

## **E. NEW BUSINESS**

- 8. Conditional Land Use Permit (CLUP)**
  - Modification of CLUP for Material Extraction**
  - PC Resolution 2021-10**
  - Applicant: River Resources, LLC**
  - Location: 34386 Patson Rd., Soldotna, AK 99669**
  - PINs: 135-243-13 & 135-243-29**

# Conditional Land Use Permit for a Material Site

## STAFF REPORT

PC MEETING: April 12, 2021

**Applicant:** River Resources, LLC

**Landowner:** River Resources, LLC

**Parcel Numbers:** 135-243-13 &-29

**Legal Description:** T 5N R 10W SEC 34 SEWARD MERIDIAN KN NW1/4 SE1/4 EXCLUDING PATSON PROPERTIES PART 1

T 05N R 10W SEC 34 SEWARD MERIDIAN KN 2019068 PATSON PROPERTIES 2019 REPLAT TRACT C1

**Location:** 34386 Patson Road

GENERAL OVERVIEW: The applicant wishes to modify the existing conditional land use permit for material extraction on the above property, approved by the planning commission on December 16, 2019, to allow for gravel extraction below the groundwater elevation. A copy of the application, including the required water monitoring information, is included as **Attachment A**. The applicant is also requesting an exemption for dewatering as part of the extraction activities. Dewatering will only be conducted within the permitted material site and water will not leave the property.

KPB 21.29.050(A)(5) provides that the planning commission may approve excavation in the water table provided the applicant completes certain water monitoring requirements carried out by an independent civil engineer or professional hydrogeologist, submits the monitoring data, and has certification by the engineer or hydrogeologist that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources.

As required by KPB 21.29.050(A)(5), McLane Consulting has certified that the excavation plan proposed by the applicant will not negatively impact the quantity of the aquifer serving the existing water sources. The excavation and reclamation site plan submitted with the application states that monitor wells will be maintained and measurements recorded for the life of the material site. Vicinity, aerial, topography, land use and ownership maps are included here as **Attachments B – F**.

According to the modification application received on March 3, 2021, the applicant seeks to excavate an area of approximately 31.2 acres to a maximum depth of 32' below original ground. The groundwater elevation data provided indicates that groundwater elevation is approximately 17' below original ground. The aquifer-confining layer of dense blue-gray silt is estimated to be approximately 35' below original ground and approximately 30' thick.

As in the original application, primary ingress and egress to the site is directly onto Funny River Road, a state maintained road, with alternate access proposed to Kenai River Avenue, a City of Soldotna maintained road, and then to Funny River Road. The groundwater excavation plan for the site is the same as the phased development originally approved, with material being excavated in the southern portion of the parcel and working northerly. Dewatering will be localized and will remain within the same property to re-enter the groundwater table. The required buffers will remain the same. As originally permitted, the impacted area remains at approximately 52 acres, with excavation within the water table on approximately 31.2 acres; the annual quantity of material expected to be removed is 45,000cy; and, the site has an expected lifespan of 40 years.

PUBLIC NOTICE: Public notice of the application was mailed on March 19, 2021 to the 233 landowners or leaseholders of the parcels within ½ mile of the subject parcel, pursuant to KPB 21.25.060. A copy of the public notice and notice radius map are included as **Attachment G**. Public comments received prior to the packet deadline are included as **Attachment H**. Any public comments received by the

Planning Department prior to the hearing will be included as desk packet items at the April 12, 2021, meeting.

FINDINGS OF FACT:

1. *Procedural Findings.*
  - A. 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.
  - B. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
  - C. On December 16, 2019, the planning commission passed resolution 2019-39, which approved a conditional land use permit to River Resources, LLC, for material extraction on KPB tax parcels #135-243-13 & 135-243-29.
  - D. On February 26, 2021, River Resources, LLC, submitted to the KPB Planning Department an application to modify its existing conditional land use permit for parcels #135-243-13 & 135-243-29 to allow for excavation below groundwater elevation. After a request from staff, additional information was provided on March 3, 2021.
  - E. KPB 21.29.050(A)(5) provides the conditions upon which the planning commission may permit excavation within the water table greater than a 300-foot distance from a water source. Conditions include installation of at least three monitoring wells, completion of monitoring requirements, certification by a qualified independent civil engineer or professional hydrogeologist that the excavation will not negatively impact the quantity of an aquifer serving existing sources, and a prohibition on operations breaching an aquifer confining layer.
  - F. The applicant contracted McLane Consulting to measure groundwater monitor wells and analyze the data in accordance with KPB 21.29.050(A)(5).
  - G. McLane Consulting collected groundwater elevation measurements in three month intervals from five monitor wells over the course of one year.
  - H. From the measurements and data from the Alaska Department of Natural Resources, McLane Consulting determined the flow direction at the site to be northwesterly, and the flow rate, or hydraulic conductivity, to be typical of dense gravel and coarse sand.
  - I. As required by KPB 21.29.050(A)(5)(a), McLane Consulting has certified that the excavation plan proposed by the applicant will not negatively impact the quantity of the aquifer serving the existing water sources.
  - J. The excavation and reclamation site plan states that at least three monitor wells will be maintained and measurements recorded for the life of the material site.
  - K. A staff site visit was conducted on March 25, 2021.
  - L. In accordance with KPB 21.29.050(A)(4-5), all excavation between 300 and 100 horizontal feet of existing wells must remain at least two feet above groundwater.
  - M. In accordance with KPB 21.29.050(A)(4), material extraction is prohibited within 100 horizontal feet of wells existing prior to the original permit issuance.
  - N. A public hearing of the planning commission was held on April 12, 2021, and notice of the application was mailed on March 19, 2021, to the 233 landowners or leaseholders of the parcels within one-half mile of the subject parcels. Public notice was sent to the postmaster in Soldotna requesting that it be posted at the Post Office. Public notice of the application was scheduled for publication in the April 1, 2021, & April 8, 2021, issues of the Peninsula Clarion.
  - O. Compliance with the mandatory conditions in KPB 21.29.050, as detailed in the following findings, necessarily means that the application meets the standards contained in KPB 21.29.040.
2. *Parcel boundaries.* KPB 21.29.050(A)(1) provides that all boundaries of the subject parcel shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
  - A. Permit condition number 1 requires the placement of stakes. Borough staff has

inspected the proposed site and has verified that stakes have been placed along the permit boundaries.

3. *Buffer zone.* KPB 21.29.050(A)(2) provides that a buffer zone shall be maintained around the excavation perimeter or parcel boundaries.
  - A. Permit condition number 2 requires that the permittee maintain the following buffers for each property boundary that will provide visual and noise screening to adjacent properties:  
50 feet of undisturbed natural vegetation to be replaced by a sight limiting minimum six-foot high fence when excavation is within 50 feet of the permit boundary and its associated utility easement, if applicable. The fence will be replaced with a minimum six-foot high berm with 2:1 slopes when excavation in that area is exhausted.
4. *Processing.* KPB 21.29.050(A)(3) provides that any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries.
  - A. The original permit site plan indicates a 17.9-acre processing area that is located 300 feet from the permit boundaries. Borough staff will regularly monitor the material site to ensure compliance with this setback requirement.
5. *Water source separation.* KPB 21.29.050(A)(4) provides that all permits shall be issued with a condition that prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance. Excavation within the water table shall not be within 300 feet of a water source. There shall be no dewatering by either pumping, ditching or some other form of draining without an exemption from the planning commission. In the event an exemption is granted, the contractor must post a bond for liability for potential accrued damages.
  - A. The site plan shows three wells with 300 feet of permit area but none of them is within 100 feet of the proposed excavation.
  - B. An exemption has been requested for dewatering within the permitted area. If granted, borough staff will regularly monitor the site to ensure that dewatering takes place only within the permitted material site.
  - C. Borough staff will regularly monitor the material site to ensure compliance with the two-foot vertical separation from the water table requirement between 100 and 300 feet of a water source.
  - D. The requirement that the permittee post a bond of \$30,000 for liability to potential accrued damages for dewatering activities will be met by permit condition number 8.
6. *Excavation in the water table.* KPB 21.29.050(A)(5) provides that excavation in the water table greater than 300 horizontal feet of a water source may be permitted with the approval of the planning commission.
  - A. This modification seeks permission to excavate within the water table.
  - B. Five monitoring tubes have been installed to monitor ground water within the permitted site. At least three wells will be maintained and measurements taken for the life of the material site.
  - C. Data and interpretation for groundwater elevation, flow direction, and flow rate for the subject parcel, measured in three month intervals by a qualified independent civil engineer at least one year prior to the modification application has been provided.
  - D. Certification by a qualified, independent engineer that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources has been provided.
7. *Waterbodies.* KPB 21.29.050(A)(6) provides that an undisturbed buffer shall be left 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. In order to prevent discharge, diversion, or capture of surface water, an additional setback from lakes, rivers, anadromous streams, and riparian wetlands may be required.
  - A. There are no water bodies within 100 feet of the proposed extraction. The Kenai River and its associated floodplain and riparian wetland is approximately 350 feet north of the proposed material site at its closest point.
8. *Fuel storage.* KPB 21.29.050(A)(7) provides that fuel storage for 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.

- A. Borough staff will regularly monitor the material site to ensure compliance with this condition.
9. *Roads.* KPB 21.29.050(A)(8) provides that operations shall be conducted in a manner so as not to damage borough roads.
  - A. The original submitted site plan indicates that the haul route will be directly to Funny River Road, a state maintained road. Two alternate access points are proposed to Kenai River Avenue, a Soldotna City maintained road, then to Funny River Road.
10. *Subdivision.* KPB 21.29.050(A)(9) provides that any further subdivision or return to acreage of a parcel subject to a conditional land use or counter permit requires the permittee to amend their permit.
  - A. Borough planning staff reviews all subdivision plats submitted to the Borough to ensure compliance with this requirement.
11. *Dust control.* KPB 21.29.050(A)(10) provides that dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
  - A. If Borough staff becomes aware of a violation of this requirement, action will be taken to ensure compliance.
12. *Hours of operation.* KPB 21.29.050(A)(11) provides that rock crushing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
  - A. If Borough staff becomes aware of a violation of this requirement, action will be taken to ensure compliance.
13. *Reclamation.* KPB 21.29.050(A)(12) provides that reclamation shall be consistent with the reclamation plan approved by the planning commission. The applicant shall post a bond to cover the anticipated reclamation costs in an amount to be determined by the planning director. This bonding requirement shall not apply to sand, gravel or material sites for which an exemption from state bond requirements for small operations is applicable pursuant to AS 27.19.050.
  - A. Updated drawings for the original reclamation plan were submitted with the modification application. The reclamation plan indicates that reclamation will be completed annually before the growing season ends (September), that seeding will be applied as necessary each season to areas that achieve final grade in order to minimize erosion and dust, and that the southwesterly portions of the site will be utilized for future buildings.
  - B. The site plan indicates that the reclamation will include recontouring using strippings, overburden, waste import and topsoil to a condition that allows for reestablishment of natural vegetation, slopes no steeper than 2:1, with slopes covered with a minimum of 4 inches of topsoil mix and seeded. Reclamation slopes within water table will be the same where above the water table, with unseeded slopes no steeper than 2:1 below the water table.
  - C. Borough staff will inspect the material site once the reclamation has been completed to ensure compliance with the reclamation plan.
  - D. The permittee is exempt from the state bond requirements until he exceeds a disturbed area of 5 acres or he extracts more than 50,000 cubic yards per year.
14. *Other permits.* KPB 21.29.050(A)(13) provides that permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits.
  - A. Any violation federal, state or local laws, applicable to the material site operation, reported to or observed by Borough staff will be forwarded to the appropriate agency for enforcement.
15. *Voluntary permit conditions.* KPB 21.29.050(A)(14) provides that conditions may be included in the permit upon agreement of the permittee and approval of the planning commission.
  - A. No additional conditions have been volunteered.

16. *Signage.* KPB 21.29.050(A)(15) provides that for permitted parcels on which the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit, the permittee shall post notice of intent on parcel corners or access.
  - A. Operations under the permit have already commenced.

#### STAFF RECOMMENDATION

In reviewing the modification application, staff has determined that the requirements for modification have been met and that the six standards contained in KPB 21.29.040 will be met. Staff recommends that the planning commission approve the modification to the conditional land use permit with listed conditions and adopt the findings of fact subject to the following:

1. Filing of the PC Resolution in the appropriate recording district after the deadline to appeal the Planning Commission's approval has expired (15 days from the date of the notice of decision) unless there are no parties with appeal rights.
2. The Planning Department is responsible for filing the Planning Commission resolution.
3. The applicant will provide the recording fee for the resolution to the Planning Department.
4. Driveway permits must be acquired from either the state or borough as necessary prior to the issuance of the material site permit.
5. The conditions of the modified permit will replace those of the original permit.

#### 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:  
Northern, eastern, and western boundaries - 50 feet of undisturbed natural vegetation to be replaced by a sight limiting minimum six-foot high fence when excavation is within 50 feet of the permit boundary and its associated utility easement, if applicable. The fence will be replaced with a minimum six-foot high berm with 2:1 slopes when excavation in that area is exhausted.  
Southern boundary - 50 feet of undisturbed natural vegetation.  
These buffers shall not overlap an easement.
3. The permittee shall maintain a 2:1 slope between the buffer zone and pit floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 30 days from the time of removal.
4. The permittee shall not allow buffers to cause surface water diversion which negatively impacts adjacent properties or water bodies.
5. The permittee shall not operate any equipment which conditions or processes material within 300 feet of the property boundaries.
6. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
7. The permittee shall maintain a 2-foot vertical separation from the seasonal high water table between 100 and 300 horizontal feet of any water source existing prior to the issuance of this permit.
8. Prior to dewatering, the permittee shall post a bond for liability for potential accrued damages pursuant to KPB 21.29.050(A)(4)(d) in the amount of \$30,000.
9. 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.

