

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Members, Material Site Subcommittee,
Assembly Committee of the Whole

FROM: Lane Chesley, Material Site Subcommittee Chair *U*

DATE: April 19, 2022

SUBJECT: **LAYDOWN** Repealing KPB 21.29.010 and Reenact as KPB 21.29.015,
Enacting New KPB 21.29.015, and Amending KPB 21.29.020 relating to
Applicability, Exemptions, and Permit Types for Earth Material
Extraction

Chesley Amendment #2

[Please note the bold underlined language is new and the strikeout bold language in brackets is to be deleted.]

- Repeal current KPB 21.29.010 and enact that section as a new section KPB 21.29.015 as follows:
 - 21.29.015[0]. – Material extraction exempt from obtaining a permit.
 - A. Material extraction which disturbs an area of less than one acre that is not in a mapped flood plain or subject to 21.29.010(B), does not enter the water table, and does not cross property boundaries, does not require a permit. There will be no excavation within 20 feet of a right-of-way or within ten feet of a lot line.
 - B. Material extraction taking place on dewatered bars within the confines of the Snow River and the streams within the Seward-Bear Creek Flood Service Area does not require a permit, however, operators subject to this exemption shall provide the planning department with the information required by KPB 21.29.030(A)(1), (2), (6), (7) and a current flood plain development permit prior to beginning operations.
 - C. A prior existing use under KPB 21.29.120 does not require a material extraction permit.~~[, BUT A FLOODPLAIN DEVELOPMENT~~

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~~PERMIT IS REQUIRED FOR ALL ACTIVITIES WITHIN ANY MAPPED
SPECIAL FLOOD HAZARD AREA.]~~

- Enact a new KPB 21.29.010 as follows:

21.29.010. – Applicability.

- A. This chapter applies to all private and public lands in the borough except where the use is prohibited by ordinance within a local option zoning district or exempt under KPB 21.29.015.**
- B. This chapter does not apply within the incorporated cities of the Kenai Peninsula Borough.**
- C. This chapter applies to commercial earth materials extraction activities where the principal activity of use of the property is the extraction of earth materials. This chapter does not apply when earth material extraction resources are not used for sale or barter.**
- D. 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 as defined in KPB 21.06. This regulation shall not apply to man-made waterbodies being constructed during the course of the materials extraction activities.¹**

- Amend KPB 21.29.020 as follows:

21.29.020. – Types of permits available. ~~[MATERIAL EXTRACTION ACTIVITIES
REQUIRING A PERMIT.]~~

- A. Counter permit.** A counter permit is required for material extraction which disturbs no more than [2.5] **10** cumulative acres, **requires no material processing, screening, or crushing, and material extraction is not below or within four feet of the seasonal high water table.** ~~[DOES NOT ENTER THE WATER TABLE.]~~ Counter permits are approved by the planning director, and are not subject to the notice requirements or planning commission approval of KPB 21.25.060. A counter permit is valid for a period of 12 months, with a possible 12-month extension. **The planning director's decision to approve or deny a counter permit may be appealed to the**

¹ Note: this language is copy/paste from current KPB 21.29.050(A)(6)(a).

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planning commission, which shall 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 the following types of earth material extraction or uses:

1. **Material extraction** which disturbs more than ~~[2.5]~~ **10** cumulative acres. **The standard conditions set out in KPB 21.29.050 shall apply to this type of CLUP. [OR]**
2. Material extraction of any size ~~[ENTERS THE WATER TABLE]~~ **that is below or within four feet of the seasonal high-water table. The standard conditions set out in KPB 21.29.050 plus the conditions set out in KPB 21.29.055 for material extraction below or within four feet of the seasonal high-water table shall apply to this type of CLUP.**
3. ~~[A CLUP IS REQUIRED FOR MATERIALS PROCESSING.]~~ **Material extraction of any size that includes processing, screening, or crushing activities. The standard conditions set out in KPB 21.29.050 plus the conditions set out in KPB 21.29.057 for material extraction processing shall apply to this type of CLUP.**

A single application may request a CLUP that includes all three of the above permit types. A CLUP is valid for a period of five years. The provisions of KPB Chapter 21.25 are applicable to material site CLUPS and the provisions of KPB 21.25 and 21.29 are 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.

Definitions place holder

Need to come back and add definition for:

- Earth material extraction / material extraction
- Processing
- Seasonal high water table

Your consideration of these amendments is appreciated.