


Kenai Peninsula Borough Assembly

MEMORANDUM

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

FROM: Richard Derkevorkian, Assembly member 

DATE: September 20, 2022

SUBJECT: **LAYDOWN Derkevorkian Amendment #1** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend 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. Earth material extraction 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, **fish-bearing** stream, or ocean, is prohibited. This prohibition does not apply to **existing** man-made water bodies or isolated ponds of less than one acre on private property **or the construction of waterbodies within the permitted area.**
- D. All operations must be conducted in accordance with the current publication of the State of Alaska, Alaska DEC User's Manual Best Management Practices for Gravel/Rock Aggregate Extraction Projects. In the event a provision of this chapter conflicts with the State of Alaska's manual, this chapter controls.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

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

FROM: Richard Derkevorkian, Assembly member 

DATE: September 20, 2022

SUBJECT: **LAYDOWN Derkevorkian Amendment #2** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.015, as follows:

21.29.015. 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 ~~[32]~~10 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 do not require a permit, however, operators subject to this exemption must 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. Notwithstanding the foregoing, on or before January 1, 2026, a prior existing use under KPB 21.29.120 must: (1) provide a reclamation plan under KPB 21.29.060 that is approved by the planning director or designee; and (2) come into compliance with the buffer zone requirements under KPB 21.29.050(A)(1).


D. Material extraction from a 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 extraction permit.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

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

FROM: Richard Derkevorkian, Assembly member 

DATE: September 20, 2022

SUBJECT: **LAYDOWN Derkevorkian Amendment #3** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.020, as follows:

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 ~~[10]~~**2.5** cumulative unreclaimed acres. Material ~~[processing,]~~ screening **over 500 cubic yards per day, [or]** crushing, ~~[and material extraction within four feet of the seasonal high-water table]~~ **and excavation within two feet of a confining layer is prohibited under a counter permit. A maximum of five feet excavation, and 7,500 square feet below seasonal high-water table is allowed. The excavation below water table must be 200 feet from the nearest potable water well.** 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. **The limited excavation within two feet of the seasonal high-water table included in this permit is exempt from KPB 21.29.057.**

B. Conditional land use permit. A conditional land use permit (CLUP) is required for the following types of earth material extraction or uses:

1. ~~Earth Materials Extraction CLUP. An Earth Materials Extraction CLUP is required for any material extraction which disturbs 10 or more cumulative acres. Material processing, screening or crushing, or extraction within four feet of the seasonal high-water table is prohibited under this permit. The standard conditions set out in KPB 21.29.050 are applicable to this type of CLUP.]~~ A Type 1 CLUP. A Type 1 CLUP permit is required for earth material extraction which disturbs more than 2.5 cumulative un-reclaimed acres. Material screening over 500 cubic yards per day, or crushing, is prohibited under a type 1 permit. A maximum of five feet excavation below seasonal high-water table is allowed. The excavation below water table must be 200 feet from the nearest potable water well. Excavation within two feet of a confining layer is prohibited. No more than ten percent of the parcels total acreage may be in the water table. The conditions set forth in KPB 21.29.050 plus the conditions set out in KPB 21.29.055 for material extraction processing area applicable to this type of CLUP. The limited excavation within two feet of seasonal high-water table included in this permit is exempt from KPB 21.29.057.

2. ~~Earth materials processing]~~ A Type 2 CLUP. A ~~[n Earth Materials Processing]~~ Type 2 CLUP is required for any operation that includes earth materials ~~[processing,]~~ screening over 500 cubic yards per day, or crushing activities. A maximum of eight feet excavation below seasonal high-water table is allowed. The excavation below water table must be 200 feet from the nearest potable water well. Excavation within two feet of a confining layer is prohibited. No more than ten percent of the parcels total acreage may be in the water table. The conditions set forth in KPB 21.29.050 plus the conditions set out in KPB 21.29.055 for material extraction processing area applicable to this type of CLUP. The limited excavation within two feet of seasonal high-water table included in this permit is exempt from KPB 21.29.057.

