ✓ YES ____ NO

**Does non-profit/non-business generate income in excess of actual cost:** ____ YES ✓ NO

**Property ownership as of January 1, 2024 in applicant's name:** ✓ YES ____ NO

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FRCA Treasurer

**Signature of Officer or Official Rep** William Poon **Date** 08/27/2023

****** ASSESSOR'S USE ONLY ******

| APPROVED | DENIED | VERIFIED BY: | ENTERED BY: |
|---|---|---|---|
| [signature] | | | |

A. WILCOX

Comments: AUG 2 9 2023

See reverse side for additional information

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| | |
|---|---|
| Introduced by: | Mayor |
| Date: | 09/19/23 |
| Hearing: | 10/24/23 |
| Action: | |
| Vote: | |

**KENAI PENINSULA BOROUGH**
**ORDINANCE 2023-23**

**AN ORDINANCE AMENDING KPB 20.30.280 AND KPB 21.06 REGARDING FLOODPLAIN MANAGEMENT TO ADOPT REQUIRED CHANGES TO REMAIN COMPLIANT WITH THE NATIONAL FLOOD INSURANCE PROGRAM**

**WHEREAS,** the Kenai Peninsula Borough has had an accredited floodplain management program under the National Flood Insurance Program ("NFIP") since 1988, which makes federal disaster insurance, federal hazard mitigation grants, federally subsidized mortgages, and affordable individual homeowner flood insurance available within the Borough; and

**WHEREAS,** continued participation in the NFIP is predicated upon continued good standing in the NFIP; and

**WHEREAS,** as part of the 2022 Federal Emergency Management Agency ("FEMA") Community Assistance Visit, FEMA officials reviewed KPB Chapter 21.06 to assess compliance with federal requirements and to provide required and recommended changes to the Chapter; and

**WHEREAS,** the proposed amendments increase flood safety, bring code pertaining to FEMA minimum regulations into compliance with federal standards and provide clarifications; and

**WHEREAS,** the proposed amendments address other portions of Borough Code for clerical purposes; and

**WHEREAS,** at the meeting of _____, the Seward-Bear Creek Flood Service Area Board recommended _____; and

**WHEREAS,** at the meeting of _____, the Kenai Peninsula Borough Planning Commission recommended _____; and

**WHEREAS,** the Borough's best interest will be served by maintaining its good standing in the NFIP by amending its floodplain management ordinance.

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

**SECTION 1.** That KPB 20.30.280 is hereby amended as follows:

**20.30.280. – Floodplain requirements.**

A. All subdivision plats which are within areas where the floodplain has been identified by the Federal Emergency Management Agency (FEMA), and which involve 50 lots or five acres whichever is lesser, shall include the base flood elevation source. If the base flood elevation is not provided from another authoritative source, it must be generated at the responsibility of the developer and noted on the final plat.

B. Any area of the subdivision within the regulatory floodplain, floodway or Seward Mapped Flood Data Area (SMFDA) is to be shown and labeled on the plat.

…

D. All subdivisions or replats within the Flood Insurance Rate Map (FIRM) area or SMFDA, as amended, as defined by KPB [21.06.020] 21.06.070, shall contain the following note:

…

E. All subdivisions or replats that include any portion of the mapped floodway shall contain the following note:

FLOODWAY NOTICE:
Portions of this subdivision are within the floodway. Pursuant to KPB Chapter 21.06, all development (including fill) in the floodway is prohibited unless certification by an engineer [OR ARCHITECT] is provided demonstrating that encroachments shall not result in any increases in flood levels during the occurrence of the base flood discharge.

[F EACH PLAT WITHIN A CITY WHICH HAS MET THE REQUIREMENTS OF THIS SECTION SHALL CONTAIN THE FOLLOWING STATEMENT: "THE FIRST FINISHED AND HABITABLE FLOOR OF A BUILDING CONSTRUCTED WITHIN A FLOODPLAIN SHALL BE BUILT AT OR ABOVE THE 100-YEAR FLOOD LEVEL."]

[G]F. This section applies to all cities which adopt a resolution requesting participation in the FEMA floodplain program and which are subsequently recognized by the state as participants.

[H]G. A city may adopt an ordinance as part of its building code with greater restrictions than those set forth in KPB 20.30.280(A). A note shall be placed on the plat to indicate that the developer is responsible for contacting the city to determine the restrictions prior to any development.

**SECTION 2.** That KPB 21.06.010 is hereby amended as follows:

**21.06.010. – [FINDINGS AND STATEMENT] Statutory authorization, findings, and statement.**

The assembly adopts the following findings and statements establishing a floodplain management chapter:

A. Statutory Authorization. The State of Alaska has delegated the responsibility to local governmental units to adopt floodplain management regulations designed to promote the public health, safety, and general welfare of its citizenry.

[A.]B. Findings. The flood hazard areas of Kenai Peninsula Borough are subject to periodic inundation which results in loss of life and property, health, and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

C. These flood losses may be caused by the cumulative effect of obstructions in flood hazard areas, which increase flood heights and velocities and, when inadequately anchored, cause damage in other areas. Uses that are inadequately flood proofed, elevated, or otherwise protected from flood damage, also contribute to flood loss.

[B.]D. Statement of Purpose. It is the purpose of this chapter to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

…

7. To ensure that potential buyers are notified that property is in an area of special flood hazard; [AND]

8. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions[.]; and

9. To allow participation in and, to maintain eligibility for, flood insurance and disaster relief.

[C.]E. Objectives. In order to accomplish its purposes, this chapter includes methods and provisions for:

…

**SECTION 3**. That KPB 21.06.030 is hereby amended as follows:

**21.06.030. – General provisions.**

…

C. *Basis for Establishing Flood Protection Elevation*. The Flood Protection Elevation (FPE) shall be the applicable elevation as determined by the planning department using the criteria below and will be the elevation to which structures and utilities must be raised as required in the building standards in KPB 21.06.050.

…

E. *Noncompliance—Enforcement and Penalties*. Structures and activities which are not permitted or allowed by this chapter are prohibited. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violation of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall be enforced by the remedies set forth in KPB 21.50. Each day a violation continues is a separate violation. Nothing herein contained shall prevent the Kenai Peninsula Borough from taking such other lawful action as is necessary to prevent or remedy any violation.

F. *Conflicts.* Unless otherwise preempted by applicable law, where this chapter and another rule, ordinance, statute, regulation, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restriction will prevail. Notwithstanding, nothing in this chapter may be construed to require the borough to enforce a private covenant or deed restriction.

G. *Interpretation.* In the interpretation and application of this chapter, all provisions must be:

1. Considered as minimum requirements;

2. Liberally construed in favor of the governing body; and,

3. Deemed neither to limit nor repeal any other powers granted under state statutes.

**SECTION 4**. That KPB 21.06.040 is hereby amended as follows:

**21.06.040. – Administration.**

…

[1. ELEVATION IN RELATION TO MEAN SEA LEVEL OF THE LOWEST FLOOR (INCLUDING BASEMENT) OF ALL STRUCTURES;

2. ELEVATION IN RELATION TO MEAN SEA LEVEL TO WHICH ANY STRUCTURE HAS BEEN FLOODPROOFED;

3. CERTIFICATION BY A REGISTERED PROFESSIONAL ENGINEER OR ARCHITECT THAT THE FLOODPROOFING METHODS FOR ANY NONRESIDENTIAL STRUCTURE MEET THE FLOODPROOFING CRITERIA IN KPB 21.06.050(B)(2);

4. DESCRIPTION OF THE EXTENT TO WHICH A WATERCOURSE WILL BE ALTERED OR RELOCATED AS A RESULT OF PROPOSED DEVELOPMENT.]

1. *For A Zones (A, A1-30, AE, AH, AO).*

   a. Proposed elevation in relation to mean sea level of the lowest floor (including basement) of all structures. In Zone AO, elevation of existing highest adjacent grade and proposed elevation of lowest floor of all structures;

   b. Proposed elevation in relation to mean sea level to which any non-residential structure will be floodproofed;

   c. Certification by a registered professional engineer or architect that the floodproofing methods for any non-residential structure meet the floodproofing criteria in KPB 21.06.050(B)(2); and

   d. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

2. *For V Zones (VE, V1-30 and V).*

   a. Proposed elevation in relation to mean sea level of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all structures, and whether such structures contain a basement;

   b. Base Flood Elevation data for subdivision proposals or other development, including manufactured home parks or subdivisions, greater than 50 lots or 5 acres, whichever is the lesser.

…

4. *Information to be Obtained and Maintained*.

Obtain and maintain the following for public inspection and make available as needed:

[A. WHERE BASE FLOOD ELEVATION DATA IS PROVIDED THROUGH THE FLOOD INSURANCE STUDY OR REQUIRED IN SUBSECTION (C)(2) OF THIS SECTION, RECORD THE ACTUAL ELEVATION AS SUBMITTED (IN RELATION TO MEAN SEA LEVEL) OF THE LOWEST FLOOR (INCLUDING BASEMENT) OF ALL NEW OR SUBSTANTIALLY IMPROVED STRUCTURES, AND WHETHER OR NOT THE STRUCTURE CONTAINS A BASEMENT;

B. FOR ALL NEW OR SUBSTANTIALLY IMPROVED FLOODPROOFED STRUCTURES:

I. RECORD THE ACTUAL ELEVATION AS SUBMITTED (IN RELATION TO MEAN SEA LEVEL), AND

II. MAINTAIN THE FLOODPROOFING CERTIFICATIONS REQUIRED IN KPB 21.06.040(A)(3);

C. MAINTAIN FOR PUBLIC INSPECTION ALL RECORDS PERTAINING TO THE PROVISIONS OF THIS CHAPTER IN PERPETUITY.]

a. Certification required by KPB 21.06.050(B)(1) and KPB 21.06.050(A)(2) (lowest floor elevations for all structures, bottom of the lowest horizontal structural member (if applicable), and service facilities/mechanical equipment);

b. Certification required by KPB 21.06.050(B)(2) (lowest floor elevations or floodproofing of non-residential structures and service facilities/mechanical equipment);

c. Certification required by KPB 21.06.050(B)(1)(b) (engineered flood openings);

d. Certification required by KPB 21.06.050(C) (floodway encroachments);

e. Records of all variance actions, including justification for their issuance; and

f. Improvement and damage calculations.

[5. *ALTERATION OF WATERCOURSES*.

A. NOTIFY ADJACENT COMMUNITIES AND THE DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS PRIOR TO ANY ALTERATION OR RELOCATION OF A WATERCOURSE, AND SUBMIT EVIDENCE OF SUCH NOTIFICATION TO THE FEDERAL INSURANCE ADMINISTRATION.

B. REQUIRE THAT MAINTENANCE IS PROVIDED WITHIN THE ALTERED OR RELOCATED PORTION OF SAID WATERCOURSE SO THAT THE FLOOD-CARRYING CAPACITY IS NOT DIMINISHED.]

5. *Notification to Other Entities.*

a. Whenever a watercourse is to be altered or relocated, notify adjacent communities and the State Coordinating Office prior to such alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administrator through appropriate notification means, and assure that the flood carrying capacity of the altered or relocated portion of said watercourse is maintained.

b. Base Flood Elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, the Floodplain Administrator must notify the Federal Insurance Administrator of the changes by submitting technical or scientific data in accordance with Volume 44 Code of Federal Regulations Section 65.3, to ensure that, upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data.

c. Notify the Federal Insurance Administrator in writing of acquisition by means of annexation, incorporation or otherwise, of additional areas of jurisdiction.

6. *Remedial Actions.* The Kenai Peninsula Borough must take actions on violations of this chapter pursuant to KPB 21.06.030(E) herein.

[6.]7. *Fee Required.* The planning department shall charge fees for permits and [EXCEPTIONS] variances. Fees shall be the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees to be paid by the applicant at the time that the floodplain development permit application is submitted.

**SECTION 5**. That KPB 21.06.050 is hereby amended as follows:

**21.06.050. – Standards.**

A. *General Standards.* In all flood hazard areas, the following standards are required:

1. *Alteration of Water Courses.*

a. The flood-carrying capacity within the altered or relocated portion of said watercourse must be maintained. Maintenance must be provided within the altered or relocated portion of said watercourse to ensure that the flood-carrying capacity is not diminished.

[1.]2. *Anchoring.*

a. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

…

3. *Storage of Materials and Equipment*

a. The storage or processing of materials that could be injurious to human, animal, or plant life if released due to damage from flooding is prohibited in special flood hazard areas.

b. Storage of other material or equipment may be allowed if not subject to damage by floods and if firmly anchored to prevent flotation, or if readily removable from the area within the time available after flood warning.

[2.]4. *Construction Materials and Methods.*

…

[3.]5. *Utilities.*

…

[4.]6. *Subdivision Proposals.*

…

[5.]7. *Review of Development Permits*.

…

B. *Specific Standards*. In all flood hazard areas, as set forth in KPB 21.06.030(B), the following provisions are required:

*1. Residential Construction.*

a. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above the Flood Protection Elevation.

b. Fully enclosed areas below the lowest floor, including crawlspaces, basements, and skirting, that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

i. A minimum of two openings located on separate walls and having a total net area of not less than 1 square inch for every square foot of enclosed space subject to flooding shall be provided.

ii. The bottom of all openings shall be no higher than 1 foot above grade.

iii. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

iv. Enclosed areas below the Flood Protection Elevation must be unfinished and usable only for parking, access or storage of materials easily moved during a flood event.

v. Before a final floodplain development permit is issued by the planning department for a residential structure with enclosed areas below the [BASE FLOOD ELEVATION] Flood Protection Elevation, the owners shall sign a non-conversion agreement stating that the enclosed space shall remain in compliance with KPB 21.06.050(B)(1)(b)(iv). The non-conversion agreement shall be recorded, [BY THE KENAI PENINSULA BOROUGH] placing future buyers of properties on notice of the hazards of enclosed spaces below the Flood Protection Elevation and the requirements to keep the permitted structure compliant with KPB floodplain regulations.

…

2. *Nonresidential Construction.* [NEW CONSTRUCTION AND SUBSTANTIAL IMPROVEMENT OF ANY COMMERCIAL, INDUSTRIAL OR OTHER NONRESIDENTIAL STRUCTURE SHALL EITHER HAVE THE LOWEST FLOOR, INCLUDING BASEMENT, ELEVATED TO THE LEVEL OF THE FLOOD PROTECTION ELEVATION; OR, TOGETHER WITH ATTENDANT UTILITY AND SANITARY FACILITIES, SHALL]:

a. New construction and substantial improvement of any commercial, industrial or other nonresidential structure, together with attendant utility and sanitary facilities, must have its lowest floor elevated to the Flood Protection Elevation to meet the standards in KPB 21.060.050(B)(1)(b); or

b. Nonresidential structures that are not elevated must:

[A.]i. Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water; and

[B.] ii. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

[C.] iii. Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the official as set forth in KPB 21.06.040(C)(4)(b); and

iv. Before a final floodplain development permit is issued by the planning department for a nonresidential structure with enclosed areas below the flood protection elevation, the owners shall sign a non-conversion agreement stating that the enclosed space shall not be converted to a residential space. The non-conversion agreement shall be recorded, placing future buyers of properties on notice of the hazards of enclosed spaces below the Flood Protection Elevation and the requirements to keep the permitted structure compliant with KPB floodplain regulations.

[D. NONRESIDENTIAL STRUCTURES THAT ARE ELEVATED, NOT FLOODPROOFED, MUST MEET THE SAME STANDARD FOR SPACE BELOW THE LOWEST FLOOR AS DESCRIBED IN KPB 21.06.050(B)(1)(B).]

[E]c. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are 1 foot below the floodproofed level (e.g. a building constructed to the base flood level will be rated as 1 foot below that level).

[F. FOR ZONES AH, AO, AND AREAS OF THE SMFDA, DRAINAGE PATHS ARE REQUIRED AROUND STRUCTURES ON SLOPES TO DRAIN FLOODWATERS AWAY FROM PROPOSED STRUCTURES.]

3. *Appurtenant Structures (Detached Garages and Storage Structures).* Appurtenant structures located in A Zones (A, AE, A1-30, AH, AO) used solely for parking of vehicles or storage may be constructed such that the floor is below the Flood Protection Elevation, provided the structure is designed and constructed in accordance with the following requirements:

    a. Use of the appurtenant structure must be limited to parking of vehicles or storage;

    b. The portions of the appurtenant structure located below the Flood Protection Elevation must be built using flood resistant materials;

    c. The appurtenant structure must be adequately anchored to prevent flotation, collapse and lateral movement;

    d. Any machinery or equipment servicing the appurtenant structure must be elevated or floodproofed to or above the Flood Protection Elevation;

    e. The appurtenant structure must comply with floodway encroachment provisions in KPB 21.06.050(C); and

    f. The appurtenant structure must be designed to allow for the automatic entry and exit of flood waters in accordance with KPB 21.06.050(B)(1)(b). Detached garages, storage structures and other appurtenant structures not meeting the above standards must be constructed in accordance with all applicable standards in KPB 21.06.050(B)(2). Upon completion of the structure, certification that the requirements of this section have been satisfied shall be provided to the Floodplain Administrator for verification.

    g. Before a final floodplain development permit is issued by the planning department for an appurtenant structure with enclosed areas below the flood protection elevation, the owners shall sign a non-conversion agreement stating that the enclosed space shall not be converted to a residential space. The non-conversion agreement shall be recorded, placing future buyers of properties on notice of the hazards of enclosed spaces below the Flood Protection Elevation and the requirements to keep the permitted structure compliant with KPB floodplain regulations.

[3.]4. *Manufactured Homes.* All manufactured homes to be placed or substantially improved within Zones A1-30, AH, and AE shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of subsection (A)[(1)](2) of this section.

[4.]5. *Recreational vehicles.*

…

[5.]6. *Before regulatory floodway*.

…

[6.]7. *Fuel storage tanks.*

…

[7.]8. *Logging or clearing*.

…

9. *AH, AO, and SMFDA*. Drainage paths are required around structures on slopes to drain floodwaters away from proposed structures.

C. *Floodways.*

…

1. All encroachments, including fill, new construction, substantial improvements, and other development are prohibited unless certification by a registered professional engineer [OR ARCHITECT] is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

…

3. Encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations may be permitted, provided that the Kenai Peninsula Borough first applies for and fulfills the requirements for a Conditional Letter of Map Revision (CLOMR), and receives approval from the Federal Insurance Administrator to revise the FIRM and FIS in accordance with KPB 21.06.040(C)(5)(b).

…

**SECTION 6**. That KPB 21.06.060 is hereby amended as follows:

**21.06.060. – [EXCEPTIONS] Variance procedure.**

The variance criteria set forth in this section are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. A variance may be granted for a parcel of property with physical characteristics so unusual that complying with the requirements of this chapter would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants or the property owners.

It is the duty of the Kenai Peninsula Borough to help protect its citizens from flooding through regulating development in the Special Flood Hazard Area. This need is so compelling and the implications of the cost of insuring a structure built below the Base Flood Elevation are so serious that variances from the flood elevation or from other requirements in the flood ordinance are quite rare. The long-term goal of preventing and reducing flood loss and damage can only be met if variances are strictly limited. Therefore, the variance guidelines provided in this ordinance are more detailed and contain multiple provisions that must be met before a variance can be properly granted. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate.

A. *Appeal Board*.

1. The Kenai Peninsula Borough Planning Commission shall hear and decide appeals and requests for [EXCEPTIONS] variances from the requirements of this chapter.

…

5. Upon consideration of the factors of subsection (A)(4) of this section and the purposes of this chapter, the planning commission may attach such conditions to the granting of [EXCEPTIONS] variances as it deems necessary to further the purposes of this chapter,

6. The planning department shall maintain the records of all appeal actions and report any [EXCEPTIONS] variances to the Federal Insurance Administration upon request.

B. *Conditions for [EXCEPTIONS] Variances*.

1. Generally, the only condition under which a[N EXCEPTION] variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of ½ acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing subparagraphs (a) through (k) of subsection (A)(4) of this section have been fully considered. As the lot size increases the technical justification required for issuing the [EXCEPTION] variance increases.

2. [EXCEPTIONS] Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in this section.

3. [EXCEPTIONS] Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.

4. [EXCEPTIONS] Variances shall only be issued upon a determination that the [EXCEPTION] variance is the minimum necessary, considering the flood hazard, to afford relief.

5. [EXCEPTIONS] Variances shall only be issued upon:

…

   b. A determination that failure to grant the [exception] variance would result in exceptional hardship to the applicant;

   c. A determination that the granting of a [exception] variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.

6. [EXCEPTIONS] Variances, or variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, or to economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, [EXCEPTIONS] variances from the flood elevations should be quite rare.

7. [EXCEPTIONS] Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-flood proofing where it can be determined that such action will have low damage potential, complies with all other [EXCEPTION] variance criteria except subsection (B)(1) of this section, and otherwise complies with KPB 21.06.060(A) and (B).

8. Any applicant to whom a[N EXCEPTION] variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

**SECTION 7**. That KPB 21.06.070 is hereby amended as follows:

**21.06.070. – Definitions.**

…

"Anchored" or "anchoring" means a system of ties, anchors and anchoring equipment that will withstand flood and wind forces. The system must work in saturated soil conditions.

"Alteration of watercourse" means any action that will change the location of the channel occupied by water within the banks of any portion of a riverine waterbody.

…

"Coastal high hazard area" means [THE AREA SUBJECT TO HIGH VELOCITY WATERS DUE TO WIND, TIDAL ACTION, STORM, TSUNAMI OR ANY SIMILAR FORCE, ACTING SINGLY OR IN ANY COMBINATION RESULTING IN A WAVE OR SERIES OF WAVES OF SUFFICIENT MAGNITUDE, VELOCITY OR FREQUENCY TO ENDANGER PROPERTY AND LIVES] an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on the FIRM as Zone V1-30, VE, or V.

