

**KENAI PENINSULA BOROUGH PLANNING COMMISSION
RESOLUTION 2025-01
KENAI RECORDING DISTRICT**

A RESOLUTION GRANTING APPROVAL OF A MODIFICATION TO A CONDITIONAL LAND USE PERMIT TO OPERATE A SAND, GRAVEL, OR MATERIAL SITE FOR A PARCEL DESCRIBED AS T 05N R 11W SEC 24 SW KN 2015012 DIAMOND WILLOW ESTATES SUB PART 13 TRACT 13, KENAI RECORDING DISTRICT, THIRD JUDICIAL DISTRICT, STATE OF ALASKA

WHEREAS, on February 13, 2015, the Kenai Peninsula Borough Board of Adjustment reversed the decision of the Kenai Peninsula Borough Planning Commission and granted approval of a conditional land use permit (permit) to operate a sand, gravel, or material site for a parcel described as T 05N R 11W Sec 24 SW KN 2015012 Diamond Willow Estates Sub Part 13 Tract 13, Kenai Recording District, Third Judicial District, State of Alaska (KPB PIN 05527001) (the CLUP) (Exhibit A), subject to the conditions and recommendations of Resolution 2014-20 (Exhibit B); and

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 permit is required for material extraction which disturbs more than 2.5 cumulative acres, enters the water table, or material processing; and

WHEREAS, KPB 21.29.070 allows operators to request modifications to their permit conditions based on changes in operations; and

WHEREAS, on July 31, 2024, the applicant, Sean Cude, submitted to the Borough Planning Department an application for a modification to the CLUP for a portion of KPB Parcel 05527001, which is located within the rural district; and

WHEREAS, public notice of the application was mailed on or before August 21, 2024, to the 324 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 Kalifornsky area requesting that it be posted at the local Post Office; and

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

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

WHEREAS, during the public hearing, planning staff requested a postponement, due to the fact that the applicant could not attend the meeting as scheduled; and

WHEREAS, during public testimony, the testifiers asked the Planning Commission to reschedule the hearing, giving property owners enough time to gather additional evidence; and

WHEREAS, public notice of the application was mailed on or before October 30, 2024, to the 324 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 Kalifornsky area requesting that it be posted

at the local Post Office; and

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

WHEREAS, a public hearing was held at the November 18, 2024 meeting of the Kenai Peninsula Borough Planning Commission; and

WHEREAS, prior to the date of applicant's request for modification to the existing permit on July 31, 2024, there were no water sources within 300 horizontal feet of the proposed material mining activity; and

WHEREAS, at the November 18, 2024, the applicant voluntarily agreed to not engage in dewatering and further agreed that operating hours for all purposes, including but not limited to rock crushing, would be from 7:00 a.m. to 7:00 p.m.;

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) 05527001, T 05N R 11W SEC 24 SW KN 2015012 DIAMOND WILLOW ESTATES SUB PART 13 TRACT 13. The total area to be disturbed under this activity is approximately 19.36 acres; of that, this modification will affect approximately 8.8 acres. The applicant, Sean Cude, is granted a permit to excavate approximately 18 feet below the seasonal high water-table elevation, consistent with the permit conditions contained within this Resolution, including the site plan, and reclamation plan.

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

1. Ordinance 2022-36 (Substitute), which amended KPB Chapter 21.25 and 21.29 took effect on October 1, 2024.
2. The application for a modification of the CLUP was submitted on July 31, 2024, prior to October 1, 2024, therefore the application must be analyzed under the KPB Code provisions as they existing prior to October 1, 2024.
3. 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.
4. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
5. KPB 21.29 provides that a conditional land use permit is required for material extraction that disturbs more than 2.5 cumulative acres or that processes material.
6. A public hearing of the Planning Commission was held on September 9, 2024, and notice of the meeting was published, posted, and mailed in accordance with KPB 21.25.060 and KPB 21.11.
7. Another public hearing of the Planning Commission was held on November 18, 2024, and notice of the meeting was published, posted, and mailed in accordance with KPB 21.25.060 and KPB 21.11.
8. The proposed cumulative disturbed area within the parcel is approximately 19.36 acres.