10. 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.
11. 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.
12. The permittee shall notify the planning department of any further subdivision or return to acreage of this property. Any further subdivision or return to acreage may require the permittee to amend this permit.
13. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
14. The permittee shall reclaim the site as described in the reclamation plan for this parcel and as approved by the planning commission.
15. 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.
16. 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.
17. This conditional land use permit is subject to review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.50, a permit may be revoked for failure to comply with the terms of the permit or the applicable provisions of KPB Title 21. The borough clerk shall issue notice to the permittee of the revocation hearing at least 20 days but not more than 30 days prior to the hearing.
18. The modification does not change the effective date of the permit. The conditional land use permit is valid for five years from the effective date of the original permit. 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.

**NOTE: Any party of record may file an appeal of a decision of the Planning Commission in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances, Chapter 21.20.250. A "party of record" is any party or person aggrieved by the decision where the decision has or could have an adverse effect on value, use, or enjoyment of real property owned by them who appeared before the planning commission with either oral or written presentation. Petition signers are not considered parties of record unless separate oral or written testimony is provided (KPB Code 21.20.210.A.5b1). An appeal must be filed with the Borough Clerk within 15 days of the notice of decision, using the proper forms, and be accompanied by the \$300 filing and records preparation fee. (KPB Code 21.25.100)**

END OF STAFF REPORT

**KENAI PENINSULA BOROUGH PLANNING COMMISSION  
RESOLUTION 2021-10  
KENAI RECORDING DISTRICT**

**A resolution granting modification to a conditional land use permit for a material site to allow for excavation within the water table on properties described as Tract C1, Patson Properties 2019 Replat, according to Plat 2019-68, and the Northwest ¼ Southeast ¼, Section 34, Township 5 North, Range 10 West, Seward Meridian, excluding Patson Road right-of-way, Kenai Recording District.**

- WHEREAS,** the KPB Planning Commission approved PC Resolution 2019-39 on December 16, 2019, which established a conditional land use permit for material extraction on KPB tax parcel ID#s 135-243-13 and 135-243-29; and
- WHEREAS,** on February 26, 2021, the applicant, River Resources, LLC, submitted an application to modify the existing conditional land use permit by allowing for excavation within the water table within KPB Parcels 135-243-13 and 135-243-129; and
- WHEREAS,** KPB Chapter 21.29.090 provides for the modification of material site permits when changes in operations approved in the original permit are proposed; and
- WHEREAS,** KPB Chapter 21.29.050(A)(5) provides that the Planning Commission may approve excavation in the water table upon certification by a qualified independent civil engineer, completion of certain water monitoring requirements, and submission of the monitoring data to the planning commission; and
- WHEREAS,** on March 3, 2021, the permittee submitted the certification letter and water monitoring data to the Planning Department; and
- WHEREAS,** notice of the application was mailed on March 19, 2021, to the 233 landowners or leaseholders of the parcels within one-half mile of the subject parcels pursuant to KPB 21.25.060; and
- WHEREAS,** public notice of the application was published in the April 1, 2021, & April 8, 2021, issues of the Peninsula Clarion; and
- WHEREAS,** a public hearing of the Planning Commission was held on April 12, 2021; and

**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. *Procedural Findings.*
  - A. 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.
  - B. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
  - C. On December 16, 2019, the planning commission passed resolution 2019-39, which approved a conditional land use permit to River Resources, LLC, for material extraction on KPB tax parcels #135-243-13 & 135-243-29.
  - D. On February 26, 2021, River Resources, LLC, submitted to the KPB Planning Department an application to modify its existing conditional land use permit for parcels #135-243-13 & 135-243-29 to allow for excavation below groundwater elevation. After a request from staff, additional information was provided on March 3, 2021.
  - E. KPB 21.29.050(A)(5) provides the conditions upon which the planning commission may permit excavation within the water table greater than a 300-foot distance from a water source. Conditions include installation of at least three monitoring wells, completion of monitoring requirements, certification by a qualified independent civil engineer or professional hydrogeologist that the excavation will not negatively impact the quantity of an aquifer serving existing sources, and a prohibition on operations breaching an aquifer confining layer.
  - F. The applicant contracted McLane Consulting to measure groundwater monitor wells and

- analyze the data in accordance with KPB 21.29.050(A)(5).
- G. McLane Consulting collected groundwater elevation measurements in three month intervals from five monitor wells over the course of one year.
  - H. From the measurements and data from the Alaska Department of Natural Resources, McLane Consulting determined the flow direction at the site to be northwesterly, and the flow rate, or hydraulic conductivity, to be typical of dense gravel and coarse sand.
  - I. As required by KPB 21.29.050(A)(5)(a), McLane Consulting has certified that the excavation plan proposed by the applicant will not negatively impact the quantity of the aquifer serving the existing water sources.
  - J. The excavation and reclamation site plan states that at least three monitor wells will be maintained and measurements recorded for the life of the material site.
  - K. A staff site visit was conducted on March 25, 2021.
  - L. In accordance with KPB 21.29.050(A)(4-5), all excavation between 300 and 100 horizontal feet of existing wells must remain at least two feet above groundwater.
  - M. In accordance with KPB 21.29.050(A)(4), material extraction is prohibited within 100 horizontal feet of wells existing prior to the original permit issuance.
  - N. A public hearing of the planning commission was held on April 12, 2021, and notice of the application was mailed on March 19, 2021, to the 233 landowners or leaseholders of the parcels within one-half mile of the subject parcels. Public notice was sent to the postmaster in Soldotna requesting that it be posted at the Post Office. Public notice of the application was scheduled for publication in the April 1, 2021, & April 8, 2021, issues of the Peninsula Clarion.
  - O. Compliance with the mandatory conditions in KPB 21.29.050, as detailed in the following findings, necessarily means that the application meets the standards contained in KPB 21.29.040.
2. *Parcel boundaries.* KPB 21.29.050(A)(1) provides that all boundaries of the subject parcel shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
    - A. Permit condition number 1 requires the placement of stakes. Borough staff has inspected the proposed site and has verified that stakes have been placed along the permit boundaries.
  3. *Buffer zone.* KPB 21.29.050(A)(2) provides that a buffer zone shall be maintained around the excavation perimeter or parcel boundaries.
    - A. Permit condition number 2 requires that the permittee maintain the following buffers for each property boundary that will provide visual and noise screening to adjacent properties:  
50 feet of undisturbed natural vegetation to be replaced by a sight limiting minimum six-foot high fence when excavation is within 50 feet of the permit boundary and its associated utility easement, if applicable. The fence will be replaced with a minimum six-foot high berm with 2:1 slopes when excavation in that area is exhausted.
  4. *Processing.* KPB 21.29.050(A)(3) provides that any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries.
    - A. The original permit site plan indicates a 17.9-acre processing area that is located 300 feet from the permit boundaries. Borough staff will regularly monitor the material site to ensure compliance with this setback requirement.
  5. *Water source separation.* KPB 21.29.050(A)(4) provides that all permits shall be issued with a condition that prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance. Excavation within the water table shall not be within 300 feet of a water source. There shall be no dewatering by either pumping, ditching or some other form of draining without an exemption from the planning commission. In the event an exemption is granted, the contractor must post a bond for liability for potential accrued damages.
    - a. The site plan shows three wells with 300 feet of permit area but none of them is within 100 feet of the proposed excavation.
    - b. An exemption has been requested for dewatering within the permitted area. If granted, borough staff will regularly monitor the site to ensure that dewatering takes place only within the permitted material site.
    - c. Borough staff will regularly monitor the material site to ensure compliance with the two-foot vertical separation from the water table requirement between 100 and 300 feet of a water source.
    - d. The requirement that the permittee post a bond of \$30,000 for liability to potential accrued damages for dewatering activities will be met by permit condition number 8.
  6. *Excavation in the water table.* KPB 21.29.050(A)(5) provides that excavation in the water table greater than 300 horizontal feet of a water source may be permitted with the approval of the planning commission.
    - a. This modification seeks permission to excavate within the water table.
    - b. Five monitoring tubes have been installed to monitor ground water within the permitted site. At least three wells will be maintained and measurements taken for the life of the material site.
    - c. Data and interpretation for groundwater elevation, flow direction, and flow rate for the subject parcel, measured in three month intervals by a qualified independent civil engineer at least one year prior to the modification application has been provided.
    - d. Certification by a qualified, independent engineer that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources has been

- provided.
7. *Waterbodies.* KPB 21.29.050(A)(6) provides that an undisturbed buffer shall be left 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. In order to prevent discharge, diversion, or capture of surface water, an additional setback from lakes, rivers, anadromous streams, and riparian wetlands may be required.
    - a. There are no water bodies within 100 feet of the proposed extraction. The Kenai River and its associated floodplain and riparian wetland is approximately 350 feet north of the proposed material site at its closest point.
  8. *Fuel storage.* KPB 21.29.050(A)(7) provides that fuel storage for 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.
    - a. Borough staff will regularly monitor the material site to ensure compliance with this condition.
  9. *Roads.* KPB 21.29.050(A)(8) provides that operations shall be conducted in a manner so as not to damage borough roads.
    - a. The original submitted site plan indicates that the haul route will be directly to Funny River Road, a state maintained road. Two alternate access points are proposed to Kenai River Avenue, a Soldotna City maintained road, then to Funny River Road.
  10. *Subdivision.* KPB 21.29.050(A)(9) provides that any further subdivision or return to acreage of a parcel subject to a conditional land use or counter permit requires the permittee to amend their permit.
    - a. Borough planning staff reviews all subdivision plats submitted to the Borough to ensure compliance with this requirement.
  11. *Dust control.* KPB 21.29.050(A)(10) provides that dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
    - a. If Borough staff becomes aware of a violation of this requirement, action will be taken to ensure compliance.
  12. *Hours of operation.* KPB 21.29.050(A)(11) provides that rock crushing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
    - a. If Borough staff becomes aware of a violation of this requirement, action will be taken to ensure compliance.
  13. *Reclamation.* KPB 21.29.050(A)(12) provides that reclamation shall be consistent with the reclamation plan approved by the planning commission. The applicant shall post a bond to cover the anticipated reclamation costs in an amount to be determined by the planning director. This bonding requirement shall not apply to sand, gravel or material sites for which an exemption from state bond requirements for small operations is applicable pursuant to AS 27.19.050.
    - a. Updated drawings for the original reclamation plan were submitted with the modification application. The reclamation plan indicates that reclamation will be completed annually before the growing season ends (September), that seeding will be applied as necessary each season to areas that achieve final grade in order to minimize erosion and dust, and that the southwesterly portions of the site will be utilized for future buildings.
    - b. The site plan indicates that the reclamation will include recontouring using strippings, overburden, waste import and topsoil to a condition that allows for reestablishment of natural vegetation, slopes no steeper than 2:1, with slopes covered with a minimum of 4 inches of topsoil mix and seeded. Reclamation slopes within water table will be the same where above the water table, with unseeded slopes no steeper than 2:1 below the water table.
    - c. Borough staff will inspect the material site once the reclamation has been completed to ensure compliance with the reclamation plan.
    - d. The permittee is exempt from the state bond requirements until he exceeds a disturbed area of 5 acres or he extracts more than 50,000 cubic yards per year.
  14. *Other permits.* KPB 21.29.050(A)(13) provides that permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits.
    - a. Any violation federal, state or local laws, applicable to the material site operation, reported to or observed by Borough staff will be forwarded to the appropriate agency for enforcement.
  15. *Voluntary permit conditions.* KPB 21.29.050(A)(14) provides that conditions may be included in the permit upon agreement of the permittee and approval of the planning commission.
    - a. No additional conditions have been volunteered.
  16. *Signage.* KPB 21.29.050(A)(15) provides that for permitted parcels on which the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit, the permittee shall post notice of intent on parcel corners or access.
    - a. Operations under the permit have already commenced.

**SECTION 2.** That the material site operations are described and shall be conducted as follows:

- A. KPB tax parcel ID#: 135-243-13 & 135-243-29, containing approximately 51.4 acres.
- B. Legal description: Tract C1, Patson Properties 2019 Replat, according to Plat 2019-68, and the Northwest ¼ Southeast ¼, Section 34, Township 5 North, Range 10 West, Seward

- Meridian, excluding Patson Road right-of-way, Kenai Recording District.
- C. The permittee, River Resources, LLC, proposes to: 1) Extract and process gravel and sand in three phases from the subject parcels; 2) Excavate within the water table, maintaining the required 2-foot vertical separation from the seasonal high water table when excavating between 300 and 100 feet from any water source existing prior to issuance of the original permit; 3) Reclaim excavated areas as outlined in the reclamation plan provided as part of the original permit application and the modification application.

**SECTION 3.** That the existing permit conditions are hereby replaced by the following:

**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:  
Northern, eastern, and western boundaries - 50 feet of undisturbed natural vegetation to be replaced by a sight limiting minimum six-foot high fence when excavation is within 50 feet of the permit boundary and its associated utility easement, if applicable. The fence will be replaced with a minimum six-foot high berm with 2:1 slopes when excavation in that area is exhausted.  
Southern boundary - 50 feet of undisturbed natural vegetation.  
These buffers shall not overlap an easement.
3. The permittee shall maintain a 2:1 slope between the buffer zone and pit floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 30 days from the time of removal.
4. The permittee shall not allow buffers to cause surface water diversion which negatively impacts adjacent properties or water bodies.
5. The permittee shall not operate any equipment which conditions or processes material within 300 feet of the property boundaries.
6. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
7. The permittee shall maintain a 2-foot vertical separation from the seasonal high water table between 100 and 300 horizontal feet of any water source existing prior to the issuance of this permit.
8. Prior to dewatering, the permittee shall post a bond for liability for potential accrued damages pursuant to KPB 21.29.050(A)(4)(d) in the amount of \$30,000.
9. 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.
10. 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.
11. 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.
12. The permittee shall notify the planning department of any further subdivision or return to acreage of this property. Any further subdivision or return to acreage may require the permittee to amend this permit.
13. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
14. The permittee shall reclaim the site as described in the reclamation plan for this parcel and as approved by the planning commission.
15. 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.
16. 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.
17. This conditional land use permit is subject to review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.50, a permit may be revoked for failure to comply with the terms of the permit or the applicable provisions of KPB Title 21. The borough clerk shall issue notice to the permittee of the

- revocation hearing at least 20 days but not more than 30 days prior to the hearing.
18. The modification does not change the effective date of the permit. The conditional land use permit is valid for five years from the effective date of the original permit. 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.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021.

