

# 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 <sup>RR</sup>  
 Sean Kelley, Borough Attorney <sup>SK</sup>  
 A. Walker Steinhage, Deputy Borough Attorney <sup>SK</sup>

**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
<b>KPB 21.25.050</b>	30-day staff review period of an application.  Copy of application must be forwarded to Kachemak Bay National Estuarine Research Reserve (“KBNERR”) for review and comment.  KBNERR has thirty days to return its review/comment.	21-day staff review period of an application.  No review and comment by KBNERR.	Increase from 21 to 30 days.  Provides for review and comment by KBNERR.
<b>KPB 21.25.060 - Notice</b>	<i>Repeals and replaces existing code section, KPB 21.25.060.</i>  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.  No longer requires newspaper publication but allows for publication on KPB website.

## Substitute Ordinance 02022-06 Sectional Analysis

August 24, 2023

Page -2-

<p><b>KPB 21.25.060</b> <b>- Notice</b></p> <p>...continued</p>	<p>to all owners/leaseholders within ½ mile radius of proposed site.</p> <p>Validity of a proceeding not affected, and no basis for appeal, if notice was timely and proper according to KPB records.</p>	<p>and/or leaseholders within one-half mile.</p>	<p>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.</p>
<p><i>The following repeals and replaces existing code chapter, KPB 21.29</i></p>			
<p><b>KPB 21.29.005</b> <b>- Intent and Purpose</b></p>	<p>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.</p>	<p>N/A</p>	<p>New code section.</p> <p>Focus on public health, safety and general welfare.</p> <p>Promotion of compatible, orderly development.</p>
<p><b>KPB 21.29.010</b> <b>- Applicability</b></p>	<p><b>A.</b> Applies to all private and public lands, except as preempted by other law;</p> <p><b>B.</b> Does not apply within the incorporated cities;</p> <p><b>C.</b> Prohibits extraction within 300 feet of riparian wetlands and naturally-occurring open water bodies;</p> <p><b>D.</b> Operations must be conducted in accordance with current Alaska DEC Manual for extraction projects.</p> <p><b>E.</b> 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.</p>	<p>N/A</p>	<p>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.</p> <p>Prohibits earth material extraction within 300 linear feet of wetlands/natural open water bodies.</p> <p>Addresses water usage from wells and open water on site.</p>
<p><b>KPB 21.29.015</b> <b>-Material extraction</b></p>	<p><b>A.</b> Exempts extraction disturbing less than one acre if:</p>	<p><i>Currently 21.29.010</i></p>	<p>New code section.</p>

Substitute Ordinance 02022-06 Sectional Analysis

August 24, 2023

Page -3-

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

Substitute Ordinance 02022-06 Sectional Analysis

August 24, 2023

Page -4-

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

Substitute Ordinance 02022-06 Sectional Analysis

August 24, 2023

Page -5-

<p><b>KPB 21.29.040- Standards for sand, gravel or material sites</b></p>	<p>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.</p> <p>Planning Director (counter permits) or Planning Commission (CLUPs) must find:</p> <ul style="list-style-type: none"> <li>-Use is not inconsistent with applicable comp plan</li> <li>-Use will not be harmful to public’s health, safety and general welfare, or health of anadromous waters</li> <li>-Provides sufficient setbacks, buffer zones, and other safeguards, including for groundwater flowpaths important for juvenile salmon</li> <li>-Reclamation plan</li> <li>-Preservation of value and character of surrounding area.</li> </ul>	<ul style="list-style-type: none"> <li>-Protects against lowering of water sources serving other properties and damage to other properties</li> <li>-Minimizes off-site dust movement, noise disturbance, visual impacts &amp; alternate post-mining land uses</li> </ul>	<p>All new standards – “may issue”</p> <p>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.</p>
<p><b>KPB 21.29.045</b></p>	<p>Applicants required to demonstrate compliance with state and federal law through written documentation from pertinent authorities:</p> <ul style="list-style-type: none"> <li>-ADNR temporary water use permit if water leaves the site</li> <li>-Mining permit if activities on state land (ADNR)</li> <li>-Permits and plans required by DEC</li> <li>-Permits from USACE, if applicable</li> <li>-Other applicable permits from other regulatory bodies authorized to regulate mining activities or earth materials extraction</li> </ul>	<p>N/A</p>	<p>New code section.</p> <p>Requires compliance with applicable state/federal agencies prior to approval of KPB permit.</p> <p>All activity must comply with state/federal regulations governing air/water quality and hazardous materials.</p> <p>Violations subject to enforcement under 21.50.</p>

