

E. NEW BUSINESS

- 8. Ordinance 2022-XX: Amending KPB 21.25 to Add Definition of “Aggrieved Party” and Amending KPB 21.29 to Remove the Term “Impartial”, to Clarify the Well-Monitoring Timeline, to Define “Quarterly”, and to Add a “Definitions” Section.**

MEMORANDUM

TO: Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor
Robert Ruffner, Planning Director

FROM: Samantha Lopez, Senior Manager

DATE: June 23, 2022

RE: Ordinance 2022-XX: Amending KPB 21.25 to Add Definition of "Aggrieved Party" and Amending KPB 21.29 to Remove the Term "Impartial", to Clarify the Well-Monitoring Timeline, to Define "Quarterly", and to Add a "Definitions" Section (Mayor)

The Material Site Assembly Subcommittee has been considering code revisions to KPB 21.25 Conditional Land Use Permits and KPB 21.29 Material Site Permits. The schedule has been slightly delayed, so staff are proposing some smaller code revisions which would provide clarification, and greatly assist staff in implementing said code:

- Amending KPB 21.25 Conditional Land Use Permits:
 - Define "Aggrieved Party". This would reduce the number of people who could file an appeal per KPB 21.25.100. Right now, chapter 21.25 lacks a definition for an "Aggrieved Party". Presently, this means individuals who are not adversely affected, but disagree, to appeal the decision of the hearing officer. By defining the term, it will reduce litigation to those people who can show they are directly and negatively impacted. Further, it clarifies that the KPB is not considered an aggrieved party unless it has a fee property interest that is affected by the decision, though it may still be a party of record and enter an appearance in an appeal to defend any claims of procedural error or claims that the decision violates KPB code or state law.
- Amending KPB 21.29 Material Site Permits:
 - Remove the term "impartial" from KPB 21.29.050(A)(4). This term proved contentious at the Planning Commission level during a recent Conditional Land Use Permit hearing. The term is not used elsewhere in code, and is not defined. Removing the term would eliminate any misperceptions.
 - Defining "quarterly" will provide much-needed clarification to the well-monitoring timeline found in KPB 21.29.050(A)(5)(C). Current code intends for quarterly water samples to be taken, but it is not

explicitly said. By using and defining the term, it will provide clear guidelines to both applicants and staff.

- o Add a "definitions" section to KPB 21.29.

Your consideration of this ordinance is appreciated.

Introduced by: Mayor
Date: 7/5/22
Hearing: 8/9/22
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-**

AN ORDINANCE AMENDING KPB 21.25 TO ADD DEFINITION OF “AGGRIEVED PARTY” AND AMENDING KPB 21.29 TO REMOVE THE TERM “IMPARTIAL”, TO CLARIFY THE WELL-MONITORING TIMELINE, TO DEFINE “QUARTERLY”, AND TO ADD A “DEFINITIONS” SECTION

WHEREAS, code related to material sites, found in KPB 21.25 and KPB 21.29, has not been substantially amended in over ten years; and

WHEREAS, Kenai Peninsula Borough Assembly President Johnson formed a subcommittee of the Assembly to review and discuss proposed amendments to KPB 21.29, KPB 21.25 and KPB 21.50.055 regarding Material Site Permits, Applications, Conditions, and Procedures; and

WHEREAS, the Material Site Assembly Subcommittee met on April 5 and April 19, 2022 but, due to scheduling conflicts, has postponed further meetings until September 6, 2022; and

WHEREAS, through recent public hearings held at Kenai Peninsula Borough Planning Commission meetings, staff have identified specific areas of code within KPB 21.25 and KPB 21.29 that would benefit from clarification, allowing for improved implementation of these chapters; and

WHEREAS, the Kenai Peninsula Borough Planning Commission, at its regular meeting of June 27, 2022, recommended _____;

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

SECTION 1. That KPB 21.25.030 is hereby amended as follows:

21.25.030. Definitions.

A. Unless the context requires otherwise, the following definitions apply to CLUPs:

1. *Abandon* means to cease or discontinue a use without intent to resume, but excluding short-term interruptions to use or activity during periods of remodeling, maintaining, or

otherwise improving or rearranging a facility or during normal periods of vacation or seasonal closure. An "intent to resume" can be shown through continuous operation of a portion of the facility, maintenance of utilities, or outside proof of continuance, e.g., bills of lading or delivery records. Abandonment also means the cessation of use, regardless of voluntariness, for a specified period of time.

