

# **C. CONSENT AGENDA**

- \*2. Planning Commission Resolutions**
  - a.* PC Resolution 2024-13**

**KENAI PENINSULA BOROUGH PLANNING COMMISSION**  
**Resolution 2024-13**  
**Seward Recording District**

**A resolution granting approval of a Conditional Land Use Permit to operate a sand, gravel, or material site for parcels described as RENFRO'S LAKESIDE RETREAT NO 6 LOT 2F EXC THAT PTN CONVEYED TO STATE OF AK DOT IN WD 2017-633, LAKEVIEW GROUP OF HOMESITES-USS 2534 LOT I (HS 88) and LOT J (HS 60), Seward Recording District, Third Judicial District, State of Alaska.**

**WHEREAS,** KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough; and

**WHEREAS,** KPB 21.29 provides that a Conditional Land Use Permit is required for material extraction which includes: Endorsement II - processing; and

**WHEREAS,** on Thursday, August 1, 2024 the applicant, COLASKA INC DBA QAP, submitted to the Planning Department a Conditional Land Use Permit application for a portion of KPB Parcels 12509028, 12509010, and 12509011, which are located within the rural district; and

**WHEREAS,** public notice of the application was mailed on or before 8/21/2024 to the 37 landowners or leaseholders within a half-mile of the subject parcel pursuant to KPB 21.25.060; and

**WHEREAS,** public notice was sent to the postmaster in the Moose Pass area requesting that it be posted at the local Post Office; and

**WHEREAS,** public notice of the project was posted as pursuant to KPB 1.08.180(B)(1)(3); and

**WHEREAS,** a public hearing was held at the September 5, 2024 meeting of the Moose Pass Advisory Planning Commission; and

**WHEREAS,** a public hearing was held at the Monday, September 9, 2024 meeting of the Kenai Peninsula Borough Planning Commission;

**NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH:**

**Section 1. That the land use and operations are described and shall be conducted on KPB Parcel Number(s) 12509028, 12509010, and 12509011, RENFRO'S LAKESIDE RETREAT NO 6 LOT 2F EXC THAT PTN CONVEYED TO STATE OF AK DOT IN WD 2017-633, LAKEVIEW GROUP OF HOMESITES-USS 2534 LOT I (HS 88) and LOT J (HS 60). The total area to be disturbed under this activity is approximately 21.1**

**acres. The applicant, COLASKA INC DBA QAP, proposes to add the following endorsement(s): Endorsement II - processing and will reclaim the site to a stable condition upon completion of the project.**

**Section 2. Findings of Fact pursuant to KPB 21.25 and 21.29:**

1. KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough.
2. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
3. KPB 21.29 provides that a Conditional Land Use Permit is required for material extraction that disturbs more than 2.5 cumulative acres or processes material.
4. A public hearing of the Planning Commission was held on Monday, September 9, 2024 and notice of the meeting was published, posted, and mailed in accordance with KPB 21.25.060 and KPB 21.11.
5. The proposed cumulative disturbed area within the parcel is approximately 21.1 acres.

**Parcel Boundaries**

6. All boundaries of the subject parcel 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. The site plan indicates the property boundary within 300 feet of the work area was staked in 2024.

**Buffer Zone**

7. A buffer zone shall be maintained around the excavation perimeter or parcel boundaries. The site plan and application propose the following buffers, which shall not overlap an easement:
  - a. North: 50 ft. of natural or improved vegetation
  - b. South: 50 ft. of natural or improved vegetation
  - c. East: 50 ft. of natural or improved vegetation
  - d. West: 50 ft. of natural or improved vegetation
8. 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.
9. Per KPB 21.19.050(A)(c), buffers provided using vegetation and/or a 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.
10. Buffers shall not cause surface water diversion which negatively impacts adjacent properties or waterbodies.
11. 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.

**Processing**

12. The applicant indicates that material processing will take place on the property. Any equipment used for conditioning or processing materials will be operated at least 300 feet from the North,

East and South parcel boundaries.

13. The applicant requests a waiver to process materials within 157 feet of the West property line.
14. Any equipment used for crushing rock or other materials will not be operated between 10:00 p.m. and 6:00 a.m., to minimize noise disturbance to other properties.

### **Water Source Separation**

15. Material extraction is prohibited within 100 horizontal feet of any water source existing prior to the original permit issuance.
16. The site plan indicates that there is 1 well located within 300 feet of the proposed laydown area.
17. The applicant is required to maintain a 2-foot vertical separation from the seasonal high-water table.
18. The application indicates that the seasonal high-water table is greater than 12 feet below grade and was determined by test holes excavated by applicant.
19. The applicant may not dewater by pumping, ditching or some other form of drainage unless an exemption is granted by the planning commission.

### **Excavation in the Water Table**

20. The application states that work is not anticipated to be completed in the water table.

### **Waterbodies**

21. The site plan states that there are no wetlands or surface waters within the proposed excavation area.
22. An undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains as defined in KPB 21.06. 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.

### **Fuel Storage**

23. The applicant is required to store fuel containers larger than 50 gallons in impermeable berms and basins capable of retaining 110 percent of storage capacity. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.

### **Haul Route**

24. The site plan indicates that the material haul route will be as follows: Haul route will access the site from three locations, corresponding to parcels 12509028, 12509010 and 12509011. Each access will lead directly to the Seward Highway. A fourth access will be constructed, on the West Side of parcel 12509028, that will allow train cars to be loaded with material.

### **Roads**

25. 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.

### **Dust Control**

26. Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.

### **Hours of Operation**

27. Rock crushing equipment may only be operated between 6:00 a.m. and 10:00 p.m.

### **Reclamation**

28. The applicant has submitted a reclamation plan consistent with KPB 21.29.050(12)(a).
29. No extraction of material is proposed.
30. Material sites that exceed 50,000 cubic yards per year must meet the bonding requirement of KPB 21.29.050(12)(b). The amount of bond will be according to AS 27.19.040 unless the State of Alaska waives these requirements. In the case of a waiver the Kenai Peninsula Borough (KPB) would require the applicant to post bond to cover the anticipated reclamations costs and will be in the amount to be determined by the planning director as stated in KPB 21.29.050.

### **Other Permits**

31. The 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 floodplain, 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 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.

### **Signage**

32. 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.

## **Section 3: Permit Conditions**

1. The boundaries of the subject parcel shall be staked at sequentially visible intervals where the parcel boundaries are within 300 feet of the excavation perimeter. Stakes must be in place and visible as long as the material site is permitted.

2. The permittee shall maintain the following buffers around the excavation perimeter or parcel boundaries. The site plan and application propose the following buffers, which shall not overlap an easement:
  - a. North: 50 ft. of natural or improved vegetation
  - b. South: 50 ft. of natural or improved vegetation
  - c. East: 50 ft. of natural or improved vegetation
  - d. West: 50 ft. of natural or improved vegetation
3. The permittee shall maintain a 2:1 slope between the buffer zone and pit 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.
4. The permittee shall not allow buffers to cause surface water diversion which negatively impacts adjacent properties or water bodies.
5. The permittee shall operate all equipment which conditions or process material at least 300 feet from the North, East and South parcel boundaries. The applicant requests a waiver from the 300-foot processing distance on the West side of the property.
6. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
7. The permittee shall maintain a 2-foot vertical separation from the seasonal high-water table.
8. The applicant may not dewater by pumping, ditching or some other form of drainage unless an exemption is granted by the planning commission.
9. The permittee shall maintain an undisturbed buffer and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and regulatory floodplains.
10. The permittee shall ensure that fuel storage 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.
11. The permittee shall notify the planning department of any further subdivision or return to acreage of this parcel. The planning director may issue a written exemption from the permit 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.
12. The permittee shall conduct operations 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.
13. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
14. The permittee shall not operate rock crushing equipment between the hours of 10:00 pm and 06:00 am.
15. The permittee shall reclaim the site as described in the reclamation plan for this parcel and approved by the planning commission.
16. The 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 floodplain, 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 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.

17. The permittee shall post notice of intent on parcel corners or access, whichever is more visible if the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit. 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.
18. The permittee shall operate in accordance with the application and site plan as approved by the planning commission. If the permittee revises or intends to revise operations so that they are no longer consistent with the original application, a permit modification is required in accordance with KPB 21.29.090.
19. This Conditional Land Use Permit is subject to annual review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.25.090, the planning commission may revoke a permit issued pursuant to this chapter if the permittee fails to comply with the provisions of this chapter or the conditions of the permit. The planning director shall provide at least 30 days written notice to the permittee of a revocation hearing before the planning commission.
20. Once effective, this Conditional Land Use Permit is valid for five years. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070. The request must be accompanied by the applicable permit renewal and recording fees.
21. All permits, permit extensions, modified permits, prior existing uses, and terminations shall be recorded.
22. The Planning Department is responsible for filing the Planning Commission resolution. The applicant will provide the recording fee for the resolution to the Planning Department.

#### **Voluntary Permit Conditions**

23. The Planning commission and the Permittee have agreed to the following voluntary condition to further support Standard 21.29.040(A)(4). The voluntary condition has been found to be in the best interest of the Borough and surrounding property owners. The permittee shall not operate rock crushing equipment between the hours of 8:00 pm and 08:00 am. (This voluntary condition was granted through Resolution 2022-21, on May 23, 2022.)
24. The Planning commission and the Permittee have agreed to the following voluntary condition to further support Standard 21.29.040(A)(4) and 21.29.040(A)(5). The voluntary condition has been found to be in the best interest of the Borough and surrounding property owners. The permittee shall restore a berm and buffer in this location to minimize visual and noise impacts to neighboring properties. A minimum 10-foot-high earthen berm with at least a 2:1 slope will be constructed on the inside vegetation line of the 50-foot vegetative buffer. All disturbed areas must be reclaimed to a condition that will allow for the reestablishment of vegetation. The Permittee may use this ingress/egress through December 15, 2024, at which point the buffer restoration and reclamation must be complete.

**SECTION 4. That based on the above findings, the Planning Commission concludes as a matter of law that the application has met all the requirements of KPB 21.25 and KPB 21.29, and through imposition of the conditions under KPB 21.29.050, the Planning Commission concludes as a matter of law that the application meets the six standards found in KPB 21.29.040:**

**CONCLUSIONS OF LAW**

1. The proposed activity must protect against lowering of water sources serving other properties. Findings 15-22 and Conditions 6-9 appear to meet this standard.
2. The proposed activity must protect against physical damage to adjacent properties. Findings 6-11 and Conditions 1-4, 10, 12 appear to meet this standard.
3. The proposed activity must minimize the off-site movement of dust. Findings 12, 26 and Condition 13 appear to meet this standard.
4. The proposed activity must minimize noise disturbance to other properties. Findings 7, 9, 12, 14, 27 and Conditions 2, 5, 14 appear to meet this standard.
5. The proposed activity must minimize visual impacts. Findings 7, 9 and Condition 2 appear to meet this standard.
6. The proposed activity must provide for alternate post-mining land uses. Findings 28-30 and Condition 15 appear to meet this standard.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON THIS 9<sup>TH</sup> DAY OF SEPTEMBER, 2024.

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Jeremy Brantley, Chairperson  
Planning Commission

ATTEST:

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Ann Shirnberg  
Administrative Assistant

PLEASE RETURN  
Kenai Peninsula Borough  
Planning Department  
144 North Binkley St.  
Soldotna, AK 99669