



Kenai Peninsula Borough

144 North Binkley Street
Soldotna, AK 99669

Meeting Agenda Assembly

Brent Johnson, President
Tyson Cox, Vice President
Lane Chesley
Richard Derkevorkian
Cindy Ecklund
Bill Elam
Brent Hibbert
Mike Tupper
District 3 Nikiski Vacant

Tuesday, January 17, 2023

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 Keith Hamilton.]

ROLL CALL

COMMITTEE REPORTS

VACANCY, DESIGNATION OR SEATING MEMBERS

1. [KPB-4851](#) Appointment of Assembly Member for District 3 - Nikiski

Attachments:

[Memo Appointment for District 3](#)
[District 3 Applicant - Peter Ribbens](#)
[District 3 Applicant - William J Hubler](#)
[District 3 Applicant - Heidi K Covey](#)
[District 3 Applicant - Lenora Niesen](#)
[LAYDOWN Public Comments](#)

2. Swearing in of Newly Appointed Assembly Member

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:

Resolution 2023-007: Inactivating Kachemak Bay APC

Resolution 2023-008: Federal Congressional Priorities

Ordinance 2023-02: Assembly & School Board District Boundaries

Ordinance 2023-03: Assembly Excused Absences & Remote Participation

KPB 4817: New Liquor License & RDP Big Daddy's Pizza

KPB 4867: New Marijuana License Bay Leaf Enterprises

KPB 4852: Anchor Point APC Appointment

ACTION ITEMS ELIGIBLE TO BE ADDED TO THE CONSENT AGENDA:

Ordinance 2022-19-39: Overhead door replacement at CPL

APPROVAL OF MINUTES

- *1. [KPB-4853](#) January 3, 2023 Regular Assembly Meeting Minutes

Attachments: [January 3, 2023 Regular Meeting Minutes](#)

COMMENDING RESOLUTIONS AND PROCLAMATIONS

- *1. [KPB-4863](#) A Resolution in Memoriam Commending the Contributions of Betty J. Glick

Attachments: [Betty J Glick Resolution in Memoriam](#)

PRESENTATIONS WITH PRIOR NOTICE

(20 minutes total)

1. [KPB-4854](#) Kenai Peninsula Borough School District Quarterly Report (10 minutes)

PUBLIC COMMENTS ON ITEMS NOT APPEARING ON THE AGENDA

(3 minutes per speaker; 20 minutes aggregate)

ITEMS NOT COMPLETED FROM PRIOR AGENDA**PUBLIC HEARINGS ON ORDINANCES**

(Testimony limited to 3 minutes per speaker)

Ordinances referred to Finance Committee

1. [2022-19-39](#) An Ordinance Deobligating and Appropriating Solid Waste Capital Project Funds Previously Appropriated for the Construction of the Funny River Transfer Site to Overhead Door Replacement at Central Peninsula Landfill (Mayor) (Hearing on 01/17/23)

Attachments: [Ordinance 2022-19-39](#)
[Memo](#)

Ordinances referred to Policies and Procedures Committee

2. [2022-44](#) An Ordinance Amending KPB 4.10.060 and 4.10.110 to Eliminate the Requirement that the Informational Election Brochure be Mailed to Every Borough Boxholder and to Eliminate the Requirement of the Borough Clerk to Seek Authorship Advocating Approval and Rejection of Ballot Propositions (Johnson, Cox) (Hearing on 01/17/23)

Attachments: [Ordinance 2022-44](#)
[Memo](#)
[Public Comment](#)
[LAYDOWN Public Comment 011723](#)

3. [2022-45](#) An Ordinance Amending KPB 4.60.030 Relating to Ballot Tabulator Testing Before a Run-Off Election (Johnson, Cox) (Hearing on 01/17/23)

Attachments: [Ordinance 2022-45](#)
[Memo](#)

4. [2022-47](#) An Ordinance Amending KPB 5.04.095(B) to Remove the River Center as a Listed General Fund Department and KPB 5.20.030 to Remove the River Center Fund from the Special Revenue Fund List (Mayor) (Hearing on 01/17/23)

Attachments: [Ordinance 2022-47](#)
[Memo](#)

UNFINISHED BUSINESS

NEW BUSINESS

1. Resolutions

Resolutions referred to Policies and Procedures Committee

- *a. [2023-007](#) A Resolution Providing a 30-Day Application Period Prior to Inactivating the Kachemak Bay Advisory Planning Commission

(Mayor)

Attachments: [Resolution 2023-007](#)
 [Memo](#)
 [LAYDOWN Advisory Board Recommendations](#)

Resolutions referred to Legislative Committee

- *b. [2023-008](#) A Resolution Establishing the Federal Congressional Priorities List for the Kenai Peninsula Borough for Fiscal Year 2024 (Mayor)

Attachments: [Resolution 2023-008](#)
 [Memo](#)
 [CDS Priorities List and Project Information Sheets Backup](#)

2. Ordinances for Introduction

Ordinances for Introduction and referred to the Policies and Procedures Committee

- *a. [2023-02](#) An Ordinance Amending Borough Code, KPB 22.30.010, Relating to Composition of Assembly Districts to Revise Assembly and School Board District Boundaries (Johnson, Cox) (Hearing on 02/21/23)

[Clerk's Note: Bobbi Sjogren, GIS Specialist will give a 10 minute presentation during Policies and Procedures Committee.]

Attachments: [Ordinance 2023-02](#)
 [Memo](#)
 [Maps](#)
 [Resdistricting Presentation](#)

- *b. [2023-03](#) An Ordinance Amending KPB 22.30 and KPB 22.40 Regarding Assembly Committees, Excused Absences and Remote Participation of Assembly Members (Cox, Hibbert, Ecklund) (Hearing on 02/21/23)

Attachments: [Ordinance 2023-03](#)
 [Memo](#)

3. Other

Other items referred to Finance Committee

- *a. [KPB-4817](#) Authorizing the Issuance of a Letter of Non-Objection to the Alcoholic Beverage Control Board Regarding the New Liquor License and Approve the Restaurant Designation Permit as Requested By George Bowen dba Big Daddy's Pizza, License No. 6103

Attachments: [Memo to Assembly](#)
[New Liquor License/Restaurant Designation Permit Application](#)

- *b. [KPB-4867](#) Authorizing the Issuance of a Letter of Non-Objection to the Marijuana Control Board Regarding the New Limited Marijuana Cultivation Facility, Bay Leaf Enterprises LLC, Requested by Dan McClure License No. 31148, Subject to the Standard Conditions

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

Other items referred to Policies and Procedures Committee

- *c. [KPB-4852](#) Confirming an Appointment to the Kenai Peninsula Borough Advisory Planning Commission (Mayor)

Anchor Point Advisory Planning Commission
Jill Gunnerson, Seat E, Term Expires 09/30/2024

Attachments: [Appointment to Advisory Planning Commission](#)

MAYOR'S REPORT

[KPB-4856](#) Mayor's Report Cover Memo

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

1. Assembly Requests/Responses
2. Agreements and Contracts
3. Other

- a. [KPB-4857](#) Authorization to Award a Contract for RFP23-007 BAB Roof Replacement

Attachments: [Authorization to Award RFP23-007](#)

- a. [KPB-4858](#) Withdrawal from FEMA's Voluntary Floodplain Community Rating System Program

Attachments: [Withdrawal from FEMA's Floodplain CRS](#)
[Insurance Letter FEMA's Floodplain Withdrawal](#)

- b. [KPB-4859](#) Soldotna Public Safety Communication Center: Text-to-911

Attachments: [Soldotna Public Safety Communication Center Text to 911](#)

- c. [KPB-4862](#) Litigation Status Report - Quarter Ending 12/31/22

Attachments: [Litigation Status Report](#)

PUBLIC COMMENTS AND PUBLIC PRESENTATIONS

ASSEMBLY COMMENTS

PENDING LEGISLATION

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

1. [2023-005](#) A Resolution of Intent by The Kenai Peninsula Borough Assembly Establishing that Financing of Energy and Resilience Improvement Projects through Assessments Serves a Valid Public Purpose and Related Matters (Ecklund) (Referred to Lands Committee) [Tabled on 01/03/23]

Attachments: [Resolution 2023-005](#)
 [Memo](#)
 [Public Comments](#)

2. [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) (Hearing on 03/14/23) (Referred to Lands Committee)

Attachments: [Ordinance 2022-36](#)
 [Tupper Amendments #1-6](#)
 [Derkevorkian Amendments #1-#14](#)
 [Johnson Amendments #1-#6](#)
 [Administrative Amendments #1-#9 \(addressed @ 11/15/22 subcommittee\)](#)
 [Sectional Analysis with Potential Amendments - Planning Department](#)
 [Memo](#)
 [Final Material Site Sectional Analysis](#)
 [Material Site Subcommittee Presentation](#)
 [Review Notes by Charley Palmer](#)
 [Takings Overview presentation](#)
 [Public Comments](#)
 [102522 Public Comments](#)
 [111522 Public Comment](#)
 [121322 Public Comments](#)
 [010323 Public Comment](#)
 [Reference Copy R2018-004 SUB](#)
 [Reference Copy O2019-30](#)
 [Reference Copy O2021-41](#)
 [Reference Copy O2021-41 SUB](#)

3. [2022-46](#) An Ordinance Amending KPB 21.02.230 to Modify the Boundaries of the Nikiski Advisory Planning Commission (Johnson, Ecklund, Tupper) (Hearing on 02/07/23) (Referred to Policies and Procedures Committee)

Attachments: [Ordinance 2022-46](#)
 [Memo](#)
 [Ltr from Tyonek Native Corporation](#)
 [Reference Copy O2022-41](#)

4. [2023-01](#) An Ordinance Amending KPB 2.04.060 to Increase the Mayor's Salary to \$130,000 and to Provide for an Inflation Adjustment Every Three Years (Mayor) (Hearing on 02/07/23) (Referred to Policies and Procedures Committee)

Attachments: [Ordinance 2023-01](#)
 [Memo](#)

INFORMATIONAL MATERIALS AND REPORTS

ASSEMBLY MEETING AND HEARING ANNOUNCEMENTS

1. February 7, 2023 Material Subcommittee Meeting

TBD

Betty J. Glick Assembly Chambers

Borough Administration Building

Remote participation available through Zoom

Meeting ID: 884 7373 9641 Passcode: 671108

2. February 7, 2023 Regular Assembly Meeting

6:00 PM

Betty J. Glick Assembly Chambers

Borough Administration Building

Remote participation available through Zoom

Meeting ID: 884 7373 9641 Passcode: 671108

ADJOURNMENT

The next meeting of the Kenai Peninsula Borough Assembly will be held on February 7, 2023, at 6:00 P.M. in the Betty J. Glick Assembly Chambers, Soldotna, Alaska.

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
Office of the Borough Clerk

MEMORANDUM

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

FROM: Michele Turner, Acting Borough Clerk (MTW)
Sean Kelley, Borough Attorney SK

DATE: January 10, 2023

RE: Appointment of Assembly Member for District 3 – Nikiski

Resolution 2022-059, accepted Jesse Bjorkman's resignation from the District 3 Assembly seat and declared a vacancy on the assembly (adopted 12/13/2022).

Per Resolution 2022-59, the Borough Clerk's Office advertised the vacancy and solicited applications of appointment from qualified voters of Assembly District 3. The filing deadline was January 10, 2023 at 4:30 p.m. Copies of the applications filed with the Borough Clerk's Office accompany this memo for your review.

Each applicant will be invited to address the Assembly during the Committee of the Whole meeting on Tuesday, January 17, 2023 and the Committee of the Whole will have the opportunity to conduct interviews. The Assembly may then choose to deliberate in executive session for the sole purpose of comparing applicant qualifications and discussing personal characteristics of applicants for appointment. The Assembly may not make an appointment decision in executive session. The Assembly must make the appointment decision during the regular Assembly meeting later that evening. The motion will be a motion to appoint the named individual to represent Assembly District 3 until the regular election in October. Votes will be publicly cast.

Please note, the successful candidate must receive the majority vote (five) by the remaining assembly members. KPB 22.30.060(D)

The successful candidate will be sworn in and seated immediately following the vote.

Kenai Peninsula Borough

Applicant for Appointment Assembly District 3 - Nikiski



Peter Ribbens

Education:

B.A, Geology; M.A, Marine Biology (UAF)

Elected Experience:

Nikiski Fire Service Area Board, 2019 – 2022 Seat A

Other Professional Experience:

Insight Environmental, Senior Environmental Professional (oil and gas consulting), 2020 to present.

Tesoro Alaska, Environmental professional/emergency response coordinator, 1997 through 2019.

DOD regulatory consultant, 1991 - 1997

Community Service:

Kenai Peninsula Food Bank volunteer.

Nikiski church member; various church board member and chair positions.

Nikiski Shelter of Hope volunteer.

Statement (reproduced exactly as submitted):

Hello, my name is Peter Ribbens. I am applying for the Nikiski assembly seat because I want to promote long-term fiscal and social responsibility for the essential services required by the citizens of the Kenai Peninsula, particularly the people of Nikiski and all of District 3.

I have been an Alaska resident for 39 years and lived in Nikiski for 25. I have been married for 38 years. Also, I am father of three children who were educated in Nikiski and are now grown.

I have been an interested political observer since my age of reason and have become involved by serving on the Nikiski Fire Service Area Board from 2019-2022. I have diverse work, volunteer, and recreational interests.

My goals on the Assembly will be guided by a long-term vision toward the needs of the people of Nikiski and the Borough. I want to work toward operational flexibility to address contingencies. Supporting individual rights of all within our community and a strong community structure is very important to me. I will strive to participate in consistent and defensible decision making within the appropriate needs of Nikiski, the Borough and the State of Alaska.

Thank you for your consideration.

Email: alaskaribbens@gmail.com

Phone No.: (907) 398-1828

144 N. Binkley Street
Soldotna, AK 99669-7599

This form must be completed in its entirety or candidacy will not be validated. Correction must be initialed. Completed **ORIGINAL** declaration form must be received by the Clerk's Office no later than **Tuesday, January 10, 2023 at 4:30 p.m.**

I, Peter Ribbens, am a qualified voter and declare myself to be a resident
Candidate's Printed Name
and applicant for nomination to the office of: Assembly District 3 – Nikiski

11

Candidate Information for Publication
Kenai Peninsula Borough
Office of the Borough Clerk

144 N. Binkley Street
Soldotna, Alaska 99669-7599

Phone: (907) 714-2160
Fax: (907) 714-2388

This form, photo and candidate statement must be received by the Clerk's Office no later than **Tuesday, January 10, 2023 at 4:30 PM**

RECEIVED

JAN 04 2023

**Borough Clerk's Office
Kenai Peninsula Borough**

[NOTE: Candidate information will be published on the Borough's website ONLY.]

CANDIDATE PROFILE	
Name: Peter Ribbens	
Office Sought: Borough Assembly Seat 3	
Email: alaskaribbens@gmail.com	Phone No.: (907) 398-1828
Education: B.A, Geology; M.A, Marine Biology (UAF)	
ELECTED EXPERIENCE	
Elected and/or appointed positions held and dates of service - List no more than 3	
1. Nikiski Fire Service Area Board; 2019 - 2022 Seat A	
2.	
3.	
OTHER PROFESSIONAL EXPERIENCE	
List no more than 3.	
1. Insight Environmental, Senior Environmental Professional (oil and gas consulting), 2020 to present.	
2. Tesoro Alaska, Environmental professional/emergency response coordinator, 1997 through 2019.	
3. DOD regulatory consultant, 1991 - 1997	
COMMUNITY SERVICE	
List no more than 3	
1. Kenai Peninsula Food Bank volunteer.	
2. Nikiski church member; various church board member and chair positions.	
3. Nikiski Shelter of Hope volunteer.	
CANDIDATE STATEMENT (200 words or less): On a separate sheet of paper (typed), you may submit a statement of your choice regarding your position on the issues, why you are running for office, etc. This statement will be printed EXACTLY as written.	

Note: You may submit a photograph suitable for reproduction. This photograph will be accepted for publication only if it meets the following standards:

1. Taken within the last five years; and
2. Composition limited to the head, neck and shoulders of candidate.

Kenai Peninsula Borough

Applicant for Appointment Assembly District 3 - Nikiski



William J. Hubler

Education:

High School grad. and 2 years college UAA

Elected Experience:

KPESA Union building Rep.

2020 until current

KCHS site counsel 2021 until current

Other Professional Experience:

KPBSD 33 years

Coach High School swimming/diving

USA age group coach

Community Service:

American Red Cross

Time chair committee for AKswimmiing

ASAA area Rep. for high school swimming/diving

Statement (reproduced exactly as submitted):

I was born and raised in Alaska and resident of the Kenai Peninsula for more than 43 years.

I am an active member of the Kenai Peninsula Community as School District Employee the last 33 years, Coached Swimming, Diving and Wrestling in multiple positions the last 30 years and volunteered my time in the community extensively.

My work has kept me active and involved with a good portion of residents and their families all over the Kenai Peninsula.

I have served as Union School Representative. Worked in the Fishing and Oil Field Industries.

I grew up on the Kenai, went to school here, raised my children here and enjoyed being a part of everything.

I've seen a lot of growth and change over the years. Watched areas develop and grow. Seen roads built through areas I played in as youth and watched homes go up where I used to fish, hunt and camp. I would like to contribute to future development but also help to preserve our unique way of life here.

I would like to be a bigger part, contribute more to all of our communities and in particular, the community of Nikiski that is my permanent residence.

Email: whubler@kpbsd.k12.ak.us

Phone No.: (907) 598-0711

Declaration of Candidacy for Appointment to Assembly
Kenai Peninsula Borough
Office of the Borough Clerk

144 N. Binkley Street
Soldotna, AK 99669-7599

Phone: (907) 714-2160
Fax: (907) 714-2388

This form must be completed in its entirety or candidacy will not be validated. Correction must be initialed. Completed **ORIGINAL** declaration form must be received by the Clerk's Office no later than **Tuesday, January 10, 2023 at 4:30 p.m.**

GENERAL INFORMATION

I, William J Hubler, am a qualified voter and declare myself to be a resident
Candidate's Printed Name
and applicant for nomination to the office of: Assembly District 3 – Nikiski

CANDIDATE INFORMATION

Physical Residence Address: 51460 Dragonfly St.

Resident of Kenai Peninsula Borough: 43 years months

Mailing Address: 51460 Dragonfly St., Kenai, AK 99611

Daytime Phone Number: 9075980711

Email: whubler@kpbsd.k12.ak.us

Provide at least ONE Identifier: Voter #

SS # (last 4 digits)

Date of Birth

CANDIDATE CERTIFICATION: I certify that the information in this Application for Appointment is true and complete and that I meet the specific residency and citizenship requirements of this office. I further certify that I shall meet the age requirements upon taking the oath of office, if appointed.

X

Candidate's Signature

For Office Use Only

Date Received:

1-10-23

By:

Verified:

D/P:

08-070

Letter Sent:

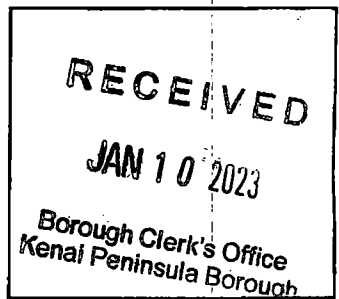
Revised 12/14/22 /mlt

Candidate Information for Publication
Kenai Peninsula Borough
Office of the Borough Clerk

144 N. Binkley Street
Soldotna, Alaska 99669-7599

Phone: (907) 714-2160
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[NOTE: Candidate information will be published on the Borough's website ONLY.]

CANDIDATE PROFILE	
Name: William J. Hubler	
Office Sought: Assembly District 3 - Nikiski	
Email: whubler@kpbsd.k12.ak.us	Phone No.: 907-598-0711
Education: High school grad. and 2 years college UAA	
ELECTED EXPERIENCE	
Elected and/or appointed positions held and dates of service - List no more than 3	
1. KPESA Union building Rep. 2020 until current	
2. KCHS site counsel 2021 until current	
3.	
OTHER PROFESSIONAL EXPERIENCE	
List no more than 3	
1. KPBSD 33 years	
2. Coach High School swimming/diving	
3. USA age group coach	
COMMUNITY SERVICE	
List no more than 3	
1. American Red Cross	
2. Time chair committee for AKswimming	
3. ASAA area Rep. for high school swimming/diving	
CANDIDATE STATEMENT (200 words or less): On a separate sheet of paper (typed), you may submit a statement of your choice regarding your position on the issues, why you are running for office, etc. This statement will be printed EXACTLY as written.	

Note: You may submit a photograph suitable for reproduction. This photograph will be accepted for publication only if it meets the following standards:

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2. Composition limited to the head, neck and shoulders of candidate.

Kenai Peninsula Borough

Applicant for Appointment Assembly District 3 - Nikiski



Heidi K. Covey

Education:

Portland Community College
(PCC)-2 years

Elected Experience:

Alaska LNG Community
Advisory Council (CAC)-
current

KPB Road Service Area At-
Large Seat-current
Nikiski Senior Service Area-
2017-2020

Other Professional Experience:

Small Business Owner-Veggies & Stuff
Assistant Manager- Nikiski 7-11
Dept. Manager Kenai Carrs grocery store

Community Service:

Alaska Division of Elections Precinct Chair Nikiski 2016-2021
KPYF-chaplain 12 yrs
Kenai Little League head coach- Tball, kid pitch, etc

Statement (reproduced exactly as submitted):

I have lived as a Nikiski resident since 1985 and served the Nikiski community as an elected board member to the Nikiski Senior Service area from 2017-2020, as well as being appointed to the AK LNG Project Advisory Committee. More recently I have been appointed to the KPB Road Service Area At-Large seat. These years of service have allowed me to work on annual Borough budgets and develop an understanding of capital projects, and the priority of maintaining taxpayers' assets.

It has been my honor to have a seat on the AK LNG CAC (Community Advisory Council), and to serve as the Alaska Division of Elections Nikiski Precinct Chair from 2016-2021 under both the Walker administration and the Dunleavy administration.

Representing Nikiski as an Assembly member is a bi-partisan role and as the representative I look forward to engaging in dialog with my Nikiski neighbors to improve essential services and to promote economic growth and opportunity within our community.

As a small business owner/producer, I have a heart for food security and a passion for local farmers markets. My husband serves on the Nikiski Fire service area board and works in management in the local oil industry.

Email: hcoveynikiski@yahoo.com

Phone No.: (907) 776-8648 | 398-8640

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JAN 10 2023
Borough Clerk's Office
Kenai Peninsula Borough

[NOTE: Candidate information will be published on the Borough's website ONLY.]

CANDIDATE PROFILE	
Name: Heidi K Covey	
Office Sought: Assembly Seat District 3-Nikiski	
Email: hcoveynikiski@yahoo.com	Phone No.: 776-8648 398-8640
Education: Portland Community College (PCC)-2 years	
ELECTED EXPERIENCE	
<small>Elected and/or appointed positions held and dates of service – List no more than 3</small>	
1. Alaska LNG Community Advisory Council (CAC)-current	
2. KPB Road Service Area At-Large Seat-current	
3. Nikiski Senior Service Area-2017-2020	
OTHER PROFESSIONAL EXPERIENCE	
<small>List no more than 3</small>	
1. Small Business Owner- Veggies & Stuff	
2. Assistant Manager- Nikiski 7-11	
3. Dept. Manager Kenai Carrs grocery store	
COMMUNITY SERVICE	
<small>List no more than 3</small>	
1. Alaska Division of Elections Precinct Chair Nikiski 2016-2021	
2. KPYF-chaplain 12yrs	
3. Kenai Little League head coach- Tball, kid pitch, etc	
CANDIDATE STATEMENT (200 words or less): On a separate sheet of paper (typed), you may submit a statement of your choice regarding your position on the issues, why you are running for office, etc. This statement will be printed EXACTLY as written.	

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Kenai Peninsula Borough

Applicant for Appointment Assembly District 3 - Nikiski

Lenora Niesen

Education:

College – Medical
Administration Studies

No Photo Provided

Elected Experience:

2022-2033 Nikiski Advisory
Planning Commission
(Appointed)

Other Professional Experience:

1977 - 1979 IBM Corporation, Greenville, SC, Customer Engineer
1979- 1981 Barrett Office Supply, Anchorage, AK Customer Engineer
1981-2007 Frontier Business Systems, Co-owner and Manager

Community Service:

Volunteer, Nikiski church of Christ – Community Clothing Closet
Board Member, North Road Pioneers

Statement (reproduced exactly as submitted):

I am applying for the District 3 Assembly Seat.

I have been an Alaska resident for 43 years. My husband and I owned and managed Frontier Business Systems, Inc., with 45 employees in Anchorage, Fairbanks, Kenai and Kodiak. Through this, I learned to lead, understand financial reports, build teams, organize, communicate, and encourage coworkers. In 2004, we were named SBA's "Small Business Persons of the Year," recognizing our success as business leaders and our contributions to the community.

In 2002-03 I worked with a group to form a Charter School within the Anchorage School District. This utilized my business, organization and public speaking skills, and helped me understand district processes and needs of teachers and schools. I served on the Academic Policy Board 2004-2010 as Chair and Community Representative. We were subject to the Open Meetings Act, which is relevant to the Assembly position. I am proud to say that the scores from Eagle Academy are among the highest in ASD, which reflects the success of the program and the support of excellent teachers.

I hope that by serving, I can utilize my skills to represent needs and concerns of the people of Nikiski in Borough matters.

Email: niesen.len@gmail.com

Phone No.: (907) 244-1095

Declaration of Candidacy for Appointment to Assembly
Kenai Peninsula Borough
Office of the Borough Clerk

144 N. Binkley Street
Soldotna, AK 99669-7599

Phone: (907) 714-2160
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GENERAL INFORMATION

I, Lenora Niesen, am a qualified voter and declare myself to be a resident
Candidate's Printed Name
and applicant for nomination to the office of: Assembly District 3 – Nikiski

CANDIDATE INFORMATION

Physical Residence Address: 50092 Halbouty Road, Nikiski, AK 99635

Resident of Kenai Peninsula Borough: 9 years 8 months

Mailing Address: PO Box 8485, Nikiski, AK 99635

Daytime Phone Number: 907-244-1095

Email: niesen.len@gmail.com

Provide at least ONE Identifier: Voter #

SS # (last 4 digits)

Date of Birth

CANDIDATE CERTIFICATION: I certify that the information in this Application for Appointment is true and complete and that I meet the specific residency and citizenship requirements of this office. I further certify that I shall meet the age requirements upon taking the oath of office, if appointed.

X

[Signature]
Candidate's Signature

For Office Use

Date Received:

1-10-23

By:

Verified:

D/P:

08-070

Letter Sent:

Revised 12/14/22 /mlt

Candidate Information for Publication
Kenai Peninsula Borough
Office of the Borough Clerk

144 N. Binkley Street
Soldotna, Alaska 99669-7599

Phone: (907) 714-2160
Fax: (907) 714-2388

This form, photo and candidate statement must be received by the Clerk's Office no later than **Tuesday, January 10, 2023 at 4:30 PM**

RECEIVED
JAN 10 2023
Borough Clerk's Office
Kenai Peninsula Borough

[NOTE: Candidate information will be published on the Borough's website ONLY.]

CANDIDATE PROFILE	
Name: Lenora Niesen	
Office Sought: Assembly Seat for District 3	
Email: niesen.len@gmail.com	Phone No.: 907-244-1095
Education: College - Medical Administration Studies	
ELECTED EXPERIENCE	
<small>Elected and/or appointed positions held and dates of service – List no more than 3</small>	
1. 2022-2033 Nikiski Advisory Planning Commission (Appointed)	
2.	
3.	
OTHER PROFESSIONAL EXPERIENCE	
<small>List no more than 3</small>	
1. 1977-1979 IBM Corporation, Greenville, SC, Customer Engineer	
2. 1979-1981 Barrett Office Supply, Anchorage, AK, Customer Engineer	
3. 1981-2007 Frontier Business Systems, Co-owner and Manager	
COMMUNITY SERVICE	
<small>List no more than 3</small>	
1. Volunteer, Nikiski church of Christ - Community Clothing Closet	
2. Board Member, North Road Pioneers	
3.	
CANDIDATE STATEMENT (200 words or less): On a separate sheet of paper (typed), you may submit a statement of your choice regarding your position on the issues, why you are running for office, etc. This statement will be printed EXACTLY as written.	

Note: You may submit a photograph suitable for reproduction. This photograph will be accepted for publication only if it meets the following standards:

1. Taken within the last five years; and
2. Composition limited to the head, neck and shoulders of candidate.

Turner, Michele

From: Kenai Peninsula Borough <webmaster@borough.kenai.ak.us>
Sent: Tuesday, January 10, 2023 4:41 PM
To: BoroughAssembly; Mayor's Department
Cc: Turner, Michele
Subject: New Public Comment to Assembly Members

Your Name: Jonathan Quick

Your Email: jdquicky@gmail.com

Subject: Heidi Covey

Message:

Dear Assembly,

Heidi Covey would be an excellent replacement for now, Senator elect Bjorkman. Heidi has shown to have the ability to act in a bipartisan fashion. She was elected to a service area board under the Pierce Administration and was appointed by Mayor Navarre recently to the roads board. She was also appointed/hired by the Division of Election as a leader for the nikiski precinct under the walker and Dunleavy administration to help run elections. She is very involved in our community, and it shows. Oil and Gas is a big deal not only for Nikiski but also for the whole borough as that acts as a tax base for the borough. Heidi has also served for several years on the Borough's oil and gas advisory group - that group advises the mayor and the assembly. Thanks for listening, John Quick

Turner, Michele

From: Scott Hamann <freedom@alaska.net>
Sent: Friday, January 13, 2023 12:40 PM
To: Turner, Michele; Johnson, Brent
Subject: <EXTERNAL-SENDER> Nikiski Vacancy

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.

Good after noon. My name is Scott Hamann and I am a long time Nikiski resident. I would first like to say that I don't think it is right for the assembly to be choosing who our representative will be. I can understand it for a short time appointment, but I am told that this is for the full 3 year term. The residents of Nikiski should be making that decision. That being said I am hopeful that Nikiski residents opinions will be taken into account. I for one would like to see Heidi Covey seated as our Representative.

Thank you for your time and consideration

Scott Hamann
776-7676



Virus-free. www.avast.com



Kenai Peninsula Borough

144 North Binkley Street
Soldotna, AK 99669

Meeting Minutes - Draft

Assembly

Brent Johnson, President

Tyson Cox, Vice President

Lane Chesley

Richard Derkevorkian

Cindy Ecklund

Bill Elam

Brent Hibbert

Mike Tupper

Tuesday, January 3, 2023

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 Willy Dunne.]

ROLL CALL

[Clerk's Note: Assembly Member Tupper participated via Zoom.]

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

Also present:

Mike Navarre, Borough Mayor

Max Best, Chief of Staff

Brandi Harbaugh, Finance Director

Sean Kelley, Borough Attorney

Michele Turner, Acting Borough Clerk

COMMITTEE REPORTS

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

Assembly Member Ecklund stated the Lands Committee met and discussed its agenda items.

Assembly Member Chesley stated the Policies and Procedures Committee met and

discussed its agenda items.

Assembly Member Chesley stated the Assembly Material Site Subcommittee met and discussed its agenda items.

APPROVAL OF AGENDA AND CONSENT AGENDA

Cox moved to approve the agenda and consent agenda.

Copies have been made available to the public, Acting Borough Clerk Michele Turner noted by title only the resolutions, ordinances and other new business items that were on the consent agenda.

[KPB-4808](#) Regular Meeting Minutes December 13, 2022
approved.

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

[2022-19-34](#) An Ordinance Approving the Second Amendment to the Spending Plan for the COVID-19 Community Funding Program to Purchase Portable Training Tables, Chairs, Response Equipment, Response Training and Electronic Signage to Support Future Emergency Response Objectives and Appropriating Service Area Funds to Support Local Portion of Signage (Mayor)

This Budget Ordinance was enacted as amended.

[2022-19-36](#) An Ordinance Accepting and Appropriating \$61,000 from the State of Alaska Department of Military and Veterans Affairs, Division of Homeland Security and Emergency Management for the Siren Warning System Replacement Project within the City of Homer (Mayor)

This Budget Ordinance was enacted.

[2022-19-37](#) An Ordinance Appropriating \$13,078.54 from the River Center Building Maintenance Reserve Fund and \$6,625.18 from the 911 Communications Fund for Unexpected Repairs to the River Center Building (Mayor)

This Budget Ordinance was enacted.

[2022-43](#) An Ordinance Authorizing a Subsurface Oil and Gas Lease to Hilcorp Alaska, LLC, in the Ninilchik Unit (Mayor) (Hearing on 01/03/23)

This Ordinance was enacted.

New Business

[2023-002](#) A Resolution Adopting an Alternate Allocation Method for the Fiscal Year 2023 Shared Fisheries Business Tax Program and Certifying that this Allocation Method Fairly Represents the Distribution of Significant Effects of Fisheries Business Activity in the Cook Inlet Fisheries Management Area (Mayor)

This Resolution was adopted.

[2023-003](#) A Resolution Authorizing the Issuance and Sale of General Obligation Bonds, in One or More Series, of the Kenai Peninsula Borough in the Principal Amount of Not to Exceed \$65,550,000 to Finance Costs of Certain Educational Capital Improvements in the Borough; Authorizing the Sale of Such Bonds; Fixing Certain Details of Such Bonds; Pledging the Full Faith and Credit of the Borough to the Payment Thereof; and Providing for Related Matters (Mayor)

This Resolution was adopted.

[2023-004](#) A Resolution Authorizing the Kenai Peninsula Borough to Issue Its Central Emergency Service Area General Obligation Bond in an Aggregate Principal Amount Not To Exceed \$16,500,000, to Finance the Costs of a Replacement Fire Station to be Located in the Central Emergency Service Area, Fixing Certain Details of Such Bond; Pledging the Full Faith and Credit of the Central Emergency Service Area to the Payment thereof; Authorizing the Sale of Such Bond, and Providing for Related Matters (Mayor)

This Resolution was adopted.

[2023-001](#) A Resolution Confirming An Appointment to a Non-Borough Board (Johnson)

This Resolution was adopted.

[2022-19-39](#) An Ordinance Deobligating and Appropriating Solid Waste Capital Project Funds Previously Appropriated for the Construction of the Funny River Transfer Site to Overhead Door Replacement at Central Peninsula Landfill (Mayor) (Hearing on 01/17/23)

This Budget Ordinance was introduced and set for public hearing.

[2023-01](#) An Ordinance Amending KPB 2.04.060 to Increase the Mayor's Salary to \$130,000 and to Provide for an Inflation Adjustment Every Three

Years (Mayor) (Hearing on 02/07/23) (Referred to Policies and Procedures Committee)

This Ordinance was introduced and set for public hearing.

[KPB-4819](#) Approving a Transfer of Owner/Transfer of Location from Inlet View Restaurant & Bar to Justin Cole DBA: Cole's Market LLC License No. 1350
approved.

[KPB-4812](#) Petition to Vacate a 2' X 222.78' portion of an alley located between Mission Ave. & Bayview Street as dedicated on USS 3036 HM 65-66 located in the Ninilchik Area.

[Clerk's Note: At its regularly scheduled meeting of December 12, 2022 the Kenai Peninsula Borough Planning Commission approved the proposed vacation by unanimous consent.]
approved.

Approval of the Agenda and Consent Agenda

President Johnson called for public comment.

Joan Corr, Soldotna spoke in opposition to Resolutions 2023-003 and 2023-004 Ordinance 2023-01.

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

PRESENTATIONS WITH PRIOR NOTICE

[KPB-4809](#) Watershed Presentation, Coowe Walker, Kachemak Bay National Estuarine Research Reserve

[Clerk's Note: Coowe Walker, Lead Watershed Ecologist, Kachemak Bay National Estuarine Research Reserve gave a presentation to the assembly.]

PUBLIC COMMENTS ON ITEMS NOT APPEARING ON THE AGENDA

President Johnson called for public comment.

Joan Corr, Soldotna addressed the assembly regarding sound waves being made in

the inlet and carbon projects.

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

PUBLIC HEARINGS ON ORDINANCES

[2022-19-35](#) An Ordinance Accepting and Appropriating Funding from the State of Alaska in the Amount of \$426,303 for Fiscal Year 2023, Allocating a One-Time Bonus Amount Based on A Per-Capita Calculation in the Amount of \$308,883.91, and Approving Projects to be Completed for Community Purposes Under the State's 2022/2023 Community Assistance Programs (Mayor)

Hibbert moved to enact Ordinance 2022-19-35.

President Johnson called for public comment.

The following people addressed the assembly regarding Ordinance 2022-19-35.

Bruce Jaffa, Moose Pass

Greg Meyer, Executive Director, Kenai Peninsula Food Bank

Leslie Rhor, Executive Director, Love, Inc.

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

President Johnson passed the gavel to Vice President Cox and declared a possible conflict as he was the President of the Kasilof Historical Association. After consulting with Borough Attorney Kelley, Vice President Cox ruled he had a conflict. President Johnson abstained from voting on Ordinance 2022-19-35. Vice President Cox returned the gavel.

The motion to enact Ordinance 2022-19-35 carried by the following vote:

Yes: 8 - Hibbert, Derkevorkian, Elam, Chesley, Ecklund, Tupper, Bjorkman, and Cox

Abstain: 1 - Johnson

[2022-19-38](#) An Ordinance Appropriating \$475,250 from the Insurance and Litigation Fund for Additional Costs of Insurance Claims Incurred in FY2023 (Mayor)

Hibbert moved to enact Ordinance 2022-19-38.

President Johnson called for public comment with none being offered.

The motion to enact Ordinance 2022-19-38 carried by the following vote:

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

NEW BUSINESS

1. Resolutions

[2023-005](#) A Resolution of Intent by The Kenai Peninsula Borough Assembly Establishing that Financing of Energy and Resilience Improvement Projects through Assessments Serves a Valid Public Purpose and Related Matters (Ecklund) (Referred to Lands Committee) [Tabled on 01/03/23]

Ecklund moved to adopt Resolution 2023-005.

President Johnson called for public comment.

The following people spoke in support of Resolution 2023-005:

Kelly Ann Cavanetta, Seward
Brentwood (Hig) Higman, Seldovia

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

Ecklund moved to table Resolution 2023-005.

The motion to table Resolution 2023-005 carried by the following vote:

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

MAYOR'S REPORT

[KPB-4823](#) Mayor's Report Cover Memo

1. Assembly Requests/Responses - None.

2. Agreements and Contracts

a. [KPB-4824](#) Authorization to Award a Contract for RFP23-001 Mass Notification System

3. Other

a. [KPB-4825](#) Budget Revisions - November 2022

b. [KPB-4826](#) Revenue-Expenditure Report - November 2022

PUBLIC COMMENTS AND PUBLIC PRESENTATIONS**ASSEMBLY COMMENTS**

Assembly Member Elam congratulated Mr. Bjorkman on his election to the Alaska Senate. He wished everyone a good evening.

Assembly Member Hibbert thanked Mr. Meyer and Ms. Rohr for their testimony on Ordinance 2022-19-35. He congratulated Mr. Bjorkman on his election to the Alaska Senate. Mr. Hibbert thanked the staff for their work.

Assembly Member Tupper stated he was thankful he was able to attend remotely and looked forward to attending in person. He stated it was a pleasure serving with Mr. Bjorkman on the Assembly and wished him the best.

Assembly Member Derkevorkian echoed the other Assembly comments regarding Mr. Bjorkman and stated he learned a lot from him. He wished Mr. Bjorkman the best on his future endeavors in Juneau.

Assembly Member Bjorkman thanked everyone for their kinds words and stated it was an honor and pleasure to serve with them. He thanked the residents in Nikiski for giving their trust and votes to represent them on the Assembly. He stated he was continuing to represent Nikiski residents in Juneau as well as all central peninsula residents. He encouraged the Assembly to postpone Ordinance 2022-46 to February 21, 2023. Mr. Bjorkman reminded everyone that winter break had ended and school starts January 4, 2023. He encouraged everyone to drive carefully on the winter roads and wished everyone a great evening.

Assembly Member Chesley congratulated Mr. Bjorkman and stated he looked forward to his legislative updates. He stated he was contacted by two residents regarding dog problems and stated he wanted to take up that challenge to see if there was something the borough could do. He wished everyone a happy new year.

Assembly Member Ecklund wished Mr. Bjorkman and his family the best with their upcoming transitions to Juneau. She stated she was thankful Mr. Bjorkman ran for state senate. Ms. Ecklund thanked everyone for their testimony and those who attended in person who were interested in grass roots government. She thanked the staff for their help and work. She wished everyone a happy new year.

Vice President Cox stated he was proud to have Mr. Bjorkman as his senator. He stated he enjoyed watching and learning from him during debate. He stated he looked forward to see what Mr. Bjorkman will do for our peninsula in Juneau as he thought good things were coming. Mr. Cox reminded everyone that school was starting

tomorrow and asked drivers to be cautious and drive slow. He wished everyone a good evening.

President Johnson stated the HR Director, Justen Huff, extended an invite to assembly members to attend upcoming collective bargaining agreement negotiations. President Johnson encouraged the assembly member to attend as a silent observer. He acknowledged borough mayor candidates Dr. Zach Hamilton, Linda Hutchings and Senator Peter Micciche for attending. Mr. Johnson shared a list of assembly members who also served on the assembly and the state legislature. He congratulated Mr. Bjorkman and stated he was excited for his upcoming service.