3. ~~Earth Materials Extraction Within Water Table]~~ A Type 3 CLUP. A ~~[n Earth Materials Extraction Within Water Table]~~ Type 3 CLUP is required for material extraction and operations of any size within ~~[four]~~ two feet of the seasonal high-water table unless specified exempt from KPB 21.29.057. The excavation below water table must be 200 feet from the nearest

potable water well. Excavation within two feet of a confining layer is prohibited. Screening and crushing is allowed. The conditions set forth in KPB 21.29.050 plus the requirements and conditions set forth in KPB 21.29.057 for material extraction within ~~four~~ two feet of the seasonal high-water table are applicable to this type of CLUP.


An applicant may request a CLUP that includes one, two or all three of the above permit types. 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 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.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

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

FROM: Richard Derkevorkian, Assembly member 

DATE: September 20, 2022

SUBJECT: **LAYDOWN Derkevorkian Amendment #4** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.030, as follows:

21.29.030. Application procedure.

- A. In order to obtain a counter permit or CLUP under this chapter, an applicant must first complete and submit to the borough planning department a permit application, along with the fee listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. The planning director may determine that certain contiguous parcels are eligible for a single permit. The application must include the following items, without which the application will be deemed incomplete:
1. Legal description of the parcel, KPB tax parcel ID number, and identification of whether the permit is for the entire parcel, or a specific location within a parcel;
 2. Expected life span of the material site;
 3. A buffer plan consistent with KPB 21.29.050(A)(1);
 4. Reclamation plan consistent with KPB 21.29.060;
 5. The depth of excavation;
 6. Type of material to be extracted;

7. A site map professional surveyor licensed in the State of Alaska to include the following:
- a. Location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;
 - b. Proposed buffers consistent with KPB 21.29.050(A)(1), or alternate buffer plan;
 - c. Identification of all encumbrances, including but not limited to, easements;
 - d. Points of ingress and egress. Driveway permits must be acquired from either the state or borough as appropriate prior to submitting the application;
 - e. Anticipated haul routes; [~~contingent on approval from the governmental agency with regulatory jurisdiction over the road;~~]
 - f. Location of any processing areas on the parcel, if applicable;
 - g. North arrow;
 - h. The scale to which the site plan is drawn;
 - i. Preparer's name and date; and
 - j. Field verification must include staking the boundary of the parcel at sequentially visible intervals. The planning director may grant an exemption in writing to the staking requirements if the parcel boundaries are obvious or staking is unnecessary.
8. A site plan, [~~prepared by a qualified independent civil engineer licensed and active in the State of Alaska~~] to include the following:
- a. Surface water protection measures, if any, for adjacent properties, including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence;
 - b. Location and elevation of test holes, and depth of groundwater, based on the seasonal high-water table. At least one test hole per ten acres of excavated area is required to be dug. The test holes must be at least four feet below the proposed lowest elevation of excavation depth **unless proposed depth is deeper than conventional equipment can dig without stage excavation;**
 - c. Location of all private wells of adjacent property owners within 300 feet of the proposed parcel boundary; and
 - d. Location of any water body on the parcel, including the location of any riparian wetland as determined by best available data.

9. A statement by the operator of the site that the requirements of KPB 21.29.045 have been satisfied.


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.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

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

FROM: Richard Derkevorkian, Assembly member 

DATE: September 20, 2022

SUBJECT: **LAYDOWN Derkevorkian Amendment #5** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.050, as follows:

21.29.050. Permit conditions applicable to all permits.

A. 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 buffer area of 32 feet must be established between the area of excavation and the parcel boundaries. The buffer area may include one or more of the following: undisturbed natural vegetation that provides sufficient noise and street-level visual screening; an eight-foot earthen berm with a 2:1 slope; or a minimum eight-foot fence;]~~ The buffer zone for counter permits and CLUPs shall be of sufficient height, density, and setback to provide noise screening of the proposed use to parcels in the vicinity as deemed appropriate by the planning commission or planning director. Buffer requirements shall be made in consideration of and in accordance with existing uses of properties in the vicinity at the time of approval of the permit. There is no requirement to buffer the material site from uses which commence after the approval of the permit.

