

FOR VISUAL AID PURPOSES ONLY

DERKEVORKIAN AMENDMENTS  
ORDINANCE 2022-36

## 21.29.060. Reclamation plan.

### ORDINANCE AS AMENDED TO-DATE

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.

B. The applicant may revegetate and must reclaim all disturbed land within the time period approved with the reclamation plan 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.

### DERKEVORKIAN #8

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 KPB21.50.

## 21.29.060. Reclamation plan.

### ORDINANCE AS AMENDED TO-DATE

...

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:

...

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.

### DERKEVORKIAN #8 (CONT'D)

...

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:

...

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.

## 21.29.063. Decision.

ORDINANCE AS AMENDED TO-DATE

*[The Ordinance as amended to-date does not include this Section.]*

DERKEVORKIAN #9

### 21.29.063. Decision.

The planning commission or planning director, as applicable, shall approve permit applications whereby mandatory standards under KPB 21.20.040 have been met through implementation of conditions set forth in KPB 21.20.050, 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.

## 21.29.065. Effect of permit denial.

### ORDINANCE AS AMENDED TO-DATE

#### 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.

### DERKEVORKIAN #10

#### ~~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.~~

## 21.29.070. Permit renewal, modification and revocation.

### ORDINANCE AS AMENDED TO-DATE

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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. A renewal application heard by the planning commission must be processed in accordance with the notice requirements of KPB 21.25.060.

### DERKEVORKIAN #11

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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.

## 21.29.115. Permit transfers.

### ORDINANCE AS AMENDED TO-DATE

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.

### DERKEVORKIAN #12

~~[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.



## 21.29.115. Permit transfers.

### ORDINANCE AS AMENDED TO-DATE

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.

### DERKEVORKIAN #12 SUBSTITUTE

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

## 21.29.120. Prior-existing uses.

### ORDINANCE AS AMENDED TO-DATE

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 is on the applicant. 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.

### DERKEVORKIAN #13

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.

## 21.29.120. Prior-existing uses.

### ORDINANCE AS AMENDED TO-DATE

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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. Based on that information, the planning director will classify the PEU based upon the use types set forth in KPB 21.29.020 and will provide a written description of the existing operations. The planning director's decision will also set forth the reclamation plan as required by subsection (F) below. 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.

### DERKEVORKIAN #13 (CONT'D)

...

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.

## 21.29.120. Prior-existing uses.

### ORDINANCE AS AMENDED TO-DATE

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C. *Discontinuance.* Any prior-existing use which has ceased by discontinuance for an uninterrupted period of five (5) 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 five (5) year time period. If a prior-existing use is discontinued or abandoned, it may not be recommenced.

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. 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. If a PEU material site has been exhausted as determined by the planning director, it cannot be used for earth materials processing without a Type II Endorsement.

### DERKEVORKIAN #13 (CONT'D)

...

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.

## 21.29.120. Prior-existing uses.

### ORDINANCE AS AMENDED TO-DATE

...

G. Materials extraction operations with legal prior-existing use status which extract material below or within two 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 beyond the classification set forth in the planning directors decision or beyond the written description of existing operations as set forth by the planning direct under subsection (B) above; (2) increasing the depth of excavation to go within two 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 determination, to include adding earth materials processing to a use that did not previously include processing.

### DERKEVORKIAN #13 (CONT'D)

...

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

## 21.29.130. Definitions.

### ORDINANCE AS AMENDED TO-DATE

*[The Ordinance as amended to-date does not include a definition for "earthen berm".]*

### DERKEVORKIAN #14

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

...

**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.**

## 21.25.060. Notice.

### ORDINANCE AS AMENDED TO-DATE

A. Except for counter permits for material sites issued under KPB 21.29.020(A) or expressly excepted elsewhere in this title, notice of any pending application required under this title shall be given in accordance with this section.

...

B. Required forms of notice are as follows:

...

3. At the beginning of the notice period a copy of the notice will be sent by First Class U.S. Mail to all owners and/or leaseholders of record of property located with a radius of one-half mile of the subject property.