Substitute Ordinance 02022-06 Sectional Analysis

August 24, 2023

Page -6-

	<p>Must comply with other regulations such as air and water quality, and hazardous materials</p> <p>Violations subject to enforcement under 21.50</p>		
<p><b>KPB 21.29.050</b></p>	<p align="center"><b>NINE MANDATORY CONDITIONS</b></p> <p><b>1. Buffers:</b>                  -30-foot buffer/must screen visual, dust and noise.                  -May include 6-foot fence or berm with a 2:1 slope, or alternative proposal. Berms may not alter natural drainage features                  -May waive if lot line adjoins another material site or industrial use.                  -Technology (LIDAR, GIS, etc.) may be used to determine sufficiency of buffer zone.                  -Planning Director or Commission, as applicable, may waive or reduce if screening unnecessary or not feasible.</p> <p><b>2. Water source separation:</b> -                  No extraction below or within 2’ of seasonal high-water table unless new section Type III Endorsement (21.29.057) conditions are met.                  -No off-site dewatering.                  -Onsite movement of water permitted with conditions.                  -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.</p> <p><b>3. Roads:</b> Operations impacting KPB roads must</p>	<p><b>Buffers:</b> 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</p> <p><b>Water source separation:</b>                  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.</p> <p><b>Roads:</b> Operations impacting KPB roads must comply with KPB 14.40.175 and subject to remedies in 14.40.</p> <p><b>Dust control:</b> Water or calcium chloride on haul roads within boundaries of material site</p>	<p>Allows flexibility to meet demands of a specific application vs. “one size fits all” of current code.</p> <p><b>Buffers:</b>                  -Visual, dust, and noise screening.                  -Decrease to 30’                  -Berms may not alter natural drainage features.                  -Decision-maker may waive if lot line is directly adjacent to another material site, or if otherwise unnecessary or not feasible.</p> <p><b>Water source separation:</b>                  -Operations within 2’ of water table governed by 21.29.057/Type III Endorsement.                  -No offsite dewatering.                  -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.                  -No extraction inside boundaries of mapped tsunami hazard zone within 500’ of any drinking water source, with one exception.</p>

Substitute Ordinance 02022-06 Sectional Analysis

August 24, 2023

Page -7-

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

Substitute Ordinance 02022-06 Sectional Analysis

August 24, 2023

Page -8-

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



Substitute Ordinance 02022-06 Sectional Analysis

August 24, 2023

Page -9-

	<p>visual/noise/dust impacts cannot be screened.</p> <p><b>8. Public campgrounds.</b> 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.</p>		
<p><b>KPB 21.29.055. Type II Endorsement – Earth materials processing.</b></p>	<p>In addition to mandatory conditions in 21.29.050(A), and any discretionary conditions PC deems appropriate.</p> <p><b>A.</b> 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.</p> <p><b>B.</b> Hours of operation for processing equipment between 8am and 7pm or as PC determines.</p> <p>PC may also grant exceptions (not to exceed 120 days) for: -Emergencies -Good cause finding that increase serves public purpose and is not harmful to public health, safety, and general welfare</p> <p>Applicant may request waiver (not to exceed six consecutive</p>	<p>300’ setback for conditioning or processing equipment.</p> <p>PC may waive or reduce in consideration of and in accordance with existing uses of adjacent property at the time.</p>	<p>New code section.</p> <p>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”.</p> <p>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.</p> <p>Allowance for settling pond if no natural water channeled or redirected and not within two feet of seasonal high-water table.</p>

Substitute Ordinance 02022-06 Sectional Analysis

August 24, 2023

Page -10-

	<p>months) for specific seasonal project. PC must also find waiver is not harmful to the public health, safety and general welfare.</p> <p>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.</p>		
<p><b>KPB 21.29.057. Type III Endorsement-Material extraction in water table.</b></p>	<p>In addition to mandatory conditions in 21.29.050(A), and any discretionary conditions PC deems appropriate.</p> <p>Dewatering prohibited (21.29.050(A)(2)(b)).</p> <p><b>A.</b> Applicant must meet the following requirements prior to applying:</p> <ol style="list-style-type: none"> <li>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.</li> <li>2. Under the supervision of a qualified professional, measurement of seasonal high-water table elevation, groundwater flow direction, hydraulic gradient and water table elevation.</li> <li>3. A qualified professional’s report determining the potential adverse effects to groundwater and surface water body elevation and quality, surrounding water users and</li> </ol>	<p>Excavation within 300’ horizontal feet of water source may be permitted based on:</p> <ul style="list-style-type: none"> <li>-No negative impact to quantity of an aquifer serving existing water sources;</li> <li>-Minimum of three water monitoring tubes or well casings to determine flow direction, flow rate, and water elevation; and</li> <li>-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.</li> <li>-Operations shall not breach aquifer-confining layer.</li> </ul> <p>No extraction activities within 100 linear feet from waterbodies.</p> <p>Additional setback from lakes, rivers, anadromous streams and riparian wetlands may be required.</p>	<p>New code section.</p> <p>In addition to 21.29.050 conditions, sets forth additional requirements and conditions primarily to protect water quantity.</p> <p>Qualified professional must be able to characterize entire property permitted for excavation through sufficient monitoring wells and test pits.</p> <p>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</p>