- b. A buffer zone shall be established between the area of excavation and the parcel boundaries. The buffer zone for a Type 1 CLUP shall consist of one of the following in any geographical area: fifty feet of natural vegetation, a minimum six-foot fence, or a minimum six-foot earthen berm with a 2:1 slope. The buffer zone for a Type 2 or Type 3 CLUP shall consist of one of the following in any geographical area: fifty feet of natural vegetation, a minimum eight-foot fence, or a minimum ten-foot earthen berm with a 2:1 slope. If the minimum buffers are insufficient to approve the permit, the applicant may modify the proposed buffers with evidence to a sufficient size in consideration of, and in accordance with the existing uses of properties in the vicinity for approval of a permit.**
- [b.]c. A 2:1 slope must be maintained between the buffer zone and excavation floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if the site plan provides the timeframe for removal and verification that suitable, stabilizing material will replace the removed material within 30 days of removal;**
- [e.]d. Where an easement exists, a buffer must not overlap the easement, unless otherwise conditioned by the planning commission or planning director, as applicable; and**
- [d.]e. This requirement may only be waived upon a finding by the planning director or planning commission, as applicable, that a lot line where the waiver is requested is directly adjacent to another material site.**
- f. GIS, LIDAR, and photogrammetry may be utilized in the design of the buffer zone when differing elevations exist between the proposed site and properties in the vicinity. Using this technology's line of sight profile drawings from the uppermost inhabitable level of existing properties located in the vicinity may be utilized in the determination of sufficiency of the buffer zone.**
- g. At its discretion the planning director or planning commission (as applicable) may waive or reduce buffer requirements when screening proves to be not necessary or not feasible.**

2. Water source separation.

- a. Material extraction below or within ~~four~~ two feet of the seasonal high-water table is prohibited unless the applicant is issued a CLUP Material Extraction Within Water Table Permit and the requirements and conditions set forth in KPB 21.29.057 are satisfied **or the depth and****

size of excavation is exempt from KPB 21.29.057 as specified in the permit:

- b. Dewatering either by pumping, ditching or some other form of draining that removes **more than 5,000 gallons of water per day** from the site or causes water to leave the site is prohibited **unless permitted by State of Alaska, Department of Natural Resources**;
 - c. All permits shall be issued with a condition which prohibits any material extraction within 100 linear feet of any private well or **applicable** water source existing prior to original permit issuance; and
 - d. On site movement of water may be permitted pursuant to KPB 21.29.057 and if: (i) the operator provides a statement under seal and supporting data from a qualified independent civil engineer licensed and active in the State of Alaska that the dewatering will not lower any known water systems; and (ii) the applicant posts a bond for liability for potential accrued damages in an amount equivalent to the cost to replace each water wells within a 300-foot radius of the site. The rebuttable presumption is that the cost per well is a minimum of \$10,000.
3. Roads. Operations that impact borough roads must be conducted in accordance with the requirements and remedies of KPB Chapter 14.40.
 4. Dust control. Dust suppression is required on haul roads within the boundaries of the **CLUP** material site by application of water or calcium chloride.
 5. Hours of operation. Material extraction activities, including equipment operation, 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 planning director, as applicable, to be appropriate based on information presented.
- a. ~~[Seasonal.]~~ **Project-based waiver.** An applicant may request a ~~[seasonal.]~~ project-based waiver of the hours of operation requirements under this subsection. A waiver granted under this subsection is valid for **up to** six consecutive calendar months. To grant a waiver under this subsection, the commission must find that the waiver is necessary for a specific project, and that the waiver is not harmful to the public health, safety, and general welfare of borough residents.