### DERKEVORKIAN #15

A. Except for counter permits for material sites issued under KPB 21.29.020(A) or expressly excepted elsewhere in this title, notice of any pending application required under this title shall be given in accordance with this section.

...

B. Required forms of notice are as follows:

...

3. At the beginning of the notice period a copy of the notice will be sent by First Class U.S. Mail to all owners and~~/or~~ leaseholders of record of property located within a radius of one-half mile of the subject property, **except for permit applications under KPB 21.29 the notice area is the parcels within a radius of 1000 feet of the subject property.**

JOHNSON AMENDMENTS  
ORDINANCE 2022-36



## 21.25.050. Permit considerations—Public hearing required.

### ORDINANCE AS AMENDED TO-DATE

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.

### Johnson #1

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.**

## 21.29.005. Intent and Purpose.

### ORDINANCE AS AMENDED TO-DATE

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. It is the further purpose of this chapter to promote compatible, orderly development.

### Johnson #2

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.

## 21.29.030. Application procedure.

### ORDINANCE AS AMENDED TO-DATE

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:

...

8. A site plan, prepared by a qualified independent civil engineer licensed and active in the State of Alaska to include the following:

...

d. Anticipated haul routes, contingent on approval from the governmental agency with regulatory jurisdiction over the road; and

e. Location of any processing areas on the parcel, if applicable.

### Johnson #3

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:

...

8. A site plan, prepared by a qualified independent civil engineer licensed and active in the State of Alaska to include the following:

...

d. Location of any water body on the parcel, including the location of any riparian wetland as determined by best available data[.];\*

**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.**

*\*This Subsection now appears in 21.29.030(A)(7)(f).*

## 21.29.040. Standards for sand, gravel or material sites.

### ORDINANCE AS AMENDED TO-DATE

A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, visual and other impacts of earth materials extraction sites through setbacks, buffer zones, and street-level visual screening. 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:

...

2. That the use will not be harmful to the public's health, safety, and general welfare;
3. That sufficient setbacks, buffer zones, and other safeguards are being provided consistent with this chapter;

...

### Johnson #4

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:

...

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

...

## 21.29.050. Permit conditions applicable to all permits.

### ORDINANCE AS AMENDED TO-DATE

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:

...

5. *Surface water protection.* Use of surface water protection measures as specified in KPB 21.29.030(A)(8)(a).

### Johnson #5

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:

...

5. *Surface water **and groundwater** protection.* Use of surface **and ground** water protection measures as specified in KPB 21.29.030(A)(8)(a).

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

## ORDINANCE AS AMENDED TO-DATE

A. Prior to application for a Type III Endorsement, the following requirements must be met:

...

4. The report must be submitted with the CLUP application and must:

...

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.

## Johnson #6

A. Prior to application for a water table extraction permit, the following requirements must be met:

...

4. The report must be submitted with the CLUP application and must:

...

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.**

CHESLEY AMENDMENTS  
ORDINANCE 2022-36

## 21.29.010. Applicability—Prohibitions.

ORDINANCE AS AMENDED TO-DATE

21.29.010. Applicability.

...

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.

E. Up to 5,000 gallons of water per day may be withdrawn from a well. Proof of ADNR use authorization is required for a withdrawal of water in excess of 5,000 gallons per day from a well, as long as there is no open pond with active excavation. Open water is allowed only with an approved settling pond per KPB 21.29.055 or in conjunction with a CLUP approved pursuant to KPB 21.29.057 (Type I Endorsement).

Chesley #1

21.29.010. Applicability—Prohibitions.

...

