



**KENAI PENINSULA BOROUGH PLANNING COMMISSION
RESOLUTION 2022-44
SEWARD RECORDING DISTRICT**

A resolution granting approval of a conditional land use permit to operate a sand, gravel, or material site for a parcel described T 4N R 1W SEC 24 SEWARD MERIDIAN SW GOVT LOT 13, Seward Recording District., Third Judicial District, State of Alaska.

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 21.29 provides that a conditional land use permit is required for material extraction which disturbs more than 2.5 cumulative acres; and

WHEREAS, on September 2, 2022 the applicant, Tutka LLC, submitted to the Borough Planning Department a conditional land use permit application for a portion of KPB Parcel 125-324-13, which is located within the rural district; and

WHEREAS, public notice of the application was mailed on or before September 9, 2022 to the 28 landowners or leaseholders within ½ mile of the subject parcel pursuant to KPB 21.25.060; and

WHEREAS, public notice was sent to the postmaster in the Crown Point area of Moose Pass requesting that it be posted at the Moose Pass Post Office; and

WHEREAS, a public hearing of the Advisory Planning Commission in Moose Pass was held on September 15, 2022 wherein the Advisory Planning Commission voted to approve the CLUP with stipulations including increased bonding for water well replacement, reduced hours of operation, reduced expected life span, residential blasting notification, increased site security; and

WHEREAS, public notice of the application was published in the September 14, 2022 and September 21, 2022 issues of the Seward Journal; and

WHEREAS, a public hearing was held at the September 26, 2022 meeting of the Kenai Peninsula Borough Planning Commission;

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH:

SECTION 1. 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 September 2, 2022 the applicant, Tutka LLC, submitted a conditional land use permit application to the Borough Planning Department for KPB Parcel 125-324-13, 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 or processes material.
5. The proposed cumulative disturbed area within the parcel is approximately 6 acres.
6. To meet material site standard 21.29.040(A)(1), the proposed activity must protect against lowering of water sources serving other properties by complying with required permit conditions KPB 21.29.050(A)(4), Water Source Separation; KPB 21.29.050(A)(5), Excavation in The Water Table; KPB 21.29.050(A)(6), Waterbodies.
7. The application indicates that the seasonal high-water table is unknown, but a visual inspection of the rock face, found no evidence of water.
8. The applicants intended depth of excavation will be 30 feet vertically up into the cliff face.
9. If water is encountered the applicant is required to maintain a 2-foot vertical separation from the seasonal high-water table.
10. The applicant is required not to dewater either by pumping, ditching or some other form of drainage.
11. The site plan indicates that there are no wells located within 300 feet of the proposed excavation area.
12. The application states that work is not anticipated to be completed in the water table.
13. The site plan states that there are no wetlands or surface waters within the proposed excavation area.
14. To meet material site standard 21.29.040(A)(2), the proposed activity must be conducted in a manner to protect against physical damage to adjacent properties by complying with the required permit conditions of KPB 21.29.050 (A)(1), Parcel Boundaries; KPB 21.29.050(A)(2), Buffer Zone; KPB 21.29.050(A)(7), Fuel Storage.
15. The site plan indicates the property boundary within 300 feet of the work area was flagged in 2019.
16. The site plan and application propose the following buffers:
 - North: Greater than 50-foot native vegetation.
 - South: Greater than 50-foot native vegetation.
 - East: Greater than 50-foot native vegetation.
 - West: Greater than 50-foot native vegetation.These buffers shall not overlap an easement.
17. The applicant is required to store fuel containers larger than 50 gallons in impermeable berms and basins capable of retaining 110 percent of storage capacity. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.
18. To meet material site standard 21.29.040(A)(3), the proposed activity must be conducted in a manner which minimizes the off-site movement of dust by complying with required permit condition KPB 21.29.050(10), Dust Control.