6. Groundwater elevation. All material sites must maintain one monitoring well four feet below the proposed excavation per ten acres of excavated area.
 7. Setback. Material site excavation areas must be 250 feet from the property boundaries of any ~~[local option zoning district,]~~existing public school ground, private school ground, college campus, **licensed** childcare facility, multi-purpose senior center, assisted living home, and licensed health care facility. ~~[If overlapping, the buffer areas of the excavation must be in addition to the 250-foot setback.]~~
 8. Permit boundaries. The buffers and any easements or right-of-way abutting the proposed permit area must be staked at sequentially visible intervals. Field verification and staking will require the services of a professional land surveyor. Stakes must be in place prior to issuance of the permit.
 9. Processing. Material extraction of any size that includes processing, screening, or crushing activities is prohibited unless the applicant is issued an Earth Materials Processing CLUP and the conditions set forth in KPB 21.29.055 are imposed on the permit.
- B. Discretionary Conditions. The planning commission or planning director, as applicable, may set conditions of approval for issuance of a counter permit or CLUP, as appropriate for the area in which the development is sited, for the following:
1. Setbacks/Buffer Area.
 - a. The mandatory buffer area condition in subsection (A) above may be increased, up to a maximum of 100 feet between the area of excavation and the parcel boundaries, if the planning commission finds based on substantial evidence presented that increasing the buffer area is necessary for the public health, welfare and safety of the surrounding community;
 - i. Upon request of the applicant, in lieu of any additional buffer area under this subsection designed to separate the use of material site activities from neighboring parcel boundaries, an eight-foot-high berm above the preexisting elevation may be constructed, prior to excavation, around the excavation area. If the excavation site

area expands, the berm may move toward the permitted boundary until such limits of the permitted area are exhausted. The berm must be maintained at eight-foot height while permitted activity is occurring.


- b. All other requirements of KPB 21.29.050(A)(1) apply; and
 - c. When a buffer area has been denuded **less than a year** prior to review of the application by the planning commission or planning director revegetation may be required.
2. Road ~~[maintenance and]~~ repair. In consultation with the Road Service Area Director, ~~[road maintenance or]~~ repair of public right-of-way haul routes may be required of the permittee.
 3. Ingress and egress. The planning commission or planning director may **[determine] suggest** the points of ingress and egress for the material site. The permittee is not required to construct haul routes outside the parcel boundaries of the material site. Driveway authorization must be acquired, from either the state through an "Approval to Construct" or the borough road service area, as appropriate, prior to issuance of a material site permit when accessing a public right-of-way.
 4. Dust suppression. Dust suppression may be required when natural precipitation is not adequate to suppress the dust generated by the material site traffic on **[public right-of-way haul routes] haul routes within permit boundaries.**
 5. Surface water protection. Use of surface water protection measures as specified in KPB 21.29.030(A)(8)(a).
 6. Street-level screening. Street-level visual screening, noise mitigation, and lighting restrictions as appropriate for the surrounding area and in accordance with the standards set forth in KPB 21.29.040.

Your consideration of these amendments is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

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

FROM: Richard Derkevorkian, Assembly member 

DATE: September 20, 2022

SUBJECT: **LAYDOWN Derkevorkian Amendment #6** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.055(B), as follows:

21.29.055. Earth materials processing.

~~[In accordance with KPB 21.29.020(B)(2), an Earth Materials Processing CLUP is required for earth materials processing activities, such as material screening or crushing.]~~ Prior to issuing a Type 2 CLUP [permit] under this subsection, the planning commission must impose the mandatory conditions set forth in KPB 21.29.050(A) and discretionary conditions as the planning commission deems appropriate. In addition, the following requirements and permit conditions specific to a Type 2 CLUP ~~[an Earth Materials Processing CLUP]~~ apply:

...