…

["EXCEPTION" MEANS A GRANT OF RELIEF FROM THE REQUIREMENTS OF THIS CHAPTER, WHICH PERMITS CONSTRUCTION IN A MANNER THAT WOULD OTHERWISE BE PROHIBITED BY THIS CHAPTER.]

["FEDERAL EMERGENCY MANAGEMENT AGENCY" IS THE AGENCY RESPONSIBLE FOR ADMINISTRATION OF THE NATIONAL FLOOD INSURANCE PROGRAM.

"FLOOD HAZARD AREA" MEANS THE LAND AREA COVERED BY THE FLOOD, HAVING A 1 PERCENT CHANCE OF OCCURRING IN ANY GIVEN YEAR. SEE ALSO "100-YEAR OR 1-PERCENT ANNUAL EXCEEDANCE PROBABILITY FLOOD.]

"Flood elevation study" means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards. Also known as a Flood Insurance Study (FIS).

…

"Functionally dependent use" means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, and does not include long term storage or related manufacturing facilities.

"Historic structure" means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or

4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

    a. By an approved state program as determined by the Secretary of the Interior or

    b. Directly by the Secretary of the Interior in states without approved programs.

…

"Recreational vehicle" means a vehicle that is:

1. Built on a single chassis;

2. 400 square feet or less when measured at the largest horizontal projection;

3. Designed to be self-propelled or permanently towable by a light duty truck; and

4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

…

"Special Flood Hazard Area (SFHA)" means Flood hazard areas identified on the Flood Insurance Rate Map [AREAS OF HIGH RISK AS DEFINED IN THE CURRENT EFFECTIVE FIRM AND DFIRM] panels for the Kenai Peninsula Borough. These are the areas that will be inundated by the flood event having a 1-percent chance of being equaled or exceeded in any given year. See also "100-year or 1-percent annual exceedance probability flood.

…

"Variance" means a grant of relief from the requirements of this chapter, which permits construction in a manner that would otherwise be prohibited by this chapter.

**SECTION 8**. That KPB 21.50.055 is hereby amended as follows:

**21.50.055. – Fines.**

…

| Code Chapter & Section | Violation Description | Daily Fine |
|---|---|---|
| … | | |
| KPB 21.06.030([D])E | Structure or activity prohibited by KPB 21.06 | $300.00 |
| [KPB 21.06.045] | [FAILURE TO OBTAIN A DEVELOPMENT PERMIT/VIOLATION OF SMFDA PERMIT CONDITIONS/FLOODPLAIN MANAGEMENT] | [$300.00] |

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2023.**

Brent Johnson, Assembly President

ATTEST:

Michele Turner, CMC, Borough Clerk

Yes:

No:

Absent:

DocuSign Envelope ID: DB1B4B7F-B66D-480B-88DD-AE03ACEAC4DA

# Kenai Peninsula Borough

Planning Department – River Center

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**THRU:** Peter A. Micciche, Mayor PAM
Robert Ruffner, Planning Director RR
Samantha Lopez, River Center Manager SL

**FROM:** Julie Hindman, Floodplain Administrator JH

**DATE:** September 7, 2023

**RE:** Ordinance 2023-23, Amending KPB 20.30.280 and KPB 21.06 Regarding Floodplain Management to Adopt Required Changes to Remain Compliant with the National Flood Insurance Program (Mayor)

Since 1988, the Borough has participated in the National Flood Insurance Program ("NFIP"), making federal disaster assistance, federal hazard mitigation grants, federal subsidized mortgages, and affordable individual homeowner flood insurance available within the Borough. The Federal Emergency Management Agency ("FEMA") oversees the NFIP and provides participating communities with the minimum regulations and regulatory flood maps for each community to enforce.

Every five to eight years, FEMA visits the Borough to perform a Community Assistance Visit. This is a visit by FEMA staff that serves the dual purpose of providing technical assistance to the community and assuring that the community is adequately enforcing its floodplain management regulations. This visit includes: meeting with community staff and officials; reviewing current code; touring and inspecting structures in the floodplain; reviewing floodplain development permits; and documenting any unpermitted structures.

The proposed amendments to Borough Code reflected in this ordinance are a combination of FEMA-required changes and housekeeping amendments to ensure the Borough's floodplain management code meets federal standards. The proposed amendments also address other portions of Borough Code for clerical purposes. These amendments are necessary to keep the Borough in good standing with the NFIP. Failure to adopt the required changes could result in sanctions, which could impact the Borough's ability to participate in the NFIP.

Your consideration is appreciated.

Kenai Peninsula Borough
Office of the Borough Clerk

**MEMORANDUM**

**TO:** Brent Johnson, Assembly President
Kenai Peninsula Borough Assembly Members

**THRU:** Michele Turner, Borough Clerk

**FROM:** Tamera Ward, Deputy Borough Clerk

**DATE:** September 19, 2023

**RE:** Approval of the Precinct Boards, Canvass Board and Absentee Voting Officials for the October 3, 2023 Regular Municipal

| PRECINCT NAME | NAME OF ELECTION WORKER |
|---|---|
| Anchor Point | Jennifer Dress<br>Roberta (Bobby) Ness<br>Mary Perry<br>Carol Slavik<br>Loretta Staple |
| Bear Creek | Cindy Clock<br>Ann Ghicadus<br>Mary Huss<br>Lori Landstrom<br>Marjorie McEldowney<br>Phyllis Shoemaker<br>Tara Swanson<br>Catherine "Katy" Turnball |
| Central | Joan Corr<br>Candance Gilbertson<br>Memphis Lyon<br>Janet Morrison<br>Cynthia Newby<br>Graceanna Phillips<br>Johnny Riggins<br>Anna Traylor |

| PRECINCT NAME | NAME OF ELECTION WORKER |
|---|---|
| Diamond Ridge | Donna Beran<br>Shari Daugherty<br>Therese Lewandowski<br>Leslie Lord-Coffing<br>Colleen Powers |
| Funny River No. 1 | Phyllis Cousins<br>Bonnie Meinzinger<br>Marcia Morgan<br>Sandra Sandoval<br>Mary Youngman |
| Funny River No. 2 | Cynthia Glassmaker<br>Karen Hatfield<br>Tanya Parshall<br>Ryann Runion |
| Homer No. 1 | Kate Finn<br>Megan Gordon<br>Louise Gross Hall<br>Vonda Nixon<br>Karen Smith |
| Homer No. 2 | Cynthia Barker<br>Joan Smith<br>Kent Smith<br>Alexander Stuart<br>Kira Stuart |
| Kachemak / Fritz Creek | Shirley Forquer<br>Karen McRae<br>Bob Neubauer<br>Susan Oesting<br>Roni Overway |
| Kasilof | Terrell Brewer<br>Gail Knobf<br>Carolyn Roush<br>Jolaine "Jodi" Toombs<br>Jerri Williams |

| PRECINCT NAME | NAME OF ELECTION WORKER |
|---|---|
| K-Beach | Nancy Eoff<br>Bridgette Nelson<br>Deanne Pearson<br>Mary Jo (Mo) Sanders<br>April Weber |
| Kenai No. 1 | Carol Freas<br>Kit Hill<br>Paul Klaben<br>Joan Seaman<br>Michelle Teates<br>Virginia Walters<br>Gwen Woodard |
| Kenai No. 2 | Darlene Merlo<br>Karen Monell<br>Barbara Norbeck<br>Arlene "Susan" Smalley<br>Jennifer Ticknor |
| Kenai No. 3 | Mike Efta<br>Sharon "Sheri" Efta<br>Christine Forbes<br>Jennie Hammond<br>Brianna Hammond<br>Michael Sounart<br>Deborah "Debbie" Sounart |
| Mackey Lake | Angela Anderson<br>Teresa Minnich<br>Stephanie Snyder<br>Gayle Valley |
| Nikiski | Casey DeSiena<br>Renee Diamond<br>Jeanette Diamond<br>Leslie Hamman<br>Virginia Jergensen<br>Kelly Noble |

| PRECINCT NAME | NAME OF ELECTION WORKER |
|---|---|
| Ninilchik | Myrtle-May Erickson<br>Becky Hamilton<br>Sherry Pinckley<br>Madeline Thompson<br>Steve Vanek |
| Salamatof | Nicole Darwin<br>Edward Fulton<br>Sarah Holiday<br>Elizabeth McPherson<br>Jeff Reitter<br>Cindy Slaughter<br>Jean Taylor<br>Jodie Titus<br>Nancy Whiting |
| Seward / Lowell Point | Catherine Byars<br>Susan "Sue" Faust<br>Mark Kansteiner<br>Mike Mahmood<br>Dawn Maness'<br>Sharyl Seese<br>Marilyn Sutherland<br>Vanessa Verhey |
| Soldotna | Kari Hudson<br>Lauri Kapp<br>Bridget Piscoya<br>Gloria Sweeney<br>Lana Syverson<br>Cheryl Tachick<br>Sally Tachick |
| Sterling No. 1 | Barbara "Barb" Blakeley<br>Greg Endsley<br>Denise Hall<br>Karen Lassiter<br>Grace Merkes |

| PRECINCT NAME | NAME OF ELECTION WORKER |
|---|---|
| Sterling No. 2 | Patricia Bouton<br>Lisa Franzmann<br>Dianna Hollers<br>Annette Pankoski<br>Jacquelyn "Jacki" Walgenbach |
| Absentee Voting Officials (Two-Weeks Prior to Election & Election Day): | |
| Homer City Hall | Pamela Brodie<br>Louise Gross Hall<br>Rachel Tussey |
| Kenai City Hall | Sharon Efta<br>Carol Freas<br>Bob Molloy |
| Kenai Peninsula Borough | Pauline Mills<br>Joanna Rodgers<br>Alyson Stogsdill<br>Katharine "Katie" Tongue |
| Seldovia City Hall<br>Seldovia Library (Election Day) | Liz Diament (City Clerk)<br>Mary Jo Stanley |
| Seward City Hall | Sue Faust<br>Vanessa Verkey |
| Canvass Board | Teri Birchfield<br>Michelle Blackwell<br>Linda Cusack<br>Brekke Hewitt<br>Pauline Mills<br>Janet St. Clair<br>Debra "Sue" Stein |

| PRECINCT NAME | NAME OF ELECTION WORKER |
|---|---|
| Election Review Board | Michele Turner (Borough Clerk)<br>Tamera Ward (Deputy Borough Clerk)<br>Teri Birchfield<br>Linda Cusack |

KPB 4.50.010 further provides that the clerk may appoint workers where they are needed to relieve the election judges of any undue hardship and may also appoint a replacement if any appointed election official is not able to serve on Election Day.

Kenai Peninsula Borough
Office of the Borough Clerk

# MEMORANDUM

**TO:** Brent Johnson, Assembly President
Assembly Members

**FROM:** Michele Turner, Borough Clerk

**DATE:** September 11, 2023

**RE:** Voter Turnout Working Group Members for Appointment

Resolution 2023-053 established the Voter Turnout Working Group. The working group will include 14 members as follows:

1.) Michele Turner, Borough Clerk
2.) Melissa Jacobsen, Homer City Clerk
3.) Lauri Wallace, Kachemak City Clerk
4.) Shellie Saner, Kenai City Clerk
5.) Liz Diament, Seldovia City Clerk
6.) Kris Peck, Seward City Clerk
7.) Johni Blankenship, Soldotna City Clerk
8.) Barb Blakeley, Community Member #1 Selected by the Mayor
9.) Leslie Hamman, Community Member #2 Selected by the Mayor
10.) Brad Parson, Independent Living Center &/or Pat Case, Local Advocate
11.) Linda Cusack, Canvass Board
12.) Teri Birchfield, Canvass Board
13.) Donna Aderhold, League of Women Voters
14.) Alex Koplin, Kenai Peninsula Votes Group

Per Resolution 2023-053, members will be appointed by the Assembly at its regular meeting on September 19, 2023.

Your consideration is appreciated.

Kenai Peninsula Borough
Office of the Borough Mayor

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members of the Borough Assembly

**FROM:** Peter A. Micciche, Borough Mayor

**DATE:** September 7, 2023

**RE:** Appointments to Advisory Planning Commissions

In accordance to KPB 21.02.060, the applicants listed below have been verified as residents within the boundaries to be represented, as well as registered voters within the precincts covered by the commission boundaries.

I hereby submit my recommendations for confirmation by the Assembly.

**COOPER LANDING ADVISORY PLANNING COMMISSION**

| | | |
|---|---|---|
| Yvette Galbraith | Seat C | Term Expires 09/30/2026 |
| Heather Harrison | Seat D | Term Expires 09/30/2026 |

**FUNNY RIVER ADVISORY PLANNING COMMISSION**

| | | |
|---|---|---|
| James L. Harpring | Seat B | Term Expires 09/30/2026 |

**HOPE / SUNRISE ADVISORY PLANNING COMMISSION**

| | | |
|---|---|---|
| Dawn Hammond-Sammet | Seat E | Term Expires 09/30/2026 |
| Jim Skogstad | Seat G | Term Expires 09/30/2026 |

**MOOSE PASS ADVISORY PLANNING COMMISSION**

| | | |
|---|---|---|
| Kevin Dunham | Seat B | Term Expires 09/30/2026 |

**NIKISKI ADVISORY PLANNING COMMISSION**

| | | |
|---|---|---|
| Tom Coursen | Seat A | Term Expires 09/30/2026 |
| Stacy Oliva | Seat B | Term Expires 09/30/2026 |
| Jon Harman | Seat F | Term Expires 09/30/2025 |

Thank you for your consideration.

Kenai Peninsula Borough
Office of the Borough Clerk

# MEMORANDUM

**TO:** Peter A. Micciche, Borough Mayor

**THRU:** Robert Ruffner, Planning Director

**FROM:** Michele Turner, Borough Clerk

**DATE:** September 8, 2023

**RE:** Advisory Planning Commission Applications for Appointment

The annual notice of vacancy for the Advisory Planning Commission Seats was advertised on August 7, 2023. The application period closed on September 6, 2023.

Per KPB 21.02.060, the applicants listed below have been verified as:
1.) residents within the commission boundaries in which they are applying, and
2.) registered voters within the precincts covered by the commission boundaries.

The following applications are being submitted for your consideration.

**COOPER LANDING ADVISORY PLANNING COMMISSION**

| | |
|---|---|
| Seat C | Yvette Galbraith |
| Seat D | Heather Harrison |

**FUNNY RIVER ADVISORY PLANNING COMISSION**

| | |
|---|---|
| Seat B | James L. Harpring |

**HOPE / SUNRISE ADVISORY PLANNING COMMISSION**

| | |
|---|---|
| Seat E | Dawn Hammond-Sammet |
| Seat G | Jim Skogstad |

**MOOSE PASS ADVISORY PLANNING COMMISSION**

| | |
|---|---|
| Seat B | Kevin Dunham |

**NIKISKI ADVISORY PLANNING COMMISION**

| | |
|---|---|
| Seat A | Jhasmine Nicely |
| | Tom Coursen |
| Seat B | Stacy Oliva |
| Seat F | Jon Harman |

Thank you.

# Kenai Peninsula Borough
## Planning Department

**Advisory Planning Commission Application Submitted 2023-08-09 11:56:23**

**APC/Seat: Cooper Landing – Seat C (Term Expires 09/30/2026)**

| **Name** | **Mobile Phone** |
|---|---|
| Yvette Galbraith | 9072303055 |
| **Home Phone** | **Work Phone** |
| 9075953055 | |
| **Email** | **Date of Birth** |
| ygalbraith@gmail.com | [redacted] |
| **SSN** | **Voter #** |
| [redacted] | |
| **Residence Address** | **Mailing Address** |
| 35499 Russian Gap Cooper Landing, Alaska 99572 | PO Box 866 Cooper Landing, Alaska 99572 |
| **How long have you lived in the area served by this Advisory Planning Commission?** | **What knowledge, experience, or expertise will you bring to this board?** |
| 17 years | I am a long time resident of Cooper Landing and have been involved in many community organizations over the years. I am married to another long time resident and business owner(45 plus years) and have had children in Cooper Landing School. Currently I am a EMT volunteering for Cooper Landing Emergency Services, and President of the Cooper Landing Community Club. I retired from owning my own marketing consulting firm 3 years ago, in which I handled and worked for clients in a wide variety of industries (Tourism, Healthcare, Telecommunication, Oil & Gas, Agriculture, Retail, Non Profit, Government, etc.) I enjoy serving on the Planning Commission, being informed on what is happening in Cooper Landing, and assisting our community in working with the Borough in planning our future. I would be honored to be nominated again. |

# YVETTE GALBRAITH

**Address**
PO Box 866, Cooper Landing, AK 99572
**Mobile** **Direct**
907.230.3055 907.595.3055
**Email**
ygalbraith@gmail.com

## PROFESSIONAL EXPERIENCE

**Retired** **January 2020**

***Marketing Consultant/Coordinator*** **- Owner** **August 2001 – December 2019**
**Alaska Marketing Consultants, Inc.**

- Provide professional marketing consulting services to established clientele in a variety of industries.
- Comfortable working in all forms of marketing mediums including advertising (i.e. radio, tv, print, direct mail, online), public relations, web design, research, event coordination, social/mobile media, and promotional items.
- Serve as an independent agency in coordinating and handling media placement for clientele.
- Experienced in creating marketing plans and budgets, creating & coordinating brand implementation, developing ad campaigns, handling media placement, managing public relations and event coordination, providing web design conception and strategies, implementing social media and ordering promotional items.
- Oversees and works frequently on campaigns and projects with independent and agency affiliated graphic artists, web designers, photographers, printers, and fine artists.
- Licensed distributor with the Advertising Specialty Institute for promotional items, apparel and goods.

***Pharmaceutical Consultant*** **November 1990 to 2001**
**GlaxoSmithKline Pharmaceuticals**
**Wyeth Ayerst Laboratories**
**SmithKline Beecham Pharmaceuticals**

- Promoted product line to healthcare professionals throughout Alaska.
- Maintained extensive knowledge of products, prescription data and marketing and sales strategies.
- Completed successful pre-launch and post-launch activities for new products and line extensions.
- Participated and help organize in local conventions, speaker programs and conferences for various local and state organizations.
- Formed and maintained professional relationships with members of the medical community.
- Developed and implemented business plans to achieve corporate and sales objectives under a continual changing environment.
- Facilitated and maintained co-marketing arrangements with other entities in the promotion of specific products.
- Ranked consistently as a top performer in market share growth for Northwest Region.

## EDUCATION

***University of Alaska-Fairbanks***
**Bachelor of Business Administration - Marketing** - Emphasis in Travel Industry Management. Graduated May 1990.