\_\_\_\_\_  
Blair J. Martin, Chairperson  
Planning Commission

ATTEST:

\_\_\_\_\_  
Ann Shirnberg  
Administrative Assistant

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



Return to: KPB PLANNING DEPARTMENT  
144 NORTH BINKLEY STREET  
SOLDOTNA, ALASKA 99669

For information call: (907) 714-2200, or (800) 478-4441,  
within the borough.

PC Resolution # \_\_\_\_\_

App. Complete \_\_\_\_\_

## 21.29 Conditional Land Use Permit Modification Application

Sand, Gravel or Material Site

### I. APPLICANT INFORMATION

Applicant River Resources, LLC Landowner same  
Address PO Box 3036 Address \_\_\_\_\_  
City, State, Zip Soldotna, AK 99669 City, State, Zip \_\_\_\_\_  
Telephone 907-394-1915 Fax \_\_\_\_\_ Telephone \_\_\_\_\_ Fax \_\_\_\_\_  
Cell Phone 907-394-1915 Cell Phone \_\_\_\_\_  
Email kyle@fosterco.biz Email \_\_\_\_\_

### II. CURRENT PERMITTED PARCEL INFORMATION

KPB Tax Parcel ID# 135-243-13 & 135-243-29 Township 5N Range 10W Section 34  
Subdivision \_\_\_\_\_ Lot \_\_\_\_\_ Block \_\_\_\_\_ Parcel acreage 51.4  
Legal description Patson Properties Replat Tr C1 & T5N R10W Sec 34 SM NW1/4 SE1/4 Excluding Patson Properties Part 1

### III. INFORMATION/ DOCUMENTATION – ☒ "Check" boxes to confirm all items are included.

☒ \$300.00 processing fee payable to: Kenai Peninsula Borough. (Include Parcel # on check comment line.)

☒ Site Plan Diagram, to scale, showing:

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> parcel boundaries   | <input checked="" type="checkbox"/> existing and/or proposed processing area(s)            |
| <input checked="" type="checkbox"/> existing required buffers   | <input checked="" type="checkbox"/> all encumbrances on parcel, <u>including</u> easements |
| <input checked="" type="checkbox"/> existing permitted extraction area(s)   | <input checked="" type="checkbox"/> site ingress and egress                                |
| <input checked="" type="checkbox"/> proposed additional extraction area(s)<br>and/or other requested permit modification(s) | <input checked="" type="checkbox"/> a north arrow and diagram scale                        |
|   | <input checked="" type="checkbox"/> the preparer's name and date                           |

☐ Permit Modification Worksheet (attached)

### IV. CERTIFICATION STATEMENT

The information contained on this form and the attachments are true and complete to the best of my knowledge. I grant permission for borough staff to enter onto the property for the purpose of processing the permit modification request.

[Signature]  
Applicant Signature

2/26/21  
Date

\_\_\_\_\_  
Property Owner Signature (if not applicant) Date

## Permit Modification Worksheet

Applicant River Resources LLC Owner River Resources LLC

CURRENT PERMITTED KPB Tax Parcel ID # 135-243-13 & 135-243-29 Parcel Acreage 51.4

1. Reason(s) for requesting permit modification:

Requesting modification to allow for excavation in the water table and for temporary, localized dewatering during excavation below groundwater elevation. Dewatering will be outlet within the same property.

2. Additional cumulative acres to be disturbed (excavation plus stockpiles, berms, etc.) 0 acres

3. Additional type(s) of material to be mined (circle all that apply): N/A gravel sand peat other \_\_\_\_\_

4. Additional equipment to be used (circle all that apply): N/A excavation processing other \_\_\_\_\_

5. Modification(s) is requested on current permit buffers: \_\_\_\_\_yes Xno

CURRENT PERMIT REQUIRED BUFFERS – ☒ “check” all types, and circle all directions that apply:

- |   |   |   |   |   |
|---|---|---|---|---|
| <input type="checkbox"/> 50 ft. of natural or improved vegetation | N | S | E | W |
| <input type="checkbox"/> minimum 6 ft. earthen berm               | N | S | E | W |
| <input type="checkbox"/> minimum 6 ft. fence                      | N | S | E | W |
| <input type="checkbox"/> other _____                              | N | S | E | W |

MODIFIED BUFFER REQUEST, if applicable – ☒ “check” all types, and circle all directions that apply:

- |   |   |   |   |   |
|---|---|---|---|---|
| <input type="checkbox"/> 50 ft. of natural or improved vegetation | N | S | E | W |
| <input type="checkbox"/> minimum 6 ft. earthen berm               | N | S | E | W |
| <input type="checkbox"/> minimum 6 ft. fence                      | N | S | E | W |
| <input type="checkbox"/> other _____                              | N | S | E | W |

6. Permit modification is requested due to subdivision of originally permitted parcel? \_\_\_\_\_yes Xno

7. Permit modification to enter the water table is requested: Xyes \_\_\_\_\_no (check “yes” if excavation in water table is desired on property not permitted under KPB 21.26)

8. Additional annual quantity of material, including overburden, to be extracted: \_\_\_\_\_ cubic yards

9. Additional excavation depth beyond permitted depth: 10 ft. Depth to groundwater: 19-21 ft.

10. Voluntary permit conditions proposed (additional buffers, dust control, limited hours of operation, etc.):

- A. \_\_\_\_\_
- B. \_\_\_\_\_
- C. \_\_\_\_\_

# McLANE

CONSULTING, INC.

March 2, 2021

Kenai Peninsula Borough Planning Department  
144 North Binkley  
Soldotna, Alaska 99669

SUBJECT: PC Resolution 2019-39  
KPB Tax Parcel No. 135-243-13 & 135-243-29

RE: Conditional Land Use Permit Modification Application

Dear Mr. Taylor:

River Resources, LLC, the property owner of KPB 135-243-13 & 135-243-29, is applying for modification of CLUP approved by PC Resolution 2019-39. The modification would allow for excavation in the water table on approximately 31.2 acres of the permitted property.

River Resources, LLC contracted McLane Consulting, Inc. to measure groundwater monitor wells and analyze the measurements in accordance with KPB 21.29. Five monitor wells were installed in April 2020 Foster Construction in accordance with recommendations by McLane Consulting. McLane Consulting has measured the monitor wells using standard surveying and engineering practices on the dates as shown below. Measurements to date are as follows:

Monitor Well	Ground Elevation	Top of MW	GW Elev. 5/4/2020	GW Elev. 7/15/2020	GW Elev. 10/15/2020	GW Elev. 1/18/2021
1	101.53	102.27	82.47	83.97	83.17	82.77
2	97.40	104.89	83.69	84.79	83.49	83.59
3	100.67	103.53	84.03	85.23	84.63	83.73
4	101.61	102.96	85.16	84.16	84.26	83.56
5	100.03	104.92	-	84.22	84.22	83.52

From these measurements it has been determined that flow direction is northwesterly, as shown on the exhibits attached to the CLUP Modification Application. The hydraulic conductivity is typical of dense gravel and coarse sand ranging from  $2.95 \times 10^{-6}$  to  $9.8 \times 10^{-2}$  ft/s.

Excavation is only proposed within the upper unconfined aquifer, not to exceed approximately 32' below original ground (approximate elevation 68.0). Local confining layer is estimated by reviewing well driller logs within the CLUP vicinity on the ADNR WELTS website. The confining layer consists of dense blue-gray silt (a non-marketable material) and is greater than 30' thick in this area. It is estimated at approximate elevation 65.0. Proposed excavation within the groundwater table at this site will not breach the confining layer.

Dewatering will be conducted on a temporary and intermittent basis while extracting below the groundwater table. Excavation dewatering temporarily depresses shallow groundwater within the

# MCLANE

CONSULTING, INC.

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immediate area of the dewatering but groundwater level will recover to pre-dewatering elevations upon termination of dewatering. Waters from the dewatering process will be outlet within the permit property to re-enter the groundwater table.

This letter is to certify that the excavation plan included in the CLUP Modification Application will not negatively impact the quantity of the aquifer serving the existing water sources.

If you have questions, please contact me.

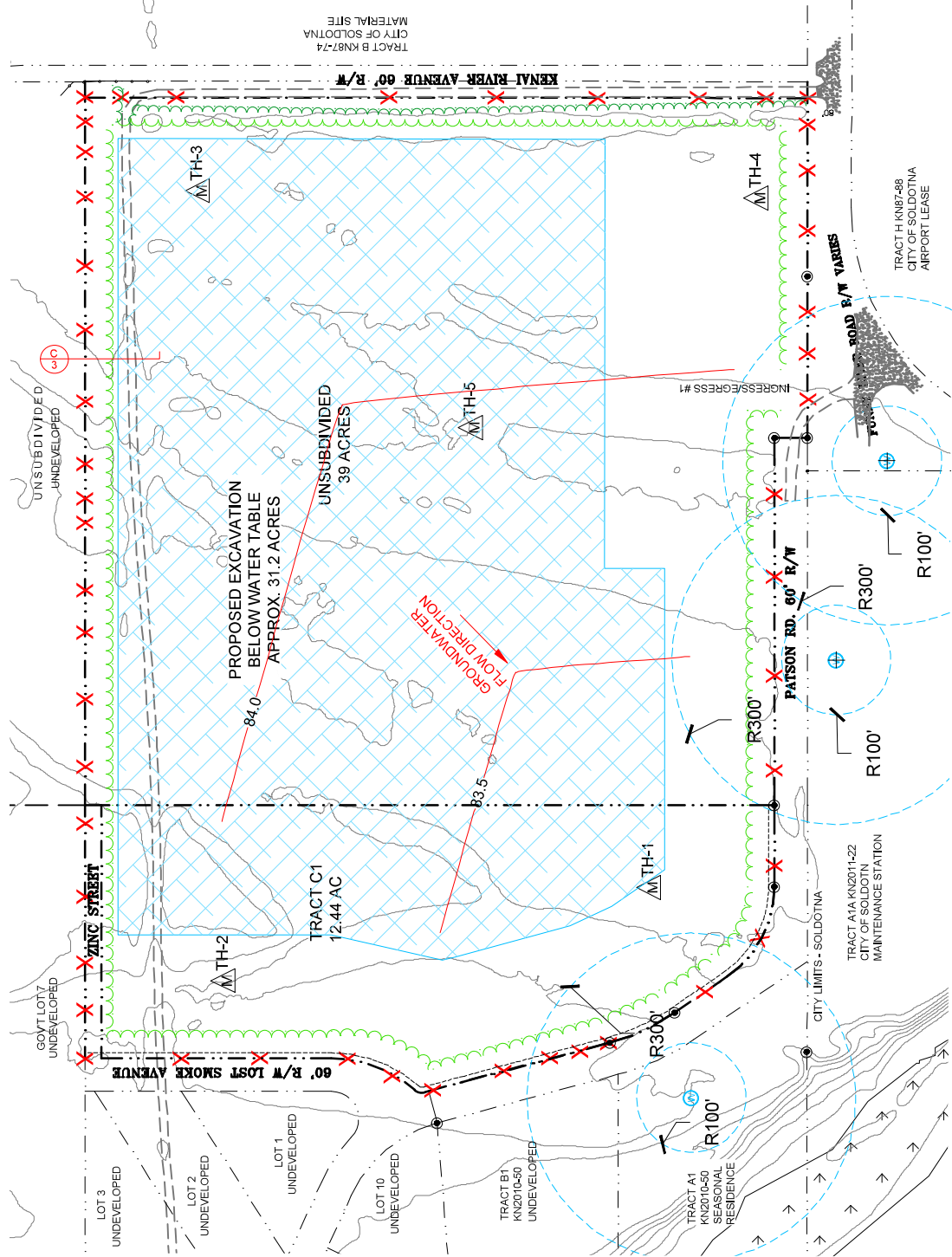
Sincerely,

A handwritten signature in cursive script that reads "Gina DeBardelaben".

Gina DeBardelaben, PE  
McLane Consulting, Inc.