B. Hours of operation.

1. Processing equipment may only be operated between ~~[8:00]~~ 7:00 a.m. and 7:00 p.m. AKST, or as determined by the planning commission.


...

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

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

FROM: Richard Derkevorkian, Assembly member 

DATE: September 20, 2022

SUBJECT: **LAYDOWN Derkevorkian Amendment #7** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.057, as follows:

21.29.057. Material extraction below or within ~~four~~ two feet of the seasonal high-water table.

In accordance with KPB 21.29.020(B)(3), a CLUP is required for material extraction of material below or within ~~four~~ 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 **over 5,000 gallons per day** is prohibited **unless permitted by the State of Alaska, Department of Natural Resources.** The following additional application requirements and permit conditions specific to a Material Extraction within the Water Table CLUP apply:


....

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

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

FROM: Richard Derkevorkian, Assembly member 

DATE: September 20, 2022

SUBJECT: **LAYDOWN Derkevorkian Amendment #8** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.060 as follows:

21.29.060. Reclamation plan.

- A. All material site permit applications require an overall reclamation plan. A site plan for reclamation must be required including a scaled drawing with finished contours. A five-year reclamation plan must be submitted with a permit renewal request. **All acreage planned for a post-mining use is exempt from reclamation.**
- B. The applicant may revegetate and must reclaim all disturbed land within the time period approved with the reclamation plan **if the planned resource extraction has been exhausted and no post-mining use is planned**, 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. 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:


1. The area will be backfilled, graded and re-contoured using strippings, overburden, and topsoil so that it will be stabilized to a condition that will allow for revegetation under KPB 21.29.060(B).
 2. The topsoil used for reclamation must be reasonably free from roots, clods, sticks, and branches greater than 3 inches in diameter. Areas having slopes greater than 2:1 require special consideration and design for stabilization by an independent, professional civil engineer licensed and active in the State of Alaska.
 3. Exploration trenches or pits will be backfilled. Brush piles and unwanted vegetation must be removed from the site, buried or burned. Topsoil and other organics will be spread on the backfilled surface to inhibit erosion and promote natural revegetation.
 4. Topsoil mine operations must ensure a minimum of four inches of suitable growing medium is left or replaced on the site upon completion of the reclamation activity (unless otherwise authorized).
 5. Ponding may be used as a reclamation method as approved by the planning commission.
 6. The area will be reclaimed in a manner ~~[that screens the site from becoming a public attractive nuisance and in a manner]~~ that is not harmful to public health, safety, and general welfare.
- D. The five-year reclamation plan must describe the total acreage to be reclaimed relative to the total excavation plan.
- E. Close-out. Reclamation plans and requirements survive expiration, termination, or revocation of a permit granted under this chapter. In order to close-out a permit, the planning director must be provided adequate proof that reclamation has been conducted in accordance with the reclamation plan. If a permit expires, terminates, or is revoked prior to permit close-out, the remedies under KPB 21.50 apply and the planning director may hold applicable fines and remedies in abeyance upon a finding that reclamation is actively ongoing.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

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

FROM: Richard Derkevorkian, Assembly member 

DATE: September 20, 2022

SUBJECT: **LAYDOWN Derkevorkian Amendment #9** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

- Amend KPB Chapter 21.29 by adding Section 21.29.063, as follows:

21.29.063. Decision.


The planning commission or planning director, as applicable, shall approve permit applications whereby mandatory standards under KPB 21.29.040 have been met through implementation of conditions set forth in KPB 21.29.050, KPB 21.29.055, and KPB 21.29.057 or shall deny applications when conditions do not meet the mandatory standards in KPB 21.29.040. The decision shall include written findings detailing how the conditions under KPB 21.29.050, KPB 21.29.055, and KPB 21.29.057 meet, or do not meet the mandatory standards set forth in KPB 21.29.040 and evidence to support those findings. The decision shall be distributed to the parties of record before the planning commission, with notice of right to appeal.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

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

FROM: Richard Derkevorkian, Assembly member 

DATE: September 20, 2022

SUBJECT: **LAYDOWN Derkevorkian Amendment #10** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

- Amend KPB Chapter 21.29 by removing Section 21.29.065 in its entirety, as follows:

[21.29.065. Effect of permit denial.]