## AFFILIATIONS

Advertising Specialty Institute – 2003- 2019
American Institute Graphic Arts – Alaska Chapter - 2012-2015
American Marketing Association, Alaska Chapter - 2001- 2019
Buy Alaska – 2001 - 2015
Cooper Landing Chamber of Commerce - 2005 – 2019
Girdwood Chamber of Commerce – 2012 – 2017
Society for Marketing Professional Services - 2003- 2018
Seward Chamber of Commerce CVB - 2005 - 2019
University of Alaska – Fairbanks Alumni Association, Life Member
Cooper Landing Emergency Services - ETT 2009, EMT 2018-Present
Cooper Landing Community Club – VP 2017-2022, President – 2023
Cooper Landing Advisory Planning Committee – Seat C – 2017-Present

*References, Client Portfolio, List of Services and Contractors provided upon request.*

# Services

## Alaska Marketing Consultants, Inc.

### Strategic Marketing Design

Corporate Branding (Image & Logo Development)
Advertising
Marketing Plan Preparation
Media Placement
Target Marketing
Product Positioning
Strategies for Marketing Mix Components
Direct Mailing

### Event Planning & Coordination

Event Program Development
Budget Monitoring
Supplier Relations
Pre-Event and on-site registrations
Event Marketing and Promotion
Media Marketing
Event Information Distribution
Catering Coordination
Booth and Display Organizing
Specialty Items

### Public Relations & Management Strategies

Press-Packet
Press Releases
Strategic – Media Placement
Long-Range Planning
Issue and Program Development
Corporate Identity Enhancement
Crisis Response

### Specialty Items

Apparel
Award & Recognition
Business & Desk Items
Executive Gifts
Food & Beverage
Kitchen & Home
Trade Show Items
Sport & Outdoor

### Web Design, Strategies & Solutions

Web Design
Internet Marketing Strategies
Pre-Launch Consultation and Planning
- Domain registration, hosting and ISP considerations

Statistical Analysis, Tracking and Reporting
Internet Research
Video / DVD Production Services

# Portfolio

## Alaska Marketing Consultants, Inc.

### Alaska Chamber Singers
Ad Design & Media Placement
-Print, Radio & Web
Collateral Materials
Corporate Image Design
Direct Mail Advertising
Event Coordination
Public Relation Strategy & Management
Social Media
Strategic Marketing Consulting
Website Development

### Alaska Rivers Company
Ad Design & Media Placement
-Print & Web
Collateral Material
Corporate Image Design
Specialty Items
Website Development

### Altman Rogers & Co.
Ad Design & Media Placement
-Print & Web
Corporate Image Design
Direct Mail Advertising
Market Research
Public Relations Strategy & Management
Specialty Items
Strategic Marketing Consulting
Website Development

### Alyeska Resort
Specialty Items

### Anchorage Festival of Music
Ad Design & Media Placement
-Print, Radio & Web
Collateral Materials
Event Coordination/Management
- Soiree Programs & Young Alaskan Artist Award
Grant Proposals/Fundraising
Public Relations and Administration Management
Social Media
Strategic Marketing Consulting
Website Development

### Cooper Landing Chamber of Commerce
Ad Design & Media Placement
Corporate Image Design
Direct Mail Advertising
Market Research
Public Relations Strategy & Management
Upper Kenai Visitors Guide
Production, Ad Sales, Distribution
Specialty Items
Strategic Marketing Consulting

### Engineered Equipment Company
Collateral Material
Corporate Image Design
Public Relations and Administration Management
Website Development

### Imaging Associates of Providence
Ad Design & Media Placement
-Print, Radio, TV & Web
Corporate Image Design
Direct Mail Advertising
Event Coordination
Market Research
Public Relation Strategy & Management
Specialty Items
Strategic Marketing Consulting

### Habitat Housewares
Ad Design & Media Placement
-Print, Radio, TV & Web
Corporate Image Design
Direct Mail Advertising
Event Coordination
Market Research
Public Relation Strategy & Management
Specialty Items
Strategic Marketing Consulting
Website Development

### Facial Plastics ENT Associates, Inc.
Collateral Materials
Market Research
Specialty Items

### Kimberly Seeds International
Corporate Image Design
Specialty Items
Website Development

### myHealth Clinic, LLC
Ad Design & Media Placement
-Print
Corporate Image Design
Direct Mail Advertising
Market Research
Public Relations Strategy & Management
Specialty Items
Strategic Marketing Consulting
Website Development

### Orthopedic Physicians Anchorage
Specialty Items

### PAC WEST, Inc.
Ad Design & Media Placement
Corporate Image Design
Collateral Materials
Specialty Items
Web Design

# Portfolio *(continued)*

## Alaska Marketing Consultants, Inc.

### Petro Star Inc.
Ad Design & Media Placement
Event Coordination
Public Relations
Strategic Marketing Consultation
Specialty Items
Web Design

***North Pacific Fuel***

Ad Design & Media Placement
Market Research
Specialty Items

***Sourdough Heating & Fuel***

Ad Design & Media Placement
Market Research
Specialty Items
Strategic Marketing Consultation

### R & M Consultants, Inc.
Specialty Items

### Red Shift, Inc.
Corporate Image Design
Collateral Material
Website Design

### Seward Chamber of Commerce
Ad Design & Media Placement
Corporate Image Design
Direct Mail Advertising
Market Research
Public Relations Strategy & Management
Seward Destination Guide 2005 - Present
Production, Ad Sales, Distribution
Seward Halibut Tournament Guide
Production, Ad Sales, Distribution
Seward Mount Marathon Race Guide
Production, Ad Sales, Distribution
Seward Silver Salmon Derby Guide
Production, Ad Sales, Distribution
Specialty Items
Strategic Marketing Consulting

### Seward Chamber of Commerce
***Seward Alternative Energy Group***

Ad Design & Media Placement
Collateral Material
Corporate Image Design
Direct Mail Advertising
Event Coordination – Seward Alternative Energy
Forum & Fair
Market Research
Public Relations Strategy & Management
Specialty Items
Strategic Marketing Consultation
Website Design & Development

### The Bake Shop
Ad Design & Media Placement
-Web, Print,
Corporate Image Design
Event Coordination
Market Research
Public Relation Strategy & Management
Specialty Items
Strategic Marketing Consulting
Website Development

# Contractors

## Alaska Marketing Consultants, Inc.

AMC has worked with many of the top free-lance providers in the state.

### Copy Writing/ Production
Katie Hickey, KT-Creative
Judy Griffin, Word Wrangling

### Graphic Design
Dawn Gerety, Art Seriously
Deb Dubac, Dubac Designs
Greger Wright, The Wright Perspecitive
Kevin Hall, K & H Graphics
Lucian Childs, GRA.F/X
Meredith Hershock, Swell Design
Michael Ardiaz, Mad Dog Graphics

### Photographers
Chris Arend, Chris Arend Photography
Daryl Pederson, D&M Photo
Frank Flavin, Frank Flavin Photography
Jeff Schultz, Alaska Stock
Judy Patrick, Judy Patrick Photography
Ken Graham, Accent Alaska/Ken Graham Agency
Michael DeYoung, Michael DeYoung Photography
Ron Niebrugge, Wild Nature Images
Scott Dickerson, Scott Dickerson Photography

### Special Projects/ Commissioned Work
Amanda Brannon, Amanda Brannon Design
Deb Dubac, Dubac Designs
Peter Brondz, Peter Brondz Pottery
Romney Dodd, Romney Designs

### Web Designers
Apokrisis, Kristen Lindsey
ITS- Alaska Computer Services
Jan Hazen, Homestead Graphics
Kelvin Doyle, OTC Web Design
Sound Web Solutions – Heidi Weiland

# Kenai Peninsula Borough
## Planning Department

**Advisory Planning Commission Application Submitted 2023-08-15 06:14:54**

**APC/Seat: Cooper Landing – Seat D (Term Expires 09/30/2026)**

| **Name** | **Mobile Phone** |
|---|---|
| Heather Harrison | 907-598-1210 |
| **Home Phone** | **Work Phone** |
| 907-595-2029 | 1-800-478-7778 ext 3660 |
| **Email** | **Date of Birth** |
| Brandonandheather@live.com | [redacted] |
| **SSN** | **Voter #** |
| **Residence Address** | **Mailing Address** |
| 19164 Sterling Hwy Cooper Landing, AK 99572 | P.O. Box 803 Cooper Landing, AK 99572 |
| **How long have you lived in the area served by this Advisory Planning Commission?** | **What knowledge, experience, or expertise will you bring to this board?** |
| 36 | Long standing community member and familiar with the area. Understand the values of the people and issues we face. |

# Kenai Peninsula Borough
## Planning Department

**Advisory Planning Commission Application Submitted 2023-08-17 07:10:43**

**APC/Seat: Funny River – Seat B (Term Expires 09/30/2026)**

| **Name** | **Mobile Phone** |
|---|---|
| James L Harpring | 907 953 0784 |
| **Home Phone** | **Work Phone** |
| **Email** | **Date of Birth** |
| jvharpring68@gmail.com | [redacted] |
| **SSN** | **Voter #** |
| | [redacted] |
| **Residence Address** | **Mailing Address** |
| , | 35001 Water Front Way Soldotna, Alaska 99669 |
| **How long have you lived in the area served by this Advisory Planning Commission?** | **What knowledge, experience, or expertise will you bring to this board?** |
| 40 years | Currently serve on FRAPC, Seat B. Very knowageable of issues impacting Funny River Community. Served in USAF for 23 years and was assigned as a Planner for 8 years. |

# Kenai Peninsula Borough
## Planning Department

**Advisory Planning Commission Application Submitted 2023-09-02 08:48:28**

**APC/Seat: Hope / Sunrise – Seat E (Term Expires 09/30/2026)**

| **Name** | **Mobile Phone** |
|---|---|
| Dawn Hammond-Sammet | 904 547-1407 |
| **Home Phone** | **Work Phone** |
| **Email** | **Date of Birth** |
| dawnleehammond@hotmail.com | [redacted] |
| **SSN** | **Voter #** |
| | [redacted] |
| **Residence Address** | **Mailing Address** |
| 64475 Wagon Trail Rd Hope, Alaska 99605 | PO Box 86 Hope, Alaska 99605 |
| **How long have you lived in the area served by this Advisory Planning Commission?** | **What knowledge, experience, or expertise will you bring to this board?** |
| Since summer 2019 | The majority of my life I have lived in small, rural communities, from Alaska, New York and California, to France and Germany. This exposed me to many cultures and land use formats, sometimes to the benefit, and sometimes to the expense of the community. I currently sit on the Hope and Sunrise Historical Society Board and volunteer for most of the non-profits in town, while working full time at the Hope School. This puts me in contact with the diverse residents of Hope, many of them young families moving here for a peaceful, safe environment to raise children, the others retirees and second home owners wanting life quality through recreation, time with friends and family, and the serenity Hope offers. I also know most of the business owners in Hope and Sunrise and consider them friends. My people skills are my biggest asset and I would like to see more communication between the Borough and residents. |

# Kenai Peninsula Borough
## Planning Department

**Advisory Planning Commission Application Submitted 2023-08-29 09:18:10**

**APC/Seat: Hope / Sunrise – Seat G (Term Expires 09/30/2026)**

| **Name** | **Mobile Phone** |
|---|---|
| Jim Skogstad | 907-229-1430 |
| **Home Phone** | **Work Phone** |
| 907-229-1430 | 9072291430 |
| **Email** | **Date of Birth** |
| akskogstad@aol.com907-229-1430 | [redacted] |
| **SSN** | **Voter #** |
| | [redacted] |
| **Residence Address** | **Mailing Address** |
| 64881 5th St Hope, Alaska 99605 | P.O. Box 8 Hope, Alaska 99605 |
| **How long have you lived in the area served by this Advisory Planning Commission?** | **What knowledge, experience, or expertise will you bring to this board?** |
| 48 years | Current member of the board. Have been involved in community of Hope and Sunrise for many years |

# Kenai Peninsula Borough
## Planning Department

**Advisory Planning Commission Application Submitted 2023-09-07 20:31:28**

**APC/Seat: Moose Pass – Seat B (Term Expires 09/30/2026)**

| **Name** | **Mobile Phone** |
|---|---|
| Kevin Dunham | 907-748-4449 |
| **Home Phone** | **Work Phone** |
| 907-288-2412 | |
| **Email** | **Date of Birth** |
| kevin.dunham19@gmail.com | [redacted] |
| **SSN** | **Voter #** |
| [redacted] | |
| **Residence Address** | **Mailing Address** |
| , | 25975 Primrose Rd Seward, AK 99664 |
| **How long have you lived in the area served by this Advisory Planning Commission?** | **What knowledge, experience, or expertise will you bring to this board?** |
| 10 years | Have served the past three years. |

# Kenai Peninsula Borough
## Planning Department

**Advisory Planning Commission Application Submitted 2023-08-10 16:13:47**

**APC/Seat: Nikiski – Seat A (Term Expires 09/30/2026)**

| **Name** | **Mobile Phone** |
|---|---|
| Jhasmine Nicely | 907.252.2001 |
| **Home Phone** | **Work Phone** |
| **Email** | **Date of Birth** |
| Msjhasmine@gmail.com | [redacted] |
| **SSN** | **Voter #** |
| [redacted] | |
| **Residence Address** | **Mailing Address** |
| , | 47714 Interlake Dr Kenai, AK 99611 |
| **How long have you lived in the area served by this Advisory Planning Commission?** | **What knowledge, experience, or expertise will you bring to this board?** |
| 1.5 years | Organizational management & civic experience. |

47714 Interlake Dr • Kenai, AK 99611
CELL (907) 252-2001 • MSJHASMINE@GMAIL.COM

# JHASMINE S. NICELY, IOM

## EXECUTIVE SUMMARY

Exceptional communications professional seeking long-term employment that offers family benefits and competitive pay.

## SPECIALIZED SKILLS AND EDUCATION

- Executive Finance
- Government Affairs
- Budgeting
- CMS Web Development
- Strategic Planning
- Fundamentals of Community and Economic Development
- Organizational Management
- Program Development
- Strategic Communication
- Incident Command
- Communications
- Database Management
- Adobe Creative Suite
- Information Dissemination
- Advanced Computer and Software Aptitude
- Communication Networking
- Media/Marketing & Brand Management
- Grant Facilitation
- City Council Meeting Facilitation

## QUALIFICATIONS

- Completion of delegated tasks in a timely manner
- Interpersonal networking, team work and communications
- New technologies, software, multimedia and application implementation
- Strong attention to detail and procedure
- Ability to turn ideas into projects that result in success
- HTML, CSS & Java coding and formatting
- Document construction and digitalization
- Ability to perform multiple tasks efficiently and accurately
- Photography, graphic design and media/digital asset creation
- Data tracking, analysis and formatting for presentation
- Strategically conscientious of media voice, tone and personality
- Strength developing copacetic and effective proposals and documents
- Strength using office systems, word processing, data tracking
- Grammar, spelling, and punctuation
- Emergency Response

## EMPLOYMENT EXPERIENCE

| | | |
|---|---|---|
| 2021 - Current | REALTOR® | Kenai Peninsula, AK |
| 2020 – 2021 | City of Montpelier<br>Executive Assistant to the City Manager | Montpelier, VT 05602 |
| 2018 – 2019 | City of Soldotna<br>Special Projects and Communications Manager | Soldotna, AK 99669 |
| 2014 – 2018 | Kenai Peninsula Tourism Marketing Council<br>Communications Manager/ Digital Media Strategist | Soldotna, AK 99669 |
| 2013 – 2014 | MSI Communications Marketing Agency<br>Communications & Digital Media Strategist | Anchorage, AK 99502 |
| 2011 – 2013 | Kenai Peninsula Tourism Marketing Council<br>Communications Manager/ Digital Media Strategist | Soldotna, AK 99669 |

| | | |
|---|---|---|
| 2010 – 2014 | Picturesque Photography<br>Small Business Owner | Soldotna, AK 99669 |
| 2008 – 2010 | Trustworthy Hardware<br>Front Line Staff / North-West Region G Loomis Representative | Soldotna, AK 99669 |
| 2005 – 2007 | Era Aviation<br>Station Agent | Homer, AK 99603 |
| 2003 – 2004 | Central Peninsula General Hospital<br>Nurses Assistant CNA | Soldotna, AK 99669 |

NON-PROFIT EXPERIENCE

| | | |
|---|---|---|
| 2015 - 2018 | Kenai Peninsula Oilers - Board of Directors | Kenai, AK |
| January '13 | Homer Chamber of Commerce / Social Networking Workshop | Homer, AK |
| January '12 | UAF & AKSBDC / Intro to Social Networking | Girdwood, AK |
| January '12 | Seward Chamber of Commerce / Social Networking Workshop | Seward, AK |
| November '12 | Land's End & KPTMC / Business, Marketing, Technology, Conference | Homer, AK |
| December '12 | AK SBDC & Homer Chamber / A Day on the Web Workshop | Homer, AK |
| 2011 - 2012 | Kenai Peninsula Racing Lions Tough Truck - BOD Director | Kenai, AK |
| 2011 - 2012 | Kenai Peninsula Racing Lions District 49A - BOD Secretary | Kenai, AK |
| 2011 - 2012 | Twin City Raceway Circle Track Division - BOD Secretary | Kenai, AK |

EDUCATION & CERTIFICATION

January 2019 — Alaska Real Estate Commission — Anchorage, AK
Department of Commerce, Community, and Economic Development

January 2014 - January 2018 — U of A & US Chamber of Commerce — Tucson, AZ
Institute for Organizational Management
Accredited Institute for Organization Management of the U.S. Chamber of Commerce Foundation

December 2017 — ATSSA Online Flagger Certification — Soldotna, AK
National Flagger Certification

November 2004 - June 2005 — Career Academy — Anchorage, AK
LMT - Licensed Massage Therapist
Accredited Member of Accrediting Commission of Career Schools and College of Technology

Department of Homeland Security FEMA - Introduction to Incident Command System, ICS-100.
Department of Homeland Security FEMA - Single Resources and Initial Action Incidents, ICS-200.

REFERENCES

| *Personal* | *Professional* | *Professional* | *Professional* |
|---|---|---|---|
| **City of Montpelier** | **State of Alaska** | **MSI Communications** | **CPH** |
| City Manager | Commissioner | Account Executive | Marketing Manager |
| Bill Fraser | Mike Navarre | Keith Baxter | Shanon Davis |
| (802) 223-9502 | (907) 394-2300 | (907) 398-7287 | (907) 394-0466 |

47714 Interlake Dr • Kenai, AK 99611
CELL (907) 252-2001 • MSJHASMINE@GMAIL.COM

# Kenai Peninsula Borough
## Planning Department

**Advisory Planning Commission Application Submitted 2023-09-07 16:09:23**

**APC/Seat: Nikiski – Seat A (Term Expires 09/30/2026)**

| **Name** | **Mobile Phone** |
|---|---|
| Tom Coursen | 907 398 1000 |
| **Home Phone** | **Work Phone** |
| 907 335 3350 | 907 776 2048 |
| **Email** | **Date of Birth** |
| coursen@acsalaska.net | [redacted] |
| **SSN** | **Voter #** |
| **Residence Address** | **Mailing Address** |
| 44055 Stipend Circle Kenai, Alaska 99611 | PO Box 598 Soldotna, Alaska 99669 |
| **How long have you lived in the area served by this Advisory Planning Commission?** | **What knowledge, experience, or expertise will you bring to this board?** |
| 8 years | Currently serving on the NPC. I was born and raised in Alaska. I have a background in oilfield work, commercial fishing, and spent 26 years as the owner of a business in the private sector. My family lives here locally. I feel I can help the NPC continue to make suggestions that will help our community. |

# Kenai Peninsula Borough
## Planning Department

**Advisory Planning Commission Application Submitted 2023-08-16 10:43:56**

**APC/Seat: Nikiski – Seat B (Term Expires 09/30/2026)**

| **Name** | **Mobile Phone** |
|---|---|
| Stacy Oliva | 9072521600 |
| **Home Phone** | **Work Phone** |
| 9077768656 | 9077768656 |
| **Email** | **Date of Birth** |
| stacy.oliva@gmail.com | [redacted] |
| **SSN** | **Voter #** |
| [redacted] | |
| **Residence Address** | **Mailing Address** |
| Mile 30.5 Kenai Spur Hwy Nikiski, Alaska 99635 | PO Box 8567 Nikiski, Alaska 99635 |
| **How long have you lived in the area served by this Advisory Planning Commission?** | **What knowledge, experience, or expertise will you bring to this board?** |
| 54 years | civil construction business/ attended real estate appraiser school/ served as a board member at North Peninsula Recreation Area, served on the KPB Anadromous streams Task Force 2012-2013 |

# Kenai Peninsula Borough
## Planning Department

**Advisory Planning Commission Application Submitted 2023-08-26 12:03:25**

**APC/Seat: Nikiski – Seat F (Term Expires 09/30/2025)**

| **Name** | **Mobile Phone** |
|---|---|
| Jon Harman | 9072400455 |
| **Home Phone** | **Work Phone** |
| 19077765344 | 19072400455 |
| **Email** | **Date of Birth** |
| harmj53@gmail.com | [redacted] |
| **SSN** | **Voter #** |
| **Residence Address** | **Mailing Address** |
| , | 52305 Wilson ct. Kenai, AK 99611 |
| **How long have you lived in the area served by this Advisory Planning Commission?** | **What knowledge, experience, or expertise will you bring to this board?** |
| 30 + years | I am a home owner and I have bought and sold several other properties. I have worked on other committees when I was employed on the North Slope. |

Kenai Peninsula Borough
Office of the Borough Mayor

# MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members of the Borough Assembly

**FROM:** Peter Micciche, Kenai Peninsula Borough Mayor PAM

**DATE:** September 7, 2023

**RE:** Appointments to the Road Service Area Board

In accordance to KPB 16.41.060(B), appointments to the Kenai Peninsula Road Service Area Board are recommended by the Borough Mayor and confirmed by the Borough Assembly. The applicants listed below are registered voters and reside within the area to be represented. Attached for your review is the appointment request.

## ROAD SERVICE AREA BOARD

| Appointment | Board Seat | Term Expires |
|---|---|---|
| Kathryn Thomas | West Region Seat (areas of North K-Beach, Kasilof & Ninilchik) | 09/30/26 |
| Michele Hartline | North Region Seat (areas of North Kenai and Nikiski) | 09/30/26 |

Kenai Peninsula Borough
Office of the Borough Clerk

# MEMORANDUM

**TO:** Peter A. Micciche, Borough Mayor

**FROM:** Michele Turner, Borough Clerk

**DATE:** September 8, 2023

**RE:** Verification of Service Area Board Applicants

The North Region seat and the West Region seat terms expire September 30, 2023. We advertised the annual notice of vacancy for Road Service Area Board on August 17, 2023. The application period closed on September 7, 2023.

Pursuant to KPB Title 16, the applicants listed below has been verified as a registered voter of the Borough.

All applications received are submitted herewith for your consideration.

**ROAD SERVICE AREA BOARD**

NOT IN REGION - VOTER ADDRESS

| | |
|---|---|
| West Region Seat<br>(areas of North K-Beach, Kasilof & Ninilchik) | Michael Horton (registered voter of Sterling)<br>Kathryn Thomas (registered voter of Kasilof) |
| North Region Seat<br>(areas of North Kenai and Nikiski) | Michele Hartline (registered voter of Nikiski) |

Thank you.

# Kenai Peninsula Borough
## Office of the Borough Clerk

**Service Area Board Application Submitted 2023-08-22 14:25:42**

**Service Area: Road Service Area, West Region Seat (Term Expires 09/30/26)**

| **Applicant Name** | **Daytime Phone** |
|---|---|
| Michael Horton | 9072527367 |
| **Email** | **Date of Birth** |
| mhorton16@gmail.com | [redacted] |
| **Physical Residence Address** | **Mailing Address** |
| 39548 Grouse Drive Soldotna, AK 99669 | , |
| **SS #** | **Voter #** |
| [redacted] | |
| **I have been a Resident of the Kenai Peninsula Borough for:** | **I have been a Resident of the selected Service Area for:** |
| 31 years, 2 months | 31 years, 2 months |

**What knowledge, experience, or expertise will you bring to this board?**

My experience that is pertinent to this position is as follows:
> 7 years as a constructions surveyor for various DOT projects in all regions of Alaska
> 4 years as an assistant superintendent for a construction company specializing in roads and bridges working on State and Federal DOT projects in all regions of the state
> 2.5 years of engineering school at the University of Alaska Anchorage in the Civil and Mechanical disciplines
>1.25 years as a Kenai Peninsula Borough Planning and Zoning Commissioner until the commission was downsized due to funding
I also have various certifications such as: US Army Corps of Engineers Quality Control Manager Certification, AK-CESCL Storm Water Pollution Prevention Certification, Carlson Survey GIS certification, and AutoCAD/CAD certification. Also of note is that I have been a resident of the Kenai Peninsula and of Soldotna for my entire life and find this community to be one of the most beauty, ingenuity, industry, and steadfastness. My family homesteaded on the Kenai Peninsula in 1907 and my grandfather was a surveyor of the southern region of the peninsula in the 1960s through the early 2000s; so the Kenai Peninsula is very near to my heart and a place that I wish to contribute to, preserve, and improve where it is needed.

