

Introduced by: Mayor, Johnson, Ribbens, Ecklund
Date: 05/21/24
Hearing: 06/18/24
Action: Enacted as Amended
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2024-11**

**AN ORDINANCE AMENDING KPB CHAPTER 21.29 RELATING TO
CONSOLIDATED MATERIAL EXTRACTION WITHIN MATERIAL SITE PERMITS**

WHEREAS, KPB Chapter 21.29 recently underwent a years-long rewrite with an effective date of October 1, 2024; and

WHEREAS, Assembly members and the Administration recognized that consolidated material extraction, commonly referred to as “quarries” were not specifically addressed in the rewrite; and

WHEREAS, within the Kenai Peninsula Borough there are several consolidated material sites that operate very differently than traditional unconsolidated material sites, commonly referred to as “sand and gravel pits”; and

WHEREAS, concerns from residents near consolidated material sites came to light very near the end of a long process to rewrite KPB Chapter 21.29 and commitments were made to address these concerns; and

WHEREAS, this ordinance addresses the commitment made by the administration and the assembly with amendments to KPB Chapter 21.29 with the same effective date for the changes as Ordinance 2022-36 (Johnson, Chesley) Substitute;

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

SECTION 1. That KPB Chapter 21.29. – Material Site Permits, is hereby amended to read as follows:

CHAPTER 21.29. - MATERIAL SITE PERMITS.

21.29.010. Applicability—Prohibitions.

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- C. Earth material 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. This prohibition likewise does not apply to tidewater material harvesting operations from saltwater sources conducted under a Type IV Endorsement;

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21.29.015. Material extraction exempt from obtaining a permit.

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- 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.
- E. All consolidated material extraction requires a conditional land use permit (KPB 21.29.020(B)).

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. Counter permits are not available for consolidated material extraction. 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 limited processing waiver for screening of materials only. This processing waiver may not exceed 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.

- 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 is required for consolidated material extraction. A CLUP applicant may request the following CLUP endorsements as part of a single application and fee:

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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. Processing does not include consolidated material initial fracturing. The conditions in KPB 21.29.050 and KPB 21.29.055 apply to a Type II Endorsement.

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4. Type IV Endorsement – Consolidated Material Extraction. A Type IV Endorsement is required for operations of any size that will require extraction of consolidated material. The requirements and conditions in KPB 21.29.050 and KPB 21.29.057 apply to a Type IV Endorsement.

An applicant may request a CLUP that includes one, two, three or all four [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.

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- 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.

- C. For Type IV Endorsements the CLUP application must include plans for material fracturing schedule, drilling schedule, affected person notifications, and blast overpressure mitigation plans.

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 sites through setbacks, buffer zones, street-level visual screening, and protection of 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:

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- 3. That sufficient setbacks, buffer zones, and other safeguards, including measures to mitigate blast overpressure impacts and impacts to groundwater flow paths, are being provided consistent with this chapter; and

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21.29.050. Permit conditions applicable to all permits.

- A. The planning commission may require additional conditions for Type IV Endorsement sites. 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 street-level, 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 sight-obscured fence; or an alternative buffer proposal that the planning commission or planning director, as applicable, deems appropriate. Site-specific slope requirements will be established for CLUPs with Type IV Endorsements. 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;

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2. *Water source separation.*

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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[;]. This subsection may not be construed to limit tidewater material harvesting operations from saltwater sources conducted under a Type IV Endorsement;

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e. Site-specific water source separation conditions will be established for CLUPS with Type IV endorsements[-], including for tidewater material harvesting operations from saltwater sources;

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5. Hours of operation. Material extraction activities, including equipment operation and consolidated material drilling or fracturing, 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 director, as applicable, to be appropriate based upon information presented.

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10. Fuel storage. Double-walled fuel storage tanks are allowed for secondary containment.

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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 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:

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- 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:

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- 7. The planning commission will establish site-specific conditions for material extraction in the water table for CLUPs with Type IV Endorsements as appropriate.

21.29.060. – Reclamation plan.

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- 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. Revegetation may not be required for sites with Type IV Endorsements only. 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:

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7. Mitigation provisions may be required for steep-slope Type IV Endorsement site reclamation plans.

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21.29.120. Prior-existing uses.

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E. PEU provisions are not applicable for Type IV Endorsement sites.

21.29.130. Definitions.

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

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10. Consolidated material means solid rock that must be fractured by blasting, hammering or other means for removal and handling.

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25. Unconsolidated material means sand, gravel, clay, silt, gravel, cobble and boulders that can be produced and used without fracturing for extraction or any blasting.

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SECTION 2. That this ordinance shall become effective on October 1, 2024.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 18TH DAY OF JUNE, 2024.

Brent Johnson

Brent Johnson, Assembly President

ATTEST:

Michele Turner

Michele Turner, CMC, Borough Clerk



Yes: Cooper, Cox, Ecklund, Elam, Hibbert, Ribbens, Tunseth, Tupper, Johnson

No: None

Absent: None