INFORMATIONAL MATERIALS AND REPORTS

1. [KPB-4828](#) Cook Inlet Regional Citizens Advisory Council Director's Report

ASSEMBLY MEETING AND HEARING ANNOUNCEMENTS

1. January 17, 2023 Material Subcommittee Meeting

TBD

Betty J. Glick Assembly Chambers

Borough Administration Building

Remote participation available through Zoom

Meeting ID: 884 7373 9641 Passcode: 671108

2. January 17, 2023 Regular Assembly Meeting

6:00 PM

Betty J. Glick Assembly Chambers

Borough Administration Building

Remote participation available through Zoom

Meeting ID: 884 7373 9641 Passcode: 671108

ADJOURNMENT

With no further business to come before the assembly, President Johnson adjourned the meeting at 8:29 p.m.

I certify the above represents accurate minutes of the Kenai Peninsula Borough Assembly meeting of January 3, 2023.

Michele Turner, CMC, Borough Clerk

Approved by the Assembly: _____

Introduced by: Mayor, Johnson
Date: 01/17/23
Action:
Vote:

**KENAI PENINSULA BOROUGH
COMMENDING RESOLUTION**

**A RESOLUTION IN MEMORIAM COMMENDING THE CONTRIBUTIONS
OF BETTY J. GLICK**

- WHEREAS,** with the passing of Betty J. Glick the Kenai Peninsula Borough has lost a significant member of our community; and
- WHEREAS,** in 1963 Betty and her husband, Carl Glick, moved their family from Carlisle, Pennsylvania to Kenai, Alaska where their first home was in the basement of the First Assembly of God Church that her father-in-law and mother-in-law founded; and
- WHEREAS,** Betty worked as an accountant for Marv Riley, CPA from 1966 to 1982; and
- WHEREAS,** she began her public service in local government as a member of the Kenai Planning and Zoning Advisory Committee from 1974 to 1976 and served as chair in 1976; and
- WHEREAS,** she later became a member of the Kenai City Council serving from 1976 to 1983, including as vice mayor from 1979 to 1982; and
- WHEREAS,** she served on the Kenai Peninsula Borough Planning Commission in 1976, serving as vice chairman from 1977 to 1981 and chairman from 1981 to 1982; and
- WHEREAS,** Betty took her civic duty seriously and was elected to the Kenai Peninsula Borough Assembly, serving from 1982 to 1996 and again from 2002 to 2005; and
- WHEREAS,** Betty presided over 100 assembly meetings, 17 more than any other president; and
- WHEREAS,** she was actively involved in the Alaska Municipal League throughout her time in public office and served on the AML executive board, including a term as AML President from 1983 to 1984; and
- WHEREAS,** she was the first female President of the Western Interstate Region Board of Directors in 1990, representing 16 Western Public Lands States; and
- WHEREAS,** Betty served as the Alaska Representative to the National Association of Counties Board of Directors; and

WHEREAS, she served on the Kenai Peninsula Borough’s Board of Equalization and Board of Adjustment; and

WHEREAS, she served on the Kenai Peninsula Borough’s Election Canvass Board as well as acting as the Election Board Chair for the Kenai No. 2 Precinct for several years; and

WHEREAS, she served as co-chair on the Kenai Peninsula Borough’s Reapportionment Committee in 2001 and as chair in 2011; and

WHEREAS, Betty has selflessly served the constituents of the Kenai Peninsula Borough since her arrival to Alaska in 1963;

WHEREAS, in 2018 to honor of her for her many years of service to the Kenai Peninsula Borough the assembly meeting chambers was officially named as the “Betty J. Glick Assembly Chambers”; and

WHEREAS, she will be remembered as a very generous woman who was committed to serving her community. Her insight, commitment to service, and keen intelligence have shaped and influenced the Kenai Peninsula Borough irrevocably. Betty J. Glick will be missed deeply by her family and community, and all who knew her are saddened by her passing;

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

SECTION 1. That the Kenai Peninsula Borough Assembly extends its heartfelt condolences to the family of Betty J. Glick and joins her many friends in mourning the loss of an extraordinary woman who gave so much to her community.

SECTION 2. That this resolution takes effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 17TH DAY OF JANUARY, 2023.

ATTEST:

Brent Johnson, Assembly President

Michele Turner, CMC, Acting Borough Clerk

Yes:

No:

Absent:

Introduced by:	Mayor
Date:	01/03/23
Hearing:	01/17/23
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-19-39**

**AN ORDINANCE DEOBLIGATING AND APPROPRIATING SOLID WASTE
CAPITAL PROJECT FUNDS PREVIOUSLY APPROPRIATED FOR THE
CONSTRUCTION OF THE FUNNY RIVER TRANSFER SITE TO OVERHEAD DOOR
REPLACEMENT AT CENTRAL PENINSULA LANDFILL**

WHEREAS, during the FY2020 annual budget process, the Assembly appropriated funds of \$670,525 to the Borough’s Solid Waste Department for completion of the Funny River Transfer Site Project; and

WHEREAS, the expansion of the Funny River site was completed leaving \$48,777.23 in available funds; and

WHEREAS, during the FY2023 annual budget process, the Assembly appropriated \$40,000 for replacement of overhead doors at the Central Peninsula Landfill (“CPL”); and

WHEREAS, two nonfunctioning overhead doors at CPL need to be replaced, however, after project bids were received, the budget is only sufficient to replace one door; and

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

SECTION 1. That an amount up to \$48,777.23 is deobligated from the Solid Waste Funny River Transfer Site Capital Project and appropriated to account 411.32122.23494.49999 to support the CPL Overhead Door Replacement Project.

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 * 2023.**

Brent Johnson, Assembly President

ATTEST:

Michele Turner, CMC, Acting 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*

FROM: Lee Frey, Solid Waste Director *LF*
Brandi Harbaugh, Finance Director *BH*
John Hedges, Purchasing & Contracting Director *JH*

DATE: December 21, 2022

RE: Ordinance 2022-19-39, Deobligating and Appropriating Solid Waste Capital Project Funds Previously Appropriated for the Construction of the Funny River Transfer Site to Overhead Door Replacement at Central Peninsula Landfill (Mayor)

During the FY2020 annual budget process, the Assembly appropriated funds of \$670,525 for the expansion of the Funny River Transfer Site. The expansion was completed leaving \$48,777.23 in available funds.

During the FY2023 annual budget process, the Assembly appropriated \$40,000 for replacement of overhead doors at the Central Peninsula Landfill (CPL). We had anticipated this covering the cost to replace two overhead doors. After the project was bid, the funds are currently only sufficient to replace one door. Re-appropriation of these funds to the overhead door replacement project will allow us to complete replacement of the two currently non-functioning doors at CPL that were bid and use remaining funds to replace other doors.

This ordinance deobligates and appropriates up to \$48,777.23 from a previously appropriated project in the Solid Waste Capital Project to supplement the FY2023 CPL Overhead Door Replacement project.

Your consideration is appreciated.

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No.	<u>411.32570.20FUN.49999</u>
Amount:	Up to <u>\$48,777.23</u>
By: <i>CJ</i>	Date: <u>12/20/2022</u>

Introduced by: Johnson, Cox
Date: 12/13/22
Hearing: 01/17/23
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-44**

**AN ORDINANCE AMENDING KPB 4.10.060 AND 4.10.110 TO ELIMINATE THE
REQUIREMENT THAT THE INFORMATIONAL ELECTION BROCHURE BE
MAILED TO EVERY BOROUGH BOXHOLDER AND TO ELIMINATE THE
REQUIREMENT OF THE BOROUGH CLERK TO SEEK AUTHORSHIP
ADVOCATING APPROVAL AND REJECTION OF BALLOT PROPOSITIONS**

WHEREAS, KPB 4.10.110(A) states the borough clerk shall prepare a brochure that shall contain “of a strictly factual nature” proposition information and “shall be mailed to every borough boxholder”; and

WHEREAS, mailing an informational brochure to every borough boxholder costs the borough approximately \$30,000 for each regular election; and

WHEREAS, the high number of abandoned informational brochures found at local post offices indicates that this is not a resource that everyone finds helpful; and

WHEREAS, publishing the informational brochure online and providing for a mechanism for interested voters to request a hard copy appears to be a more targeted approach; and

WHEREAS, the more targeted approach would include adding information in the notice of election that notifies to the voters as to where and how voters can locate and/or request a copy of the informational brochure; and

WHEREAS, printed copies of the informational brochure will be available in the borough clerk’s office, every city clerk’s office throughout the borough and both borough annex offices in Homer and Seward; and

WHEREAS, in addition, the borough clerk’s office will send a postcard to every registered voter that includes a link to the internet address where the voter pamphlet can be found online; and

WHEREAS, KPB 4.10.110(B) requires the clerk to offer authorship of statements by an individual or organization with a stated interest in advocating approval or rejection of propositions to be included in the borough election pamphlet; and

WHEREAS, the administration of this code provision has proven to be difficult and an unnecessary point of contention in the public process; and

WHEREAS, examples of such difficulties include identifying publicly recognized individuals or organizations with stated interests in the proposition; and

WHEREAS, nothing in the code prevents a proponent or opponent of a ballot proposition from submitting a statement in order to further their position on a ballot proposition; and

WHEREAS, there is concern that the use of public funds to advocate for or against any ballot proposition is not appropriate;

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

SECTION 1. Amend KPB 4.10.060(B) to read as follows:

4.10.060. Notice of election.

...

B. Each notice of election shall include:

1. The type of election, whether regular, special or runoff;
2. The date of the election;
3. The hours the polls will be open;
4. The offices to which candidates are to be elected;
5. The subjects of propositions to be voted upon;
6. Voter qualifications and instructions for registration;
7. Instructions for application for absentee voting;
8. Precinct polling places;
9. The KPB web address where the informational brochure will be published;
10. The locations printed copies of the informational brochure will be available;
11. The borough clerk's office contact information.

SECTION 2. Amend KPB 4.10.110(A) to read as follows:

4.10.110. Informational brochures for ballot propositions.

- A. Fifteen days prior to each regular or special election the borough clerk shall prepare [AND MAIL TO EVERY BOROUGH BOXHOLDER] a brochure containing information approved by the assembly of a strictly factual nature pertaining to each proposition on the ballot, [EXCEPT AS PROVIDED BELOW IN THIS SECTION]. The informational brochure shall be published on the borough's election webpage and hard copies will be made available at the borough clerk's office, all city clerk offices and the

borough's annex offices in Seward and Homer. A voter may request a printed copy with the borough clerk's office.

SECTION 2. Repeal KP.B 4.10.110(B) in its entirety.

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

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH * DAY OF * 2023.

Brent Johnson, Assembly President

ATTEST:

Michele Turner, CMC, Acting Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Borough Assembly

MEMORANDUM

TO: Members, Kenai Peninsula Borough Assembly

THRU: Brent Johnson, Assembly President *BJ*
Tyson Cox, Assembly Vice President *TRC*

FROM: Michele Turner, Acting Borough Clerk *(MT)*

DATE: December 1, 2022

RE: Ordinance 2022-44, Amending KPB 4.10.060 and 4.10.110 to Eliminate the Requirement that the Informational Election Brochure be Mailed to Every Borough Boxholder and to Eliminate the Requirement of the Borough Clerk to Seek Authorship Advocating Approval and Rejection of Ballot Propositions (Johnson, Cox)

KPB 4.10.110(A) states the Borough Clerk shall prepare a brochure that contains "of a strictly factual nature" proposition information and "shall be mailed to every borough boxholder". Mailing an informational brochure to every borough boxholder costs the borough approximately \$30,000 for each regular election.

The abandoned informational brochures found at local post offices indicate that this is not a resource that everyone finds helpful. The Borough Clerk's Office will post the entire brochure online and continue to publish the informational brochure. Publishing the informational brochure online and providing for a mechanism for interested voters to request a hard copy appears to be a more targeted approach. Printed copies will be available in the Borough Clerk's Office, every city clerk's office and both borough annex offices in Homer and Seward. In addition, the Borough Clerk's Office will send a postcard to every registered voter that includes a link to the internet address where the voter pamphlet can be found online.

KPB 4.10.110(B) requires the clerk to offer authorship of statements by an individual or organization with a stated interest in advocating approval or rejection of propositions to be included in the borough election pamphlet. The administration of this code provision has proven to be difficult and an unnecessary point of contention in the public process. Nothing in the code prevents a proponent or opponent of a ballot propositions from submitting a statement in order to further their stated position on a ballot proposition. This change would simply mean that the Borough Clerk does not need to actively seek out pro/con statements.

Your consideration is appreciated.

From: [Turner, Michele](#)
To: [Turner, Michele](#)
Cc: [Warner, Avery](#)
Subject: FW: <EXTERNAL-SENDER>Election pamphlets ordinance
Date: Monday, December 19, 2022 8:49:29 AM

Good morning,

Please see the public comment below regarding Ordinance 2022-44.

Thank you,

Michele Turner, CMC
Acting Borough Clerk
Kenai Peninsula Borough
(907) 714-2165 direct

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

From: Ken Landfield <ken@ak.net>
Sent: Saturday, December 17, 2022 5:36 PM
To: Turner, Michele <MicheleTurner@kpb.us>
Subject: <EXTERNAL-SENDER>Election pamphlets ordinance

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.

> Dear President Brent Johnson and Kenai Peninsula Borough Assembly
> legislators, I urge you not to amend the code that mandates you to mail voter information pamphlets to all registered voters. We should all be doing everything in our power to increase voter education and turnout, not limiting or diminishing access to important, balanced information in any way. Certainly, there are other means to this material, but we should look for more, not fewer, ways to provide access and to encourage informed voting. Please do not discontinue mailing printed informational pamphlets to every registered voter.

>

> Ken Landfield

> Homer

>

> 299-4147

>

>

>

>

Turner, Michele

From: Kenai Peninsula Borough <webmaster@borough.kenai.ak.us>
Sent: Wednesday, January 11, 2023 1:35 PM
To: BoroughAssembly; Mayor's Department
Cc: Turner, Michele
Subject: New Public Comment to Assembly Members

Your Name: mary griswold

Your Email: mgrt@xyz.net

Subject: 2022-44 election brochure

Message:

I support Ord 2022-44 to eliminate mailing election brochures to all boxholders. Voter access to information is critical for making wise choices and modern technology provides us with good alternatives to creating piles of discarded brochures in the post offices. Please make an effort to supply local libraries with copies. Most people who do not use the internet rely on libraries for access to important information and documents.

Borough Clerk and Borough Assembly Members,

Regarding Ordinance 2022-44:

I agree entirely with no longer publishing pros/cons of propositions in the Election Pamphlet. I do not agree with ceasing the mailing of the Pamphlet.

With all due respect, a postcard will be just as likely as the pamphlet to end up in the landfill or get missed due to its size. At least the pamphlet is on newsprint and more likely to compost.

Since it seems likely this Ordinance will pass, I encourage the Assembly to use some of the \$30,000 saved and put towards large ads in the papers (online as well), radio PSAs, large re-usable road signage near all voting places and on the way into and out of our towns. I know the borough website and FB page posts all the dates/deadlines but I wonder if many go out of their way to go there. The City of Homer put up two large digital road signs ahead of election dates facing drivers on the way into town. The Borough should do the same.

It's a challenge to increase voter turnout. It's a challenge to educate voters on dates/deadlines, candidates and propositions. I have worked the elections here in Homer since 2020 and have known folks to come in to vote only because they saw the "vote here" clapboard on the road and have little but a vague idea of what the election is for.

The state did a youth contest for their pamphlet cover art, the Chamber does photo contests for theirs. Both are incentives to get drawn into the pamphlet.

Michelle and Joni (who will be greatly missed) are great and do an incredible job as election clerks. They have a tough job! I especially appreciate their calm on election day. I appreciate and understand the discouragement at seeing low voter turnout and the pamphlets in the trash but I strongly feel a postcard in its stead will only save money.

Sincerely,

Therese Lewandowski, Homer

Introduced by: Johnson, Cox
Date: 12/13/22
Hearing: 01/17/23
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-45**

**AN ORDINANCE AMENDING KPB 4.60.030 RELATING TO BALLOT TABULATOR
TESTING BEFORE A RUN-OFF ELECTION**

WHEREAS, KPB 4.10.050(C) provides a mayoral run-off election shall be held on the third Tuesday following the regular election or within two weeks after certification of the results of the regular election; and

WHEREAS, KPB 4.60.030(A) provides testing of equipment shall be tested publicly two times for each election; and

WHEREAS, the time allocated between a regular or special election and a run-off election is an extremely tight timeline; and

WHEREAS, it is not feasible to conduct tabulator testing two weeks after certification of a regular and/or special election;

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

SECTION 1. Amend KPB 4.60.030(A) to read as follows:

4.60.030. - Ballot tabulator tests and security.

- A. The automatic tabulating equipment used for counting ballots (tabulator) at voting places shall be tested publicly two times for each election: before the election, and before the counting of ballots. After the counting of ballots a post-election audit shall be performed. Testing automatic tabulating equipment for a run-off election shall be deemed appropriately tested before the regular or special election.

SECTION 2. 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:

Michele Turner, CMC, Acting Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Borough Assembly

MEMORANDUM

TO: Members, Kenai Peninsula Borough Assembly

FROM: Brent Johnson, Assembly President *BJ*
Tyson Cox, Assembly Vice President *TRC*

DATE: December 1, 2022

RE: Ordinance 2022-45, Amending KPB 4.60.030 Relating to Ballot Tabulator Testing Before a Run-Off Election (Johnson, Cox)

In speaking with the Acting Borough Clerk, it has been brought to our attention that performing logic and accuracy testing after the special election on February 14, 2023 is not possible.

If required, the run-off election will be held two weeks after certification of the special election on March 7, 2023.

An election takes months to prepare, but due to the run-off election requirements as currently prescribed in code, preparation of a run-off election is condensed into a three week timeline. Therefore, we are requesting that the ballot tabulators be deemed appropriately tested before a regular or special election per KPB 4.60.030(B).

Your consideration is appreciated.

Introduced by:	Mayor
Date:	12/13/22
Hearing:	01/17/23
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-47**

**AN ORDINANCE AMENDING KPB 5.04.095(B) TO REMOVE THE RIVER CENTER
AS A LISTED GENERAL FUND DEPARTMENT AND KPB 5.20.030 TO REMOVE
THE RIVER CENTER FUND FROM THE SPECIAL REVENUE FUND LIST**

- WHEREAS,** Chapter 5.04, Budget Procedure and Fiscal Year, Kenai Peninsula Borough (“Borough”) Code of Ordinances, indicates that the Donald E. Gilman River Center (“River Center”) is a distinct department general fund department; and
- WHEREAS,** the River Center is organized inside the Planning Department; operating under a special revenue fund since 2006; and
- WHEREAS,** in 2012, as a result of GASB 54 required fund type changes, the River Center was re-classified as a department of the general fund; and
- WHEREAS,** per KPB 5.20.030 the “Kenai River Center Fund” is included within the list of Borough special revenue funds; and
- WHEREAS,** the River Center has evolved away from initial construction and startup that was largely funded by federal sources and now encompasses Planning Department and 911/Dispatch staff not associated with the River Center’s special fund; and
- WHEREAS,** neither the day-to-day operations nor the financial accounting systems benefit from maintaining separate fund accounts for the Planning Department and River Center special fund; and
- WHEREAS,** keeping the funds separate reduces flexibility and efficiency within the Planning Department; and
- WHEREAS,** this ordinance reclassifies the River Center as a division of the Planning Department, which will increase/improve flexibility and efficiency for the Planning Department as a whole;

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

SECTION 1. That KPB 5.04.095(B) is hereby amended to read as follows:

5.04.095. Level of budgetary control.

- B. That departments for the general fund are defined as assembly, clerk (to include elections and record management), mayor, purchasing and contracting, human resources (to include print shop, and custodial), information technology, office of emergency management, legal, finance, assessing, planning, [RIVER CENTER], capital projects, and non-departmental.

SECTION 2. That KPB 5.20.030 is hereby amended to read as follows:

5.20.030. - Special revenue funds.

Special revenue funds account for the proceeds from specific revenue sources (other than expendable trust or major capital projects) that are legally restricted to expenditures for specific purposes. These funds consist of the following:

Nikiski Fire Service Area Fund
Bear Creek Fire Service Area Fund
Anchor Point Fire and Emergency Medical Service Area Fund
Central Emergency Service Area Fund
Kachemak Emergency Service Area Fund
Lowell Point Fire Service Area
Central Peninsula Emergency Medical Service Area Fund
North Peninsula Recreation Service Area Fund
Road Service Area Fund
Road Improvement Assessment District Engineer's Estimate Fund
RIAD Match Fund
School Fund
Post-Secondary Education Fund
Land Trust Fund
Land Trust Investment Fund
[KENAI RIVER CENTER FUND]
Coastal Zone Management Fund
Seward Bear Creek Flood Service Area
Disaster Relief Fund
Environmental Protection Programs Fund
Underground Storage Tank Removal and Upgrade Fund
Pass-Through Grants Fund
Miscellaneous Grants Fund
Nikiski Senior Citizen Service Area Fund
Solid Waste Fund
Local Emergency Planning Committee Fund
Central Kenai Peninsula Hospital Service Area Fund
South Peninsula Hospital Service Area Fund

SECTION 3. That this ordinance shall become effective on July 1, 2023.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY
OF * 2023.**

Brent Johnson, Assembly President

ATTEST:

Michele Turner, CMC, Acting Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Planning Department

MEMORANDUM

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

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

FROM: Robert Ruffner, Planning Director *RR*

DATE: December 1, 2022

SUBJECT: Ordinance 2022-47, Amending KPB 5.04.095(B) to Remove the River Center as a Listed General Fund Department and KPB 5.20.030 to Remove the River Center Fund from the Special Revenue Fund List (Mayor)

Chapter 5.20 of the Kenai Peninsula Borough (the "Borough") Code of Ordinances contains a list of Borough funds and a definition of each fund. Special fund accounts have been established to track unique funds that need to be kept separate from the general fund for a variety of reasons. The Kenai River Center Fund was established in 2006 in large part due to federal grant funds that assisted in construction and earlier operations of the Donald E. Gilman River Center (the "River Center"). Tracking these grant funds and activities separate from the general fund was necessary at that time. Grants of this magnitude are no longer coming to the Borough, and in 2012 as a result of requirements outlined by GASB 54 "Fund Type Definitions," the River Center was reclassified as a department of the general fund.

Further, the River Center building now houses Planning Department staff who are not exclusively associated with the Kenai River Center Fund, and it has been upgraded to accommodate additional staff for the 911 call center. Keeping the River Center funds and Planning Department funds separate increases the internal administrative workload when moving funds between the traditional River Center activities and the Planning Department, even though the River Center is organized under the Planning Department. The Ordinance will reclassify River Center as a division of the Planning Department, which will improve flexibility and efficiency of the Planning Department as a whole. The administration is bringing this forward now in anticipation of staff preparing the FY 24 budget.

Your consideration is appreciated.

Introduced by:
Date:
Action:
Vote:

Mayor
01/17/23

**KENAI PENINSULA BOROUGH
RESOLUTION 2023-007**

**A RESOLUTION PROVIDING A 30-DAY APPLICATION PERIOD PRIOR TO
INACTIVATING THE KACHEMAK BAY ADVISORY PLANNING COMMISSION**

WHEREAS, the Kenai Peninsula Borough ("Borough") has established an Advisory Planning Commission ("APC") in several communities throughout the Borough, including the Kachemak Bay APC; and

WHEREAS, the Kachemak Bay APC was established on January 16, 1996, by Ordinance 95-38; and

WHEREAS, Borough code allows an APC to seat up to seven members, and requires at least four members to constitute a quorum; and

WHEREAS, currently there are five declared vacancies on this APC (Seats A, B, E, F, and G); and

WHEREAS, to date, no applications have been received to fill Seats A, B, E, F or G on this APC; and

WHEREAS, there are only two remaining seated members on the Kachemak Bay APC and the APC is therefore unable to meet and conduct business due to a lack of a quorum; and

WHEREAS, Borough code does not address how or when an APC should be inactivated when a quorum cannot be met; and

WHEREAS, the Kalifornsky APC was deactivated by the same process via Resolution 2022-025 on April 19, 2022; and

WHEREAS, at its meeting held on January 9, 2023, the Borough Planning Commission recommended approval by unanimous consent;

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

SECTION 1. That the Assembly declares Kachemak Bay APC Seats A, B, E, F, and G vacant and the Borough shall, for a period of 30 days, advertise for applicants to fill those vacancies.

SECTION 2. That during the 30-day application period if the Borough receives applicants for the Kachemak Bay APC but there remains an insufficient number of qualified applicants to constitute a quorum, the Borough will then list the Kachemak Bay APC as inactive.

SECTION 3. This resolution is effective immediately upon adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 17TH DAY OF JANUARY 2023.

Brent Johnson, Assembly President

ATTEST:

Michele Turner, CMC, Acting Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Planning Department

MEMORANDUM

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

THRU: Mike Navarre, Mayor *MN*
Robert Ruffner, Planning Director *SLERR*

FROM: Samantha Lopez, Senior Manager *SL*

DATE: January 5, 2023

RE: Resolution 2023-007, Providing a 30-Day Application Period Prior to Inactivating the Kachemak Bay Advisory Planning Commission (Mayor)

The Kenai Peninsula Borough (Borough) has established an Advisory Planning Commissions (APC) in several communities throughout the Borough, one being the Kachemak Bay APC. The Kachemak Bay APC was established on January 16, 1996, by Ordinance 95-38.

Borough code allows an APC to seat up to seven members, and requires at least four members to constitute a quorum. Since September 30, 2022, there have been two filled seats on this APC (Seats C and D), and five vacancies (Seats A, B, E, F, and G). These vacancies have been posted since October 3, 2022, and no applications have been received to date to fill these seats.

Because only two seats are filled, this APC is unable to meet and conduct business due to a lack of a quorum. Code does not address how or when an APC should be inactivated when a quorum cannot be established. However, when the Kalifornsky APC did not have enough members to form a quorum, it was deactivated by the same process via Resolution 2022-025 on April 19, 2022.

Through this resolution, Kachemak Bay APC seats A, B, E, F, and G will be declared vacant and advertised for 30 days. If, during the application period, the Borough receives applicants for the APC but there is still not a sufficient number of qualified applicants to secure a quorum on the APC, then the APC will be listed as inactive.

Your consideration is appreciated.

Kenai Peninsula Borough
Office of the Borough Clerk

MEMORANDUM

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

THRU: Johni Blankenship, Borough Clerk (B)

FROM: Michele Turner, Deputy Borough Clerk (MT)

DATE: March 1, 2022

RE: Ordinance 2021-19-37: Appropriating Funding from the Nikiski Fire Service Area Capital Project Fund for the Installation of a Water Treatment System at Nikiski Fire Station #3 (Mayor)

Per KPB 22.40.050(F), the borough clerk, or the clerk's designee in his or her absence, has the authority to revise pending resolutions and ordinances prior to assembly action, by filling in any blanks in the legislation stating advisory board recommendations made concerning the legislation. This serves as our memorandum to advise the assembly of same.

Conforming to the advisory board's actions, the last Whereas clause have been updated to read:

"WHEREAS, at its meeting held on February 9, 2022, the Nikiski Fire Service Area Board recommended approval by unanimous consent;"

Thank you.

Turner, Michele

From: Burnett, Trent
Sent: Thursday, February 10, 2022 11:52 AM
To: Turner, Michele
Cc: Hedges, John; White, Rhonda
Subject: Ordinance 2021-19-XX

Michele,

We had our regular scheduled board meeting last night and the board voted unanimously in favor of the referenced ordinance for transferring funds from the Nikiski Fire Service Area Capital Project Fund balance in the amount of \$10,000 for the installation of the water treatment system at Nikiski Fire Station #3.

Thank you,

Trent Burnett
Fire Chief
Nikiski Fire Dept.
(907)776-6401
(907)398-4101

Introduced by:

Mayor

Date:

01/17/23

Action:

Vote:

**KENAI PENINSULA BOROUGH
RESOLUTION 2023-008**

**A RESOLUTION ESTABLISHING THE FEDERAL CONGRESSIONAL PRIORITIES
LIST FOR THE KENAI PENINSULA BOROUGH FOR FISCAL YEAR 2024**

WHEREAS, the Kenai Peninsula Borough ("Borough") has capital projects that are qualified for submission to Alaska's U.S. Senate representatives for Congressionally Directed Spending requests as allowed under RULE XLIV of the Standing Rules of the Senate; and

WHEREAS, the Assembly finds it is in the best interest of the Borough to establish priorities for capital projects for Congressionally Directed Spending and submission to Senator Lisa Murkowski and Senator Dan Sullivan for their awareness of the Borough's request for financial assistance to achieve priority infrastructure needs;

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

SECTION 1. That the Kenai Peninsula Borough's Congressional Priorities List for Fiscal Year 2024 for Congressionally Direct Spending for important infrastructure needs in the Borough, as set forth and described on the project information statements that accompany this resolution, are hereby adopted. The adopted capital project priorities as listed in the memorandum accompanying this resolution and the project information statements are: the Seward Bear Creek Flood Service Flood Mitigation Projects, the South Peninsula Hospital's Site and Facility Rehabilitation Project, and the Central Peninsula Landfill's Gas Collection System Project

SECTION 2. That a copy of this resolution and all accompanying project information will be sent to Senator Lisa Murkowski and Senator Dan Sullivan.

SECTION 3. That this resolution is effective immediately upon adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 17TH DAY JANUARY, 2023.

Brent Johnson, Assembly President

ATTEST:

Michele Turner, CMC, Acting Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Purchasing & Contracting Department

MEMORANDUM

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

THRU: Mike Navarre, Mayor *MN*

FROM: John Hedges, Purchasing & Contracting Director *JH*
Rachel Chaffee, Community and Fiscal Projects Manager *RC*

DATE: January 5, 2023

RE: Resolution 2023- 008, Establishing the Federal Congressional Priorities List for the Kenai Peninsula Borough for Fiscal Year 2024 (Mayor)

The purpose of this Resolution is for Assembly approval of the Kenai Peninsula Borough's Federal Congressional Priorities list for fiscal year 2024. The approved list will be submitted as Congressionally Directed Spending requests as allowed under Rule XLIV of the Standing Rules of the Senate.

The proposed list contains the following significant capital projects:

- (1) The Kenai Peninsula Borough Seward Bear Creek Flood Service Area flood mitigation projects to mitigate flooding and reduce potential flood points and create long term solutions for those residents in the Seward, Bear Creek, and Lowell Point communities;
- (2) South Kenai Peninsula Hospital Service Area's South Peninsula Hospital - Site and Facility Rehabilitation project; and
- (3) Kenai Peninsula Borough's Central Peninsula Landfill Gas Collection System Project.

Each project included on the list is discussed in more detail on the accompanying project statements. Each of these projects are large projects that have the potential for funding, and are priority needs and will greatly benefit the Kenai Peninsula Borough and its residents. Each project addresses a severe need identified by the Borough.

Promoting and prioritizing these projects is an important step to receive Congressionally Directed Spending.

Thank you for your consideration.



Borough Assembly

144 North Binkley Street, Soldotna, Alaska 99669 • (907) 714-2160 • (907) 714-2388 Fax

Brent Johnson
President

KENAI PENINSULA BOROUGH'S CAPITAL PROJECTS CONGRESSIONAL PRIORITIES LIST FOR FISCAL YEAR 2024

The approved capital projects list requesting Congressionally Directed Spending for priority infrastructure needs is as follows:

1. Seward Bear Creek Flood Service Area Flood Mitigation Projects:

These flood mitigation projects include five different project needs that, together, would mitigate flooding and reduce potential flood points and create long term solutions for those residents in the Seward, Bear Creek, and Lowell Point communities.

2. South Peninsula Hospital Site and Facility Rehabilitation Project:

The Kenai Peninsula Borough South Peninsula Hospital Service Area South Peninsula Hospital Site and Facility Rehabilitation will Renovate and Rehabilitate the existing hospital facilities, build a new power plant and generator, expand the existing campus, and consolidate all services on campus.

3. Central Peninsula Landfill Gas Collection System Project:

The Kenai Peninsula Borough Central Peninsula Landfill will construct a gas collection system to provide sustainable energy resources for the landfill and the community now and into the future.

Encl.

- Project Information sheets (5 pages)



Kenai Peninsula Borough-Seward Bear Creek Flood Service Area Flood Mitigation Project Federal Share \$7,083,735

Kenai Peninsula Borough

Rachel Chaffee, Community & Fiscal Projects Manager

907-714-2153 (desk) * 907-690-1068 (mobile) * grants@kpb.us

– Project Information

Project Purpose

There are several flood service area improvements that are identified in the Seward Bear Creek Flood Service area located within the Kenai Peninsula Borough. These improvements include, but are not limited to, Japanese Creek Drainage Improvements, Bruno Road Armoring and Drainage Improvements, Box Canyon Creek Water Diversion Structure Improvements, Tiehacker Bank Stabilization, and Sediment Extraction. Seward Bear Creek Flood Service Area project needs are:

1. The Kenai Peninsula Borough worked with the U.S. Army Corps of Engineers (USACE) to complete a feasibility study of the Japanese Creek Floodplain. The USACE provided cost estimates, and recommendations to correct the issues noted within Japanese Creek. These recommendations and costs include road modifications, a debris basin, and an early warning system to ensure that residents are notified of potential flooding.
2. In the Questawoods subdivision, there is a 2,600-foot-long gravel embankment with an assessed value of over \$36.5 million. Recent storm events have caused floodwaters to rapidly erode existing gravel berms, which undermined the adjacent road and caused damage to the existing infrastructure and private properties. The only egress for the neighborhood, Bruno Road, had to be closed as a result of the flooding.
3. Box Canyon Creek is a deactivated alluvial fan, with a 2,800 foot gravel embankment maintained by the Kenai Peninsula Borough. There is a neighborhood, Old Exit Glacier subdivision, with an assessed value of \$44 million of Borough, State, and Federal infrastructure that is protected by this water diversion structure. In 2012 there was a major flooding event that eroded the embankment that protects the infrastructure within the Old Exit Glacier neighborhood. The USACE, at the request of the Kenai Peninsula Borough, is planning on completing an initial study of the floodplain during the 2023 fiscal year. Following the study the USACE will continue to the feasibility phase of the Continuing Authorities Program, Section 205 of the 1948 Flood Control Act.
4. Tiehacker Road has had streambank erosion during recent storm events that threaten road and utility infrastructure. Erosion has carved out over 1.4 acres of streambanks since a 2006 flood event. The Borough aims to construct an armored revetment along 440 feet of streambank, backfilling the eroded area to protect the road, utilities, and private properties from flood hazard.
5. Sediment Extraction is a major ongoing need for the flood service area. There are several streambed channels that are maintained by the flood service area to allow for the reduction in floodwaters. An effort to engineer controls and advance the flood service areas efforts to remove sediment in high risk areas of sediment build-up would assist in long term and effective solutions for streambed maintenance.

Project Impact to Alaska

The Seward Bear Creek Flood Service Area provides planning, protection, and mitigation of flooding, sedimentation and erosion hazards in the communities of Seward, Bear Creek, and Lowell Point. These communities provide year-round recreation for Alaska, and provide large economic support for the entire State of Alaska through the city of Seward. Through ensuring that flood mitigation is adequately addressed, economic activity and ongoing logistic supports from Seward's port of entry can continue unhindered during flooding season.

Project Description

The Kenai Peninsula Borough Seward Bear Creek Flood Service Area flood mitigation projects would mitigate flooding and reduce potential flood points and create long term solutions for those residents in the Seward, Bear Creek, and Lowell Point communities.

Project Goals and Results

Project Goals:

1. Implement recommendations of the USACE for Japanese Creek Floodplain
2. Armor the eroding berms in the Questawoods subdivision along the embankment
3. Replace the damaged infrastructure along the alluvial fan in Box Canyon Creek
4. Protect the infrastructure along Tiehacker Road
5. Engineer and establish long term solutions for Sediment Extraction in the Seward Bear Creek Flood Service Area

Project Results

1. Prevention of low-level flooding in residential and local areas
2. Prevention of economic and food supply delivery
3. Prevention of delivery of goods and materials from Seward's Port of Entry
4. Protection of infrastructure
5. Stimulation of the local economy through projects



Kenai Peninsula Borough-South Kenai Peninsula Hospital Service Area-South Peninsula
Hospital Site and Facility Rehabilitation
\$21,500,000

Kenai Peninsula Borough
Rachel Chaffee, Community & Fiscal Projects Manager
907-714-2153 (desk) * 907-690-1068 (mobile) * grants@kpb.us

– Project Information

Project Purpose

The Kenai Peninsula Borough owns and provides for the operation of South Peninsula Hospital (SPH) through the South Peninsula Hospital Service Area. SPH is a non-profit entity that was founded in 1956 and serves those who live in the southern communities of the Kenai Peninsula from Ninilchik to Nanwalek, Port Graham, and Seldovia. SPH operates the hospital through an operating agreement with the borough. SPH is a 22-bed acute care critical access hospital with an attached 28-bed skilled nursing/long-term care facility. It provides healthcare services, including acute care, cancer care, home health, family birthing, imaging, sleep center, rehabilitation, surgery, trauma level IV emergency care, and other specialties clinical services utilized by the residents of the service area as well as other Alaskans and seasonal visitors who are within the service area and have an emergent need.

The current facility that houses the SPH has exceeded its useful life expectancy and is currently experiencing failures to existing mechanical, plumbing, roofing, and building envelope systems. Average Age of Plant is a common ratio used in the healthcare industry which determines the age of fixed assets used in a business's operations. The median *Average Age of Plant* for U.S. Hospitals was 10.8 years in 2014. Coincidentally, Hospitals within the lowest quartile of *average age of plant* (0 to 8.13 years) are found to have higher overall performance metrics (1). South Peninsula Hospital's Average Age of Plant as of June 30, 2022 is 15.44 years, placing it in the highest quartile for aging hospitals (14.3+ years).

These failures are disruptive to patient care and cause life safety risks and hazards to the communities the hospital serves. In addition to these failures, the current emergency power plant, which was built in the early 1980s, is in need of a total renovation and relocation. The Center for Medicare and Medicaid Services has cited the facility for several code compliance issues related to the age of the facility and its components as a result of these failures and issues.

A master plan has recently provided for a complete renovation of the existing facility which consolidates all services in one single campus, prioritizes patient care, improves efficiencies, ensures code compliance, and provides for a safer facility for all patients within the hospital. The project ensures the hospital can better serve the entirety of the Southern Peninsula.

Project Impact to Alaska

The South Peninsula Hospital service all of the southern Kenai Peninsula. This includes all remote villages, tribal entities, and communities. The service area includes the communities of Anchor Point, Diamond Ridge, Fox River, Fritz Creek, Halibut Cove, Happy Valley, City of Homer, Kachemak City, Nikolaevsk, and Ninilchik with extended services to Nanwalek, Port Graham, Seldovia, and Seldovia Village Tribe. Through the hospital site and facility rehabilitation project, it will reduce an overall cost to the local community, ensure better life safety services to those in need, provide for better code compliance, and extend the aging infrastructure for many years to come.

Project Description

The Kenai Peninsula Borough South Peninsula Hospital Service Area South Peninsula Hospital Site and Facility Rehabilitation will Renovate and Rehabilitate the existing hospital facilities, build a new power plant and generator, expand the existing campus, and consolidate all services on campus.

Project Goals and Results

Project Goals:

1. Rehabilitate the aging infrastructure to extend the useful life of the facility
2. Correct code compliance issues
3. Expand the facility to ensure all services can be consolidated on campus
4. Build a new power plant and generator to meet the future expectancy of the community for the hospital
5. Correct maintenance needs in plumbing, roof, and mechanical issues
6. Renovate the facility to update and extend the useful life of the facility
7. Where renovation is not fiscally responsibly, demolish and rebuild a new facility.

Project Results

1. Life safety of southern Kenai Peninsula Community and Tribal Entities is increased
2. Hospital Services are expanded
3. Infrastructure of the hospital is extended and expanded
4. Cost of providing services to patients are reduced, thus reducing costs to patients
5. Reduction of cost to operate the hospital to the local taxpayer
6. Economic support for the projects in the local community



Kenai Peninsula Borough-Central Peninsula Landfill Gas Collection System

\$5,487,451

Kenai Peninsula Borough

Rachel Chaffee, Community & Fiscal Projects Manager

907-714-2153 (desk) * 907-690-1068 (mobile) * grants@kpb.us

– Project Information

Project Purpose

The Kenai Peninsula Borough's Central Peninsula Landfill (CPL) has been filling municipal solid waste into lined landfill cells beginning in 2006. The cells that have solid waste currently have active gas, and the Borough has installed passive horizontal gas vents through the cells that vent any landfill gas to the atmosphere. A new leachate evaporator is being installed in the CPL that will be capable of using landfill gas and supplementing natural gas usage. There is a cooperative partnership between the Kenai Peninsula Borough and local energy providers to explore projects that utilize surplus energy from waste heat and excess gas to provide sustainable energy to the Borough's residents for generator usage in the concentrator.

The solid waste facility services the entire Kenai Peninsula Borough. All waste is transferred from waste transfer sites to the CPL where it is then transferred to landfill cells. The refuse then creates a resource in methane produced from the degradation process. Currently, the methane is released into the atmosphere, and is wasted. This project will collect the methane gas and utilize it to reduce the cost of operation and forward excess usages to provide sustainable energy to the community and project the environment.

Project Impact to Alaska

This project will impact all of the Kenai Peninsula Borough residents, and the entirety of Alaskans as it is a project that works to reduce emissions into the atmosphere and provide a sustainable energy resource. This project will collect methane gas that is currently released into the atmosphere and utilize it to power the CPL and forward the excess to support the cooperative energy partners for sustainable energy community wide.