# CONDITIONAL LAND USE PERMIT - MODIFICATION

APPLICANT / OWNER:  
ATTN: KYLE FOSTER  
RIVER RESOURCES, LLC  
P.O. BOX 3036  
SOLDOTNA, ALASKA 99669



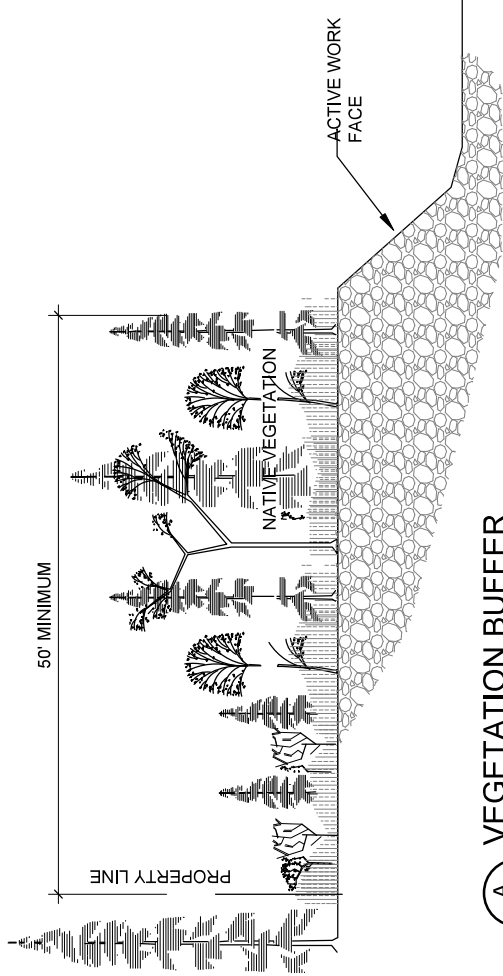
LEGEND	
—	PROPERTY LINE
- - -	UTILITY EASEMENT
Δ TH	MONITOR WELL & TESTHOLE
⊕	WATER WELL
⊙	RECORD MONUMENT
⊙	PROPERTY CORNERS
⊙	POWER POLE
—	EXISTING GRAVEL SHOULDER
—	WELL SETBACK
X	INTERVISIBLE FLAGGING
—	EXISTING TREELINE
—	PROPOSED BUFFER TREELINE
—	GROUNDWATER CONTOUR

RIVER RESOURCES, LLC FUNNY RIVER - PATSON CLUP MODIFICATION		ENGINEERING - TESTING SURVEYING P.O. BOX 465 SOLDOTNA, AK 99669 PHONE: (907) 263-2951 FAX: (907) 263-2955 WWW.MCLANECO.COM	
REV	DATE	JOB NO.	FIELD BOOK NO.
1	2/28/2021	140014	15-11
DESCRIPTION		FIELD WORK DATE: 9/17/2019 & 10/22/2019	
BY		DRAWN BY: BSG/MD	
GMD		CHECKED BY: GMD	
		HORIZ. SCALE: 1" = 200'	
		VERT. SCALE: N/A	
		SHEET: P1	

# CONDITIONAL LAND AND USE PERMIT FOR MATERIAL SITE

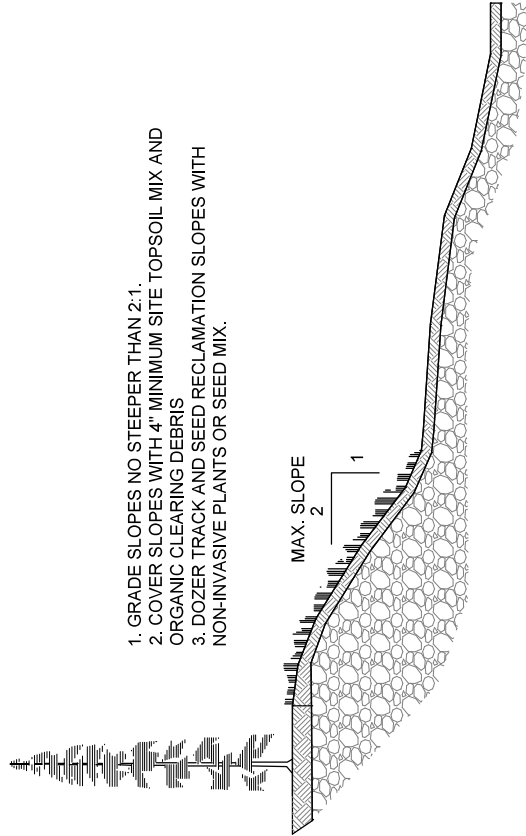
## CLUP DEVELOPMENT NOTES

1. THIS PERMIT APPLICATION MODIFICATION IS FOR KPB PARCEL 13524313 AND 13524329, TOWNSHIP 5N, RANGE 10W, SECTION 34 SEWARD MERIDIAN.
2. A KENAI PENINSULA BOROUGH CONDITIONAL LAND AND USE PERMIT FOR MATERIAL SITE EXTRACTION ABOVE THE WATER TABLE WAS ISSUED BY PC RESOLUTION 2019-39. REFERENCE ORIGINAL CLUP APPLICATION FOR EXCAVATION PLAN, PROCESS AREA AND PHASING.
3. MONITOR WELLS WERE INSTALLED IN APRIL 2020 AT FIVE LOCATIONS AS SHOWN AND GROUNDWATER ELEVATION MEASURED IN EACH OF THESE MONITOR WELLS AT THREE MONTH INTERVALS.
4. GROUNDWATER ELEVATIONS IN THE MONITOR WELLS WERE UTILIZED TO COMPUTE THE AVERAGE GROUNDWATER ELEVATIONS, FLOW DIRECTION AND FLOW RATE.
5. EXCAVATION IN THE WATER TABLE WILL BEGIN IN THE SOUTHERN PORTION OF THE PROPERTY AND PROCEED NORTHERLY WITH THE NORTH PROCESS AREA BEING THE LAST AREA EXCAVATED BELOW THE WATER TABLE.
6. MONITOR WELLS WILL BE MAINTAINED, OR RE-SET AS NEEDED, AND MEASUREMENTS OF A MINIMUM OF THREE MONITOR WELLS RECORDED FOR THE LIFE OF THE MATERIAL SITE.
7. DEWATERING WILL BE USED IN LOCALIZED EXCAVATION AREAS DURING EXTRACTION ACTIVITIES BELOW THE GROUNDWATER ELEVATION. DEWATERING WILL BE OUTLET WITHIN THE SAME PROPERTY TO RE-ENTER THE GROUNDWATER TABLE.



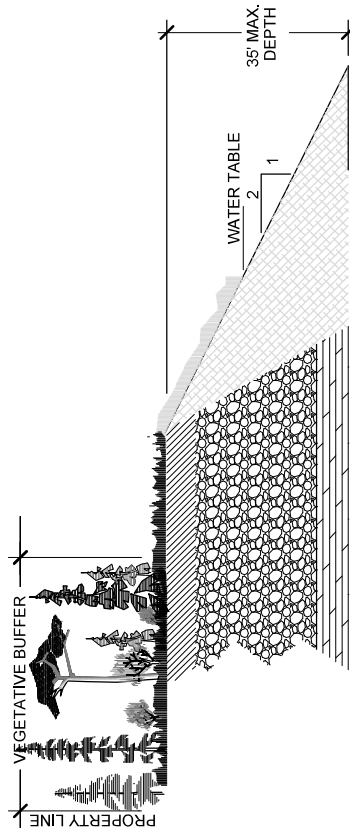
A VEGETATION BUFFER

SCALE: 1" = 10 FT.



B RECLAMATION SLOPE

SCALE: 1" = 10 FT.



1. GRADE SLOPES NO STEEPER THAN 2:1.
2. DO NOT EXCAVATE INTO THE AQUIFER CONFINING LAYER.
3. ORGANICS AND SILT STRIPPED FROM PIT MAY BE STOCKPILED AND USED FOR RECLAMATION SLOPE FLATTENING.
4. COVER SLOPES WITH 4" MINIMUM SITE TOPSOIL MIX AND ORGANIC CLEARING DEBRIS.
5. DOZER TRACK AND SEED ALL RECLAMATION SLOPES ABOVE GROUNDWATER LEVEL WITH NON-INVASIVE PLANTS OR SEED MIX.

C RECLAMATION SLOPE WITH WATER TABLE

NOT TO SCALE



REV	DATE	DESCRIPTION
1	2/28/2021	PERMIT MODIFICATION
2		
3		
4		
5		
6		
7		
8		
9		
10		

JOB NO.	204014
FIELD BOOK NO.	15-11
FIELD WORK DATE	9/17/2019 & 10/2/2019

RIVER RESOURCES, LLC  
FUNNY RIVER - PATSON  
CLUP MODIFICATION

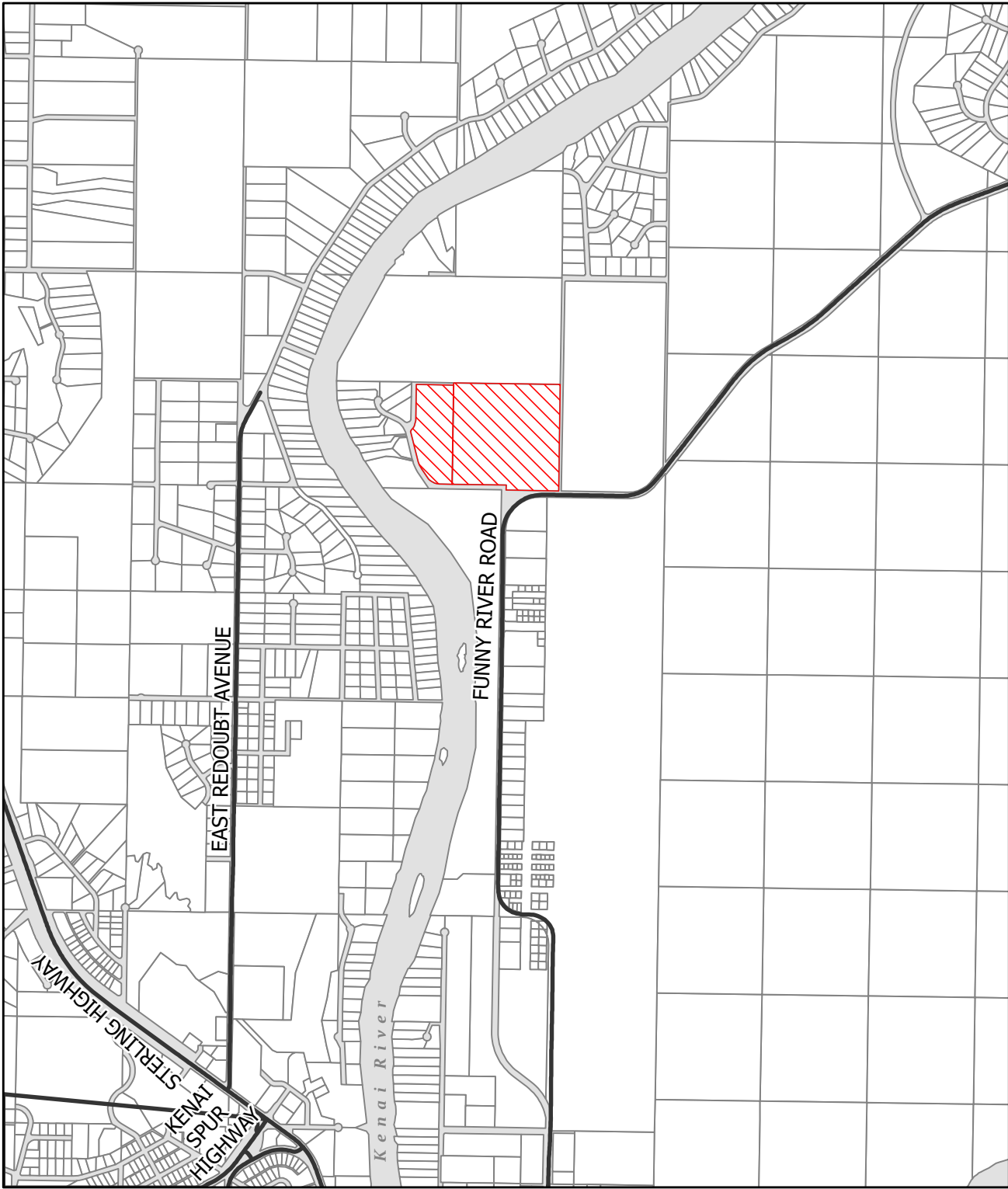
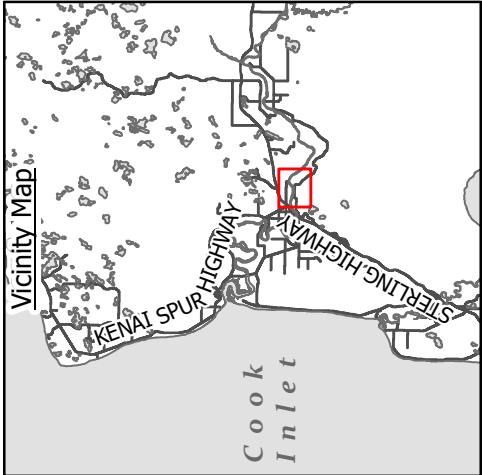


ENGINEERING - TESTING  
SURVEYING - MAPPING  
P.O. BOX 465  
SOLDOTNA, AK 99669  
PHONE: (907) 283-3255  
FAX: (907) 283-3255  
WWW.MCLANECO.COM

DRAWN BY	BSB/AND
CHECKED BY	GMD
HORIZ. SCALE	1" = 300'
VERT. SCALE	N/A
SHEET	P2

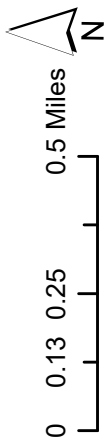


**Parcels: 135-243-13 & -29**  
**Applicant: River Resources LLC**



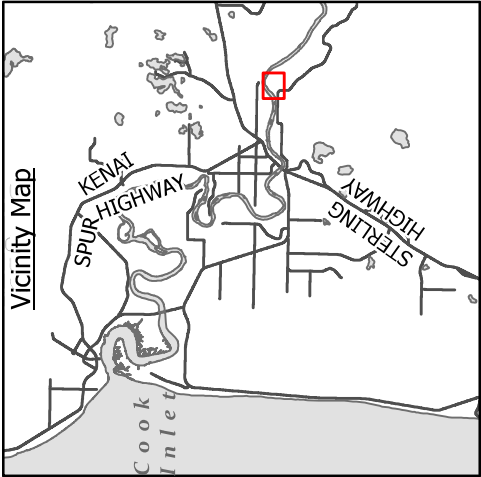
**LEGEND**

- KPB Tax Parcels
- Subject Parcels



The information depicted hereon is a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.

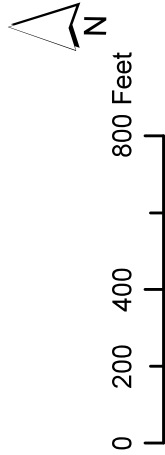
Parcels: 135-243-13 & -29  
Applicant: River Resources LLC



LEGEND

- KPB Tax Parcels
- Subject Parcels

Aerial Imagery:  
June 2018

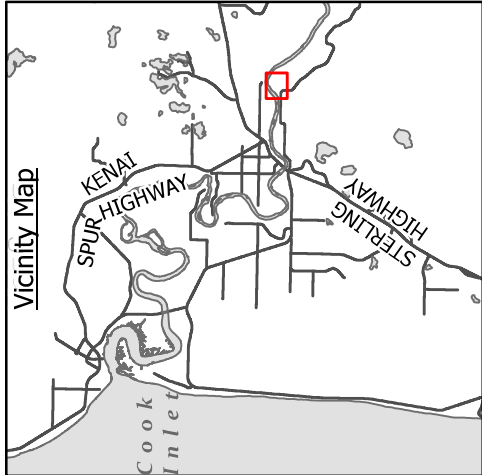


The information depicted hereon is a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.





