



Kenai Peninsula Borough

144 North Binkley Street
Soldotna, AK 99669

Meeting Agenda Assembly

Tuesday, October 25, 2022

6:00 PM

Betty J. Glick Assembly Chambers

Meeting ID: 884 7373 9641 Passcode: 671108

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

Any invocation that may be offered at the beginning of the assembly meeting shall be a voluntary offering of a private person, to and for the benefit of the assembly. No member of the community is required to attend or participate in the invocation.

[Clerk's Note: The invocation will be offered by Talakai Finau.]

ROLL CALL

COMMITTEE REPORTS

APPROVAL OF AGENDA AND CONSENT AGENDA

(All items listed with an asterisk () are considered to be routine and non-controversial by the Assembly and will be approved by one motion. Public testimony will be taken. There will be no separate discussion of these items unless an Assembly Member so requests, in which case the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda.)*

ACTION ITEMS CURRENTLY ON CONSENT AGENDA:

KPB 4664: October 11, 2022 Regular Assembly Meeting Minutes

Resolution 2022-054: Watermelon Trail Easement Approval

Resolution 2022-055: Full-Time Assessing Clerk Position

Ordinance 2022-19-25: Litigation of Oil and Gas Appeal

ACTION ITEMS ELIGIBLE TO BE ADDED TO THE CONSENT AGENDA:

Ordinance 2022-19-19: Special Mayoral Election, Date, and Funds

Ordinance 2022-19-20: Hiring Hearing Officers for Planning Commission Appeals

Ordinance 2022-19-21: UPS Replacement Project in the ERC

Ordinance 2022-19-22: Areawide Warning Sirens and Cybersecurity Upgrades

Ordinance 2022-19-23: Accepting and Appropriating Funds for Emergency Operations

Ordinance 2022-19-24: Increased Costs of Operating Certain Transfer Facilities

ASSEMBLY REORGANIZATION

1. Election of President and Vice President

APPROVAL OF MINUTES

1. [KPB-4664](#) October 11, 2022 Regular Assembly Meeting Minutes

Attachments: [October 11, 2022 Regular Assembly Meeting Minutes](#)

COMMENDING RESOLUTIONS AND PROCLAMATIONS

1. [KPB-4671](#) Mayor's Proclamation declaring October 23, 2022 through October 29, 2022 Childhood Cancer Awareness Week

Attachments: [Proclamation of Childhood Cancer Awareness Week](#)

PRESENTATIONS WITH PRIOR NOTICE

(20 minutes total)

1. [KPB-4665](#) South Peninsula Hospital Quarterly Report
1. [KPB-4666](#) Central Peninsula Hospital Quarterly Report

PUBLIC COMMENTS ON ITEMS NOT APPEARING ON THE AGENDA

(3 minutes per speaker; 20 minutes aggregate)

PUBLIC HEARINGS ON ORDINANCES

(Testimony limited to 3 minutes per speaker)

Ordinances referred to Finance Committee

1. [2022-19-19](#) An Ordinance Calling For A Special Mayoral Election, Setting The Special Election Date, And Appropriating Necessary Funds (Johnson) (Hearing on 10/25/22)

Attachments: [Ordinance 2022-19-19](#)
[Memo](#)
[By Mail Election v Polling Site Election Cost](#)
[101422 Public Comment](#)

2. [2022-19-20](#) An Ordinance Appropriating \$100,000 to the Legal Department to Cover Costs of Hiring Hearing Officers for Planning Commission Appeals (Johnson at the Request of the Borough Attorney) (Hearing on 10/25/22)
- Attachments:* [Ordinance 2022-19-20](#)
[Memo](#)
3. [2022-19-21](#) An Ordinance Appropriating Supplemental Funding to Complete the Uninterrupted Power Supply Replacement Project Located in the Emergency Response Center (Mayor) (Hearing on 10/25/22)
- Attachments:* [Ordinance 2022-19-21](#)
[Memo](#)
4. [2022-19-22](#) An Ordinance Accepting and Appropriating \$441,000 from the State of Alaska Department of Military and Veteran Affairs, Division of Homeland Security and Emergency Management for Areawide Warning Sirens and Cybersecurity Upgrades (Mayor) (Hearing on 10/25/22)
- Attachments:* [Ordinance 2022-19-22](#)
[Memo](#)
[Allocation Table](#)
[Allocation Announcement Letter](#)
5. [2022-19-23](#) An Ordinance Accepting \$200,000 from the State of Alaska Department of Military and Veterans Affairs, Division of Homeland Security & Emergency Management for Emergency Management Operations and Appropriating \$40,000 for the Remaining Match Requirement (Mayor) (Hearing on 10/25/22)
- Attachments:* [Ordinance 2022-19-23](#)
[Memo](#)
[Award Letter](#)
6. [2022-19-24](#) An Ordinance Appropriating \$653,900 from the General Fund for Increased Costs of Contract Services for Operation of the Seward, Kenai, Nikiski and Sterling Transfer Facilities (Mayor) (Hearing on 10/25/22)
- Attachments:* [Ordinance 2022-19-24](#)
[Memo](#)

Ordinances referred to Lands Committee

7. [2022-36](#) An Ordinance Amending KPB Chapter 21.25 and KPB Chapter 21.29 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley) (Referred to Lands Committee)

Attachments:

[Ordinance 2022-36](#)
[Derkevorkian Amendments #1-#14](#)
[Sectional Analysis with Potential Amendments - Planning Department](#)
[Tupper Amendments #1-6](#)
[Administrative Amendments #1-#9](#)
[Memo](#)
[Final Material Site Sectional Analysis](#)
[Material Site Subcommittee Presentation](#)
[Review Notes by Charley Palmer](#)
[Takings Overview presentation](#)
[Public Comments](#)
[Public Comments 10/25/22](#)
[Reference Copy R2018-004 SUB](#)
[Reference Copy O2019-30](#)
[Reference Copy O2021-41](#)
[Reference Copy O2021-41 SUB](#)

NEW BUSINESS

1. Resolutions

Resolutions referred to Lands Committee

- *a. [2022-054](#) A Resolution Approving the Acquisition of a Public Access Easement from the State of Alaska for Watermelon Trail (Mayor)

Attachments:

[Resolution 2022-054](#)
[Memo](#)
[Map](#)
[ADL 223843 survey](#)
[Easement Req Ltr 6-24-22](#)
[Draft Easement](#)
[CTMA Amendment Pkg](#)

Resolutions referred to Policies and Procedures Committee

- *b. [2022-055](#) A Resolution Authorizing One Full-Time Assessing Clerk Classified Service Position (Mayor)

Attachments: [Resolution 2022-055](#)
[Memo](#)
[Job Description](#)

2. Ordinances for Introduction

Ordinances for Introduction and referred to Finance Committee

- *a. [2022-19-25](#) An Ordinance Appropriating Funds to the Legal Department for Litigation Fees and Costs Related to an Oil and Gas Property Tax Appeal (Mayor) (Hearing on 11/15/22)

Attachments: [Ordinance 2022-19-25](#)
[Memo](#)

3. Other

Other items referred to Finance Committee

- *a. [KPB-4636](#) Approving a New Liquor License filed by Vince Benjamin DBA: Mt. Marathon Brewing Company, License NO. 5894

Attachments: [5894 Memo to Assembly](#)
[5894 New Liquor License](#)

Other items referred to Lands Committee

- *b. [KPB-4672](#) Petition to Vacate a 60' Wide Section of Ciccone Street Right-of-Way and Associated Utility Permits; KPB File 2022-136V

Attachments: [Assembly Memo Ciccone St.](#)
[Ciccone Street Right of Way Vacation Packet](#)

MAYOR'S REPORT

[KPB-4673](#) Mayor's Report Cover Memo

Attachments: [Mayor's Report Memo](#)

1. Assembly Requests/Responses - None.
2. Agreements and Contracts

- a. [KPB-4677](#) Authorization to Award a Contract for ITB23-002 South Peninsula Hospital Roof Replacement
Attachments: [Authorization to Award ITB23-002](#)
- b. [KPB-4678](#) Authorization to Award a Contract for ITB23-014 Nikiski Fire Station #2 Lighting
Attachments: [Authorization to Award ITB23-014](#)
- c. [KPB-4683](#) 23F1A Bruno Road Flooding Event - Real Property Tax Exemptions - Disaster Damage
Attachments: [23F1A Bruno Road Flooding Event](#)
- d. [KPB-4686](#) Central Peninsula Landfill - Landfill Gas to Energy Update
Attachments: [Central Peninsula Landfill - Landfill Gas to Energy Update](#)
- e. [KPB-4687](#) South Peninsula Future Inert Waste Landfill Search
Attachments: [South Peninsula Future Inert Waste Landfill Search](#)

3. Other

- a. [KPB-4679](#) Budget Revisions - September 2022
Attachments: [Budget Revisions - September 2022](#)
- b. [KPB-4680](#) Revenue-Expenditure Report - September 2022
Attachments: [Revenue-Expenditure Report](#)
- c. [KPB-4681](#) Capital Projects Reports - September 30, 2022
Attachments: [Capital Project Reports - September 30, 2022](#)

PUBLIC COMMENTS AND PUBLIC PRESENTATIONS

ASSEMBLY COMMENTS

PENDING LEGISLATION

(This item lists legislation which will be addressed at a later date as noted.)

1. [2022-42](#) An Ordinance Approving the 2023 Asset Allocation for the Land Trust Investment Fund Investments and Amending KPB Code 5.10.200(B) to Update and Add New Subsections Under Authorized Investments (Mayor) (Hearing on 11/15/22)

Attachments: [Ordinance 2022-42](#)
[Memo](#)

INFORMATIONAL MATERIALS AND REPORTS

ASSEMBLY MEETING AND HEARING ANNOUNCEMENTS

1. November 15, 2022 Material Subcommittee Meeting
Time TBD Betty J. Glick Assembly Chambers
Borough Administration Building
Remote participation available through Zoom
Meeting ID: 884 7373 9641 Passcode: 671108

2. November 15, 2022 Regular Assembly Meeting
6:00 PM Betty J. Glick Assembly Chambers
Borough Administration Building
Remote participation available through Zoom
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ADJOURNMENT

This meeting will be broadcast on KDLL-FM 91.9 (Central Peninsula), KBBI-AM 890 (South Peninsula), K201AO(KSKA)-FM 88.1 (East Peninsula).

The meeting will be held through Zoom, the Meeting ID: 884 7373 9641 Passcode: 671108 and in-person from the Betty J. Glick Assembly Chambers, Borough Administration Building, Soldotna, Alaska. To attend the Zoom meeting by telephone call toll free 1-888-788-0099 or 1-877-853-5247 and enter the Meeting ID: 884 7373 9641 Passcode: 671108. Detailed instructions will be posted on at the Kenai Peninsula Borough's main page at www.kpb.us: "Meeting and Public Notices" "Assembly Meeting Calendar".

For further information, please call the Clerk's Office at 714-2160 or toll free within the Borough at 1-800-478-4441, Ext. 2160. Visit our website at www.kpb.us for copies of the agenda, meeting minutes, ordinances and resolutions.



Kenai Peninsula Borough

144 North Binkley Street
Soldotna, AK 99669

Meeting Minutes - Draft

Assembly

Brent Johnson, President

Brent Hibbert, Vice President

Jesse Bjorkman

Lane Chesley

Tyson Cox

Richard Derkevorkian

Cindy Ecklund

Bill Elam

Mike Tupper

Tuesday, October 11, 2022

6:00 PM

Betty J. Glick Assembly Chambers

Meeting ID: 884 7373 9641 Passcode: 671108

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

[Clerk's Note: The invocation was given by Kathy Medcoff.]

ROLL CALL

[Clerk's Note: Assembly Members Ecklund and Derkevorkian attended via Zoom.]

Present: 9 - Jesse Bjorkman, Tyson Cox, Brent Hibbert, Brent Johnson, Richard Derkevorkian, Bill Elam, Lane Chesley, Cindy Ecklund, and Mike Tupper

Also present were:

Mike Navarre, Borough Mayor

Max Best, Chief of Staff

Sean Kelley, Borough Attorney

Brandi Harbaugh, Finance Director

Johni Blankenship, Borough Clerk

Michele Turner, Deputy Borough Clerk

COMMITTEE REPORTS

Assembly Member Cox stated the Finance Committee met and discussed its agenda items.

Assembly Member Elam stated the Lands Committee met and discussed its agenda item.

Assembly Member Chesley stated the Policies and Procedures Committee met and discussed its agenda items.

APPROVAL OF AGENDA AND CONSENT AGENDA

Hibbert moved to approve the Agenda and Consent Agenda.

[KPB-4623](#) September 20, 2022 Regular Assembly Meeting Minutes
approved.

The following public hearing item met the required conditions of KPB 22.40.110 and was added to the consent agenda:

[2022-19-18](#) An Ordinance Accepting and Appropriating an Additional \$231,044.38 from the State of Alaska Department of Military and Veteran Affairs, Division of Homeland Security and Emergency Management for the Emergency Siren Warning System Replacement Project (Mayor) (Hearing on 10/11/22)

[Clerk's Note: Section 4 in Ordinance 2022-19-18 was amended to read, "This ordinance shall be effective [IMMEDIATELY UPON ENACTMENT] retroactive to August 29, 2022."]

This Ordinance was enacted as amended.

New Business

[2022-053](#) Certifying the Results of the October 4, 2022 Regular Borough Election (Johnson at the Request of the Borough Clerk)

This Resolution was adopted.

[2022-19-19](#) An Ordinance Calling For A Special Mayoral Election, Setting The Special Election Date, And Appropriating Necessary Funds (Johnson) (Hearing on 10/25/22)

This Ordinance was introduced and set for public hearing.

[2022-19-20](#) An Ordinance Appropriating \$100,000 to the Legal Department to Cover Costs of Hiring Hearing Officers for Planning Commission Appeals (Johnson at the Request of the Borough Attorney) (Hearing on 10/25/22)

This Budget Ordinance was introduced and set for public hearing.

[2022-19-21](#) An Ordinance Appropriating Supplemental Funding to Complete the

Uninterrupted Power Supply Replacement Project Located in the Emergency Response Center (Mayor) (Hearing on 10/25/22)

This Budget Ordinance was introduced and set for public hearing.

[2022-19-22](#) An Ordinance Accepting and Appropriating \$441,000 from the State of Alaska Department of Military and Veteran Affairs, Division of Homeland Security and Emergency Management for Areawide Warning Sirens and Cybersecurity Upgrades (Mayor) (Hearing on 10/25/22)

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This Budget Ordinance was introduced and set for public hearing.

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This Budget Ordinance was introduced and set for public hearing.

[2022-42](#) An Ordinance Approving the 2023 Asset Allocation for the Land Trust Investment Fund Investments and Amending KPB Code 5.10.200(B) to Update and Add New Subsections Under Authorized Investments (Mayor) (Hearing on 11/15/22)

This Ordinance was introduced and set for public hearing.

[KPB-4635](#) Approving a New Liquor License and Restaurant Designation Permit Filed by Mark Burner DBA: Anglers Lodge LLC, License No. 6094
approved.

[KPB-4634](#) Petition to Vacate Entire Cul-De-Sac Where Lothrop Park Drive and Ivy Avenue Meet at Lot 1 Block 4 of Leisure Time Estates and Dedicated on Leisure Time Estates, HM 80-32, in the Ninilchik area. KPB File 2022-130V

[Clerk's Note: At its regularly scheduled meeting of September 26, 2022 the Kenai Peninsula Borough Planning Commission approved the

proposed vacation by unanimous vote.]

approved.

[KPB-4648](#)

Confirming Appointments to Advisory Planning Commissions

Cooper Landing Advisory Planning Commission
Laura Johnson, Seat G, Term Expires 09/30/2025

Moose Pass Advisory Planning Commission
Jennifer Boyle, Seat F, Term Expires 09/30/2025
Jeff Hetrick, Seat G, Term Expires 09/30/2025

approved.

[KPB-4656](#)

Confirming Appointments to the Service Area Boards (Mayor)

Bear Creek Fire Service Area Board
Wolfgang V. Kurtz, Seat A, Term Expires 10/2025

Nikiski Fire Service Area Board
Tony Jackson, Seat A, Term Expires 10/2025
Paul M. Walukewicz, Seat B, Term Expires 10/2025
Kathryn Walukewicz, Seat C, Term Expires 10/2025

Road Service Area Board
Phillip Fraley, At-Large Seat #1,
Term Expires 09/30/2025
Heidi Covey, At-Large Seat #2, Term Expires 09/30/2025

Seldovia Recreational Service Area Board
Elizabeth Diamant, Seat D, Term Expires 10/2025

West Emergency Service Area Board
Dawson Slaughter, Seat B, Term Expires 10/2025
Katherine Covey, Seat D, Term Expires 10/2025

approved.

[KPB-4662](#)

Confirming an Appointment to the Resilience and Security Advisory Commission (Mayor)

Resilience and Security Advisory Commission
Bretwood Higman, Southwest Peninsula Seat, Term Expires

09/30/2025

approved.

[KPB-4663](#)

Designation of Administrative Officer and Alternate Administrative Officer to Act on Behalf of the Mayor (Mayor)

approved.

Approval of the Agenda and Consent Agenda

President Johnson called for public comment.

The following people spoke in support of postponing Ordinance 2022-19-19 to November:

Garrett

Joan Corr

There being no one else who wished to speak, the public comment period was closed.

The motion to approve the Agenda and Consent Agenda carried by the following vote:

Yes: 9 - Bjorkman, Cox, Hibbert, Johnson, Derkevorkian, Elam, Chesley, Ecklund, and Tupper

VACANCY, DESIGNATION OR SEATING MEMBERS

1. Swear-In Newly Elected Assembly Members

[Clerk's Note: Borough Clerk Johni Blankenship administered oaths of office to the newly elected Assembly Members: Jesse Bjorkman, District 3; Tyson Cox, District 4; and Brent Johnson, District 7.]

PRESENTATIONS WITH PRIOR NOTICE

1. [KPB-4624](#) KPBSD Quarterly Report, Clayton Holland, Superintendant (10 minutes)

[Clerk's Note: Kenai Peninsula Borough School District Superintendent Holland gave a quarterly report to the assembly.]

2. [KPB-4625](#) Resilience and Security Advisory Commission Presentation: Cook Inlet Natural Gas and Energy Future, RSAC Vice Chair Brett Higman (10 minutes)

[Clerk's Note: Resilience and Security Advisory Commission Vice Chair Brett "Hig" Higman gave a presentation to the assembly.]

PUBLIC COMMENTS ON ITEMS NOT APPEARING ON THE AGENDA

President Johnson called for public comment.

Queen Parker, Sterling spoke in support of hand count elections and more opportunity for community participation.

Ed Martin III addressed the assembly regarding material site processes and regulations.

There being no one else who wished to speak, the public comment period was closed.

MAYOR'S REPORT

1. Assembly Requests/Responses - None.
2. Agreements and Contracts
 - a. [KPB-4638](#) Authorization to Award a Contract for ITB23-015 Brushing Vegetation Control - Central Region
 - b. [KPB-4639](#) Authorization to Award a Contract for ITB23-021 Brushing Vegetation Control - West Region, Units 6 & 7
 - c. [KPB-4640](#) Authorization to Award a Contract for ITB23-020 Kwechak Creek Maintenance
 - d. [KPB-4641](#) Purchase of Motorola Radios, Under the National Association of State Procurement Officials (NASPO) Contract
 - e. [KPB-4642](#) Authorization to Award a Contract for ITB23-016 Brushing Vegetation Control - North Region
 - f. [KPB-4643](#) Authorization to Award a Contract for ITB23-017 Brushing Vegetation Control - South Region
 - g. [KPB-4644](#) Authorization to Award a Contract for ITB23-018 Brushing Vegetation Control - East Region, Unit 3
 - h. [KPB-4645](#) Authorization to Award a Contract for ITB23-019 Brushing Vegetation Control - West Region, Units 3, 4, & 5
 - i. [KPB-4646](#) FutureSync Sole Source Waiver

3. Other

- a. [KPB-4647](#) Litigation Status Report - Quarter Ending 09/30/22

PUBLIC COMMENTS AND PUBLIC PRESENTATIONS

President Johnson called for public comment.

Susan Smalley, Kenai addressed the assembly regarding breast cancer awareness month.

There being no one else who wished to speak, the public comment period was closed.

ASSEMBLY COMMENTS

Assembly Member Elam thanked everyone for attending. He congratulated the school district and Central Emergency Services on the passage of Proposition 2 and Proposition 3 by the voters. He wished everyone a good evening.

Assembly Member Cox congratulated his son for completing the sacrament of confirmation. He thanked the constituents of District 4 for electing him as their representative. Mr. Cox shared a few of his observations while on the campaign trail.

Assembly Member Tupper reminded everyone to mentally and automotively prepare themselves for winter driving as it was sneaking up on us.

Assembly Member Derkevorkian thanked President Johnson for allowing him to attend via Zoom. He thanked the election workers and the Clerk's Office for all their efforts to conduct this year's election. He congratulated the assembly members that were re-elected. Mr. Derkevorkian wished everyone a good evening.

Assembly Member Bjorkman thanked everyone for attending in person as well as those who attended online or via the radio. He thanked everyone who voted in the October 4, 2022 election, stating voter participation is essential for democracy. He stated the school year was moving quickly and reminded students to get their first quarter work completed and turned in. Mr. Bjorkman stated AGDC issued a memorandum of understanding to include the possibility of producing ammonia as part of the potential AK LNG project. He stated he was looking forward to seeing this project move forward, but was reminded not to get too excited about the Christmas tree decorations as you had to get the tree first. Mr. Bjorkman congratulated Nikiski High School football team and the girls volleyball team for a good season. He wished everyone a good evening.

Assembly Member Chesley stated he looked forward to both Central Peninsula Hospital and South Peninsula Hospital's presenting their quarterly reports at the October 25, 2022 assembly meeting. He provided a brief synopsis of the hospital's reporting requirements per the operating agreement. He encouraged the assembly to continue to ask certain questions as that was in the borough's scope in the oversight of the hospitals; however, practicing medicine was not. Mr. Chesley shared that he attended a City of Homer event, Homer Drawdown, which was launching a non-motorized transportation plan that encourages folks to walk instead of drive. He stated the Homer Trails Alliance was scheduled to give a presentation to the Assembly on November 15, 2022, which was a group who were promoting, maintaining and developing sustainable trails in the Homer area. He stated these efforts were also being explored at Homer High School and Middle School and looked forward to the Superintendent and Capital Projects director to attend future meetings regarding this topic.

Assembly Member Ecklund provided an update on activities in the Seward area regarding the flooding. She congratulated Jesse Bjorkman, Tyson Cox and Brent Johnson for their re-election to the assembly. Ms. Ecklund stated it was also good to see Chief of Staff Max Best back at the borough. She wished everyone a good evening.

Vice President Hibbert thanked all the candidates who were elected and all the candidates that participated in the election. He thanked the Clerk's Office and all the election workers who put on a great election this year. Mr. Hibbert welcomed Mayor Navarre and Chief of Staff Best. He stated Ben Hanson, IT Director was going to be greatly missed. He thanked Superintendent Holland and all the director's for attending. He reminded everyone to be careful on the slick roads.

President Johnson provided a brief summation of a situation surrounding election worker Susan Smalley and recapped borough code as well as state statutes regarding election candidates. He stated he appreciated all election workers and hoped this clarification encouraged Mrs. Smalley to continue to serve as an election worker as she had done over the last forty years. Mr. Johnson wished everyone a good night.

INFORMATIONAL MATERIALS AND REPORTS

ASSEMBLY MEETING AND HEARING ANNOUNCEMENTS

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ADJOURNMENT

With no further business to come before the assembly, President Johnson adjourned the meeting at 8:21 p.m.

I certify the above represents accurate minutes of the Kenai Peninsula Borough Assembly meeting of October 11, 2022.

Johni Blankenship, MMC, Borough Clerk

Approved by the Assembly: _____

Kenai Peninsula Borough

Alaska

Proclamation

WHEREAS, the American Cancer Fund for Children and Kids Cancer Connection report cancer is the leading cause of death by disease among U.S. children between infancy and age 15. This tragic disease is detected in more than 16,000 of our country's young people each and every year; and

WHEREAS, one in five of our nation's children loses his or her battle with cancer. Many infants, children and teens will suffer from long-term effects of comprehensive treatment, including secondary cancers. An estimated 400,000 children and adolescents are diagnosed with cancer globally each year; and

WHEREAS, founded nearly thirty years ago by Steven Firestein, a member of the philanthropic Max Factor cosmetics family, the American Cancer Fund for Children, Inc. Kids Cancer Connection, Inc. along with Lions Club International are dedicated to helping these children and their families; and

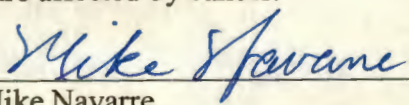
WHEREAS, the American Cancer Fund for Children and Kids Cancer Connection provide a variety of vital patient psychosocial services to children undergoing cancer treatment at The Children's Hospital at Providence Alaska Medical Center in Anchorage, as well as participating hospitals throughout the country, thereby enhancing the quality of life for these children and their families; and

WHEREAS, the American Cancer Fund for Children and Kids Cancer Connection also sponsor toy distributions, family sailing programs, pet-assisted therapy, Laughternoon – Laughter is Healing, KCC Supercar Experience, positive appearance programs, educational programs and hospital celebrations in honor of a child's determination and bravery to fight the battle against childhood cancer.

NOW THEREFORE, I, Mike Navarre Mayor of the Kenai Peninsula Borough, do hereby proclaim the week of October 23rd through October 29th as:

Childhood Cancer Awareness Week

on the Kenai Peninsula, and encourage all citizens to help increase public awareness and support for the children and families who are affected by cancer.


Mike Navarre
Kenai Peninsula Borough Mayor

Introduced by:	Johnson
Date:	10/11/22
Hearing:	10/25/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-19-19**

**AN ORDINANCE CALLING FOR A SPECIAL MAYORAL ELECTION, SETTING
THE SPECIAL ELECTION DATE, AND APPROPRIATING NECESSARY FUNDS**

WHEREAS, Mayor Pierce’s resignation from the office of the mayor effective September 30, 2022, was accepted by the Assembly at the September 6, 2022 regular Assembly meeting; and

WHEREAS, on September 6, 2022, the Assembly unanimously declared a vacancy in the office of the mayor; and

WHEREAS, KPB 4.10.050(A), states, “The assembly, by motion, resolution, or adoption of an ordinance, may call a special election at any time at least 75 days prior to the date of the election;” and

WHEREAS, AS 29.20.280(b) states, “a vacancy in the office of mayor occurring six months before a regular election shall be filled by the governing body. The person appointed serves until the next regular election when a successor is elected to serve the balance of the term. If a member of the governing body is appointed mayor, the member shall resign the seat on the governing body. If a vacancy occurs more than six months before a regular election, the governing body shall call a special election to fill the unexpired term;” and

WHEREAS, the vacancy occurred more than six months before a regular election for the office of the mayor, therefore a special election is required by law; and

WHEREAS, funds need to be appropriated to administer the special mayoral election and, potentially, a runoff election in the event no candidate receives a majority of the votes cast pursuant to KPB 4.10.070(A);

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That the Assembly directs the Borough Clerk acting in her capacity as the Election Supervisor to conduct a Special Mayoral Election on _____, 2023.

SECTION 2. That the Assembly appropriates \$250,000 from the General Fund to the Assembly Elections Division, project account No. 100.11130.23VOT.49999., for the purpose

of conducting the Special Mayoral Election and the Special Mayoral Runoff Election, if necessary.

SECTION 3. That this ordinance shall become effective immediately upon enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2022.

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Members, Kenai Peninsula Borough Assembly
FROM: Brent Johnson, Assembly President *Bj*
DATE: October 11, 2022
RE: Ordinance 2022-19-19 Calling for a Special Mayor Election, Setting the Special Election Date, and Appropriating Necessary Funds (Johnson)

On September 6, 2022, the Kenai Peninsula Borough (Borough) Assembly, accepted Mayor Pierce's resignation from the office of Borough Mayor and declared a vacancy in the office of the mayor.

The Borough Clerk's Office and Legal Department, respectively, provided public memorandums recommending that the Assembly call a special mayoral election and set a special election date no sooner than 75 days after calling for the special election per KPB 4.10.050.

KPB 4.10.050(A), states, "The assembly, by motion, resolution, or adoption of an ordinance, may call a special election at any time at least 75 days prior to the date of the election;"

Pursuant to AS 29.20.280(b), I have determined that a special election is required by law.

The Borough Clerk estimates that a special election and subsequent runoff election, if necessary, may cost up to \$250,000. Therefore, this ordinance calls for a special election, will set a special election date, and will appropriate fund balance from the General Fund necessary to conduct the special mayoral election and a runoff election in the event a runoff election is necessary in the event no candidate receives a majority of the votes cast.

Your consideration of the ordinance is appreciated.

FINANCE DEPARTMENT ACCOUNT / FUNDS VERIFIED	
Acct. No.	<u>100,27910</u>
Amount:	<u>\$ 250,000</u>
By: <i>Bj</i>	Date: <u>9/22/22</u>

POLLING SITE VERSUS BY MAIL SPECIAL ELECTION EXPENSES - ESTIMATE ONLY

Kenai Peninsula Borough

Expense Category	Polling Sites	By Mail	Difference		Explanantion of Difference
Personnel	\$ 62,000	\$ 30,000	48%	\$(32,000)	150 Temporary Employees versus 15 Temporary Employees
Supplies	\$ 2,000	\$ 1,000	50%	\$ (1,000)	Supplies for 5 AVO Site versus 22 Polling Sites and 5 AVO Sites
Services					
Contract Services	\$ 16,800	\$ 51,000	304%	\$ 34,200	55,000 ballot packages (Remove from stub, fold ballots and insert into envelope with sleeve and inner envelope. Affix label and seal)
Postage & Freight	\$ 7,000	\$ 30,000	429%	\$ 23,000	
Transportation and Subsistence	\$ 500	\$ 500	100%	\$ -	
Advertising	\$ 8,000	\$ 5,000	63%	\$ (3,000)	
Printing	\$ 50,000	\$ 85,000	170%	\$ 35,000	Printing of Ballots, Outer Envelopes, Inner Envelopes and Secrecy Sleeves
Rents	\$ 2,000		0%	\$ (2,000)	
Services Total	\$ 84,300	\$ 175,000	208%	\$ 87,200	
TOTAL ELECTION BUDGET	\$ 148,300	\$ 206,000	139%	\$ 54,200	
OTHER: Additional Borough Expenses Not in Assembly Election Budget					
Equipment Delivery	\$ 7,000	\$ -	0%	\$ (7,000)	Maintenance Department Estimate
TOTAL OVERALL BUDGET	\$ 155,300	\$ 206,000	133%	\$ 50,700	

From: [Blankenship, Johni](#)
To: [Warner, Avery](#)
Subject: FW: <EXTERNAL-SENDER>Ord 2022-19-19 mayoral special election date
Date: Thursday, October 13, 2022 4:34:35 PM

Public comment

From: mary griswold <mgrt@xyz.net>
Sent: Thursday, October 13, 2022 4:28 PM
To: Blankenship, Johni <JBlankenship@kpb.us>
Subject: <EXTERNAL-SENDER>Ord 2022-19-19 mayoral special election date

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.

Please include in public comments for the next assembly meeting:

----- Original Message -----

Subject: mayor special election date
Date: Thu, 13 Oct 2022 13:04:41 -0400
From: "mary griswold" <mgrt@xyz.net>
To: brent johnson <bjohnson@kpb.us>, mike tupper <mtupper@kpb.us>, tyson cox <tysoncox@kpb.us>, bill elam <belam@kpb.us>, jesse bjorkman <bjorkman@kpb.us>, brent hibbert <bhibbert@kpb.us>, cindy ecklund <cecklund@kpb.us>, ron derkevorkian <rderkevorkian@kpb.us>, lane chesley <lchesley@kpb.us>

I support February 14, 2023 as the date for the special election for borough mayor. This would give sufficient time for voters to request and return absentee ballots, if desired. The date is between assembly meetings so will not disrupt borough business. Candidates will have time to present and debate their views to voters across the peninsula with locally scheduled events.

Thank you for your consideration.
Mary Griswold
Homer

Introduced by: Johnson at the Request of
the Borough Attorney
Date: 10/11/22
Hearing: 10/25/22
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-19-20**

**AN ORDINANCE APPROPRIATING \$100,000 TO THE LEGAL DEPARTMENT TO
COVER COSTS OF HIRING HEARING OFFICERS FOR PLANNING COMMISSION
APPEALS**

- WHEREAS,** in effort to provide for added consistency and professionally trained administrative law judges, the Kenai Peninsula Borough transitioned in 2021 to engaging the State of Alaska, Office of Administrative Hearings to serve as the hearing officer to adjudicate all administrative appeals from decisions of the planning commission; and
- WHEREAS,** the cost of these appeal hearings varies depending upon the complexity of the issues and the number of parties involved; and
- WHEREAS,** the cost of hearing officers are paid from the legal department's Legal Services account which is also used to pay for hiring of outside counsel in cases where a conflict of interest may exist; and
- WHEREAS,** it would be a conflict of interest for the Borough's Legal Department to serve as the hearing officer; and
- WHEREAS,** the unencumbered balance available in the legal department's Legal Services account is currently \$21,000;
- WHEREAS,** there are currently pending three appeals to a hearing officer from planning commission decisions; and
- WHEREAS,** it is estimated that additional funds of \$100,000 may be needed for appeals to the hearing officer from planning commission decisions; and
- WHEREAS,** moving forward it is anticipated that either the Borough's Legal Department or Planning Department will include estimated hearing officer costs in the annual budget; and
- WHEREAS,** in the interim is necessary to appropriate funds to retain a hearing officer in order provide due process for adjudication of administrative appeals from planning commission decisions;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. The sum of \$100,000 is hereby appropriated from the General Fund, fund balance to account 100.11310.23HOA.43034 Legal Services to fund the services of hearing officers in appeals from planning commission decisions and the hiring of outside counsel in situations where a conflict of interest may exist.

SECTION 2. That the appropriations made in this ordinance are of a project length nature and as such do not lapse at the end of any particular fiscal year.

SECTION 3. That upon enactment this ordinance is effective retroactive to July 1, 2022.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2022.

Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Legal Department

MEMORANDUM

TO: Members, Kenai Peninsula Borough Assembly

THRU: Brent Johnson, Assembly President *BJ*
Brandi Harbaugh, Finance Director *BH*

FROM: Sean Kelley, Borough Attorney *SK*

DATE: October 11, 2022

RE: Ordinance 2022-19-20, Appropriating \$100,000 to the Legal Department to Cover Costs of Hiring Hearing Officers for Planning Commission Appeals (Johnson)

In FY2021, the Kenai Peninsula Borough (Borough) transitioned from hiring outside counsel on a case-by-case basis to utilizing the State of Alaska, Office of Administrative Hearings to serve as the hearing officer to adjudicate planning commission appeals. Currently, there are three pending appeals from planning commission decisions.

Ordinance 2021-19-15 appropriated \$150,000 for the payment of services of hearing officers in appeals from planning commission decisions and for the hiring of outside counsel in conflict cases. Of the \$150,000 appropriated in FY22, \$44,215 is encumbered for payment of two of the current pending appeals which were filed in FY22, and approximately \$19,600 lapsed back to the General Fund on July 1, 2022. With the final costs of the two ongoing appeals unknown, approximately 88 percent of the funds appropriated for hearing officers in FY22 were utilized.

While it is difficult to predict in any one given year how many appeals or conflict cases will require the services of a hearing officer or outside counsel, recent history suggests that the majority of the Planning Commission's conditional land use permit decisions will result in an appeal to the hearing officer.

It is currently estimated that an additional \$100,000 will be required to pay for hearing officers to adjudicate planning commission appeals.

Your consideration of the ordinance is appreciated.

FINANCE DEPARTMENT ACCOUNT / FUNDS VERIFIED	
Acct. No.	<u>100.27910</u>
Am	<u>100,000</u>
By: <i>SK</i>	Date: <u>9/26/2022</u>

Introduced by:	Mayor
Date:	10/11/22
Hearing:	10/25/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-19-21**

**AN ORDINANCE APPROPRIATING SUPPLEMENTAL FUNDING TO COMPLETE
THE UNINTERRUPTED POWER SUPPLY REPLACEMENT PROJECT LOCATED IN
THE EMERGENCY RESPONSE CENTER**

WHEREAS, the 2023 fiscal year budget includes an appropriation in the amount of \$115,404 to replace the uninterrupted power supply located at the Kenai Peninsula Borough (“Borough”) Emergency Response Center; and

WHEREAS, the total costs of the project exceed the estimate by \$34,596; and

WHEREAS, it is in the best interest of the Borough to replace the failing uninterrupted power supply unit to maintain a power source in the event of a commercial power outage for vital communications equipment that supports emergency management functions;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That \$17,298 is appropriated from the General Government Capital Project Fund fund balance to account 407.11250.23471.49999 to provide additional funds for the uninterrupted power supply project.

SECTION 2. That \$17,298 is appropriated from the 911 Communications Capital Project Fund fund balance to account 455.11255.23431.49999 to provide additional funds for the uninterrupted power supply project.

SECTION 3. That the appropriations made in this ordinance are of a project length nature and as such do not lapse at the end of any particular fiscal year.

SECTION 4. This ordinance shall be effective immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY
OF * 2022.**

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Office of Emergency Management

MEMORANDUM

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

THRU: Mike Navarre, Mayor *MN*
Brandi Harbaugh, Finance Director *BH*
Tammy Goggia, 911 Emergency Communications Coordinator *TGc*
Ben Hanson, IT Director *BH*
John Hedges, Purchasing & Capital Projects Director *JH*

FROM: Brenda Ahlberg, Emergency Manager *BA*

DATE: October 11, 2022

RE: Ordinance 2022-19-21, Appropriating Supplemental Funding to Complete the Uninterrupted Power Supply Replacement Project Located in the Emergency Response Center (Mayor)

The Borough's FY 2023 budget appropriated \$115,404 to replace an Uninterrupted Power Supply (UPS) located at the Emergency Response Center. This UPS unit is necessary to maintain a power source in the event of a commercial power outage for vital communications equipment that supports emergency management functions.

The total project costs exceed the original appropriation by approximately \$34,596. This is due to an increase in costs, which includes the labor for removal of the old system, site preparation, and installation of the new UPS unit.

This ordinance approves and appropriates supplemental funding in the amount of \$34,596 to complete this project.

Your consideration of the ordinance is appreciated.

FINANCE DEPARTMENT FUNDS/ACCOUNT VERIFIED

Account: 407.11250.23471.49999 - Amount: \$17,298

Account: 455.11255.23431.49999 - Amount: \$17,298

By: *CJ*

Date: 9/27/2022

Introduced by:	Mayor
Date:	10/11/22
Hearing:	10/25/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-19-22**

AN ORDINANCE ACCEPTING AND APPROPRIATING \$441,000 FROM THE STATE OF ALASKA DEPARTMENT OF MILITARY AND VETERAN AFFAIRS, DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT FOR AREAWIDE WARNING SIRENS AND CYBERSECURITY UPGRADES

WHEREAS, the State of Alaska Department of Military and Veterans Affairs, Division of Homeland Security and Emergency Management (“DHS&EM”) provides funds to enhance the capability of local governments to prevent, deter, respond to and recover from all-hazard incidents and to enhance regional preparedness efforts; and

WHEREAS, the DHS&EM 2022 State Homeland Security Program is a federal grant pass through program with the Federal Emergency Management Agency which provides funding for planning, equipment, training and exercises; and

WHEREAS, DHS&EM approved the Borough’s request for \$316,000 to install sirens in Anchor Point and Kachemak Selo as well as \$125,000 to purchase software and equipment for critical cybersecurity functions; and

WHEREAS, it is in the best interest of the Borough to accept the grant funds;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That the mayor is authorized to accept \$441,000 from the State of Alaska Department of Military and Veteran Affairs, Division of Homeland Security and Emergency Management and to execute a grant agreement and any other documents deemed necessary to accept and to expend the grant funds and to fulfill the intents and purposes of this ordinance.

SECTION 2. That grant funds in the amount of \$441,000 are appropriated to the account 271.94910.22HSP.49999.

SECTION 3. That appropriations made in this ordinance are project length in nature and as such do not lapse at the end of any particular fiscal year.

SECTION 4. That this ordinance shall be effective retroactive to October 1, 2022.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY
OF * 2022.**

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Office of Emergency Management

MEMORANDUM

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

THRU: Mike Navarre, Mayor *MN*
Brandi Harbaugh, Finance Director *BH*
Ben Hanson, IT Director *BH*

FROM: Brenda Ahlberg, Emergency Manager *BA*

DATE: October 11, 2022

RE: Ordinance 2022-19-22 Accepting and Appropriating \$441,000 from the State of Alaska Department of Military and Veteran Affairs, Division of Homeland Security and Emergency Management for Areawide Warning Sirens and Cybersecurity Upgrades (Mayor)

The Alaska Division of Homeland Security and Emergency Management (DHS&EM) approved two projects to be funded under the federal fiscal year 2022 State Homeland Security Program (SHSP), in the amount of \$441,000, as follows:

1. Areawide Warning Sirens Upgrades (Ahlberg project manager): Purchase and install two sirens, one in Anchor Point and another siren in Kachemak Selo. This project also includes conducting acoustics study to determine the proper locations for both sides as well as addressing the expanding inundation areas in Kachemak and Resurrection bays.
2. Cybersecurity Upgrades (Hanson project manager): Purchase and implement key software and equipment to improve cybersecurity posture at all Borough locations. The project objectives are based upon recommendations from the KPB Cybersecurity Assessment completed December 2021.

Brenda Ahlberg, Emergency Manager will oversee grant compliance; the grant performance period is 10/01/22 through 09/30/24.

Attachment: DHS&EM Announcement by jurisdiction email 09/07/22.

FINANCE DEPARTMENT FUNDS/ACCOUNT VERIFIED	
Acct. No. <u>271.94910.22HSP.49999</u>	
Amc	—
By: <i>CAF</i>	Date: <u>9/27/2022</u>

2022 State Homeland Security Program (SHSP) Grant Jurisdiction Total Allocations

Jurisdiction	Funding
AK Department of Public Safety-Criminal Intelligence Center	\$230,125.00
Anchorage, Municipality	\$664,600.00
Bethel, City of	\$39,000.00
Denali, Borough	\$100,340.00
Fairbanks North Star Borough	\$156,000.00
Homer, City of	\$43,702.43
Juneau, City and Borough	\$288,325.86
Kenai, Peninsula Borough	\$441,000.00
Kenai, City of	\$229,500.00
Matanuska Susitna Borough	\$435,000.00
North Pole, City of	\$110,000.00
Palmer, City of	\$322,177.71
Saint Paul, City of	\$45,000.00
Wrangell, City and Borough	\$427,804.00
Total Allocations	\$3,532,575.00

From: [MVA DHSEM Grants \(MVA sponsored\)](#)
To: [MVA DHSEM Grants \(MVA sponsored\)](#)
Cc: [Dennis, Bill A \(MVA\)](#); [Fisher, Bryan J \(MVA\)](#); [Hildreth, Richard K \(MVA\)](#); [Lafferty, Jeffrey S \(MVA\)](#); [Woody, Jared B \(MVA\)](#); [Edwards, Eva J \(MVA\)](#); [McKenzie, Jeffrey M \(MVA\)](#); [Torres, Michelle G \(MVA\)](#); [Little, Jj \(MVA\)](#)
Subject: <EXTERNAL-SENDER>Fiscal Year 2022 Homeland Security Grant Program Allocation Announcement
Date: Wednesday, September 7, 2022 1:24:19 PM
Attachments: [Jurisdiction Total Allocations.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.

To: Local Jurisdiction Administrative Agency Heads
Local Jurisdiction Agency Points of Contact

Subject: Fiscal Year 2022 Homeland Security Grant Program Allocation Announcement

The Alaska Division of Homeland Security and Emergency Management (DHS&EM) is pleased to announce the final award allocations for the Fiscal Year (FY) 2022 State Homeland Security Program (SHSP). The total award amount for each successful local jurisdiction is included as an attachment with this electronic notification. Grant award letters with Project Budget Details (PBDs) will be emailed out by November 1st.

The local signatory official from each jurisdiction will receive an emailed packet containing the SHSP grant award, approved projects, and any applicable attachments. Other identified points of contact will be cc'd on the email correspondence. Please note, attendance by programmatic and financial representatives at a Grant Kick-off Meeting, to be held in the fall is mandatory for jurisdictions receiving awards. These kickoff meetings will be held virtually and a separate message will be sent with further information. The award performance period start date for subrecipients will be October 1, 2022.

The US Department of Homeland Security FY 2020 HSGP is one tool among a comprehensive set of measures authorized by Congress and implemented by the Administration to help strengthen the Nation against risks associated with potential terrorist attacks and the larger, coordinated effort to strengthen homeland security preparedness. This program implements objectives addressed in a series of post-9/11 laws, strategy documents, plans, and Homeland Security Presidential Directives (HSPDs).

The Grants Section can be reached at 907-428-7000, toll-free 800-478-2337, or by email at mva.grants@alaska.gov for any questions regarding process or allocations.

Please do not call or email inquiries about projects funded, as we are diligently trying to get all awards out timely and efficiently.

Kris Jedlicki
Grants Administrator

Division of Homeland Security & Emergency Management
Department of Military & Veterans Affairs
Direct (907)428-7064



Introduced by:	Mayor
Date:	10/11/22
Hearing:	10/25/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-19-23**

**A ORDINANCE ACCEPTING \$200,000 FROM THE STATE OF ALASKA
DEPARTMENT OF MILITARY AND VETERANS AFFAIRS, DIVISION OF
HOMELAND SECURITY & EMERGENCY MANAGEMENT FOR EMERGENCY
MANAGEMENT OPERATIONS AND APPROPRIATING \$40,000 FOR THE
REMAINING MATCH REQUIREMENT**

- WHEREAS,** the Kenai Peninsula Borough’s (“Borough”) Office of Emergency Management (“OEM”) is responsible for disaster management and activities; and
- WHEREAS,** the State of Alaska receives funding from the Federal Emergency Management Agency to support the efforts of local governments in emergency preparedness and response; and
- WHEREAS,** OEM applied for funding under the 2022 Emergency Management Performance Grant program administered by the Alaska Department of Military and Veterans Affairs, Division of Homeland Security & Emergency Management (“DHS & EM”); and
- WHEREAS,** the Borough received notice from DHS & EM of a grant award in the amount of \$200,000 to support personnel and activities essential to local emergency management; and
- WHEREAS,** the grant program requires a local match of non-federal funds on a 50/50 ratio, or dollar-to-dollar match, for expenditures made from July 1, 2022 through September 30, 2023; and
- WHEREAS,** the \$160,000 match requirement will be met through operational expenditures of OEM and the planning department as part of the FY2023 budget; and
- WHEREAS,** the increased award makes it necessary to appropriate an additional \$40,000 to meet the 50/50 ratio match requirement for the performance period ending September 30, 2023; and
- WHEREAS,** it is in the best interest of the Borough to accept this grant and to appropriate the \$40,000 to meet the grant objectives and performance period;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That the mayor is authorized to accept grant funds in the amount of \$200,000 from the State of Alaska Department of Military and Veterans Affairs, Division of Homeland Security & Emergency Management, for emergency management operations and is authorized to execute all documents deemed necessary to accept the grant.

SECTION 2. That \$160,000 was appropriated to personnel accounts 100.11250.00000.40XXX as part of the FY2023 budget ordinance 2022-19 to meet the 50/50 ratio match requirement.

SECTION 3. That \$40,000 is appropriated from the General Fund fund balance to account 100.11250.EMP23.49999 to meet the 50/50 ratio match requirement for the performance period ending September 30, 2023.

SECTION 4. That expenditures associated with the grant funds in the amount of \$200,000 will be recorded to account 100.11250.EMP23.49999.

SECTION 5. That appropriations made in this ordinance are project length in nature and as such do not lapse at the end of any particular fiscal year.

SECTION 6. That upon enactment this ordinance is effective retroactive to July 1, 2022.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2022.

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Office of Emergency Management

MEMORANDUM

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

THRU: Mike Navarre, Mayor *MN*
Brandi Harbaugh, Finance Director *BH*
Robert Ruffner, Planning Director *RR*

FROM: Brenda Ahlberg, Emergency Manager *BA*

DATE: October 11, 2022

SUBJECT: Ordinance 2022-19-23, Accepting \$200,000 from the State of Alaska Department of Military and Veterans Affairs, Division of Homeland Security & Emergency Management for Emergency Management Operations and Appropriating \$40,000 for the Remaining Match Requirement (Mayor)

The Kenai Peninsula Borough (Borough) has received funding from the State of Alaska Division of Homeland Security and Emergency Management for disaster management activities. This funding is provided by the Federal Emergency Management Agency under the Emergency Management Performance Grant ("EMPG") program.

The purpose of the EMPG program is to assist in the development, maintenance and improvement of state and local emergency management capabilities in responding to disasters that may result from natural or man-made events.

The Borough's Office of Emergency Management ("OEM") applied for this funding and received a notice of award in the amount of \$200,000. The grant will offset staff salary percentages directly associated with the EMPG program. There is a 50/50 matching fund ratio of non-federal funds. The match funds will be supplied from the balance of the OEM and Planning departments FY2023 annual budget. Furthermore, it is necessary to appropriate \$40,000 to meet the match requirement for activities that will be generated July 1 through September 30, 2023, which is part of the Borough's FY2024.

Activities eligible for reimbursement include personnel and activity costs associated with public education on emergency response plans and individual emergency planning, improving borough emergency response plans, developing hazard and risk assessments and evacuation planning activities.

Page -2-
October 11, 2022
Re: O2022-19-23

The OEM Senior Manager will provide grant management and project completion. Project performance period ends September 30, 2023.

Your consideration of the ordinance is appreciated.

Attachment: Award letter

**FINANCE DEPARTMENT
MATCH ACCOUNT/FUNDS VERIFIED**

Acct. No. 100.11250.00000.4XXXX Amt: \$160,000.00

Acct. No. 100 27910 Amt: \$40,000

By: CS Date: 9/27/2022



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

**Department of Military and
Veterans Affairs**

Division of Homeland Security and
Emergency Management

P.O. Box 5750
JBER, AK 99505-0800
Main: 907.428.7000
Fax: 907.428.7009
ready.alaska.gov

September 12, 2022

The Honorable Charlie Pierce, Mayor
144 N Binkley Street
Soldotna, AK 99669

RE: 2022 Emergency Management Performance Grant, EMS-2022-EP-00004-S01
State Grant No.: 22EMPG-GY22

Mayor Pierce:

We received funds from the Federal Emergency Management Agency (FEMA) under the 2022 Emergency Management Performance Grant (EMPG). We are pleased to award the Kenai Peninsula Borough the amount of \$200,000.00 under this grant.

EMPG performance includes but is not limited to the following:

- Accomplishment of activities identified in the jurisdiction's 2022 EMPG Work Plan.
- Update or completion of the Whole Community Input Form (WCIF)
- Development of a local jurisdiction multi-year Training and Exercise Plan (TEP) to be submitted to Division of Homeland Security and Emergency Management by March 1, 2023.
- Participate in the state multi-year Integrated Preparedness Planning Workshop (IPPW) to be held in conjunction with the 2023 Preparedness Conference.
- EMPG-funded personnel should make every attempt to participate in no less than three exercises during the performance period. Exercises may be discussion-based (seminars, workshops, tabletop simulations) or operations-based (drills, functional exercises, full scale exercises). Sponsored opportunities by us may be available during the performance period. Real world events may not always count as exercise participation
- Continued utilization and work towards adoption and implementation of the National Incident Management System (NIMS). The Alaska Assessment is the required means to report NIMS adoption and implementation
- Complete the FEMA Independent Study Professional Development Series
- Timely quarterly progress report submissions
- Dollar-for-dollar, local, in-kind match

New for this grant year, the EMPG grant will cover a 15-month period of performance from July 1, 2022 through September 30, 2023. The following years will go back to a 12-month performance period and will follow the federal fiscal calendar. This information will be discussed during the 2022 Grant Kick-Off Meetings. Participation at a Kick-Off Meeting is required.

Mayor Pierce
September 12, 2022
Page 2 of 2

EMPG funding allocations to local jurisdictions are a direct result of continued reporting on actual funds spent at the local level on emergency management activities. With that in mind, we encourage reporting all funds spent on emergency management activities even if they exceed the required match.

Federal regulations (CFR Part 200.430) require charges for federal awards for salaries, and wages must be based on records that accurately reflect the work performed, and after the fact determination of the actual total activity of the employee. This includes all funding sources and all hours for the pay period to be accounted for when submitting for reimbursement. The required documentation for reimbursement includes payroll reports or timesheets signed and certified that capture the employee's name, position, payroll time period, breakdown of all hours charged to each allocation to total 100% of the employee's worked time, amount paid, and copies of the corresponding pay warrants.

Attached is a pre-signed Obligating Award Document (OAD). Please review the information for accuracy and review any Special Conditions. Please print the document, sign the OAD, and send a scanned copy to mva.grants@alaska.gov within 30 days of subrecipient receipt. Keep a fully executed copy for your records. If the OAD cannot be returned within 30 days due to local jurisdiction policies, a Notice of Intent to Accept Grant Award form must be submitted. If signatory points of contact have changed since submittal of the application, please complete and return a Signatory Authority Form with the signed OAD.

Submitted Funded Staff Worksheets and Annual Work Plans have been reviewed and are approved at the funding amount stated on your OAD. Authorized funded positions are listed in the Project Budget Details.

If you have any questions, please contact the Division Project Manager for this grant, JJ Little, at (907) 428-7019 or by email at jj.little@alaska.gov.

Sincerely,



William A. Dennis
Administrative Operations Manager

Enclosure(s): Obligating Award Document
Project Budget Details Report

cc: Brenda Ahlberg, Jurisdiction Project Manager
Brandi Harbaugh, Jurisdiction Chief Financial Officer

Introduced by:	Mayor
Date:	10/11/22
Hearing:	10/25/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-19-24**

**AN ORDINANCE APPROPRIATING \$653,900 FROM THE GENERAL FUND FOR
INCREASED COSTS OF CONTRACT SERVICES FOR OPERATION OF THE
SEWARD, KENAI, NIKISKI AND STERLING TRANSFER FACILITIES**

WHEREAS, both the Seward Transfer Facility Operation and Maintenance Contract and the Kenai, Nikiski and Sterling Transfer Facilities Operation and Maintenance Contract are expiring on December 31, 2022; and

WHEREAS, these contracts were recently bid out for operations and the costs to perform the services and increased \$653,900 more than originally budgeted for in the FY2023 annual budget; and

WHEREAS, the contract bids are very similar to the previous scopes of work; and

WHEREAS, the Solid Waste Department recommends appropriation of \$236,700 for operation and maintenance of the Seward Transfer Facility and \$417,200 for operation and maintenance of the three manned transfer sites in Kenai, Nikiski and Sterling from the General Fund fund balance to maintain solid waste services at these sites through the remainder of FY22;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That \$236,700 is appropriated from the General Fund fund balance to be transferred to account 290.32150.00000.43011 to provide supplemental funds for operation and maintenance of the Seward Transfer Facility.

SECTION 2. That \$417,200 is appropriated from the General Fund fund balance to be transferred to account 290.32570.00000.43011 to provide supplemental funds for operation and maintenance of the three manned transfer sites in Kenai, Nikiski and Sterling.

SECTION 3. That appropriations made in this ordinance are project length in nature and as such do not lapse at the end of any particular fiscal year

SECTION 4. That this ordinance shall be effective immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY
OF * 2022.**

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Solid Waste Department

MEMORANDUM

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

THRU: Mike Navarre, Mayor *MN*
Brandi Harbaugh, Finance Director *BH*
John Hedges, Purchasing and Contracting Director *JH*

FROM: Lee Frey, Solid Waste Director *LF*

DATE: October 11, 2022

RE: Ordinance 2022-19-24, Appropriating \$653,900 from the General Fund for Increased Costs of Contract Services for Operation of the Seward, Kenai, Nikiski and Sterling Transfer Facilities (Mayor)

The Seward Transfer Facility Operation and Maintenance Contract and the Kenai, Nikiski and Sterling Transfer Facilities Operation and Maintenance Contract are expiring on December 31, 2022. Both contracts were recently bid out for operations and the costs to perform the services and have increased \$653,900 more than originally budgeted for in the FY2023 annual budget.

The contract bids are very similar to the previous scopes of work. The Seward Transfer Facility contract added pay items for inert waste handling and recycling hauling that were previously being done as part of the operations and maintenance. The manned transfer facilities contract changed snow removal to being incidental to operations and maintenance, and added annual brushing of the facility.

The Solid Waste Department recommends appropriation of \$236,700 for operation and maintenance of the Seward Transfer Facility and \$417,200 for operation and maintenance of the three manned transfer sites in Kenai, Nikiski and Sterling from the general fund to maintain Solid Waste services at these sites through the remainder of FY22. Corresponding increases will be included in the proposed FY23 Solid Waste budget.

Your consideration of the ordinance is appreciated.

FINANCE DEPARTMENT FUNDS VERIFIED

Acct. No.: 100.27910

Amount: \$ 653,900.00

By: *CJ* Date: 9/27/2022

Introduced by:	Johnson, Chesley
Date:	08/09/22
Hearing:	09/06/22 & 09/20/22
Action:	Introduced and set for public hearing
Vote:	7 Yes, 2 No, 0 Absent
Date:	09/06/22
Action:	Postponed to 10/25/22
Vote:	9 Yes, 0 No, 0 Absent
Date:	10/25/22
Action:	
Vote:	

KENAI PENINSULA BOROUGH ORDINANCE 2022-36

AN ORDINANCE AMENDING KPB CHAPTER 21.25 AND KPB CHAPTER 21.29 REGARDING CONDITIONAL LAND USE PERMITS AND MATERIAL SITE PERMITS, UPDATING NOTICE, APPLICABILITY, PERMIT TYPES, APPLICATION REQUIREMENTS, STANDARDS AND PERMITS CONDITIONS

WHEREAS, there are goals and objectives within the 2019 Kenai Peninsula Borough Comprehensive Plan to establish policies that better guide land use to minimize land use conflicts, maintain property values, protect natural systems and support individual land use freedoms, as well as strategy objectives to update the Borough's existing conditional use regulations for gravel extraction and other uses to better address reoccurring land use conflicts; and

WHEREAS, land use conflicts related to earth materials extraction and processing sites remain a point of contention within the Borough; and

WHEREAS, under current state law a first or second class borough shall provide for planning, platting, and land use regulation on an areawide basis, except where such powers have been delegated to a city within the Borough; and

WHEREAS, land use regulation includes zoning powers; and

WHEREAS, the Borough has enacted KPB Chapter 21.04, Zoning Districts, and has established two zoning districts: the municipal district and the rural district; and

WHEREAS, within the rural district, KPB 21.25.040 requires a permit for the commencement of certain land uses within the rural district of the Kenai Peninsula Borough; and

WHEREAS, approximately 253 registered prior existing use material sites and approximately 104 conditional land use permits for material sites have been granted since 1996; and

- WHEREAS,** the assembly established a material site work group by adoption of Resolution 2018-004 (Substitute) to engage in a collaborative discussion involving the public and industry to make recommendations regarding the material site code; and
- WHEREAS,** the ordinance, Ordinance 2019-30, incorporating the final report and work group recommendations, failed enactment following public hearing and a vote during the assembly's October 24, 2019 meeting; and
- WHEREAS,** in late 2021, due to continued conflict including costly administrative and court appeals, the administration brought this land use issue back to the assembly and requested assembly action regarding the permitting process related to earth materials extraction and processing; and
- WHEREAS,** throughout this process the planning department, the material site work group, the planning commission, and the assembly have received many verbal and written public comments from Borough residents, professionals, and site operators; and
- WHEREAS,** the assembly first considered this issue by looking at the same ordinance that failed in 2019, relabeled Ordinance 2021-41; and
- WHEREAS,** Ordinance 2021-41 and a related substitute ordinance were tabled by the assembly at its February 1, 2022 to allow for consideration by the assembly as a committee of the whole, and
- WHEREAS,** the availability of three different types of conditional land use permits for material sites are designed to separate impacts of such uses and tailor applicable conditions and requirements to the associated impacts; and
- WHEREAS,** the Kenai Peninsula Borough recognizes the importance of implementing bonding, as applicable, to ensure neighboring properties and water sources are insured; and
- WHEREAS,** implementing a systematic process to determine a prior-existing use will allow the planning department to better identify the number of and types of pre-existing use sites in existence on the Kenai Peninsula and address complaints regarding nonconforming prior existing material sites; and
- WHEREAS,** requiring all prior-existing use operations to comply with reclamation plan and hours of operation requirements protects public health, safety, and general welfare; and
- WHEREAS,** requiring all prior-existing use operations which extract material below or within four feet of the seasonal highwater table to conduct operations in accordance with the requirements outlined in the relevant sections of code protects public health, safety, and general welfare; and

WHEREAS, buffer zones, dust control, hours of operation, and setbacks as mandatory conditions applicable to all permits, along with the discretionary conditions and conditions specific to processing or extraction with the water table, will reduce dust, noise, and attractive nuisances, thereby promoting public health, safety, and general welfare; and

WHEREAS, providing the planning director or planning commission the ability to add certain discretionary conditions recognizes the unique challenges material sites on the Kenai Peninsula present and that all conditions appropriate for one material site on one part of the Kenai Peninsula may not be appropriate for another site located on another part of the Kenai Peninsula; and

WHEREAS, after many years of work, public input, and public deliberative process, this ordinance enacts a new notice section to align with notice requirements of Title 20 of Borough code and enacts a new chapter of code related to material sites wherein it establishes a multi-permit system with standards and conditions applicable to each permit type that are intended to encourage responsible development while also protecting and promoting the public health, safety, and general welfare of all residents and visitors of the Kenai Peninsula Borough; and

WHEREAS, the planning commission at its regularly scheduled meeting held on _____ 2022, recommended _____;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That KPB 21.25.050 is hereby amended as follows.

21.25.050. Permit considerations—Public hearing required.

- A. Within [21]30 days of receiving an application, the planning director or designee shall review the submitted application for completeness and compliance with this chapter. If it is incomplete or does not meet the requirements of this chapter, the planning director shall notify the applicant in writing. The planning director shall thereafter either return the application to the applicant or schedule the application to be considered by the planning commission at the next appropriate scheduled meeting.

...

SECTION 2. That the Kenai Peninsula Borough Code of Ordinances is hereby amended by repealing and reenacting KPB Chapter 21.25.060, Notice, which shall read as follows:

21.25.060. Notice.

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

 - 1. Notice of the pending application will be published on the borough website.
 - 2. When available, the notice will also be posted on a public bulletin of the impacted community.
 - 3. At the beginning of the notice period a copy of the notice will be sent by First Class U.S. Mail to all owners and/or leaseholders of record of property located with a radius of one-half mile of the subject property.
- C. The notice must contain a description of the proposed location, the type of proposed land use or a description of the action requested, as applicable, the applicant's name, where written comments may be submitted, the last deadline for submitting written comments to the planning commission, and the date, time and location of the public hearing.
- D. The failure of any person to receive any notice required under this section, where the records of the borough indicate the notice was provided in a timely and proper manner, shall not affect the validity of any proceeding under this title or be basis for appeal.

SECTION 3. That the Kenai Peninsula Borough Code of Ordinances is hereby amended by repealing and reenacting KPB Chapter 21.29, Material Site Permits, which shall read as follows:

21.29.005. Intent and Purpose.

The purpose of this chapter is to provide a land use permitting process to regulate the operation, scope, and duration of earth materials extraction and processing within the borough while promoting the public health, safety, and general welfare of the Kenai Peninsula Borough. It is the further purpose of this chapter to promote compatible, orderly development.

21.29.010. Applicability.

- A. This chapter applies to all private and public lands in the borough except where the use is prohibited by ordinance within a local option zoning district or exempt under KPB 21.29.015.
- B. This chapter does not apply within the incorporated cities of the Kenai Peninsula Borough.
- C. Earth material extraction within 300 linear feet from riparian wetlands and the seasonal high-water level of naturally-occurring open water bodies, such as a lake, pond, river, stream, or ocean, is prohibited. This prohibition does not apply to man-made water bodies or isolated ponds of less than one acre on private property.
- D. All operations must be conducted in accordance with the current publication of the State of Alaska, Alaska DEC User's Manual Best Management Practices for Gravel/Rock Aggregate Extraction Projects. In the event a provision of this chapter conflicts with the State of Alaska's manual, this chapter controls.

21.29.015. Material extraction exempt from obtaining a permit.

- A. Material extraction which disturbs an area of less than one acre that is not in a mapped flood plain or subject to 21.29.010(B), does not enter the water table, and does not cross property boundaries, does not require a permit. There will be no excavation within 32 feet of a lot line.
- B. Material extraction taking place on dewatered bars within the confines of the Snow River and the streams within the Seward-Bear Creek Flood Service Area do not require a permit, however, operators subject to this exemption must provide the planning department with the information required by KPB 21.29.030(A)(1), (2), (6), (7) and a current flood plain development permit prior to beginning operations.
- C. A prior existing use under KPB 21.29.120 does not require a material extraction permit. Notwithstanding the foregoing, on or before January 1, 2026, a prior existing use under KPB 21.29.120 must: (1) provide a reclamation plan under KPB 21.29.060 that is approved by the planning director or designee; and (2) come into compliance with the buffer zone requirements under KPB 21.29.050(A)(1).

21.29.020. Types of permits available.

- A. Counter permit. A counter permit is required for earth material extraction which disturbs more than one acre and less than 10 cumulative un-reclaimed acres. Material processing, screening, or crushing, and material extraction within four feet of the seasonal high-water table is prohibited under a counter permit. A

counter permit is valid for a period of two years. Upon request from the applicant, the planning director, or designee, may grant one 12-month extension on a counter permit. Counter permits are approved by the planning director, or designees, and are not subject to notice requirements under KPB 21.25.060. The planning director's decision to approve or deny a counter permit may be appealed to the planning commission, which must act as the hearing officer, in accordance with KPB 21.20.

B. Conditional land use permit. A conditional land use permit (CLUP) is required for the following types of earth material extraction or uses:

1. Earth Materials Extraction CLUP. An Earth Materials Extraction CLUP is required for any material extraction which disturbs 10 or more cumulative acres. Material processing, screening or crushing, or extraction within four feet of the seasonal high-water table is prohibited under this permit. The standard conditions set out in KPB 21.29.050 are applicable to this type of CLUP.
2. Earth Materials Processing CLUP. An Earth Materials Processing CLUP is required for any operation that includes earth materials processing, screening, or crushing activities. The conditions set forth in KPB 21.29.050 plus the conditions set out in KPB 21.29.055 for material extraction processing area applicable to this type of CLUP.
3. Earth Materials Extraction Within Water Table CLUP. An Earth Materials Extraction within Water Table CLUP is required for material extraction and operations of any size within four feet of the seasonal high-water table. The conditions set forth in KPB 21.29.050 plus the requirements and conditions set forth in KPB 21.29.057 for material extraction within four feet of the seasonal high-water table are applicable to this type of CLUP.

An applicant may request a CLUP that includes one, two or all three of the above permit types. A CLUP is valid for a period of five years. A CLUP may be renewed in accordance with KPB 21.29.070. The provisions of KPB Chapter 21.25 are applicable to material site CLUPs and the provisions of KPB 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling.

21.29.030. Application procedure.

A. In order to obtain a counter permit or CLUP under this chapter, an applicant must first complete and submit to the borough planning department a permit application, along with the fee listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. The planning director may determine that certain

contiguous parcels are eligible for a single permit. The application must include the following items, without which the application will be deemed incomplete:

1. Legal description of the parcel, KPB tax parcel ID number, and identification of whether the permit is for the entire parcel, or a specific location within a parcel;
2. Expected life span of the material site;
3. A buffer plan consistent with KPB 21.29.050(A)(1);
4. Reclamation plan consistent with KPB 21.29.060;
5. The depth of excavation;
6. Type of material to be extracted;
7. A site map provided by a professional surveyor licensed in the State of Alaska to include the following:
 - a. Location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;
 - b. Proposed buffers consistent with KPB 21.29.050(A)(1), or alternate buffer plan;
 - c. Identification of all encumbrances, including but not limited to, easements;
 - d. Points of ingress and egress. Driveway permits must be acquired from either the state or borough as appropriate prior to submitting the application;
 - e. Anticipated haul routes, contingent on approval from the governmental agency with regulatory jurisdiction over the road;
 - f. Location of any processing areas on the parcel, if applicable;
 - g. North arrow;
 - h. The scale to which the site plan is drawn;
 - i. Preparer's name and date; and
 - j. Field verification must include staking the boundary of the parcel at sequentially visible intervals. The planning director may grant an exemption in writing to the staking requirements if the parcel boundaries are obvious or staking is unnecessary.
8. A site plan, prepared by a qualified independent civil engineer licensed and active in the State of Alaska to include the following:
 - a. Surface water protection measures, if any, for adjacent properties, including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence;

- b. Location and elevation of test holes, and depth of groundwater, based on the seasonal high-water table. At least one test hole per ten acres of excavated area is required to be dug. The test holes must be at least four feet below the proposed lowest elevation of excavation depth;
 - c. Location of all private wells of adjacent property owners within 300 feet of the proposed parcel boundary; and
 - d. Location of any water body on the parcel, including the location of any riparian wetland as determined by best available data.
- 9. A statement by the operator of the site that the requirements of KPB 21.29.045 have been satisfied.

- B. In order to aid the planning commission or planning director's decision-making process, the planning director may provide vicinity, aerial, land use, and ownership maps for each application and may include additional information.

21.29.040. Standards for sand, gravel or material sites.

- A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise and other impacts of earth materials extraction sites through setbacks, buffer zones, and street-level visual screening. Prior to granting a counter permit or conditional land use permit under this chapter, the planning director or planning commission, as applicable, must make the following findings:
 - 1. That the use is not inconsistent with the applicable comprehensive plan;
 - 2. That the use will not be harmful to the public's health, safety, and general welfare;
 - 3. That sufficient setbacks, buffer zones, and other safeguards are being provided consistent with this chapter; and
 - 4. That the use provides for a reclamation plan consistent with this chapter.

21.29.045. Required compliance with State and Federal laws

- A. All applicants for permits for earth materials extraction are required to demonstrate compliance with state and federal law. Prior to final approval of the permit, the applicant or agent must provide written documentation from the permitting agency of compliance with the following:
 - 1. Mining license as required by the Alaska State Department of Revenue, pursuant to A.S. 43.65;

2. Mining permit as required by the Alaska State Department of Natural Resources (ADNR) if extraction activities are to take place on state land;
3. Reclamation plan as required by ADNR, pursuant to A.S. 27.19;
4. Notice of intent for construction general permit or multi-sector general permit and storm water pollution prevention plan, and other associated permits or plans required by the Department of Environmental Conservation (DEC) pursuant to the Alaska Pollutant Discharge Elimination System (APDES) requirements;
5. United States Army Corps of Engineers (USACE) permit pursuant to Section 404 of the Clean Water Act, 33 U.S.C. 1344, if material extraction activity requires USACE approval; and
6. Any other applicable state or federal agency with regulatory authority of mining activities or earth materials extraction.

B. In addition to the requirements in subsection (A) of this section, all activity must be conducted in compliance with state or federal regulations governing the items listed below. Written documentation of compliance with these regulations is not required. Complaints received by the borough of violations of requirements within this section will be forwarded to the appropriate agency for enforcement, this includes but is not limited to:

1. Air quality.

- a. EPA air quality control permit is required for asphalt plants and crushers;
- b. ADNR burn permit is required for brush or stump burning. Combustibles must be stockpiled separate from noncombustibles, and burn permit requirements must be followed; and
- c. ADEC dust control and air quality regulations pertaining to burning activities must be followed.

2. Water quality. EPA or ADEC regulations controlling spills, spill reporting, storage and disposal of oil, anti-freeze and hydrocarbons.

3. Hazardous Materials. Use and storage of hazardous materials, waste and explosives.

- a. EPA regulations controlling use of hazardous materials must be followed; and
- b. U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives regulations must be followed when storing or using explosives.

- C. Failure to comply with any of the requirements in subsections (A) and (B) of this section is a violation of the permit, and is subject to enforcement pursuant to KPB Chapter 21.50.

21.29.050. Permit conditions applicable to all permits.

- A. The planning commission or planning director, as applicable, must impose the following mandatory conditions prior to approval of a permit under this chapter:

1. Buffer Zone.

- a. A buffer area of 32 feet must be established between the area of excavation and the parcel boundaries. The buffer area may include one or more of the following: undisturbed natural vegetation that provides sufficient noise and street-level visual screening; an eight-foot earthen berm with a 2:1 slope; or a minimum eight-foot fence;
- b. A 2:1 slope must be maintained between the buffer zone and excavation floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if the site plan provides the timeframe for removal and verification that suitable, stabilizing material will replace the removed material within 30 days of removal;
- c. Where an easement exists, a buffer must not overlap the easement, unless otherwise conditioned by the planning commission or planning director, as applicable; and
- d. This requirement may only be waived upon a finding by the planning director or planning commission, as applicable, that a lot line where the waiver is requested is directly adjacent to another material site.

2. Water source separation.

- a. Material extraction below or within four feet of the seasonal high-water table is prohibited unless the applicant is issued a CLUP Material Extraction Within Water Table Permit and the requirements and conditions set forth in KPB 21.29.057 are satisfied;
- b. Dewatering either by pumping, ditching or some other form of draining that removes water from the site or causes water to leave the site is prohibited;
- c. All permits shall be issued with a condition which prohibits any material extraction within 100 linear feet of any private well or water source existing prior to original permit issuance; and

- d. On site movement of water may be permitted pursuant to KPB 21.29.057 and if: (i) the operator provides a statement under seal and supporting data from a qualified independent civil engineer licensed and active in the State of Alaska that the dewatering will not lower any known water systems; and (ii) the applicant posts a bond for liability for potential accrued damages in an amount equivalent to the cost to replace each water wells within a 300-foot radius of the site. The rebuttable presumption is that the cost per well is a minimum of \$10,000.
- 3. Roads. Operations that impact borough roads must be conducted in accordance with the requirements and remedies of KPB Chapter 14.40.
- 4. Dust control. Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
- 5. Hours of operation. Material extraction activities, including equipment operation, may only occur between the hours of 6:00 a.m. and 9:00 p.m. Alaska Standard Time (AKST), or as determined by the planning commission or planning director, as applicable, to be appropriate based on information presented.
 - a. Seasonal, project-based waiver. An applicant may request a seasonal, project-based waiver of the hours of operation requirements under this subsection. A waiver granted under this subsection is valid for six consecutive calendar months. To grant a waiver under this subsection, the commission must find that the waiver is necessary for a specific project, and that the waiver is not harmful to the public health, safety, and general welfare of borough residents.
- 6. Groundwater elevation. All material sites must maintain one monitoring well four feet below the proposed excavation per ten acres of excavated area.
- 7. Setback. Material site excavation areas must be 250 feet from the property boundaries of any local option zoning district, existing public school ground, private school ground, college campus, childcare facility, multi-purpose senior center, assisted living home, and licensed health care facility. If overlapping, the buffer areas of the excavation must be in addition to the 250-foot setback.

8. Permit boundaries. The buffers and any easements or right-of-way abutting the proposed permit area must be staked at sequentially visible intervals. Field verification and staking will require the services of a professional land surveyor. Stakes must be in place prior to issuance of the permit.
 9. Processing. Material extraction of any size that includes processing, screening, or crushing activities is prohibited unless the applicant is issued an Earth Materials Processing CLUP and the conditions set forth in KPB 21.29.055 are imposed on the permit.
- B. Discretionary Conditions. The planning commission or planning director, as applicable, may set conditions of approval for issuance of a counter permit or CLUP, as appropriate for the area in which the development is sited, for the following:
1. Setbacks/Buffer Area.
 - a. The mandatory buffer area condition in subsection (A) above may be increased, up to a maximum of 100 feet between the area of excavation and the parcel boundaries, if the planning commission finds based on substantial evidence presented that increasing the buffer area is necessary for the public health, welfare and safety of the surrounding community;
 - i. Upon request of the applicant, in lieu of any additional buffer area under this subsection designed to separate the use of material site activities from neighboring parcel boundaries, an eight-foot-high berm above the preexisting elevation may be constructed, prior to excavation, around the excavation area. If the excavation site area expands, the berm may move toward the permitted boundary until such limits of the permitted area are exhausted. The berm must be maintained at eight-foot height while permitted activity is occurring.
 - b. All other requirements of KPB 21.29.050(A)(1) apply; and
 - c. When a buffer area has been denuded prior to review of the application by the planning commission or planning director revegetation may be required.
 2. Road maintenance and repair. In consultation with the Road Service Area Director, road maintenance or repair of public right-of-way haul routes may be required of the permittee.

3. Ingress and egress. The planning commission or planning director may determine the points of ingress and egress for the material site. The permittee is not required to construct haul routes outside the parcel boundaries of the material site. Driveway authorization must be acquired, from either the state through an “Approval to Construct” or the borough road service area, as appropriate, prior to issuance of a material site permit when accessing a public right-of-way.
4. Dust suppression. Dust suppression may be required when natural precipitation is not adequate to suppress the dust generated by the material site traffic on public right-of-way haul routes.
5. Surface water protection. Use of surface water protection measures as specified in KPB 21.29.030(A)(8)(a).
6. Street-level screening. Street-level visual screening, noise mitigation, and lighting restrictions as appropriate for the surrounding area and in accordance with the standards set forth in KPB 21.29.040.

21.29.055. Earth materials processing.

In accordance with KPB 21.29.020(B)(2), a n Earth Materials Processing CLUP is required for earth materials processing activities, such as material screening or crushing. Prior to issuing a permit under this subsection, the planning commission must impose the mandatory conditions set forth in KPB 21.29.050(A) and discretionary conditions as the planning commission deems appropriate. In addition, the following requirements and permit conditions specific to an Earth Materials Processing CLUP apply:

- A. Setback. In the case of a CLUP, any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries. At its discretion, the planning commission may waive the 300-foot processing distance requirement, or allow a lesser distance in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.
- B. Hours of operation.
 1. Processing equipment may only be operated between 8:00 a.m. and 7:00 p.m. AKST, or as determined by the planning commission.
 2. The planning commission may grant exceptions to increase the hours of operation and processing in the event of an emergency or a good-cause finding that the increased hours of operation serve a public purpose and are not harmful to the public health, safety, and general welfare of borough residents. Such an exception shall not exceed 120 days.

3. Seasonal, project-based waiver. An applicant may request a seasonal, project-based waiver of the hours of operation requirements under this section. A waiver granted under this subsection is valid for six consecutive calendar months. To grant a waiver under this subsection, the commission must find that the waiver is necessary for a specific project, and that the waiver is not harmful to the public health, safety, and general welfare of borough residents.

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

In accordance with KPB 21.29.020(B)(3), a CLUP is required for material extraction of material below or within four feet of the seasonal high water table. Prior to a permit being issued the planning commission must impose the mandatory conditions set forth in KPB 21.29.050(A) and discretionary conditions as deemed appropriate. In accordance with KPB 21.29.050(A)(2)(b) dewatering is prohibited. The following additional application requirements and permit conditions specific to a Material Extraction within the Water Table CLUP apply:

- A. Prior to application for a water table extraction permit, the following requirements must be met:
 1. Installation of a sufficient number of monitoring wells and test pits, as recommended by a qualified professional, to adequately determine groundwater flow direction, hydraulic gradient, water table and seasonal high-water table elevation. Monitoring well and test pit locations must provide the qualified professional with adequate information to characterize the entire property that will be permitted for material extraction. Well casing elevations must be surveyed to a vertical accuracy of 0.01 feet by a registered land surveyor and tied to NAVD 1988.
 2. Determination of seasonal high-water table elevation, groundwater flow direction, hydraulic gradient, and water table elevation for the site must be measured under the supervision of a qualified professional.
 3. A written report must be completed by a qualified professional that makes a determination about the potential adverse effects to groundwater and surface water body elevation, groundwater and surface water quality, surrounding water users and adjacent properties. The determination must be based on available data, interpretations of the data and knowledge of groundwater processes.
 4. The report must be submitted with the CLUP application and must:
 - a. Identify existing public water system sources (i.e., wells, springs, surface water intakes), as identified by the state, that are located

within one-half mile of the boundary of the property on which the activity will take place;

- b. Identify actual or presumed private drinking water wells located within one-half mile of the boundary of the property on which the activity will take place and include a copy of the available well logs;
- c. Identify existing regulated potential sources of contamination within at least one-half mile of the boundary of the property on which the activity will take place;
- d. Contain maps at appropriate scales presenting the results of the well search, the setbacks required by subsection (C)(7) of this section, and illustrating wetlands and water bodies; at least one map must show identified potential sources of contamination;
- e. Include the water table elevation monitoring data, monitoring well logs and records of any test pits, and a discussion of the seasonal high-water table determination; and
- f. Evaluate subsurface hydrologic conditions and identify potential adverse effects that may occur as a result of material extraction. The evaluation of the hydrologic conditions must include identifying confining layers.

B. In addition to the application requirements for a CLUP for earth materials extraction, the application for a water table extraction permit must include:

- 1. A description of the proposed extent and depth of material extraction beneath the seasonal high-water table.
- 2. A written report that meets the requirements of subsection (A)(4) of this section, a monitoring plan, and a spill prevention, control, and countermeasures plan as required by this section.

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

- 1. Implement a monitoring plan that meets the requirements of this chapter. If existing wells will provide sufficient data, no additional wells are required.
- 2. Implement the spill prevention, control and countermeasures plan in accordance with Environmental Protection Agency's requirements for above ground storage tank operations regardless of the quantity of petroleum products on site.
- 3. Groundwater flow direction, hydraulic gradient, and groundwater table elevation for the subject parcel must be measured at least monthly during active extraction. Monitoring wells must be maintained or replaced with equivalent monitoring wells.

4. Water elevation monitoring data must be retained for two years following completion of reclamation activities and must be provided to the planning director upon request.
5. A qualified professional must annually submit a report to the department that includes water table elevation monitoring data.
6. Operations must not breach or extract material from a confined aquifer or a confining layer beneath a perched aquifer.
 - a. If evidence suggests a confined aquifer or confining layer has been breached, or if groundwater or surface water elevation changes rapidly or beyond natural variation, the director must be notified within 24 hours.
 - i. A hydrologic assessment, conducted by a qualified professional, to determine the affected area and the nature and degree of effects and a description of potential repair or mitigation options must be submitted to the director within 14 calendar days of notification; and
 - ii. Repair or mitigation sufficient to address identified effects must be initiated as soon as practical, not to exceed 45 calendar days from the date the assessment is received by the director.
7. Operations must maintain the following setbacks:
 - a. 500 feet from the nearest down-gradient drinking water source;
 - b. 350 feet from the nearest cross-gradient drinking water source;
 - c. 200 feet from the nearest up-gradient drinking water source; and
 - d. Minimum separation distances do not apply to drinking water sources constructed after a permit to extract material below the water table has been issued.

21.29.060. – Reclamation plan.

- A. All material site permit applications require an overall reclamation plan. A site plan for reclamation must be required including a scaled drawing with finished contours. A five-year reclamation plan must be submitted with a permit renewal request.

- B. The applicant may revegetate and must reclaim all disturbed land within the time period approved with the reclamation plan so as to leave the land in a stable condition wherein a 2:1 slope is maintained. Any revegetation must be done with a non-invasive plant species. Bonding must be required at \$750.00 per acre for all acreage included in the current five-year reclamation plan. In the alternative, the planning director may accept a qualified professional's estimate for determining the amount of bonding. If the applicant is bonded with the state, the borough's bonding requirement is waived. Compliance with reclamation plans will be enforced under KPB 21.50.
- C. The following measures must be considered in the preparation, approval and implementation of the reclamation plan, although not all will be applicable to every reclamation plan:
1. The area will be backfilled, graded and re-contoured using strippings, overburden, and topsoil so that it will be stabilized to a condition that will allow for revegetation under KPB 21.29.060(B).
 2. The topsoil used for reclamation must be reasonably free from roots, clods, sticks, and branches greater than 3 inches in diameter. Areas having slopes greater than 2:1 require special consideration and design for stabilization by an independent, professional civil engineer licensed and active in the State of Alaska.
 3. Exploration trenches or pits will be backfilled. Brush piles and unwanted vegetation must be removed from the site, buried or burned. Topsoil and other organics will be spread on the backfilled surface to inhibit erosion and promote natural revegetation.
 4. Topsoil mine operations must ensure a minimum of four inches of suitable growing medium is left or replaced on the site upon completion of the reclamation activity (unless otherwise authorized).
 5. Ponding may be used as a reclamation method as approved by the planning commission.
 6. The area will be reclaimed in a manner that screens the site from becoming a public attractive nuisance and in a manner that is not harmful to public health, safety, and general welfare.
- D. The five-year reclamation plan must describe the total acreage to be reclaimed relative to the total excavation plan.
- E. Close-out. Reclamation plans and requirements survive expiration, termination, or revocation of a permit granted under this chapter. In order to close-out a permit, the planning director must be provided adequate proof that reclamation has been

conducted in accordance with the reclamation plan. If a permit expires, terminates, or is revoked prior to permit close-out, the remedies under KPB 21.50 apply and the planning director may hold applicable fines and remedies in abeyance upon a finding that reclamation is actively ongoing.

21.29.065. Effect of permit denial.

- A. No reapplication concerning the same counter permit application may be filed within one calendar year of the date of the planning director's final denial action except in the case where new evidence or circumstances exist that were not available or present when the original application was filed.
- B. No reapplication concerning the same CLUP may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original application was filed.
- C. For the purposes of this section, the applicant bears the burden of proof of demonstrating that new evidence or circumstances exist and that they were not available or present with the original application was filed.

21.29.070. Permit renewal, modification and revocation.

- A. Conditional land use permittees must submit a renewal application every five years after the permit is issued. A renewal application must be submitted at least 90 days prior to expiration of the CLUP.
- B. The planning director may administratively approve a renewal application that meets the following requirements: (i) the permittee is in compliance with all permit conditions and no modification to operations or conditions are proposed; and (ii) the borough did not issue a notice of violation under the permit during the two calendar years preceding the renewal application. If the renewal application does not satisfy the foregoing requirements or if the planning director determines a review by the planning commission is warranted, then the planning commission will hear the renewal application.
- C. In the event the renewal application is heard by the planning commission, the planning commission must hold a public hearing on the renewal application. If the applicant is complying with all permit conditions and requirements and is not in violation of borough code, then the renewal must be granted by the planning commission. Notwithstanding the foregoing, if the commission determines, after public hearing, that discretionary conditions are appropriate on renewal then the commission may modify the CLUP by imposing conditions as deemed appropriate under the circumstances. Permit renewal applications will be denied if the permittee is in violation of the original permit requirements and conditions or

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

- D. A permittee may request a modification of a CLUP or counter permit, as needed. A modification application will be processed pursuant to KPB 21.29.030 through KPB 21.29.050 with public notice given as provided by KPB 21.25.060. A permit modification is required if the permittee's operations are no longer consistent with the original permit application.
- E. The fee for a permit renewal or modification is the same as an original permit application in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees.
- F. Failure to submit a permit renewal will result in the expiration of the permit. The borough may issue a permit termination document upon expiration pursuant to KPB 21.29.080. Once a permit has expired, a new permit application approval process is required in order to operate the material site.
- G. Permits may be revoked pursuant to KPB 21.50.