Project Description

The Kenai Peninsula Borough Central Peninsula Landfill will construct a gas collection system to provide sustainable energy resources for the landfill and the community now and into the future.

Project Goals and Results

Project Goals:

1. Build a gas collection system
2. Implement and utilize the methane gas to power the central peninsula landfill
3. Forward excess gas usage to the energy providers
4. Provide sustainable energy resources to the community
5. Reduce costs of operation to the taxpayers

Project Results

1. Reduced atmospheric pollution
2. Reduced operational costs to the taxpayer
3. Partnerships between the Borough and cooperative energy providers for sustainable energy
4. Economic stimulation through sustainable energy projects

Introduced by:	Johnson, Cox
Date:	01/17/23
Hearing:	02/21/23
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2023-02**

**AN ORDINANCE AMENDING BOROUGH CODE, KPB 22.30.010, RELATING TO
COMPOSITION OF ASSEMBLY DISTRICTS TO REVISE ASSEMBLY AND
SCHOOL BOARD DISTRICT BOUNDARIES**

- WHEREAS,** Resolution 2022-003 declared the Kenai Peninsula Borough (“Borough”) Assembly and Kenai Peninsula Borough School Board District seats malapportioned following the decennial census;
- WHEREAS,** Ordinance 2022-07 submitted two assembly and school board apportionment plans to the voters; and
- WHEREAS,** in the October 4, 2022 election, the Borough voters approved an apportionment plan with nine single-member assembly and school board districts with each assembly and school board member elected from one district; and
- WHEREAS,** the Reapportionment Committee’s final report stated, in part, that the current nine-member configuration was working well and in reality, only a small adjustment was needed to the current configuration to meet the desired deviation parameters; and
- WHEREAS,** the assembly must by ordinance adopt the legal descriptions for final assembly and school board districts which comply with equal representation requirements of the United States Constitution; and
- WHEREAS,** as a result of a reduction in the population on the north side of the Kenai Peninsula since the 2010 census, the southern boundary for District 3 has been moved to include a small portion of District 2 – Kenai to meet equal representation requirements as well as continuing to include populations with similar economic and social interests; and
- WHEREAS,** adjustments are made to the remaining districts to maintain compliance with equal representation standards and continue to include populations with similar economic, cultural, and social interests, and/or to retain consistency with political boundaries; and

WHEREAS, due to the minor nature of the changes making slight adjustments to current district boundary lines to satisfy constitutional equal representation requirements and the final report of the Reapportionment Committee recommending slight adjustments, the Assembly President directed the Borough Planning Department, GIS, Legal Department, and Clerk's Office to bring forward the adjustments proposed in the legal descriptions herein and as shown on the maps provided, as such, no redistricting committee was formed; and

WHEREAS, pursuant to KPB 1.20.100, Borough school board districts mirror assembly district boundaries;

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

SECTION 1. That the Kenai Peninsula Borough Code of Ordinances is hereby amended by repealing and reenacting KPB Chapter 22.30.010, Composition, which shall read as follows:

22.30.010. – Composition.

A. **District No. 1,** Kalifornsky, shall be represented by 1 seat, designated Seat 1, described as follows:

Commencing at the projection south of the east right of way of Hardy Street south to the intersection of the south line of Section 27, T5N, R11W;

Thence north to the intersection of the section line common to sections 27 and 28, T5N, R11W and the centerline of Unocal Airport Road;

Thence southwesterly along Unocal Airport Road to the intersection with centerline of Kalifornsky Beach Road;

Thence south along the centerline of Kalifornsky Beach Road to the intersection of Kalifornsky Beach Road and Oil Company Haul Road;

Thence west to the mean high water line of Cook Inlet;

Thence northerly along the mean high water line to the intersection of the section line common to Sections 7, 18, T5N, R11W;

Thence easterly to the intersection of the section corner common to Sections 7,8,17 and 18, T5N, R11W;

Thence south to the section corner common to sections 17, 18, 19 and 20, T5N, R11W;

Thence east to the section corner common to Sections 15, 16, 21 and 22, T5N, R11W;

Thence northerly to the west 1/4 corner of Section 15, T5N, R11W;

Thence east to the westerly bank of the Kenai River;

Thence easterly and northerly along the bank of the Kenai River and old channel to the intersection with the east section line of section 14, T5N, R11W;

Thence north along the section common to Section 14 and 13, 11 and 12 and 1 and 2, T5N, R11W to the north side of Beaver Creek and the southeast corner of Lot 1A Tide View Heights #2 KN 2022-10;

Thence north along the northerly and westerly bank of Beaver Creek to the southwest corner of Tract 1 of Dolchok – Kenai Subdivision KN 83-103 in Section 1, T5N, R11W;

Thence north along the west edge of said Tract 1 Dolchok – Kenai Subdivision KN 83-103 to the northeast corner of said Tract 1, being also the southwest corner of Government Lot 2 of Section 1, T5N, R11W;

Thence east along the south line of Government Lot 2, to the southwest corner of Tract A Mack Subdivision KN 78-41 in Section 1, T5N, R11W;

Thence north along the west line of said Tract A Mack Subdivision KN 78-41 to the northwest corner of said Tract A, being also the southwest corner of Lot 6A Sunset Rim Subdivision Part Two KN 2010-48;

Thence northerly along the west edge of Sunset Rim Subdivision Part Two KN 2010-48 to the north line of Section 1, T5N, R11W, also being the south line of Section 36, T6N, R11W;

Thence northerly along the westerly bank of Beaver Creek, across Kenai Spur Highway, continuing north and east along the west bank of Beaver Creek to the east line of Tract A of the amended Plat of the Alaska State Land Survey No. 2013-49 KN 2020-3, being also the east line of Section 36 T6N R11W and the west line of Section 31, T6N, R10W;

Thence south along the west line of section 31, T6N, R10W to the northwest corner of Kee's Tern Subdivision Phase 1 KM 2015-25 and the centerline of N Fern Street;

Thence east along the north line of Kee's Tern Subdivision Phase 1 KN 2015-25 and the north line of Part 5 Valhalla Heights Subdivision K-1737 and the north line of the SW1/4 of the SE1/4 and the SE1/4 of the SE1/4 of Section 31 T6N R10W to the northeast corner of said SE1/4 of the SE1/4;

Thence south along the section line to the section corner common to Sections 5, 6, 7, 8, T5N, R10W;

Thence east to the 1/4 corner common to Sections 5, 8, T5N, R10W;

Thence south to the center 1/4 corner of Section 8, T5N, R10W;

Thence west to the center west 1/16 of Section 8, T5N, R10W;

Thence south to the southwest 1/16 corner of Section 8, T5N, R10W;

Thence west to the centerline of the Kenai Spur Highway;

Thence southerly along centerline of the Kenai Spur Highway to the intersection with the south line of Section 17, T5N, R10W;

Thence east to the section line to the section corner common to Sections 17, 16, 20, 21, T5N, R10W;

Thence south along the section line common to Sections 20 and 21 to the 1/4 common to Section 20 and 21, T5N, R10W;

Thence west to the center east 1/16 corner of Section 20, T5N, R10W;

Thence south to the south east 1/16 corner of Section 20, T5N, R10W;

Thence west to the northwest corner of the northeast 1/4 of the northeast 1/4 of the southeast 1/4 of the southwest 1/4 of Section 20, T5N, R10W, also being the centerline of Delta Avenue and Pero Street;

Thence south along the west line of the northeast 1/4 of the northeast 1/4 of the southeast 1/4 of the southwest 1/4 of Section 20, T5N, R10W to the centerline of Kilowatt Avenue;

Thence westerly along the centerline of Kilowatt Avenue to the centerline of the Kenai Spur Highway;

Thence southeasterly along the centerline of the Kenai Spur Highway to the north 1/16 line of Section 29, T5N, R10W also being the centerline of Knight Drive;

Thence west along the north 1/16 line of Section 29 and 30, T5N, R10W to the intersection of the thread of the Kenai River;

Thence southwesterly along the thread of the Kenai River to the section line common to Sections 25, 36, T5N, R11W;

Thence west along said section line to section corner common to Sections 25, 26, 35, 36, T5N, R11W;

Thence south to the section corner common to Sections 35, 36, T5N, R11W also being the township line being common to T4N and T5N and the southwest corner of the corporate boundary of the City of Soldotna;

Thence west along said township line to the section corner common to Sections 33 and 34, T5N, R11W;

Thence north along the west line of Section 34, T5N, R11W to a projection west of the south line of Jenny Subdivision Treeside Estates Addition KN 83-192;

Thence east along the project of and south line of Lot 4 Jenny Subdivision Treeside Estates Addition KN 83-192 to the southeast corner of Lot 4 Jenny Subdivision Treeside Estates Addition KN 83-192;

Thence northeast along the southeast line of Lot 4 Jenny Subdivision Treeside Estates Addition KN 83-192 to the center of the cul-de-sac of Paddle Circle;

Thence north along the center of Paddle Circle to the intersection of the center line of W Poppy Lane;

Thence west to the point of beginning, and all being within the Seward Meridian, Alaska.

- B. **District No. 2**, Kenai, shall be represented by 1 seat, designated Seat 2, described as follows:

Commencing at the 1/4 corner common to Sections 13, 24, T6N, R11W;

Thence west to the 1/4 corner common to Sections 17, 20, T6N, R11W;

Thence south to the center 1/4 corner of Section 29, T6N, R11W;

Thence west to the centerline of Wildwood Drive;

Thence south along the centerline of Wildwood Drive to the intersection with the centerline of California Avenue;

Thence south and east along the centerline of California Avenue to the intersection with the projection of the east line of Block Five of A Replat of Mommsen's Addition No. 2 K-1355;

Thence south along the east line of Block Five and Four and the west line of Block Three and Two of A Replat of Mommsen's Addition No 2 K-1355 to the centerline of Redoubt Avenue;

Thence west along the center line of Redoubt Avenue to the intersection of the centerline of Kenai Spur Highway;

Thence northwest along the centerline of the Kenai Spur Highway to the intersection with the common line between Sections 26 and 23, T6N, R12W;

Thence west to the intersection of the mean high water line of Cook Inlet;

Thence southerly along the mean high water line to the intersection of the section line common to Sections 7, 18, T5N, R11W;

Thence easterly to the intersection of the section corner common to sections 7,8,17 and 18, T5N, R11W;

Thence south to the section corner common to sections 17, 18, 19 and 20, T5N, R11W;

Thence east to the section corner common to sections 15, 16, 21 and 22, T5N, R11W;

Thence northerly to the west 1/4 corner of section 15, T5N, R11W;

Thence east to the westerly bank of the Kenai River;

Thence easterly and northerly along the bank of the Kenai River and old channel to the intersection with the east section line of section 14, T5N, R11W;

Thence north along the section common to Section 14 and 13, 11 and 12 and 1 and 2, T5N, R11W to the north side of Beaver Creek and the southeast corner of Lot 1A Tide View Heights #2 KN 2022-10;

Thence north along the northerly bank of Beaver Creek to the southwest corner of Tract 1 of Dolchok – Kenai Subdivision KN 83-103 in Section 1, T5N, R11W;

Thence north along the west edge of said Tract 1 Dolchok – Kenai Subdivision KN 83-103 to the northeast corner of said Tract 1, being also the southwest corner of Government Lot 2 of Section 1, T5N, R11W;

Thence east along the south line of Government Lot 2, to the southwest corner of Tract A Mack Subdivision KN 78-41 in Section 1, T5N, R11W;

Thence north along the west line of said Tract A Mack Subdivision KN 78-41 to the northwest corner of said Tract A, being also the southwest corner of Lot 6A Sunset Rim Subdivision Part Two KN 2010-48 in Section 1, T5N, R11W;

Thence northerly along the west edge of Sunset Rim Subdivision Part Two KN 2010-48 to the north line of Section 1, T5N, R11W, also being the south line of Section 36, T6N, R11W;

Thence northerly along the westerly bank of Beaver Creek, across Kenai Spur Highway, continuing north and east along the west bank of Beaver Creek to the east line of Tract A of the amended Plat of the Alaska State Land Survey No. 2013-49 KN 2020-3, being also the east line of Section 36 T6N R11W and the west line of Section 31, T6N, R10W;

Thence north along said range line to the 1/4 corner common to Section 24, T6N, R11W and Section 19, T6N, R10W;

Thence west to the center 1/4 corner of Section 24, T6N, R11W;

Thence north to the point of beginning, and all being within the Seward Meridian, Alaska.

- C. **District No. 3**, Nikiski, shall be represented by 1 seat, designated Seat 3, described as follows:

District No. 3, Nikiski, Area 1

Commencing at the 1/4 corner common to Sections 13, 24, T6N, R11W;

Thence west to the 1/4 corner common to Sections 17, 20, T6N, R11W;

Thence south to the center 1/4 corner of Section 29, T6N, R11W;

Thence west to the centerline of Wildwood Drive;

Thence south along the centerline of Wildwood Drive to the intersection with the centerline of California Avenue;

Thence south and east along the centerline of California Avenue to the intersection with the projection of the east line of Block Five of A Replat of Mommsen's Addition No. 2 K-1355;

Thence south along the east line of Block Five and Four and the west line of Block Three and Two of A Replat of Mommsen's Addition No 2 K-1355 to the centerline of Redoubt Avenue;

Thence west along the center line of Redoubt Avenue to the intersection of the centerline of Kenai Spur Highway;

Thence north along the centerline of Kenai Spur Highway to the line common to Sections 23 and 26, T6N, R12W;

Thence west to the intersection of the mean high water line of Cook Inlet;

Thence northeasterly and southeasterly along the mean high water line of Cook Inlet to the intersection of T10N, R4W and T10N, R3W;

Thence south along the range lines to the SE corner of T6N, R4W;

Thence west to the southwest corner of T6N, R8W;

Thence north to the 1/4 corner common to Section 31, T6N, R8W and Section 36, T6N, R9W;

Thence east to the 1/4 corner common to Sections 31, 32, T6N, R8W;

Thence north to the section corner common to Sections 31, 32, 30, 29, T6N, R8W;

Thence east to the 1/4 corner common to Sections 29, 32, T6N, R8W;

Thence north to the center 1/4 corner of Section 20, T6N, R8W;

Thence west to the centerline of Swanson River Road;

Thence northerly along Swanson River Road centerline to the intersection of the line from the center of section 13 to the 1/4 corner common to section 13 and 14 T6N, R9W;

Thence west to the 1/4 corner common to Sections 14 and 15 T6N, R9W;

Thence south to the south 1/16 corner common to Sections 14 and 15, T6N, R9W;

Thence west to the south 1/16 corner common to Section 18, T6N, R9W and Section 13, T6N, R10W;

Thence south to the corner common to Section 36, T6N, R10W and Section 31, T6N, R9W and Section 6 T5N R9W and Section 1 T5 R10W;

Thence west to the corner common to Section 31 and 32, T6N, R10W and Section 5 and 6 T5N R10W;

Thence north to the south 1/16 corner common to Section 31 and 32, T6N, R10W;

Thence west to the south 1/16 corner common to Section 31, T6N, R10W and Section 36, T6N, R11W;

Thence north along said range line to the 1/4 corner common to Section 24, T6N, R11W and Section 19, T6N, R10W;

Thence west to the center 1/4 corner of Section 24, T6N, R11W;

Thence north to the point of beginning, and all being within the Seward Meridian, Alaska.

District No. 3, Nikiski, Area 2

Commencing at the northeast corner of T13N, R10W;

Thence south along the range line to the mean high-water line of Cook Inlet;

Thence southeasterly along the mean high-water line of Cook Inlet to the intersection of range line between T3S, R20W and R21W;

Thence south to the southeast corner of T3S, R21W;

Thence west to the southwest corner of T3S, R25W;

Thence north to northwest corner of T1S, R25W;

Thence east to the southwest corner of T1N, R24W;

Thence north to the northwest corner of T4N, R24W;

Thence east to the southwest corner of T5N, R23W;
 Thence north to the northwest corner of T8N, R23W;
 Thence west to the southwest corner of T9N, R23W;
 Thence north to the northwest corner of T12N, R23W;
 Thence west to the southwest corner of T13N, R23W;
 Thence north to the northwest corner of T15N, R23W;
 Thence east to the northeast corner T15N, R12W;
 Thence south to the northwest corner of T13N, R12W;
 Thence east to the northeast corner of T13N, R10W, and being the point of beginning, and all being within the Seward Meridian, Alaska.

District No. 3, Nikiski, Area 3

All of Kalgin Island and Chisik Island in Cook Inlet, and all being within the Seward Meridian, Alaska.

- D. **District No. 4, Soldotna**, shall be represented by 1 seat, designated Seat 4, described as follows:

Commencing at the section corner common to Sections 5, 6, T5N, R10W and Section 31, 32, T6N, R10W;

Thence south to the section corner common to Sections 5, 6, 7, 8, T5N, R10W;

Thence east to the 1/4 corner common to Sections 5, 8, T5N, R10W;

Thence south to the center 1/4 corner of Section 8, T5N, R10W;

Thence west to the center west 1/16 corner of Section 8, T5N, R10W;

Thence south to the southwest 1/16 corner of Section 8, T5N, R10W;

Thence west to the centerline of the Kenai Spur Highway;

Thence southerly along centerline of the Kenai Spur Highway to the intersection with the south line of Section 17, T5N, R10W;

Thence east to the section line to the section corner common to Sections 17, 18, 20, 21, T5N, R10W;

Thence south along the section line common to Sections 20 and 21 to the 1/4 common to Section 20 and 21, T5N, R10W;

Thence west to the center east 1/16 corner of Section 20, T5N, R10W;

Thence south to the south east 1/16 corner of Section 20, T5N, R10W;

Thence west to the northwest corner of the northeast 1/4 of the northeast 1/4 of the southeast 1/4 of the southwest 1/4 of Section 20, T5N, R10W;

Thence south along the west line of the northeast 1/4 of the northeast 1/4 of the southeast 1/4 of the southwest 1/4 of Section 20, T5N, R10W to the centerline of Kilowatt Avenue;

Thence westerly along the centerline of Kilowatt Avenue to the centerline of the Kenai Spur Highway;

Thence southerly along the centerline of the Kenai Spur Highway to the north 1/16 line of Section 29, T5N, R10W being the centerline of Knight Drive;

Thence west along the north 1/16 line of Section 29 and 30 to the intersection of the thread of the Kenai River;

Thence southwesterly along the thread of the Kenai River to the section line common to Sections 25, 36, T5N, R11W;

Thence west along said section line to section corner common to Sections 25, 26, 35, 36 T5N, R11W;

Thence south to the section corner common to Sections 35, 36, T5N, R11W also being the township line being common to T4N and T5N and the southwest corner of the corporate boundary of the City of Soldotna;

Thence east along the township line to the intersection of the centerline Ski Hill Road;

Thence northwesterly along the centerline of Ski Hill Road to centerline of Funny River Road;

Thence southeasterly along the centerline of Funny River Road to extension of the east property boundary of Lot 3A, Tachick Subdivision Part Three plat 86-160 KRD;

Thence north to the thread of the Kenai River;

Thence northeasterly along the thread of the Kenai River to the extension of the lot line of Lot 6, Block 1 Logan Subdivision plat 1636 KRD and Lot 27, Derkevorkian Subdivision No. 2 Amended plat 77-52 KRD;

Thence southeasterly along said lot line to the north boundary of Funny River Road;

Thence northeasterly along the north edge of Funny River Road to the intersection of Oehler Road;

Thence north and east along the centerline of Oehler Road to the extension of the east lot line of Lot L-1A, Derkevorkian Subdivision Wackler Addition plat 2007-50;

Thence north to the south meander of the Kenai River;

Thence southwesterly along the south meander of the Kenai River to the east west center 1/4 section line of Section 32, T5N, R10W;

Thence west to the thread of the Kenai River;

Thence easterly along the thread of the Kenai River to the intersection of the north south center 1/4 section line of section 33, T5N, R10W;

Thence south along the north south 1/4 section line to the point of curvature of the old western right of way line of Funny River Road;

Thence along a curve to the right having a central angle of 90°02'10", a radius of 400.00 feet, a curve length of 565.86 feet, more or less, and having a point of intersection identical to the Center South 1/16 corner of Section 33, T5N, R10W, to a point of tangency situated along the old northern right of way of the Funny River Road and being the South 1/16 line to Section 33, T5N, R10W;

Thence west along north boundary of old Funny River Road to the south 1/16 corner common to Section 32 and 33, T5N, R10W

Thence south to the township line common to T4N and T5N;

Thence east along the township line common to T4N and T5N sections 34 and 35, T5N, R10W;

Thence north to the south 1/16 corner common to section 34 and 35, T5N, R10W;

Thence west to the center south 1/16 corner common to Section 34, T5N, R10W;

Thence north to the thread of the Kenai River;

Thence easterly along the thread of the Kenai River to the northeast corner of Section 1, T4N, R10W;

Thence northwest towards the end of Dan France Road (a private drive) to the intersection of the east line of the southwest 1/4 of Section 31, T5N, R9W;

Thence north along east line of the southwest 1/4 to the center 1/4 corner of Section 31, T5N, R9W;

Thence east along the section line to the intersection of centerline of Forest Lane near Bubba's Avenue.

Thence northerly along Forest Lane to the center line of the Sterling Highway and Jim Dahler Road;

Thence northeasterly along the centerline of the Sterling Highway to the intersection of Deville Rd;

Thence northerly along the centerline of Deville Road to the intersection of Deville Road and the north 1/16 line of Section 18, T5N, R9W;

Thence east to the center north 1/16 corner of Section 18, T5N, R9W;

Thence north to the 1/4 corner common to Sections 7 and 18, T5N, R9W;

Thence west to the west 1/16 corner common to Sections 7, and 18, T5N, R9W;

Thence south to the northwest 1/16 corner of Section 18, T5N, R9W;

Thence west to the 1/16 corner common to Section 18, T5N, R9W and Section 13, T5N, R10W;

Thence north to the northeast corner of T5N, R10W;

Thence west along said township line to point of beginning, and all being within the Seward Meridian, Alaska.

E. **District No. 5**, Sterling-Funny River, shall be represented by 1 seat,

designated Seat 5, described as follows:

Commencing at the north section corner common to Sections 2, and 3, T4N, R11W also being centerline of Echo Lake Road;

Thence south to the intersection of the centerline of Evelyn Lane;

Thence east along the centerline of Evelyn Lane and the projection of the north line of Lot 5A McWilliams Subdivision Brown Replat KN 2002-53 to the thread of Slikok Creek in Section 11, T4N, R11W;

Thence southerly along the thread of Slikok Creek to the centerline of Sterling Highway in Section 13, T4N, R10W;

Thence south along the centerline of Sterling Highway to the intersection with the south line of Section 4, T3N, R11W;

Thence east along the section line to the intersection of the centerline of Heavy Down Lane;

Thence southerly along the centerline of Heavy Down Lane to the easterly line of Lot 4B Eastview Subdivision No. 2 KN 85-85 in Section 9, T3N, R11W;

Thence southeasterly along the east line of Lot 4B Eastview Subdivision No. 2 KN 85-85 to the southeast corner of Lot 4B also being the north line of the northeast 1/4 of Section 9, T3N, R11W;

Thence east along the 1/4 line to the 1/4 corner common to Section 9, and 10, T3N, R11W;

Thence south to the section corner common to Sections 33, 34, T3N, R11W and Sections 3, 4, T2N, R11W;

Thence west to the thread of the Kasilof River;

Thence southeasterly along the Kasilof River to the intersection of Tustumena Lake;

Thence along the north shore of Tustumena Lake to the intersection of T1N, R8W;

Thence east to the southeast corner of T1N, R4W;

Thence north along the range lines to the northeast corner of T4N, R4W;

Thence west to the thread of the Kenai River;

Thence southwesterly along the thread of the Kenai River to the extended centerline of Steelhead Cir;

Thence northerly along said centerline to the intersection of Steelhead Cir and Samsel Rd;

Thence northerly along the centerline of Samsel Rd to Bings Landing Rd;

Thence northerly along the centerline of Bings Landing Rd to the Sterling Highway;

Thence westerly along the centerline of the Sterling Highway to Jalapeno St;

Thence south along the centerline of Jalapeno St to Ruth Ln;

Thence northwesterly along the centerline of Ruth Ln to Iris Ln;

Thence northeast along the centerline of Iris Ln to the Sterling Highway;

Thence northwest along the centerline of the Sterling Highway to Otter Trail Rd;

Thence north along the centerline of Otter Trail Rd to the intersection of the Alaska Natural Gas Pipeline right-of-way;

Thence west to the southeast corner of Lot 2 of R. Abbott Subdivision KN 2019-29;

Thence along the south line of lot 2 R. Abbot Subdivision KN 2019-29 to the Southwest corner of Lot 2;

Thence southwesterly along the west line of the first property deeded at book 2010 page 6678 to the easterly line of the second property deeded at book 2010 page 6678;

Thence northwest on the east line of the second property deeded at book 2010 page 6678 to the thread of the Moose River;

Thence northeasterly along the thread of the Moose River to the township line common to T6N and T5N;

Thence west along said township line to the southeast corner of T6N, R9W;

Thence north to the 1/4 corner common to Section 31, T6N, R8W and Section 36, T6N, R9W;

Thence east to the 1/4 corner common to Sections 31, 32, T6N, R8W;

Thence north to the section corner common to Sections 31, 32, 30, 29, T6N, R8W;

Thence east to the 1/4 corner common to Sections 29, 32, T6N, R8W;

Thence north to the center 1/4 corner of Section 20, T6N, R8W;

Thence west to the centerline of Swanson River Road;

Thence north along the centerline of Swanson River Road to the north line of the Southwest 1/4 of Section 13, T6N, R9W;

Thence west to the 1/4 corner common to Section 14 and 15, T6N, R9W;

Thence south along the section line to the S1/16 corner common to Section 14 and 15, T6N, R9W;

Thence west along the 1/16 line to the S 1/16 corner common to Section 18, T6N, R9W and Section 13, T6N, R10W;

Thence south to the 1/16 corner common to Section 18, T5N, R9W and Section 13, T5N, R10W;

Thence east to the northwest 1/16 corner of Section 18, T5N, R9W;

Thence north to the west 1/16 corner common to Sections 7, and 18, T5N, R9W;

Thence east to the 1/4 corner common to Sections 7, and 18, T5N, R9W;

Thence south to the center north 1/16 corner of Section 18, T5N, R9W;

Thence west to the intersection with the centerline of Deville Road;

Thence southerly along the centerline of Deville Road to the intersection of the centerline of the Sterling Highway;

Thence southwesterly along the centerline of the Sterling Highway to the centerline of Jim Dahler Road and Forest Lane;

Thence south and east along Forest Lane to the north line of the northwest 1/4 of Section 31, T5N, R9W near Bubba's Avenue centerline;

Thence east along the section line to the center 1/4 corner of Section 31, T5N, R9W;

Thence south along the east line of the southwest 1/4 of Section 31, T5N, R9W to a point on the line between the end of Dan France Road (a private road) and the northeast corner of Section 1, T4N, R10W;

Thence southeast to the northeast corner of Section 1, T4N, R10W;

Thence westerly along the thread of the Kenai River to the intersection of the north south center 1/4 line of section 34, T5N, R10W;

Thence south to the center south 1/16 corner of Section 34, T5N, R10W;

Thence east to the south 1/16 corner common to Sections 34, 35, T5N, R10W;

Thence south to the township line common to T5N and T4N;

Thence west to the section corner common to Section 32, 33, T5N, R10W;

Thence north to the south 1/16 corner common to Section 32, 33, T5N, R10W;

Thence east along the S1/16 line to a point of curvature on the old north right of way line of Funny River Road;

Thence along a curve to the left having a central angle of 90°02'10", a radius of 400.00 fee, a curve length of 565.86 feet, more or less, and having a point of intersection identical to the Center South 1/16 corner of Section 33, T5N, R10W, to a point of tangency situated along the old northern right of way of the Funny River Road;

Thence north to the thread of the Kenai River;

Thence westerly along the thread of the Kenai River to the intersection of the east west center 1/4 line of Section 32, T5N, R10W;

Thence east along the center 1/4 line to the south meander of the Kenai River;

Thence northeasterly along the south meander of the Kenai River to the extension of east lot line of Lot L-1A, Derkevorkian Subdivision Wackler Addition plat 2007-50;

Thence south to the intersection of Oehler Road;

Thence west and south to the intersection of the north boundary of Funny River Road;

Thence southwesterly to the intersection of the lot line of Lot 6, Block 1 Logan Subdivision plat 1636 KRD and Lot 27, Derkevorkian Subdivision No. 2 Amended plat 77-52 KRD;

Thence northwesterly along the lot line of Lot 6, Block 1 Logan Subdivision plat 1636 KRD and Lot 27, Derkevorkian Subdivision No. 2 Amended plat 77-52 KRD to the thread of the Kenai River;

Thence southwesterly along the thread of the Kenai River to the extension of the east property boundary of Lot 3A, Tachick Subdivision Part Three plat 86-160 KRD;

Thence south along the east property boundary of Lot 3A, Tachick Subdivision Part Three plat 86-160 KRD to the centerline of Funny River Road;

Thence west along the centerline of Funny River Road to the intersection of Ski Hill Road;

Thence southeasterly along the centerline of Ski Hill Road to the intersection of the township line common to T5N and T4N;

Thence west to the northwest corner of Section 2, T4N, R11W to the point of beginning, and all being within the Seward Meridian, Alaska.

- F. **District No. 6**, East Peninsula, shall be represented by 1 seat, designated Seat 6, described as follows:

Commencing at intersection of the mean high-water line of Turnagain Arm and section line common to Sections 25, 26, T9N, R2E;

Thence south to the southeast corner of Section 35, T9N, R2E;

Thence west to the northeast corner of Section 2, T8N, R2E;

Thence south to the northeast corner of Section 2, T7N, R2E;

Thence east to the northeast corner of T7N, R4E;

Thence south to the southeast corner of T5N, R4E;

Thence west to the northeast corner of T4N, R4E;

Thence south to the northeast corner of Section 25, T4N, R4E;

Thence east to the southeast corner of the southwest 1/4 of Section 22, T4N, R5E;

Thence southerly to the southeast corner of the southwest 1/4 of Section 34, T1N, R5E;

Thence west to the northeast corner of the northwest 1/4 of Section 3, T1S, R5E;

Thence south to the southeast corner of the northwest 1/4 of Section 27, T1S, R5E;

Thence west to the southwest corner of the northwest 1/4 of Section 27, T1S, R5E;

Thence south to the northeast corner of Section 9, T3S, R5E;

Thence southwesterly to the southeast corner of Section 7, T3S, R5E, said corner being at or approximately at Cape Junken;

Thence southwesterly to the southeast corner of the northeast 1/4 of Section 4, T4S, R1E, said corner being at or approximately at Barwell Island;

Thence southwesterly to the northeast corner of the southeast 1/4 Section 17, T5S, R1W, said corner being at or approximately at Pilot Rock;

Thence southwesterly to the southwest corner of the southeast 1/4 corner of Section 33, T7S, R2W, said corner being at or approximately at Seal Rock;

Thence southwesterly to the southeast corner of Section 24, T8S, R4W and the southwest corner of Section 19, T8S, R3W;

Thence north to the northwest corner of Section 6, T5S, R3W;

Thence west to the Southwest corner of Section 31, T4S, R3W;

Thence north to the northwest corner of T4N, R3W;

Thence west to the thread of the Kenai River;

Thence southwesterly along the thread of the Kenai River to the extended centerline of Steelhead Cir;

Thence northerly along said centerline to the intersection of Steelhead Cir and Samsel Rd;

Thence northerly along the centerline of Samsel Rd to Bings Landing Rd;

Thence northerly along the centerline of Bings Landing Rd to the Sterling Highway;

Thence westerly along the centerline of the Sterling Highway to Jalapeno St;

Thence south along the centerline of Jalapeno St to Ruth Ln;

Thence northwesterly along the centerline of Ruth Ln to Iris Ln;

Thence northeast along the centerline of Iris Ln to the Sterling Highway;

Thence northwest along the centerline of the Sterling Highway to Otter Trail Rd;

Thence north along the centerline of Otter Trail Rd to the intersection of the Alaska Natural Gas Pipeline right-of-way;

Thence west to the southeast corner of Lot 2 of R. Abbott Subdivision KN 2019-29;

Thence along the south line of lot 2 R. Abbot Subdivision KN 2019-29 to the Southwest corner of Lot 2;

Thence southwesterly along the west line of the first property deeded at book 2010 page 6678 to the easterly line of the second property deeded at book 2010 page 6678;

Thence northwest on the east line of the second property deeded at book 2010 page 6678 to the thread of the Moose River;

Thence northeasterly along the thread of the Moose River to the township line common to T6N and T5N;

Thence east along said township line to the northeast corner of Section 1, T5N R4W;

Thence north along the range lines to the mean high water line of Turnagain Arm;

Thence southeasterly along the mean high-water line of Turnagain Arm to the point of beginning, and all being within the Seward Meridian, Alaska.

- G. **District No. 7**, Central, shall be represented by 1 seat, designated Seat 7, described as follows:

Commencing at the north section corner common to Sections 2, and 3, T4N, R11W also being centerline of Echo Lake Road;

Thence south to the intersection of the centerline of Evelyn Lane;

Thence east along the centerline of Evelyn Lane and the project of the north line of Lot 5A of McWilliams Subdivision Brown Replat KN 2002-53 to the thread of Slikok Creek in Section 11, T4N, R11W;

Thence southerly along the thread of Slikok Creek to the centerline of Sterling Highway in Section 13, T4N, R10W;

Thence south along the centerline of Sterling Highway to the intersection with the south line of Section 4, T4N, R11W;

Thence east along the section line to the intersection of the centerline of Heavy Down Lane;

Thence southerly along the centerline of Heavy Down Lane to the easterly line of Lot 4B Eastview Subdivision No. 2 KN 85-85 in Section 9, T3N, R11W;

Thence southeasterly along the east line of Lot 4B Eastview Subdivision No. 2 KN 85-85 to the southeast corner of Lot 4B also being the north line of the northeast 1/4 of Section 9, T3N, R11W;

Thence east along the 1/4 line to the 1/4 corner common to Section 9 and 10, T3N, R11W;

Thence south to the section corner common to Sections 33, 34, T3N, R11W and Sections 3, 4, T2N, R11W;

Thence west to the thread of the Kasilof River;

Thence southeasterly along the Kasilof River to the intersection of Tustumena Lake;

Thence along the south shore of Tustumena Lake to the line between Section 34 and 35, T2N, R11W;

Thence south to the southeast corner of Section 10, T1N, R11W;

Thence west to the 1/4 corner common to Section 10 and 15, T1N, R11W;

Thence south to the 1/4 corner common to Section 15, and 22, T1N, R11W;

Thence west to the southwest corner of Section 16, T1N, R11W;

Thence south to the southeast corner of Section 32, T1N, R11W;

Thence east to the northwest corner of Section 1, T1S, R11W;

Thence south to the southeast corner of Section 23, T3S, R11W;

Thence west to the southwest corner of Section 23, T3S, R11W;

Thence south to the 1/4 corner common to Section 14 and 15, T4S, R11W;

Thence west to the center 1/4 corner of Section 15, T4S, R11W;

Thence south to the 1/4 corner common to Section 15 and 22, T4S, R11W;

Thence west to the northeast corner of Section 21, T4S, R11W;

Thence south to the southeast corner of Section 21, T4S, R11W;

Thence west to the northeast corner of Section 26, T4S, R13W;

Thence south to the southeast corner of Section 26, T4S, R13W;

Thence west to the west 1/16 corner common to Section 25 and 36, T4S, R14W;

Thence north to the northeast corner of the southwest 1/4 of the southwest 1/4 of Section 25, T4S, R14W;

Thence west to the south 1/16 corner of Section 25, T4S, R14W;

Thence north to the 1/4 corner common to Sections 25 and 26, T4S, R14W;

Thence west to the southwest corner of Tract 14 in North Fork Acres HM 74-484 and the east boundary of the right of way on a cul de sac of an unnamed road;

Thence northwesterly around the boundary of said cul-de-sac boundary to the southerly corner between Tracts 14 and 15 North Fork Acres HM 74-484;

Thence north to the northwest corner of Tract 14 of North Fork Acres HM 74-484;

Thence west to the southwest corner of Tract 9 North Fork Acres HM 74-484;

Thence north to the northwest corner of Tract 9 North Fork Acres HM 74-484 also being on the south right of way of an unnamed road;

Thence west along the south right of way of the unnamed road to a point 60 feet west of the northwest corner of Tract 13 Panoramic Estates HM 74-487 being on the west right of way of an unnamed road;

Thence north to the northeast corner of Tract 12 Panoramic Estates HM 74-487;

Thence west to the northwest corner of Tract 9 Panoramic Estates HM 74-487 being on the east right of way of an unnamed road;

Thence south along the west of Tract 9 panoramic Estates HM 74-487 to the intersection of the thread of the North Fork Anchor River;

Thence west to the west line of Lot 2 Schopp Subdivision HM 94-20;

Thence south along the west line of Lot 2 Schopp Subdivision 94-20 to the southeast corner of Lot 2 Bottens Subdivision HM 82-82;

Thence northwesterly along the south line of Lot 2 Bottens Subdivision HM 82-82 to the intersection with the east boundary of the right of way of Kingfisher Place;

Thence west across Kingfisher Place right of way to the southeasterly corner of Lot 1 Bottens Subdivision HM 82-82;

Thence westerly along the south line of Lot 1 to the west line of Lot 1 Bottens Subdivision HM 82-82 being the east boundary right of way of an unnamed road;

Thence north along the west line of Lot 1 Bottens Subdivision HM 82-82 to a point at the projection of the north line of Lot 8 Cottonwood East Subdivision HM 78-20 easterly across the road right of way;

Thence westerly along the south line of Lot 8, 7 and 3 Cottonwood East Subdivision HM 78-20 to the west line of Lot 3 Cottonwood East Subdivision HM 78-20;

Thence north to the northwest corner of Lot 3 Cottonwood East Subdivision HM 78-20;

Thence west to the southwest corner of the northeast 1/4 of the northwest 1/4 of Section 28, T4S, R14W;

Thence south to the southeast corner of the southwest 1/4 of the northwest 1/4 of Section 28, T4S, R14W;

Thence west to the center 1/4 corner of Section 29, T4S, R14W;

Thence south along the east line of the southwest 1/4 to the southeast corner of Tract 3-A Antone Muth No. 3 and Vacation of a Portion of Flyers Lane HM 97-68;

Thence southwesterly along the south line of Tract 3-A and 2-A of Antone Muth No. 3 and Vacation of a Portion of Flyers Lane HM 97-68 and Lot 1 and 2 Antone Muth Subdivision HM 84-71 to the southwest corner of Lot 1 Antone Muth Subdivision HM 84-71;

Thence south to the southeast corner of C & S Estates HM 2002-21;

Thence west to the corner common to Section 29, 30, 31, 32, T4S, R14W;

Thence north to the intersection with the projection east of the south line of Lot 9 Block 1 Riverdale Estates Unit 3 HM 77-49;

Thence westerly along the project and south line of Lot 9 Block 1 Riverdale Estates Unit 3 HM 77-49 to the southwest corner of Lot 9 Block 1 Riverdale Estates Unit 3 HM 77-49;

Thence north along the east line of Lot 17 Block 1 Riverdale Estates Unit 3 HM 77-49 to the southeast corner of Lot 7 Block 1 Riverdale Estates Unit 3 HM 77-49;

Thence westerly along the south lines of Lots 7, 18, 22, 23, 24, 25 and 26 Block 1 Riverdale Estates Unit 3 HM 77-49 to the southwest corner of Lot 26 Block 1 Riverdale Estates Unit 3 HM 77-49 and the east right of way boundary of Cottonwood Lane right of way;

Thence south along Cottonwood Lane right of way to the line between Section 30 and 31, T4S, R14W;

Thence west along the south line of Section 30 to the southwest corner of the southeast 1/4 of the southwest 1/4 of Section 30, T4S, R14W;

Thence north along the west line of the southeast 1/4 of the southwest 1/4 of Section 30, T4S, R14W to the intersection of the thread of the North Fork Anchor River;

Thence northwesterly along the thread of the North Fork Anchor River to the north line of the southwest 1/4 of the southwest 1/4 of Section 30, T4S, R14W;

Thence west to the south 1/16 corner of Section 30, T4S, R14W;

Thence north along the west line of Section 30, T4S, R14W to the north-north-south corner of Section 25, T4S, R14W;

Thence west along the north line of Iliamna View Estates HM 96-72 to the intersection of the thread of North Fork Anchor River;

Thence north and westerly along the thread of the North Fork Anchor River to the intersection with the east line of Lot 4 Symens Subdivision HM 78-67;

Thence north to the northeast corner of Lot 4 Symens Subdivision HM 78-67;

Thence west along the north line of Symens Subdivision HM 78-67 to the northwest corner of Lot 1 Symens Subdivision HM 78-67;

Thence south along the west line of Lot 1 Symens Subdivision HM 78-67 to the northeast corner of Lot 9 Anchor Point Estates HM 86-56;

Thence westerly along the north line of Anchor Point Estates HM 86-56 to the south line of northwest 1/4 of the southeast 1/4 of Section 26, T4S, R15W;

Thence west to the southwest corner of the northeast 1/4 of the southwest 1/4 of Section 26, T4S, R15W;

Thence south to the southeast corner of Lot 4 Matagorda Subdivision HM 77-57;

Thence east to the northeast corner of Lot 1 Earl Johnson Homestead HM 78-117;

Thence southerly along the east boundary of Earl Johnson Homestead HM 78-117 to the southeast corner of Lot 5 Earl Johnson Homestead HM 78-117;

Thence west along the north line of the southwest 1/4 to the northeast corner of the west 1/4 of the northeast 1/4 of the southwest 1/4 of Section 35, T4S, R15W;

Thence south to the southeast corner of the west 1/4 of the northeast 1/4 of the southwest 1/4 of Section 35, T4S, R15W;

Thence west to the southwest corner of the west 1/4 of the northeast 1/4 of the southwest 1/4 of Section 35, T4S, R15W;

Thence south along the east line of the west half of the southwest 1/4 of Section 35, T4S, R14W to the centerline of North Fork Road;

Thence west along the centerline of North Fork Road to the intersection with the centerline with the Sterling Highway;

Thence north along the centerline of the Sterling Highway to the intersection of the west line of Section 12, T4S, R15W;

Thence north to the north 1/16 corner common to Section 1 and 2, T4S, R15W;

Thence west along the 1/16 line of Section 2, T4S, R15W to the mean high-water line of Cook Inlet;

Thence northerly along the mean high-water line of Cook Inlet to a point west of the intersection of Kalifornsky Beach Road and Oil Company Haul Road;

Thence northerly along the mean high-water line of Cook Inlet to a point west of the intersection of Kalifornsky Beach Road and Oil Company Haul Road;

Thence east to the centerline of Kalifornsky Beach Road;

Thence north along the centerline of Kalifornsky Beach Road to the intersection of the Unocal Airport Road;

Thence northeasterly along Unocal Airport Road to the intersection of section line common to Sections 27, 28, T5N, R11W;

Thence southerly to the centerline of W Poppy Lane at the projection south of the east right of way boundary line of Hardy Street;

Thence east along the centerline of W Poppy Lane to the intersection of the centerline of Paddle Circle;

Thence south along the centerline of Paddle Circle to the center of the cul-de-sac;

Thence southwest along the southeast line of Lot 4 Jenny Subdivision Treeside Estates Addition KN 83-192 to the southeast corner of Lot 4 Jenny Subdivision Treeside Estates Addition KN 83-192;

Thence west along the south line and projection thereof of Lot 4 Jenny Subdivision Treeside Estates Addition KN 83-192 to the east line of Section 33, T5N, R11W;

Thence south to the section corner common to Sections 33, 34, T5N, R11W;

Thence east to the section corner common to Sections 2, 3, T4N, R11W, the point of beginning, and all being within the Seward Meridian, Alaska.