MICHAEL HORTON
39548 Grouse Drive Soldotna, AK 99669
Cell: (907) 252-7367
Email: mhorton16@gmail.com
mhorton@hilcorp.com

## SUMMARY

Current experience in production, waterflood, and utility operations in the Cook Inlet Oil Field. Extensive experience in horizontal civil construction projects that includes working as a liaison with the Alaska Department of Transportation, developing demolition and assembly plans utilizing CAD programs, managing Storm Water Pollution Prevention Plans, developing and administrating traffic control plans, conducting construction surveying and grade-checking utilizing basic surveyor equipment and advanced GPS systems, basic estimating for project bidding, expediting various supplies, and general administration of projects. Continuing experience with AutoCAD drafting of isometric, standard, and P&ID drawings. Excellent oral and written communication skills within the workforce.

## EDUCATION

**University of Alaska Anchorage**, College of Engineering, Anchorage, AK GPA: 3.0 Expected December 2022
Bachelor of Science, Mechnical Engineering
Minor(s): Mathematics
**Cook Inlet Academy**, Soldotna, AK June 2011
Awards: Valedictorian of Graduating Class, President of Class, National Honor Society, Alaska Performance Scholarship Award

## SPECIALIZED SKILLS

**Programming Languages**: MATLAB, Simulink
Programs: SolidWorks (novice), Autodesk (advanced), AutoCAD (advanced), AutoCAD 3D Modeling (advanced), AutoCAD Civil 3D (intermediate), Carlson SurvCE (advanced), Carlson Civil Suite (intermediate), Adobe Creative Suite (advanced), Microsoft PowerPoint (advanced), Microsoft Excel (intermediate), Microsoft Word (advanced), Microsoft Projects (intermediate), U.S. Army Corps of Engineers Quality Control System (novice)
**Operating Systems**: Windows 10, Windows XP, Windows 7, Mac OS 9
**Fabrication Skills**: Operation of commercial band saws and cutting torches. Experience with arc welding, drills, sawing, wiring, soldering, and welding (novice level).

## EXPERIENCE

**Hilcorp Energy Company** **January 2022 – Present**

- King Salmon Platform and Grayling Platform:
  -Production Operator – ESP, Separators, Scrubbers, Shipping Systems
  -Waterflood Operator – Water Injection System
  -Utilities Operator – Chemical Systems, Potable & Drill Water, Sewage
  -Expeditor
  -Emergency Trauma Techinician
  -Visible Emissions Technician
  -Liason Between Inspections Department and Welders
  -Rigger-Signalman
  -Helicopter Landing Officer
  -P&ID, Isometric, & Standard AutoCAD Drafter

**CCI Industrial Services, LLC** **August 2018 – January 2022**

- King Salmon Platform: Production Operations

**D & L Construction Co. Inc., Soldotna, AK** **June 2013 – August 2018**

- Laborer
- Storm Water Pollution Prevention Plan Foreman & Manager:
- Traffic Control Supervisor:
- Construction Surveyor (not licensed)/Grade-Checker:
- Office Manager/Engineer:
- Quality Control Technician & Manager:

**D & D Equipment & Fabrication, Sterling, AK, Welder's Helper & Apprentice Fitter** **May-Aug. 2012**

- Welders' Helper

**Chumley's Inc., Soldotna, AK, Laborer** **May – Aug. 2010, May – Aug. 2011**

- Roust-About

## ADDITIONAL EXPERIENCE

**The Study**, Soldotna, AK, Tutor **2015 – 2017**

- Tutoring Junior High School and High School Students in the following: -Algebra

**Kenai Peninsula Borough Planning & Zoning Commission**, Soldotna, AK, Planning & Zoning Commissioner

- Studying, reviewing, understanding, and applying KPB Code to individual cases and applications of residents in a fair and just manner
- Review of submitted plats to ensure within KPB Code.
- Use of prudence concerning legislative matters and coordination with other KPB Commissioners during meetings.

## REFERENCES

**Shawn Taplin**, Hilcorp Alaska, PB East Ops – Mechanic, Cell: 1(907) 394-9344, Email: Shawn.Taplin@hilcorp.com

**Justin Ruffridge**, Alaska State House Representative District 7, Cell: 1(509) 338-5891; Email: ruffridgeak@gmail.com

## CERTIFICATIONS

Alaska Certified Erosion & Sediment Control Lead
(SWPPP/AK-CESCL): Expires: 12/14/2020

- Certificate #: AGC-17-0551

IMSA Temporary Traffic Control Techician
Expires: 6/24/2021
Certificate #: ZZ-111749

Carlson Survey Software

- Courses: Carlson Civil Suite, Carlson SurvCE

Emergency Trauma Technician:
Expires: 10/2021
Instructor: Mark Hall
Registered in Alaska Medical System

Visible Emissions Technician:
Certified through October 2020

Coldwater Survival Egress Training:
Completed: 3/8/2019

Certified Rigger-Signaler:
Completed: 2/26/2020
Expires: 2/26/2023

AutoCAD:
AutoCAD 2014 & AutoCAD Civil 3D 2015 by Autodesk
Date: Fall 2013, Spring 2014, Present Use

Drafsight 2020 CAD Programs
Present Use

Carlson Civil Suite 2016

U.S. Army Corps of Engineers Construction Quality Management for Contractors
Certificate #: POA-14-17-53547
Expires: 2/3/2022

# Kenai Peninsula Borough
## Office of the Borough Clerk

**Service Area Board Application Submitted 2023-09-04 08:25:44**

**Service Area: Road Service Area, West Region Seat (Term Expires 09/30/26)**

| **Applicant Name** | **Daytime Phone** |
|---|---|
| Kathryn Thomas | 9073941663 |
| **Email** | **Date of Birth** |
| arctech@alaska.net | [redacted] |
| **Physical Residence Address** | **Mailing Address** |
| Irish Hills Road, Spruce Park Drive Soldotna, Alaska 99611 | Box 3005 Kenai, Alaska 99611 |
| **SS #** | **Voter #** |
| **I have been a Resident of the Kenai Peninsula Borough for:** | **I have been a Resident of the selected Service Area for:** |
| 40 years, 0 months | 40 years, 0 months |

**What knowledge, experience, or expertise will you bring to this board?**

I've served on the Road Service Board for one year.
I'm a retired civil construction contractor with extensive road building experience. I continue to work as a civil construction consultant in the surety industry.

# Kenai Peninsula Borough

## Office of the Borough Clerk

**Service Area Board Application Submitted 2023-08-21 18:24:43**

**Service Area: Road Service Area, North Region Seat (Term Expires 09/30/26)**

| | |
|---|---|
| **Applicant Name**<br>Michele Hartline | **Daytime Phone**<br>9078308327 |
| **Email**<br>hartlines@hotmail.com | **Date of Birth**<br>[redacted] |
| **Physical Residence Address**<br>51665 STICKLEBACK ROAD Kenai, AK 99611 | **Mailing Address**<br>PO BOX 7933 NIKISKI, AK 99635 |
| **SS #** | **Voter #** |
| **I have been a Resident of the Kenai Peninsula Borough for:**<br>21 years, 0 months | **I have been a Resident of the selected Service Area for:**<br>21 years, 0 months |

**What knowledge, experience, or expertise will you bring to this board?**

I'm currently the President of the Kenai Peninsula Borough Road Service Area Board on which I have served for the past 5 years under 3 Borough Mayors. My resume' was forwarded in past applications but of course I can re-send if needed. I feel that I have brought value to the Board and served the Borough and our Community through common sense and integrity.

Kenai Peninsula Borough
Office of the Borough Mayor

# MAYOR'S REPORT TO THE ASSEMBLY

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Peter A. Micciche, Kenai Peninsula Borough Mayor

**DATE:** September 19, 2023

Assembly Request / Response

*None*

Agreements and Contracts

a. Authorization to Award a Contract for ITB23-035 Digital Signage – Western Emergency Services
b. Authorization to Award a Contract for ITB24-007 Gravel Road Projects FY2024 South Region, Units 5, 7 & 8
c. Authorization to Award a Contract for ITB24-014 CPL Temporary Cover Purchase & Installation
d. Authorization to Award a Contract for RFP24-001 Local Trust Fund Investment Services
e. Barge Services to Nanwalek Sole Source Waiver

Other

a. Certification of the 2023 Personal Property Supplemental Assessment Roll
b. Tax Adjustment Request Approval

DocuSign Envelope ID: 20827D23-C989-49D9-BDCB-ABE2969A82F1

# Kenai Peninsula Borough
## Purchasing & Contracting

**MEMORANDUM**

**TO:** Peter A. Micciche, Borough Mayor

**THRU:** John Hedges, Purchasing & Contracting Director JH

**FROM:** Jon Marsh, Western Emergency Services Chief JM

**DATE:** August 25, 2023

**RE:** Authorization to Award a Contract for ITB23-035 Digital Signage – Western Emergency Services

The Purchasing and Contracting Office formally solicited and received bids for the ITB23-035 Digital Signage – Western Emergency Services. Bid packets were released on January 25, 2023 and the Invitation to Bid was advertised in the Peninsula Clarion and the Anchorage Daily News on January 25, 2023.

> The project consists of providing Digital Signage, Watchfire 16mm RGB or Equivalent as well as pylons for the Ninilchik Fire Station and Anchor Point Fire Station.

On the due date of February 9, 2023, three (3) bids were received and reviewed to ensure that all the specifications and delivery schedules were met. The low bid of $43,120 was submitted by Fair-Play Corporation, Hazelwood, Missouri.

Your approval for this bid award is hereby requested. Funding for this project is in account number 271-51410-21VAC-48630.

PAM

Peter A. Micciche, Borough Mayor

8/28/2023

Date

FINANCE DEPARTMENT
FUNDS VERIFIED

Acct. No. 271-51410-21VAC-48630

Amount $43,120.00

By: CJ BH Date: 8/25/2023

NOTES: Funds have not been pushed forward to FY24. Still shows funding in FY23.

DocuSign Envelope ID: 20827D23-C989-49D9-BDCB-ABE2969A82F1

# KENAI PENINSULA BOROUGH
## PURCHASING & CONTRACTING

**BID TAB FOR: ITB23-035 DIGITAL SIGNAGE - WES**

| CONTRACTOR | LOCATION | BASE BID |
|---|---|---|
| Fair-Play / Broadway Signs | Hazelwood, Missouri | $43,120.00 |
| Alaska Sign Source, LLC / Kenai Neon Sign Co. | Kenai, Alaska | $74,676.00 |
| Hardy Enterprises | North Pole, Alaska | $94,000.00 |
| | | |
| | | |
| | | |
| | | |

DUE DATE: February 9, 2023

KPB OFFICIAL: _____
John Hedges, Purchasing & Contracting Director

DocuSign Envelope ID: 42FB31AC-2E19-4F83-B897-1F5797A5C246

# Kenai Peninsula Borough
## Purchasing & Contracting

**MEMORANDUM**

**TO:** Peter A. Micciche, Borough Mayor

**THRU:** John Hedges, Purchasing & Contracting Director JH

**FROM:** Scott Griebel, Roads Director SG

**DATE:** August 30, 2023

**RE:** Authorization to Award a Contract for ITB24-007 Gravel Road Projects FY2024 South Region, Units 5, 7 & 8

The Purchasing and Contracting Office formally solicited and received bids for the ITB24-006 Gravel Road Projects FY2024 – South Region, Units 5, 7 & 8. Bid packets were released on July 12, 2023 and the Invitation to Bid was advertised in the Peninsula Clarion on July 12, 2023 and the Homer Daily News on July 13, 2023.

> The project consists of the contractor providing all labor and materials to place gravel on the following roads in the South Region, Units 5, 7 & 8. Pahl Lane, 537 cubic yards KPB Type II; Clayton Way, 880 cubic yards KPB Type II; Falls Creek Road, 852 cubic yards KPB Type II; Via Hermosa Drive, 470 cubic yards of KPB Type II; Linda Lane, 1,700 cubic yards of KPB Type II; Secluded Circle, 217 cubic yards of KPB Type II.

On the due date of August 2, 2023, two (2) bids were received and reviewed to ensure that all the specifications and delivery schedules were met. The negotiated low bid of $122,105.76 was submitted by East Road Services, Homer, Alaska.

Your approval for this bid award is hereby requested. Funding for this project is in account number 434.33950.24GRV.43011.

Peter A. Micciche, Borough Mayor

9/5/2023
Date

FINANCE DEPARTMENT
FUNDS VERIFIED

Acct. No. 434.33950.24GRV.43011

Amoun: $122,105.76

By: CG BH Date: 9/1/2023

NOTES: NA

DocuSign Envelope ID: 42FB31AC-2E19-4F83-B897-1F5797A5C246

# KENAI PENINSULA BOROUGH
## PURCHASING & CONTRACTING

**BID TAB FOR: ITB24-007 Gravel Road Projects FY2024 - South Region, Units 5, 7 & 8**

| CONTRACTOR | LOCATION | BASE BID |
|---|---|---|
| East Road Services | Homer, Alaska | $190,557.97 |
| Paul's Services | Anchor Point, Alaska | $229,999.34 |
| | | |
| | | |
| | | |

DUE DATE: August 2, 2023

KPB OFFICIAL: _____
John Hedges, Purchasing & Contracting Director

DocuSign Envelope ID: 2E87010E-1027-43DB-9ABA-6DA8A71C4C39

# Kenai Peninsula Borough
## Purchasing & Contracting

**MEMORANDUM**

**TO:** Peter A. Micciche, Borough Mayor

**THRU:** John Hedges, Purchasing & Contracting Director JH

**FROM:** Lee Frey, Solid Waste Director LF

**DATE:** August 23, 2023

**RE:** Authorization to Award a Contract for ITB24-014 CPL Temporary Cover Purchase & Installation

The Purchasing and Contracting Office formally solicited and received bids for ITB24-014 CPL Temporary Cover Purchase & Installation. Bid packets were released on July 23, 2023 and the Invitation to Bid was advertised in the Peninsula Clarion on July 29, 2023.

> The project consists of purchasing and installing of approximately 522,000 square feet of temporary covers over landfill cells per plans and specifications.

On the due date of August 17, 2023, one (1) bid was received and reviewed to ensure that all the specifications and delivery schedules were met. The low bid of $476,215.00 was submitted by Alaska Aggregate Products, LLC, Palmer, Alaska.

Your approval for this bid award is hereby requested. Funding for this project is in account number 290-32122-SHEET-43011.

Peter A. Micciche, Borough Mayor — 8/28/2023 Date

FINANCE DEPARTMENT
FUNDS VERIFIED

Acct. No. 290-32122-SHEET-43011

Amoun: $476,215.00

By: BA Date: 8/23/2023

NOTES: NA

DocuSign Envelope ID: 2E87010E-1027-43DB-9ABA-6DA8A71C4C39

# KENAI PENINSULA BOROUGH
## PURCHASING & CONTRACTING

**BID TAB FOR: ITB24-014 CPL Temporary Cover Purchase & Installation**

| CONTRACTOR | LOCATION | BASE BID | ADDITIVE ALTERNATE |
|---|---|---|---|
| Alaksa Aggregate Products, LLC | Palmer, Alaska | $476,215.00 | $252,042.00 |
| | | | |
| | | | |
| | | | |

DUE DATE: August 17, 2023

KPB OFFICIAL: _____
John Hedges, Purchasing & Contracting Director

DocuSign Envelope ID: B0A2B3A8-1162-4D2A-9C52-D043E07F2A6A

# Kenai Peninsula Borough
## Purchasing & Contracting

## MEMORANDUM

**TO:** Peter A. Micciche, Borough Mayor

**THRU:** John D. Hedges, Purchasing & Contracting Director JH

**FROM:** Brandi Harbaugh, Finance Director BH

**DATE:** September 1, 2023

**RE:** Authorization to Award a Contract for RFP24-001 Local Trust Fund Investment Services

On July 19, 2023, the Kenai Peninsula Borough Finance Department formally solicited proposals for RFP24-001 Land Trust Fund Investment Services. The request for proposals was advertised in the Peninsula Clarion on July 19, 2023.

The project consists providing Land Trust Fund Investment Services.

On the due date of July 19, 2023, one (1) proposal was received from Alaska Permanent Capital Management Company and was received and reviewed by the Kenai Peninsula Borough Finance Department.

The proposal, which includes a cost factor, was submitted by Alaska Permanent Capital Management Company with a lump sum cost proposal of $33,649.80. The Finance Department recommends award of a contract to Alaska Permanent Capital Management Company, Anchorage, Alaska. Your approval for this award is hereby requested.

Funding of this contract will be charged to account numbers 252-00000-00000-37350.

Peter A. Micciche, Borough Mayor — 9/5/2023 Date

FINANCE DEPARTMENT
FUNDS VERIFIED

Acct. No. 252-00000-00000-37350

Amount: $33,649.80

By: CJ BH Date: 9/1/2023

NOTES: NA

DocuSign Envelope ID: 5953A5CA-47BF-481A-8849-81B66539608B

# Kenai Peninsula Borough
## Solid Waste Department

## MEMORANDUM

**TO:** Peter A. Micciche, Borough Mayor

**THRU:** John D. Hedges, Purchasing & Contracting Department JH

**FROM:** Lee Frey, Solid Waste Director LF

**DATE:** August 31, 2023

**RE:** Barge Services to Nanwalek Sole Source Waiver

The Kenai Peninsula Borough Solid Waste Department needs to hire a barge to haul equipment, materials, and dumpsters to and from Nanwalek. There are two large barges operating out of Homer and the other barge is not currently operating. The $26,000 cost to Alaska Marine Excavation LLC includes all cargo hauling, fuel, crew, ramp, and wharfage fees to and from Nanwalek. We released a project for bidding to complete rework of the landfill, but did not receive any bids. We are proceeding with completing the work with KPB employees.

We anticipate completing this work in October and are working on securing equipment, dumpsters, and other materials to haul to the site to complete the work.

Your approval is hereby requested. Funding for this project is $26,000 and in account number 290-32570-23SIT-43011.

Approved: _____ 9/5/2023
Peter A. Micciche, Mayor Date

FINANCE DEPARTMENT
FUNDS VERIFIED

Acct. No. 290-32570-23SIT-43011

Amount $26,000.00

By: CJ BH Date: 8/31/2023

NOTES: NA

Kenai Peninsula Borough
Assessing Department

**MEMORANDUM**

**TO:** Peter A. Micciche, Borough Mayor PAM

**FROM:** Adeena Wilcox, Borough Assessor

**DATE:** September 1, 2023

**RE:** Certification of the 2023 Personal Property Supplemental Assessment Roll

The undersigned, duly qualified and appointed Assessor of the Kenai Peninsula Borough, does hereby certify that the following is the total valuation contained in the 2023 Personal Property Supplemental Assessment Roll as of September 1, 2023.

