

**KENAI PENINSULA BOROUGH PLANNING COMMISSION
RESOLUTION 2022-07
HOMER RECORDING DISTRICT**

A resolution denying a conditional land use permit to operate a sand, gravel, or material site for a parcel described as Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District, State of Alaska.

(DECISION ON REMAND)

- 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 21.25.040 provides that a permit is required for a sand, gravel or material site; and
- WHEREAS,** KPB 21.29 provides that a conditional land use permit is required for material extraction which disturbs more than 2.5 cumulative acres; and
- WHEREAS,** on June 4, 2018, the applicant, Beachcomber LLC, submitted a conditional land use permit (CLUP) application to the Borough Planning Department for KPB Parcel 169-010-67, which is located within the rural district; and
- WHEREAS,** public notice of the application was mailed on June 22, 2018 to the 200 landowners or leaseholders of the parcels within one-half mile of the subject parcel pursuant to KPB 21.25.060; and
- WHEREAS,** public notice of the application was published in the July 5, 2018 & July 12, 2018 issues of the Homer News; and
- WHEREAS,** a public hearing of the Planning Commission was held on July 16, 2018 wherein the Planning Commission voted to deny the CLUP;
- WHEREAS,** following an administrative appeal to a hearing officer, the matter was remanded to the Planning Commission;
- WHEREAS,** on remand from the hearing officer, five additional public hearings were properly noticed and held on March 25, 2019, April 8, 2019, April 22, 2019, June 10, 2019, and July 24, 2019; and
- WHEREAS,** notice of the public hearings was mailed to 203 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Public notice was sent to the postmaster in Anchor Point requesting that it be posted at their location. Public notice was published in the Homer News all as described in Resolution 2018-23 that was eventually voted on at the Planning Commissions June 24, 2019 meeting; and
- WHEREAS,** public comment was taken at all the public hearings but for the June 24, 2019 meeting where only the applicant was provided a final rebuttal opportunity after additional written

were provided to the Planning Commission after close of the public hearing on June 10, 2019; and

WHEREAS, after the Planning Commission voted to approve the CLUP at its June 24, 2019 meeting the matter was appealed to a hearing officer and then to the Kenai Superior Court; and

WHEREAS, on September 2, 2021, Kenai Superior Court Judge Gist remanded the matter back to the Planning Commission; and

WHEREAS, the Kenai Superior Court's remand decision was subsequently appealed to the Superior Court which stayed any action before the Planning Commission on remand; and

WHEREAS, on December 29, 2021, the Alaska Supreme Court denied Beachcomber, LLC's Petition for Review; and

WHEREAS, the Planning Commission recognizes that compliance with the mandatory conditions in KPB 21.29.050, as detailed in the findings, does not necessarily mean that the application meets the standards contained in the KPB 21.29.040; and

WHEREAS, at its regularly scheduled meeting on January 10, 2022, the Planning Commission unanimously voted to deliberate this matter on remand during a special meeting scheduled for January 25, 2022 and, through staff, provided email notice to all parties to the appeal in this matter; and

WHEREAS, the Planning Commission reviewed the remand decision entered by Superior Court Judge Gist on appeal and understands that it has discretion to "approve, modify, or disapprove" a permit application pursuant to KPB 21.25.050 and pursuant to the standards specific to material sand, gravel or material sites under KPB 21.29.040; and

WHEREAS, on January 25, 2022, at its special meeting, the Planning Commission deliberated this matter on remand; and

WHEREAS, this decision on remand rescinds, revokes and replaces Planning Commission Resolution 2018-23;

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

SECTION 1. That PC Resolution 2018-23 is hereby revoked and replaced by this resolution.

