

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Brent Johnson, Assembly Presider BJ

DATE: October 25, 2022

SUBJECT: **LAYDOWN Johnson 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 21.25.050, as follows:

21.25.050. Permit considerations—Public hearing required.

Within 30 days of receiving an application, the planning director or designee shall review the submitted application for completeness and compliance with this chapter. If it is incomplete or does not meet the requirements of this chapter, the planning director shall notify the applicant in writing. The planning director shall thereafter either return the application to the applicant or schedule the application to be considered by the planning commission at the next appropriate scheduled meeting. **Upon receiving an application, the planning director or designee will forward a copy of the application to the Kachemak Bay National Estuarine Research Reserve (“KBNERR”) for review and comment. KBNERR will have thirty days to provide its review and comment prior to submission of the application to the planning commission if the application is otherwise complete.**

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Brent Johnson, Assembly President BJ

DATE: October 25, 2022

SUBJECT: **LAYDOWN Johnson 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 21.29.005, as follows:

21.29.005. Intent and Purpose.

The purpose of this chapter is to provide a land use permitting process to regulate the operation, scope, and duration of earth materials extraction and processing within the borough while promoting the public health, safety, and general welfare of the Kenai Peninsula Borough, **including the health of aquatic systems that support salmon.** It is the further purpose of this chapter to promote compatible, orderly development.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Brent Johnson, Assembly President BJ

DATE: October 25, 2022

SUBJECT: **LAYDOWN Johnson 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 21.29.030, 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;

Page 2 of 3

October 25, 2022

Re: LAYDOWN Johnson Amendment #3

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;
 - 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 [1];

Page 3 of 3

October 25, 2022

Re: LAYDOWN Johnson Amendment #3

- e. Ground water protection measures for anadromous streams, especially with regard to juvenile salmon, as identified by shallow groundwater flowpaths and critical areas of aquifer connectivity, such as recharge, where this information is available.**
- 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: Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Brent Johnson, Assembly Presiden BJ

DATE: October 25, 2022

SUBJECT: **LAYDOWN Johnson 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 21.29.040, as follows:

21.29.040. Standards for sand, gravel or material sites.

A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise and other impacts of earth materials extraction to properties in the vicinity through setbacks, buffer zones, ~~[and]~~ street-level visual screening [;] **and protection of salmon-rearing waters.** Prior to granting a counter permit or conditional land use permit under this chapter, the planning director or planning commission, as applicable, must make the following findings:

1. That the use is not inconsistent with the applicable comprehensive plan;
2. That the use will not be harmful to the public's health, safety, ~~[and]~~ general welfare [;] **and the health of anadromous streams, particularly with regard to juvenile salmon;**
3. That sufficient setbacks, buffer zones, and other safeguards **such as avoidance of critical groundwater flowpaths and recharge areas** are being provided consistent with this chapter; and

Page 2 of 2
October 25, 2022
Re: LAYDOWN Johnson Amendment #4

4. That the use provides for a reclamation plan consistent with this chapter.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Brent Johnson, Assembly President BJ

DATE: October 25, 2022

SUBJECT: **LAYDOWN Johnson 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.

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

Page 2 of 2
October 25, 2022
Re: LAYDOWN Johnson Amendment #5

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 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 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.
 5. Surface water **and groundwater** protection. Use of surface **and ground** 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 this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Brent Johnson, Assembly President BJ

DATE: October 25, 2022

SUBJECT: **LAYDOWN Johnson 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 strikeout bold language in brackets is to be deleted.]

➤ Amend KPB 21.29.057, as follows:

21.29.057(A). Material extraction below or within four 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 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 is prohibited. The following additional application requirements and permit conditions specific to a Material Extraction within the Water Table CLUP apply:

- A. Prior to application for a water table extraction permit, the following requirements must be met:
 1. Installation of a sufficient number of monitoring wells and test pits, as recommended by a qualified professional, to adequately determine groundwater flow direction, hydraulic gradient, water table and seasonal high-water table elevation Monitoring well and test pit locations must provide the qualified professional with adequate information to characterize the entire property that will be permitted for material extraction. Well casing elevations must be surveyed to a

Page 2 of 2

October 25, 2022

Re: LAYDOWN Johnson Amendment #6

- vertical accuracy of 0.01 feet by a registered land surveyor and tied to NAVD 1988.
2. Determination of seasonal high-water table elevation, groundwater flow direction, hydraulic gradient, and water table elevation for the site must be measured under the supervision of a qualified professional.
 3. A written report must be completed by a qualified professional that makes a determination about the potential adverse effects to groundwater and surface water body elevation, groundwater and surface water quality, surrounding water users and adjacent properties. The determination must be based on available data, interpretations of the data and knowledge of groundwater processes.
 4. The report must be submitted with the CLUP application and must:
 - a. Identify existing public water system sources (i.e., wells, springs, surface water intakes), as identified by the state, that are located within one-half mile of the boundary of the property on which the activity will take place;
 - b. Identify actual or presumed private drinking water wells located within one-half mile of the boundary of the property on which the activity will take place and include a copy of the available well logs;
 - c. Identify existing regulated potential sources of contamination within at least one-half mile of the boundary of the property on which the activity will take place;
 - d. Contain maps at appropriate scales presenting the results of the well search, the setbacks required by subsection (C)(7) of this section, and illustrating wetlands and water bodies; at least one map must show identified potential sources of contamination;
 - e. Include the water table elevation monitoring data, monitoring well logs and records of any test pits, and a discussion of the seasonal high-water table determination;
 - f. Evaluate subsurface hydrologic conditions and identify potential adverse effects that may occur as a result of material extraction. The evaluation of the hydrologic conditions must include identifying confining layers **and shallow ground water flowpaths.**

Your consideration of this amendment is appreciated.