**The total *assessed* value for the Kenai Peninsula Borough, including all properties on this assessment roll is as follows:**

| PERSONAL PROPERTY | TOTAL PROPERTY |
|---|---|
| $22,075,070 | **$22,075,070** |

**The total *taxable* value for the Kenai Peninsula Borough is as follows:**

| PERSONAL PROPERTY | TOTAL PROPERTY |
|---|---|
| $14,566,475 | **$14,566,475** |

Adeena Wilcox, Borough Assessor

## SERVICE AREA TAXABLE CERTIFIED SUPPLEMENTAL PPV VALUES

**TAG 57** — **Bear Creek Fire Service Area**

| | Assessed Value | Taxable Value |
|---|---|---|
| REAL | - | - |
| OIL | - | - |
| PERSONAL | 1,201,951 | 1,111,489 |
| TOTAL | 1,201,951 | **1,111,489** |

**TAG 54, 58, 70** — **Central Emergency Services Area**

| | Assessed Value | Taxable Value |
|---|---|---|
| REAL | - | - |
| OIL | - | - |
| PERSONAL | 4,557,399 | 2,968,196 |
| TOTAL | 4,557,399 | **2,968,196** |

**TAG 30,53,54,55,58,61,63,70** — **Central Kenai Peninsula Hospital Service Area (TY18 & Prior)**

| | Assessed Value | Taxable Value |
|---|---|---|
| REAL | - | - |
| OIL | - | - |
| PERSONAL | 10,731,791 | 6,243,941 |
| TOTAL | 10,731,791 | **6,243,941** |

**TAG 30,53,54,55,58,59,61,62,63,70** — **Central Kenai Peninsula Hospital Service Area (TY19 & Future)**

| | Assessed Value | Taxable Value |
|---|---|---|
| REAL | - | - |
| OIL | - | - |
| PERSONAL | 10,731,791 | 6,243,941 |
| TOTAL | 10,731,791 | **6,243,941** |

**TAG 62,63,64** — **Central Peninsula Emergency Med**

| | Assessed Value | Taxable Value |
|---|---|---|
| REAL | - | - |
| OIL | - | - |
| PERSONAL | - | - |
| TOTAL | - | **-** |

**TAG 81** — **Kachemak Emergency Service Area**

| | Assessed Value | Taxable Value |
|---|---|---|
| REAL | - | - |
| OIL | - | - |
| PERSONAL | 501,037 | 256,713 |
| TOTAL | 501,037 | **256,713** |

**TAG 11,43,53,54,55,57,58,59,61,62, 63,64,65,67,68,69,81** — **Road Service Area**

| | Assessed Value | Taxable Value |
|---|---|---|
| REAL | - | - |
| OIL | - | - |
| PERSONAL | 8,578,353 | 6,008,227 |
| TOTAL | 8,578,353 | **6,008,227** |

**TAG 53, 55** — **Nikiski Fire Service Area**

| | Assessed Value | Taxable Value |
|---|---|---|
| REAL | - | - |
| OIL | - | - |
| PERSONAL | 2,363,656 | 1,458,889 |

| | | | |
|---|---|---|---|
| | TOTAL | 2,363,656 | **1,458,889** |

**TAG 55** — **Nikiski Senior Service Area**

| | Assessed Value | Taxable Value |
|---|---|---|
| REAL | - | - |
| OIL | - | - |
| PERSONAL | 1,549,355 | 905,108 |
| TOTAL | 1,549,355 | **905,108** |

**TAG 53,54,55** — **North Peninsula Recreation Area**

| | Assessed Value | Taxable Value |
|---|---|---|
| REAL | - | - |
| OIL | - | - |
| PERSONAL | 2,363,656 | 1,458,889 |
| TOTAL | 2,363,656 | **1,458,889** |

**TAG 40,41,43,57** — **Seward / Bear Creek Flood Service Area**

| | Assessed Value | Taxable Value |
|---|---|---|
| REAL | - | - |
| OIL | - | - |
| PERSONAL | 7,247,344 | 5,703,509 |
| TOTAL | 7,247,344 | **5,703,509** |

**TAG 20,21,52,59,62,64,65,68,80,81** — **South Kenai Peninsula Hospital Service Area (TY18 & Prior)**

| | Assessed Value | Taxable Value |
|---|---|---|
| REAL | - | - |
| OIL | - | - |
| PERSONAL | 3,530,969 | 2,392,777 |
| TOTAL | 3,530,969 | **2,392,777** |

**TAG 11,20,21,52,62,64,65,68,69,80,81** — **South Kenai Peninsula Hospital Service Area (TY19 & Future)**

| | Assessed Value | Taxable Value |
|---|---|---|
| REAL | - | - |
| OIL | - | - |
| PERSONAL | 3,823,449 | 2,542,835 |
| TOTAL | 3,823,449 | **2,542,835** |

**TAG 10,11** — **Seldovia RSA**

| | Assessed Value | Taxable Value |
|---|---|---|
| REAL | - | - |
| OIL | - | - |
| PERSONAL | 216,348 | 23,740 |
| TOTAL | 216,348 | **23,740** |

**TAG 59, 68** — **Western Emergency Services**

| | Assessed Value | Taxable Value |
|---|---|---|
| REAL | - | - |
| OIL | - | - |
| PERSONAL | 327,679 | 127,618 |
| TOTAL | 327,679 | **127,618** |

**ALL TAGS** — **KPB - Borough Wide**

| | Assessed Value | Taxable Value |
|---|---|---|
| REAL | - | - |
| OIL | - | - |
| PERSONAL | 22,075,070 | 14,566,475 |
| TOTAL | 22,075,070 | **14,566,475** |

# KENAI PENINSULA BOROUGH
## SUMMARY OF COMBINED PROPERTY VALUES

### Assessed Value before Exemptions

| Assessed Value | | VALUE |
|---|---|---|
| Personal Property | $ | 22,075,070 |
| Real Property | $ | - |
| Oil Property | $ | - |
| TOTAL BOROUGH ASSESSED | $ | 22,075,070 |

### Assessed Value after Exemptions

| Taxable Value | | VALUE |
|---|---|---|
| Personal Property | $ | 14,566,475 |
| Real Property | $ | - |
| Oil Property | $ | - |
| TOTAL BOROUGH TAXABLE | $ | 14,566,475 |

# 2023 CERTIFIED SUPP PPV ROLL

| | | BOROUGH | | CITY | |
|---|---|---|---|---|---|
| | | Assessed | Taxable | Assessed | Taxable |
| **City of Seldovia** | | | | | |
| **Tag 10** | REAL | - | - | - | - |
| | OIL | - | - | - | - |
| | PERSONAL | 216,348 | 23,740 | 216,348 | 216,348 |
| | **TOTAL** | **216,348** | **23,740** | **216,348** | **216,348** |
| **City of Homer** | REAL | - | - | - | - |
| **Tag 20** | OIL | - | - | - | - |
| | PERSONAL | 2,136,444 | 1,553,877 | 2,136,444 | 1,386,225 |
| | **TOTAL** | **2,136,444** | **1,553,877** | **2,136,444** | **1,386,225** |
| **City of Homer** | REAL | - | - | - | - |
| **Tag 21 ODL** | OIL | - | - | - | - |
| | PERSONAL | - | - | - | - |
| | **TOTAL** | **-** | **-** | **-** | **-** |
| **City of Kenai** | REAL | - | - | - | - |
| **Tag 30** | OIL | - | - | - | - |
| | PERSONAL | 3,810,736 | 1,816,856 | 7,273,087 | 7,273,087 |
| | **TOTAL** | **3,810,736** | **1,816,856** | **7,273,087** | **7,273,087** |
| **City of Seward** | REAL | - | - | - | - |
| **Tag 40** | OIL | - | - | - | - |
| | PERSONAL | 5,524,558 | 4,297,226 | 25,766,220 | 25,766,220 |
| | **TOTAL** | **5,524,558** | **4,297,226** | **25,766,220** | **25,766,220** |
| **Seward Special** | REAL | - | - | - | - |
| **Tag 41** | OIL | - | - | - | - |
| | PERSONAL | 520,835 | 294,794 | 3,212,737 | 3,212,737 |
| | **TOTAL** | **520,835** | **294,794** | **3,212,737** | **3,212,737** |
| **City of Soldotna** | REAL | - | - | - | - |
| **Tag 70** | OIL | - | - | - | - |
| | PERSONAL | 1,287,796 | 571,755 | 1,287,796 | 561,438 |
| | **TOTAL** | **1,287,796** | **571,755** | **1,287,796** | **561,438** |
| **Kachemak City** | REAL | - | - | - | - |
| **Tag 80** | OIL | - | - | - | - |
| | PERSONAL | - | - | - | - |
| | **TOTAL** | **-** | **-** | **-** | **-** |

# Kenai Peninsula Borough
Assessing Department

## MEMORANDUM

**TO:** Peter A. Micciche, Borough Mayor

**FROM:** Adeena Wilcox, Borough Assessor

**DATE:** September 6, 2023

**RE:** Tax Adjustment Request Approval

Attached is a spreadsheet of tax adjustment requests required by changes to the assessment roll. These adjustments are being submitted to the Finance Department for processing.

Borough code 5.12.119 (D) authorizes the mayor to approve tax adjustment requests prepared by the borough assessor.

I hereby certify that I have reviewed the tax adjustment requests submitted for your signature and I find them to be proper and correct.

DATED: September 6, 2023

Adeena Wilcox
Borough Assessor

**APPROVED**

Peter A. Micciche
Borough Mayor

# SEPTEMBER TARS

| | 2023 | 2022 | 2021 | 2020 | 2019 |
|---|---|---|---|---|---|
| | | | | | |
| TAG 10 (assessed) | | | | | |
| (taxable) | | | | | |
| TAG 11 (assessed) | | | | | |
| (taxable) | | | | | |
| TAG 20 (assessed) | | | | | |
| (taxable) | | | | | |
| TAG 21 (assessed) | | | | | |
| (taxable) | | | | | |
| TAG 30 (assessed) | | | | | |
| (taxable | | | | | |
| TAG 40 (assessed) | | | | | |
| (taxable) | | | | | |
| TAG 41 (assessed) | | | | | |
| (taxable) | | | | | |
| TAG 42 (assessed) | | | | | |
| (taxable) | | | | | |
| TAG 43 (assessed) | | | | | |
| (taxable) | | | | | |
| TAG 52 (assessed) | | | | | |
| (taxable) | | | | | |
| TAG 53 (assessed) | | | | | |
| (taxable) | | | | | |
| TAG 54 (assessed) | | | | | |
| (taxable) | | | | | |
| TAG 55 (assessed) | $0 | $0 | | | |
| (taxable) | ($95,500) | ($109,500) | | | |
| TAG 57 (assessed) | | | | | |
| (taxable) | | | | | |
| TAG 58 (assessed) | ($282,500) | | | | |
| (taxable) | ($758,000) | | | | |
| TAG 59 (assessed) | | | | | |
| (taxable) | | | | | |
| TAG 61 (assessed) | | | | | |
| (taxable) | | | | | |
| TAG 63 (assessed) | | | | | |
| (taxable) | | | | | |
| TAG 64 (assessed) | | | | | |
| (taxable) | | | | | |
| TAG 65 (assessed) | | | | | |
| (taxable) | | | | | |
| TAG 67 (assessed) | | | | | |
| (taxable) | | | | | |
| TAG 68 (assessed) | | | | | |
| (taxable) | | | | | |
| TAG 69 (assessed) | | | | | |
| (taxable) | | | | | |
| TAG 70 (assessed) | | | | | |
| (taxable) | | | | | |
| TAG 80 (assessed) | | | | | |
| (taxable) | | | | | |
| TAG 81 (assessed) | | | | | |
| (taxable) | | | | | |
| | | | | | |
| TOTAL ASSESSED | ($282,500) | $0 | $0 | $0 | $0 |
| | | | | | |
| TOTAL TAXABLE | ($853,500) | ($109,500) | $0 | $0 | $0 |
| | | | | | |
| KPB FLAT TAX | ($300) | | | | |

# SEPTEMBER TARS CITY VALUES

| | 2023 | 2022 | 2021 | 2020 | 2019 |
|---|---|---|---|---|---|
| | | | | | |
| TAG 10 (assessed) | | | | | |
| (taxable) | | | | | |
| Seldovia Flat Tax | | | | | |
| TAG 20 (assessed) | | | | | |
| (taxable) | | | | | |
| Homer Flat Tax | ($60) | | | | |
| TAG 21 (assessed) | | | | | |
| (taxable) | | | | | |
| TAG 30 (assessed) | | | | | |
| (taxable) | | | | | |
| Disability Tax Credit | | | | | |
| TAG 40 (assessed) | | | | | |
| (taxable) | | | | | |
| TAG 41 (assessed) | | | | | |
| (taxable) | | | | | |
| TAG 70 (assessed) | | | | | |
| (taxable) | | | | | |
| Soldotna Flat Tax | | | | | |
| TAG 80 (assessed) | | | | | |
| (taxable) | | | | | |
| | | | | | |
| TOTAL ASSESSED | $0 | $0 | $0 | $0 | $0 |
| | | | | | |
| TOTAL TAXABLE | $0 | $0 | $0 | $0 | $0 |
| | | | | | |
| KPB FLAT TAX | ($60) | $0 | $0 | $0 | $0 |

# TAX ADJUSTMENT REQUEST

**ROLL/YEAR** 2023 **TAR NUMBER** 20-23-018

**PARCEL ID** 97849

**PRIMARY OWNER** YOUNG THOMAS LEE

| | CURRENT VALUE | CORRECTED VALUE |
|---|---|---|
| **TAG** | 20 | 20 |
| **BOAT CLASS/COUNT** | BC4 - 2 | BC4 - 0 |
| **PLANE CLASS/COUNT** | | |
| **KPB ASSESSED (VT 1001)** | | |
| **KPB TAXABLE (VT 1003)** | | |
| **CITY ASSESSED (VT 1011)** | | |
| **CITY TAXABLE (V 1013)** | | |

**EXPLANATION** MANIFEST CLERICAL ERROR. ACCOUNT WAS INCORRECTLY ENTERED AS A MAIN ROLL FILER FOR 2023. NO FILING RECEIVED FROM TAXPAYER. ACCOUNT SHOULD HAVE BEEN SUPPLEMENTAL ROLL AND WOULD HAVE BEEN CLOSED DURING SUPPLEMENTAL REVIEW.

**DATE** 08/23/23

**SUBMITTED BY** C. JOHNSON

**VERIFIED BY** C. FINLEY

**CHANGE SUMMARY**

| | |
|---|---|
| **KPB ASSESSED** | $0 |
| **KPB TAXABLE** | $0 |
| **CITY ASSESSED** | $0 |
| **CITY TAXABLE** | $0 |
| **KPB FLAT TAX** | ($300) |
| **CITY FLAT TAX** | ($60) |

Cadastre Values

Expand to Filter Values

| Site | Class | Value Type | Attribute | Secondary Attribute | Previous Amount | Amount |
|---|---|---|---|---|---|---|
| **Default - Default Value Group** | | **Boat Personal Class 4 Count** | | | **2.00** | |
| | **Appraised** | **Improvement Market value** | | | **$72,150.00** | |
| | | **TAG** | | | **20.00** | |
| | | **TAG.Id** | | | **20.00** | |
| | **Assessed** | **Boat Assessed Value** | | | **$72,150.00** | |
| | | **Boat Personal Class 4** | | | **$72,150.00** | |
| | | **Personal Property Assessed Value** | | | **0** | |
| | | **Total Assessed Value - City** | | | **0** | |
| | | **Total City Optional Exempt Value** | | | **0** | |
| | | **Total Assessed Value - Borough** | | | **0** | |
| | **Taxable** | **City Taxable Value** | **20 - HOMER CITY** | | **0** | |
| | | Taxable Value - Borough | | | 0 | 0 |
| | **Exemption** | **Exemption Value City** | **20 - HOMER CITY** | | **0** | |
| | | OP PP Bor $100K Exe Value | | | 0 | 0 |
| | | OP PPV 100K Exemption | | | $100,000.00 | $100,000.00 |
| | | OP PPV Borough $100K Exemption | | | $100,000.00 | $100,000.00 |
| | | **OP PPV City $100K Exemption** | | | | **$100,000.00** |
| | | **OP PPV City $100K Exemption** | **20 - HOMER CITY** | | **$100,000.00** | |
| | | Exemption Value Borough | | | 0 | 0 |
| | **Date** | **Year of Cadastre** | | | **2023.0000000000** | |
| | | **Effective date of value change** | | | **20230101.0000000000** | |

# MANIFEST CLERICAL ERROR - CHECKLIST

The assembly may correct manifest clerical errors made by the borough in an assessment notice, tax statement or other borough tax record at any time. A manifest clerical error is a typographical, computational or other similar error readily apparent from the assessment notice, tax statement or other borough tax record and made by a borough employee in the performance of typing, record keeping, filing, measuring, or other similar duties.

Parcel ID / Acct # 00097849

X Typographical, computational or other similar error?

*Identify & Describe:*
*MANIFEST CLERICAL ERROR. ACCOUNT WAS INCORRECTLY ENTERED AS A MAIN ROLL FILER FOR 2023. NO FILING RECEIVED FROM TAXPAYER. ACCOUNT SHOULD HAVE BEEN SUPPLEMENTAL ROLL AND WOULD HAVE BEEN CLOSED DURING SUPPLEMENTAL REVIEW.*

X Readily apparent from the assessment notice, tax statement or other borough tax record?

*Identify & Describe:*
*MANIFEST CLERICAL ERROR. ACCOUNT WAS INCORRECTLY ENTERED AS A MAIN ROLL FILER FOR 2023. NO FILING RECEIVED FROM TAXPAYER. ACCOUNT SHOULD HAVE BEEN SUPPLEMENTAL ROLL AND WOULD HAVE BEEN CLOSED DURING SUPPLEMENTAL REVIEW.*

X Made by a borough employee in the performance of typing, record keeping, filing, measuring, or other similar duties?

*Identify & Describe:*
*MANIFEST CLERICAL ERROR. ACCOUNT WAS INCORRECTLY ENTERED AS A MAIN ROLL FILER FOR 2023. NO FILING RECEIVED FROM TAXPAYER. ACCOUNT SHOULD HAVE BEEN SUPPLEMENTAL ROLL AND WOULD HAVE BEEN CLOSED DURING SUPPLEMENTAL REVIEW.*

| | | |
|---|---|---|
| Certified Value | Land | |
| | Improvements | |
| | Personal Property | |
| | Total | $0 |
| Adjusted Value | Land | |
| | Improvements | |
| | Personal Property | |
| | Total | $0 |

Prepared by Clyde Johnson 8/23/2023
Date

Approved by
Department Director 8/23/23
Date

# TAX ADJUSTMENT REQUEST

**ROLL/YEAR** 2023 **TAR NUMBER** 55-23-004

**PARCEL ID** 013-440-36

**PRIMARY OWNER** Thomas A. Toloff Estate

| | CURRENT VALUE | CORRECTED VALUE |
|---|---|---|
| **TAG** | 55 | 55 |
| **CLASS CODE** | 0 | 0 |
| **LAND ASSESSED (VT4)** | 124,400 | 124,400 |
| **IMPROVEMENT ASSESSED (VT5)** | 0 | 0 |
| **KPB ASSESSED (VT 1001)** | 124,400 | 124,400 |
| **KPB TAXABLE (VT 1003)** | 124,400 | 0 |
| **CITY ASSESSED (VT 1011)** | 0 | 0 |
| **CITY TAXABLE (VT 1013)** | 0 | 0 |

**EXPLANATION** Deed transferring parcel to the Kenai Peninsla Borough prior to January 1, 2022 was not recorded until 7/2023. (Exception No Interest)

**CHANGE SUMMARY**

| | |
|---|---|
| **KPB ASSESSED** | $0 |
| **KPB TAXABLE** | ($124,400) |
| **CITY ASSESSED** | $0 |
| **CITY TAXABLE** | $0 |
| **KPB FLAT TAX** | |
| **CITY FLAT TAX** | |

**DATE** 08/14/23

**SUBMITTED BY** A. Wilcox

**VERIFIED BY** C. FINLEY

Cadastre Values

Expand to Filter Values

| Site | Class | Value Type | Attribute | Secondary Attribute | Previous Amount | Amount |
|---|---|---|---|---|---|---|
| Default - Default Value Group | | Legal Acres | | | 41.75 Acres | 41.75 Acres |
| | **Appraised** | Land Market value | | | $124,400.00 | $124,400.00 |
| | | TAG | | | 55.00 | 55.00 |
| | | TAG.Id | | | 55.00 | 55.00 |
| | **Assessed** | Land | | | $124,400.00 | $124,400.00 |
| | | Parcel Assessed Value | | | $124,400.00 | $124,400.00 |
| | | Personal Property Assessed Value | | | 0 | 0 |
| | | Qualified for Exemption | | | $124,400.00 | $124,400.00 |
| | | Total Assessed Value - City | | | 0 | 0 |
| | | Total City Optional Exempt Value | | | 0 | 0 |
| | | **Total Mandatory Exempt Value** | | | | $124,400.00 |
| | | Land Assessed Value | | | $124,400.00 | $124,400.00 |
| | | Total Assessed Value - Borough | | | $124,400.00 | $124,400.00 |
| | Taxable | City Taxable Value | 55 - NIKISKI SN. | | 0 | 0 |
| | | **Taxable Value - Borough** | | | **$124,400.00** | **0** |
| | Exemption | Exemption Value City | **55** - NIKISKI SN. | | 0 | 0 |
| | | **Government Exempt Value** | | | | **$124,400.00** |
| | | **Exemption Value Borough** | | | **0** | **$124,400.00** |
| | Date | Year of Cadastre | | | 2023.0000000000 | 2023.0000000000 |
| | | Effective date of value change | | | 20230101.0000000000 | 20230101.0000000000 |

## MANIFEST CLERICAL ERROR - CHECKLIST

The assembly may correct manifest clerical errors made by the borough in an assessment notice, tax statement or other borough tax record at any time. A manifest clerical error is a typographical, computational or other similar error readily apparent from the assessment notice, tax statement or other borough tax record and made by a borough employee in the performance of typing, record keeping, filing, measuring, or other similar duties.