Parcels: 135-243-13 & -29  
Applicant: River Resources LLC



## LEGEND

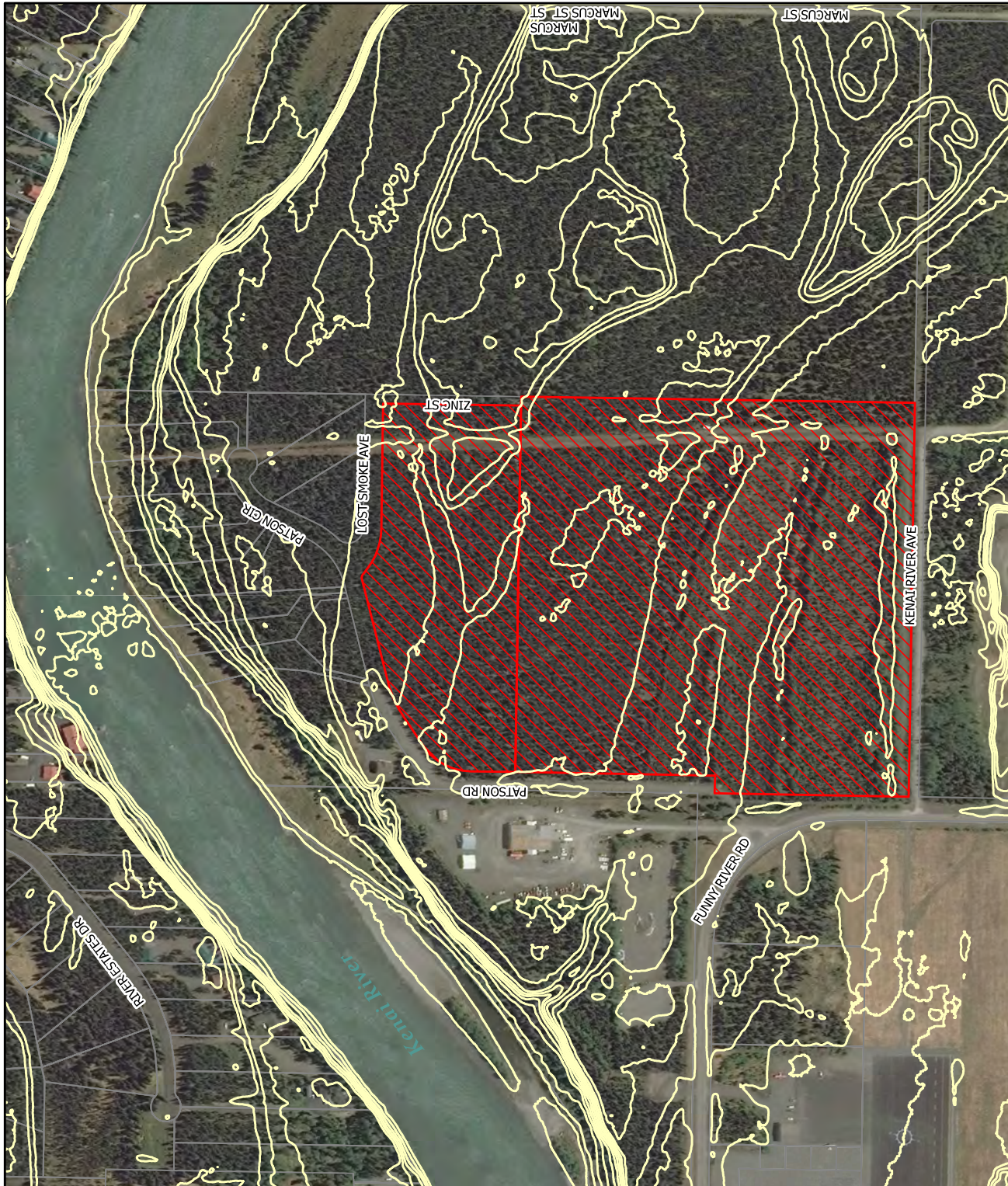
- KPB Tax Parcels
- Contours 4 ft
- Subject Parcels

Aerial Imagery:  
June 2018



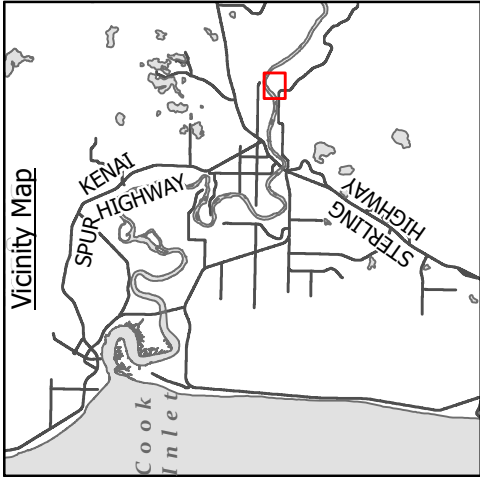
0 200 400 800 Feet

The information depicted hereon is a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.





**Parcels: 135-243-13 & -29**  
**Applicant: River Resources LLC**



## LEGEND

- KPB Tax Parcels
- Subject Parcels

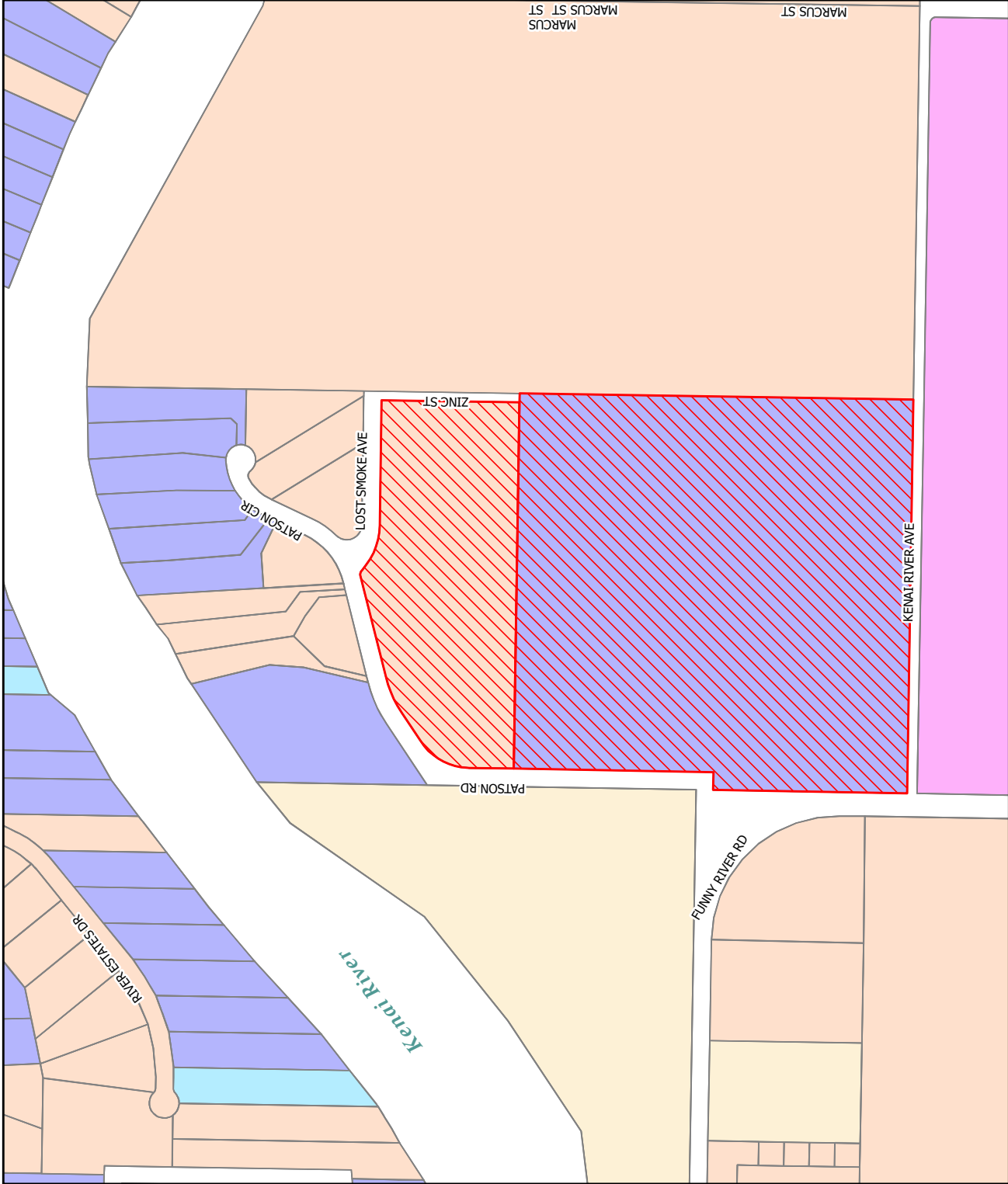
### Grouped Assessor's Usage Records

- Vacant
- Residential
- Multiple-Dwelling Residential
- Industrial
- Institutional

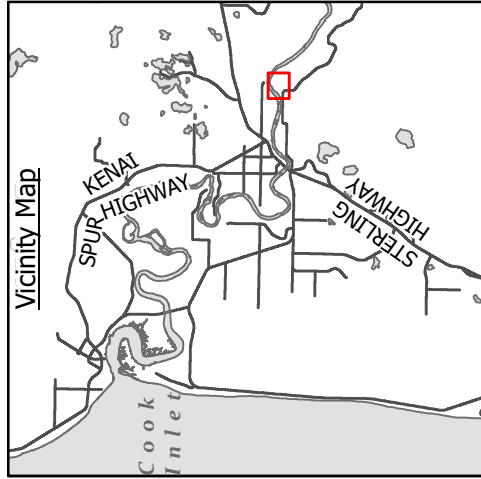


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The information depicted hereon is a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.



**Parcels: 135-243-13 & -29**  
**Applicant: River Resources LLC**



## LEGEND

KPB Tax Parcels

Subject Parcels

## Ownership

Municipal

Native Allotment

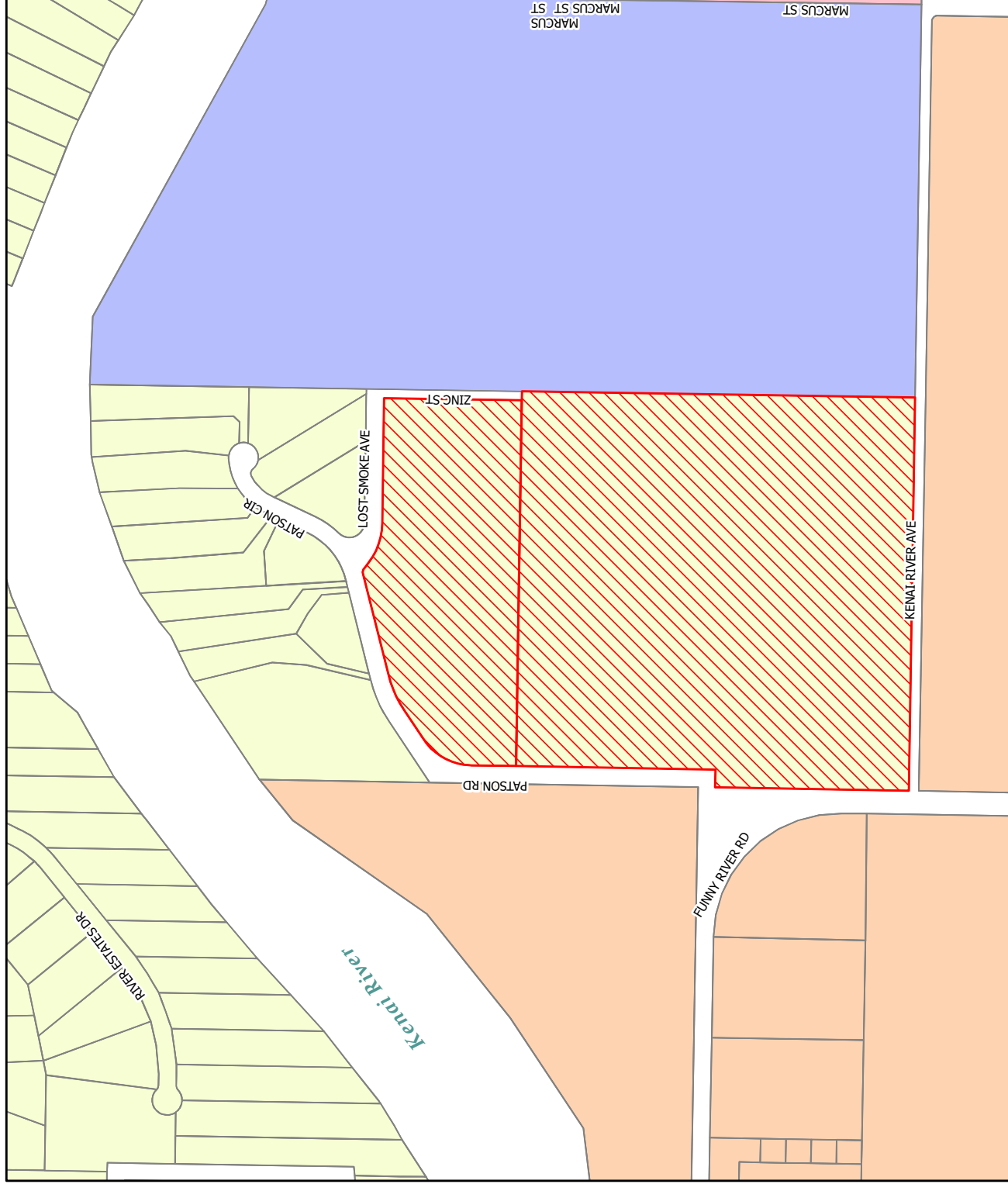
Private

State



0 200 400 800 Feet

The information depicted hereon is a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.





