

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

A resolution granting 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;

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

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. *Parcel boundaries.* All boundaries of the subject parcel shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
 - a. The submitted site plan indicates the location of each of the parcel boundary stakes.
 - b. Planning staff has visited the site several times and has observed that the boundary stakes are in place.
15. *Buffer zone.* A buffer zone shall be maintained around the excavation perimeter or parcel boundaries.
 - a. The applicant has proposed to maintain a six-foot high berm along all excavation boundaries except the western most boundary and along the east 400 feet of the northern boundary, where a 50-foot vegetated buffer is proposed.
 - b. There are 16 parcels adjacent to the proposed material site (adjoining or separated only by a roadway).
 - c. Eight of the adjacent parcels are vacant; one of the vacant parcels is a Prior Existing Use material site. Six of the adjacent properties have a dwelling. One of the adjacent properties has a recreational vehicle that is used as a seasonal dwelling. One of the adjacent properties contains commercial recreational cabins.
 - d. The elevation of the commercial recreational cabins is at a lower elevation than the proposed excavation area. Three of the adjacent residences are at about the same elevation as the proposed excavation area. Four of the adjacent residences are at a higher elevation than the material site parcel.
 - e. Farther away, there are additional residences in the vicinity that are at higher elevations than the adjacent properties. These parcels are less impacted by the material site than the parcels adjacent to the material site as sound dissipates over distance.
 - f. Per the site plan there is a greater than 50-foot native vegetated buffer along the western most boundary of the material site.
 - g. Along the southern and eastern property boundaries, where the applicant has proposed a six-foot high berm, staff recommends a 50-foot vegetated buffer along the property boundary with a 12-foot high berm between the extraction area and the vegetated buffer.
 - h. Over 40 percent of the southern and eastern property boundaries, where the applicant has proposed a six-foot high berm as the buffer, contains vegetation that

can provide visual and noise screening of the material site for some of the adjacent uses.

- i. For the remaining southern and eastern property boundaries, where the vegetation was previously removed, a 50-foot buffer will reduce the sound level for the adjacent properties.
- j. 12-foot high berm between the excavation perimeter and the vegetated buffer along the southern and eastern property boundaries will increase visual and noise screening of the proposed use beyond that of a six-foot berm along those boundaries.
- k. The total buffer width, as recommended by staff, along the southern and eastern property boundaries is 98-feet.
- l. As the excavation extends deeper, the visual and noise impacts will decrease because the height of the berm relative to the excavation will increase.
- m. A six-foot high berm between the extraction area and the 100-foot setback from the riparian wetland and floodplain will provide additional visual and noise screening of the material site. The berm will also provide additional surface water protection.
- n. A 12-foot high berm along the remaining northern property boundaries will increase visual and noise screening of the proposed use beyond that of a six-foot berm along those boundaries.
- o. Borough staff will regularly monitor the material site to ensure that the required buffer will not cause surface water diversion that negatively affects adjacent properties or water bodies.
- p. There has been testimony that the material site will mar the view of Mount Iliamna and Mount Redoubt. Condition 21.29.050(A)(2) is written to provide screening from the material site, not protect view sheds beyond the material site.
- q. Each piece of real estate is uniquely situated and a material site cannot be conditioned so that all adjacent parcels are equally screened by the buffers. The different elevations of the parcels, varying vegetation on the surrounding parcels and the proposed material site, and distance of the material site from the various surrounding parcels necessarily means the surrounding parcels will not be equally impacted nor can they be equally screened from the material site.
- r. The applicant has volunteered a condition requiring the berm be placed near the active excavation area, dampening the noise and reducing the visual impacts at the source. The berm will be moved as excavation progresses.

16. *Processing.* Any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries.

