

O2022-36 (SUB)
Material site permitting
process overview

Updated 9-5-2023

Section 1

KPB 21.25.050. – Permit considerations

- Increased review time of application for permit from 21 days to 30 days.

Section 2

KPB 21.25.060

- New notice section applicable to Conditional Land Use Permits (CLUPs) under Title 21
- 1000 feet notice radius for KPB 21.29 CLUPs (Material Sites)
- Provides for notice via borough website

Section 3

New Chapter KPB 21.29, Material Site Permits

- Establishes a multi-permit stratification system intended to increase decision-making flexibility while protecting against uses that carry with them potentially negative impacts to public health, safety, and general welfare.
- Two permits, 3 endorsement types
 - Counter Permit (CP): anything from over 1 acre to 5 acres, no processing, no extraction in water table.
 - Conditional Land Use Permit (CLUP), with three endorsements types:
 - Type I: extraction activity disturbs more than 5 acres, no processing, no extraction w/in 2 feet of water table.
 - Type II: required for all on-site materials processing (including crushing, screening, etc).
 - Type III: provides for additional monitoring and a professional report for uses within water table.

KPB Chapter 21.29

- KPB 21.29.005 – Intent and Purpose
- KPB 21.29.010 – Applicability
- KPB 21.29.015 – Material extraction exempt
- KPB 21.29.020 – Types of permits available
- KPB 21.29.030 – Application procedure
- KPB 21.29.040 – Standards for sand, gravel or material sites
- KPB 21.29.045 – Required compliance with State/Federal laws
- KPB 21.29.050 – Permit conditions applicable to all permits
- KPB 21.29.055 – Earth materials processing (Type II)
- KPB 21.29.057 – Material extraction in water table (Type III)
- KPB 21.29.060 – Reclamation plan
- KPB 21.29.063 – Decision
- KPB 21.29.065 – Effect of permit denial
- KPB 21.29.070 – Permit renewal, modification, revocation
- KPB 21.29.080 – Permit close-out
- KPB 21.29.100 – Recordation
- KPB 21.29.110 – Violations
- KPB 21.29.115 – Permit transfers
- KPB 21.29.120 – Prior existing uses
- KPB 21.29.130 – Definitions

Section 3

KPB 21.29.005 – Intent and Purpose

- Sets forth intent and purpose for chapter in borough code regulating material sites.
- General purpose:
 - Promotes the public health, safety, and general welfare of KPB residents and visitors.
 - Promotes compatible, orderly development.

KPB 21.29.010 – Applicability

- Chapter applies to all private and public lands in the borough, unless otherwise exempt by law.
- Does not apply within the incorporated cities.
 - Zoning powers have been delegated by the borough to all incorporated cities within the borough
- Prohibits earth materials extraction within 300 feet of riparian wetlands or naturally-occurring open water bodies.
- References State of Alaska, DEC Best Management Practices.

KPB 21.29.015 – Material extraction exempt

- Exempts extraction disturbing less than one acre under circumstances set out
- Exempts dewatered bars within SBCFSA
- PEUs exempt
- Exempts extraction activities on private or public property necessary for development of the same property.

KPB 21.29.020 – Types of permits available.

- Current code: counter permit and CLUP. CLUP application requires all mandatory conditions and covers all uses.
- KPB 21.29.020
 - Counter Permit (CP): anything from over 1 acre to 5 acres, no crushing limited screening, no extraction w/in 2 feet of water table. Only the conditions set forth in KPB 21.29.050 apply.
 - Conditional Land Use Permit (CLUP) types:
 - Type I - Earth Materials Extraction : extraction activity disturbs more than 5 acres, no processing, no extraction w/in 2 feet of water table, only the conditions set forth in KPB 21.29.050 apply.
 - Type II - Earth Materials Processing: required for all on-site processing, screening, or crushing. Conditions set forth in KPB 21.29.050 + conditions set forth in KPB 21.29.055 apply.
 - Type III - Earth Materials Extraction within Water Table : Required for any earth materials extraction within water table. Conditions set forth in KPB 21.29.050 + conditions set forth in KPB 21.29.057 apply.
 - A CLUP applicant may request all three types at the time of application for a single fee.

KPB 21.29.030 – Application procedure

- Similar to current code application procedure
- Breaks apart a site map (professional surveyor) from site plan (professional engineer)
- Adds identification on site plan of groundwater protections measures for anadromous waters.

KPB 21.29.040 – Standards for sand, gravel or material sites

- All new standards.
- Regulations serve legitimate public purpose to protect against damage of public roads, physical damage to adjacent properties, dust, noise and other impacts through setbacks, buffer zones, and street-level visual screening.
- In granting a permit the Planning Director or Planning Commission must find:
 - Use is not inconsistent with applicable comp plan.
 - Use will not be harmful to public's health, safety, and general welfare.
 - Sufficient setbacks, buffer zones, and other safeguards are provided.
 - Use provides for a reclamation plan.
 - Use will preserve the value and character of the surrounding area.

KPB 21.29.045 – Required compliance with State and Federal laws

- Requires evidence of compliance with applicable state/federal agency prior to approval of KPB permit.
- Requires all activity conducted in manner that complies with state/federal protections including but not limited to air quality, water quality, hazardous materials.