## Planning Department

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2200 • (907) 714-2378 Fax

Charlie Pierce  
Borough Mayor

### **KENAI PENINSULA BOROUGH PLANNING COMMISSION NOTICE OF PUBLIC HEARING**

Public notice is hereby given that an application to modify an approved conditional land use permit for material extraction has been received for a parcel in the Soldotna area. This notice is being sent to landowners located within ½ mile of the subject property. All members of the public are invited to comment. Details of the application under consideration are as follows:

**Applicant:** River Resources, LLC

**Landowner:** River Resources, LLC

**Parcel Numbers:** 135-243-13 & 135-243-29

**Legal Description:** **T 5N R 10W SEC 34 SEWARD MERIDIAN KN NW1/4 SE1/4 EXCLUDING PATSON PROPERTIES PART 1**

**T 05N R 10W SEC 34 SEWARD MERIDIAN KN 2019068 PATSON PROPERTIES 2019 REPLAT TRACT C1**

**Location:** 34386 PATSON RD

**Proposed Land Use:** The applicant wishes to modify an existing material site permit to allow for sand and gravel extraction in the water table.

**KPB Code:** Conditional land use permit modification applications for material extraction are reviewed in accordance with KPB Code 21.25 and 21.29. Copies of these ordinances are available from the Planning Department or at: [www.kpb.us](http://www.kpb.us)

**Public Hearing:** A hearing will be held by the Kenai Peninsula Borough Planning Commission to consider the application on **Monday, April 12, 2021**, commencing at 7:30 p.m., or as soon thereafter as business permits.

**Please be aware that due to the recent COVID-19 pandemic and based on CDC guidelines, the meeting will not be physically open to the public. Instructions are as follows:**

The meeting will remain open to the public. The Planning Commissioners, along with staff members, will be attending via teleconferencing. The public will be able to listen or participate with the same methods. The meeting will be held through Zoom. To join the meeting from a computer visit <https://zoom.us/j/2084259541>.

To attend the Zoom meeting by telephone call toll free **1-888-788-0099** or **1-877-853-5247**. When calling in you will need the Meeting ID of **208 425 9541**. If you connect by computer and do not have speakers or a microphone, connect online and then select phone for audio. A box will come up with the toll free numbers, the Meeting ID, and your participant number. Instructions will be posted on the Planning Commission's

webpage prior to the meeting. <https://www.kpb.us/planning-dept/planning-commission>

If you have question or experience technical difficulties, please contact the Planning Department at (907) 714-2200.

**Public Comment:** Those wishing to comment may come to the above meeting to give testimony or may submit a written statement addressed to Planning Commission Chairman, 144 N Binkley St, Soldotna, AK 99669. A statement addressed to the chairman may also be emailed to [btaylor@kpb.us](mailto:btaylor@kpb.us). Please provide written statements by Thursday, April 8, 2021.

The staff report will be available on the Planning Commission website a week prior to the meeting. For additional information please call the planning department at (907) 714-2200, or 1-800-478-4441 (toll free within the Borough).

**Bryan Taylor**

Planner

Ph: (907) 714-2206

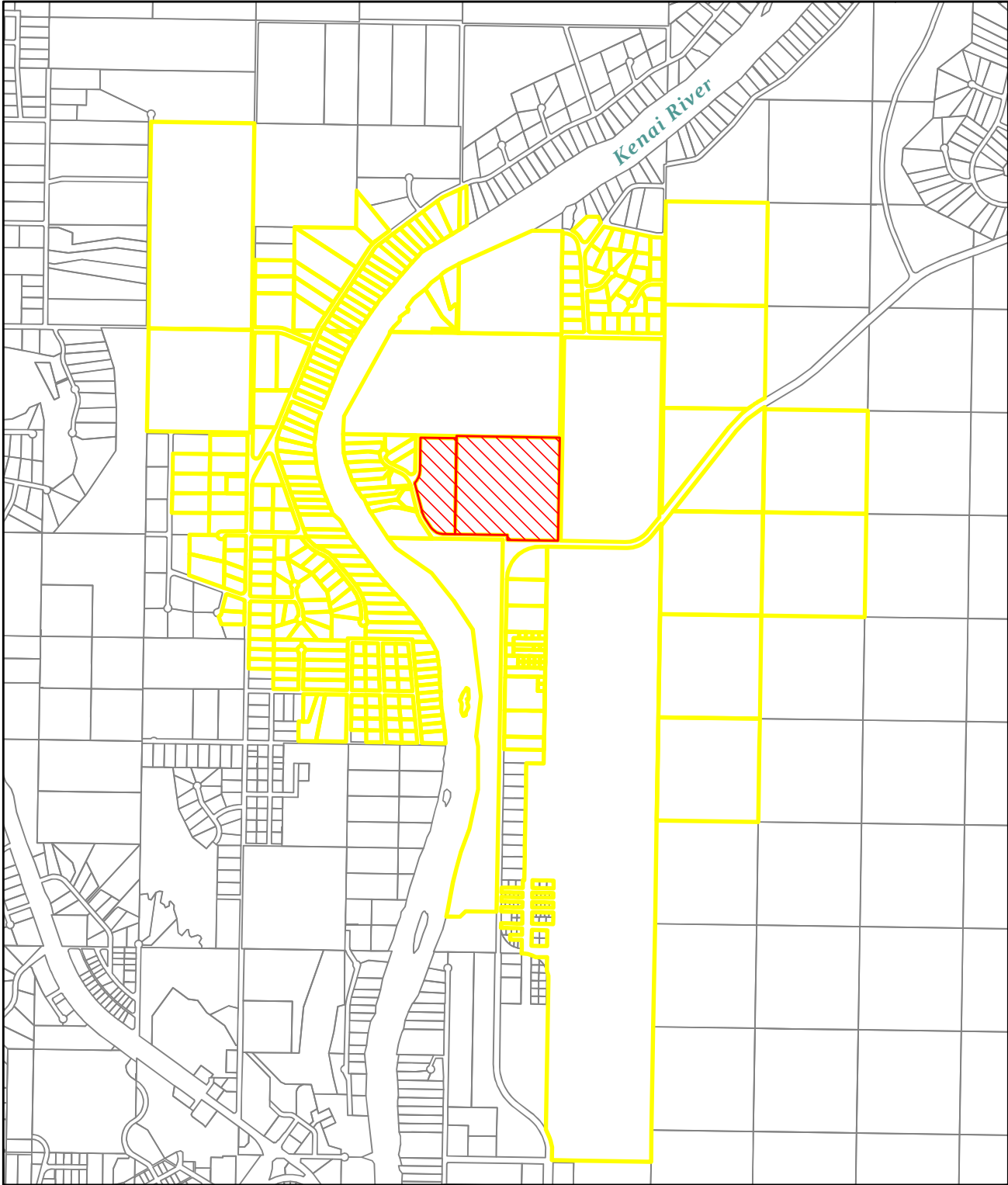
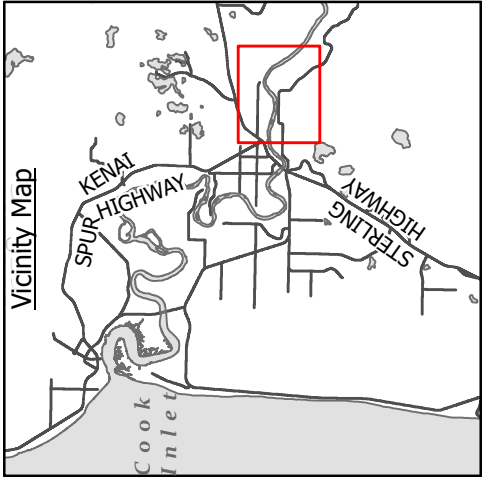
Fx: (907) 714-2378

KENAI PENINSULA BOROUGH  
144 North Binkley Street  
Soldotna, Alaska 99669



**Kenai Peninsula Borough Planning Commission -- April 12, 2021**  
**Modification to Conditional Land Use Permit for a Material Site**

**Parcels: 135-243-13 & -29**  
**Applicant: River Resources LLC**



**LEGEND**

- KPB Tax Parcels (1006)
- Subject Parcels (2)
- Properties 1/2-Mile Radius (285)



0 5001,000 2,000 Feet

The information depicted hereon is a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.

# Attachment H

**Taylor, Bryan**

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**From:** Richard McCartan <rmccartan109@gmail.com>  
**Sent:** Monday, March 29, 2021 5:45 PM  
**To:** Taylor, Bryan  
**Subject:** <EXTERNAL-SENDER>Opposition to conditional land use permit for parcels  
135-243-13 & 135-243-29  
**Attachments:** Conditional Use Permit Application, Notice of.pdf

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

We are writing to express our opposition to the granting of the conditional land use permit described in the attached letter from your department..We are landowners within a half mile of the described property. We feel that the proposed gravel pit will degrade both the Kenai River and our property value.

Thank you.

Richard and Michele McCartan  
1085 Keystone Drive  
Soldotna, AK 99669



**MOTION PASSED:** Hearing no further discussion or objection the motion passed by the following vote:

Yes	9	No	0	Absent	2
Yes	Brantley, Carluccio, Chesser, Ecklund, Fikes, Gillham, Morgan, Ruffner, Venuti				
Absent	Bentz, Martin				

#### AGENDA ITEM E      CONDITIONAL LAND USE PERMIT MODIFICATION

##### 8. Conditional Land Use Permit Modification for an Existing Material Site Operation

Applicant: River Resources, LLC

Landowner: River Resources, LLC

Parcel Numbers: 135-243-13 & 29

Legal Description:

- T05N, R10W, SEC 34, Seward Meridian, KN NW1/4 SE1/4, Excluding Patson Properties Part 1
- T05N, R10W, SEC 34 Seward Meridian, KN 2019-068, Patson Properties 2019 Replat Tract 1C

Location: 34386 Patson Road

Staff report given by Bryan Taylor

**GENERAL OVERVIEW:** The applicant wishes to modify the existing conditional land use permit for material extraction on the above property, approved by the planning commission on December 16, 2019, to allow for gravel extraction below the groundwater elevation. A copy of the application, including the required water monitoring information, is included as **Attachment A**. The applicant is also requesting an exemption for dewatering as part of the extraction activities. Dewatering will only be conducted within the permitted material site and water will not leave the property.

KPB 21.29.050(A)(5) provides that the planning commission may approve excavation in the water table provided the applicant completes certain water monitoring requirements carried out by an independent civil engineer or professional hydrogeologist, submits the monitoring data, and has certification by the engineer or hydrogeologist that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources.

As required by KPB 21.29.050(A)(5), McLane Consulting has certified that the excavation plan proposed by the applicant will not negatively impact the quantity of the aquifer serving the existing water sources. The excavation and reclamation site plan submitted with the application states that monitor wells will be maintained and measurements recorded for the life of the material site. Vicinity, aerial, topography, land use and ownership maps are included here as **Attachments B – F**.

According to the modification application received on March 3, 2021, the applicant seeks to excavate an area of approximately 31.2 acres to a maximum depth of 32' below original ground. The groundwater elevation data provided indicates that groundwater elevation is approximately 17' below original ground. The aquifer-confining layer of dense blue-gray silt is estimated to be approximately 35' below original ground and approximately 30' thick.

As in the original application, primary ingress and egress to the site is directly onto Funny River Road, a state maintained road, with alternate access proposed to Kenai River Avenue, a City of Soldotna maintained road, and then to Funny River Road. The groundwater excavation plan for the site is the same as the phased development originally approved, with material being excavated in the southern portion of the parcel and working northerly. Dewatering will be localized and will remain within the same property to re-enter the groundwater table. The required buffers will remain the same. As originally permitted, the impacted area remains at approximately 52 acres, with excavation within the water table on approximately 31.2 acres; the annual quantity of material expected to be removed is 45,000cy; and, the site has an expected lifespan of 40 years.

**PUBLIC NOTICE:** Public notice of the application was mailed on March 19, 2021 to the 233 landowners on Kenai Peninsula Borough.



leaseholders of the parcels within ½ mile of the subject parcel, pursuant to KPB 21.25.060. A copy of the public notice and notice radius map are included as **Attachment G**. Public comments received prior to the packet deadline are included as **Attachment H**. Any public comments received by the Planning Department prior to the hearing will be included as desk packet items at the April 12, 2021, meeting.

#### FINDINGS OF FACT:

1. *Procedural Findings.*
  - A. 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.
  - B. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
  - C. On December 16, 2019, the planning commission passed resolution 2019-39, which approved a conditional land use permit to River Resources, LLC, for material extraction on KPB tax parcels #135-243-13 & 135-243-29.
  - D. On February 26, 2021, River Resources, LLC, submitted to the KPB Planning Department an application to modify its existing conditional land use permit for parcels #135-243-13 & 135-243-29 to allow for excavation below groundwater elevation. After a request from staff, additional information was provided on March 3, 2021.
  - E. KPB 21.29.050(A)(5) provides the conditions upon which the planning commission may permit excavation within the water table greater than a 300-foot distance from a water source. Conditions include installation of at least three monitoring wells, completion of monitoring requirements, certification by a qualified independent civil engineer or professional hydrogeologist that the excavation will not negatively impact the quantity of an aquifer serving existing sources, and a prohibition on operations breaching an aquifer confining layer.
  - F. The applicant contracted McLane Consulting to measure groundwater monitor wells and analyze the data in accordance with KPB 21.29.050(A)(5).
  - G. McLane Consulting collected groundwater elevation measurements in three month intervals from five monitor wells over the course of one year.
  - H. From the measurements and data from the Alaska Department of Natural Resources, McLane Consulting determined the flow direction at the site to be northwesterly, and the flow rate, or hydraulic conductivity, to be typical of dense gravel and coarse sand.
  - I. As required by KPB 21.29.050(A)(5)(a), McLane Consulting has certified that the excavation plan proposed by the applicant will not negatively impact the quantity of the aquifer serving the existing water sources.
  - J. The excavation and reclamation site plan states that at least three monitor wells will be maintained and measurements recorded for the life of the material site.
  - K. A staff site visit was conducted on March 25, 2021.
  - L. In accordance with KPB 21.29.050(A)(4-5), all excavation between 300 and 100 horizontal feet of existing wells must remain at least two feet above groundwater.
  - M. In accordance with KPB 21.29.050(A)(4), material extraction is prohibited within 100 horizontal feet of wells existing prior to the original permit issuance.
  - N. A public hearing of the planning commission was held on April 12, 2021, and notice of the application was mailed on March 19, 2021, to the 233 landowners or leaseholders of the parcels within one-half mile of the subject parcels. Public notice was sent to the postmaster in Soldotna requesting that it be posted at the Post Office. Public notice of the application was scheduled for publication in the March 31, 2021, & April 7, 2021, issues of the Peninsula Clarion.
  - O. Compliance with the mandatory conditions in KPB 21.29.050, as detailed in the following findings, necessarily means that the application meets the standards contained in KPB 21.29.040.
2. *Parcel boundaries.* KPB 21.29.050(A)(1) provides that all boundaries of the subject parcel shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
  - A. Permit condition number 1 requires the placement of stakes. Borough staff has inspected the proposed site and has verified that stakes have been placed along the

permit boundaries.