- a. The site plan indicates that the proposed processing area is 300 feet from the south and east property lines, and greater than 300 feet from the west property line. A processing distance waiver is being requested from the north property line.
- b. The applicant proposed the following justifications for waiving the processing setback: "Although it is a large parcel, the configuration has limited potential process area. The waiver is requested to the north as 169-022-04 is owned by the applicant's daughter & 169-022-08 is not developed."
- c. The 300-foot processing distance from the property lines is a mandatory condition imposed to decrease the visual and noise impact to adjacent properties.
- d. The portion of the proposed processing area greater than 300 feet from the property line is very small, ranging from just a few feet wide to about 30 feet wide at the eastern edge of the proposed location.
- e. There is a larger area in proposed phase III of the project that meets the requirement for a 300-foot processing distance setback, as such, there is adequate room to accommodate processing on the parcel while complying with 300-foot processing setback.

17. *Water source separation.* All permits shall be issued with a condition that prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance. All CLUPs shall be issued with a condition that requires that a two-foot vertical separation from

the seasonal high water table be maintained. There shall be no dewatering by either pumping, ditching or some other form of draining.

- a. The submitted site plan and application indicates that there are not any wells within 100 feet of the proposed excavation. The 100-foot radius line on the site plan for the nearest well indicates that the proposed extraction is greater than 100 feet from this well.
 - b. Borough staff will regularly monitor the material site to ensure compliance with the two-foot vertical separation requirement.
 - c. Borough staff will regularly monitor the material site to ensure that dewatering does not take place in the material site.
18. *Excavation in the water table.* Excavation in the water table greater than 300 horizontal feet of a water source may be permitted with the approval of the planning commission.
 - a. This permit approval does not allow excavation in the water table.
19. *Waterbodies.* 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 waterbody, including riparian wetlands and mapped floodplains. 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.
 - a. The Cook Inlet lies about 600 feet west of the proposed material extraction.
 - b. The Anchor River, which is an anadromous stream, is located about 1,000 feet north of the proposed material extraction.
 - c. The "Wetland Mapping and Classification of the Kenai Lowland, Alaska" maps, created by the Kenai Watershed Forum, show a riparian wetland in the northeast corner of the property.
 - d. The FEMA maps adopted by KPB 21.06 indicates a mapped floodplain in the northeast corner of the property. This mapped floodplain approximately matches the mapped riparian wetland.
 - e. The site plan indicates that the proposed extraction is 104 feet from the mapped riparian wetland. There is approximately two feet difference between the mapped riparian wetland and the floodplain boundary. This places the proposed excavation at about 102 feet from the floodplain.
 - f. A portion of the required 100-foot buffer adjacent to the riparian wetlands and the floodplain is an existing stripped area.
 - g. Prior to permit issuance the applicant is required to restore the 100-foot buffer adjacent to the riparian wetlands and the floodplain to an undisturbed state.
 - h. As stated on the site plan the buffer will provide protection via phytoremediation of any site run-off prior to entering the surface water. The site plan also indicates that the Alaska DEC user's manual, "Best Management practices for Gravel/Rock Aggregate Extraction Projects, Protecting Surface Water and Groundwater Quality in Alaska" will be utilized as a guideline to reduce potential impacts to water quality.
 - i. Borough staff will work with the applicant and regularly monitor the material site to ensure that excavation does not take place within 100 feet of the mapped floodplain, riparian wetland, or other water body and that the restored buffer remains undisturbed.
20. *Fuel storage.* Fuel storage for 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.
 - a. Borough staff will regularly monitor the material site to ensure compliance with mandatory condition KPB 21.20.050(A)(7).
21. *Roads.* Operations shall be conducted in a manner so as not to damage borough roads.
 - a. The submitted site plan indicates that the material site haul route will be Danver Road, which is maintained by the Borough, and then to Anchor River Road, which is maintained by the state.
 - b. There was a significant number of public comments concerning the condition of Anchor