**Parcel ID / Acct #** 013-440-36

x Typographical, computational or other similar error?
*Identify & Describe:*
*Deed transfering ownership to KPB was not recorded prior to 1/1/22.*

x Readily apparent from the assessment notice, tax statement or other borough tax record?
*Identify & Describe:*
*Deed transfering ownership to KPB was not recorded prior to 1/1/22.*

x Made by a borough employee in the performance of typing, record keeping, filing, measuring, or other similar duties?
*Identify & Describe:*
*Deed transfering ownership to KPB was not recorded prior to 1/1/22.*

| | | |
|---|---|---|
| Certified Value | Land | $124,400 |
| | Improvements | $0 |
| | Personal Property | $0 |
| | Total | $124,400 |
| Adjusted Value | Land | $124,400 |
| | Improvements | $0 |
| | Personal Property | $0 |
| | Total | $124,400 |

Prepared by A. Wilcox 8/24/23
Date

Approved by
Department Director 8/24/23
Date

# TAX ADJUSTMENT REQUEST

**ROLL/YEAR** 2022 **TAR NUMBER** 55-22-010

**PARCEL ID** 013-440-36

**PRIMARY OWNER** Thomas A. Toloff Estate

| | CURRENT VALUE | CORRECTED VALUE |
|---|---|---|
| **TAG** | 55 | 55 |
| **CLASS CODE** | 0 | 0 |
| **LAND ASSESSED (VT4)** | 109,500 | 109,500 |
| **IMPROVEMENT ASSESSED (VT5)** | 0 | 0 |
| **KPB ASSESSED (VT 1001)** | 109,500 | 109,500 |
| **KPB TAXABLE (VT 1003)** | 109,500 | 0 |
| **CITY ASSESSED (VT 1011)** | 0 | 0 |
| **CITY TAXABLE (VT 1013)** | 0 | 0 |

**EXPLANATION** Deed transferring parcel to the Kenai Peninsla Borough prior to January 1, 2022 was not recorded until 7/2023. (Exception No Interest)

**DATE** 08/14/23

**SUBMITTED BY** A. Wilcox

**VERIFIED BY** C. FINLEY

**CHANGE SUMMARY**

| | |
|---|---|
| **KPB ASSESSED** | $0 |
| **KPB TAXABLE** | ($109,500) |
| **CITY ASSESSED** | $0 |
| **CITY TAXABLE** | $0 |
| **KPB FLAT TAX** | |
| **CITY FLAT TAX** | |

**Cadastre Values** — Expand to Filter Values

| Site | Class | Value Type | Attribute | Secondary Attribute | Previous Amount | Amount |
|---|---|---|---|---|---|---|
| Default - Default Value Group | | Legal Acres | | | 41.75 Acres | 41.75 Acres |
| | Appraised | Land Market value | | | $109,500.00 | $109,500.00 |
| | | TAG | | | 55.00 | 55.00 |
| | | TAG.Id | | | 55.00 | 55.00 |
| | Assessed | Land | | | $109,500.00 | $109,500.00 |
| | | Parcel Assessed Value | | | $109,500.00 | $109,500.00 |
| | | Personal Property Assessed Value | | | 0 | 0 |
| | | Qualified for Exemption | | | $109,500.00 | $109,500.00 |
| | | Total Assessed Value - City | | | 0 | 0 |
| | | Total City Optional Exempt Value | | | 0 | 0 |
| | | **Total Mandatory Exempt Value** | | | | $109,500.00 |
| | | Land Assessed Value | | | $109,500.00 | $109,500.00 |
| | | Total Assessed Value - Borough | | | $109,500.00 | $109,500.00 |
| | Taxable | City Taxable Value | 55 - NIKISKI SN. | | 0 | 0 |
| | | **Taxable Value - Borough** | | | $109,500.00 | 0 |
| | Exemption | Exemption Value City | 55 - NIKISKI SN. | | 0 | 0 |
| | | **Government Exempt Value** | | | | $109,500.00 |
| | | **Exemption Value Borough** | | | 0 | $109,500.00 |
| | Date | Year of Cadastre | | | 2022.0000000000 | 2022.0000000000 |
| | | Effective date of value change | | | 20220101.0000000000 | 20220101.0000000000 |

## MANIFEST CLERICAL ERROR - CHECKLIST

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**Parcel ID / Acct #** 013-440-36

x Typographical, computational or other similar error?
*Identify & Describe:*
*Deed transfering ownership to KPB was not recorded prior to 1/1/22.*

x Readily apparent from the assessment notice, tax statement or other borough tax record?
*Identify & Describe:*
*Deed transfering ownership to KPB was not recorded prior to 1/1/22.*

x Made by a borough employee in the performance of typing, record keeping, filing, measuring, or other similar duties?
*Identify & Describe:*
*Deed transfering ownership to KPB was not recorded prior to 1/1/22.*

| | | |
|---|---|---|
| **Certified Value** | **Land** | $109,500 |
| | **Improvements** | $0 |
| | **Personal Property** | $0 |
| | **Total** | $109,500 |
| **Adjusted Value** | **Land** | $109,500 |
| | **Improvements** | $0 |
| | **Personal Property** | $0 |
| | **Total** | $109,500 |

**Prepared by** A. Wilcox 8/24/23
**Date**

**Approved by** Helen Dewitt 8/24/23
**Department Director** **Date**

# TAX ADJUSTMENT REQUEST

**ROLL/YEAR** 2023 **TAR NUMBER** 058-23-035

**PARCEL ID** 055-630-18

**PRIMARY OWNER** KEATING, ROSE ANN & DENNIS

| | CURRENT VALUE | CORRECTED VALUE |
|---|---|---|
| **TAG** | 58 | 58 |
| **CLASS CODE** | 110 | 110 |
| **LAND ASSESSED (VT4)** | 23,400 | 23,400 |
| **IMPROVEMENT ASSESSED (VT5)** | 243,100 | 243,100 |
| **KPB ASSESSED (VT 1001)** | 266,500 | 266,500 |
| **KPB TAXABLE (VT 1003)** | 266,500 | 0 |
| **CITY ASSESSED (VT 1011)** | 0 | 0 |
| **CITY TAXABLE (VT 1013)** | 0 | 0 |

**EXPLANATION** SENIOR CITIZEN EXEMPTION APPROVED AFTER CONFIRMING PFD ELIGIBLE

**CHANGE SUMMARY**

| | |
|---|---|
| **KPB ASSESSED** | $0 |
| **KPB TAXABLE** | ($266,500) |
| **CITY ASSESSED** | $0 |
| **CITY TAXABLE** | $0 |
| **KPB FLAT TAX** | |
| **CITY FLAT TAX** | |

**DATE** 08/09/23

**SUBMITTED BY** SGUZMAN

**VERIFIED BY** C. FINLEY

Cadastre Values

Expand to Filter Values

| Site | Class | Value Type | Attribute | Secondary Attribute | Previous Amount | Amount |
|---|---|---|---|---|---|---|
| Default - Default Value Group | | Legal Acres | | | .92 Acres | .92 Acres |
| | Appraised | Improvement Market value | | | $243,100.00 | $243,100.00 |
| | | Land Market value | | | $23,400.00 | $23,400.00 |
| | | TAG | | | 58.00 | 58.00 |
| | | TAG.id | | | 58.00 | 58.00 |
| | Assessed | Improvements | | | $243,100.00 | $243,100.00 |
| | | Land | | | $23,400.00 | $23,400.00 |
| | | Parcel Assessed Value | | | $266,500.00 | $266,500.00 |
| | | Personal Property Assessed Value | | | 0 | 0 |
| | | Qualified for Exemption | | | $266,500.00 | $266,500.00 |
| | | Total Assessed Value - City | | | 0 | 0 |
| | | **Total Borough Optional Exempt Value** | | | | **$116,500.00** |
| | | Total City Optional Exempt Value | | | 0 | 0 |
| | | **Total Mandatory Exempt Value** | | | | **$150,000.00** |
| | | Land Assessed Value | | | $23,400.00 | $23,400.00 |
| | | Improvement Assessed Value | | | $243,100.00 | $243,100.00 |
| | | Total Assessed Value - Borough | | | $266,500.00 | $266,500.00 |
| | Taxable | City Taxable Value | 58 - CENTRAL EMERGENCY SERVICES | | 0 | 0 |
| | | **Taxable Value - Borough** | | | **$266,500.00** | **0** |
| | **Exemption** | **BOROUGH SENIOR Exempt Value** | | | | **$266,500.00** |
| | | **Cap for Senior Exemption** | | | | **$150,000.00** |
| | | Exemption Value City | 58 - CENTRAL EMERGENCY SERVICES | | 0 | 0 |
| | | **OP Senior Resident >150k Exempt Value** | | | | **$116,500.00** |
| | | **Residential Exemption** | | | | **$50,000.00** |
| | | **Senior Citizen Exemption** | | | | **$150,000.00** |
| | | **Senior Mandatory Exempt Value** | | | | **$150,000.00** |
| | | **Senior MandatoryImp** | | | | **$150,000.00** |
| | | Working Improvement Assessed Value | | | $243,100.00 | **$243,100.00** |
| | | **Exemption Value Borough** | | | **0** | **$266,500.00** |
| | Date | Year of Cadastre | | | 2023.0000000000 | 2023.0000000000 |
| | | Effective date of value change | | | 20230101.0000000000 | 20230101.0000000000 |

# TAX ADJUSTMENT REQUEST

**ROLL/YEAR** 2023 **TAR NUMBER** 058-23-036

**PARCEL ID** 063-096-44

**PRIMARY OWNER** Orellana, Edgar Ricardo Mendez

| | CURRENT VALUE | CORRECTED VALUE |
|---|---|---|
| **TAG** | 58 | 58 |
| **CLASS CODE** | 110 | 105 |
| **LAND ASSESSED (VT4)** | 43,300 | 43,300 |
| **IMPROVEMENT ASSESSED (VT5)** | 284,500 | 2,000 |
| **KPB ASSESSED (VT 1001)** | 327,800 | 45,300 |
| **KPB TAXABLE (VT 1003)** | 327,800 | 45,300 |
| **CITY ASSESSED (VT 1011)** | 0 | 0 |
| **CITY TAXABLE (VT 1013)** | 0 | 0 |

**EXPLANATION** Home added to an incorrect parcel.

**CHANGE SUMMARY**

| | |
|---|---|
| **KPB ASSESSED** | ($282,500) |
| **KPB TAXABLE** | ($282,500) |
| **CITY ASSESSED** | $0 |
| **CITY TAXABLE** | $0 |
| **KPB FLAT TAX** | |
| **CITY FLAT TAX** | |

**DATE** 08/17/23

**SUBMITTED BY** Scott Romain

**VERIFIED BY** C. FINLEY

Cadastre Values

Expand to Filter Values

| Site | Class | Value Type | Attribute | Secondary Attribute | Previous Amount | Amount |
|---|---|---|---|---|---|---|
| Default - Default Value Group | | Legal Acres | | | 1.86 Acres | 1.86 Acres |
| | **Appraised** | **Improvement Market value** | | | **$284,500.00** | **$2,000.00** |
| | | Land Market value | | | $43,300.00 | $43,300.00 |
| | | TAG | | | 58.00 | 58.00 |
| | | TAG.Id | | | 58.00 | 58.00 |
| | **Assessed** | **Improvements** | | | **$284,500.00** | **$2,000.00** |
| | | Land | | | $43,300.00 | $43,300.00 |
| | | **Parcel Assessed Value** | | | **$327,800.00** | **$45,300.00** |
| | | Personal Property Assessed Value | | | 0 | 0 |
| | | **Qualified for Exemption** | | | **$327,800.00** | **$45,300.00** |
| | | Total Assessed Value - City | | | 0 | 0 |
| | | Total City Optional Exempt Value | | | 0 | 0 |
| | | Land Assessed Value | | | $43,300.00 | $43,300.00 |
| | | **Improvement Assessed Value** | | | **$284,500.00** | **$2,000.00** |
| | | **Total Assessed Value - Borough** | | | **$327,800.00** | **$45,300.00** |
| | Taxable | City Taxable Value | 58 - CENTRAL EMERGENCY SERVICES | | 0 | 0 |
| | | **Taxable Value - Borough** | | | **$327,800.00** | **$45,300.00** |
| | Exemption | Exemption Value City | 58 - CENTRAL EMERGENCY SERVICES | | 0 | 0 |
| | | **Working Improvement Assessed Value** | | | **$284,500.00** | **$2,000.00** |
| | | Exemption Value Borough | | | 0 | 0 |
| | Date | Year of Cadastre | | | 2023.0000000000 | 2023.0000000000 |
| | | Effective date of value change | | | 20230101.0000000000 | 20230101.0000000000 |

# MANIFEST CLERICAL ERROR - CHECKLIST

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**Parcel ID / Acct #** 06309644

_____ Typographical, computational or other similar error?
*Identify & Describe:*

_____ Readily apparent from the assessment notice, tax statement or other borough tax record?
*Identify & Describe:*

X Made by a borough employee in the performance of typing, record keeping, filing, measuring, or other similar duties?
*Identify & Describe:*
*Improvements were added the wrong parcel in error. Only improvement is a driveway.*

| | | |
|---|---|---|
| Certified Value | Land | $43,300 |
| | Improvements | $284,500 |
| | Personal Property | |
| | Total | $327,800 |
| Adjusted Value | Land | $43,300 |
| | Improvements | $2,000 |
| | Personal Property | |
| | Total | $45,300 |

Prepared by Scott Romain 8/17/2023
Date

Approved by [signature] 8/17/23
Department Director Date

# TAX ADJUSTMENT REQUEST

**ROLL/YEAR** 2023 **TAR NUMBER** 058-23-037

**PARCEL ID** 063-470-17

**PRIMARY OWNER** BELL, JEAN

| | CURRENT VALUE | CORRECTED VALUE |
|---|---|---|
| **TAG** | 58 | 58 |
| **CLASS CODE** | 110 | 110 |
| **LAND ASSESSED (VT4)** | 36,600 | 36,600 |
| **IMPROVEMENT ASSESSED (VT5)** | 222,400 | 222,400 |
| **KPB ASSESSED (VT 1001)** | 259,000 | 259,000 |
| **KPB TAXABLE (VT 1003)** | 209,000 | 0 |
| **CITY ASSESSED (VT 1011)** | 0 | 0 |
| **CITY TAXABLE (VT 1013)** | 0 | 0 |

**EXPLANATION** SENIOR EXEMPTION APPROVED AFTER CONFIRMING PFD ELIGIBLE

**DATE** 08/16/23

**SUBMITTED BY** SGUZMAN

**VERIFIED BY** C. FINLEY

**CHANGE SUMMARY**

| | |
|---|---|
| **KPB ASSESSED** | $0 |
| **KPB TAXABLE** | ($209,000) |
| **CITY ASSESSED** | $0 |
| **CITY TAXABLE** | $0 |
| **KPB FLAT TAX** | |
| **CITY FLAT TAX** | |

Cadastre Values

Expand to Filter Values

| Site | Class | Value Type | Attribute | Secondary Attribute | Previous Amount | Amount |
|---|---|---|---|---|---|---|
| Default - Default Value Group | | Legal Acres | | | 2.17 Acres | 2.17 Acres |
| | Appraised | Improvement Market value | | | $222,400.00 | $222,400.00 |
| | | Land Market value | | | $36,600.00 | $36,600.00 |
| | | TAG | | | 58.00 | 58.00 |
| | | TAG.Id | | | 58.00 | 58.00 |
| | Assessed | Improvements | | | $222,400.00 | $222,400.00 |
| | | Land | | | $36,600.00 | $36,600.00 |
| | | Parcel Assessed Value | | | $259,000.00 | $259,000.00 |
| | | Personal Property Assessed Value | | | 0 | 0 |
| | | Qualified for Exemption | | | $259,000.00 | $259,000.00 |
| | | Total Assessed Value - City | | | 0 | 0 |
| | | **Total Borough Optional Exempt Value** | | | **$50,000.00** | **$109,000.00** |
| | | Total City Optional Exempt Value | | | 0 | 0 |
| | | **Total Mandatory Exempt Value** | | | | **$150,000.00** |
| | | Land Assessed Value | | | $36,600.00 | $36,600.00 |
| | | Improvement Assessed Value | | | $222,400.00 | $222,400.00 |
| | | Total Assessed Value - Borough | | | $259,000.00 | $259,000.00 |
| | Taxable | City Taxable Value | 58 - CENTRAL EMERGENCY SERVICES | | 0 | 0 |
| | | **Taxable Value - Borough** | | | **$209,000.00** | **0** |
| | **Exemption** | **BOROUGH SENIOR Exempt Value** | | | | **$259,000.00** |
| | | **Cap for Senior Exemption** | | | | **$150,000.00** |
| | | Exemption Value City | 58 - CENTRAL EMERGENCY SERVICES | | 0 | 0 |
| | | **OP Residential Boro Exemption** | | | **$50,000.00** | |
| | | **OP Senior Resident >150k Exempt Value** | | | | **$109,000.00** |
| | | Residential Exemption | | | $50,000.00 | $50,000.00 |
| | | **Senior Citizen Exemption** | | | | **$150,000.00** |
| | | **Senior Mandatory Exempt Value** | | | | **$150,000.00** |
| | | **Senior MandatoryImp** | | | | **$150,000.00** |
| | | Working Improvement Assessed Value | | | $222,400.00 | $222,400.00 |
| | | **Exemption Value Borough** | | | **$50,000.00** | **$259,000.00** |
| | Date | Year of Cadastre | | | 2023.0000000000 | 2023.0000000000 |
| | | Effective date of value change | | | 20230101.0000000000 | 20230101.0000000000 |

# TAX ADJUSTMENT REQUEST

**ROLL/YEAR** 2023 **TAR NUMBER** 55-23-005

**PARCEL ID** 211-280-13

**PRIMARY OWNER** DOUGLAS BETZOLD

| | CURRENT VALUE | CORRECTED VALUE |
|---|---|---|
| **TAG** | 55 | 55 |
| **CLASS CODE** | 100 | 100 |
| **LAND ASSESSED (VT4)** | 28,900 | 28,900 |
| **IMPROVEMENT ASSESSED (VT5)** | 0 | 0 |
| **KPB ASSESSED (VT 1001)** | 28,900 | 28,900 |
| **KPB TAXABLE (VT 1003)** | 0 | 28,900 |
| **CITY ASSESSED (VT 1011)** | 0 | 0 |
| **CITY TAXABLE (VT 1013)** | 0 | 0 |

**EXPLANATION** CLERICAL ERROR. Kenai Peninsula Borough owned and was 100% Gov exempt for 2022. KPB sold and QuitClaim Deed recorded 11/16/22 but the deed was not posted nor exemption removed until 8/21/23. The deed has since been posted and the 2023 exemption has been removed. Buyer should be billed.

**CHANGE SUMMARY**

| | |
|---|---|
| **KPB ASSESSED** | $0 |
| **KPB TAXABLE** | $28,900 |
| **CITY ASSESSED** | $0 |
| **CITY TAXABLE** | $0 |
| **KPB FLAT TAX** | |
| **CITY FLAT TAX** | |

**DATE** 08/21/23

**SUBMITTED BY** Mary Kay Grenier

**VERIFIED BY** C. FINLEY

Cadastre Values

Expand to Filter Values

| Site | Class | Value Type | Attribute | Secondary Attribute | Previous Amount | Amount |
|---|---|---|---|---|---|---|
| Default - Default Value Group | | Legal Acres | | | 8.33 Acres | 8.33 Acres |
| | Appraised | Land Market value | | | $28,900.00 | $28,900.00 |
| | | TAG | | | 55.00 | 55.00 |
| | | TAG.Id | | | 55.00 | 55.00 |
| | Assessed | Land | | | $28,900.00 | $28,900.00 |
| | | Parcel Assessed Value | | | $28,900.00 | $28,900.00 |
| | | Personal Property Assessed Value | | | 0 | 0 |
| | | Qualified for Exemption | | | $28,900.00 | $28,900.00 |
| | | Total Assessed Value - City | | | 0 | 0 |
| | | Total City Optional Exempt Value | | | 0 | 0 |
| | | Land Assessed Value | | | $28,900.00 | $28,900.00 |
| | | Total Assessed Value - Borough | | | $28,900.00 | $28,900.00 |
| | Taxable | City Taxable Value | 55 - NIKISKI SN. | | 0 | 0 |
| | | Taxable Value - Borough | | | $28,900.00 | $28,900.00 |
| | Exemption | Exemption Value City | 55 - NIKISKI SN. | | 0 | 0 |
| | | Exemption Value Borough | | | 0 | 0 |
| | Date | Year of Cadastre | | | 2023.0000000000 | 2023.0000000000 |
| | | Effective date of value change | | | 20230101.0000000000 | 20230101.0000000000 |

# MANIFEST CLERICAL ERROR - CHECKLIST

The assembly may correct manifest clerical errors made by the borough in an assessment notice, tax statement or other borough tax record at any time. A manifest clerical error is a typographical, computational or other similar error readily apparent from the assessment notice, tax statement or other borough tax record and made by a borough employee in the performance of typing, record keeping, filing, measuring, or other similar duties.

**Parcel ID / Acct #** 211-280-13

x Typographical, computational or other similar error?
*Identify & Describe:*
*Deed that transferred ownership from exempt government to taxable individual was missed when posting.*

x Readily apparent from the assessment notice, tax statement or other borough tax record?
*Identify & Describe:*
*Deed that transferred ownership from exempt government to taxable individual was missed when posting.*

x Made by a borough employee in the performance of typing, record keeping, filing, measuring, or other similar duties?
*Identify & Describe:*
*Deed that transferred ownership from exempt government to taxable individual was missed when posting.*

| | | |
|---|---|---|
| Certified Value | Land | $28,900 |
| | Improvements | $0 |
| | Personal Property | $0 |
| | Total | $28,900 |
| Adjusted Value | Land | $28,900 |
| | Improvements | $0 |
| | Personal Property | $0 |
| | Total | $28,900 |

Prepared by MKG 8/21/2023
Date

Approved by
Department Director 8/21/23
Date

| | |
|---|---|
| Introduced by: | Ecklund |
| Date: | 09/05/23 |
| Hearing: | 10/10/23 |
| Action: | |
| Vote: | |

**KENAI PENINSULA BOROUGH**
**ORDINANCE 2023-20**

**AN ORDINANCE AMENDING BOROUGH CODE KPB 19.30.070 TO UPDATE THE DEFINITION FOR ECONOMIC DEVELOPMENT**

**WHEREAS,** in 2022, the Alaska Legislature enacted House Bill 411 (HB 411) relating to municipal economic development;

**WHEREAS,** this ordinance updates Borough Code and uses the exact definition that HB 411 added to AS 29.71.800;

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

**SECTION 1.** That KPB 19.30.070 is hereby amended to read as follows:

**19.30.070. Definitions.**

For purposes of this chapter, the following terms shall have the following meanings.

Adds to long-term tax base means an increase in the assessed valuation of taxable property in the borough.

Bank-ready business plan means a business plan typically required by banks for loan applicants containing, at a minimum:

1) a detailed description of the company and proposed project;

2) a detailed description of the product or service to be rendered;

3) a feasibility study including market opportunity, competition, trends, research and promotional strategies, management strategies including job creation, job descriptions, key personnel, and long- and short-term employment projections, detailed financial projections for the next five years;

4) resumes of all managerial and significant technical personnel;

5) financial statements of the company, including the current year and up to five previous years for any such years the company has been in business; and

6) an analysis of how this project qualifies for direct borough support under this chapter, and a detailed description of the requested borough support.