A. No reapplication concerning the same counter permit application may be filed within one calendar year of the date of the planning director's final denial action except in the case where new evidence or circumstances exist that were not available or present when the original application was filed.

B. No reapplication concerning the same CLUP may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original application was filed.


C. For the purposes of this section, the applicant bears the burden of proof of demonstrating that new evidence or circumstances exist and that they were not available or present with the original application was filed.]

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

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

FROM: Richard Derkevorkian, Assembly member 

DATE: September 20, 2022

SUBJECT: **LAYDOWN Derkevorkian Amendment #11** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.070, as follows:

21.29.070. Permit renewal, modification and revocation.

- A. Conditional land use permittees must submit a renewal application every five years after the permit is issued. A renewal application must be submitted at least 90 days prior to expiration of the CLUP.
- B. The planning director may administratively approve a renewal application that meets the following requirements: (i) the permittee is in compliance with all permit conditions and no modification to operations or conditions are proposed; and (ii) the borough did not issue a notice of violation under the permit during the two calendar years preceding the renewal application. If the renewal application does not satisfy the foregoing requirements or if the planning director determines a review by the planning commission is warranted, then the planning commission will hear the renewal application.
- C. In the event the renewal application is heard by the planning commission, the planning commission must hold a public hearing on the renewal application. If the applicant is complying with all permit conditions and requirements and is not in violation of borough code, then the renewal must be granted by the planning commission. **[Notwithstanding the foregoing, if the commission determines, after public hearing, that discretionary**

~~conditions are appropriate on renewal then the commission may modify the CLUP by imposing conditions as deemed appropriate under the circumstances.]~~ Permit renewal applications will be denied if the permittee is in violation of the original permit requirements and conditions or borough code. **The permittee will be given ninety days to correct violations. If the corrections are met, the permit will be renewed.** A renewal application heard by the planning commission must be processed in accordance with the notice requirements of KPB 21.25.060.


- D. A permittee may request a modification of a CLUP or counter permit, as needed. A modification application will be processed pursuant to KPB 21.29.030 through KPB 21.29.050 with public notice given as provided by KPB 21.25.060. A permit modification is required if the permittee's operations are no longer consistent with the original permit application.
- E. The fee for a permit renewal or modification is the same as an original permit application in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees.
- F. Failure to submit a permit renewal will result in the expiration of the permit. The borough may issue a permit termination document upon expiration pursuant to KPB 21.29.080. Once a permit has expired, a new permit application approval process is required in order to operate the material site.
- G. Permits may be revoked pursuant to KPB 21.50.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

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

FROM: Richard Derkevorkian, Assembly member 

DATE: September 20, 2022

SUBJECT: **LAYDOWN Derkevorkian Amendment #12** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.115, as follows:

21.29.115. Permit transfers.


~~[Permits issued under this chapter do not automatically transfer upon a conveyance or transfer of the applicable real property. The planning director will issue a letter of approval or disapproval upon receipt of the following: (1) a written permit transfer request is provided to the planning department that includes: legal description of the parcel, former owner name, new owner name, and a copy of the approved permit or the legal PEU status; and (2) a recorded conveyance instrument listing the new owner. The requesting party may appeal a disapproval letter to the planning commission. Permit transfer approvals are not subject to administrative appeal.]~~ Permits must transfer with the sale or transfer of the real property unless the permittee is currently in violation of the original permit requirements and conditions or borough code. The permittee will be given ninety days to correct violations.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