- Point Road. Anchor Point Road is a paved State of Alaska maintained road for which this condition is not applicable.
- c. If operations associated with the proposed material site damages borough roads, the remedies set forth in KPB 14.40 will be used to ensure compliance with this requirement imposing the condition that operations not damage borough roads.
22. *Subdivision.* Any further subdivision or return to acreage of a parcel subject to a conditional land use or counter permit requires the permittee to amend their permit.
- a. Borough planning staff reviews all subdivision plats submitted to the Borough to ensure compliance with this requirement.
23. *Dust control.* Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
- a. If Borough staff becomes aware of a violation of this requirement action will be taken to ensure compliance.
24. *Hours of operation.* Rock crushing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
- a. If Borough staff becomes aware of a violation of this requirement action will be taken to ensure compliance.
 - b. This condition further reduces off-site noise impacts of the material site.
25. *Reclamation.* Reclamation shall be consistent with the reclamation plan approved by the planning commission. The applicant shall post a bond to cover the anticipated reclamation costs in an amount to be determined by the planning director. This bonding requirement shall not apply to sand, gravel or material sites for which an exemption from state bond requirements for small operations is applicable pursuant to AS 27.19.050.
- a. The submitted application contains a reclamation plan as required by KPB 21.29.060.
 - b. The applicant has submitted a reclamation plan that omits KPB 21.29.060(C)(3), which requires the placement of a minimum of four inches of topsoil with a minimum organic content of 5% and precludes the use of sticks and branches over 3 inches in diameter from being used in the reclamation topsoil. These measures are generally applicable to this type of excavation project. The inclusion of the requirements contained in KPB 21.29.060(C)(3) is necessary to meet this material site condition.
 - c. Permit condition number 15 requires that the permittee reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C)(3) and as approved by the planning commission
 - d. The application states that less than 50,000 cubic yards will be mined annually therefore the material site qualifies for a small quantity exception from bonding.
26. *Other permits.* Permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits.
- a. Any violation federal, state or local laws, applicable to the material site operation, reported to or observed by Borough staff will be forwarded to the appropriate agency for enforcement.
27. *Voluntary permit conditions.* Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission.
- a. The applicant has volunteered to operate his equipment onsite with multi-frequency (white noise) back-up alarms rather than traditional (beep beep) back-up alarms.
 - b. The volunteered condition concerning back-up alarms is in the best interest of the Borough and the surrounding property owners because the multi-frequency alarms better minimizes the noise impacts of the material site.
 - c. The applicant has volunteered a condition requiring the berm be placed near the active excavation area, dampening the noise and reducing the visual impacts at the source. The berm will be moved as excavation progresses
 - d. The volunteered condition to place the berm near the active excavation area is in the best interest of the Borough and the surrounding property owners because this placement of the berm will better minimize the visual impacts of the material site.
 - e. The applicant has volunteered a condition a condition that prohibits material site operations on holiday weekends during the summer months.

- f. The volunteered condition, to not operate on holidays, is consistent with the standard to reduce noise disturbance to adjacent properties.
 - g. The volunteered condition, to not operate on holidays, is in the best interest of the Borough and the surrounding property owners because the Anchor River State Recreational Area has a significantly greater number of visitors on holidays and several of the neighbors and Alaska State Parks has expressed concern about the noise impacts to the recreational area.
28. *Signage.* 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.
 - a. If Borough staff determines that operations have not commenced after one year, action will be taken to ensure compliance
29. The proposed extraction **meets** material site standard 21.29.040(A1), "Protects against the lowering of water sources serving other properties", as evidenced by:
 - a. Permit condition number 6 requires that the permittee not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
 - b. The submitted site plan shows several wells located within 300 feet of the parcel boundaries but none within 100 feet of the proposed excavation area.
 - c. Permit condition number 7 requires that the permittee maintain a 2-foot vertical separation from the seasonal high-water table.
 - d. The application indicates that the depth to groundwater is greater than 20 feet and that the depth of the proposed excavation is 18 feet.
 - e. Permit condition number 8 requires that the permittee not dewater either by pumping, ditching or any other form of draining.
 - f. [Reserved for additional findings of fact, if needed.]
 - g. [Reserved for additional findings of fact, if needed.]
30. The proposed extraction **meets** material site standard 21.29.040(A2); "Protects against physical damage to other properties".
 - a. There is no evidence in the record to indicate that physical damage will occur to any other properties as a result of the operations of a material site at this location.
 - b. [Reserved for additional findings of fact, if needed.]
 - c. [Reserved for additional findings of fact, if needed.]
31. The proposed extraction **meets** material site standard 21.29.040(A3); "Minimizes off-site movement of dust", as evidenced by:
 - a. Permit condition number 13 requires that the permittee provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
 - b. [Reserved for additional findings of fact, if needed.]
 - c. [Reserved for additional findings of fact, if needed.]
32. The proposed extraction **meets** material site standard 21.29.040(A4); "Minimizes noise disturbance to other properties" as evidenced by:
 - a. Permit condition number 2 requires that the permittee maintain the following buffers that will minimize, or reduce, the noise disturbance to other properties:
 - 50-foot vegetated buffer adjacent to the section line easement on the east property line with a 6-foot high berm inside the vegetated buffer.
 - 50-foot vegetated buffer adjacent to the Echo Drive right-of-way and the north and west property line of the adjacent Lot 1, Block 1, Silver King Estates with a 6-foot high berm inside the vegetated buffer.
 - 12-foot high berm along the south property line where a 6-foot high berm is shown on the site plan adjacent to Lots 2 - 6, Block 1, Silver King Estates. The placement of the berm shall take place prior to removing the existing vegetation in the western portion of the material site.
 - Greater than 50-foot vegetated buffer west of the material site as shown on the site plan.
 - 50-foot vegetated buffer in the east 400 feet adjacent to the northern boundary of the material site as shown on the site plan.
 - 6-foot high berm along the northern property as shown on the site plan.