Parcel Boundaries

9. 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

10. 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: minimum 6 ft. earthen berm
 - b. South: minimum 6 ft. earthen berm, minimum 6 ft. fence
 - c. East: 50 ft. of natural or improved vegetation
 - d. West: minimum 6 ft. earthen berm
11. 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.
12. Per KPB 21.19.050(A)(2)(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.
13. Buffers shall not cause surface water diversion which negatively impacts adjacent properties or waterbodies.
14. 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

15. 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 East, South and West property lines. Operations, including but not limited to crushing rock or other materials, will only occur between 7:00 a.m. and 7:00 p.m., to minimize noise disturbance to other properties.
16. The 300-foot processing buffer to the Northern property line was waived to allow a 100-foot buffer through Resolution 2014-20.

Water Source Separation

17. Material extraction is prohibited within 100 horizontal feet of any water source existing prior to the original permit issuance.
18. The site plan indicates that there are 9 wells located within 300 feet of the property line.
19. The applicant is required to maintain a 2-foot vertical separation from the seasonal high-water table from any excavation areas not permitted by the planning commission under KPB 21.29.050(A)(5).
20. The application indicates that the seasonal high-water table is 27 feet below original grade which was determined by the placement of monitor wells.
21. The applicant may not dewater by pumping, ditching or some other form of drainage unless an exemption is granted by the planning commission.
22. The applicant has withdrawn a request for an exemption for dewatering within the permitted area.
23. Having withdrawn a request for an exemption to allow dewatering the applicant will not be required to post a bond for liability for potential accrued damages..

Excavation in the Water Table

24. The application states that work is anticipated to be completed in the water table.
25. The applicant's depth of excavation will be 45 feet deep, and go 18 feet into the water table.
26. The application included 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.
27. A minimum of three water monitoring tubes or well casings have been installed to determine flow direction, flow rate, and water elevation.

28. For at least four quarters prior to submitting the application, groundwater elevation, flow direction, and flow rate for the subject parcel, were measured in quarterly intervals by a duly licensed and qualified independent civil engineer or professional hydrogeologist.
29. Monitoring tubes or wells must be kept in place, and measurements taken, for the duration of any excavation in the water table.
30. Operations will not breach an aquifer-confining layer.

Waterbodies

31. The site plan states that there are no wetlands or surface waters within the proposed excavation area.

Fuel Storage

32. 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

33. The site plan indicates that the material haul route will be as follows: Haul route will access the site from two locations (Northeast corner of property at Virginia Drive and Southwest corner of property at Canvasback Ave).

Roads

34. 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

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

Hours of Operation

36. Per the Applicant's voluntary agreement, all operations, including but not limited to the operation of rock crushing equipment, may only occur between 7:00 a.m. and 7:00 p.m.

Reclamation

37. The applicant has submitted a reclamation plan consistent with KPB 21.29.050(12)(a) and 21.29.060.
38. The applicant has indicated that ponding will be used as a reclamation method, which may be used if approved by the planning commission.
39. Extraction at this material site is expected to be less than 50,000 cubic yards of material per year.

Other Permits

40. 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

41. 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. 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:

1. **The proposed activity must protect against lowering of water sources serving other properties.**
 - a. This Standard is met by imposition of Conditions 6-15.
 - b. Conditions 6-15 are supported by Findings 17-31.
2. **The proposed activity must protect against physical damage to adjacent properties.**
 - a. This Standard is met by imposition of Conditions 2-4, and 16.
 - b. Conditions 2-4; are supported by Findings 9-14, 32 and 34.
3. **The proposed activity must minimize the off-site movement of dust.**
 - a. This Standard is met by the conditions of the existing CLUP, and those conditions are not affected by this Modification.
 - b. This Standard is also met by imposition of Condition 19.
 - c. Condition 19 is supported by Findings 10, 15 and 35.
4. **The proposed activity must minimize noise disturbance to other properties.**
 - a. This Standard is met by the conditions of the existing CLUP, and those conditions are not affected by this Modification.
 - b. This Standard is also met by imposition of Conditions 3 and 5.
 - c. Conditions 3 and 5 are supported by Findings 10, 12, 15, and 36.
5. **The proposed activity must minimize visual impacts.**
 - a. This Standard was met by the conditions of the existing CLUP, and those conditions are not affected by this Modification.
 - b. This Standard is also met by imposition of Condition 3.
 - c. Condition 3 is supported by Findings 10 and 12.
6. **The proposed activity must provide for alternate post-mining land uses.**
 - a. This Standard is met by Condition 20.
 - b. Condition 20 is supported by Findings 37-38.