- H. **District No. 8**, Homer, shall be represented by 1 seat, designated Seat 8, described as follows:

District No. 8, Homer, Area 1

Commencing at the mean high-water line of Cook Inlet and the intersection of the section line common to Sections 15,16, T6S, R14W;

Thence north along said section line to the centerline of the Sterling Highway;

Thence northwesterly along the centerline of the Sterling Highway to Diamond Ridge Rd;

Thence easterly along the centerline of Diamond Ridge Rd. to the north edge of the right-of-way of Skyline Drive;

Thence northeasterly along the northerly edge of Skyline Drive right-of-way to the west intersection of Crossman Ridge Road right-of-way;

Thence northeasterly along the northerly edge of Crossman Road to the corner common to Lot 12 & 13 Diamond Ridge Estates, Plat 71-1238 Homer Recording District;

Thence north to the C-N-S-SE 1/256 corner of Section 6, T6S, R13W;

Thence east to the centerline of Crossman Ridge Rd;

Thence easterly along the centerline of Crossman Ridge Rd. to Palmer St;

Thence southerly along the centerline of Palmer St. to Skyline Dr;

Thence easterly along the centerline of Skyline Drive to the intersection with the common line to Sections 35 and 36, T5S, R13W;

Thence south along the section line to the 1/4 corner common to Sections 1 and 2, T6S, R13W

Thence west to the centereast 1/16 corner of Section 2, T6S, R13W

Thence south to the east 1/16 corner common to Section 2 and 11, T6S, R13W;

Thence east to the section corner common to Sections 1,2,11, and 12, T6S, R13W;

Thence north to the south 1/16 corner common to Sections 1 and 2, T6S, R13W being on the north edge of Deitz Lane right of way

Thence along the north edge of Deitz Lane right-of way to the line common to lots 3 and 4 Deitz Homes Estates Sub No 4 HRD 84-42;

Thence northwesterly to the southwest corner of Tract A-3 Deitz Home Estates Sub No 13 HRD 2022-45;

Thence northeasterly along the southern boundary of Tract A-3 Deitz Home Estates Sub No 13 HRD 2022-45 to the westerly edge of the China Poot St right-of-way;

Thence perpendicular 60' across China Poot St right-of-way to the west boundary of Tract A-4C Deitz Home Estates 15 HRD 2008-65;

Thence southeasterly along the western boundary of Tract A-4C to the southwest corner of Tract A-4C Deitz Home Estates 15 HRD 2008-65;

Thence northeasterly along the southern boundary of Tract A-4C Deitz Home Estates 15 HRD 2008-65 to the southeast corner of Tract A-4 Deitz Home Estates 15 HRD 2008-65C;

Thence north to the CW1/4 corner of Section 1, T6S, R13W;

Thence east to the C1/4 of Section 1, T6S, R13W;

Thence south to the CS1/4 of Section 1, T6S, R13W;

Thence east to the S $\frac{1}{2}$ common to Section 1, T6S, R13W and section 6, T6S, R12W;

Thence south along the section line to the mean high water of Kachemak Bay;

Thence southwesterly along the mean high water of Kachemak Bay to the director's line of Alaska Tidelands Survey #612;

Thence easterly, southerly and northerly along said director's line to the intersection of the section line common to sections 22, 23, T6S, R14W, also being the mean high water line of Kachemak Bay;

Thence northwesterly along the mean high-water line of Kachemak Bay to the point of beginning, and all being within the Seward Meridian, Alaska.

District No. 8, Homer, Area 2

Commencing at the northeast corner of Section 25, T15S, R24W;

Thence west to the northeast corner of Section 29, T15S, R26W;

Thence south to the southeast corner of Section 32, T16S, R26W;

Thence west to the northeast corner of T17S, R28W;

Thence south to the southeast corner of T17S, R28W;

Thence west to the southwest corner of T17S, R32W;

Thence north to the northwest corner of T17S, R32W;

Thence west to the southwest corner of T16S, R32W;

Thence north to the northwest corner of T13S, R32W;

Thence west to the southwest corner of T12S, R32W;

Thence north to the northwest corner of T11S, R32W;

Thence east to the southwest corner of T10S, R30W;

Thence north to the northwest corner of T9S, R30W;

Thence east to the southeast corner of T8S, R29W;
Thence north to the northeast corner of T8S, R29W;
Thence east to the northeast corner of T8S, R28W;
Thence north to the northwest corner of T6S, R27W;
Thence east to the southwest corner of T5S, R26W;
Thence north to the northwest corner of T5S, R26W;
Thence east to the southwest corner of T4S, R25W;
Thence north to the northwest corner of T4S, R25W;
Thence east to the northeast corner of T4S, R22W;
Thence south to the southeast corner of T4S, R22W;
Thence west to the northeast corner of Section 3, T5S, R22W;
Thence south to the southeast corner of Section 10, T5S, R22W;
Thence west to the southwest corner of Section 10, T5S, R22W;
Thence south to the southeast corner of Section 33, T5S, R22W;
Thence east to the southwest corner of Section 33, T5S, R22W;
Thence south to the southeast corner of Section 5, T6S, R22W;
Thence west to the southwest corner of Section, T6S, R23W;
Thence south to the southeast corner of Section 14, T6S, R23W;
Thence west to the southwest corner of Section 14, T6S, R23W;
Thence south to the southeast corner of Section 22, T6S, R23W;
Thence west to the southwest corner of Section 21, T6S, R23W;
Thence south to the southeast corner of Section 29, T6S, R23W;
Thence west to the southwest corner of Section 30, T6S, R23W;
Thence south to the southeast corner of T8S, R24W;
Thence east to the northeast corner of T9S, R24W;
Thence southerly to the point of beginning, and all being within
the Seward Meridian, Alaska.

- I. **District No. 9**, South Peninsula, shall be represented by 1 seat, designated Seat 9, described as follows:

Commencing at the mean high-water line of Cook Inlet and the intersection of the section line common to Sections 15,16, T6S, R14W;

Thence north along said section line to the centerline of the Sterling Highway;

Thence northwesterly along the centerline of the Sterling Highway to Diamond Ridge Rd;

Thence easterly along the centerline of Diamond Ridge Rd. to the north edge of the right-of-way of Skyline Drive;

Thence northeasterly along the northerly edge of Skyline Drive right-of-way to the west intersection of Crossman Ridge Road right-of-way;

Thence northeasterly along the northerly edge of Crossman Road to the corner common to Lot 12 & 13 Diamond Ridge Estates, Plat 71-1238 Homer Recording District;

Thence north to the C-N-S-SE 1/256 corner of Section 6, T6S, R13W;

Thence east to the centerline of Crossman Ridge Rd;

Thence easterly along the centerline of Crossman Ridge Rd. to Palmer St;

Thence southerly along the centerline of Palmer St. to Skyline Dr;

Thence easterly along the centerline of Skyline Drive to the intersection with the common line to Sections 35 and 36, T5S, R13W;

Thence south along the section line to the 1/4 corner common to Sections 1 and 2, T6S, R13W;

Thence west to the centereast 1/16 corner of Section 2, T6S, R13W;

Thence south to the east 1/16 corner common to Section 2 and 11, T6S, R13W;

Thence east to the section corner common to Sections 1,2,11, and 12, T6S, R13W;

Thence north to the south 1/16 corner common to Sections 1 and 2, T6S, R13W being on the north edge of Deitz Lane right of way;

Thence along the north edge of Deitz Lane right-of way to the line common to lots 3 and 4 Deitz Homes Estates Sub No 4 HRD 84-42;

Thence northwesterly to the southwest corner of Tract A-3 Deitz Home Estates Sub No 13 HRD 2022-45;

Thence northeasterly along the southern boundary of Tract A-3 Deitz Home Estates Sub No 13 HRD 2022-45 to the westerly edge of the China Poot St right-of-way;

Thence perpendicular 60' across China Poot St right-of-way to the west boundary of Tract A-4C Deitz Home Estates 15 HRD 2008-65;

Thence southeasterly along the western boundary of Tract A-4C to the southwest corner of Tract A-4C Deitz Home Estates 15 HRD 2008-65;

Thence northeasterly along the southern boundary of Tract A-4C Deitz Home Estates 15 HRD 2008-65 to the southeast corner of Tract A-4 Deitz Home Estates 15 HRD 2008-65C;

Thence north to the CW1/4 corner of Section 1, T6S, R13W;

Thence east to the C1/4 of Section 1, T6S, R13W;

Thence south to the CS1/4 of Section 1, T6S, R13W;

Thence east to the S¹/₄ common to Section 1, T6S, R13W and section 6, T6S, R12W;

Thence south along the section line to the mean high water of Kachemak Bay;

Thence southwesterly along the mean high water of Kachemak Bay to the director's line of Alaska Tidelands Survey #612;

Thence easterly, southerly along the director's line to the tip of the Homer Spit;

Thence south to the E 1/16 corner of Section 1, T7S, R13W;

Thence east to the southeast corner of Section 1, T7S, R13W;

Thence south to the northeast corner of Section 25, T7S, R13W;

Thence west to the northwest corner of Section 27, T7S, R13W;
Thence south to the southwest corner of Section 27, T7S, R13W;
Thence west to the northwest corner of Section 33, T7S, R13W;
Thence south to the southwest corner of Section 33, T7S, R13W;
Thence west to the northwest corner of Section 5, T8S, R13W;
Thence south to the southwest corner of Section 8, T8S, R13W;
Thence west to the northwest corner of Section 16, T8S, R14W;
Thence south to the northeast corner of Section 20, T8S, R14W;
Thence west to the northwest corner of Section 20, T8S, R14W;
Thence south to the southwest corner of Section 20, T8S, R14W;
Thence west to the northwest corner of Section 25, T8S, R15W;
Thence south to the southwest corner of Section 25, T8S, R15W;
Thence west to the northwest corner of Section 33, T8S, R15W;
Thence south to the southwest corner of Section 33, T8S, R15W;
Thence west to the northwest corner of Section 1, T9S, R16W;
Thence south to the northeast corner of Section 35, T9S, R16W;
Thence west to the northwest corner of Section 34, T9S, R16W;
Thence south to the southwest corner of Section 34, T9S, R16W;
Thence west to the northwest corner of Section 4, T10S, R16W;
Thence south to the southwest corner of Section 4, T11S, R16W;
Thence east to the southeast corner of Section 3, T11S, R16W;
Thence south to the southwest corner of Section 14, T11S, R16W;
Thence east to the southeast corner of Section 13, T11S, R16W;
Thence south to the southwest corner of Section 18, T12S, R15W;
Thence east to the southeast corner of Section 14, T12S, R15W;

Thence south to the southwest corner of Section 25, T12S, R15W;

Thence northeasterly to the southeast corner of the northeast 1/4 of Section 27, T12S, R13W, said corner being on or approximately on the southerly point of East Chugach Island;

Thence northeasterly to the southeast corner of the northeast 1/4 of Section 28, T11S, R10W, said corner being at or approximately at Gore Point;

Thence northeasterly to the northwest corner of Section 14, T10S, R7W, said point being at or approximately Pye Reef;

Thence northeasterly to the southeast corner of Section 24, T8S, R4W and the southwest corner of Section 19, T8S, R3W;

Thence north along the range lines to the northeast corner of T1S, R4W;

Thence west along the township line to the north shore of Tustumena Lake;

Thence southerly and westerly along the south shore of the Tustumena Lake to the intersection with the east line of Section 34, T2N, R11W;

Thence south to the southeast corner of Section 10, T1N, R11W;

Thence west to the 1/4 corner common to Section 10 and 15, T1N, R11W;

Thence south to the 1/4 corner common to Section 15 and 22, T1N, R11W;

Thence west to the northwest corner of Section 21, T1N, R11W;

Thence south to the southeast corner of Section 32 T1N, R11W;

Thence east to the northeast corner of Section 2, T1S, R11W;

Thence south to the southeast corner of Section 23, T3S, R11W;

Thence west to the southwest corner of Section 23, T3S, R11W;

Thence south the 1/4 corner common to Sections 14 and 15, T4S, R11W;

Thence west the center 1/4 corner of Section 15, T4S, R11W;

Thence south to the 1/4 corner common to Sections 15 and 22, T4S, R11W;

Thence west to the northeast corner of Section 21, T4S, R11W;

Thence south to the southeast corner of Section 21, T4S, R11W;

Thence west to the northwest corner of Section 25, T4S, R13W;

Thence south to the southwest corner of Section 25, T4S, R13W;

Thence west to the west 1/16 corner common to Section 25 and 36, T4S, R14W;

Thence north to the northeast corner of the southwest 1/4 of the southwest 1/4 of Section 25, T4S, R14W;

Thence west to the south 1/16 corner of Section 25, T4S, R14W;

Thence north to the 1/4 corner common to Sections 25 and 26, T4S, R14W;

Thence west to the southwest corner of Tract 14 in North Fork Acres HM 74-484 and the east boundary of the right of way on a cul de sac of an unnamed road;

Thence northwesterly around the boundary of said cul-de-sac boundary to the southerly corner between Tracts 14 and 15 North Fork Acres HM 74-484;

Thence north to the northwest corner of Tract 14 of North Fork Acres HM 74-484;

Thence west to the southwest corner of Tract 9 North Fork Acres HM 74-484;

Thence north to the northwest corner of Tract 9 North Fork Acres HM 74-484 also being on the south right of way of an unnamed road;

Thence west along the south right of way of the unnamed road to a point 60 feet west of the northwest corner of Tract 13 Panoramic Estates HM 74-487 being on the west right of way of an unnamed road;

Thence north to the northeast corner of Tract 12 Panoramic Estates HM 74-487;

Thence west to the northwest corner of Tract 9 Panoramic Estates HM 74-487 being on the east right of way of an unnamed road;

Thence south along the west of Tract 9 panoramic Estates HM 74-487 to the intersection of the thread of the North Fork Anchor River;

Thence west to the west line of Lot 2 Schopp Subdivision HM 94-20;

Thence south along the west line of Lot 2 Schopp Subdivision 94-20 to the southeast corner of Lot 2 Bottens Subdivision HM 82-82;

Thence northwesterly along the south line of Lot 2 Bottens Subdivision HM 82-82 to the intersection with the east boundary of the right of way of Kingfisher Place;

Thence west across Kingfisher Place right of way to the southeasterly corner of Lot 1 Bottens Subdivision HM 82-82;

Thence westerly along the south line of Lot 1 to the west line of Lot 1 Bottens Subdivision HM 82-82 being the east boundary right of way of an unnamed road;

Thence north along the west line of Lot 1 Bottens Subdivision HM 82-82 to a point at the projection of the north line of Lot 8 Cottonwood East Subdivision HM 78-20 easterly across the road right of way;

Thence westerly along the south line of Lot 8, 7 and 3 Cottonwood East Subdivision HM 78-20 to the west line of Lot 3 Cottonwood East Subdivision HM 78-20;

Thence north to the northwest corner of Lot 3 Cottonwood East Subdivision HM 78-20;

Thence west to the southwest corner of the northeast 1/4 of the northwest 1/4 of Section 28, T4S, R14W;

Thence south to the southeast corner of the southwest 1/4 of the northwest 1/4 of Section 28, T4S, R14W;

Thence west to the center 1/4 corner of Section 29, T4S, R14W;

Thence south along the east line of the southwest 1/4 to the southeast corner of Tract 3-A Antone Muth No. 3 and Vacation of a Portion of Flyers Lane HM 97-68;

Thence southwesterly along the south line of Tract 3-A and 2-A of Antone Muth No. 3 and Vacation of a Portion of Flyers Lane HM 97-68 and Lot 1 and 2 Antone Muth Subdivision HM 84-71 to the southwest corner of Lot 1 Antone Muth Subdivision HM 84-71;

Thence south to the southeast corner of C & S Estates HM 2002-21;

Thence west to the corner common to Section 29, 30, 31, 32, T4S, R14W;

Thence north to the intersection with the projection east of the south line of Lot 9 Block 1 Riverdale Estates Unit 3 HM 77-49;

Thence westerly along the project and south line of Lot 9 Block 1 Riverdale Estates Unit 3 HM 77-49 to the southwest corner of Lot 9 Block 1 Riverdale Estates Unit 3 HM 77-49;

Thence north along the east line of Lot 17 Block 1 Riverdale Estates Unit 3 HM 77-49 to the southeast corner of Lot 7 Block 1 Riverdale Estates Unit 3 HM 77-49;

Thence westerly along the south lines of Lots 7, 18, 22, 23, 24, 25 and 26 Block 1 Riverdale Estates Unit 3 HM 77-49 to the southwest corner of Lot 26 Block 1 Riverdale Estates Unit 3 HM 77-49 and the east right of way boundary of Cottonwood Lane right of way;

Thence south along Cottonwood Lane right of way to the line between Section 30 and 31, T4S, R14W;

Thence west along the south line of Section 30 to the southwest corner of the southeast 1/4 of the southwest 1/4 of Section 30, T4S, R14W;

Thence north along the west line of the southeast 1/4 of the southwest 1/4 of Section 30, T4S, R14W to the intersection of the thread of the North Fork Anchor River;

Thence northwesterly along the thread of the North Fork Anchor River to the north line of the southwest 1/4 of the southwest 1/4 of Section 30, T4S, R14W;

Thence west to the south 1/16 corner of Section 30, T4S, R14W;

Thence north along the wet line of Section 30, T4S, R14W to the north-north-south corner of Section 25, t4S, R14W;

Thence west along the north line of Iliamna View Estates HM 96-72 to the intersection of the thread of North Fork Anchor River;

Thence north and westerly along the thread of the North Fork Anchor River to the intersection with the east line of Lot 4 Symens Subdivision HM 78-67;

Thence north to the northeast corner of Lot 4 Symens Subdivision HM 78-67;

Thence west along the north line of Symens Subdivision HM 78-67 to the northwest corner of Lot 1 Symens Subdivision HM 78-67;

Thence south along the west line of Lot 1 Symens Subdivision HM 78-67 to the northeast corner of Lot 9 Anchor Point Estates HM 86-56;

Thence westerly along the north line of Anchor Point Estates HM 86-56 to the south line of northwest 1/4 of the southeast 1/4 of Section 26, T4S, R15W;

Thence west to the southwest corner of the northeast 1/4 of the southwest 1/4 of Section 26, T4S, R15W;

Thence south to the southeast corner of Lot 4 Matagorda Subdivision HM 77-57;

Thence east to the northeast corner of Lot 1 Earl Johnson Homestead HM 78-117;

Thence southerly along the east boundary of Earl Johnson Homestead HM 78-117 to the southeast corner of Lot 5 Earl Johnson Homestead HM 78-117;

Thence west along the north line of the southwest 1/4 to the northeast corner of the west 1/4 of the northeast 1/4 of the southwest 1/4 of Section 35, T4S, R15W;

Thence south to the southeast corner of the west 1/4 of the northeast 1/4 of the southwest 1/4 of Section 35, T4S, R15W;

Thence west to the southwest corner of the west 1/4 of the northeast 1/4 of the southwest 1/4 of Section 35, T4S, R15W;

Thence south along the east line of the west half of the southwest 1/4 of Section 35, T4S, R14W to the centerline of North Fork Road.

SECTION 2. That this ordinance shall be effective immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS *
DAY OF *, 2023.**

Brent Johnson, Assembly President

ATTEST:

Michele Turner, CMC, Acting Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Office of the Borough Clerk

MEMORANDUM

TO: Members, Kenai Peninsula Borough Assembly

THRU: Brent Johnson, Assembly President BJ
Tyson Cox, Assembly Vice President TRC

FROM: Michele Turner, Acting Borough Clerk (MT)

DATE: January 5, 2023

RE: Ordinance 2023-02, Amending Borough Code, KPB 22.30.010, Relating to Composition of Assembly Districts to Revise Assembly and School Board District Boundaries (Johnson, Cox)

At the October 4, 2022 regular election, the Kenai Peninsula Borough voters approved an apportionment plan with nine single-member assembly and school board districts with each assembly and school board member elected from one district. Due a reduction in the population on the north side of the Kenai Peninsula since the 2010 census, the southern boundary for District 3 has been moved to include a small portion of District 2 – Kenai to meet equal representation requirements as well as continuing to include populations with similar economic and social interests. Adjustments are made to the remaining districts to maintain compliance with equal representation standards and continue to include populations with similar economic, cultural, and social interests, and/or to retain consistency with political boundaries.

Pursuant to KPB 1.20.100, Borough School Board districts mirror Assembly district boundaries.

Due, in large part, to the minor nature of the changes making slight adjustments to current district boundary lines to satisfy constitutional equal representation requirements and the final report of the Reapportionment Committee recommending slight adjustments, the Assembly President directed the Borough Planning Department, GIS, Legal Department, and Clerk's Office to bring forward the adjustments proposed in the legal descriptions herein and as shown on the maps provided. As such, no redistricting committee was formed.

Your consideration is appreciated.