21.29.080. Permit Close-out.

When a permit expires, is revoked, or a permittee requests close-out of their permit, a review of permit conditions and site inspections will be conducted by the planning department to ensure code compliance and verify site reclamation prior to close-out. When the planning director determines that a site qualifies for close-out, a permit close-out document will be issued to the permittee to terminate the permit and associated requirements. Reclamation plans and requirements survive permit expiration and revocation. The planning director is only authorized to close-out a permit following reclamation. A permit close-out determination shall release any bonding associated with the permit.

21.29.100. Recordation.

All permits, permit extensions, modified permits, prior existing uses, and terminations shall be recorded. Failure to record a material site document does not affect the validity of the documents. The operator or owner of the material site is responsible for all associated permit recording fees.

21.29.110. Violations.

Violations of this chapter shall be governed by KPB 21.50 and this chapter.

21.29.115. Permit transfers.

Permits issued under this chapter do not automatically transfer upon a conveyance or transfer of the applicable real property. The planning director will issue a letter of approval or disapproval upon receipt of the following: (1) a written permit transfer request is provided to the planning department that includes: legal description of the parcel, former owner name, new owner name, and a copy of the approved permit or the legal PEU status; and (2) a recorded conveyance instrument listing the new owner. The requesting party may appeal a disapproval letter to the planning commission. Permit transfer approvals are not subject to administrative appeal.

21.29.120. Prior-existing uses.

- A. *Determination.* Prior-existing uses (PEU) in effect on October 1, 2022 are allowed to continue operation subject to the requirements of this section. The burden of proof that the prior-existing use existed before October 1, 2022 is on the applicant. If the planning director denies prior-existing use status, the applicant must comply with the permit requirements of this chapter. Failure to apply for a prior-existing use determination by January 1, 2024 will result in termination of all rights to continued operation as a nonconforming use and require full compliance with all provisions of this chapter.
- B. *Decision.* The planning director will give notice of the application for a prior-existing use determination to property owners within 100 feet of the subject parcel boundaries. The notice shall include a summary of the application, a vicinity map, and a deadline for submitting written comments or evidence regarding the existence of the use prior to the planning director issuing a decision. The planning director will issue a decision regarding the prior-existing use status based on the written application, written comments, or evidence regarding the existence of the use. The planning director's decision may be appealed by the applicant or affected property owners to the planning commission within 15 days of distribution of the decision.
- C. *Discontinuance.* Any prior-existing use which has ceased by discontinuance for an uninterrupted period of 365 days must thereafter conform to the permit requirements of this chapter. Lack of intent to cease use or abandon the use does not suspend the 365-day time period. If a prior-existing use is discontinued or abandoned, it may not be recommenced.
- D. *Expansion Prohibited.* A prior-existing use may not be increased, intensified, or expanded or moved to any other part of the lot, tract, or parcel it occupies after October 1, 2022, nor may the prior-existing use be moved to a parcel which is subject to this chapter. If a parcel is subdivided, the pre-existing use may not be expanded to any lot, tract, or parcel where material extraction or processing had not previously occurred or was not lawfully established in accordance with this section.
- E. *Standards.* In order to qualify as a legal prior-existing use, the use must meet the following standards, on or before October 1, 2022:

1. A use must have been legally established under prior law.
2. A use must be operational in accordance with the type of use.
- F. In accordance with 21.29.015, on or before January 1, 2026, all legal prior-existing-use extraction operations shall comply with KPB 21.29.060 (reclamation plan) and applicable hours of operation requirements under this chapter.
- G. Materials extraction operations with legal prior-existing use status which extract material below or within four feet of the seasonal highwater table shall conduct operations in accordance with the requirements outlined in KPB 21.29.057, except that KPB 21.29.057(C)(7) will not apply.
- H. For the purposes of this section, "increased, intensified, or expanded" means: (1) enlarging the area of excavation; (2) increasing the depth of excavation to go within four feet of the seasonal high-water table; or (3) adding a use that was not in existence as of the date of the PEU status determination, to include adding earth materials processing to a use that did not previously include processing.

21.29.130. Definitions.

- A. Unless the context requires otherwise, the following definitions apply to material site permits and activities:
 1. *Abandon* means to cease or discontinue a use without intent to resume, but excluding short-term interruptions to use or activity during periods of remodeling, maintaining, or otherwise improving or rearranging a facility or during normal periods of vacation or seasonal closure. An "intent to resume" can be shown through continuous operation of a portion of the facility, maintenance of utilities, or outside proof of continuance, e.g., bills of lading or delivery records. Abandonment also means the cessation of use, regardless of voluntariness, for a specified period of time.
 2. *Aggrieved Party* means a party of record adversely impacted by the decision of the hearing officer who participated before the hearing officer either by written or oral presentation.
 3. *Aquifer* means a subsurface formation that contains sufficient water-saturated permeable material to yield economical quantities of water to wells and springs.
 4. *Aquifer-confining layer* means that layer of relatively impermeable soil below an aquifer, typically clay, which confines water.
 5. *Assisted-living home* means a residential facility to which AS 47.33 applies, as described in AS 47.33.010.
 6. *Commercial* means any provision of services, sale of goods, or use operated for production of income whether or not income is derived, including sales, barter, rental, or trade of goods and services.

7. Conditioning or processing material means a value-added process including batch plants, asphalt plants, screening, washing, and crushing by use of machinery.
8. Exhausted means that all material of a commercial quality in a sand, gravel, or material site has been removed.
9. Groundwater means, in the broadest sense, all subsurface water, more commonly that part of the subsurface water in the saturated zone.
10. Inactive site walls means a wall with a slope steeper than 1.5:1 where there has been no exaction activity for 180 consecutive days.
11. Isolated pond means no surface water inlet or outlet is present at any time of the year.
12. Person shall include any individual, firm, partnership, association, corporation, cooperative, or state or local government.
13. Qualified professional means a licensed professional engineer, hydrologist, hydrogeologist, or other similarly-licensed professional.
14. Quarter or Quarterly means January through March, April through June, July through September, or October through December;
15. Sand, gravel or material site means an area used for extracting, quarrying, or conditioning gravel or substances from the ground that are not subject to permits through the state location (mining claim) system (e.g., gold, silver, and other metals), nor energy minerals including but not limited to coal, oil, and gas.
16. Seasonal high groundwater table means the highest level to which the groundwater rises on an annual basis.
17. Stable condition means the rehabilitation, where feasible, of the physical environment of the site to a condition that allows for the reestablishment of renewable resources on the site within a reasonable period of time by natural processes.
18. Surface water means water on the earth's surface exposed to the atmosphere such as rivers, lakes, and creeks.
19. Topsoil means material suitable for vegetative growth.
20. Waterbody means any lake, pond, stream, riparian wetland, or groundwater into which stormwater runoff is directed.
21. Water source means a well, spring or other similar source that provides water for human consumptive use.

SECTION 4. That this ordinance is effective immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY
OF * 2022.**

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

08/09/22 Vote on motion to introduce and set for public hearing:

Yes: Bjorkman, Chesley, Cox, Ecklund, Hibbert, Tupper, Johnson

No: Elam, Derkevorkian

Absent: None

09/06/22 Vote on motion to postpone to 10/25/22:

Yes: Bjorkman, Chesley, Cox, Derkevorkian, Ecklund, Elam, Hibbert, Tupper, Johnson

No: None

Absent: None

Yes:


No:

Absent:

Kenai Peninsula Borough Assembly

MEMORANDUM

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

FROM: Richard Derkevorkian, Assembly member 

DATE: September 20, 2022

SUBJECT: **LAYDOWN Derkevorkian Amendment #1** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.010, as follows:

21.29.010. Applicability.


- A. This chapter applies to all private and public lands in the borough except where the use is prohibited by ordinance within a local option zoning district or exempt under KPB 21.29.015.
- B. This chapter does not apply within the incorporated cities of the Kenai Peninsula Borough.
- C. Earth material extraction within 300 linear feet from riparian wetlands and the seasonal high-water level of naturally occurring open water bodies, such as a lake, pond, river, **fish-bearing** stream, or ocean, is prohibited. This prohibition does not apply to **existing** man-made water bodies or isolated ponds of less than one acre on private property **or the construction of waterbodies within the permitted area.**
- D. All operations must be conducted in accordance with the current publication of the State of Alaska, Alaska DEC User's Manual Best Management Practices for Gravel/Rock Aggregate Extraction Projects. In the event a provision of this chapter conflicts with the State of Alaska's manual, this chapter controls.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

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

FROM: Richard Derkevorkian, Assembly member 

DATE: September 20, 2022

SUBJECT: **LAYDOWN Derkevorkian Amendment #2** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.015, as follows:

21.29.015. Material extraction exempt from obtaining a permit.

- A. Material extraction which disturbs an area of less than one acre that is not in a mapped flood plain or subject to 21.29.010(B), does not enter the water table, and does not cross property boundaries, does not require a permit. There will be no excavation within [32]10 feet of a lot line.
- B. Material extraction taking place on dewatered bars within the confines of the Snow River and the streams within the Seward-Bear Creek Flood Service Area do not require a permit, however, operators subject to this exemption must provide the planning department with the information required by KPB 21.29.030(A)(1), (2), (6), (7) and a current flood plain development permit prior to beginning operations.
- C. A prior existing use under KPB 21.29.120 does not require a material extraction permit. Notwithstanding the foregoing, on or before January 1, 2026, a prior existing use under KPB 21.29.120 must: (1) provide a reclamation plan under KPB 21.29.060 that is approved by the planning director or designee; and (2) come into compliance with the buffer zone requirements under KPB 21.29.050(A)(1).


D. Material extraction from a public or private property which is necessary for the construction of a public or private development on the same property does not require a material extraction permit.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

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

FROM: Richard Derkevorkian, Assembly member 

DATE: September 20, 2022

SUBJECT: **LAYDOWN Derkevorkian Amendment #3** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.020, as follows:

21.29.020. Types of permits available.

- A. Counter permit. A counter permit is required for earth material extraction which disturbs more than one acre and less than ~~[10]~~2.5 cumulative unreclaimed acres. Material ~~[processing,]~~ screening **over 500 cubic yards per day, [or]** crushing, ~~[and material extraction within four feet of the seasonal high-water table]~~ **and excavation within two feet of a confining layer** is prohibited under a counter permit. **A maximum of five feet excavation, and 7,500 square feet below seasonal high-water table is allowed. The excavation below water table must be 200 feet from the nearest potable water well.** A counter permit is valid for a period of two years. Upon request from the applicant, the planning director, or designee, may grant one 12-month extension on a counter permit. Counter permits are approved by the planning director, or designees, and are not subject to notice requirements under KPB 21.25.060. The planning director's decision to approve or deny a counter permit may be appealed to the planning commission, which must act as the hearing officer, in accordance with KPB 21.20. **The limited excavation within two feet of the seasonal high-water table included in this permit is exempt from KPB 21.29.057.**

B. Conditional land use permit. A conditional land use permit (CLUP) is required for the following types of earth material extraction or uses:

1. ~~[Earth Materials Extraction CLUP. An Earth Materials Extraction CLUP is required for any material extraction which disturbs 10 or more cumulative acres. Material processing, screening or crushing, or extraction within four feet of the seasonal high-water table is prohibited under this permit. The standard conditions set out in KPB 21.29.050 are applicable to this type of CLUP.]~~ A Type 1 CLUP. A Type 1 CLUP permit is required for earth material extraction which disturbs more than 2.5 cumulative unreclaimed acres. Material screening over 500 cubic yards per day, or crushing, is prohibited under a type 1 permit. A maximum of five feet excavation below seasonal high-water table is allowed. The excavation below water table must be 200 feet from the nearest potable water well. Excavation within two feet of a confining layer is prohibited. No more than ten percent of the parcels total acreage may be in the water table. The conditions set forth in KPB 21.29.050 plus the conditions set out in KPB 21.29.055 for material extraction processing area applicable to this type of CLUP. The limited excavation within two feet of seasonal high-water table included in this permit is exempt from KPB 21.29.057.
2. ~~[Earth materials processing]~~ A Type 2 CLUP. A ~~[n Earth Materials Processing]~~ Type 2 CLUP is required for any operation that includes earth materials ~~[processing,]~~ screening over 500 cubic yards per day, or crushing activities. A maximum of eight feet excavation below seasonal high-water table is allowed. The excavation below water table must be 200 feet from the nearest potable water well. Excavation within two feet of a confining layer is prohibited. No more than ten percent of the parcels total acreage may be in the water table. The conditions set forth in KPB 21.29.050 plus the conditions set out in KPB 21.29.055 for material extraction processing area applicable to this type of CLUP. The limited excavation within two feet of seasonal high-water table included in this permit is exempt from KPB 21.29.057.
3. ~~[Earth Materials Extraction Within Water Table]~~ A Type 3 CLUP. A ~~[n Earth Materials Extraction Within Water Table]~~ Type 3 CLUP is required for material extraction and operations of any size within ~~[four]~~ two feet of the seasonal high-water table unless specified exempt from KPB 21.29.057. The excavation below water table must be 200 feet from the nearest

potable water well. Excavation within two feet of a confining layer is prohibited. Screening and crushing is allowed. The conditions set forth in KPB 21.29.050 plus the requirements and conditions set forth in KPB 21.29.057 for material extraction within ~~four~~ **two** feet of the seasonal high-water table are applicable to this type of CLUP.


An applicant may request a CLUP that includes one, two or all three of the above permit types. A CLUP is valid for a period of five years. A CLUP may be renewed in accordance with KPB 21.29.070. The provisions of KPB Chapter 21.25 are applicable to material site CLUPs and the provisions of KPB 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

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

FROM: Richard Derkevorkian, Assembly member 

DATE: September 20, 2022

SUBJECT: **LAYDOWN Derkevorkian Amendment #4** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.030, as follows:

21.29.030. Application procedure.

- A. In order to obtain a counter permit or CLUP under this chapter, an applicant must first complete and submit to the borough planning department a permit application, along with the fee listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. The planning director may determine that certain contiguous parcels are eligible for a single permit. The application must include the following items, without which the application will be deemed incomplete:
1. Legal description of the parcel, KPB tax parcel ID number, and identification of whether the permit is for the entire parcel, or a specific location within a parcel;
 2. Expected life span of the material site;
 3. A buffer plan consistent with KPB 21.29.050(A)(1);
 4. Reclamation plan consistent with KPB 21.29.060;
 5. The depth of excavation;
 6. Type of material to be extracted;

7. A site map professional surveyor licensed in the State of Alaska to include the following:
- a. Location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;
 - b. Proposed buffers consistent with KPB 21.29.050(A)(1), or alternate buffer plan;
 - c. Identification of all encumbrances, including but not limited to, easements;
 - d. Points of ingress and egress. Driveway permits must be acquired from either the state or borough as appropriate prior to submitting the application;
 - e. Anticipated haul routes; ~~[, contingent on approval from the governmental agency with regulatory jurisdiction over the road;]~~
 - f. Location of any processing areas on the parcel, if applicable;
 - g. North arrow;
 - h. The scale to which the site plan is drawn;
 - i. Preparer's name and date; and
 - j. Field verification must include staking the boundary of the parcel at sequentially visible intervals. The planning director may grant an exemption in writing to the staking requirements if the parcel boundaries are obvious or staking is unnecessary.
8. A site plan, ~~[prepared by a qualified independent civil engineer licensed and active in the State of Alaska]~~ to include the following:
- a. Surface water protection measures, if any, for adjacent properties, including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence;
 - b. Location and elevation of test holes, and depth of groundwater, based on the seasonal high-water table. At least one test hole per ten acres of excavated area is required to be dug. The test holes must be at least four feet below the proposed lowest elevation of excavation depth **unless proposed depth is deeper than conventional equipment can dig without stage excavation;**
 - c. Location of all private wells of adjacent property owners within 300 feet of the proposed parcel boundary; and
 - d. Location of any water body on the parcel, including the location of any riparian wetland as determined by best available data.

9. A statement by the operator of the site that the requirements of KPB 21.29.045 have been satisfied.


B. In order to aid the planning commission or planning director's decision-making process, the planning director may provide vicinity, aerial, land use, and ownership maps for each application and may include additional information.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

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

FROM: Richard Derkevorkian, Assembly member 

DATE: September 20, 2022

SUBJECT: **LAYDOWN Derkevorkian Amendment #5** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.050, as follows:

21.29.050. Permit conditions applicable to all permits.

A. The planning commission or planning director, as applicable, must impose the following mandatory conditions prior to approval of a permit under this chapter:

1. Buffer Zone.

a. ~~[A buffer area of 32 feet must be established between the area of excavation and the parcel boundaries. The buffer area may include one or more of the following: undisturbed natural vegetation that provides sufficient noise and street-level visual screening; an eight-foot earthen berm with a 2:1 slope; or a minimum eight-foot fence;]~~ The buffer zone for counter permits and CLUPs shall be of sufficient height, density, and setback to provide noise screening of the proposed use to parcels in the vicinity as deemed appropriate by the planning commission or planning director. Buffer requirements shall be made in consideration of and in accordance with existing uses of properties in the vicinity at the time of approval of the permit. There is no requirement to buffer the material site from uses which commence after the approval of the permit.

- b. A buffer zone shall be established between the area of excavation and the parcel boundaries. The buffer zone for a Type 1 CLUP shall consist of one of the following in any geographical area: fifty feet of natural vegetation, a minimum six-foot fence, or a minimum six-foot earthen berm with a 2:1 slope. The buffer zone for a Type 2 or Type 3 CLUP shall consist of one of the following in any geographical area: fifty feet of natural vegetation, a minimum eight-foot fence, or a minimum ten-foot earthen berm with a 2:1 slope. If the minimum buffers are insufficient to approve the permit, the applicant may modify the proposed buffers with evidence to a sufficient size in consideration of, and in accordance with the existing uses of properties in the vicinity for approval of a permit.**
- [b.]c. A 2:1 slope must be maintained between the buffer zone and excavation floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if the site plan provides the timeframe for removal and verification that suitable, stabilizing material will replace the removed material within 30 days of removal;**
- [c.]d. Where an easement exists, a buffer must not overlap the easement, unless otherwise conditioned by the planning commission or planning director, as applicable; and**
- [d.]e. This requirement may only be waived upon a finding by the planning director or planning commission, as applicable, that a lot line where the waiver is requested is directly adjacent to another material site.**
- f. GIS, LIDAR, and photogrammetry may be utilized in the design of the buffer zone when differing elevations exist between the proposed site and properties in the vicinity. Using this technology's line of sight profile drawings from the uppermost inhabitable level of existing properties located in the vicinity may be utilized in the determination of sufficiency of the buffer zone.**
- g. At its discretion the planning director or planning commission (as applicable) may waive or reduce buffer requirements when screening proves to be not necessary or not feasible.**
- 2. Water source separation.**
- a. Material extraction below or within ~~[four]~~ two feet of the seasonal high-water table is prohibited unless the applicant is issued a CLUP Material Extraction Within Water Table Permit and the requirements and conditions set forth in KPB 21.29.057 are satisfied or the depth and**

size of excavation is exempt from KPB 21.29.057 as specified in the permit:

- b. Dewatering either by pumping, ditching or some other form of draining that removes **more than 5,000 gallons of water per day** from the site or causes water to leave the site is prohibited **unless permitted by State of Alaska, Department of Natural Resources**;
 - c. All permits shall be issued with a condition which prohibits any material extraction within 100 linear feet of any private well or **applicable** water source existing prior to original permit issuance; and
 - d. On site movement of water may be permitted pursuant to KPB 21.29.057 and if: (i) the operator provides a statement under seal and supporting data from a qualified independent civil engineer licensed and active in the State of Alaska that the dewatering will not lower any known water systems; and (ii) the applicant posts a bond for liability for potential accrued damages in an amount equivalent to the cost to replace each water wells within a 300-foot radius of the site. The rebuttable presumption is that the cost per well is a minimum of \$10,000.
3. Roads. Operations that impact borough roads must be conducted in accordance with the requirements and remedies of KPB Chapter 14.40.
4. Dust control. Dust suppression is required on haul roads within the boundaries of the **CLUP** material site by application of water or calcium chloride.
5. Hours of operation. Material extraction activities, including equipment operation, may only occur between the hours of 6:00 a.m. and 9:00 p.m. Alaska Standard Time (AKST), or as determined by the planning commission or planning director, as applicable, to be appropriate based on information presented.
- a. ~~[Seasonal.]~~ Project-based waiver. An applicant may request a ~~[seasonal.]~~ project-based waiver of the hours of operation requirements under this subsection. A waiver granted under this subsection is valid for **up to** six consecutive calendar months. To grant a waiver under this subsection, the commission must find that the waiver is necessary for a specific project, and that the waiver is not harmful to the public health, safety, and general welfare of borough residents.

6. Groundwater elevation. All material sites must maintain one monitoring well four feet below the proposed excavation per ten acres of excavated area.
 7. Setback. Material site excavation areas must be 250 feet from the property boundaries of any ~~[local option zoning district,]~~existing public school ground, private school ground, college campus, **licensed** childcare facility, multi-purpose senior center, assisted living home, and licensed health care facility. **[If overlapping, the buffer areas of the excavation must be in addition to the 250-foot setback.]**
 8. Permit boundaries. The buffers and any easements or right-of-way abutting the proposed permit area must be staked at sequentially visible intervals. Field verification and staking will require the services of a professional land surveyor. Stakes must be in place prior to issuance of the permit.
 9. Processing. Material extraction of any size that includes processing, screening, or crushing activities is prohibited unless the applicant is issued an Earth Materials Processing CLUP and the conditions set forth in KPB 21.29.055 are imposed on the permit.
- B. Discretionary Conditions. The planning commission or planning director, as applicable, may set conditions of approval for issuance of a counter permit or CLUP, as appropriate for the area in which the development is sited, for the following:
1. Setbacks/Buffer Area.
 - a. The mandatory buffer area condition in subsection (A) above may be increased, up to a maximum of 100 feet between the area of excavation and the parcel boundaries, if the planning commission finds based on substantial evidence presented that increasing the buffer area is necessary for the public health, welfare and safety of the surrounding community;
 - i. Upon request of the applicant, in lieu of any additional buffer area under this subsection designed to separate the use of material site activities from neighboring parcel boundaries, an eight-foot-high berm above the preexisting elevation may be constructed, prior to excavation, around the excavation area. If the excavation site

area expands, the berm may move toward the permitted boundary until such limits of the permitted area are exhausted. The berm must be maintained at eight-foot height while permitted activity is occurring.

- b. All other requirements of KPB 21.29.050(A)(1) apply; and
 - c. When a buffer area has been denuded **less than a year** prior to review of the application by the planning commission or planning director revegetation may be required.
2. Road ~~[maintenance and]~~ repair. In consultation with the Road Service Area Director, ~~[road maintenance or]~~ repair of public right-of-way haul routes may be required of the permittee.
 3. Ingress and egress. The planning commission or planning director may **[determine] suggest** the points of ingress and egress for the material site. The permittee is not required to construct haul routes outside the parcel boundaries of the material site. Driveway authorization must be acquired, from either the state through an "Approval to Construct" or the borough road service area, as appropriate, prior to issuance of a material site permit when accessing a public right-of-way.
 4. Dust suppression. Dust suppression may be required when natural precipitation is not adequate to suppress the dust generated by the material site traffic on **[public right-of-way haul routes] haul routes within permit boundaries.**
 5. Surface water protection. Use of surface water protection measures as specified in KPB 21.29.030(A)(8)(a).
 6. Street-level screening. Street-level visual screening, noise mitigation, and lighting restrictions as appropriate for the surrounding area and in accordance with the standards set forth in KPB 21.29.040.

Your consideration of these amendments is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

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

FROM: Richard Derkevorkian, Assembly member *RD*

DATE: September 20, 2022

SUBJECT: **LAYDOWN Derkevorkian Amendment #6** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.055(B), as follows:

21.29.055. Earth materials processing.

~~[In accordance with KPB 21.29.020(B)(2), an Earth Materials Processing CLUP is required for earth materials processing activities, such as material screening or crushing.]~~ Prior to issuing a Type 2 CLUP [permit] under this subsection, the planning commission must impose the mandatory conditions set forth in KPB 21.29.050(A) and discretionary conditions as the planning commission deems appropriate. In addition, the following requirements and permit conditions specific to a Type 2 CLUP ~~[an Earth Materials Processing CLUP]~~ apply:

...

B. Hours of operation.

1. Processing equipment may only be operated between ~~[8:00]~~ 7:00 a.m. and 7:00 p.m. AKST, or as determined by the planning commission.

...

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

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

FROM: Richard Derkevorkian, Assembly member (RD)

DATE: September 20, 2022

SUBJECT: **LAYDOWN Derkevorkian Amendment #7** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.057, as follows:

21.29.057. Material extraction below or within ~~[four]~~ two feet of the seasonal high-water table.

In accordance with KPB 21.29.020(B)(3), a CLUP is required for material extraction of material below or within ~~[four]~~ two feet of the seasonal high water table. Prior to a permit being issued the planning commission must impose the mandatory conditions set forth in KPB 21.29.050(A) and discretionary conditions as deemed appropriate. In accordance with KPB 21.29.050(A)(2)(b) dewatering **over 5,000 gallons per day** is prohibited **unless permitted by the State of Alaska, Department of Natural Resources**. The following additional application requirements and permit conditions specific to a Material Extraction within the Water Table CLUP apply:

....

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

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

FROM: Richard Derkevorkian, Assembly member (RD)

DATE: September 20, 2022

SUBJECT: **LAYDOWN Derkevorkian Amendment #8** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.060 as follows:

21.29.060. Reclamation plan.

- A. All material site permit applications require an overall reclamation plan. A site plan for reclamation must be required including a scaled drawing with finished contours. A five-year reclamation plan must be submitted with a permit renewal request. **All acreage planned for a post-mining use is exempt from reclamation.**
- B. The applicant may revegetate and must reclaim all disturbed land within the time period approved with the reclamation plan **if the planned resource extraction has been exhausted and no post-mining use is planned,** so as to leave the land in a stable condition wherein a 2:1 slope is maintained. Any revegetation must be done with a non-invasive plant species. Bonding must be required at \$750.00 per acre for all acreage included in the current five-year reclamation plan. In the alternative, the planning director may accept a qualified professional's estimate for determining the amount of bonding. If the applicant is bonded with the state, the borough's bonding requirement is waived. Compliance with reclamation plans will be enforced under KPB 21.50.
- C. The following measures must be considered in the preparation, approval and implementation of the reclamation plan, although not all will be applicable to every reclamation plan:


1. The area will be backfilled, graded and re-contoured using strippings, overburden, and topsoil so that it will be stabilized to a condition that will allow for revegetation under KPB 21.29.060(B).
 2. The topsoil used for reclamation must be reasonably free from roots, clods, sticks, and branches greater than 3 inches in diameter. Areas having slopes greater than 2:1 require special consideration and design for stabilization by an independent, professional civil engineer licensed and active in the State of Alaska.
 3. Exploration trenches or pits will be backfilled. Brush piles and unwanted vegetation must be removed from the site, buried or burned. Topsoil and other organics will be spread on the backfilled surface to inhibit erosion and promote natural revegetation.
 4. Topsoil mine operations must ensure a minimum of four inches of suitable growing medium is left or replaced on the site upon completion of the reclamation activity (unless otherwise authorized).
 5. Ponding may be used as a reclamation method as approved by the planning commission.
 6. The area will be reclaimed in a manner ~~[that screens the site from becoming a public attractive nuisance and in a manner]~~ that is not harmful to public health, safety, and general welfare.
- D. The five-year reclamation plan must describe the total acreage to be reclaimed relative to the total excavation plan.
- E. Close-out. Reclamation plans and requirements survive expiration, termination, or revocation of a permit granted under this chapter. In order to close-out a permit, the planning director must be provided adequate proof that reclamation has been conducted in accordance with the reclamation plan. If a permit expires, terminates, or is revoked prior to permit close-out, the remedies under KPB 21.50 apply and the planning director may hold applicable fines and remedies in abeyance upon a finding that reclamation is actively ongoing.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

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

FROM: Richard Derkevorkian, Assembly member 

DATE: September 20, 2022

SUBJECT: **LAYDOWN Derkevorkian Amendment #9** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

- Amend KPB Chapter 21.29 by adding Section 21.29.063, as follows:

21.29.063. Decision.


The planning commission or planning director, as applicable, shall approve permit applications whereby mandatory standards under KPB 21.29.040 have been met through implementation of conditions set forth in KPB 21.29.050, KPB 21.29.055, and KPB 21.29.057 or shall deny applications when conditions do not meet the mandatory standards in KPB 21.29.040. The decision shall include written findings detailing how the conditions under KPB 21.29.050, KPB 21.29.055, and KPB 21.29.057 meet, or do not meet the mandatory standards set forth in KPB 21.29.040 and evidence to support those findings. The decision shall be distributed to the parties of record before the planning commission, with notice of right to appeal.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

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

FROM: Richard Derkevorkian, Assembly member 

DATE: September 20, 2022

SUBJECT: **LAYDOWN Derkevorkian Amendment #10** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

- Amend KPB Chapter 21.29 by removing Section 21.29.065 in its entirety, as follows:

[21.29.065. Effect of permit denial.

A. ~~No reapplication concerning the same counter permit application may be filed within one calendar year of the date of the planning director's final denial action except in the case where new evidence or circumstances exist that were not available or present when the original application was filed.~~

B. ~~No reapplication concerning the same CLUP may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original application was filed.~~


C. ~~For the purposes of this section, the applicant bears the burden of proof of demonstrating that new evidence or circumstances exist and that they were not available or present with the original application was filed.~~

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

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

FROM: Richard Derkevorkian, Assembly member 

DATE: September 20, 2022

SUBJECT: **LAYDOWN Derkevorkian Amendment #11** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.070, as follows:

21.29.070. Permit renewal, modification and revocation.

- A. Conditional land use permittees must submit a renewal application every five years after the permit is issued. A renewal application must be submitted at least 90 days prior to expiration of the CLUP.
- B. The planning director may administratively approve a renewal application that meets the following requirements: (i) the permittee is in compliance with all permit conditions and no modification to operations or conditions are proposed; and (ii) the borough did not issue a notice of violation under the permit during the two calendar years preceding the renewal application. If the renewal application does not satisfy the foregoing requirements or if the planning director determines a review by the planning commission is warranted, then the planning commission will hear the renewal application.
- C. In the event the renewal application is heard by the planning commission, the planning commission must hold a public hearing on the renewal application. If the applicant is complying with all permit conditions and requirements and is not in violation of borough code, then the renewal must be granted by the planning commission. **[Notwithstanding the foregoing, if the commission determines, after public hearing, that discretionary**

~~conditions are appropriate on renewal then the commission may modify the CLUP by imposing conditions as deemed appropriate under the circumstances.]~~ Permit renewal applications will be denied if the permittee is in violation of the original permit requirements and conditions or borough code. **The permittee will be given ninety days to correct violations. If the corrections are met, the permit will be renewed.** A renewal application heard by the planning commission must be processed in accordance with the notice requirements of KPB 21.25.060.


- D. A permittee may request a modification of a CLUP or counter permit, as needed. A modification application will be processed pursuant to KPB 21.29.030 through KPB 21.29.050 with public notice given as provided by KPB 21.25.060. A permit modification is required if the permittee's operations are no longer consistent with the original permit application.
- E. The fee for a permit renewal or modification is the same as an original permit application in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees.
- F. Failure to submit a permit renewal will result in the expiration of the permit. The borough may issue a permit termination document upon expiration pursuant to KPB 21.29.080. Once a permit has expired, a new permit application approval process is required in order to operate the material site.
- G. Permits may be revoked pursuant to KPB 21.50.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

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

FROM: Richard Derkevorkian, Assembly member 

DATE: September 20, 2022

SUBJECT: **LAYDOWN Derkevorkian Amendment #12** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.115, as follows:

21.29.115. Permit transfers.


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

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

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

FROM: Richard Derkevorkian, Assembly member 

DATE: September 20, 2022

SUBJECT: **LAYDOWN Derkevorkian Amendment #13** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.120, as follows:

21.29.120. Prior-existing uses.

- A. Determination. Prior-existing uses (PEU) in effect on October 1, 2022 are allowed to continue operation subject to the requirements of this section. The burden of proof that the prior-existing use existed before October 1, 2022 **and after May 21, 1996**, is on the applicant. **All other PEUs prior to May 21, 1996, are already recorded with the borough and are recognized.** If the planning director denies prior-existing use status, the applicant must comply with the permit requirements of this chapter. Failure to apply for a prior-existing use determination by January 1, 2024 will result in termination of all rights to continued operation as a nonconforming use and require full compliance with all provisions of this chapter.
- B. Decision. The planning director will give notice of the application for a prior-existing use determination to property owners within 100 feet of the subject parcel boundaries. The notice shall include a summary of the application, a vicinity map, and a deadline for submitting written comments or evidence regarding the existence of the use prior to the planning director issuing a decision. The planning director will issue a decision regarding the prior-existing use status based on the written application, **[written comments,]** or evidence regarding the existence of the use. The planning director's decision may be appealed by the applicant or affected property

owners to the planning commission within 15 days of distribution of the decision.

C. *Discontinuance.* Any prior-existing use which has ceased by discontinuance for an uninterrupted period of ~~[365 days]~~ **five years** must thereafter conform to the permit requirements of this chapter. Lack of intent to cease use or abandon the use does not suspend the ~~[365-day]~~ **five-year** time period. If a prior-existing use is discontinued or abandoned, it may not be recommenced. **Any activity such as extraction, excavation, processing, or reclamation is considered valid and a continuance of site use.**

D. *Expansion Prohibited.* ~~[A prior-existing use may not be increased, intensified, or expanded or moved to any other part of the lot, tract, or parcel it occupies after October 1, 2022, nor may the prior-existing use be moved to a parcel which is subject to this chapter.]~~ **The prior-existing use may not be moved to a parcel that is subject to this chapter.** If a parcel is subdivided, the pre-existing use may not be expanded to any lot, tract, or parcel where material extraction or processing had not previously occurred or was not lawfully established in accordance with this section.

E. *Standards.* In order to qualify as a legal prior-existing use, the use must meet the following standards, on or before October 1, 2022:

1. A use must have been legally established under prior law.
2. A use must be operational in accordance with the type of use.

F. In accordance with 21.29.015, on or before January 1, 2026, all legal prior-existing-use extraction operations shall comply with KPB 21.29.060 (reclamation plan) and applicable hours of operation requirements under this chapter.

~~[G. Materials extraction operations with legal prior-existing use status which extract material below or within four feet of the seasonal highwater table shall conduct operations in accordance with the requirements outlined in KPB 21.29.057, except that KPB 21.29.057(C)(7) will not apply.]~~

~~[H. For the purposes of this section, "increased, intensified, or expanded" means: (1) enlarging the area of excavation; (2) increasing the depth of excavation to go within four feet of the seasonal high-water table; or (3) adding a use that was not in existence as of the date of the PEU status~~


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

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

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

FROM: Richard Derkevorkian, Assembly member 

DATE: September 20, 2022

SUBJECT: **LAYDOWN Derkevorkian Amendment #14** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.130, as follows:

21.29.130. Definitions.

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

...

8. Earthen berm means a berm constructed of aggregate or soil not to contain slash or brush that maintains a 2:1 slope. The berm is to be constructed above the preexisting elevation.

...

21. Vicinity means 1,000 linear feet from permitted boundary.

Your consideration of this amendment is appreciated.

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
KPB 21.25.050	30-day staff review period of an application.	21-day staff review period of an application.	Increase from 21 to 30 days.	
KPB 21.25.060 - Notice	Notice published on KPB website; public bulletin; mailed to all owners/leaseholders within ½ mile radius of proposed site.	Requires notice published two times in newspaper, posted in the post office, copy of the notice sent by regular mail to all owners and/or leaseholders within one-half mile.	Expressly does not apply to counter permits. No longer requires newspaper publication but allows for publication on KPB website.	
KPB 21.29.005 - Intent and Purpose	Establishes an intent and purpose section for KPB Chapter 21.29 with focus on public health, safety and general welfare, and to promote compatible, orderly development.	N/A	New code section.	
KPB 21.29.010 - Applicability	<p>A. Applies to all private and public lands, except as preempted by other law;</p> <p>B. Does not apply within the incorporated cities;</p> <p>C. Prohibits extraction within 300 feet of riparian wetlands and naturally-occurring open water bodies;</p>	N/A	New code section to clarify applicability of chapter and fact that it does apply to both public and private lands outside of the incorporated cities unless otherwise exempt.	

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
	D. Operations must be conducted in accordance with current Alaska DEC Manual for extraction projects.			
KPB 21.29.015 -Material extraction exempt from obtaining a permit	<p>A. Exempts extraction disturbing less than one acre if: -Not in floodplain; -Does not enter water table; and -Does not cross property boundaries.</p> <p>No excavation within 32' of lot line.</p> <p>B. Exempts dewatered bars within SBCFSA/Snow River.</p> <p>C. Exempts PEUs but by 2026 must: -Provide reclamation plan -Comply with buffer zone requirements</p>	<p>Currently 21.29.010</p> <p>A. Exempts extraction disturbing less than one acre if: -Not in floodplain; -Does not enter water table; and -Does not cross property boundaries.</p> <p>No excavation within 20 feet of ROW or 10 feet of lot line.</p> <p>B. Exempts dewatered bars within SBCFSA/ Snow River.</p> <p>C. PEUs exempt but floodplain permit required within mapped special flood hazard area.</p>	<p>New code section.</p> <p>No excavation within 32' of lot lines.</p> <p>PEUs exempt but must provide reclamation plan & comply with buffer zone requirements by 2026.</p>	<p>Require registration of excavation <1 acre. Addresses the concern of how can KPB state no permit required yet stipulate buffer requirements, clarify that the buffer is not part of the 1 acre limitation.</p>

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
KPB 21.29.020- Types of permits available	Counter permit -1 to 10 acres -No processing -No water table extraction -Only 21.29.050 conditions apply.	Counter permit and generic CLUP only. CLUP application requires all mandatory conditions and covers all uses.	Counter permit and three types of CLUPs. 1 to 10 acres eligible for counter permit if no processing or water table extraction. Three different CLUP categories: earth materials extraction (more than ten acres), earth materials processing, and earth materials extraction within water table. Applicant may apply for one, two, or all CLUP types.	Counter Permits and Earth Materials Extraction CLUP - Allow for up to 5k gallons of water withdrawal/ day, from well. Require proof of ADNR water withdrawal for amount in excess of 5k/ gallons/ day from a well, not create open pond with active excavation. Open water allowable, but requires water CLUP
	Earth Materials Extraction CLUP -Activity disturbing more than 10 acres -No processing -No water table extraction -Only 21.29.050 conditions apply			Allow for up to 500 cubic yards of processing material between hours of 8AM to 6PM.
	Earth Materials Processing CLUP -Required for all on- site processing, screening, or crushing -21.29.050 and 21.29.055 conditions apply			Earth Materials Processing CLUP Add blasting as a type of processing. Clarify processing does not mean striping and
	Earth Materials Extraction within Water Table CLUP -Required for all earth materials extraction within water table -21.29.050 and			

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
	21.29.057 conditions apply			segregation with excavation equipment.
KPB 21.29.030- Application procedure	Very similar to current procedure. Requires site map from professional surveyor and site plan from professional engineer	-Legal description -Life span -Buffer plan -Reclamation plan -Excavation depth -Type of materials and equipment -Any voluntary permit conditions -Site plan	Breaks apart site map (professional surveyor) from site plan (professional engineer) Application will be deemed incomplete without all items listed. (Not in current code.)	Revise to stipulate that Survey function is limited to existing site conditions prior to any activity. Require engineer w/seal for all future site lay out plans
KPB 21.29.040- Standards for sand, gravel or material sites	Planning Director (counter permits) or Planning Commission (CLUPs) must find: -Use is not inconsistent with applicable comp plan -Use will not be harmful to public's health, safety and general welfare -Provides sufficient setbacks, buffer zones, and other safeguards -Reclamation plan	-Protects against lowering of water sources serving other properties and damage to other properties -Minimizes off-site dust movement, noise disturbance, visual impacts & alternate post-mining land uses	All new standards/"may issue" Focus on legitimate public purpose to protect against damage to public roads and adjacent properties as well as dust, noise and other impacts through setbacks, buffer zones, and street-level visual screening.	Amount of visual screening, if any, is a significant question, which we recognize from public testimony. Significant policy call with legal input.
KPB 21.29.045	Applicants required to demonstrate compliance with state and federal law through written	N/A	New code section. Requires compliance with applicable	

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
	<p>documentation from pertinent authorities:</p> <ul style="list-style-type: none"> -Mining license (AK Dept of Revenue) -Mining permit (ADNR) -Permits and plans required by DEC -Permits from USACE, if applicable -Other applicable permits from other regulatory bodies authorized to regulate mining activities or earth materials extraction <p>Must comply with other regulations such as air and water quality, and hazardous materials</p> <p>Violations subject to enforcement under 21.50</p>		<p>state/federal agencies prior to approval of KPB permit.</p> <p>All activity must comply with state/federal regulations governing air/water quality and hazardous materials.</p> <p>Violations subject to enforcement under 21.50.</p>	Explicitly add ADNR for temporary water withdrawals
KPB 21.29.050	<p>NINE MANDATORY CONDITIONS</p> <p>1. Buffers: 32-foot buffer/may include natural vegetation for street-level visual and noise screening; 8-foot fence or berm with a 2:1</p>	<p>Buffers: 50' of undisturbed natural vegetation, or 6' berm with at least 2:1 slope, or 6' fence. Material from slope may be removed if site plan provides removal timeframe and verification material will</p>	<p>Allows flexibility to meet demands of a specific application vs. "one size fits all" of current code.</p> <p>Buffers:</p> <ul style="list-style-type: none"> -Street-level noise and visual screening (as 	Berm height needs to be more flexible if screening requirements are to consider more 8' above elevation at property boundaries.

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
	<p>slope; 2:1 slope between buffer zone and floor on all inactive site walls. Material from slope may be removed if site plan provides removal timeframe and verification material will be replaced within 30 days.</p> <p>2. Water source separation: No extraction below or within 4' of seasonal high-water table unless new section 21.29.057 conditions are met (Material Extraction within Water Table CLUP/see below); no off-site dewatering; no extraction within 100 feet of private well.</p> <p>3. Roads: Operations impacting KPB roads must comply with 14.40 and subject to remedies in 14.40.</p> <p>4. Dust control: Water or calcium chloride on haul</p>	<p>be replaced within 30 days. Planning Commission may waive where topography or placement of natural barriers make screening not feasible or unnecessary</p> <p>Water source separation: No material extraction within 100 horizontal feet of any water source existing prior to permit issuance. Counter permits require four-foot vertical separation from seasonal high water table. CLUPs require two-foot vertical separation from seasonal high water table. No dewatering unless PC grants exemption.</p> <p>Roads: Operations impacting KPB roads must comply with KPB 14.40.175 and subject to remedies in 14.40.</p>	<p>opposed to generic "noise and visual screening/impacts -Decrease from 50' vegetation to 32' -Increase from 6' to 8' minimum -Decision-maker may waive if lot line is directly adjacent to another material site</p> <p>Water source separation: -Operations within water table governed by new section, 21.29.057 (see below) and require Material Extraction within Water Table CLUP -On site water movement permitted if qualified independent civil engineer provides statement under seal that dewatering will not lower any known water systems and applicant posts bond for potential accrued</p>	<p>Clarify that street level means elevation at property boundaries.</p> <p>"Note adjacent means adjoining in this instance, not separated by a ROW"</p>

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
	<p>roads within boundaries of material site</p> <p>5. Hours of operation: 6 am-9m but decision-maker may waive for specific seasonal project. Waiver valid for six consecutive months.</p> <p>6. Groundwater elevation: Requires groundwater monitoring/one well 4' below proposed excavation per ten acres of excavated area.</p> <p>7. Setback: 250' from LOZD/school/senior center/child care facility/etc.</p> <p>8. Boundaries: Must stake buffers, ROWs, easements at visible intervals by professional land surveyor. Stakes must be placed prior to permit issuance.</p>	<p>Dust control: Water or calcium chloride on haul roads within boundaries of material site</p> <p>Hours of operation: Rock crushing equipment shall not be operated between 10 pm and 6 am.</p> <p>Boundaries: Staked at sequentially visible intervals where boundaries are within 300' of excavation perimeter. Verification and staking by professional land surveyor.</p> <p>Processing: See below.</p>	<p>damages in amount equivalent to replace each water well within 300-foot radius of site. Rebuttable presumption is each well is minimum of \$10,000.</p> <p>Roads/Dust control: Essentially the same.</p> <p>Hours of operation: For all extraction activities, 6 am to 9 pm but decision-maker can waive or adjust for specific seasonal project for period of six consecutive months.</p> <p>Groundwater elevation: Requires groundwater monitoring.</p> <p>Setback: 250' from LOZD/school/senior center/child care facility/etc.</p>	

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
	<p>9. Processing: Must comply with conditions in new section 21.29.055 (Earth Materials Processing CLUP/see below.)</p> <p>SIX DISCRETIONARY CONDITIONS</p> <p>1. Setbacks/Buffer Areas: Up to maximum of 100' if PC finds based on substantial evidence that increase is necessary for public health, welfare, and safety; potential for rolling berms instead.</p> <p>2. Road maintenance and repair: Permittee may be required to maintain/repair damaged public roads; requires consultation with RSA Director.</p> <p>3. Ingress/egress: Decision-maker may require driveway authorization.</p>		<p>Boundaries: Stakes must be placed prior to permit issuance rather than time of application.</p> <p>Processing: Requires compliance with new section 21.29.055 and Earth Materials Processing CLUP.</p> <p>Adds discretionary conditions: -Additional setbacks or rolling berms -Maintenance and repair of damaged public roads -Driveway authorization -Dust suppression on public ROWs -Surface water protections as set forth in 21.29.030(A)(8)(a) -Street-level screening as appropriate for surrounding area and</p>	

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
	<p>4. Dust suppression: On public ROWs when natural precipitation inadequate to suppress dust generated by material site traffic.</p> <p>5. Surface water protection: As specified in 21.29.030(A)(8)(a).</p> <p>6. Street-level screening: Street-level visual screening, noise mitigation, & lighting restrictions as appropriate for the surrounding area and in accordance with 21.29.040 standards set to protect against attractive nuisance issues.</p>		to protect against attractive nuisances	
KPB 21.29.055- Earth materials processing	<p>In addition to mandatory conditions in 21.29.050(A).</p> <p>A. Conditioning or processing equipment must be operated at least 300' from parcel boundaries. PC may waive or reduce distance</p>	<p>300' setback for conditioning or processing equipment.</p> <p>PC may waive or reduce in consideration of and in accordance with existing uses of adjacent property at the time.</p>	<p>New code section.</p> <p>PC may waive or reduce in consideration of and in accordance with existing uses of the "properties in the vicinity". Present code</p>	

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
	<p>requirement in consideration of and in accordance with existing uses of properties in the vicinity.</p> <p>B. Hours of operation for processing equipment between 8am and 7pm or as PC determines.</p> <p>PC may also grant exceptions (not to exceed 120 days) for:</p> <ul style="list-style-type: none"> -Emergencies -Good cause finding that increase serves public purpose and is not harmful to public health, safety, and general welfare <p>Applicant may request waiver (not to exceed six consecutive months) for specific seasonal project. PC must also find waiver is not harmful to the public health, safety and general welfare.</p>		<p>is "adjacent property".</p> <p>Processing equipment may only be operated between 8am and 7pm, may be increased for emergencies, to serve a public purpose or for specific, seasonal project.</p>	

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
KPB 21.29.057- Material extraction in water table	<p>In addition to mandatory conditions in 21.29.050(A).</p> <p>Dewatering prohibited (21.29.050(A)(2)(b)).</p> <p>A. Applicant must meet the following requirements prior to applying:</p> <ol style="list-style-type: none"> 1. Installation of sufficient monitoring wells and test pits to provide qualified professional with adequate information to characterize the entire property that will be permitted for excavation. 2. Under the supervision of a qualified professional, measurement of seasonal high-water table elevation, groundwater flow direction, hydraulic gradient and water table elevation. 	<p>Excavation within 300' horizontal feet of water source may be permitted based on:</p> <ul style="list-style-type: none"> -No negative impact to quantity of an aquifer serving existing water sources; -Minimum of three water monitoring tubes or well casings to determine flow direction, flow rate, and water elevation; and -Quarterly measurements of groundwater elevation, flow direction, and flow rate for at least four quarters prior to application. Tubes or wells must be kept in place for duration of excavation in water table. <p>-Operations shall not breach aquifer-confining layer.</p> <p>No extraction activities within 100 linear feet from waterbodies.</p>	<p>New code section.</p> <p>In addition to 21.29.050 conditions, sets forth additional requirements and conditions primarily to protect water quantity.</p> <p>Qualified professional must be able to characterize entire property permitted for excavation through sufficient monitoring wells and test pits.</p> <p>Qualified professional must supervise measurement of seasonal high-water table elevation, groundwater flow direction, hydraulic gradient and water table elevation.</p> <p>Based upon available data, interpretations of data and knowledge of groundwater</p>	

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
	<p>3. A qualified professional's report determining the potential adverse effects to groundwater and surface water body elevation and quality, surrounding water users and adjacent properties. Determination based upon available data, interpretations of data and knowledge of groundwater processes.</p> <p>4. Report must be submitted with CLUP application. Subsection lists what must be included in the report.</p> <p>B. Must also include:</p> <p>1. Description of proposed extent and depth of material extraction beneath seasonal high-water table.</p> <p>2. Report 21.29.057(A)(4) report, monitoring plan</p>	<p>Additional setback from lakes, rivers, anadromous streams and riparian wetlands may be required.</p> <p>-Permits may contain additional conditions addressing surface water diversion.</p>	<p>processes, qualified professional will report potential detrimental adverse effects to groundwater and surface water body elevation and quality, surrounding water users and adjacent properties. Must be submitted with application and also include extent and depth of extraction beneath seasonal high-water table, spill prevention/control/countermeasures plan.</p> <p>Conditions: -Implementation of monitoring and spill prevention/control/countermeasures plan; -Monthly measurement of groundwater and retention of groundwater data for two years after</p>	

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
	<p>and spill prevention/control/countermeasures plan.</p> <p>C. Conditions</p> <ol style="list-style-type: none"> 1. Implement monitoring plan 2. Implement spill prevention/control/countermeasures plan 3. Monthly measurement (during active extraction) of groundwater flow direction, hydraulic gradient and groundwater table elevation 4. Retain water elevation monitoring data for two years after completion of reclamation activities 5. Annual report including water table elevation monitoring data from qualified professional 6. Operations must not breach or extract material from a confined 		<p>completion of reclamation activities;</p> <ul style="list-style-type: none"> -Annual report from qualified professional; -No breach or extraction from a confined aquifer or a confining layer beneath a perched aquifer; and -Setbacks from existing drinking water sources. 	

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
	<p>aquifer or a confining layer beneath a perched aquifer. Subsection sets forth what must be done if there is a breach.</p> <p>7. Setbacks: -500' from nearest down-gradient drinking water source -350' from nearest cross-gradient drinking water source -200' from nearest up-gradient drinking water source -Do not apply to drinking water sources constructed after permit issued</p>			
KPB 21.29.060 -Reclamation plan	<p>A. Reclamation with site plan required. 5 year reclamation plan must be submitted with permit renewal request.</p> <p>B. Applicant may re-vegetate and reclaim all disturbed land upon exhausting the material site or time determined</p>	<p>A. Reclamation Plan required.</p> <p>B. Applicant shall vegetate and reclaim all disturbed land upon exhausting the material site or time determined by plan to leave land in a stable condition.</p>	<p>"May" rather than "shall" revegetate.</p> <p>Bonding required.</p> <p>Plan survives permit termination and must list total acreage to be reclaimed.</p>	

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
	<p>by plan to leave land in a stable condition. 2:1 slope must be maintained. \$750 per acre bond required unless state bond. Enforcement under KPB 21.50.</p> <p>C. Measures listed must be considered as part of every reclamation plan, 6 reclamation measures including ponding and protection against public nuisance.</p> <p>D. Plan must list total acreage to be reclaimed.</p> <p>E. Close-out – reclamation survives permit expiration, termination or revocation.</p>	<p>Reclamation must occur for area exceeding 5 acres prior to 5 year renewal or as PC specifies.</p> <p>C. Measures listed must be considered as part of every reclamation plan, 6 reclamation measures including ponding.</p> <p>D. Plan must list total acreage to be reclaimed each year, a list of equipment and a time schedule for reclamation measures.</p>	Protection against public nuisance.	
KPB 21.29.065 -Effect of permit denial	A. Applicant denied counter permit cannot reapply within same calendar year w/out new evidence or circumstances.	N/A	An applicant cannot immediately reapply for a permit after denial.	

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
	<p>B. Applicant denied CLUP permit cannot reapply within same calendar year w/out new evidence or circumstances.</p> <p>C. Applicant bears burden of proof.</p>			
KPB 21.29.070 -Permit renewal, modification and revocation	<p>A. Renewal by application every 5 years.</p> <p>B. Administrative approval if compliance with all conditions, no modification and no violation in prior 2 years.</p> <p>C. Public hearing on renewal required when there is a modification, permit violation, or as determined by planning director. Permit in compliance with no violations must be approved for renewal but the commission can add additional conditions where appropriate.</p>	<p>A. Must request permit extension every 5 years, 30 days prior to expiration.</p> <p>B. If no modification to operations or conditions proposed, a permit extension certificate may be issued by planning director.</p> <p>C. Extension may be denied if: (1) not in compliance with reclamation requirements; (2) non-compliance with permit conditions; (3) permit violation in last 2 years and still in non-compliance.</p>	<p>Renewal application not request in writing.</p> <p>Possibility for public hearing on renewal and additional discretionary conditions on renewal.</p>	

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
	<p>D. Modifications processed per KPB 21.29.030 -.050</p> <p>E. Renewal fee is same as original permit fee.</p> <p>F. Failure to apply for renewal = permit expiration.</p> <p>G. Permits revoked per KPB 21.50.</p>	<p>D. Modification processed per KPB 21.29.030-.050.</p> <p>E. No fee for permit extensions approved by planning director. The fee for a permit modification processed under KPB 21.29.070(D) requires original permit fee.</p> <p>F. Failure to apply for renewal = permit expiration.</p> <p>G. Permits revoked per KPB 21.50.</p>		
KPB 21.29.080 -Permit Close-out	<p>Requires permittee to request close-out of permit and verification of reclamation compliance.</p> <p>Bonding released at close-out.</p>	<p>Current code section is titled "Permit Termination" and provides for a termination document and verification of site reclamation.</p>	<p>Terminology change from permit "termination" to "close-out". Explicit that reclamation requirement survives permit expiration or revocation & that bonds are released upon close-out.</p>	

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
KPB 21.29.100 -Recordation	Provides for recordation of permits, etc. issued under KPB 21.29. Owner/operator responsible for cost.	Similar recordation requirement.	Owner/operator responsible for recording costs.	
KPB 21.29.110 -Violations	Violations governed by KPB 21.50.	Same but also has subsection (B) which provides for bonding if owner/operator has 3 violations within a 3-year period.	Violations governed by KPB 21.50 remain unchanged. No subsection B related to bonding requirement if there are 3 violations in 3 year period.	
KPB 21.29.115 -Permit transfers	Planning director approves or disapproves permit transfers. Permits do not run with the land.	N/A	New section of code.	
KPB 21.29.120 -Prior-existing uses	<p>A. Determination – mirrors process under KPB 21.44 (LOZD) for nonconforming-use determination</p> <p>B. Director provides notice of application and issues decision. Decision can be appealed to the Planning Commission.</p> <p>C. Establishes 365-day period for abandonment.</p>	<p>A. Requires determination that use as a material site commenced or operated after May 21, 1986 and prior to May 21, 1996. Limited subdivision rights. PEU runs with land.</p> <p>B. Must have applied to be registered as a PEU prior to January 1, 2001.</p>	<p>By 1/1/2026, PEUs required to come into compliance with:</p> <ul style="list-style-type: none"> -Reclamation requirements; -Hours of operation; & -Buffer area. <p>365 period of nonuse/ no operations = Abandonment</p>	Modify 365 days of no use to: 5years=abandonment

Code Section	ORD 2022-36	Current Code	Highlighted Changes	Potential amendments Planning Director
	<p>D. Prohibits increasing, intensifying or expanding or moving the use.</p> <p>E. Establishes standards to guide decision-making process.</p> <p>F. Requires PEU compliance with KPB 21.29 reclamation plan and hours of operation by January 1, 2026.</p> <p>G. Requires PEU compliance with code requirements for extraction within water table under KPB 21.29.057, except the water source separation requirements do not apply.</p>	<p>C. Abandonment if no operation as a material site between 5/21/1996 and 5/21/2011. Owner may protest finding of abandonment and may appeal decision to the Planning Commission.</p>		<p>F. ADD some flexibility to the acceptable reclamation plans for PEUs that can demonstrate hardship in achieving standards.</p> <p>i.e.: Topsoil requirements <i>Sites that have not planned for this may have undue hardship.</i></p>

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Mike Tupper, Assembly Member *MT*

DATE: October 13, 2022

SUBJECT: **Tupper Amendment #1** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.020(A), as follows:

21.29.020. Types of permits available.

A. Counter permit. A counter permit is required for earth material extraction which disturbs more than one acre and less than **2.5** cumulative unreclaimed acres. Material processing, screening, or crushing, and material extraction within four feet of the seasonal high-water table is prohibited under a counter permit. A counter permit is valid for a period of two years. Upon request from the applicant, the planning director, or designee, may grant one 12-month extension on a counter permit. Counter permits are approved by the planning director, or designees, and are not subject to notice requirements under KPB 21.25.060. The planning director's decision to approve or deny a counter permit may be appealed to the planning commission, which must act as the hearing officer, in accordance with KPB 21.20.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Mike Tupper, Assembly Member *MT*

DATE: October 13, 2022

SUBJECT: **Tupper Amendment #2** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.020(B), as follows:

21.29.020. Types of permits available.

B. Conditional land use permit. A conditional land use permit (CLUP) is required for the following types of earth material extraction or uses:

1. ~~[Earth Materials Extraction CLUP. An Earth Materials Extraction CLUP is required for any material extraction which disturbs 10 or more cumulative acres. Material processing, screening or crushing, or extraction within four feet of the seasonal high-water table is prohibited under this permit. The standard conditions set out in KPB 21.29.050 are applicable to this type of CLUP.]~~ Type 1 CLUP. Earth Materials Extraction with Restricted Processing CLUP. An Earth Materials Extraction with Restricted Processing CLUP is required for any material extraction which disturbs 2.5 or more cumulative acres. Processing is restricted to one portable two-deck screen capable of screening or classifying material, limited to a maximum of 500 cubic yards per day. Extraction within four feet of the seasonal high-water table is prohibited under this permit. The conditions set out in KPB 21.29.050 and .055 are applicable to this type of CLUP.

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2. ~~[Earth materials processing] Type 2 CLUP. A [n-Earth Materials Processing] Type 2~~ CLUP is required for any operation that includes earth materials processing, screening or crushing activities. The conditions set forth in KPB 21.29.050 plus the conditions set out in KPB 21.29.055 for material extraction processing area applicable to this type of CLUP.
3. ~~[Earth Materials Extraction Within Water Table] A Type 3~~ CLUP. A ~~[n-Earth Materials Extraction Within Water Table] Type 3~~ CLUP is required for material extraction and operations of any size within four feet of the seasonal high-water table. The conditions set forth in KPB 21.29.050 plus the requirements and conditions set forth in KPB 21.29.057 for material extraction within four feet of the seasonal high-water table are applicable to this type of CLUP.

An applicant may request a CLUP that includes one, two or all three of the above permit types. A CLUP is valid for a period of five years. A CLUP may be renewed in accordance with KPB 21.29.070. The provisions of KPB Chapter 21.25 are applicable to material site CLUPs and the provisions of KPB 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Mike Tupper, Assembly Member *MT*

DATE: October 13, 2022

SUBJECT: **Tupper Amendment #3** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.040, as follows:

21.29.040. Standards for sand, gravel or material sites.

A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, **visual**, and other impacts of earth materials extraction to properties in the vicinity through setbacks and buffer zones. Prior to granting a counter permit or a conditional land use permit under this chapter, the planning director or planning commission, as applicable, must make the following findings:

1. That the use is not inconsistent with the applicable comprehensive plan;
2. That the use will not be harmful to the public's health, safety, and general welfare;
3. That sufficient setbacks, buffer zones, and other safeguards are being provided consistent with this chapter; **[and]**
4. That the use provides for a reclamation plan consistent with this chapter~~[-]~~ ; **and**

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5. That the use will preserve the value and character of the surrounding area.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Mike Tupper, Assembly Member *MT*

DATE: October 13, 2022

SUBJECT: **Tupper Amendment #4** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.050(A)(1), as follows:

21.29.050. Permit conditions applicable to all permits.

A. The planning commission or planning director, as applicable, must impose the following mandatory conditions prior to approval of a permit under this chapter:

1. Buffer Zone.

a. ~~[A buffer area of 32 feet must be established between the area of excavation and the parcel boundaries. The buffer area may include one or more of the following: undisturbed natural vegetation that provides sufficient noise and street-level visual screening; an eight-foot earthen berm with a 2:1 slope; or a minimum eight-foot fence.]~~
The buffer zone for counter permits and CLUPs shall be of sufficient height, density, and setback to provide visual and noise screening of the proposed use to parcels in the vicinity as deemed appropriate by the planning commission or planning director. Buffer requirements shall be made in consideration of and in accordance with existing uses of properties in the vicinity at the time of approval of the permit. There is no requirement to buffer the material site from uses which commence after the approval of the permit.

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- b. A buffer zone shall be established between the area of excavation and the parcel boundaries. The buffer zone for a Counter Permit and a Type 1 CLUP shall consist of one or any combination of the following: Fifty feet of natural vegetation, a minimum six-foot fence, a minimum six-foot earthen berm with a minimum 2:1 slope. The buffer zone for a Type 2 or a Type 3 CLUP shall consist of one of the following: Minimum eight-foot fence, or a minimum fifty feet of natural vegetation and a minimum ten-foot earthen berm with a minimum 2:1 slope.**
- [b.]c. A 2:1 slope must be maintained between the buffer zone and excavation floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if the site plan provides the timeframe for removal and verification that suitable, stabilizing material will replace the removed material within 30 days of removal;**
- [c.]d. Where an easement exists, a buffer must not overlap the easement, unless otherwise conditioned by the planning commission or planning director, as applicable; and**
- [d.]e. This requirement may ~~[only]~~ be waived upon a finding by the planning director or planning commission, as applicable, that a lot line where the waiver is requested is ~~[directly adjacent to]~~ adjoining another material site or industrial use.**
- f. Geographic Information System (GIS), photogrammetry, or LIDAR may be utilized in the design of the buffer zone when differing elevations exist between the proposed site and properties in the vicinity. Using this technology, line of sight profile drawings from the uppermost inhabitable level of existing properties located in the vicinity may be utilized in the determination of sufficiency of the buffer zone.**
- g. At its discretion the planning director or planning commission (as applicable) may waive or reduce buffer requirements when screening proves to be not necessary or not feasible.**

Your consideration of these amendments is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Mike Tupper, Assembly Member *MT*

DATE: October 13, 2022

SUBJECT: **Tupper Amendment #5** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.050(B), as follows:

21.29.050. Permit conditions applicable to all permits.

B. Discretionary Conditions. The planning commission or planning director, as applicable, may set conditions of approval for issuance of a counter permit or CLUP, as appropriate for the area in which the development is sited, for the following:

1. *Setbacks/Buffer Area.*

a. The mandatory buffer area condition in subsection (A) above may be increased ~~[, up to a maximum of 100 feet]~~ between the area of excavation and the parcel boundaries if the planning commission finds based on substantial evidence presented that increasing the buffer area is necessary for the public health, welfare and safety of the ~~[surrounding community]~~ vicinity;

i. ~~[Upon request of the applicant, in lieu of any additional buffer area under this subsection designed to separate the use of material site activities from neighboring parcel boundaries, an eight-foot-high berm above the preexisting elevation may be constructed, prior to excavation, around the excavation area. If the excavation site area expands, the berm may move toward the permitted~~

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~~boundary until such limits of the permitted area are exhausted. The berm must be maintained at eight-foot height while permitted activity is occurring.]~~ The planning commission may require that an earthen berm with a minimum 2:1 slope of the height determined by the planning commission under KPB 21.29.050 shall be constructed above preexisting elevation around the excavation area. As the excavation area expands, the berm shall be moved toward negatively-impacted properties in the vicinity until such limits of the permitted area are exhausted. The berm must be maintained at the predetermined height while permitted activity is occurring. This earthen berm may be in addition to other buffer zone conditions imposed by the planning commission, or required by KPB 21.29.050.

- b. All other requirements of KPB 21.29.050(A)(1) apply; and
 - c. When a buffer area has been denuded **less than a year** prior to review of the application by the planning commission or planning director revegetation may be required.
2. Road ~~[maintenance and]~~ repair. In consultation with the Road Service Area Director, ~~[road maintenance or]~~ repair of public right-of-way haul routes may be required of the permittee.
 3. Ingress and egress. The planning commission or planning director may ~~[determine]~~ suggest the points of ingress and egress for the material site. The permittee is not required to construct haul routes outside the parcel boundaries of the material site. Driveway authorization must be acquired, from either the state through an "Approval to Construct" or the borough road service area, as appropriate, prior to issuance of a material site permit when accessing a public right-of-way.
 4. Dust suppression. Dust suppression may be required when natural precipitation is not adequate to suppress the dust generated by the material site traffic on ~~[public right-of-way haul routes]~~ haul routes within permit boundaries.
 5. Surface water protection. Use of surface water protection measures as specified in KPB 21.29.030(A)(8)(a).

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~~**6. Street-level screening. Street-level visual screening, noise mitigation, and lighting restrictions as appropriate for the surrounding area and in accordance with the standards set forth in KPB 21.29.040.]**~~

7. Noise suppression. At the discretion of the planning commission or planning director, as applicable, multi-frequency (white noise) back-up alarms may be required on all equipment and vehicular traffic on site as a condition to help meet the noise impact standard in accordance with and in consideration of existing uses in the vicinity.

Your consideration of these amendments is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Mike Tupper, Assembly Member *MT*

DATE: October 13, 2022

SUBJECT: **Tupper Amendment #6** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.050 by adding KPB 21.29.050(C), as follows:

21.29.050. Permit conditions applicable to all permits.

C. Volunteered Permit Conditions. Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission or planning director, as applicable. Such conditions must be consistent with the standards set forth in KPB 21.29.040. Planning commission approval of such conditions shall be contingent upon a finding that the condition will be in the best interest of the borough and surrounding property owners. Volunteered permit conditions apply to the subject parcel and operation, regardless of a change in ownership. A change in volunteered conditions may be proposed at permit renewal.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

Thru: Mike Navarre, Mayor *MN*
Max Best, Chief of Staff *MB*

FROM: Robert Ruffner, Planning Director *RR*

DATE: October 13, 2022

SUBJECT: **Administrative Amendment #1** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.010, as follows:

21.29.010. Applicability.

- A. This chapter applies to all private and public lands in the borough except where the use is prohibited by ordinance within a local option zoning district or exempt under KPB 21.29.015.
- B. This chapter does not apply within the incorporated cities of the Kenai Peninsula Borough.
- C. Earth material extraction within 300 linear feet from riparian wetlands and the seasonal high-water level of naturally occurring open water bodies, such as a lake, pond, river, stream, or ocean, is prohibited. This prohibition does not apply to man-made water bodies or isolated ponds of less than one acre on private property.
- D. All operations must be conducted in accordance with the current publication of the State of Alaska, Alaska DEC User's Manual Best Management Practices for Gravel/Rock Aggregate Extraction Projects. In

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October 13, 2022

Re: Administrative Amendment #1

the event a provision of this chapter conflicts with the State of Alaska's manual, this chapter controls.

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

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

Thru: Mike Navarre, Mayor *MN*
Max Best, Chief of Staff *MB*

FROM: Robert Ruffner, Planning Director *RR*

DATE: October 13, 2022

SUBJECT: **Administrative Amendment #2** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.015, as follows:

21.29.015. Material extraction exempt from obtaining a permit.

- A. Material extraction which disturbs an area of less than one acre that is not in a mapped flood plain or subject to 21.29.010(B), does not enter the water table, and does not cross property boundaries, does not require a permit. ~~[There will be no excavation within 32 feet of a lot line.] An owner or operator exempt under this subsection must register with the borough on a form provided by the planning department and must comply with KPB 21.29.010(C).~~
- B. Material extraction taking place on dewatered bars within the confines of the Snow River and the streams within the Seward-Bear Creek Flood Service Area do not require a permit, however, operators subject to this exemption must provide the planning department with the information required by KPB 21.29.030(A)(1), (2), (6), (7) and a current flood plain development permit prior to beginning operations.

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October 13, 2022

Re: Administrative Amendment #2

C. A prior existing use that is in full compliance with all provisions of [under] KPB 21.29.120 does not require a material extraction permit. [Notwithstanding the foregoing, on or before January 1, 2026, a prior existing use under KPB 21.29.120 must: (1) provide a reclamation plan under KPB 21.29.060 that is approved by the planning director or designee; and (2) come into compliance with the buffer zone requirements under KPB 21.29.050(A)(1).]

D. A 300-foot buffer from riparian and riverine wetlands must be maintained.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

Thru: Mike Navarre, Mayor *MN*
Max Best, Chief of Staff *MB*

FROM: Robert Ruffner, Planning Director *RR*

DATE: October 13, 2022

SUBJECT: **Administrative Amendment #3** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.030, as follows:

21.29.030. Application procedure.

A. In order to obtain a counter permit or CLUP under this chapter, an applicant must first complete and submit to the borough planning department a permit application, along with the fee listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. The planning director may determine that certain contiguous parcels are eligible for a single permit. The application must include the following items, without which the application will be deemed incomplete:

1. Legal description of the parcel, KPB tax parcel ID number, and identification of whether the permit is for the entire parcel, or a specific location within a parcel;
2. Expected life span of the material site;
3. A buffer plan consistent with KPB 21.29.050(A)(1);

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October 13, 2022

Re: Administrative Amendment #3

4. Reclamation plan consistent with KPB 21.29.060;
5. The depth of excavation;
6. Type of material to be extracted;
7. A site map professional surveyor licensed in the State of Alaska to include the following:
 - a. ~~Location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase~~ Location and elevation of test holes, and depth of groundwater, based on the seasonal high-water table. At least one test hole per ten acres of excavated area is required to be dug. The test holes must be at least four feet below the proposed lowest elevation of excavation depth;
 - b. ~~Proposed buffers consistent with KPB 21.29.050(A)(1), or alternate buffer plan~~ Location of all private wells of adjacent property owners within 300 feet of the proposed parcel boundary;
 - c. Identification of all encumbrances, including but not limited to, easements;
 - d. Points of ingress and egress. Driveway permits must be acquired from either the state or borough as appropriate prior to submitting the application;
 - ~~e. Anticipated haul routes, contingent on approval from the governmental agency with regulatory jurisdiction over the road;~~
 - ~~f.] e. Location of any processing areas on the parcel, if applicable~~ Identify and label all drainage features entering and exiting property;
 - ~~g.] f. Location of any water body on the parcel, including the location of any riparian wetland as determined by best available data;~~
 - g. North arrow;
 - ~~h.] h. The scale to which the site plan is drawn;~~
 - ~~i.] i. Preparer's name and date; and~~
 - ~~i.] j. Field verification must include staking the boundary of the parcel at sequentially visible intervals. The planning director may grant an exemption in writing to the staking requirements if the parcel boundaries are obvious or staking is unnecessary.~~
8. A site plan, prepared by a qualified independent civil engineer licensed and active in the State of Alaska to include the following:

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Re: Administrative Amendment #3

- a. Surface water protection measures, if any, for adjacent properties, including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence;
 - b. ~~Location and elevation of test holes, and depth of groundwater, based on the seasonal high-water table. At least one test hole per ten acres of excavated area is required to be dug. The test holes must be at least four feet below the proposed lowest elevation of excavation depth;~~ Location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;
 - c. ~~Location of all private wells of adjacent property owners within 300 feet of the proposed parcel boundary;~~ Proposed buffers consistent with KPB 21.29.050(A)(1), or alternate buffer plan; and
 - ~~d. Location of any water body on the parcel, including the location of any riparian wetland as determined by best available data.;~~
 - d. Anticipated haul routes, contingent on approval from the governmental agency with regulatory jurisdiction over the road; and
 - e. Location of any processing areas on the parcel, if applicable.
9. A statement by the operator of the site that the requirements of KPB 21.29.045 have been satisfied.
- B. In order to aid the planning commission or planning director's decision-making process, the planning director may provide vicinity, aerial, land use, and ownership maps for each application and may include additional information.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

Thru: Mike Navarre, Mayor *MN*
Max Best, Chief of Staff *MB*

FROM: Robert Ruffner, Planning Director *RR*

DATE: October 13, 2022

SUBJECT: **Administrative Amendment #4** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.045, as follows:

21.29.045. Required compliance with State and Federal laws

- A. All applicants for permits for earth materials extraction are required to demonstrate compliance with state and federal law. Prior to final approval of the permit, the applicant or agent must provide written documentation from the permitting agency of compliance with the following:
 1. ~~[Mining license as required by the Alaska State Department of Revenue, pursuant to AS 43.65]~~ An Alaska State Department of Natural Resources (ADNR) temporary water use authorization if the Applicant intends for water to leave the site. If water leaves the site, the applicant must adhere to the provisions of the ADNR temporary water use authorization;
 2. Mining permit as required by ~~[the Alaska State Department of Natural Resources (ADNR)]~~ if extraction activities are to take place on state land;
 3. Reclamation plan as required by ADNR, pursuant to A.S. 27.19;

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October 13, 2022

Re: Administrative Amendment #4

4. Notice of intent for construction general permit or multi-sector general permit and storm water pollution prevention plan, and other associated permits or plans required by the Department of Environmental Conservation (DEC) pursuant to the Alaska Pollutant Discharge Elimination System (APDES) requirements;
 5. United States Army Corps of Engineers (USACE) permit pursuant to Section 404 of the Clean Water Act, 33 U.S.C. 1344, if material extraction activity requires USACE approval; and
 6. Any other applicable state or federal agency with regulatory authority of mining activities or earth materials extraction.
- B. In addition to the requirements in subsection (A) of this section, all activity must be conducted in compliance with state or federal regulations governing the items listed below. Written documentation of compliance with these regulations is not required. Complaints received by the borough of violations of requirements within this section will be forwarded to the appropriate agency for enforcement, this includes but is not limited to:
1. Air quality.
 - a. EPA air quality control permit is required for asphalt plants and crushers;
 - b. ADNR burn permit is required for brush or stump burning. Combustibles must be stockpiled separate from noncombustibles, and burn permit requirements must be followed; and
 - c. ADEC dust control and air quality regulations pertaining to burning activities must be followed.
 2. Water quality. EPA or ADEC regulations controlling spills, spill reporting, storage and disposal of oil, anti-freeze and hydrocarbons.
 3. Hazardous Materials. Use and storage of hazardous materials, waste and explosives.
 - a. EPA regulations controlling use of hazardous materials must be followed; and
 - b. U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives regulations must be followed when storing or using explosives.

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October 13, 2022
Re: Administrative Amendment #4

C. Failure to comply with any of the requirements in subsections (A) and (B) of this section is a violation of the permit, and is subject to enforcement pursuant to KPB Chapter 21.50.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

Thru: Mike Navarre, Mayor *MN*
Max Best, Chief of Staff *MB*

FROM: Robert Ruffner, Planning Director *RR*

DATE: October 13, 2022

SUBJECT: **Administrative Amendment #5** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.050, as follows:

21.29.050. Permit conditions applicable to all permits.

A. The planning commission or planning director, as applicable, must impose the following mandatory conditions prior to approval of a permit under this chapter:

1. *Buffer Zone.*

- a. A buffer area of 32 feet must be established between the area of excavation and the parcel boundaries. The buffer area may include one or more of the following: undisturbed natural vegetation that provides sufficient noise and street-level visual screening; an eight-foot earthen berm with a 2:1 slope; or a minimum eight-foot fence. **Berms should not alter natural drainage features;**
- b. A 2:1 slope must be maintained between the buffer zone and excavation floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if the site plan provides

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October 13, 2022
Re: Administrative Amendment #5

- the timeframe for removal and verification that suitable, stabilizing material will replace the removed material within 30 days of removal;
- c. Where an easement exists, a buffer must not overlap the easement, unless otherwise conditioned by the planning commission or planning director, as applicable; and
- d. This requirement may only be waived upon a finding by the planning director or planning commission, as applicable, that a lot line where the waiver is requested is directly adjacent to another material site.

2. Water source separation.

- a. Material extraction below or within four feet of the seasonal high-water table is prohibited unless the applicant is issued a CLUP Material Extraction Within Water Table Permit and the requirements and conditions set forth in KPB 21.29.057 are satisfied;
- b. Dewatering either by pumping, ditching or some other form of draining that removes water from the site or causes water to leave the site is prohibited;
- c. All permits shall be issued with a condition which prohibits any material extraction within 100 linear feet of any private well or water source existing prior to original permit issuance; and
- d. On site movement of water may be permitted pursuant to KPB 21.29.057 and if: (i) the operator provides a statement under seal and supporting data from a qualified independent civil engineer licensed and active in the State of Alaska that the dewatering will not lower any known water systems; and (ii) the applicant posts a bond for liability for potential accrued damages in an amount equivalent to the cost to replace each water wells within a 300-foot radius of the site. The rebuttable presumption is that the cost per well is a minimum of \$10,000.

3. Roads. Operations that impact borough roads must be conducted in accordance with the requirements and remedies of KPB Chapter 14.40.

4. Dust control. Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.

5. Hours of operation. Material extraction activities, including equipment operation, may only occur between the hours of 6:00 a.m. and 9:00 p.m. Alaska Standard Time (AKST), or as determined by the planning

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October 13, 2022
Re: Administrative Amendment #5

commission or planning director, as applicable, to be appropriate based on information presented.

- a. *Seasonal, project-based waiver.* An applicant may request a seasonal, project-based waiver of the hours of operation requirements under this subsection. A waiver granted under this subsection is valid for six consecutive calendar months. To grant a waiver under this subsection, the commission must find that the waiver is necessary for a specific project, and that the waiver is not harmful to the public health, safety, and general welfare of borough residents.
6. *Groundwater elevation.* All material sites must maintain one monitoring well four feet below the proposed excavation per ten acres of excavated area.
7. *Setback.* Material site excavation areas must be 250 feet from the property boundaries of any **[local option zoning district,]** existing public school ground, private school ground, college campus, childcare facility, multi-purpose senior center, assisted living home, and licensed health care facility. If overlapping, the buffer areas of the excavation must be in addition to the 250-foot setback.
8. *Permit boundaries.* The buffers and any easements or right-of-way abutting the proposed permit area must be staked at sequentially visible intervals. Field verification and staking will require the services of a professional land surveyor. Stakes must be in place prior to issuance of the permit.
9. *Processing.* Material extraction of any size that includes processing, screening, or crushing activities is prohibited unless the applicant is issued an Earth Materials Processing CLUP and the conditions set forth in KPB 21.29.055 are imposed on the permit.
- B. *Discretionary Conditions.* The planning commission or planning director, as applicable, may set conditions of approval for issuance of a counter permit or CLUP, as appropriate for the area in which the development is sited, for the following:
 1. *Setbacks/Buffer Area.*

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October 13, 2022

Re: Administrative Amendment #5

- a. The mandatory buffer area condition in subsection (A) above may be increased, up to a maximum of 100 feet between the area of excavation and the parcel boundaries, if the planning commission finds based on substantial evidence presented that increasing the buffer area is necessary for the public health, welfare and safety of the surrounding community;
- i. Upon request of the applicant, in lieu of any additional buffer area under this subsection designed to separate the use of material site activities from neighboring parcel boundaries, an eight-foot-high berm above the preexisting elevation may be constructed, prior to excavation, around the excavation area. If the excavation site area expands, the berm may move toward the permitted boundary until such limits of the permitted area are exhausted. The berm must be maintained at eight-foot height while permitted activity is occurring.
- b. All other requirements of KPB 21.29.050(A)(1) apply; and
- c. When a buffer area has been denuded prior to review of the application by the planning commission or planning director revegetation may be required.
2. Road maintenance and repair. In consultation with the Road Service Area Director, road maintenance or repair of public right-of-way haul routes may be required of the permittee.
3. Ingress and egress. The planning commission or planning director may determine the points of ingress and egress for the material site. The permittee is not required to construct haul routes outside the parcel boundaries of the material site. Driveway authorization must be acquired, from either the state through an "Approval to Construct" or the borough road service area, as appropriate, prior to issuance of a material site permit when accessing a public right-of-way.
4. Dust suppression. Dust suppression may be required when natural precipitation is not adequate to suppress the dust generated by the material site traffic on public right-of-way haul routes.
5. Surface water protection. Use of surface water protection measures as specified in KPB 21.29.030(A)(8)(a).

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October 13, 2022

Re: Administrative Amendment #5

6. *Street-level screening.* Street-level visual screening, noise mitigation, and lighting restrictions as appropriate for the surrounding area and in accordance with the standards set forth in KPB 21.29.040.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

Thru: Mike Navarre, Mayor *MN*
Max Best, Chief of Staff *MB*

FROM: Robert Ruffner, Planning Director *RR*

DATE: October 13, 2022

SUBJECT: **Administrative Amendment #6** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.055, as follows:

21.29.055. Earth materials processing.

In accordance with KPB 21.29.020(B)(2), a n Earth Materials Processing CLUP is required for earth materials processing activities, such as material screening or crushing. Prior to issuing a permit under this subsection, the planning commission must impose the mandatory conditions set forth in KPB 21.29.050(A) and discretionary conditions as the planning commission deems appropriate. In addition, the following requirements and permit conditions specific to an Earth Materials Processing CLUP apply:

A. *Setback*. In the case of a CLUP, any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries. At its discretion, the planning commission may waive the 300-foot processing distance requirement, or allow a lesser distance in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.

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Re: Administrative Amendment #6

B. Hours of operation.

1. Processing equipment may only be operated between 8:00 a.m. and 7:00 p.m. AKST, or as determined by the planning commission.
2. The planning commission may grant exceptions to increase the hours of operation and processing in the event of an emergency or a good-cause finding that the increased hours of operation serve a public purpose and are not harmful to the public health, safety, and general welfare of borough residents. Such an exception shall not exceed 120 days.
2. Seasonal, project-based waiver. An applicant may request a seasonal, project-based waiver of the hours of operation requirements under this section. A waiver granted under this subsection is valid for six consecutive calendar months. To grant a waiver under this subsection, the commission must find that the waiver is necessary for a specific project, and that the waiver is not harmful to the public health, safety, and general welfare of borough residents.

C. Onsite retention of settling pond water is allowed, including for the washing of materials, provided that the settling pond is not created by channeling or redirecting natural water bodies or natural drainage. However, if the settling pond is within four feet of the seasonal high water table, then an earth materials extraction within water table CLUP under KPB 21.29.057 is also required.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

Thru: Mike Navarre, Mayor *MN*
Max Best, Chief of Staff *MB*

FROM: Robert Ruffner, Planning Director *RR*

DATE: October 13, 2022

SUBJECT: **Administrative Amendment #7** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.060, as follows:

21.29.060. Reclamation plan.

- A. All material site permit applications require an overall reclamation plan. A site plan for reclamation must be required including a scaled drawing with finished contours. A five-year reclamation plan must be submitted with a permit renewal request.
- B. The applicant may revegetate and must reclaim all disturbed land within the time period approved with the reclamation plan so as to leave the land in a stable condition wherein a 2:1 slope is maintained. Any revegetation must be done with a non-invasive plant species. Bonding must be required at \$750.00 per acre for all acreage included in the current five-year reclamation plan. In the alternative, the planning director may accept a qualified professional's estimate for determining the amount of bonding. If the applicant is bonded with the state, the borough's bonding requirement is waived. Compliance with reclamation plans will be enforced under KPB 21.50.

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Re: Administrative Amendment #7

C. The following measures must be considered in the preparation, approval and implementation of the reclamation plan, although not all will be applicable to every reclamation plan:

1. The area will be backfilled, graded and re-contoured using strippings, overburden, and topsoil so that it will be stabilized to a condition that will allow for revegetation under KPB 21.29.060(B).
2. The topsoil used for reclamation must be reasonably free from roots, clods, sticks, and branches greater than 3 inches in diameter. Areas having slopes greater than 2:1 require special consideration and design for stabilization by an independent, professional civil engineer licensed and active in the State of Alaska.
3. Exploration trenches or pits will be backfilled. Brush piles and unwanted vegetation must be removed from the site, buried or burned. Topsoil and other organics will be spread on the backfilled surface to inhibit erosion and promote natural revegetation.
4. Topsoil mine operations must ensure a minimum of four inches of suitable growing medium is left or replaced on the site upon completion of the reclamation activity (unless otherwise authorized).
5. Ponding may be used as a reclamation method as approved by the planning commission.
6. The area will be reclaimed in a manner that screens the site from becoming a public attractive nuisance and in a manner that is not harmful to public health, safety, and general welfare.

D. The five-year reclamation plan must describe the total acreage to be reclaimed relative to the total excavation plan. **The five-year reclamation plan must also identify any drainage features which enter or exit the property.**

E. Close-out. Reclamation plans and requirements survive expiration, termination, or revocation of a permit granted under this chapter. In order to close-out a permit, the planning director must be provided adequate proof that reclamation has been conducted in accordance with the reclamation plan. If a permit expires, terminates, or is revoked prior to permit close-out, the remedies under KPB 21.50 apply and the planning director

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October 13, 2022

Re: Administrative Amendment #7

may hold applicable fines and remedies in abeyance upon a finding that
reclamation is actively ongoing.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

Thru: Mike Navarre, Mayor *MN*
Max Best, Chief of Staff *MB*

FROM: Robert Ruffner, Planning Director *RR*

DATE: October 13, 2022

SUBJECT: **Administrative Amendment #8** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.120, as follows:

21.29.120. Prior-existing uses.

- A. Determination. Prior-existing uses (PEU) in effect on October 1, 2022 are allowed to continue operation subject to the requirements of this section. The burden of proof that the prior-existing use existed before October 1, 2022 is on the applicant. If the planning director denies prior-existing use status, the applicant must comply with the permit requirements of this chapter. Failure to apply for a prior-existing use determination by January 1, 2024 will result in termination of all rights to continued operation as a nonconforming use and require full compliance with all provisions of this chapter.
- B. Decision. The planning director will give notice of the application for a prior-existing use determination to property owners within 100 feet of the subject parcel boundaries. The notice shall include a summary of the application, a vicinity map, and a deadline for submitting written comments or evidence regarding the existence of the use prior to the planning director issuing a decision. The planning director will issue a decision regarding the prior-existing use status based on the written application, written

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Re: Administrative Amendment #8

comments, or evidence regarding the existence of the use. **Based on that information, the planning director will classify the PEU based upon the types defined in KPB 21.29.020 and will provide a written description of the existing operations. The planning director's decision will also set forth the reclamation plan as required by subsection (F) below.** The planning director's decision may be appealed by the applicant or affected property owners to the planning commission within 15 days of distribution of the decision.