19. The applicant is required to provide dust control by the use of water and calcium chloride.
20. The site plan indicates that the material haul route will be to the Southwest of the subject parcel leading to a newly constructed haul road. The haul road will be located on the Eastside of the runway and run parallel with it. At the Southern end of the runway the haul road merges with the existing access and exits onto Rock Ptarmigan Rd., a Borough maintained facility. From here, the route turns West and makes its way to the Seward Highway a State maintained facility.
21. To meet material site standard 21.29.040(A)(4), the proposed activity must be conducted in a manner which minimizes noise disturbance to other properties by complying with required permit conditions KPB 21.29.050(2), Buffer Zone; KPB 21.29.050(3), Processing; and KPB 21.29.050(11), Hours of Operation.
22. The site plan and application propose the following buffers:
 - North: Greater than 50-foot native vegetation.
 - South: Greater than 50-foot native vegetation.
 - East: Greater than 50-foot native vegetation.
 - West: Greater than 50-foot native vegetation.These buffers shall not overlap an easement.
23. The applicant indicates that material processing will take place on the property. Any equipment used for processing, screening and sorting of riprap materials will be operated at least 300 feet from all property lines. Any equipment used for crushing rock or other materials will not be operated between 10:00 p.m. and 6:00a.m., to minimize noise disturbance to other properties.
24. To meet material site standard 21.29.040(A)(5), the proposed activity must be conducted in a manner which minimizes visual impacts by complying with the permit condition KPB 21.29.050(2), Buffer Zone.
25. The site plan and application propose the following buffers:
 - North: Greater than 50-foot native vegetation.
 - South: Greater than 50-foot native vegetation.
 - East: Greater than 50-foot native vegetation.
 - West: Greater than 50-foot native vegetation.These buffers shall not overlap an easement.
26. To meet material site standard 21.29.040(A)(6), the proposed activity must be conducted in a manner which provides for alternate post-mining land uses by complying with the permit condition KPB 21.29.050(12).
27. The applicant has submitted a reclamation plan consistent with KPB 21.29.050(12)(a).
28. The bonding requirement of KPB 21.29.050(12)(b) will apply to this material site, because extraction is expected to be around 53,000 cubic yards of material. The amount of bond will be according to AS 27.19.040 unless the State of Alaska waives these requirements. In the case of a waiver the Kenai Peninsula Borough (KPB) would require the applicant to post bond to cover the anticipated reclamation costs and will be in the amount to be determined by the planning director as stated in KPB 21.29.050.
29. A public hearing of the Planning Commission was held on September 26, 2022 and notice of the meeting was published, posted, and mailed in accordance with KPB 21.25.060 and KPB 21.11.



SECTION 2. 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, 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

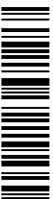
1. Material site standard 21.29.040(A)(1) is met because even though the seasonal high-water table is unknown, a visual inspection of the rock face, found no evidence of water, as set forth in Finding 7.
2. Material site standard 21.29.040(A)(2) is met because the permittee shall maintain a 2:1 slope between the buffer zone and pit floor on all inactive site walls and shall not allow buffers to cause surface water diversion too negatively impact adjacent properties.
3. Material site standard 21.29.040(A)(3) is met because the permittee will use water and calcium chloride on the driveways throughout the excavation area to minimize the movement of off-site dust.
4. Material site standard 21.29.040(A)(4) is met because site plan indicates the following noise buffers:
 - North: Greater than 50-foot native vegetation.
 - South: Greater than 50-foot native vegetation.
 - East: Greater than 50-foot native vegetation.
 - West: Greater than 50-foot native vegetation.Material site standard 21.29.040(A)(4) is also met, because any equipment used for conditioning or processing materials will be operated at least 300 feet from the parcel boundaries and any equipment used for crushing rock or other materials will not be operated between 10:00 p.m. and 6:00 a.m., to minimize noise disturbance to other properties.
5. Material site standard 21.29.040(A)(5) is met because the site plan indicates the following visual screening buffers:
 - North: Greater than 50-foot native vegetation.
 - South: Greater than 50-foot native vegetation.
 - East: Greater than 50-foot native vegetation.
 - West: Greater than 50-foot native vegetation.
6. Material site standard 21.29.040(A)(6) is met because the applicant has submitted a reclamation plan consistent with KPB 21.29.050(12)(a) and (b).