SECTION 2. That the Planning Commission makes the following findings of fact pursuant to KPB 21.25 and 21.29:

Findings of Fact

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. On June 4, 2018 the applicant, Beachcomber LLC, submitted a conditional land use permit application to the Borough Planning Department for KPB Parcel 169-010-67, which is located within the rural district.
4. KPB 21.29 provides that a conditional land use permit is required for material extraction that disturbs more than 2.5 cumulative acres.
5. The proposed disturbed area is approximately 27.7 acres.

6. The submitted application with its associated documents was reviewed by staff for compliance with the application requirements of KPB 21.29.030. Staff determined that the application was complete and scheduled the application for a public hearing.
7. A public hearing of the Planning Commission was first held on July 16, 2018 and notice of the meeting was published, posted, and mailed in accordance with KPB 21.25.060 and KPB 21.11.
8. Five additional public hearings were held on March 25, 2019, April 8, 2019, April 22, 2019, June 10, 2019, and June 24, 2019. Notice of the meetings was published, posted, and mailed in accordance with KPB 21.25.060 and KPB 21.11.
9. This application has been heard twice on remand, once after a hearing officer remand and then again after a superior court remand.
10. The site plan indicates that the processing area is 300 feet from the south and east property lines and is greater than 300 feet from the west property line. A waiver was requested from the north property line.
11. The site plan shows the proposed processing area being 200 feet south of Parcel 169-022-08, which is undeveloped. Parcel 169-022-04 is developed and located within 300 feet of the proposed processing area; this parcel is owned by the applicant's daughter.
12. At the June 10, 2019 hearing, the applicant volunteered to utilize a moving, or rolling, berm rather than a stationary berm. The berms will be placed near the active excavation area to be moved as the extraction area and reclaimed areas expand.
13. At the June 10, 2019 hearing, the applicant volunteered to operate his equipment onsite with multi-frequency (white noise) back-up alarms rather than traditional (beep beep) back-up alarms.
14. If granted, the Planning Commission would have imposed every mandatory condition under code and pursuant to KPB 21.29.050. The Applicant also offered two voluntary conditions related to rolling berms and white noise back-up alarms. Nonetheless, as outlined below the Planning Commission finds that even when all the conditions are imposed under KPB 21.29.050, the modification application does not meet the applicable standards under KPB 21.29.040.
15. In a letter dated March 21, 2019, the Alaska DOT&PF expressed concerns on the suitability of the landing and staging at the intersection of Danver Street and the impacts to state owned Anchor River Road, and Alaska DOT&PF objects to the application for permit if the KPB does not commit to pavement repair in Anchor River Road in the event of damage.
16. In a letter dated May 1, 2019, the Alaska DPOR suggested the Planning Commission consider impacts from noise, dust and safety to the nearby Anchor River State Recreational Area.
17. This modification does not meet material site standard 21.29.040(A4); "Minimizes noise disturbance to other properties" as evidenced by:
 - a. Topography of the site, as a natural amphitheater with surrounding bluffs, makes noise minimization and disturbance to upslope neighboring properties unfeasible with proposed existing natural buffers and proposed placement of barriers.
 - b. For the remaining southern and eastern property boundaries, where the vegetation was previously removed, a 50-foot buffer will not reduce the sound level for the adjacent properties.
18. This modification does not meet material site standard 21.29.040(A5); "Minimizes visual impacts" as evidenced by:
 - a. Topography of the site, existing natural vegetation and surrounding land uses, prevents screening or minimization of visual impacts to upslope neighboring properties.
 - b. Elevation data from LiDAR of east boundary demonstrates no feasible visual screening methods for multiple property owners.

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; notwithstanding, even after imposition of the conditions under KPB 21.29.050, and in accordance with the above findings of fact, the Planning Commission concludes as a matter of law that the application does not meets [two] of the standards found in KPB 21.29.040:

SECTION 4. That the material site conditional land use application filed by Beachcomber, LLC is denied.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON
THIS _____ DAY OF _____, 2022.

Robert Ruffner, Vice Chairperson
Planning Commission

ATTEST:

Ann Shirnberg
Administrative Assistant

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