- C. *Discontinuance.* Any prior-existing use which has ceased by discontinuance for an uninterrupted period of ~~[365 days]~~ **five (5) years** must thereafter conform to the permit requirements of this chapter. Lack of intent to cease use or abandon the use does not suspend the 365-day time period. If a prior-existing use is discontinued or abandoned, it may not be recommenced.
- D. *Expansion Prohibited.* A prior-existing use may not be increased, intensified, or expanded or moved to any other part of the lot, tract, or parcel it occupies after October 1, 2022, nor may the prior-existing use be moved to a parcel which is subject to this chapter. If a parcel is subdivided, the pre-existing use may not be expanded to any lot, tract, or parcel where material extraction or processing had not previously occurred or was not lawfully established in accordance with this section. **If a PEU material site has been exhausted as determined by the planning director, it cannot be used for earth materials processing without an earth materials processing CLUP.**
- E. *Standards.* In order to qualify as a legal prior-existing use, the use must meet the following standards, on or before October 1, 2022:
1. A use must have been legally established under prior law.
 2. A use must be operational in accordance with the type of use.
- F. In accordance with 21.29.015, on or before January 1, 2026, all legal prior-existing-use extraction operations shall comply with KPB 21.29.060 (reclamation plan) and applicable hours of operation requirements under this chapter. **The planning director may waive or modify any or all of the reclamation plan requirements set forth in KPB 21.29.060 as appropriate.**
- G. Materials extraction operations with legal prior-existing use status which extract material below or within four feet of the seasonal highwater table shall conduct operations in accordance with the requirements outlined in KPB 21.29.057, except that KPB 21.29.057(C)(7) will not apply.

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Re: Administrative Amendment #8

H. For the purposes of this section, "increased, intensified, or expanded" means: (1) enlarging the area of excavation **beyond the classification set forth in the planning director's decision or beyond the written description of existing operations as set forth by the planning director under subsection (B) above;** (2) increasing the depth of excavation to go within four feet of the seasonal high-water table; or (3) adding a use that was not in existence as of the date of the PEU status determination, to include adding earth materials processing to a use that did not previously include processing.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

Thru: Mike Navarre, Mayor *MN*
Max Best, Chief of Staff *MB*

FROM: Robert Ruffner, Planning Director *RR*

DATE: October 13, 2022

SUBJECT: **Administrative Amendment #9** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

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

➤ Amend KPB 21.29.130, as follows:

21.29.130. Definitions.

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

1. Abandon means to cease or discontinue a use without intent to resume, but excluding short-term interruptions to use or activity during periods of remodeling, maintaining, or otherwise improving or rearranging a facility or during normal periods of vacation or seasonal closure. An "intent to resume" can be shown through continuous operation of a portion of the facility, maintenance of utilities, or outside proof of continuance, e.g., bills of lading or delivery records. Abandonment also means the cessation of use, regardless of voluntariness, for a specified period of time.
2. Aggrieved Party means a party of record adversely impacted by the decision of the hearing officer who participated before the hearing officer either by written or oral presentation.

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Re: Administrative Amendment #9

3. Aquifer means a subsurface formation that contains sufficient water-saturated permeable material to yield economical quantities of water to wells and springs.
4. Aquifer-confining layer means that layer of relatively impermeable soil below an aquifer, typically clay, which confines water.
5. Commercial means any provision of services, sale of goods, or use operated for production of income whether or not income is derived, including sales, barter, rental, or trade of goods and services.
6. Conditioning or processing material means a value-added process including batch plants, asphalt plants, screening, **blasting**, washing, and crushing by use of machinery. **It does not include stripping and segregation with excavation equipment.**
7. Exhausted means that all material of a commercial quality in a sand, gravel, or material site has been removed.
8. Groundwater means, in the broadest sense, all subsurface water, more commonly that part of the subsurface water in the saturated zone.
9. Person shall include any individual, firm, partnership, association, corporation, cooperative, or state or local government.
10. Quarter or Quarterly means January through March, April through June, July through September, or October through December;
11. Sand, gravel or material site means an area used for extracting, quarrying, or conditioning gravel or substances from the ground that are not subject to permits through the state location (mining claim) system (e.g., gold, silver, and other metals), nor energy minerals including but not limited to coal, oil, and gas.
12. Seasonal high groundwater table means the highest level to which the groundwater rises on an annual basis.
13. Stable condition means the rehabilitation, where feasible, of the physical environment of the site to a condition that allows for the reestablishment of renewable resources on the site within a reasonable period of time by natural processes.
14. Surface water means water on the earth's surface exposed to the atmosphere such as rivers, lakes, and creeks.
15. Topsoil means material suitable for vegetative growth.
16. Waterbody means any lake, pond, stream, riparian wetland, or groundwater into which stormwater runoff is directed.

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17. Water source means a well, spring or other similar source that provides water for human consumptive use.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Members, Kenai Peninsula Borough Assembly

FROM: Brent Johnson, Assembly President BJ
Lane Chesley, Assembly Member (B)

DATE: July 28, 2022

RE: Ordinance 2022-36, Amending KPB Chapter 21.25 and KPB Chapter 21.29 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

In 2021, the Borough administration brought the issue of land use conflicts related to earth material extraction and processing sites back before the Assembly and requested Assembly consideration and action to address the regulatory process related to conditional land use permits issued under KPB Chapter 21.29, Material sites.

After receiving public comment on Ordinance 2021-41, the Assembly ultimately tabled the ordinance and a related substitute ordinance. The Assembly formed a committee of the whole to review the permitting process with a fresh perspective.

This ordinance will repeal and re-enact KPB Chapter 21.29. This ordinance shifts the conditional land use permit (CLUP) process for earth materials extraction and processing away from a "one size fits all" approach and instead establish a multi-permit structure wherein activities related to materials processing and extraction within the water table require heightened protections for the public good but activities of lesser impact to surrounding properties do not require the same level of protections. This ordinance maintains important mandatory conditions found in current code that are necessary to protect the public health, safety, and general welfare of Borough residents. This ordinance also presents a permitting system that will provide for more flexibility to meet the needs of the particular application through discretionary conditions that may only apply when appropriate under the circumstances.

Your consideration of the ordinance is appreciated.

Kenai Peninsula Borough

Legal Department

MEMORANDUM

TO: Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly
Blair Martin, Planning Commission Chair
Members, Kenai Peninsula Borough Planning Commission

FROM: Robert Ruffner, Planning Director
Sean Kelley, Borough Attorney
A. Walker Steinhage, Deputy Borough Attorney

COPY: Charlie Pierce, Mayor

DATE: August 30, 2022

SUBJECT: Ordinance 2022-36: Sectional Analysis

The following provides a sectional analysis for Ordinance 02022-36, An Ordinance Amending KPB Chapter 21.25 and KPB Chapter 21.29 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permit Conditions ("Ordinance 02022-36").

The purpose of this Sectional Analysis is to provide an easy reference to compare present KPB code with Ordinance 02022-36. Ideally it will supplement and cement the presentation to the Committee of the Whole on August 23, 2022. For the quickest summation of the changes proposed in Ordinance 02022-06, simply refer to the final column, "Highlighted Changes".

Finally, many of the features in Ordinance 02022-36—especially dimensional or durational descriptions like the 365-day period for prior-existing use abandonment—are intended to act as "springboards" for Assembly legislative policy decisions.

ORDINANCE 02022-36 SECTIONAL ANALYSIS

Code Section	O2022-36	Current Code	Highlighted Changes
KPB 21.25.050	30-day staff review period of an application.	21-day staff review period of an application.	Increase from 21 to 30 days.
KPB 21.25.060 - Notice	Notice published on KPB website; public bulletin; mailed to all owners/leaseholders within ½ mile radius of proposed site.	Requires notice published two times in newspaper, posted in the post office, copy of the notice sent by regular mail to all owners	Expressly does not apply to counter permits. No longer requires newspaper publication but allows

		and/or leaseholders within one-half mile.	for publication on KPB website.
KPB 21.29.005 - Intent and Purpose	Establishes an intent and purpose section for KPB Chapter 21.29 with focus on public health, safety and general welfare, and to promote compatible, orderly development.	N/A	New code section.
KPB 21.29.010 - Applicability	<p>A. Applies to all private and public lands, except as preempted by other law;</p> <p>B. Does not apply within the incorporated cities;</p> <p>C. Prohibits extraction within 300 feet of riparian wetlands and naturally-occurring open water bodies;</p> <p>D. Operations must be conducted in accordance with current Alaska DEC Manual for extraction projects.</p>	N/A	New code section to clarify applicability of chapter and fact that it does apply to both public and private lands outside of the incorporated cities unless otherwise exempt.
KPB 21.29.015 -Material extraction exempt from obtaining a permit	<p>A. Exempts extraction disturbing less than one acre if: -Not in floodplain; -Does not enter water table; and -Does not cross property boundaries.</p> <p>No excavation within 32' of lot line.</p> <p>B. Exempts dewatered bars within SBCFSA/Snow River.</p>	<p>Currently 21.29.010</p> <p>A. Exempts extraction disturbing less than one acre if: -Not in floodplain; -Does not enter water table; and -Does not cross property boundaries.</p> <p>No excavation within 20 feet of ROW or 10 feet of lot line.</p> <p>B. Exempts dewatered bars within SBCFSA/</p>	<p>New code section.</p> <p>No excavation within 32' of lot lines.</p> <p>PEUs exempt but must provide reclamation plan & comply with buffer zone requirements by 2026.</p>

	<p>C. Exempts PEUs but by 2026 must:</p> <ul style="list-style-type: none"> -Provide reclamation plan -Comply with buffer zone requirements 	<p>Snow River.</p> <p>C. PEUs exempt but floodplain permit required within mapped special flood hazard area.</p>	
<p>KPB 21.29.020-Types of permits available</p>	<p>Counter permit</p> <ul style="list-style-type: none"> -1 to 10 acres -No processing -No water table extraction -Only 21.29.050 conditions apply. <p>Earth Materials Extraction CLUP</p> <ul style="list-style-type: none"> -Activity disturbing more than 10 acres -No processing -No water table extraction -Only 21.29.050 conditions apply <p>Earth Materials Processing CLUP</p> <ul style="list-style-type: none"> -Required for all on-site processing, screening, or crushing -21.29.050 and 21.29.055 conditions apply <p>Earth Materials Extraction within Water Table CLUP</p> <ul style="list-style-type: none"> -Required for all earth materials extraction within water table -21.29.050 and 21.29.057 conditions apply 	<p>Counter permit and generic CLUP only.</p> <p>CLUP application requires all mandatory conditions and covers all uses.</p>	<p>Counter permit and three types of CLUPs.</p> <p>1 to 10 acres eligible for counter permit if no processing or water table extraction.</p> <p>Three different CLUP categories: earth materials extraction (more than ten acres), earth materials processing, and earth materials extraction within water table.</p> <p>Applicant may apply for one, two, or all three CLUP types.</p>
<p>KPB 21.29.030-Application procedure</p>	<p>Very similar to current procedure. Requires site map from professional surveyor and site plan</p>	<ul style="list-style-type: none"> -Legal description -Life span -Buffer plan -Reclamation plan 	<p>Breaks apart site map (professional surveyor)</p>

	from professional engineer	-Excavation depth -Type of materials and equipment -Any voluntary permit conditions -Site plan	from site plan (professional engineer) Application will be deemed incomplete without all items listed. (Not in current code.)
KPB 21.29.040- Standards for sand, gravel or material sites	Planning Director (counter permits) or Planning Commission (CLUPs) must find: -Use is not inconsistent with applicable comp plan -Use will not be harmful to public's health, safety and general welfare -Provides sufficient setbacks, buffer zones, and other safeguards -Reclamation plan	-Protects against lowering of water sources serving other properties and damage to other properties -Minimizes off-site dust movement, noise disturbance, visual impacts & alternate post-mining land uses	All new standards/"may issue" Focus on legitimate public purpose to protect against damage to public roads and adjacent properties as well as dust, noise and other impacts through setbacks, buffer zones, and street-level visual screening.
KPB 21.29.045	Applicants required to demonstrate compliance with state and federal law through written documentation from pertinent authorities: -Mining license (AK Dep't of Revenue) -Mining permit (ADNR) -Permits and plans required by DEC -Permits from USACE, if applicable -Other applicable permits from other regulatory bodies authorized to regulate mining activities or earth materials extraction Must comply with other regulations such as air	N/A	New code section. Requires compliance with applicable state/federal agencies prior to approval of KPB permit. All activity must comply with state/federal regulations governing air/water quality and hazardous materials. Violations subject to enforcement under 21.50.

	and water quality, and hazardous materials		
	Violations subject to enforcement under 21.50		
KPB 21.29.050	<p>NINE MANDATORY CONDITIONS</p> <p>1. Buffers: 32-foot buffer/may include natural vegetation for street-level visual and noise screening; 8-foot fence or berm with a 2:1 slope; 2:1 slope between buffer zone and floor on all inactive site walls. Material from slope may be removed if site plan provides removal timeframe and verification material will be replaced within 30 days.</p> <p>2. Water source separation: No extraction below or within 4' of seasonal high-water table unless new section 21.29.057 conditions are met (Material Extraction within Water Table CLUP/see below); no off-site dewatering; no extraction within 100 feet of private well.</p> <p>3. Roads: Operations impacting KPB roads must comply with 14.40 and subject to remedies in 14.40.</p> <p>4. Dust control: Water or calcium chloride on haul</p>	<p>Buffers: 50' of undisturbed natural vegetation, or 6' berm with at least 2:1 slope, or 6' fence. Material from slope may be removed if site plan provides removal timeframe and verification material will be replaced within 30 days. Planning Commission may waive where topography or placement of natural barriers make screening not feasible or unnecessary</p> <p>Water source separation: No material extraction within 100 horizontal feet of any water source existing prior to permit issuance. Counter permits require four-foot vertical separation from seasonal high water table. CLUPs require two-foot vertical separation from seasonal high water table. No dewatering unless PC grants exemption.</p> <p>Roads: Operations impacting KPB roads must comply with KPB 14.40.175 and subject to remedies in 14.40.</p>	<p>Allows flexibility to meet demands of a specific application vs. "one size fits all" of current code.</p> <p>Buffers:</p> <ul style="list-style-type: none"> -Street-level noise and visual screening (as opposed to generic "noise and visual screening/impacts") -Decrease from 50' vegetation to 32' -Increase from 6' to 8' minimum -Decision-maker may waive if lot line is directly adjacent to another material site <p>Water source separation:</p> <ul style="list-style-type: none"> -Operations within water table governed by new section, 21.29.057 (see below) and require Material Extraction within Water Table CLUP -On site water movement permitted if qualified independent civil engineer provides statement under seal that dewatering will not lower any known water systems and applicant posts bond for potential accrued

	<p>roads within boundaries of material site</p> <p>5. Hours of operation: 6 am-9m but decision-maker may waive for specific seasonal project. Waiver valid for six consecutive months.</p> <p>6. Groundwater elevation: Requires groundwater monitoring/one well 4' below proposed excavation per ten acres of excavated area.</p> <p>7. Setback: 250' from LOZD/school/senior center/child care facility/etc.</p> <p>8. Boundaries: Must stake buffers, ROWs, easements at visible intervals by professional land surveyor. Stakes must be placed prior to permit issuance.</p> <p>9. Processing: Must comply with conditions in new section 21.29.055 (Earth Materials Processing CLUP/see below.)</p> <p>SIX DISCRETIONARY CONDITIONS</p> <p>1. Setbacks/Buffer Areas: Up to maximum of 100' if PC finds based on substantial evidence that increase is necessary for</p>	<p>Dust control: Water or calcium chloride on haul roads within boundaries of material site</p> <p>Hours of operation: Rock crushing equipment shall not be operated between 10 pm and 6 am.</p> <p>Groundwater elevation: See below.</p> <p>Setback: Not addressed.</p> <p>Boundaries: Staked at sequentially visible intervals where boundaries are within 300' of excavation perimeter. Verification and staking by professional land surveyor.</p> <p>Processing: See below.</p> <p>No provision for discretionary conditions.</p>	<p>damages in amount equivalent to replace each water well within 300-foot radius of site. Rebuttable presumption is each well is minimum of \$10,000.</p> <p>Roads/Dust control: Essentially the same.</p> <p>Hours of operation: For all extraction activities, 6 am to 9 pm but decision-maker can waive or adjust for specific seasonal project for period of six consecutive months.</p> <p>Groundwater elevation: Requires groundwater monitoring.</p> <p>Setback: 250' from LOZD/school/senior center/child care facility/etc.</p> <p>Boundaries: Stakes must be placed prior to permit issuance rather than time of application.</p> <p>Processing: Requires compliance with new section 21.29.055 and Earth Materials Processing CLUP.</p>
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	<p>public health, welfare, and safety; potential for rolling berms instead.</p> <p>2. Road maintenance and repair: Permittee may be required to maintain/repair damaged public roads; requires consultation with RSA Director.</p> <p>3. Ingress/egress: Decision-maker may require driveway authorization.</p> <p>4. Dust suppression: On public ROWs when natural precipitation inadequate to suppress dust generated by material site traffic.</p> <p>5. Surface water protection: As specified in 21.29.030(A)(8)(a).</p> <p>6. Street-level screening: Street-level visual screening, noise mitigation, & lighting restrictions as appropriate for the surrounding area and in accordance with 21.29.040 standards set to protect against attractive nuisance issues.</p>		<p>Adds discretionary conditions:</p> <ul style="list-style-type: none"> -Additional setbacks or rolling berms -Maintenance and repair of damaged public roads -Driveway authorization -Dust suppression on public ROWs -Surface water protections as set forth in 21.29.030(A)(8)(a) -Street-level screening as appropriate for surrounding area and to protect against attractive nuisances
KPB 21.29.055-Earth materials processing	<p>In addition to mandatory conditions in 21.29.050(A).</p> <p>A. Conditioning or processing equipment must be operated at</p>	<p>300' setback for conditioning or processing equipment.</p> <p>PC may waive or reduce in consideration of and in accordance with</p>	<p>New code section.</p> <p>PC may waive or reduce in consideration of and in accordance with existing uses of the</p>

	<p>least 300' from parcel boundaries. PC may waive or reduce distance requirement in consideration of and in accordance with existing uses of properties in the vicinity.</p> <p>B. Hours of operation for processing equipment between 8am and 7pm or as PC determines.</p> <p>PC may also grant exceptions (not to exceed 120 days) for:</p> <ul style="list-style-type: none"> -Emergencies -Good cause finding that increase serves public purpose and is not harmful to public health, safety, and general welfare <p>Applicant may request waiver (not to exceed six consecutive months) for specific seasonal project. PC must also find waiver is not harmful to the public health, safety and general welfare.</p>	existing uses of adjacent property at the time.	<p>"properties in the vicinity". Present code is "adjacent property".</p> <p>Processing equipment may only be operated between 8am and 7pm, may be increased for emergencies, to serve a public purpose or for specific, seasonal project.</p>
KPB 21.29.057- Material extraction in water table	<p>In addition to mandatory conditions in 21.29.050(A).</p> <p>Dewatering prohibited (21.29.050(A)(2)(b)).</p> <p>A. Applicant must meet the following requirements prior to applying:</p>	<p>Excavation within 300' horizontal feet of water source may be permitted based on:</p> <ul style="list-style-type: none"> -No negative impact to quantity of an aquifer serving existing water sources; -Minimum of three water monitoring tubes or well casings to determine flow direction, flow rate, 	<p>New code section.</p> <p>In addition to 21.29.050 conditions, sets forth additional requirements and conditions primarily to protect water quantity.</p> <p>Qualified professional must be able to characterize entire</p>

	<p>1. Installation of sufficient monitoring wells and test pits to provide qualified professional with adequate information to characterize the entire property that will be permitted for excavation.</p> <p>2. Under the supervision of a qualified professional, measurement of seasonal high-water table elevation, groundwater flow direction, hydraulic gradient and water table elevation.</p> <p>3. A qualified professional's report determining the potential adverse effects to groundwater and surface water body elevation and quality, surrounding water users and adjacent properties. Determination based upon available data, interpretations of data and knowledge of groundwater processes.</p> <p>4. Report must be submitted with CLUP application. Subsection lists what must be included in the report.</p> <p>B. Must also include:</p> <p>1. Description of proposed extent and depth of material extraction beneath</p>	<p>and water elevation; and</p> <p>-Quarterly measurements of groundwater elevation, flow direction, and flow rate for at least four quarters prior to application. Tubes or wells must be kept in place for duration of excavation in water table.</p> <p>-Operations shall not breach aquifer-confining layer. No extraction activities within 100 linear feet from waterbodies.</p> <p>Additional setback from lakes, rivers, anadromous streams and riparian wetlands may be required.</p> <p>-Permits may contain additional conditions addressing surface water diversion.</p>	<p>property permitted for excavation through sufficient monitoring wells and test pits.</p> <p>Qualified professional must supervise measurement of seasonal high-water table elevation, groundwater flow direction, hydraulic gradient and water table elevation. Based upon available data, interpretations of data and knowledge of groundwater processes, qualified professional will report potential detrimental adverse effects to groundwater and surface water body elevation and quality, surrounding water users and adjacent properties. Must be submitted with application and also include extent and depth of extraction beneath seasonal high-water table, spill prevention/control/countermeasures plan.</p> <p>Conditions: -Implementation of monitoring and spill prevention/control/countermeasures plan;</p>
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	<p>seasonal high-water table.</p> <p>2. Report 21.29.057(A)(4) report, monitoring plan and spill prevention/control/countermeasures plan.</p> <p>C. Conditions</p> <p>1. Implement monitoring plan</p> <p>2. Implement spill prevention/control/countermeasures plan</p> <p>3. Monthly measurement (during active extraction) of groundwater flow direction, hydraulic gradient and groundwater table elevation</p> <p>4. Retain water elevation monitoring data for two years after completion of reclamation activities</p> <p>5. Annual report including water table elevation monitoring data from qualified professional</p> <p>6. Operations must not breach or extract material from a confined aquifer or a confining layer beneath a perched aquifer. Subsection sets forth what must be done if there is a breach.</p> <p>7. Setbacks:</p>		<p>-Monthly measurement of groundwater and retention of groundwater data for two years after completion of reclamation activities;</p> <p>-Annual report from qualified professional;</p> <p>-No breach or extraction from a confined aquifer or a confining layer beneath a perched aquifer; and</p> <p>-Setbacks from existing drinking water sources.</p>
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	<p>-500' from nearest down-gradient drinking water source</p> <p>-350' from nearest cross-gradient drinking water source</p> <p>-200' from nearest up-gradient drinking water source</p> <p>-Do not apply to drinking water sources constructed after permit issued</p>		
KPB 21.29.060 -Reclamation plan	<p>A. Reclamation with site plan required. 5-year reclamation plan must be submitted with permit renewal request.</p> <p>B. Applicant may re-vegetate and reclaim all disturbed land upon exhausting the material site or time determined by plan to leave land in a stable condition. 2:1 slope must be maintained. \$750 per acre bond required unless state bond. Enforcement under KPB 21.50.</p> <p>C. Measures listed must be considered as part of every reclamation plan, 6 reclamation measures including ponding and protection against public nuisance.</p> <p>D. Plan must list total acreage to be reclaimed.</p>	<p>A. Reclamation Plan required.</p> <p>B. Applicant shall vegetate and reclaim all disturbed land upon exhausting the material site or time determined by plan to leave land in a stable condition. Reclamation must occur for area exceeding 5 acres prior to 5 year renewal or as PC specifies.</p> <p>C. Measures listed must be considered as part of every reclamation plan, 6 reclamation measures including ponding.</p> <p>D. Plan must list total acreage to be reclaimed each year, a list of equipment and a time schedule for reclamation measures.</p>	<p>"May" rather than "shall" revegetate.</p> <p>Bonding required.</p> <p>Plan survives permit termination and must list total acreage to be reclaimed.</p> <p>Protection against public nuisance.</p>

	E. Close-out – reclamation survives permit expiration, termination or revocation.		
KPB 21.29.065 -Effect of permit denial	<p>A. Applicant denied counter permit cannot reapply within same calendar year w/out new evidence or circumstances.</p> <p>B. Applicant denied CLUP permit cannot reapply within same calendar year w/out new evidence or circumstances.</p> <p>C. Applicant bears burden of proof.</p>	N/A	An applicant cannot immediately reapply for a permit after denial.
KPB 21.29.070 -Permit renewal, modification and revocation	<p>A. Renewal by application every 5 years.</p> <p>B. Administrative approval if compliance with all conditions, no modification and no violation in prior 2 years.</p> <p>C. Public hearing on renewal required when there is a modification, permit violation, or as determined by planning director. Permit in compliance with no violations must be approved for renewal but the commission can add additional conditions where appropriate.</p>	<p>A. Must request permit extension every 5 years, 30 days prior to expiration.</p> <p>B. If no modification to operations or conditions proposed, a permit extension certificate may be issued by planning director.</p> <p>C. Extension may be denied if: (1) not in compliance with reclamation requirements; (2) non-compliance with permit conditions; (3) permit violation in last 2 years and still in non-compliance.</p> <p>D. Modification processed per</p>	<p>Renewal application, not request in writing.</p> <p>Possibility for public hearing on renewal and additional discretionary conditions on renewal.</p>

	<p>D. Modifications processed per KPB 21.29.030 -.050</p> <p>E. Renewal fee is same as original permit fee.</p> <p>F. Failure to apply for renewal = permit expiration.</p> <p>G. Permits revoked per KPB 21.50.</p>	<p>KPB 21.29.030-.050.</p> <p>E. No fee for permit extensions approved by planning director. The fee for a permit modification processed under KPB 21.29.070(D) requires original permit fee.</p> <p>F. Failure to apply for renewal = permit expiration.</p> <p>G. Permits revoked per KPB 21.50.</p>	
KPB 21.29.080 -Permit Close-out	<p>Requires permittee to request close-out of permit and verification of reclamation compliance.</p> <p>Bonding released at close-out.</p>	<p>Current code section is titled "Permit Termination" and provides for a termination document and verification of site reclamation.</p>	<p>Terminology change from permit "termination" to "close-out". Explicit that reclamation requirement survives permit expiration or revocation & that bonds are released upon close-out.</p>
KPB 21.29.100 -Recordation	<p>Provides for recordation of permits, etc. issued under KPB 21.29. Owner/operator responsible for cost.</p>	<p>Similar recordation requirement.</p>	<p>Owner/operator responsible for recording costs.</p>
KPB 21.29.110 -Violations	<p>Violations governed by KPB 21.50.</p>	<p>Same but also has subsection (B) which provides for bonding if owner/operator has 3 violations within a 3-year period.</p>	<p>Violations governed by KPB 21.50 remain unchanged. No subsection B related to bonding requirement if there are 3 violations in 3 year period.</p>
KPB 21.29.115 -Permit transfers	<p>Planning director approves or disapproves permit transfers. Permits do not run with the land.</p>	<p>N/A</p>	<p>New section of code.</p>

<p>KPB 21.29.120 -Prior-existing uses</p>	<p>A. Determination – mirrors process under KPB 21.44 (LOZD) for nonconforming-use determination</p> <p>B. Director provides notice of application and issues decision. Decision can be appealed to the Planning Commission.</p> <p>C. Establishes 365-day period for abandonment.</p> <p>D. Prohibits increasing, intensifying, expanding or moving the use.</p> <p>E. Establishes standards to guide decision-making process.</p> <p>F. Requires PEU compliance with KPB 21.29 reclamation plan and hours of operation by January 1, 2026.</p> <p>G. Requires PEU compliance with code requirements for extraction within water table under KPB 21.29.057, except the water source separation requirements do not apply.</p>	<p>A. Requires determination that use as a material site commenced or operated after May 21, 1986 and prior to May 21, 1996. Limited subdivision rights. PEU runs with land.</p> <p>B. Must have applied to be registered as a PEU prior to January 1, 2001.</p> <p>C. Abandonment if no operation as a material site between 5/21/1996 and 5/21/2011. Owner may protest finding of abandonment and may appeal decision to the Planning Commission.</p>	<p>By 1/1/2026, PEUs required to come into compliance with: -Reclamation requirements; -Hours of operation; & -Buffer area.</p> <p>365 period of nonuse/ no operations = Abandonment</p>
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O2022-36

Material site permitting process overview

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Section 1

KPB 21.25.050

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

Section 2

KPB 21.25.060

- New notice section applicable to CLUPs
- Tracks Title 20 notice and maintains ½ mile notice radius.
- Provides for notice via borough website

Section 3

New Chapter KPB 21.29, Material Site Permits

- Establishes a multi-permit stratification system intended to increase decision-making flexibility while protecting against uses with highest impacts on public health, safety, and general welfare.
- Four permit types
 - Counter Permit (CP): anything from over 1 acre to 10 acres, no processing, no extraction in water table.
 - 3 Conditional Land Use Permit (CLUP) types:
 - Earth Materials Extraction CLUP: extraction activity disturbs more than 10 acres, no processing, no extraction in water table.
 - Earth Materials Processing CLUP: required for all on-site processing, screening, or crushing.
 - Earth Materials Extraction within Water Table CLUP: provides for heightened protections for uses within water table.

KPB Chapter 21.29

(as proposed in O2022-36)

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

Section 3

KPB 21.29.005 – Intent and Purpose

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

Section 3

KPB 21.29.010 – Applicability

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

Section 3

KPB 21.29.015 – Material extraction exempt

- Exempts extraction disturbing less than one acre under circumstances set out
- Exempts dewatered bars within SBCFSA
- PEUs exempt BUT
 - Requires that by 2026, a legally established PEU:
 - 1. Provide a reclamation plan per KPB 21.29.060
 - 2. come into compliance with buffer zone requirements under KPB 21.29.050(A)(1)
 - Note: KPB 21.29.120 also requires PEUs to come into compliance with hours of operation requirements – this Section could be amended to include that as well.

Section 3

KPB 21.29.020 – Types of permits available.

- Current code: counter permit and CLUP. CLUP application requires all mandatory conditions and covers all uses.
- Proposed KPB 21.29.020 = 4 permit types
 - Counter Permit (CP): anything from over 1 acre to 10 acres, no processing, no extraction in water table. Only the conditions set forth in KPB 21.29.050 apply.
 - 3 Conditional Land Use Permit (CLUP) types:
 - Earth Materials Extraction CLUP: extraction activity disturbs more than 10 acres, no processing, no extraction in water table, only the conditions set forth in KPB 21.29.050 apply.
 - Earth Materials Processing CLUP: required for all on-site processing, screening, or crushing. Conditions set forth in KPB 21.29.050 + conditions set forth in KPB 21.29.055 apply.
 - Earth Materials Extraction within Water Table CLUP: Required for any earth materials extraction within water table. Conditions set forth in KPB 21.29.050 + conditions set forth in KPB 21.29.057 apply.
 - A CLUP applicant may request 1, 2 or all three CLUP types at the time of application.

Section 3

KPB 21.29.030 – Application procedure

- Very similar to current code application procedure
- Breaks apart a site map (professional surveyor) from site plan (professional engineer)

Section 3

KPB 21.29.040 – Standards for sand, gravel or material sites

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

Section 3

KPB 21.29.045 – Required compliance with State and Federal laws

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

Section 3

KPB 21.29.050 – Permit conditions applicable to all permits

- In lieu of current exhaustive conditions in borough code that apply as a “one size fits all” this section establishes 2 mandatory conditions and provides 6 potentially applicable discretionary conditions.
- Allows for flexibility to meet the demands of a specific application.
- Is a move away from the “one size fits all” system.

Section 3

KPB 21.29.050 – Permit conditions

...Continued

- 9 mandatory conditions:
 1. Buffer Zone: 32 feet, 8 foot berm or fence, 2:1 slope, buffer zone can only be waived when site is next to adjacent pit.
 2. Water source separation: extraction within water table is prohibited unless requirements of KPB 21.29.057 are met; dewatering off site is prohibited; material extraction within 100 feet of any private well is prohibited.
 3. Roads: Operations that impact KPB roads must be in accordance with KPB Chapter 14.40.
 4. Dust control: Dust suppression required within material site haul roads.
 5. Hours of operation: Applicable to all operations, 6am to 9pm, but can be adjusted by decision-maker and/or waived for seasonal project.
 6. Groundwater elevation: Requires monitoring of groundwater.
 7. Setback: 250 ft from LOZD, school, senior center, child care facility, etc.
 8. Permit boundaries: Must stake buffers, ROWs.
 9. Processing: Requires compliance with KPB 21.29.050 conditions and KPB 21.29.055.

Section 3

KPB 21.29.050 – Permit conditions

...Continued

- 6 discretionary conditions:
 1. Setbacks/Buffer Areas: Up to a maximum of 100 feet based on circumstances, potential for “rolling berms”.
 2. Road maintenance and repair: Permittee may be required to maintain/repair damaged roads.
 3. Ingress/Egress: As determined by decision-makers, driveway authorization required.
 4. Dust Suppression: May be required on public ROWs.
 5. Surface water protection: Use of surface water protection measures specified in KPB 21.29.030(A)(8)(a).
 6. Street-level screening: Street-level visual screening, noise mitigation, and lighting restrictions as appropriate for the surrounding area and in accordance with the standards set forth in KPB 21.29.040 to protect against attractive nuisance issues.

Section 3

KPB 21.29.055 – Earth materials processing

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

Section 3

KPB 21.29.057 – Material extraction in water table

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

Section 3

KPB 21.29.060 – Reclamation plan

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

Section 3

KPB 21.29.065 - .115

- KPB 21.29.065 – Effect of permit denial: no reapplication within 1 year without new evidence.
- KPB 21.29.070 – Permit renewal, modification, revocation: renewal required every 5 years, administrative if no changes, violations or complaints; public hearing otherwise.
- KPB 21.29.080 – Permit close-out: adds formal close-out process.
- KPB 21.29.100 – Recordation
- KPB 21.29.110 – Violations
- KPB 21.29.115 – Permit transfers: permits do not run with land, transfers must be approved.

Section 3

KPB 21.29.120 – Prior existing uses

- Recognizes “grandfather” rights, also known as non-conforming uses or prior existing uses (PEU).
- Must apply for PEU status. Determination by Planning Director appealable to Planning Commission (similar to LOZD nonconforming use process).
- Abandonment after 365 days of non-use; expansion prohibited.
- MAJOR CHANGE - BY JANUARY 1, 2026 – PEU must:
 - Comply with KPB 21.29.060 (reclamation plan)
 - Comply with KPB 21.29.057 (extraction within water table)
 - Comply with applicable hours of operation requirements

Issues that O2022-36 addresses to move the conversation forward

- One Size Fits All = rigid, not flexible to meet needs of application
 - Exhaustive list of mandatory conditions, no discretionary conditions, no room for adjustment
- Clarifies standards, and private vs. public viewshed concerns
- Provides for heightened requirements, conditions and protective measures for uses that could have highest detrimental impact on public health, safety, and general welfare.
- Address PEU issues, provides for formal process to establish use and status; requires eventual compliance with reclamation plan, hours of operation, and extraction within water table.

21.29.010. Applicability.

D. All operations must be conducted in accordance with the current publication of the State of Alaska, Alaska DEC User's Manual Best Management Practices for Gravel/Rock Aggregate Extraction Projects. In the event a provision of this chapter conflicts with the State of Alaska's manual, this chapter controls.

21.29.020. Types of permits available.

B. Conditional land use permit. A conditional land use permit (CLUP) is required for the following types of earth material extraction or uses:

3. Earth Materials Extraction Within Water Table CLUP. An Earth Materials Extraction within Water Table CLUP is required for material extraction and operations of any size within four feet of the seasonal high-water table. The conditions set forth in KPB 21.29.050 plus the requirements and conditions set forth in KPB 21.29.057 for material extraction within four feet of the seasonal high-water table are applicable to this type of CLUP.

May want to define "water table" and how this level fluctuates. May also want to differentiate it from a "potentiometric water level", or the water level expressed by a "confined aquifer".

21.29.030. Application procedure.

A. In order to obtain a counter permit or CLUP under this chapter, an applicant must first complete and submit to the borough planning department a permit application, along with the fee listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. The planning director may determine that certain contiguous parcels are eligible for a single permit. The application must include the following items, without which the application will be deemed incomplete:

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

21.29.045. Required compliance with State and Federal laws

A. All applicants for permits for earth materials extraction are required to demonstrate compliance with state and federal law. Prior to final approval of the permit, the applicant or agent must provide written documentation from the permitting agency of compliance with the following:

4. Notice of intent for construction general permit or multi-sector general permit and storm water pollution prevention plan, and other associated permits or plans required by the Department of Environmental Conservation (DEC) pursuant to the Alaska Pollutant Discharge Elimination System (APDES) requirements;

B. In addition to the requirements in subsection (A) of this section, all activity must be conducted in compliance with state or federal regulations governing the items listed below. Written documentation of compliance with these regulations is not required. Complaints received by the borough of violations of requirements within this section will be forwarded to the appropriate agency for enforcement, this includes but is not limited to:

2. Water quality. EPA or ADEC regulations controlling spills, spill reporting, storage and disposal of oil, anti-freeze and hydrocarbons.

C. Failure to comply with any of the requirements in subsections (A) and (B) of this section is a violation of the permit, and is subject to enforcement pursuant to KPB Chapter 21.50.

21.29.050. Permit conditions applicable to all permits.

- A. The planning commission or planning director, as applicable, must impose the following mandatory conditions prior to approval of a permit under this chapter:

2. Water source separation.

- a. Material extraction below or within four feet of the seasonal high-water table is prohibited unless the applicant is issued a CLUP Material Extraction Within Water Table Permit and the requirements and conditions set forth in KPB 21.29.057 are satisfied;
- b. Dewatering either by pumping, ditching or some other form of draining that removes water from the site or causes water to leave the site is prohibited;
- c. All permits shall be issued with a condition which prohibits any material extraction within 100 linear feet of any private well or water source existing prior to original permit issuance; and

Does this include PWS sources??

- d. On site movement of water may be permitted pursuant to KPB 21.29.057 and if: (i) the operator provides a statement under seal and supporting data from a qualified independent civil engineer licensed and active in the State of Alaska that the dewatering will not lower any known water systems; and (ii) the applicant posts a bond for liability for potential accrued damages in an amount equivalent to the cost to replace each water wells within a 300-foot radius of the site. The rebuttable presumption is that the cost per well is a minimum of \$10,000.

Re "...any known water systems..." - Does this include PWS sources?? If so, clarify.

6. Groundwater elevation. All material sites must maintain one monitoring well four feet below the proposed excavation per ten acres of excavated area.

Should this be clarified to mean one monitoring well in the same aquifer?

7. Setback. Material site excavation areas must be 250 feet from the property boundaries of any local option zoning district, existing public school ground, private school ground, college campus, childcare facility, multi-purpose senior center, assisted living home, and licensed health care facility. If overlapping, the buffer areas of the excavation must be in addition to the 250-foot setback.

- B. Discretionary Conditions. The planning commission or planning director, as applicable, may set conditions of approval for issuance of a counter permit or CLUP, as appropriate for the area in which the development is sited, for the following:

1. Setbacks/Buffer Area.

- a. The mandatory buffer area condition in subsection (A) above may be increased, up to a maximum of 100 feet between the area of excavation and the parcel boundaries, if the planning commission finds based on substantial evidence presented that increasing the buffer area is necessary for the public health, welfare and safety of the surrounding community;

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

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

In accordance with KPB 21.29.020(B)(3), a CLUP is required for material extraction of material below or within four feet of the seasonal high water table. Prior to a permit being issued the planning commission must impose the mandatory conditions set forth in KPB 21.29.050(A) and discretionary conditions as deemed appropriate. In accordance with KPB 21.29.050(A)(2)(b) dewatering is prohibited. The following additional application requirements and permit conditions specific to a Material Extraction within the Water Table CLUP apply:

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

1. Installation of a sufficient number of monitoring wells and test pits, as recommended by a qualified professional, to adequately determine groundwater flow direction, hydraulic gradient, water table and seasonal high-water table elevation Monitoring well and test pit locations must provide the qualified professional with adequate information to characterize the entire property that will be permitted for material extraction. Well casing elevations must be surveyed to a vertical accuracy of 0.01 feet by a registered land surveyor and tied to NAVD 1988.

Seems to conflict with 21.29.050(A)(6) that says "...one monitoring well...per ten acres...". Perhaps add "at least" to 21.29.050(A)(6) and reference this section for more details.

2. Determination of seasonal high-water table elevation, groundwater flow direction, hydraulic gradient, and water table elevation for the site must be measured under the supervision of a qualified professional.

3. A written report must be completed by a qualified professional that makes a determination about the potential adverse effects to groundwater and surface water body elevation, groundwater and surface water quality, surrounding water users and adjacent properties. The determination must be based on available data, interpretations of the data and knowledge of groundwater processes.

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

- a. Identify existing public water system sources (i.e., wells, springs, surface water intakes), as identified by the state, that are located within one-half mile of the boundary of the property on which the activity will take place;

- Recommend changing to "Identify where the property boundary on which the activity will take place intersects a public water system (PWS) Drinking Water Protection Area, as identified by the state."
- See interactive public web map, titled "Alaska DEC Drinking Water Protection Areas", at <https://www.arcgis.com/home/item.html?id=13ed2116e4094f9994775af9a62a1e85>.
- The link could be part of a supplemental fact sheet?

b. Identify actual or presumed private drinking water wells located within one-half mile of the boundary of the property on which the activity will take place and include a copy of the available well logs;

c. Identify existing regulated potential sources of contamination within at least one-half mile of the boundary of the property on which the activity will take place;

d. Contain maps at appropriate scales presenting the results of the well search, the setbacks required by subsection (C)(7) of this section, and illustrating wetlands and water bodies; at least one map must show identified potential sources of contamination;

e. Include the water table elevation monitoring data, monitoring well logs and records of any test pits, and a discussion of the seasonal high-water table determination; and

f. Evaluate subsurface hydrologic conditions and identify potential adverse effects that may occur as a result of material extraction. The evaluation of the hydrologic conditions must include identifying confining layers.

B. In addition to the application requirements for a CLUP for earth materials extraction, the application for a water table extraction permit must include:

1. A description of the proposed extent and depth of material extraction beneath the seasonal high-water table.

2. A written report that meets the requirements of subsection (A)(4) of this section, a monitoring plan, and a spill prevention, control, and countermeasures plan as required by this section.

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

1. Implement a monitoring plan that meets the requirements of this chapter. If existing wells will provide sufficient data, no additional wells are required.

2. Implement the spill prevention, control and countermeasures plan in accordance with Environmental Protection Agency's requirements for above ground storage tank operations regardless of the quantity of petroleum products on site.

3. Groundwater flow direction, hydraulic gradient, and groundwater table elevation for the subject parcel must be measured at least monthly during active extraction. Monitoring wells must be maintained or replaced with equivalent monitoring wells.

4. Water elevation monitoring data must be retained for two years following completion of reclamation activities and must be provided to the planning director upon request.

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

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

Define "confined aquifer", "confining layer", and "perched aquifer".

a. If evidence suggests a confined aquifer or confining layer has been breached, or if groundwater or surface water elevation changes rapidly or beyond natural variation, the director must be notified within 24 hours.

i. A hydrologic assessment, conducted by a qualified professional, to determine the affected area and the nature and degree of effects and a description of potential repair or mitigation options must be submitted to the director within 14 calendar days of notification; and

ii. Repair or mitigation sufficient to address identified effects must be initiated as soon as practical, not to exceed 45 calendar days from the date the assessment is received by the director.

7. Operations must maintain the following setbacks:

- a. 500 feet from the nearest down-gradient drinking water source;
- b. 350 feet from the nearest cross-gradient drinking water source;
- c. 200 feet from the nearest up-gradient drinking water source; and
- d. Minimum separation distances do not apply to drinking water sources constructed after a permit to extract material below the water table has been issued.

21.29.060. – Reclamation plan.

E. **Close-out.** Reclamation plans and requirements survive expiration, termination, or revocation of a permit granted under this chapter. In order to close-out a permit, the planning director must be provided adequate proof that reclamation has been conducted in accordance with the reclamation plan. If a permit expires, terminates, or is revoked prior to permit close-out, the remedies under KPB 21.50 apply and the planning director may hold applicable fines and remedies in abeyance upon a finding that reclamation is actively ongoing.

Is this a good place to include requirements for decommissioning any monitoring wells? See Section 9.2.12 Well Decommissioning of the DEC Gravel Extraction BMP Manual, <https://dec.alaska.gov/water/wastewater/stormwater/gravel/>.

TAKINGS OVERVIEW

INTRODUCTION

TAKINGS OVERVIEW

BACKGROUND PRINCIPLES

FEDERAL CONSTITUTION'S FIFTH AMENDMENT

“Takings Clause” or
“Just Compensation
Clause”

- Gov’t cannot take “private property...for public use, without just compensation.”
 - Gov’t’s power to take property (or lesser interests in property) = “eminent domain”
 - Exercise of eminent domain also called “condemnation”
 - “Just compensation” has been interpreted to mean FMV for property taken
- **Fundamental principle: Avoid unfairly burdening some individuals with expense of accomplishing public purposes**

ALASKA CONSTITUTION'S ARTICLE 1, SECTION 18

- “Private property shall not be taken or damaged for public use without just compensation.”

BACKGROUND PRINCIPLES

(CONT'D)

- A taking can only occur where a private property interest exists.
- People own property subject to government's reserved power to reasonably regulate
- Nonetheless, a regulation of property still can go too far and become an indirect taking
 - Excessive government regulation of property can amount to compensable taking (i.e. “**Regulatory taking**” / “inverse condemnation”)

TAKINGS

DOES A REGULATION AMOUNT TO AN
ACT OF EMINENT DOMAIN REQUIRING
COMPENSATION?

Significant “Takings” Cases

- ***Pennsylvania v. Mahon (1922)***: Excessive gov’t regulation could amount to a compensable taking.
- ***Penn Central Transportation v. New York City (1978)***: Delineated factors determining when gov’t regulation evolve into a taking: (1) the regulations economic impact on the property, (2) the extent to which the regulation has interfered with distinct investment-backed expectations and (3) the character of the government’s action. (“Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law.” ... “where State “reasonably conclude[s] that ‘the health, safety, morals, or general welfare’ would be promoted by prohibiting particular contemplated uses of land,” compensation need not accompany prohibition.”)
- ***Nollan v. California Coastal Commission (1987)***: an excessive exaction amounts to taking if there is no nexus between the condition and the purpose of the restriction/exaction. (“Our cases have not elaborated on the standards for determining what constitutes a ‘legitimate state interest[,]’ [but] [t]hey have made clear ... that a broad range of governmental purposes and regulations satisfy these requirements”)
- ***Lucas v. South Carolina Coastal Council (1992)***: Total deprivation of productive or economically beneficial use of land requires compensation. (“regulations that leave the owner of land without economically beneficial or productive options for its use—typically, as here, by requiring land to be left substantially in its natural state—carry with them a heightened risk that private property is being pressed into some form of public service under the guise of mitigating serious public harm”)
- ***Dolan v. City of Tigard (1994)***: excessive exaction (green space dedication and pedestrian plan required for permit approval) gov’t may not condition a permit on certain requirements unless those requirements have a “rough proportionality” to the proposed development’s impacts.

Types of “Takings”

- A Plaintiff seeking to challenge a government regulation as an uncompensated taking of private property must allege one of the following:
 - 1) A “Physical” taking
 - 2) A “*Lucas*-type” total regulatory taking
 - 3) A “*Penn Central* taking”
 - 4) A land-use exaction violating *Nollan* and *Dolan* “*per se* physical taking”

EXCESSIVE REGULATION = COMPENSATORY TAKING

- Regulation requires property owner to submit to **physical invasion of land/permanent physical occupation** of real/personal property
 - Right to exclude others is fundamental to private property ownership
- (Case is *Loretto*)
- Regulation deprives property owner of **all economically beneficial/productive** use of the land
- Even if it is, still may be justified by background principles of property law/nuisance law
- (Case is *Lucas*)

NOLLAN & DOLAN'S UNIQUE CIRCUMSTANCES: EXACTIONS

- “**Exaction**” = conditioning approval of development on dedication of property to public use, and they also can include conditioning development approval, e.g., permit subdivision plat, etc., upon developer making some financial commitment, such as requiring construction of public street, this is known as a “monetary exaction”.
- The term “**exaction**” encompasses both requirements that land be dedicated for street rights-of-way, parks, or utility easements and requirements that developers pay “impact” or “facility” fees reflecting their respective prorated shares of the cost of providing new roads, utility systems, parks, and similar facilities serving the entire area.

Nollan

- Gov't conditioned development request on condition the owner give the gov't unrelated property interest
- U.S. Supreme Court:
 - Exaction is unconstitutional if it doesn't somehow mitigate public harms that would justify outright denial of permission
 - *Dolan* calls this the “nexus” requirement

Dolan

- Exaction required property owner to dedicate land to the public for a bike and pedestrian path in order to obtain permission to expand owner's store
- Explained *Nollan* as an application of “unconstitutional conditions doctrine”:
 - Gov't can't require property owner to surrender constitutional right in exchange for discretionary public benefit
- U.S. Supreme Court said an exaction must:
 1. Mitigate harms of the proposed development (the “nexus” requirement from *Nollan*); **and**
 2. Condition must also be roughly proportional to public harms threatened by proposed development.

*OTHERWISE,
THERE'S NO
DEFINITE LINE.*

Difficulty is determining when a regulation is “excessive”, requiring compensation

- Requires complex consideration of various factors
- “Ad hoc” / case-by-case determination
- But, the **greater the negative economic impact of the regulation, the more likely courts will consider it a taking**

HOW WILL COURTS ANALYZE A REGULATION THAT'S NOT SO CLEARLY DEFINED?

- *Penn Central's* balancing test:
 - **The character of the governmental action involved in the regulation;**
 - Remember, if the government's action is a physical action, rather than a "regulatory invasion", then the action is almost certainly a taking.
 - **The extent to which the regulation has interfered with the owner's reasonable investment-backed expectations for the parcel as a whole; and**
 - **The regulation's economic impact on the affected property owner.**

A FINAL CONSIDERATION: THE “NOXIOUS USE” TEST

- If a regulation adopted under the police power to protect the public health, safety or welfare, courts have said it is not a taking, even if the taking reduces the value of the property.

TAKINGS OVERVIEW

CONCLUSION/QUESTIONS



To whom it may concern:

The Kenai Peninsula Aggregate and Contractors Association does not support ordinance 2022-36. We feel that it is flawed in many ways, and in some respects, impossible to follow.

Below is a detailed list of our grievances with this document and reasons why. This includes, but is not limited to our concerns at this time. Our members are still digesting all applied situations applicable.

21.29.010 (c) This regulation gives us no access to any waterbody. It has been common in sites and mining to access non fish bearing streams and creeks within the state and even sometimes divert them for access to a commodity such as gravel or precious metals.

21.29.015 (a) This regulation went from 10ft to 32ft. 32ft buffer on a parcel less than 1 acre does not leave enough land to produce much at all. It would be extremely hard to operate in that space. Renders the exception almost useless.

(c) This regulation imposes current reclamation plans and buffers to PEU sites. While some consideration may be achieved on reclamation plans, the buffers of 32ft are likely impossible to achieve and considerably over-reaching. These PEU sites have been active or existing for sometimes longer than the KPB itself and have buffers less than 32ft. The material needed to comply may not be available and the work and cost associated to place 32ft of earth is enormous. Also, it is unbecoming of the KPB to change the deal struck years ago with the site operator or their successors.

21.29.020 (a) This regulation enlarged total acres from 2.5 to 10 acres, raised the floor 2 more feet, yet prohibits processing, screening, and crushing. This renders the permit useless as by definition, processing is what we do. 95% of our members or site operators screen material. Most have a small plant that makes very little dust or noise. Almost no complaints have been filed from this activity. Most small operations produce less than 750cu yds of material per day. The loss of 2 ft of material from the water table is unsubstantiated, and unnecessary. Not only does it create a loss of opportunity to the operator, but it takes a valuable commodity out of circulation and decreases the life of a site. This will only cause more contention with the public as more CLUP's will need to be applied for more frequently and in more areas. We feel this is going the wrong direction and we should be allowed to dig in the water table a minimum distance with standard conditions to extend the life of sites. Only if a major dig beyond the minimum distance, would a water table permit be needed.

(b) (1) Same grievance and reasoning as above.

(b) (2) Processing CLUP. This should not apply to small operations.

21.29.030 (a)(7)(e) This regulation sort of sheds the government's responsibility to construct and maintain standard roads and puts that responsibility on the site operator. All roads in the KPB should be up to KPB or State of AK standard. We pay taxes too.

(8)(b) This regulation demands we dig test holes 4 ft below proposed elevation. Some areas have deposits of gravel or peat that are deeper than common equipment can dig. It will commonly be an impossible or unnecessary task.

(9)(b) This regulation suggests the planning director may provide additional information. This information should be specifically specified as we may not always have a director that is as knowledgeable as our current director, as written, this promotes possible conflict of process.

21.29.040 (a) You have all heard my testimony on the lawfulness of viewshed rights and the few ways they are regulated or transferred. "Street-level visual screening" is just as unlawful as before, just a different angle of repose. There is no need for this language in the code, as if the operator is complying with the buffers, they will absolutely, inadvertently, achieve the screening.

21.29.050 (a)(1)(a) This regulation imposes 32ft buffer. We proposed a larger berm, and thus a buffer, but with access granted in the water table to offset the loss. One requirement without the other allowance is again, costing the operator, removing a valuable commodity from circulation with the public, and promoting more contention with the public as the frequency of new sites will surely increase because the need is naturally going to increase. The Street-level visual screening is the same as previously explained. The use of Undisturbed natural vegetation is unlawful. Please research *Tigard v. Dolyn*. Without giving the operator a alternative use for the property, it is a takings without just compensation.

(a)(1)(b) This regulation allows for the use of, and replacement of, the buffer slopes. We accept the idea, but 30 days is too short a time frame as material to replace the excavation may need to be hauled in as waste material from construction projects. 90 days is more suitable. Onsite material will surely be needed for reclamation since there is no provision in this document for the average pit to dig shallow ponds, thus shrinking the total area needed to reclaim.

(a)(2) This regulation prohibits use of any on site water. How are we to do any dust suppression? How do we make septic rock with a wash plant? Calcium chloride uses water to apply it as well. Traditionally we have used ponds in our sites to fill water trucks to suppress dust, run a wash plant, or obtain compaction on job sites. Without this availability, we would need outside sources, and truck it in. this goes against the intent of protecting the public safety, health, and welfare, by imposing unnecessary truck traffic. Also, the availability of outside sources is extremely small, as we can not pump out of any fish bearing source, and would not want to as responsible operators. A small pond or minimum dig in the water table should be allowed with every CLUP. Major or deep digs should be looked at with a separate permit and requirements. A minimum amount of dewatering should be allowed with each CLUP. 75,000 gallons per day should suffice. A water truck is 4,000 gal. We have been operating at this level on the KPB for 50 plus years and have no record of incident. The bonding of wells should only apply if the well is close horizontally or vertically to proposed excavation. If the dig is 15ft and the nearest well is 80ft....they are in two different aquifer formations and not connected. No need to burden the operator as we have no record of wells being damaged by a material site.

(a)(4) As explained before, this goes against the intent of this ordinance without access to a water source. May in some areas be an impossible task, as we will not be able to haul water fast enough to keep up.

(a)(6) How are we to install a monitor well if we are not allowed to excavate within 4ft of the water table? Even a drill excavates material by definition.

(a)(7) When will the setback not overlap? So this is really 282ft. Also, child care facility needs to be licensed.

(a)(9) As explained before, a permit without processing is useless. We process material by definition. We would simply be not able to operate.

(b)(1)(a),(i) Giving the planning commission discretion to 100ft eliminates any standard. How are we to speculate a suitable site if we do not have a standard that wont more than triple? Plannings discretion should not be over 300% of the standard. It should be less than 50%. "an eight-foot-high berm above the preexisting elevation may be constructed" may needs to be changed to must.

(b)(2) Roads should be kept to standard by the government. Maintenance is included in the gov. responsibility's. If we damage a road, its on the operator to repair it. Government should not shed it's responsibility. We pay taxes too.

(b)(3) ingress and egress. There is no need for this regulation. No one knows the best choice for placement than the operator. This is sort of a double regulation as we are already regulated to conform to all applicable agencies.

(b)(4) This regulation imposes operators to operate outside their ownership. Some operators don't have equipment designed for work outside the site boundary. Certain accesses may have restrictions or other permits required for activity within their ownership. A site operator can not control outside influences.

(b)(6) As stated before, any visual language should be struck from any ordinance. Viewshed rights don't allow for it.

21.29.055(b)(1) Processing hours have been limited from 6am-10pm to 8am-7pm. This is commonly not enough time to get the necessary projects done in the construction season. 7am-7pm is more appropriate as discussed with our members.

21.29.057 This regulation does not allow for any dewatering. As stated before, we need the tools to do the job. A minimum dig for a water source should be allowed with a maximum dewatering of 75,000gal. in all permits to comply with dust mitigation, wash plants for septic rock and other uses, and to be in harmony with the intent of this ordinance and not create unnecessary truck traffic.

21.29.060 There is no consideration here for post mining uses. We should be promoting post mining uses.

21.29.070 This regulation says if you meet all requirements, the planning commission MUST renew permit...but then says they may impose additional requirements and therefore, would deny the permit, in essence, if the operator did not agree with the new requirements. Government should not make a deal and then change the goal posts! Very unbecoming of the KPB to do so.

21.29.115 This regulation is probably the most egregious. Many PEU's were here before the KPB was. Many came from homesteads. Many have been passed down as a last wish of a generation to ensure the next had a form of value. Also, many sites, PEU and CLUP, have been operated for years, with the sweat equity of the operator, with the intention of someday selling the operation and retiring. This regulation almost guarantees that the value is lost. The site would immediately turn from an asset to a liability as the loss of the PEU or CLUP would initiate immediate reclamation, whether the commodity was exhausted or not. It would go against the Alaska constitution to use our resources to the fullest extent. The reality is that almost surely, the site was there before any surrounding residents were and if the site was forced to reapply for a permit, the half mile radius of opinions would not be in favor. Very unbecoming of the KPB to suggest this.

21.29.120(b) There needs to be clarification and standards in which the director would make a decision to approve or deny. We reserve our grievance on this portion of code until more information is provided.

(c) This regulation is the second most concerning. 365 days is not near enough time. This code also goes against the intent of this ordinance as it, like the lack of water, will create unnecessary truck traffic, dust,

noise, and general activity. Many larger sites sit dormant for very good reasons. Many are reserved quantities of resources for major state projects. Not unlike the four-lane connection between Soldotna and Sterling. It is finally scheduled and there's a few sites that have been waiting years for it to happen. It is not uncommon for an operator to get sick or hurt for a year and skip a construction season. The residents around some of the sites that have been dormant have enjoyed a reprieve from any activity. This regulation would end that enjoyment, and guarantee activity every year. Also, this is another case that the government is changing the deal struck with operators years ago. A longer time frame may be manageable. Our members have discussed 10 years.

(f) As these are old sites, and deals were struck years ago, it will almost surely be hard or impossible for these sites to conform to the new reclamation requirements. The material may not be there to do so. If ponding or post mining uses aren't allowed, it will make it even harder to accomplish. Also, the hours of operation and reclamation plan requirements is again, the government moving the goal posts. Unbecoming.

(h) This needs to be clarified as "permitted excavation" it reads as a cease and desist order as written.

Thank you for your consideration,

Ed Martin III, President, KPACA.

From: [Blankenship, Johni](#)
To: [Warner, Avery](#)
Cc: [Turner, Michele](#)
Subject: FW: <EXTERNAL-SENDER>Fwd: Proposed KPB ordinance 2022-36 regarding CLUPs and MSPs
Date: Tuesday, August 23, 2022 6:08:09 PM

From: Katharine M. Tongue <kmtongue@icloud.com>
Sent: Tuesday, August 23, 2022 5:51 PM
To: Blankenship, Johni <JBlankenship@kpb.us>
Subject: <EXTERNAL-SENDER>Fwd: Proposed KPB ordinance 2022-36 regarding CLUPs and MSPs

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Hi, Johni. I sent this to Mr. Johnson and Mr. Chesley on the 12th. Didn't hear anything back - of course they're super busy - but realized I should've cc'd you. Thanks very much. Enjoy the meeting.
Katie

Begin forwarded message:

From: Katharine Tongue <kmtongue@icloud.com>
Date: August 12, 2022 at 12:20:13 PM AKDT
To: bjohnson@kpb.us, lchesley@kpb.us
Cc: John & Katie <jbandkt@gmail.com>
Subject: **Proposed KPB ordinance 2022-36 regarding CLUPs and MSPs**

Dear Mr. Johnson and Mr. Chesley,

I'm writing with regard to proposed KPB ordinance **2022-36** regarding CLUPs and MSPs.

We are a small Kasilof operation, extracting our material in stages, over the long term, conscious of the wildlife, scenery, and reasonable use of all materials involved. We engage with our neighbors in the years we operate the pit and have very good relationships. While we have sold to large highway projects in the past, we prefer to limit our sales to individual contractors and neighbors.

I'm still working my way through your document, but 3 concerns are immediately apparent:

Under 21.29.120. *Prior-existing uses*, Clause D, *Expansion Prohibited* of your proposed ordinance, it sounds like you are asking that we clarify our footprint prior to October 1st in order to protect our PEU status. Do you mean that our entire PEU property must be cleared of trees? of topsoil? While beetle kill will soon render that suggestion somewhat less ridiculous, stripping our property in order to preserve our pre-existing right to extract our material strikes me as completely contrary to the goals of this amendment process. What is wrong with using current mapped parcel parameters? We can bulldoze our property/forrest but that seems counter to good sense. I think you are trying to prevent adjacent property purchasers from being offended after they did not look at a map when they purchased their land. That seems to be coddling at our expense (as well as current neighbors' when we are forced to clear a current visual and auditory barrier). Give thought to how you can achieve your goals without causing more neighborhood problems - as this directive will. We will be obliged to clear right to property lines which we have avoided thus far.

My second objection regards Clause C, *Discontinuance*. Again, given our historic and long term plan for extraction of material, there have been and may be years where there is no extraction. Why is that a problem? If you are looking to prevent operators from reopening old pits, consider a 3-5 or 10 year 'fallow' rule as opposed to one. One year is too draconian.

Third, regarding A. *Determination* and B. *Decision*, we went through this to comply with 21.29.120. (Prior existing uses. B. Owners of sites must have applied to be registered as a prior existing use prior to January 1, 2001.) Why do you need to impose this burden again? If it is intended to weed out the pits whose owners are no longer engaged, then please make the application process simple for those of us you are imposing this burden upon.

Thank you for your consideration.

Katie Tongue.
Owner, JBKT, LLC



DATE: August 30, 2022

TO: KPB Assembly

SUBJECT: Ordinance 2022-36 Amending 21.25 & 21.29
Regarding CLUP & Material Site Permits

RE: Technical Recommendations

The proposed ordinance does a good job in laying out and addressing different aspects material site permitting and the areas that need improvement regarding material site permitting and management.

After initial review of the proposed ordinance, there are two sections that I am submitting written comment on currently.

21.29.030.A.7 & 21.29.030.A.8

The Application Procedure section designates which parts of site map and site plan should be prepared by a professional surveyor versus a professional engineer. As written, these sections do not properly differentiate responsibilities of the two disciplines. Recommended amendments are as follows:

Part 7 Subsection a. Separated into both professional qualifications as follows: areas of existing excavation should be shown on Surveyor's map & areas of proposed excavation & reclamation should be part of Part 8 Engineering.

Part 7 Subsection b. Proposed buffers should be included in Part 8 Engineering.

Part 7 Subsection d. Separated into both professional qualifications as follows: areas of existing ingress/egress should be shown on Surveyor's map & areas of proposed ingress/egress should be part of Part 8 Engineering.

Part 7 Subsection e. Anticipated haul routes should be included in Part 8 Engineering.

Part 7 Subsection f. Should be separated into both professional qualifications as follows: areas of existing processing should be shown on Surveyor's map & areas of proposed processing should be part of Part 8 Engineering.

Part 8 Subsection b. Locations of test holes and depth to groundwater should be included in Part 7 Surveying.

Part 8 Subsection c. Locations of private wells of adjacent property owners should be included in Part 7 Surveying.

Part 8 Subsection d. Locations of any waterbody on the parcel should be included in Part 7 Surveying.

Page 1 of 2



Basically, any existing conditions should be included Part 7 Surveying and planning related items should be included in Part 8 Engineering.

21.29.055 Earth Material Processing

The Borough needs to add in a reference to blasting. While blasting to mine or process material isn't very common in the Borough there are areas of the borough where hard-rock mining is taking place and should be covered in permitting. Blasting will also become more prevalent in the Borough as the high-quality riverbed deposited gravels are exhausted.

Please feel free to contact me if you have any questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Gina DeBardelaben".

Gina DeBardelaben, P.E.
Vice President

Page 2 of 2

P.O. Box 468 Soldotna, Alaska 99669 (907) 283-4218 Fax (907) 283-3265
Email ginadebar@mclanecg.com

From: Blankenship, Johni
To: Warner, Avery
Subject: FW: <EXTERNAL-SENDER>Material site 2022-36
Date: Thursday, September 1, 2022 1:25:43 PM

Laydown public comment

From: Greg Turner <prudhoedude@gmail.com>
Sent: Thursday, September 1, 2022 1:25 PM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>Material site 2022-36

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.

Unregulated or grandfathered Material Sites and Gravel Pits have a long history of causing harm and pollution in KPB.

We taxpayers need to be protected with regulations and control to work permits and monitoring. Helping to prevent on going problems and issues created by these uncontrolled sites doing what is now illegal in controlled sites. Some examples in my area Kobuk between Spruce and Big Eddy are mining gravel below the aquifer level. Not having proper site slopes adjacent to roads, and high pressure gas transmission lines. Dumping on site of organic or nor organic material. Non functioning Junk heavy equipment and big trucks, pickups and other items, Atco trailers, RV's equipment shops and buildings. These new regulations can help prevent problems.

Recent 8/23/22 unpermitted water release by Glen Martin's Gravel Pit doing business as Northern Enterprises from three large ponds, created by digging 30' below the waters surface that is the exposed aquifer level. This is the natural aquifer level in the area 35-40 ft below Kobuk Rd between Spruce and Big Eddy Road. The surface of those ponds are 12'-15' above Greenridge St, my neighborhood and they are 25-30 feet deep. The released water flowed through Doug Norris's Gravel Pit off of Joplin Ct and Greenridge St covering Greenridge St.

In the past Glen Martin has breached the artisan aquifer twice that we know of in the last seven years. Once resulting in flooding of Greenridge St neighborhood and home crawl spaces yards similar to what we are experiencing now.

If you dig deeply 30' below the natural aquifer level to extract gravel to sell you end up with big deep ponds that are always going to be there. Open exposed deep water ponds are dangerous to humans and animals. Creating hazards for money that could possibly cause harm to citizens from flooding or drowning or impact water quality of the local wells.

This gravel pit has a low side 5' above the pond water level of exposed sand adjacent tp Doug Norris's Pit that looks like a dike separating and containing these elevated ponds. Not ideal as it looks more like a dam.

Filling a pond with beetle kill trees and slash or dirt will displace the water resulting in overflow of the ponds. The water has to go someplace.

Water containment, Junk equipment, miscellaneous scrap and metal, older shop buildings.

Truly amazing to look at the new regulated material sites compared to the older uncontrolled sites.
Help to keep the KPB clean, vote to regulate and control these older unregulated sites and pits.

From: [Blankenship, Johni](#)
To: [Warner, Avery](#)
Subject: FW: <EXTERNAL-SENDER>Visual Screening of a Material Site
Date: Thursday, September 1, 2022 9:57:11 AM

[For laydown packet](#)

From: Hans Bilben <catchalaska@alaska.net>
Sent: Wednesday, August 31, 2022 10:43 AM
To: Blankenship, Johni <JBlankenship@kpb.us>
Subject: <EXTERNAL-SENDER>Visual Screening of a Material Site

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.

Hi Johni,

Please forward this to all Assembly members and copy to Legal and the Planning Director

Assembly Members,

As you are likely aware, the author/authors of the proposed material site ordinance rewrite have purposely removed visual screening (other than street level, whatever that means) from the ordinance. The result of this action would be that a large number of borough residents will not have equal protection under the law. If you live at street level in a one story structure you're possibly protected, but any multi story dwellings, and all houses at higher elevations will be left totally unprotected from negative visual impact. If the author(s) have a legitimate and legal reason to deny this basic protection, please have them explain it in public. KPB code currently requires visual screening for material sites, marijuana operations, and animal feed lots. MatSu code, which seems to be the foundation for the proposed rewrite, requires visual screening. When a buffer zone is properly designed visual screening and noise screening are both dependent upon visual line of sight. To write the Standard for visual screening out of the ordinance would be a huge step backwards for the residents of this borough.

Please take a couple minutes to read the following information concerning visual

screening and its relevance to the KPB Comprehensive Plan, and please ensure that any new ordinance will continue to provide this basic protection to ALL residents of the borough.

Thank You,

Hans Bilben

The standards and conditions relating to the operation of a material site are to avoid certain land uses which may be potentially damaging to the public health, safety and welfare (21.25.020). Restrictions must be rationally related to a legitimate government objective, and ensuring protection of the public health, safety and welfare is a legitimate objective.

Standards and conditions to “minimize visual impacts” certainly shield surrounding property owners from actually seeing the material site activities. But they also do more – they mitigate against devaluing surrounding land values (a public welfare issue); they mitigate against noise (public health); they mitigate against dust (public health); they mitigate against the potential that a material site turns into an attractive nuisance (which is a dangerous condition on a landowner’s property that may

particularly attract children onto the land and pose a risk to their safety) as essentially what is being created appear to neighboring (public safety); they mitigate against the negative impacts such sites have on preservation of the scenic beauty and furtherance of the tourism industry (public welfare) (Per comprehensive plan, tourism and hospitality are major parts of the Kenai region's economy and represent the second-largest private employment sector after healthcare)

The guiding principals to better regulate land use are

- Balance and integrate multiple interests in land use: the right to use land as you choose; the right to not be excessively impacted by neighbors who exercise that freedom; and the shared value in protecting the underlying health of borough natural systems
- Develop regulations that will minimize conflicts between adjoining uses, maintain property values, maintain and improve neighborhoods, communities and natural systems
- Develop an improved set of Borough land use regulations to reduce reoccurring conflicts on the same narrow set of issues such as gravel pits.

The Comprehensive Plan specifically calls for consideration of establishing conditions that require larger setbacks, safety and visual screening, control on access routes, control on hours of operation, and address

environmental concerns.

Consideration of updating the list of topics that staff and Planning Commission may consider when setting conditions of approval.

Incorporate safety, visual quality, environmental impacts and traffic impacts.

From: [Blankenship, Johni](#)
To: [Warner, Avery](#)
Subject: FW: <EXTERNAL-SENDER>Fwd: Gravel pit in back of 50-51 Greenridge Drive causing flooding and eroding my property. Ordinance 2022-36
Date: Thursday, September 1, 2022 12:22:41 PM

Laydown public comment

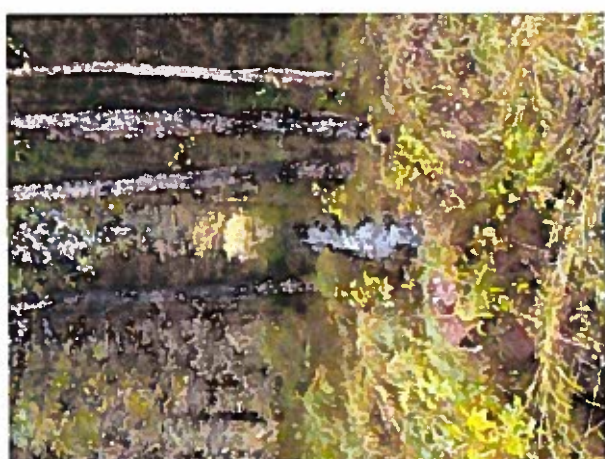
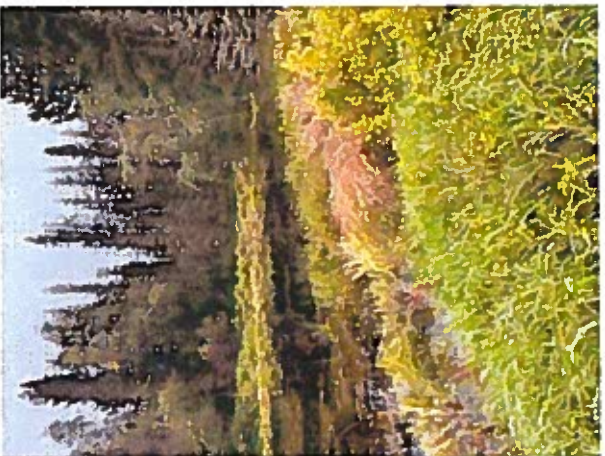
From: DR Lee <dr.lee@live.com>
Sent: Thursday, September 1, 2022 12:09 PM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>Fwd: Gravel pit in back of 50-51 Greenridge Drive causing flooding and eroding my property. Ordinance 2022-36

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.

Sent from my iPhone

Begin forwarded message:

From: DR Lee <dr.lee@live.com>
Date: September 1, 2022 at 12:07:34 PM AKDT
To: assemblyclerk@kpb.com
Cc: Ohare Russ <ro_ua@live.com>, Soldotna Neighbors Elena Staab <elena-joy@hotmail.com>
Subject: Gravel pit in back of 50-51 Greenridge Drive causing flooding and eroding my property. Ordinance 2022-36





Sent from my iPhone

We have owned lots 50-51 Greenridge Street in Ridgeway for over 12 years; and, we have never seen the pond in back of the property overflow or be even high. The pond is usually very low. For the past week the pond has overflowed and it's now eroding our property. Greenridge Street is flooded.

If you drive and observe the pit that is adjacent to Kobuk Street and Spruce Ave E and that now surrounds this area, you will see that the topography and drainage resulting from the pit overreach is changed and flooding; thus, ruining the residential property in the area. This overreach must stop.

Thank you for a quick resolution to this problem.

Sincerely,

Drs Cynthia Lee and Russell James O'Hare
907-3782987

2022-36

From Gary and Eileen D Sheridan, Anchor Point, AK

For State of Alaska residents and tourists health, safety, and sight, Please Add this Amendment to the new KPB Regulations for Gravel Pits Under 21.29.040. Add B. Gravel Pits will not be allowed in a residential area, close to recreational State Parks and Rivers, due to the Silica that can be inhaled and cause Silicosis and other fatal conditions.

Notice in the following articles, what other illnesses the silica dust can cause.

What is Silicosis? Please read the following articles.

<https://www.stopthegravelpit.com/post/crystalline-silica-dust-the-invisible-killer>
attached.

Also, From MedlinePlus - part included

<https://medlineplus.gov/ency/article/000134.htm>

"Causes - Silica is common, naturally-occurring crystal. It is found in most rock bed. Silica dust forms during mining, quarrying, tunneling, and working with certain metal ores. Silica is a main part of sand, glass workers and sand-blasters are also exposed to silica. Three types of silicosis occur:

Chronic silicosis, which results from long-term exposure (more than 20 years) to low amounts of silica dust. The silica dust causes swelling in the lungs and chest lymph nodes. This disease may cause people to have trouble breathing. This is the most common form of silicosis.

Accelerated silicosis, which occurs after exposure to larger amounts of silica over shorter period of time (5-15 years). Swelling in the lungs and symptoms occur faster than in simple silicosis.

Acute silicosis, which results from short-term exposure to very large amounts of silica. The lungs become very inflamed and can fill with fluid, causing severe shortness of breath and a low blood oxygen level....Intense exposure to silica can cause disease within a year. But it usually takes at least 10 - 15 years of exposure before symptoms occur. Silicosis has become less common since the Occupational Safety and Health Administration (OSHA) created regulations requiring the use of protective equipment, which limits the amount of silica dust workers inhale....."click on the reference above to finish reading."

Also read please

<https://www.sciencedirect.com/topics/medicine-and-dentistry/silicosis>

The noise even a block away can cause such noise to disturbances as it did me this summer after a busy day and needing sleep. Can you imagine being a visitor coming to enjoy the State camp ground on the Anchor River for a week's or holiday vacation and having to deal with the noise of the machines working the gravel pit and trucks.

I don't know how the KPB can possibly agree to have a gravel pit and mining that may cause such illnesses to our families, grandchildren, and tourists. I'm now scared for my grandchildren that came this summer to fish and vacation with grandpa and grandma and enjoyed running around in our yard, riding the bikes grandpa had fixed up for them. Have we unknowingly allowed them to have the start of Silicosis from the gravel pit which was denied but then given 2.5 acres to work? We built a "Beachy Built Home" with an air system never expecting to have

From Gary and Eileen D Sheridan, Anchor Point, AK

a gravel pit being put in 15 years later. That fine dust gets in everything. Look at the different types of cancer that has been shown to be causes of gravel pits and mining. I know what it is like to fight cancer. I had just started treatments in Soldotna when we first found out there was a plan to have a gravel pit in our neighborhood. Our rivers help bring our tourist businesses, and we should protect those businesses, too.

Respectfully submitted to the work group of KPB to update regulations for Gravel Pits,
Eileen and Gary Sheridan



Photo by friend of ours who visits us almost every year.

Crystalline Silica Dust — The Invisible Killer

**How a *Totally Unnecessary* Gravel Mine Would Create
Widely Known Deadly Health Issues
That Would Harm Hundreds of Benzie County Residents**

Developed for and Presented to the
Homestead Inland Joint Planning Commission
December 6, 2019

prepared by



Crystalline Silica Dust — The Invisible Killer

Summary

The proposal of an open pit gravel mine in a district zoned Rural Residential creates numerous very serious consequences. This report primarily examines the devastating health issues created by crystalline silica dust, an unavoidable byproduct produced when mining gravel.

Until recently, few understood the dangers created by crystalline silica dust. Unlike normal sand, crystalline silica dust has razor sharp edges and is microscopic in size. When inhaled, it bypasses the body's natural defenses and become *permanently* lodged in the deepest parts of the lungs. It has proven links to diseases that lead to death including silicosis, lung cancer, COPD, renal failure, and kidney disease as well as causing auto-immune diseases like rheumatoid arthritis. These health issues are so grave that OSHA and MIOSHA have recently adopted new safety standards to deal with crystalline silica dust. Both agencies are involved in a massive educational drive to warn workers about the dangers.

Not only is crystalline silica dust deadly, it is difficult to control. Clouds of it can easily be swept up and carried by the wind for tens of miles. Even in what weather experts call 'calm' winds, this deadly dust can travel for miles settling in the yards and on the homes and innocent bystanders in Inland Township, its three neighboring townships, and even further.

All of the related diseases crystalline silica dust is widely known to cause serve as sufficient proof of a 'very serious consequence' health based issue as required under MCL 125.3205 Sec. 205 (5)(e). Denying the requested special use permit for this totally unnecessary gravel mine at parcel 08-006-007-00 is the only logical, fair, and humane course of action the HIJPC can take.

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Direct any questions
about this report to:

Jim Brouwer
Friends of the Platte River Watershed
jim@platteriverwatershed.org

Crystalline Silica Dust — The Invisible Killer

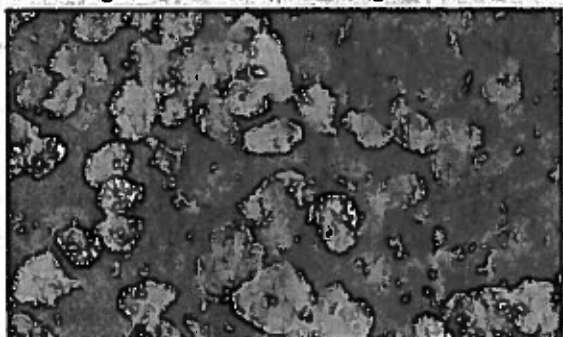
Sand's Tiny Secrets — Size, Material, & Shape

Sand holds some interesting secrets. We think we know what it is, but do we? Technically, 'sand' is any sediment whose particles are 60µm (microns or micrometers) or larger. Granules smaller than 60µm down to 2µm are considered 'silt.' For a point of reference, the hairs on your head are typically 10µm thick.

Sand is often referred to as 'silica.' Most sand deposits are primarily made up of quartz, but other minerals are usually found. Quartz is *crystalline silica*, a silicate mineral made of silicon dioxide (SiO₂), silicon and oxygen. It is the most abundant mineral found in sand.

Figure 1 shows a typical sample of sand, not unlike that which is found all around northern Michigan. It is comprised mostly of crystalline silica (quartz), with some epidote, garnet, potassium feldspar, and a few other minerals.

Figure 1 — 'Sand' (300x Magnification)



Different types of sands are put to work in a wide range of useful applications including: road construction, concrete, filtration, glass, ceramics, and computer chips. They also vary considerably in their marketable value.

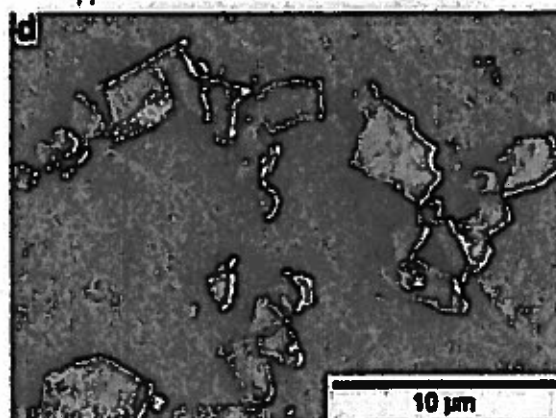
Most sand with which we are familiar is heavily weathered. It has the familiar shape of

stones washed up along the Lake Michigan shoreline. While their sizes may vary a bit, they all have nicely rounded, smooth edges.

Digging into the earth when mining for gravel, the size and shape of these unweathered common sand granules change dramatically.

Figure 2 — Crystalline Silica Dust
(5,000x Magnification)

Appendix A shows three even smaller sizes.



Note the 10µm graphic in Figure 2. That's the width of a typical human hair. Anything smaller than 5µm is invisible to the naked eye, unless there are billions of particles — as in crystalline silica dust clouds (see Appx. D p.4).

These jagged microscopic sub-10µm particles are as sharp as a stone-age flint knife — and they can kill you!¹

Crystalline Silica Dust IS Deadly

Unlike beach sand which is just annoying when it sticks to your skin and swimsuit, crystalline silica dust *is* a killer. Don't take our word for it, just take OSHA's.²

"[Those inhaling] these very small crystalline silica particles are at increased risk of developing serious silica-related diseases."

¹ Silica...It's Not Just Dust: Silica Dust Causes Silicosis - What rock drillers can do to protect their lungs from silica dust, Center for Disease Control and Prevention, National Institute for Occupational Safety and Health, NIOSH Publications, 97-118, July 1998

² *Respirable Crystalline Silica*, Occupational Safety and Health Administration, United States Department of Labor, osha.gov/dsg/topics/silicacrystalline/

Crystalline Silica Dust — The Invisible Killer

In 2017, OSHA completely revamped their requirements for worker safety when engaged in activities where crystalline silica is present.

Plastered all over OSHA's website and materials is the warning graphic shown here.



So, what exactly are those 'serious silica-related diseases?' They include (but are not limited to):

- ☛ Silicosis
- ☛ Lung Cancer
- ☛ COPD (Chronic Obstructive Pulmonary Disease)
- ☛ Kidney Disease

Silicosis is an incurable lung disease that leads to disability and death. We've all heard of 'black lung disease.' Black lung expert, Dr. Robert Cohen, has recently warned that

"[Crystalline] Silica could be even more dangerous to workers than coal dust.

[Crystalline] Silica is actually a lung carcinogen. And it causes renal disease, it causes other auto-immune diseases like rheumatoid arthritis and other things, so silica exposure is a huge problem.³

So serious is this issue that even the Michigan Aggregate Association (the lobbying organization behind the totally discredited MDOT *Michigan Aggregates Market Study Ph I & Ph II Reports*) is actively encouraging its member supporters to attend OSHA approved silica training!⁴ Why does the MAA promote this you ask?

"To increase workers' awareness of the serious health hazards of silica dust and provide the knowledge necessary for employee protections."

Why is Crystalline Silica Dust So Deadly?

Mother Nature provided our respiratory tracts with a host of protective mechanisms to 'filter out' most of the junk that *naturally* occurs in our air. Since most of what nature throws at us is over 10µm in size, we do a pretty good job of keeping the bad stuff out of our bodies.

However, breathing crystalline silica dust is the equivalent of inhaling millions of microscopic razor blades. As shown in Appendix A, these dust particles can be as small as .01µm.

These invisible particles pass all body defense mechanisms and become embedded in the deepest reaches of the lungs. This is where the greatest danger lies as they reach the alveoli, the finest branches of the lungs where the oxygen/carbon dioxide exchange takes place.⁵

When inhaled, particulate matter larger than 5µm usually gets trapped and expelled before it reaches the lung's gas-exchange zone. Particles smaller than 5µm are considered to be 'respirable,' meaning they can reach the deepest parts of the human lungs.

³ Silica safety urged in QLD, OHS Career, March 21, 2017, ohscareer.com.au

⁴ *Protecting and Promoting Your Interests*, Michigan Aggregate Association, November 16, 2019 See Appendix B

⁵ A. Voss and S. Alfano, *The Body's Defenses Against Breathing Dirty Air*, ProRemodler, June 23, 2016

Crystalline Silica Dust — The Invisible Killer

Mother Nature never planned on us being exposed to crystalline silica dust, certainly not in the quantities produced by our many industrial activities. Silicosis can develop very quickly and (short of an entire lung transplant) is completely untreatable.

Think You're Safe? — Wrong!

OSHA is making a tremendous push to raise worker awareness of the real hazards created by crystalline silica dust. Wearing adequate dust protection, respirators, and controlling the dust in the first place will save countless lives. How about those who don't work around this stuff?

Non-occupational exposure to crystalline silica dust is even greater cause for concern. As this 'killer dust' spreads miles past its place of origin it not only lingers in the air but settles everywhere — including *inside* homes.