2. Aggrieved Party means a party of record adversely impacted by the decision of the hearing officer who participated before the hearing officer either by written or oral presentation. For the purposes of this section, the Kenai Peninsula Borough will not be considered an aggrieved party unless it has a fee property interest that is affected by the decision. Notwithstanding, the Kenai Peninsula Borough will be considered a party of record and may enter an appearance in an appeal to defend claims of procedural error or claims that the decision violates borough code or state law.
3. *Animal feeding operation* means a lot or facility (other than an aquatic animal production facility) where animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period.
 - a. The same animals need not remain on the lot for 45 days or more; rather, some animals are fed or maintained on the lot 45 days out of any 12-month period, and
 - b. Animals are "maintained" for purposes of this ordinance when they are confined in an area where waste is generated and/or concentrated or are watered, cleaned, groomed, or medicated in a confined area, even if the confinement is temporary.
 - c. Two or more animal feeding operations under common ownership are considered, for the purposes of these regulations, to be a single animal feeding operation if they adjoin each other.
 - d. Slaughterhouses are animal feeding operations.
4. *Animal unit* means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighting [weighing] over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.
5. *Animal waste* means animal excrement, animal carcasses, feed wasted, process wastewaters or any other waste associated with the confinement of animals from an animal feeding operation.
6. *Animal waste management system* means a combination of structures and nonstructural practices serving an animal feeding operation that provides for the collection, treatment, disposal, distribution, storage and land application of animal waste.
7. *Aquifer* means a subsurface formation that contains sufficient water-saturated permeable material to yield economical quantities of water to wells and springs.
8. *Aquifer-confining layer* means that layer of relatively impermeable soil below an aquifer, typically clay, which confines water.
9. *Child care facility* means a place where child care is regularly provided for children under the age of 12 for periods of time that are less than 24 hours in duration and that is licensed

pursuant to AS 47.35.005 et seq., excluding child care homes and child care group homes, as currently written or hereafter amended.

10. *Commercial* means any provision of services, sale of goods, or use operated for production of income whether or not income is derived, including sales, barter, rental, or trade of goods and services.
11. *Concentrated animal feeding operation (CAFO)* means an animal feeding operation confining at least: (1) 1,000 swine weighing at least approximately 55 pounds; (2) 1,000 slaughter and feeder cattle; (3) 700 mature dairy cattle; (4) 500 horses; (5) 10,000 sheep or lambs; (6) 55,000 turkeys; (7) 100,000 laying hens or broilers (if the facility has continuous overflow watering); (8) 30,000 laying hens or broilers (if the facility has a liquid manure system); (9) 5,000 ducks; (10) 1,000 animal units; or (11) a combination of the above resulting in at least 1,000 animal units. Each individual parcel upon which a CAFO is located is a separate CAFO unless they adjoin each other.
12. *Conditioning or processing material* means a value-added process including batch plants, asphalt plants, screening, washing, and crushing by use of machinery.
13. *Correctional community residential center (CCRC)* means a community residential center, other than a correctional institution, for the short-term or temporary detention of prisoners in transition from a correctional institution, performing restitution, or undergoing rehabilitation or recovery from a legal infirmity. CCRCs may not be used for detention of prisoners who pose a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four hour physical supervision. The determination of whether a prisoner poses a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four hour physical supervision shall be made by the commissioner of corrections for state prisoners and the United States Attorney General, or the U.S. Director of Bureau of Prisons for federal prisoners.
14. *Correctional institution* means a facility other than a correctional community residential center providing for the imprisonment or physical confinement or detention of prisoners under guard or twenty-four hour physical supervision, such as prisons, prison farms, jails, reformatories, penitentiaries, houses of detention, detention centers, honor camps, and similar facilities.
15. *Exhausted* means that all material of a commercial quality in a sand, gravel, or material site has been removed.
16. *Federal prisoners* means offenders in the custody or control or under the care or supervision of the United States Attorney General or the Bureau of Prisons. *Groundwater* means, in the broadest sense, all subsurface water, more commonly that part of the subsurface water in the saturated zone.
17. *Liquid manure* or *liquid animal waste system* means any animal waste management system which uses water as the primary carrier of such waste into a primary retention structure.
18. *Multi-purpose senior center* is a facility where persons 60 years of age or older are provided with services and activities suited to their particular needs. The services and activities may include, but are not limited to, health examinations, legal assistance,

recreation programs, general social activities, telephone reassurance programs, nutrition classes, meals at minimum cost, counseling, protective services, programs for shut-ins and education programs, and that complies with Alaska Statutes 47.60.010—47.60.090, as currently written or hereafter amended.

19. *Person* shall include any individual, firm, partnership, association, corporation, cooperative, or state or local government.

20. *Prisoner* means:

- a. a person held under authority of state law in official detention as defined in AS 11.81.900;
- b. includes a juvenile committed to the custody of the Alaska Department of Corrections Commissioner when the juvenile has been charged, prosecuted, or convicted as an adult.

21. *Private school* is a school comprised of kindergarten through 12th grade, or any combination of those grades, that does not receive direct state or federal funding and that complies with either Alaska Statute 14.45.030 or 14.45.100—14.45.130, as currently written or hereafter amended.

22. *Public school* is a school comprised of kindergarten through 12th grade, or any combination of those grades, that is operated by the State of Alaska or any political subdivision of the state.

23. *Quarter or Quarterly* means January through March, April through June, July through September, or October through December;

24. *Sand, gravel or material site* means an area used for extracting, quarrying, or conditioning gravel or substances from the ground that are not subject to permits through the state location (mining claim) system (e.g., gold, silver, and other metals), nor energy minerals including but not limited to coal, oil, and gas.