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

FROM: Richard Derkevorkian, Assembly member 

DATE: September 20, 2022

SUBJECT: **LAYDOWN Derkevorkian Amendment #13** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.120, as follows:

21.29.120. Prior-existing uses.

- A. Determination. Prior-existing uses (PEU) in effect on October 1, 2022 are allowed to continue operation subject to the requirements of this section. The burden of proof that the prior-existing use existed before October 1, 2022 and after May 21, 1996, is on the applicant. All other PEUs prior to May 21, 1996, are already recorded with the borough and are recognized. If the planning director denies prior-existing use status, the applicant must comply with the permit requirements of this chapter. Failure to apply for a prior-existing use determination by January 1, 2024 will result in termination of all rights to continued operation as a nonconforming use and require full compliance with all provisions of this chapter.
- B. Decision. The planning director will give notice of the application for a prior-existing use determination to property owners within 100 feet of the subject parcel boundaries. The notice shall include a summary of the application, a vicinity map, and a deadline for submitting written comments or evidence regarding the existence of the use prior to the planning director issuing a decision. The planning director will issue a decision regarding the prior-existing use status based on the written application, [written comments,] or evidence regarding the existence of the use. The planning director's decision may be appealed by the applicant or affected property

owners to the planning commission within 15 days of distribution of the decision.

C. *Discontinuance.* Any prior-existing use which has ceased by discontinuance for an uninterrupted period of ~~[365 days]~~ **five years** must thereafter conform to the permit requirements of this chapter. Lack of intent to cease use or abandon the use does not suspend the ~~[365-day]~~ **five-year** time period. If a prior-existing use is discontinued or abandoned, it may not be recommenced. **Any activity such as extraction, excavation, processing, or reclamation is considered valid and a continuance of site use.**

D. *Expansion Prohibited.* ~~[A prior-existing use may not be increased, intensified, or expanded or moved to any other part of the lot, tract, or parcel it occupies after October 1, 2022, nor may the prior-existing use be moved to a parcel which is subject to this chapter.] The prior-existing use may not be moved to a parcel that is subject to this chapter.~~ If a parcel is subdivided, the pre-existing use may not be expanded to any lot, tract, or parcel where material extraction or processing had not previously occurred or was not lawfully established in accordance with this section.

E. *Standards.* In order to qualify as a legal prior-existing use, the use must meet the following standards, on or before October 1, 2022:

1. A use must have been legally established under prior law.
2. A use must be operational in accordance with the type of use.

F. In accordance with 21.29.015, on or before January 1, 2026, all legal prior-existing-use extraction operations shall comply with KPB 21.29.060 (reclamation plan) and applicable hours of operation requirements under this chapter.

~~[G. Materials extraction operations with legal prior-existing use status which extract material below or within four feet of the seasonal highwater table shall conduct operations in accordance with the requirements outlined in KPB 21.29.057, except that KPB 21.29.057(C)(7) will not apply.]~~

~~[H. For the purposes of this section, "increased, intensified, or expanded" means: (1) enlarging the area of excavation; (2) increasing the depth of excavation to go within four feet of the seasonal high-water table; or (3) adding a use that was not in existence as of the date of the PEU status~~

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September 20, 2022

Re: LAYDOWN Derkevorkian Amendment #13 to O2022-36


~~determination, to include adding earth materials processing to a use that did not previously include processing.]~~

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

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

FROM: Richard Derkevorkian, Assembly member 

DATE: September 20, 2022

SUBJECT: **LAYDOWN Derkevorkian Amendment #14** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.130, as follows:

21.29.130. Definitions.

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

...

8. Earthen berm means a berm constructed of aggregate or soil not to contain slash or brush that maintains a 2:1 slope. The berm is to be constructed above the preexisting elevation.

...

21. Vicinity means 1,000 linear feet from permitted boundary.

Your consideration of this amendment is appreciated.