We spend the majority of our time at home. Depending on our job and lifestyle that can be 70%-100% of our time. Unlike a protected work environment, exposure at home is unprotected and constant. Home settings also includes children and the elderly who are more vulnerable than able bodied workers. Not only do children breath more deeply than adults, their smaller body mass means their comparable exposure risk is much higher.⁶

Exposure limits for crystalline silica differ considerably between work and non-occupational exposure. OSHA's permissible exposure limit is 50 micrograms per cubic meter during an 8-hour workday.⁷ Michigan follows these guidelines which includes an

'action level' set at 25 micrograms per cubic meter. Michigan also requires employers to safeguard employees from exposure, provide them with respiratory protection, maintain medical surveillance, engage in hazard communication, and keep good records.⁸

For those who spend all their time at home, equivalent exposure limits would fall below 12 micrograms per cubic meter for exposure and 6 micrograms per cubic meter for action.

I'm Nowhere Near Silica Dust — Really?

Turns out, size really does matter. For crystalline silica dust, the smaller it is the more threatening it becomes. Not only is this invisible dust respirable, it easily becomes airborne, stays airborne for extended periods of time, and travels incredible distances.⁹

Particles typically need to be under 200µm in size to become airborne. Those smaller than 10µm are invisible and smaller than 5µm penetrate our immune system. As shown in Figure 3, dangerous crystalline silica dust easily travels for miles. It not only affects people at the source but those in surrounding neighborhoods. In some measured cases as far away as 50 miles.¹⁰

Figure 3 – Distance Traveled by Particulate Size

Wind Speed (mph)	Miles Traveled	
	10µm	5µm
3.1	0.55	2.2
6.2	1.1	4.5
12.4	2.3	9
24.8	4.6	18
37.3	6.9	27
49.7	9.2	36.1

⁶ J. Warren, *Silica Monitoring*, Public Lab, publiclab.org, February 22, 2018

⁷ C.A. Epstein, *Everything You Need to Know About OSHA's Respirable Crystalline Silica Final Rule*, February 2, 2018, oshaonline.com

⁸ *Crystalline Silica Exposure*, MIOSHA Fact Sheet, CSH Fact Sheet - #109, Revised October 12, 2017

⁹ *Silica Dust Particle Size Causes Problems*, BossTek, 2019, bosstek.com/silica-dust-compliance/silica-particle-size-behavior

¹⁰ *How Far Can Respirable dust Actually Travel?*, Insider News, NeSilex, September 24, 2019

Crystalline Silica Dust — The Invisible Killer

How Far Will Silica Dust Spread Here?

The only available historic 'local' wind measurements are those taken at the Frankfort and Traverse City airports. Appendix C contains the diagrams of the wind history at both airports for the months of May – October (the busiest times for gravel production).

Roughly one-third of the time the wind is calm (less than 5.8mph). Calm doesn't mean 'dead calm.' Shown as red in Figure 5, at 5.8mph respirable silica would still travel 4.2 miles from the proposed 150-acre gravel mine.

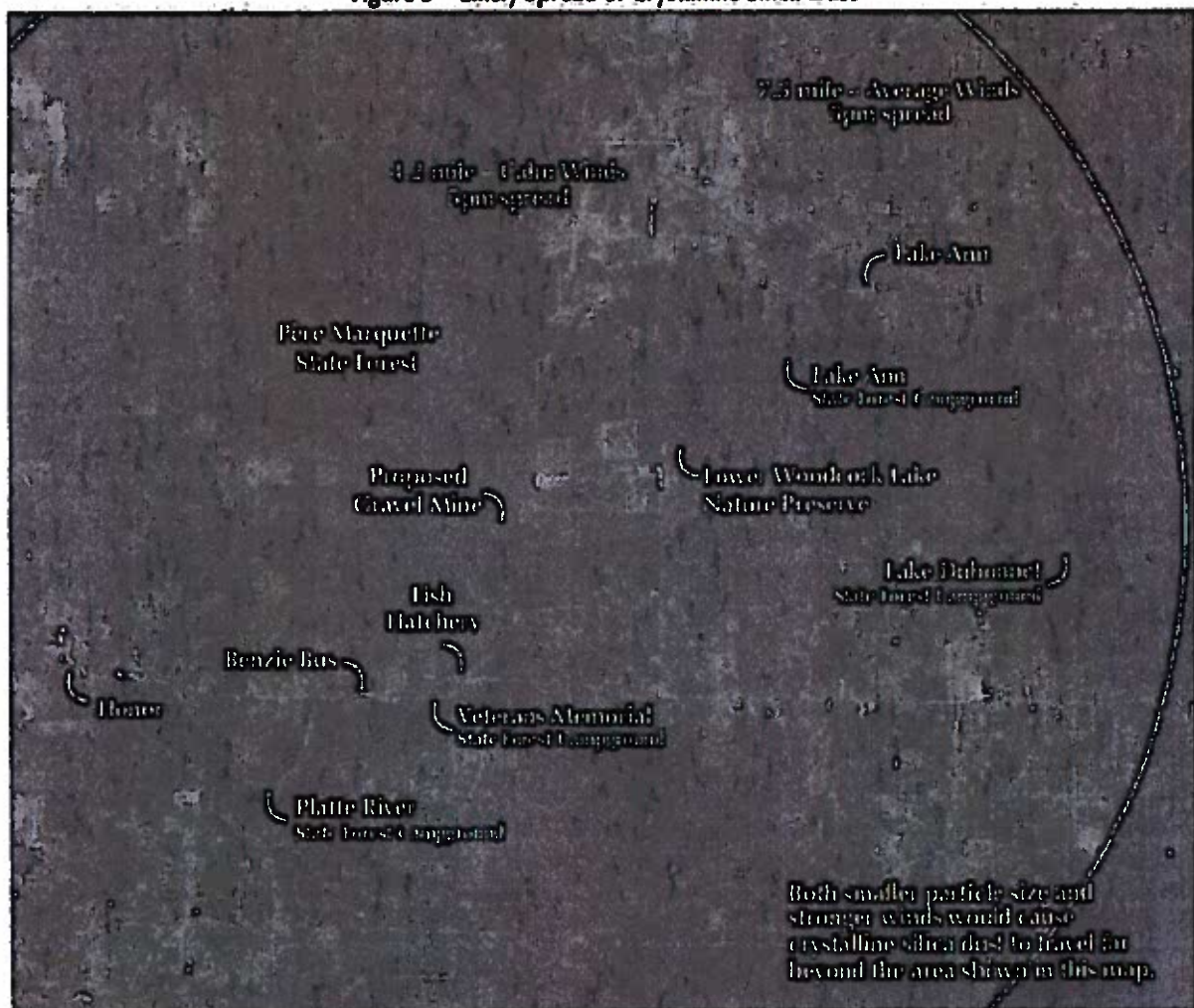
This area's Average windspeed over the past three years for May – October, the average Maximum sustained winds, and average Gusts are shown in Figure 4. The miles that silica dust can be spread relates to particulate size.¹¹

Figure 4 – Crystalline Silica Dust Wind Distribution

	Wind Speed (mph)	Miles Traveled	
		10µm	5µm
Calm	<5.8	<1.0	<4.2
Average	10.3	1.9	7.5
Maximum	23.9	4.4	17.4
Gusts	39.8	7.4	28.9

Note: Silica Dust smaller than 5µm travels even further!

Figure 5 – Likely Spread of Crystalline Silica Dust



¹¹ While wind data was pulled from the Weather Underground, all data originates from the National Centers for Environmental Information, National Oceanic and Atmospheric Administration.

Crystalline Silica Dust — The Invisible Killer

It's easy to understand how these microscopic razor blades carry so far in gentle winds. Strong gusts can carry crystalline silica dust all the way to Traverse City or Frankfort. As duly noted in the Homestead Inland Townships Master Plan, this truly is an issue of "Greater Than Local Concern."

Where's the Problem? – You Can't Be Serious! Mr. Leman has done little to instill confidence that he understands the consequences of his desire to have a hobby gravel mine. In a September 12, 2019, TV 7&4 News interview, Mr. Leman states

"There's no production things we processes that we would do here which would pollute the ground in any way. That sand and gravel is already in the ground."

Seriously? It is obvious he doesn't understand the environmental impact of gravel mining or the dangerous release of crystalline silica dust which mining causes.

Mr. Leman is also quoted in that interview and in papers saying he's only going to work on 4-acres at a time. Yet all of the plans submitted to and described at HIJPC meetings clearly show sections of 6+ acres. If he is so inattentive to these and other details, how can he ever be trusted to understand or look after what's necessary to run a gravel mine safely?

Crystalline silica dust is a serious health issue. Given Mr. Leman's lack of responsiveness to providing a complete and timely application, let alone his inconsistency within those plans, many believe he's not taking things seriously. If that's the case and if his special use permit is granted, many wonder if he would ever follow safety precautions or take any laws seriously.

Given there appears to be no statutory value to the gravel as defined under MCL 125.3205 Sec. 205 (3) and there are considerable health risks, in the opinion of neighboring residents the risks completely outweigh the non-benefit.

Having focused on the harm silica dust does to humans, the same needs to be noted about the local wildlife. Further, local organic farming would also be disrupted as the strict protocols of being organic are unavoidably, unfairly, and unjustifiably violated. Even on a 'calm' day, over 55-square miles are put at risk. Kick the wind up to 'average' speed and the number jumps to over 176-square miles.

It is abundantly obvious that allowing the operation of an open pit gravel mine would create uncontrolled crystalline silica dust.

Beyond the flood of studies readily discoverable online and the recently adopted push by OSHA to protect workers, this report clearly outlines the very serious consequence that would result from granting the requested special use permit. It fulfills the requirement of defining a 'very serious consequence' under MCL 125.3205 Sec. 205 (5)(e)

"The impact on other identifiable health, safety, and welfare interests in the local unit of government."

But It's Just a Small Operation – Yeh, Right! Getting one's foot in the door appears to be a standard ploy. There are dozens (if not hundreds) of stories about little mining operations that were never supposed to grow much bigger — but did — and did so quickly. Here's just one of those stories.

Downstate in Grass Lake Township, just 25 miles west of Ann Arbor, the Bohne Road Gravel Mine started as a little operation.

Crystalline Silica Dust — The Invisible Killer

The local farmer was granted a special use permit to mine sand on his land for his own use on his farm. No big deal, right?

Then the farmer sells his farm to a company that expands the mine's operation into gravel extraction — hey, the special use permit said sand and gravel, not 'just sand.' The mine grew quickly. So did the problems.

In addition to the quality of life disruption and property devaluation experienced by the gravel mine's neighbors, crystalline silica dust became problematic. As some residents shared with their planning commission¹²

"...the dust issue is a HUGE factor here."

"The gravel pit is a serious health risk."

"...my windows haven't been open since the mine was started."

"There is dust all over the plants and trees in the yard as well as the house and car on a daily basis."

"The dust is a nightmare!! It's constantly in the air..."

"We are concerned for the health of our family, my daughter and I have severe asthma ... we will have to continue to wear our masks to try and keep the contaminants out of our lungs. Why do we have to suffer?"

"There is overwhelming evidence regarding longterm silica dust exposure and respiratory disease. Residents near Bohne Road gravel pit testified they now suffer from respiratory diseases such as asthma and COPD."

"Why should the residents be subjected to all these issues from this gravel pit?"

The last comment raises a great question.

Figure 6 – Crystalline Silica Dust Inside a Home (near the Bohne Road Gravel Mine)



As the years passed, the gravel mine was sold to its new owner who now wants to expand operations even further. What was once a 'little private sand mine' has turned a community upside down with a full-blown gravel mining as shown in the pictures of Figure 7 on the next page.

Don't Tell Us It Can't Happen Here!

It could. Far too easily it could. Need or benefit of this gravel mine does not exist. The damage to the community would be devastating and permanent. The HJPC has evidence of very serious consequences which it can utilize to equitably and justifiably deny the requested special use permit. Crystalline silica dust is perhaps the most compelling of all very serious consequences.

¹² Excerpts from a private Memorandum from Dr. Sandra McCoy, December 3, 2019, full memorandum in Appendix D

Crystalline Silica Dust — The Invisible Killer

Figure 7 – Bohne Road Gravel Mine, Grass Lake Township, Michigan



Conclusion

To the communities' knowledge, Mr. Leman has failed to provide credible evidence that there is a need for more gravel production in Benzie County. With over a dozen-and-a-half gravel mines within 2 – 12 miles with at least two being major operators, supply far exceeds demand.

To underscore Mr. Leman's apparent lack of market awareness, in his September 12, 2019, TV 7&4 News interview, he states

"People want to move to our area and the demand for construction materials is certainly there. Sand and gravel from our community means you don't waste fuel and truck this stuff in from a long ways away. They can get it right down the street."

First, as noted in the newly formed Inland Township Planning Commission's November 27, 2019 draft Master Plan, as reported by the official U.S. Census, Inland's population has fallen 8.6% since 2010. People certainly may want to move here, but the official numbers suggest they aren't doing so. "Demand for construction materials is certainly [here]" — and it is being more than sufficiently met by existing operators. More gravel mines in our area are *not* needed.

Second, there isn't much building going on 'right down the street' from this 150-acre Rural Residential parcel. Even with the horrible mileage a gravel truck gets, given the close proximity of existing gravel mines, any theoretical savings on 'wasted fuel' is meaningless.

Mr. Leman's hasn't and likely can't justify that mining at this Rural Residential

property would produce revenue of a sufficient enough level that he could reasonably expect to operate at a profit, a requirement under Michigan's Zoning Enabling Act, MCL 125.3205 Sec. 205 (3). In the opinion of many, under this act, this lack of profitability precludes finding value in the gravel on that property.

Even if there were valuable minerals to be found there — a hypothetical, not an acknowledgement — the HIJPC must, as required under Michigan's Zoning Enabling Act, balance that value against the very real health issues extracting it would create.

Clearly stated in MCL 125.3205 Sec. 205 (5)(e) and supported by OSHA, MIOSHA, scores of other reputable organizations, and health experts worldwide, the dangers of crystalline silica dust definitely creates a 'very serious consequence' that would

"impact on other identifiable health, safety, and welfare interests in the local unit of government."

The residents of Inland Township and Benzie County would be unduly and unnecessarily punished if the special use permit for parcel 08-006-007-00 were approved.

For the negative financial impacts it would impose on local property values, granting a special use permit would be unfair. For the unavoidable health problems it would unleash, such a decision would be downright cruel.



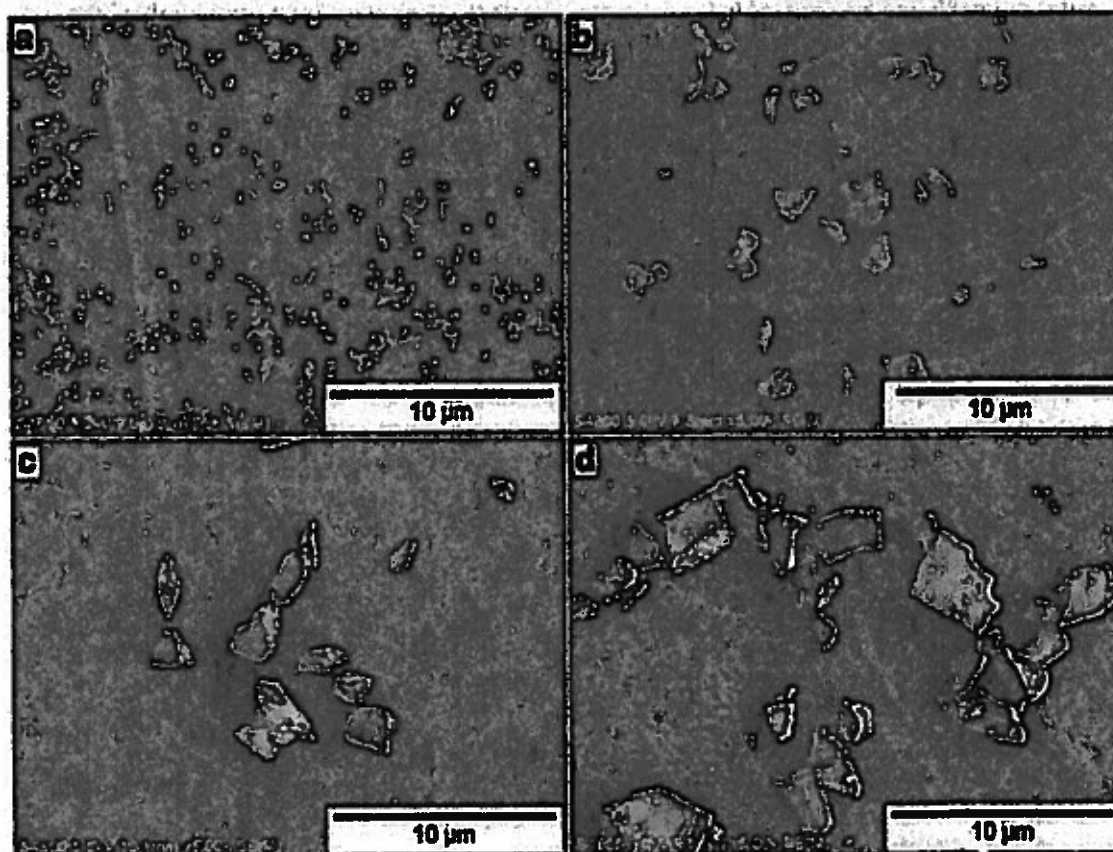
Appendix A

5,000x Images of Crystalline Silica Dust

These electron microscope images of the crystalline silica dust sort their sizes from 'ultra-fine' (as small as $0.01\mu\text{m}$) to 'course' (up to $7\mu\text{m}$). For reference, $10\mu\text{m}$ is the typical width of a human hair, represented here as the graphic insert of each image.

At sizes of $5\mu\text{m}$ and smaller, these microscopic razor blades are not only invisible, they are respirable. That is, when inhaled, they bypass all immune system defenses and can travel all the way to the deepest parts of the human lungs. There they *permanently* imbed themselves and begin creating their havoc on one's health.

As reported here and recognized by the medical community around the world, crystalline silica dust is deadly. It causes silicosis (an *incurable lung disease* that leads to disability and death), lung cancer, COPD (Chronic Obstructive Pulmonary Disease), kidney disease, renal disease, and auto-immune diseases such as rheumatoid arthritis.



Comparison of SEM Images of the four sizes of crystalline silica particles used for this study,
(a) Ultrafine (UF), (b) Submicron (S), (c) Respirable (R), and (d) Coarse (C).
Images are all at the same magnification (5,000x)

SOURCE: S.E. Mischler et al, *Differential activation of RAW 264.7 macrophages by size-segregated crystalline silica*, Journal of Occupational Medicine and Toxicology, DOI 10.1186/s12995-016-0145-2, December 15, 2016



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OSHA Approved Silica Training



MAA and MTA has partnered with Wayne State University to offer Respirable Crystalline Silica training.

This program was developed through an OSHA Susan Harwood Training Grant and is designed for the construction industry (construction professionals including but not limited to workers, site superintendents, project managers, safety managers) to increase workers' awareness of the serious health hazards of silica dust and provide the knowledge necessary for employee protections.

The training covers the new OSHA Standard on Respirable Crystalline Silica (29 CFR 1926.1153) and it aims to increase workers' awareness on the serious health hazards associated with silica exposure and provide the knowledge necessary to perform work safely when there is silica exposure and ways to limit silica exposure.

Trainees who complete all the training steps will be eligible to receive a certification.

The cost for the training is provided by funds from the grant but space is limited (max 50), so if you are interested please contact the MAA office to register. Space will be filled on first come basis.

Training dates and locations are as follows:

All training times will be from 10:00 am to 12:00 pm.

December 12, 2019

Michigan CAT

Grand Rapids, MI

December 18, 2019

AIS Construction Equipment - Lansing

3600 N Grand River Ave

Lansing, MI 48906

For more information about these sessions, please click here.


(https://gallery.mtchtmp.com/d250bd5a823dc5dd5e1625052/files/76fc3d95-753e-44ad-9b3a-b1ae46de08bf/5-1_Silica_Training_Marketing_Flyer.pdf)

If you have any questions, please contact the MAA office at 517-381-1732

https://www.miaagg.org/


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Appendix B (p.2)


**OSHA SUSAN HARWOOD GRANT
RESPIRATORY & ENVIRONMENTAL SILICA SAFETY TRAINING**

In-Class Silica Safety Training for Construction Industry

Effective October 23, 2017, OSHA has been fully enforcing all appropriate provisions of the Silica in Construction standard.



Our OSHA APPROVED TRAINING MATERIALS were developed under an OSHA Susan Harwood training grant and designed for the construction industry to increase workers' awareness of the serious health hazards of silica dust and provide the knowledge necessary for employee protections.

This training is for all the construction professionals including but not limited to workers, site superintendents, project managers, safety managers and employers.

If you are interested in an in-class training for your company or organization, please contact one of the training coordinators below to schedule a session.


Training Session Scheduling or for More Information

Please Contact

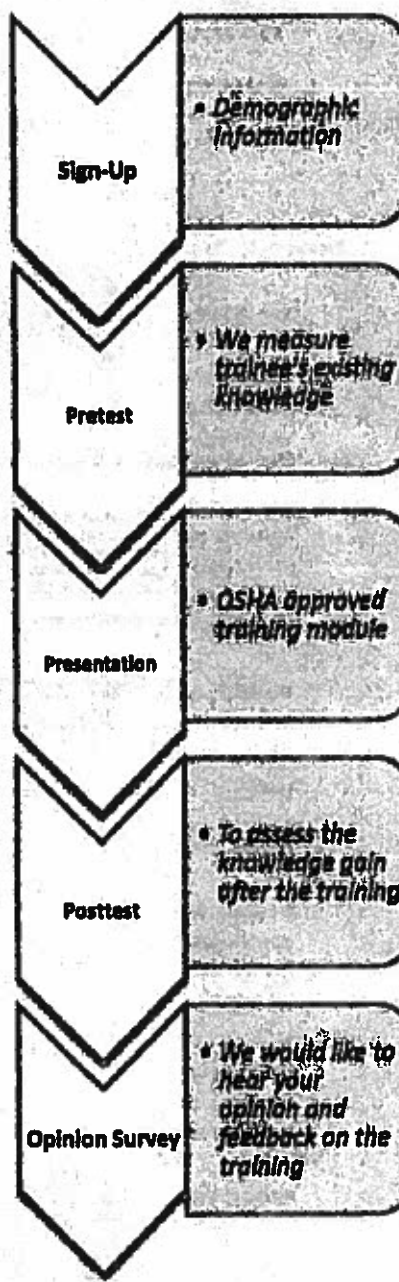
Mumtaz A. Usman, PhD, PE
e-mail : musmen@eng.wayne.edu
Phone: (313) 577-3608

Emrah Kazan, PhD
e-mail: ekazan@wayne.edu

TRAINEES WHO PARTICIPATE in and complete the whole training will receive a certificate.

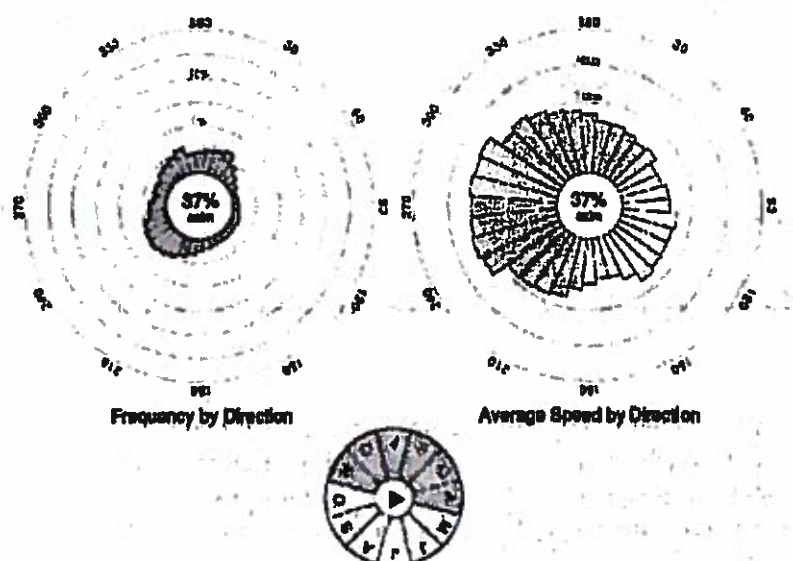


Training contact hours:
1.5 to 2 Hours



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KTVC: Cherry Capital Airport

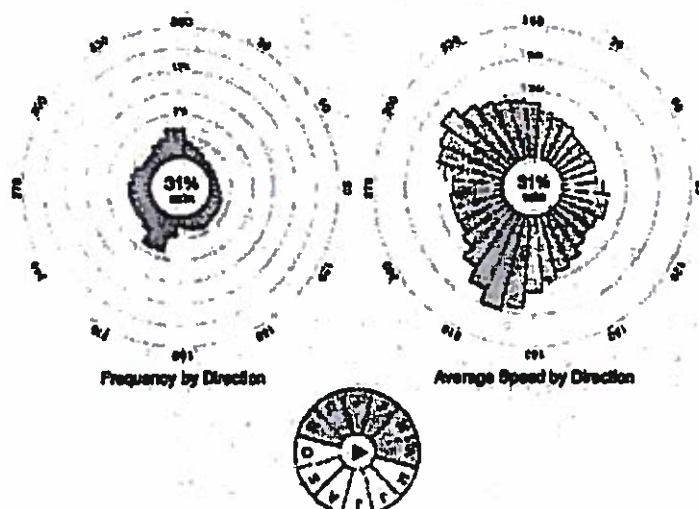


44.7438, -85.585 WeatherSpook Wunderground VFRMap FlightFinder NavMonster

A diagram of the prevailing winds at KTVC: Cherry Capital Airport. The blue diagram at left is a wind rose; the bar length shows the frequency of winds from each direction. In the red diagram at right the bar length shows the average speed of winds when they come from that direction. For more information, see about this site.

WindHistory. Copyright © 2011 Doodah LLC, LLC. All rights reserved.

KFKS: Frankfort, Frankfort Dow Memorial Field Airport



STATION VIEW



The station view shows the prevailing winds for a single weather station. Above is an example image for KSPC, San Francisco airport.

The blue diagram at left is a classic Wind Rose. The length of each bar is proportional to the frequency the wind comes from each direction and the color is proportional to the average speed. At KSPC the wind is pretty much always from the west. The most common direction is 250°, 10% of the time with an average speed of 15kts.

The red diagram at right shows the same data as the wind rose but emphasizes wind speed. Bar length is proportional to frequency. At KSPC northeast winds are rare, and when they come they tend to be light. The strongest winds come from 270°, 15kts 11% of the time.

You may hover the mouse over a bar to see exact textual data. In both diagrams the percentage in the middle indicates how often the winds are less than 4 knots (4Kts at KSPC). There are links on the station page for further information. WeatherSpook is a particularly nice complementary site showing historical weather.

MONTH FILTER

The month filter allows you to display prevailing winds for specific months. Click the extendor wedges to toggle each specific month off and on. Click the play button in the middle to animate your selection through the year.



DATA

The source data for these graphs is the NOAA archive. METARs from 2000 to 2010 were parsed and crunched to calculate average winds for each weather station. Reporting variance and data processing errors mean these diagrams are not true statistical samples.

BROWSER COMPATIBILITY

This site makes extensive use of SVG for graphics. It should work fine in modern versions of Firefox, Safari, Mobile Safari, Chrome, and Microsoft Internet Explorer 9. It will not work in IE 6, 7, or 8 and never will.

FEEDBACK

This site is a labour of love; feedback and suggestions are most welcome. Please mail scoperneto@windhistory.com with any thoughts you have. Some planned enhancements include showing winds for specific months and showing more detailed histograms.

SOURCE: Weather Underground wunderground.com reported data from NOAA (National Centers for Environmental Information) National Oceanic and Atmospheric Administration

MEMORANDUM

TO: Jim Brouwer, Friends of Platte River Watershed

FROM: Sandra McCoy, Ph.D.

DATE: December 3, 2019

RE: Bohne Rd Gravel Mine, Grass Lake, Michigan

Jim,

I moved to Grass Lake Township, Michigan 1-1/2 years ago. Grass Lake is a small town, about 25 minutes West of Ann Arbor. It has a delightful "rural" character and that is what draws many people to settle here. Grass Lake Township has been embroiled in conflicts for many years concerning the incursion of gravel mining into residential areas in our community.

I am pleased to provide some excerpts from letters written by the residents of Grass Lake Township to their Township government over the past several years concerning the Bohne Rd gravel mine which has operated since 2003. These letters were obtained through a FOIA request. Also included are excerpts from Grass Lake Planning Commission meeting minutes. Many of the comments illustrate the negative effects of dust and health concerns related to mining operations in close proximity to residential areas.

"We purchased 5-1/2 acres of land... in 1999 to build our final dream home. Since the start of the sand extraction operation... in August, 2003, our lives have been totally disrupted and our land value has definitely gone down."
"Needless to say the dust issue is a HUGE factor here. The day they were doing this our whole house and deck were covered with dust and still is. I can't even open my windows. These big earth movers were coming by our property every 10 minutes and the noise and dust was unbearable."

"Gravel pits in residential areas undoubtedly cause health and safety concerns and much disturbance for surrounding residents... The gravel pit on Bohne Road as currently operating provides no benefit to Grass Lake Township... We need to consider the more than 200 people that live within a 2 mile radius of the gravel pit with many living within 50-100 feet of pit operations. These people have stated they now must close their windows due to the dust created by gravel pit operations. This certainly is not a desirable condition for them and we can and must protect the value of our homes, the environment and keep our township a safe place to live in."

"The gravel pit is a serious health risk. There are no six foot trees on the berm to eliminate dust. Many people have not been able to walk in the area as a result of the extreme dust and probable air-borne, dangerous silica. There is no monitoring for silica contamination in the air and in the well water." "There has been no MDEQ study done prior to the original SUP to check for environmental health hazards and issues, including aquifer and water table contamination (well water contamination) and negative wildlife issues."

"I would have my windows open to let the fresh air in... Now my windows haven't been open since the mine (then called gravel pit to make it sound smaller and unobtrusive) was started. There is dust all over the plants and trees in the yard as well as the house and car on a daily basis. Inside my house, a layer of dust accumulates within a few days. I don't work in the yard anymore or hang my clothes outside... I've become a prisoner in my home which is supposed to be an enjoyable, safe haven and an investment."

"We live in a log home on Sager road that we built in 2000 and it was supposed to be our dream home." "We couldn't even open our windows at all and still can't. The dust is a nightmare! It's constantly in the air... and it's destroyed the finish on our home & decks and we have to clean it multiple times in a year now versus every 4-5 years." The biggest and closest to me is being diagnosed with a blood cancer called Multiple Myeloma. I went thru chemo for 9 months twice a week and had a stem cell collection. It's been the hardest 2 years of my life!! I asked my dr. at the UpM cancer center what is the cause of Multiple Myeloma?? He said there is a connection from diesel fumes in the air. There are diesel trucks running all day long right behind my house since they opened this sand mine around 2001 or 2002. So this has been going on for around 17 years now."

"We are concerned for the health of our family, my daughter and I have severe asthma and are worried over the silica dust among other gravel pit issues that has caused our asthma to be in a constant state of flux. We are concerned with the location of the gravel pit being so close to our property and our well that we use for water. We don't want our well to be contaminated... We unfortunately are not in a position to move, so we will continue to keep our doors and windows shut, continue to have our house vents, ac and heat checked for contaminants that the gravel pit puts upon us, we are not able to enjoy sitting outside on our deck, swimming in our pool and we will have to continue to wear our masks to try and keep the contaminants out of our lungs. Why do we have to suffer?"

"There is overwhelming evidence regarding longterm silica dust exposure and respiratory disease. Residents near Bohne Road gravel pit testified they now suffer from respiratory diseases such as asthma and COPD."

Appendix D (p3)

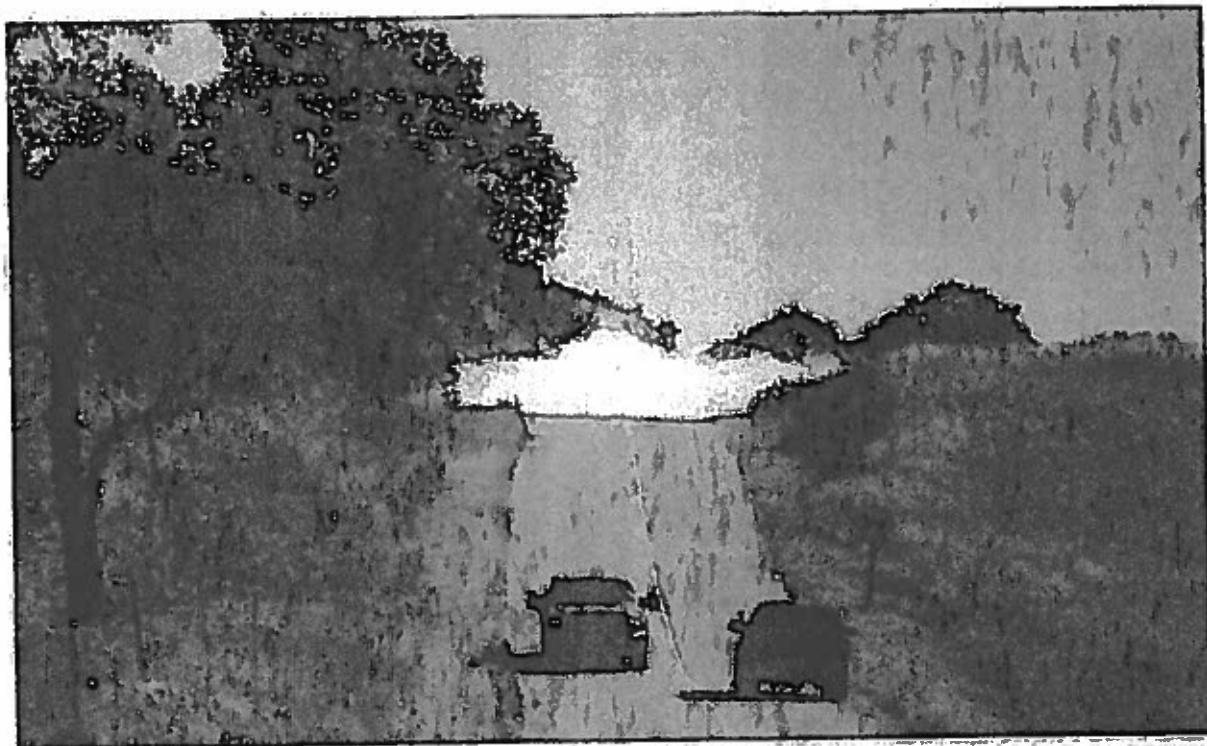
"The site alone is appalling with the noise, dust, contamination of the stream near the gravel pit, the pond, wildlife absent and natural resources. Why is this gravel pit still in operation, from failing to comply with the agreement from 21 March 2018?" "Why should the residents be subjected to all these issues from this gravel pit?"

"8/15/19 1.33pm to 1.40pm, while my husband and I were driving along Bohne Rd, Grass Lake, right near the Bohne Rd Gravel Pit. The dust was so bad we had to pull over on to the side of the road because we couldn't see in front of us." "No only is this mine dangerous to any vehicle who happens to travel along Bohne Rd, the health issues caused by the dust and diesel fumes are catastrophic."

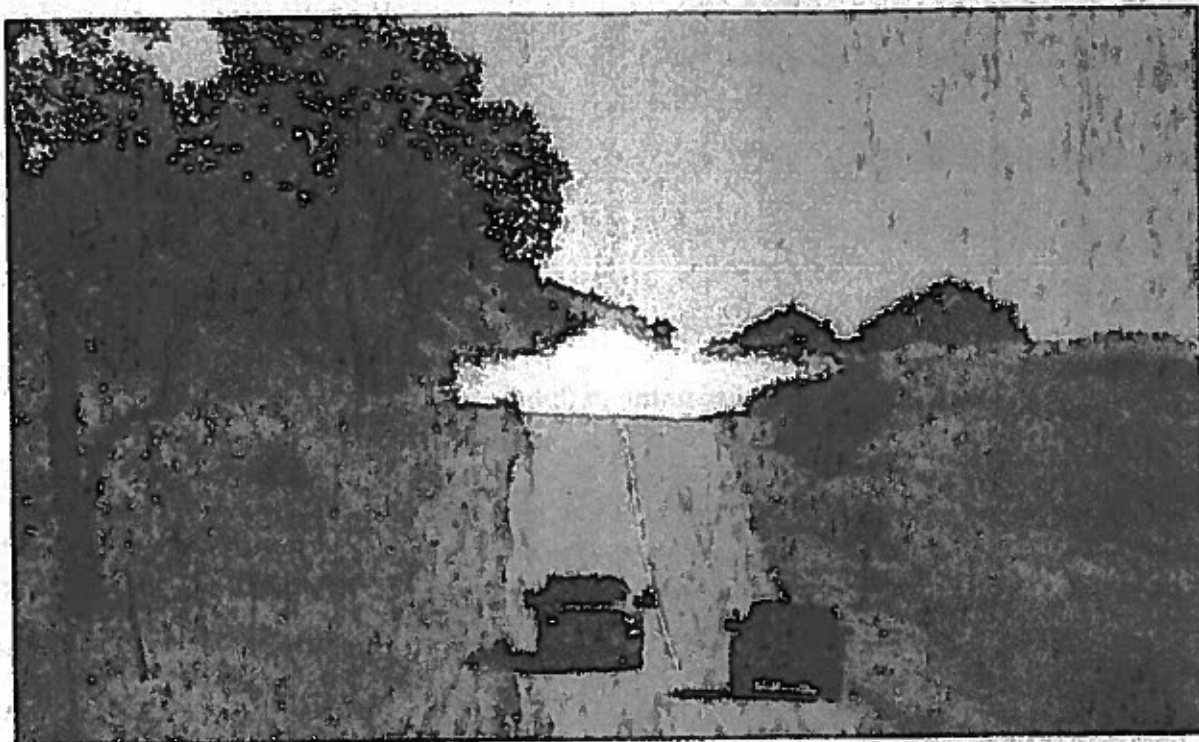
I think the issue is best summed up by one Bohne Road resident in a letter to the Township, urging them not to renew the mine permit:

"The residents need to be able to open their windows, sit outside, children need to play outside, they need sleep, they need peace and quiet, most importantly, they need to breathe, be healthy, and they need to smile and dream again."

Mcloy



Appendix D (p4)





[Home](#) → [Medical Encyclopedia](#) → Silicosis

URL of this page: [//medlineplus.gov/ency/article/000134.htm](http://medlineplus.gov/ency/article/000134.htm)

Silicosis

Silicosis is a lung disease caused by breathing in (inhaling) silica dust.

Causes

Silica is a common, naturally-occurring crystal. It is found in most rock beds. Silica dust forms during mining, quarrying, tunneling, and working with certain metal ores. Silica is a main part of sand, so glass workers and sand-blasters are also exposed to silica.

Three types of silicosis occur:

- Chronic silicosis, which results from long-term exposure (more than 20 years) to low amounts of silica dust. The silica dust causes swelling in the lungs and chest lymph nodes. This disease may cause people to have trouble breathing. This is the most common form of silicosis.
- Accelerated silicosis, which occurs after exposure to larger amounts of silica over a shorter period of time (5 to 15 years). Swelling in the lungs and symptoms occur faster than in simple silicosis.
- Acute silicosis, which results from short-term exposure to very large amounts of silica. The lungs become very inflamed and can fill with fluid, causing severe shortness of breath and a low blood oxygen level.

People who work in jobs where they are exposed to silica dust are at risk. These jobs include:

- Abrasives manufacturing
- Glass manufacturing
- Mining
- Quarrying
- Road and building construction

- Sand blasting
- Stone cutting

Intense exposure to silica can cause disease within a year. But it usually takes at least 10 to 15 years of exposure before symptoms occur. Silicosis has become less common since the Occupational Safety and Health Administration (OSHA) created regulations requiring the use of protective equipment, which limits the amount of silica dust workers inhale.

Symptoms

Symptoms include:

- Cough
- Shortness of breath
- Weight loss

Exams and Tests

Your health care provider will take a medical history. You'll be asked about your jobs (past and present), hobbies, and other activities that may have exposed you to silica. The provider will also do a physical exam.

Tests to confirm the diagnosis and rule out similar diseases include:

- Chest x-ray
- Chest CT scan
- Pulmonary function tests
- Tests for tuberculosis (TB)
- Blood tests for connective tissue diseases

Treatment

There is no specific treatment for silicosis. Removing the source of silica exposure is important to prevent the disease from getting worse. Supportive treatment includes cough medicine, bronchodilators, and oxygen if needed. Antibiotics are prescribed for respiratory infections as needed.

Treatment also includes limiting exposure to irritants and quitting smoking.

People with silicosis are at high risk for developing TB. Silica is believed to interfere with the

body's immune response to the bacteria that cause TB. Skin tests to check for exposure to TB should be done regularly. Those with a positive skin test should be treated with anti-TB drugs. Any change in the appearance of the chest x-ray may be a sign of TB.

People with severe silicosis may need to have a lung transplant.

Support Groups

Joining a support group where you can meet other people with silicosis or related diseases can help you understand your disease and adapt to its treatments.

Outlook (Prognosis)

Outcome varies, depending on the amount of damage to the lungs.

Possible Complications

Silicosis can lead to the following health problems:

- Connective tissue disease, including rheumatoid arthritis, scleroderma (also called progressive systemic sclerosis), and systemic lupus erythematosus
- Lung cancer
- Progressive massive fibrosis
- Respiratory failure
- Tuberculosis

When to Contact a Medical Professional

Call your provider if you suspect that you have been exposed to silica at work and you have breathing problems. Having silicosis makes it easier for you to develop lung infections. Talk to your provider about getting the flu and pneumonia vaccines.

If you've been diagnosed with silicosis, call your provider right away if you develop a cough, shortness of breath, fever, or other signs of a lung infection, especially if you think you have the flu. Since your lungs are already damaged, it's very important to have the infection treated promptly. This will prevent breathing problems from becoming severe, as well as further damage to your lungs.

Prevention

If you work in a high-risk occupation or have a high-risk hobby, always wear a dust mask and do not smoke. You might also want to use other protection recommended by OSHA, such as a

3

respirator.

Alternative Names

Acute silicosis; Chronic silicosis; Accelerated silicosis; Progressive massive fibrosis; Conglomerate silicosis; Silicoproteinosis

References

Go LHT, Cohen RA. Pneumoconioses. In: Broaddus VC, Ernst JD, King TE, et al, eds. *Murray and Nadel's Textbook of Respiratory Medicine*. 7th ed. Philadelphia, PA: Elsevier; 2022:chap 101.

Tarlo SM. Occupational lung disease. In: Goldman L, Schafer AI, eds. *Goldman-Cecil Medicine*. 26th ed. Philadelphia, PA: Elsevier; 2020:chap 87.

Review Date 5/30/2021

Updated by: Denis Hadjiladis, MD, MHS, Paul F. Harron, Jr. Associate Professor of Medicine, Pulmonary, Allergy, and Critical Care, Perelman School of Medicine, University of Pennsylvania, Philadelphia, PA. Also reviewed by David Zieve, MD, MHA, Medical Director, Brenda Conaway, Editorial Director, and the A.D.A.M. Editorial team

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From: [Blankenship, Johni](#)
To: [Warner, Avery](#)
Subject: FW: <EXTERNAL-SENDER>Amendments to Material Site Ordinance
Date: Tuesday, September 6, 2022 9:03:27 AM
Attachments: [Bilben Amendments \(dragged\) 2.pdf](#)
[Definitions Amendment 96.pdf](#)
[Decision.pdf](#)
[Standards Amendment.pdf](#)
[Delete Effect of Denial.pdf](#)
[type of CLUP Amendment 96.pdf](#)
[Tsunami Zone Amendment.pdf](#)
[Buffer Zone Amendments 06.pdf](#)
[Conditions Amendments 96.pdf](#)

Public comment

From: Hans Bilben <catchalaska@alaska.net>
Sent: Monday, September 5, 2022 8:18 PM
To: Blankenship, Johni <JBlankenship@kpb.us>
Subject: <EXTERNAL-SENDER>Amendments to Material Site Ordinance

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Hi Johni,

Please forward these amendments to assembly members, legal, and planning director. Also, please plan to project attachments in sequence to the screen as I am speaking to the Committee of the Whole tomorrow. Let me know if there is any technical issues in doing that, and I will try to adjust accordingly..

Thanks,

Hans Bilben

1 of 11

Does Visual Impact really matter??



21.29.050 (A)(1) Buffer Zone (5 amendments)

1st amendment is to replace (1)(a) with:

a. The buffer zone for counter permits and CLUPs shall be of sufficient height, density, and setback to provide visual and noise screening of the proposed use to parcels in the vicinity as deemed appropriate by the planning commission or planning director (as applicable). Buffer requirements shall be made in consideration of and in accordance with existing uses of properties in the vicinity at the time of approval of the permit. There is no requirement to buffer the material site from uses which commence after the approval of the permit.

2nd amendment would replace 21.29.050(A)(1)(b)
Existing (b) becomes (c) etc.

b. A buffer zone shall be established between the area of excavation and the parcel boundaries. The buffer zone for a Counter Permit and a Type 1 CLUP shall consist of one or any combination of the following: Fifty feet of natural vegetation, a minimum six-foot fence, a minimum six-foot earthen berm with a minimum 2/1 slope. The buffer zone for a Type 2 or a Type 3 CLUP shall consist of the following: Minimum

eight-foot fence, or fifty feet of natural vegetation and a minimum ten-foot earthen berm with a minimum 2/1 slope.

3rd amendment would change wording in existing 21.29.050(A)(1)(d) (now e.) to:

e. This requirement may [ONLY] be waived upon a finding by the planning director or planning commission, as applicable, that a lot line where the waiver is requested is [DIRECTLY ADJACENT TO] adjoining another material site or industrial use.

4th amendment is to add a new paragraph 21.29.050(A)(1)(f).

f. Geographic Information System (GIS), Photogrammetry, and LIDAR technology may be utilized in the design of the buffer zone when differing elevations exist between the proposed site and properties in the vicinity. Using this technology, line of sight profile drawings from the uppermost inhabitable level of existing properties located in the vicinity may be utilized in the determination of sufficiency of the buffer zone.

5th amendment is to add another new paragraph to 21.29.050(A)(1)(g).

g. At its discretion the planning director or planning commission, as applicable, may waive or reduce buffer requirements when screening proves to be not necessary or not feasible.

Four amendments to amend 21.29.050. Permit Conditions

1st — Deleting Discretionary Conditions 21.29.050(B)(1)(a).

If GIS and LIDAR technology is utilized the buffer zone will be defined under (A)(1). Setting a maximum of 100 feet would deny protections laid out in Standards in some cases. One size does not fit all!!

***Justification for this amendment is that if the buffer zone is designed correctly by using evidence and technology there is no need for this discretionary condition. The tools, and the discretion, for the correct design are spelled out in amendments which I have written to the buffer zone language.

2nd — Amend 21.29.050(B)(1)(i) to read:

i. Upon request of the applicant [IN LIEU OF ANY ADDITIONAL BUFFER AREA THIS SUBSECTION DESIGNED TO SEPARATE THE USE OF MATERIAL SITE ACTIVITIES FROM NEIGHBORING PARCEL BOUNDARIES, AN EIGHT-FOOT-BERM ABOVE THE PREEXISTING ELEVATION MAY BE CONSTRUCTED PRIOR TO EXCAVATION, AROUND THE EXCAVATION AREA.] an earthen berm with a minimum 2:1 slope of the height determined by the planning commission under KPB 21.29.050 shall be constructed above preexisting elevation around the excavation area. If the excavation site area expands, the berm may move toward [THE PERMITTED BOUNDARY] negatively impacted properties in the vicinity

until such limits of the permitted area are exhausted. The berm must be maintained at [EIGHT-FOOT HEIGHT] the predetermined height while permitted activity is occurring. This earthen berm may be in addition to other buffer zone conditions imposed by the planning commission, or required by KPB 21.29.050.

3rd — 21.29.050(B)(6) should be deleted. If enacted, only borough residents living at street level or below will be protected from visual, noise, and dust impacts.

4th — Amend 21.29.050(2) Discretionary Conditions to add:

6. *Noise suppression.* At the discretion of the planning commission or planning director (as applicable) multi frequency (white noise) back-up alarms may be required on all equipment and vehicular traffic on site as a condition to help meet the noise impact standard in accordance with and in consideration of existing uses in the vicinity.

Amendment to add new section **KPB 21.29.063. Decision.**

21.29.063. Decision.

The planning commission or planning director, as applicable, shall approve permit applications whereby mandatory standards under KPB 21.29.040 have been met through implementation of conditions as set forth in KPB 21.29.050, or shall disapprove applications when the conditions do not meet the mandatory standards in KPB 21.29.040. The decision shall include written findings detailing how the conditions under KPB 21.29.050 meet, or do not meet the mandatory standards set forth in KPB 21.29.040 and evidence to support those findings. The decision shall be distributed to the parties of record before the planning commission, with a notice of right to appeal.

*** Justification is to give the Planning Commission and the Planning Director direction as they approve, modify, or disapprove an application based upon its compliance with the requirements of the ordinance as currently spelled out in KPB 21.25.050(B). This new paragraph is based upon **"21.29.055. Decision"** as taken from the material site working group document.

Amending **21.29.130 Definitions** to add two items:

1. Vicinity means 1,000 horizontal feet from the parcel boundary of the proposed earth materials site.

***Justification for this is that in the past the word “adjacent” was often used to determine the extent of protecting neighbors. An adjacent property might be as small as a quarter acre, in which case the property owners further out might be left without adequate protection. An adjacent property might be eighty acres which leaves the applicant at risk because of the planning commission’s interpretation of the ordinance. By having a stated distance it protects both the applicant, and neighboring property owners. The material site working group defined “vicinity” as the notification area meaning 1/2 mile or 2,640 feet. This is a compromise distance.

2. Earthen Berm means a berm constructed above the preexisting elevation, consisting of topsoil or aggregate, suitable for revegetation, not to contain more than 10% organic material, and maintaining a 2:1 slope on both sides.

***Justification for this is to aid the compliance officer in determining if berms are constructed in a fashion that will meet the standards. A pile of brush with a couple inches of dirt on top is not an adequate protection for properties in the vicinity. A properly constructed berm could provide sufficient noise, visual, and some dust screening for the duration of the project, plus it would aid in the reclamation process.

Section **21.29.065 Effect of permit denial** amended by **DELETION** of entire section.

***Justification: There is currently a process in place that allows either party to **appeal** a decision that they feel is unjust. This process may proceed all the way to the Alaska Supreme Court and the final decision rendered, whether it is approval or denial of a permit, should be adhered to. To subject neighboring property owners and KPB to the costs, both in dollars and time spent on a first appeal, only to restart the cycle again in one year or less is ludicrous. In the 16 year history of the current ordinance there has never been a denial that stood up on appeal—**ZERO**—so just who is this written for? Certainly not for the benefit of the vast majority of Borough residents!

Including this section in the ordinance undermines the credibility of the planning commission, the planning director, the entire appeal process, and is the ultimate slap in the face to the residents of this borough who may have successfully (and legally) defended their neighborhood as spelled out in the ordinance.

If the Assembly really thinks that a reapplication is warranted, then the rule for denial should be the same as the rule for approval. If approved a counter permit is good for two years and a CLUP for five years. If denied a counter permit reapplication should not be allowed for two years, and for a CLUP no reapplication for five years. Any reapplication even then should only be allowed if the applicant can prove that new evidence or circumstances exist that were not available or present with the first application.

Amend **21.29.040 Standards for sand , gravel, or material sites.** Two amendments:

1st— In **21.29.040(A)** rewrite (A) to include visual impact and to delete reference to street-level screening.

A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, visual, and other impacts of earth materials extraction to properties in the vicinity through setbacks and buffer zones. Prior to granting a counter permit or a conditional land use permit under this chapter, the planning director or planning commission, as applicable, must make the following findings:

*** Justification would be that by only requiring street level visual screening this ordinance will eliminate protections for a segment of the borough population—again going back to the one-size-fits-all model that didn't work in the past.

2nd— Include the omitted MatSu standard #2 into **21.29.040.**

2. That the use will preserve the value, spirit, character, and integrity of the surrounding area;

*** Justification is that this standard (currently in the MarSu ordinance) helps to define just where a material site should and/or should not be located. It is critical if the ordinance is really meant to comply with the Comprehensive Plan.

Amend **21.29.050(A)(2) Permit Conditions applicable to all permits** to read:

2. Water source separation. (New paragraph after letter c.)

d. All permits shall be issued with a condition which prohibits any material extraction within 500 linear feet of any existing private well or water source when located within the boundaries of a mapped tsunami hazard zone

***Justification is to include mapped tsunami Hazard Zones as defined by Alaska DNR, in partnership with the Alaska Earthquake Center and the Alaska Division of Homeland Security and Emergency Management. There are seven such zones in the Kenai Borough. Any excavation in a tsunami hazard zone demands scrutiny because of the potential to turn a material site into a saltwater lake thereby contaminating any wells or water sources in that zone.

1st Amend **21.29.020(A)** **Types of permits available** to return Counter permit to current 2.5 acre size, and to retain new language concerning two year time period with one 12 month extension.

***Justification: To allow a material site greater than 2.5 acres that would have multiple negative impacts to properties in the vicinity without any prior public input is a great disservice to the residents of the borough and not in accordance with the Comprehensive Plan.

2nd Amend **21.29.020(B)(1)(2)(3)** to read:
Type 1 CLUP. Type 2 CLUP. Type 3 CLUP.

****Justification: Makes for cleaner reference in remainder of ordinance.

3rd Amend **21.29.020(B)(1)** to read:

1. Type 1 CLUP. Earth Materials Extraction with Restricted Processing CLUP. An Earth Materials Extraction with Restricted Processing CLUP is required for any material extraction which disturbs 2.5 or more cumulative acres. Processing is restricted to one portable two deck screen capable of screening or classifying material, limited to a maximum of 500 cubic yards per day. Extraction within four feet of the seasonal high-water table is prohibited under this permit. The conditions set out in KPB 21.29.050 and .055 are applicable to this type of CLUP.

4th Amend **21.29.020(B)(2)** to add language dealing with water-table separation.

2. ...or crushing activities. Extraction or processing within four feet of the seasonal high-water table is prohibited under this permit. The conditions set forth....

5th Amend the The Type 3 CLUP **21.29.020(B)(3) (Earth Materials Extraction within Water Table)** to include processing in its language. Why wouldn't it??????

From: [Blankenship, John](#)
To: [Warner, Avery](#)
Subject: FW: New Public Comment to Assembly Members
Date: Tuesday, September 6, 2022 6:10:37 PM

From: Kenai Peninsula Borough <webmaster@borough.kenai.ak.us>
Sent: Tuesday, September 6, 2022 5:46 PM
To: BoroughAssembly <Borough-Assembly@kpb.us>; Mayor's Department <MayorDepartmental@kpb.us>
Subject: New Public Comment to Assembly Members

Your Name: Elena Staab

Your Email: Elena-joy@hotmail.com

Subject: Ordinance 2022-36

Message:

To the KPB Assembly:

This is to show my support for Ordinance 2022-36. As a property owner that is adjacent to 2 gravel pits that have grandfather rights (Kobuk & Big Eddy/Spruce St. and Greenridge St & Joplin), I am acutely affected by their unregulated operations. I have experienced flooding multiple times in the last 10 years due to their uncontrolled release of water and the absence of ditches and driveway culverts on my road. I live on Greenridge Street.

After reviewing the ordinance, I noticed the lack of a contingency plan for catastrophic failure of their coffer dams. This is my biggest fear, that a wall of water from those dams will make my home unlivable and render me homeless. I have flood insurance, but that only covers flooding from the river in an "act of god" happenstance.

When these gravel pits were granted grandfather rights this was a rural area, only 3 people homesteading. The current and coming population density calls for re-evaluation and an SWPP at the very least. I have discussed these things with my neighbors and we are all in agreement with your ordinance, plus upgrades to our road for flood management are necessary. I appreciate your time and consideration.

Sincerely,
Elena J. Staab

Kenai Peninsula Borough Assembly
144 N. Binkley Street,
Soldotna, Alaska 99669

Re: Comments Regarding Proposed KPB Ordinance 2022-36

Dear Assembly Members:

We are writing to you regarding the new proposed Ordinance 2022-36, amending KPB Chapter 21.25 and Chapter 21.29. There are certain truths related to gravel pits:

- 1) No one really wants one as a neighbor
- 2) They are for the most part noisy and dusty
- 3) They have a negative visual impact to surrounding homes and neighborhoods
- 4) We all need gravel and sand for our lives we enjoy on the Peninsula
- 5) We all want our families and children to be safe from gravel pit operations
- 6) We all know, to be safe, we need reasonable Borough regulations that protect both the public welfare while helping the gravel industry sustain their businesses.
- 7) We all want gravel and sand at a fair price

The key takeaway from these truths is, "reasonable Borough regulations" for gravel pit operations.

The new proposed Ordinance 2022-36 does move us in the right direction, however, some of the above truths we can agree on have been overlooked or not given the weight they should have.

For example, 21.29.015 (C) now allows a Counter Permit to be 10 acres. A square 10 acre gravel pit would be about 14, 150 foot square residential lots. By any standard, this would be a huge gravel pit. It should be left at 2.5 acres. This new regulation also strips out any public safeguards from all the concerns listed in 1) thru 3) above. Delete this amended version and add back the current language under 21.29.020 (B). But add that Counter Permits must meet public notice requirements of 21.25.060. Also, delete exception given to public notice for Counter Permits under this section.

The public should have the right to examine any proposed gravel pit in their area and be able to discuss it with the Planning Commission.

In the new regs 21.29.040 "Standards for sand, gravel, or material sites", the new amendment is striped of any meaningful language that would allow the Planning Commission to exert their authority in denying a gravel permit. In fact, under this section, and others similar, the Planning Commission will almost have to approve any and all gravel pit applications. The new amendment as written, fails to address most of the above truths we all share about the need for the public's protections from gravel pit operations. The current, existing section of 21.29.040 in its entirety should be left in place as written.

Regarding Item 3) above, about visual impact, the amendment 21.29.040 has set the limit of visual impact to only "street-level visual screening". This restriction of the height of screening to protect properties surrounding a proposed gravel pit does not take into account screening for two story homes, much less, homes on a hill side above a proposed gravel pit. Delete "street-level screening" from this section. And, address visual screening by adding back the current standards in the existing regulations under 21.29.040 (A) (1 thru 6).

Under item. 2) above, regarding dust from gravel pit operations, Eileen Sheridan will be offering an Amendment to 21.29.040 related to dust from quartz and silica that is found in all types of rock and sand mined on the Kenai Peninsula. I took a shovelful of gravel that came from a known gravel pit source in Anchor Point and found it laced with minute particles of silica. The winds pick up the fine silica particles from gravel pit operations and they are blown into surrounding areas. Silica is a known cause of silicosis, respiratory illnesses, cancer and death for humans if breathed in for long periods of time. I urge you all to listen to Eileen's presentation and take time to read the material she's gathered on this important subject. Please pay particular attention to the table on Page 3 of "Crystalline Silica Dust-The Invisible Killer" section. It shows that small silica dust, small enough to enter our immune system can travel 4.5 miles in a 6.2 mph wind. Most gravel people don't seem to understand the long term effects of working around gravel operations and fail to take any precautions themselves. OSHA has issued strong warnings and advisories for people who work around silica dust. Its time we take notice too, and adjust our materials regulations to protect our residents and the public.

There's much more that needs to be addressed in the proposed amendments and we hope to have another chance to do so. This is a big deal for not only the residents and public but very important for our gravel producing neighbors on the Peninsula as well. So, we hope you will take time to weigh all the pros and cons carefully to arrive at fair and workable regulations for us all.

Lastly, we want to encourage you to carefully review and act on Hans Bilben's amendments he has submitted. Hans is a very honest, fair-minded man. He has been working closely with Ed Martin, one of the gravel interest leaders to try to work out language in the proposed new amendments that would work for all of us, both residents and the public, and the folks with gravel interests. We support Mr. Bilben's amendments.

Thank you for considering our views.

Gary and Eileen Sheridan

PO Box 661,
Anchor Point, Alaska 99556

KPB Ord. 2022-36

From: [Blankenship, Johni](#)
To: [Warner, Avery](#)
Subject: FW: <EXTERNAL-SENDER>Cline response - Kenai Peninsula Borough Ordinance 2022-36
Date: Monday, September 12, 2022 5:00:09 PM

Public comment on Material Site Ordinance

From: Ann Cline <anndotcalm@gmail.com>
Sent: Monday, September 12, 2022 4:48 PM
To: Blankenship, Johni <JBlankenship@kpb.us>
Cc: Hans and Jeanne Bilben <Catchalaska@alaska.net>
Subject: <EXTERNAL-SENDER>Cline response - Kenai Peninsula Borough Ordinance 2022-36

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Good afternoon,

At last week's KPB Assembly meeting, the ordinance regarding CLUPs was discussed. After I spoke at the meeting, I gave my name and phone number to you and several of the Assembly to offer my assistance in the ordinance's revision. Johni, please forward this to all Assembly members and Planning Department.

I have several clarifying points which hopefully will result in a clear, easy to follow document to assist landowners and the public regarding land use and material site permits with protections. I am using the amended Ordinance 2022-36 with the new text. Please let me know if I may be of further assistance.

[1]. I was unable to locate where the ordinance stipulates how many acres can be permitted per parcel. What is to prevent a landowner from having 1 acre permitted, another acre permitted a year later, another acre permitted the following year, and so on till he/she has excavated all the acres they would like? Should the ordinance stipulate 1 acre **per parcel**? If the Borough allows short platting, then that's another loophole that needs to be addressed. Otherwise, a landowner could shortplatt his/her parcel into 1 acre parcels and permit them individually.

[2] I don't see the necessity of KPB offering a Counter Permit. It seems to me that a CLUP is sufficient. I didn't see any difference in the 21.29.020 A. Counter Permit description. What am I missing?

[3]. Under 21.29.020 B. Conditional Land Use Permit, 1. states "an Earth Materials Extraction CLUP is required for any material extraction which disturbs 10 or more cumulative acres." My Anchor Point neighbors and I respectfully exhort you to replace the number 10 with 1 to read:

"an Earth Materials Extraction CLUP is required for any material extraction which disturbs more than 1 acre."

[4] I was unable to find the requirements of a public hearing for any CLUP request in excess of 1 acre. A public hearing is very important to ensure that affected Kenai Peninsula Borough residents have an

opportunity to inform planners and stakeholders of concerns regarding health, safety, and welfare of the surrounding residents, tourists, and business owners.

[5] Regarding 21.29.030. Application procedure A:

Delete “a counter permit or” if you determine that only a CLUP is sufficient.

[6] Regarding 21.29.040. A:

Delete “street level” and replace with “visual screening from all affected surrounding areas within 1/2 mile.”

[7] Regarding 21.29.060 - Reclamation plan:

Asking for a bonding requirement of \$750 per acre for reclamation is completely unrealistic. Just to bring in the equipment necessary to do the work far exceeds that price! I suggest you speak with local excavators to obtain an accurate bid on the actual cost to reclaim property and proceed. Remember that unscrupulous landowners will do the least of your demands so you must be diligent and realistic with your legal requirements.

[8] Regarding 21.29.065 A:

A can be deleted if you decide to remove counter permits from the ordinance.

The most important aspect to any ordinance is whether or not it will be enforced. If there are no real consequences for disobedience, then the ordinance is moot. If you are concerned that the KPB planners will have a difficult time bringing landowners into legal compliance with ordinances, then it's imperative that you change your wording from “may” to “must” in your ordinance.

Part of the KPB Planning and Assembly personnel job descriptions should include making a physical visit to the locations of the permits under review. For example, our Anchor Point neighbors have no doubt that if the Assembly and borough Planners had come to our neighborhood to witness for themselves, our lawsuit would have been unnecessary. The Beachcombers LLC gravel pit was/is in full view of, and carcinogenic dust exposure to, our surrounding hillside homes.

As I expressed at the open KPB meeting last week, I believe we all need to be able to sleep each night knowing that we have been honorable and have made righteous decisions not only for our neighbors, businesses, and ourselves but also for **posterity**. We will become dust, but our actions should carry lasting goodness to those we leave behind.

Respectfully,

Ann Cline
34926 Denver
PO Box 121
Anchor Point, AK. 99556
(425) 449-3540

Warner, Avery

From: Blankenship, Johni
Sent: Monday, October 3, 2022 9:55 AM
To: Warner, Avery
Cc: Turner, Michele
Subject: FW: <EXTERNAL-SENDER>Gravel pits- to be forwarded, thanks

From: laura sievert <laurasievert@hotmail.com>
Sent: Monday, September 26, 2022 8:03 PM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>Gravel pits- to be forwarded, thanks

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To the Borough Assembly:

I admit that I haven't been keeping up on Assembly progress on regulating gravel pits.

Listening to Nikiski candidates on the KDLL assembly candidate forum tonight, I gather that most residents have concerns about gravel pits because of the normal nuisances and lowering of adjacent property values, which I agree are problems. However, my primary concern (my property value is forever lowered) is the way that gravel pit operators are trusted to run their pits after they have been approved. The two operators that surround my property - Great Northern and QAP- have bulldozed a salmon stream, stacked up old asphalt on shorelines, dumped derelict machinery, run a batch plant without a permit, and otherwise ignored what is allowed by the Borough.

Below, find my previous letter. I still have the same concerns, which are not being addressed when you only look at residents' common concerns like dust, jake brakes, and unsightly views. My concerns are violations that have repercussions that will last decades and beyond. I am not asking you to address my two gravel pit problems- since it's too late- only that you consider the future.

Thank you - Laura Sievert

I live on Beaver Loop, home to several gravel pits. We live between the Quality Asphalt Pit and the Great Northern pit. Both were old gravel pits that came back into production for the Spur Highway project.

As part of your discussion going forward, I beg you to consider two things: first, how to enforce the rules that pit operators are required to follow, new rules as well as those already in effect such as the Anadromous Stream Ordinance. Also, what is to be the relationship between city and Borough regulations regarding gravel pits? Apparently the regulations vary.

Our experience with Quality Asphalt & Paving in 2020 is an example of what can go wrong. Since 2020 we have tried to get the Borough and the City of Kenai to fix QAP's violation of the Anadromous Stream Ordinance in a stream that originates on our property and then runs through their gravel pit and into the Kenai River.

Just prior to the violation, we had been working with a former Borough biologist who studied our property and made some suggestions as to how we might enhance the coho run up our stream. This was part of a project he was working on to help property owners enhance privately owned habitat.

While extracting gravel for the Spur highway project, QAP bulldozed the stream on their property, cut all trees and vegetation along the bank, built two roads over the stream, and installed two culverts. I found out later that the City of Kenai knew of this plan and approved it. This was apparently due to a difference between City and Borough regulations.

I objected- after the fact- but the repercussions were slight. QAP denied knowing it was an anadromous stream despite having installed an expensive fish culvert on that very stream a couple of hundred yards downstream, under Beaver Loop road.

The biologist who had been helping us negotiated two ways that QAP could begin to make up for damaging the stream: planting trees (which they did- maybe 20 alders, which in our lifetimes will not shade the stream), and removing an old culvert further upstream on their property. Too little, too late. Photo of clear cut stream:



There's more. QAP dumped broken-up used approach asphalt in their pit, near the stream- I believe it is still there. They installed a batch plant in the gravel pit (gone now). There was no permitting or public hearing for that plant. On the other side of our property, Great Northern pushed dirt into the pond (right at our property line) that is the origin of the anadromous stream I refer to. Photo of asphalt dumped in the QAP pit:



Rules and regulations are good, but please consider if and how they will be enforced.

No one is watching these pits. We got the Kenai City planner out a couple of times, first on Day One, when QAP clear-cut the 200 foot buffer zones around the pit, a violation of their conditional use permit. No repercussions- the trees are gone, nothing to be done.

I could go on. I can send more photos. How will you make sure pit operators follow the rules? How do they make amends when they violate the rules? Perhaps by posting large bonds? No one can stand out there and monitor them, and the damage can happen really fast. The cutting of the buffer took a few hours. And money doesn't bring back our streams, salmon or buffer zones.

Thanks for your work on this. We need gravel, but I hope you can balance that need with a consideration for the long term health of our water, people, land and wildlife.

Laura Sievert
3329 Beaver Loop, Kenai

From: Blankenship, Johni
Sent: Thursday, October 6, 2022 8:47 AM
To: Warner, Avery
Subject: FW: <EXTERNAL-SENDER>gravel pit

Public comment on O2022-36

-----Original Message-----

From: Supercub Inalaska <sw69313@yahoo.com>
Sent: Wednesday, October 5, 2022 4:56 PM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>gravel pit

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.

Hello,
I just spoke with Ryan Raidmae on the phone.
This email is how i am showing support
FOR
the proposed code rewrite of the conditional land use dewatered bar material site permits.

I live within 1/2 mile of several pits in seldovia alaska

i may be reached

loren rhyeer
2837 glacier street
anc ak 99508 in the winter.

907-227-8480
for comment or confirmation.

thank you

loren

From: Blankenship, Johni
Sent: Monday, October 10, 2022 2:06 PM
To: Warner, Avery
Subject: FW: <EXTERNAL-SENDER>Public Comment - Conditional Land Use Permits, Material Site Permits and Fees regarding applications, conditions, and Procedures

Ordinance 2022-36 public comment

From: Greg Barclay <gbearclaw52@gmail.com>
Sent: Sunday, October 9, 2022 6:21 PM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>Public Comment - Conditional Land Use Permits, Material Site Permits and Fees regarding applications, conditions, and Procedures

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Dear Madam Clerk,

We are not opposed to gravel pits as we realize they are part of building construction and keeping roads safe. We live in Lakewood Subdivision, at Mile 86 of the Sterling Hwy, across the road from an active gravel pit and do notice a lot more noise from the equipment and material being moved in the summer season. Would more pavement close to intersections help or some type of dust treatment applied on the access road?

There is quite an increase in dust in the area, our yards and houses during the construction season from the gravel pit. Is it possible for some type of dust prevention such as water application in certain gravel pit activities?

We like to see our community to be safe and also grow.

Thank you,

Greg and Linda Barclay
38403 Breezewood Dr.
Sterling, AK 99672
907-262-1400

From: [Blankenship, Johni](#)
To: [Warner, Avery](#)
Subject: FW: <EXTERNAL-SENDER>material assembly site meeting, to be held October 25th, 2022
Date: Tuesday, October 11, 2022 12:19:47 PM

From: patricia gross <plgross293@gmail.com>
Sent: Tuesday, October 11, 2022 12:14 PM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>material assembly site meeting, to be held October 25th, 2022

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To whom this concerns;

I am a resident close to a conditional land use area. I am against you renewing their permit, because they have to drive thru a residential area. The roads are maintained by the subdivision residents, in order to get to the main road, or go partway down the subdivision road onto a state road which the heavy trucks tear up too, then to the main road. There are several small children that play in or close to the road in the neighborhood. Thank You .

Pat Gross

From: Blankenship, Johni
Sent: Tuesday, October 11, 2022 12:24 PM
To: Warner, Avery
Subject: FW: <EXTERNAL-SENDER>Public Hearing 10/25/22

From: D Garske <ddgarske@gmail.com>
Sent: Tuesday, October 11, 2022 12:24 PM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>Public Hearing 10/25/22

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.

Hi Johnny!

My husband and I can't make the scheduled KPB Material Site Assembly Meeting, so please consider this our written statement in regards to the gravel pits near our house:

We don't have any issues with gravel pits in general, however, when people think they can trespass and use them to sight in or practice shooting their pistols and/or rifles, especially late at night, we tend to bristle. Perhaps a security provision could be added to future permits. Must have locking gates, or something similar.

Thank you for your time,
Diane & Hugh Garske

From: [Blankenship, Johni](#)
To: [Warner, Avery](#)
Subject: FW: <EXTERNAL-SENDER>Kenai Peninsula Borough Material Site Assembly Conditional Land Use
Date: Friday, October 14, 2022 10:43:16 AM

-----Original Message-----

From: toni.swearingen@gmail.com <toni.swearingen@gmail.com>
Sent: Friday, October 14, 2022 10:40 AM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>Kenai Peninsula Borough Material Site Assembly Conditional Land Use

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.

To Assembly Clerk:

I would like to make a comment concerning the Conditional Land Permits, regarding Conditions and Procedures. We own a house in Soldotna, 45037 Big Eddy Rd on the corner of Kobuk and Big Eddy roads. A huge gravel pit is on two sides of our property. We would like to be assured that they will not be able to disturb our well water level or the quality of our water. Currently we have very clear and delightful water. We want to make sure they can not disturb our well. Please include protection of Quality and Quantity to the land use permits.

Thank you for your attention to this matter.
Sincerely,
Toni Swearingen

Toni Swearingen
3201 Rosalind Loop
Anchorage, AK 99607
907-242-3367

From: [Blankenship, Johni](#)
To: [Warner, Avery](#)
Subject: FW: <EXTERNAL-SENDER>2022-36 changes for material sites
Date: Monday, October 17, 2022 9:06:05 AM

Public comment

From: mamabear Roderick <ak_mamabear@yahoo.com>
Sent: Monday, October 17, 2022 7:37 AM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>2022-36 changes for material sites

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.

I am a small business owner in Anchor Point, Alaska. I have owned R/C Land Improvement since 1993. Three years ago, my husband Marc Roderick was killed in a trucking accident, and I was forced to downsize the business in order to keep my business running and for me to support my family.

I went from personal loss, to COVID, to the current struggling economy and now you want to force changes in a short time frame.

I have many concerns and questions regarding the proposed changes, here are a few:

Why are you not allowing the PEU status to transfer from landowner to landowner? This devalues my assets and hurts my small businesses value. Do I get compensation?

It is not economically feasible for small business to be forced to work PEU pits every year. Could there be a better solution? Why not 3 or 5 years?

Are you going to pay for fixing my buffer zones? They were made according to the rules at the time.

Digging in water tables, now I would have to put in monitoring wells and pay surveyors and others for services. The expense would put me out of business or make my prices so high customers will buy from someone else. I feel like you're trying to kill the small business operators and reduce the number of active gravel pits. What percentage is KPB going to be paying for the monitoring wells?

Wording is vague and confusing, "to minimize," in the vicinity"...who then makes the call on what that means? MSHA is already vague, and every inspector has their own opinion on what the regulations mean. Please don't make it worse. Clarify your statement in exact terms so there will be no disputes later. This shouldn't be left up for interpretation.

If I understand correctly, the new changes will go into effect in a few years, for me that is not enough time, I am in the middle of contracts with set prices. I don't have the budget to switch to the new changes in just a few years. Can we work on the timeline in which this will take effect?

Why would I need to pay for fixing public roads? Truckers are already taxed high, registration fees by the state, 2290 taxes by the feds, isn't that supposed to be for road repairs? Small business can't be expected to take on all the burden for public roads.

I do not support the changes. I do not support you changing my PEU status to a permit.

Thank you for your time,
Shanna Roderick

owner of R/C Land Improvement

Introduced by:	Mayor
Substitute Introduced:	01/16/18
Resolution 2018-004 (Mayor)	See Original for Prior History
Action:	Adopted
Vote:	8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2018-004
(MAYOR) SUBSTITUTE**

A RESOLUTION ESTABLISHING A MATERIAL SITE WORK GROUP

WHEREAS, KPB 21.25.040(A)(2) requires a permit for the commencement of commercial sand, gravel or material sites within the rural district of the Kenai Peninsula Borough; and

WHEREAS, KPB 21.29 provides for a permit process to extract material from the ground; and

WHEREAS, with the exception of one minor change relating to floodplain permits, the material site code was last updated in 2006; and

WHEREAS, the assembly, administration, planning department and the planning commission have recognized that certain provisions of the material site ordinance can be clarified for the operators, public, and staff; and;

WHEREAS, the public has expressed many concerns about dust, noise, water, and negative secondary impacts of material sites; and

WHEREAS, it is the intent of the assembly and administration to involve the public and industry in a collaborative discussion designed to incorporate possible changes to the material site code;

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

SECTION 1. That a work group is established for the purpose of examining the current material site permit process and potentially recommending amendments to the material site code provisions.

SECTION 2. That the work group shall consist of at least two assembly members; two planning commissioners; two members of the public; and, two material site industry members. The group shall elect from among its members a chair and a vice-chair who may serve in the absence of the chair. The two members of the assembly shall be appointed by the assembly. The remaining members shall be appointed by the mayor.

SECTION 3. That each meeting time and place shall be advertised, open to the public and subject to the Open Meetings Act.


SECTION 4. The material site work group shall have no authority to act on behalf of the assembly or the administration or communicate on the borough's behalf other than to make recommendations to the planning commission, administration and assembly.

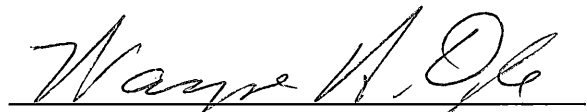
SECTION 5. The work group shall provide a final report to the planning commission, administration and assembly by June 5, 2018, and then discontinue unless extended by the assembly.

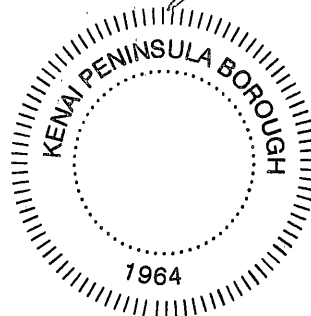
SECTION 6. That this resolution shall take effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 16TH DAY OF JANUARY, 2018.

ATTEST:


John Blankenship, MMC, Borough Clerk


Wayne H. Ogle, Assembly President



Yes: Bagley, Blakeley, Carpenter, Dunne, Fischer, Hibbert, Smalley, Ogle
No: None
Absent: Cooper

Introduced by:	Mayor
Substitute Introduced:	12/03/19
Ordinance 2019-30 (Mayor):	See Original Ordinance for Prior History
Hearing:	12/03/19
Action:	Failed to Enact
Vote:	3 Yes, 6 No, 0 Absent
Action:	Reconsideration Filed by Bjorkman

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-30
(MAYOR) SUBSTITUTE**

**AN ORDINANCE AMENDING KPB 21.29, KPB 21.25, AND KPB 21.50.055
REGARDING MATERIAL SITE PERMITS, APPLICATIONS, CONDITIONS, AND
PROCEDURES**

- WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A of the 2019 Kenai Peninsula Borough Comprehensive Plan is to establish policies that better guide land use to minimize land use conflicts, maintain property values, protect natural systems and support individual land use freedoms; and
- WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A, Strategy 1 of the 2019 Comprehensive Plan is to adopt limited development standards for specific areas and uses to reduce potential off site impacts of development on adjoining uses and the natural environment; and
- WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A, Strategy 2 of the 2019 Comprehensive Plan is to update the Borough’s existing conditional use regulations for gravel extraction and other uses to better address reoccurring land use conflicts; and
- WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A, Strategy 2a of the 2019 Comprehensive Plan is to clarify the broad purpose of the conditional use process and clear parameters for allowable conditional uses that include reasonable, project-specific conditions that reduce impacts on surrounding uses, and if/when a conditional use permit can be denied and consider establishing conditions that require larger setbacks, safety and visual screening, control on access routes, control on hours of operation, and address environmental concerns; and
- WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A, Strategy 2d of the 2019 Comprehensive Plan is to complete improvements to the rules guiding gravel extraction, with the goal of providing an appropriate balance between providing access to affordable materials for development and protecting quality of life for borough residents; and

- WHEREAS,** Goal 1 of the Mining and Minerals Processing section of the 1990 Kenai Peninsula Borough Coastal Management Program is to provide opportunities to explore, extract and process minerals, sand and gravel resources, while protecting environmental quality and other resource users; and
- WHEREAS,** an assembly subcommittee was formed in 2005 to review the material site code; and
- WHEREAS,** Ordinance 2006-01 (Substitute) codified as KPB 21.29 was adopted in 2006 after consideration of the subcommittee's report; and
- WHEREAS,** the planning department has been administering Ordinance 2006-01 (Substitute), codified as KPB 21.29 for 13 years; and
- WHEREAS,** KPB 21.25.040 requires a permit for the commencement of certain land uses within the rural district of the Kenai Peninsula Borough; and
- WHEREAS,** the planning department has recognized that certain provisions of the material site ordinance could be better clarified for the operators, public, and staff; and
- WHEREAS,** the planning commission and planning department received comments expressing concerns about dust, noise, safety, and aesthetics; and
- WHEREAS,** approximately 253 registered prior existing use material sites and approximately 99 conditional land use permits for material sites have been granted since 1996;
- WHEREAS,** the planning department receives numerous complaints regarding unreclaimed parcels registered as nonconforming prior existing material sites which have not been regulated by KPB; and
- WHEREAS,** the assembly established a material site work group by adoption of resolution 2018-004 (Substitute) to engage in a collaborative discussion involving the public and industry to make recommendations regarding the material site code; and
- WHEREAS,** assembly resolution 2018-025 extended the deadline for the final report to be submitted to the assembly, administration and planning commission to April 30, 2019; and
- WHEREAS,** certain additional conditions placed on material site permits would facilitate a reduction in the negative secondary impacts of material sites, e.g. dust, noise, safety, and unsightliness of material sites; and
- WHEREAS,** at its regularly scheduled meeting of November 12, 2019, the Planning Commission recommended approval by unanimous consent;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That KPB 21.25.030 is hereby amended, as follows:

21.25.030. - Definitions.

Unless the context requires otherwise, the following definitions apply to CLUPs:

Abandon means to cease or discontinue a use without intent to resume, but excluding short-term interruptions to use or activity during periods of remodeling, maintaining, or otherwise improving or rearranging a facility or during normal periods of vacation or seasonal closure. An "intent to resume" can be shown through continuous operation of a portion of the facility, maintenance of utilities, or outside proof of continuance, e.g., bills of lading or delivery records. Abandonment also means the cessation of use, regardless of voluntariness, for a specified period of time.

Animal feeding operation means a lot or facility (other than an aquatic animal production facility) where animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period.

- a. The same animals need not remain on the lot for 45 days or more; rather, some animals are fed or maintained on the lot 45 days out of any 12-month period, and
- b. Animals are "maintained" for purposes of this ordinance when they are confined in an area where waste is generated and/or concentrated or are watered, cleaned, groomed, or medicated in a confined area, even if the confinement is temporary.
- c. Two or more animal feeding operations under common ownership are considered, for the purposes of these regulations, to be a single animal feeding operation if they adjoin each other.
- d. Slaughterhouses are animal feeding operations.

Animal unit means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing [weighing] over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

Animal waste means animal excrement, animal carcasses, feed wasted, process wastewaters or any other waste associated with the confinement of animals from an animal feeding operation.

Animal waste management system means a combination of structures and nonstructural practices serving an animal feeding operation that provides for the collection, treatment, disposal, distribution, storage and land application of animal waste.

Aquifer means a subsurface formation that contains sufficient water-saturated permeable material to yield economical quantities of water to wells and springs.

Aquifer-confining layer means that layer of relatively impermeable soil below an aquifer, typically clay, which confines water.

Assisted living home means a residential facility that serves three or more adults who are not related to the owner by blood or marriage, or that receives state or that receives state or federal payment for service of the number of adults served. The services and activities may include, but are not limited to, housing and food services to its residents, assistance with activities of daily living, and personal assistance, and that complies with Alaska Statutes 47.32.0101 – 47.60.900, as amended.

Child care facility means a place where child care is regularly provided for children under the age of 12 for periods of time that are less than 24 hours in duration and that is licensed pursuant to AS 47.35.005 et seq., excluding child care homes and child care group homes, as currently written or hereafter amended.

Commercial means any provision of services, sale of goods, or use operated for production of income whether or not income is derived, including sales, barter, rental, or trade of goods and services.

Concentrated animal feeding operation (CAFO) means an animal feeding operation confining at least: (1) 1,000 swine weighing at least approximately 55 pounds; (2) 1,000 slaughter and feeder cattle; (3) 700 mature dairy cattle; (4) 500 horses; (5) 10,000 sheep or lambs; (6) 55,000 turkeys; (7) 100,000 laying hens or broilers (if the facility has continuous overflow watering); (8) 30,000 laying hens or broilers (if the facility has a liquid manure system); (9) 5,000 ducks; (10) 1,000 animal units; or (11) a combination of the above resulting in at least 1,000 animal units. Each individual parcel upon which a CAFO is located is a separate CAFO unless they adjoin each other.

Conditioning or processing material means a value-added process including batch plants, asphalt plants, screening, washing, and crushing by use of machinery.

Correctional community residential center (CCRC) means a community residential center, other than a correctional institution, for the short-term or temporary detention of prisoners in transition from a correctional institution, performing restitution, or undergoing rehabilitation or recovery from a legal infirmity. CCRCs may not be used for detention of prisoners who pose a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four-hour physical supervision. The determination of whether a prisoner poses a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four-hour physical supervision shall be made by the commissioner of corrections for state prisoners and the United States Attorney General, or the U.S. Director of Bureau of Prisons for federal prisoners.

Correctional institution means a facility other than a correctional community residential center providing for the imprisonment or physical confinement or detention of prisoners under guard or twenty-four-hour physical supervision, such as prisons, prison farms, jails, reformatories, penitentiaries, houses of detention, detention centers, honor camps, and similar facilities.

Development plan means a plan created to describe a proposed development on a specific building site excluding material sites under KPB 21.29.020.

Disturbed includes active excavation and all areas necessary to use a parcel as a material site including but not limited to berms, stockpiles, and excavated areas excluding all areas reclaimed for alternate post mining land uses.

[EXHAUSTED MEANS THAT ALL MATERIAL OF A COMMERCIAL QUALITY IN A SAND, GRAVEL, OR MATERIAL SITE HAS BEEN REMOVED.]

Federal prisoners means offenders in the custody or control or under the care or supervision of the United States Attorney General or the Bureau of Prisons.

Groundwater means, in the broadest sense, all subsurface water, more commonly that part of the subsurface water in the saturated zone.

Haul route includes the roads used to haul materials from the permit area to a roadway designated as collector, arterial or interstate by the Alaska Department of Transportation & Public Facilities.

Liquid manure or liquid animal waste system means any animal waste management system which uses water as the primary carrier of such waste into a primary retention structure.

Multi-purpose senior center is a facility where persons 60 years of age or older are provided with services and activities suited to their particular needs. The

services and activities may include, but are not limited to, health examinations, legal assistance, recreation programs, general social activities, telephone reassurance programs, nutrition classes, meals at minimum cost, counseling, protective services, programs for shut-ins and education programs, and that complies with Alaska Statutes 47.60.010—47.60.090, as currently written or hereafter amended.

Permit area includes all excavation, processing, buffer and haul route areas of a CLUP or counter permit.

Person shall include any individual, firm, partnership, association, corporation, cooperative, or state or local government.

Prisoner means:

- a. a person held under authority of state law in official detention as defined in AS 11.81.900;
- b. includes a juvenile committed to the custody of the Alaska Department of Corrections Commissioner when the juvenile has been charged, prosecuted, or convicted as an adult.

Private school is a school comprised of kindergarten through 12th grade, or any combination of those grades, that does not receive direct state or federal funding and that complies with either Alaska Statute 14.45.030 or 14.45.100—14.45.130, as currently written or hereafter amended.

Public school is a school comprised of kindergarten through 12th grade, or any combination of those grades, that is operated by the State of Alaska or any political subdivision of the state.

Sand, gravel or material site means an area used for extracting, quarrying, or conditioning gravel or substances from the ground that are not subject to permits through the state location (mining claim) system (e.g., gold, silver, and other metals), nor energy minerals including but not limited to coal, oil, and gas.

Seasonal high groundwater table means the highest level to which the groundwater rises on an annual basis.

Senior housing project means senior housing as defined for purposes of construction or operation in 15 Alaska Administrative Code 151.950(c), as currently written or hereafter amended.

Stable condition means the rehabilitation, where feasible, of the physical environment of the site to a condition that allows for the reestablishment of

renewable resources on the site within a reasonable period of time by natural processes.

Surface water means water on the earth's surface exposed to the atmosphere such as rivers, lakes, and creeks.

Topsoil means material suitable for vegetative growth.

Vicinity means the same as the area of notification.

Waterbody means any lake, pond, stream, riparian wetland, or groundwater into which storm water runoff is directed.

Water source means a well, spring or other similar source that provides water for human consumptive use.

SECTION 2. That KPB 21.29 is hereby amended, as follows:

CHAPTER 21.29. MATERIAL SITE PERMITS

21.29.010. Material extraction exempt from obtaining a permit.

- A. Material extraction which disturbs an area of less than one acre that is not in a mapped flood plain or subject to 21.29.010(B), does not enter the water table, and does not cross property boundaries, does not require a permit. There will be no excavation within 20 feet of a right-of-way or within ten feet of a lot line.
- B. Material extraction taking place on dewatered bars within the confines of the Snow River and the streams within the Seward-Bear Creek Flood Service Area does not require a permit, however, operators subject to this exemption shall provide the planning department with the information required by KPB 21.29.030(A)(1), (2), (6), (7) and a current flood plain development permit prior to beginning operations.
- C. A prior existing use under KPB 21.29.120 does not require a material extraction permit, but a floodplain development permit is required for all activities within any mapped special flood hazard area.
- D. Material extraction incidental to site development does not require a permit when an approved site development plan is on file with the planning department. Site development plans are approved by the planning director and are valid for one year. The site development plan may be renewed on an annual basis subject to the planning director's approval.

21.29.020. Material extraction and activities requiring a permit.

- A. *Counter permit.* A counter permit is required for material extraction which disturbs no more than 2.5 cumulative acres and does not enter the water table. Counter permits are approved by the planning director, and are not subject to the notice requirements or planning commission approval of KPB 21.25.060. A counter permit is valid for a period of 12 months, with a possible 12-month extension.
- B. *Conditional land use permit.* A conditional land use permit (CLUP) is required for material extraction which disturbs more than 2.5 cumulative acres, or material extraction of any size that enters the water table. A CLUP is required for materials processing. A CLUP is valid for a period of five years. The provisions of KPB Chapter 21.25 are applicable to material site CLUPS and the provisions of KPB 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling.

21.29.030. Application procedure.

- A. In order to obtain a counter permit or CLUP, an applicant shall first complete and submit to the borough planning department a permit application, along with the fee listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. The planning director may determine that certain contiguous parcels are eligible for a single permit. The application shall include the following items:
 - 1. Legal description of the parcel, KPB tax parcel ID number, and identification of whether the permit is for the entire parcel, or a specific location within a parcel;
 - 2. Expected life span of the material site;
 - 3. A buffer plan consistent with KPB 21.29.050(A)(2);
 - 4. Reclamation plan consistent with KPB 21.29.060;
 - 5. The depth of excavation;
 - 6. Type of material to be extracted and type of equipment to be used;
 - 7. Any voluntary permit conditions the applicant proposes. Failure to include a proposed voluntary permit condition in the application does not preclude the applicant from proposing or agreeing to voluntary permit conditions at a later time;

8. Surface water protection measures, if any, for adjacent properties designed by a civil engineer, including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence;
9. A site plan and field verification prepared by a professional surveyor licensed and registered in the State of Alaska, including the following information:
 - a. Location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;
 - b. Proposed buffers consistent with KPB 21.29.050(A)(2), or alternate buffer plan;
 - c. Identification of all encumbrances, including, but not limited to easements;
 - d. Points of ingress and egress. Driveway permits must be acquired from either the state or borough as appropriate prior to the issuance of the material site permit;
 - e. Anticipated haul routes;
 - f. Location and [DEPTH] elevation of test holes, and depth of groundwater, if encountered between May and December. At least one test hole per ten acres of excavated area is required to be dug. The test holes shall be at least four feet below the proposed depth of excavation;
 - g. Location of wells of adjacent property owners within 300 feet of the proposed parcel boundary;
 - h. Location of any water body on the parcel, including the location of any riparian wetland as determined by "Wetland Mapping and Classification of the Kenai Lowland, Alaska" maps created by the Kenai Watershed Forum;
 - [I. SURFACE WATER PROTECTION MEASURES FOR ADJACENT PROPERTIES, INCLUDING THE USE OF DIVERSION CHANNELS, INTERCEPTION DITCHES, ON-SITE COLLECTION DITCHES, SEDIMENT PONDS AND TRAPS, AND SILT FENCE; PROVIDE DESIGNS FOR SUBSTANTIAL STRUCTURES; INDICATE WHICH

STRUCTURES WILL REMAIN AS PERMANENT FEATURES AT THE CONCLUSION OF OPERATIONS, IF ANY;]

[J]i. Location of any processing areas on parcel, if applicable;

[K]j. North arrow;

[L]k. The scale to which the site plan is drawn;

[M]l. Preparer's name, date and seal;

[N]m. Field verification shall include staking the boundary of the parcel at sequentially visible intervals. The planning director may grant an exemption in writing to the staking requirements if the parcel boundaries are obvious or staking is unnecessary.

B. In order to aid the planning commission or planning director's decision-making process, the planning director shall provide vicinity, aerial, land use, and ownership maps for each application and may include additional information.

21.29.040. Standards for sand, gravel or material sites.

A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, and visual impacts. Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:

1. Protects against the lowering of water sources serving other properties;
2. Protects against physical damage to [OTHER] adjacent properties;
3. [MINIMIZES] Protects against off-site movement of dust;
4. [MINIMIZES] Protects against noise disturbance to other properties;
5. [MINIMIZES] Protects against visual impacts of the material site; [AND]
6. Provides for alternate post-mining land uses[.];
7. Protects Receiving Waters against adverse effects to fish and wildlife habitat;

8. Protects against traffic impacts; and
9. Provides consistency with the objectives of the Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents.

21.29.050. Permit conditions.

A. The following mandatory conditions apply to counter permits and CLUPs issued for sand, gravel or material sites:

1. [PARCEL]Permit boundaries. [ALL BOUNDARIES OF THE SUBJECT PARCEL] The buffers and any easements or right-of-way abutting the proposed permit area shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter. Field verification and staking will require the services of a professional land surveyor. Stakes shall be in place [AT TIME OF APPLICATION] prior to issuance of the permit.

- [2. *BUFFER ZONE. A BUFFER ZONE SHALL BE MAINTAINED AROUND THE EXCAVATION PERIMETER OR PARCEL BOUNDARIES. WHERE AN EASEMENT EXISTS, A BUFFER SHALL NOT OVERLAP THE EASEMENT, UNLESS OTHERWISE CONDITIONED BY THE PLANNING DIRECTOR OR PLANNING COMMISSION.*

A. THE BUFFER ZONE SHALL PROVIDE AND RETAIN A BASIC BUFFER OF:

- I. 50 FEET OF UNDISTURBED NATURAL VEGETATION, OR
- II. A MINIMUM SIX-FOOT EARTHEN BERM WITH AT LEAST A 2:1 SLOPE, OR
- III. A MINIMUM SIX-FOOT FENCE.

B. A 2:1 SLOPE SHALL BE MAINTAINED BETWEEN THE BUFFER ZONE AND EXCAVATION 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.

C. THE PLANNING COMMISSION OR PLANNING DIRECTOR SHALL DESIGNATE ONE OR A COMBINATION OF THE ABOVE AS IT DEEMS APPROPRIATE. THE VEGETATION AND FENCE SHALL BE OF SUFFICIENT HEIGHT AND DENSITY TO PROVIDE VISUAL AND NOISE SCREENING OF THE PROPOSED USE AS DEEMED

APPROPRIATE BY THE PLANNING COMMISSION OR PLANNING DIRECTOR.

- D. BUFFERS SHALL NOT CAUSE SURFACE WATER DIVERSION WHICH NEGATIVELY IMPACTS ADJACENT PROPERTIES OR WATER BODIES. SPECIFIC FINDINGS ARE REQUIRED TO ALTER THE BUFFER REQUIREMENTS OF KPB 21.29.050(A)(2)(A) IN ORDER TO MINIMIZE NEGATIVE IMPACTS FROM SURFACE WATER DIVERSION. FOR PURPOSES OF THIS SECTION, SURFACE WATER DIVERSION IS DEFINED AS EROSION, FLOODING, DEHYDRATION OR DRAINING, OR CHANNELING. NOT ALL SURFACE WATER DIVERSION RESULTS IN A NEGATIVE IMPACT.
- E. AT ITS DISCRETION, THE PLANNING COMMISSION MAY WAIVE BUFFER REQUIREMENTS WHERE THE TOPOGRAPHY OF THE PROPERTY OR THE PLACEMENT OF NATURAL BARRIERS MAKES SCREENING NOT FEASIBLE OR NOT NECESSARY. BUFFER REQUIREMENTS SHALL BE MADE IN CONSIDERATION OF AND IN ACCORDANCE WITH EXISTING USES OF ADJACENT PROPERTY AT THE TIME OF APPROVAL OF THE PERMIT. THERE IS NO REQUIREMENT TO BUFFER THE MATERIAL SITE FROM USES WHICH COMMENCE AFTER THE APPROVAL OF THE PERMIT.]

2. *Buffer Area.* Material sites shall maintain buffer areas in accord with this section.

- a. A buffer area of a maximum of 100 feet shall be established between the area of excavation and the parcel boundaries. The buffer area may include one or more of the following: undisturbed natural vegetation, a minimum six-foot fence, a minimum six-foot berm or a combination thereof.
- b. A 2:1 slope shall be maintained between the buffer zone and excavation 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.
- c. Where an easement exists, a buffer shall not overlap the easement, unless otherwise conditioned by the planning commission or planning director, as applicable.
- d. The buffer area may be reduced where the planning commission or planning director, as applicable, has approved an alternate buffer plan. The alternate buffer plan must consist of natural undisturbed vegetation, a minimum six-foot berm,

or a minimum six-foot fence or a combination thereof; unless the permittee proposes another solution approved by the planning commission or planning director, as applicable, to meet this condition.

- e. The buffer requirements may be waived by the planning commission or planning director, as applicable, where the topography of the property or the placement of natural barriers makes screening not feasible or unnecessary.
- f. There is no requirement to buffer a material site from uses that commence after approval of the permit.
- g. When a buffer area has been denuded prior to review of the application by the planning commission or planning director revegetation may be required.

3. *Processing.* In the case of a CLUP, any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries. At its discretion, the planning commission may waive the 300-foot processing distance requirement, or allow a lesser distance in consideration of and in accordance with existing uses of [OF ADJACENT PROPERTY AT THE TIME] the properties in the vicinity at the time of approval of the permit.

4. *Water source separation.*

- a. All permits shall be issued with a condition which prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance.
- b. All counter permits shall be issued with a condition which requires that a four-foot vertical separation [FROM]between extraction operations and the seasonal high water table be maintained.
- c. All CLUPS shall be issued with a condition which requires that a [TWO] four-foot vertical separation [FROM]between extraction operations and the seasonal high water table be maintained.
- d. There shall be no dewatering either by pumping, ditching or some other form of draining unless an exemption is granted by the planning commission. The exemption for dewatering may be granted if the operator provides a statement under seal and supporting data from a duly licensed and qualified impartial

civil engineer, that the dewatering will not lower any of the surrounding property's water systems and the contractor posts a bond for liability for potential accrued damages.

5. *Excavation in the water table.* Excavation in the water table greater than 300 horizontal feet of a water source may be permitted with the approval of the planning commission based on the following:
 - a. Certification by a qualified independent civil engineer or professional hydrogeologist that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources.
 - b. The installation of a minimum of three water monitoring tubes or well casings as recommended by a qualified independent civil engineer or professional hydrogeologist adequate to determine flow direction, flow rate, and water elevation.
 - c. Groundwater elevation, flow direction, and flow rate for the subject parcel, measured in three-month intervals by a qualified independent civil engineer or professional hydrogeologist, for at least one year prior to application. Monitoring tubes or wells must be kept in place, and measurements taken, for the duration of any excavation in the water table.
 - d. Operations shall not breach an aquifer-confining layer.
6. *Waterbodies.*
 - a. An undisturbed buffer shall be left and no earth material extraction activities shall take place within [100] 200 linear feet from excavation limits and the ordinary high water level of surface water bodies such as a lake, river, stream, [OR OTHER WATER BODY, INCLUDING] riparian wetlands and mapped floodplains as defined in KPB 21.06. This regulation shall not apply to man-made waterbodies being constructed during the course of the materials extraction activities. 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.
 - b. Counter permits and CLUPS may contain additional conditions addressing surface water diversion.

7. *Fuel storage.* 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.
8. *Roads.* Operations shall be conducted 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.
9. *Subdivision.* 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. The planning director may issue a written exemption from the amendment requirement if it is determined that the subdivision is consistent with the use of the parcel as a material site and all original permit conditions can be met.
10. *Dust control.* Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
11. *Hours of operation.* [ROCK CRUSHING EQUIPMENT SHALL NOT BE OPERATED BETWEEN 10:00 P.M. AND 6:00 A.M.]
 - a. Processing equipment shall not be operated between 7:00 p.m. and 6:00 a.m.
 - b. The planning commission may grant exceptions to increase the hours of operation and processing based on surrounding land uses, topography, screening the material site from properties in the vicinity and conditions placed on the permit by the planning commission to mitigate the noise, dust and visual impacts caused by the material site.
12. *Reclamation.*
 - a. Reclamation shall be consistent with the reclamation plan approved by the planning commission or planning director as appropriate in accord with KPB 21.29.060.
 - b. [AS A CONDITION OF ISSUING THE PERMIT, THE APPLICANT SHALL SUBMIT A RECLAMATION PLAN AND 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.] The applicant shall operate the material site consistent with the approved reclamation plan and provide bonding pursuant to 21.29.060(B). 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.

13. *Other permits.* 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 air and 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. Any violation of these regulations or permits reported to or observed by borough personnel will be forwarded to the appropriate agency for enforcement.
14. [~~VOLUNTARY~~]Volunteered *permit conditions.* Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission for CLUPs or the planning director for counter permits. Such conditions must be consistent with the standards set forth in KPB 21.29.040(A). Planning commission approval of such conditions shall be contingent upon a finding that the conditions will be in the best interest of the borough and the surrounding property owners. [~~VOLUNTARY~~] Volunteered permit conditions apply to the subject parcel and operation, regardless of a change in ownership. A change in [~~VOLUNTARY~~] volunteered permit conditions may be proposed [AT] by permit [RENEWAL OR AMENDMENT] modification.
15. *Signage.* 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, whichever is more visible. Sign dimensions shall be no more than 15" by 15" and must contain the following information: the phrase "Permitted Material Site" along with the permittee's business name and a contact phone number.

16. Appeal. No clearing of vegetation shall occur within the 100-foot maximum buffer area from the permit boundary nor shall the permit be issued or operable until the deadline for the appeal, pursuant to KPB 21.20, has expired.
17. Sound level.
- a. No sound resulting from the materials extraction activities shall create a sound level, when measured at or within the property boundary of the adjacent land, that exceeds 75 dB(A).
 - b. For any sound that is of short duration between the hours of 7 a.m. and 7 p.m. the levels may be increased by:
 - i. Five dB(A) for a total of 15 minutes in any one hour; or
 - ii. Ten dB(A) for a total of five minutes in any hour; or
 - iii. Fifteen db(A) for a total of one and one-half minutes in any one-hour period.
 - c. At its discretion, the planning commission or planning director, as applicable, may reduce or waive the sound level requirements on any or all property boundaries. Sound level requirements shall be made in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.
 - d. Mandatory condition KPB 21.29.050(A)(17) shall expire 365 days from adoption of KPB 21.29.050(A)(17) unless extended or modified by the assembly.
18. Reverse signal alarms. Reverse signal alarms, used at the material site on loaders, excavators, and other earthmoving equipment shall be more technically advanced devices; such as, a multi-frequency “white noise” alarms rather than the common, single (high-pitch) tone alarms. At its discretion, the planning commission or planning director, as applicable, may waive this requirement or a portion of this requirement. The waiver of this requirement shall be made in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.
19. Ingress and egress. The planning commission or planning director may determine the points of ingress and egress for the material site. The permittee is not required to construct haul routes outside the

parcel boundaries of the material site. Driveway authorization must be acquired, from either the state through an “Approval to Construct” or a borough road service area as appropriate, prior to issuance of a material site permit when accessing a public right-of-way.

20. *Dust suppression.* Dust suppression shall be required when natural precipitation is not adequate to suppress the dust generated by the material site traffic on haul routes. Based on surrounding land uses the planning commission or planning director, as applicable, may waive or reduce the requirement for dust suppression on haul routes.
21. *Surface water protection.* Use of surface water protection measures as specified in KPB 21.29.030(A)(8) must be approved by a licensed civil engineer.
22. *Groundwater elevation.* All material sites must maintain one monitoring tube per ten acres of excavated area four feet below the proposed excavation.
23. *Setback.* Material site excavation areas shall be 250-feet from the property boundaries of any local option zoning district, existing public school ground, private school ground, college campus, child care facility, multi-purpose senior center, assisted living home, and licensed health care facility. If overlapping, the buffer areas of the excavation shall be included in the 250-foot setback.

21.29.055. Decision.

The planning commission or planning director, as applicable, shall approve permit applications meeting the mandatory conditions or shall disapprove permit applications that do not meet the mandatory conditions. The decision shall include written findings supporting the decision, and when applicable, there shall be written findings supporting any site-specific alterations to the mandatory condition as specifically allowed by KPB 21.29.050(A)(2)(a), (2)(c), (2)(d), (2)(e), (2)(g), (3), (4)(d), (5), (11)(b), (12), (14), (17)(c), (18), (19), and (20) and as allowed for the KPB 21.29.060 reclamation plan.

21.29.060. Reclamation plan.

- A. All material site permit applications require an overall reclamation plan along with a five-year reclamation plan. A site plan for reclamation shall be required including a scaled drawing with finished contours. A five-year reclamation plan must be submitted with a permit extension request.
- B. The applicant shall revegetate with a non-invasive plant species and reclaim all disturbed land [UPON EXHAUSTING THE MATERIAL ON-SITE, OR WITHIN A

PRE-DETERMINED TIME PERIOD FOR LONG-TERM ACTIVITIES, SO AS TO LEAVE THE LAND IN A STABLE CONDITION. RECLAMATION MUST OCCUR FOR ALL EXHAUSTED AREAS OF THE SITE EXCEEDING FIVE ACRES BEFORE A FIVE-YEAR RENEWAL PERMIT IS ISSUED, UNLESS OTHERWISE REQUIRED BY THE PLANNING COMMISSION. IF THE MATERIAL SITE IS ONE ACRE OR LESS IN SIZE AND HAS BEEN GRANTED A CLUP DUE TO EXCAVATION IN THE WATER TABLE, RECLAMATION MUST BE PERFORMED AS SPECIFIED BY THE PLANNING COMMISSION OR PLANNING DIRECTOR IN THE CONDITIONAL USE OR COUNTER PERMIT] within the time period approved with the reclamation plan so as to leave the land in a stable condition. Bonding shall be required at \$2,000.00 per acre for all acreage included in the current five-year reclamation plan. In the alternative, the planning director may accept a civil engineer's estimate for determining the amount of bonding. If the applicant is bonded with the state, the borough's bonding requirement is waived. Compliance with reclamation plans shall be enforced under KPB 21.50.

C. The following measures must be considered in the [PREPARING] preparation, approval and [IMPLEMENTING] implementation of the reclamation plan, although not all will be applicable to every reclamation plan.

1. Topsoil that is not promptly redistributed to an area being reclaimed will be separated and stockpiled for future use. [THIS MATERIAL WILL BE PROTECTED FROM EROSION AND CONTAMINATION BY ACIDIC OR TOXIC MATERIALS AND PRESERVED IN A CONDITION SUITABLE FOR LATER USE.]
2. The area will be backfilled, graded and recontoured using strippings, overburden, and topsoil [TO A CONDITION THAT ALLOWS FOR THE REESTABLISHMENT OF RENEWABLE RESOURCES ON THE SITE WITHIN A REASONABLE PERIOD OF TIME. IT WILL BE STABILIZED TO A CONDITION THAT WILL ALLOW SUFFICIENT MOISTURE FOR REVEGETATION] so that it will be stabilized to a condition that will allow for the revegetation as required by KPB 21.29.060(B).
3. [SUFFICIENT QUANTITIES OF STOCKPILED OR IMPORTED TOPSOIL WILL BE SPREAD OVER THE RECLAIMED AREA TO A DEPTH OF FOUR INCHES TO PROMOTE NATURAL PLANT GROWTH THAT CAN REASONABLY BE EXPECTED TO REVEGETATE THE AREA WITHIN FIVE YEARS. THE APPLICANT MAY USE THE EXISTING NATURAL ORGANIC BLANKET REPRESENTATIVE OF THE PROJECT AREA IF THE SOIL IS FOUND TO HAVE AN ORGANIC CONTENT OF 5% OR MORE AND MEETS THE SPECIFICATION OF CLASS B TOPSOIL REQUIREMENTS AS SET BY ALASKA TEST METHOD (ATM) T-6.] The [MATERIAL] topsoil used for reclamation shall be reasonably free from roots, clods, sticks, and branches greater than 3 inches in diameter. Areas having slopes

greater than 2:1 require special consideration and design for stabilization by a licensed engineer.

4. Exploration trenches or pits will be backfilled. Brush piles and unwanted vegetation shall be removed from the site, buried or burned. Topsoil and other organics will be spread on the backfilled surface to inhibit erosion and promote natural revegetation.
5. [PEAT AND T]Topsoil mine operations shall ensure a minimum of [TWO] four inches of suitable growing medium is left or replaced on the site upon completion of the reclamation activity (unless otherwise authorized).
6. Ponding may be used as a reclamation method as approved by the planning commission.

- D. The five-year reclamation plan shall describe the total acreage to be reclaimed [EACH YEAR, A LIST OF EQUIPMENT (TYPE AND QUANTITY) TO BE USED IN RECLAMATION, AND A TIME SCHEDULE OF RECLAMATION MEASURES] relative to the total excavation plan.

21.29.070. Permit extension and revocation.

- A. Conditional land use permittees must submit a request in writing for permit extension every five years after the permit is issued. Requests for permit extension must be made at least 30 days prior to permit expiration. Counter permittees must submit any request for a 12-month extension at least 30 days prior to the expiration of the original 12-month permit period.
- B. A permit extension certificate for a CLUP may be granted by the planning director after 5 years, and after one year for a counter permit where no modification to operations or conditions are proposed.
- C. Permit extension may be denied if: (1) reclamation required by this chapter and the original permit has not been performed; (2) the permittee is otherwise in noncompliance with the original permit conditions; or (3) the permittee has had a permit violation in the last two years and has not fulfilled compliance requests.
- D. A modification application shall be processed pursuant to KPB 21.29.030-050 with public notice given as provided by KPB 21.25.060 when operators request modification of their permit conditions based on changes in operations set forth in the modification application.
- E. There shall be no fee for permit extensions approved by the planning director. The fee for a permit modification processed under KPB

21.29.070(D) will be the same as an original permit application in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees.

- F. Failure to submit a request for extension will result in the expiration of the permit. The borough may issue a permit termination document upon expiration pursuant to KPB 21.29.080. Once a permit has expired, a new permit application approval process is required in order to operate the material site.
- G. Permits may be revoked pursuant to KPB 21.50. 21.29.080. - Permit termination.

When a permit expires, is revoked, or a permittee requests termination of their permit, a review of permit conditions and site inspections will be conducted by the planning department to ensure code compliance and verify site reclamation prior to termination. When the planning director determines that a site qualifies for termination, a termination document shall be issued to the permittee.

21.29.090. Permit modifications.

If a permittee revises or intends to revise operations (at a time other than permit extension) so that they are no longer consistent with the original application, a permit modification is required. The planning director shall determine whether the revision to operations requires a modification. Permit modification shall be processed in the same manner as original permits.

21.29.100. Recordation.

All permits, permit extensions, modified permits, prior existing uses, and terminations shall be recorded. Failure to record a material site document does not affect the validity of the documents.

21.29.110. Violations.

- A. Violations of this chapter shall be governed by KPB 21.50.
- B. In addition to the remedies provided in KPB 21.50, the planning director may require bonding in a form and amount adequate to protect the borough's interests for an owner or operator who has been cited for three violations of KPB 21.50, 21.25, and 21.29 within a three-year period. The violations need not be committed at the same material site. Failure to provide requested bonding may result in permit revocation proceedings.

21.29.120. Prior existing uses.

- A. Material sites are not held to the standards and conditions of a CLUP if a prior existing use (PEU) determination was granted for the parcel in accordance with KPB 21.29.120(B). To qualify as a PEU, a parcel's use as a material site must have commenced or have been operated after May 21, 1986, and prior to May 21, 1996, provided that the subject use continues in the same location. In no event shall a prior existing use be expanded beyond the smaller of the lot, block, or tract lines as they existed on May 21, 1996. If a parcel is further subdivided after May 21, 1996, the pre-existing use may not be expanded to any lot, tract, or parcel where extraction had not occurred before or on February 16, 1999. If a parcel is subdivided where extraction has already occurred, the prior existing use is considered abandoned, and a CLUP must be obtained for each parcel intended for further material site operations. The parcel owner may overcome this presumption of abandonment by showing that the subdivision is not inconsistent with material site operation. If a parcel subject to a prior existing use is conveyed, the prior existing use survives the conveyance.
- B. Owners of sites must have applied to be registered as a prior existing use prior to January 1, 2001.
- C. [ANY PRIOR EXISTING USE THAT HAS NOT OPERATED AS A MATERIAL SITE BETWEEN MAY 21, 1996, AND MAY 21, 2011, IS CONSIDERED ABANDONED AND MUST THEREAFTER COMPLY WITH THE PERMIT REQUIREMENTS OF THIS CHAPTER. THE PLANNING DIRECTOR SHALL DETERMINE WHETHER A PRIOR EXISTING USE HAS BEEN ABANDONED. AFTER GIVING NOTICE TO THE PARCEL OWNER THAT A PEU IS CONSIDERED ABANDONED, A PARCEL OWNER MAY PROTEST THE TERMINATION OF THE PEU BY FILING WRITTEN NOTICE WITH THE PLANNING DIRECTOR ON A FORM PROVIDED BY THE PLANNING DEPARTMENT. WHEN A PROTEST BY A PARCEL OWNER IS FILED, NOTICE AND AN OPPORTUNITY TO MAKE WRITTEN COMMENTS REGARDING PRIOR EXISTING USE STATUS SHALL BE ISSUED TO OWNERS OF PROPERTY WITHIN A ONE-HALF MILE RADIUS OF THE PARCEL BOUNDARIES OF THE SITE. THE OWNER OF THE PARCEL SUBJECT TO THE PRIOR EXISTING USE MAY SUBMIT WRITTEN INFORMATION, AND THE PLANNING DIRECTOR MAY GATHER AND CONSIDER ANY INFORMATION RELEVANT TO WHETHER A MATERIAL SITE HAS OPERATED. THE PLANNING DIRECTOR MAY CONDUCT A HEARING IF HE OR SHE BELIEVES IT WOULD ASSIST THE DECISION-MAKING PROCESS. THE PLANNING DIRECTOR SHALL ISSUE A WRITTEN DETERMINATION WHICH SHALL BE DISTRIBUTED TO ALL PERSONS MAKING WRITTEN COMMENTS. THE PLANNING DIRECTOR'S DECISION REGARDING TERMINATION OF THE PRIOR EXISTING USE STATUS MAY BE APPEALED TO THE PLANNING COMMISSION WITHIN 15 DAYS OF THE DATE OF THE NOTICE OF DECISION.]

The owner of a material site that has been granted a PEU determination shall provide proof of compliance with AS 27.19.030 – 050 concerning

reclamation to the planning department no later than July 1, 2021. The proof shall consist of an Alaska Department of Natural Resources (DNR) approved reclamation plan and receipt for bonding or a letter of intent filed with DNR.

1. The planning department may request proof of continued compliance with AS 27.19.030 – 050 on an annual basis.
2. Pursuant to KPB 21.29.110 the enforcement process and remedies set forth in KPB 21.50 shall govern if the proof that the statutory requirements contained in AS 27.19.030-050 is not provided to the planning department.

SECTION 3. That KPB 21.50.055 is hereby amended, as follows:

21.50.055. Fines.

- A. Following are the fines for violations of this title. Each day a violation occurs is a separate violation. Violations begin to accrue the date the enforcement notice is issued and continue to the date the enforcement is initially set for hearing. The fine for a violation may not be reduced by the hearing officer to less than the equivalent of one day's fine for each type of violation.

Code Chapter & Section	Violation Description	Daily Fine
KPB 20.10.030(A)	Offering land for sale without final plat approval	\$300.00
KPB 20.10.030(B)	Filing/recording unapproved subdivision/plat	\$300.00
KPB 20.10.030(C)	Violation of subdivision code or condition	\$300.00
KPB 21.05.040(C)	Violation of variance conditions	\$300.00
KPB 21.06.030(D)	Structure or activity prohibited by KPB 21.06	\$300.00
KPB 21.06.040	Failure to obtain a Development Permit/Floodplain Management	\$300.00
KPB 21.06.045	Failure to obtain a SMFDA Development Permit/Violation of SMFDA permit conditions/Floodplain Management	\$300.00
KPB 21.06.050	Violation of permit conditions/Floodplain Management	\$300.00

KPB 21.18.071	Failure to obtain staff permit/Violation of staff permit/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.072	Failure to obtain limited commercial activity permit/Violation of permit conditions/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.075	Prohibited use or structure/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.081	Failure to obtain Conditional Use Permit/Violation of Conditional Use Permit Condition/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.090	Failure to obtain prior existing use/structure permit/Violation of permit conditions/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.135(C)	Violation of emergency permit conditions/anadromous stream habitat protection	\$300.00
KPB 21.25.040	Failure to Obtain a Permit/Material Site/Correctional community residential center/Concentrated Animal Feeding Operation	\$300.00
KPB 21.28.030	Violation of permit conditions/Concentrated Animal Feeding Operations	\$300.00
KPB 21.29.020	Failure to Obtain a counter permit/Material Site Permits	\$300.00
KPB 21.29.050	Violation of Conditional Land Use Permit Conditions/Material Site Permits Also applies to KPB 21.26 material site permits	\$300.00
KPB 21.29.060	Violation of Reclamation Plan/Material Site Permits Also applies to KPB 21.26 material site permits	\$300.00
<u>KPB 21.29.120</u>	<u>Failure to Provide Reclamation Plan and Proof of Bonding or Letter of Intent</u>	<u>\$300.00</u>
KPB 21.44.100	Violation of Pre-existing structures/Local Option Zoning	\$300.00
KPB 21.44.110(D)	Prohibited expansion of nonconforming use/Local Option Zoning	\$300.00

KPB 21.44.110(E)	Prohibited Change in Use/Local Option Zoning	\$300.00
KPB 21.44.110(G)	Violation of Conditions on Nonconforming Use/Local Option Zoning	\$300.00
KPB 21.44.130(C)(D)	Violation of Home Occupation Standards and Conditions/Local Option Zoning	\$300.00
KPB 21.44.130(F)	Disallowed Home Occupation/Local Option Zoning	\$300.00
KPB 21.44.135	Failure to file development notice	\$300.00
KPB 21.44.160(A)(B)	Prohibited use	\$300.00
KPB 21.44.160(C)	Violation of Development Standards/Single Family Zoning/Local Option Zoning	\$300.00
KPB 21.44.165(A)(B)	Prohibited use	\$300.00
KPB 21.44.165(C)	Violation of Development Standards/Small Lot Residential Zoning/Local Option Zoning	\$300.00
KPB 21.44.170(A)(B)	Prohibited use	\$300.00
KPB 21.44.170(C)	Violation of Development Standards/Rural Residential District/Local Option Zoning	\$300.00
KPB 21.44.175(B)(C)	Prohibited Use	\$300.00
KPB 21.44.175(D)	Violation of Development Standards/Residential Waterfront	\$300.00
KPB 21.44.180(A)(B)	Prohibited Use	\$300.00
KPB 21.44.180(C)	Violation of Development Standards/Multi-Family Residential District/Local Option Zoning	\$300.00
KPB 21.44.190(A)(B)	Prohibited Use	\$300.00
KPB 21.44.190(C)	Violation of Development Standards/Industrial District/Local Option Zoning	\$300.00

KPB 21.46.030(b)	Failure to maintain bear-resistant garbage cans/Local option zone/Birch and Grove Ridge subdivisions Rural Residential District	\$300.00
KPB 21.50.100(F)	Removal of posted enforcement notice	\$300.00
KPB 21.50.100(G)	Violation of enforcement notice	\$1,000.00
KPB 21.50.130(I)	Violation of an enforcement order	\$1,000.00

SECTION 4. That this ordinance shall become effective upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2019.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes: Dunne, Johnson, Cooper

No: Bjorkman, Blakeley, Carpenter, Cox, Hibbert, Smalley

Absent: None

Introduced by:	Mayor, Johnson
Date:	12/07/21
Hearing:	01/18/22
Action:	Postponed as Amended to 02/01/22
Vote:	5 Yes, 3 No, 1 Absent
Date:	02/01/22
Action:	Tabled
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2021-41**

**AN ORDINANCE AMENDING KPB 21.29, KPB 21.25, AND KPB 21.50.055
REGARDING MATERIAL SITE PERMITS, APPLICATIONS, CONDITIONS, AND
PROCEDURES**

- WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A of the 2019 Kenai Peninsula Borough Comprehensive Plan is to establish policies that better guide land use to minimize land use conflicts, maintain property values, protect natural systems and support individual land use freedoms; and
- WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A, Strategy 1 of the 2019 Comprehensive Plan is to adopt limited development standards for specific areas and uses to reduce potential off site impacts of development on adjoining uses and the natural environment; and
- WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A, Strategy 2 of the 2019 Comprehensive Plan is to update the Borough’s existing conditional use regulations for gravel extraction and other uses to better address reoccurring land use conflicts; and
- WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A, Strategy 2a of the 2019 Comprehensive Plan is to clarify the broad purpose of the conditional use process and clear parameters for allowable conditional uses that include reasonable, project-specific conditions that reduce impacts on surrounding uses, and if/when a conditional use permit can be denied and consider establishing conditions that require larger setbacks, safety and visual screening, control on access routes, control on hours of operation, and address environmental concerns; and
- WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A, Strategy 2d of the 2019 Comprehensive Plan is to complete improvements to the rules guiding gravel extraction, with the goal of providing an appropriate balance between providing access to affordable materials for development and protecting quality of life for borough residents; and

- WHEREAS,** Goal 1 of the Mining and Minerals Processing section of the 1990 Kenai Peninsula Borough Coastal Management Program is to provide opportunities to explore, extract and process minerals, sand and gravel resources, while protecting environmental quality and other resource users; and
- WHEREAS,** an assembly subcommittee was formed in 2005 to review the material site code; and
- WHEREAS,** Ordinance 2006-01 (Substitute) codified as KPB 21.29 was adopted in 2006 after consideration of the subcommittee's report; and
- WHEREAS,** the planning department has been administering Ordinance 2006-01 (Substitute), codified as KPB 21.29 for 13 years; and
- WHEREAS,** KPB 21.25.040 requires a permit for the commencement of certain land uses within the rural district of the Kenai Peninsula Borough; and
- WHEREAS,** the planning department has recognized that certain provisions of the material site ordinance could be better clarified for the operators, public, and staff; and
- WHEREAS,** the planning commission and planning department received comments expressing concerns about dust, noise, safety, and aesthetics; and
- WHEREAS,** approximately 253 registered prior existing use material sites and approximately 99 conditional land use permits for material sites have been granted since 1996;
- WHEREAS,** the planning department receives numerous complaints regarding unreclaimed parcels registered as nonconforming prior existing material sites which have not been regulated by KPB; and
- WHEREAS,** the assembly established a material site work group by adoption of Resolution 2018-004 (Substitute) to engage in a collaborative discussion involving the public and industry to make recommendations regarding the material site code; and
- WHEREAS,** assembly Resolution 2018-025 extended the deadline for the final report to be submitted to the assembly, administration and planning commission to April 30, 2019; and
- WHEREAS,** certain additional conditions placed on material site permits would facilitate a reduction in the negative secondary impacts of material sites, e.g. dust, noise, safety, and unsightliness of material sites; and
- WHEREAS,** at its regularly scheduled meeting of November 12, 2019, the planning commission recommended approval by unanimous consent;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That KPB 21.25.030 is hereby amended, as follows:

21.25.030. - Definitions.

Unless the context requires otherwise, the following definitions apply to CLUPs:

Abandon means to cease or discontinue a use without intent to resume, but excluding short-term interruptions to use or activity during periods of remodeling, maintaining, or otherwise improving or rearranging a facility or during normal periods of vacation or seasonal closure. An "intent to resume" can be shown through continuous operation of a portion of the facility, maintenance of utilities, or outside proof of continuance, e.g., bills of lading or delivery records. Abandonment also means the cessation of use, regardless of voluntariness, for a specified period of time.

Animal feeding operation means a lot or facility (other than an aquatic animal production facility) where animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period.

- a. The same animals need not remain on the lot for 45 days or more; rather, some animals are fed or maintained on the lot 45 days out of any 12-month period, and
- b. Animals are "maintained" for purposes of this ordinance when they are confined in an area where waste is generated and/or concentrated or are watered, cleaned, groomed, or medicated in a confined area, even if the confinement is temporary.
- c. Two or more animal feeding operations under common ownership are considered, for the purposes of these regulations, to be a single animal feeding operation if they adjoin each other.
- d. Slaughterhouses are animal feeding operations.

Animal unit means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighting [weighing] over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

Animal waste means animal excrement, animal carcasses, feed wasted, process wastewaters or any other waste associated with the confinement of animals from an animal feeding operation.

Animal waste management system means a combination of structures and nonstructural practices serving an animal feeding operation that provides for the collection, treatment, disposal, distribution, storage and land application of animal waste.

Aquifer means a subsurface formation that contains sufficient water-saturated permeable material to yield economical quantities of water to wells and springs.

Aquifer-confining layer means that layer of relatively impermeable soil below an aquifer, typically clay, which confines water.

Assisted living home means a residential facility that serves three or more adults who are not related to the owner by blood or marriage, or that receives state or federal payment for service of the number of adults served. The services and activities may include, but are not limited to, housing and food services to its residents, assistance with activities of daily living, and personal assistance, and that complies with Alaska Statutes 47.32.0101 – 47.60.900, as amended.

Child care facility means a place where child care is regularly provided for children under the age of 12 for periods of time that are less than 24 hours in duration and that is licensed pursuant to AS 47.35.005 et seq., excluding child care homes and child care group homes, as currently written or hereafter amended.

Commercial means any provision of services, sale of goods, or use operated for production of income whether or not income is derived, including sales, barter, rental, or trade of goods and services.

Concentrated animal feeding operation (CAFO) means an animal feeding operation confining at least: (1) 1,000 swine weighing at least approximately 55 pounds; (2) 1,000 slaughter and feeder cattle; (3) 700 mature dairy cattle; (4) 500 horses; (5) 10,000 sheep or lambs; (6) 55,000 turkeys; (7) 100,000 laying hens or broilers (if the facility has continuous overflow watering); (8) 30,000 laying hens or broilers (if the facility has a liquid manure system); (9) 5,000 ducks; (10) 1,000 animal units; or (11) a combination of the above resulting in at least 1,000 animal units. Each individual parcel upon which a CAFO is located is a separate CAFO unless they adjoin each other.

Conditioning or processing material means a value-added process including batch plants, asphalt plants, screening, washing, and crushing by use of machinery.

Correctional community residential center (CCRC) means a community residential center, other than a correctional institution, for the short-term or temporary detention of prisoners in transition from a correctional institution, performing restitution, or undergoing rehabilitation or recovery from a legal infirmity. CCRCs may not be used for detention of prisoners who pose a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four-hour physical supervision. The determination of whether a prisoner poses a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four-hour physical supervision shall be made by the commissioner of corrections for state prisoners and the United States Attorney General, or the U.S. Director of Bureau of Prisons for federal prisoners.

Correctional institution means a facility other than a correctional community residential center providing for the imprisonment or physical confinement or detention of prisoners under guard or twenty-four-hour physical supervision, such as prisons, prison farms, jails, reformatories, penitentiaries, houses of detention, detention centers, honor camps, and similar facilities.

Development plan means a plan created to describe a proposed development on a specific building site excluding material sites under KPB 21.29.020.

Disturbed includes active excavation and all areas necessary to use a parcel as a material site including but not limited to berms, stockpiles, and excavated areas excluding all areas reclaimed for alternate post mining land uses.

[EXHAUSTED MEANS THAT ALL MATERIAL OF A COMMERCIAL QUALITY IN A SAND, GRAVEL, OR MATERIAL SITE HAS BEEN REMOVED.]

Federal prisoners means offenders in the custody or control or under the care or supervision of the United States Attorney General or the Bureau of Prisons.

Groundwater means, in the broadest sense, all subsurface water, more commonly that part of the subsurface water in the saturated zone.

Haul route includes the roads used to haul materials from the permit area to a roadway designated as collector, arterial or interstate by the Alaska Department of Transportation & Public Facilities.

Liquid manure or liquid animal waste system means any animal waste management system which uses water as the primary carrier of such waste into a primary retention structure.

Multi-purpose senior center is a facility where persons 60 years of age or older are provided with services and activities suited to their particular needs. The

services and activities may include, but are not limited to, health examinations, legal assistance, recreation programs, general social activities, telephone reassurance programs, nutrition classes, meals at minimum cost, counseling, protective services, programs for shut-ins and education programs, and that complies with Alaska Statutes 47.60.010—47.60.090, as currently written or hereafter amended.

Permit area includes all excavation, processing, buffer and haul route areas of a CLUP or counter permit.

Person shall include any individual, firm, partnership, association, corporation, cooperative, or state or local government.

Prisoner means:

- a. a person held under authority of state law in official detention as defined in AS 11.81.900;
- b. includes a juvenile committed to the custody of the Alaska Department of Corrections Commissioner when the juvenile has been charged, prosecuted, or convicted as an adult.

Private school is a school comprised of kindergarten through 12th grade, or any combination of those grades, that does not receive direct state or federal funding and that complies with either Alaska Statute 14.45.030 or 14.45.100—14.45.130, as currently written or hereafter amended.

Public school is a school comprised of kindergarten through 12th grade, or any combination of those grades, that is operated by the State of Alaska or any political subdivision of the state.

Sand, gravel or material site means an area used for extracting, quarrying, or conditioning gravel or substances from the ground that are not subject to permits through the state location (mining claim) system (e.g., gold, silver, and other metals), nor energy minerals including but not limited to coal, oil, and gas.

Seasonal high groundwater table means the highest level to which the groundwater rises on an annual basis.

Senior housing project means senior housing as defined for purposes of construction or operation in 15 Alaska Administrative Code 151.950(c), as currently written or hereafter amended.

Stable condition means the rehabilitation, where feasible, of the physical environment of the site to a condition that allows for the reestablishment of

renewable resources on the site within a reasonable period of time by natural processes.

Surface water means water on the earth's surface exposed to the atmosphere such as rivers, lakes, and creeks.

Topsoil means material suitable for vegetative growth.

Vicinity means the same as the area of notification.

Waterbody means any lake, pond, stream, riparian wetland, or groundwater into which storm water runoff is directed.

Water source means a well, spring or other similar source that provides water for human consumptive use.

SECTION 2. That KPB 21.29 is hereby amended, as follows:

CHAPTER 21.29. MATERIAL SITE PERMITS

21.29.010. Material extraction exempt from obtaining a permit.

- A. Material extraction which disturbs an area of less than one acre that is not in a mapped flood plain or subject to 21.29.010(B), does not enter the water table, and does not cross property boundaries, does not require a permit. There will be no excavation within 20 feet of a right-of-way or within ten feet of a lot line.
- B. Material extraction taking place on dewatered bars within the confines of the Snow River and the streams within the Seward-Bear Creek Flood Service Area does not require a permit, however, operators subject to this exemption shall provide the planning department with the information required by KPB 21.29.030(A)(1), (2), (6), (7) and a current flood plain development permit prior to beginning operations.
- C. A prior existing use under KPB 21.29.120 does not require a material extraction permit, but a floodplain development permit is required for all activities within any mapped special flood hazard area.
- D. Material extraction incidental to site development does not require a permit when an approved site development plan is on file with the planning department. Site development plans are approved by the planning director and are valid for one year. The site development plan may be renewed on an annual basis subject to the planning director's approval.

21.29.020. Material extraction and activities requiring a permit.

- A. *Counter permit.* A counter permit is required for material extraction which disturbs no more than 2.5 cumulative acres and does not enter the water table. Counter permits are approved by the planning director, and are not subject to the notice requirements or planning commission approval of KPB 21.25.060. A counter permit is valid for a period of 12 months, with a possible 12-month extension.
- B. *Conditional land use permit.* A conditional land use permit (CLUP) is required for material extraction which disturbs more than 2.5 cumulative acres, or material extraction of any size that enters the water table. A CLUP is required for materials processing. A CLUP is valid for a period of five years. The provisions of KPB Chapter 21.25 are applicable to material site CLUPS and the provisions of KPB 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling.

21.29.030. Application procedure.

- A. In order to obtain a counter permit or CLUP, an applicant shall first complete and submit to the borough planning department a permit application, along with the fee listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. The planning director may determine that certain contiguous parcels are eligible for a single permit. The application shall include the following items:
 - 1. Legal description of the parcel, KPB tax parcel ID number, and identification of whether the permit is for the entire parcel, or a specific location within a parcel;
 - 2. Expected life span of the material site;
 - 3. A buffer plan consistent with KPB 21.29.050(A)(2);
 - 4. Reclamation plan consistent with KPB 21.29.060;
 - 5. The depth of excavation;
 - 6. Type of material to be extracted and type of equipment to be used;
 - 7. Any voluntary permit conditions the applicant proposes. Failure to include a proposed voluntary permit condition in the application does not preclude the applicant from proposing or agreeing to voluntary permit conditions at a later time;

8. Surface water protection measures, if any, for adjacent properties designed by a civil engineer, including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence;
9. A site plan and field verification prepared by a professional surveyor licensed and registered in the State of Alaska, including the following information:
 - a. Location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;
 - b. Proposed buffers consistent with KPB 21.29.050(A)(2), or alternate buffer plan;
 - c. Identification of all encumbrances, including, but not limited to easements;
 - d. Points of ingress and egress. Driveway permits must be acquired from either the state or borough as appropriate prior to the issuance of the material site permit;
 - e. Anticipated haul routes;
 - f. Location and [DEPTH] elevation of test holes, and depth of groundwater, if encountered between May and December. At least one test hole per ten acres of excavated area is required to be dug. The test holes shall be at least four feet below the proposed depth of excavation;
 - g. Location of wells of adjacent property owners within 300 feet of the proposed parcel boundary;
 - h. Location of any water body on the parcel, including the location of any riparian wetland as determined by ["WETLAND MAPPING AND CLASSIFICATION OF THE KENAI LOWLAND, ALASKA" MAPS CREATED BY THE KENAI WATERSHED FORUM] best available data;
 - [i. SURFACE WATER PROTECTION MEASURES FOR ADJACENT PROPERTIES, INCLUDING THE USE OF DIVERSION CHANNELS, INTERCEPTION DITCHES, ON-SITE COLLECTION DITCHES, SEDIMENT PONDS AND TRAPS, AND SILT FENCE; PROVIDE DESIGNS FOR SUBSTANTIAL STRUCTURES; INDICATE WHICH

STRUCTURES WILL REMAIN AS PERMANENT FEATURES AT THE CONCLUSION OF OPERATIONS, IF ANY;]

[J]i. Location of any processing areas on parcel, if applicable;

[K]j. North arrow;

[L]k. The scale to which the site plan is drawn;

[M]l. Preparer's name, date and seal;

[N]m. Field verification shall include staking the boundary of the parcel at sequentially visible intervals. The planning director may grant an exemption in writing to the staking requirements if the parcel boundaries are obvious or staking is unnecessary.

B. In order to aid the planning commission or planning director's decision-making process, the planning director shall provide vicinity, aerial, land use, and ownership maps for each application and may include additional information.

21.29.040. Standards for sand, gravel or material sites.

A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, and visual impacts. Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:

1. Protects against the lowering of water sources serving other properties;
2. Protects against physical damage to [OTHER] adjacent properties;
3. [MINIMIZES] Protects against off-site movement of dust;
4. [MINIMIZES] Protects against noise disturbance to other properties;
5. [MINIMIZES] Protects against visual impacts of the material site; [AND]
6. Provides for alternate post-mining land uses[.];
7. Protects Receiving Waters against adverse effects to fish and wildlife habitat;
8. Protects against traffic impacts; and

9. Provides consistency with the objectives of the Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents.

21.29.050. Permit conditions.

- A. The following mandatory conditions apply to counter permits and CLUPs issued for sand, gravel or material sites:

1. [*PARCEL*]Permit boundaries. [ALL BOUNDARIES OF THE SUBJECT PARCEL] The buffers and any easements or right-of-way abutting the proposed permit area shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter. Field verification and staking will require the services of a professional land surveyor. Stakes shall be in place [AT TIME OF APPLICATION]prior to issuance of the permit.

- [2. *BUFFER ZONE.* A BUFFER ZONE SHALL BE MAINTAINED AROUND THE EXCAVATION PERIMETER OR PARCEL BOUNDARIES. WHERE AN EASEMENT EXISTS, A BUFFER SHALL NOT OVERLAP THE EASEMENT, UNLESS OTHERWISE CONDITIONED BY THE PLANNING DIRECTOR OR PLANNING COMMISSION.

- A. THE BUFFER ZONE SHALL PROVIDE AND RETAIN A BASIC BUFFER OF:

- I. 50 FEET OF UNDISTURBED NATURAL VEGETATION, OR

- II. A MINIMUM SIX-FOOT EARTHEN BERM WITH AT LEAST A 2:1 SLOPE, OR

- III. A MINIMUM SIX-FOOT FENCE.

- B. A 2:1 SLOPE SHALL BE MAINTAINED BETWEEN THE BUFFER ZONE AND EXCAVATION 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.

- C. THE PLANNING COMMISSION OR PLANNING DIRECTOR SHALL DESIGNATE ONE OR A COMBINATION OF THE ABOVE AS IT DEEMS APPROPRIATE. THE VEGETATION AND FENCE SHALL BE OF SUFFICIENT HEIGHT AND DENSITY TO PROVIDE VISUAL AND NOISE SCREENING OF THE PROPOSED USE AS DEEMED

APPROPRIATE BY THE PLANNING COMMISSION OR PLANNING DIRECTOR.

- D. BUFFERS SHALL NOT CAUSE SURFACE WATER DIVERSION WHICH NEGATIVELY IMPACTS ADJACENT PROPERTIES OR WATER BODIES. SPECIFIC FINDINGS ARE REQUIRED TO ALTER THE BUFFER REQUIREMENTS OF KPB 21.29.050(A)(2)(A) IN ORDER TO MINIMIZE NEGATIVE IMPACTS FROM SURFACE WATER DIVERSION. FOR PURPOSES OF THIS SECTION, SURFACE WATER DIVERSION IS DEFINED AS EROSION, FLOODING, DEHYDRATION OR DRAINING, OR CHANNELING. NOT ALL SURFACE WATER DIVERSION RESULTS IN A NEGATIVE IMPACT.
- E. AT ITS DISCRETION, THE PLANNING COMMISSION MAY WAIVE BUFFER REQUIREMENTS WHERE THE TOPOGRAPHY OF THE PROPERTY OR THE PLACEMENT OF NATURAL BARRIERS MAKES SCREENING NOT FEASIBLE OR NOT NECESSARY. BUFFER REQUIREMENTS SHALL BE MADE IN CONSIDERATION OF AND IN ACCORDANCE WITH EXISTING USES OF ADJACENT PROPERTY AT THE TIME OF APPROVAL OF THE PERMIT. THERE IS NO REQUIREMENT TO BUFFER THE MATERIAL SITE FROM USES WHICH COMMENCE AFTER THE APPROVAL OF THE PERMIT.]

2. *Buffer Area.* Material sites shall maintain buffer areas in accord with this section.

- a. A buffer area of a maximum of 100 feet shall be established between the area of excavation and the parcel boundaries. The buffer area may include one or more of the following: undisturbed natural vegetation, a minimum six-foot fence, a minimum six-foot earthen berm with at least a 2/1 slope or a combination thereof.
- b. A 2:1 slope shall be maintained between the buffer zone and excavation 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.
- c. Where an easement exists, a buffer shall not overlap the easement, unless otherwise conditioned by the planning commission or planning director, as applicable.
- d. The vegetation and fence shall be of sufficient height and density to provide visual and noise screening of the proposed

use as deemed appropriate by the planning commission or the planning director.

- e. The buffer area may be reduced where the planning commission or planning director, as applicable, has approved an alternate buffer plan. The alternate buffer plan must consist of natural undisturbed vegetation, a minimum six-foot berm, or a minimum six-foot fence or a combination thereof; unless the permittee proposes another solution approved by the planning commission or planning director, as applicable, to meet this condition.
- f. The buffer requirements may be waived by the planning commission or planning director, as applicable, where the topography of the property or the placement of natural barriers makes screening not feasible or unnecessary.
- g. There is no requirement to buffer a material site from uses that commence after approval of the permit.
- h. When a buffer area has been denuded prior to review of the application by the planning commission or planning director revegetation may be required.

3. *Processing.* In the case of a CLUP, any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries. At its discretion, the planning commission may waive the 300-foot processing distance requirement, or allow a lesser distance in consideration of and in accordance with existing uses of [OF ADJACENT PROPERTY AT THE TIME] the properties in the vicinity at the time of approval of the permit.

4. *Water source separation.*

- a. All permits shall be issued with a condition which prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance.
- b. All counter permits shall be issued with a condition which requires that a four-foot vertical separation [FROM]between extraction operations and the seasonal high water table be maintained.
- c. All CLUPS shall be issued with a condition which requires that a [TWO] four-foot vertical separation [FROM]between

extraction operations and the seasonal high water table be maintained.

- d. There shall be no dewatering either by pumping, ditching or some other form of draining unless an exemption is granted by the planning commission. The exemption for dewatering may be granted if the operator provides a statement under seal and supporting data from a duly licensed and qualified impartial civil engineer, that the dewatering will not lower any of the surrounding property's water systems and the contractor posts a bond for liability for potential accrued damages.

5. *Excavation in the water table.* Excavation in the water table greater than 300 horizontal feet of a water source may be permitted with the approval of the planning commission based on the following:

- a. Certification by a qualified independent civil engineer or professional hydrogeologist that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources.
- b. The installation of a minimum of three water monitoring tubes or well casings as recommended by a qualified independent civil engineer or professional hydrogeologist adequate to determine flow direction, flow rate, and water elevation.
- c. Groundwater elevation, flow direction, and flow rate for the subject parcel, measured in three-month intervals by a qualified independent civil engineer or professional hydrogeologist, for at least one year prior to application. Monitoring tubes or wells must be kept in place, and measurements taken, for the duration of any excavation in the water table.
- d. Operations shall not breach an aquifer-confining layer.

6. *Waterbodies.*

- a. An undisturbed buffer shall be left and no earth material extraction activities shall take place within [100] 200 linear feet from excavation limits and the ordinary high water level of surface water bodies such as a lake, river, stream, [OR OTHER WATER BODY, INCLUDING] riparian wetlands and mapped floodplains as defined in KPB 21.06. This regulation shall not apply to man-made waterbodies being constructed during the course of the materials extraction activities. 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.

- b. Counter permits and CLUPS may contain additional conditions addressing surface water diversion.
7. *Fuel storage.* 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.
8. *Roads.* Operations shall be conducted 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.
9. *Subdivision.* 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. The planning director may issue a written exemption from the amendment requirement if it is determined that the subdivision is consistent with the use of the parcel as a material site and all original permit conditions can be met.
10. *Dust control.* Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
11. *Hours of operation.* [ROCK CRUSHING EQUIPMENT SHALL NOT BE OPERATED BETWEEN 10:00 P.M. AND 6:00 A.M.]
 - a. Processing equipment shall not be operated between 7:00 p.m. and 6:00 a.m.
 - b. The planning commission may grant exceptions to increase the hours of operation and processing based on surrounding land uses, topography, screening the material site from properties in the vicinity and conditions placed on the permit by the planning commission to mitigate the noise, dust and visual impacts caused by the material site.

12. *Reclamation.*

- a. Reclamation shall be consistent with the reclamation plan approved by the planning commission or planning director as appropriate in accord with KPB 21.29.060.
- b. [AS A CONDITION OF ISSUING THE PERMIT, THE APPLICANT SHALL SUBMIT A RECLAMATION PLAN AND 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.] The applicant shall operate the material site consistent with the approved reclamation plan and provide bonding pursuant to 21.29.060(B). 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.

13. *Other permits.* 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 air and 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. Any violation of these regulations or permits reported to or observed by borough personnel will be forwarded to the appropriate agency for enforcement.

14. [~~VOLUNTARY~~]Volunteered *permit conditions.* Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission for CLUPs or the planning director for counter permits. Such conditions must be consistent with the standards set forth in KPB 21.29.040(A). Planning commission approval of such conditions shall be contingent upon a finding that the conditions will be in the best interest of the borough and the surrounding property owners. [~~VOLUNTARY~~] Volunteered permit

conditions apply to the subject parcel and operation, regardless of a change in ownership. A change in [VOLUNTARY] volunteered permit conditions may be proposed [AT] by permit [RENEWAL OR AMENDMENT] modification.

15. *Signage.* 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, whichever is more visible. Sign dimensions shall be no more than 15" by 15" and must contain the following information: the phrase "Permitted Material Site" along with the permittee's business name and a contact phone number.
16. *Appeal.* No clearing of vegetation shall occur within the 100-foot maximum buffer area from the permit boundary nor shall the permit be issued or operable until the deadline for the appeal, pursuant to KPB 21.20, has expired.
17. *Sound level.*
 - a. No sound resulting from the materials extraction activities shall create a sound level, when measured at or within the property boundary of the adjacent land, that exceeds 75 dB(A).
 - b. For any sound that is of short duration between the hours of 7 a.m. and 7 p.m. the levels may be increased by:
 - i. Five dB(A) for a total of 15 minutes in any one hour; or
 - ii. Ten dB(A) for a total of five minutes in any hour; or
 - iii. Fifteen db(A) for a total of one and one-half minutes in any one-hour period.
 - c. At its discretion, the planning commission or planning director, as applicable, may reduce or waive the sound level requirements on any or all property boundaries. Sound level requirements shall be made in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.
 - d. Mandatory condition KPB 21.29.050(A)(17) shall expire 365 days from adoption of KPB 21.29.050(A)(17) unless extended or modified by the assembly.

18. Reverse signal alarms. Reverse signal alarms, used at the material site on loaders, excavators, and other earthmoving equipment shall be more technically advanced devices; such as, a multi-frequency “white noise” alarms rather than the common, single (high-pitch) tone alarms. At its discretion, the planning commission or planning director, as applicable, may waive this requirement or a portion of this requirement. The waiver of this requirement shall be made in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.
19. Ingress and egress. The planning commission or planning director may determine the points of ingress and egress for the material site. The permittee is not required to construct haul routes outside the parcel boundaries of the material site. Driveway authorization must be acquired, from either the state through an “Approval to Construct” or a borough road service area as appropriate, prior to issuance of a material site permit when accessing a public right-of-way.
20. Dust suppression. Dust suppression shall be required when natural precipitation is not adequate to suppress the dust generated by the material site traffic on haul routes. Based on surrounding land uses the planning commission or planning director, as applicable, may waive or reduce the requirement for dust suppression on haul routes.
21. Surface water protection. Use of surface water protection measures as specified in KPB 21.29.030(A)(8) must be approved by a licensed civil engineer.
22. Groundwater elevation. All material sites must maintain one monitoring tube per ten acres of excavated area four feet below the proposed excavation.
23. Setback. Material site excavation areas shall be 250-feet from the property boundaries of any local option zoning district, existing public school ground, private school ground, college campus, child care facility, multi-purpose senior center, assisted living home, and licensed health care facility. If overlapping, the buffer areas of the excavation shall be included in the 250-foot setback.

21.29.055. Decision.

The planning commission or planning director, as applicable, shall approve permit applications meeting the mandatory conditions or shall disapprove permit applications that do not meet the mandatory conditions. The decision shall include written findings supporting the decision, and when applicable, there shall be written findings supporting any site-specific alterations to the mandatory condition as

specifically allowed by KPB 21.29.050(A)(2)(a), (2)(c), (2)(d), (2)(e), (2)(g), (3), (4)(d), (5), (11)(b), (12), (14), (17)(c), (18), (19), and (20) and as allowed for the KPB 21.29.060 reclamation plan.

21.29.060. Reclamation plan.

- A. All material site permit applications require an overall reclamation plan along with a five-year reclamation plan. A site plan for reclamation shall be required including a scaled drawing with finished contours. A five-year reclamation plan must be submitted with a permit extension request.
- B. The applicant shall revegetate with a non-invasive plant species and reclaim all disturbed land [UPON EXHAUSTING THE MATERIAL ON-SITE, OR WITHIN A PRE-DETERMINED TIME PERIOD FOR LONG-TERM ACTIVITIES, SO AS TO LEAVE THE LAND IN A STABLE CONDITION. RECLAMATION MUST OCCUR FOR ALL EXHAUSTED AREAS OF THE SITE EXCEEDING FIVE ACRES BEFORE A FIVE-YEAR RENEWAL PERMIT IS ISSUED, UNLESS OTHERWISE REQUIRED BY THE PLANNING COMMISSION. IF THE MATERIAL SITE IS ONE ACRE OR LESS IN SIZE AND HAS BEEN GRANTED A CLUP DUE TO EXCAVATION IN THE WATER TABLE, RECLAMATION MUST BE PERFORMED AS SPECIFIED BY THE PLANNING COMMISSION OR PLANNING DIRECTOR IN THE CONDITIONAL USE OR COUNTER PERMIT] within the time period approved with the reclamation plan so as to leave the land in a stable condition. Bonding shall be required at \$2,000.00 per acre for all acreage included in the current five-year reclamation plan. In the alternative, the planning director may accept a civil engineer's estimate for determining the amount of bonding. If the applicant is bonded with the state, the borough's bonding requirement is waived. Compliance with reclamation plans shall be enforced under KPB 21.50.
- C. The following measures must be considered in the [PREPARING] preparation, approval and [IMPLEMENTING] implementation of the reclamation plan, although not all will be applicable to every reclamation plan.
 - 1. Topsoil that is not promptly redistributed to an area being reclaimed will be separated and stockpiled for future use. [THIS MATERIAL WILL BE PROTECTED FROM EROSION AND CONTAMINATION BY ACIDIC OR TOXIC MATERIALS AND PRESERVED IN A CONDITION SUITABLE FOR LATER USE.]
 - 2. The area will be backfilled, graded and recontoured using strippings, overburden, and topsoil [TO A CONDITION THAT ALLOWS FOR THE REESTABLISHMENT OF RENEWABLE RESOURCES ON THE SITE WITHIN A REASONABLE PERIOD OF TIME. IT WILL BE STABILIZED TO A CONDITION THAT WILL ALLOW SUFFICIENT MOISTURE FOR

REVEGETATION] so that it will be stabilized to a condition that will allow for the revegetation as required by KPB 21.29.060(B).

3. [SUFFICIENT QUANTITIES OF STOCKPILED OR IMPORTED TOPSOIL WILL BE SPREAD OVER THE RECLAIMED AREA TO A DEPTH OF FOUR INCHES TO PROMOTE NATURAL PLANT GROWTH THAT CAN REASONABLY BE EXPECTED TO REVEGETATE THE AREA WITHIN FIVE YEARS. THE APPLICANT MAY USE THE EXISTING NATURAL ORGANIC BLANKET REPRESENTATIVE OF THE PROJECT AREA IF THE SOIL IS FOUND TO HAVE AN ORGANIC CONTENT OF 5% OR MORE AND MEETS THE SPECIFICATION OF CLASS B TOPSOIL REQUIREMENTS AS SET BY ALASKA TEST METHOD (ATM) T-6.] The [MATERIAL] topsoil used for reclamation shall be reasonably free from roots, clods, sticks, and branches greater than 3 inches in diameter. Areas having slopes greater than 2:1 require special consideration and design for stabilization by a licensed engineer.
4. Exploration trenches or pits will be backfilled. Brush piles and unwanted vegetation shall be removed from the site, buried or burned. Topsoil and other organics will be spread on the backfilled surface to inhibit erosion and promote natural revegetation.
5. [PEAT AND T]Topsoil mine operations shall ensure a minimum of [TWO] four inches of suitable growing medium is left or replaced on the site upon completion of the reclamation activity (unless otherwise authorized).
6. Ponding may be used as a reclamation method as approved by the planning commission.

- D. The five-year reclamation plan shall describe the total acreage to be reclaimed [EACH YEAR, A LIST OF EQUIPMENT (TYPE AND QUANTITY) TO BE USED IN RECLAMATION, AND A TIME SCHEDULE OF RECLAMATION MEASURES] relative to the total excavation plan.

21.29.070. Permit extension and revocation.

- A. Conditional land use permittees must submit a request in writing for permit extension every five years after the permit is issued. Requests for permit extension must be made at least 30 days prior to permit expiration. Counter permittees must submit any request for a 12-month extension at least 30 days prior to the expiration of the original 12-month permit period.
- B. A permit extension certificate for a CLUP may be granted by the planning director after 5 years, and after one year for a counter permit where no modification to operations or conditions are proposed.

- C. Permit extension may be denied if: (1) reclamation required by this chapter and the original permit has not been performed; (2) the permittee is otherwise in noncompliance with the original permit conditions; or (3) the permittee has had a permit violation in the last two years and has not fulfilled compliance requests.
- D. A modification application shall be processed pursuant to KPB 21.29.030-050 with public notice given as provided by KPB 21.25.060 when operators request modification of their permit conditions based on changes in operations set forth in the modification application.
- E. There shall be no fee for permit extensions approved by the planning director. The fee for a permit modification processed under KPB 21.29.070(D) will be the same as an original permit application in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees.
- F. Failure to submit a request for extension will result in the expiration of the permit. The borough may issue a permit termination document upon expiration pursuant to KPB 21.29.080. Once a permit has expired, a new permit application approval process is required in order to operate the material site.
- G. Permits may be revoked pursuant to KPB 21.50. 21.29.080. - Permit termination.

When a permit expires, is revoked, or a permittee requests termination of their permit, a review of permit conditions and site inspections will be conducted by the planning department to ensure code compliance and verify site reclamation prior to termination. When the planning director determines that a site qualifies for termination, a termination document shall be issued to the permittee.

21.29.090. Permit modifications.

If a permittee revises or intends to revise operations (at a time other than permit extension) so that they are no longer consistent with the original application, a permit modification is required. The planning director shall determine whether the revision to operations requires a modification. Permit modification shall be processed in the same manner as original permits.

21.29.100. Recordation.

All permits, permit extensions, modified permits, prior existing uses, and terminations shall be recorded. Failure to record a material site document does not affect the validity of the documents.

21.29.110. Violations.

- A. Violations of this chapter shall be governed by KPB 21.50.
- B. In addition to the remedies provided in KPB 21.50, the planning director may require bonding in a form and amount adequate to protect the borough's interests for an owner or operator who has been cited for three violations of KPB 21.50, 21.25, and 21.29 within a three-year period. The violations need not be committed at the same material site. Failure to provide requested bonding may result in permit revocation proceedings.

21.29.120. Prior existing uses.

- A. Material sites are not held to the standards and conditions of a CLUP if a prior existing use (PEU) determination was granted for the parcel in accordance with KPB 21.29.120(B). To qualify as a PEU, a parcel's use as a material site must have commenced or have been operated after May 21, 1986, and prior to May 21, 1996, provided that the subject use continues in the same location. In no event shall a prior existing use be expanded beyond the smaller of the lot, block, or tract lines as they existed on May 21, 1996. If a parcel is further subdivided after May 21, 1996, the pre-existing use may not be expanded to any lot, tract, or parcel where extraction had not occurred before or on February 16, 1999. If a parcel is subdivided where extraction has already occurred, the prior existing use is considered abandoned, and a CLUP must be obtained for each parcel intended for further material site operations. The parcel owner may overcome this presumption of abandonment by showing that the subdivision is not inconsistent with material site operation. If a parcel subject to a prior existing use is conveyed, the prior existing use survives the conveyance.
- B. Owners of sites must have applied to be registered as a prior existing use prior to January 1, 2001.
- C. [ANY PRIOR EXISTING USE THAT HAS NOT OPERATED AS A MATERIAL SITE BETWEEN MAY 21, 1996, AND MAY 21, 2011, IS CONSIDERED ABANDONED AND MUST THEREAFTER COMPLY WITH THE PERMIT REQUIREMENTS OF THIS CHAPTER. THE PLANNING DIRECTOR SHALL DETERMINE WHETHER A PRIOR EXISTING USE HAS BEEN ABANDONED. AFTER GIVING NOTICE TO THE PARCEL OWNER THAT A PEU IS CONSIDERED ABANDONED, A PARCEL OWNER MAY

PROTEST THE TERMINATION OF THE PEU BY FILING WRITTEN NOTICE WITH THE PLANNING DIRECTOR ON A FORM PROVIDED BY THE PLANNING DEPARTMENT. WHEN A PROTEST BY A PARCEL OWNER IS FILED, NOTICE AND AN OPPORTUNITY TO MAKE WRITTEN COMMENTS REGARDING PRIOR EXISTING USE STATUS SHALL BE ISSUED TO OWNERS OF PROPERTY WITHIN A ONE-HALF MILE RADIUS OF THE PARCEL BOUNDARIES OF THE SITE. THE OWNER OF THE PARCEL SUBJECT TO THE PRIOR EXISTING USE MAY SUBMIT WRITTEN INFORMATION, AND THE PLANNING DIRECTOR MAY GATHER AND CONSIDER ANY INFORMATION RELEVANT TO WHETHER A MATERIAL SITE HAS OPERATED. THE PLANNING DIRECTOR MAY CONDUCT A HEARING IF HE OR SHE BELIEVES IT WOULD ASSIST THE DECISION-MAKING PROCESS. THE PLANNING DIRECTOR SHALL ISSUE A WRITTEN DETERMINATION WHICH SHALL BE DISTRIBUTED TO ALL PERSONS MAKING WRITTEN COMMENTS. THE PLANNING DIRECTOR'S DECISION REGARDING TERMINATION OF THE PRIOR EXISTING USE STATUS MAY BE APPEALED TO THE PLANNING COMMISSION WITHIN 15 DAYS OF THE DATE OF THE NOTICE OF DECISION.]

The owner of a material site that has been granted a PEU determination shall provide proof of compliance with AS 27.19.030 – 050 concerning reclamation to the planning department no later than July 1, 2022. The proof shall consist of an Alaska Department of Natural Resources (DNR) approved reclamation plan and receipt for bonding or a letter of intent filed with DNR.

1. The planning department may request proof of continued compliance with AS 27.19.030 – 050 on an annual basis.
2. Pursuant to KPB 21.29.110 the enforcement process and remedies set forth in KPB 21.50 shall govern if the proof that the statutory requirements contained in AS 27.19.030-050 is not provided to the planning department.

SECTION 3. That KPB 21.50.055 is hereby amended, as follows:

21.50.055. Fines.

- A. Following are the fines for violations of this title. Each day a violation occurs is a separate violation. Violations begin to accrue the date the enforcement notice is issued and continue to the date the enforcement is initially set for hearing. The fine for a violation may not be reduced by the hearing officer to less than the equivalent of one day's fine for each type of violation.

CODE CHAPTER & SECTION	VIOLATION DESCRIPTION	DAILY FINE
KPB 20.10.030(A)	Offering land for sale without final plat approval	\$300.00
KPB 20.10.030(B)	Filing/recording unapproved subdivision/plat	\$300.00
KPB 20.10.030(C)	Violation of subdivision code or condition	\$300.00
KPB 21.05.040(C)	Violation of variance conditions	\$300.00
KPB 21.06.030(D)	Structure or activity prohibited by KPB 21.06	\$300.00
KPB 21.06.040	Failure to obtain a Development Permit/Floodplain Management	\$300.00
KPB 21.06.045	Failure to obtain a SMFDA Development Permit/Violation of SMFDA permit conditions/Floodplain Management	\$300.00
KPB 21.06.050	Violation of permit conditions/Floodplain Management	\$300.00
KPB 21.18.071	Failure to obtain staff permit/Violation of staff permit/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.072	Failure to obtain limited commercial activity permit/Violation of permit conditions/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.075	Prohibited use or structure/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.081	Failure to obtain Conditional Use Permit/Violation of Conditional Use Permit Condition/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.090	Failure to obtain prior existing use/structure permit/Violation of permit conditions/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.135(C)	Violation of emergency permit conditions/anadromous stream habitat protection	\$300.00

CODE CHAPTER & SECTION	VIOLATION DESCRIPTION	DAILY FINE
KPB 21.25.040	Failure to Obtain a Permit/Material Site/Correctional community residential center/Concentrated Animal Feeding Operation	\$300.00
KPB 21.28.030	Violation of permit conditions/Concentrated Animal Feeding Operations	\$300.00
KPB 21.29.020	Failure to Obtain a counter permit/Material Site Permits	\$300.00
KPB 21.29.050	Violation of Conditional Land Use Permit Conditions/Material Site Permits Also applies to KPB 21.26 material site permits	\$300.00
KPB 21.29.060	Violation of Reclamation Plan/Material Site Permits Also applies to KPB 21.26 material site permits	\$300.00
<u>KPB 21.29.120</u>	<u>Failure to Provide Reclamation Plan and Proof of Bonding or Letter of Intent</u>	<u>\$300.00</u>
KPB 21.44.100	Violation of Pre-existing structures/Local Option Zoning	\$300.00
KPB 21.44.110(D)	Prohibited expansion of nonconforming use/Local Option Zoning	\$300.00
KPB 21.44.110(E)	Prohibited Change in Use/Local Option Zoning	\$300.00
KPB 21.44.110(G)	Violation of Conditions on Nonconforming Use/Local Option Zoning	\$300.00
KPB 21.44.130(C)(D)	Violation of Home Occupation Standards and Conditions/Local Option Zoning	\$300.00
KPB 21.44.130(F)	Disallowed Home Occupation/Local Option Zoning	\$300.00
KPB 21.44.135	Failure to file development notice	\$300.00
KPB 21.44.160(A)(B)	Prohibited use	\$300.00

CODE CHAPTER & SECTION	VIOLATION DESCRIPTION	DAILY FINE
KPB 21.44.160(C)	Violation of Development Standards/Single Family Zoning/Local Option Zoning	\$300.00
KPB 21.44.165(A)(B)	Prohibited use	\$300.00
KPB 21.44.165(C)	Violation of Development Standards/Small Lot Residential Zoning/Local Option Zoning	\$300.00
KPB 21.44.170(A)(B)	Prohibited use	\$300.00
KPB 21.44.170(C)	Violation of Development Standards/Rural Residential District/Local Option Zoning	\$300.00
KPB 21.44.175(B)(C)	Prohibited Use	\$300.00
KPB 21.44.175(D)	Violation of Development Standards/Residential Waterfront	\$300.00
KPB 21.44.180(A)(B)	Prohibited Use	\$300.00
KPB 21.44.180(C)	Violation of Development Standards/Multi-Family Residential District/Local Option Zoning	\$300.00
KPB 21.44.190(A)(B)	Prohibited Use	\$300.00
KPB 21.44.190(C)	Violation of Development Standards/Industrial District/Local Option Zoning	\$300.00
KPB 21.46.030(b)	Failure to maintain bear-resistant garbage cans/Local option zone/Birch and Grove Ridge subdivisions Rural Residential District	\$300.00
KPB 21.50.100(F)	Removal of posted enforcement notice	\$300.00
KPB 21.50.100(G)	Violation of enforcement notice	\$1,000.00
KPB 21.50.130(I)	Violation of an enforcement order	\$1,000.00

SECTION 4. That this ordinance shall become effective upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY
OF *, 2022.**

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

01/18/22 Vote on motion to postpone to 02/01/22:

Yes: Bjorkman, Derkevorkian, Elam, Tupper, Johnson

No: Chesley, Cox, Ecklund

Absent: Hibbert

02/01/22 Vote on motion to table:

Yes: Bjorkman, Chesley, Cox, Derkevorkian, Ecklund, Elam, Hibbert, Tupper, Johnson

No: None

Absent: None

Introduced by:	Elam, Derkevorkian
Substitute Introduced:	02/01/22
O2021-41 (Mayor, Johnson)	See Original Ordinance for Prior History
Action:	Tabled
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2021-41
(ELAM, DERKEVORKIAN) SUBSTITUTE**

**AN ORDINANCE AMENDING KPB 21.29, KPB 21.25, AND KPB 21.50.055
REGARDING MATERIAL SITE PERMITS, APPLICATIONS, CONDITIONS, AND
PROCEDURES**

- WHEREAS,** Goal 2, Focus Area: Land Use, Objective A of the 2019 Kenai Peninsula Borough Comprehensive Plan is to establish policies to minimize land use conflicts, protect natural systems, and support individual land use freedoms; and
- WHEREAS,** Goal 2, Focus Area: Land Use, Objective A, Strategy 2 of the 2019 Comprehensive Plan is to update the Borough’s existing conditional use regulations for material extraction to better address reoccurring land use conflicts; and
- WHEREAS,** Goal 2, Focus Area: Land Use, Objective A, Strategy 2a of the 2019 Comprehensive Plan is to clarify the broad purpose of the conditional use process and clear parameters for allowable conditional uses that include reasonable, project-specific conditions that reduce impacts on surrounding use; and
- WHEREAS,** Goal 2, Focus Area: Land Use, Objective A, Strategy 2d of the 2019 Comprehensive Plan is to complete improvements to the rules guiding gravel extraction, with the goal of providing an appropriate balance between providing access to affordable materials for development and quality of life for borough residents; and
- WHEREAS,** Goal 1 of the Mining and Minerals Processing section of the 1990 Kenai Peninsula Borough Coastal Management Program is to provide opportunities to explore, extract and process minerals, sand and gravel resources, while protecting environmental quality and other resource users; and
- WHEREAS,** an assembly subcommittee was formed in 2005 to review the material site code; and
- WHEREAS,** Ordinance 2006-01 (Substitute) codified as KPB 21.29 was adopted in 2006 after consideration of the subcommittee’s report; and
- WHEREAS,** the planning department has been administering Ordinance 2006-01 (Substitute), codified as KPB 21.29 for 13 years; and

WHEREAS, KPB 21.25.040 requires a permit for the commencement of certain land uses within the rural district of the Kenai Peninsula Borough; and

WHEREAS, the planning department has recognized that certain provisions of the material site ordinance could be better clarified for the operators, public, and staff; and

WHEREAS, the planning commission and planning department received comments expressing concerns about dust, noise, safety; and

WHEREAS, approximately 253 registered prior existing use material sites and approximately 99 conditional land use permits for material sites have been granted since 1996;

WHEREAS, the planning department receives numerous complaints regarding unreclaimed parcels registered as nonconforming prior existing material sites which have not been regulated by KPB; and

WHEREAS, the assembly established a material site work group by adoption of resolution 2018-004 (Substitute) to engage in a collaborative discussion involving the public and industry to make recommendations regarding the material site code; and

WHEREAS, at its regularly scheduled meeting of November 12, 2019, the planning commission recommended approval by unanimous consent;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That KPB 21.25.030 is hereby amended, as follows:

21.25.030. Definitions.

Unless the context requires otherwise, the following definitions apply to CLUPs:

Abandon means to cease or discontinue a use without intent to resume, but excluding short-term interruptions to use or activity during periods of remodeling, maintaining, or otherwise improving or rearranging a facility or during normal periods of vacation or seasonal closure. An "intent to resume" can be shown through continuous operation of a portion of the facility, maintenance of utilities, or outside proof of continuance, e.g., bills of lading or delivery records. Abandonment also means the cessation of use, regardless of voluntariness, for a specified period of time.

Animal feeding operation means a lot or facility (other than an aquatic animal production facility) where animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period.

- a. The same animals need not remain on the lot for 45 days or more; rather, some animals are fed or maintained on the lot 45 days out of any 12-month period, and
- b. Animals are "maintained" for purposes of this ordinance when they are confined in an area where waste is generated and/or concentrated or are watered, cleaned, groomed, or medicated in a confined area, even if the confinement is temporary.
- c. Two or more animal feeding operations under common ownership are considered, for the purposes of these regulations, to be a single animal feeding operation if they adjoin each other.
- d. Slaughterhouses are animal feeding operations.

Animal unit means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighting [weighing] over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

Animal waste means animal excrement, animal carcasses, feed wasted, process wastewaters or any other waste associated with the confinement of animals from an animal feeding operation.

Animal waste management system means a combination of structures and nonstructural practices serving an animal feeding operation that provides for the collection, treatment, disposal, distribution, storage and land application of animal waste.

Aquifer means a subsurface formation that contains sufficient water-saturated permeable material to yield economical quantities of water to wells and springs.

Aquifer-confining layer means that layer of relatively impermeable soil below an aquifer, typically clay, which confines water.

Assisted living home means a residential facility that serves three or more adults who are not related to the owner by blood or marriage, or that receives state or that receives state or federal payment for service of the number of adults served. The services and activities may include, but are not limited to, housing and food services to its residents, assistance with activities of daily living, and personal assistance, and that complies with Alaska Statutes 47.32.0101 – 47.60.900, as amended.

Child care facility means a place where child care is regularly provided for children under the age of 12 for periods of time that are less than 24 hours in duration and that is licensed pursuant to AS 47.35.005 et seq., excluding child care homes and child care group homes, as currently written or hereafter amended.

Commercial means any provision of services, sale of goods, or use operated for production of income whether or not income is derived, including sales, barter, rental, or trade of goods and services.

Concentrated animal feeding operation (CAFO) means an animal feeding operation confining at least: (1) 1,000 swine weighing at least approximately 55 pounds; (2) 1,000 slaughter and feeder cattle; (3) 700 mature dairy cattle; (4) 500 horses; (5) 10,000 sheep or lambs; (6) 55,000 turkeys; (7) 100,000 laying hens or broilers (if the facility has continuous overflow watering); (8) 30,000 laying hens or broilers (if the facility has a liquid manure system); (9) 5,000 ducks; (10) 1,000 animal units; or (11) a combination of the above resulting in at least 1,000 animal units. Each individual parcel upon which a CAFO is located is a separate CAFO unless they adjoin each other.

Conditioning or processing material means a value-added process including batch plants, asphalt plants, screening, washing, and crushing by use of machinery.

Correctional community residential center (CCRC) means a community residential center, other than a correctional institution, for the short-term or temporary detention of prisoners in transition from a correctional institution, performing restitution, or undergoing rehabilitation or recovery from a legal infirmity. CCRCs may not be used for detention of prisoners who pose a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four-hour physical supervision. The determination of whether a prisoner poses a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four-hour physical supervision shall be made by the commissioner of corrections for state prisoners and the United States Attorney General, or the U.S. Director of Bureau of Prisons for federal prisoners.

Correctional institution means a facility other than a correctional community residential center providing for the imprisonment or physical confinement or detention of prisoners under guard or twenty-four-hour physical supervision, such as prisons, prison farms, jails, reformatories, penitentiaries, houses of detention, detention centers, honor camps, and similar facilities.

Development plan means a plan created to describe a proposed development on a specific building site excluding material sites under KPB 21.29.020.

Disturbed includes active excavation and all areas necessary to use a parcel as a material site including but not limited to berms, stockpiles, and excavated areas excluding all areas reclaimed for alternate post mining land uses.

[*EXHAUSTED* MEANS THAT ALL MATERIAL OF A COMMERCIAL QUALITY IN A SAND, GRAVEL, OR MATERIAL SITE HAS BEEN REMOVED.]

Federal prisoners means offenders in the custody or control or under the care or supervision of the United States Attorney General or the Bureau of Prisons.

Groundwater means, in the broadest sense, all subsurface water, more commonly that part of the subsurface water in the saturated zone.

Liquid manure or liquid animal waste system means any animal waste management system which uses water as the primary carrier of such waste into a primary retention structure.

Multi-purpose senior center is a facility where persons 60 years of age or older are provided with services and activities suited to their particular needs. The services and activities may include, but are not limited to, health examinations, legal assistance, recreation programs, general social activities, telephone reassurance programs, nutrition classes, meals at minimum cost, counseling, protective services, programs for shut-ins and education programs, and that complies with Alaska Statutes 47.60.010—47.60.090, as currently written or hereafter amended.

Permit area includes all excavation, processing, buffer and haul route areas of a CLUP or counter permit.

Person shall include any individual, firm, partnership, association, corporation, cooperative, or state or local government.

Prisoner means:

- a. a person held under authority of state law in official detention as defined in AS 11.81.900;
- b. includes a juvenile committed to the custody of the Alaska Department of Corrections Commissioner when the juvenile has been charged, prosecuted, or convicted as an adult.

Private school is a school comprised of kindergarten through 12th grade, or any combination of those grades, that does not receive direct state or federal funding and that complies with either Alaska Statute 14.45.030 or 14.45.100—14.45.130, as currently written or hereafter amended.

Public school is a school comprised of kindergarten through 12th grade, or any combination of those grades, that is operated by the State of Alaska or any political subdivision of the state.

Sand, gravel or material site means an area used for extracting, quarrying, or conditioning gravel or substances from the ground that are not subject to permits through the state location (mining claim) system (e.g., gold, silver, and other metals), nor energy minerals including but not limited to coal, oil, and gas.

Seasonal high groundwater table means the highest level to which the groundwater rises on an annual basis.

Senior housing project means senior housing as defined for purposes of construction or operation in 15 Alaska Administrative Code 151.950(c), as currently written or hereafter amended.

Stable condition means the rehabilitation, where feasible, of the physical environment of the site to a condition that allows for the reestablishment of renewable resources on the site within a reasonable period of time by natural processes.

Surface water means water on the earth's surface exposed to the atmosphere such as rivers, lakes, and creeks.

Topsoil means material suitable for vegetative growth.

Waterbody means any lake, pond, stream, riparian wetland, or groundwater into which storm water runoff is directed.

Water source means a well, spring or other similar source that provides water for human consumptive use.

SECTION 2. That KPB 21.29 is hereby amended, as follows:

CHAPTER 21.29. MATERIAL SITE PERMITS

21.29.010. Material extraction exempt from obtaining a permit.

- A. Material extraction which disturbs an area of less than one acre that is not in a mapped flood plain or subject to 21.29.010(B), does not enter the water table, and does not cross property boundaries, does not require a permit. There will be no excavation within 20 feet of a right-of-way or within ten feet of a lot line.
- B. Material extraction taking place on dewatered bars within the confines of the Snow River and the streams within the Seward-Bear Creek Flood

Service Area does not require a permit, however, operators subject to this exemption shall provide the planning department with the information required by KPB 21.29.030(A)(1), (2), (6), (7) and a current flood plain development permit prior to beginning operations.

- C. A prior existing use under KPB 21.29.120 does not require a material extraction permit, but a floodplain development permit is required for all activities within any mapped special flood hazard area.
- D. Material extraction incidental to site development does not require a permit when an approved site development plan is on file with the planning department. Site development plans are approved by the planning director and are valid for one year. The site development plan may be renewed on an annual basis subject to the planning director's approval.

21.29.020. Material extraction and activities requiring a permit.

- A. *Counter permit.* A counter permit is required for material extraction which disturbs no more than 2.5 cumulative acres and does not enter the water table. Counter permits are approved by the planning director, and are not subject to the notice requirements or planning commission approval of KPB 21.25.060. A counter permit is valid for a period of 12 months, with a possible 12-month extension.
- B. *Conditional land use permit.* A conditional land use permit (CLUP) is required for material extraction which disturbs more than 2.5 cumulative acres, or material extraction of any size that enters the water table. [A CLUP IS REQUIRED FOR MATERIALS PROCESSING.] A CLUP is valid for a period of five years. The provisions of KPB Chapter 21.25 are applicable to material site CLUPS and the provisions of KPB 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling

21.29.030. Application procedure.

- A. In order to obtain a counter permit or CLUP, an applicant shall first complete and submit to the borough planning department a permit application, along with the fee listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. The planning director may determine that certain contiguous parcels are eligible for a single permit. The application shall include the following items:
 - 1. Legal description of the parcel, KPB tax parcel ID number, and identification of whether the permit is for the entire parcel, or a specific location within a parcel;

2. Expected life span of the material site;
3. A buffer plan consistent with KPB 21.29.050(A)(2);
4. Reclamation plan consistent with KPB 21.29.060;
5. The depth of excavation;
6. Type of material to be extracted and type of equipment to be used;
7. Any voluntary permit conditions the applicant proposes. Failure to include a proposed voluntary permit condition in the application does not preclude the applicant from proposing or agreeing to voluntary permit conditions at a later time;
8. Surface water protection measures, if any, for adjacent properties designed by a SWPPP certified individual, including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence;
9. A site plan prepared by the site operator and field verification prepared by a professional surveyor licensed and registered in the State of Alaska, including the following information:
 - a. Location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;
 - b. Proposed buffers consistent with KPB 21.29.050(A)(2), or alternate buffer plan;
 - c. Identification of all encumbrances, including, but not limited to easements;
 - d. Points of ingress and egress. Driveway permits must be acquired from either the state or borough as appropriate prior to the issuance of the material site permit;
 - e. Anticipated haul routes;
 - f. Location and [DEPTH] elevation of test holes, and depth of groundwater, if encountered between May and December. At least one test hole per ten acres of excavated area is required to be dug.

- g. Location of wells of adjacent property owners within [300] 200 feet of the proposed parcel boundary;
- h. Location of any water body on the parcel,
- [I. SURFACE WATER PROTECTION MEASURES FOR ADJACENT PROPERTIES, INCLUDING THE USE OF DIVERSION CHANNELS, INTERCEPTION DITCHES, ON-SITE COLLECTION DITCHES, SEDIMENT PONDS AND TRAPS, AND SILT FENCE; PROVIDE DESIGNS FOR SUBSTANTIAL STRUCTURES; INDICATE WHICH STRUCTURES WILL REMAIN AS PERMANENT FEATURES AT THE CONCLUSION OF OPERATIONS, IF ANY;]
- [J]i. Location of any processing areas on parcel, if applicable;
- [K]j. North arrow;
- [L]k. The scale to which the site plan is drawn;
- [M]l. Preparer's name, date
- [N]m. Field verification shall include staking the boundary of the parcel at sequentially visible intervals. The planning director may grant an exemption in writing to the staking requirements if the parcel boundaries are obvious or staking is unnecessary.

- B. In order to aid the planning commission or planning director's decision-making process, the planning director shall provide vicinity, aerial, land use, and ownership maps for each application and may include additional information.

21.29.040. Standards for sand, gravel or material sites.

- A. These material site regulations are intended to Minimize aquifer disturbance, road damage, physical damage to adjacent properties, dust, and noise. Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:
 - 1. [PROTECTS AGAINST] Minimizes the lowering of water sources serving other properties;
 - 2. [PROTECTS AGAINST] Minimizes physical damage to [OTHER] adjacent properties;

3. Minimizes off-site movement of dust;
4. Minimizes noise disturbance to other properties;
5. [MINIMIZES VISUAL IMPACTS] Provides for alternate post-mining land uses.

21.29.050. Permit conditions.

A. The following mandatory conditions apply to counter permits and CLUPs issued for sand, gravel or material sites:

1. [*PARCEL*]Permit boundaries. [ALL BOUNDARIES OF THE SUBJECT PARCEL] The buffers and any easements or right-of-way abutting the proposed permit area shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter. Field verification and staking will require the services of a professional land surveyor. Stakes shall be in place [AT TIME OF APPLICATION] prior to issuance of the permit.

[2. BUFFER ZONE. A BUFFER ZONE SHALL BE MAINTAINED AROUND THE EXCAVATION PERIMETER OR PARCEL BOUNDARIES. WHERE AN EASEMENT EXISTS, A BUFFER SHALL NOT OVERLAP THE EASEMENT, UNLESS OTHERWISE CONDITIONED BY THE PLANNING DIRECTOR OR PLANNING COMMISSION.

A. THE BUFFER ZONE SHALL PROVIDE AND RETAIN A BASIC BUFFER OF:

I. 50 FEET OF UNDISTURBED NATURAL VEGETATION, OR

II. A MINIMUM TEN FOOT EARTHEN BERM WITH AT LEAST A 2:1 SLOPE, OR

III. A MINIMUM SIX-FOOT FENCE.

B. A 2:1 SLOPE SHALL BE MAINTAINED BETWEEN THE BUFFER ZONE AND EXCAVATION 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 90 DAYS FROM THE TIME OF REMOVAL.

C. THE PLANNING COMMISSION OR PLANNING DIRECTOR SHALL DESIGNATE ONE OR A COMBINATION OF THE ABOVE AS IT DEEMS APPROPRIATE. THE VEGETATION AND FENCE SHALL BE OF SUFFICIENT HEIGHT AND DENSITY TO PROVIDE VISUAL AND NOISE SCREENING OF THE PROPOSED USE AS DEEMED

APPROPRIATE BY THE PLANNING COMMISSION OR PLANNING DIRECTOR.

- D. BUFFERS SHALL NOT CAUSE SURFACE WATER DIVERSION WHICH NEGATIVELY IMPACTS ADJACENT PROPERTIES OR WATER BODIES. SPECIFIC FINDINGS ARE REQUIRED TO ALTER THE BUFFER REQUIREMENTS OF KPB 21.29.050(A)(2)(A) IN ORDER TO MINIMIZE NEGATIVE IMPACTS FROM SURFACE WATER DIVERSION. FOR PURPOSES OF THIS SECTION, SURFACE WATER DIVERSION IS DEFINED AS EROSION, FLOODING, DEHYDRATION OR DRAINING, OR CHANNELING. NOT ALL SURFACE WATER DIVERSION RESULTS IN A NEGATIVE IMPACT.
- E. AT ITS DISCRETION, THE PLANNING COMMISSION MAY WAIVE BUFFER REQUIREMENTS WHERE THE TOPOGRAPHY OF THE PROPERTY OR THE PLACEMENT OF NATURAL BARRIERS MAKES SCREENING NOT FEASIBLE OR NOT NECESSARY. BUFFER REQUIREMENTS SHALL BE MADE IN CONSIDERATION OF AND IN ACCORDANCE WITH EXISTING USES OF ADJACENT PROPERTY AT THE TIME OF APPROVAL OF THE PERMIT. THERE IS NO REQUIREMENT TO BUFFER THE MATERIAL SITE FROM USES WHICH COMMENCE AFTER THE APPROVAL OF THE PERMIT.]

2. *Buffer Area.*

- a. A 2:1 slope shall be maintained between the buffer zone and excavation 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 90 days from the time of removal.
- b. The buffer area may be reduced where the planning commission or planning director, as applicable, has approved an alternate buffer plan introduced by the applicant. The alternate buffer plan must consist of natural undisturbed vegetation, or a minimum ten foot berm, or a minimum six-foot fence or a combination thereof, consisting of only one option in a single geographical location; unless the permittee proposes another solution approved by the planning commission or planning director, as applicable, to meet this condition.
- c. The buffer requirements may be waived by the planning commission or planning director, as applicable, where the topography of the property or the placement of natural barriers makes screening not feasible or unnecessary.

- d. There is no requirement to buffer a material site from uses that commence after approval of the permit.
- 3. *Processing.* In the case of a CLUP, any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries. At its discretion, the planning commission may waive the 300-foot processing distance requirement, or allow a lesser distance in consideration of and in accordance with existing uses of adjacent properties at the time.
- 4. *Water source separation.*
 - a. All permits shall be issued with a condition which prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance.
 - b. All counter permits shall be issued with a condition which requires that a four-foot vertical separation [FROM THE SEASONAL HIGH WATER TABLE BE MAINTAINED] an excavation distance a maximum of 15 feet below the seasonal high-water table must be maintained under these conditions:
 - 1. No dewatering is allowed.
 - 2. The edge of any water body must be 200 feet from any DEC septic or well.
 - 3. A spill response kit must be maintained onsite.
 - 4. Operations shall stay 2 foot above an aquifer-confining layer.
 - 5. A 200-foot separation from any water body and any stored hazardous material.
 - [C. ALL CLUPS SHALL BE ISSUED WITH A CONDITION WHICH REQUIRES THAT A TWO-FOOT VERTICAL SEPARATION FROM THE SEASONAL HIGH WATER TABLE BE MAINTAINED.]
 - c. There shall be no dewatering either by pumping, ditching or some other form of draining unless an exemption is granted by the planning commission. The exemption for dewatering may be granted if the operator provides a statement under seal and supporting data from a duly licensed and qualified impartial civil engineer, that the dewatering will not lower any of the surrounding property's water systems and the contractor posts a bond for liability for potential accrued damages.

5. *Excavation in the water table.* Excavation in the water table greater than ~~[300]~~200 horizontal feet of a water source and 15 feet below water table may be permitted with the approval of the planning commission based on the following:
 - a. Certification by a qualified independent civil engineer or professional hydrogeologist that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources.
 - b. The installation of a minimum of three water monitoring tubes or well casings as recommended by a qualified independent civil engineer or professional hydrogeologist adequate to determine flow direction, flow rate, and water elevation.
 - c. Groundwater elevation, flow direction, and flow rate for the subject parcel, measured in three-month intervals by a qualified independent civil engineer or professional hydrogeologist, for at least one year prior to application. Monitoring tubes or wells must be kept in place, and measurements taken, for the duration of any excavation in the water table.
 - d. Operations shall not breach an aquifer-confining layer.
6. *Waterbodies.*
 - a. An undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet [FROM] of excavation limits and the ordinary high water level of surface water bodies such as a lake, river, stream, ~~[OR OTHER WATER BODY, INCLUDING]~~ riparian wetlands ~~[AND MAPPED FLOODPLAINS AS DEFINED IN KPB 21.06]~~. This regulation shall not apply to ponds less than one acre on private land, man-made waterbodies being constructed during the course of the materials extraction activities. 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.
 - b. Counter permits and CLUPS may contain additional conditions addressing surface water diversion.
7. *Fuel storage.* 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. Double wall tanks are also acceptable.

8. *Roads.* Operations shall be conducted 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.
9. *Subdivision.* 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. The planning director may issue a written exemption from the amendment requirement if it is determined that the subdivision is consistent with the use of the parcel as a material site and all original permit conditions can be met.
10. *Dust control.* Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
11. *Hours of operation.* [ROCK CRUSHING EQUIPMENT SHALL NOT BE OPERATED BETWEEN 10:00 P.M. AND 6:00 A.M.]
 - a. Processing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
 - b. The planning commission may grant exceptions to increase the hours of operation and processing based on surrounding land uses, topography, screening the material site from properties in the vicinity and conditions placed on the permit by the planning commission to mitigate the noise, dust and ~~visual impacts~~ caused by the material site.
12. *Reclamation.*
 - a. Reclamation shall be consistent with the reclamation plan approved by the planning commission or planning director as appropriate in accord with KPB 21.29.060.
 - b. [AS A CONDITION OF ISSUING THE PERMIT, THE APPLICANT SHALL SUBMIT A RECLAMATION PLAN AND 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.] The applicant shall operate the material site consistent with the approved reclamation plan and provide bonding pursuant to 21.29.060(B). 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.

13. *Other permits.* 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 air and 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. Any violation of these regulations or permits reported to or observed by borough personnel will be forwarded to the appropriate agency for enforcement.
14. [~~VOLUNTARY~~]Volunteered *permit conditions.* Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission for CLUPs or the planning director for counter permits. Such conditions must be consistent with the standards set forth in KPB 21.29.040(A). Planning commission approval of such conditions shall be contingent upon a finding that the conditions will be in the best interest of the borough and the surrounding property owners. [~~VOLUNTARY~~] Volunteered permit conditions apply to the subject parcel and operation, regardless of a change in ownership. A change in [~~VOLUNTARY~~] volunteered permit conditions may be proposed [~~AT~~] by permit [~~RENEWAL OR AMENDMENT~~] modification.
15. *Signage.* 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, whichever is more visible. Sign dimensions shall be no more than 15" by 15" and must contain the following information: the phrase "Permitted Material Site" along with the permittee's business name and a contact phone number.

16. Appeal. No clearing of vegetation shall occur within the ~~50~~ 100-foot maximum buffer area from the permit boundary nor shall the permit be issued or operable until the deadline for the appeal, pursuant to KPB 21.20, has expired.
17. Reverse signal alarms. Reverse signal alarms, used at the material site on loaders, excavators, and other earthmoving equipment may be more technically advanced devices; such as, a multi-frequency “white noise” alarms rather than the common, single (high-pitch) tone alarms. At its discretion, the planning commission or planning director, as applicable, may waive this requirement or a portion of this requirement. The waiver of this requirement shall be made in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.
19. Dust suppression. Dust suppression ~~may~~ shall be required when natural precipitation is not adequate to suppress the dust generated by the material site traffic on haul routes within property boundaries. Based on surrounding land uses the planning commission or planning director, as applicable, may waive or reduce the requirement for dust suppression on haul routes within property boundaries.
21. Surface water protection. Use of surface water protection measures as specified in KPB 21.29.030(A)(8) must be approved by a licensed civil engineer or SWPPP certified individual.
22. Setback. Material site excavation areas shall be 250-feet from the property boundaries of any local option zoning district, existing public school ground, private school ground, college campus, child care facility, multi-purpose senior center, assisted living home, and licensed health care facility. If overlapping, the buffer areas of the excavation shall be included in the 250-foot setback. At the time of application.

21.29.060. Reclamation plan.

- A. All material site permit applications require an overall reclamation plan.
- B. The applicant may revegetate with a non-invasive plant species and reclaim all disturbed land [UPON EXHAUSTING THE MATERIAL ON-SITE, OR WITHIN A PRE-DETERMINED TIME PERIOD FOR LONG-TERM ACTIVITIES, SO AS TO LEAVE THE LAND IN A STABLE CONDITION. RECLAMATION MUST OCCUR FOR ALL EXHAUSTED AREAS OF THE SITE EXCEEDING FIVE ACRES BEFORE A FIVE-YEAR RENEWAL PERMIT IS ISSUED, UNLESS OTHERWISE REQUIRED BY THE PLANNING COMMISSION. IF THE MATERIAL SITE IS ONE ACRE OR LESS IN SIZE AND HAS BEEN GRANTED A CLUP DUE TO EXCAVATION IN THE WATER TABLE,

RECLAMATION MUST BE PERFORMED AS SPECIFIED BY THE PLANNING COMMISSION OR PLANNING DIRECTOR IN THE CONDITIONAL USE OR COUNTER PERMIT] within the time period approved with the reclamation plan so as to leave the land in a stable condition. Bonding shall be required at \$750.00 per acre for all acreage included in the current five-year reclamation plan. In the alternative, the planning director shall accept a civil engineer's estimate for determining the amount of bonding. If the applicant is bonded with the state, the borough's bonding requirement is waived. Compliance with reclamation plans shall be enforced under KPB 21.50.

C. The following measures must be considered in the [PREPARING] preparation, approval and [IMPLEMENTING] implementation of the reclamation plan, although not all will be applicable to every reclamation plan.

1. The area will be backfilled, graded and recontoured using strippings, overburden, and topsoil [TO A CONDITION THAT ALLOWS FOR THE REESTABLISHMENT OF RENEWABLE RESOURCES ON THE SITE WITHIN A REASONABLE PERIOD OF TIME. IT WILL BE STABILIZED TO A CONDITION THAT WILL ALLOW SUFFICIENT MOISTURE FOR REVEGETATION] so that it will be stabilized to a condition that will allow for the revegetation as required by KPB 21.29.060(B).
2. [SUFFICIENT QUANTITIES OF STOCKPILED OR IMPORTED TOPSOIL WILL BE SPREAD OVER THE RECLAIMED AREA TO A DEPTH OF FOUR INCHES TO PROMOTE NATURAL PLANT GROWTH THAT CAN REASONABLY BE EXPECTED TO REVEGETATE THE AREA WITHIN FIVE YEARS. THE APPLICANT MAY USE THE EXISTING NATURAL ORGANIC BLANKET REPRESENTATIVE OF THE PROJECT AREA IF THE SOIL IS FOUND TO HAVE AN ORGANIC CONTENT OF 5% OR MORE AND MEETS THE SPECIFICATION OF CLASS B TOPSOIL REQUIREMENTS AS SET BY ALASKA TEST METHOD (ATM) T-6.] The [MATERIAL] topsoil used for reclamation shall be reasonably free from roots, clods, sticks, and branches greater than 3 inches in diameter. Areas having slopes greater than 2:1 require special consideration and design for stabilization by a licensed engineer.
4. Exploration trenches or pits will be backfilled. Brush piles and unwanted vegetation shall be removed from the site, buried or burned. Topsoil and other organics will be spread on the backfilled surface to inhibit erosion and promote natural revegetation.
5. [PEAT AND T] Topsoil mine operations shall ensure a minimum of [TWO] four inches of suitable growing medium is left or replaced on the site upon completion of the reclamation activity (unless otherwise authorized).

6. Ponding may be used as a reclamation method as approved by the planning commission.

[D. THE PLAN SHALL DESCRIBE THE TOTAL ACREAGE TO BE RECLAIMED EACH YEAR, A LIST OF EQUIPMENT (TYPE AND QUANTITY) TO BE USED IN RECLAMATION, AND A TIME SCHEDULE OF RECLAMATION MEASURES.]

21.29.070. Permit extension and revocation.

- A. Conditional land use permittees must submit a request in writing for permit extension every five years after the permit is issued. Requests for permit extension must be made at least 30 days prior to permit expiration. Counter permittees must submit any request for a 12-month extension at least 30 days prior to the expiration of the original 12-month permit period.
- B. A permit extension certificate for a CLUP may be granted by the planning director after 5 years, and after one year for a counter permit where no modification to operations or conditions are proposed.
- C. Permit extension may be denied if: (1) reclamation required by this chapter and the original permit has not been performed; (2) the permittee is otherwise in noncompliance with the original permit conditions; or (3) the permittee has had a permit violation in the last two years and has not fulfilled compliance requests.
- D. A modification application shall be processed pursuant to KP.B 21.29.030-050 with public notice given as provided by KP.B 21.25.060 when operators request modification of their permit conditions based on changes in operations set forth in the modification application.
- E. There shall be no fee for permit extensions approved by the planning director. The fee for a permit modification processed under KP.B 21.29.070(D) will be the same as an original permit application in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees.
- F. Failure to submit a request for extension will result in the expiration of the permit. The borough may issue a permit termination document upon expiration pursuant to KP.B 21.29.080. Once a permit has expired, a new permit application approval process is required in order to operate the material site.
- G. Permits may be revoked pursuant to KP.B 21.50.

21.29.080. Permit termination.

When a permit expires, is revoked, or a permittee requests termination of their permit, a review of permit conditions and site inspections will be conducted by the planning department to ensure code compliance and verify site reclamation prior to termination. When the planning director determines that a site qualifies for termination, a termination document shall be issued to the permittee.

21.29.090. Permit modifications.

If a permittee revises or intends to revise operations (at a time other than permit extension) so that they are no longer consistent with the original application, a permit modification is required. The planning director shall determine whether the revision to operations requires a modification. Permit modification shall be processed in the same manner as original permits.

21.29.100. Recordation.

All permits, permit extensions, modified permits, prior existing uses, and terminations shall be recorded. Failure to record a material site document does not affect the validity of the documents.

21.29.110. Violations.

- A. Violations of this chapter shall be governed by KPB 21.50.
- B. In addition to the remedies provided in KPB 21.50, the planning director may require bonding in a form and amount adequate to protect the borough's interests for an owner or operator who has been cited for three violations of KPB 21.50, 21.25, and 21.29 within a three-year period. The violations need not be committed at the same material site. Failure to provide requested bonding may result in permit revocation proceedings.

21.29.120. Prior existing uses.

- A. Material sites are not held to the standards and conditions of a CLUP if a prior existing use (PEU) determination was granted for the parcel in accordance with KPB 21.29.120(B). To qualify as a PEU, a parcel's use as a material site must have commenced or have been operated after May 21, 1986, and prior to May 21, 1996, provided that the subject use continues in the same location. In no event shall a prior existing use be expanded beyond the smaller of the lot, block, or tract lines as they existed on May 21, 1996. If a parcel is further subdivided after May 21, 1996, the pre-existing use may not be expanded to any lot, tract, or parcel where extraction had not occurred before or on February 16, 1999. If a parcel is subdivided where extraction has already occurred, the prior existing use is considered

abandoned, and a CLUP must be obtained for each parcel intended for further material site operations. The parcel owner may overcome this presumption of abandonment by showing that the subdivision is not inconsistent with material site operation. If a parcel subject to a prior existing use is conveyed, the prior existing use survives the conveyance.

- B. Owners of sites must have applied to be registered as a prior existing use prior to January 1, 2001.
- C. [ANY PRIOR EXISTING USE THAT HAS NOT OPERATED AS A MATERIAL SITE BETWEEN MAY 21, 1996, AND MAY 21, 2011, IS CONSIDERED ABANDONED AND MUST THEREAFTER COMPLY WITH THE PERMIT REQUIREMENTS OF THIS CHAPTER. THE PLANNING DIRECTOR SHALL DETERMINE WHETHER A PRIOR EXISTING USE HAS BEEN ABANDONED. AFTER GIVING NOTICE TO THE PARCEL OWNER THAT A PEU IS CONSIDERED ABANDONED, A PARCEL OWNER MAY PROTEST THE TERMINATION OF THE PEU BY FILING WRITTEN NOTICE WITH THE PLANNING DIRECTOR ON A FORM PROVIDED BY THE PLANNING DEPARTMENT. WHEN A PROTEST BY A PARCEL OWNER IS FILED, NOTICE AND AN OPPORTUNITY TO MAKE WRITTEN COMMENTS REGARDING PRIOR EXISTING USE STATUS SHALL BE ISSUED TO OWNERS OF PROPERTY WITHIN A ONE-HALF MILE RADIUS OF THE PARCEL BOUNDARIES OF THE SITE. THE OWNER OF THE PARCEL SUBJECT TO THE PRIOR EXISTING USE MAY SUBMIT WRITTEN INFORMATION, AND THE PLANNING DIRECTOR MAY GATHER AND CONSIDER ANY INFORMATION RELEVANT TO WHETHER A MATERIAL SITE HAS OPERATED. THE PLANNING DIRECTOR MAY CONDUCT A HEARING IF HE OR SHE BELIEVES IT WOULD ASSIST THE DECISION-MAKING PROCESS. THE PLANNING DIRECTOR SHALL ISSUE A WRITTEN DETERMINATION WHICH SHALL BE DISTRIBUTED TO ALL PERSONS MAKING WRITTEN COMMENTS. THE PLANNING DIRECTOR'S DECISION REGARDING TERMINATION OF THE PRIOR EXISTING USE STATUS MAY BE APPEALED TO THE PLANNING COMMISSION WITHIN 15 DAYS OF THE DATE OF THE NOTICE OF DECISION.]

The owner of a material site that has been granted a PEU determination shall provide proof of compliance with AS 27.19.030 – 050 concerning reclamation to the planning department no later than July 1, 2021. The proof shall consist of an Alaska Department of Natural Resources (DNR) approved reclamation plan and receipt for bonding or a letter of intent filed with DNR.

- 1. The planning department may request proof of continued compliance with AS 27.19.030 – 050 on an annual basis.
- 2. Pursuant to KPB 21.29.110 the enforcement process and remedies set forth in KPB 21.50 shall govern if the proof that the statutory requirements contained in AS 27.19.030-050 is not provided to the planning department.

SECTION 3. That KPB 21.50.055 is hereby amended, as follows:

21.50.055. Fines.

- A. Following are the fines for violations of this title. Each day a violation occurs is a separate violation. Violations begin to accrue the date the enforcement notice is issued and continue to the date the enforcement is initially set for hearing. The fine for a violation may not be reduced by the hearing officer to less than the equivalent of one day's fine for each type of violation.

CODE CHAPTER & SECTION	VIOLATION DESCRIPTION	DAILY FINE
KPB 20.10.030(A)	Offering land for sale without final plat approval	\$300.00
KPB 20.10.030(B)	Filing/recording unapproved subdivision/plat	\$300.00
KPB 20.10.030(C)	Violation of subdivision code or condition	\$300.00
KPB 21.05.040(C)	Violation of variance conditions	\$300.00
KPB 21.06.030(D)	Structure or activity prohibited by KPB 21.06	\$300.00
KPB 21.06.040	Failure to obtain a Development Permit/Floodplain Management	\$300.00
KPB 21.06.045	Failure to obtain a SMFDA Development Permit/Violation of SMFDA permit conditions/Floodplain Management	\$300.00
KPB 21.06.050	Violation of permit conditions/Floodplain Management	\$300.00
KPB 21.18.071	Failure to obtain staff permit/Violation of staff permit/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.072	Failure to obtain limited commercial activity permit/Violation of permit conditions/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.075	Prohibited use or structure/Anadromous Streams Habitat Protection	\$300.00

CODE CHAPTER & SECTION	VIOLATION DESCRIPTION	DAILY FINE
KPB 21.18.081	Failure to obtain Conditional Use Permit/Violation of Conditional Use Permit Condition/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.090	Failure to obtain prior existing use/structure permit/Violation of permit conditions/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.135(C)	Violation of emergency permit conditions/anadromous stream habitat protection	\$300.00
KPB 21.25.040	Failure to Obtain a Permit/Material Site/Correctional community residential center/Concentrated Animal Feeding Operation	\$300.00
KPB 21.28.030	Violation of permit conditions/Concentrated Animal Feeding Operations	\$300.00
KPB 21.29.020	Failure to Obtain a counter permit/Material Site Permits	\$300.00
KPB 21.29.050	Violation of Conditional Land Use Permit Conditions/Material Site Permits Also applies to KPB 21.26 material site permits	\$300.00
KPB 21.29.060	Violation of Reclamation Plan/Material Site Permits Also applies to KPB 21.26 material site permits	\$300.00
<u>KPB 21.29.120</u>	<u>Failure to Provide Reclamation Plan and Proof of Bonding or Letter of Intent</u>	<u>\$300.00</u>
KPB 21.44.100	Violation of Pre-existing structures/Local Option Zoning	\$300.00
KPB 21.44.110(D)	Prohibited expansion of nonconforming use/Local Option Zoning	\$300.00
KPB 21.44.110(E)	Prohibited Change in Use/Local Option Zoning	\$300.00
KPB 21.44.110(G)	Violation of Conditions on Nonconforming Use/Local Option Zoning	\$300.00

CODE CHAPTER & SECTION	VIOLATION DESCRIPTION	DAILY FINE
KPB 21.44.130(C)(D)	Violation of Home Occupation Standards and Conditions/Local Option Zoning	\$300.00
KPB 21.44.130(F)	Disallowed Home Occupation/Local Option Zoning	\$300.00
KPB 21.44.135	Failure to file development notice	\$300.00
KPB 21.44.160(A)(B)	Prohibited use	\$300.00
KPB 21.44.160(C)	Violation of Development Standards/Single Family Zoning/Local Option Zoning	\$300.00
KPB 21.44.165(A)(B)	Prohibited use	\$300.00
KPB 21.44.165(C)	Violation of Development Standards/Small Lot Residential Zoning/Local Option Zoning	\$300.00
KPB 21.44.170(A)(B)	Prohibited use	\$300.00
KPB 21.44.170(C)	Violation of Development Standards/Rural Residential District/Local Option Zoning	\$300.00
KPB 21.44.175(B)(C)	Prohibited Use	\$300.00
KPB 21.44.175(D)	Violation of Development Standards/Residential Waterfront	\$300.00
KPB 21.44.180(A)(B)	Prohibited Use	\$300.00
KPB 21.44.180(C)	Violation of Development Standards/Multi-Family Residential District/Local Option Zoning	\$300.00
KPB 21.44.190(A)(B)	Prohibited Use	\$300.00
KPB 21.44.190(C)	Violation of Development Standards/Industrial District/Local Option Zoning	\$300.00

CODE CHAPTER & SECTION	VIOLATION DESCRIPTION	DAILY FINE
KPB 21.46.030(b)	Failure to maintain bear-resistant garbage cans/Local option zone/Birch and Grove Ridge subdivisions Rural Residential District	\$300.00
KPB 21.50.100(F)	Removal of posted enforcement notice	\$300.00
KPB 21.50.100(G)	Violation of enforcement notice	\$1,000.00
KPB 21.50.130(I)	Violation of an enforcement order	\$1,000.00

SECTION 4. That this ordinance shall become effective upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2022.

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

02/01/22 Vote on motion to table:

Yes: Bjorkman, Chesley, Cox, Derkevorkian, Ecklund, Elam, Hibbert, Tupper, Johnson

No: None

Absent: None

Introduced by: Mayor
Date: 10/25/22
Action:
Vote:

**KENAI PENINSULA BOROUGH
RESOLUTION 2022-054**

**A RESOLUTION APPROVING THE ACQUISITION OF A PUBLIC ACCESS
EASEMENT FROM THE STATE OF ALASKA FOR WATERMELON TRAIL**

- WHEREAS,** KPB 17.10.030 and KPB 17.10.040 requires Kenai Peninsula Borough (“Borough”) Planning Commission consideration and assembly approval for the acquisition of interests in lands; and
- WHEREAS,** an easement is an interest in land; and
- WHEREAS,** the purpose of the acquisition is for construction, operation and maintenance of an existing multi-use public trail, commonly called Watermelon Trail, across State of Alaska lands on the southern Kenai Peninsula; and
- WHEREAS,** Snomads, Inc. has initiated the easement process through the State of Alaska, Department of Natural Resources under ADL 223843 and is also the holder of the Borough Community Trail Management Agreement for the portions of this same trail across Borough-owned lands; and
- WHEREAS,** Watermelon Trail is an important backcountry access point for Borough residents, including access to Borough lands; and
- WHEREAS,** a land classification does not fit within the intent and purpose of Borough Chapter 17.10 and the use of the easement area defined by the easement instrument; and
- WHEREAS,** the Borough Planning Commission, at its regularly scheduled meeting of October 24, 2022, recommended _____;

**NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI
PENINSULA BOROUGH:**

- SECTION 1.** That the acquisition of a public access easement described as ADL 223843 for a 60-foot-wide trail easement 55,000-feet-in-length, more or less, commonly known as Watermelon Trail is in the best interests of the Borough.
- SECTION 2.** The terms of the acquisition are in accordance with AS 38.05.850, public and charitable use. The duration of the easement is indefinite.

SECTION 3. The purpose of the acquisition is for construction, operation and maintenance of an existing public multi-use trail and related infrastructure commonly called Watermelon Trail.

SECTION 4. That no land classification is required pursuant to KPB 17.10.080(C). The Borough intends to administer the trail through community trail management agreement authorizations consistent with other sections of the trail on Borough-owned lands, and consistent with the terms of the easement.

SECTION 5. That the mayor is authorized to execute any and all documents necessary to acquire the interest in real property as described in this resolution in accordance with the terms and conditions contained in this resolution and accompanying Public Access easement document and consistent with applicable provisions of KPB 17.10.

SECTION 6. That this resolution is effective immediately upon adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 25TH DAY OF OCTOBER 2022.

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Planning Department – Land Management Division

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Mike Navarre, Mayor *MN*
Robert Ruffner, Planning Director *RR*
Marcus Mueller, Land Management Officer *RRFMM*

FROM: Julie Denison, Land Management Technician *JD*

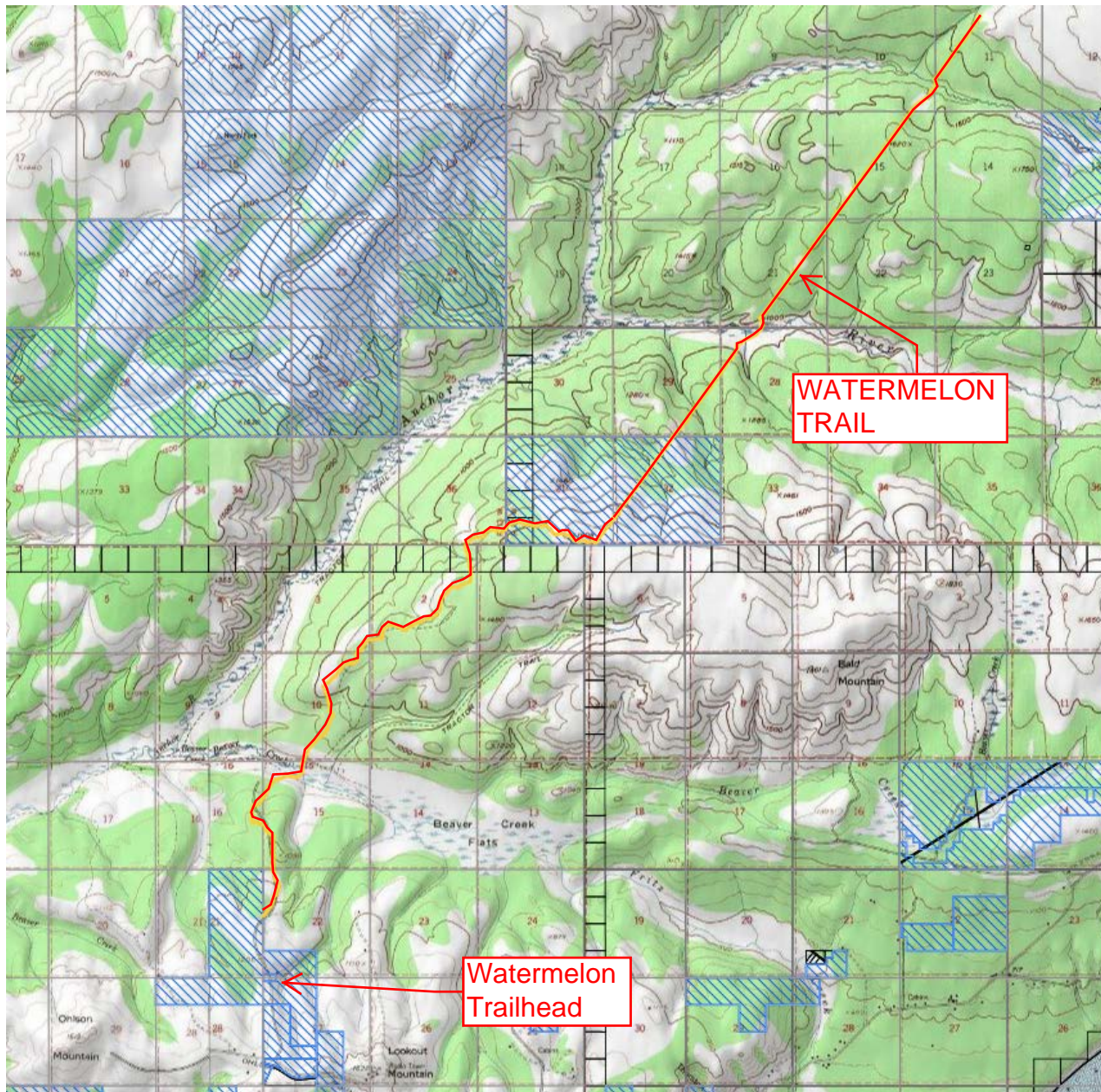
DATE: October 13, 2022

RE: Resolution 2022-054, Approving the Acquisition of a Public
Access Easement from the State of Alaska for Watermelon Trail (Mayor)

Watermelon Trail is an existing multi-use public trail accessing backcountry and Kenai Peninsula Borough (Borough) lands, primarily across state and Borough lands. Across Borough lands, the trail is maintained year-round by Snomads, Inc. (Snomads) through a Community Trail Management Agreement (CTMA). Where Watermelon Trail traverses state land, Snomads has applied for an easement with the State of Alaska, with the Borough requested to become the grantee.

Borough acceptance of the trail easement from the State of Alaska would enable the Borough and Snomads to amend the CTMA Trail Management Plan to include the segments of Watermelon Trail extending across state lands.

Your consideration of the resolution is appreciated.



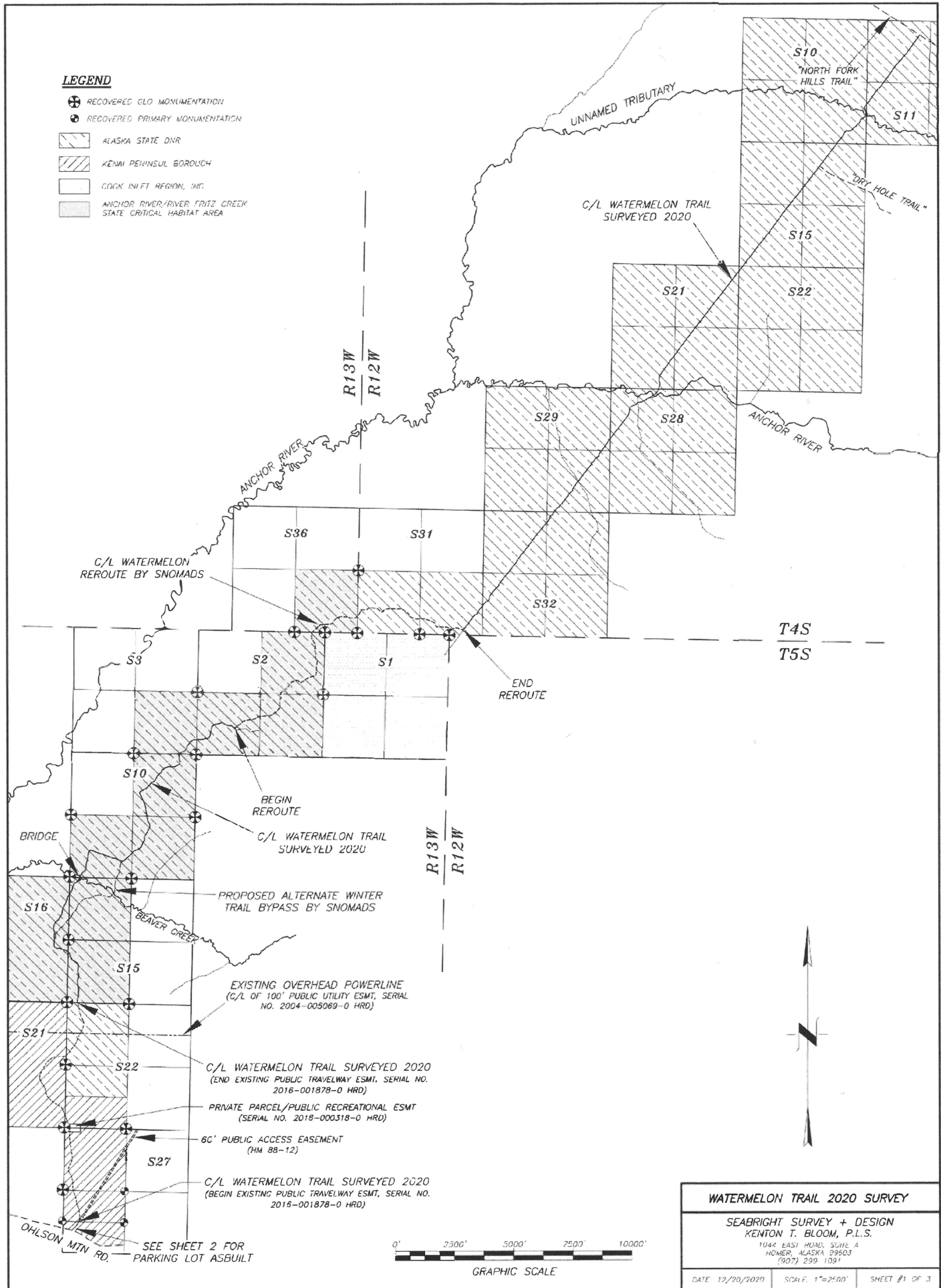
ADL 233843
Watermelon Trail Easement

60-Foot Wide Public Easement

Located on State land within
Township 4 South, Ranges 12
& 13 West and Township 5
South, Range 13 West



ADL 233843: Attachment A





Land Management

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2205 • (907) 714-2378 Fax

A Division of the Planning Department

Charlie Pierce
Borough Mayor

June 24, 2022

State of Alaska
Department of Natural Resources DMLW, SCRO
Attn: Evan Dodd, Easement Unit
550 West 7th Avenue, Suite 900C
Anchorage, AK 99501
(Via Email evan.dodd@alaska.gov)

RE: ADL 233843 – Watermelon Trail Easement

Dear Mr. Dodd,

The Kenai Peninsula Borough is the landowner at the Watermelon Trail Trailhead and works with the Snomads organization through a Community Trail Management Agreement as to the borough land involved along that trail. KPB Land Management has been in discussions with Snomads concurrent with the easement application for ADL 233843, pertaining to those sections of Watermelon Trail on State land. KPB Land Management has at the same time had discussions with the SOA DNR DMLW SCRO Easement Unit to evaluate whether KPB should hold the easement as grantee, to determine the scope of interests that KPB would hold under this easement, and to design the easement such that KPB would have a managing interest, permitting, and regulatory authority within the scope of the easement purpose. The contemplated easement would then allow KPB to permit development, use, and maintenance within the purpose and scope of the easement, subject to plan review by the DMLW; for example KPB could extend the Snomads Community Trail Management Agreement to the ADL 233843 area.

With this understanding, and subject to approval of the KPB Assembly pursuant to KPB 17.10.040 and acceptance by the KPB Mayor, I hereby request that ADL 233843 Watermelon Trail Easement be granted with Kenai Peninsula Borough named as Grantee.

ADL 233843 – Easement Request

Upon receiving a draft easement, a resolution will be prepared for Planning Commission recommendation and Assembly Approval which may take 45-60 days.

We appreciate SCRO's work to solidify the Watermelon Trail within the Kenai Peninsula Borough to provide appropriate management tools.

Respectfully,



Marcus A. Mueller
Land Management Officer

CC: Robert Ruffner, KPB Planning Director
Charlie Pierce, KPB Mayor

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER

ADL 233843
Public Access Easement
Kenai Peninsula Borough

This easement is granted this XXth day of MONTH, YEAR, by the State of Alaska, acting by and through the Department of Natural Resources, Division of Mining, Land and Water, whose address is 550 West 7th Avenue, Suite 900C, Anchorage, AK 99501, hereinafter referred to as the Grantor. This easement is granted to the Kenai Peninsula Borough, whose address is 144 North Binkley Street, Soldotna, AK 99669, hereinafter referred to as the Grantee.

In accordance with the provisions of AS 38.05.850, and the rules and regulations promulgated thereunder, a public access easement is hereby granted for an indefinite term for the construction, operation, and maintenance of an existing public multi-use trail and related infrastructure. This easement is located near Homer, AK, over and across the following described state lands:

Within applicable portions of Sections 10, 11, 15, 21, 22, 28, and 29, Township 4 South, Range 12 West, Seward Meridian, Sections 2, 3, 10, 15, 16, and 22, Township 5 South, Range 13 West, Seward Meridian, in the Homer Recording District. The easement is XXXX feet in length and XX feet in width for a total of XX.XX acres, more or less. The easement is depicted As-Built Survey EPF XXXXXX, recorded concurrently as Plat #_____, Homer Recording District.

This easement is subject to the terms and conditions contained herein.

In the event that this easement shall in any manner conflict with or overlap a previously granted easement or right-of-way, the Grantee shall use this easement in a manner that will not interfere with the peaceful use and enjoyment of the previously issued easement or right-of-way. The Grantor reserves the right to set or modify stipulations governing the use of the conflicting or overlapping area.

Any lands included in this easement that are conveyed from state ownership shall be subject to this easement.

This easement shall terminate at the end of the stated term, if any, when the Grantor determines that the easement is no longer in use for the purpose(s) authorized, or the easement is revoked as a result of violation of the terms and conditions contained herein. The State of Alaska shall be forever wholly absolved from any liability for damages that might result if this easement is terminated for any reason.

Now therefore, in accordance with the conditions of this easement including all attachments and documents that are incorporated by reference, the Grantee is authorized to operate and maintain said easement over and across lands herein described. In witness whereof, the Grantor and the Grantee have affixed their signatures on the date(s) specified herein.

[SIGNATURE PAGES FOLLOW]

GRANTOR

Samantha Carroll, Natural Resource Manager 3
Southcentral Regional Land Office, Division of Mining, Land and Water

STATE OF ALASKA)
) ss
____ Judicial District)

THIS IS TO CERTIFY THAT ON THIS ____ day of _____, 20____, before me personally appeared _____ known by me to be the person named in and who executed said document and acknowledged voluntarily signing the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Notary Public in and for the State of Alaska
My commission expires with office

GRANTEE

Charlie Pierce, Mayor
Kenai Peninsula Borough

STATE OF ALASKA)
) ss
____ Judicial District)

THIS IS TO CERTIFY THAT ON THIS ____ day of _____, 20____, before me personally appeared _____ known by me to be the person named in and who executed said document and acknowledged voluntarily signing the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Notary Public in and for the State of Alaska
My commission expires: _____

WHEN RECORDED, RETURN DOCUMENT TO:
Department of Natural Resources
Division of Mining, Land and Water
550 West 7th Avenue, Suite 900C
Anchorage, AK 99501

Stipulations:

1. **Authorized Officer:** The Authorized Officer (AO) for the State of Alaska (State), Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), is the Regional Manager or designee.
2. **Change of Contact Information:** The Grantee shall maintain current contact information with the AO. Any change of contact information must be submitted in writing to the AO.
3. **Proper Location:** This authorization is for activities on state lands or interests managed by DMLW. It does not authorize any activities on private, federal, native, and municipal lands, or lands which are owned or solely managed by other offices and agencies of the State. The Grantee is responsible for proper location within the authorized area.
4. **Development Plan:** Development shall be limited to the authorized area, improvements, and maintenance activities specified in the approved development plan or subsequent modifications approved by the AO. The Grantee is responsible for accurately siting development and operations within the authorized area. Any proposed revisions to the development plan must be approved in writing by the AO before the change in use or development occurs.
5. **Directives:** Directives may be issued for corrective actions that are required to correct a deviation from design criteria, project specifications, stipulations, State statutes or regulations. Work at the area subject to the Directive may continue while implementing the corrective action. Corrective action may include halting or avoiding specific conduct, implementing alternative measures, repairing any damage to state resources that may have resulted from the conduct, or other action as determined by DNR.
6. **Violations:** This authorization may be revoked upon violation of any of its terms, conditions, stipulations, nonpayment of fees, or upon failure to comply with any other applicable laws, statutes and regulations. A revocation may not become effective until 60 days after the Grantee has been notified in writing of the violation during which time the Grantee has an opportunity to cure any such violation.

No public access easement may be terminated without the prior written approval of DMLW.

7. **Public Access:** The construction, operation, use, and maintenance of the authorized area shall not interfere with public use of roads, trails, waters, landing areas, and public access easements. The ability to use or access state land or public waters may not be restricted in any manner. However, if a specific activity poses a safety concern, the AO may allow the restriction of public access for a specific period of time. The Grantee is required to contact the AO in advance for approval. No restriction is allowed unless specifically authorized in writing by the AO.
8. **Public Trust Doctrine:** The Public Trust Doctrine guarantees public access to, and the public right to use, navigable and public waters and the land beneath them for navigation, commerce, fishing, and other purposes. This authorization is subject to the principles of the Public Trust

Doctrine regarding navigable or public waters. The AO reserves the right to grant other interests consistent with the Public Trust Doctrine.

- 9. Valid Existing Rights:** This authorization is subject to all valid existing rights and reservations in and to the authorized area. The State makes no representations or warranties, whatsoever, either expressed or implied, as to the existence, number, or nature of such valid existing rights.
- 10. Site Maintenance:** The authorized area shall be maintained in a neat, clean, and safe condition, free of any solid waste, debris, or litter, except as specifically authorized herein. Nothing may be stored that would be an attractive nuisance to wildlife or create a potentially hazardous situation.
- 11. Maintenance of Improvements:** The Grantor is not responsible for maintenance of authorized improvements or liable for injuries or damages related to those improvements. No action or inaction of the Grantor is to be construed as assumption of responsibility.
- 12. Removal of Improvements and Site Restoration:** Upon termination of this authorization, whether by abandonment, revocation or any other means, the Grantee shall within 30 days remove all improvements from the area herein granted, except those owned by the State, and the site shall be restored to a condition acceptable to the AO. Should the Grantee fail or refuse to remove said structures or improvements within the time allotted, they shall revert to and become the property of the State; however, the Grantee shall not be relieved of the cost of the removal of the structures, improvements and/or the cost of restoring the area
- 13. Amendment or Modification:** The Grantee may request an amendment or modification of this authorization; the Grantee's request must be in writing. Any amendment or modification must be approved by the AO in advance and may require additional fees and changes to the terms of this authorization.
- 14. Assignment:** In the event the grantee desires to transfer their interest in this authorization to another party the grantee shall submit in writing to the AO a request for assignment. The grantor reserves the right to modify and/or add stipulations for the authorization prior to approving the assignment. The grantor reserves the right to require an assignment between the grantee and another party in the event of a change in corporate ownership, LLC/LLP membership or name change. Notwithstanding other requirements described in this authorization, assignments shall be restricted to those entities that are also eligible to obtain an authorization under the same statutory authority in which this authorization was issued.
- 15. Request for Information:** The AO, at any time, may require the Grantee to provide any information directly or indirectly related to this authorization, in a manner prescribed by the AO.
- 16. Inspections:** The AO shall have reasonable access to the authorized area for inspection, which may be conducted without prior notice. If the Grantee is found to be in noncompliance the authorized area may be subject to reinspection. The Grantee may be charged for actual expenses of any inspection.

- 17. Waste Disposal:** On-site refuse disposal is prohibited, unless specifically authorized. All waste generated during operation, maintenance, and termination activities under this authorization shall be removed and disposed of at an off-site DEC approved disposal facility. Waste, in this paragraph, means all discarded matter, including but not limited to human waste, trash, garbage, refuse, oil drums, petroleum products, ashes and discarded equipment.
- 18. Operation of Vehicles:** Vehicles shall be operated without disturbing the vegetative mat and underlying substrate.
- 19. Surface Drainage:** Adequate culverts shall be installed to maintain surface drainage and to prevent ponding and/or erosion.
- 20. Site Disturbance:**
- Site disturbance shall be kept to a minimum to protect local habitats. All activities at the site shall be conducted in a manner that will minimize the disturbance of soil and vegetation and changes in the character of natural drainage systems.
 - Brush clearing is allowed, but shall be kept to the minimum necessary to conduct or complete the authorized activity. Removal or destruction of the vegetative mat outside of the authorized area is not allowed.
 - The Grantee shall conduct all operations in a manner which will prevent unwarranted pollution, erosion, and siltation. Any pollution, erosion, or siltation shall be repaired/remediated in a manner and time frame satisfactory to the AO at the Grantee's expense.
- 21. Ground Disturbance and Repair:** Grantee will refill holes, trenches and surface depressions resulting from development or maintenance activities with sand, gravel, native materials, or a substitute approved by the AO. Surface areas will be recontoured to the satisfaction of the AO so that they do not pose a threat to human safety or wildlife transit.
- 22. Destruction of Markers:** The Grantee shall protect all survey monuments, witness corners, reference monuments, mining claim posts, bearing trees, and unsurveyed corner posts against damage, destruction, or obliteration. The Grantee shall notify the AO of any damaged, destroyed, or obliterated markers and shall reestablish the markers at the Grantee's expense in accordance with accepted survey practices of the DMLW.
- 23. Fuel and Hazardous Substances:**
- No fuel or hazardous substances are to be stored on state land. Prior written approval from the AO is required for a change in this restriction and may include additional stipulations and/or a change in the amount required for the performance guaranty.
 - Signs: Trail signs may be posted within the easement corridor only. Flexible signposts shall be used.
- 24. Performance Guaranty:** The requirement of a performance guaranty for this authorization is met by the self-bonding of the Grantee, who is a state agency. The provisions of this authorization shall not prejudice the State's right to obtain remedy under any law or regulation.

- 25. Incurred Expenses:** The Grantor shall in no way be held liable for expenses incurred by the Grantee connected with the activities directly or indirectly related to this authorization.
- 26. In Lieu of Indemnification:** In connection with the entry on or use of assigned lands, subject to the limitations and provisions of AS 09.50.250-.270 and AS 37.05.170, the Grantee shall ensure that its contractors and subcontractors shall indemnify, save harmless, and defend the State, its agents and its employees from any and all claims or actions for injuries or damages sustained by any person or property arising directly or indirectly from the construction or the contractor's performance of the contract, except when the proximate cause of the injury or damage is the State's sole negligence.
- 27. Preference Right:** No preference right for subsequent authorizations is granted or implied by this authorization.
- 28. Alaska Historic Preservation Act:** The Alaska Historic Preservation Act, AS 41.35.200, prohibits the appropriation, excavation, removal, injury, or destruction of any state owned historic, prehistoric, archaeological or paleontological site without written approval from the DNR Commissioner. Should any sites be discovered, the Grantee shall cease any activities that may cause damage and immediately contact the AO and the Office of History and Archaeology in the Division of Parks and Recreation.
- 29. Compliance with Government Requirements:** The Grantee shall, at its expense, comply with all federal, state, and local laws, regulations, and ordinances directly or indirectly related to this authorization. The Grantee shall ensure compliance by its employees, agents, contractors, subcontractors, licensees, or invitees.
- 30. Waiver of Forbearance:** Any failure on the part of the AO to enforce the terms of this authorization, or the waiver of any right under this authorization by the Grantee, unless in writing, shall not discharge or invalidate the authorization of such terms. No forbearance or written waiver affects the right of the AO to enforce any terms in the event of any subsequent violations of terms of this authorization.
- 31. Severability Clause:** If any clause or provision of this authorization is, in a final judicial proceeding, determined illegal, invalid, or unenforceable under present or future laws, then the Grantor and the Grantee agree that the remainder of this authorization will not be affected, and in lieu of each clause or provision of this authorization that is illegal, invalid, or unenforceable, there will be added as a part of this authorization a clause or provision as similar in terms to the illegal, invalid, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.
- 32. Fire Prevention, Protection and Liability:** The Grantee shall take all reasonable precautions to prevent and suppress forest, structure, brush and grass fires, and shall assume full liability for any damage to state land and structures resulting from the negligent use of fire. The State is not liable for damage to the Grantee's personal property and is not responsible for forest fire protection of the Grantee's activity. To report a wildfire, call 911 or 1-800-237-3633.

33. Notification of Discharge: The Grantee shall immediately notify the Department of Environmental Conservation (DEC) and AO of any unauthorized discharge of oil to water, any discharge of hazardous substances (other than oil), and any discharge of oil greater than 55 gallons on land. All fires and explosions must also be reported immediately.

If a discharge, including a cumulative discharge, of oil is greater than 10 gallons but less than 55 gallons, or a discharge of oil greater than 55 gallons is made to an impermeable secondary containment area, the Grantee shall report the discharge within 48 hours. Any discharge of oil greater than one gallon up to 10 gallons, including a cumulative discharge, solely to land, must be reported in writing on a monthly basis.

Notification of discharge during normal business hours must be made to the nearest DEC Area Response Team: Anchorage (907) 269-3063, fax (907) 269-7648; Fairbanks (907) 451-2121, fax (907) 451-2362; Juneau (907) 465-5340, fax (907) 465-5245. To report a spill outside of normal business hours, call toll free 1-800-478-9300 or international 1-907-269-0667.

Notification of discharge must be made to the appropriate DNR Office, preferably by e-mail: Anchorage email dnr.scro.spill@alaska.gov, (907) 269-8528; Fairbanks email dnr.nro.spill@alaska.gov, (907) 451-2739; Juneau email dnr.sero@alaska.gov, (907) 465-3513. The Grantee shall supply the AO with all incident reports submitted to DEC.

**REQUEST FOR AMENDMENT OR MODIFICATION TO
TRAIL MANAGEMENT PLAN
FOR PUBLIC TRAILS ON BOROUGH LAND
LAND MANAGEMENT DIVISION**

TRAIL MANAGER:

Organization Name: _____

Address: _____

City/State/Zip: _____ **Phone:** _____

Email: _____ **Web Address:** _____

Please anticipate a minimum of sixty (60) days to review the submittal. Amendments or modifications may be approved administratively when they are consistent in nature with the standing agreement. Major amendments or modifications require approval by the assembly.

1. Describe the purpose and location of the proposed modification or amendment, including timetable. Attach additional pages as necessary (add additional pages if needed):

2. Attach a map or other drawing depicting the location of the proposed modification or amendment. *Map attached* ☐

Per section V(B) of CTMA No. 2021-01, Amd-3, Snomads Inc., CHS Multituse Trail System
Agreement # Trail Manager

Hereby requests consideration of the proposed amendments or modifications.

David Mastolier, President, Snomads Inc.

President or Vice President Name (Print)

[Signature]
Signature

Doug Inglis, Vice President, Snomads Inc

Secretary or Treasurer Name (Print)

[Signature]
Signature

NOTARY ACKNOWLEDGMENTS

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this 22 day of July
2022, by David Mastolier, the President of,
Name Title
an Alaska non-profit corporation, for and on behalf of the corporation.

[Signature]
Notary Public for State of Alaska
Commission Expires: 15 FEB 2026



STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this 22 day of July
2022, by Doug Inglis, the Vice President of,
Name Title
an Alaska non-profit corporation, for and on behalf of the corporation.

[Signature]
Notary Public for State of Alaska
Commission Expires: 15 FEB 2026



CTMA 2021-01 Amendment 3, Watermelon Trail Easement Grantee (KPB)

Request, July 2022

(Amends Original CTMA 2021-01, Apr 21)

**TRAIL MANAGEMENT PLAN
FOR PUBLIC TRAILS ON BOROUGH LAND
Caribou Hills South (CHS) Trail System**

TRAIL MANAGER:

SNOMADS, Inc.

PO Box 3646

Homer AK 99603

snomads@gmail.com

www.snomadsonline.org

SUMMARY OF PROPOSED ACTIVITIES (Check All That Apply)

SEASONS OF TRAIL MANAGEMENT

☐ Winter ☐ Summer ☒ Year Round

TRAIL WIDTH (Typical)

☐ Under 5 Feet

☐ 5-10 Feet

☒ 10-20 Feet

TRAIL MAINTENANCE ACTIVITIES

☒ Periodic Brushing/Clearing

☒ Grading

☒ Snow Grooming

☒ Erosion Controls

TRAIL IMPROVEMENTS

☒ Trailheads

☒ Parking Area

☒ Loading/Unloading Area

☒ Signs

☐ Sanitation (Trash/Outhouse)

☒ Picnic Area

☒ Shelters

☒ Culverts

☒ Bridges

☐ Stairs

☒ Gates & Bollards

☒ Hardening

☒ New Trails

TRAIL ADMINISTRATION

☒ Competitions/Sponsored Events

☒ Grants

☒ Signage

☒ Equipment Storage Facilities

TRAIL ACTIVITIES

Motorized:

☒ ATV

☒ Snow Machines

Non-Motorized:

☒ Dog Sleds

☒ Skiing

☒ Snowshoeing

☒ Skijoring

☒ Sledding

☒ Hiking

☒ Biking

☒ Walking/Running

☐ Biathlon

☒ Horses

☒ Pet Friendly

☒ Other:

Water Access

☐ Landing Area

1. **Long Range Goals:** As per Agreements, Partnerships and Easements, Snomads seeks to inform KPB of its plans and intentions. KPB acceptance of this amendment will authorize DNR issuance of a Public Outdoor Recreational Easement for the Watermelon Trail to KPB, who will be listed as the Easement “Grantee” of record (co-management with DNR), and authorizes its inclusion into CTMA 2021-01 for Trail Management to Snomads for both short and long term Management/Maintenance of the Watermelon Trail: (Para 1a, 1b): DNR ADL-233843

- a. The Watermelon Trail (and its parking lot), is one of the major arterial trails providing Multiuse access to the Caribou Hills South Trail System. Snomads has applied for a Public Recreation Trail Easement for the Watermelon Trail, in its entirety, (ref: DNR ADL 233843). A goodly portion of this trail and parking lot already exists on KPB lands, managed by the KPB LMD, with Snomads as the Trail Manager (ref: CTMA 2021-01), so the KPB is already a tenant stakeholder. The Alaska DNR South Central Regional Office (SCRO) Easement Division has recently issued a preliminary or draft Easement (unsigned) and Entry Authorization (also unsigned), with the KPB listed as the ‘Grantee’ (at Snomads request) for the rest of the trail. It is our understanding that DNR requires KPB acceptance of the “KPB Grantee” status for the Trail Easement and Entry Authorization in the form of a fully executed KPB Resolution to continue their processing.

Snomads recognizes the importance of establishing a permanent legal status for trails in the form of permanent Easements, to ensure that access and the resource is available for generations to come. It is equally important to establish a viable long term management and maintenance structure and system with the legal authority to properly manage and maintain the resource. When Trail Use Permits or Easements are applied for on Public Lands, DNR requires the applicant to do the work, and pay the fees, and in the case of Easements, generally issues it to themselves (DNR) as the ‘Grantee’, on behalf of the public. It is Snomads intent to consolidate management of the numerous stakeholders that own or manage sections of the trail under the KPB, which has a viable and active management structure/system already in place (the KPB CTMA), to ease the burden of maintaining and rehabilitating this important trail. It is also important to note that an Easement Grantee should be a survivable Public Government entity, like the KPB.

- b. Construct, Install and Maintain 3 ea. Standardized Trail Bridges on the Watermelon Trail. A component of the final Easement being issued, are a requirement for 3 ea Trail Bridges at specifically identified locations along the trail. Snomads, as the Trail Manager, accepts the responsibility of funding and constructing these Trail Bridges to published standards, and has an active program to accomplish this task, in

partnership with the Homer Soil & Water Conservation District & US Fish & Wildlife. Multiagency Permitting (including Army Corps of Engineers) will be required.

Detailed Plans:

Snomads includes Site Surveys, Surveys for Record, Detailed Project Plans, Project Progress Reports, Annual Reports, Project Proposal and Proposed Amendments in its communication and interaction with the Borough. Detailed Project Plans, Status Updates, Spot and Project Completion Reports will be forwarded to KPB in a timely manner.

Plans for specific improvement including architectural or engineering designs, when Applicable:

Snomads will contact KPB LMD for any improvements that are planned, and where applicable, will submit detailed project plans and amendment proposals to the CTMA and obtain requisite approval in the planning stages of projects.

Grant proposals, when applicable: Snomads will inform KPB LMD of all Grant Proposal Plans or Applications that directly or indirectly impact KPB lands, or this CTMA.

Attachments:

DNR ADL 233843 Regional Managers Decision
DNR ADL 233843 Draft Easement (unsigned)
DNR ADL 233843 Entry Authorization (unsigned)

**STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER
SOUTHCENTRAL REGIONAL LAND OFFICE**

Regional Manager's Decision

ADL 233843

Snomads, Inc.

Public Access Easement

Watermelon Trail

REQUESTED ACTION

On June 16, 2021, the Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW), Southcentral Regional Land Office (SCRO), received an application for an easement from Snomads, Inc. (Snomads; the applicant) for the existing Watermelon Trail located on State-owned, DMLW-managed uplands near Homer, Alaska. The purpose of the proposed easement is to authorize maintenance, rehabilitation and operation of the existing trail. The applicant has requested a public access easement 75,573 feet long, 60 feet wide, and approximately 104.1 acres in size. The applicant has further requested that the easement be granted to the Kenai Peninsula Borough (KPB) to hold in trust for the public, as other portions of the trail are located on KPB managed lands. An easement for the Watermelon Trail was previously requested by the Alaska Department of Fish & Game (ADF&G), serialized as ADL 229161, but was closed on August 12, 2020, per ADF&G's request.

RECOMMENDED ACTION

The request shall be modified, and this easement will be authorized as follows:

- Type of easement: Public Access Easement
- Length: Change from 75,573 feet to 55,000 feet
- Width: 60 feet
- Acreage: Change from 104.1 acres to 75.75 acres
- Term: Indefinite
- Grantee: KPB
- Use and Restriction: Use of the easement on general state lands will conform to the weight restrictions outlined in 11 AAC 96.020 with the exception of seasonal grooming and maintenance equipment unless otherwise permitted.

SCOPE OF DECISION

The scope of this decision is to determine if it is in the State's interest to create an easement for the proposed use. The scope of administrative review for this authorization is limited to (1) reasonably foreseeable, significant effects of the uses to be authorized; (2) applicable statutes and regulations; (3) facts pertaining to the land or resources; and (4) issues that are material to the determination that issuing the authorization is in the interest of the State of Alaska. All other aspects of the applicant's project are outside the scope of this decision.

STATUTORY AUTHORITY

This easement application is being adjudicated pursuant to AS 38.05.850 and the Alaska Land Act as amended.

ADMINISTRATIVE RECORD

The administrative record for the proposed action consists of the Constitution of the State of Alaska, the Alaska Land Act as amended, applicable statutes and regulations referenced herein, the 2001 Kenai Area Plan, other classification references described herein, and the casefile for the application serialized by DNR as ADL 233843.

LOCATION INFORMATION

Geographic Location

The applicant has requested that DMLW authorize an easement near Homer, AK.

Meridian Township Range Section

The applicant has applied to use State-owned, DMLW-managed lands within Sections 10, 11, 15, 21, 22, 28, and 29, Township 4 South, Range 12 West, Seward Meridian, Sections 2, 3, 10, 15, 16, and 22, Township 5 South, Range 13 West, Seward Meridian.

Additionally, SCRO review indicates that the Watermelon Trail is also be located within Section 36, Township 4 South, Range 13 West, Seward Meridian. SCRO recommends these sections of land be included in the authorized area if this request is approved.

The applicant also included Sections 31 and 32 of Township 4 South, Range 12 West, Seward Meridian, and Section 27, Township 5 South, Range 13 West, Seward Meridian in their requested legal description. Further analysis indicates that Section 27 has been conveyed to the KPB, and that Sections 31 and 32 are managed by the KPB per municipal entitlement ADL 62695. After accounting for portions of the request located on lands managed by the KPB, SCRO has adjusted the legal description to more accurately reflect the 55,000 feet of trail located on state owned and managed lands.

Other Land Information

Municipality: KPB

Regional Corporation: Cook Inlet Region, Inc. (CIRI)

TITLE

The State of Alaska holds title to applicable portions of lands within Sections 10, 11, 15, 21, 22, 28, and 29, Township 4 South, Range 12 West, Seward Meridian, Section 36, Township 4 South, Range 13 West, and Sections 2, 3, 10, 15, 16 and 22, Township 5 South, Range 13 West, Seward Meridian per Patent Number 50-65-0594, Patent Number 1220722, Patent Number 1207176, Patent Number 1217411, Patent Number 122073, Supplemental Patent Number 50-66-0495 and Tentative Approval recorded as Document Number 2012-003355-0 in the Homer Recording District. The associated DNR land acquisition casefiles are GS 6, GS 76, SCH 75 and SCH 81.

THIRD PARTY INTERESTS

Known third-party interests within the proposed project area include:

- ADL 59921 –Grazing lease, reissuance adjudication ongoing, held by Viola Jerrel;
- ADL 200045 – Public utility easement issued to Homer Electric Association;
- LAS 33241 – Land use permit issued to the Homer Soil & Water Conservation District;
- LAS 33248 – Land use permit issued to ADF&G.

PLANNING & CLASSIFICATION

The proposed easement falls within the boundaries of DNR's 2001 Kenai Area Plan (the Plan; KAP), Region 7, Unit 217, Unit 266B, and Unit 290.

Unit 217 is designated as Public Recreation and Tourism – Dispersed Use, which converts to a classification of Public Recreation Land. The plan states that the unit is frequently used by snowmachines, skiers, moose hunters, and berry pickers. The plan notes that a spur of the Watermelon Trail crosses this unit and recommends reserving access for trails prior to conveyance out of state ownership. Areas classified as Public Recreation Land are to be managed to ensure continued public use of trails, including, but not limited to, hunting, snow machining, hiking, and cross-country skiing. Management guidelines located in the Trails and Access section of Chapter 2 of the Plan note that DNR should keep trails available for public use and assist in establishing local trail systems which provide access to public land and water. Trails near wetlands may be authorized if the proposed activity will not cause significant adverse impacts to fish and wildlife habitat, ecological processes and scenic vistas; though ADF&G is to be consulted to provide recommendations on easement alignments. ADF&G was given the opportunity to comment on the proposed easement and their recommendations are discussed in the Agency Review section of this document.

Unit 266B is designated as Habitat and Public Recreation and Tourism – Dispersed Use, which convert to classifications of Wildlife Habitat Land and Public Recreation Land respectively. The plan notes that Unit 266B serves as a wildlife corridor between the Anchor River Fritz Creek Critical Habitat Area (ARFCCHA) and that the area is characterized by moose rutting habitat and multiple anadromous streams. Management guidelines located in the Fish and Wildlife Habitat and Harvest section of Chapter 2 of the Plan note that access to public lands and water should be ensured and that habitat loss should be mitigated. The Plan outlines DNR's management authority within critical habitat areas and notes that Special Area Permits issued by the Alaska Department of Fish and Game (ADF&G) are required, even for uses that may be generally allowed pursuant to 11 AAC 96.020. The applicant has previously been granted a Special Use Permit by ADF&G for the trail work associated with this easement request, and ADF&G has provided additional information regarding future permits which may be necessary for the activities proposed by the Snomads.

Portions of Unit 266B are located within the Caribou Hills Special Use Area (ADL 226574), which is governed by the Caribou Hills Management Plan (CHMP). The CHMP notes that the area should be managed in accordance with Generally Allowed Uses (11 AAC 96.020) associated with recreation and that the area has high public use values including hunting and snow machining. The CHMP further notes that rights-of-way should be established over heavily used trails to protect public access, though trail use restrictions may be necessary to prevent resource damage during

seasons characterized by wet ground conditions. Trail restrictions are consistent with the intent of the CHMP, and other agencies and the public will be notified of any restrictions imposed by DNR.

Unit 290 is designated as Habitat, which converts to a classification of Wildlife Habitat Land. The entire unit falls within the ARFCCHA which is governed in accordance with AS 16.20.605 and the ARFCCHA Management Plan. Per the ARFCCHA Management Plan, continued motorized and non-motorized use of existing trails and seismic lines is to be provided for, and trailheads/corridors between Ohlson Mountain Road and the ARFCCHA are to be established to accommodate public access. As with portions of Unit 266B, ADF&G Special Area Permits are required to authorize activities within the boundaries of the legislatively designated Critical Habitat Area.

Because the proposed authorization does not conflict with management guidelines outlined by the KAP, CHMP, or ARFCCHA Management Plan, and as ADF&G has issued a Special Area Permit authorizing trail work associated with this application, SCRO has determined that it is consistent with the overall management intent and goals of the relevant planning documents.

ACCESS

Functional legal access to the state land discussed herein exists via a public travelway easement granted by the KPB, recorded as Document Number 2016-001878-0 in the Homer Recording District.

Construction of the improvements described herein is contingent on the placement of related infrastructure on borough land owned and/or managed by the KPB and private owner Gwendolyn Perry. The KPB has provided DMLW with record of their support for the DMLW easement considered herein. Gwendolyn Perry has granted a public recreational easement pursuant to AS 34.17.100, recorded as Document Number 2018-000318-0 in the Homer Recording District.

PUBLIC NOTICE & AGENCY REVIEW

Public Notice Summary

Public notice of the application was conducted from September 1, 2021, to October 4, 2021. The notice was posted to the State of Alaska Online Public Notice System and was sent to the Homer, Anchor Point, Fritz Creek, and Nikolaevsk post offices for display on their notice boards. The notice was also sent to the following recipients:

- CIRI
- Homer Electric Association
- Viola Jerrel
- Gwendolyn Perry

Comments: A total of 52 comments were received during the public notice period. All of the comments received by SCRO voiced overwhelming support for the issuance of the proposed easement, with many citing the high recreational values of the area, the need for extensive trail work due to deteriorating conditions, and the long history of community engagement by the applicant.

Response: SCRO acknowledges the 52 comments received and thanks the public for their participation in the process. Individual comments are housed within the casefile for ADL 233843.

Agency Review Summary

Agency review of the application was conducted from September 1, 2021, to October 4, 2021. The notice was sent to the following recipients.

State of Alaska:

- DNR Division of Parks & Outdoor Recreation (DPOR); Permitting and the Office of History and Archeology (OHA)
- DNR DMLW; Survey Section, Land Conveyance Section, Contract Initiation and Revenue Recovery, Realty Services Section (RSS), Mining Section, and Water Section
- DNR Division of Forestry; Kenai Office
- DNR Division of Oil & Gas (DOG); State Pipeline Coordinators Section, Permitting Section, Leasing Section
- DNR Mental Health Land Trust Office
- DNR Spatial Case Information Management System
- Department of Environmental Conservation (DEC) Division of Water; Wastewater, Alaska Pollutant Discharge Elimination System Program
- DEC Division of Environmental Health; Drinking Water Program, Solid Waste Program
- DEC Division of Spill Prevention; Contaminated Sites
- ADF&G; Wildlife Conservation, Access Defense Program
- Department of Commerce, Community and Economic Development, Division of Community and Regional Affairs
- Department of Transportation and Public Facilities; Statewide Right-of-Way
- Homer Soil and Water Conservation District (HS&WCD)

Federal

- United States Army Corps of Engineers

Local

- Kenai Peninsula Borough; Land Management Division
- Kenai River Center

Agency Review Comment & Response

A total of seven comments were received during the agency review and are summarized below:

Comment: On September 1, 2021, the DMLW Land Conveyances Section provided a statement of non-objection in regard to the proposed public access easement.

Response: SCRO acknowledges the comment.

Comment: On September 2, 2021, DMLW RSS commented to note that three sections of land included in the application were under management by KPB.

Response: SCRO appreciates the comment and has subsequently excluded Section 27, Township 5 South, Range 13 West, Seward Meridian, and Sections 31 and 32, Township 4 South, Range 12 West, Seward Meridian, from this decision as KPB is the managing authority. KPB has provided agreements made with the applicant for the portions of the trails within these sections.

Comment: On September 3, 2021, ADF&G Habitat Section commented to note that an existing Special Area Permit (21-V-0128-SA) had been issued to the Snomads for work along the Watermelon Trail within the ARFCCHA and noted that a second Special Area Permit was anticipated at a later date for portions of the project northeast of the Anchor River. ADF&G had no additional comments or objections to the proposed easement.

Response: SCRO acknowledges the response and thanks ADF&G Habitat for copies of permits issued within the CHA

Comment: On September 24, 2021, DPOR OHA commented that there are no reported cultural resource sites within the project area but noted that the applicant should notify OHA if any cultural resources are discovered during construction.

Response: SCRO acknowledges the response.

Comment: On September 28, 2021, DOT&PF Statewide Right-of-Way stated that they have no comments concerning the project.

Response: SCRO acknowledges the response.

Comment: On October 4, 2021, ADF&G Access Defense Program stated that a portion of the proposed easement crosses through the ARFCCHA which is managed by ADF&G. ADF&G has previously issued a Special Area Permit (21-V-0128-SA) but notes that an additional Special Area Permit will be required for placement of bridges over Beaver Creek proposed by the applicant. ADF&G further noted that while they support the applicant's desire to have the proposed easement held by a government agency, that it would prefer that an easement over State lands be held by DMLW. Finally, ADF&G notes that they hold management authority over lands within the CHA that the proposed easement crosses, as well as any activities below ordinary high water or crossings of anadromous water bodies.

Response: SCRO acknowledges the response. While SCRO acknowledges ADF&G's desire to have the easement held by DMLW, access to and along the route requested by the Snomads would require passage through two large segments of KPB-managed land, with all public parking occurring at the trailhead located on KPB land. Management of the trailhead would likely present the greatest influence over public use of the trail as informative signage and future expansion efforts by the KPB would directly impact the behavior and volume of various user groups. Additionally, if the proposed easement were to be held by DMLW, users would pass through four transition points along the trail where the management of the trail may change. Alternatively, granting the authorization to KPB would only require two transitions between management where the trail enters and exits the ARFCCHA. Minimizing the number of managing entities and regulations such as weight restrictions, reduces public confusion over which regulations apply where, and increases overall compliance. As the public would enjoy the same rights of access and assurances of long-term protection of the trail regardless if the easement is held by KPB or

DMLW, SCRO has determined that KPB would be the more appropriate entity to hold the easement.

SCRO understands that the ARFCCHA (legislatively designated by AS 16.20.500) is governed by the ARFCCHA Management Plan pursuant to 5 AAC 95.600. Per the ARFCCHA Management Plan, DNR authorization is required for any use, lease, or disposal of resources on state land within the critical habitat area. As co-management of state resources within the CHA is required by the ARFCCHA Management Plan, SCRO and ADF&G will consult regarding any management issues that may arise concerning impacts of, and user conflicts within, the proposed Watermelon Trail easement within the CHA.

Comment: On October 13, 2021 the HS&WCD commented to suggest that the hardened trail width proposed by the Snomads be increased from the requested five feet to six feet, to be consistent with trail hardening previously conducted by the HS&WCD. Additionally, HS&WCD requested that the specifications for U.S. Forest Service (USFS) Tier Three be listed in any granting document as they were unavailable online.

Response: SCRO will encourage the Snomads to consider increasing the hardened surface width from 5 feet to 6 feet, but will not require this change as it may impact other existing permits and may be constrained by funding limitations.

A public access easement as currently requested would authorize the Snomads to construct a hardened trail at a width suggested by the HS&WCD if desirable. As the Snomads have incorporated the USFS design standards into their development plan, no additional action is required by SCRO to require such standards. Specifications for USFS trail design is located within the casefile for ADL 233843 and can be provided to HS&WCD for reference.

No other comments were received.

ENVIRONMENTAL CONSIDERATIONS

Environmental contamination risk associated with this proposed easement is minimal. SCRO recommends that fuel, lubricants, and other hazardous materials be restricted to those necessary and be contained within tools and vehicles when equipment is necessary for construction and maintenance activities. SCRO further recommends that no fuel or other hazardous materials are authorized to be stored on site. There are no other known environmental considerations or constraints in this location.

ECONOMIC BENEFIT & DEVELOPMENT OF STATE RESOURCES

In accordance with AS 38.05.850, DMLW considers if the requested authorization will provide the greatest economic benefit to the State and development of its natural resources. Specifically, SCRO assesses both direct and indirect economic benefits and whether the proposed authorization encourages the development of the State's resources. The proposed easement facilitates the expansion of public recreational resources, thus providing an indirect benefit to the state. In consideration of these factors, and because there are no competing requests for authorization, SCRO advises that approval of this easement will provide the greatest economic benefit to the State.

DISCUSSION

SCRO has revised the applicant's estimate of the length of the requested easement based on the erroneous inclusion of lands managed by the KPB, as confirmed by the KPB Land Management Division on December 3, 2021. In light of this revision, SCRO recommends the issuance of an easement approximately 55,000 feet long by 60 feet wide for an estimated total area of 75.75 acres in order to facilitate and protect public access along the existing Watermelon Trail and provide adequate space for trail hardening and maintenance activities.

SCRO recommends that the authorization considered herein be a public access easement granted to KPB on behalf of the public as the easement provides access to both State and Borough lands noted to yield significant public recreation opportunities, and as management of the trailhead and public parking will occur on KPB lands. Grant of a public access easement to KPB is not in any way intended to diminish DMLW or ADF&G's role in the co-management structure of the ARFCCHA.

SCRO further recommends that the easement considered herein be granted for an indefinite term from the effective date of this decision as the need for this easement can be expected to exist as long as the adjoining land requires access.

In evaluation of the applicant's request, SCRO has identified the following management issues:

Winter Route:

The applicant has proposed to create a spur route of the Watermelon Trail for winter use, which would create a 0.94-mile deviation from the existing trail. While the applicant notes that the winter route would require no construction and little to no clearing, an easement will be required to provide long term protection of the trail and to authorize grooming equipment with a curb weight in excess of Generally Allowed Uses, pursuant to 11 AAC 96.020. SCRO recommends that the winter route be included in the grant of a public access easement to ensure consistent management of the trail and reduce the number of additional authorizations required for seasonal grooming.

Installation of Bridges:

The applicant has proposed to construct two bridges over portions of the Anchor River to allow for trail grooming while mitigating erosion and damage to anadromous waters. While the proposed bridges would serve to address environmental and habitat concerns, they may present a hazard to the public in the long-term if not properly inspected and maintained. As such, SCRO recommends that the grantee be required to submit post-construction designs which have been reviewed and approved by a Registered Professional Engineer (RPE) prior to issuance of a final easement by DMLW. The plans must include the load rating and estimated life of the bridge, and load limits must be clearly posted on either side of the bridge for public awareness. After final construction of the two bridges, the grantee would be required to submit an inspection report by a qualified RPE which clearly outlines the intervals at which subsequent inspection reports will be necessary. The applicant would be required to submit all inspection reports to SCRO for documentation in the casefile for ADL 233843.

SCRO understands that a bridge crossing Beaver Creek within the ARFCCHA was installed in 2009 following authorization by ADF&G. SCRO recommends that the pre-existing bridge be included in the proposed public access easement but requires that a post-instruction report be conducted by a RPE to confirm the structural integrity of the bridge. SCRO advises that regular inspection reports by a RPE be required for the pre-existing bridge, consistent with the two proposed bridges.

In the event that any bridge installed within the proposed easement is deemed to be unsafe or is not inspected at an interval acceptable to an RPE, DMLW reserves the right to close the bridge to public use and require removal by the grantee at their own expense.

Monitoring activities and maintenance of the bridges and other infrastructure will be the exclusive responsibility of the grantee: DNR does not take responsibility for the maintenance of these bridges and other infrastructure.

Trail Weight Restrictions and Winter Grooming:

The applicant has noted that they are aware of and support a weight restriction for recreational off-road vehicles on general state land pursuant to 11 AAC 96.020, and a weight restriction of 1,000 lb. curb weight for recreational off-road vehicles within the ARFCCHA. The applicant further requests that vehicles used for trail maintenance, rehabilitation, construction, and grooming be exempt from additional authorizations.

For portions of the Watermelon Trail which fall upon general state lands, SCRO recommends that vehicles exceeding the weight restrictions of 11 AAC 96.020 be allowable only to facilitate trail maintenance, rehabilitation, construction, and grooming activities. SCRO concurs with the applicant that trail grooming by the Snomads on general state lands should only occur with a minimum snow base of six inches to protect the underlying vegetative mat. All other trail users must obtain an authorization for any vehicle use which exceeds the generally allowed uses pursuant to 11 AAC 96.020. The applicant currently has a valid Special Area Permit (21-V-0128-SA) to develop, construct, maintain, rehabilitate, and groom the Watermelon Trail within the ARFCCHA. Any trail users wishing to operate vehicles in excess of 1,000 lbs. within the ARFCCHA must seek approval from ADF&G pursuant to 5 AAC 95.

Potential for Oil & Gas Development:

The existing route of the Watermelon Trail requested by the applicant crosses six Lease Sale Tracts designated by DOG in the Cook Inlet Sale Area. While there are not currently any active oil and gas leases associated with the six tracts, DOG noted that the State reserves oil, gas, minerals, fissionable material, geothermal resources, and fossils that may be in or upon the land that it conveys in accordance with Section 6(i) of the Alaska Statehood Act and Alaska Statute 38.05.125. The State also reserves the right to enter the land for the purposes of exploring for, developing, and producing these mineral resources.

PERFORMANCE GUARANTY

A performance guaranty is intended to incentivize compliance with the terms and conditions of the entry authorization and easement. It also provides a mechanism for the State to ensure that the applicant shares in the financial burden in the event of noncompliance (including fee payment, survey, etc.), restoration (interim and final), and any associated costs after termination or expiration of the easement. In consideration of the low risk associated with the proposed authorization and the applicant's known history of compliance, SCRO recommends that a performance guaranty not be required at this time. DMLW reserves the right to require a performance guaranty during the term of the easement.

INSURANCE

SCRO recommends that insurance not be required as the grantee is self-insured. SCRO recommends that the grantee be required to provide proof of its contractor's insurance upon DMLW's request.

SURVEY

SCRO recommends that a DMLW-approved as-built survey is required to determine the proper location and acreage of installed improvements and the associated easement on State-owned, DMLW-managed lands. The applicant will be required to request survey instructions prior to issuance of the entry authorization. The survey must be produced in accordance with survey instructions provided by the DMLW Survey Section and stamped by a Professional Land Surveyor registered in the State of Alaska. A final easement will not be issued until the as-built survey has been approved by DMLW.

FEES

Per 11 AAC 05.020(b), SCRO recommends that interim and one-time issuance fee(s) for this authorization are waived as the request is in the public interest. However, the applicant will be required to pay the appropriate recording fees to have the easement recorded by DMLW.

ENTRY AUTHORIZATION

The entry authorization is an interim authorization issued when a survey is necessary prior to easement issuance. SCRO recommends that an entry authorization be issued for a term ending 5 years from the effective date of this decision for the purpose of constructing, surveying, operating, and maintaining the infrastructure considered herein prior to DMLW's issuance of a public access easement. The entry authorization may be revoked if the applicant has not supplied DMLW with a draft as-built survey within 3 years of receiving survey instructions. An extension of the entry authorization may be granted at the written request of the applicant if granting the extension is deemed appropriate by DMLW, and may be subject to applicable fees. If an extension is required, the applicant must contact DMLW no later than 30 days prior to the expiration of the entry authorization and certify there have been no changes to the approved development plan. SCRO recommends that entry authorization not be granted until the following deliverables have been provided to DMLW, as described or recommended above:

- Evidence of having made request for survey instructions to the DMLW Survey Section.

RECOMMENDATION

Based upon the information provided by the applicant, as well as review of relevant planning documents, statutes, and regulations related to this application, it is the recommendation of SCRO to issue an easement as described above, on the condition that all stipulations are followed as described in the attached authorization.

Evan Dodd

Evan Dodd, Natural Resource Specialist 3
DMLW Southcentral Regional Land Office


6/28/2022

Date

REGIONAL MANAGER'S DECISION

When adjudicating an easement authorization pursuant to AS 38.05.850, DMLW seeks to responsibly develop Alaska's resources by making them available for maximum use and benefit consistent with public interest. In consideration of all events and criteria listed above, I hereby determine that the authorizations to be granted by this decision are consistent with DMLW's mission, that this project is consistent with the overall classification and management intent for this land, and that issuance of an authorization as described above is in the interest of the State of Alaska. The Department assumes no responsibility for maintenance or liability for injury or damages attributable to this authorization.

This decision may be rescinded by written notification if, after 60 days from the effective date of this decision, the applicant has not completed all requirements outlined in this decision for issuance of the authorization. Additional time may be allotted to complete these requirements; however, this will not extend the total term of the authorizations issued under this decision. This decision goes into effect and becomes a final administrative order and decision of the department on the 31st calendar day after issuance.

 for
Samantha Carroll, Regional Manager
DMLW Southcentral Regional Land Office

6/28/78
Date

ATTACHMENTS

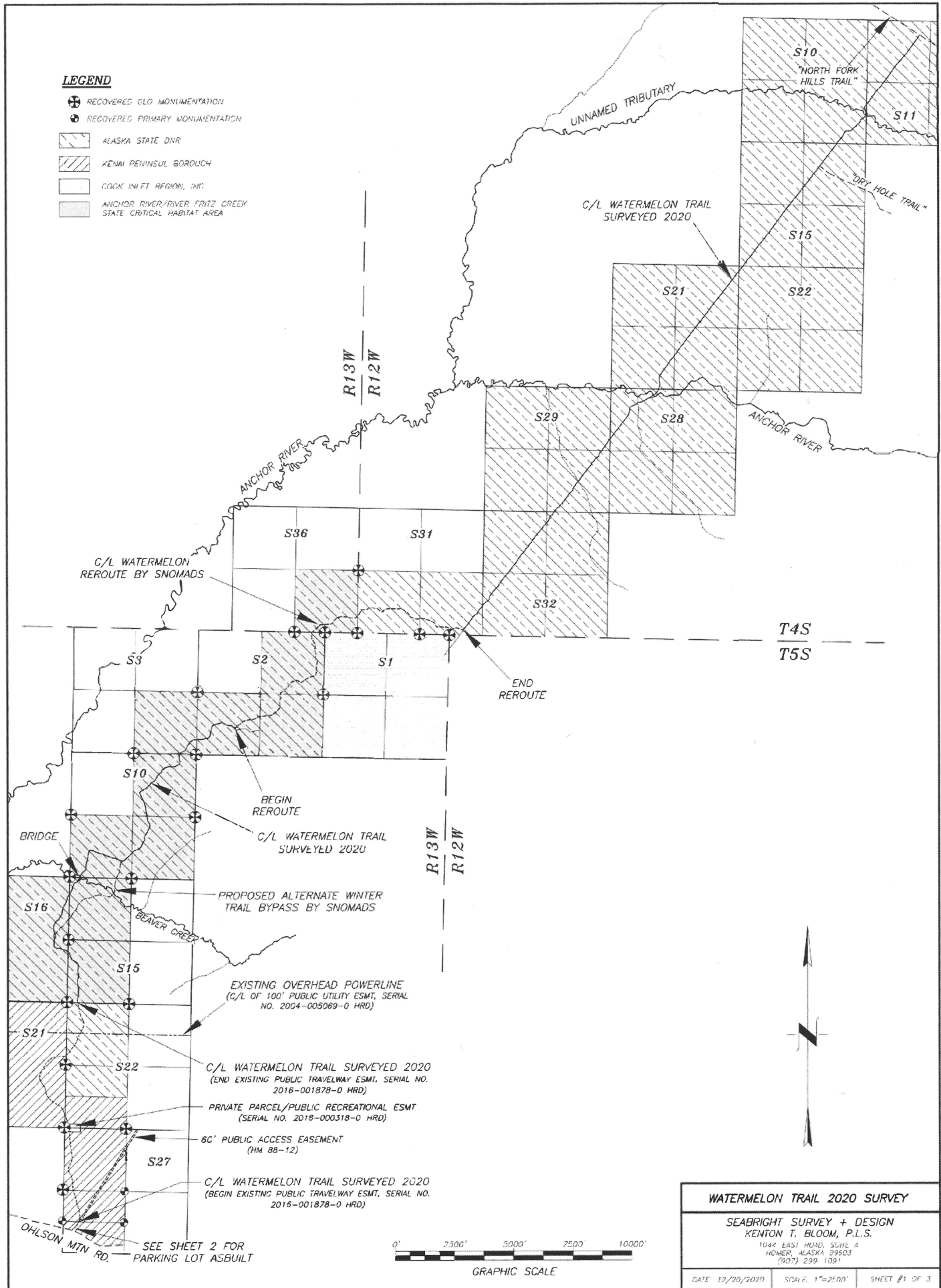
- Attachment A: Location Diagram
- Entry authorization, unsigned
- Draft easement document

APPEAL

An eligible person affected by this decision may appeal to the DNR Commissioner per AS 44.37.011 and 11 AAC 02. Any appeal must be received within twenty (20) calendar days after issuance of this decision under 11 AAC 02.040. An eligible person must first appeal a decision to the Commissioner before seeking relief in superior court. The Alaska Court System establishes its own rules for timely appealing final administrative orders and decisions of the department.

Appeals may be mailed or hand-delivered to the DNR Commissioner's Office, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska, 99501; or faxed to (907)-269-8918; or sent by electronic mail to dnr.appeals@alaska.gov. Appeals must be accompanied by the fee established in 11 AAC 05.160(d)(6), which has been set at \$200 under the provisions of 11 AAC 05.160 (a)-(b). A .pdf or print copy of 11 AAC 02 may be obtained by contacting Erik Fossum via phone at (907) 269-8429, via email at erik.fossum@alaska.gov, and is also available on the department's website at <https://dnr.alaska.gov/mlw/pdf/DNR-11-AAC-02.pdf>.

ADL 233843: Attachment A



STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER

ADL 233843
Public Access Easement
Kenai Peninsula Borough

This easement is granted this XXth day of MONTH, YEAR, by the State of Alaska, acting by and through the Department of Natural Resources, Division of Mining, Land and Water, whose address is 550 West 7th Avenue, Suite 900C, Anchorage, AK 99501, hereinafter referred to as the Grantor. This easement is granted to the Kenai Peninsula Borough, whose address is 144 North Binkley Street, Soldotna, AK 99669, hereinafter referred to as the Grantee.

In accordance with the provisions of AS 38.05.850, and the rules and regulations promulgated thereunder, a public access easement is hereby granted for an indefinite term for the construction, operation, and maintenance of an existing public multi-use trail and related infrastructure. This easement is located near Homer, AK, over and across the following described state lands:

Within applicable portions of Sections 10, 11, 15, 21, 22, 28, and 29, Township 4 South, Range 12 West, Seward Meridian, Sections 2, 3, 10, 15, 16, and 22, Township 5 South, Range 13 West, Seward Meridian, in the Homer Recording District. The easement is XXXX feet in length and XX feet in width for a total of XX.XX acres, more or less. The easement is depicted As-Built Survey EPF XXXXXX, recorded concurrently as Plat #_____, Homer Recording District.

This easement is subject to the terms and conditions contained herein.

In the event that this easement shall in any manner conflict with or overlap a previously granted easement or right-of-way, the Grantee shall use this easement in a manner that will not interfere with the peaceful use and enjoyment of the previously issued easement or right-of-way. The Grantor reserves the right to set or modify stipulations governing the use of the conflicting or overlapping area.

Any lands included in this easement that are conveyed from state ownership shall be subject to this easement.

This easement shall terminate at the end of the stated term, if any, when the Grantor determines that the easement is no longer in use for the purpose(s) authorized, or the easement is revoked as a result of violation of the terms and conditions contained herein. The State of Alaska shall be forever wholly absolved from any liability for damages that might result if this easement is terminated for any reason.

Now therefore, in accordance with the conditions of this easement including all attachments and documents that are incorporated by reference, the Grantee is authorized to operate and maintain said easement over and across lands herein described. In witness whereof, the Grantor and the Grantee have affixed their signatures on the date(s) specified herein.

[SIGNATURE PAGES FOLLOW]

GRANTOR

Samantha Carroll, Natural Resource Manager 3
Southcentral Regional Land Office, Division of Mining, Land and Water

STATE OF ALASKA)
) ss
____ Judicial District)

THIS IS TO CERTIFY THAT ON THIS ____ day of _____, 20____, before me personally appeared _____ known by me to be the person named in and who executed said document and acknowledged voluntarily signing the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Notary Public in and for the State of Alaska
My commission expires with office

GRANTEE

Charlie Pierce, Mayor
Kenai Peninsula Borough

STATE OF ALASKA)
) ss
____ Judicial District)

THIS IS TO CERTIFY THAT ON THIS ____ day of _____, 20____, before me personally appeared _____ known by me to be the person named in and who executed said document and acknowledged voluntarily signing the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Notary Public in and for the State of Alaska
My commission expires: _____

WHEN RECORDED, RETURN DOCUMENT TO:
Department of Natural Resources
Division of Mining, Land and Water
550 West 7th Avenue, Suite 900C
Anchorage, AK 99501

Stipulations:

1. **Authorized Officer:** The Authorized Officer (AO) for the State of Alaska (State), Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), is the Regional Manager or designee.
2. **Change of Contact Information:** The Grantee shall maintain current contact information with the AO. Any change of contact information must be submitted in writing to the AO.
3. **Proper Location:** This authorization is for activities on state lands or interests managed by DMLW. It does not authorize any activities on private, federal, native, and municipal lands, or lands which are owned or solely managed by other offices and agencies of the State. The Grantee is responsible for proper location within the authorized area.
4. **Development Plan:** Development shall be limited to the authorized area, improvements, and maintenance activities specified in the approved development plan or subsequent modifications approved by the AO. The Grantee is responsible for accurately siting development and operations within the authorized area. Any proposed revisions to the development plan must be approved in writing by the AO before the change in use or development occurs.
5. **Directives:** Directives may be issued for corrective actions that are required to correct a deviation from design criteria, project specifications, stipulations, State statutes or regulations. Work at the area subject to the Directive may continue while implementing the corrective action. Corrective action may include halting or avoiding specific conduct, implementing alternative measures, repairing any damage to state resources that may have resulted from the conduct, or other action as determined by DNR.
6. **Violations:** This authorization may be revoked upon violation of any of its terms, conditions, stipulations, nonpayment of fees, or upon failure to comply with any other applicable laws, statutes and regulations. A revocation may not become effective until 60 days after the Grantee has been notified in writing of the violation during which time the Grantee has an opportunity to cure any such violation.

No public access easement may be terminated without the prior written approval of DMLW.

7. **Public Access:** The construction, operation, use, and maintenance of the authorized area shall not interfere with public use of roads, trails, waters, landing areas, and public access easements. The ability to use or access state land or public waters may not be restricted in any manner. However, if a specific activity poses a safety concern, the AO may allow the restriction of public access for a specific period of time. The Grantee is required to contact the AO in advance for approval. No restriction is allowed unless specifically authorized in writing by the AO.
8. **Public Trust Doctrine:** The Public Trust Doctrine guarantees public access to, and the public right to use, navigable and public waters and the land beneath them for navigation, commerce, fishing, and other purposes. This authorization is subject to the principles of the Public Trust

Doctrine regarding navigable or public waters. The AO reserves the right to grant other interests consistent with the Public Trust Doctrine.

- 9. Valid Existing Rights:** This authorization is subject to all valid existing rights and reservations in and to the authorized area. The State makes no representations or warranties, whatsoever, either expressed or implied, as to the existence, number, or nature of such valid existing rights.
- 10. Site Maintenance:** The authorized area shall be maintained in a neat, clean, and safe condition, free of any solid waste, debris, or litter, except as specifically authorized herein. Nothing may be stored that would be an attractive nuisance to wildlife or create a potentially hazardous situation.
- 11. Maintenance of Improvements:** The Grantor is not responsible for maintenance of authorized improvements or liable for injuries or damages related to those improvements. No action or inaction of the Grantor is to be construed as assumption of responsibility.
- 12. Removal of Improvements and Site Restoration:** Upon termination of this authorization, whether by abandonment, revocation or any other means, the Grantee shall within 30 days remove all improvements from the area herein granted, except those owned by the State, and the site shall be restored to a condition acceptable to the AO. Should the Grantee fail or refuse to remove said structures or improvements within the time allotted, they shall revert to and become the property of the State; however, the Grantee shall not be relieved of the cost of the removal of the structures, improvements and/or the cost of restoring the area
- 13. Amendment or Modification:** The Grantee may request an amendment or modification of this authorization; the Grantee's request must be in writing. Any amendment or modification must be approved by the AO in advance and may require additional fees and changes to the terms of this authorization.
- 14. Assignment:** In the event the grantee desires to transfer their interest in this authorization to another party the grantee shall submit in writing to the AO a request for assignment. The grantor reserves the right to modify and/or add stipulations for the authorization prior to approving the assignment. The grantor reserves the right to require an assignment between the grantee and another party in the event of a change in corporate ownership, LLC/LLP membership or name change. Notwithstanding other requirements described in this authorization, assignments shall be restricted to those entities that are also eligible to obtain an authorization under the same statutory authority in which this authorization was issued.
- 15. Request for Information:** The AO, at any time, may require the Grantee to provide any information directly or indirectly related to this authorization, in a manner prescribed by the AO.
- 16. Inspections:** The AO shall have reasonable access to the authorized area for inspection, which may be conducted without prior notice. If the Grantee is found to be in noncompliance the authorized area may be subject to reinspection. The Grantee may be charged for actual expenses of any inspection.

- 17. Waste Disposal:** On-site refuse disposal is prohibited, unless specifically authorized. All waste generated during operation, maintenance, and termination activities under this authorization shall be removed and disposed of at an off-site DEC approved disposal facility. Waste, in this paragraph, means all discarded matter, including but not limited to human waste, trash, garbage, refuse, oil drums, petroleum products, ashes and discarded equipment.
- 18. Operation of Vehicles:** Vehicles shall be operated without disturbing the vegetative mat and underlying substrate.
- 19. Surface Drainage:** Adequate culverts shall be installed to maintain surface drainage and to prevent ponding and/or erosion.
- 20. Site Disturbance:**
- Site disturbance shall be kept to a minimum to protect local habitats. All activities at the site shall be conducted in a manner that will minimize the disturbance of soil and vegetation and changes in the character of natural drainage systems.
 - Brush clearing is allowed, but shall be kept to the minimum necessary to conduct or complete the authorized activity. Removal or destruction of the vegetative mat outside of the authorized area is not allowed.
 - The Grantee shall conduct all operations in a manner which will prevent unwarranted pollution, erosion, and siltation. Any pollution, erosion, or siltation shall be repaired/remediated in a manner and time frame satisfactory to the AO at the Grantee's expense.
- 21. Ground Disturbance and Repair:** Grantee will refill holes, trenches and surface depressions resulting from development or maintenance activities with sand, gravel, native materials, or a substitute approved by the AO. Surface areas will be recontoured to the satisfaction of the AO so that they do not pose a threat to human safety or wildlife transit.
- 22. Destruction of Markers:** The Grantee shall protect all survey monuments, witness corners, reference monuments, mining claim posts, bearing trees, and unsurveyed corner posts against damage, destruction, or obliteration. The Grantee shall notify the AO of any damaged, destroyed, or obliterated markers and shall reestablish the markers at the Grantee's expense in accordance with accepted survey practices of the DMLW.
- 23. Fuel and Hazardous Substances:**
- No fuel or hazardous substances are to be stored on state land. Prior written approval from the AO is required for a change in this restriction and may include additional stipulations and/or a change in the amount required for the performance guaranty.
 - Signs: Trail signs may be posted within the easement corridor only. Flexible signposts shall be used.
- 24. Performance Guaranty:** The requirement of a performance guaranty for this authorization is met by the self-bonding of the Grantee, who is a state agency. The provisions of this authorization shall not prejudice the State's right to obtain remedy under any law or regulation.

- 25. Incurred Expenses:** The Grantor shall in no way be held liable for expenses incurred by the Grantee connected with the activities directly or indirectly related to this authorization.
- 26. In Lieu of Indemnification:** In connection with the entry on or use of assigned lands, subject to the limitations and provisions of AS 09.50.250-.270 and AS 37.05.170, the Grantee shall ensure that its contractors and subcontractors shall indemnify, save harmless, and defend the State, its agents and its employees from any and all claims or actions for injuries or damages sustained by any person or property arising directly or indirectly from the construction or the contractor's performance of the contract, except when the proximate cause of the injury or damage is the State's sole negligence.
- 27. Preference Right:** No preference right for subsequent authorizations is granted or implied by this authorization.
- 28. Alaska Historic Preservation Act:** The Alaska Historic Preservation Act, AS 41.35.200, prohibits the appropriation, excavation, removal, injury, or destruction of any state owned historic, prehistoric, archaeological or paleontological site without written approval from the DNR Commissioner. Should any sites be discovered, the Grantee shall cease any activities that may cause damage and immediately contact the AO and the Office of History and Archaeology in the Division of Parks and Recreation.
- 29. Compliance with Government Requirements:** The Grantee shall, at its expense, comply with all federal, state, and local laws, regulations, and ordinances directly or indirectly related to this authorization. The Grantee shall ensure compliance by its employees, agents, contractors, subcontractors, licensees, or invitees.
- 30. Waiver of Forbearance:** Any failure on the part of the AO to enforce the terms of this authorization, or the waiver of any right under this authorization by the Grantee, unless in writing, shall not discharge or invalidate the authorization of such terms. No forbearance or written waiver affects the right of the AO to enforce any terms in the event of any subsequent violations of terms of this authorization.
- 31. Severability Clause:** If any clause or provision of this authorization is, in a final judicial proceeding, determined illegal, invalid, or unenforceable under present or future laws, then the Grantor and the Grantee agree that the remainder of this authorization will not be affected, and in lieu of each clause or provision of this authorization that is illegal, invalid, or unenforceable, there will be added as a part of this authorization a clause or provision as similar in terms to the illegal, invalid, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.
- 32. Fire Prevention, Protection and Liability:** The Grantee shall take all reasonable precautions to prevent and suppress forest, structure, brush and grass fires, and shall assume full liability for any damage to state land and structures resulting from the negligent use of fire. The State is not liable for damage to the Grantee's personal property and is not responsible for forest fire protection of the Grantee's activity. To report a wildfire, call 911 or 1-800-237-3633.

33. Notification of Discharge: The Grantee shall immediately notify the Department of Environmental Conservation (DEC) and AO of any unauthorized discharge of oil to water, any discharge of hazardous substances (other than oil), and any discharge of oil greater than 55 gallons on land. All fires and explosions must also be reported immediately.

If a discharge, including a cumulative discharge, of oil is greater than 10 gallons but less than 55 gallons, or a discharge of oil greater than 55 gallons is made to an impermeable secondary containment area, the Grantee shall report the discharge within 48 hours. Any discharge of oil greater than one gallon up to 10 gallons, including a cumulative discharge, solely to land, must be reported in writing on a monthly basis.

Notification of discharge during normal business hours must be made to the nearest DEC Area Response Team: Anchorage (907) 269-3063, fax (907) 269-7648; Fairbanks (907) 451-2121, fax (907) 451-2362; Juneau (907) 465-5340, fax (907) 465-5245. To report a spill outside of normal business hours, call toll free 1-800-478-9300 or international 1-907-269-0667.

Notification of discharge must be made to the appropriate DNR Office, preferably by e-mail: Anchorage email dnr.scro.spill@alaska.gov, (907) 269-8528; Fairbanks email dnr.nro.spill@alaska.gov, (907) 451-2739; Juneau email dnr.sero@alaska.gov, (907) 465-3513. The Grantee shall supply the AO with all incident reports submitted to DEC.

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER

ADL 233843
Public Access Easement
Watermelon Trail Improvements

Entry Authorization

The Kenai Peninsula Borough, herein known as the Grantee, is issued this Entry Authorization for the use of state land within:

Legal Description:

Applicable portions of Sections 10, 11, 15, 21, 22, 28, and 29, Township 4 South, Range 12 West, Seward Meridian, Sections 2, 3, 10, 15, 16, and 22, Township 5 South, Range 13 West, Seward Meridian, as further described in the Regional Manager's Decision for ADL 233843 dated June 28, 2022, and as depicted in Attachment A.

This Entry Authorization is issued for the purpose of authorizing the following:

Constructing, surveying, operating, and maintaining an existing public multi-use trail and related infrastructure.

This authorization is effective beginning _____ and ending _____, unless sooner terminated.

Stipulations:

- 1. Authorized Officer:** The Authorized Officer (AO) for the State of Alaska (State), Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), is the Regional Manager or designee.
- 2. Change of Contact Information:** The Grantee shall maintain current contact information with the AO. Any change of contact information must be submitted in writing to the AO.
- 3. Valid Existing Rights:** This authorization is subject to all valid existing rights and reservations in and to the authorized area. The State makes no representations or warranties, whatsoever, either expressed or implied, as to the existence, number, or nature of such valid existing rights.
- 4. Preference Right:** No preference right for subsequent authorizations is granted or implied by this authorization.

5. **Inspections:** The AO shall have reasonable access to the authorized area for inspection, which may be conducted without prior notice. If the Grantee is found to be in noncompliance, the authorized area may be subject to reinspection. The Grantee may be charged for actual expenses of any inspection.
6. **Public Access:** The construction, operation, use, and maintenance of the authorized area shall not interfere with public use of roads, trails, waters, landing areas, and public access easements. The ability to use or access state land or public waters may not be restricted in any manner. However, if a specific activity poses a safety concern, the AO may allow the restriction of public access for a specific period of time. The Grantee is required to contact the AO in advance for approval. No restriction is allowed unless specifically authorized in writing by the AO.
7. **Public Trust Doctrine:** The Public Trust Doctrine guarantees public access to, and the public right to use, navigable and public waters and the land beneath them for navigation, commerce, fishing, and other purposes. This authorization is subject to the principles of the Public Trust Doctrine regarding navigable or public waters. The AO reserves the right to grant other interests consistent with the Public Trust Doctrine.
8. **Alaska Historic Preservation Act:** The Alaska Historic Preservation Act, AS 41.35.200, prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric, archaeological or paleontological site without written approval from the DNR Commissioner. Should any sites be discovered, the Grantee shall cease any activities that may cause damage and immediately contact the AO and the Office of History and Archaeology in the Division of Parks and Recreation.
9. **Compliance with Government Requirements:** The Grantee shall, at its expense, comply with all federal, state, and local laws, regulations, and ordinances directly or indirectly related to this authorization. The Grantee shall ensure compliance by its employees, agents, contractors, subcontractors, licensees, or invitees.
10. **Incurred Expenses:** The Grantor shall in no way be held liable for expenses incurred by the Grantee connected with the activities directly or indirectly related to this authorization.
11. **Waiver of Forbearance:** Any failure on the part of the AO to enforce the terms of this authorization, or the waiver of any right under this authorization by the Grantee, unless in writing, shall not discharge or invalidate the authorization of such terms. No forbearance or written waiver affects the right of the AO to enforce any terms in the event of any subsequent violations of terms of this authorization.
12. **Severability Clause:** If any clause or provision of this authorization is, in a final judicial proceeding, determined illegal, invalid, or unenforceable under present or future laws, then the Grantor and the Grantee agree that the remainder of this authorization will not be affected, and in lieu of each clause or provision of this authorization that is illegal, invalid, or unenforceable, there will be added as a part of this authorization a clause or provision as similar in terms to the illegal, invalid, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.

- 13. Assignment:** This authorization may not be transferred or assigned without the prior written consent of the AO.
- 14. Indemnification:** In connection with the entry on or use of these lands, subject to the limitations and provision of AS 09.50.250-270 and AS 37.05.170, the Grantee shall ensure that its contractors and subcontractors shall indemnify, save harmless, and defend the State, its agents and its employees from any and all claims or actions for injuries sustained by any person or property arising directly or indirectly from the construction of the contractor's performance of the contract, except when the sole proximate cause of the injury or damage is the State's negligence.
- 15. Fuel and Hazardous Substances:** No fuel or hazardous substances may be stored in the authorized area without prior written approval from the AO.
- 16. Insurance:** Insurance is not required. The AO reserves the right to require insurance during the term of this authorization. If required, insurance of a type and in an amount acceptable to the AO, must be provided and remain in place during the term of this authorization. The type and amount of insurance may be adjusted to reflect updates and changes in the associated project.
- 17. Removal of Improvements and Site Restoration:** Upon termination of this authorization, whether by abandonment, revocation or any other means, the Grantee shall within 30 days remove all improvements from the area herein granted, except those owned by the State, and the site shall be restored to a condition acceptable to the AO. Should the Grantee fail or refuse to remove said structures or improvements within the time allotted, they shall revert to and become the property of the State; however, the Grantee shall not be relieved of the cost of the removal of the structures, improvements and/or the cost of restoring the area.
- 18. Concurrent Use:** The DMLW reserves the right to grant additional authorizations to third parties for compatible uses on or adjacent to the land under this authorization. Authorized concurrent users of State land, their agents, employees, contractors, subcontractors, and licensees shall not interfere with the operation or maintenance activities of each user. The DMLW may require authorized concurrent users of State land to enter into an equitable agreement regarding concurrent use.
- 19. Performance Guaranty:** A performance guaranty is not required. The provisions of this authorization shall not prejudice the State's right to obtain remedy under any law or regulation.
- 20. Extensions:** The AO may approve a written request to extend this authorization if additional time is necessary to meet its requirements. The written request must certify that there have been no changes to the approved development plan and be received at least 30 days before the expiration date of this authorization. Additional fees may be required.
- 21. Violations:** This authorization may be revoked upon violation of any of its terms, conditions, stipulations, nonpayment of fees, or upon failure to comply with any other applicable laws, statutes, and regulations. A revocation may not become effective until 60 days after the Grantee has been notified in writing of the violation during which time the Grantee has an

opportunity to cure any such violation. No public access easement may be terminated without the prior written approval of DMLW.

- 22. Notification of Discharge:** The Grantee shall immediately notify the Department of Environmental Conservation (DEC) and AO of any unauthorized discharge of oil to water, any discharge of hazardous substances (other than oil), and any discharge of oil greater than 55 gallons on land. All fires and explosions must also be reported immediately.

If a discharge, including a cumulative discharge, of oil is greater than 10 gallons but less than 55 gallons, or a discharge of oil greater than 55 gallons is made to an impermeable secondary containment area, the Grantee shall report the discharge within 48 hours. Any discharge of oil greater than one gallon up to 10 gallons, including a cumulative discharge, solely to land, must be reported in writing on a monthly basis.

Notification of discharge during normal business hours must be made to the nearest DEC Area Response Team: Anchorage (907) 269-3063, fax (907) 269-7648; Fairbanks (907) 451-2121, fax (907) 451-2362; Juneau (907) 465-5340, fax (907) 465-5245. To report a spill outside of normal business hours, call toll free 1-800-478-9300 or international 1-907-269-0667. Notification of discharge must be made to the appropriate DNR Office, preferably by e-mail: Anchorage email dnr.scro.spill@alaska.gov, (907) 269-8528; Fairbanks email dnr.nro.spill@alaska.gov, (907) 451-2739; Juneau email dnr.sero@alaska.gov, (907) 465-3513. The Grantee shall supply the AO with all incident reports submitted to DEC.

- 23. Returned Check Penalty:** A returned check penalty of \$50.00 will be charged for any check on which the bank refuses payment. Late payment penalties shall continue to accrue.
- 24. Late Payment Penalty Charges:** The Grantee shall pay a fee for any late payment. The amount is the greater of either \$50.00 or interest accrued daily at the rate of 10.5% per annum and will be assessed on each past-due payment until paid in full.
- 25. Fees:** Land use fees for this authorization are waived in accordance with 11 AAC 05.020 (b).
- 26. Request for Information:** The AO, at any time, may require the Grantee to provide any information directly or indirectly related to this authorization in a manner prescribed by the AO.
- 27. Annual Report:** An annual report shall be submitted by December 15 of each year outlining work completed that year, work to be completed next year, and anticipated construction completion timeframe.
- 28. Post Construction Reporting:** A report shall be submitted to the AO by December 15 in any year wherein construction activities occurred that describes the changes made to improvements within the easement during the preceding year. The report shall include photos of all portions of the easement and infrastructure therein that were the focus of construction activities that would be readily accessible to DMLW personnel during a site inspection.
- 29. Waste Disposal:** On-site refuse disposal is prohibited unless specifically authorized. All waste generated during operation, maintenance, and termination activities under this

authorization shall be removed and disposed of at an off-site DEC approved disposal facility. Waste, in this paragraph, means all discarded matter, including but not limited to human waste, trash, garbage, refuse, oil drums, petroleum products, ashes, and discarded equipment.

- 30. Destruction of Markers:** The Grantee shall protect all survey monuments, witness corners, reference monuments, mining claim posts, bearing trees, and unsurveyed corner posts against damage, destruction, or obliteration. The Grantee shall notify the AO of any damaged, destroyed, or obliterated markers and shall reestablish the markers at the Grantee's expense in accordance with accepted survey practices of the DMLW.
- 31. Site Maintenance:** The authorized area shall be maintained in a neat, clean, and safe condition, free of any solid waste, debris, or litter, except as specifically authorized herein.
- 32. Maintenance of Improvements:** The Grantor is not responsible for maintenance of authorized improvements or liable for injuries or damages related to those improvements. No action or inaction of the Grantor is to be construed as assumption of responsibility.
- 33. Amendment or Modification:** The Grantee may request an amendment or modification of this authorization; the Grantee's request must be in writing. Any amendment or modification must be approved by the AO in advance and may require additional fees and changes to the terms of this authorization.
- 34. Development Plan:** Development shall be limited to the authorized area and improvements specified in the approved development plan or subsequent modifications approved by the AO. The Grantee is responsible for accurately siting development and operations within the authorized area. Any proposed revisions to the development plan must be approved in writing by the AO before the change in use or development occurs.
- 35. Proper Location:** This authorization is for activities on state lands or interests managed by DMLW. It does not authorize any activities on private, federal, native, and municipal lands, or lands which are owned or solely managed by other offices and agencies of the State. The Grantee is responsible for proper location within the authorized area.
- 36. Choice of Venue:** This authorization shall be construed under the laws of the State of Alaska. The Grantee confers personal jurisdiction on the courts of the State of Alaska for any litigation under this authorization.
- 37. Stop Work Orders:** Stop Work Orders may be issued if there is a deviation from design criteria, project specifications, stipulations, state statutes, or state regulations and that deviation is causing or is likely to cause significant damage to state resources. Under a Stop Work Order, work at the area subject to the Stop Work Order may not resume until the deviation is cured and corrective action is taken. Corrective action may include halting or avoiding specific conduct, implementing alternative measures, repairing any damage to state resources that may have resulted from the conduct, or other action as determined by the AO. The AO has the right but not the obligation, to undertake corrective action at the expense of the Grantee by moving against the performance bond when such action is necessitated by neglect or inaction on the part of the Grantee to take corrective action.

- 38. Existing Easements:** In the event that this easement shall in any manner conflict with or overlap a previously granted easement or right-of-way, the Grantee shall use this easement in a manner that will not interfere with the peaceful use and enjoyment of the previously issued easement or right-of-way. The Grantor reserves the right to set or modify stipulations governing the use of the conflicting or overlapping area.
- 39. Survey:** The Grantee shall submit a record of survey format as-built acceptable to the standards of the Survey Section prior to the expiration of this Entry Authorization. The Grantee is required to submit a preliminary draft as-built survey one year prior to the expiration of this authorization to allow adequate time for the State's review and approval of a final as-built survey. The final easement will not be issued until the survey has been approved by the DMLW.
- 40. Fire Prevention, Protection and Liability:** The Grantee shall take all reasonable precautions to prevent and suppress forest, structure, brush and grass fires, and shall assume full liability for any damage to state land and structures resulting from the negligent use of fire. The State is not liable for damage to the Grantee's personal property and is not responsible for forest fire protection of the Grantee's activity. To report a wildfire, call 911 or 1-800-237-3633.

Any correspondence on this authorization may be directed to the Department of Natural Resources, Division of Mining, Land and Water, Southcentral Regional Land Office, 550 West 7th Avenue, Suite 900C, Anchorage, AK 99501, (907) 269-8503.

I have read and understand all of the foregoing and attached stipulations. By signing this authorization, I agree to conduct the authorized activity in accordance with the terms and conditions of this authorization.

Signature of Grantee or Authorized Representative	Title	Date
---	-------	------

Grantee's Address	City	State	Zip
-------------------	------	-------	-----

Contact Person	Primary Phone	Alternate Phone
----------------	---------------	-----------------

Signature of Authorized State Representative	Title	Date
--	-------	------

Introduced by:
Date:
Action:
Vote:

Mayor
10/25/22

**KENAI PENINSULA BOROUGH
RESOLUTION 2022-055**

**A RESOLUTION AUTHORIZING ONE FULL-TIME ASSESSING CLERK
CLASSIFIED SERVICE POSITION**

WHEREAS, this position is a reinstated position within the Kenai Peninsula Borough (Borough) Assessing Department that was not filled following a retirement in 2020 and eliminated in the FY2021 budget; and

WHEREAS, throughout 2020 and 2021 the Assessing Department also did not fill two tech positions that became vacant and subsequently eliminated those positions in the FY2022 budget as an additional cost savings measure; and

WHEREAS, in 2021 the Assessing Department experienced a 20% increase in transfer deeds that required research and processing, with 2022 on track to exceed the volume experienced in 2021; and

WHEREAS, in addition to an influx of real property conveyances the Assessing Department has noted increases in address changes, returned notices and tax bills resulting in a large increase in research time to accurately update records; and

WHEREAS, this position is necessary and vital to operational needs of the Assessing Department to meet increasing workload demands; and

WHEREAS, reinstating this position would also eliminate the need for the Assessing Department to hire a temporary position during the 2023 tax assessment appeal period; and

WHEREAS, this position would be within the Borough's classified service and the Assessing Department has sufficient funds in the current FY2023 budget so no additional fiscal appropriations are necessary; and

WHEREAS, it would be in the best interests of the Borough to reinstate the full-time assessing clerk position within the classified service;

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

SECTION 1. That the assembly hereby authorizes the addition of one new full-time permanent Assessing Clerk Position. This position is a classified service position under KPB 3.04.060.

SECTION 2. That this resolution is effective immediately upon adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 25TH DAY OF OCTOBER 2022.

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Assessing Department

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Mike Navarre, Mayor *MN*
Brandi Harbaugh, Finance Director *BH*
Justen Huff, HR Director *JH*

FROM: Adeena Wilcox, Borough Assessor *AW*

DATE: October 13, 2022

RE: Resolution 2022-055 Authorizing One Full-Time Assessing Clerk
Classified Service Position (Mayor)

This resolution will add/reinstate one full-time clerk to the Kenai Peninsula Borough Assessing Department.

This position is necessary and vital to operational needs of the Assessing Department. The Assessing Department saw an increase of 20% in Transfer Deeds in 2021 and 2022 is on track to be higher than 2021. Additionally, the Assessing Department has noted increases in address changes, returned notices and tax bills resulting in a large increase in research time to accurately update parcel records.

Due to prior vacancies, the Assessing Department has sufficient funds in the current FY2023 budget and no additional fiscal appropriations will be necessary.

Your consideration of the resolution is appreciated.



Position Description

Kenai Peninsula Borough

Assessing Clerk / Senior Assessing Clerk

Service Type: Classified, Range J/K

Definition: Under the general direction and supervision of the assessing administration manager, the assessing clerk represents the assessing department as the primary point of contact for public inquiry and is responsible for maintenance of assessment records including data input of building sketches, appraisal and information. The Senior Assessing Clerk position is responsible for maintaining a higher level of review and record maintenance and includes responsibilities involving subdivision processing and taxability of personal property to include boats and aircraft. The Senior Assessing Clerk position upgrade to the higher salary range (K) is not automatic but is conditioned upon budgetary restrictions and management's review of the individual competency and capabilities of the assessing clerk employee.

Minimum Qualifications: High school diploma. One year of experience in data entry/clerical work, familiar with computer processing, accurately and proficiently type a minimum of 40 wpm, operate a ten-key calculator by touch at a minimum of 5000 kph. Ability to function in stress related environment; Must be able to interact effectively with the public and handle difficult situations.

Preferred Qualifications: Twelve (12) months experience in an assessor's/appraisal office, or related field. Recent experience with appraisal sketching software.

Senior Clerk: Must demonstrate advanced skills with word processing and spreadsheet applications (Advanced Excel test required). Demonstrated ability to read subdivision plats to determine ownership and area of resulting parcels and ability to identify parcels on map using aliquot part descriptions. Persons who exhibit proficiency with entry level Assessing clerk position may be eligible for advancement to senior clerk after 18 months of employment in an assessor's office at the Assessing Clerk level and based upon position availability, budget and other considerations at the sole discretion of the Department Head.

Preferred Qualifications: Three years' experience in an assessor's/appraisal office at the Assessing Clerk level.

Essential Functions:

- Greets visitors, ascertains nature of business and responds to requests for service and information and conducts them to the appropriate official when necessary.
- Interprets and troubleshoots property owner concerns regarding administrative errors made in assessments and/or resulting tax.
- Inputs land attributes, building sketches, and structure element information from appraisals into CAMA system. Reconciles errors and inputs corrections.
- Catalogs and edits digital images, prepares them for printing and import into the CAMA system
- Prepares and maintains assessment records for real and personal property. Creates and deletes accounts as warranted.
- Receives and responds to routine personal property correspondence and address change requests.
- Receives exemption applications from residents, explains exemption programs and checks applications for completeness.
- Conducts limited ownership research involving chain of title records. Prepares general correspondence dealing with real and personal property accounts.
- Reads legal descriptions and maps to locate parcel information and account numbers.
- Makes changes to parcel data as required, including taxing jurisdiction, physical addresses, legal descriptions and property classification.
- Prepares documents for archiving and inputs data into records management system for microfilm and/or storage.

1. **Senior Clerk**

- Makes limited adjustments to valuations and assists in solving other concerns or inquiries.

- Analyzes subdivision plats and current parcel maps to determine new parcel numbers and ownership. Inputs new subdivision and parcels into system and retires old parcels. Determines corrected legal description of non-platted remainder parcels.
- Reviews situs survey records of boats and aircraft to verify accuracy of filing and determination of taxing jurisdiction.
- Assists in determining which boats and aircraft are added to the assessment roll by verifying sufficiency of situs dates.

Other Functions:

- Conducts audits of address information and property classification codes for accuracy.
- Processes tax certificates and request for estimated tax bills on new subdivision filings.
- Other related duties as assigned.

1. **Senior Clerk:**

- Instruct temporary and new assessing clerks in the use and input techniques of the personal and real property assessment systems.

Physical Demands: While performing the duties of this job, the employee is frequently required to communicate orally, and to use hands and fingers dexterously to operate office equipment; regularly required to sit; and occasionally required to stand, walk, and reach with hands and arms. The employee must occasionally transport up to 30 pounds. Specific vision abilities required include close vision and the ability to adjust focus. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Other Requirements:

1. **Examination:** Related skills tests as required.

Position Description Record:

Date Updated: 11.26.2019

Reason for Update: Revised

Date Updated: 11.05.2019

Reason for Update: Reformatted

Date Updated: 08.16.2012

Reason for Update Approved in FY-13 Budget, Re-classification to split range

Introduced by:	Mayor
Date:	10/25/22
Hearing:	11/15/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-19-25**

**APPROPRIATING FUNDS TO THE LEGAL DEPARTMENT FOR LITIGATION FEES
AND COSTS RELATED TO AN OIL AND GAS PROPERTY TAX APPEAL**

- WHEREAS,** on June 23, 2021, Furie Operating Alaska, LLC (“Furie”) filed an appeal in the Anchorage Superior Court of the State Assessment Review Board’s Certificate of Determination dated May 24, 2021, regarding Furie’s appeal of the assessed tax value of oil and gas production property within the borough for the 2021 assessment year (“Furie Appeal”);
- WHEREAS,** the assessment of oil and gas production property is a State of Alaska function under the State’s Department of Revenue;
- WHEREAS,** the Kenai Peninsula Borough (“Borough”) is a party to the appeal because the property is within the Borough’s boundaries; and
- WHEREAS,** the Borough retained the law firm of Dillon & Findley, PC to represent it in the Furie Appeal; and
- WHEREAS,** subsequently Furie appealed the 2022 assessed tax value of its oil and gas production property; and
- WHEREAS,** the Superior Court consolidated the 2021 and 2022 appeals into a single case; and
- WHEREAS,** this case involves complex legal and property valuations issues with numerous out-of-state experts; and
- WHEREAS,** the continuing services and expertise of Dillon & Findley will be needed to adequately represent the Borough’s interest in this matter; and
- WHEREAS,** it is estimated that at this time funds of at least \$225,000 will be needed to pay legal services and costs incurred by outside counsel on behalf of the borough;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. The sum of \$225,000 is hereby appropriated from the General Fund's fund balance to account number 100.11310.22FUR.49999 for expenses associated with hiring outside counsel and necessary experts for the Furie Appeal.

SECTION 2. That the appropriations made in this ordinance are of a project length nature and as such do not lapse at the end of any particular fiscal year.

SECTION 3. This ordinance shall be effective immediately upon enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2022.

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Legal Department

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Mike Navarre, Mayor *MN*
Brandi Harbaugh, Finance Director *BH*
Adeena Wilcox, Assessing Director *AW*

FROM: Sean Kelley, Borough Attorney *SK*

DATE: October 13, 2022

RE: Ordinance 2022-19-25, Appropriating Funds to the Legal Department for Litigation Fees and Costs Related to an Oil and Gas Property Tax Appeal (Mayor)

On June 23, 2021, Furie Operating Alaska, LLC (Furie), the owner of oil and gas production property, filed an appeal of the State Assessment Review Board's (SARB) Certificate of Determination dated May 24, 2021, in the Anchorage Superior Court. The SARB decision upheld the State of Alaska's assessment of the oil and gas production property under appeal.

The assessment of oil and gas production property is a State of Alaska function under the State's Department of Revenue. The Kenai Peninsula Borough (Borough) is a party to the appeal because the property is within the Borough's boundaries. The Borough retained the law firm of Dillon & Findley, PC to represent it in the Furie Appeal. Subsequently, Furie appealed the 2022 assessed tax value of its oil and gas production property. A second SARB decision upheld the 2022 assessment. The Superior Court consolidated the 2021 and 2022 appeals into a single case.

Ordinance 2021-19-06 appropriated \$150,000 for legal fees and costs to protect the borough's interests in this appeal. To date, approximately \$102,903 has been expended in this matter on the borough's behalf. It is estimated that up to an additional \$225,000 may be required to litigate this matter through the trial scheduled for July 2023. This appropriation would include fees and costs associated with the upcoming trial, including expert witness fees.

The approximate annual oil and gas production tax that KPB receives from the Furie property is \$822,991.35.

Your consideration of the ordinance is appreciated.

FINANCE DEPARTMENT ACCOUNT / FUNDS VERIFIED

Acct. No. 100.27910

Amount: \$225,000.00

By: *CK* Date: 10/13/2022

Kenai Peninsula Borough Assembly

MEMORANDUM

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

THRU: Johni Blankenship, Borough Clerk (JB)

FROM: Jenny Ratky, Borough Clerk Secretary

DATE: Tuesday, October 25, 2022

RE: New Liquor License – Mt. Marathon Brewing Company – License 5894

Kenai Peninsula Borough Code § 7.10.010 provides for a mandatory Assembly review of applications for new Liquor Licenses at locations within the Borough. Accordingly, the attached application for a New Liquor License as filed by Vince Benjamin dba Mt. Marathon Brewing Company located in the Kenai Peninsula Borough, Alaska, is being submitted to you for review and action.

RECOMMENDATION: That the Assembly approve the issuance of the letter of non-objection to the license as requested by Vince Benjamin dba Mt. Marathon Brewing Company.

cc: Vince Benjamin



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Commerce, Community,
and Economic Development

ALCOHOL & MARIJUANA CONTROL OFFICE
550 West 7th Avenue, Suite 1600
Anchorage, AK 99501
Main: 907.269.0350

September 13, 2022

Kenai Peninsula Borough

VIA Email: MJenkins@kpb.us; JVanHoose@kpb.us; jratky@kpb.us; Cjackinsky@kpb.us;
MAldridge@kpb.us; ncarver@kpb.us; slopez@kpb.us; JBlankenship@kpb.us; assemblyclerk@kpb.us

License Type:	Brewpub-Seasonal	License Number:	5894
Licensee:	Exit Glacier Salmon Bake LLC		
Doing Business As:	Mt. Marathon Brewing Company		
Premises Address	31832 Herman Leirer Road		

☒ **New Application**

☐ **Transfer of Ownership Application**

☐ **Transfer of Location Application**

☐ **Transfer of Controlling Interest Application**

We have received a completed application for the above listed license (see attached application documents) within your jurisdiction. This is the notice required under AS 04.11.480.

A local governing body may protest the approval of an application(s) pursuant to AS 04.11.480 by furnishing the director **and** the applicant with a clear and concise written statement of reasons for the protest within 60 days of receipt of this notice, and by allowing the applicant a reasonable opportunity to defend the application before a meeting of the local governing body, as required by 3 AAC 304.145(d). If a protest is filed, the board will deny the application unless the board finds that the protest is arbitrary, capricious, and unreasonable. To protest the application referenced above, please submit your protest within 60 days and show proof of service upon the applicant.

AS 04.11.491 – AS 04.11.509 provide that the board will deny a license application if the board finds that the license is prohibited under as a result of an election conducted under AS 04.11.507.

AS 04.11.420 provides that the board will not issue a license when a local governing body protests an application on the grounds that the applicant's proposed licensed premises are located in a place within the local government where a local zoning ordinance prohibits the alcohol establishment, unless the local government has approved a variance from the local ordinance.

Sincerely,

Joan Wilson, Director

amco.localgovernmentonly@alaska.gov



Alcohol and Marijuana Control Office
 550 W 7th Avenue, Suite 1600
 Anchorage, AK 99501
alcohol.licensing@alaska.gov
<https://www.commerce.alaska.gov/web/amco>
 Phone: 907.269.0350

Alaska Alcoholic Beverage Control Board

Form AB-02: Premises Diagram

What is this form?

A detailed diagram of the proposed licensed premises is required for all liquor license applications, per AS 04.11.260 and 3 AAC 304.185. Your diagram must include dimensions and must show all entrances and boundaries of the premises, walls, bars, fixtures, and areas of storage, service, consumption, and manufacturing. If your proposed premises is located within a building or building complex that contains multiple businesses and/or tenants, please provide an additional page that clearly shows the location of your proposed premises within the building or building complex, along with the addresses and/or suite numbers of the other businesses and/or tenants within the building or building complex.

The second page of this form is not required. Blueprints, CAD drawings, or other clearly drawn and marked diagrams may be submitted in lieu of the second page of this form. The first page must still be completed, attached to, and submitted with any supplemental diagrams. An AMCO employee may require you to complete the second page of this form if additional documentation for your premises diagram is needed.

This form must be completed and submitted to AMCO's main office before any license application will be considered complete.

Yes No

I have attached blueprints, CAD drawings, or other supporting documents in addition to, or in lieu of, the second page of this form.

☐


Section 1 – Establishment Information

Enter information for the business seeking to be licensed, as identified on the license application.

Licensee:	Exit Glacier Salmon Bake LLC	License Number:	?
License Type:	Brewpub License - Seasonal		
Doing Business As:	Mt. Marathon Brewing Company		
Premises Address:	31832 Herman Leirer Road		
City:	Seward	State:	AK
		ZIP:	99664

AMCO
 JAN 13 2020

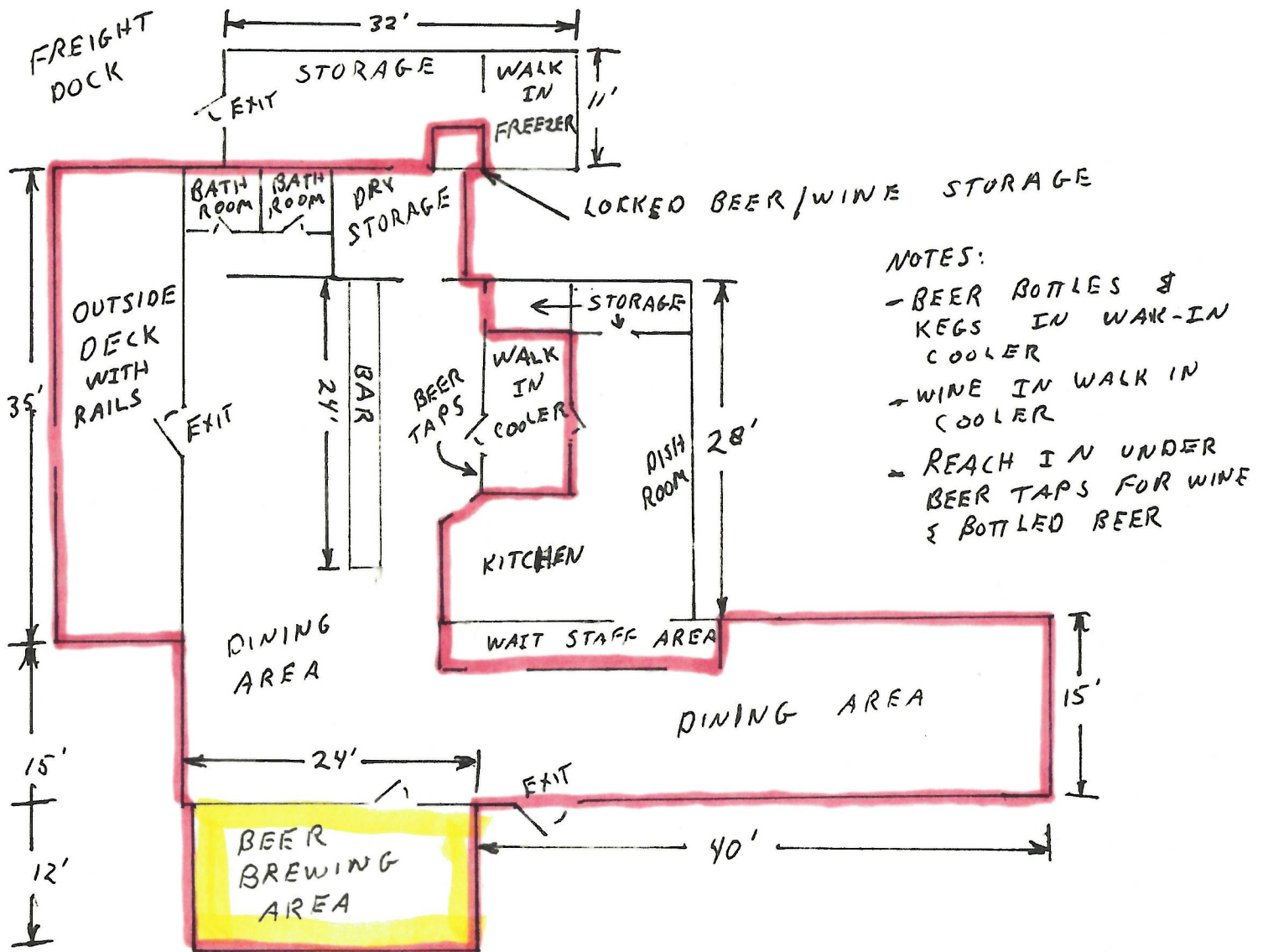


Alaska Alcoholic Beverage Control Board

Form AB-02: Premises Diagram

Section 2 – Detailed Premises Diagram

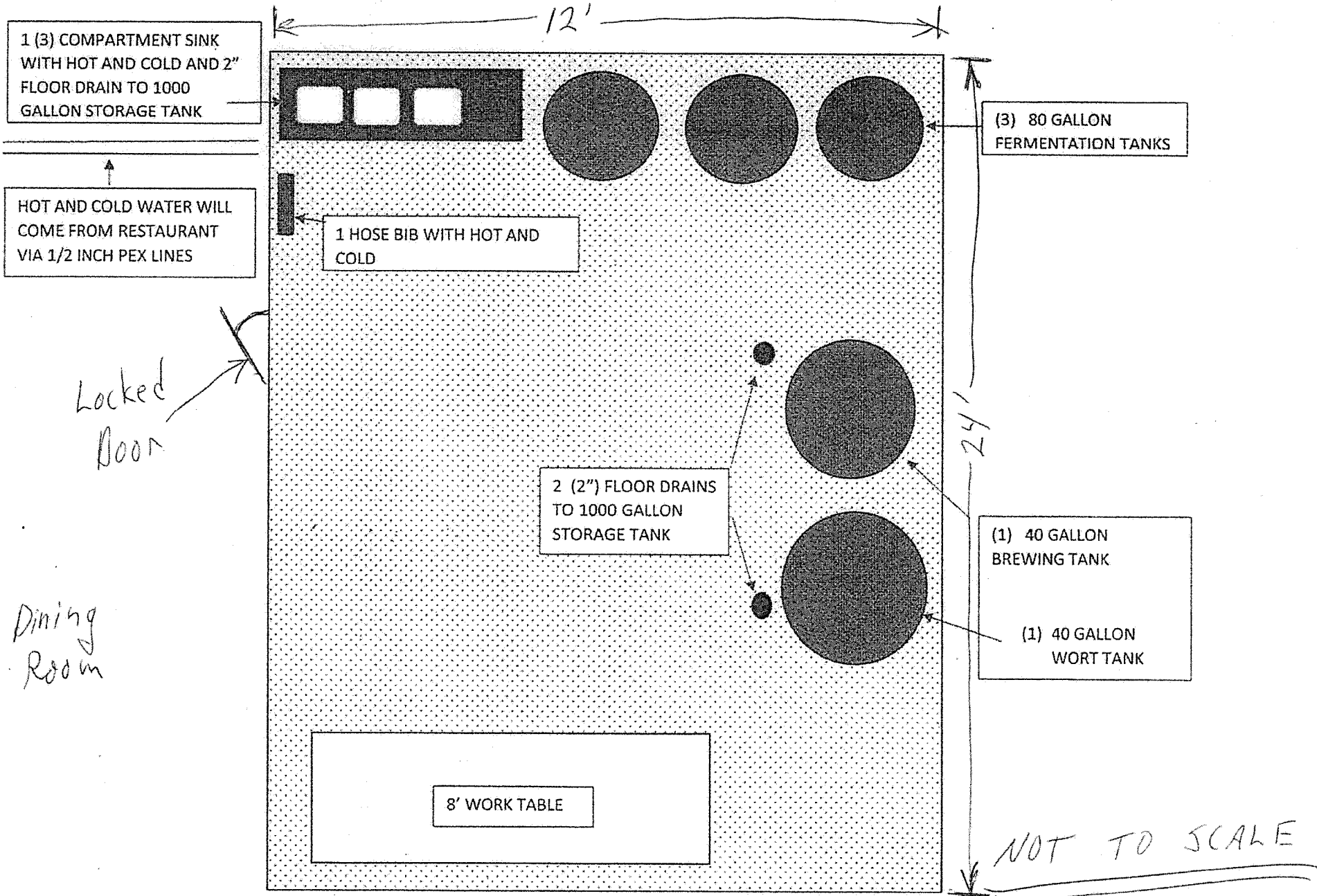
Clearly indicate the boundaries of the premises and the proposed licensed area within that property. Clearly indicate the interior layout of any enclosed areas on the proposed premises. Clearly identify all entrances and exits, walls, bars, and fixtures, and outline in red the perimeter of the areas designated for alcohol storage, service, consumption, and manufacturing. Include dimensions, cross-streets, and points of reference in your drawing. You may attach blueprints or other detailed drawings that meet the requirements of this form.



HERMAN LEIRER ROAD (EXIT GLACIER ROAD)
(120' FROM RESTAURANT)

MAR 12 2020

BEER BREWING AREA



Exit Glacier Salmon Bake LLC

MT Marathon Brewing Company

3-11-2020

The Salmon Bake Restaurant

Deck Security Plan

The deck located on the West side of The Salmon Bake Restaurant will have the following steps in place to provide security to ensure no minors gain access to alcohol.

1. Posting of all required alcohol signage for the State of Alaska alcohol license I have applied for.
2. Full table service by waitstaff with TAMS training.
3. A 36" deck railing surrounding the entire deck.
4. Security cameras will be in place on deck and signage in place to alert customers of said cameras on deck. This will help to discourage any underage drinking.
5. The deck will be well lit at all times the business is open.

AMCO
MAR 12 2020



Alcohol and Marijuana Control Office
550 W 7th Avenue, Suite 1600
Anchorage, AK 99501
alcohol.licensing@alaska.gov
<https://www.commerce.alaska.gov/web/amco>
Phone: 907.269.0350

Alaska Alcoholic Beverage Control Board

Form AB-00: New License Application

What is this form?

This new license application form is required for all individuals or entities seeking to apply for a new liquor license. Applicants should review **Title 04 of Alaska Statutes** and **Chapter 304 of the Alaska Administrative Code**. All fields of this form must be completed, per AS 04.11.260 and 3 AAC 304.105.

This form must be completed and submitted to AMCO's main office, along with all other required forms and documents, before any license application will be considered complete.

Section 1 – Establishment and Contact Information

Enter information for the business seeking to be licensed.

Licensee:	Exit Glacier Salmon Bake LLC		
License Type:	Brewpub License – <i>Seasonal</i>	Statutory Reference:	AS04.11.135
Doing Business As:	MT. Marathon Brewing Company		
Premises Address:	31832 Herman Leirer Road		
City:	Seward	State:	AK ZIP: 99664
Local Governing Body:	Kenai Peninsula Borough		
Community Council:	Kenai Peninsula Borough <i>NONE</i>		

Mailing Address:	PO Box 3151		
City:	Seward	State:	AK ZIP: 99664

Designated Licensee:	Vince Benjamin		
Contact Phone:	907-362-1928	Business Phone:	907-224-2204
Contact Email:	sewardlogistics@hotmail.com		

Seasonal License? Yes ☒ No ☐ If "Yes", write your six-month operating period: 4-1 to 10-1

OFFICE USE ONLY			
Complete Date:	9-13-22	License Years:	License #: 5894
Board Meeting Date:	9-20-2022	Transaction #:	1248386
Issue Date:		BRE:	John / Nate / KRS



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 550 W 7th Avenue, Suite 1600
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alcohol.licensing@alaska.gov
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Alaska Alcoholic Beverage Control Board

Form AB-00: New License Application

Section 2 – Premises Information

Premises to be licensed is:



an existing facility



a new building



a proposed building

The next two questions must be completed by beverage dispensary (including tourism) and package store applicants only:

What is the distance of the shortest pedestrian route from the public entrance of the building of your proposed premises to the outer boundaries of the nearest school grounds? Include the unit of measurement in your answer.

1.9 miles

What is the distance of the shortest pedestrian route from the public entrance of the building of your proposed premises to the public entrance of the nearest church building? Include the unit of measurement in your answer.

2.1 miles

Section 3 – Sole Proprietor Ownership Information

This section must be completed by any sole proprietor who is applying for a license. Entities should skip to Section 4.

If more space is needed, please attach a separate sheet with the required information.

The following information must be completed for each licensee and each affiliate (spouse).

This individual is an:



applicant



affiliate

Name:					
Address:					
City:		State:		ZIP:	

This individual is an:



applicant



affiliate

Name:					
Address:					
City:		State:		ZIP:	



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Alaska Alcoholic Beverage Control Board

Form AB-00: New License Application

Section 4 – Entity Ownership Information

This section must be completed by any entity, including a corporation, limited liability company (LLC), partnership, or limited partnership, that is applying for a license. Sole proprietors should skip to Section 5.

If more space is needed, please attach a separate sheet with the required information.

- If the applicant is a corporation, the following information must be completed for each *stockholder who owns 10% or more* of the stock in the corporation, and for each *president, vice-president, secretary, and managing officer*.
- If the applicant is a limited liability organization, the following information must be completed for each *member with an ownership interest of 10% or more*, and for each *manager*.
- If the applicant is a partnership, including a limited partnership, the following information must be completed for each *partner with an interest of 10% or more*, and for each *general partner*.

Entity Official:	Vince Benjamin				
Title(s):	Member	Phone:	9073621928	% Owned:	100
Address:	PO Box 3151				
City:	Seward	State:	AK	ZIP:	99664

Entity Official:					
Title(s):		Phone:		% Owned:	
Address:					
City:		State:		ZIP:	

Entity Official:					
Title(s):		Phone:		% Owned:	
Address:					
City:		State:		ZIP:	

Entity Official:					
Title(s):		Phone:		% Owned:	
Address:					
City:		State:		ZIP:	

AMCO
 JAN 13 2020



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Alaska Alcoholic Beverage Control Board

Form AB-00: New License Application

This subsection must be completed by any applicant that is a corporation or LLC. Corporations and LLCs are required to be in good standing with the Alaska Division of Corporations (DOC) and have a registered agent who is an individual resident of the state of Alaska.

DOC Entity #:	75968D	AK Formed Date:	3-26-02	Home State:	Alaska
Registered Agent:	Vince Benjamin	Agent's Phone:	907-362-1928		
Agent's Mailing Address:	PO Box 3151				
City:	Seward	State:	Alaska	ZIP:	99664

Residency of Agent: Yes No

Is your corporation or LLC's registered agent an individual resident of the state of Alaska?

☒ ☐

Section 5 - Other Licenses

Ownership and financial interest in other alcoholic beverage businesses: Yes No

Does any representative or owner named in this application have any direct or indirect financial interest in any other alcoholic beverage business that does business in or is licensed in Alaska?

☒ ☐

If "Yes", disclose which individual(s) has the financial interest, what the type of business is, and if licensed in Alaska, which license number(s) and license type(s):

Restaurant Eating Place AS 04 11.100 License #4153

Section 6 - Authorization

Communication with AMCO staff: Yes No

Does any person other than a licensee named in this application have authority to discuss this license with AMCO staff?

☐ ☒

If "Yes", disclose the name of the individual and the reason for this authorization:



Alaska Alcoholic Beverage Control Board

Form AB-00: New License Application

Alcohol and Marijuana Control Office
550 W 7th Avenue, Suite 1600
Anchorage, AK 99501
alcohol.licensing@alaska.gov
<https://www.commerce.alaska.gov/web/amco>
Phone: 907.269.0350

Section 7 – Certifications

Read each line below, and then sign your initials in the box to the right of each statement:

Initials

I certify that all proposed licensees (as defined in AS 04.11.260) and affiliates have been listed on this application.

VB

I certify that all proposed licensees have been listed with the Division of Corporations.

VB

I certify that I understand that providing a false statement on this form or any other form provided by AMCO is grounds for rejection or denial of this application or revocation of any license issued.

VB

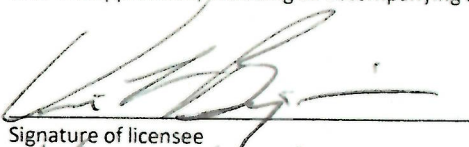
I certify that all licensees, agents, and employees who sell or serve alcoholic beverages or check the identification of a patron will complete an approved alcohol server education course, if required by AS 04.21.025, and, while selling or serving alcoholic beverages, will carry or have available to show a current course card or a photocopy of the card certifying completion of approved alcohol server education course, if required by 3 AAC 304.465.

VB

I agree to provide all information required by the Alcoholic Beverage Control Board in support of this application.

VB

As an applicant for a liquor license, I declare under penalty of perjury that I have read and am familiar with AS 04 and 3 AAC 304, and that this application, including all accompanying schedules and statements, is true, correct, and complete.

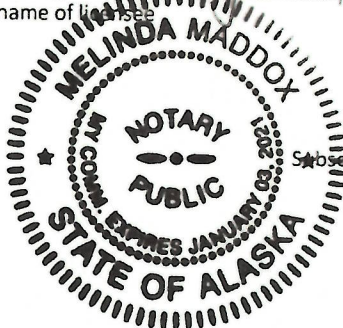

Signature of licensee


Signature of Notary Public


Printed name of licensee

Notary Public in and for the State of ALASKA

My commission expires: Jan 03, 2021



Subscribed and sworn to before me this 13 day of January, 2020.

AMCO


JAN 13 2020

Kenai Peninsula Borough

Planning Department

MEMORANDUM

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

FROM: Robert Ruffner, Planning Director 

DATE: October 11, 2022

RE: Right-Of-Way Vacation: Vacation of a 60' wide section of Ciccone Street right-of-way and associated utility permits; KPB File 2022-136V.

In accordance with AS 29.40.140, no vacation of a Borough right-of-way and/or easement may be made without the consent of the Borough Assembly.

During their regularly scheduled meeting of October 10, 2022 the Kenai Peninsula Borough Planning Commission granted approval of the above proposed vacation by unanimous vote based on the means of evaluating public necessity established by KPB 20.65 (12-Yes, 0-Absent, 2-Vacant). This petition is being sent to you for your consideration and action.

A draft copy of the unapproved minutes of the pertinent portion of the meeting and other related materials are attached.


October 10, 2022 Draft PC Minutes
October 10, 2022 Meeting Packet Materials
Petition Form

Kenai Peninsula Borough

Planning Department

MEMORANDUM

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

FROM: Robert Ruffner, Planning Director 

DATE: October 11, 2022

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A draft copy of the unapproved minutes of the pertinent portion of the meeting and other related materials are attached.

October 10, 2022 Draft PC Minutes
October 10, 2022 Meeting Packet Materials
Petition Form

ITEM E2 - RIGHT OF WAY VACATION**60-FOOT-WIDE CICCONE STREET RIGHT OF WAY AND ASSOCIATED UTILITY EASEMENTS**

KPB File No.	2022-136V
Planning Commission Meeting:	October 10, 2022
Applicant / Owner:	Jim & Debbie Wann Family Trust of Clam Gulch, AK Anthony & Kathleen Ciccone of Houston, TX
Surveyor:	Jerry Johnson / Johnson Surveying
General Location:	Russell Avenue, Clam Gulch
Legal Description:	Ciccone Street between Lot 8A Clam Gulch Heights 2011 Addition KRD 2011-60 and Lots 11 & 12 Clam Gulch Heights, Glendening 1979 Subdivision of Tracts 12, 13, 14, 15, 16, 17 18 KRD 18-135, Kenai Recording District, Section 28, Township 2 North, Range 12 West Seward Meridian

Staff report given by Platting Manager Vince Piagentini.

Chair Brantley opened the item for public comment.

James Wann, Applicant; P.O. Box 269, Kasilof, AK 99568: Mr. Wann stated he was working with ACS regarding the equipment they had in the right-of-way. He spoke with the reviewing engineer from ACS this morning and he has agreed to grant them a 10' easement where the existing equipment is located. ACS has agreed to this solution and no longer opposes this vacation.

Commissioner Fikes asked for the name of the reviewing engineer at ACS that he spoke with. Mr. Wann replied that it was Eoiwo Olewniczak.

Jerry Johnson, Surveyor; P.O. Box 27, Clam Gulch, AK 99568: Mr. Johnson was the surveyor on this project and he made himself available for any questions.

Seeing and hearing no one else wishing to comment, public comment was closed and discussion was opened among the commission.

MOTION: Commissioner Morgan moved, seconded by Commissioner Slaughter to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.70, subject to staff recommendations and compliance with borough code.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 12	Brantley, Fikes, Gillham, Horton, Hooper, Martin, Morgan Slaughter, Staggs, Stutzer, Tautfest, Venuti
No - 0	

AGENDA ITEM F. PLAT COMMITTEE REPORT

Commissioner Gillham reported the plat committee reviewed & granted preliminary approval to 3 plats.

AGENDA ITEM G.

- a. Annual Presentation related to KPB 21.18 – Presented by Kenai River Center Manager Sam Lopez.

AGENDA ITEM H. PUBLIC COMMENT/PRESENTATIONS

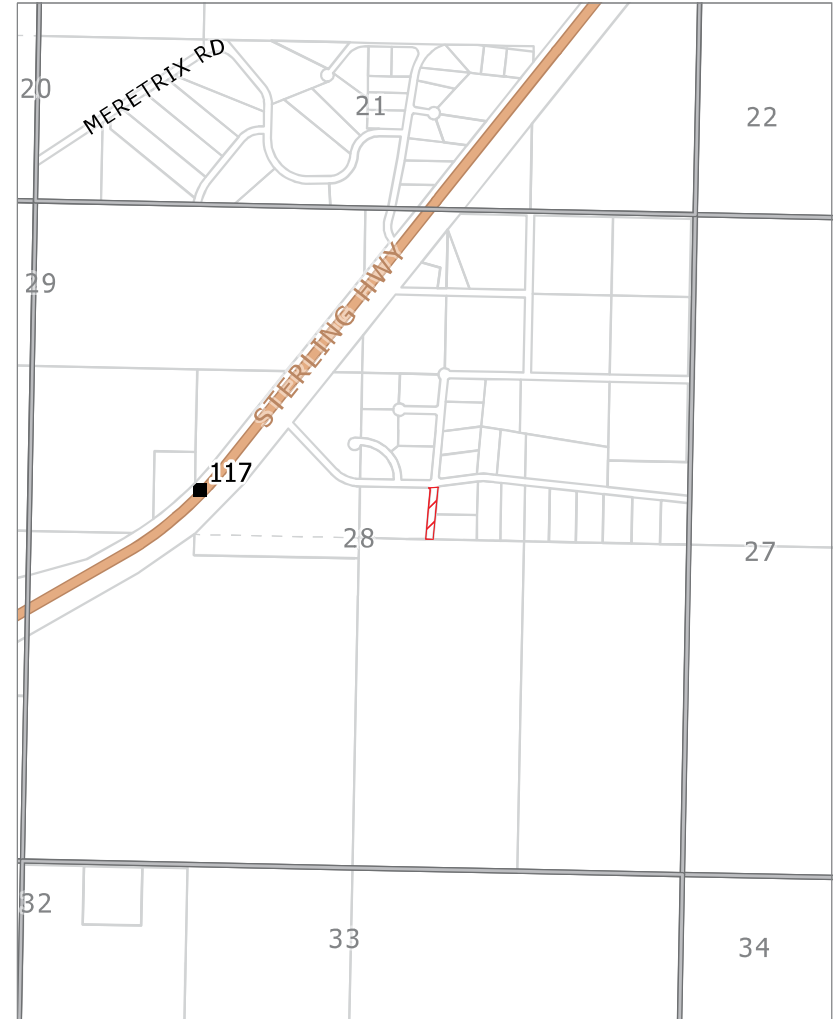
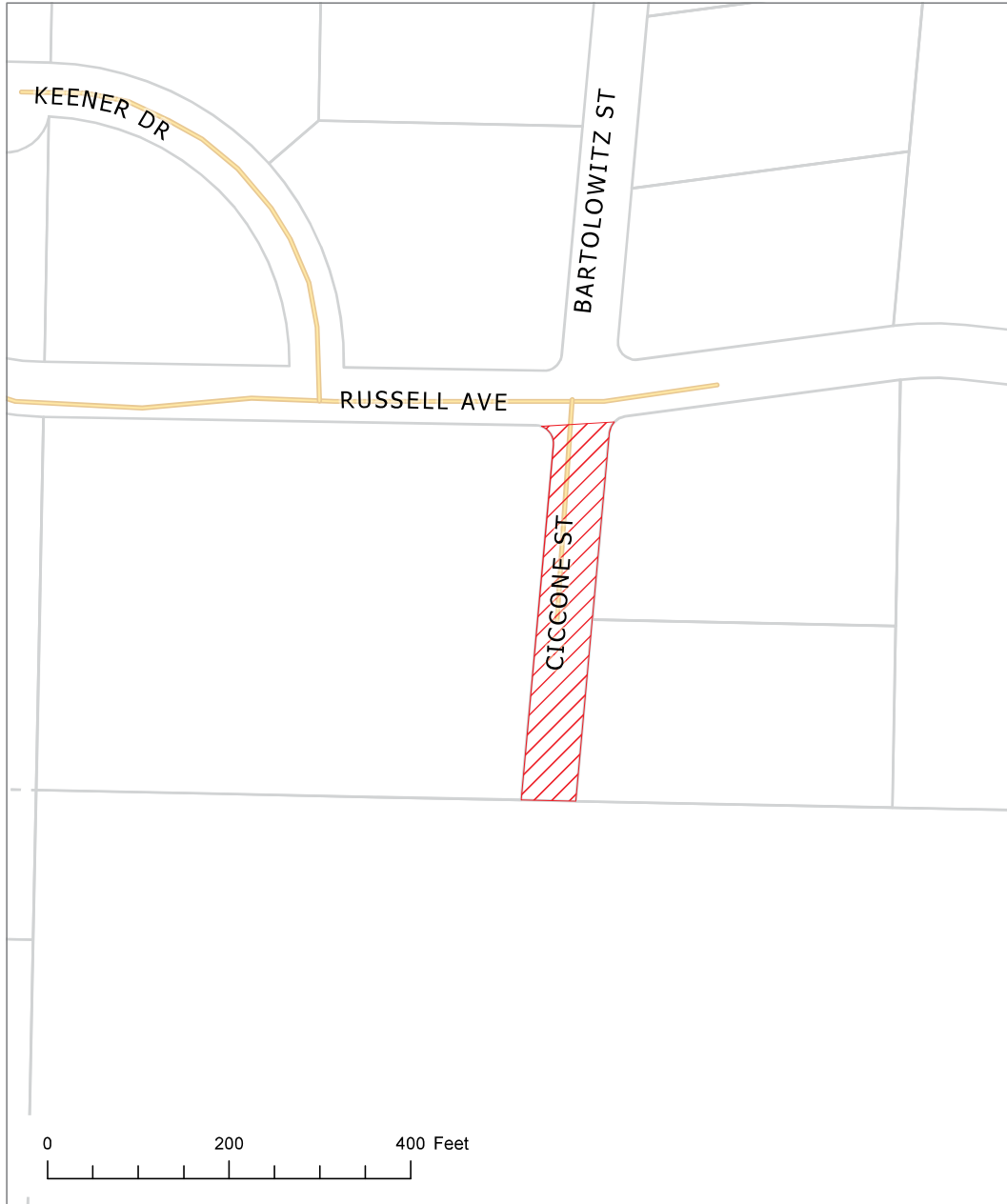
Chair Brantley asked if there was anyone from the public who would like to comment on anything not appearing on the agenda. No one wished to comment.

E. NEW BUSINESS

2. Right-Of-Way Vacation; KPB File 2022-136V

Request: Ciccone Street & Associated Utility Easements

**Johnson Surveying / Jim & Debbie Wann Family Trust, Ciccone
Clam Gulch Area**



KPB File # 2022-136V
S28 T02N R12W
Clam Gulch



A replot of Lots 11 & 12 Clam Gulch Heights, Glendening 1979 Subd. of Tracts 12,13, 14, 15, 16, 17, 18 (KRD 81-135), and Lot 8A Clam Gulch Heights 2011 Addition (KRD 2011-60) 17, 18 (KRD 81-135), including a vacation of Ciccone St. & associated utility easements. Located in the NE1/4 Section 28, T2N R12W, SM, Clam Gulch, Alaska.
Kenai Recording District Kenai Peninsula Borough

Prepared for



Jim & Debbie Wann
Family Trust
P.O. Box 269
Clam Gulch, AK 99568

Prepared by

Johnson Surveying
P.O. Box 27
Clam Gulch, Ak 99568
(907) 262-5772

NOTES

1. A building setback of 20' from all street ROWs is required unless a lesser standard is approved by a resolution of the appropriate planning commission. Building setback is also a utility easement as granted by plat KRD 85-135.
2. No permanent structures shall be constructed or placed within a utility easement that would interfere with the ability of a utility to use the easement.
3. Contour interval 4'. Shaded areas indicate grades over 25%. There are no wet areas on the property.

 - indicates Ciccone St. ROW being vacated.
 - indicates utility easement being vacated.

SCALE 1" = 100'
3 August, 2022

AREA = 9.169 acres

[illegible]

WASTEWATER DISPOSAL

20.40.020(A)(2)
The parent subdivision for lots resulting from this platting action was approved by the Alaska Department of Environmental Conservation on 4/30/1980. Wastewater treatment and disposal systems must meet the regulatory requirements of the Alaska Department of Environmental Conservation.

N1/2 N1/2 N1/2 NE1/4 SW1/14

KPB 2022-136V

AGENDA ITEM E. NEW BUSINESS

**ITEM 2 - RIGHT OF WAY VACATION
60 FOOT WIDE CICCONE STREET RIGHT OF WAY AND ASSOCIATED UTILITY EASEMENTS**

KPB File No.	2022-136V
Planning Commission Meeting:	October 10, 2022
Applicant / Owner:	Jim & Debbie Wann Family Trust of Clam Gulch, AK Anthony & Kathleen Ciccone of Houston, TX
Surveyor:	Jerry Johnson / Johnson Surveying
General Location:	Russell Avenue, Clam Gulch
Legal Description:	Ciccone Street between Lot 8A Clam Gulch Heights 2011 Addition KRD 2011-60 and Lots 11 & 12 Clam Gulch Heights, Glendening 1979 Subdivision of Tracts 12, 13, 14, 15, 16, 17 18 KRD 18-135, Kenai Recording District, Section 28, Township 2 North, Range 12 West Seward Meridian

STAFF REPORT

Specific Request / Purpose as stated in the petition: ROW is being moved to a more desirable location to the adjacent owners.

Notification: Public notice appeared in the September 29, 2022 issue of the Peninsula Clarion as a separate ad. The public hearing notice was published in the October 6, 2022 issue of the Peninsula Clarion as part of the Commission's tentative agenda.

The public notice was posted on the Planning Commission bulletin board at the Kenai Peninsula Borough George A. Navarre Administration building. Additional notices were mailed to the following with the request to be posted for public viewing.

Library of Ninilchik

Post Office of Clam Gulch

Seventeen certified mailings were sent to owners of property within 600 feet of the proposed vacation. Six receipts had been returned when the staff report was prepared.

Seventeen public hearing notices were emailed to agencies and interested parties as shown below;

State of Alaska Dept. of Fish and Game
State of Alaska DNR
State of Alaska DOT
State of Alaska DNR Forestry
Central Emergency Services
Ninilchik Traditional Council

Alaska Communication Systems (ACS)
ENSTAR Natural Gas
General Communications Inc, (GCI)
Homer Electric Association (HEA)

Legal Access (existing and proposed): The proposed vacation is for approximately 400 feet of the 60 foot wide Ciccone Street and the associated utility easements located south of Russell Avenue. Russell Avenue is a borough maintained 60 foot wide right-of-way located near mile 117 of the Sterling Highway. Ciccone Street provides access to one lot along the west, two lots along the east, and dead ends at an 80 acre parcel. Approximately half the length of Ciccone Street is constructed and maintained by the borough and is used by Lot 8A of Clam Gulch Heights 2011 Addition.

New access is proposed with the plat Clam Gulch Heights 2022 Addition. The proposal is to combine the three lots that are along Ciccone Street to create one lot and provide a new 60 foot wide dedication for Ciccone Street to the east of the new lot.

The Sterling Highway, Russell Avenue, and section line easements define a closed block that exceeds allowable lengths. Ciccone Street, if continued south could help the block length. The block length with Ciccone Street where it is currently approximately 1,460 feet. Moving the right-of-way to the east will lengthen the block to approximately 1,800 feet. The only constructed portions of the block are the Sterling Highway and Russell Avenue. Large acreage tracts are to the south that can provide additional rights-of-way to improve the block when they are subdivided. A dedication existed along the southern boundary that improved the block. That right-of-way was granted on Clam Gulch Heights, Plat KN 72-61 and was vacated by Clam Gulch Heights Glendening 1979 Subdivision of Tracts 12-18, Plat KN 81-135.

Ciccone Street currently provides access to an 80 acre parcel with improvements located on it. An 80 acre parcel to the east of that land contains improvements and is owned by the same owner. The large acreage tracts are accessed directly from the Sterling Highway through University of Alaska lands. The existing location of Ciccone Street is the closest dedication to the structures and existing travelway on the property. The replat will move the access to the east approximately 400 feet.

KPB Roads Dept. comments	Out of Jurisdiction: Yes Roads Director: Uhlin, Dil Comments: No comments
SOA DOT comments	

Site Investigation: The existing right-of-way has some sloping within the dedication but nothing extremely steep. The slopes within the new proposed location are less steep and appear to improve the slope associated with the dedication. There are steep slopes found further south within the abutting 80 acre parcel. Continuation of the right-of-way in the future may require some meandering, slope easements, or additional widths to provide for a feasible right-of-way.

There are not low wet areas present in the area to affect the vacation or the new proposed dedication. There are no flood hazard areas present.

A travelway is located within Lots 11 and 12 from Russell Avenue. This travelway runs through the lots to the south and then turns east and runs through Lots 13 and 14 and appears to end within or near Lot 15. Lots 13 and 14 are owned by the petitioners of the vacation. The proposed relocation will allow portions of the existing travelway to be within the dedication.

KPB River Center review	A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Within City of Soldotna/Kenai Comments: No comments B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments C. State Parks Reviewer: Russell, Pam Comments: No Comments
Alaska Fish and Game	No objections

Staff Analysis: The original dedication of Ciccone Street was on Clam Gulch Heights Glendening 1979 Subdivision of Tracts 12, 13, 14, 15, 16, 17, 18 KN 81-135 and was named Barbara Street. The road is partially constructed and maintained but is used as a driveway as it is currently only providing access to one lot with improvements.

As a portion of the existing drive is maintained by the borough, staff would request that the new right-of-way dedication be built to borough standards prior to finalization of the vacation with KPB Roads agreeing that the new construction is acceptable. The creation of the new right-of-way will help provide a good access to the large acreage lot to the south if it is later needed. The new right-of-way will also provide an access to Lot 13 within a dedication and not through parcels.

Homer Electric Association has requested an additional easement but this is not along or within the vacation area and will be addressed on the preliminary plat.

Alaska Communications (ACS) does not approve of the vacation due to equipment along Ciccone Street. Relocation of the equipment can occur at the expense of the land owners. Staff would recommend the owners work with the utility provider to grant utility easements for the existing equipment. If the vacation is approved, staff will not allow the vacation to be finalized without written acceptance by ACS.

20.65.050 – Action on vacation application

- D. The planning commission shall consider the merits of each vacation request and in all cases the planning commission shall deem the area being vacated to be of value to the public. It shall be incumbent upon the applicant to show that the area proposed for vacation is no longer practical for the uses or purposes authorized, or that other provisions have been made which are more beneficial to the public. In evaluating the merits of the proposed vacation, the planning commission shall consider whether:
1. The right-of-way or public easement to be vacated is being used;
Staff comments: The right-of-way is only being used by the property to the west as a driveway. ACS has equipment within the associated utility easement.
 2. A road is impossible or impractical to construct, and alternative access has been provided;
Staff comments: The road is not impossible to construct and portions are but more practical to be dedicated and constructed to the east.
 3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;
Staff comments: The lots on both sides of the vacation are residential usage. The new dedication will provide the same amount of access to the lots to the south as the existing but terrain will need to be considered in future dedications.
 4. The vacation of a public right-of-way provides access to a lake, river, or other area with public interest or value, and if so, whether equal or superior access is provided;
Staff comments: Does not provide access to any public interest area.
 5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;
Staff comments: The new dedication will allow for development to the south and allow for access to the lots to the east.
 6. Other public access, other than general road use, exist or are feasible for the right-of-way;
Staff comments: Other access is not needed.
 7. All existing and future utility requirements are met. Rights-of-way which are utilized by a utility, or which logically would be required by a utility, shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests,

and no other public need for the right-of-way exists, the commission may approve the vacation and require that a utility easement be granted in place of the right-of-way.

Staff comments: Utility easements along new dedications must remain and work with utility providers for any requested easements. Acquire approval from ACS by relocating equipment or granting of additional utility easements.

8. Any other factors that are relevant to the vacation application or the area proposed to be vacated.

Staff comments: This will allow the owners to combine some of their lots.

A KPB Planning Commission decision denying a vacation application is final. A KPB Planning Commission decision to approve the vacation application is subject to consent or veto by the KPB Assembly, or City Council if located within City boundaries. The KPB Assembly, or City Council must hear the vacation within thirty days of the Planning Commission decision.

The Assembly will hear the vacation at their scheduled October 25, 2022 meeting.

If approved, Clam Gulch Heights 2022 Addition will finalize the proposed right of way vacations. The Plat Committee is scheduled to review Clam Gulch Heights 2022 Addition on October 10, 2022.

KPB department / agency review:

Planner	Reviewer: Raidmae, Ryan There are not any Local Option Zoning District issues with this proposed plat. Material Site Comments: There are not any material site issues with this proposed plat.
Code Compliance	Reviewer: Ogren, Eric Comments: No comments
Addressing	Reviewer: Haws, Derek Affecte Addresses: 17565 CICCONE ST 17570 CICCONE ST 17556 CICCONE ST Existing Street Names are Correct: Yes List of Correct Street Names: CICCONE ST RUSSELL AVE KEENER DR BARTOLOWITZ ST Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names; List of Street Names Denied: Comments: 17565 CICCONE ST, 17570 CICCONE ST, and 17556 CICCONE ST will be deleted. New Russell Ave address will be assigned to lot 8A-1.
Assessing	Reviewer: Wilcox, Adeena Comments: No Comment

Utility provider review:

HEA	Locate the overhead single phase electric line and provide a 30 foot easement centered on the overhead line including any down guy anchors within this subdivision boundary.
ENSTAR	No comments or recommendations
ACS	Not approved. ACS has plants along Ciccone St. If they will need to be relocated approval upon contractor for reimbursement.
GCI	Approved as shown

RECOMMENDATION:

Based on consideration of the merits as per KPB 20.65.050(D) as outlined by Staff comments, Staff recommends APPROVAL as petitioned, subject to:

1. Consent by KPB Assembly.
2. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
3. Grant utility easements requested by the utility providers.
4. Construction of the new right-of-way built to the satisfaction of the KPB Road's Department.
5. Submittal of a final plat within a timeframe such that the plat can be recorded within one year of vacation consent (KPB 20.70.130).