25. *Seasonal high groundwater table* means the highest level to which the groundwater rises on an annual basis.

26. *Senior housing project* means senior housing as defined for purposes of construction or operation in 15 Alaska Administrative Code 151.950(c), as currently written or hereafter amended.

27. *Stable condition* means the rehabilitation, where feasible, of the physical environment of the site to a condition that allows for the reestablishment of renewable resources on the site within a reasonable period of time by natural processes.

28. *Surface water* means water on the earth's surface exposed to the atmosphere such as rivers, lakes, and creeks.

29. *Topsoil* means material suitable for vegetative growth.

30. *Waterbody* means any lake, pond, stream, riparian wetland, or groundwater into which stormwater runoff is directed.

31. *Water source* means a well, spring or other similar source that provides water for human consumptive use.

SECTION 2. That KPB 21.29.050 is hereby amended as follows:

21.29.050. Permit conditions.

- A. The following mandatory conditions apply to counter permits and CLUPs issued for sand, gravel or material sites:

...

4. *Water source separation.*
 - a. All permits shall be issued with a condition which prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance.
 - b. All counter permits shall be issued with a condition which requires that a four-foot vertical separation from the seasonal high water table be maintained.
 - c. All CLUPS shall be issued with a condition which requires that a two-foot vertical separation from the seasonal high water table be maintained.
 - d. There shall be no dewatering either by pumping, ditching or some other form of draining unless an exemption is granted by the planning commission. The exemption for dewatering may be granted if the operator provides a statement under seal and supporting data from a duly licensed and qualified [IMPARTIAL] independent civil engineer, that the dewatering will not lower any of the surrounding property's water systems and the contractor posts a bond for liability for potential accrued damages.
5. *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 based on the following:
 - a. Certification by a qualified independent civil engineer or professional hydrogeologist that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources.
 - b. The installation of a minimum of three water monitoring tubes or well casings as recommended by a qualified independent civil engineer or professional hydrogeologist adequate to determine flow direction, flow rate, and water elevation.
 - c. Groundwater elevation, flow direction, and flow rate for the subject parcel, measured in [THREE-MONTH] quarterly intervals by a duly licensed and qualified independent civil engineer or professional hydrogeologist, for at least [ONE YEAR] four quarters prior to application. Monitoring tubes or wells must be kept in place, and measurements taken, for the duration of any excavation in the water table.
 - d. Operations shall not breach an aquifer-confining layer.

SECTION 3. That KPB 21.29 is hereby amended as follows:

21.29.130. Definitions.

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

1. Abandon means to cease or discontinue a use without intent to resume, but excluding short-term interruptions to use or activity during periods of remodeling, maintaining, or otherwise improving or rearranging a facility or during normal periods of vacation or seasonal closure. An "intent to resume" can be shown through continuous operation of a portion of the facility, maintenance of utilities, or outside proof of continuance, e.g., bills of lading or delivery records. Abandonment also means the cessation of use, regardless of voluntariness, for a specified period of time.
2. Aggrieved Party means a party of record adversely impacted by the decision of the hearing officer who participated before the hearing officer either by written or oral presentation.
3. Aquifer means a subsurface formation that contains sufficient water-saturated permeable material to yield economical quantities of water to wells and springs.
4. Aquifer-confining layer means that layer of relatively impermeable soil below an aquifer, typically clay, which confines water.
5. Commercial means any provision of services, sale of goods, or use operated for production of income whether or not income is derived, including sales, barter, rental, or trade of goods and services.
6. Conditioning or processing material means a value-added process including batch plants, asphalt plants, screening, washing, and crushing by use of machinery.
7. Exhausted means that all material of a commercial quality in a sand, gravel, or material site has been removed.
8. Groundwater means, in the broadest sense, all subsurface water, more commonly that part of the subsurface water in the saturated zone.
9. Person shall include any individual, firm, partnership, association, corporation, cooperative, or state or local government.
10. Quarter or Quarterly means January through March, April through June, July through September, or October through December;
11. Sand, gravel or material site means an area used for extracting, quarrying, or conditioning gravel or substances from the ground that are not subject to permits through the state location (mining claim) system (e.g., gold, silver, and other metals), nor energy minerals including but not limited to coal, oil, and gas.
12. Seasonal high groundwater table means the highest level to which the groundwater rises on an annual basis.
13. Stable condition means the rehabilitation, where feasible, of the physical environment of the site to a condition that allows for the reestablishment of renewable resources on the site within a reasonable period of time by natural processes.

- 14. Surface water means water on the earth's surface exposed to the atmosphere such as rivers, lakes, and creeks.
- 15. Topsoil means material suitable for vegetative growth.
- 16. Waterbody means any lake, pond, stream, riparian wetland, or groundwater into which stormwater runoff is directed.
- 17. Water source means a well, spring or other similar source that provides water for human consumptive use.

SECTION 4. That this ordinance shall become effective immediately upon enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS ____ DAY OF _____, 2022.

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk