

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Peter A. Micciche, Mayor *PAM*

**DATE:** September 7, 2023

**SUBJECT:** **Mayor Micciche Amendment #1** to Substitute 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)

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The addition of two additional whereas clauses are necessary to highlight and empathize that material sites are a very important and appreciated component of this Borough. Without material sites, development and economic progress would be stifled. Without affordable borrow, gravel and other materials, the Borough could not continue to grow and prosper.

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

➤ **Add a new second and third whereas clause as follows:**

**WHEREAS, material sites and material site operators are vital to the development and improvement of the borough; and**

**WHEREAS, the Kenai Peninsula Borough supports material sites and recognizes that without material sites there would not be economic development; and**

Your consideration is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Peter A. Micciche, Mayor *PAM*

**DATE:** September 7, 2023

**SUBJECT:** **Mayor Micciche Amendment #2** to Substitute 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)

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This amendment is brought forward in response to a very reasonable request from the Kenai Peninsula Aggregate and Contractors Association request that the 60-day waiver be changed to 30 days for each year of the two years that a counter permit is in effect.

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

➤ **Amend KPB 21.29.020(A) 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 5 cumulative un-reclaimed acres and is limited to one counter permit per parcel. 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]~~ **limited** processing waiver for screening of materials only. ~~[The one-time]~~ **This** processing waiver may not exceed ~~[sixty]~~**thirty** consecutive days **per year**. 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.


Your consideration is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Peter A. Micciche, Mayor 

**DATE:** September 7, 2023

**SUBJECT:** **Mayor Micciche Amendment #3** to Substitute 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)

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These amendments address concerns within the KPB 21.29.040 section related to standards. This amendment removes the term “visual” within the standards section. My recommendation is that the term should not be used within the standards. Removing the term will not change the intent of the chapter or any of the regulations therein. Next, this amendment will change references to “salmon” or “juvenile salmon” to “anadromous waters”. The final amendment will remove the fifth standard relating to preserving the “value and character” of the surrounding area. The term is not appropriate when reading this chapter and Borough Code as a whole. Value and character of an area is subjective, not measurable, and will only serve to drive a wedge between home owners and commercial operators.

[Please note the bold underlined language is new and the strikethrough 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, ~~[visual]~~ and other impacts of earth materials extraction sites through setbacks, buffer zones, street-level ~~[visual]~~ screening, and protection of ~~[salmon rearing]~~ **anadromous 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, or the health of anadromous waters ~~[particularly with regard to juvenile salmon]~~;

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3. That sufficient setbacks, buffer zones, and other safeguards, including measures to mitigate impacts to groundwater flow paths [~~important for juvenile salmon~~], are being provided consistent with this chapter; **and**
4. That the use provides for a reclamation plan consistent with this chapter[;].  
[~~and~~
5. ~~That the use will preserve the value and character of the surrounding area.]~~

Your consideration is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Peter A. Micciche, Mayor *PMM*

**DATE:** September 7, 2023

**SUBJECT:** **Mayor Micciche Amendment #4** to Substitute 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)

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This amendment removes the word “visual” from KPB 21.29.050(A).

[Please note the bold underlined language is new and the strikeout 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 minimum 30-foot buffer zone must be established between the area of excavation and the parcel boundaries. The buffer zone must provide [~~visual,~~] dust, and noise screening. The buffer zone may include one of the following: a six-foot earthen berm with a 2:1 slope; a minimum six-foot foot sight-obscured fence; or an alternative buffer proposal that the planning commission or planning director, as applicable, deems appropriate. There is no requirement to buffer the material site from uses which commence after the approval of the permit. Berms may not alter natural drainage features;

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Your consideration is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Peter A. Micciche, Mayor *PM*

**DATE:** September 7, 2023

**SUBJECT:** **Mayor Micciche Amendment #5** to Substitute 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)

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These amendments remove the word “visual” from KPB 21.29.050(B)(5) and (B)(7).

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

➤ **Amend KPB 21.29.050(B) as follows:**

**21.29.050. Permit conditions applicable to all permits.**

B. ~~[Discretionary]~~ **Site Specific** 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. 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.