- c. Permit condition number 5 requires that the processing area be located greater than 300 feet from the property boundaries.
 - d. Permit condition number 14 requires that the permittee shall not operate rock crushing equipment between the hours of 10:00 p.m. and 6:00 a.m.
 - e. [Reserved for additional findings of fact, if needed.]
 - f. [Reserved for additional findings of fact, if needed.]
33. The proposed extraction **meets** material site standard 21.29.040(A5); "Minimizes visual impacts" as evidenced by permit condition number 2 that requires that the permittee maintain the following buffers that will minimize, or reduce, the visual impacts to other properties:
- a. Permit condition number 2 requires that the permittee maintain the following buffers that will minimize the visual impact to other properties:
 - 50-foot vegetated buffer adjacent to the section line easement on the east property line with a 6-foot high berm inside the vegetated buffer.
 - 50-foot vegetated buffer adjacent to the Echo Drive right-of-way and the north and west property line of the adjacent Lot 1, Block 1, Silver King Estates with a 6-foot high berm inside the vegetated buffer.
 - 12-foot high berm along the south property line where a 6-foot high berm is shown on the site plan adjacent to Lots 2 - 6, Block 1, Silver King Estates. The placement of the berm shall take place prior to removing the existing vegetation in the western portion of the material site.
 - Greater than 50-foot vegetated buffer west of the material site as shown on the site plan.
 - 50-foot vegetated buffer in the east 400 feet adjacent to the northern boundary of the material site as shown on the site plan.
 - 6-foot high berm along the northern property as shown on the site plan.
34. [Reserved for additional findings of fact, if needed.]
35. [Reserved for additional findings of fact, if needed.]
36. The proposed extraction **meets** material site standard 21.29.040(A6); "Provides for alternate post-mining land uses" as evidenced by:
- a. The submitted application contains a reclamation plan as required by KPB 21.29.060.
 - b. The applicant has submitted a reclamation plan that omits KPB 21.29.060(C3), which requires the placement of a minimum of four inches of topsoil with a minimum organic content of 5% and precludes the use of sticks and branches over 3 inches in diameter from being used in the reclamation topsoil. These measures are generally applicable to this type of excavation project. The inclusion of the requirements contained in KPB 21.29.060(C3) is necessary to meet this material site standard.
 - c. Permit condition number 15 requires that the permittee reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C3) and as approved by the planning commission.
 - d. The bonding requirement of KPB 21.29.050(12)(b) will not apply to this material site if extraction in any one year does not exceed 50,000 cubic yards of material as stated in the application.
 - e. [Reserved for additional findings of fact, if needed.]
 - f. [Reserved for additional findings of fact, if needed.]

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 and imposed on the permit by Section 4 below, 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. Material site standard 21.29.040(A1) is met because:

[The Planning Commission deems the conditions set forth below, and pursuant to the above findings for fact, to be sufficient to protect against the lowering of water sources serving other properties.]