Substitute Ordinance 02022-06 Sectional Analysis

August 24, 2023

Page -11-

	<p>adjacent properties. Determination based upon available data, interpretations of data and knowledge of groundwater processes.</p> <p>4. Report must be submitted with CLUP application. Subsection lists what must be included in the report.</p> <p><b>B. Must also include:</b></p> <p>1. Description of proposed extent and depth of material extraction beneath seasonal high-water table.</p> <p>2. Report meeting requirements of 21.29.057(A)(4), monitoring plan and spill prevention/control/countermeasures plan.</p> <p><b>C. Conditions</b></p> <p>1. Implement monitoring plan.</p> <p>2. Implement spill prevention/control/countermeasures plan.</p> <p>3. Monthly measurement (during active extraction) of groundwater flow direction, hydraulic gradient and groundwater table elevation</p> <p>4. Retain water elevation monitoring data for two years after completion of reclamation activities</p> <p>5. Annual report including water table elevation monitoring data from qualified professional</p>	<p>-Permits may contain additional conditions addressing surface water diversion.</p>	<p>high-water table, spill prevention/control/countermeasures plan.</p> <p>Conditions:</p> <ul style="list-style-type: none"> <li>-Implementation of monitoring and spill prevention/control/countermeasures plan;</li> <li>-Monthly measurement of groundwater and retention of groundwater data for two years after completion of reclamation activities;</li> <li>-Annual report from qualified professional;</li> <li>-No breach or extraction from a confined aquifer or a confining layer beneath a perched aquifer; and</li> <li>-Setbacks from existing drinking water sources.</li> </ul>
--	---	---	--

Substitute Ordinance 02022-06 Sectional Analysis

August 24, 2023

Page -12-

	<p>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.</p> <p>7. Setbacks:                      -500’ from nearest down-gradient drinking water source                      -350’ from nearest cross-gradient drinking water source                      -200’ from nearest up-gradient drinking water source                      -Do not apply to drinking water sources constructed after permit issued</p>		
<p><b>KPB 21.29.060 -Reclamation plan</b></p>	<p><b>A.</b> Reclamation with site plan required. 5-year reclamation plan must be submitted with permit renewal request.</p> <p><b>B.</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.</p> <p><b>C.</b> Six measures listed must be considered as part of every reclamation plan, including ponding and protection against public nuisance.</p> <p><b>D.</b> Plan must list total acreage to be reclaimed as well as identify any drainage features entering or exiting the property.</p>	<p><b>A.</b> Reclamation Plan required.</p> <p><b>B.</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 five-year renewal or as PC specifies.</p> <p><b>C.</b> Measures listed must be considered as part of every reclamation plan, 6 reclamation measures including ponding.</p> <p><b>D.</b> Plan must list total acreage to be reclaimed each year, a list of equipment and a time schedule for reclamation measures.</p>	<p>“May” rather than “shall” revegetate.</p> <p>Bonding required.</p> <p>Plan survives permit termination and must list total acreage to be reclaimed, as well as drainage features entering and exiting the property.</p> <p>Protection against public nuisance/reclamation in manner that is not harmful to public health, safety, and general welfare.</p> <p>Permit close-out requirements, including remedies if permit expires, is terminated or revoked prior to close-out.</p>