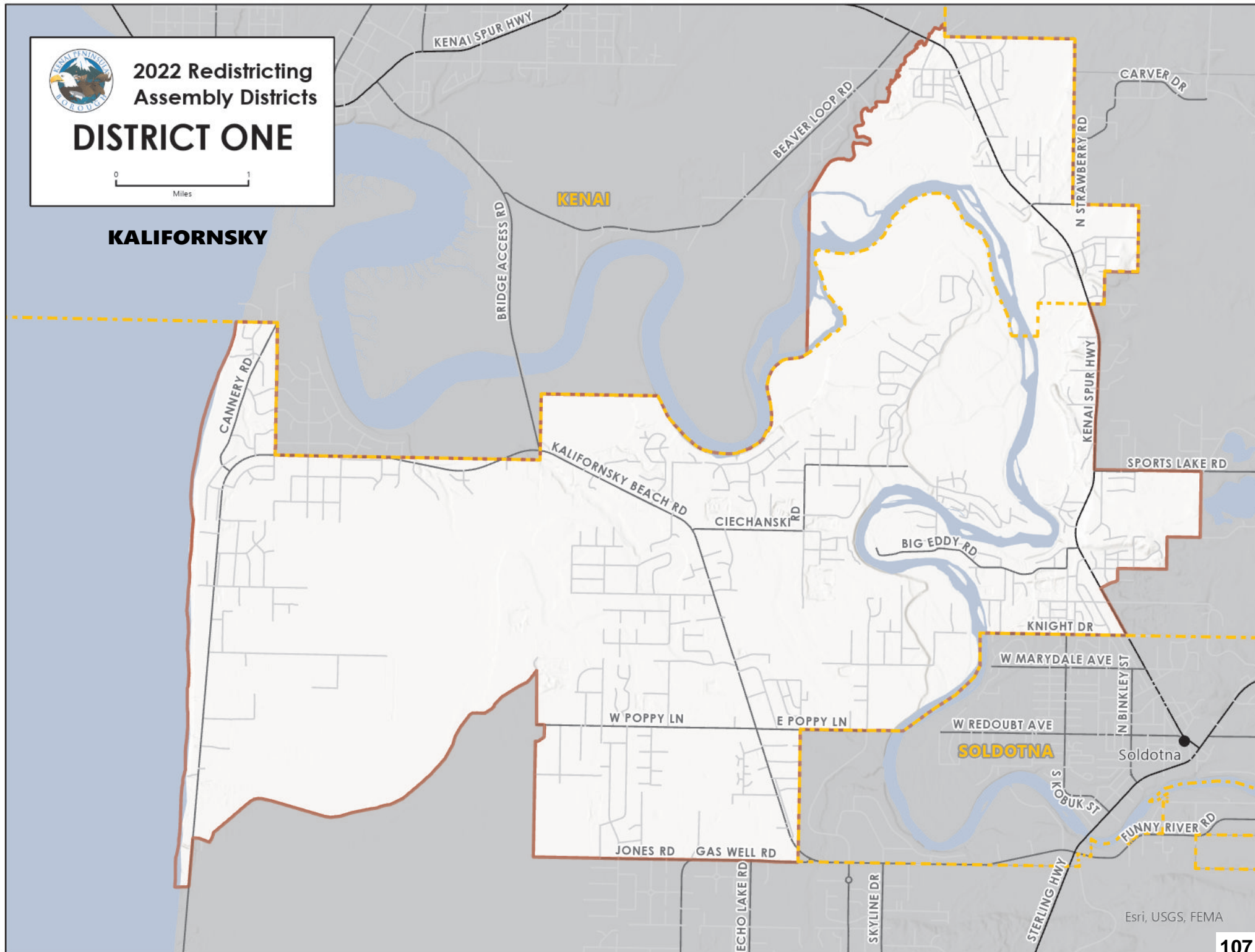


2022 Redistricting
Assembly Districts

DISTRICT ONE



KALIFORNISKY



Esri, USGS, FEMA



2022 Redistricting
Assembly Districts

DISTRICT TWO



KENAI

REDOUBT AVE

N FOREST DR

MARATHON RD

N WILLOW ST

KENAI SPUR HWY

KENAI

● Kenai

S WILLOW ST

BEAVER LOOP RD

BRIDGE ACCESS RD

CANNERY RD

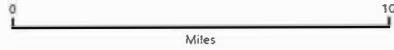
KALIFORNIA BEACH RD

Esri, USGS, FEMA
CIECHANSKI RD

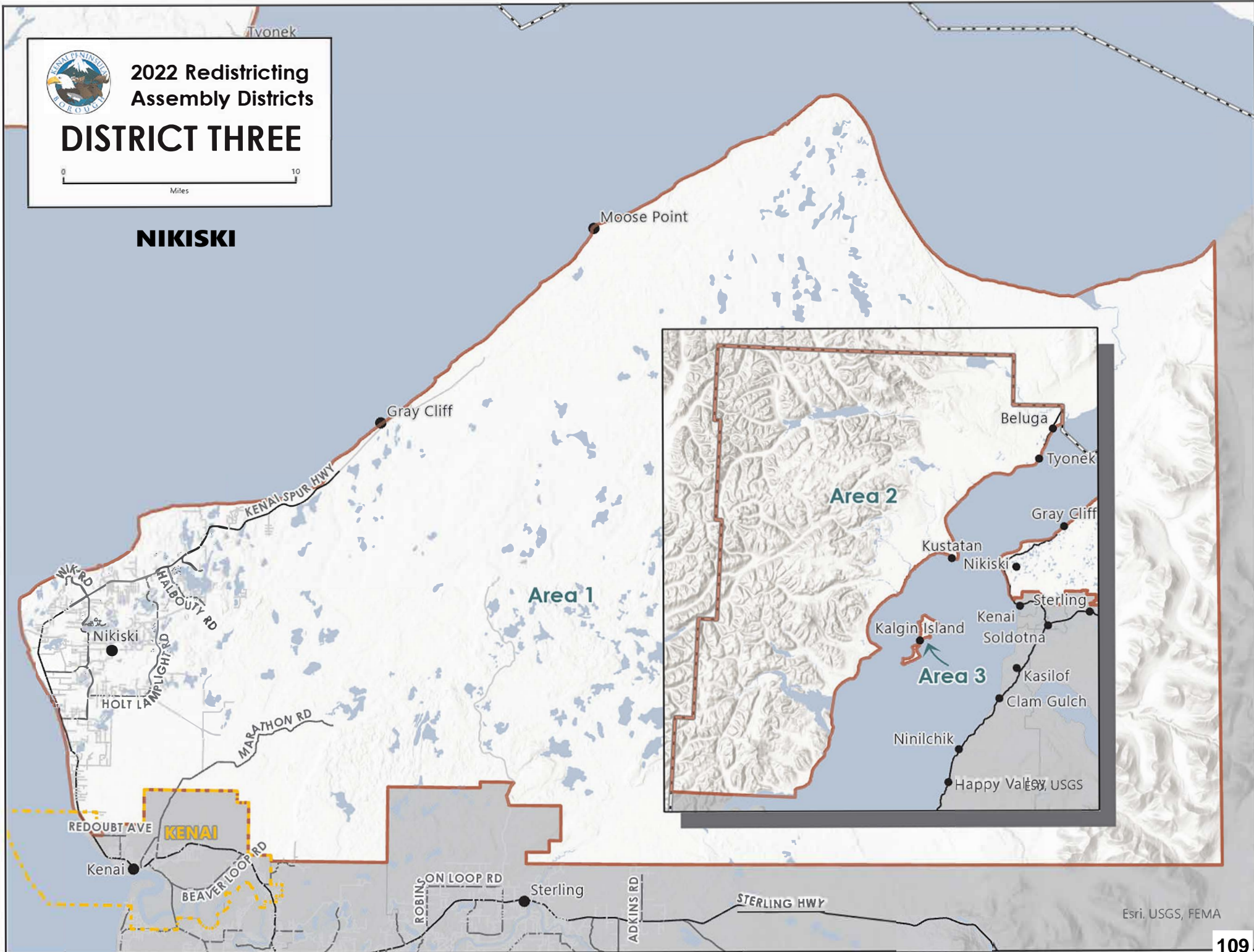


2022 Redistricting
Assembly Districts

DISTRICT THREE



NIKISKI



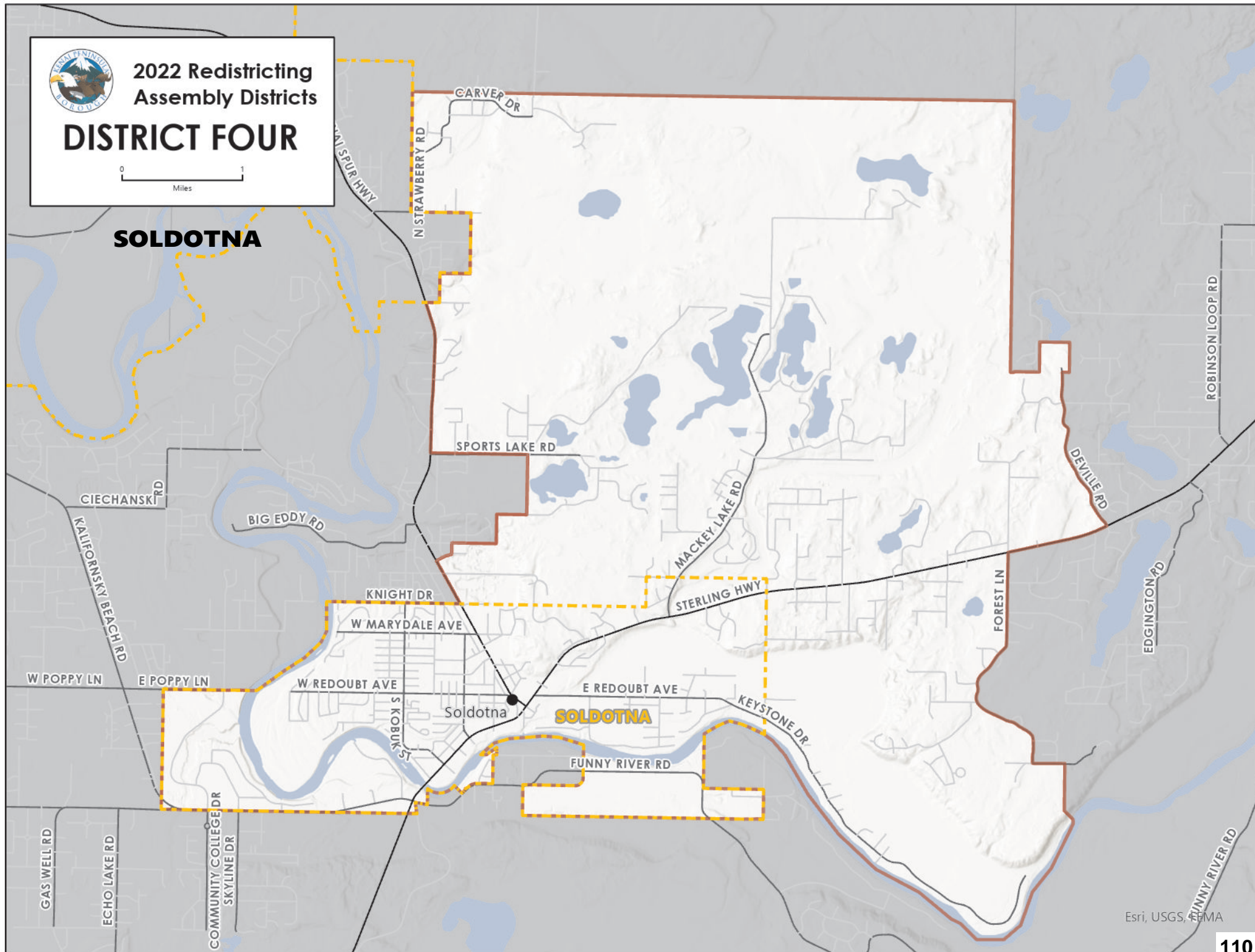


2022 Redistricting
Assembly Districts

DISTRICT FOUR



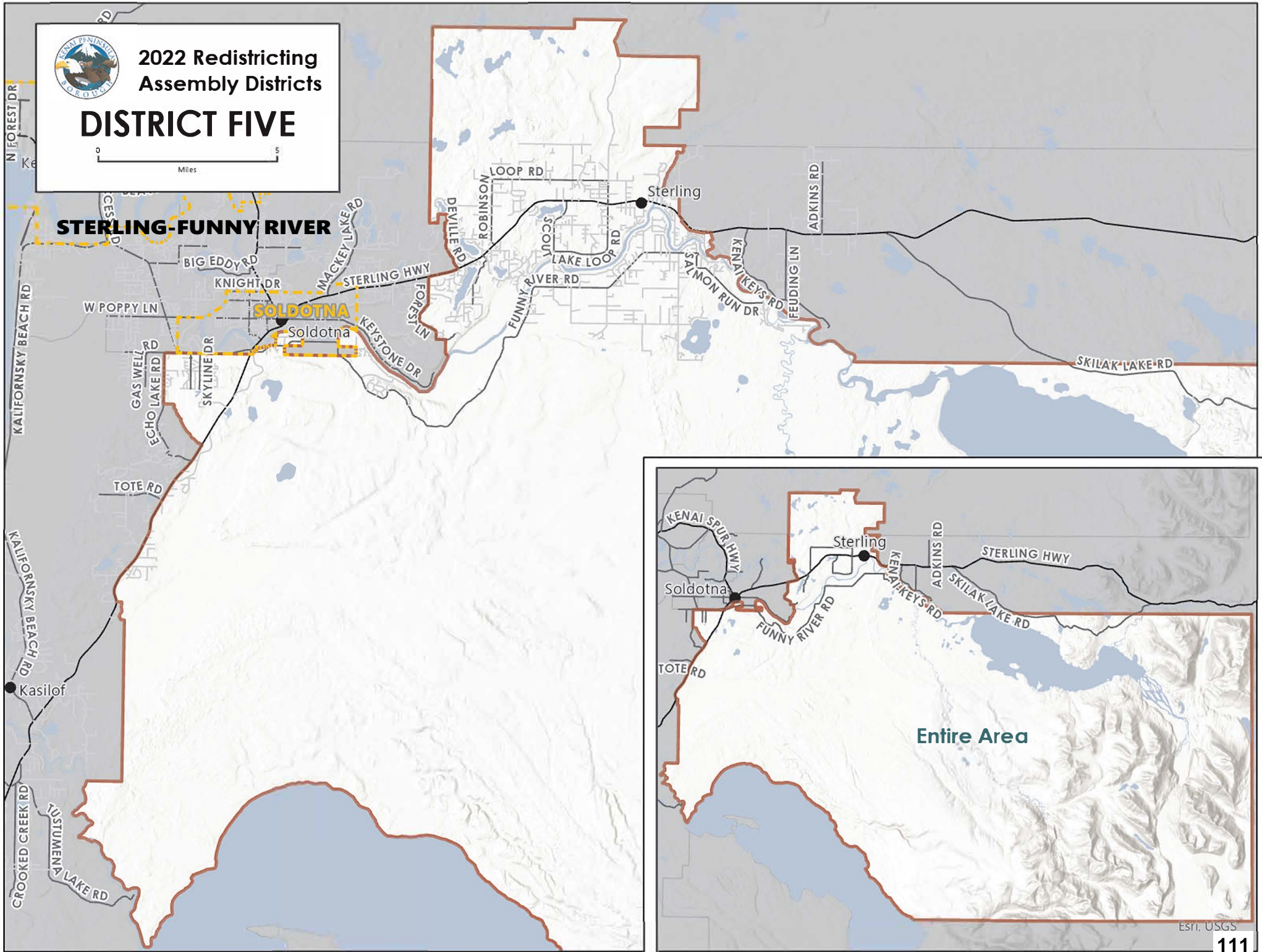
SOLDOTNA





2022 Redistricting Assembly Districts

DISTRICT FIVE



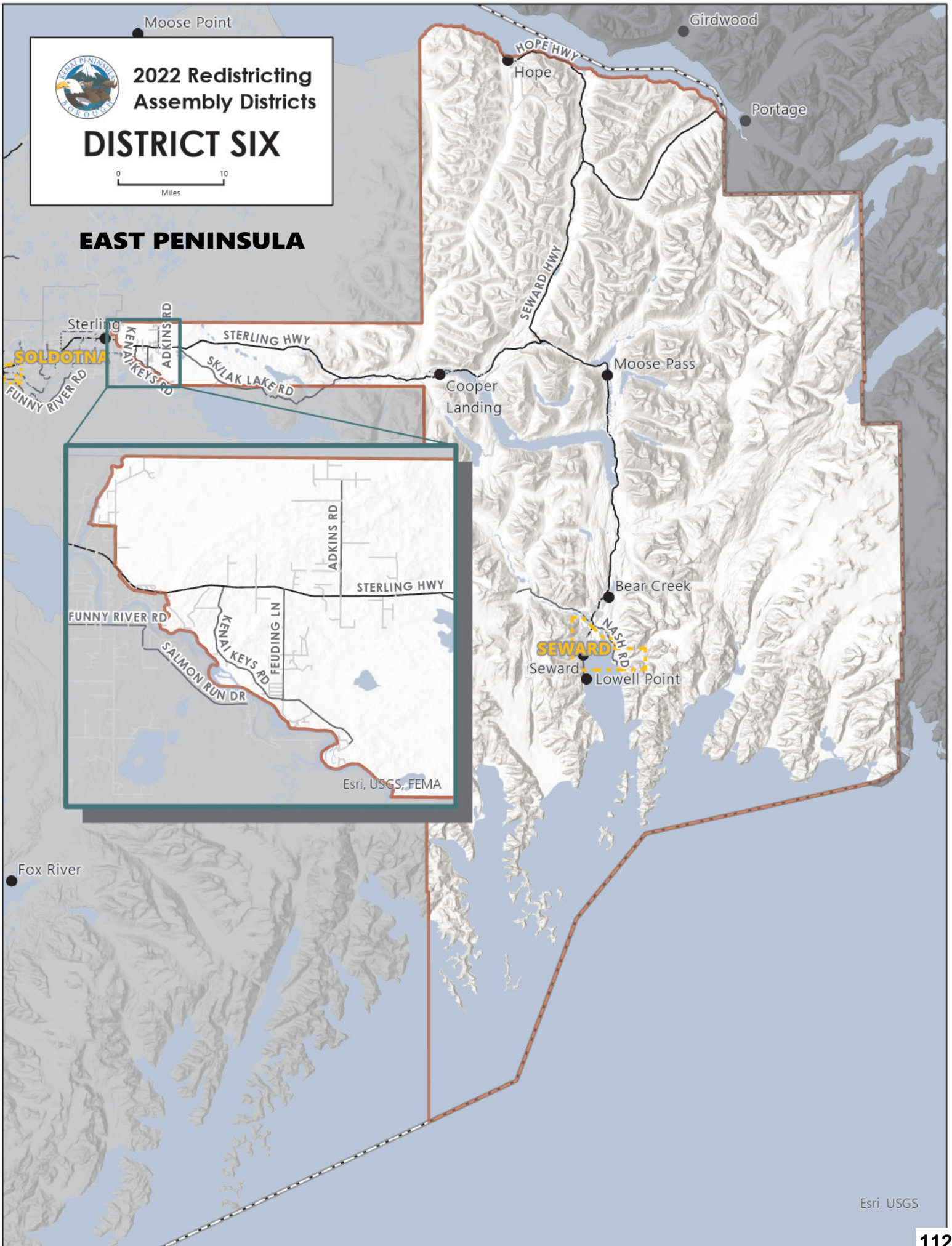


2022 Redistricting Assembly Districts

DISTRICT SIX



EAST PENINSULA



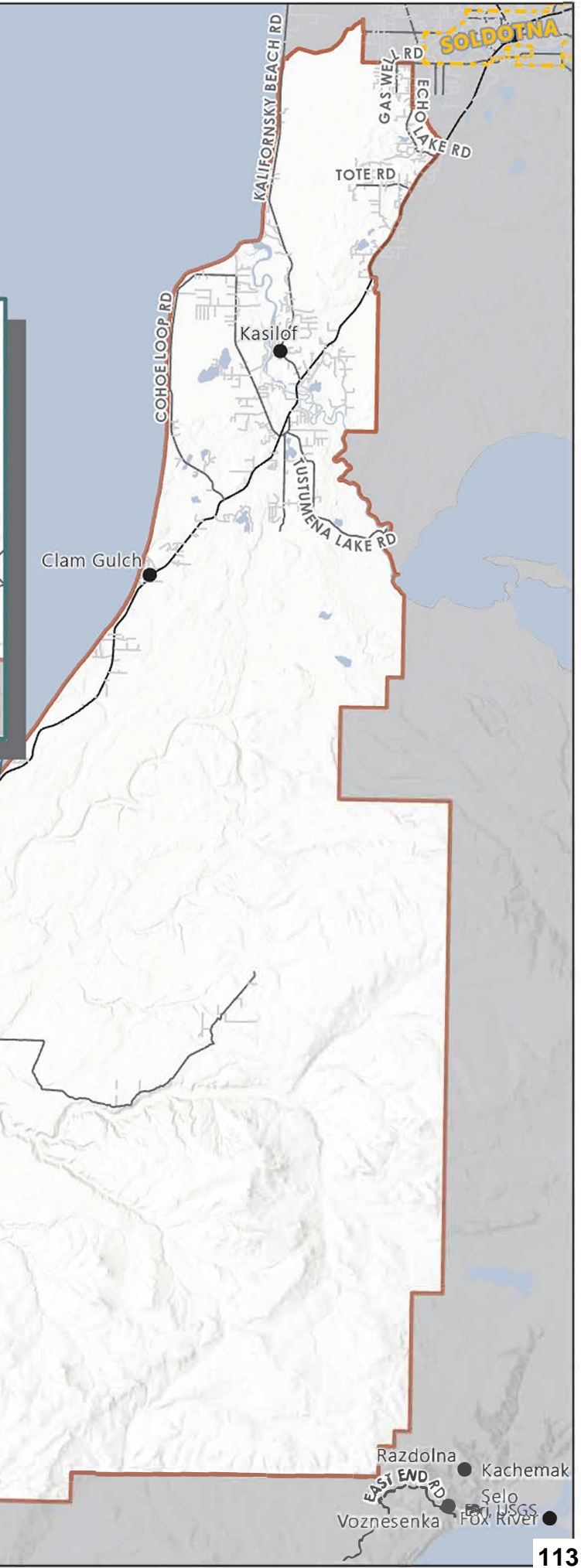


2022 Redistricting
Assembly Districts

DISTRICT SEVEN



CENTRAL





2022 Redistricting
Assembly Districts

DISTRICT EIGHT



HOMER

DIAMOND RIDGE RD

STERLING HWY

WEST HILL RD

Area 1

Homer

LAKE ST
OCEAN DR

HOMER

KACHEMAK DR

EAST HILL RD

EAST END RD

SKYLINE DR

KACHEMAK

Kachemak City

HOMER SPIT RD

Area 2

Esri, CGIAR, USGS

Esri, NASA, NGA, USGS, FEMA

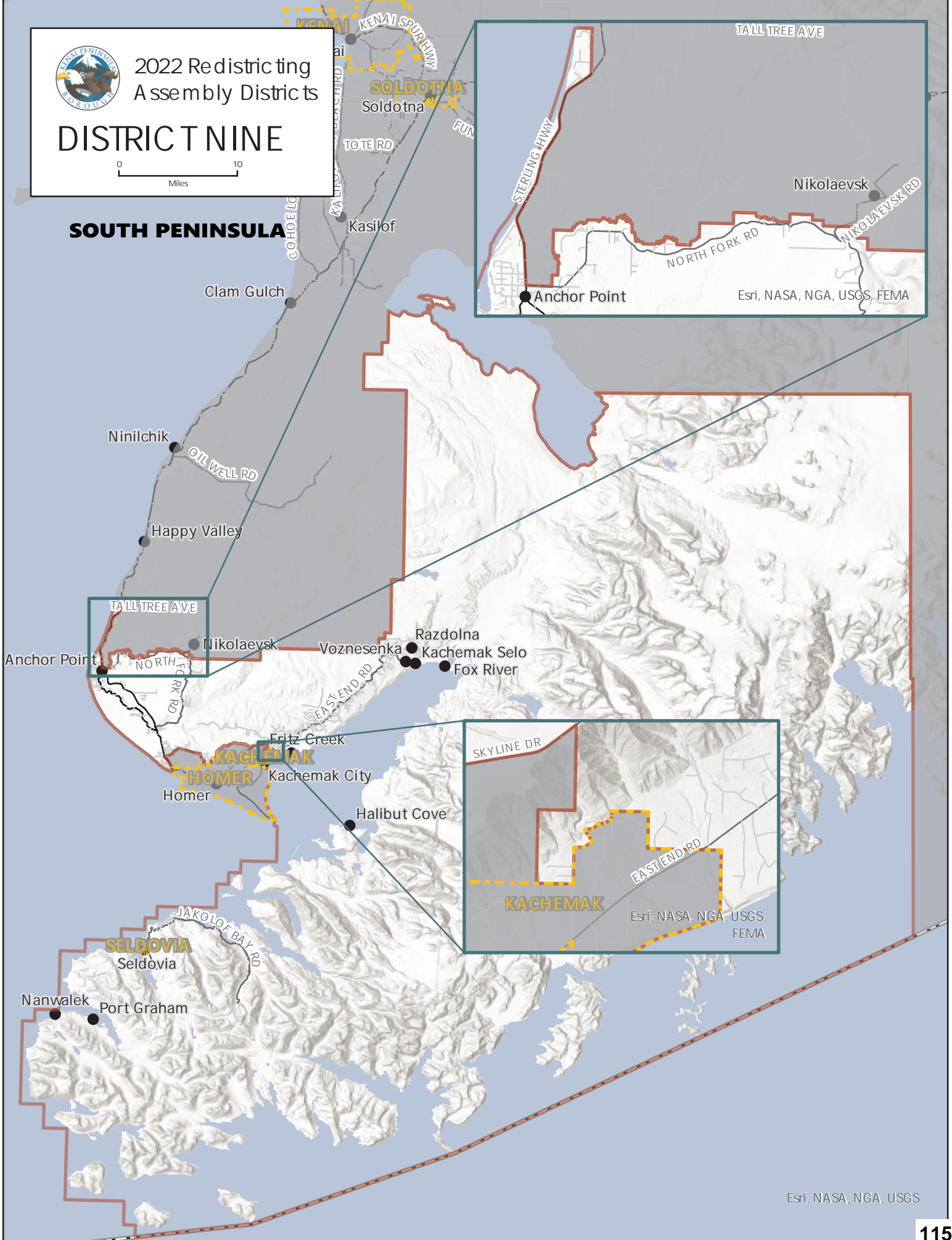


2022 Redistricting
Assembly Districts

DISTRICT NINE



SOUTH PENINSULA



Esri, NASA, NGA, USGS



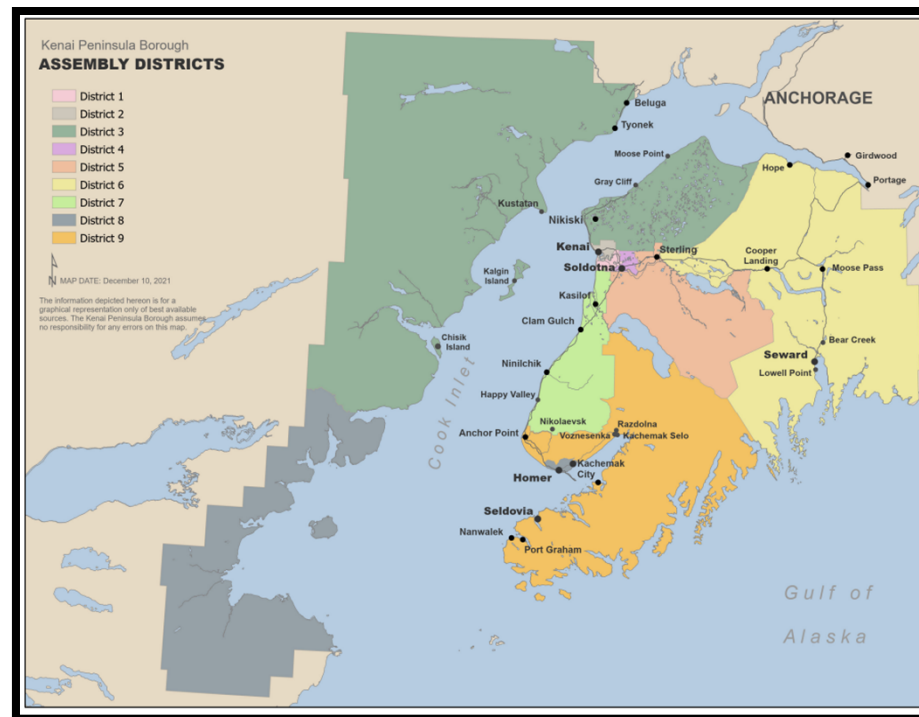
Kenai Peninsula Borough Redistricting 2022

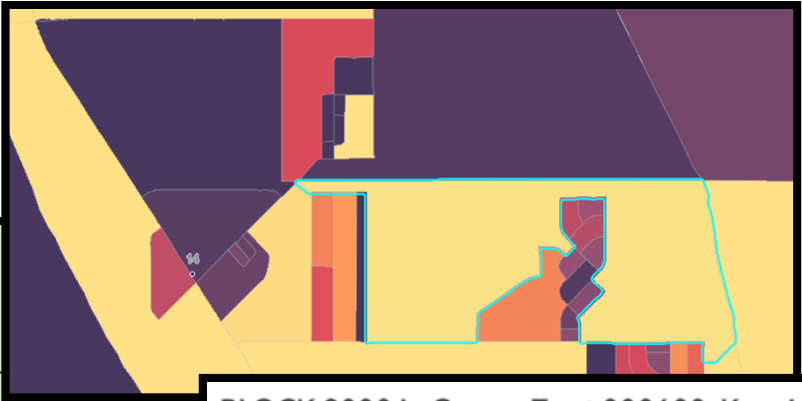
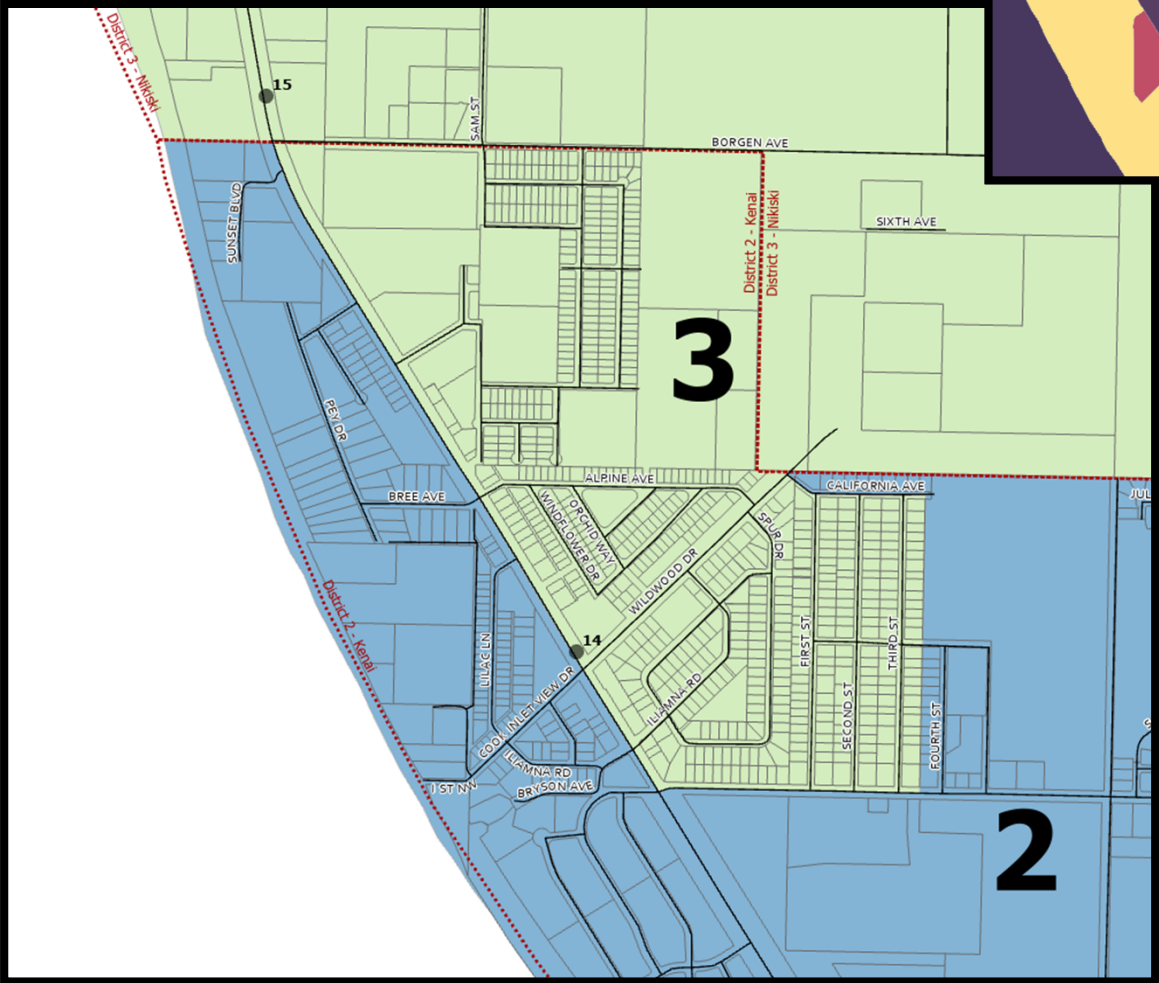


Population by Current Assembly District

	Total Population	Target Population	Deviation	Deviation %
District 1	6,490	6,533	-43	-0.66
District 2	6,604	6,533	71	1.09
District 3	5,915	6,533	-618	-9.46
District 4	6,795	6,533	262	4.01
District 5	6,722	6,533	189	2.89
District 6	6,662	6,533	129	1.97
District 7	6,600	6,533	67	1.03
District 8	6,504	6,533	-29	-0.44
District 9	6,507	6,533	-26	-0.4

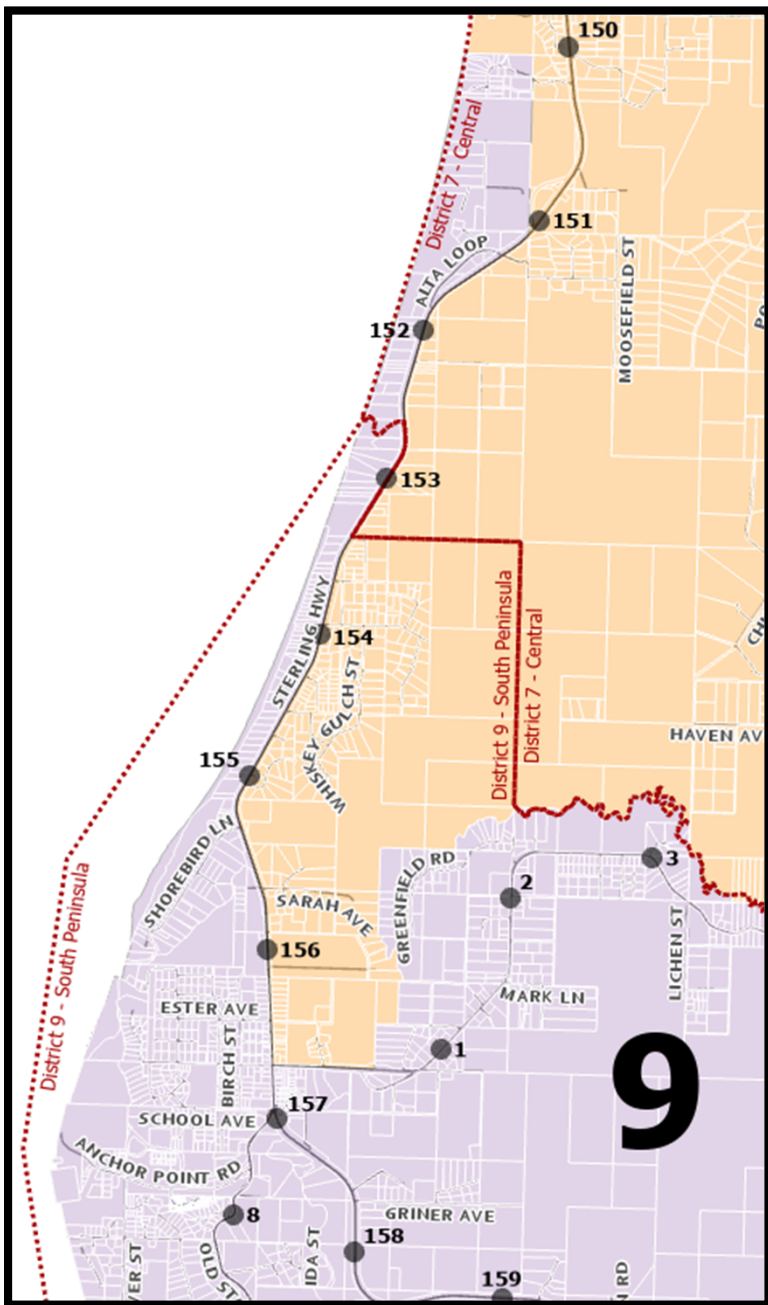
Total Population:	58,799
Mean Target Population:	6,533
Mean Deviation:	159
Mean Percent Deviation:	2.44
Largest Positive Deviation:	262
Largest Negative Deviation:	-618
Overall Range in Deviation:	880
Overall Range in Deviation Percentage:	13.47





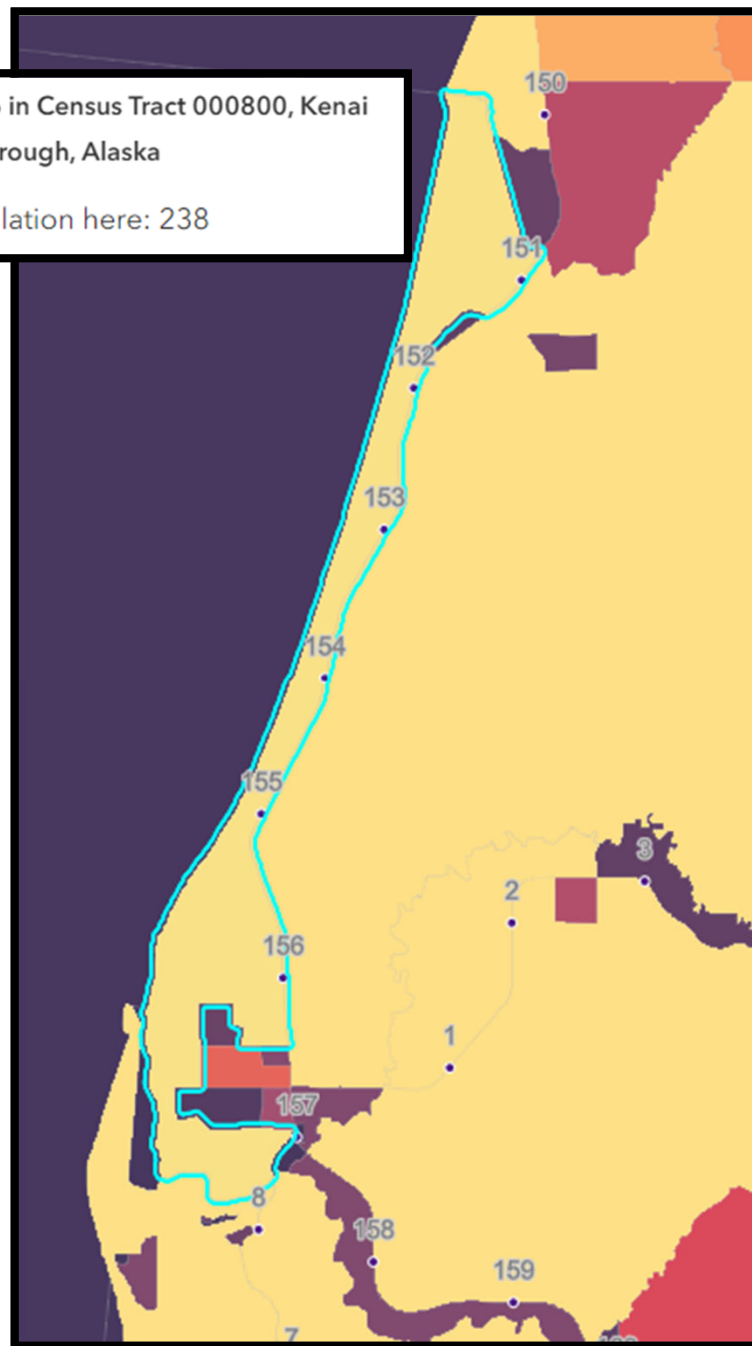
BLOCK 2000 in Census Tract 000600, Kenai
 Peninsula Borough, Alaska

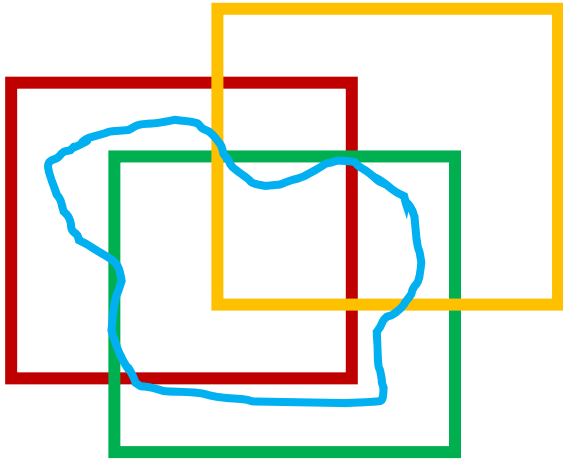
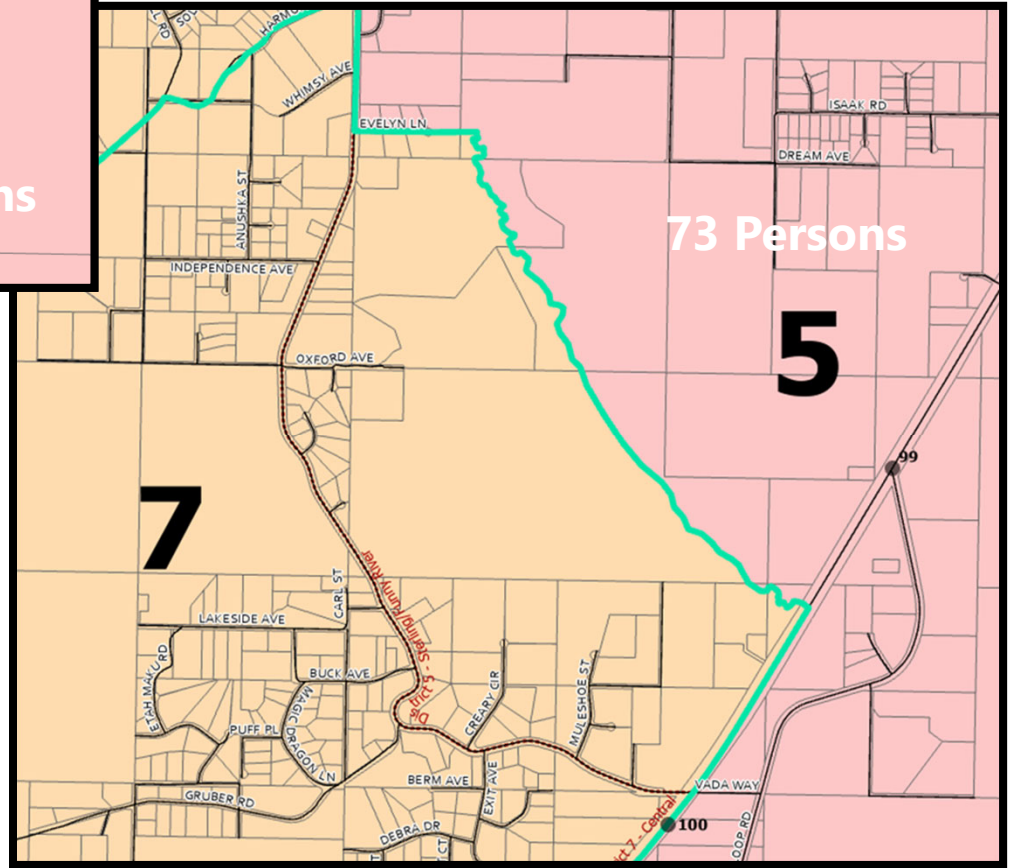
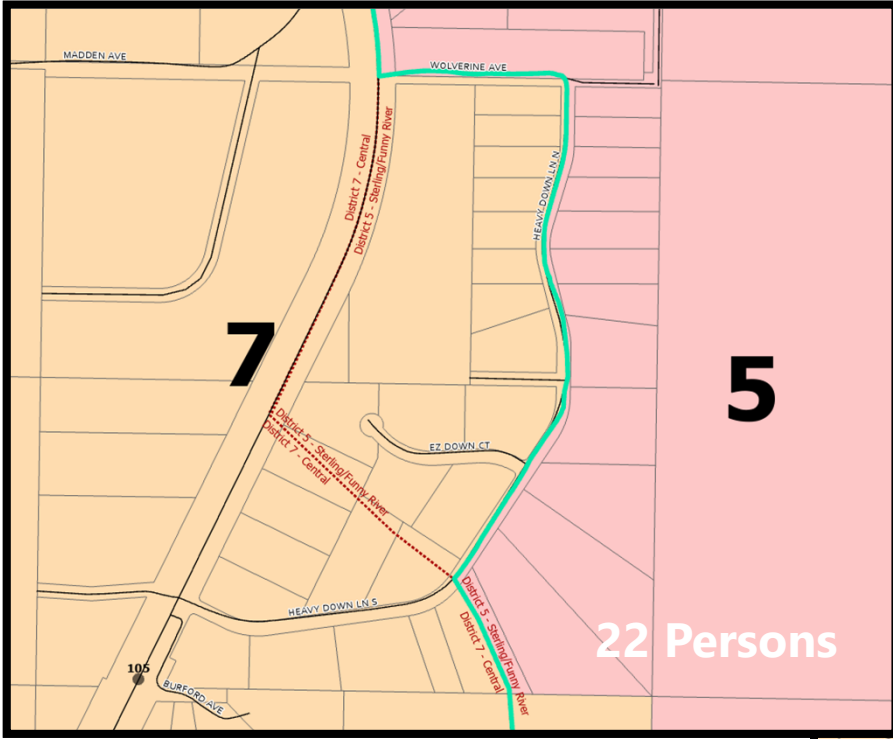
Total population here: 234

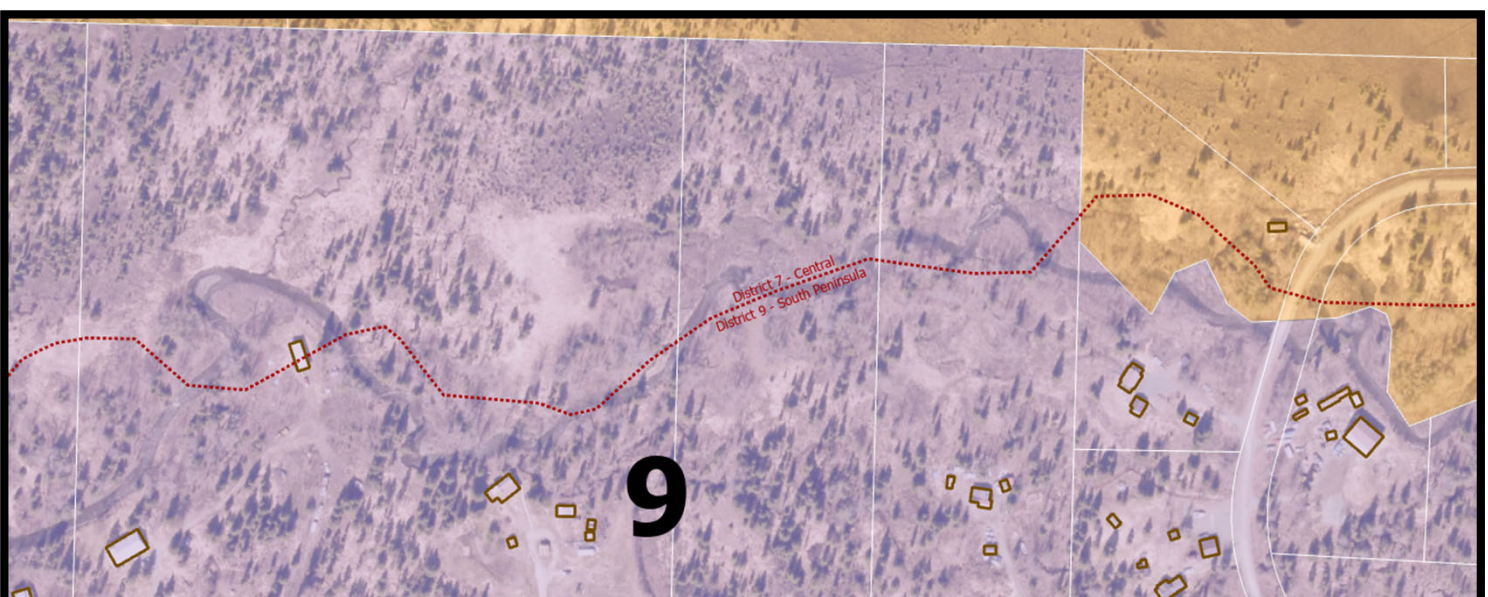


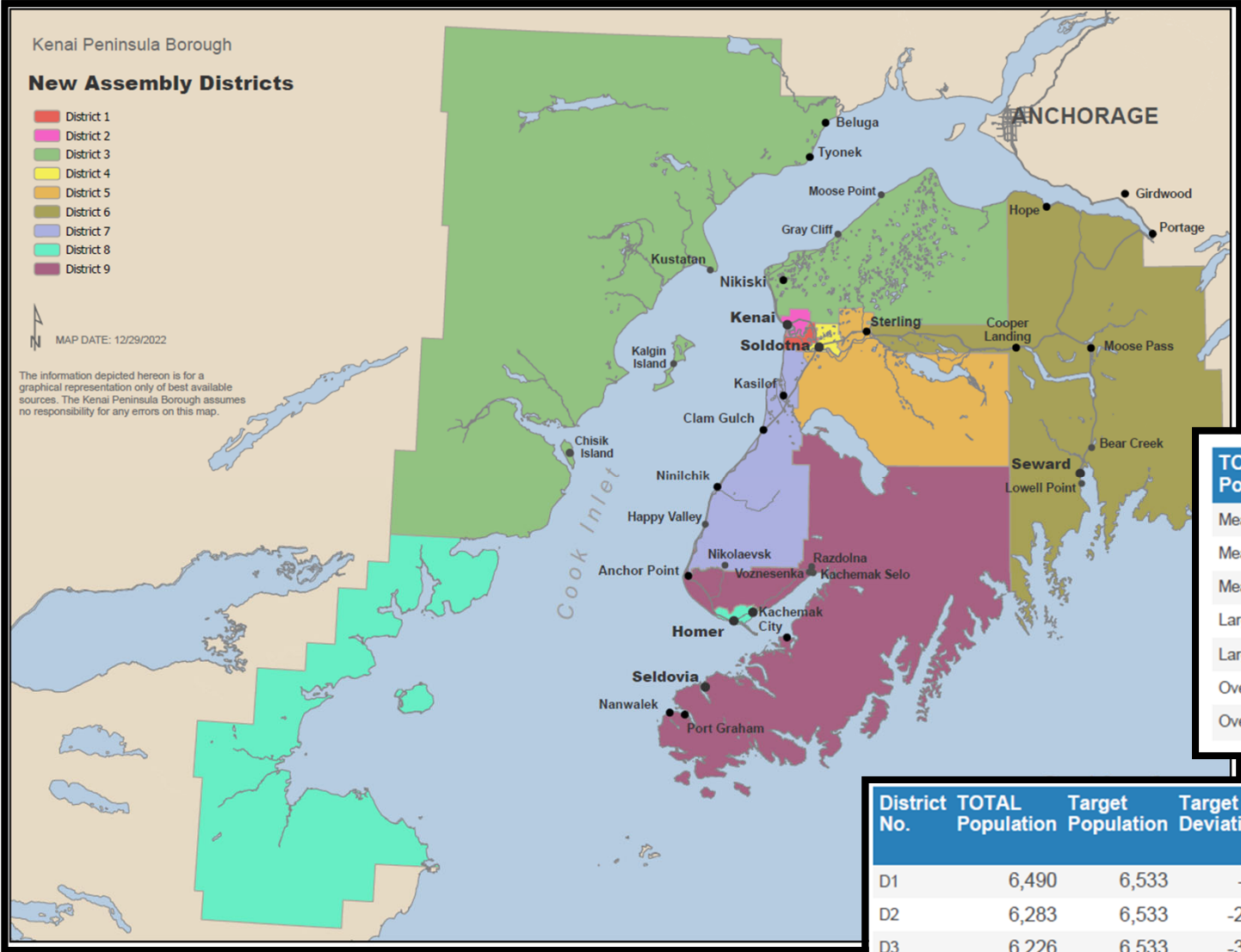
BLOCK 3006 in Census Tract 000800, Kenai Peninsula Borough, Alaska

Total population here: 238



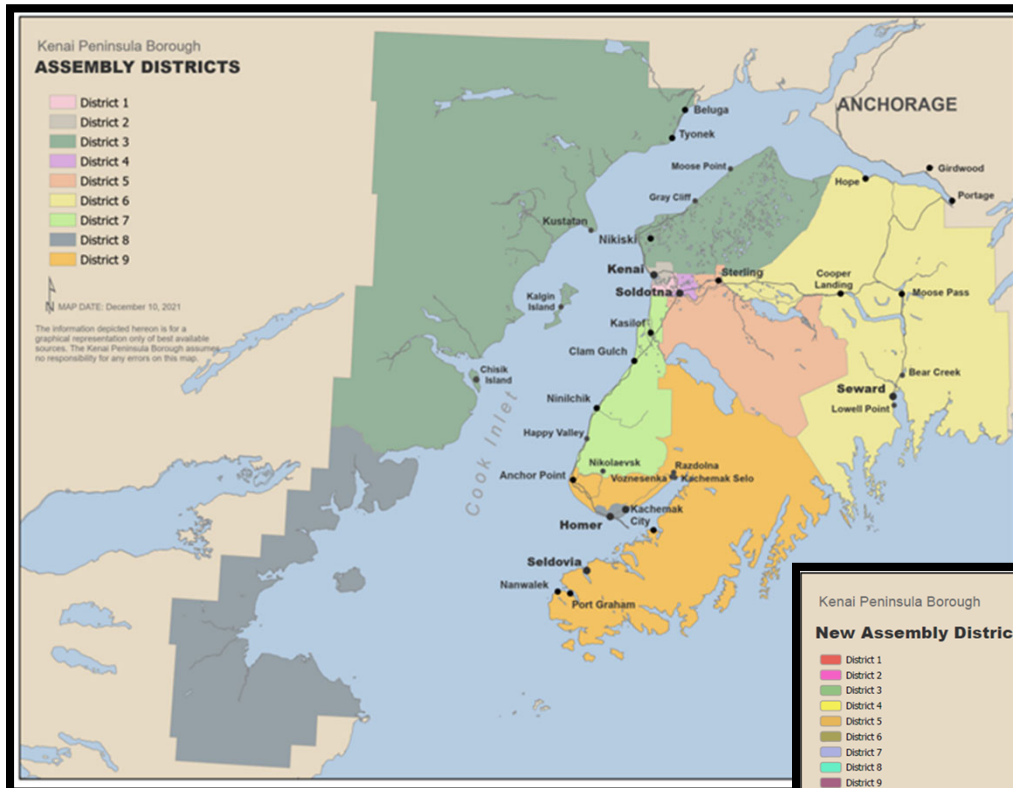






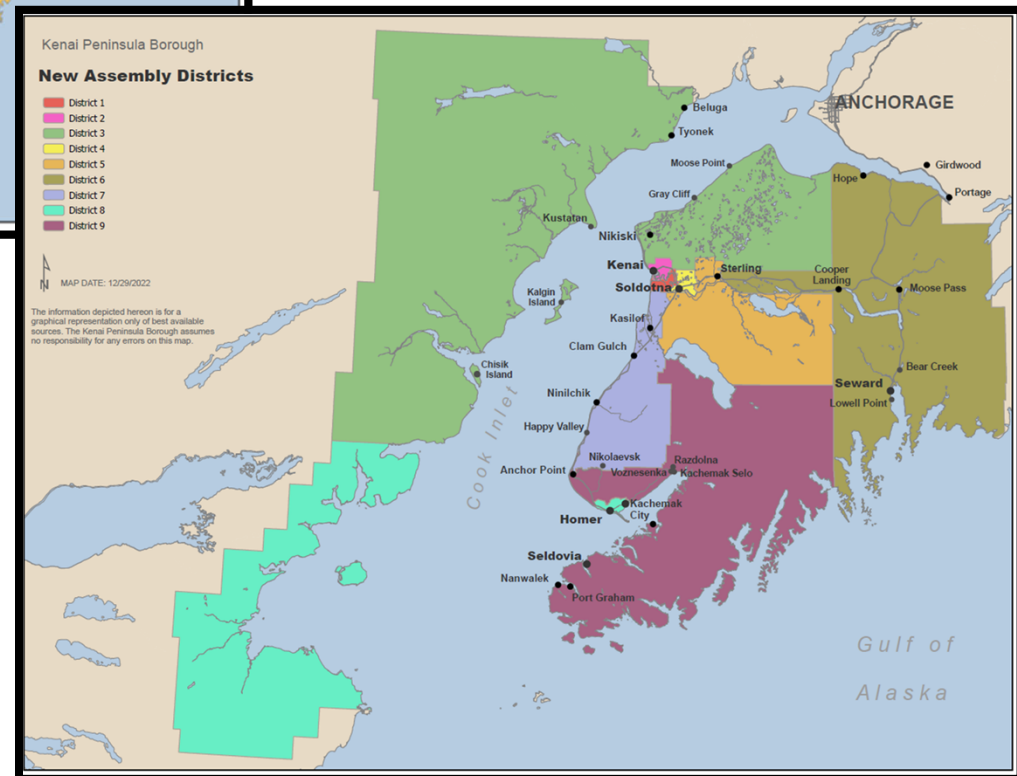
TOTAL Population:	58,799
Mean Target Population:	6,533
Mean Deviation:	144
Mean Percent Deviation:	2.21
Largest Positive Deviation:	262
Largest Negative Deviation:	-307
Overall Range in Deviation:	569
Overall Range in Deviation Percentage:	8.71

District No.	TOTAL Population	Target Population	Target Deviation	Target Deviation (%)	Total
D1	6,490	6,533	-43	-0.66	6,490
D2	6,283	6,533	-250	-3.83	6,283
D3	6,226	6,533	-307	-4.70	6,226
D4	6,795	6,533	262	4.01	6,795
D5	6,637	6,533	104	1.59	6,637
D6	6,662	6,533	129	1.97	6,662
D7	6,688	6,533	155	2.37	6,688
D8	6,504	6,533	-29	-0.44	6,504
D9	6,514	6,533	-19	-0.29	6,514



Total Population:	58,799
Mean Target Population:	6,533
Mean Deviation:	159
Mean Percent Deviation:	2.44
Largest Positive Deviation:	262
Largest Negative Deviation:	-618
Overall Range in Deviation:	880
Overall Range in Deviation Percentage:	13.47

TOTAL Population:	58,799
Mean Target Population:	6,533
Mean Deviation:	144
Mean Percent Deviation:	2.21
Largest Positive Deviation:	262
Largest Negative Deviation:	-307
Overall Range in Deviation:	569
Overall Range in Deviation Percentage:	8.71



Introduced by: Cox, Hibbert, Ecklund
Date: 01/17/23
Hearing: 02/21/23
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2023-03**

**AN ORDINANCE AMENDING KPB 22.30 AND KPB 22.40 REGARDING ASSEMBLY
COMMITTEES, EXCUSED ABSENCES AND REMOTE PARTICIPATION OF
ASSEMBLY MEMBERS**

- WHEREAS,** due to the Kenai Peninsula Borough ("Borough") Assembly moving to a hybrid format for its meetings, which provide for greater public and member participation through both internet videoconferencing and in-person participation, it is appropriate to update code provisions regarding Assembly committees, excused absences, and participation via teleconferencing, also known as remote participation; and
- WHEREAS,** the current code section regarding Assembly committees, KPB 22.30.090, was last updated in 1990;
- WHEREAS,** the current code section regarding excused absences for Assembly members, KPB 22.40.025, was last updated in 1990 and does not provide a procedure or guidelines for when a member requests an excused absence;
- WHEREAS,** KPB 22.40.170 through KPB 22.40.175 contain three sections regarding teleconference participation by Assembly members during meetings that could be stated in a more concise way through one section of code that would eliminate unnecessary repetitive wording and cross-references; and
- WHEREAS,** it is appropriate to identify standing committees of the Assembly to clarify that all assembly members are members of the standing committees; and
- WHEREAS,** it is appropriate to establish a clear procedure for an Assembly member to request an excused absence along with limitations on when excused absences may be granted; and
- WHEREAS,** it is appropriate to adjust to changes in technology by recognizing that members may occasionally need to participate remotely via teleconferencing while also emphasizing the importance of in-person participation by Assembly members;

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

SECTION 1. That KPB 22.30.090 is hereby amended to read as follows:

22.30.090. Assembly committees.

[A. THE ASSEMBLY PRESIDENT IS AUTHORIZED TO ESTABLISH SUCH COMMITTEES, STANDING OR TEMPORARY, AS THE PRESIDENT DEEMS NECESSARY FOR THE CONDUCT OF ASSEMBLY BUSINESS; PROVIDED, HOWEVER, THAT THE ASSEMBLY MAY BY MOTION CREATE, ABOLISH OR COMBINE ANY COMMITTEE IT DEEMS APPROPRIATE AND SUCH ACTION SHALL TAKE PRECEDENCE OVER ANY PREVIOUS ACTION OF THE PRESIDENT.]