Economic development means an action intended to result in an outcome that causes an increase in, or avoids a decrease of, economic activity, gross domestic product, or the tax base. [PRIVATE SECTOR EXPANSION THAT CREATES PERMANENT JOBS, ADDS TO THE BOROUGH'S LONG-TERM TAX BASE, AND RESULTS IN ENHANCED ECONOMIC ACTIVITY AND QUALITY OF LIFE FOR BOROUGH RESIDENTS.]

[ENHANCED ECONOMIC ACTIVITY MEANS AN ACTIVITY WHICH INCREASES JOB OPPORTUNITIES AND OTHERWISE ENCOURAGES THE ECONOMIC GROWTH OF THE BOROUGH INCLUDING THE DEVELOPMENT OF ITS NATURAL RESOURCES THROUGH THE ESTABLISHMENT AND EXPANSION OF MANUFACTURING, INDUSTRIAL, EXPORT, SMALL BUSINESS, AND BUSINESS ENTERPRISES AND OTHER FACILITIES.

ENHANCED QUALITY OF LIFE MEANS AN IMPROVEMENT OF COMMUNITY CHARACTERISTICS AFFECTING LIFESTYLES WITHIN THE BOROUGH, BASED UPON COMMUNITY STANDARDS AS DETERMINED BY THE BOROUGH ASSEMBLY WITH INPUT FROM THE COMMUNITY AT LARGE.]

Permanent jobs means full-time equivalent jobs for five continuous years excluding construction jobs which are tied directly to the economic development project.

**SECTION 2.** That this ordinance shall be effective immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2023.**

Brent Johnson, Assembly President

ATTEST:

Michele Turner, CMC, Borough Clerk

Yes:

No:

Absent:

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# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Cindy Ecklund, Assembly Member CE

**DATE:** August 24, 2023

**RE:** Ordinance 2023-20, Amending Borough Code KPB 19.30.070 to Update the Definition for Economic Development (Ecklund)

House Bill 411, enacted in 2022 and signed into law, added a definition for "economic development" to Title 29 of the Alaska Statutes.

Per AS 29.71.800(9): " 'economic development' means an action intended to result in an outcome that causes an increase in, or avoids a decrease of, economic activity, gross domestic product, or the tax base;"

This Ordinance will amend Borough Code to align with State Statutes by using the exact same definition that is found in AS 29.71.800.

Your consideration is appreciated.

| | |
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| Introduced by: | Cox |
| Date: | 09/05/23 |
| Hearing: | 10/10/23 |
| Action: | |
| Vote: | |

**KENAI PENINSULA BOROUGH**
**ORDINANCE 2023-21**

**AN ORDINANCE AMENDING BOROUGH CODE KPB 5.08.025 REGARDING LOANS FROM THE BOROUGH'S GENERAL FUND TO BOROUGH SERVICE AREAS**

**WHEREAS,** current KPB 5.08.025 provides that loans from the general fund to service areas must be in accordance with specific loan terms and conditions "unless otherwise approved by ordinance";

**WHEREAS,** since enacting KPB 5.08.025 none of the loans approved by the assembly have matched the specific terms and conditions set out in KPB 5.08.025; and

**WHEREAS,** this ordinance repeals the specific terms and conditions and replaces them with loan requirements that will be adhered to when setting the terms and conditions for the specific loan and set of circumstances being considered;

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

**SECTION 1.** That KPB 5.08.025 is hereby amended to read as follows:

**5.08.025. Authorization and standards for lending money to service areas [FOR LAND AND CAPITAL IMPROVEMENTS]from the borough general fund.**

Service areas may borrow money from the general fund [ONLY] in accordance with the [FOLLOWING] loan terms and conditions [UNLESS OTHERWISE] approved by ordinance. The following requirements will be specifically addressed within the ordinance:

1. Loans shall only be for the purpose of financing [THE] start-up costs, acquisitions [OF LAND] or [CAPITAL] improvements that the Assembly finds are in the best interest of the borough and service area after consideration of the service area board's recommendation;

2. The term[S] of the loan [SHALL BE FOR NO MORE THAN FIVE YEARS] must be approved for a fixed period of time of not more than five years and allow early payoff;

3. The fixed or variable rate of interest [SHALL BE THE PRIME RATE IN EFFECT ON THE DATE OF ORDINANCE APPROVAL PLUS 2 PERCENT] must be established pursuant to a published indexed rate. The rate may not be less than the expected rate of return to be earned by existing borough general fund investment accounts over the same period of time as the loan;

4. The total amount borrowed by a service area pursuant to this section [MAY NOT EXCEED $150,000 AT ANY TIME] must be stated in the title of the ordinance and fixed by the terms of the ordinance. This amount may be amended by ordinance;

5. [PAYMENTS SHALL BE PAID IN EQUAL ANNUAL INSTALLMENTS UPON ADOPTION OF EACH YEAR'S ANNUAL BUDGET UNTIL THE LOAN IS PAID IN FULL] The ordinance must provide the frequency and amount of installment payments, and whether the installments include required lump sum balloon payments; and

6. [ALL SUCH LOANS MUST BE APPROVED BY THE ASSEMBLY BY ORDINANCE, AND THE ASSEMBLY MAY ADD SUCH ADDITIONAL TERMS AND CONDITIONS AS IT FINDS IN THE BEST INTERESTS OF THE BOROUGH] The ordinance will state whether or not an increase in the service area mill levy will be needed for loan repayment. If the assembly determines that the loan will require an increase in the service area mill levy for repayment purposes, the loan must first be approved by the voters of the service area at a regular or special election before any funds can be distributed.

**SECTION 2.** That this ordinance shall be effective immediately.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2023.**

_____
Brent Johnson, Assembly President

ATTEST:

_____
Michele Turner, CMC, Borough Clerk

Yes:

No:

Absent:

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# Kenai Peninsula Borough
## Assembly

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Tyson Cox, Assembly Vice-President TRC

**DATE:** August 24, 2023

**RE:** Ordinance 2023-21 , Amending Borough Code KPB 5.08.025 Regarding Loans from the Borough's General Fund to Borough Service Areas (Cox),

Current KPB 5.08.025 code provides that loans from the general fund to service areas must be in accordance with specific loan terms and conditions "unless otherwise approved by ordinance".

Since enacting KPB 5.08.025 none of the loans approved by the assembly have matched the specific terms and conditions set out in KPB 5.08.025.

This ordinance repeals the specific terms and conditions and replaces them with loan requirements that will be adhered to when setting the terms and conditions for the specific loan and set of circumstances being considered.

These changes will therefore provide necessary flexibility while also setting requirements to follow when the general fund is loaning money to a service area.

Your consideration is appreciated.

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| Introduced by: | Administration |
| Date: | 08/23/2023 |
| Action: | Approved |
| Vote: | Yes - 7, No - 0, Exc - 4 |

**SOUTH PENINSULA HOSPITAL**
**BOARD RESOLUTION**
**2023-25**

# A RESOLUTION OF THE SOUTH PENINSULA HOSPITAL BOARD OF DIRECTORS APPROVING A MINOR ALTERATION OF SCOPE TO PROJECT 21SHB REMODEL OF KACHEMAK PROFESSIONAL BUILDING

**WHEREAS,** South Peninsula Hospital Board of Directors approved resolution 2020-01 in January 2020 approving project 21SHB; and

**WHEREAS,** the established scope of the project was to approve $500,000 in lease renovations to the 4201 Bartlett St leased property to collocate Medical Staff offices and to provide a one-stop shop for Specialty Physician Services and Behavioral Health; and

**WHEREAS,** Project 21SHB has $451,703 remaining, as the majority of work has not commenced; and

**WHEREAS,** South Peninsula Hospital has purchased property on Hohe Street since the passing of the Resolution 2020-01 to locate Behavioral Health; and

**WHEREAS,** South Peninsula Hospital has since leased additional clinical space to locate General Surgery and has been able to accommodate other specialty providers in already established clinic space at 4201 Bartlett; and

**WHEREAS,** the needs for space for Behavioral Health and Specialty Providers has been solved, South Peninsula Hospital would like to amend the scope of project 21SHB to complete leasehold improvements to the 4201 Bartlett St property to provide clinical services and support offices to meet the needs of the organization; and

**WHEREAS,** the resolution to amend the scope of project 21SHB Remodel Kachemak Professional Building was discussed at Finance Committee on August 17, 2023.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF SOUTH PENINSULA HOSPITAL:**

1. That the South Peninsula Hospital Board of Directors approves amending the scope of Project 21SHB Remodel of Kachemak Professional Building to allow for renovations for clinical services and support offices.

**PASSED AND ADOPTED BY THE BOARD OF DIRECTORS OF SOUTH PENINSULA AT ITS MEETING HELD ON THIS 24th DAY OF AUGUST, 2023.**

ATTEST:

DocuSigned by:
Julie Woodworth
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Julie Woodworth, Board Secretary

DocuSigned by:
Kelly Cooper
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Kelly Cooper, Board President

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# Kenai Peninsula Borough
Assembly

**MEMORANDUM**

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Lane Chesley, Assembly Member LC

**DATE:** June 20, 2023

**SUBJECT:** **Chesley Amendment #8 Replacement** 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(B), as follows:

21.29.050. Permit conditions applicable to all permits.

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:
…

8. **[*~~Visual exclusion~~*] *Special Impacts Zone* (SIZ)**.

a. **The screening of adverse visual, noise, and dust protects public health, safety, and general welfare. General welfare is further served through imposition of this zone. The distance restrictions balance the right to quiet enjoyment of one's property against development rights. Residents within this zone may request screening methods that are objective, measurable, and within the overall regulatory limits set by this chapter by providing substantial evidence to support the request.**

b. For counter permits, visual, noise, and dust impacts that cannot be **[~~reasonably mitigated~~] screened as set forth in Subsection 8(a)** within 500 **horizontal** feet of an existing principle residential structure may be grounds for denial. For Type 1, 2, and 3 **[~~CLUP~~] Endorsements**, visual, noise, and dust impacts that cannot be **[~~reasonably mitigated~~] screened as set forth in Subsection 8(a)** within 750 **horizontal** feet of an existing principle residential structure may be grounds for denial. **The distances specified in this subsection will be measured from any outer wall of a principle residential structure to the nearest boundary of the proposed material site parcel.**

Your consideration is appreciated.

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# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Lane Chesley, Assembly Member LC

**DATE:** June 20, 2023

**SUBJECT:** **Chesley Substitute 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 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:

…

***Camp or camping*** **means to use a vehicle, tent, or shelter, or to arrange bedding, or both, with the intent to stay overnight.**

***Campsite*** **means any space designated for camping within a public campground.**

…

***Public campground*** **means an area, developed and maintained by a public entity, that is open to the public and contains one or more campsites.**

…

***Reclamation*** **means the process of restoring land that has been mined to a natural or economically-usable state in order to meet a variety of goals ranging from the restoration of productive ecosystems to the creation of industrial and municipal resources.**

…

Your consideration is appreciated.

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# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

**FROM:** Peter A. Micciche, Mayor
Richard Derkevorkian, Assembly Member

**DATE:** September 7, 2023

**SUBJECT:** **Derkevorkian Amendment** to Substitute 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 language in brackets is to be deleted.]

➢ Amend KPB 21.29.050(A) as follows:

**21.25.050. Permit considerations—Public hearing required.**

A. Within **30** days of receiving an application, the planning director or designee shall review the submitted application for completeness and compliance with this chapter. If it is incomplete or does not meet the requirements of this chapter, the planning director shall notify the applicant in writing. The planning director shall thereafter either return the application to the applicant or schedule the application to be considered by the planning commission at the next appropriate scheduled meeting. [~~UPON RECEIVING AN APPLICATION, THE PLANNING DIRECTOR OR DESIGNEE WILL FORWARD A COPY OF THE APPLICATION TO THE KACHEMAK BAY NATIONAL ESTUARINE RESEARCH RESERVE ("KBNERR") FOR REVIEW AND COMMENT. KBNERR WILL HAVE THIRTY DAYS TO PROVIDE ITS REVIEW AND COMMENT PRIOR TO SUBMISSION OF THE APPLICATION TO THE PLANNING COMMISSION IF THE APPLICATION IS OTHERWISE COMPLETE.~~]

Your consideration is appreciated.

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# Kenai Peninsula Borough
Legal Department

## MEMORANDUM

**TO:** Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly
Jeremy Brantley, Planning Commission Chair
Members, Kenai Peninsula Borough Planning Commission

**FROM:** Robert Ruffner, Planning Director RR
Sean Kelley, Borough Attorney SK
A. Walker Steinhage, Deputy Borough Attorney SK

**COPY:** Peter A. Micciche, Mayor

**DATE:** August 24, 2023

**SUBJECT:** Substitute Ordinance 2022-36: Sectional Analysis

The following provides a sectional analysis for Substitute Ordinance 02022-36, An Ordinance Amending KPB Chapter 21.25 and KPB Chapter 21.29 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permit Conditions ("Substitute 02022-36"). Substitute 02022-36 is the final product of over a year of bi-monthly meetings of the Assembly sitting a Committee of the Whole as it considered the original Ordinance 02022-36.

The purpose of this Sectional Analysis is to provide an easy reference to compare present KPB code with Substitute 02022-36. For the quickest summation of the changes in Substitute 02022-06, simply refer to the final column, "Highlighted Changes".

**ORDINANCE 02022-06 SECTIONAL ANALYSIS**

| CODE SECTION | SUBSTITUTE O2022-36 | CURRENT CODE | HIGHLIGHTED CHANGES |
|---|---|---|---|
| **KPB 21.25.050** | 30-day staff review period of an application.<br><br>Copy of application must be forwarded to Kachemak Bay National Estuarine Research Reserve ("KBNERR") for review and comment.<br><br>KBNERR has thirty days to return its review/comment. | 21-day staff review period of an application.<br><br>No review and comment by KBNERR. | Increase from 21 to 30 days.<br><br>Provides for review and comment by KBNERR. |
| **KPB 21.25.060 - Notice** | *Repeals and replaces existing code section, KPB 21.25.060.*<br><br>Notice published on KPB website; public bulletin of impacted community; mailed | Requires notice published two times in newspaper, posted in the post office, copy of the notice sent by regular mail to all owners | Expressly does not apply to counter permits.<br><br>No longer requires newspaper publication but allows for publication on KPB website. |

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| **KPB 21.25.060 - Notice**<br><br>**…continued** | to all owners/leaseholders within ½ mile radius of proposed site.<br><br>Validity of a proceeding not affected, and no basis for appeal, if notice was timely and proper according to KPB records. | and/or leaseholders within one-half mile. | Person may not claim proceeding was invalid or file an appeal based on lack of notice if KPB records show its notice was timely and proper. |
| *The following repeals and replaces existing code chapter, KPB 21.29* | | | |
| **KPB 21.29.005 - Intent and Purpose** | Establishes an intent and purpose section for KPB Chapter 21.29 with focus on public health, safety and general welfare—including health of aquatic systems supporting salmon, and to promote compatible, orderly development. | N/A | New code section.<br><br>Focus on public health, safety and general welfare.<br><br>Promotion of compatible, orderly development. |
| **KPB 21.29.010 - Applicability** | **A.** Applies to all private and public lands, except as preempted by other law;<br><br>**B.** Does not apply within the incorporated cities;<br><br>**C.** Prohibits extraction within 300 feet of riparian wetlands and naturally-occurring open water bodies;<br><br>**D.** Operations must be conducted in accordance with current Alaska DEC Manual for extraction projects.<br><br>**E.** Allows up to 5,000 gallons of water per day to be drawn from well. Anything more requires ADNR use authorization. Open water only if approved settling pond or under Type III CLUP. | N/A | New code section to clarify applicability of chapter and fact that it does apply to both public and private lands outside of the incorporated cities unless otherwise exempt.<br><br>Prohibits earth material extraction within 300 linear feet of wetlands/natural open water bodies.<br><br>Addresses water usage from wells and open water on site. |
| **KPB 21.29.015 -Material extraction** | **A.** Exempts extraction disturbing less than one acre if: | *Currently 21.29.010* | New code section. |

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| **exempt from obtaining a permit** | -Not in floodplain or subject to 21.29.015(B);<br>-Does not enter water table; and<br>-Does not cross property boundaries.<br><br>No excavation within 20 feet of a public right-of-way (ROW) or 32' of lot line.<br><br>Material extraction within two feet of seasonal high-water table/material crushing or screening activities prohibited.<br><br>**B.** Exempts dewatered bars within SBCFSA/Snow River.<br><br>**C.** Exempts PEUs fully compliant with 21.29.120.<br><br>**D.** Exempts extraction necessary for public or private construction on same property. | **A.** Exempts extraction disturbing less than one acre if:<br>-Not in floodplain;<br>-Does not enter water table; and<br>-Does not cross property boundaries.<br><br>No excavation within 20 feet of ROW or 10 feet of lot line.<br><br>**B.** Exempts dewatered bars within SBCFSA/ Snow River.<br><br>**C.** PEUs exempt but floodplain permit required within mapped special flood hazard area. | No excavation within 20 feet of a public right-of-way or 32' of lot line.<br>No crushing, screening or extraction within two feet of the seasonal high-water table.<br><br>PEUs exempt if fully compliant with 21.29.120.<br><br>Extraction necessary for construction on the same property does not require a permit. |
| **KPB 21.29.020- Types of permits available** | **A. Counter permits**<br>-1 to 5 acres<br>-No conditioning or processing, except one-time processing waiver for materials screening only, with conditions.<br>-No extraction within two feet of seasonal high-water table.<br>-Two-year life, with one 12-month extension.<br>-No notice requirement.<br>-Planning Director's decision may be appealed to Planning Commission.<br><br>**B. CLUPs**<br>-Any activities outside counter permit limitations or within two feet of seasonal high-water table.<br>-Valid for five years. | Counter permit and generic CLUP only.<br><br>CLUP application requires all mandatory conditions and covers all uses. | Counter permit and CLUP with three possible endorsements.<br><br>1 to 5 acres eligible for counter permit if no conditioning, processing or extraction within two feet of water table. One-time processing waiver for material screening, with conditions.<br><br>Planning Director's decision on counter permits may be appealed to Planning Commission.<br><br>Notice not required for counter permits<br><br>One CLUP/Three possible endorsements: earth materials |

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| | -Chapter 21.25 provisions applicable.<br>-Applicant may request any or all of following endorsements as part of same application/fee:<br>**1. Type I Endorsement**<br>-Excavation or extraction activities disturbing 5 or more cumulative acres<br>-No conditioning or processing<br>-No extraction within two feet of seasonal high-water table<br>-21.29.050 conditions apply<br><br>**2. Type II Endorsement**<br>-Required for all materials conditioning or processing activities.<br>-21.29.050 and 21.29.055 conditions apply.<br><br>**3. Type III Endorsement**<br>-Required for any materials extraction or excavation within two feet of seasonal high-water table<br>-21.29.050 and 21.29.057 conditions apply<br>-21.29.055 conditions apply if application includes conditioning or processing. | | extraction (five or more acres), earth materials conditioning or processing, and earth materials extraction within two feet of seasonal high-water table.<br><br>Applicant may apply for one, two, or all three CLUP types with one application/fee.<br><br>KPB 21.25 applicable. |
| **KPB 21.29.030-Application procedure** | Breaks apart site map (professional surveyor) from site plan (professional engineer)<br><br>Site map must include, among others, drainage features, location of all private wells of adjacent property owners within 300’ of proposed parcel boundary.<br><br>Site map must include, among others, ground water protection measures for anadromous waters. | -Legal description<br>-Life span<br>-Buffer plan<br>-Reclamation plan<br>-Excavation depth<br>-Type of materials and equipment<br>-Any voluntary permit conditions<br>-Site plan | Requires site map from professional surveyor and site plan from professional engineer, and adds additional requirements for each.<br><br>Application will be deemed incomplete without all items listed. (Not in current code.) |

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| **KPB 21.29.040- Standards for sand, gravel or material sites** | Regulations intended to protect against: aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, visual and other impacts through setbacks, street-level visual screening, and protection of salmon-rearing waters.<br><br>Planning Director (counter permits) or Planning Commission (CLUPs) must find:<br>-Use is not inconsistent with applicable comp plan<br>-Use will not be harmful to public's health, safety and general welfare, or health of anadromous waters<br>-Provides sufficient setbacks, buffer zones, and other safeguards, including for groundwater flowpaths important for juvenile salmon<br>-Reclamation plan<br>-Preservation of value and character of surrounding area. | -Protects against lowering of water sources serving other properties and damage to other properties<br>-Minimizes off-site dust movement, noise disturbance, visual impacts & alternate post-mining land uses | All new standards – "may issue"<br><br>Focus on legitimate public purpose to protect against damage to public roads and adjacent properties as well as dust, noise and other impacts through setbacks, buffer zones, and street-level visual screening, as well as anadromous waters. |
| **KPB 21.29.045** | Applicants required to demonstrate compliance with state and federal law through written documentation from pertinent authorities:<br>-ADNR temporary water use permit if water leaves the site<br>-Mining permit if activities on state land (ADNR)<br>-Permits and plans required by DEC<br>-Permits from USACE, if applicable<br>-Other applicable permits from other regulatory bodies authorized to regulate mining activities or earth materials extraction | N/A | New code section.<br><br>Requires compliance with applicable state/federal agencies prior to approval of KPB permit.<br><br>All activity must comply with state/federal regulations governing air/water quality and hazardous materials.<br><br>Violations subject to enforcement under 21.50. |