2. Material site standard 21.29.040(A)(2) is met because:

[The Planning Commission deems the conditions set forth below, and pursuant to the above findings of facts, to be sufficient to protect against physical damage to other properties.]

3. Material site standard 21.29.040(A)(3) is met because:

[The Planning Commission deems the conditions set forth below, and pursuant to the above findings of fact, to be sufficient to minimize off-site movement of dust.]

4. Material site standard 21.29.040(A)(4) is met because:

[The Planning Commission deems the conditions set forth below, and pursuant to the above findings of fact, to be sufficient to minimize noise disturbance; primarily through the buffer zone/noise screening and processing conditions as well as the condition that any rock crushing equipment will not be operated between 10:00 p.m. and 6:00 a.m.]

5. Material site standard 21.29.040(A)(5) is met because:

[The Planning Commission deems the conditions set forth below, and pursuant to the above findings of fact, to be sufficient to minimize or reduce visual impacts, through the buffer zone/visual screening and processing conditions.]

6. Material site standard 21.29.040(A)(6) is met because:

[The Planning Commission deems the conditions set forth below, and pursuant to the above findings of fact, to be sufficient to provide for alternate post-mining land uses and as provided in the reclamation plan.]

SECTION 4. That the land use and operations are described and shall be conducted as follows:

1. A portion KPB Tax Parcel 169-010-67. The proposed disturbed area within the parcel is approximately 27.7 acres.
2. Legal Description: **Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116**, Homer Recording District, Third Judicial District, State of Alaska.
3. The applicant, Beachcomber LLC, proposes to:
 - A. Extract gravel and sand from the subject parcel;
 - B. Reclaim the site to a stable condition upon depletion of material.

PERMIT CONDITIONS

1. 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.
2. The permittee shall maintain the following buffers around the excavation perimeter or parcel boundaries:
 - A 50-foot vegetated buffer adjacent to the south boundary of Parcel 169-022-03 (Brantley) with a six-foot high berm placed near the active extraction area.
 - A six-foot high berm between the extraction area and the 100-foot setback from the riparian wetland and floodplain
 - A 12-foot high berm along the rest of the northern boundary.

- A 50-foot vegetated buffer adjacent to the southern parcel boundaries with a 12-foot high berm placed near the active extraction area.
- A 50-foot vegetated buffer adjacent to the eastern most parcel boundary; and a 12-foot high berm placed near the active extraction area except along the northern 200 feet of the proposed excavation.
- A greater than 50-foot vegetated buffer along the western most parcel boundary.

These buffers shall not overlap an easement.

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 processes material at least 300 feet from the parcel boundaries.
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 permittee shall not dewater either by pumping, ditching or any other form of draining.
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 mapped 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 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.
12. The permittee shall notify the planning department of any further subdivision or return to acreage of this property. Any further subdivision or return to acreage may require the permittee to amend this permit.
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 p.m. and 6:00 a.m.
15. The permittee shall reclaim the site as described in the reclamation plan for this parcel, and the requirements contained in KPB 21.29.060(C)(3) as 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 flood plain, 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, & Explosives 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 review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.50, a permit may be revoked for failure to comply with the terms of the permit or the applicable provisions of KPB Title 21. The borough clerk shall issue notice to the permittee of the revocation hearing at least 20 days but not more than 30 days prior to the hearing.
 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.
 21. The permittee shall operate his equipment onsite with multi-frequency (white noise) back-up alarms rather than traditional (beep beep) back-up alarms.
 22. The permittee shall not operate the material site or haul material from the site on Memorial Day weekend (Saturday through Monday), Labor Day weekend (Saturday through Monday), and the 4th of July holiday to also include:
 - Saturday and Sunday if July 4th is on a Saturday, Sunday, Monday, or Friday
 - Saturday, Sunday, and Monday if July 4th is on a Tuesday
 - Saturday, Sunday, and Friday if July 4th is on a Thursday

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

Blair J. Martin, Chairperson
Planning Commission

ATTEST:

Ann Shirnberg
Administrative Assistant

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