A. The assembly has established the following standing committees:

Finance

Lands

Policies and Procedures

Legislative

Committee of the Whole

All assembly members are members of the standing committees. The assembly president will appoint the chairperson and vice-chairperson for each committee. The assembly president and vice president will serve as the chairperson and vice-chairperson of the Committee of the Whole. The president may remove or change the presiding committee members as he or she deems appropriate.

[B. THE ASSEMBLY PRESIDENT SHALL APPOINT A CHAIRPERSON AND MEMBERS OF EACH COMMITTEE. THE PRESIDENT MAY REMOVE OR CHANGE COMMITTEE ASSIGNMENTS AS HE OR SHE DEEMS APPROPRIATE.]

B. The assembly president is authorized to establish all other such committees, standing or temporary, as the president deems necessary to conduct assembly business. The assembly president will appoint a chairperson and members of any committee established by the president. The president may remove or change committee assignments as he or she deems appropriate. The assembly may by motion create, abolish or combine any committee it deems appropriate and such action will take precedence over any previous action of the president.

C. An assembly committee [SHALL] will carry out the duties assigned it by the assembly president or the assembly and [SHALL] will regularly review matters before the assembly that deal with subjects within the scope of its duties.

- D. The time and place of all committee meetings [SHALL] will be communicated to the clerk who [SHALL] will keep a committee meeting list [OF SUCH] available to the public. Regularly scheduled meeting times and locations [SHALL] will be listed in the assembly meeting packet.
- E. All committee meetings [SHALL] will be open to the public unless the committee has moved to go into an executive session in accordance with the provisions of the Alaska open meetings law. [ANY A] Assembly members present [MAY] must attend an executive session of a committee unless that member has a conflict of interest or is participating by teleconferencing.
- F. Receipt of testimony from the public at committee meetings on matters before it [SHALL BE] is at the discretion of the committee unless the assembly or the president has directed the committee to conduct a public hearing to receive public testimony. If the committee has been directed to conduct a hearing to receive testimony the committee chair [SHALL] will arrange with the clerk for minutes of the hearing to be taken or for the hearing to be recorded and minutes prepared.
- G. A member that expects to be absent from a committee meeting must notify the borough clerk prior to the meeting. An assembly member may participate in an assembly committee meeting via teleconferencing by notifying the borough clerk prior to the meeting. The borough clerk will note in the minutes of the committee meeting the attendance of the members and whether a member is participating via teleconferencing.

SECTION 2. That KPB 22.40.025 is hereby amended to read as follows:

22.40.025. Excused absences.

[A MEMBER WILL BE GRANTED AN EXCUSED ABSENCE FROM A REGULAR ASSEMBLY MEETING IF THE ABSENCE IS DUE TO THE CONDUCT OF BOROUGH BUSINESS AUTHORIZED BY THE ASSEMBLY OR THE PRESIDENT. AN EXCUSED ABSENCE MAY BE GRANTED BY THE ASSEMBLY OR ASSEMBLY PRESIDENT FOR PERSONAL REASONS.]

- A. In order for an absence to be excused, an assembly member must contact the borough clerk prior to the meeting and state the reason for their inability to attend the meeting.
- B. The borough clerk will inform the assembly president of the request for an excused absence prior to the meeting and the assembly president will rule whether absence is excused or unexcused. The assembly president's ruling may be overruled by a majority of members present. The motion is a motion to excuse the absent member and the motion is non-debatable.
- C. During the roll call for the meeting, the borough clerk will indicate whether a member's absence was ruled excused or unexcused and make an appropriate notation in the minutes.
- D. A member will not be granted an excused absence if the member:
 - a. failed to request an excused absence in writing; or

- b. has missed more than 25 percent of the regular and special meetings held by the assembly during any past consecutive twelve-month period;
- c. will not be able to attend at least 75 percent of the regular meetings of the assembly during any future consecutive twelve-month period; or
- d. has missed three consecutive regular meetings.

SECTION 3. That the Kenai Peninsula Borough Code of Ordinances is hereby amended by repealing and reenacting KPB Chapter 22.40.170, Teleconferencing, which shall read as follows:

22.40.170. – Teleconferencing.

- A. Assembly meetings must have reasonable technical capabilities to allow participation by teleconference whenever possible, to include being able to hear and engage in discussion and being audible to all persons participating in the meeting.
- B. A member of the assembly may participate in and vote at a regular meeting or special meeting, or work session of the assembly by teleconference (e.g., telephone, videoconferencing, or similar technology) under the following circumstances:
 - 1. When a local, state, or federal disaster declaration is in effect for the borough; or
 - 2. When a member cannot physically attend the meeting, subject to the following limitation: the member’s physical absence may not exceed a total of three consecutive regular assembly meetings or a total of 12 regular meetings in a 12-month period commencing November 1 each year. Notwithstanding, the assembly president may relax the foregoing limitation in the event of extenuating circumstances, a health or family emergency, or inclement weather.
- C. Assembly members may not use teleconferencing as a regular form of participating in meetings.
- D. No more than the first three members to contact the Clerk’s office requesting participation by teleconference at a particular meeting may participate remotely except during a declared disaster. Notwithstanding other provisions herein, all members may participate by teleconference in a special meeting called to consider an emergency action.
- E. Assembly members may not participate in an executive session proceeding by teleconference except during a declared disaster.
- F. An assembly member may not preside over or chair a meeting in which they are participating by teleconference except during a declared disaster.
- G. For purposes of KPB 22.40.170 and KPB 22.30.090, the term “teleconferencing” means a method used for remote or electronic participation by an assembly member for a meeting of the assembly by use of telephone, videoconference, or similar technology that allows for clear and fully functional participation in that meeting by the member.

[22.40.170. TELEPHONIC PARTICIPATION IN REGULAR ASSEMBLY MEETINGS.

- A. KPB 22.40.170 THROUGH KPB 22.40.175 GOVERNS THE TELEPHONIC PARTICIPATION OF ASSEMBLY MEMBERS AT ALL REGULAR ASSEMBLY MEETINGS.
- B. THE PREFERRED PROCEDURE FOR ASSEMBLY MEETINGS IS THAT ALL ASSEMBLY MEMBERS SHOULD BE PHYSICALLY PRESENT AT THE DESIGNATED TIME AND LOCATION FOR EACH MEETING. HOWEVER, PHYSICAL PRESENCE MAY BE WAIVED AND ANY MEMBER(S) MAY PARTICIPATE IN AN ASSEMBLY MEETING BY TELECONFERENCE, SUBJECT TO THE PROCEDURES AND LIMITATIONS PROVIDED IN THIS SECTION THROUGH KPB 22.40.175.
- C. AN ASSEMBLY MEMBER PARTICIPATING BY TELECONFERENCE SHALL, WHILE ACTUALLY ON THE TELECONFERENCE, BE DEEMED TO BE PRESENT AT THE MEETING FOR ALL PURPOSES. THE ASSEMBLY MEMBER SHALL MAKE EVERY EFFORT TO PARTICIPATE IN THE ENTIRE MEETING.
- D. IF THE ASSEMBLY PRESIDENT PARTICIPATES TELEPHONICALLY, THE ASSEMBLY VICE-PRESIDENT, OR THE PRESIDENT *PRO TEM*, IN THE ASSEMBLY VICE-PRESIDENT'S ABSENCE, SHALL PRESIDE OVER AND PERFORM ALL OTHER FUNCTIONS OF THE ASSEMBLY PRESIDENT AT THE MEETING.
- E. "TELECONFERENCING," FOR PURPOSES OF KPB 22.40.170 THROUGH .175, MEANS A METHOD USED FOR REMOTE PARTICIPATION BY AN ASSEMBLY MEMBER FOR A MEETING OF THE ASSEMBLY WHICH MUST ENABLE THE REMOTE MEMBER, FOR THE DURATION OF THE MEETING, TO CLEARLY HEAR ALL ASSEMBLY MEMBERS, THE MAYOR, THE BOROUGH CLERK, THE ATTORNEY, AND PUBLIC TESTIMONY, AND TO BE CLEARLY HEARD BY ALL ASSEMBLY MEMBERS, THE MAYOR, THE BOROUGH CLERK, THE ATTORNEY, AND THE PUBLIC IN ATTENDANCE.]

SECTION 4. That KPB 22.40.173 is hereby repealed.

[22.40.173. TELECONFERENCE—PROCEDURES.

- A. AN ASSEMBLY MEMBER WHO CANNOT BE PHYSICALLY PRESENT FOR A REGULARLY SCHEDULED ASSEMBLY MEETING SHALL NOTIFY THE BOROUGH CLERK AT LEAST FIVE DAYS PRIOR TO THE SCHEDULED TIME FOR THE MEETING OF HIS OR HER REQUEST TO PARTICIPATE IN THE MEETING BY TELEPHONIC MEANS OF COMMUNICATION.
- B. AT LEAST THREE DAYS PRIOR TO THE SCHEDULED TIME FOR THE ASSEMBLY MEETING, THE BOROUGH CLERK SHALL NOTIFY THE ASSEMBLY OF THE PERSON'S REQUEST TO PARTICIPATE BY TELECONFERENCE.

- C. AT THE COMMENCEMENT OF THE ASSEMBLY MEETING A TELEPHONIC CONNECTION WILL BE ESTABLISHED WITH THE PERSON OR PERSONS INTENDING TO PARTICIPATE TELEPHONICALLY. IF THE ASSEMBLY MEMBER HAS ATTENDED AT LEAST THREE REGULAR ASSEMBLY MEETINGS BY TELEPHONE SINCE THE MOST RECENT NOVEMBER 1, AFTER A TELEPHONIC CONNECTION IS ESTABLISHED THE ASSEMBLY PRESIDENT SHALL CALL FOR A VOTE OF THE ASSEMBLY ON WHETHER THE PERSON(S) MAY OR MAY NOT PARTICIPATE BY TELEPHONE. PRIOR TO THE VOTE, THE ASSEMBLY MEMBERS MAY MAKE SUCH INQUIRIES AS NECESSARY TO MAKE A DECISION. ONLY THE ASSEMBLY MEMBERS PHYSICALLY PRESENT MAY VOTE ON THE QUESTION. THE ASSEMBLY'S DETERMINATION IS FINAL AND NOT SUBJECT TO APPEAL. IF A PERSON PARTICIPATES IN THE MEETING TELEPHONICALLY WITHOUT A RULING FROM THE ASSEMBLY, IT SHALL BE DEEMED TO BE WITH THE APPROVAL OF SUCH PARTICIPATION BY THE ASSEMBLY, AND ALL ACTIONS TAKEN BY THE ASSEMBLY WITH THE PARTICIPATION OF ALL SUCH PERSONS ARE VALID.
- D. SUBSECTIONS A, B AND C OF THIS SECTION DO NOT APPLY TO SPECIAL MEETINGS OF THE ASSEMBLY. AN ASSEMBLY MEMBER WHO REQUESTS TO PARTICIPATE TELEPHONICALLY IN A SPECIAL MEETING OF THE ASSEMBLY MUST NOTIFY THE BOROUGH CLERK BEFORE THE TIME SCHEDULED FOR THE START OF THE MEETING. THE BOROUGH CLERK WILL NOTIFY THE ASSEMBLY NO LATER THAN THE COMMENCEMENT OF THE MEETING. AFTER A TELEPHONIC CONNECTION IS ESTABLISHED THE MEMBER SHALL BE ALLOWED TO PARTICIPATE TELEPHONICALLY.
- E. SUBSECTIONS A, B AND C OF THIS SECTION ALSO DO NOT APPLY TO MEETINGS HELD WHILE AN EMERGENCY DISASTER DECLARATION IS IN EFFECT AND THE NATURE OF THE DISASTER SIGNIFICANTLY IMPACTS AN ASSEMBLY MEMBER'S ABILITY TO ATTEND AN ASSEMBLY MEETING OTHER THAN BY TELECONFERENCE OR OTHER TECHNOLOGICAL MEANS.
- F. THE MEANS USED FOR A TELECONFERENCE MEETING OF THE ASSEMBLY MUST ENABLE EACH MEMBER APPEARING TELEPHONICALLY TO CLEARLY HEAR ALL OTHER ASSEMBLY MEMBERS, THE MAYOR, THE BOROUGH CLERK, THE ATTORNEY, AND PUBLIC TESTIMONY AT THE MEETING AS WELL AS BE CLEARLY HEARD BY ALL OTHER ASSEMBLY MEMBERS, THE MAYOR, THE BOROUGH CLERK, THE ATTORNEY, AND MEMBERS OF THE PUBLIC IN ATTENDANCE.
- G. THE BOROUGH CLERK SHALL NOTE IN THE MINUTES OF THE ASSEMBLY MEETING ALL MEMBERS APPEARING TELEPHONICALLY.

- H. TO THE EXTENT PRACTICABLE, MATERIALS TO BE CONSIDERED BY THE ASSEMBLY SHALL BE MADE AVAILABLE TO THOSE MEMBERS ATTENDING BY TELECONFERENCE.]

SECTION 5. That KPB 22.40.175 is hereby repealed.

[22.40.175. TELECONFERENCE—LIMITATIONS.

- A. ALL ASSEMBLY MEMBERS SHOULD MAKE ALL REASONABLE EFFORT TO BE PHYSICALLY PRESENT FOR EVERY MEETING. TELECONFERENCE PROCEDURES MAY NOT BE USED AS A REGULAR MEANS OF ATTENDANCE AT MEETINGS EXCEPT TEMPORARILY DURING EVENTS DESCRIBED IN SUBPARAGRAPH E OF THIS SECTION.
- B. PARTICIPATION BY TELECONFERENCE MAY BE DENIED WHENEVER THE PHYSICAL PRESENCE OF THE INDIVIDUAL IS CONSIDERED ESSENTIAL TO EFFECTIVE PARTICIPATION IN THE MEETING OR TO THE PROPER CONDUCT OF THE BUSINESS TO BE ADDRESSED AT THE MEETING AND THE MEMBER IS NOT PREVENTED BY ATTENDING DUE TO CIRCUMSTANCES BEYOND THEIR CONTROL.
- C. IF TELECONFERENCING IS DENIED THE ASSEMBLY MEMBER WILL BE LISTED AS ABSENT.
- D. EACH ASSEMBLY MEMBER MAY ATTEND A MAXIMUM OF THREE REGULAR ASSEMBLY MEETINGS BY TELECONFERENCE DURING THE 12-MONTH PERIOD COMMENCING NOVEMBER 1ST EACH YEAR.
- E. SUBSECTIONS B, C, D, F AND G OF THIS SECTION DO NOT APPLY TO MEETINGS HELD WHILE AN EMERGENCY DISASTER DECLARATION IS IN EFFECT AND THE NATURE OF THE DISASTER SIGNIFICANTLY IMPACTS AN ASSEMBLY MEMBER'S ABILITY TO ATTEND AN ASSEMBLY MEETING OTHER THAN BY TELECONFERENCE OR OTHER TECHNOLOGICAL MEANS.]
- F. EACH ASSEMBLY MEMBER MAY ATTEND ADDITIONAL TELECONFERENCES AS A SPECIAL EXCEPTION IF EXPRESSLY APPROVED FOR GOOD CAUSE IN EACH INSTANCE BY A VOTE OF THE ASSEMBLY. GOOD CAUSE MAY INCLUDE, BUT IS NOT LIMITED TO, ABSENCE REQUIRED FOR EXTENDED MEDICAL CARE NEEDED FOR THE INDIVIDUAL OR A MEMBER OF THE INDIVIDUAL'S IMMEDIATE FAMILY.
- G. NO ASSEMBLY MEMBER SHALL ATTEND AN EXECUTIVE SESSION BY TELEPHONIC MEANS.]

SECTION 6. That this ordinance is effective immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH * DAY OF *
2023.**

Brent Johnson, Assembly President

ATTEST:

Michele Turner, CMC, Acting Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough Assembly

MEMORANDUM

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

FROM: Tyson Cox, Assembly Vice President *TRC*
Brent Hibbert, Assembly Member *BH*
Cindy Ecklund, Assembly Member *CE*

DATE: January 5, 2023

RE: Ordinance 2023-03, Amending KPB 22.30 and KPB 22.40 Regarding Assembly Committees, Excused Absences and Remote Participation of Assembly Members (Cox, Hibbert, Ecklund)

Since the onset of the Covid pandemic in 2020, Borough Assembly meetings have moved to a hybrid format that allow for greater public and member participation through both videoconferencing and in-person participation. After more than two years of using this hybrid format, it is appropriate to update code provisions regarding assembly committees, excused absences and participation via teleconferencing, also known as remote participation, that account for this hybrid meeting format.

This Ordinance, primarily, proposes to amend borough code to:


- (1) Identify the standing committees of the Assembly; the Assembly President's authority to appoint a chair and vice-chair for each committee; and to clarify that all assembly members are members of the standing committee (KPB 22.30.090(A));
- (2) Provide that the Assembly President may establish additional committees and that the Assembly may create, abolish or combine committees (KPB 22.30.090(B));
- (3) Establish an expectation for members to notify the Borough Clerk prior to the meeting if they expect to be absent or if they will be participating via teleconferencing (i.e. remote participation) (KPB 22.30.090(G));
- (4) Set clear parameters and procedure for a member requesting an excused absence (KPB 22.40.025); and
- (5) Combine three sections of code regarding teleconferencing into a single section of code that provides expectations, parameters, and procedure for members participating via teleconferencing (KPB 22.40.170).

Your consideration is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

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

THRU: Michele Turner, Acting Borough Clerk 

FROM: Jenny Ratky, Borough Clerk Administrative Asst.

DATE: Tuesday, January 17, 2023

RE: Restaurant Designation Permit - New Liquor License – Big
Daddy's Pizza – License 6103

Kenai Peninsula Borough Code § 7.10.010 provides for a mandatory Assembly review of applications for restaurant designation permits at locations within the Borough. Accordingly, the attached application for a Restaurant Designation permit and New Liquor License as filed by George Bowen dba Big Daddy's Pizza located in the Kenai Peninsula Borough, Alaska, is being submitted to you for review and action.

The granting of this permit allows access of persons under 21 years of age to designated licensed premises for purposes of dining, and personnel under age of 20 for employment.

RECOMMENDATION: That the Assembly approve the issuance of the Restaurant Designation permit and New Liquor License as requested by George Bowen dba Big Daddy's Pizza.

cc: George Bowen



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

November 28, 2022

Kenai Peninsula Borough

VIA Email: mjenkins@kpb.us; jvanhooose@kpb.us; jratky@kpb.us; cjackinsky@kpb.us; maldridge@kpb.us;
narcarver@kpb.us; slopez@kpb.us; jblankenship@kpb.us; assemblyclerk@kpb.us; bcarter@kpb.us

License Type:	Restaurant/Eating Place	License Number:	6103
Licensee:	Big Daddy's Pizza LLC		
Doing Business As:	Big Daddy's Pizza		
Premises Address	43335 Kalifornsky Beach Rd Bldg D Suite 20		

☒ **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



Alaska Alcoholic Beverage Control Board

Form AB-03: Restaurant Designation Permit Application

Why is this form needed?

A restaurant designation permit application is required for a licensee desiring designation under 3 AAC 304.715 – 3 AAC 304.795 as a bona fide restaurant, hotel, or eating place for purposes of AS 04.16.010(c) or AS 04.16.049. Designation will be granted only to a holder of a beverage dispensary, club, recreational site, golf course, or restaurant or eating place license, and only if the requirements of 3 AAC 304.305, 3 AAC 304.725, and 3 AAC 304.745, as applicable, are met. A menu or expected menu listing the meals, including entrées prepared on-site and offered to patrons, and copy of the DEC Food Service Permit (or corresponding DHHS documentation for licenses located in the Municipality of Anchorage) must accompany this form. Applicants should review AS 04.16.049 – AS 04.16.052 and 3 AAC 304.715 – 3 AAC 304.795. All fields of this form must be completed. The required \$50 permit fee may be made by credit card, check, or money order.

Section 1 – Establishment Information

Enter information for licensed establishment.

Licensee:	Big Daddys Pizza LLC GEORGE BOWEN		
License Type:	Restaurant Eating Place.	License Number:	
Doing Business As:	Big Daddys Pizza the		
Premises Address:	43335 Kalifornsky Beach Rd. Bldg. D. Suite 20		
City:	Soldotna	State:	AK
Contact Name:	George Bowen	ZIP:	99669
		Contact Phone:	907-252-7287

Section 2 – Type of Designation Requested

This application is for the request of designation as a bona fide restaurant, hotel, or eating place for purposes of AS 04.16.010(c) or AS 04.16.049, and for the request of the following designation(s) (check all that apply):

- ☐ Dining after standard closing hours: AS 04.16.010(c)
- ☒ Dining by persons 16 – 20 years of age: AS 04.16.049(a)(2)
- ☒ Dining by persons under the age of 16 years, accompanied by a person over the age of 21: AS 04.16.049(a)(3)
- ☒ Employment for persons 16 or 17 years of age: AS 04.16.049(c)
NOTE: Under AS 04.16.049(d), this permit is not required to employ a person 18 - 20 years of age.

OFFICE USE ONLY	
Transaction #:	Initials:



Alaska Alcoholic Beverage Control Board

Form AB-03: Restaurant Designation Permit Application

Section 3 – Minor Access

Review AS 04.16.049(a)(2); AS 04.16.049(a)(3); AS 04.16.049(c)

List where within the premises minors are anticipated to have access in the course of either dining or employment as designated in Section 2. (Example: Minors will only be allowed in the dining area. OR Minors will only be employed and present in the Kitchen.)

Minors will be allowed in dining Area.
Minors maybe employed and present in kitchen and dining Area

Describe the policies, practices and procedures that will be in place to ensure that minors do not gain access to alcohol while dining or employed at your premises.

Beer and wine will be dispensed from a Tap system. There is not access to stored Beer and wine. Only Trained Employees will dispense and Server Beer and wine. Staff and Management will monitor individuals with minors to ensure alcohol is not gain in dining area.

Is an owner, manager, or assistant manager who is 21 years of age or older always present on the premises during business hours?

Yes No
☒ ☐

Section 4 – DEC Food Service Permit

Per 3 AAC 304.910 for an establishment to qualify as a Bona Fide Restaurant, a Food Service Permit or (for licenses within the Municipality of Anchorage) corresponding Department of Health and Human Services documentation is required.

Please follow this link to the DEC Food Safety Website: <http://dec.alaska.gov/eh/fss/food/>

Please follow this link to the Municipality Food Safety Website:

<http://www.muni.org/Departments/health/Admin/environment/FSS/Pages/fssfood.aspx>

IF you are unable to certify the below statement, please discuss the matter with the AMCO office:

Initials

I have attached a copy of the current food service permit for this premises OR the plan review approval.

*Please note, if a plan review approval is submitted, a final permit will be required before finalization of any permit or license application.

OCT 21 2022



Alaska Alcoholic Beverage Control Board

Form AB-03: Restaurant Designation Permit Application

Section 5 – Hours of Operation

Review AS 04.16.010(c).

Enter all hours that your establishment intends to be open. Include variances in weekend/weekday hours, and indicate am/pm:

Monday thru Thursday 11:00 AM to 8:00 PM
Friday 11:00 AM to 9:00 PM
Saturday and Sunday 12:00 to 9:00 pm.

Section 6 – Entertainment & Service

Review AS 04.11.100(g)(2)

Are any forms of entertainment offered or available within the licensed business or within the proposed licensed premises?

Yes

☐

No

☒

If "Yes", describe the entertainment offered or available and the hours in which the entertainment may occur:

Food and beverage service offered or anticipated is:

☒

table service

☐

buffet service

☒

counter service

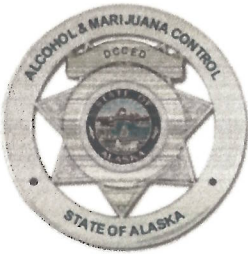
☐

other

If "other", describe the manner of food and beverage service offered or anticipated:

Service will be offered by ordering at counter and seating is provided. Food and beverage will be brought out to tables for consumption.

AMCO



Alaska Alcoholic Beverage Control Board

Form AB-03: Restaurant Designation Permit Application

Section 7 – Certifications and Approvals

Read each line below, and then sign your initials in the box to the right of each statement:

Initials

There are tables or counters at my establishment for consuming food in a dining area on the premises.

JB

I have included with this form a menu, or an expected menu, listing the meals to be offered to patrons.
This menu includes entrées that are regularly sold and prepared by the licensee at the licensed premises.

JB

I certify that the license for which I am requesting designation is either a beverage dispensary, club, recreational site, golf course, or restaurant or eating place license.

JB

I have included with this application a copy of the most recent AB-02 or AB-14 for the premises to be permitted.

(AB-03 applications that accompany a new or transfer license application will not be required to submit an additional copy of their premises diagram.)

JB

I hereby certify that I am the person herein named and subscribing to this application and that I have read the complete application, and I know the full content thereof. I declare that all of the information contained herein, and evidence or other documents submitted are true and correct. I understand that any falsification or misrepresentation of any item or response in this application, or any attachment, or documents to support this application, is sufficient grounds for denying or revoking a license/permit. I further understand that it is a Class A misdemeanor under Alaska Statute 11.56.210 to falsify an application and commit the crime of unsworn falsification.

JB

George Bowen
Printed name of licensee

Signature of licensee

Local Government Review (to be completed by an appropriate local government official):

Approved

Denied



Signature of local government official

Date

Printed name of local government official

Title

AMCO

PIZZA

	LG (14")	XL (16")	Jumbo (18")
Combo Pepperoni, Canadian Bacon, Sausage, Beef, Black Olives, Green Peppers, Onions and Mushrooms.	\$26.99	\$28.99	\$32.99
All Meat Combo Pepperoni, Canadian Bacon, Sausage, Beef and Bacon Bits.	\$24.99	\$26.99	\$29.99
Deluxe Pepperoni, Beef, Black Olives, Green Peppers and Mushrooms.	\$24.99	\$26.99	\$29.99
Vegetarian Black Olives, Green Peppers, Onions, Mushrooms, Pineapple and Tomatoes.	\$24.99	\$26.99	\$29.99
Zoey Garlic Ranch, Chicken, Feta, Oregano.	\$24.99	\$26.99	\$29.99
The Hippie Garlic Ranch Sauce, Spinach, Artichoke, Mushrooms, Green Pepper, and Magic Sprinkles.	\$24.99	\$26.99	\$29.99
Chicken Bacon Ranch Garlic Ranch, Chicken, Green Peppers and Bacon Bits.	\$24.99	\$26.99	\$29.99
Greek Combo Garlic Butter Sauce, Beef, Salami, Onions, Mushrooms, Artichokes and Feta.	\$26.99	\$28.99	\$32.99
Kickin' Chicken Spicy Garlic Ranch Sauce, Buffalo Chicken, Onion and Green Pepper.	\$24.99	\$26.99	\$29.99
J-Bird Garlic Ranch, Pepperoni, Chicken, Black Olives, Mushrooms.	\$24.99	\$26.99	\$29.99
The Luau B.B.Q. Sauce, Chicken, Onions, Mushrooms, Pineapple and Green Pepper.	\$24.99	\$26.99	\$29.99
The Whiteout Garlic Ranch Sauce, American Swiss Cheese, Fresh Shredded Parmesan, Feta, Mozzarella and Magic Sprinkles.	\$24.99	\$26.99	\$29.99
Italian Trio Salami, Italian Sausage, Pepperoni and Magic Sprinkles.	\$24.99	\$26.99	\$29.99

CREATE YOUR OWN PIZZA



	MED	LG	XL	JUMBO
Cheese Pizza	\$14.99	\$15.99	\$17.99	\$21.99
Price per topping	\$1.49	\$1.99	\$2.49	\$2.99

Bacon	Artichoke Hearts	Onion
Beef	Bell Peppers	Pineapple
Canadian Bacon	Black Olives	Spinach
Chicken	Chopped Garlic	Tomato
Italian Sausage	Jalapeños	Cheddar Cheese
Pepperoni	Mushroom	Feta Cheese
Salami		

Try Our New York
Style Thin Crust!

GLUTEN FREE
DOUGH AVAILABLE
MEDIUM SIZE ONLY

SPECIALS

#1 Any Large 3 Topper \$4.00 OFF

#2 Buy 2 Jumbos and Get \$7.00 OFF



ORIGINAL (HOT) 10pc. \$12.99
GARLIC PARMESAN 20pc. \$24.99
IPA INFUSED BBQ Bone-In or
SPICY GARLIC Boneless
SHANGHAI



SALADS

Side Salad \$4.50
 Caesar \$10.99
 Chicken Caesar \$12.99
 Chef \$12.99
 Greek \$12.99



CALZONE
 Med. \$15.99
 Lg. \$18.99
 Up to 5 Toppings.



STROMBOLI

Includes Marinara, Mozzarella
 and up to 5 toppings. \$15.99



APPETIZERS

Bread Sticks
 Med. \$7.99 Lg. \$8.99

Stuffed Cheese Sticks
 Med. \$8.99 Lg. \$9.99



(907) 262-9559

43335 K-Beach Road, Suite 20
 Soldotna, Alaska 99669
 in the Copper Center

Sorry, No Personal Checks



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Coca-Cola

DRINKS

Coke, Dr. Pepper, Sprite, Fanta Orange,
 Rootbeer and Minute Maid Lemonade

Fountain Soda ~ Free Refill \$2.25
 Foutain Soda To Go \$1.25
 Can Soda \$1.25



Alaska Food Code 2022 Establishment Permit

Division of Environmental Health
Food Safety & Sanitation Program

Permit Number: 13120
 Issued to: **BIG DADDY'S PIZZA LLC**
 For: **Big Daddy's Pizza**
 For Operation of: **FF-6 Deli/Takeout/Drive-in Food Service**
 Located at: **43335 Kalifornsky Beach RD #20 Soldotna, AK 99669**

This permit, issued under the provisions of 18 AAC 31, is valid until the noted expiration date or unless suspended or revoked by the department.

This permit is not transferable for change of ownership, facility location, or type of operation. It must be posted in plain view in the establishment and is the property of the State of Alaska.

Expiration Date:
December 31, 2022

Program Manager:

**If you have questions or concerns regarding
safe food handling practices call toll free:**

1-87-SAFE-FOOD

(in Anchorage call 334-2560)



AMCO

OCT 21 2022



Alaska Alcoholic Beverage Control Board

Form AB-02: Premises Diagram

Why is this form needed?

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 may not be 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 Anchorage office before any license application will be considered complete.

Yes No

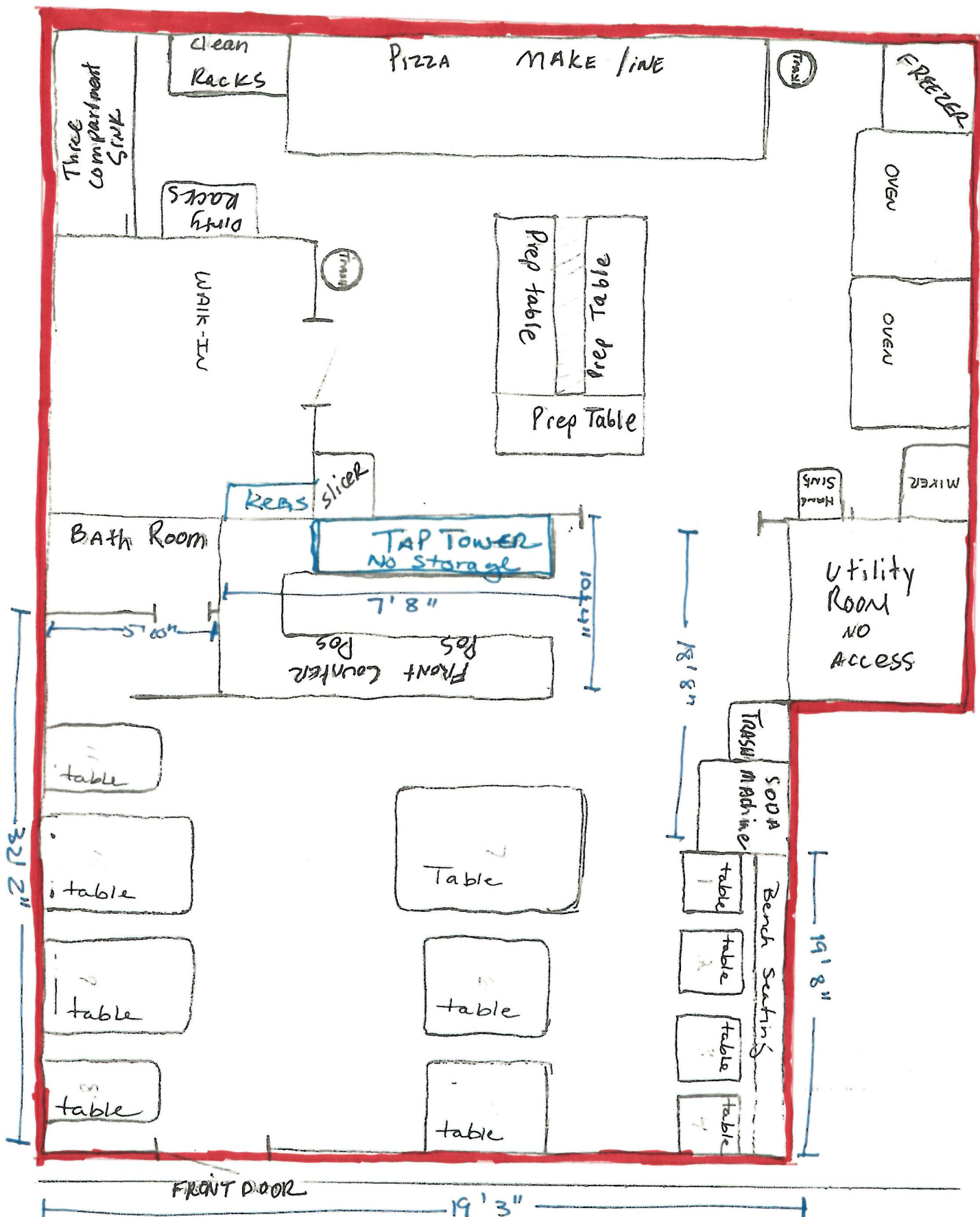
I have attached blueprints, CAD drawings, or other supporting documents in addition to, or in lieu of, the second page of this form.

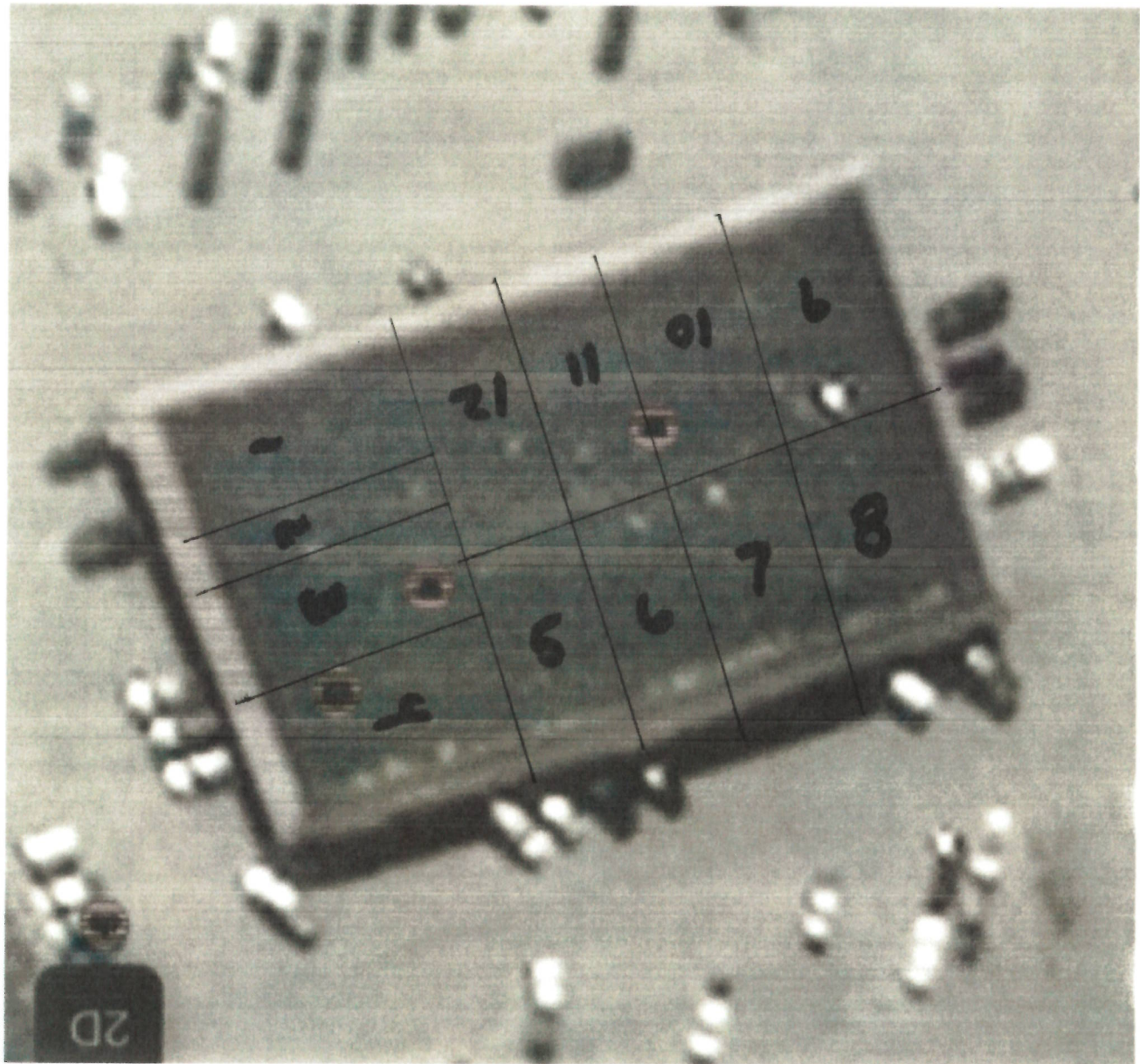
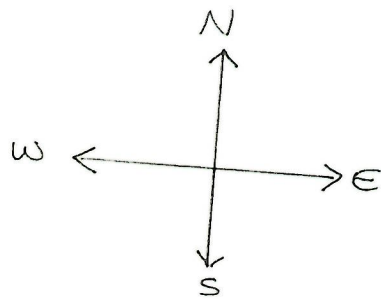


Section 1 - Establishment Information

Enter information for the business seeking to be licensed, as identified on the license application.

Licensee:	Big Daddys Pizza LLC		License Number:		
License Type:	Restaurant / Eating Place				
Doing Business As:	Big Daddys Pizza LLC				
Premises Address:	43335 Kalifornsky Beach Rd Bldg D Suite 20				
City:	Soldotna	State:	AK	ZIP:	99669





- | | |
|---------------------------|--------------------------------------|
| 1. K-Beach Medical | 7. Whitey's Music |
| 2. VACANT | 8. Country Financial |
| 3. Big Daddy's Pizza, LLC | 9. Alaska Small business Dev. Center |
| 4. Mel's | 10. SLP Alaska |
| 5. True Colors | 11. Copper Center Mini Offices |
| 6. Peninsula Sleep Center | 12. New Season's Bodywork |



OCT 21 2022



Alaska Alcoholic Beverage Control Board

Form AB-00: New License Application

Why is this form needed?

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 Anchorage 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:	Big Daddy's Pizza LLC.		
License Type:	Restaurant Eating Place	Statutory Reference:	04.11.100
Doing Business As:	Big Daddy's Pizzn.		
Premises Address:	43335 Kalifornsky Branch Rd. Bldg. D. Suite 20		
City:	Soldotna	State:	AK
Local Governing Body:	KENAI PENINSULA Borough.		
Community Council:	Soldotna City Council		

Mailing Address:	Po Box 223		
City:	Kenai	State:	AK
		ZIP:	99611

Designated Licensee:	George Bowen		
Contact Phone:	907-252-7287	Business Phone:	907-262-9559
Contact Email:	georgebowen@gei.net		

Seasonal License? ☐ Yes ☒ No If "Yes", write your six-month operating period: _____

OFFICE USE ONLY			
Complete Date:	11.28.22	License Years:	License #:
Board Meeting Date:	12-12-2022	Transaction #:	616003
Issue Date:		Examiner:	100477384/100481867 AMCO KRS



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.

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.

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:	

AMCO



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:	George Bowen				
Title(s):	Member.	Phone:	907-252-7287	% Owned:	100
Address:	37445 CETACEA LN.				
City:	KEUAI	State:	AK	ZIP:	99611

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



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 #:	10185731	AK Formed Date:	2/1/2022	Home State:	AK
Registered Agent:	GEORGE BOWEN	Agent's Phone:	907-252-7287		
Agent's Mailing Address:	PO Box 223				
City:	KENAI	State:	AK	ZIP:	99611

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):

George Bowen # 1189 + 1190 Beverage Dispensary + Package Store.

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:

AMCO



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

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.

JB

I certify that all proposed licensees have been listed with the Division of Corporations.

JB

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.

JB

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.

JB

I agree to provide all information required by the Alcoholic Beverage Control Board in support of this application.

JB

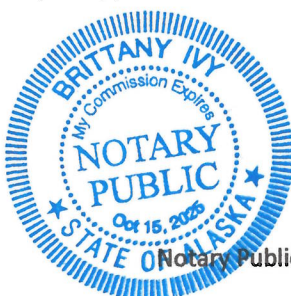
I hereby certify that I am the person herein named and subscribing to this application and that I have read the complete application, and I know the full content thereof. I declare that all of the information contained herein, and evidence or other documents submitted are true and correct. I understand that any falsification or misrepresentation of any item or response in this application, or any attachment, or documents to support this application, is sufficient grounds for denying or revoking a license/permit. I further understand that it is a Class A misdemeanor under Alaska Statute 11.56.210 to falsify an application and commit the crime of unsworn falsification.

JB

Signature of licensee

George Bowen

Printed name of licensee



Signature of Notary Public

Brittany Ivy

Notary Public in and for the State of Alaska

My commission expires: 10-15-25

Subscribed and sworn to before me this 20th day of October, 2022.

AMCO



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Commerce,
Community,
and Economic Development

Alcohol and Marijuana Control Office

550 West 7th Avenue, Suite 1600
Anchorage, AK 99501
Main: 907.269.0350

November 29, 2022

City of Seward; Kenai Peninsula Borough

Attn: Clerk

VIA Email: clerk@cityofseward.net; bballou@cityofseward.net

License Number:	31148
License Type:	Limited Marijuana Cultivation Facility
Licensee:	Bay Leaf Enterprises LLC
Doing Business As:	Bay Leaf Enterprises LLC
Physical Address:	33695 Nash Rd Seward, AK 99664
Designated Licensee:	Dan McClure
Phone Number:	907-769-1133
Email Address:	danmcclure99664@gmail.com

☒ **New Application** ☐ **New Onsite Consumption Endorsement Application (Retail Only)**

AMCO has received a complete application for a marijuana establishment within your jurisdiction. This notice is required under 3 AAC 306.025(d)(2). Application documents will be sent to you separately via ZendTo.

To protest the approval of this application pursuant to 3 AAC 306.060, you must furnish the director **and** the applicant with a clear and concise written statement of reasons for the protest within 60 days of the date of this notice, and provide AMCO proof of service of the protest upon the applicant. If the protest is a “conditional protest” as defined in 3 AAC 306.060(d)(2) and the application otherwise meets all the criteria set forth by the regulations, the Marijuana Control Board may approve the license, but require the applicant to show to the board’s satisfaction that the requirements of the local government have been met before the director issues the license.

3 AAC 306.010, 3 AAC 306.080, and 3 AAC 306.250 provide that the board will deny an application for a new license if the board finds that the license is prohibited under AS 17.38 as a result of an ordinance or election conducted under AS 17.38 and 3 AAC 306.200, or when a local government protests an application on the grounds that the proposed licensed premises are located in a place within the local government where a local zoning ordinance prohibits the marijuana establishment, unless the local government has approved a variance from the local ordinance.

This application will be in front of the Marijuana Control Board at our June 29-30, 2022, meeting.

Sincerely,

Joan Wilson, Director

amco.localgovernmentonly@alaska.gov

AFFIDAVIT OF PUBLICATION

UNITED STATES OF AMERICA
STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Before me, the undersigned, a notary public, this day personally appeared, Michael Paschall who, being first duly sworn according to law, says that he represents TriDelta, Incorporated, publisher of the Seward Journal, a newspaper of general circulation published in Seward in said Third Judicial District and State of Alaska, and that the advertisement of which the annexed is a true copy, was published in said newspaper on the following day(s):

10/13/2021, 10/20/2021, 10/27/2021

and that the rate charged is not in excess of the rate charged private individuals, with the usual discounts.

Michael R. Paschall
Michael R. Paschall

Subscribed and sworn before me this 10TH day of November, 2021.



"Official Seal"
Notary Public
T.P. Holoday
State of Alaska
Commission #000310098 Expires 3/10/2024

T.P. Holoday
Notary Public in and for the
State of Alaska
My commission expires: March 10, 2024

DBA BAY LEAF ENT
LIC # 31148

PUBLISHER'S AFFIDAVIT Pg 2 of

STANDARD LEASE AGREEMENT

This Agreement, dated JANUARY 1ST, 2022, by and between a business entity known as JJK Enterprises LLC of 10491 Moose Horn Drive, Seward, Alaska, 99664, hereinafter known as the "Landlord",

AND

A business entity known as Bay Leaf Enterprises LLC, hereinafter known as the "Tenant(s)", agree to the following:

OCCUPANT(S): The Premises is to be occupied strictly as a residential dwelling with only the Tenant(s) mentioned above as the Occupant(s).

OFFER TO RENT: The Landlord hereby rents to the Tenant(s), subject to the following terms and conditions of this Agreement, commercial space with the address of 33695 Nash Road, Seward, Alaska, 99664 consisting of 1 bathroom(s) and 1 bedroom(s) hereinafter known as the "Premises". The Landlord may also use the address for notices sent to the Tenant(s).

PURPOSE: The Tenant(s) and any Occupant(s) may only use the Premises as a residential dwelling. It may not be used for storage, manufacturing of any type of food or product, professional service(s), or for any commercial use unless otherwise stated in this Agreement.

FURNISHINGS: The Premises is not furnished.

APPLIANCES: The Landlord shall not provide any appliances in the Premises.

LEASE TERM: This Agreement shall be a fixed-period arrangement beginning on January 1 2022 and ending on December 31 2023 with the Tenant(s) having the option to continue to occupy the Premises under the same terms and conditions of this Agreement under a Month-to-Month arrangement (Tenancy at Will) with either the Landlord or Tenant having the option to cancel the tenancy with at least thirty (30) days notice or the minimum time-period set by the State, whichever is shorter. For the Tenant to continue under Month-to-Month tenancy at the expiration of the Lease Term, the Landlord must be notified within sixty (60) days before the end of the Lease Term. Hereinafter known as the "Lease Term".

RENT: Tenant(s) shall pay the Landlord in equal monthly installments of \$600.00 (US Dollars) hereinafter known as the "Rent". The Rent will be due on the First (1st) of every month and be paid via the following instructions:

Check, Cash or Direct Deposit

NON-SUFFICIENT FUNDS (NSF CHECKS): If the Tenant(s) attempts to pay the rent with a check that is not honored or an electronic transaction (ACH) due to insufficient funds (NSF) there shall be a fee of \$25 (US Dollars).

LATE FEE: If rent is not paid on the due date, there shall be a late fee assessed by the Landlord in the amount of:

Calculated as 10% percent of the monthly rent per occurrence for each month payment that is late after the 15th Day rent is due.

FIRST (1ST) MONTH'S RENT: First (1st) month's rent shall be due by the Tenant(s) upon the execution of this Agreement.

PRE-PAYMENT: The Landlord shall not require any pre-payment of rent by the Tenant(s).

PRORATION PERIOD: The Tenant(s) will not move into the Premises before the start of the Lease Term.

SECURITY DEPOSIT: The Tenant(s) shall not be obligated to pay a Security Deposit as part of this Agreement.

POSSESSION: Tenant(s) has examined the condition of the Premises and by taking possession acknowledges that they have accepted the Premises in good order and in its current condition except as herein otherwise stated. Failure of the Landlord to deliver possession of the Premises at the start of the Lease Term to the Tenant(s) shall terminate this Agreement at the option of the Tenant(s). Furthermore, under such failure to deliver possession by the Landlord, and if the Tenant(s) cancels this Agreement, the Security Deposit (if any) shall be returned to the Tenant(s) along with any other pre-paid rent, fees, including if the Tenant(s) paid a fee during the application process before the execution of this Agreement.

ACCESS: Upon the beginning of the Proration Period or the start of the Lease Term, whichever is earlier, the Landlord agrees to give access to the Tenant(s) in the form of keys, fobs, cards, or any type of keyless security entry as needed to enter the common areas and the Premises. Duplicate copies of the access provided may only be authorized under the consent of the Landlord and, if any replacements are needed, the Landlord may provide them for a fee. At the end of this Agreement all access provided to the Tenant(s) shall be returned to the Landlord or a fee will be charged to the Tenant(s) or the fee will be subtracted from the Security Deposit.

MOVE-IN INSPECTION: Before, at the time of the Tenant(s) accepting possession, or shortly thereafter, the Landlord and Tenant(s) shall not perform an inspection of the Premises.

SUBLETTING: The Tenant(s) shall not have the right to sub-let the Premises or any part thereof without the prior written consent of the Landlord. If consent is granted by the Landlord, the Tenant(s) will be responsible for all actions and liabilities of the Sublessee including but not limited to: damage to the Premises, non-payment of rent, and any eviction process (In the event of an eviction the Tenant(s) shall be responsible for all court filing fee(s), representation, and any other fee(s) associated with removing the Sublessee). The consent by the Landlord to one sub-let shall not be deemed to be consent to any subsequent subletting.

ABANDONMENT: If the Tenant(s) vacates or abandons the property for a time-period that is the minimum set by State law or seven (7) days, whichever is less, the Landlord shall have the right to terminate this Agreement immediately and remove all belongings including any personal property off of the Premises. If the Tenant(s) vacates or abandons the property, the Landlord shall immediately have the right to terminate this Agreement.

ASSIGNMENT: Tenant(s) shall not assign this Lease without the prior written consent of the Landlord. The consent by the Landlord to one assignment shall not be deemed to be consent to any subsequent assignment.

PARKING: The Landlord shall provide the Tenant(s) 2 Parking Spaces.

The Landlord shall not charge a fee for the 2 Parking Spaces.

RIGHT OF ENTRY: The Landlord shall have the right to enter the Premises during normal working hours by providing notice in accordance with the minimum State requirement in order for inspection, make necessary repairs, alterations or improvements, to supply services as agreed or for any reasonable purpose. The Landlord may exhibit the Premises to prospective purchasers, mortgagees, or lessees upon reasonable notice.

SALE OF PROPERTY: If the Premises is sold, the Tenant(s) is to be notified of the new Owner, and if there is a new Manager, their contact details for repairs and maintenance shall be forwarded. If the Premises is conveyed to another party, the new owner shall have the right to terminate this Agreement.

The new owner shall have the right to terminate ONLY after providing at least 60 days' notice to the Tenant(s).

UTILITIES: The Landlord shall not pay for any of the utilities and services and will be the responsibility of the Tenant(s).

MAINTENANCE, REPAIRS, OR ALTERATIONS: The Tenant(s) shall, at their own expense and at all times, maintain premises in a clean and sanitary manner, and shall surrender the same at termination hereof, in as good condition as received, normal wear and tear excepted. The Tenant(s) may not make any alterations to the leased premises without the consent in writing of the Landlord. The Landlord shall be responsible for repairs to the interior and exterior of the building. If the Premises includes a washer, dryer, freezer, dehumidifier unit and/or air conditioning unit, the Landlord makes no warranty as to the repair or replacement of units if one or all shall fail to operate. The Landlord will place fresh batteries in all battery-operated smoke detectors when the Tenant(s) moves into the premises. After the initial placement of the fresh batteries it is the responsibility of the Tenant(s) to replace batteries when needed. A monthly "cursory" inspection may be required for all fire extinguishers to make sure they are fully charged.

EARLY TERMINATION: The Tenant(s) may not be able to cancel this Agreement unless the Tenant is a victim of Domestic Violence, in such case, the Tenant may be able to cancel in accordance with any local, state, or federal laws.

PETS: The Tenant(s) shall be allowed to have:

Two (2) pets on the Premises consisting of Birds, Cats, Dogs, with no other types of Pet(s) being allowed on the Premises or common areas, hereinafter known as the "Pet(s)". The Tenant(s) shall not be required to pay a fee for any pet allowed on the Premises. The Tenant(s) is responsible for all damage that any pet causes, regardless of ownership of said pet and agrees to restore the property to its original condition at their expense. There shall be no limit on the weight of the pet. pounds (Lb.).

NOISE/WASTE: The Tenant(s) agrees not to commit waste on the premises, maintain, or permit to be maintained, a nuisance thereon, or use, or permit the premises to be used, in an unlawful manner. The Tenant(s) further agrees to abide by any and all local, county, and State noise ordinances.

GUESTS: There shall be no other persons living on the Premises other than the Tenant(s) and any Occupant(s). Guests of the Tenant(s) are allowed for periods not lasting for more than forty-eight hours unless otherwise approved by the Landlord.

SMOKING POLICY: Smoking on the Premises is permitted anywhere on the Premises.

COMPLIANCE WITH LAW: The Tenant(s) agrees that during the term of the Agreement, to promptly comply with any present and future laws, ordinances, orders, rules, regulations, and requirements of the Federal, State, County, City, and Municipal government or any of their departments, bureaus, boards, commissions and officials thereof with respect to the premises, or the use or occupancy thereof, whether said compliance shall be ordered or directed to or against the Tenant(s), the Landlord, or both.

DEFAULT: If the Tenant(s) fails to comply with any of the financial or material provisions of this Agreement, or of any present rules and regulations or any that may be hereafter prescribed by the Landlord, or materially fails to comply with any duties imposed on the Tenant(s) by statute or State laws, within the time period after delivery of written notice by the Landlord specifying the non-compliance and indicating the intention of the Landlord to terminate the Agreement by reason thereof, the Landlord may terminate this Agreement. If the Tenant(s) fails to pay rent when due and the default continues for the time-period specified in the written notice thereafter, the Landlord may, at their option, declare the entire balance (compiling all months applicable to this Agreement) of rent payable hereunder to be immediately due and payable and may exercise any and all rights and remedies available to the Landlord at law or in equity and may immediately terminate this Agreement.

The Tenant(s) will be in default if: (a) Tenant(s) does not pay rent or other amounts that are owed in accordance with respective State laws; (b) Tenant(s), their guests, or the Occupant(s) violate this Agreement, rules, or fire, safety, health, or criminal laws, regardless of whether arrest or conviction occurs; (c) Tenant(s) abandons the Premises; (d) Tenant(s) gives incorrect or false information in the rental application; (e) Tenant(s), or any Occupant(s) is arrested, convicted, or given deferred adjudication for a criminal offense involving actual or potential physical harm to a person, or involving possession, manufacture, or delivery of a controlled substance, marijuana, or drug paraphernalia under state statute; (f) any illegal drugs or paraphernalia are found in the Premises or on the person of the Tenant(s), guests, or Occupant(s) while on the Premises and/or; (g) as otherwise allowed by law.

MULTIPLE TENANT(S) OR OCCUPANT(S): Each individual that is considered a Tenant(s) is jointly and individually liable for all of this Agreement's obligations, including but not limited to rent monies. If any Tenant(s), guest, or Occupant(s) violates this Agreement, the Tenant(s) is considered to have violated this Agreement. Landlord's requests and notices to the Tenant(s) or any of the Occupant(s) of legal age constitutes notice to the Tenant(s). Notices and requests from the Tenant(s) or any one of the Occupant(s) (including repair requests and entry permissions) constitutes notice from the Tenant(s). In eviction suits, the Tenant(s) is considered the agent of the Premise for the service of process.

DISPUTES: If a dispute arises during or after the term of this Agreement between the Landlord and Tenant(s), they shall agree to hold negotiations amongst themselves, in "good faith", before any litigation.

SEVERABILITY: If any provision of this Agreement or the application thereof shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Agreement nor

the application of the provision to other persons, entities or circumstances shall be affected thereby, but instead shall be enforced to the maximum extent permitted by law.

SURRENDER OF PREMISES: The Tenant(s) has surrendered the Premises when (a) the move-out date has passed and no one is living in the Premise within the Landlord's reasonable judgment; or (b) Access to the Premise have been turned in to Landlord – whichever comes first. Upon the expiration of the term hereof, the Tenant(s) shall surrender the Premise in better or equal condition as it were at the commencement of this Agreement, reasonable use, wear and tear thereof, and damages by the elements excepted.

RETALIATION: The Landlord is prohibited from making any type of retaliatory acts against the Tenant(s) including but not limited to restricting access to the Premises, decreasing or cancelling services or utilities, failure to repair appliances or fixtures, or any other type of act that could be considered unjustified.

WAIVER: A Waiver by the Landlord for a breach of any covenant or duty by the Tenant(s), under this Agreement is not a waiver for a breach of any other covenant or duty by the Tenant(s), or of any subsequent breach of the same covenant or duty. No provision of this Agreement shall be considered waived unless such a waiver shall be expressed in writing as a formal amendment to this Agreement and executed by the Tenant(s) and Landlord.

EQUAL HOUSING: If the Tenant(s) possess(es) any mental or physical impairment, the Landlord shall provide reasonable modifications to the Premises unless the modifications would be too difficult or expensive for the Landlord to provide. Any impairment of the Tenant(s) is/are encouraged to be provided and presented to the Landlord in writing in order to seek the most appropriate route for providing the modifications to the Premises.

HAZARDOUS MATERIALS: The Tenant(s) agrees to not possess any type of personal property that could be considered a fire hazard such as a substance having flammable or explosive characteristics on the Premises. Items that are prohibited to be brought into the Premises, other than for everyday cooking or the need of an appliance, includes but is not limited to gas (compressed), gasoline, fuel, propane, kerosene, motor oil, fireworks, or any other related content in the form of a liquid, solid, or gas.

WATERBEDS: The Tenant(s) is not permitted to furnish the Premises with waterbeds.

INDEMNIFICATION: The Landlord shall not be liable for any damage or injury to the Tenant(s), or any other person, or to any property, occurring on the Premises, or any part thereof, or in common areas thereof, and the Tenant(s) agrees to hold the Landlord harmless from any claims or damages unless caused solely by the Landlord's negligence. It is recommended that renter's insurance be purchased at the Tenant(s)'s expense.

ABSENCE: If under any circumstance the Tenant(s) vacates the Premises for a period of more than seven (7) days the Landlord must be notified.

COVENANTS: The covenants and conditions herein contained shall apply to and bind the heirs, legal representatives, and assigns of the parties hereto, and all covenants are to be construed as conditions of this Agreement.

NOTICES: Any notice to be sent by the Landlord or the Tenant(s) to each other shall use the following mailing addresses:

Landlord's/Agent's Mailing Address

JJK Enterprises LLC, ATTN. James Shirk
10491 Moose Horn Drive, Seward, Alaska, 99664

Tenant(s)'s Mailing Address

Bay Leaf Enterprises LLC, ATTN. Boyd McClure
33695 Nash Road, Seward, Alaska, 99664

AGENT/MANAGER: The Landlord does not have an Agent or Manager and all contact in regards to any repair, maintenance, or complaint must go through the Landlord through the following contact information:

Landlord's Phone Number: (907) 362-1515 Email: jjshirk02@hotmail.com.

PREMISES DEEMED UNINHABITABLE: If the Property is deemed uninhabitable due to damage beyond reasonable repair the Tenant(s) will be able to terminate this Agreement by written notice to the Landlord. If said damage was due to the negligence of the Tenant(s), the Tenant(s) shall be liable to the Landlord for all repairs and for the loss of income due to restoring the Premises back to a livable condition in addition to any other losses that can be proved by the Landlord.

SERVICEMEMBERS CIVIL RELIEF ACT: In the event the Tenant(s) is or hereafter becomes, a member of the United States Armed Forces on extended active duty and hereafter the Tenant(s) receives permanent change of station (PCS) orders to depart from the area where the Premises are located, or is relieved from active duty, retires or separates from the military, is ordered into military housing, or receives deployment orders, then in any of these events, the Tenant may terminate this lease upon giving thirty (30) days written notice to the Landlord. The Tenant shall also provide to the Landlord a copy of the official orders or a letter signed by the Tenant's commanding officer, reflecting the change which warrants termination under this clause. The Tenant will pay prorated rent for any days which he/she occupies the dwelling past the beginning of the rental period.

The damage/security deposit will be promptly returned to Tenant, provided there are no damages to the Premises.

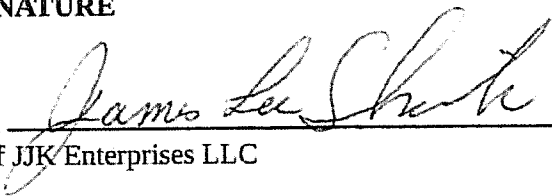
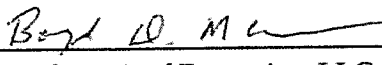
LEAD PAINT: The Premises was not constructed before 1978 and therefore does not contain lead-based paint.

GOVERNING LAW: This Agreement is to be governed under the laws located in the State of Alaska.

ADDITIONAL TERMS AND CONDITIONS: There are no further terms or conditions that will be added to this Agreement other than any attachments or addendums attached.

ENTIRE AGREEMENT: This Agreement contains all the terms agreed to by the parties relating to its subject matter including any attachments or addendums. This Agreement replaces all previous discussions, understandings, and oral agreements. The Landlord and Tenant(s) agree to the terms and conditions and shall be bound until the end of the Lease Term.

The parties have agreed and executed this agreement on _____,
20____.

LANDLORD(S) SIGNATURE**Landlord's Signature**
James Shirk as CEO of JJK Enterprises LLC**TENANT(S) SIGNATURE****Tenant's Signature**
Boyd McClure as CEO of Bay Leaf Enterprises LLC

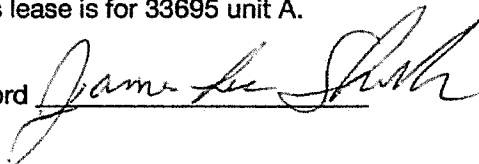
AMOUNT (\$) DUE AT SIGNING

First (1st) Month's Rent: \$600.00

Addendum to lease.

1. Landlord is aware that this premise 33695 unit a is being used to cultivate marijuana.
2. Landlord in case of default of this lease. The landlord may not take possession or remove marijuana from the premises and AMCO will be contacted.
3. This lease is for 33695 unit A.

Landlord



Tenant





Alaska Marijuana Control Board

Form MJ-09: Statement of Financial Interest

What is this form?

A statement of financial interest completed by each proposed licensee (as defined in 3 AAC 306.020(b)(2)) is required for all marijuana establishment license applications, per 3 AAC 306.020(b)(4). A person other than a licensee may not have direct or indirect financial interest (as defined in 3 AAC 306.015(e)(1)) in the business for which a marijuana establishment license is issued, per 3 AAC 306.015(a).

This form must be completed and submitted to AMCO's main office by each proposed licensee before any license application will be considered complete.

Section 1 – Establishment Information

Enter information for the business seeking to be licensed, as identified on the license application.

Licensee:	Bay Leaf Enterprises LLC	License Number:	31148		
License Type:	Limited Cultivation Facility				
Doing Business As:	Bay Leaf Enterprises LLC				
Premises Address:	33695 Nash Rd				
City:	Seward	State:	Ak	ZIP:	99664

Section 2 – Individual Information

Enter information for the individual licensee.

Name:	Boyd D. McClure
Title:	Owner



Alaska Marijuana Control Board

Form MJ-09: Statement of Financial Interest**Section 3 – Certifications**

I certify that no person other than a proposed licensee listed on my marijuana establishment license application has a direct or indirect financial interest, as defined in 3 AAC 306.015(e)(1), in the business for which a marijuana establishment license is being applied for.

I further certify that any ownership change shall be reported to the board as required under 3 AAC 306.040.

I understand that my fingerprints will be used to check the criminal history records of the Federal Bureau of Investigation (FBI), and that I have the opportunity to complete or challenge the accuracy of the information contained in the FBI identification record.

The procedures for obtaining a change, correction, or updating an FBI identification record are set forth in Title 28, CFR, 16.34.

I declare under penalty of unsworn falsification that this form, including all accompanying schedules and statements, is true, correct, and complete.

Boyd D. McChurn

Signature of licensee

Boyd D. McChurn

Printed name of licensee



[Signature]
Notary Public in and for the State of Alaska

My commission expires: 11-14-2022Subscribed and sworn to before me this 5th day of NOVEMBER, 2021.



Alaska Marijuana Control Board

Form MJ-08: Local Government Notice

Why is this form needed?

A local government notice is required for all marijuana establishment license applications with a proposed premises that is located within a local government, per 3 AAC 306.025(b)(3). As soon as practical after initiating a marijuana establishment license application, an applicant must give notice of the application to the public by submitting a copy of the application to each local government and any community council in the area of the proposed licensed premises. For an establishment located inside the boundaries of city that is within a borough, both the city and the borough must be notified.

This form must be completed and submitted to AMCO's Anchorage office before any new or transfer license application will be considered complete.

Section 1 - Establishment Information

Enter information for the business seeking to be licensed, as identified on the license application.

Licensee:	BAY LEAF ENTERPRISES LLC	License Number:	31148		
License Type:	Limited marijuana cultivation				
Doing Business As:	BAY LEAF ENTERPRISES LLC				
Premises Address:	33695 unit a Nash Rd				
City:	Seward	State:	AK	ZIP:	99664

Section 2 - Certification

I certify that I have met the local government notice requirement set forth under 3 AAC 306.025(b)(3) by submitting a copy of my application to the following local government (LG) official(s) and community council (if applicable):

Local Government(s): Kenai Peninsula Borough Date Submitted: 11/07/2022

Name/Title of LG Official 1: Michele Turner, Dpty CLK Name/Title of LG Official 2: _____

Community Council: _____ Date Submitted: _____
(Municipality of Anchorage and Matanuska-Susitna Borough only)

You must be able to certify the statement below. Read the following and then sign your initials in the box to the right: Initials

I hereby certify that I am the person herein named and subscribing to this application and that I have read the complete application, and I know the full content thereof. I declare that all of the information contained herein, and evidence or other documents submitted are true and correct. I understand that any falsification or misrepresentation of any item or response in this application, or any attachment, or documents to support this application, is sufficient grounds for denying or revoking a license/permit. I further understand that it is a Class A misdemeanor under Alaska Statute 11.56.210 to falsify an application and commit the crime of unsworn falsification.



Boyd D McClure

Printed name of licensee

Boyd D. McClure
Signature of licensee



Alaska Marijuana Control Board

Form MJ-07: Public Notice Posting Affidavit

What is this form?

A public notice posting affidavit is required for all marijuana establishment license applications, per 3 AAC 306.020(b)(10). As soon as practical after initiating a marijuana establishment license application, an applicant must give notice of the application to the public by posting a true copy of the application for ten (10) days at the location of the proposed licensed premises and one other conspicuous location in the area of the proposed premises, per 3 AAC 306.025(b)(1).

This form must be completed and submitted to AMCO's main office before any new or transfer license application will be considered complete.

Section 1 – Establishment Information

Enter information for the business seeking to be licensed, as identified on the license application.

Licensee:	Bay Leaf Enterprises LLC	License Number:	31148		
License Type:	Limited Marijuana Cultivation Facility				
Doing Business As:	Bay Leaf Enterprises LLC				
Premises Address:	33695 Nash Rd				
City:	Seward	State:	Ak	ZIP:	99664

Section 2 – Certification

I certify that I have met the public notice requirement set forth under 3 AAC 306.025(b)(1) by posting a copy of my application for the following 10-day period at the location of the proposed licensed premises and at the following conspicuous location in the area of the proposed premises:

Start Date: 1 Oct 2021

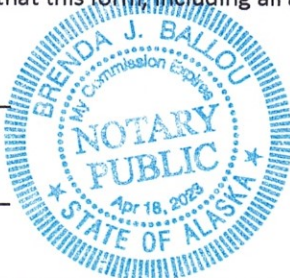
End Date: 10 Oct 2021

Other conspicuous location: Safeway

I declare under penalty of unsworn falsification that this form, including all accompanying schedules and statements, is true, correct, and complete.

Bay D. Ma
Signature of licensee

Bay D. Ma
Printed name of licensee



Brenda J. Ballou
Notary Public in and for the State of Alaska

My commission expires: 4/18/2023

Subscribed and sworn to before me this 10th day of November, 2021



Alaska Marijuana Control Board
Operating Plan Supplemental
Form MJ-04: Marijuana Cultivation Facility

350 W 7th Avenue, Suite 1000
Anchorage, AK 99501
marijuana.licensing@alaska.gov
<https://www.commerce.alaska.gov/web/amco>
Phone: 907.269.0350

What is this form?

This operating plan supplemental form is required for all applicants seeking a marijuana cultivation facility license and must accompany **Form MJ-01: Marijuana Establishment Operating Plan**, per 3 AAC 306.020(b)(11). Applicants should review **Chapter 306: Article 4** of the **Alaska Administrative Code**. This form will be used to document how an applicant intends to meet the requirements of the statutes and regulations.

If your business has a formal operating plan, you may include a copy of that operating plan with your application, but all fields of this form must still be completed per 3 AAC 306.020 and 3 AAC 306.420(2).

What additional information is required for cultivation facilities?

Applicants must identify how the proposed establishment will comply with applicable regulations regarding the following:

- Prohibitions
- Cultivation plan
- Waste disposal
- Odor control
- Testing procedure and protocols
- Packaging and labeling

This form must be completed and submitted to AMCO's main office before any new or transfer application for a standard marijuana cultivation facility or limited marijuana cultivation facility license will be considered complete.

Section 1 – Establishment Information

Enter information for the business seeking to be licensed, as identified on the license application.

Licensee:	Bay Leaf Enterprises LLC	MJ License #:	31148		
License Type:	Limited Cultivation Facility				
Doing Business As:	Bay Leaf Enterprises LLC				
Premises Address:	33695 Nash rd				
City:	Seward	State:	Alaska	ZIP:	99664



Section 2 – Overview of Operations

2.1. Provide an overview of your proposed facility's operations. Include information regarding the flow of marijuana from seed or clone to harvest and transfer from your premises:

Marijuana will be cultivated from seed when plants reach 8 inches tall they will be tagged according to metric they will be inputted into the computer. When they achieve appropriate size they be affixed with a plant tag and moved to vegetative area and re inputted into the computer. When they reach the flowering stage when they will be harvested and dried and trimmed they would then be packaged and a package label will be affixed to it. This would be inputted into the computer. They would be ready to transport to testing and then to retail after a transfer manifest has been filled out.

Section 3 – Prohibitions

Review the requirements under 3 AAC 306.405 and 3 AAC 306.410.

3.1. I certify that the marijuana cultivation facility will not:

Initials

- a. sell, distribute, or transfer any marijuana or marijuana product to a consumer, with or without compensation;
- b. allow any person, including a licensee, employee, or agent, to consume marijuana or marijuana product on the licensed premises or within 20 feet of the exterior of any building or outdoor cultivation facility; or
- c. treat or otherwise adulterate marijuana with any organic or nonorganic chemical or compound to alter the color, appearance, weight, or odor of the marijuana.

Bn

Bn

Bn

Section 4 – Cultivation Plan

Review the requirements under 3 AAC 306.420 and 3 AAC 306.430.

4.1. Describe the size of the space(s) the marijuana cultivation facility intends to be under cultivation, including dimensions and overall square footage. Provide your calculations below:

I plan on growing in 6 5x5 grow tents with 25 sq ft per tent =150 sq ft

My nursery for seedlings will be in an 8 ft long 2 ft wide enclosed box =16 sq ft

I plan on drying in one 8x8 tent =16 sq ft



You must be able to certify the statement below. Read the following and then sign your initials in the box to the right:

Initials

4.2. The proposed area(s) for cultivation are clearly identified on the Form MJ-02: Premises Diagram that is submitted with this application.



Answer "Yes" or "No" to the following question:

Yes

No

4.3. Will the marijuana cultivation facility include outdoor production?

☐☒

If "Yes", describe the outdoor structure(s) or the expanse of open or clear ground and how it is fully-enclosed by a physical barrier:

4.4. Describe the method(s) used to ensure that any marijuana at the marijuana cultivation facility, whether indoors or outdoors, cannot be observed by the public from outside the facility:

Plastic film is affixed to the windows to preclude any one from seeing inside.

4.5. Describe the marijuana cultivation facility's growing medium(s) to be used:

Pro mix (mycorrhizae) , potting soil with bat guano and earthworm casting, refined compost, epsom salt.

4.6. Provide the complete product name and EPA registration # (if applicable) for each of the cultivation facility's pesticide and pest control product to be used. All proposed products must be on DEC's list of approved pesticides in the state of Alaska:

Beneficial nematodes, and sticky aphid and white fly trap.

4.7. Describe all other fertilizers, chemicals, gases, and delivery systems, including carbon dioxide management, to be used at the marijuana cultivation facility:

Worm power liquid extract water soluble. All cleaning supplies are citrus based and have no harsh chemicals.



4.8. Describe the marijuana cultivation facility's irrigation and waste water systems to be used:

Well water for irrigation and septic for waste water

Section 5 – Waste Disposal

Review the requirements under 3 AAC 306.740.

You must be able to certify the statement below. Read the following and then sign your initials in the box to the right:

Initials

5.1. The marijuana cultivation facility shall give the board at least three days written notice required under 3 AAC 306.740(c) before making marijuana waste unusable and disposing of it.

BM

5.2. Describe how you will store, manage, and dispose of any solid or liquid marijuana waste, including wastewater generated during marijuana cultivation, in compliance with any applicable laws. Include details about the material(s) you will mix with ground marijuana waste and the processes that you will use to make the marijuana waste unusable for any purpose for which it was grown:

Marijuana will be power shredded and 50% sand or soil added to it and stored on premises until AMCO gives me permission to dispose of the waste into the land fill. A record will be kept of the final destination of the waste made unusable.



Section 6 – Odor Control

Review the requirements under 3 AAC 306.430.

Answer "Yes" or "No" to the following question:

Yes No

6.1. Have you received an exemption from your local government for the odor control requirement set forth in 3 AAC 306.430(c)(2)?

☐☒

If "Yes", you must be able to certify the statement below. Read the following and then sign your initials in the box:

Initials

I am attaching to this form documentation of my odor control exemption from the local government.

If "No" to question 6.1., describe the odor control method(s) to be used and how the marijuana cultivation facility will ensure that any marijuana at the facility does not emit an odor that is detectable by the public from outside the facility:

An exhaust fan coupled with a 6" diameter carbon filter will exhaust the clean air outside.

Section 7 – Testing Procedure and Protocols

Review the requirements under 3 AAC 306.455 and 3 AAC 306.465.

You must be able to certify each statement below. Read the following and then sign your initials in the corresponding box:

Initials

7.1. I understand and agree that the board or director will, from time to time, require the marijuana cultivation facility to provide samples of the growing medium, soil amendments, fertilizers, crop production aids, pesticides, or water for random compliance checks.

7.2. I will ensure that any individual responsible for collecting random, homogenous samples for required laboratory testing under 3 AAC 306.455 will prepare the necessary accompanying signed statement, provide the signed statement to the marijuana testing facility, and maintain a copy as a business record under 3 AAC 306.755.

7.3. Describe the testing procedures and protocols the marijuana cultivation facility will follow:

All marijuana shall be tested from each harvest batch I may not sell or transport any marijuana until lab reports are completed. I will comply by collecting a representative sample that has been dried and cured for example 1lb package would require 4 grams 3lb would require 5 grams etc as outlined in AAC 306.455. All marijuana will be segregated each harvest package and keep it cool and dry until testing is completed. A log will be kept showing the results of the lab test.

Section 8 – Packaging and Labeling

Review the requirements under 3 AAC 306.470 and 3 AAC 306.475.

Answer "Yes" or "No" to the following question:

Yes No

8.1. Will the marijuana cultivation facility be packaging marijuana for a retail marijuana store to sell to a consumer without repackaging?

☐ ☒

If "Yes", describe how the marijuana cultivation facility will ensure that the marijuana sold will meet the packaging requirements in 3 AAC 306.470, and provide a sample label that the facility will use to meet the labeling requirements set forth in 3 AAC 306.475:

Answer "Yes" or "No" to the following question:

Yes No

8.2. Will the marijuana cultivation facility be packaging marijuana in wholesale packages?

☐ ☒

If "Yes", describe how the marijuana cultivation facility will ensure that the marijuana sold will meet the packaging requirements in 3 AAC 306.470, and provide a sample label that the facility will use to meet the labeling requirements set forth in 3 AAC 306.475:

I certify that as a marijuana cultivation facility, I will submit monthly reports to the Department of Revenue and pay the excise tax required under AS 43.61.010 and AS 43.61.020 on all marijuana sold or provided as a sample to a marijuana establishment, as required under 3 AAC 306.480.

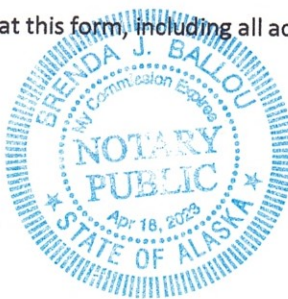
I declare under penalty of unsworn falsification that this form, including all accompanying schedules and statements, is true, correct, and complete.

Boyd D. McClure

Signature of licensee

Boyd McClure

Printed name of licensee



Brenda J. Ballou
Notary Public in and for the State of Alaska

My commission expires:

4/18/2023

Subscribed and sworn to before me this

22nd

day of

November, 2021.



(Additional Space as Needed):

None



Form MJ-04: Marijuana Cultivation Facility Operating Plan Supplemental

You must be able to certify the statement below. Read the following and then sign your initials in the box to the right:

Initials

4.2. The proposed area(s) for cultivation are clearly identified on the Form MJ-02: Premises Diagram that is submitted with this application.



Answer "Yes" or "No" to the following question:

Yes

No

4.3. Will the marijuana cultivation facility include outdoor production?

☐☒

If "Yes", describe the outdoor structure(s) or the expanse of open or clear ground and how it is fully-enclosed by a physical barrier:

4.4. Describe the method(s) used to ensure that any marijuana at the marijuana cultivation facility, whether indoors or outdoors, cannot be observed by the public from outside the facility:

Plastic film covering the windows as to not let any one see inside

4.5. Describe the marijuana cultivation facility's growing medium(s) to be used:

Soil w amendments such as peat, compost, rice hulls ect

4.6. Provide the complete product name and EPA registration # (if applicable) for each of the cultivation facility's pesticide and pest control product to be used. All proposed products must be on DEC's list of approved pesticides in the state of Alaska:

None

4.7. Describe all other fertilizers, chemicals, gases, and delivery systems, including carbon dioxide management, to be used at the marijuana cultivation facility:

Bio tea



Section 2 – Overview of Operations

2.1. Provide an overview of your proposed facility's operations. Include information regarding the flow of marijuana from seed or clone to harvest and transfer from your premises:

Marijuana will be cultivated from seed when plants reach 8 inches tall they will be tagged according to metric they will be inputted into the computer. When they achieve appropriate size they be affixed with a plant tag and moved to vegetative area and re inputted into the computer. When they reach the flowering stage when they will be harvested and dried and trimmed they would then be packaged and a package label will be affixed to it. This would be inputted into the computer. They would be ready to transport to testing and then to retail after a transfer manifest has been filled out.

Section 3 – Prohibitions

Review the requirements under 3 AAC 306.405 and 3 AAC 306.410.

3.1. I certify that the marijuana cultivation facility will not:

Initials

- a. sell, distribute, or transfer any marijuana or marijuana product to a consumer, with or without compensation;
- b. allow any person, including a licensee, employee, or agent, to consume marijuana or marijuana product on the licensed premises or within 20 feet of the exterior of any building or outdoor cultivation facility; or
- c. treat or otherwise adulterate marijuana with any organic or nonorganic chemical or compound to alter the color, appearance, weight, or odor of the marijuana.

Bn

Bn

Bn

Section 4 – Cultivation Plan

Review the requirements under 3 AAC 306.420 and 3 AAC 306.430.