## Substitute Ordinance 02022-06 Sectional Analysis

August 24, 2023

Page -13-

	<p><b>E.</b> 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.</p>		
<p><b>KPB 21.29.063. Decision.</b></p>	<p>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.</p> <p>Requirement for written findings detailing how conditions meet or do not meet the standards and evidentiary support for those findings.</p>	N/A	<p>New code section.</p> <p>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.</p>
<p><b>KPB 21.29.065 -Effect of permit denial</b></p>	<p><b>A.</b> Applicant denied counter permit cannot reapply within same calendar year w/out new evidence or circumstances.</p> <p><b>B.</b> Applicant denied CLUP permit cannot reapply within same calendar year w/out new evidence or circumstances.</p> <p><b>C.</b> Applicant bears burden of proof.</p>	N/A	<p>New code section.</p> <p>An applicant cannot immediately reapply for a permit after denial (one year after counter permit denial; five years after CLUP denial).</p>
<p><b>KPB 21.29.070 -Permit renewal, modification and revocation</b></p>	<p><b>A.</b> Renewal by application every 5 years, at least ninety days prior to expiration.</p> <p><b>B.</b> Administrative approval if compliance with all conditions, no modification and no violation in prior 2 years.</p>	<p><b>A.</b> Must request permit extension every 5 years, 30 days prior to expiration.</p> <p><b>B.</b> If no modification to operations or conditions proposed, a permit extension certificate may be issued by planning director.</p>	<p>Renewal application, not request in writing.</p> <p>Possibility for public hearing on renewal and additional discretionary conditions on renewal.</p> <p>Modifications processed per KPB 21.29.030-.050.</p>

## Substitute Ordinance 02022-06 Sectional Analysis

August 24, 2023

Page -14-

	<p><b>C.</b> 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</p> <p><b>D.</b> Modifications processed per KPB 21.29.030 -.050, including with notice under 21.25.060.</p> <p><b>E.</b> Renewal fee is same as original permit fee.</p> <p><b>F.</b> Failure to apply for renewal = permit expiration.</p> <p><b>G.</b> Permits revoked per KPB 21.50.</p>	<p><b>C.</b> 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.</p> <p><b>D.</b> Modification processed per KPB 21.29.030-.050.</p> <p><b>E.</b> 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.</p> <p><b>F.</b> Failure to apply for renewal = permit expiration.</p> <p><b>G.</b> Permits revoked per KPB 21.50.</p>	
<b>KPB 21.29.080 -Permit Close-out</b>	<p>Requires permittee to request close-out of permit and verification of reclamation compliance.</p> <p>Bonding released at close-out.</p>	<p>Current code section is titled "Permit Termination" and provides for a termination document and verification of site reclamation.</p>	<p>Terminology change from permit "termination" to "close-out".</p> <p>Explicit that reclamation requirement survives permit expiration or revocation and that bonds are released upon close-out.</p>
<b>KPB 21.29.100 -Recordation</b>	<p>Provides for recordation of permits, etc. issued under KPB 21.29.</p> <p>Owner/operator responsible for cost.</p>	<p>Similar recordation requirement.</p>	<p>Owner/operator responsible for recording costs.</p>
<b>KPB 21.29.110 -Violations</b>	<p>Violations governed by KPB 21.50.</p>	<p>Same but also has subsection (B) which provides for bonding if owner/operator has 3 violations within a 3-year period.</p>	<p>Violations governed by KPB 21.50 remain unchanged.</p> <p>No subsection B related to bonding requirement if there are 3 violations in 3 year period.</p>
<b>KPB 21.29.115 -Permit transfers</b>	<p>Planning director approves or disapproves permit transfers.</p>	<p>N/A</p>	<p>New section of code.</p>

Substitute Ordinance 02022-06 Sectional Analysis

August 24, 2023

Page -15-

	<p>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.</p>		<p>Permits do not run with the land. Governs process for permit transfers.</p>
<p><b>KPB 21.29.120 -Prior-existing uses</b></p>	<p><b>A.</b> 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.</p> <p><b>B.</b> Director provides notice of application and issues decision. Decision can be appealed to the Planning Commission.</p> <p><b>C.</b> Establishes five-year period for discontinuance.</p> <p><b>D.</b> Prohibits increasing, intensifying, expanding or moving the use. If PEU has been exhausted, it cannot be used for processing without a Type II Endorsement.</p> <p><b>E.</b> Establishes standards to guide decision-making process.</p> <p><b>F.</b> Requires PEU compliance with KPB 21.29 reclamation plan and hours of operation by January 1, 2026.</p> <p><b>G.</b> Requires PEU compliance with code requirements for extraction within water table</p>	<p><b>A.</b> 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.</p> <p><b>B.</b> Must have applied to be registered as a PEU prior to January 1, 2001.</p> <p><b>C.</b> 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.</p>	<p>PEUs allowed to continue if in effect after May 21, 1996, and on October 1, 2023. Burden of proof is on the applicant.</p> <p>By 1/1/2025, PEUs required to come into apply for PEU determination.</p> <p>Five years of nonuse/ no operations = discontinuance.</p> <p>Defines “increased, intensified, or expanded”.</p>

Substitute Ordinance 02022-06 Sectional Analysis

August 24, 2023

Page -16-

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