Section 4: Permit Conditions

1. ALL CONDITIONS OF THE EXISTING CLUP THAT ARE NOT EXPRESSLY MODIFIED AS PROVIDED BELOW REMAIN IN FULL EFFECT.
2. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
3. The permittee shall place and maintain a 6-foot berm along the north property line adjacent to Virginia Drive, the west property line along Ciechanski Road, and along a portion of the south property line along Canvasback Avenue; place and maintain a 6-foot fence along the remainder of the south property line adjacent to Ravenwood Subdivision; and maintain a minimum of 50 feet of undisturbed, natural vegetation between the excavation perimeter and the east property line until

excavation takes place in that area, the vegetative buffer shall then be replaced with a 6-foot fence that shall be maintained.

4. The permittee shall maintain at least a 2:1 slope between the inner buffer zones 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.
5. The permittee may not operate materials processing equipment within 300 feet of the west, south, or east parcel boundaries; or within 100 feet of the north boundary. Per applicant's voluntary agreement operations, including but not limited to, Rock crushing equipment, will be between 7:00 a.m. and 7:00 p.m.
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 WITHIN 300 HORIZONTAL FEET OF ANY WATER SOURCE EXISTING PRIOR TO THE APPLICATION FOR THIS PERMIT MODIFICATION.
8. THE APPLICANT VOLUNTARILY WITHDREW A REQUEST FOR A MODIFICATION TO ALLOW DEWATERING AND, ACCORDINGLY, THE PERMITTEE SHALL NOT DEWATER EITHER BY PUMPING, DITCHING, OR ANY OTHER FORM OF DRAINING UNLESS AN EXEMPTION IS GRANTED BY THE PLANNING COMMISSION.
9. HAVING WITHDRAWN THE REQUEST TO DEWATER, APPLICANT IS NOT REQUIRED TO POST A BOND FOR LIABILITY FOR POTENTIAL ACCRUED DAMAGES, IN THE AMOUNT OF \$90,000.
10. THE PERMITTEE MAY EXCAVATE IN THE WATER TABLE GREATER THAN 300 HORIZONTAL FEET FROM AN EXISTING WATER SOURCE THAT EXISTED AT THE TIME OF MODIFICATION APPLICATION PER KPB 21.29.050(A)(5) AND SUBJECT TO CONDITIONS 10-13.
11. THE PERMITTEE MUST PROVIDE 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.
12. THE PERMITTEE IS REQUIRED TO MAINTAIN A MINIMUM OF THREE WATER MONITORING TUBES OR WELL CASINGS AS DETERMINED BY A QUALIFIED INDEPENDENT CIVIL ENGINEER OR PROFESSIONAL HYDROGEOLOGIST ADEQUATE TO CHARACTERIZE FLOW DIRECTION, FLOW RATE, AND WATER ELEVATION.
13. THE PERMITTEE MUST KEEP THE MONITORING TUBES OR WELLS IN PLACE AND MUST TAKE MEASUREMENTS FOR THE DURATION OF ANY EXCAVATION IN THE WATER TABLE.
14. THE PERMITTEE'S OPERATIONS SHALL NOT BREACH AN AQUIFER-CONFINING LAYER.
15. 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 mapped floodplains.
16. 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.
17. 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.
18. 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.
19. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
20. The permittee shall reclaim the site as described in the reclamation plan for this parcel and approved by the planning commission.
21. The permittee is responsible for determining the need for any other municipal, state or federal

permits and acquiring the same. 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.

22. 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.
23. This conditional land use permit may be 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 KPB 21.29 or the conditions of the permit. The planning director will provide at least 30 days written notice to the permittee of a revocation hearing before the planning commission.
24. 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.
25. All permits, permit extensions, modified permits, prior existing uses, and terminations shall be recorded.
26. The Planning Department is responsible for filing the Planning Commission resolution. The permittee will provide the recording fee for the resolution to the Planning Department.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON THIS 16TH DAY OF DECEMBER, 2024.

Jeremy Brantley, Chairperson
Planning Commission

ATTEST:

Ann Shirnberg
Administrative Assistant

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