**D. Earth materials excavation, extraction, hauling, conditioning or processing, within 1,000 feet of the main entrance to a public campground is prohibited from the last Monday of May through the first Monday of September each year. The distance will be measured from the entrance of the public campground to the outer boundary of a parcel for which an applicant has requested a counter permit or conditional land use permit under this chapter.**

**[D] E.** 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.

**[E] F.** Up to 5,000 gallons of water per day may be withdrawn from a well. Proof of an ADNR use authorization is required for withdrawal of water in excess of 5,000 gallons per day from a well, as long as there is no open pond with active excavation. Open water is allowed only with an approved settling pond per KPB 21.29.055 or in conjunction with a CLUP approved pursuant to KPB 21.29.057 (earth materials extraction within the water table CLUP).



## 21.29.015. Material extraction exempt from obtaining a permit.

### ORDINANCE AS AMENDED TO-DATE

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. An owner or operator exempt under this subsection must register with the borough on a form provided by the planning department and must comply with KPB 21.29.010(C).

### Chesley #2

A. Material extraction limited to one acre per parcel [~~which disturbs an area of less than one acre~~] that is not in a mapped flood plain or subject to 21.29.010(B) [~~,does not enter the water table, and does not cross property boundaries,~~] does not require a permit. There will be no excavation within 20 feet of a public right-of-way or within 10 feet of a lot line. An owner or operator exempt under this subsection must register with the borough on a form provided by the planning department and must comply with KPB 21.29.010(C). Material extraction within four feet of seasonal high-water table and all material crushing or screening activities is prohibited under this exemption.

## 21.29.020. Types of permits available.

### ORDINANCE AS AMENDED TO-DATE

A. Counter permit. A counter permit is required for earth material extraction which disturbs more than one acre and less than 5 cumulative un-reclaimed acres. Material conditioning or processing, and material extraction within two feet of the seasonal high-water table is prohibited under a counter permit except, upon request from the applicant, the planning director or designee may issue a one-time processing waiver for screening of materials only. A one-time processing waiver will not exceed sixty consecutive days. The hours of operation under the one-time processing waiver are the same as provided for a Type II Earth Materials Conditioning or Processing Endorsement under 21.29.055. Buffer conditions for a one-time processing waiver must be established consistent with the permit application prior to commencement of processing operations. 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.

### Chesley #3

A. Counter permit. A counter permit is required for earth material extraction which disturbs more than one acre and less than 5 cumulative unreclaimed acres **and is limited to one counter permit per parcel**. Material processing, screening, or crushing, and material extraction within four feet of the seasonal high-water table is prohibited under a counter permit. 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.

## 21.29.065. Effect of permit denial.

### ORDINANCE AS AMENDED TO-DATE

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.

### Chesley #4

A. **Absent new evidence or a material change in circumstances that even with due diligence the applicant could not have presented with the original application, [N]** 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. **Absent new evidence or a material change in circumstances that even with due diligence the applicant could not have presented with the original application, [N]** no reapplication concerning the same CLUP may be filed within ~~[one]~~ **five** calendar years 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 a material change of circumstances exist and that [they were not available or present,]~~ **even with due diligence the applicant could not have presented the information** with the original application. ~~[was filed.]~~

## 21.29.130. Definitions.

### ORDINANCE AS AMENDED TO-DATE

*[The Ordinance as amended to-date does not include a definition for “camp or camping”, “campsite”, or “public campground”.]*

### CHESLEY AMENDMENT #5

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

...

**5. Camp or camping means to use a vehicle, tent, or shelter, or to arrange bedding, or both, with the intent to stay overnight.**

**6. Campsite means any space designated for camping within a public campground.**

...

**12. Public campground means an area, developed and maintained by a public entity, that is open to the public and contains one or more campsites.**

ADMINISTRATIVE  
AMENDMENTS  
ORDINANCE 2022-36

## 21.29.130. Definitions.

### ORDINANCE AS AMENDED TO-DATE

*[The Ordinance as amended to-date does not include a definition for "excavation dewatering".]*

### ADMINISTRATIVE AMENDMENT #11

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

...

8. **Excavation dewatering means the practice of dewatering excavation areas through the use of pumps placed within the excavation or well pumps in adjacent dewatering wells which lower the water table to provide a relatively dry working area.**