...

7. *Special Impacts Zone (SIZ)*

a. The screening of adverse [visual,] noise, dust, ~~[and dust]~~ **or other** impacts protects public health, safety, and general welfare. General welfare is further served through imposition of this zone. The distance restrictions balance the right to quiet enjoyment of one’s property against development rights. Residents within this zone may request screening methods that are objective, measurable, and within the overall regulatory limits set by this chapter by providing substantial evidence to support the request.

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- b. For counter permits, ~~[visual,]~~ noise, dust, ~~[and dust]~~ **or other** impacts that cannot be screened as set forth in Subsection 8(a) within 500 horizontal feet of an existing principle residential structure may be grounds for denial. For Type 1, 2, and 3 Endorsements, ~~[visual,]~~ noise, dust, ~~[and dust]~~ **or other** impacts that cannot be screened as set forth in Subsection 8(a) within 750 horizontal feet of an existing principle residential structure may be grounds for denial. The distances specified in this subsection will be measured from any outer wall of a principle residential structure to the nearest boundary of the proposed material site permitted parcel.

Your consideration is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Peter A. Micciche, Mayor

**DATE:** September 7, 2023

**SUBJECT:** **Mayor Micciche Amendment #6** to Substitute 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)

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These amendment removes the annual report. The applicant will still need to provide the required plan and if necessary, the Planning Director can obtain necessary elevation monitoring data. Following consultation with the Planning Director, an annual report is not necessary.

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

➤ **Amend KPB 21.29.050(C) as follows:**

**21.29.057. Type III Endorsement - Material extraction below or within two feet of the seasonal high-water table.**

...

C. Conditions. In addition to the requirements of KPB 21.29.050, operating conditions for extraction within or below two feet of the seasonal high-water table are as follows:...

~~[5. A qualified professional must annually submit a report to the department that includes water table elevation monitoring data.]~~

~~[6]5. Operations must not breach or extract material from a confined aquifer or a confining layer beneath a perched aquifer.~~

Your consideration is appreciated.



# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Peter A. Micciche, Mayor

**DATE:** September 7, 2023

**SUBJECT:** **Mayor Micciche Amendment #7** to Substitute 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)

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This amendment changes the “cooling off” period after a possible permit denial from five years to two years in the event there is no new evidence or a material change in circumstances that would allow for re-application following denial.

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

➤ **Amend KPB 21.29.065(B) as follows:**

### **21.29.065. Effect of permit denial.**

- 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, 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.
- 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, no reapplication concerning the same CLUP may be filed within [~~five~~]**three** calendar years of the date of the final denial action.

Your consideration is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Peter A. Micciche, Mayor *PMM*

**DATE:** September 7, 2023

**SUBJECT:** **Mayor Micciche Amendment #8** to Substitute 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)

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This amendment changes the two year look-back for any violations on review to one calendar year.

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

➤ **Amend KPB 21.29.070(B) 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 [~~FWO~~] calendar year[s] 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.

Your consideration is appreciated.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Peter A. Micciche, Mayor *PM*

**DATE:** September 7, 2023

**SUBJECT:** **Mayor Micciche Amendment #9** to Substitute 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)

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This amendment provides that the borough will pay to record the permit by using funds from the permit application fee.

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

➤ **Amend KPB 21.29.100 as follows:**

### **21.29.100. Recordation.**

All permits, permit extensions, modified permits, prior existing uses, and terminations will be recorded. Failure to record a material site document does not affect the validity of the documents. The ~~[operator or owner of the material site is responsible for all associated]~~ **borough will use funds from the application fee to pay** the permit recording fees.

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Peter A. Micciche, Mayor *PM*

**DATE:** September 7, 2023

**SUBJECT:** **Mayor Micciche Amendment #10** to Substitute 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)

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This amendment addresses and clarifies prior existing uses. The amendment clarifies that prior existing uses that existed prior to 1996 are recognized PEUs and an owner or operator of a PEU site does not need to apply with the Borough to be recognized. This amendment will eliminate confusion surrounding PEU status, concerns with regarding the expansion prohibition language in the current substitute, and serves to effectuate the intent of the Assembly and Administration regarding prior existing uses.

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

➤ **Amend KPB 21.29.120 as follows:**

### **21.29.120. Prior-existing uses.**

- A. *Recognized status.* A prior existing use (PEU) is a use that existed prior to May 21, 1996, and still in effect as of October 1, 2024. A PEU is recognized and is allowed to continue operation subject to the requirements of this section. A permitted material site is not considered a prior existing use.** ~~[PRIOR-EXISTING USES (PEU) IN EFFECT ON OCTOBER 1, 2023 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, 2023 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, 2025 WILL RESULT IN SUSPENSION OF ALL RIGHTS TO CONTINUED OPERATION AS A NONCONFORMING USE UNTIL 1) THE OPERATOR APPLIES FOR A PRIOR-EXISTING USE DETERMINATION; 2) THE APPLICATION IS APPROVED; AND 3) THE OPERATOR DEMONSTRATES FULL COMPLIANCE WITH ALL~~

~~PROVISIONS OF THIS CHAPTER RELATING TO PEUS. THE OPERATOR WILL HAVE ONE YEAR FROM THE DATE OF THE NOTICE OF THE PLANNING DIRECTOR'S REVIEW OF AN OPERATOR'S FIVE YEAR RENEWAL TO COME INTO FULL COMPLIANCE WITH THE PROVISIONS OF THIS CHAPTER, OTHERWISE THE SUSPENDED PEU PERMIT WILL BE TERMINATED.]~~

- B. **Classification.** **The planning department will review PEUs to determine the established use by classifying a PEU based upon the use types set forth in KPB 21.29.020, and provide a written description of the existing operations and classification determination. The PEU classification determination is only for the use that was established prior to October 1, 2024. The classification determination runs with the land and applies to the entire parcel or lot. The PEU classification determination must state whether or not the PEU is within the water table. The planning director's decision will also set forth the reclamation plan as required by subsection (D) below. The planning director's decision may be appealed by the applicant to the planning commission within 15 days of distribution of the decision. If a parcel is subdivided, the PEU 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.** ~~[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 WILL INCLUDE A SUMMARY OF THE APPLICATION, A VICINITY MAP, AND A DEADLINE FOR SUBMITTING 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 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.]~~
- C. **Discontinuance.** **Any PEU which has ceased by discontinuance for an uninterrupted period of 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 five-year time period. If a PEU 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. The planning director will determine in writing whether a PEU has ceased by discontinuance. The planning director's decision may be appealed to the planning commission within 15 days of distribution of the decision**

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~~[D. EXPANSION PROHIBITED. A PRIOR-EXISTING USE MAY NOT BE INCREASED, INTENSIFIED, OR EXPANDED OR MOVED AFTER OCTOBER 1, 2023, 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.]~~

D.[F.] In accordance with 21.29.015, on or before January 1, 2026, all legal PEU extraction operations must comply with KPB 21.29.060 (reclamation plan) and applicable hours of operation requirements under this chapter. The planning director may waive or modify any or all of the reclamation plan requirements set forth in KPB 21.29.060 as appropriate.

~~[G. MATERIALS EXTRACTION OPERATIONS WITH LEGAL PRIOR-EXISTING USE STATUS WHICH EXTRACT MATERIAL BELOW OR WITHIN TWO FEET OF THE SEASONAL HIGHWATER TABLE MUST 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 DIRECTOR'S DECISION OR BEYOND THE WRITTEN DESCRIPTION OF EXISTING OPERATIONS AS SET FORTH BY THE PLANNING DIRECTOR 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.]~~

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

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

**FROM:** Peter A. Micciche, Mayor 

**DATE:** September 7, 2023

**SUBJECT:** **Mayor Micciche Amendment #11** to Substitute 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)

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This amendment changes the effective date to October 1, 2024, in order to provide time for planning and implementation.

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

➤ **Amend SECTION 4 as follows:**

**SECTION 4.** That this ordinance ~~[is effective immediately upon enactment]~~ **shall become effective on October 1, 2024.**