3. *Buffer zone.* KPB 21.29.050(A)(2) provides that a buffer zone shall be maintained around the excavation perimeter or parcel boundaries.
  - A. Permit condition number 2 requires that the permittee maintain the following buffers for each property boundary that will provide visual and noise screening to adjacent properties:  
50 feet of undisturbed natural vegetation to be replaced by a sight limiting minimum six-foot high fence when excavation is within 50 feet of the permit boundary and its associated utility easement, if applicable. The fence will be replaced with a minimum six-foot high berm with 2:1 slopes when excavation in that area is exhausted.
4. *Processing.* KPB 21.29.050(A)(3) provides that any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries.
  - A. The original permit site plan indicates a 17.9-acre processing area that is located 300 feet from the permit boundaries. Borough staff will regularly monitor the material site to ensure compliance with this setback requirement.
5. *Water source separation.* KPB 21.29.050(A)(4) provides that all permits shall be issued with a condition that prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance. Excavation within the water table shall not be within 300 feet of a water source. There shall be no dewatering by either pumping, ditching or some other form of draining without an exemption from the planning commission. In the event an exemption is granted, the contractor must post a bond for liability for potential accrued damages.
  - A. The site plan shows three wells with 300 feet of permit area but none of them is within 100 feet of the proposed excavation.
  - B. An exemption has been requested for dewatering within the permitted area. If granted, borough staff will regularly monitor the site to ensure that dewatering takes place only within the permitted material site.
  - C. Borough staff will regularly monitor the material site to ensure compliance with the two-foot vertical separation from the water table requirement between 100 and 300 feet of a water source.
  - D. The requirement that the permittee post a bond of \$30,000 for liability to potential accrued damages for dewatering activities will be met by permit condition number 8.
6. *Excavation in the water table.* KPB 21.29.050(A)(5) provides that excavation in the water table greater than 300 horizontal feet of a water source may be permitted with the approval of the planning commission.
  - A. This modification seeks permission to excavate within the water table.
  - B. Five monitoring tubes have been installed to monitor ground water within the permitted site. At least three wells will be maintained and measurements taken for the life of the material site.
  - C. Data and interpretation for groundwater elevation, flow direction, and flow rate for the subject parcel, measured in three month intervals by a qualified independent civil engineer at least one year prior to the modification application has been provided.
  - D. Certification by a qualified, independent engineer that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources has been provided.
7. *Waterbodies.* KPB 21.29.050(A)(6) provides that an undisturbed buffer shall be left 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. In order to prevent discharge, diversion, or capture of surface water, an additional setback from lakes, rivers, anadromous streams, and riparian wetlands may be required.
  - A. There are no water bodies within 100 feet of the proposed extraction. The Kenai River and its associated floodplain and riparian wetland is approximately 350 feet north of the proposed material site at its closest point.

8. *Fuel storage.* KPB 21.29.050(A)(7) provides that fuel storage for 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.
  - A. Borough staff will regularly monitor the material site to ensure compliance with this condition.
9. *Roads.* KPB 21.29.050(A)(8) provides that operations shall be conducted in a manner so as not to damage borough roads.
  - A. The original submitted site plan indicates that the haul route will be directly to Funny River Road, a state maintained road. Two alternate access points are proposed to Kenai River Avenue, a Soldotna City maintained road, then to Funny River Road.
10. *Subdivision.* KPB 21.29.050(A)(9) provides that any further subdivision or return to acreage of a parcel subject to a conditional land use or counter permit requires the permittee to amend their permit.
  - A. Borough planning staff reviews all subdivision plats submitted to the Borough to ensure compliance with this requirement.
11. *Dust control.* KPB 21.29.050(A)(10) provides that dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
  - A. If Borough staff becomes aware of a violation of this requirement, action will be taken to ensure compliance.
12. *Hours of operation.* KPB 21.29.050(A)(11) provides that rock crushing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
  - A. If Borough staff becomes aware of a violation of this requirement, action will be taken to ensure compliance.
13. *Reclamation.* KPB 21.29.050(A)(12) provides that reclamation shall be consistent with the reclamation plan approved by the planning commission. The applicant shall post a bond to cover the anticipated reclamation costs in an amount to be determined by the planning director. This bonding requirement shall not apply to sand, gravel or material sites for which an exemption from state bond requirements for small operations is applicable pursuant to AS 27.19.050.
  - A. Updated drawings for the original reclamation plan were submitted with the modification application. The reclamation plan indicates that reclamation will be completed annually before the growing season ends (September), that seeding will be applied as necessary each season to areas that achieve final grade in order to minimize erosion and dust, and that the southwesterly portions of the site will be utilized for future buildings.
  - B. The site plan indicates that the reclamation will include recontouring using strippings, overburden, waste import and topsoil to a condition that allows for reestablishment of natural vegetation, slopes no steeper than 2:1, with slopes covered with a minimum of 4 inches of topsoil mix and seeded. Reclamation slopes within water table will be the same where above the water table, with unseeded slopes no steeper than 2:1 below the water table.
  - C. Borough staff will inspect the material site once the reclamation has been completed to ensure compliance with the reclamation plan.
  - D. The permittee is exempt from the state bond requirements until he exceeds a disturbed area of 5 acres or he extracts more than 50,000 cubic yards per year.
14. *Other permits.* KPB 21.29.050(A)(13) provides that permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits.
  - A. Any violation federal, state or local laws, applicable to the material site operation, reported to or observed by Borough staff will be forwarded to the appropriate agency for



enforcement.

15. *Voluntary permit conditions.* KPB 21.29.050(A)(14) provides that conditions may be included in the permit upon agreement of the permittee and approval of the planning commission.
  - A. No additional conditions have been volunteered.
16. *Signage.* KPB 21.29.050(A)(15) provides that for permitted parcels on which the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit, the permittee shall post notice of intent on parcel corners or access.
  - A. Operations under the permit have already commenced.

#### STAFF RECOMMENDATION

In reviewing the modification application, staff has determined that the requirements for modification have been met and that the six standards contained in KPB 21.29.040 will be met. Staff recommends that the planning commission approve the modification to the conditional land use permit with listed conditions and adopt the findings of fact subject to the following:

1. Filing of the PC Resolution in the appropriate recording district after the deadline to appeal the Planning Commission's approval has expired (15 days from the date of the notice of decision) unless there are no parties with appeal rights.
2. The Planning Department is responsible for filing the Planning Commission resolution.
3. The applicant will provide the recording fee for the resolution to the Planning Department.
4. Driveway permits must be acquired from either the state or borough as necessary prior to the issuance of the material site permit.
5. The conditions of the modified permit will replace those of the original permit.

#### 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:  
Northern, eastern, and western boundaries - 50 feet of undisturbed natural vegetation to be replaced by a sight limiting minimum six-foot high fence when excavation is within 50 feet of the permit boundary and its associated utility easement, if applicable. The fence will be replaced with a minimum six-foot high berm with 2:1 slopes when excavation in that area is exhausted.  
Southern boundary - 50 feet of undisturbed natural vegetation.  
These buffers shall not overlap an easement.
3. The permittee shall maintain a 2:1 slope between the buffer zone and pit floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 30 days from the time of removal.
4. The permittee shall not allow buffers to cause surface water diversion which negatively impacts adjacent properties or water bodies.
5. The permittee shall not operate any equipment which conditions or processes material within 300 feet of the property boundaries.
6. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
7. The permittee shall maintain a 2-foot vertical separation from the seasonal high water table between 100 and 300 horizontal feet of any water source existing prior to the issuance of this permit.
8. Prior to dewatering, the permittee shall post a bond for liability for potential accrued damages pursuant to KPB 21.29.050(A)(4)(d) in the amount of \$30,000.
9. 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.

10. 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.
11. 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.
12. The permittee shall notify the planning department of any further subdivision or return to acreage of this property. Any further subdivision or return to acreage may require the permittee to amend this permit.
13. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
14. The permittee shall reclaim the site as described in the reclamation plan for this parcel and as approved by the planning commission.
15. 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.
16. 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.
17. This conditional land use permit is subject to review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.50, a permit may be revoked for failure to comply with the terms of the permit or the applicable provisions of KPB Title 21. The borough clerk shall issue notice to the permittee of the revocation hearing at least 20 days but not more than 30 days prior to the hearing.
18. The modification does not change the effective date of the permit. The conditional land use permit is valid for five years from the effective date of the original permit. 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.

**NOTE: Any party of record may file an appeal of a decision of the Planning Commission in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances, Chapter 21.20.250. A "party of record" is any party or person aggrieved by the decision where the decision has or could have an adverse effect on value, use, or enjoyment of real property owned by them who appeared before the planning commission with either oral or written presentation. Petition signers are not considered parties of record unless separate oral or written testimony is provided (KPB Code 21.20.210.A.5b1). An appeal must be filed with the Borough Clerk within 15 days of the notice of decision, using the proper forms, and be accompanied by the \$300 filing and records preparation fee. (KPB Code 21.25.100)**

#### END OF STAFF REPORT

Vice Chair Ruffner opened the item for public comment.

Kyle Foster, Petitioner; 34717 Sentinel, Soldotna AK, 99669: Mr. Foster and his brother are the owners of River Resources, LLC. He and his brother are petitioning to modify their existing material site permit to allow them to dig down into the water table and to do localized dewater within their pit. Their de-watering plans are relatively small. They plan to build two 50' x 50' cells with an 8' levy in between them to pump water out of one and into the other to allowing for a 50' x 50' excavation area. The dewatering activity will run only a few days at a time.



Commissioner Ruffner understood the plans for dewatering for the project. He asked Mr. Foster to verify that there would be no additional runoff because of the pumping of water between the cells. In addition, the water being pumped will stay within the 50' x 50' foot cell. Mr. Foster replied that he was correct. That the pump will only be run while they are trying to excavate the gravel in the other cell. Commissioner Ruffner asked if this activity would require a DNR permit. Mr. Foster replied that he did not believe so.

Commissioner Fikes asked Mr. Foster if the pumping of the water between the two cells would negatively affect any of the area wells. Mr. Foster replied that he believe this activity would not negatively affect any of the area wells as they are not removing the water but just moving over to the next cell.

Commissioner Venuti wanted to know what happens to the water level of the receiving cell. Mr. Foster stated the cell receiving the water would only be dug down about 6" above the water table, which will allow for plenty of room for the pumped water. Commissioner Venuti then ask what was the reclamation plan for this pit. Mr. Foster said it would become a manmade lake.

Gina DeBardelaben, McLane Consulting; P.O. Box 468, Soldotna AK, 99669: Ms. DeBardelaben was the author of the well monitoring report for this project. Ms. DeBardelaben assisted the petitioner with completing their application and stated that the application met the standards of borough code. She realizes that the commissions does not see many applications for gravel extraction from within the water table however this a common occurrence. She is aware of many gravel pits on the peninsula that currently are extracting gravel from within the water table. Ms. DeBardelaben reviewed all the comments from surrounding neighbors regarding this permit modification and found that most all of them were upgrade of the material site, with the closest neighbor being about 1400' east of the pit. None of the commenters were owners of wells within 300' of the pit. She then reviewed the results of the well monitoring report (which was contained in the meeting packet) with the commission. She noted one of the questions the neighboring landowner had was the type of monitoring well used. The wells are 4" PVC pipes, approximately 25' in length with the lower 10' – 15' of the pipe having curve cuts. The wells were surveyed on a quarterly schedule and the collected data was utilized to determine the ground water depth, ground water directional flow and the hydraulic connectivity. The petitioners have no incentive to extract into the confining layer as this material is not used in construction and if excavated is considered waste material. In the course of preparing her report she contacted the DEC and DNR to analyze any well log data in the area. She noted that many logs were missing from the database. State statute requires that well drillers to register wells in the system but unfortunately, the State does not have a means to enforce well registration. The petitioner plans to dig to a depth to a maximum of 32' below existing ground elevation, which is approximately 15' in to the ground water table. They will not be digging into the confining layers. While dewatering is not a requirement to excavating into the water table, it does provide for a cleaner means of excavation and line of site. The dewatering process would be conducted over a 5-7 day period. Day 1 would be excavating the cells to begin dewatering. Days two to five would be excavation and stockpiling of materials. Days 6 and 7 would be slope dressing of the excavated cell and decommission of the water pumps. She noted some of the neighbors were concerned about dewatering affecting their private wells, which is known as well draw down. Using a pump to remove ground water creates what is called a cone of depression within the water table. Using the information from the petitioners dewatering plan she calculated that within a 300' radius of the operation the drawdown would be approximately .7 of a foot on day-1, 1.1 feet by day-7 and it would be 1.2 feet by day-10. She noted the majority of the comments from neighboring property owners were 1400' or more from the site. Using the same data, she calculated that at ¼-mile radius, the drawdown on day-1 would be approximately .1 of foot, by day-7 it would be .5 of a foot and by day-10, the drawdown would be .6 of a foot. This data shows that the proposed dewatering process will have minimal impact on the surrounding wells. The ground water being pumped in the proposed excavation process will become a non-factor, as it will be reintroduced within the same property and will be allowed to infiltrate back into the ground water table, recharging the aquafer. The operators will have to meet DEC requirements for dewatering as well as protection of water rights and quality. The petitioners would like to ask the commission to potentially separate the permit modification from the exemption from dewatering request. Doing this would limit the bonding requirements to the timeframe of the dewatering process only and not for the entire life of the permit. This petition meets all the requirements of code and they would ask that the commission approve the request.