KPB 21.29.050 – Permit conditions applicable to all permits

- In lieu of current exhaustive conditions in borough code that apply as a “one size fits all” this section establishes 9 mandatory conditions and provides 8 potentially applicable discretionary conditions.
- Allows for flexibility to meet the demands of a specific application.
- Is a move away from the “one size fits all” system.
- Promotes flexibility

KPB 21.29.050 – Permit conditions

...Continued

- 9 mandatory conditions:
 1. Buffer Zone: 30 feet, 6 foot berm or fence, 2:1 slope, buffer zone can only be waived when site is next to adjacent pit.
 2. Water source separation: extraction within 2 feet of water table is prohibited unless requirements of KPB 21.29.057 are met; dewatering off site is prohibited; material extraction within 100 feet of any private well is prohibited.
 3. Roads: Operations that impact KPB roads must be in accordance with KPB Chapter 14.40.
 4. Dust control: Dust suppression required within material site haul roads.
 5. Hours of operation: Applicable to all operations, 6am to 9pm, but can be adjusted by decision-maker and/or waived for seasonal project.
 6. Groundwater elevation: Requires monitoring of groundwater.
 7. Setback: 250 ft from school, senior center, child care facility, etc.
 8. Permit boundaries: Must stake buffers, ROWs.
 9. Processing: Requires compliance with KPB 21.29.050 conditions and KPB 21.29.055.

KPB 21.29.050 – Permit conditions ...Continued

- 8 discretionary conditions:
 1. Setbacks/Buffer Areas: Up to a maximum of 100 feet based on circumstances, potential for “rolling berms”.
 2. Road maintenance and repair: Permittee may be required to maintain/repair damaged public haul routes.
 3. Ingress/Egress: May be suggested by PC/Planning Director.
 4. Surface water protection: Use of surface water protection measures specified in KPB 21.29.030(A)(8)(a).
 5. 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 to protect against attractive nuisance issues.
 6. Noise suppression: discretionary white noise reverse alarms.
 7. Special Impacts Zone (SIZ): Residents within 500’ (counter permit) and 750’ (CLUP) of principle residential structure may request objective, measurable screening methods. May be grounds for denial if visual/noise/dust impacts cannot be screened.
 8. Public Campgrounds: Within 1000 feet of campsite, from Memorial Day through Labor Day, 9am -6pm limited hours, no excavation during listed holidays, PC/Planning Director may designate haul route.

KPB 21.29.055 – Earth materials processing

- In addition to KPB 21.29.050 conditions, this new Section sets forth 2 additional conditions:
 1. Setback – must process 300 feet from parcel boundaries, or lesser distance as appropriate.
 2. Hours of operation: 8am to 7pm, or as determined by the PC.
 - Provides for exceptions for emergency or good-cause findings.
 - Seasonal, project-based waiver available.

Section 3

KPB 21.29.057 – Material extraction in water table

- In addition to KPB 21.29.050 conditions sets forth additional requirements & conditions aimed primarily at protecting water quantity:
 - 21.29.057(A): establishes 6 additional application requirements when applicant requests to extract within the water table.
 - Requires groundwater study and report from a professional to characterize and monitor the condition of groundwater at the permitted site. Elevations of groundwater will be tied to real-world elevation datum. Focuses on water quantity concern over water quality concerns
 - 21.29.057(C): establishes 7 additional conditions applicable when applicant requests to extract within the water table.
 - Setback: up to 500 feet setback required related to proximity to drinking water source.

KPB 21.29.060 – Reclamation plan

- Similar to current code. Requires reclamation plan. Must be submitted with renewal application as well.
- Requires reclamation of site to leave land in stable condition with 2:1 slopes and presumably revegetation.
- Requires \$750 per acre bond.
- Reclamation plan and bond survives close-out, expiration, termination or revocation of permit.

KPB 21.29.065 - .115

- KPB 21.29.063 – Decision, permit applications that meet standards will be approved, applications that do not meet standards will be denied.
- KPB 21.29.065 – Effect of permit denial: no reapplication within 1 year without new evidence.
- KPB 21.29.070 – Permit renewal, modification, revocation: renewal required every 5 years, administrative if no changes, violations or complaints; public hearing otherwise.
- KPB 21.29.080 – Permit close-out: adds formal close-out process.
- KPB 21.29.100 – Recordation
- KPB 21.29.110 – Violations
- KPB 21.29.115 – Permit is transferrable.

KPB 21.29.120 – Prior existing uses (PEU)

- Must apply for PEU status. Determination by Planning Director appealable to Planning Commission (similar to LOZD nonconforming use process).
- Abandonment after 5 years of non-use; expansion prohibited.
- BY JANUARY 1, 2026 – PEU must:
 - Comply with KPB 21.29.060 (reclamation plan)
 - Comply with KPB 21.29.057 (extraction within water table, except setbacks don't apply)
 - Comply with applicable hours of operation requirements

ISSUES TO CONSIDER

- KPB 21.29.040 Standards
- Prior Existing Use (PEU) – Needs clarification. In fact, section may require substantial revisions to clarify body's intent: is idea that both the pre-1996 PEUs and CLUPs permitted between 1996 and 2023 are all considered PEU status moving forward **OR** only pre-1996 PEU are recognized, classified, PEU?