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| | Must comply with other regulations such as air and water quality, and hazardous materials<br><br>Violations subject to enforcement under 21.50 | | |
| **KPB 21.29.050** | **NINE MANDATORY CONDITIONS**<br><br>**1. Buffers:**<br>-30-foot buffer/must screen visual, dust and noise.<br>-May include 6-foot fence or berm with a 2:1 slope, or alternative proposal. Berms may not alter natural drainage features<br>-May waive if lot line adjoins another material site or industrial use.<br>-Technology (LIDAR, GIS, etc.) may be used to determine sufficiency of buffer zone.<br>-Planning Director or Commission, as applicable, may waive or reduce if screening unnecessary or not feasible.<br><br>**2. Water source separation:** -No extraction below or within 2' of seasonal high-water table unless new section Type III Endorsement (21.29.057) conditions are met.<br>-No off-site dewatering.<br>-Onsite movement of water permitted with conditions.<br>-No extraction inside boundaries of mapped tsunami hazard zone within 500' of any drinking water source, unless floor higher than surround in at least one direction.<br><br>**3. Roads:** Operations impacting KPB roads must | **Buffers:** 50' of undisturbed natural vegetation, or 6' berm with at least 2:1 slope, or 6' fence. Material from slope may be removed if site plan provides removal timeframe and verification material will be replaced within 30 days. Planning Commission may waive where topography or placement of natural barriers make screening not feasible or unnecessary<br><br>**Water source separation:** No material extraction within 100 horizontal feet of any water source existing prior to permit issuance. Counter permits require four-foot vertical separation from seasonal high-water table. CLUPs require two-foot vertical separation from seasonal high-water table. No dewatering unless PC grants exemption.<br><br>**Roads:** Operations impacting KPB roads must comply with KPB 14.40.175 and subject to remedies in 14.40.<br><br>**Dust control:** Water or calcium chloride on haul roads within boundaries of material site | Allows flexibility to meet demands of a specific application vs. "one size fits all" of current code.<br><br>**Buffers:**<br>-Visual, dust, and noise screening.<br>-Decrease to 30'<br>-Berms may not alter natural drainage features.<br>-Decision-maker may waive if lot line is directly adjacent to another material site, or if otherwise unnecessary or not feasible.<br><br>**Water source separation:**<br>-Operations within 2' of water table governed by 21.29.057/Type III Endorsement.<br>-No offsite dewatering.<br>-On site water movement permitted if qualified independent civil engineer provides statement under seal that dewatering will not lower any known water systems and applicant posts bond for potential accrued damages in amount equivalent to replace each water well within 300-foot radius of site. Rebuttable presumption is each well is minimum of $10,000.<br>-No extraction inside boundaries of mapped tsunami hazard zone within 500' of any drinking water source, with one exception. |

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| | comply with 14.40 and subject to remedies in 14.40.<br><br>**4. Dust control:** Water or calcium chloride on haul roads within boundaries of material site<br><br>**5. Hours of operation**: 6 am-9m but decision-maker may waive for specific seasonal project. Waiver valid for six consecutive months.<br><br>**6. Groundwater elevation:** Requires groundwater monitoring/one well 2' below proposed excavation per ten acres of excavated area.<br><br>**7. Setback:** 250' from school/senior center/child care facility/assisted living home/licensed health care facility etc.<br><br>**8. Boundaries:** Must stake buffers, ROWs, easements at visible intervals by professional land surveyor. Stakes must be placed prior to permit issuance.<br><br>**9. Processing:** Processing, screening, or crushing must comply with conditions in new section 21.29.055 (Type II Endorsement).<br><br>**EIGHT DISCRETIONARY CONDITIONS**<br><br>**1. Setbacks/Buffer Area:**<br>-May be increased up to maximum 100' and may include combination of appropriate buffers if necessary for public health, welfare and safety of vicinity. | **Hours of operation:** Rock crushing equipment shall not be operated between 10 pm and 6 am.<br><br>**Groundwater elevation:** See below.<br><br>**Setback:** Not addressed.<br><br>**Boundaries:** Staked at sequentially visible intervals where boundaries are within 300' of excavation perimeter. Verification and staking by professional land surveyor.<br><br>**Processing:** See below.<br><br>**No provision for discretionary conditions.** | **Roads/Dust control:**<br>Essentially the same.<br><br>**Hours of operation:**<br>For all extraction activities, 6 am to 9 pm but decision-maker can waive or adjust for specific seasonal project for period of six consecutive months.<br><br>**Groundwater elevation:**<br>Requires groundwater monitoring.<br><br>**Setback:** 250' from school/senior center/child care facility/assisted living home/licensed health care facility etc.<br><br>**Boundaries:**<br>Stakes must be placed prior to permit issuance rather than time of application.<br><br>**Processing:**<br>Requires compliance with new section 21.29.055 and Type II Endorsement.<br><br>**EIGHT DISCRETIONARY CONDITIONS**<br><br>Adds discretionary conditions:<br>-Increase setbacks to maximum 100'/may include combination of appropriate buffers for health/welfare/safety.<br>-Rolling berms.<br>-Repair of damaged public right-of-way haul routes.<br>-Suggestion of ingress/egress points.<br>-Surface water protections as set forth in 21.29.030(A)(8)(a). |

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| | -Decision-maker may require a rolling berm.<br>-Decision-maker may require revegetation when buffer area has been denuded prior to review of application.<br><br>**2. Road maintenance and repair:** Permittee may be required to repair public right-of-way haul routes; requires consultation with RSA Director.<br><br>**3. Ingress/egress:** Decision-maker may suggest ingress/egress points. Permittee not required to construct haul routes outside parcel boundaries.<br><br>**4. Surface water protection:** As specified in 21.29.030(A)(8)(a).<br><br>**5. Street-level screening:** Street-level visual screening, noise mitigation, and lighting restrictions as appropriate for the surrounding area and in accordance with 21.29.040 standards set to protect against attractive nuisance issues.<br><br>**6. Noise suppression:** Decision-maker may require white-noise back-up alarms on equipment/vehicles with back-up alarm requirements.<br><br>**7. Special Impacts Zone (SIZ).**<br>-Residents within 500' (counter permit) and 750' (CLUP) of principle residential structure may request objective, measurable screening methods. May be grounds for denial if | | -Street-level screening as appropriate for surrounding area and to protect against attractive nuisances.<br>-White noise back-up alarms for equipment/vehicles with existing back-up alarm requirements.<br>-Special Impacts Zone (SIZ) for residents within SIZ to request visual/noise/dust screening. May be grounds for denial if impacts cannot be screened.<br>-May limit operations within 1,000' of campsites within public campgrounds during the summer. |

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| | visual/noise/dust impacts cannot be screened.<br><br>**8. Public campgrounds.** Decision-maker may limit hours of operation, activities on Memorial and Labor Day weekends, and Independence Day, and designate haul route to be used (if it conflicts with public campground entrance road) for operations within 1,000' of campsites within a public campground, from the last Monday of May through the first Monday of September. | | |
| **KPB 21.29.055. Type II Endorsement – Earth materials processing.** | In addition to mandatory conditions in 21.29.050(A), and any discretionary conditions PC deems appropriate.<br><br>**A.** Conditioning or processing equipment must be operated at least 300' from parcel boundaries. PC may waive or reduce distance requirement in consideration of and in accordance with existing uses of properties in the vicinity.<br><br>**B.** Hours of operation for processing equipment between 8am and 7pm or as PC determines.<br><br>PC may also grant exceptions (not to exceed 120 days) for:<br>-Emergencies<br>-Good cause finding that increase serves public purpose and is not harmful to public health, safety, and general welfare<br><br>Applicant may request waiver (not to exceed six consecutive | 300' setback for conditioning or processing equipment.<br><br>PC may waive or reduce in consideration of and in accordance with existing uses of adjacent property at the time. | New code section.<br><br>PC may waive or reduce in consideration of and in accordance with existing uses of the "properties in the vicinity". Present code is "adjacent property".<br><br>Processing equipment may only be operated between 8am and 7pm, may be increased for emergencies, to serve a public purpose or for specific, seasonal project.<br><br>Allowance for settling pond if no natural water channeled or redirected and not within two feet of seasonal high-water table. |

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| | months) for specific seasonal project. PC must also find waiver is not harmful to the public health, safety and general welfare.<br><br>Settling pond allowed, including for materials washing, if it is not created by channeling or redirecting natural water. Type III Endorsement required if settling pond is within two feet of seasonal high-water table. | | |
| **KPB 21.29.057. Type III Endorsement-Material extraction in water table.** | In addition to mandatory conditions in 21.29.050(A), and any discretionary conditions PC deems appropriate.<br><br>Dewatering prohibited (21.29.050(A)(2)(b)).<br><br>**A.** Applicant must meet the following requirements prior to applying:<br><br>1. Installation of sufficient monitoring wells and test pits to provide qualified professional with adequate information to characterize the entire property that will be permitted for excavation.<br><br>2. Under the supervision of a qualified professional, measurement of seasonal high-water table elevation, groundwater flow direction, hydraulic gradient and water table elevation.<br><br>3. A qualified professional's report determining the potential adverse effects to groundwater and surface water body elevation and quality, surrounding water users and | Excavation within 300' horizontal feet of water source may be permitted based on:<br>-No negative impact to quantity of an aquifer serving existing water sources;<br>-Minimum of three water monitoring tubes or well casings to determine flow direction, flow rate, and water elevation; and<br>-Quarterly measurements of groundwater elevation, flow direction, and flow rate for at least four quarters prior to application. Tubes or wells must be kept in place for duration of excavation in water table.<br>-Operations shall not breach aquifer-confining layer.<br>No extraction activities within 100 linear feet from waterbodies.<br><br>Additional setback from lakes, rivers, anadromous streams and riparian wetlands may be required. | New code section.<br><br>In addition to 21.29.050 conditions, sets forth additional requirements and conditions primarily to protect water quantity.<br><br>Qualified professional must be able to characterize entire property permitted for excavation through sufficient monitoring wells and test pits.<br><br>Qualified professional must supervise measurement of seasonal high-water table elevation, groundwater flow direction, hydraulic gradient and water table elevation. Based upon available data, interpretations of data and knowledge of groundwater processes, qualified professional will report potential detrimental adverse effects to groundwater and surface water body elevation and quality, surrounding water users and adjacent properties. Must be submitted with application and also include extent and depth of extraction beneath seasonal |

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| | adjacent properties. Determination based upon available data, interpretations of data and knowledge of groundwater processes.<br><br>4. Report must be submitted with CLUP application. Subsection lists what must be included in the report.<br><br>**B.** Must also include:<br><br>1. Description of proposed extent and depth of material extraction beneath seasonal high-water table.<br><br>2. Report meeting requirements of 21.29.057(A)(4), monitoring plan and spill prevention/control/ countermeasures plan.<br><br>**C.** Conditions<br><br>1. Implement monitoring plan.<br><br>2. Implement spill prevention/control/ countermeasures plan.<br><br>3. Monthly measurement (during active extraction) of groundwater flow direction, hydraulic gradient and groundwater table elevation<br><br>4. Retain water elevation monitoring data for two years after completion of reclamation activities<br><br>5. Annual report including water table elevation monitoring data from qualified professional | -Permits may contain additional conditions addressing surface water diversion. | high-water table, spill prevention/control/ countermeasures plan.<br><br>Conditions:<br>-Implementation of monitoring and spill prevention/control/ countermeasures plan;<br>-Monthly measurement of groundwater and retention of groundwater data for two years after completion of reclamation activities;<br>-Annual report from qualified professional;<br>-No breach or extraction from a confined aquifer or a confining layer beneath a perched aquifer; and<br>-Setbacks from existing drinking water sources. |

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| | 6. Operations must not breach or extract material from a confined aquifer or a confining layer beneath a perched aquifer. Subsection sets forth what must be done if there is a breach.<br><br>7. Setbacks:<br>-500' from nearest down-gradient drinking water source<br>-350' from nearest cross-gradient drinking water source<br>-200' from nearest up-gradient drinking water source<br>-Do not apply to drinking water sources constructed after permit issued | | |
| **KPB 21.29.060 -Reclamation plan** | **A.** Reclamation with site plan required. 5-year reclamation plan must be submitted with permit renewal request.<br><br>**B.** Applicant may re-vegetate with non-invasive species and must reclaim all disturbed land to stable condition with 2:1 slope within specified time period. $750 per acre bond required unless state bond, or Planning Director accepts qualified professional's estimate of bonding amount. Enforcement under KPB 21.50.<br><br>**C.** Six measures listed must be considered as part of every reclamation plan, including ponding and protection against public nuisance.<br><br>**D.** Plan must list total acreage to be reclaimed as well as identify any drainage features entering or exiting the property. | **A.** Reclamation Plan required.<br><br>**B.** Applicant shall vegetate and reclaim all disturbed land upon exhausting the material site or time determined by plan to leave land in a stable condition.<br>Reclamation must occur for area exceeding 5 acres prior to five-year renewal or as PC specifies.<br><br>**C.** Measures listed must be considered as part of every reclamation plan, 6 reclamation measures including ponding.<br><br>**D.** Plan must list total acreage to be reclaimed each year, a list of equipment and a time schedule for reclamation measures. | "May" rather than "shall" revegetate.<br><br>Bonding required.<br><br>Plan survives permit termination and must list total acreage to be reclaimed, as well as drainage features entering and exiting the property.<br><br>Protection against public nuisance/reclamation in manner that is not harmful to public health, safety, and general welfare.<br><br>Permit close-out requirements, including remedies if permit expires, is terminated or revoked prior to close-out. |

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| | **E.** Close-out – reclamation survives permit expiration, termination or revocation. Planning Director must be provided with adequate proof of reclamation in accord with reclamation plan prior in order to close-out of permit. Remedies under 21.50 apply if permit expires, is terminated or revoked prior to close-out/may hold in abeyance upon finding of active, ongoing reclamation. | | |
| **KPB 21.29.063. Decision.** | Clarifies basis for decisions; i.e., whether or not 21.20.040's standards have or have not been met through implementation of conditions in 21.29.050/055/057.<br><br>Requirement for written findings detailing how conditions meet or do not meet the standards and evidentiary support for those findings. | N/A | New code section.<br><br>Decisions must be based upon findings of whether or not the standards are met through the application of the conditions. Those findings must be supported by evidence and must be in writing. |
| **KPB 21.29.065 -Effect of permit denial** | **A.** Applicant denied counter permit cannot reapply within same calendar year w/out new evidence or circumstances.<br><br>**B.** Applicant denied CLUP permit cannot reapply within same calendar year w/out new evidence or circumstances.<br><br>**C.** Applicant bears burden of proof. | N/A | New code section.<br><br>An applicant cannot immediately reapply for a permit after denial (one year after counter permit denial; five years after CLUP denial). |
| **KPB 21.29.070 -Permit renewal, modification and revocation** | **A.** Renewal by application every 5 years, at least ninety days prior to expiration.<br><br>**B.** Administrative approval if compliance with all conditions, no modification and no violation in prior 2 years. | **A.** Must request permit extension every 5 years, 30 days prior to expiration.<br><br>**B.** If no modification to operations or conditions proposed, a permit extension certificate may be issued by planning director. | Renewal application, not request in writing.<br><br>Possibility for public hearing on renewal and additional discretional conditions on renewal.<br><br>Modifications processed per KPB 21.29.030-.050. |

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| | **C.** Public hearing on renewal required when there is a modification, permit violation, or as determined by planning director. Permit in compliance with no violations must be approved for renewal but the commission can add additional conditions where appropriate. Permittee has ninety days to correct violations<br><br>**D.** Modifications processed per KPB 21.29.030 -.050, including with notice under 21.25.060.<br><br>**E.** Renewal fee is same as original permit fee.<br><br>**F.** Failure to apply for renewal = permit expiration.<br><br>**G.** Permits revoked per KPB 21.50. | **C.** Extension may be denied if: (1) not in compliance with reclamation requirements; (2)non- compliance with permit conditions; (3) permit violation in last 2 years and still in non-compliance.<br><br>**D.** Modification processed per KPB 21.29.030-.050.<br><br>**E.** No fee for permit extensions approved by planning director. The fee for a permit modification processed under KPB 21.29.070(D) requires original permit fee.<br><br>**F.** Failure to apply for renewal = permit expiration.<br><br>**G.** Permits revoked per KPB 21.50. | |
| **KPB 21.29.080 -Permit Close-out** | Requires permittee to request close-out of permit and verification of reclamation compliance.<br><br>Bonding released at close-out. | Current code section is titled "Permit Termination" and provides for a termination document and verification of site reclamation. | Terminology change from permit "termination" to "close-out".<br>Explicit that reclamation requirement survives permit expiration or revocation and that bonds are released upon close-out. |
| **KPB 21.29.100 -Recordation** | Provides for recordation of permits, etc. issued under KPB 21.29.<br>Owner/operator responsible for cost. | Similar recordation requirement. | Owner/operator responsible for recording costs. |
| **KPB 21.29.110 -Violations** | Violations governed by KPB 21.50. | Same but also has subsection (B) which provides for bonding if owner/operator has 3 violations within a 3-year period. | Violations governed by KPB 21.50 remain unchanged.<br>No subsection B related to bonding requirement if there are 3 violations in 3 year period. |
| **KPB 21.29.115 -Permit transfers** | Planning director approves or disapproves permit transfers. | N/A | New section of code. |

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| | Provides process and conditions for conditional approval, time to correct violations, denial, and final approval. Denial letter may be appealed to PC, but transfer approvals not subject to administrative appeal. | | Permits do not run with the land. Governs process for permit transfers. |
| **KPB 21.29.120 -Prior-existing uses** | **A.** Determination – mirrors process under KPB 21.44 (LOZD) for nonconforming-use determination. Sanctions for failure to apply for PEU determination by January 1, 2025. Operator has one year from date of notice of Planning Director's review of operator's five-year renewal to comply, otherwise PEU permit will be terminated.<br><br>**B.** Director provides notice of application and issues decision. Decision can be appealed to the Planning Commission.<br><br>**C.** Establishes five-year period for discontinuance.<br><br>**D.** Prohibits increasing, intensifying, expanding or moving the use. If PEU has been exhausted, it cannot be used for processing without a Type II Endorsement.<br><br>**E.** Establishes standards to guide decision-making process.<br><br>**F.** Requires PEU compliance with KPB 21.29 reclamation plan and hours of operation by January 1, 2026.<br><br>**G.** Requires PEU compliance with code requirements for extraction within water table | **A.** Requires determination that use as a material site commenced or operated after May 21, 1986 and prior to May 21, 1996. Limited subdivision rights. PEU runs with land.<br><br>**B.** Must have applied to be registered as a PEU prior to January 1, 2001.<br><br>**C.** Abandonment if no operation as a material site between 5/21/1996 and 5/21/2011. Owner may protest finding of abandonment and may appeal decision to the Planning Commission. | PEUs allowed to continue if in effect after May 21, 1996, and on October 1, 2023. Burden of proof is on the applicant.<br><br>By 1/1/2025, PEUs required to come into apply for PEU determination.<br><br>Five years of nonuse/ no operations = discontinuance.<br><br>Defines "increased, intensified, or expanded". |

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| | under KPB 21.29.057, except the water source separation requirements do not apply.<br><br>**H.** Defines "increased, intensified, or expanded" for the purposes of this section. | | |
| **21.29.130. Definitions.** | Adds definitions for: "assisted-living home"; "camp" or "camping"; "campsite"; "earthen berm"; "inactive site walls"; "isolated pond"; "public campground"; "qualified professional"; "reclamation"; and "vicinity".<br><br>Adds to definition of "conditioning or processing material". | | Adds definitions for: "assisted-living home"; "camp" or "camping"; "campsite"; "earthen berm"; "inactive site walls"; "isolated pond"; "public campground"; "qualified professional"; "reclamation"; and "vicinity".<br><br>Adds to definition of "conditioning or processing material". |

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# Kenai Peninsula Borough
Assembly

## MEMORANDUM

**TO:** Members, Kenai Peninsula Borough Assembly

**FROM:** Brent Johnson, Assembly President BJ
Lane Chesley, Assembly Member LC

**DATE:** August 24, 2023

**RE:** **SUBSTITUTE** Ordinance 2022-36, Amending KPB Chapter 21.25 and KPB Chapter 21.29 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

In 2021, the Borough administration requested Assembly consideration and action to address the regulatory process related to conditional land use permits issued under KPB Chapter 21.29, Material sites.

After receiving public comment on Ordinance 2021-41, the Assembly ultimately tabled the ordinance and a related substitute ordinance. The Assembly formed a committee of the whole to review the permitting process with a fresh perspective.

This ordinance will repeal and re-enact KPB Chapter 21.29. This ordinance shifts the conditional land use permit (CLUP) process for earth materials extraction and processing away from a "one size fits all" approach and instead establishes a multi-permit structure wherein activities related to materials processing and extraction within the water table require heightened protections for the public good but activities of lesser impact to surrounding properties do not require the same level of protections. This ordinance maintains important mandatory conditions found in current code that are necessary to protect the public health, safety, and general welfare of Borough residents. This ordinance also presents a permitting system that will provide for more flexibility to meet the needs of the particular application through discretionary conditions that may only apply when appropriate under the circumstances.

The Assembly has been working through this process, listening to presentations and testimony, and deliberating amendments borough through the Committee of the Whole for over a year. The Assembly has grappled with the need to promote business uses and activities while also promoting harmony of uses and promoting the Borough's growing residential and recreational use properties. Developing communities need gravel. And gravel businesses need developing communities. As part of reconciling some conflicting uses, the Assembly was asked to sort out some of those issues that address the potential conflict in proximity of uses and attempt to harmonize such uses as far as that is possible under the Borough's limited zoning and mixed use structure. We believe the substitute ordinance strikes a fair balance between regulation to protect public health, safety, and general welfare, and the importance of responsible development of material site resources.

Your consideration is appreciated.