Commissioner Venuti wanted to know how long would the pumps in the dewatering operation run on average. He noted when he ran pumps for dewatering during commercial project the pumps were required

to run 24 hours a day and they were loud. He wondered what the noise factor would be for this pump operation. Ms. DeBardelaben replied that the pumps would not be overly loud and would only run 3-5 days during the 7-day excavation period.

Commissioner Ruffner asked Ms. DeBardelaben what the maximum drawdown would be for the three closest wells. Ms. DeBardelaben replied that the maximum drawdown within 300' of the operation during a 10 period would 1.2 feet.

Commissioner Ecklund asked if McLane Consulting had a hydrologist on staff or was one hired to consult on her research for this project. Ms. DeBardelaben replied that she is a licensed civil engineer and meets the requirement under borough code to consult on this project. She did talk with a hydrologist regarding this project but a hydrologist was not hired as a consultant.

Mr. Taylor provided clarification on the bonding requirements. Permit condition number eight states that prior to dewatering the permittee shall post a bond for liability for potential accrued damages for \$30,000.00. There is no need to separate the modification permit from the exemption from dewatering request.

Michael Pomplin; 41918 River Park Dr., Soldotna AK, 99669: Mr. Pomplin would like to ask that a decision on this permit be delayed to allow time for the neighboring properties to conduct their own research. He only received notice on this permit application two weeks ago. This did not give him adequate time to do any research. In his subdivision, he is one of eight landowners who have 30' wells. He has concerns about the dewatering aspect of this permit. The operator is talking about pumping 1000 gallons a minute during this process over the 40-year life of this site. He is very concerned how this will affect the water table. There will also be trucks and excavating equipment being used and he wants to know what measures are going to be put in place regarding spills and leakage from the equipment. He has concerns about contamination of the water due to exposure. He appreciates Ms. DeBardelaben trying to answer some of his questions but not all were answered. In the meantime, he has applied for his water rights because that is the only thing that he knows to do to try to protect himself. He also has concerns about noise from the pumps; they already have to deal with the noise of the trucks backing up and tailgates slamming. The pumps would just add to an already noisy pit operation. He wonders how the effects of this permit modification will affect his property value. He would really like more research into how many wells could be affected by the dewatering. He knows there are more wells in the area than are showing up on the DEC logs. He also noted that a \$30,000 bond would not do a whole lot if a lot of the area well were affected.

Michael Gravier; 34540 Marcus St., Soldotna AK, 99669: Mr. Gravier has a well that is 1400' away from this pit. He found a gravel pit study, not in the Kenai Peninsula area, regarding drawdown. As far away as his well is, he should not be affected by the drawdown of this project. However, the study did state that open pits could affect groundwater flow direction causing a local increase in the hydrologic gradient. He is concerned that should the groundwater flow shift it could negatively affect his well. He also does not believe that the \$30,000 bond is enough; there are more than just three wells in the area. He just wants assurance that this project will not negatively affect his well.

Commissioner Venuti asked Mr. Gravier if he has had his water quality tested recently. He stated that it is important to have a benchmark place to have something to compare to. Mr. Gravier said his water was tested last year when he refinanced his house. He also is currently in the process of have a more comprehensive water test done and should get the results within the next week or two.

Bill Ferguson; 34484 Marcus St., Soldotna AK, 99669: Mr. Ferguson is a neighbor to Mr. Gravier and he has lived on his property since 1970. He well is within 150' of Mr. Ferguson's property. He stated that area well logs are incomplete. He recently found out his well is more shallow than he believed. He was shocked to find out the reclamation plan for the 31.2-acre pit is to turn it into a lake. The lake will most likely be pretty stagnate and will provide a wonderful breeding ground for mosquitos. He is also concerned that the standing water during the dewatering process could become contaminated and negatively affect his well. He is a retired slope worker and knows that spill and contamination can happen, even with the best practices in place. This application does not contain information on a safety plan, what they will do if there are spills or if the water is contaminated. Also with this pit being so close to the Kenai River, he has concerns regarding possible negative affects to the river. There are a whole lot of unknowns associated with this project and there is only one viewpoint being heard here tonight. He would also request that a



decision on this permit be delayed to allow the area residents more time to do research. There is only one engineer's report being considered here. He believes that the area residents should have the opportunity to hire their own experts and have that information considered as well.

Commissioner Ruffner asked Mr. Ferguson how much time he thought it would take, if the commission delayed a decision on this permit, for the residents to do their own research. Mr. Ferguson replied anywhere of 30-60 days. Commissioner Ruffner then asked Mr. Ferguson if he had applied for his water rights from DNR. Mr. Ferguson stated that he is in the process of doing so. Commissioner Ruffner then stated one way the area residents could protect themselves would be to apply for their water rights.

Commissioner Fikes asked Mr. Ferguson if he had any idea how many of his neighbors might be seasonal residents and may not have received notification about this material site permit. Mr. Ferguson stated that he could not answer that question.

Joseph & Billie Hardy; 41937 River Park Dr., Soldotna AK, 99669: Mr. Hardy lives approximately ¼ mile from the pit. He stated he shares the same concerns that the neighbors before him have expressed. He is particularly concerned that there is no baseline information on any of the local well around this pit. He believes that information should have been a part of the study. While he respects the McLane Consulting firm, their information is based on hypotheticals; he would like to see hard numbers. He also noted that the state requires a dewatering permit and he does not believe the operators have obtained one yet. He believes that question should be answered before the commission makes a decision on the permit. He wants to see the spill plan for this operation. He is also concerned about them using Kenai River Ave. to access Funny River Rd. This is a dangerous intersection for regular vehicles; there is no way it would be safe from large trucks to use. He also believes that the \$30,000 bond is a joke. They too would request that the commission delay making a decision on this permit for 30-60 days. The delay would allow the residents time to hire their own hydrologist.

Lillian Weed; 34054 Snow Lane, Soldotna AK, 99669: Ms. Weed stated the others have already brought up many of her concerns. She then stated that she is very concerned about how this operation could negatively affect the Kenai River and the surrounding habitat. She would ask that the delay be upwards of 60 days due to the challenges associated with the COVID pandemic.

Bill Elam; 47320 Jefferson Ave., Soldotna AK, 99669: As an assembly member, he would support the area residents request to delay the decision on this matter. The delay would allow time for them to bring in a hydrologist to conduct a study. He believes that this would be a nice accommodation to extend to the residents.

Lindsey Holland; 41750 River Park Dr., Soldotna AK, 99669: Ms. Holland stated that she shares Ms. Weed's concern about negative impacts to the river. She would like to know what kind of safe guards would be put in place for the river. She noted the engineer from McLane stated there are numerous pits in the area that have extracted into the water table. She wondered how many of them were within 350 feet of a river. She believed that a 350' buffer was practically nothing in the grand scheme of things. She too would like to ask the commission to delay making a decision on this permit until the neighborhood can hire their own hydrologist.

Gina DeBardelaben, McLane Consulting; P.O. Box 468, Soldotna AK, 99669: Ms. DeBardelaben wanted the public testifiers to know that other permitting processes for material sites, outside of the borough permitting process, will address the concerns expressed regarding spill mitigation and other environmental concerns. This information has not been requested or provided with this application because it is not a required part of the borough permitting process.

Commissioner Fikes asked if this permit had been reviewed by the Kenai River Center. Mr. Taylor responded the application had not been sent to the River Center for review because this project is not within the 50 ft. Habitat Protection District and was not within their jurisdiction. Commissioner Fikes also noted several members of the public stated that there was a discrepancy in the number of wells in the area. She asked if the applicant would be prepared to increase the amount of their bond if it was discovered there were more well in the area than have been reported. Mr. Foster stated that going out further from the project seem to be a bit extreme to him. He noted that their application meets the requirements of borough



code and does not believe additional bonding should be required.

Commissioner Venuti asked Mr. Foster if equipment to be used at this site would have white noise backup alarms. Mr. Foster replied no, the equipment does not have white noise alarms.

Hearing no one else wishing to comment, Vice Chair Ruffner closed public comment and opened discussion among the Commission.

**MOTION:** Commissioner Gillham moved, seconded by Commissioner Brantley to approved PC Resolution 2021-10 granting a modification to a conditional land use permit issued to River Resources, LLC.

Commissioner Gillham would like to know what would be a reasonable amount of time to allow the area residents to secure a hydrologist to conduct survey.

Commissioner Fikes stated that she would support a delay to allow the area residence to bring in their own hydrologist. She does not believe that is an unreasonable request.

Commissioner Ecklund also agreed with postponement to allow the residents more time to conduct their research.

Commissioner Gillham thought a 30-day postponement would be fair to both the applicant and the area residents.

Planning Director stated she and Bryan Taylor would be on vacation for the first part of May. Should the commission wish to postpone the application, she would suggest moving it to the May 24, 2021 meeting as they both will be back from vacation by then.

**AMENDMENT MOTION:** Commissioner Gillham moved, seconded by Commissioner Carluccio to postpone this item to the May 24, 2021 meeting.

Commissioner Carluccio noted that she believed May 24<sup>th</sup> meeting was a good compromise as it was between the 30-60 day timeframe.

Mr. Taylor asked for clarification in regards to the delay and the commission's expectations of him. What did they expect from him in regards to research. Commissioner Ruffner stated that was a fair question and posed the question to the commission.

Commissioner Fikes asked if Mr. Taylor if he could secure an expert that could address any potential impact to local wells because of the dewatering process and spill containment plans. She would also like to have additional information regarding any noise impacts. Concerns have been brought up and the information in the application does not address these issues. She believes they are being asked to make a decision without having the information needed. Mr. Taylor replied several of the permit conditions do address contamination concerns. As far as what borough codes lays out to address the issues such as drawdown and contamination he believes the application has addressed them. He is not sure what would be considered outstanding with this application.

Commissioner Ecklund asked Mr. Taylor if the borough had a hydrologist on staff. Mr. Taylor replied no, the borough does not have a hydrologist on staff. Commissioner Ecklund then asked if Mr. Taylor made any calls to or sought the input from a hydrologist on this permit. Mr. Taylor replied that he did not consult with a hydrologist. He stated he did reach out to DNR regarding reclamation and bonding requirements.

Commissioner Ruffner stated what he heard was a request to delay making a decision, which would allow the area residents time to research and/or hire a hydrologist. Then they could bring their information back to the commission. He did not hear any expectations for staff to conduct additional research.

Commissioner Venuti wanted to state that he did not believe the borough should bear the cost of hiring a hydrologist. Commissioner Ruffner stated he believed it was understood that the residents would bear the cost of the hydrologist.

Commissioner Fikes asked if there was a way to know for sure how many wells are within the affected area, since it was brought up that there was a discrepancy in the number. Mr. Taylor replied that the site plan was an on the ground survey, so he does not believe there were wells missed in the immediate vicinity. For wells within the ¼ mile area, if they are not registered in the DNR log the only way to determine the number would be to conduct an on the ground survey. If the commission wanted to identify an area, he might be able to do some research. Commissioner Fikes stated she just wanted to know if there were any other wells in the immediate area, say along Kenai River Ave., other than the three identified in the report. Mr. Taylor stated that he could do some additional research and see if there were any other wells in that immediate area.

Commissioner Ruffner passed the gavel to Jeremy Brantley so he could make a statement on the motion. He stated that he is inclined to support the motion to postpone giving the landowners a little bit more time to assess this proposal. He stated he does have some professional association with ground water and geology and does not see anything in the application that would give him pause in approving the permit in the future. He believed that quantifying how much water is moved and being able to put some sort of limits or expectation on it would be beneficial, however he recognizes that code does not address this issue. He noted that it is the responsibility of the applicant to protect the water surrounding the pit. Having reviewed these types of applications for a long time, the water quality issues and spill mitigation associated with digging in this pit are no different from any other pit. He does have concerns with over dewatering and it causing water loss in area wells as he has seen this happen here on the peninsula.

**AMENDMENT MOTION PASSED:** Hearing no further discussion or objection the motion passed by the following vote:

Yes	8	No	1	Absent	2
Yes	Carluccio, Chesser, Ecklund, Fikes, Gillham, Morgan, Ruffner, Venuti				
No	Brantley				
Absent	Bentz, Martin				

#### AGENDA ITEM E.

#### PUBLIC HEARING

9. State application for a marijuana establishment license; Kalifornsky area.

**Applicant:** Greenstar, Inc. dba Gold Star Concentrates  
**Landowner:** Otium Sanctum, LLC  
**Parcel ID#:** 055-040-33  
**Legal Description:** T05N, R11W, S.M., KN 0940082 Carrol Martin Sub. No. 2, Lot 1  
**Location:** 40593 Kalifornsky Beach Road

Staff report given by Bryan Taylor

**BACKGROUND INFORMATION:** On June 30, 2020, the borough received notification from the Alcohol and Marijuana Control Office (AMCO) that the applicant had initiated the application to the state for a Retail Marijuana Store license. The AMCO notified the borough that the application was complete on March 1, 2021. On March 16, 2021, the applicant supplied the borough with a signed acknowledgement form and a site plan of the proposed Retail Marijuana Store on the above-described parcel. Staff has reviewed the completed license that has been submitted to the state and the site plan submitted to the borough and has found the following concerning the standards contained in KPB 7.30.020:

1. The Borough finance department has been notified of the complete application and they report that the applicant complies with the borough tax regulations.
2. Borough planning department staff has evaluated the application and has determined that the proposed facility will be located greater than 1,000 feet from any school.
3. Borough planning department staff has evaluated the application and has determined that the proposed facility will be located greater than 500 feet from all recreation or youth centers,