KPB 20.65.050 – Action on vacation application

- H. A planning commission decision to approve a vacation is not effective without the consent of the city council, if the vacated area to be vacated is within a city, or by the assembly in all other cases. The council or assembly shall have 30 days from the date of the planning commission approval to either consent to or veto the vacation. Notice of veto of the vacation shall be immediately given to the planning commission. Failure to act on the vacation within 30 days shall be considered to be consent to the vacation. This provision does not apply to alterations of utility easements under KPB 20.65.070 which do not require the consent of the assembly or city council unless city code specifically provides otherwise.**
- I. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, where applicable, the applicant shall have a surveyor prepare and submit a plat including the entire area approved for vacation in conformance with KPB 20.10.080. Only the area approved for vacation by the assembly or council may be included on the plat. The final plat must be recorded within one year of the vacation consent.**
- J. A planning commission decision denying a vacation application is final. No reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.**
- K. An appeal of the planning commission, city council or assembly vacation action under this chapter must be filed in the superior court in accordance with the Alaska Rules of Appellate Procedure.**

The 2019 Kenai Peninsula Borough Comprehensive Plan adopted November, 2019 by Ordinance No. 2019-25. The relevant objectives are listed.

Goal 3. Preserve and improve quality of life on the Kenai Peninsula Borough through increased access to local and regional facilities, activities, programs and services.

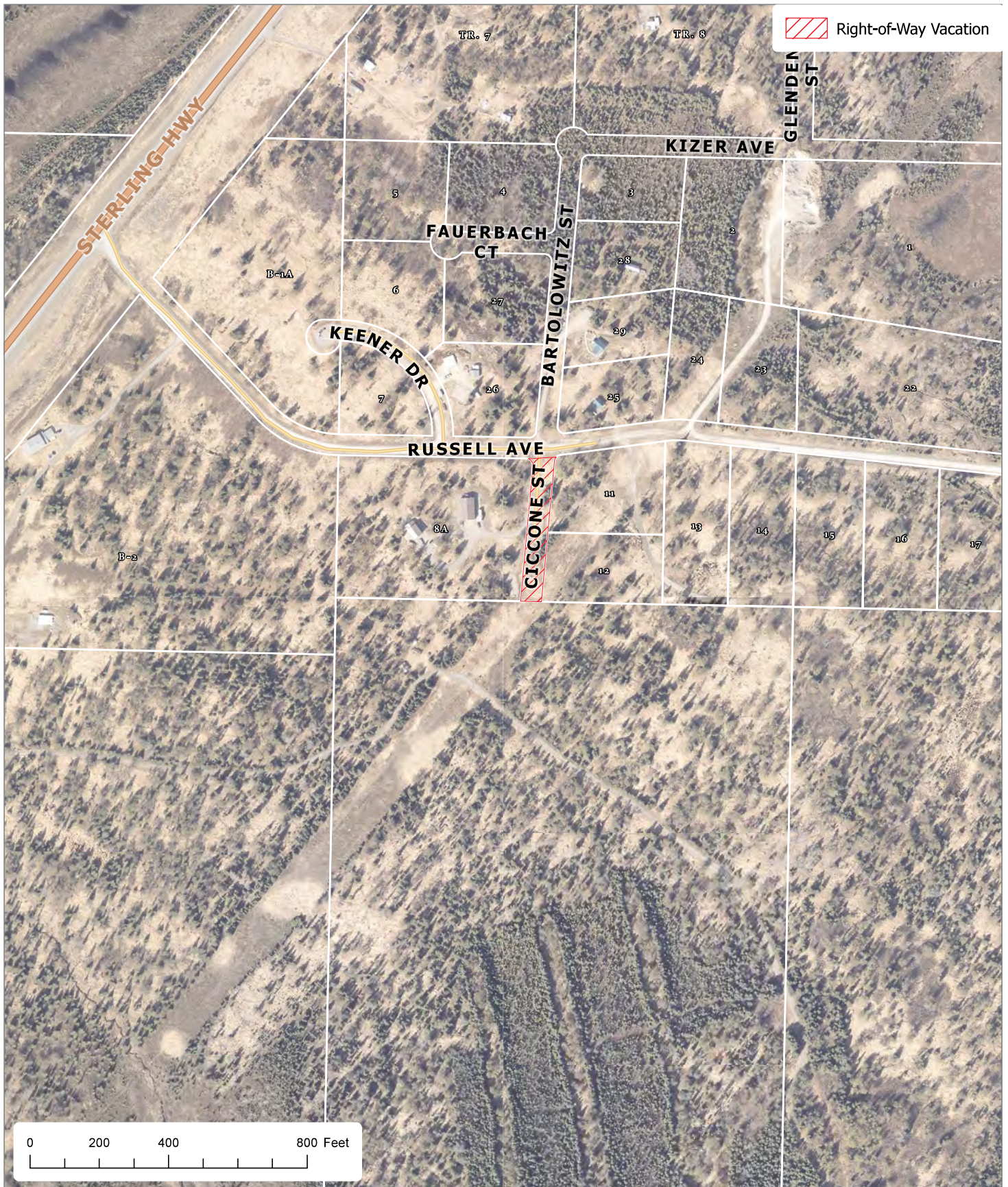
- *Focus Area: Energy and Utilities*

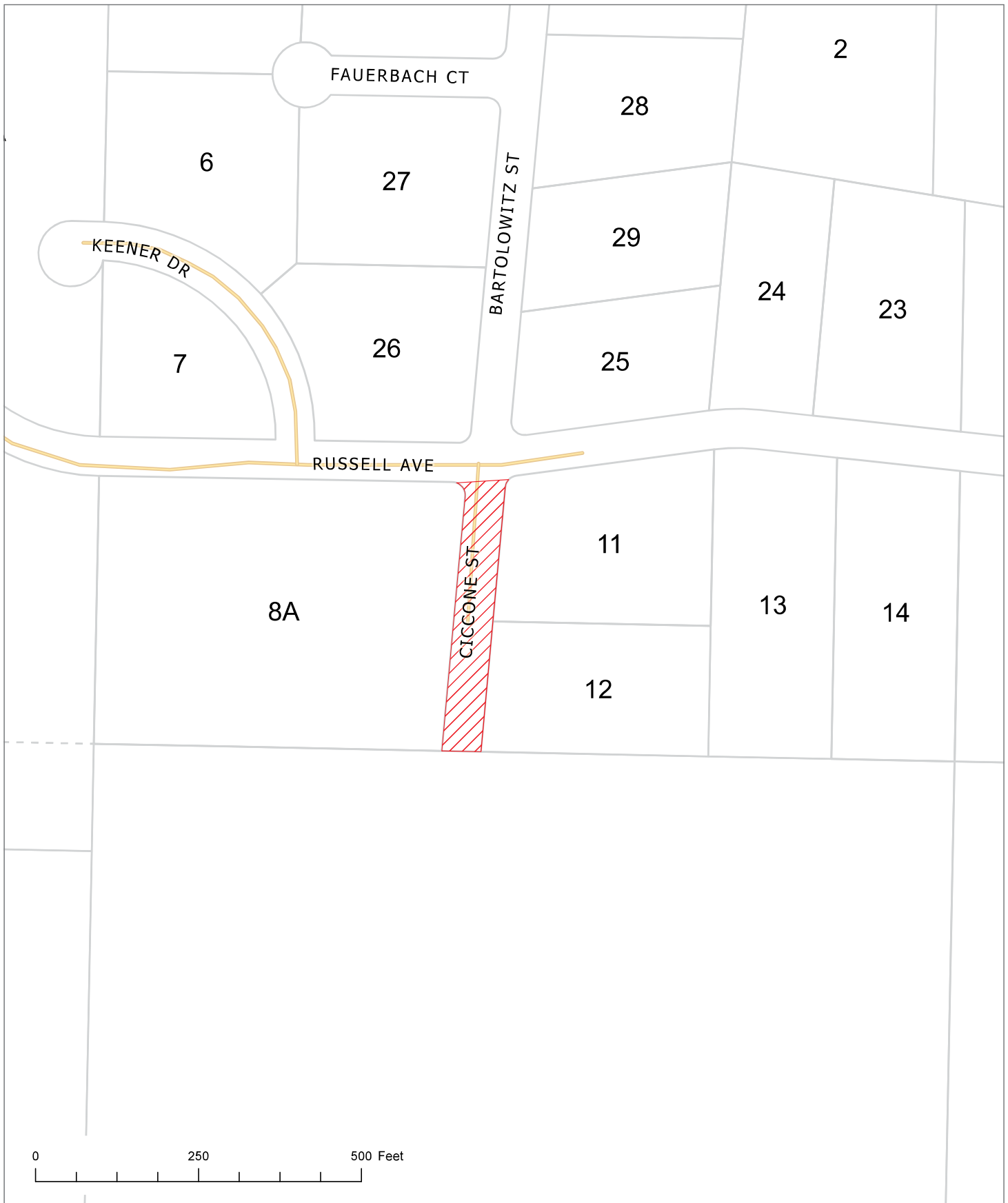
- *Objective A - Encourage coordination of residential, commercial, and industrial development with extension of utilities and other infrastructure.*
 - *Strategy 1. Near – Term: Maintain existing easements (especially section line easements) in addition to establishing adequate utility rights of way or easements to serve existing and future utility needs.*
 - *Strategy 2. Near – Term: Maintain regular contact with utility operators to coordinate and review utility easement requests that are part of subdivision plat approval.*
 - *Strategy 3. Near – Term: Identify potential utility routes on Borough lands.*
 - *Housing*
 - *Objective D. Encourage efficient use of land, infrastructure and services outside incorporated cities by prioritizing future growth in the most suitable areas.*
 - *Strategy 1. Near – Term: Collaborate with the AK Department of Transportation, incorporated cities within the borough, utility providers, other agencies overseeing local services, and existing communities located adjacent to the undeveloped areas that are appropriate for future growth, to align plans for future expansion of services to serve future residential development and manage growth.*
- Goal 4. Improve access to, from and connectivity within the Kenai Peninsula Borough*
- *Focus Area: Transportation*
 - *Objective B. Ensure new roads are developed in alignment with existing and planned growth and development.*
 - *Strategy 2. Near – Term: Establish subdivision codes that dictate road construction standards to accommodate future interconnectivity and/or public safety.*
 - *Strategy 3. Near – Term: Identify areas of anticipated growth to determine future access needs.*

END OF STAFF REPORT



Aerial View

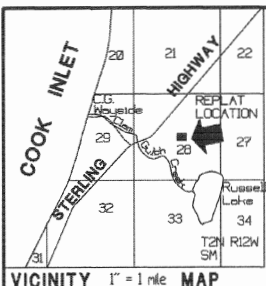






Aerial with 5-foot Contours





CLAM GULCH HEIGHTS 2011 ADDITION

A replat of Lots 8, 9, & 10 Clam Gulch Heights, Glendening 1979
 Subd. of Tracts 12, 13, 14, 15, 16, 17, 18 (KRD 81-135).
 Located in the NE1/4 Section 28, T2N R12W, SM, Clam Gulch, Alaska.
 Kenai Recording District Kenai Peninsula Borough File 2011-084

Prepared for
 James Glendening
 694 Sycamore Circle
 Kenai, AK 99611

Prepared by
 Johnson Surveying
 Box 27
 Clam Gulch, AK 99568



SCALE 1" = 100' **AREA = 5.184 acres**
13 June, 2011

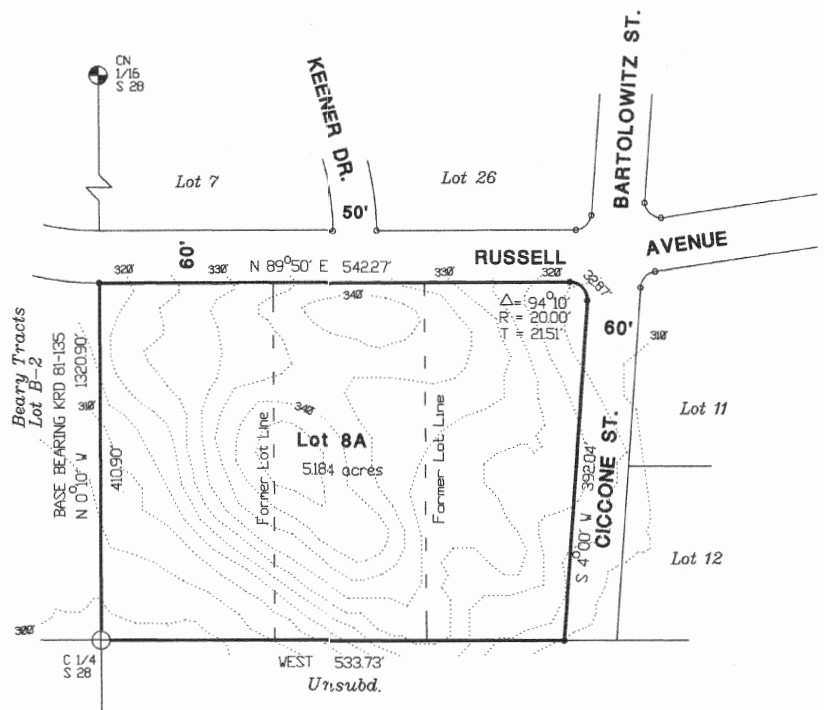
LEGEND

- ⊕ - 2 1/2" brass cap monument, 918-S, 1962, Found.
- ⊙ - 2 1/2" brass cap monument, 268-S, 1978, Found.
- - 1/2" rebar lot corner, Found.

RECORDED-FILED

REC. DIST. 2011-60
 DATE 10-28 2011
 TIME 8:34 AM
 Requested by: Kenai
 Johnson Surveying
 Box 27
 Clam Gulch, AK 99568

- NOTES**
1. A building setback of 20' from all street RDWs is required unless a lesser standard is approved by a resolution of the appropriate planning commission. 20' building setback is to be limit of utilities easement.
 2. No permanent structure shall be constructed or placed within a utility easement which would interfere with the ability of a utility to use the easement.
 3. Restrictive covenants affecting this property are filed with the Kenai District Recorder in Book 513 Page 542 and amended in Book 536 Page 510.



PLAT APPROVAL

This plat was approved by the Kenai Peninsula Borough Planning Commission at the meeting of 18 July, 2011.

KENAI PENINSULA BOROUGH

BY: Maya Best OCT. 26, 2011
 Authorized Official Date

WASTEWATER DISPOSAL

This Lot is at least 200,000 square feet or nominal 5 acres in size and conditions may not be suitable for onsite wastewater treatment and disposal. Any wastewater treatment or disposal systems must meet the regulatory requirements of the Alaska Dept. of Environmental Conservation.

OWNERSHIP CERTIFICATE

I hereby certify that I am the owner of the real property shown and described hereon; and that I hereby adopt this plan of replat, and by my free consent grant all easements to the use shown.

James E. Glendening
 James E. Glendening 694 Sycamore Circle Kenai, AK 99611

NOTARY'S ACKNOWLEDGEMENT

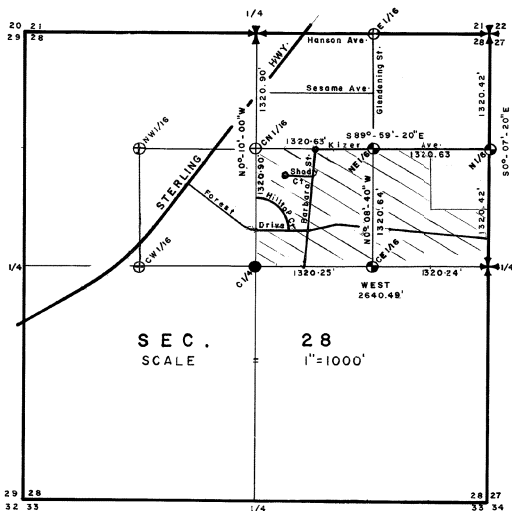
For: James E. Glendening
 Subscribed and sworn to before me this 3

day of October 2011.

Karen Fuller
 Notary Public for Alaska

My commission expires 9-25-2012





NOTE: BUILDING SETBACKS - A setback of 20' is required from all street right of ways unless a lesser standard is approved by resolution of appropriate planning commission.
UTILITY EASEMENTS - 20' building setback line is to be limit of utilities easements.

LEGEND

- ⊙ - Brass cap monument set by 268-S
- ⊕ - 1978 brass cap mon. by 268-S found
- - brass cap by Cloud Hoffman, found
- ⊗ - 1919 brass cap by G.L.O., found
- - 1/2" x 2" rerod set.

CURVES

1
A=88°-00'-48" R=50.00'
B=20.00' C=41.63'
T=22.88' L=30.02'
CB=N47°-00'-20"E BC=S29°-55'-25"E

3
A=85°-50' R=50.00'
B=20.00' C=41.63'
T=22.88' L=30.02'
CB=N47°-00'-20"E BC=S29°-55'-25"E

5
A=90° R=50.00'
B=20.00' C=41.63'
T=22.88' L=30.02'
CB=N47°-00'-20"E BC=S29°-55'-25"E

7
A=53°-08' R=50.00'
B=20.00' C=41.63'
T=22.88' L=30.02'
CB=N47°-00'-20"E BC=S29°-55'-25"E

9
A=85°-50' R=50.00'
B=20.00' C=41.63'
T=22.88' L=30.02'
CB=N47°-00'-20"E BC=S29°-55'-25"E

11
A=77°-15' R=50.00'
B=20.00' C=41.63'
T=22.88' L=30.02'
CB=N47°-00'-20"E BC=S29°-55'-25"E

13
A=119°-45' R=330.00'
B=330.00' C=79.00'
T=39.79' L=79.19'
CB=N88°-07'-30"W BC=N88°-07'-30"W

15
A=90°-00' R=270.00'
B=270.00' C=64.64'
T=32.32' L=64.64'
CB=N88°-07'-30"W BC=N88°-07'-30"W

17
A=48°-29' R=330.00'
B=330.00' C=79.00'
T=39.79' L=79.19'
CB=N88°-07'-30"W BC=N88°-07'-30"W

19
A=48°-29' R=330.00'
B=330.00' C=79.00'
T=39.79' L=79.19'
CB=N88°-07'-30"W BC=N88°-07'-30"W

21
A=48°-29' R=330.00'
B=330.00' C=79.00'
T=39.79' L=79.19'
CB=N88°-07'-30"W BC=N88°-07'-30"W

23
A=48°-29' R=330.00'
B=330.00' C=79.00'
T=39.79' L=79.19'
CB=N88°-07'-30"W BC=N88°-07'-30"W

25
A=48°-29' R=330.00'
B=330.00' C=79.00'
T=39.79' L=79.19'
CB=N88°-07'-30"W BC=N88°-07'-30"W

27
A=48°-29' R=330.00'
B=330.00' C=79.00'
T=39.79' L=79.19'
CB=N88°-07'-30"W BC=N88°-07'-30"W

29
A=48°-29' R=330.00'
B=330.00' C=79.00'
T=39.79' L=79.19'
CB=N88°-07'-30"W BC=N88°-07'-30"W

31
A=48°-29' R=330.00'
B=330.00' C=79.00'
T=39.79' L=79.19'
CB=N88°-07'-30"W BC=N88°-07'-30"W

CLAM GULCH HEIGHTS

GLENDENING 1979 SUBDIVISION OF TRACTS 12,13,14,15,16,17,18

LOCATED IN S1/2 NE1/4 SEC.28, T2N R12W S.M. CLAM GULCH, ALASKA 99568

SCALE 1"= 200' AREA = 70.058 AC.

DEC. 26, 1980

BY: JAMES E. AND BARBARA E. GLENDENING BOX 38 KASLOF, AK. 99568

PLAT APPROVAL

This plat was approved by the KENAI PENINSULA BOROUGH PLANNING COMMISSION at the meeting of

AUGUST 6 1979

KENAI PENINSULA BOROUGH

By

[Signature]

ADMINISTRATIVE OFFICIAL

CERTIFICATE OF OWNERSHIP AND DEDICATION

We hereby certify that we are the owners of the property shown and described hereon, and that we hereby adopt this plan of subdivision, and dedicate all right of ways to public use, and grant all easements to the use shown.

[Signature]
JAMES E. GLENDENING

[Signature]
BARBARA E. GLENDENING

NOTARY'S ACKNOWLEDGEMENT

Subscribed and sworn to before me this 4th day of September 1981

[Signature]
Jane M. Gabler
NOTARY PUBLIC FOR ALASKA, for James E. and

Barbara E. Glendenning

My commission expires Sept. 13, 1981

Barbara E. Glendenning

Barbara E. Glendenning

Barbara E. Glendenning

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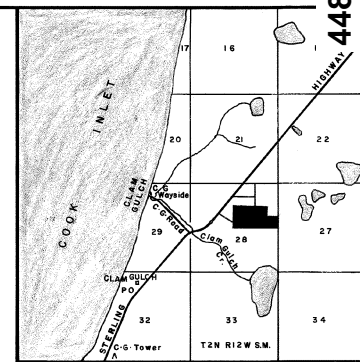
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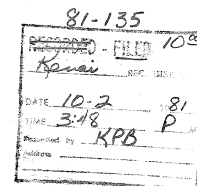
Barbara E. Glendenning

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Barbara E. Glendenning



VICINITY SCALE 1"=1 MILE MAP



BOX 27 CLAM GULCH, AK. 99568



Kenai Peninsula Borough Planning Department
144 North Binkley
Soldotna, Alaska 99669-7599
Toll free within the Borough 1-800-478-4441, extension 2200
(907) 714-2200

RECEIVED

SEP 07 2022

KPB PLANNING DEPT.

Petition to Vacate Public Right-of-Way/Easement/Platted Public Area
Public Hearing Required

Upon receipt of complete application with fees and all required attachments, a public hearing before the Planning Commission will be scheduled. The petition with all required information and attachments must be in the Planning Department at least 30 days prior to the preferred hearing date. By State Statute and Borough Code, the public hearing must be scheduled within 60 days of receipt of complete application.

- ☒ \$500 non-refundable fee to help defray costs of advertising public hearing.
- ☐ City Advisory Planning Commission. Copy of minutes at which this item was acted on, along with a copy of City Staff Report.
- ☒ Name of public right-of-way proposed to be vacated is dedicated by the plat of Clam Gulch Heights Subdivision, filed as Plat No. 81-135 in Kenai Recording District.
- ☒ Are there associated utility easements to be vacated? ☒ Yes ☐ No
- ☐ Are easements in use by any utility company? If so, which company NO
- ☐ Easement for public road or right-of-way as set out in (specify type of document) _____ as recorded in Book _____ Page _____ of the _____ Recording District. (Copy of recorded document must be submitted with petition.)
- ☒ Submit three copies of plat or map showing area proposed to be vacated. Must not exceed 11x17 inches in size. In the case of public right-of-way, the submittal must include a sketch showing which parcels the vacated area will be attached to. Proposed alternative dedication is to be shown and labeled on the sketch.
- Has right-of-way been fully or partially constructed? ☐ Yes ☒ No
- Is right-of-way used by vehicles / pedestrians / other? ☐ Yes ☒ No
- Is alternative right-of-way being provided? ☒ Yes ☐ No

The petitioner must provide reasonable justification for the vacation. Reason for vacating:
ROW is being moved to a more desirable location to the adjacent owners

The petition must be signed (written signature) by owners of the majority of land fronting the right-of-way, easement, or platted public area proposed to be vacated. Each petitioner must include address and legal description of his/her property.

Submitted By:

Name: Anthony & Kathleen Ciccone
Address: 16111 Pasadena Dr.
Houston, TX 77083-3815

Signature as:

☒ Petitioner☐ RepresentativePhone 281-224-2956

Petitioners:

Signature Anthony Ciccone
Name Anthony Ciccone
Address 16111 Pasadena Dr.
Houston, TX 77083-3815

Signature Kathleen S. Ciccone
Name Kathleen Ciccone
Address 16111 Pasadena Dr.
Houston, TX 77083-3815

Owner of Clam Gulch Hts Glendening
79 TRS 12-19 L11 & 12

Signature James W Wann
Name James W Wann
Address PO Box 269
Kasilof, AK 99610

(Jim & Debbie Wann family trust)
Owner of Clam Gulch Hts Glendening
79 TRS 12-19 L 8-A

Owner of Clam Gulch Hts Glendening
79 TRS 12-19 L11


Signature _____
Name _____
Address _____

Owner of _____

Kenai Peninsula Borough
Office of the Borough Mayor

MAYOR'S REPORT TO THE ASSEMBLY

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

FROM: Mike Navarre, Kenai Peninsula Borough Mayor 

DATE: October 25, 2022

Assembly Request / Response

None

Agreements and Contracts

- a. Authorization to Award a Contract for ITB23-002 SPH Roof Replacement
- b. Authorization to Award a Contract for ITB23-014 Nikiski Fire Station #2 Lighting
- c. 23F1A Bruno Road Flooding Event – Real Property Tax Exemptions – Disaster Damage
- d. Central Peninsula Landfill – Landfill Gas to Energy Update
- e. South Peninsula Future Inert Waste Landfill Search

Other

- a. Budget Revisions-September 2022
- b. Revenue-Expenditure Report-September 2022
- c. Capital Project Reports- September 30, 2022

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Kenai Peninsula Borough

Purchasing & Contracting

MEMORANDUM

TO: Mike Navarre, Acting Mayor

THRU: John Hedges, Purchasing & Contracting Director *JH*

FROM: Kevin Kinnie, Project Manager *kk*

DATE: October 3, 2022

RE: Authorization to Award a Contract for ITB23-002 SPH Roof Replacement

The Purchasing and Contracting Office formally solicited and received bids for the ITB23-002 SPH Roof Replacement. Bid packets were released on July 19, 2022 and the Invitation to Bid was advertised in the Peninsula Clarion on July 19, 2022, Homer News on July 21, 2022 and in the Anchorage Daily News on July 19, 2022.

The project consists of providing all labor and materials to replace two sections of roof at the South Peninsula Hospital, 4300 Bartlett Street, Homer, Alaska.

On the due date of August 10, 2022, four (4) bids were received and reviewed to ensure that all the specifications and delivery schedules were met. The scope of work was changed to only have Section A of the roof replaced with a low bid of \$734,500 was submitted by RPR, Inc., dba Rain Proof Roofing.

Your approval for this bid award is hereby requested. Funding for this project is in account numbers 491.81210.21SHC.43011 and 491.81210.22SHQ.43011.

Mike Navarre

Mike Navarre, Acting Mayor

10/3/2022

Date

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No. <u>491.81210.21SHC.43011</u>	<u>\$161,534.65</u>
Acct. No. <u>491.81210.22SHQ.43011</u>	<u>\$572,965.35</u>
By: <i>CJ BH</i>	Date: <u>10/3/2022</u>

NA

**KENAI PENINSULA BOROUGH
PURCHASING & CONTRACTING****BID TAB FOR: ITB23-002 South Peninsula Hospital Roof Replacement**

CONTRACTOR	LOCATION	BASE BID
RPR, Inc., dba Rain Proof Roofing	Anchorage, Alaska	\$1,174,000.00
Earhart Roofing Co., Inc.	Anchorage, Alaska	\$1,224,000.00
Interior Alaska Roofing, Inc.	Fairbanks, Alaska	\$1,394,700.00
Wolverine Supply, Inc.	Wasilla, Alaska	\$1,437,000.00

DUE DATE: August 16, 2022**KPB OFFICIAL:**
John Hedges, Purchasing & Contracting Director

Kenai Peninsula Borough

PURCHASING AND CONTRACTING

MEMORANDUM

TO: Mike Navarre, Acting Borough Mayor

THRU: John Hedges, Purchasing & Contracting Director JH

FROM: Carmen Vick, Project Manager CV

DATE: October 4, 2022

RE: Authorization to Award a Contract for ITB23-014 Nikiski Fire Station #2 Lighting

The Purchasing and Contracting Office formally solicited and received bids for ITB23-014 Nikiski Fire Station #2 Lighting. Bid packets were released on August 31, 2022 and the Invitation to Bid was advertised in the Peninsula Clarion and the Anchorage Daily News on August 31, 2022.

The project consists of providing all labor & materials to repair / replace lighting / fixtures per contract documents.

On the due date of September 29, 2022, one (1) bid was received and reviewed to ensure that all the specifications and delivery schedules were met. The low bid of \$38,940.00 was submitted by Huffer Electric, Inc., Soldotna, Alaska.

Your approval for this bid award is hereby requested. Funding for this project is in account number 441.51110.23412.43011.

Mike Navarre

Mike Navarre, Acting Borough Mayor

10/5/2022

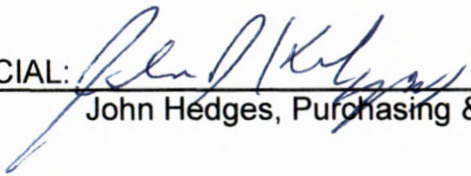
Date

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No.	441.51110.23412.43011
Amount	\$38,940.00
By: <u>CV</u>	Date: <u>10/4/2022</u>

NA

**KENAI PENINSULA BOROUGH
PURCHASING & CONTRACTING****BID TAB FOR: ITB23-014 NIKISKI FIRE STATION #2 LIGHTING PHASE II**

CONTRACTOR	LOCATION	BASE BID	ALTERNATE BID	TOTAL BID
HUFFER ELECTRIC	SOLDOTNA, AK	\$25,955.00	\$12,985.00	\$38,940.00

DUE DATE: September 29, 2022**KPB OFFICIAL:**
John Hedges, Purchasing & Contracting Director

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Kenai Peninsula Borough

Assessing Department

MEMORANDUM

TO: Mike Navarre, Mayor

THRU: Brandi Harbaugh, Finance Director *BH*
Brenda Ahlberg, Emergency Manager *BA*

FROM: Adeena Wilcox, Borough Assessor *aw*

DATE: October 13, 2022

RE: 23F1A Bruno Road Flooding Event – Real Property Tax Exemptions – Disaster Damage

Kenai Peninsula Borough Real Property Tax - Exemption - Disaster Damage (KPB Title 5.12.114) is available to qualified owners whose property was damaged by disaster without his/her fault.

I, Mike Navarre, Borough Mayor, hereby qualify the areas impacted by flooding as a result of the flooding event Sunday October 9, 2022 in the unincorporated community of Bear Creek. This qualification authorizes the Borough Assessing Department to reassess damaged properties for a real property tax exemption – disaster relief. Effected property owners must apply for disaster relief. Property owners must meet all qualifications to be eligible for this exemption on or before December 7, 2022 (60 days from the date of the disaster).

Mike Navarre

Mike Navarre, Mayor

10/13/2022

Date

Kenai Peninsula Borough
Solid Waste Department

MEMORANDUM

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

THRU: Mike Navarre, Mayor

FROM: Lee Frey, Solid Waste Director

DATE: October 14, 2022

RE: Central Peninsula Landfill – Landfill Gas to Energy Update

The Homer Electric Association (HEA) received grant from the Alaska Energy Authority for the KPB CPL Landfill Gas Combined Heat & Power Project in the amount of \$884,986 with HEA providing a match of \$221,247 for a total of \$1,106,223. These are design funds only and proposed for developing construction documents for a landfill gas collection system and a 1.6 MW generator capable of using landfill gas. The waste heat coming off the generator would be captured and directed to the leachate evaporator to further reduce gas consumption requirements.

Since HEA has received the grant, we have been in discussion about developing the scope of work for the project. I have been contacting other landfills in regards to their benefits and issues with similar projects using landfill gas for power generation and capturing the waste heat for evaporation. A major item in this project will be developing the agreement between the Borough and HEA in regards to the financial terms that make it a success for both parties. Although landfill and power company management structures vary across the country, I have been unable to find a group with a similar arrangement to our proposal.

We will continue to move forward with design of the project with the future goal of seeking funding for construction. We will also continue discussions on operational and financial terms that will make this future project a success for the Borough and HEA.

Please contact me for any questions or additional information.

Kenai Peninsula Borough

Solid Waste Department

MEMORANDUM

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

THRU: Mike Navarre, Mayor
Robert Ruffner, Planning Director

FROM: Lee Frey, Solid Waste Director

DATE: October 14, 2022

RE: South Peninsula Future Inert Waste Landfill Search

The Solid Waste Department in cooperation with the Planning Department has been reviewing several properties in the southern peninsula for future development of a new inert waste monofill. Inert waste is commonly known as construction or demolition debris. The monofill at the Homer Transfer site is estimated to have 6-7 years of life remaining before closure and we desire to have a site permitted and constructed before the active cell is full.

Suitable land for an inert waste cell can be difficult to locate. Ideally the property has relatively deep ground water, separation from surface water and wetlands, provides a significantly large area for development providing a long lifespan and allows us to have a source for cover material onsite. From a fiscal perspective, the property would be located close to the highway and utilities, already be owned by the Borough and be close to the population centers it serves. Sites in already developed residential or recreational areas could be problematic during permitting and public comment.

While there are several potential locations we reviewed, we have identified Parcel #16910153 that is owned by the Borough, off of Ibenson Road in Anchor Point as a site for further investigation. The 80 acre parcel has minor development around it and there are adjacent properties that may allow a larger footprint, if acquired. A map with the proposed parcel highlighted is included.

With operating funds already allocated in the FY23 Homer Transfer Facility budget, we will proceed with geotechnical and groundwater investigation at the site to further determine suitability. Please contact me for any questions or

Page -2-

10/14/22

To: Brent Johnson, Assembly President, Member, Kenai Peninsula Borough
Assembly

RE: South Peninsula Future Inert Waste Landfill Search

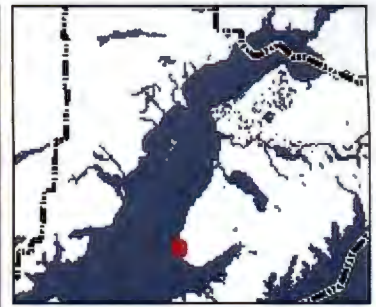
information.



Geographic Information Systems

144 North Binkley Street, Soldotna, Alaska 99669

Parcel #16910153



Legend

- Mileposts
- City Limits
- Highways
- Major Roads
- Roads
 - Town Medium Volume
 - Town Low/Seasonal; Other
 - Proposed
- Parcels

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. It is not to be used for navigation.

Notes

DATE PRINTED: 10/14/2022

Kenai Peninsula Borough

Finance Department

MEMORANDUM

TO: Brent Johnson, Assembly President
Members of the Kenai Peninsula Borough Assembly

THRU: Mike Navarre, Borough Mayor

THRU: Brandi Harbaugh, Finance Director *BH*

FROM: Sarah Hostetter, Payroll Accountant *SH*

DATE: October 5, 2022

RE: Budget Revisions – September 2022

Attached is a budget revision listing for September 2022. The attached list contains budget revisions between major expenditure categories (i.e., maintenance & operations and capital outlay). Other minor transfers were processed between object codes within major expenditure categories.

SEPTEMBER 2022**INCREASE****DECREASE****911 DISPATCH**

To purchase audio codes modules to prepare for new AT&T 911 trunks.

264-11255-00000-40110 (Regular Wages)		\$3,684.00
264-11255-00000-48710 (Minor Office Equipment)	\$3,684.00	

HUMAN RESOURCES - ADMINISTRATION

To cover relocation expenses for the HR Director.

100-11230-00000-40110 (Regular Wages)		\$10,000.00
100-11230-00000-43210 (Transport & Subsistence)	\$10,000.00	

KACHEMAK EMERGENCY SERVICES

To purchase promotional supplies, funds are available due to lower than expected equipment costs.

212-51810-00000-48515 (Medical Equipment)		\$4,000.00
212-51810-00000-42220 (Medical Supplies)	\$4,000.00	

LEGAL DEPARTMENT

Increasing wages to equalize pay between the two Deputy Attorneys.

100-11310-00000-43011 (Contract Services)		\$7,000.00
100-11310-00000-40110 (Regular Wages)	\$7,000.00	

PURCHASING DEPARTMENT

To purchase a new computer and desk.

100-11227-00000-40110 (Regular Wages)		\$3,500.00
100-11227-00000-48710 (Minor Office Equipment)	\$2,100.00	
100-11227-00000-48720 (Minor Office Furniture)	\$1,400.00	

WESTERN EMERGENCY SERVICES

Additional funds needed for the Land Purchase.

209-51410-00000-43014 (Physical Examinations)		\$2,079.00
209-51410-00000-50252 (Transfer to Land Trust Investment Fund)	\$2,079.00	

Kenai Peninsula Borough

Finance Department

MEMORANDUM

TO: Brent Johnson, Assembly President
Members of the Kenai Peninsula Borough Assembly

THRU: Mike Navarre, Borough Mayor

THRU: Brandi Harbaugh, Finance Director *BH*

FROM: Sarah Hostetter, Payroll Accountant *SH*

DATE: October 5, 2022

RE: Revenue-Expenditure Report – September 2022

Attached is the Revenue-Expenditure Report of the General Fund for the month of September 2022. Please note that 25% of the year has elapsed, 32.34% of budgeted revenues have been collected, and 19.91% of budgeted expenditures have been made.

KENAI PENINSULA BOROUGH
Revenue Report
For the Period
September 1 through September 30, 2022

ACCOUNT NUMBER	DESCRIPTION	ESTIMATED REVENUE	YEAR TO DATE RECEIPTS	MONTH TO DATE RECEIPTS	VARIANCE	% COLLECTED
31100	Real Property Tax	\$ 31,396,714	\$ 17,556,859	\$ 10,240,984	\$ (13,839,855)	55.92%
31200	Personal Property Tax	1,867,988	1,027,208	748,519	(840,780)	54.99%
31300	Oil Tax	6,755,283	6,753,103	711	(2,180)	99.97%
31400	Motor Vehicle Tax	642,580	50,297	50,297	(592,283)	7.83%
31510	Property Tax Penalty & Interest	717,562	31,412	15,119	(686,150)	4.38%
31610	Sales Tax	42,000,000	3,046,051	2,288,205	(38,953,949)	7.25%
33110	In Lieu Property Tax	3,100,000	-	-	(3,100,000)	0.00%
33117	Other Federal Revenue	155,534	-	-	(155,534)	0.00%
33220	Forestry Receipts	500,000	-	-	(500,000)	0.00%
34110	School Debt Reimbursement	2,449,113	-	-	(2,449,113)	0.00%
34221	Electricity & Phone Revenue	155,000	-	-	(155,000)	0.00%
34222	Fish Tax Revenue Sharing	500,000	-	-	(500,000)	0.00%
34210	Revenue Sharing	894,402	894,402	894,402	-	100.00%
37350	Interest on Investments	364,493	279,684	114,569	(84,809)	76.73%
39000	Other Local Revenue	265,000	97,678	40,857	(167,322)	36.86%
290	Solid Waste	602,000	134,154	5,927	(467,846)	22.28%
Total Revenues		\$ 92,365,669	\$ 29,870,849	\$ 14,399,590	\$ (62,494,820)	32.34%

KENAI PENINSULA BOROUGH
Expenditure Report
For the Period
September 1 through September 30, 2022

DESCRIPTION	REVISED BUDGET	YEAR TO DATE EXPENDED	MONTH TO DATE EXPENDED	AMOUNT ENCUMBERED	AVAILABLE BALANCE	% EXPENDED
Assembly:						
Administration	\$ 542,587	\$ 163,439	\$ 68,517	\$ 110,480	\$ 268,668	30.12%
Clerk	614,064	123,945	60,020	20,292	469,827	20.18%
Elections	224,513	7,727	5,347	146,582	70,204	3.44%
Records Management	381,831	102,760	34,917	18,994	260,077	26.91%
Mayor Administration	1,114,354	185,562	83,453	4,475	924,317	16.65%
Purch/Contracting/Cap Proj	710,159	134,697	63,473	21,605	553,858	18.97%
Human Resources:						
Administration	930,768	184,636	76,595	11,932	734,200	19.84%
Print/Mail	240,995	54,345	12,479	28,342	158,309	22.55%
Custodial Maintenance	132,655	26,767	12,350	71	105,817	20.18%
Information Technology	2,463,342	457,213	164,668	70,940	1,935,190	18.56%
Emergency Management	1,028,719	211,309	75,899	79,030	738,380	20.54%
Legal Administration	1,285,948	237,905	134,008	226,347	821,695	18.50%
Finance:						
Administration	575,568	142,869	63,722	3,870	428,829	24.82%
Services	1,197,353	321,592	100,468	38,645	837,116	26.86%
Property Tax	1,187,490	306,262	81,385	51,393	829,835	25.79%
Sales Tax	1,226,455	230,728	89,253	553	995,174	18.81%
Assessing:						
Administration	1,482,895	361,353	110,875	44,513	1,077,028	24.37%
Appraisal	1,784,074	362,143	169,976	5,812	1,416,118	20.30%
Resource Planning:						
Administration	1,668,055	261,644	120,500	65,922	1,340,489	15.69%
GIS	722,796	239,174	95,793	2,098	481,523	33.09%
River Center	791,460	182,761	69,405	35,843	572,856	23.09%
Senior Citizens Grant Program	791,444	-	-	791,444	-	0.00%
School District Operations	61,313,017	10,602,857	-	-	50,710,160	17.29%
Solid Waste Operations	11,663,194	3,122,667	824,203	2,199,992	6,340,535	26.77%
Economic Development	549,878	-	-	214,550	335,328	0.00%
Non-Departmental	1,767,099	1,169,347	18,119	58,049	539,704	66.17%
Total Expenditures	\$ 96,390,712	\$ 19,193,701	\$ 2,535,424	\$ 4,251,774	\$ 72,945,237	19.91%

Kenai Peninsula Borough

Finance Department

MEMORANDUM

TO: Brent Johnson, Assembly President
Members of the Kenai Peninsula Borough Assembly

THRU: Mike Navarre, Borough Mayor

THRU: Brandi Harbaugh, Finance Director *BH*

FROM: Sarah Hostetter, Payroll Accountant *SH*

DATE: October 10, 2022

RE: Capital Project Reports – September 30, 2022

Attached are the quarterly project reports for the Borough's capital project funds:

Fund 400 - Borough and Grant Funded School Capital Projects Fund
Fund 401 - Bond Funded Capital Projects Fund
Fund 407 - General Government Capital Projects Fund
Fund 411 - Solid Waste Capital Projects Fund
Fund 434 - Road Service Area Capital Projects Fund
Fund 441 - Nikiski Fire Service Area Capital Projects Fund
Fund 442 - Bear Creek Fire Service Area Capital Projects Fund
Fund 443 - Central Emergency Service Area Capital Projects Fund
Fund 444 - Western Emergency Service Area Capital Projects Fund
Fund 446 - Kachemak Emergency Service Area Capital Projects Fund
Fund 455 - Communication Center 911 Capital Projects Fund
Fund 459 - North Peninsula Recreation Service Area Capital Projects Fund
Fund 490 - Central Peninsula Hospital Capital Projects Fund
Fund 491 - South Peninsula Hospital Capital Projects Fund

School Revenue Projects - Fund 400

Balances through September 30, 2022

Project	Year	Site	Project Description	Authorized Amount	FY23 Budget	Expend FY23	Total LTD Expenditures	Unexpended Balance
13DSG	2013	78050	A/W Design Improvements	\$ 200,000	\$ 107,382	\$ -	\$ 92,618	\$ 107,382
14000	2014	78050	A/W Auditorium Lighting	75,000	9,322	-	65,678	9,322
17727	2017	78050	A/W Bleacher Replacement	100,000	22,675	-	77,325	22,675
17780	2017	78050	A/W Playground Upgrades	75,000	7,421	2,975	70,553	4,447
17782	2017	78050	A/W ADA Upgrades	75,000	3,256	-	71,744	3,256
17802	2017	78050	A/W Asphalt/Sidewalk Repair	75,000	734	-	74,266	734
17860	2017	78050	A/W Generator/Hardware	100,000	695	-	99,305	695
18728	2018	78050	A/W Doors/Entries	100,000	629	629	100,000	-
18759	2018	78050	A/W Water Quality Improvements	125,000	19,159	11,786	117,627	7,373
18802	2018	78050	A/W Asphalt/Sidewalk Repair	150,000	97,876	7,500	59,624	90,376
18851	2018	78010	A/W Portables/Outbuildings	75,000	2,312	1,852	74,540	460
18860	2018	78050	A/W Generator/Hardware	75,000	1,905	-	73,095	1,905
19714	2019	78050	A/W Window/Siding Replacement	150,000	56,505	1,845	95,340	54,660
19782	2019	78050	A/W ADA Upgrades	75,000	6,446	-	68,554	6,446
19802	2019	78050	A/W Asphalt/Sidewalk Repair	150,000	150,000	-	-	150,000
19803	2019	78050	A/W Elevator Upgrades	50,000	50,000	-	-	50,000
19860	2019	78050	A/W Generator/Hardware	50,000	4,275	-	45,725	4,275
19801	2019	72010	Homer High Boiler Replacement	425,000	2,854	-	422,146	2,854
KSELO	2019	71065	KSELO New School Construction	13,010,000	12,940,743	5,274	74,531	12,935,469
20728	2020	78050	A/W Doors/Entries	100,000	38,386	22,777	84,391	15,609
20756	2020	78050	A/W Asbestos Removal/Repair	75,000	43,675	-	31,325	43,675
20758	2020	78050	A/W Electrical/Lighting	125,000	193	193	125,000	-
20759	2020	78050	A/W Water Quality Improvements	100,000	18,739	18,519	99,780	220
20780	2020	78050	A/W Playground Upgrades	75,000	38,068	7,833	44,765	30,235
20782	2020	78050	A/W ADA Upgrades	75,000	75,000	-	-	75,000
20801	2020	78050	A/W HVAC/DDC/Boiler Upgrades	1,225,000	97,282	11,982	1,139,700	85,300
20803	2020	78050	A/W Elevator Upgrades	50,000	50,000	-	-	50,000
20856	2020	78050	A/W Security/Safety	100,000	1,460	44	98,584	1,416
20CON	2020	7(1/2)010	Chapman Remodel/Homer HS DDC	1,000,000	71,533	-	928,467	71,533
21714	2021	78050	A/W Window/Siding Replacement	100,000	100,000	-	-	100,000
21755	2021	78050	A/W Flooring Upgrades	175,000	66,312	41,742	150,431	24,570
21756	2021	78050	A/W Asbestos Removal/Repair	75,000	75,000	-	-	75,000
21758	2021	78050	A/W Electrical/Lighting	125,000	346	346	125,000	-
21759	2021	78050	A/W Water Quality Improvements	50,000	42,287	1,736	9,449	40,551
21801	2021	78050	A/W HVAC/DDC/Boiler Upgrades	75,000	65,828	10,057	19,230	55,770
21802	2021	78050	A/W Asphalt/Sidewalk Repair	100,000	100,000	-	-	100,000
21803	2021	78050	A/W Elevator Upgrades	75,000	75,000	-	-	75,000
21851	2021	78010	A/W Portables/Outbuildings	75,000	55,367	44,362	63,994	11,006
21855	2021	78050	A/W Locker Replacement	75,000	53,164	-	21,836	53,164
21856	2021	78050	A/W Security/Safety	100,000	63,141	13,223	50,082	49,918
21860	2021	78050	A/W Generator/Hardware	50,000	1,897	603	48,706	1,294
21ADA	2021	78050	A/W ADA Upgrades	75,000	75,000	-	-	75,000
21DRS	2021	78050	A/W Doors/Entries	100,000	100,000	-	-	100,000
22000	2022	78050	A/W Auditorium Lighting	300,000	300,000	-	-	300,000
22714	2022	78050	A/W Building Envelope Upgrades	200,000	200,000	-	-	200,000
22755	2022	78050	A/W Flooring Upgrades	125,000	125,000	52,919	52,919	72,081
22758	2022	78050	A/W Electrical/Lighting	150,000	18,535	8,597	140,062	9,938
22801	2022	78050	A/W HVAC/DDC/Boiler Upgrades	850,000	363,800	58,672	544,872	305,128
22851	2022	78010	A/W Portables/Outbuildings	150,000	150,000	40,776	40,776	109,224
22856	2022	78050	A/W Security/Safety	175,000	171,984	-	3,016	171,984
22DSG	2022	78050	A/W Assessment/Design	300,000	273,095	8,444	35,349	264,651
HHSRF	2022	72010	Homer High Roof Phase 2 & 3	1,800,000	1,601,051	2,327	201,276	1,598,724
SLF03	2022	72010	Homer High Roof Replace - ARPA	2,203,341	2,192,832	309	10,819	2,192,522
SLF04	2022	72051	West Homer El Siding - ARPA	700,000	682,256	1,304	19,049	680,951
23714	2023	78050	A/W Building Envelope Upgrades	155,000	155,000	-	-	155,000
23727	2023	78050	A/W Bleacher Replacement	60,000	60,000	-	-	60,000
23755	2023	78050	A/W Flooring Upgrades	100,000	100,000	-	-	100,000
23758	2023	78050	A/W Electrical/Lighting	65,000	65,000	-	-	65,000
23759	2023	78050	A/W Water Quality Improvements	40,000	40,000	-	-	40,000
23780	2023	78050	A/W Playground Upgrades	25,000	25,000	-	-	25,000
23801	2023	78050	A/W HVAC/DDC/Boiler Upgrades	400,000	400,000	-	-	400,000
23802	2023	78050	A/W Asphalt/Sidewalk Repair	155,000	155,000	-	-	155,000
23803	2023	78050	A/W Elevator Upgrades	50,000	50,000	-	-	50,000
23851	2023	78010	A/W Portables/Outbuildings	350,000	350,000	-	-	350,000
23855	2023	78050	A/W Locker Replacement	250,000	250,000	-	-	250,000
23856	2023	78050	A/W Security/Safety	150,000	150,000	-	-	150,000
23860	2023	78050	A/W Generator/Hardware	50,000	50,000	-	-	50,000
23861	2023	78050	A/W Auditorium Lighting	300,000	300,000	-	-	300,000
23DSG	2023	78050	A/W Assessment/Design	100,000	100,000	-	-	100,000

Project Totals \$ 28,513,341 \$ 23,120,420 \$ 378,630 \$ 5,771,551 \$ 22,741,790

Beginning Fund Balance 7/1/22 \$ 4,973,763

Funds Provided:

	FY23 Transfer from General Fund	\$ 5,250,000	
13DSG	Local Contribution - KPBSD Design	107,382	
KESLO	AK Dept of Education & Early Development	9,940,743	
SLF03/04	US Dept. of Treasury - APRA Funds	2,875,087	
	Total Funds Provided		18,173,212

Funds applied - current year expenditures (378,630)

Funds obligated to existing projects (22,741,790)

Projects completed, cancelled or other funding source identified -

Funds available for appropriation and for future capital expansion plans \$ 26,554

School Bond Projects - Fund 401

Balances through September 30, 2022

Project	Year Appropriated	Project Description	Authorized Amount	FY23 Budget	Expend FY23	Total LTD Expenditures	Unexpended Balance
11SCH	2011	FY11 School Roof Replacements	\$ 16,894,646	\$ 22,649	\$ -	\$ 16,871,997	\$ 22,649
14SCH	2014	FY14 School Roofs/Homer Field	61	61	-	-	61
22SCH	2021	FY22 Homer High School Roof	1,473,484	497,310	-	976,174	497,310
Project Totals			\$ 18,368,191	\$ 520,020	\$ -	\$ 17,848,172	\$ 520,020

	Bond	Interest	Local - GF	Total
Beginning Fund Balance 7/1/22	\$ 457,132	\$ 178,801	\$ 40,239	\$ 676,172
Funds Provided:				
22SCH FY22 Homer High School Roof	-	1,641	-	-
Total Funds Provided	-	1,641	-	1,641
Funds applied - current year expenditures:				
11SCH FY11 School Roof Replacements	-	-	-	-
14SCH FY14 School Roof/Homer Field	-	-	-	-
22SCH FY22 Homer High School Roof	-	-	-	-
Total Funds Applied - current year expenditures	-	-	-	-
Funds obligated to existing projects:				
11SCH FY11 School Roof Replacements	-	(22,649)	-	-
14SCH FY14 School Roofs/Homer Field	(61)	-	-	-
22SCH FY22 Homer High School Roof	(457,071)	-	(40,239)	-
Total funds obligated to existing projects	(457,132)	(22,649)	(40,239)	(520,020)
Projects completed or cancelled	-	-	-	-
Funds avail. for approp. and for future capital expansion plans	\$ -	\$ 157,793	\$ -	\$ 157,793

General Government Projects - Fund 407

Balances through September 30, 2022

Project	Year Appropriated	Project Description	Authorized Amount	FY23 Budget	Expend FY23	Total LTD Expenditures	Unexpended Balance
14MAN	2014	Manatron Software Upgrade	\$ 75,000	\$ 73,800	\$ -	\$ 1,200	\$ 73,800
15SOF	2015	Tax Software Upgrade	75,000	64,364	-	10,636	64,364
19407	2019	Card Entry Security System	150,000	5,560	-	144,440	5,560
22471	2022	OEM-ERC Server Room A/C Unit	28,000	28,000	-	-	28,000
22472	2022	OEM-Radio Communications	125,000	125,000	-	-	125,000
22473	2022	Poppy Ln Building Entry Remodel	155,000	54,521	32,717	133,196	21,804
22474	2022	B/W Access Cntrl Improvements	180,000	79,019	17,885	118,866	61,134
22SIR	2022	Siren Warning System Replacement	700,000	700,000	1,349	1,349	698,651
23471	2023	ERC Power Supply	57,702	57,702	-	-	57,702
23472	2023	BAB Roof Replacement	700,000	700,000	-	-	700,000
23473	2023	BAB Chiller Replacement	120,000	120,000	-	-	120,000
23474	2023	HR Portable Foundation	10,000	10,000	2,251	2,251	7,749
Project Totals			<u>\$ 2,375,702</u>	<u>\$ 2,017,965</u>	<u>\$ 54,202</u>	<u>\$ 411,939</u>	<u>\$ 1,963,763</u>

Beginning Fund Balance 7/1/22 \$ 1,708,169

Funds Provided:

	FY23 Transfer from General Fund	\$ 500,000	
22472	FY23 Transfer from General Fund - PILT	<u>112,500</u>	
	Total Funds Provided		612,500

Funds applied - current year expenditures (54,202)

Funds obligated to existing projects (1,963,763)

Projects completed or cancelled -

Funds available for appropriation and for future capital expansion plans \$ 302,704

Solid Waste Projects - Fund 411

Balances through September 30, 2022

Project	Year Appropriated	Project Description	Authorized Amount	FY23 Budget	Expend FY23	Total LTD Expenditures	Unexpended Balance
17SWB	2017	SW CPL Equip/Plan/Design/Construction	\$ 5,999,365	\$ 497,442	\$ -	\$ 5,501,923	\$ 497,442
18CDE	2018	FY18 C&D Cell Expansion	350,000	3,527	3,380	349,853	147
18GAS	2018	Landfill Gas to Energy Project	100,000	29,400	-	70,600	29,400
19HLC	2019	FY19 SW-Homer Landfill Closure - Phase 2	2,702,000	771,082	-	1,930,918	771,082
20FUN	2020	Funny River Transfer Site Expansion	670,525	48,777	-	621,748	48,777
21DMP	2021	Dumpster Replacement	104,000	8,000	-	96,000	8,000
22DEM	2022	Demolition of Obsolete Facilities	20,000	19,280	15,924	16,644	3,356
22FIR	2022	CPL Building Fire Detection System	40,000	40,000	-	-	40,000
22LIT	2022	AW Facility Lighting	90,000	90,000	-	-	90,000
22SUR	2022	Transfer Site Surveillance	100,000	100,000	-	-	100,000
22WEL	2022	Monitoring Well Decommissioning	60,000	1,819	-	58,181	1,819
SLF02	2022	Leachate Improvements - ARPA Funds	6,000,000	5,793,025	2,221,690	2,428,665	3,571,335
HOMMF	2022	Homer Monofill Cut/Fill Project	326,446	321,147	832	6,132	320,314
23491	2023	SWD Master Plan	300,000	300,000	-	-	300,000
23492	2023	CPL Gas/Leachate Materials	150,000	150,000	-	-	150,000
23493	2023	CPL Gas Collection Design	100,000	100,000	-	-	100,000
23494	2023	CPL Overhead Door Replacement	40,000	40,000	-	-	40,000
23495	2023	CPL Used Oil Burner Replacement	25,000	25,000	-	-	25,000
23496	2023	CPL Rotary Brush Cutter	15,000	15,000	-	-	15,000
Project Totals			\$ 17,192,336	\$ 8,353,500	\$ 2,241,826	\$ 11,080,663	\$ 6,111,674

	Capt Proj Fund	Closure/Post	17SWB Bond	Total
Beginning Fund Balance 7/1/22	\$ 994,307	\$ 9,266,866	\$ 609,291	\$ 10,870,463
Funds Provided:				
SLF02 FY23 Transfer from Operating Fund	1,250,000			
US Dept. of Treasury - APRA Funds	5,793,025			
FY23 Transfer for Closure/Post		765,450		
FY23 Interest Earnings on 17SWB Bond Proceeds			1,760	7,810,235
Funds applied - current year expenditures	(2,241,826)	(26,337)	-	(2,268,163)
Funds obligated to existing projects	(4,843,150)	(771,082)	(497,442)	(6,111,674)
Projects completed or cancelled	-	-	-	-
Funds available for approp. and future capital expansion plans	\$ 952,356			952,356
Closure/post closure liability		\$ 9,234,897		9,234,897
Funds restricted for SWD bond			\$ 113,608	113,608
Ending fund balance				\$ 10,300,861

Road Service Area Projects - Fund 434

Balances through September 30, 2022

Project	Year Appropriated	Project Description	Authorized Amount	FY23 Budget	Expend FY23	Total LTD Expenditures	Unexpended Balance
Grant Funded Projects							
14JAC	2014	Jacobs Ladder Repair	\$ 100,000	\$ 16,427	\$ -	\$ 83,573	\$ 16,427
16NRD	2016	North Road Extension	7,023,591	906,559	135,492	6,252,524	771,067
21SAL	2021	Fish Passage/Old Exit Glacier	385,000	354,845	1,913	32,068	352,932
SLF05	2022	Bridge Improvements - ARPA	500,000	500,000	-	-	500,000
Service Area Funded - FY CIP Projects							
2019 Road CIP Projects (\$2,023,124)							
19CIP	2019	B/W FY19 Local Funds	89,386	89,386	-	-	89,386
S7HLR	2019	Hulter Road	847,341	66,015	78	781,404	65,937
		Projects completed prior to FY23	1,086,398	-	-	1,086,398	-
			2,023,124				
2020 Road CIP Projects (\$2,188,876)							
20CIP	2020	B/W FY20 Local Funds	948	948	-	-	948
20WRT	2020	Warranty Funds	20,000	20,000	-	-	20,000
S7WAL	2020	Walters St/Wilderness Ln	1,006,500	927,068	537,209	616,641	389,859
S8BSG	2020	Basargin Rd	888,501	42,185	-	846,316	42,185
		Projects completed prior to FY23	272,927	-	-	272,927	-
			2,188,876				
2021 Road CIP Projects (\$2,852,400)							
21CIP	2021	B/W FY21 Local Funds	15,969	15,969	-	-	15,969
21GRV	2021	FY21 Borough Gravel Projects	300,000	15,139	-	284,861	15,139
C2MRR	2021	Moose River Dr/River Ridge Rd	150,000	145,512	-	4,488	145,512
E2FER	2021	Ferrin Road	469,000	446,888	215,442	237,554	231,446
S7MAN	2021	Mansfield Ave	902,700	851,016.78	66,847	118,531	784,169
S8BGN	2021	Basargin Road	871,200	49,003	-	822,197	49,003
		Projects completed prior to FY23	143,531			143,531	-
			2,852,400				
2022 Road CIP Projects (\$2,881,000)							
22CIP	2022	B/W FY22 Local Funds	-	-	-	-	-
22GRV	2022	FY22 Borough Gravel Projects	300,000	23,157	5,510	282,353	17,647
S8BSR	2022	Basargin Road	1,122,000	1,092,338	2,254	31,916	1,090,084
N3DUK	2022	Duke Street	276,500	245,531	2,439	33,408	243,092
W7AND	2022	St Andrews Road	175,000	144,599	324	30,725	144,275
C5SPO	2022	Sports Lake/Hakala/Cotman	352,500	321,573	314	31,241	321,259
N3POL	2022	Poolside Ave	46,800	22,168	195	24,826	21,973
W6SKY	2022	Skyline Dr	395,201	369,955	304,537	329,782	65,418
W1CHN	2022	Chinulna Ct	213,000	204,012	183,911	192,898	20,102
			2,881,000				
2023 Road CIP Projects (\$2,565,550)							
23CIP	2023	B/W FY23 Local Funds	-	-	-	-	-
23GRV	2023	FY23 Borough Gravel Projects	300,000	300,000	-	-	300,000
23BRG	2023	Bridges CIP	300,000	300,000	-	-	300,000
C5PAR	2023	Parkway/Sylvan/Northern Lights	366,600	366,600	-	-	366,600
N3LIS	2023	Lisburn Ave	453,700	453,700	-	-	453,700
W6GOO	2023	Goodrich/Center/Retirement	507,000	507,000	-	-	507,000
W1GRI	2023	Griffing Ct/Way/Territorial	263,250	263,250	-	-	263,250
N4MCG	2023	McGahan Dr	375,000	375,000	-	-	375,000
			2,565,550				
Service Area Funded - Other Projects							
22431	2022	Inspector Vehicles	80,000	80,000	36,734	36,734	43,266
Project Totals			<u>\$20,599,541</u>	<u>\$ 9,515,843</u>	<u>\$ 1,493,199</u>	<u>\$ 12,576,897</u>	<u>\$ 8,022,644</u>

Beginning Fund Balance 7/1/22 \$ 11,140,703

Funds Provided:

14JAC	FY23 Transfer from Operating Fund	\$ 2,300,000	
16NRD	DCCED Boro Wide Improvement	16,427	
21SAL	US Dept. of Transportation	906,559	
SLF05	US Dept. of Commerce	130,788	
	US Dept. of Treasury - ARPA Funds	500,000	
	Total Funds Provided		3,853,775

Funds applied - current year expenditures (1,493,199)

Funds obligated to existing projects (8,022,644)

Projects completed or cancelled by Service Area Board Action -

Funds available for appropriation and for future capital expansion plans \$ 5,478,634

Nikiski Fire Service Area Projects - Fund 441

Balances through September 30, 2022

Project	Year Appropriated	Project Description	Authorized Amount	FY23 Budget	Expend FY23	Total LTD Expenditures	Unexpended Balance
19411	2019	NFSA Fire ST 3 New Construction	\$ 4,729,000	\$ 12,692	\$ 12,692	\$ 4,729,000	\$ -
21412	2021	NFSA Station 2 Lighting	82,986	8,522	780	75,244	7,742
22411	2022	FY22 SCBA/Radio Communications	300,000	207,851	206,117	298,266	1,734
22413	2022	Response Vehicle/Plow	75,000	75,000	39,270	39,270	35,730
23411	2023	FY23 SCBA/Radio Communications	300,000	300,000	2,848	2,848	297,152
23412	2023	Lighting Upgrade St 2 Phase 2	60,000	60,000	-	-	60,000
23413	2023	Snow Machines (2)	30,000	30,000	3,720	3,720	26,280
Project Totals			<u>\$ 5,576,986</u>	<u>\$ 694,065</u>	<u>\$ 265,427</u>	<u>\$ 5,148,348</u>	<u>\$ 428,638</u>

Beginning Fund Balance 7/1/22 \$ 747,751

Funds Provided:

	FY23 Transfer from Operating Fund	\$ 300,000	
22411	FY23 Transfer from General Fund - PILT	92,066	
23411	FY23 Transfer from General Fund - PILT	175,000	
	Total Funds Provided		567,066

Funds applied - current year expenditures (265,427)

Funds obligated to existing projects (428,638)

Projects completed or cancelled by Service Area Board Action -

Funds available for appropriation and for future capital expansion plans \$ 620,752

Bear Creek Fire Service Area Projects - Fund 442

Balances through September 30, 2022

Project	Year Appropriated	Project Description	Authorized Amount	FY23 Budget	Expend FY23	Total LTD Expenditures	Unexpended Balance
14421	2014	Dispatch/Communication Equip	\$ 25,000	\$ 1,342	\$ -	\$ 23,658	\$ 1,342
20421	2020	Turnout Gear	10,820	10,820	-	-	10,820
21421	2021	Heavy Rescue Engine	400,000	54,275	50,500	396,225	3,775
22421	2022	FY22 SCBA/Radio Communications	192,500	90,427	-	102,073	90,427
23421	2023	FY23 SCBA/Radio Communications	192,500	192,500	-	-	192,500
23422	2023	Ambulance	250,000	250,000	-	-	250,000
Project Totals			<u>\$ 1,070,820</u>	<u>\$ 599,365</u>	<u>\$ 50,500</u>	<u>\$ 521,955</u>	<u>\$ 548,865</u>
Beginning Fund Balance 7/1/22							\$ 446,668
Funds Provided:							
		FY23 Transfer from Operating Fund				\$ 290,000	
22421		FY23 Transfer from General Fund - PILT				83,135	
23421		FY23 Transfer from General Fund - PILT				<u>175,000</u>	
Total Funds Provided							548,135
Funds applied - current year expenditures							(50,500)
Funds obligated to existing projects							(548,865)
Projects completed or cancelled by Service Area Board Action							<u>-</u>
Funds available for appropriation and for future capital expansion plans							<u>\$ 395,438</u>

Central Emergency Service Area Projects - Fund 443

Balances through September 30, 2022

Project	Year Appropriated	Project Description	Authorized Amount	FY23 Budget	Expend FY23	Total LTD Expenditures	Unexpended Balance
16CES	2016	Emergency Response Vehicles	\$ 2,785,629	\$ 7,710	\$ 5,571	\$ 2,783,490	\$ 2,139
19461	2019	SCBA Compressor	450,000	145,701	-	304,299	145,701
19469	2019	Training Site Phase 2 Expansion	150,000	7,036	973	143,936	6,064
20461	2020	Station 1 Land Acquisition	900,000	859,456	839,932	880,476	19,524
20CES	2020	Emergency Response Vehicles	1,611,196	864	-	1,610,331	864
21461	2021	Staff Vehicle	60,000	60,000	-	-	60,000
22461	2022	FY22 SCBA/Radio Communications	192,500	184,627	65,180	73,053	119,447
22463	2022	Utility Vehicle	60,000	60,000	-	-	60,000
22464	2022	FY22 Station 1 Relocation	1,000,000	1,000,000	-	-	1,000,000
22465	2022	Ambulance	280,000	238,925	-	41,075	238,925
J026C	2022	Vehicle Maintenance	100,995	100,995	-	-	100,995
23461	2023	FY23 SCBA/Radio Communications	575,000	575,000	-	-	575,000
23462	2023	Stations 5 & 6 Interior LED Lighting	125,000	125,000	-	-	125,000
23463	2023	Station 5 Air & Ceiling Reels	50,000	50,000	-	-	50,000
23464	2023	FY23 Station 1 Relocation	250,000	250,000	-	-	250,000
23465	2023	Security Doors	175,000	175,000	-	-	175,000
23466	2023	Stations 4 & 6 Bay Floor Resurface	200,000	200,000	-	-	200,000
23467	2023	Interior/Flooring Updates	50,000	50,000	-	-	50,000
23469	2023	Training Site Phase 3	100,000	100,000	-	-	100,000
Project Totals			\$ 9,115,320	\$ 4,190,314	\$ 911,656	\$ 5,836,661	\$ 3,278,658

	Capt Proj Fund	16CES Bond	20CES Bond	Total
Beginning Fund Balance 7/1/22	\$ 2,980,410	\$ 23,179	\$ 864	\$ 3,004,453
Funds Provided:				
FY23 Transfer from Operating Fund	1,100,000			
22461 FY23 Transfer from General Fund - PILT	167,914			
23461 FY23 Transfer from General Fund - PILT	175,000			
FY23 Interest Earnings on Bond Proceeds		69	-	1,442,984
Funds applied - current year expenditures	(906,085)	(5,571)	-	(911,656)
Funds obligated to existing projects	(3,275,655)	(2,139)	(864)	(3,278,658)
Projects completed or cancelled by Service Area Board Action	-	-	-	-
Funds avail. for approp. and for future capital expansion plans	\$ 241,585			241,585
Funds restricted for 16CES bond		\$ 15,538		15,538
Funds restricted for 20CES bond			\$ -	-
Ending fund balance				\$ 257,123

Western Emergency Service Area Projects - Fund 444

Balances through September 30, 2022

Project	Year Appropriated	Project Description	Authorized Amount	FY23 Budget	Expend FY23	Total LTD Expenditures	Unexpended Balance	
19441	2019	Emergency Water Fill Site FY19	\$ 100,000	\$ 4,235	\$ 47	\$ 95,811	\$ 4,189	*
21441	2021	Emergency Water Fill Site FY21	125,000	9,950	-	115,050	9,950	
22441	2022	FY22 SCBA/Radio Communications	459,000	38,810	1,611	421,800	37,200	
22442	2022	Cardiac Monitor/Defibrillator	138,750	138,750	-	-	138,750	
22443	2022	Command/Utility Vehicle	59,678	3,139	1,191	57,730	1,948	*
22FIL	2022	Emergency Water Fill Site FY22	34,981	20,148	-	14,833	20,148	
23441	2023	FY23 SCBA/Radio Communications	220,000	220,000	-	-	220,000	
23442	2023	Heavy Duty Truck Lift	68,250	68,250	-	-	68,250	
23443	2023	Command Vehicle	60,000	60,000	-	-	60,000	
23WLD	2023	Land Acquisition/LTIF Loan	755,000	755,000	736,679	736,679	18,321	
Project Totals			\$ 2,020,659	\$ 1,318,283	\$ 739,527	\$ 1,441,903	\$ 578,756	

Beginning Fund Balance 7/1/22 \$ 218,283

Funds Provided:

	FY23 Transfer from Operating Fund	\$ 165,000	
	FY23 Interest Earnings	161	
23441	FY23 Transfer from General Fund - PILT	175,000	
23WLD	FY23 Transfer - LTIF	755,000	
	Total Funds Provided		1,095,161

Funds applied - current year expenditures (739,527)

Funds obligated to existing projects (578,756)

Projects completed or cancelled by Service Area Board Action 5,000 *

Funds available for appropriation and for future capital expansion plans \$ 161

Kachemak Emergency Service Area Projects - Fund 446

Balances through September 30, 2022

Project	Year Appropriated	Project Description	Authorized Amount	FY23 Budget	Expend FY23	Total LTD Expenditures	Unexpended Balance
17482	2017	ST 2 Water Tank/Generator	\$ 25,000	\$ 6,962	\$ -	\$ 18,038	\$ 6,962
22485	2022	FY22 SCBA/Radio Communications	273,000	19,979	13,357	266,378	6,622
23481	2023	Ambulance/Medic 2	270,000	270,000	-	-	270,000
23482	2023	Powerlift Systems	100,000	100,000	-	-	100,000
23483	2023	Lucas Devices	40,000	40,000	-	-	40,000
23484	2023	E-Draulic Tools	30,000	30,000	-	-	30,000
23485	2023	FY23 SCBA/Radio Communications	192,500	192,500	-	-	192,500
23486	2023	Snow Machine	30,000	30,000	-	-	30,000
Project Totals			<u>\$ 960,500</u>	<u>\$ 689,441</u>	<u>\$ 13,357</u>	<u>\$ 284,416</u>	<u>\$ 676,084</u>

Beginning Fund Balance 7/1/22 \$ 166,468

Funds Provided:

23485	FY23 Transfer from Operating Fund	\$ 400,000	
	FY23 Transfer from General Fund - PILT	<u>175,000</u>	
	Total Funds Provided		575,000

Funds applied - current year expenditures (13,357)

Funds obligated to existing projects (676,084)

Projects completed or cancelled by Service Area Board Action -

Funds available for appropriation and for future capital expansion plans \$ 52,027

Communication Center 911 Projects - Fund 455

Balances through September 30, 2022

Project	Year Appropriated	Project Description	Authorized Amount	FY23 Budget	Expend FY23	Total LTD Expenditures	Unexpended Balance
23431	2023	ERC Uninterruptible Power	\$ 57,702	\$ 57,702	\$ -	\$ -	\$ 57,702
23432	2023	Router/Switch Replacement	18,000	18,000	-	-	18,000
23433	2023	Workstation Equipment	12,950	12,950	1,973	1,973	10,977
23434	2023	Distribution Switches	28,000	28,000	-	-	28,000
23435	2023	Dell Host Servers	13,000	13,000	11,578	11,578	1,422
Totals			<u>\$ 129,652</u>	<u>\$ 129,652</u>	<u>\$ 13,551</u>	<u>\$ 13,551</u>	<u>\$ 116,101</u>

Beginning Fund Balance 7/1/22	\$ 10,889
Funds Provided:	
FY23 Transfer from Operating Fund	<u>\$ 624,000</u>
Total Funds Provided	624,000
Funds applied - current year expenditures	(13,551)
Funds obligated to existing projects	(116,101)
Projects completed or cancelled	<u>-</u>
Funds available for appropriation and for future capital expansion plans	<u>\$ 505,237</u>

North Peninsula Recreation Projects - Fund 459

Balances through September 30, 2022

Project	Year	Project Description	Authorized Amount	FY23 Budget	Expend FY23	Total LTD Expenditures	Unexpended Balance
23451	2023	Truck/Plow	\$ 65,000	\$ 65,000	\$ -	\$ -	\$ 65,000
23452	2023	Asphalt Resurfacing	62,000	62,000	-	-	62,000
23453	2023	Pool Sidewalks	150,000	150,000	-	-	150,000
23454	2023	Pool Boilers Replacement	476,000	476,000	-	-	476,000
23455	2023	Trail Groomer	26,000	26,000	-	-	26,000
Project Totals			<u>\$ 779,000</u>	<u>\$ 779,000</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 779,000</u>

Beginning Fund Balance 7/1/22	\$ 406,854
Funds Provided:	
FY23 Transfer from Operating Fund	\$ 700,000
Total Funds Provided	700,000
Funds applied - current year expenditures	-
Funds obligated to existing projects	(779,000)
Projects completed or cancelled by Service Area Board Action	-
Funds available for appropriation and for future capital expansion plans	<u>\$ 327,854</u>

Central Peninsula Hospital Projects - Fund 490

Balances through September 30, 2022

Project	Year Appropriated	Project Description	Authorized Amount	FY23 Budget	Expend FY23	Total LTD Expenditures	Unexpended Balance
Provided by Bond Proceeds							
14CPH	2014	CPH Specialty Clinic	\$ 41,249,563	\$ 93,027	\$ -	\$ 41,156,536	\$ 93,027
18CPH	2018	CPH OB/Cath Lab	29,140,645	7,444	-	29,133,201	7,444
Funds Provided by Hospital Plant Replacement Fund							
17OBL	2017	CPH OB/Cardiac Cath Lab	10,215,000	680,210	678	9,535,469	679,531
21PRK	2021	CPH Parking Lot	1,500,000	113,826	-	1,386,174	113,826
22LAB	2021	FY22 Hot Lab Upgrade	869,778	632,312	90,338	327,804	541,974
22SFT	2022	Software Workday ERP	4,881,993	4,881,993	-	-	4,881,993
22SUR	2023	Surgery Center Purchase	9,770,000	9,770,000	-	-	9,770,000
Total Funds Provided by Hospital Plant Replacement Fund			27,236,771	16,078,340	91,016	11,249,447	15,987,324
Project Totals			\$ 97,626,979	\$ 16,178,812	\$ 91,016	\$ 81,539,184	\$ 16,087,795

	Capt Proj Fund	KHCTR	CPH Bonds	Total
Beginning Fund Balance 7/1/22	\$ 752,460	\$ 887,826	\$ 926,567	\$ 2,566,852
Funds Provided:				
17OBL CPH Local Contribution - OB / Card Cath Lab	680,210			
21PRK CPH Local Contribution - CPH Parking Lot	113,826			
22LAB CPH Local Contribution - Hot Lab	632,312			
22SFT CPH Local Contribution - Software Workday ERP	4,881,993			
22SUR CPH Local Contribution - Surgery Center Purchase	9,770,000			
FY23 Interest Earnings on CPH Bond Proceeds			2,719	16,081,060
Funds applied - current year expenditures	(91,016)	-	-	(91,016)
Funds obligated to existing projects	(15,987,324)	-	(100,471)	(16,087,795)
Projects completed or cancelled	-	-	-	-
Funds available for approp. and future capital projects	\$ 752,460			752,460
Funds restricted For Kenai Health Center Maintenance		\$ 887,826		887,826
Funds restricted for CPH bonds			\$ 828,815	828,815
Ending fund balance				\$ 2,469,101

South Peninsula Hospital Projects - Fund 491

Balances through September 30, 2022

Project	Year	Appropriated	Project Description	Authorized Amount	FY23 Budget	Expend FY23	Total LTD Expenditures	Unexpended Balance
Funds Provided by Local Funds								
17SPM	2017		Homer Medical Center Remodel	\$ 3,007,999	\$ 1,478	\$ -	\$ 3,006,520	\$ 1,478
18SHJ	2018		Elevator Upgrade	83,000	4,788	-	78,212	4,788
19SHE	2019		Access Control/Security Cameras	95,000	6,416	-	88,584	6,416
21SHC	2021		Roof Replacement	325,000	231,464	8,030	101,566	223,434
21SHD	2021		Nuclear Medicine System	303,673	303,673	-	-	303,673
21SHG	2021		SPH Wi-Fi System	172,500	38,653	5,506	139,353	33,147
21SHU	2021		Homer Medical Clinic Lobby Remodel	30,500	30,500	-	-	30,500
21SHZ	2021		Various Minor Hospital Equip/Software	150,882	18,658	-	132,224	18,658
22PFT	2022		Pulmonary Function Equipment	86,930	86,930	-	-	86,930
22SEC	2022		Security Upgrade Phase I	105,000	101,926	-	3,074	101,926
22SHA	2022		Pharmacy Remodel	555,000	555,000	-	-	555,000
22SHB	2022		A/C Unit - Long Term Care/Rehab	450,000	327,053	1,364	124,310	325,690
22SHC	2022		MRI Chiller Replacement	170,000	82,267	28,108	115,841	54,159
22SHG	2022		Incident Management Software	81,760	24,443	-	57,318	24,443
22SHJ	2022		Anesthesia Machine	60,000	60,000	-	-	60,000
22SHY	2022		Hot Water System Replacement	389,500	389,500	719	719	388,781
23SHA	2023		Imaging Nuc Med System Part 2	625,000	625,000	-	-	625,000
23SHB	2023		Imaging Nuc Med Reno Part 2	400,000	400,000	-	-	400,000
23SHC	2023		Infant Security System	231,625	231,625	-	-	231,625
23SHD	2023		Pre-Op PACU Monitor Replacement	168,579	168,579	-	-	168,579
23SHE	2023		Chemistry Analyzer	165,000	165,000	-	-	165,000
23SHF	2023		Lobby Door Replacement	110,000	110,000	1,178	1,178	108,822
23SHG	2023		OR Suite Surgical Light Replacement	97,573	97,573	-	-	97,573
23SHH	2023		Mammography Software	88,500	88,500	-	-	88,500
23SHK	2023		Network Switch Refresh	66,000	66,000	-	-	66,000
23SHL	2023		Minor Hospital Equipment	60,652	60,652	-	-	60,652
Total Funds Provided by Local Funds				8,079,673	4,275,678	44,905	3,848,899	4,230,773
Funds Provided by Hospital Plant Replacement Fund								
21MRF	2021		Homer Medical Clinic Roof	360,000	61,472	-	298,528	61,472
21SHA	2021		Nuclear Medicine Renovations	606,000	606,000	-	-	606,000
21SHB	2021		Remodel Kachemak Prof Building	500,000	456,871	-	43,129	456,871
22SHQ	2022		SPH Roof Replacement	578,695	578,695	-	-	578,695
22SHR	2022		Flooring for Long Term Care	103,199	103,199	-	-	103,199
22SHW	2022		Bayar Power Injector Software	11,500	11,500	-	-	11,500
22SPR	2022		203 W Pioneer Av Bldg Repairs	147,500	146,432	-	1,068	146,432
23SHM	2023		Ultrasound Software/Hardware	65,000	65,000	-	-	65,000
23SHN	2023		Anesthesia Machine	64,599	64,599	-	-	64,599
23SHO	2023		MRI AI	51,000	51,000	-	-	51,000
23SHP	2023		Hospital Vehicles	55,000	55,000	-	-	55,000
23SHQ	2023		Minor Hospital Equipment	107,608	107,608	-	-	107,608
Total Funds Provided by Hospital Plant Replacement Fund				2,650,101	2,307,376	-	342,725	2,307,376
Project Totals				\$ 10,729,774	\$ 6,583,054	\$ 44,905	\$ 4,191,624	\$ 6,538,149
						Capt Proj Fund	17SPH/M Bond	Total
Beginning Fund Balance 7/1/22						\$ 2,779,281	\$ 23,254	\$ 2,802,535
Funds Provided:								
FY23 Transfer from Operating Fund						2,012,929		
21MRF	SPH Local Contribution - Homer Medical Clinic Roof					61,472		
21SHA	SPH Local Contribution - Nuclear Medicine Reno					606,000		
21SHB	SPH Local Contribution - Kachemak Prof Bldg Reno					456,871		
22SHQ	SPH Local Contribution - Roof Replacement					578,695		
22SHR	SPH Local Contribution - Flooring Long term Care					103,199		
22SHW	SPH Local Contribution - Bayer Power Injector Software					11,500		
22SPR	SPH Local Contribution - 203 W Pioneer Av Repairs					146,432		
23SHM	SPH Local Contribution - Ultrasound Software/Hardware					65,000		
23SHN	SPH Local Contribution - Anesthesia Machine					64,599		
23SHO	SPH Local Contribution - MRI AI					51,000		
23SHP	SPH Local Contribution - Hospital Vehicles					55,000		
23SHQ	SPH Local Contribution - Minor Hospital Equipment					107,608		4,320,305
Funds applied - current year expenditures						(44,905)	-	(44,905)
Funds obligated to existing projects						(6,536,671)	(1,478)	(6,538,149)
Projects completed or cancelled						-	-	-
Funds available for approp. and future capital expansion plans						\$ 518,011		518,011
Funds restricted for 17SPH Bond							\$ 21,775	21,775
Ending fund balance								\$ 539,786

Introduced by:	Mayor
Date:	10/11/22
Hearing:	11/15/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-42**

**APPROVING THE 2023 ASSET ALLOCATION FOR THE LAND TRUST INVESTMENT
FUND INVESTMENTS AND AMENDING KPB 5.10.200(B) TO UPDATE AND ADD NEW
SUBSECTIONS UNDER AUTHORIZED INVESTMENTS**

WHEREAS, pursuant to KPB 5.10.200(B) the financial asset investments of the Land Trust Investment Fund (“LTIF”) must be approved annually; and

WHEREAS, the asset allocation plan must specify categories of investments for the fund with percentage targets that allow for reasonable fluctuations above and below the target performance; and

WHEREAS, Alaska Permanent Capital Management (“APCM”), the Borough’s Land Trust Fund Investment Manager, is not recommending changes to the current asset allocation for calendar year 2023; and

WHEREAS, APCM recommends changes to KPB 5.10.200(B) to update indices that are currently being utilized in management of the LTIF investment portfolio;

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

SECTION 1. That KPB 5.10.200(B) is hereby amended to update subsections 7 and 9 and to add two new subsections, 12 and 13, to read as follows:

5.10.200. –Authorized Investments for the Land Trust Investment Fund.

B. Authorized Investments—Financial Assets. Moneys in the Land Trust Investment Fund shall be invested only in the following instruments and subject to the applicable limitations and requirements

...

7. International equities, which taken as a whole, attempt to replicate the MSCI EAFE Index or another index of similar characteristics, including both mutual funds and exchange traded funds (ETFs).

8. Equities, which taken as a whole, attempt to replicate the universe of domestic real estate investment trusts as represented by the Standard and Poor's REIT composite index or another index of similar characteristics including both mutual funds and exchange traded funds (ETFs).
9. Emerging market equities, which taken as a whole, attempt to replicate the MSCI Emerging Markets Index or another index of similar characteristics including both mutual funds and exchange traded funds (ETFs).
-
12. Implementation strategies, which taken as whole, attempt to replicate the Wilshire Liquid Alternatives Index or another index of similar characteristics including both mutual funds and exchange traded funds (ETFs).
13. U.S. high yield bonds, which taken as a whole, attempt to replicate the Bloomberg Barclays U.S. Corporate High Yield Very Liquid Index or another index of similar characteristics including both mutual funds and exchange traded funds (ETFs).

SECTION 2. This ordinance shall become effective immediately upon enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2022.

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Finance Department

MEMORANDUM

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

THRU: Mike Navarre, Mayor *MN*

FROM: Brandi Harbaugh, Finance Director *BH*

DATE: October 11, 2022

RE: Ordinance 2022-42, Approving the 2023 Asset Allocation for the Land Trust Investment Fund Investments and Amending KPB Code 5.10.200(B) to Update and Add New Subsections Under Authorized Investments (Mayor)

Pursuant to KPB 5.10.200(A)(2) the financial asset investments of the Land Trust Investment Fund (LTIF) are approved annually by resolution. The asset allocation plan must specify categories of investments for the fund with percentage targets that allow for reasonable fluctuations above and below the target performance. Alaska Permanent Capital Management (APCM), the Borough's Land Trust Fund Investment Manager, is not recommending changes to the current asset allocation for calendar year 2023. The current allocation is as follows:

Asset Class	Strategic Weight	Current Weight	Range
Risk Control	27.00%	27.70%	
US Fixed Income	18.00%	16.50%	8 - 28%
TIPS	2.00%	2.20%	0 - 10%
International Bonds	5.00%	4.50%	0 - 10%
Cash	2.00%	4.50%	0 - 10%
Risk Assets	52.00%	50.00%	
High Yield	5.00%	5.00%	0 - 10%
US Large Cap	22.00%	21.50%	12 - 32%
US Mid Cap	10.00%	9.30%	5 - 15%
US Small Cap	5.00%	4.70%	0 - 10%

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 October 11, 2022
 Re: O2022-42

International Equity	6.00%	5.60%	0 - 12%
Emerging Markets	4.00%	3.90%	0 - 8%
Alternatives	21.00%	22.30%	
Real Estate	3.00%	2.70%	0 - 6%
Infrastructure	5.00%	4.90%	0 - 10%
Commodities	3.00%	3.00%	0 - 6%
Alternative Beta	10.00%	11.70%	0 - 15%

APCM recommends the below updates to KPB 5.10.200(B) to update indices that are that are currently being utilized in management of the LTIF investment portfolio.

The code changes will update KPB 5.10.200(B) subsections 7 and 9, and add two new subsections, numbered 12 and 13, as follows:

7. International equities, which taken as a whole, attempt to replicate the MSCI EAFE Index or another index of similar characteristics, including both mutual funds and exchange traded funds (ETFs).
9. Emerging market equities, which taken as a whole, attempt to replicate the MSCI Emerging Markets Index or another index of similar characteristics including both mutual funds and exchange traded funds (ETFs).
- ...
12. Implementation strategies, which taken as whole, attempt to replicate the Wilshire Liquid Alternatives Index or another index of similar characteristics including both mutual funds and exchange traded funds (ETFs).
13. U.S. high yield bonds, which taken as a whole, attempt to replicate the Bloomberg Barclays U.S. Corporate High Yield Very Liquid Index or another index of similar characteristics including both mutual funds and exchange traded funds (ETFs).

Your consideration of the ordinance is appreciated.