SECTION 3. That the land use and operations are described and shall be conducted as follows:

1. A portion of KPB Tax Parcel Number 125-324-13. The disturbed area within the parcel is approximately 6 acres;
2. Legal Description: **T 4N R 1W SEC 24 SEWARD MERIDIAN SW GOVT LOT 13, Seward Recording District.**, Third Judicial District, State of Alaska.
3. The applicant, Tutka, LLC proposes to:
 - a. Process materials on the subject parcel;
 - b. Reclaim the site to a stable condition upon completion of the project.

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 as shown in the approved site plan:
 - North: Greater than 50-foot native vegetation.
 - South: Greater than 50-foot native vegetation.
 - East: Greater than 50-foot native vegetation.
 - West: Greater than 50-foot native vegetation.



- These buffers shall not overlap an easement.
3. The permittee shall not allow buffers to cause surface water diversion which negatively impacts adjacent properties or water bodies.
 4. The permittee shall operate all equipment which conditions or processes material at least 300 feet from the parcel boundaries.
 5. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
 6. The permittee shall maintain a 2-foot vertical separation from the seasonal high-water table.
 7. The permittee shall not dewater either by pumping, ditching or any other form of draining unless an exemption is granted by the planning commission.
 8. 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.
 9. 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.
 10. 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.
 11. The permittee shall notify the planning department of any further subdivision or return to acreage of this parcel. The planning director may issue a written exemption from the permit amendment requirement if it is determined that the subdivision is consistent with the use of the parcel as a material site and all original permit conditions can be met.
 12. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
 13. The permittee shall not operate rock crushing equipment between the hours of 10:00 pm and 06:00 am.
 14. The permittee shall update their reclamation plan to include all provisions listed in the State of Alaska Department of Natural Resources reclamation plan. If there are any conflicts between the reclamation plans, the more site-specific provision shall control.
 15. The permittee shall reclaim the site as described in the reclamation plan for this parcel and approved by the planning commission.
 16. The permittee shall post a bond to cover the anticipated reclamation costs in an amount determined by AS 27.19.040 unless the State of Alaska waives their requirements. In the case of a waiver the Kenai Peninsula Borough would require the applicant to post bond in the amount to be determined by the planning director and as stated in KPB 21.29.050.
 17. 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 regulations regarding using and storing explosives.
 18. 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.
 19. 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.



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20. This conditional land use permit is subject to annual review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.25.090, the planning commission may revoke a permit issued pursuant to this chapter if the permittee fails to comply with the provisions of this chapter or the conditions of the permit. The planning director shall provide at least 30 days written notice to the permittee of a revocation hearing before the planning commission.
21. 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.

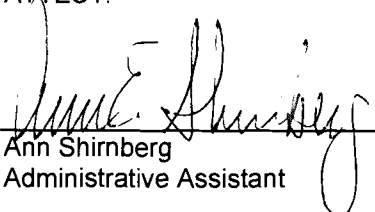
Voluntary Permit Conditions

22. The Planning commission and the Permittee have agreed to the following voluntary condition to further support Standard 21.29.040(A)(4): The permittee shall not conduct material site operations between the hours of 6:00 pm and 07:00 am. Monday through Saturday and will not conduct operation on Sunday.
23. The Planning commission and the Permittee have agreed to the following voluntary condition to further support Standard 21.29.040(A)(4): The permittee shall not detonate explosives or blasting agents between the hours of 5:00 pm and 9:00 am Monday through Friday and will not detonate explosives or blasting agents on Saturday or Sunday.
24. The Planning commission and the Permittee have agreed to the following voluntary condition to further support Standard 21.29.040(A)(2) and 21.29.040(A)(4): The permittee shall notify all residential or commercial properties within one and one-half miles (1.5 miles) of the blasting site prior to each blast.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON THIS 10TH DAY OF OCTOBER, 2022.


Jeremy Brantley, Chairperson
Planning Commission

ATTEST:


Ann Shirnberg
Administrative Assistant

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



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