4.1. Describe the size of the space(s) the marijuana cultivation facility intends to be under cultivation, including dimensions and overall square footage. Provide your calculations below:

I plan on growing in 6 5x5 grow tents with 25 sq ft per tent =150 sq ft

My nursery for seedlings will be in an 8 ft long 2 ft wide enclosed box =16 sq ft

I plan on drying in one 8x8 tent =16 sq ft



Form MJ-04: Marijuana Cultivation Facility Operating Plan Supplemental

4.8. Describe the marijuana cultivation facility's irrigation and waste water systems to be used:

Well water for irrigation and septic for waste water

Section 5 – Waste Disposal

Review the requirements under 3 AAC 306.740.

You must be able to certify the statement below. Read the following and then sign your initials in the box to the right:

Initials

5.1. The marijuana cultivation facility shall give the board at least three days written notice required under 3 AAC 306.740(c) before making marijuana waste unusable and disposing of it.

Am

5.2. Describe how you will store, manage, and dispose of any solid or liquid marijuana waste, including wastewater generated during marijuana cultivation, in compliance with any applicable laws. Include details about the material(s) you will mix with ground marijuana waste and the processes that you will use to make the marijuana waste unusable for any purpose for which it was grown:

Marijuana will be power shredded and 50% sand added to it and stored on premises until Armco gives me permission to dispose of the waste into the land fill.



Section 6 – Odor Control

Review the requirements under 3 AAC 306.430.

Answer "Yes" or "No" to the following question:

Yes

No

6.1. Have you received an exemption from your local government for the odor control requirement set forth in 3 AAC 306.430(c)(2)?

☐☒

If "Yes", you must be able to certify the statement below. Read the following and then sign your initials in the box:

Initials

I am attaching to this form documentation of my odor control exemption from the local government.

BS

If "No" to question 6.1., describe the odor control method(s) to be used and how the marijuana cultivation facility will ensure that any marijuana at the facility does not emit an odor that is detectable by the public from outside the facility:

In each tent an exhaust fan will be coupled with a carbon filter 6 in in diameter before it reaches the air outside

Section 7 – Testing Procedure and Protocols

Review the requirements under 3 AAC 306.455 and 3 AAC 306.465.

You must be able to certify each statement below. Read the following and then sign your initials in the corresponding box:

Initials

7.1. I understand and agree that the board or director will, from time to time, require the marijuana cultivation facility to provide samples of the growing medium, soil amendments, fertilizers, crop production aids, pesticides, or water for random compliance checks.

BS

7.2. I will ensure that any individual responsible for collecting random, homogenous samples for required laboratory testing under 3 AAC 306.455 will prepare the necessary accompanying signed statement, provide the signed statement to the marijuana testing facility, and maintain a copy as a business record under 3 AAC 306.755.

BS

7.3. Describe the testing procedures and protocols the marijuana cultivation facility will follow:

Marijuana will be tested at an accredited testing lab in Anchorage

Section 8 – Packaging and Labeling

Review the requirements under 3 AAC 306.470 and 3 AAC 306.475.

Answer "Yes" or "No" to the following question:

Yes No

8.1. Will the marijuana cultivation facility be packaging marijuana for a retail marijuana store to sell to a consumer without repackaging?

☐ ☒

If "Yes", describe how the marijuana cultivation facility will ensure that the marijuana sold will meet the packaging requirements in 3 AAC 306.470, and provide a sample label that the facility will use to meet the labeling requirements set forth in 3 AAC 306.475:

Answer "Yes" or "No" to the following question:

Yes No

8.2. Will the marijuana cultivation facility be packaging marijuana in wholesale packages?

☐ ☒

If "Yes", describe how the marijuana cultivation facility will ensure that the marijuana sold will meet the packaging requirements in 3 AAC 306.470, and provide a sample label that the facility will use to meet the labeling requirements set forth in 3 AAC 306.475:

I certify that as a marijuana cultivation facility, I will submit monthly reports to the Department of Revenue and pay the excise tax required under AS 43.61.010 and AS 43.61.020 on all marijuana sold or provided as a sample to a marijuana establishment, as required under 3 AAC 306.480.

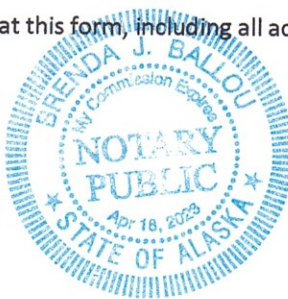
I declare under penalty of unsworn falsification that this form, including all accompanying schedules and statements, is true, correct, and complete.

Boyd D. McClure

Signature of licensee

Boyd McClure

Printed name of licensee



Brenda J. Ballou
Notary Public in and for the State of Alaska

My commission expires:

4/18/2023

Subscribed and sworn to before me this

22nd

day of

November, 2021.



Alaska Marijuana Control Board

Form MJ-02: Premises Diagram**What is this form?**

A detailed diagram of the proposed licensed premises is required for all marijuana establishment license applications, per 3 AAC 306.020(b)(8). **All areas designated as the licensed premises of a single license must be contiguous. All diagrams must have the licensed premises area labeled, and outlined or shaded as appropriate.**

What must be submitted with this form?

Applicants must attach multiple diagrams to this form, including (as applicable):

- **Diagram 1:**
a diagram showing only the licensed premises areas that will be ready to be **operational at the time of your preliminary inspection** and license issuance;
- **Diagram 2:**
if different than Diagram 1, a diagram outlining **all areas for which the licensee has legal right of possession** (a valid lease or deed), and clearly showing those areas' relationship to the current proposed licensed premises (*details of any planned expansion areas do not need to be included; a complete copy of Form MJ-14: Licensed Premises Diagram Change must be submitted and approved before any planned expansion area may be added to the licensed premises*);
- **Diagram 3:**
a **site plan or as-built of the entire lot**, showing all structures on the property and clearly indicating which area(s) will be part of the licensed premises;
- **Diagram 4:**
an **aerial photo of the entire lot and surrounding lots**, showing a view of the entire property and surrounding properties, and clearly indicating which area(s) will be part of the licensed premises (*this can be obtained from sources like Google Earth*); and
- **Diagram 5:**
a diagram of the **entire building in which the licensed premises is located**, clearly distinguishing the licensed premises from unlicensed areas and/or premises of other licenses within the building. If your proposed licensed premises is located within a building or building complex that contains multiple business and/or tenants, please provide the addresses and/or suite numbers of the other businesses and/or tenants (*a separate diagram is not required for an establishment that is designating the entire building as a single licensed premises*).

This form, and all necessary diagrams that meet the requirements on Page 2 of this form, must be completed and submitted to AMCO's main office before any new or transfer license application will be considered complete.

Section 1 – Establishment Information

Enter information for the business seeking to be licensed, as identified on the license application.

Licensee:	Bay Leaf Enterprises LLC	MJ License #:	31148		
License Type:	Limited Marijuana Cultivation Facility				
Doing Business As:	Bay Leaf Enterprises LLC				
Premises Address:	33695 Nash Rd				
City:	Seward	State:	Alaska	ZIP:	99664



Form MJ-02: Premises Diagram

Section 2 – Required Information

For your security, do not include locations of security cameras, motion detectors, panic buttons, and other security devices. Items marked with a double asterisks (**) are only required for those retail marijuana establishments that are also applying for an onsite consumption endorsement.

The following details must be included in all diagrams:

- ☐ License number and DBA
- ☐ Legend or key
- ☐ Color coding
- ☐ Licensed Premises Area Labeled and Shaded, or Outlined as appropriate
- ☐ Dimensions
- ☐ Labels
- ☐ True north arrow

The following additional details must be included in Diagram 1:

- ☐ Surveillance room
- ☐ Restricted access areas
- ☐ Storage areas
- ☐ Entrances, exits, and windows
- ☐ Walls, partitions, and counters
- ☐ Any other areas that must be labeled for specific license or endorsement types
- ☐ ** Serving area(s)
- ☐ **Employee monitoring area(s)
- ☐ ***Ventilation exhaust points, if applicable

The following additional details must be included in Diagram 2:

- ☐ Areas of ingress and egress
- ☐ Entrances and exits
- ☐ Walls and partitions

The following additional details must be included in Diagrams 3 and 4:

- ☐ Areas of ingress and egress
- ☐ Cross streets and points of reference

The following additional details must be included in Diagram 5:

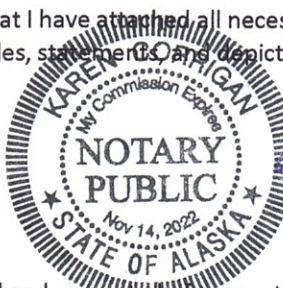
- ☐ Areas of ingress and egress
- ☐ Entrances and exits
- ☐ Walls and partitions
- ☐ Cross streets and points of reference

I declare under penalty of unsworn falsification that I have attached all necessary diagrams that meet the above requirements, and that this form, including all accompanying schedules, statements, and depictions is true, correct, and complete.

Signature of licensee

Boyd McClure

Printed name of licensee



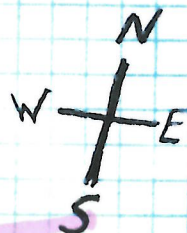
Notary Public in and for the State of Alaska

My commission expires: 11.14.2022

Subscribed and sworn to before me this 5th day of November, 2021.

DBA Bayleaf Enterprises
Lic# 31148

Restricted
Access



EXIT

EXIT

EXIT

EXIT

1/4" = 1'
**Entire Area is Licensed Premises
∩ = DOOR
() = WINDOW

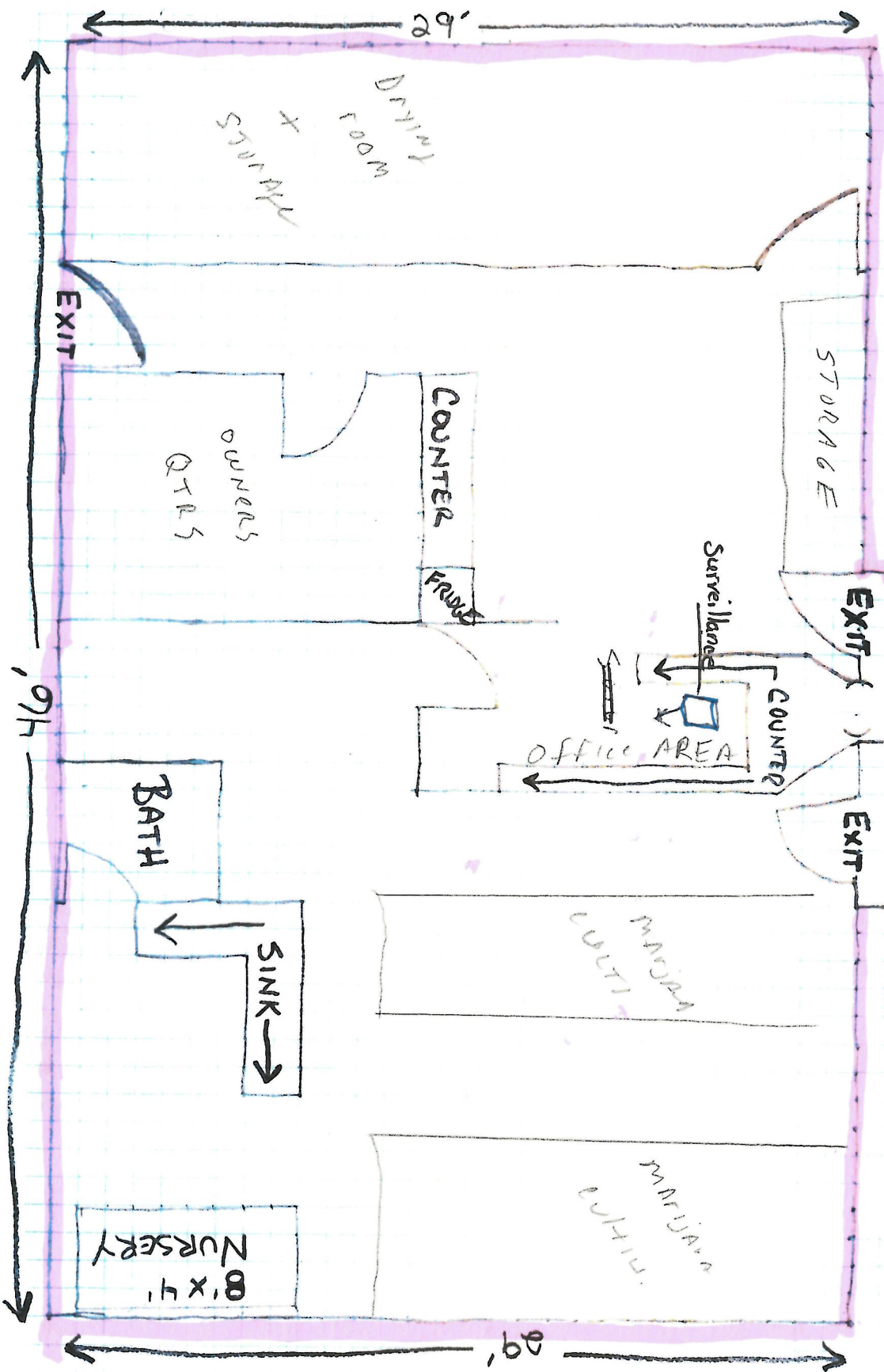
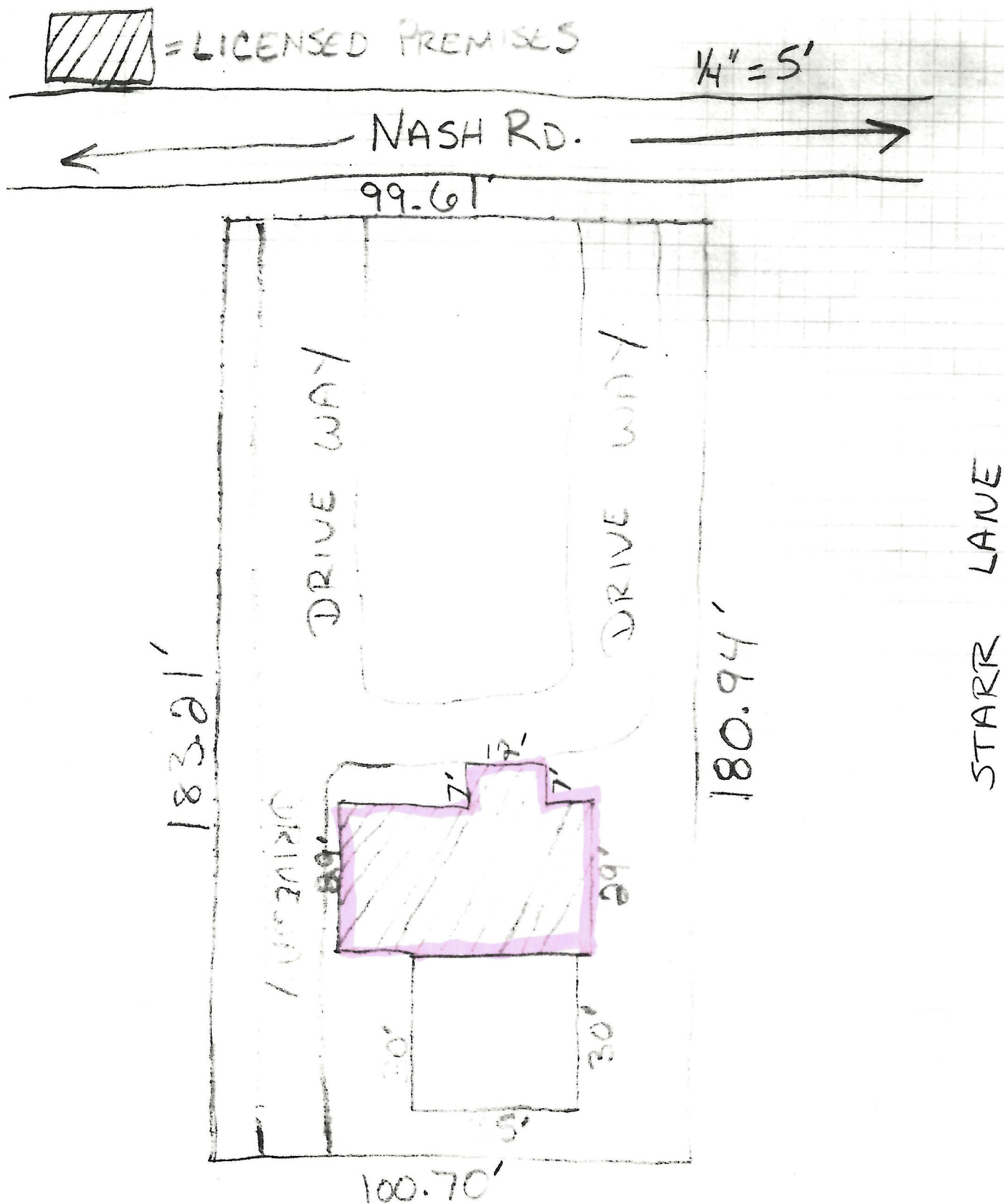


DIAGRAM #1



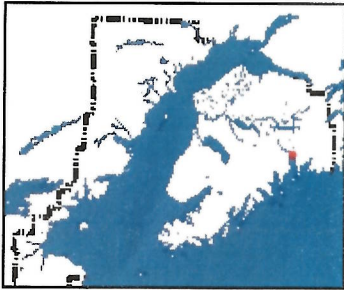
DBA Bayleaf Ent
 Lic# 31148

JJK CAMPGROUND

DIAGRAM #3

MS-02 RESPONSE
 Pg 2 of 4

33695 A Nash Road



Legend

- Mileposts
- KPB Boundary
- Place Names
 - Towns and Villages
 - City
- Highways
- Major Roads
- Roads
 - Town Medium Volume
 - Town Low/Seasonal; Other
 - Proposed
- Tax Parcels

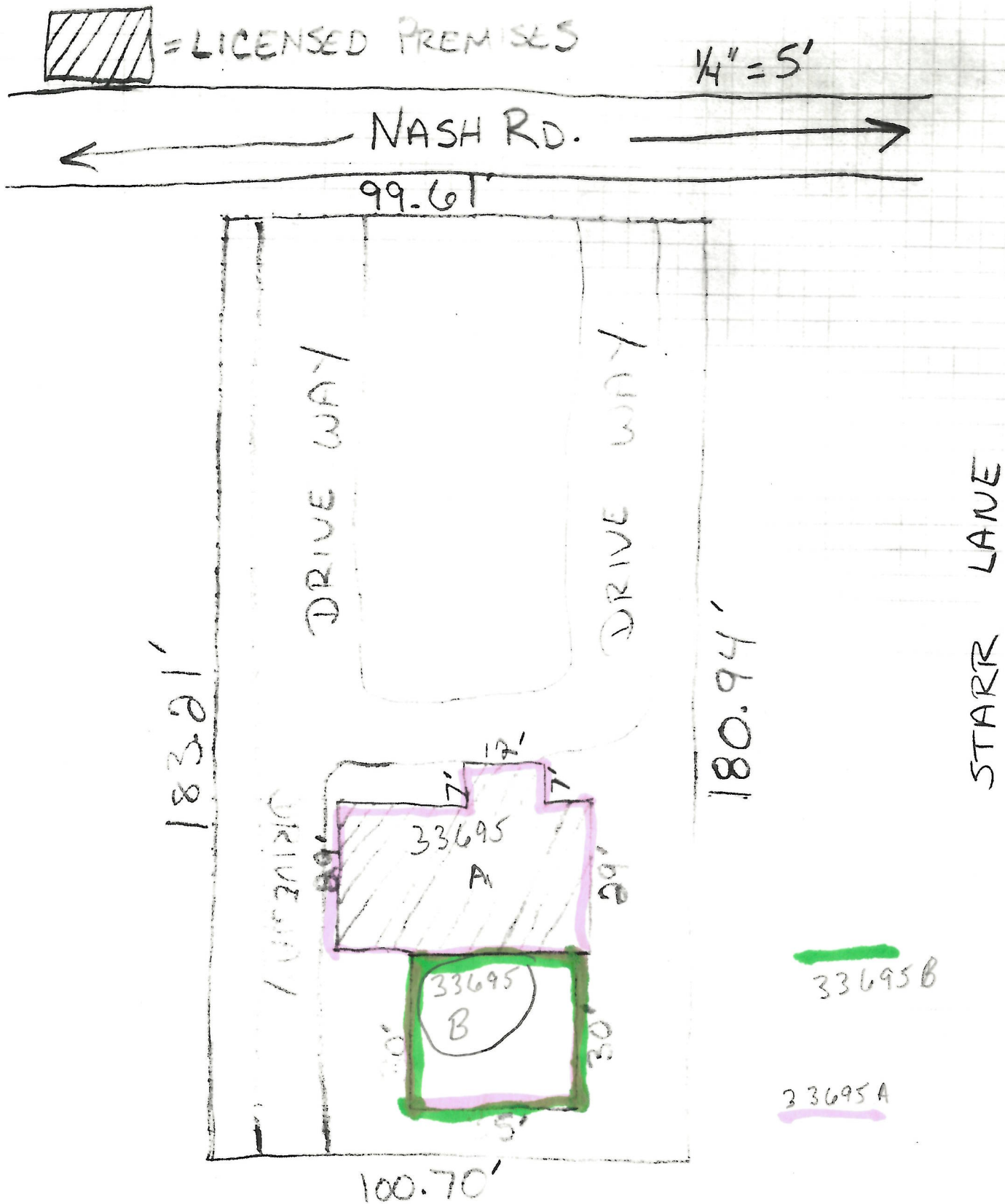
This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. It is not to be used for navigation.

Notes
Enter map notes here.

DATE PRINTED: 11/10/2022

Diagram 4

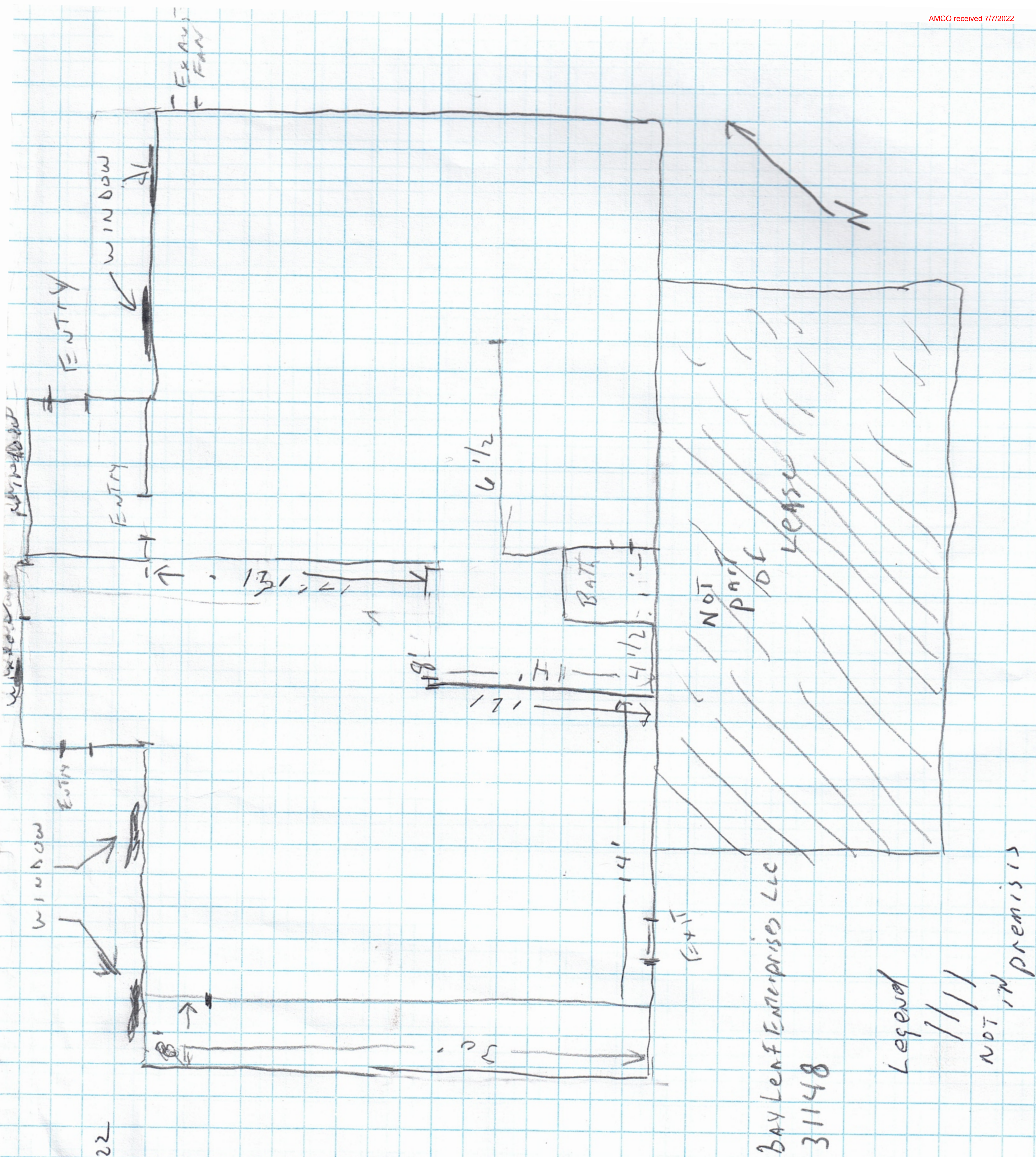
MS-02 RESPONSE
Pg 3 of 4



DBA Bayleaf Ent
Lic# 31148

JJK CAMPGROUND

Revised
7 JUL 2022





Alaska Marijuana Control Board

Form MJ-01: Marijuana Establishment Operating Plan**What is this form?**

An operating plan is required for all marijuana establishment license applications. Applicants should review **Title 17.38 of Alaska Statutes** and **Chapter 306 of the Alaska Administrative Code**. This form will be used to document how an applicant intends to meet the requirements of those statutes and regulations. If your business has a formal operating plan, you may include a copy of that operating plan with your application, but all fields of this form must still be completed per 3 AAC 306.020(c).

What must be covered in an operating plan?

Applicants must identify how the proposed premises will comply with applicable statutes and regulations regarding the following:

- Control plan for persons under the age of 21
- Security
- Business records
- Inventory tracking of all marijuana and marijuana product on the premises
- Employee qualification and training
- Health and safety standards
- Transportation and delivery of marijuana and marijuana products
- Signage and advertising

Applicants must also complete the corresponding operating plan supplemental forms (**Form MJ-03, Form MJ-04, Form MJ-05, or Form MJ-06**) to meet the additional operating plan requirements for each license type.

Section 1 – Establishment & Contact Information

Enter information for the business seeking to be licensed, as identified on the license application.

Licensee:	Bay Leaf Enterprises LLC	MJ License #:	31148		
License Type:	Limited Marijuana Cultivation Facility				
Doing Business As:	Bay Leaf Enterprises LLC				
Premises Address:	33695 Nash Rd				
City:	Seward	State:	Alaska	ZIP:	99664

Mailing Address:	PO Box 1396				
City:	Seward	State:	Alaska	ZIP:	99664

Designated Licensee:	Boyd McClure				
Main Phone:		Cell Phone:	907 7691133		
Email:	danmcclure99664@gmail.com				



Section 2 – Control Plan for Persons Under the Age of 21

2.1. Describe how the marijuana establishment will prevent persons under the age of 21 from gaining access to any portion of the licensed premises and marijuana items:

All persons will be carded when requesting entrance into facility. The only entrance into the facility will be locked at all times.

Section 3 – Security

Restricted Access Areas (3 AAC 306.710):

3.1. Describe how you will prevent unescorted members of the public from entering restricted access areas:

The front and only entrance will be locked and an employee or the owner will escort them in give them a visitor pass and have them sign in and out.

3.2. Describe your recordkeeping and processes for admitting visitors into and escorting them through restricted access areas:

I will have a register at the front door they will sign in and be issued a visitor pass and when they leave they must sign out and return the pass



Form MJ-01: Marijuana Establishment Operating Plan

3.3. Provide samples of licensee-produced identification badges that will be displayed by each licensee, employee, or agent while on the premises, and of visitor identification badges that will be worn by all visitors while in restricted access areas:

VISITOR

Bay Leaf
Enterprises

Owner

Bay Leaf
Enterprises

Employee

Bay Leaf
Enterprises

Security Alarm Systems and Lock Standards (3 AAC 306.715):

3.4. Exterior lighting is required to facilitate surveillance. Describe how the exterior lighting will meet this requirement:

The building already has a hps light installed that illuminates the entrance well.



Form MJ-01: Marijuana Establishment Operating Plan

3.5. An alarm system is required for all license types that must be activated on all exterior doors and windows when the licensed premises is closed for business. Describe the security alarm system for the proposed premises, explain how it will meet all regulatory requirements, and outline your policies and procedures regarding the actions to be taken by a licensee, employee, or agent when the alarm system alerts of an unauthorized breach:

My alarm system has door switches window breakage switches and a loud alarm. If an alarm goes off my alarm system auto calls a number via cell service you choose the number. I will have the phone number call my personnel number and I can determine the actions taken ie. call the troopers. If I cannot be reached an alternative number I automatically called. My employees are briefed as to what to do ie. look at video monitors to determine the actions they will take.

3.6. Describe your policies and procedures for preventing diversion of marijuana or marijuana product, including by employees:

Video surveillance camera, as well as training explaining the metric system, and a violation of state law.

3.7. Describe your policies and procedures for preventing loitering:

Sign depicting NO LOITERING is posted prominently on the front. If does not work I will call the State Troopers.

You must be able to certify the statement below. Read the following and then sign your initials in the box to the right:

Initials

3.8. I certify that if any additional security devices are used, such as a motion detector, pressure switch, and duress, panic, or hold-up alarm, to enhance security of the licensed premises, I will have written policies and procedures describing their use.

Bm



Form MJ-01: Marijuana Establishment Operating Plan

Video Surveillance (3 AAC 306.720):

You must be able to certify each statement below. Read the following and then sign your initials in the corresponding box: Initials

- 3.9. The video surveillance and camera recording system for the licensed premises covers each restricted access area, and both the interior and exterior of each entrance to the facility.

Ben
- 3.10. Each video surveillance recording: is preserved for a minimum of 40 days, in a format that can be easily accessed for viewing (consistent with the Alcohol & Marijuana Control Office's approved format list); clearly and accurately displays the time and date; and is archived in a format that does not permit alteration of the recorded image.

Ben
- 3.11. The surveillance room or area is clearly defined on the Form MJ-02: Premises Diagram that is submitted with this application.

Ben
- 3.12. Surveillance recording equipment and video surveillance records are housed in a designated, locked, and secure area or in a lock box, cabinet, closet or other secure area where access is limited to the licensee(s), an authorized employee, and law enforcement personnel (including an agent of the Marijuana Control Board).

Ben

3.13. Describe how the video cameras will be placed to produce a clear view adequate to identify any individual inside the licensed premises, or within 20 feet of each entrance to the licensed premises:

Two Cameras will be placed about 25 ft apart on the front of the building depicting a clear view of approaching vehicle and pedestrians, also I will place 2 video cameras indoors that will view the entire premises.

3.14. Describe the locked and secure area where video surveillance recording equipment and original copies of surveillance records will be housed and stored, and how you will ensure the area is accessible only to authorized personnel, law enforcement, or an agent of the Marijuana Control Board. If you will be using an offsite monitoring service and offsite storage of video surveillance records, your response must include how the offsite facility will meet these security requirements:

I will put the DVR in locked enclosure that is bolted to the table.

Section 4 – Business Records

Review the requirements under 3 AAC 306.755. All licensed marijuana establishments must maintain, in a format that is readily understood by a reasonably prudent business person, certain business records.

4.1. I certify that the following business records will be maintained and kept on the licensed premises:

Initials

- a. all books and records necessary to fully account for each business transaction conducted under my license for the current year and three preceding calendar years (*records for the last six months must be maintained on the licensed premises; older records may be archived on or off-premises*);
- b. a current employee list setting out the full name and marijuana handler permit number of each licensee, employee, and agent who works at the marijuana establishment;
- c. the business contact information for vendors that maintain video surveillance systems and security alarm systems for the licensed premises;
- d. records related to advertising and marketing;
- e. a current diagram of the licensed premises, including each restricted access area;
- f. a log recording the name, and date and time of entry of each visitor permitted into a restricted access area;
- g. all records normally retained for tax purposes;
- h. accurate and comprehensive inventory tracking records that account for all marijuana inventory activity from seed or immature plant stage until the retail marijuana or retail marijuana product is sold to a consumer, to another marijuana establishment, or destroyed;
- i. transportation records for marijuana and marijuana product, as required by 3 AAC 306.750(f); and
- j. registration and inspection reports of scales registered under the Weights and Measures Act, as required by 3 AAC 306.745.

Bm

Bm

Bm

Bm

Bm

Bm

Bm

Bm

Bm

Bm

4.2. A marijuana establishment is required to exercise due diligence in preserving and maintaining all required records. Describe how you will prevent records and data, including electronically maintained records, from being lost or destroyed:

All records will be located on my laptop computer which will be backed up to the cloud daily.



Form MJ-01: Marijuana Establishment Operating Plan

Section 5 – Inventory Tracking of All Marijuana and Marijuana Product

Review the requirements under 3 AAC 306.730. All licensed marijuana establishments must use a marijuana inventory tracking system capable of sharing information with Metrc to ensure all marijuana cultivated and sold in the state, and each marijuana product processed and sold in the state, is identified and tracked from the time the marijuana is propagated from seed or cutting, through transfer to another licensed marijuana establishment, or use in manufacturing a marijuana product, to a completed sale of marijuana or marijuana product, or disposal of the harvest batch of marijuana or production lot of marijuana product.

You must be able to certify each statement below. Read the following and then sign your initials in the corresponding box: Initials

5.1. My marijuana establishment will be using Metrc, and if any other tracking software is used, it will be capable of sharing information with Metrc.

Am

5.2. All marijuana delivered to a marijuana establishment will be weighed on a scale registered in compliance with 3 AAC 306.745.

Am

5.3. My marijuana establishment will use registered scales in compliance with AS 45.75.080 (Weights and Measures Act), as required by 3 AAC 306.745.

Am

Section 6 – Employee Qualification and Training

Review the requirements under 3 AAC 306.700. All licensees, and every employee or agent of the marijuana establishment who sells, cultivates, manufactures, tests, or transports marijuana or a marijuana product, or who checks the identification of a consumer or visitor, must obtain a marijuana handler permit from the board before being licensed or beginning employment at a marijuana establishment.

You must be able to certify each statement below. Read the following and then sign your initials in the corresponding box: Initials

6.1. All licensees, and each employee or agent of the marijuana establishment who sells, cultivates, manufactures, tests, or transports marijuana or marijuana product, or who checks the identification of a consumer or visitor, shall obtain a marijuana handler permit from the board before being licensed or beginning employment at the marijuana establishment.

Am

6.2. Each licensee, employee, or agent who is required to have a marijuana handler permit shall keep that person's marijuana handler permit card in that person's immediate possession (or a valid copy on file on the licensed premises) when on the licensed premises.

Am

6.3. Each licensee, employee, or agent who is required to have a marijuana handler permit shall ensure that that person's marijuana handler permit card is valid and has not expired.

Am

6.4. Describe any in-house training that will be provided to employees and agents (apart from a marijuana handler course):

NONE No Employees

Section 7 – Health and Safety Standards

Review the requirements under 3 AAC 306.735.

You must be able to certify each statement below. Read the following and then sign your initials in the corresponding box: Initials

7.1. I understand that a marijuana establishment is subject to inspection by the local fire department, building inspector, or code enforcement officer to confirm that health or safety concerns are not present.

Bm

7.2. I have policies regarding health and safety standards (including: ensuring a person with an illness or infection does not come into contact with marijuana or marijuana product; good hygienic practices; cleaning and maintenance of equipment and the premises; pest deterrence; chemical storage; sanitation principles; and proper handling of marijuana and marijuana product) and will take all reasonable measures and precautions to ensure that they are met or exceeded.

Bm

7.3. I have policies to ensure that any marijuana or marijuana product that has been stored beyond its usable life, or was stored improperly, is not salvaged and returned to the marketplace.

Bm

7.4. I have policies to ensure that in the event information about the age or storage conditions of marijuana or marijuana product is unreliable, the marijuana or marijuana product will be handled in accordance with 3 AAC 306.735(d).

Bm

Answer "Yes" or "No" to each of the following questions:

Yes No

7.5. Adequate and readily accessible toilet facilities that are maintained and in good repair and sanitary condition are clearly indicated on my Form MJ-02: Premises Diagram.



7.6. Convenient handwashing facilities with running water at a suitable temperature are clearly indicated on my Form MJ-02: Premises Diagram.



7.7. If you answered "No" to either 7.5 or 7.6 above, describe how toilet and/or handwashing facilities are made accessible, as required by 3 AAC 306.735(b)(2):

Section 8 – Transportation and Delivery of Marijuana and Marijuana Products

Review the requirements under 3 AAC 306.750.

8.1. Describe how marijuana or marijuana product will be prepared, packaged, and secured for shipment. Include a description of the type of locked, safe, and secure storage compartments to be used in vehicles transporting marijuana or marijuana product:

Marijuana will be transported in a plastic box 2x3x2 pad locked and placed in a locked trunk.
Marijuana will be packaged in a plastic bag with a metric label affixed to it.



Form MJ-01: Marijuana Establishment Operating Plan

You must be able to certify each statement below. Read the following and then sign your initials in the corresponding box: Initials

8.2. The marijuana establishment from which a shipment of marijuana or marijuana product originates will ensure that any individual transporting marijuana shall have a marijuana handler permit required under 3 AAC 306.700.

Bm

8.3. The marijuana establishment that originates the transport of any marijuana or marijuana product will use the marijuana inventory tracking system to record the type, amount, and weight of marijuana or marijuana product being transported, the name of the transporter, the time of departure and expected delivery, and the make, model, and license plate number of the transporting vehicle.

Bm

8.4. The marijuana establishment that originates the transport of any marijuana or marijuana product will ensure that a complete printed transport manifest on a form prescribed by the board must be kept with the marijuana or marijuana product at all times during transport.

Bm

8.5. During transport, any marijuana or marijuana product will be in a sealed package or container in a locked, safe, and secure storage compartment in the vehicle transporting the marijuana or marijuana product, and the sealed package will not be opened during transport.

Bm

8.6. Any vehicle transporting marijuana or marijuana product will travel directly from the shipping marijuana establishment to the receiving marijuana establishment, and will not make any unnecessary stops in between except to deliver or pick up marijuana or marijuana product at any other licensed marijuana establishment.

Bm

8.7. When the marijuana establishment receives marijuana or marijuana product from another licensed marijuana establishment, the recipient of the shipment will use the marijuana inventory tracking system to report the type, amount, and weight of marijuana or marijuana product received.

Bm

8.8. The marijuana establishment will refuse to accept any shipment of marijuana or marijuana product that is not accompanied by the transport manifest.

Bm

Section 9 – Signage and Advertising

Review the requirements under 3 AAC 306.770.

9.1. Describe any signs that you intend to post on your establishment, including quantity, dimensions, graphics, and location on your establishment (photos or drawings may be attached):

None

Form MJ-01: Marijuana Establishment Operating Plan

9.2. Describe any advertising you intend to distribute for your establishment. Include medium types and business logos (photos or drawings may be attached):

None

I declare under penalty of unsworn falsification that this form, including all accompanying schedules and statements, is true, correct, and complete.

Bryk. Ma

Signature of licensee

Boyd McClure

Printed name of licensee



[Signature]
Notary Public in and for the State of Alaska

My commission expires: 11.14.2022

Subscribed and sworn to before me this 5th day of November, 2021.



Form MJ-01: Marijuana Establishment Operating Plan

Section 2 – Control Plan for Persons Under the Age of 21

2.1. Describe how the marijuana establishment will prevent persons under the age of 21 from gaining access to any portion of the licensed premises and marijuana items:

All persons entering will show valid ID. Use of surveillance cameras 24/7 . All entrances and exits will be locked at all times. There will be signs posted at all entrances "no one under the age of 21 allowed "

Section 3 – Security

Restricted Access Areas (3 AAC 306.710):

3.1. Describe how you will prevent unescorted members of the public from entering restricted access areas:

All entrances and exits will be locked at all times. All locks will be commercial grade, signs "restricted access " and "visitors must be escorted " and "video surveillance" Five visitor limit per escort.

3.2. Describe your recordkeeping and processes for admitting visitors into and escorting them through restricted access areas:

I will have a register at the front door visitor's will be required to sign in and sign out. No more than five per escort.

3.3. Provide samples of licensee-produced identification badges that will be displayed by each licensee, employee, or agent while on the premises, and of visitor identification badges that will be worn by all visitors while in restricted access areas:

Bay Leaf Enterprise

Boyd McClure

Owner



907 769 1133

VISITOR

Bay Leaf
Enterprises

Security Alarm Systems and Lock Standards (3 AAC 306.715):

3.4. Exterior lighting is required to facilitate surveillance. Describe how the exterior lighting will meet this requirement:

All points of entry and exits will have a 80 watt security light that will illuminate the whole building including the windows.



Form MJ-01: Marijuana Establishment Operating Plan

3.5. An alarm system is required for all license types that must be activated on all exterior doors and windows when the licensed premises is closed for business. Describe the security alarm system for the proposed premises, explain how it will meet all regulatory requirements, and outline your policies and procedures regarding the actions to be taken by a licensee, employee, or agent when the alarm system alerts of an unauthorized breach:

My security system includes door switches on all points of entry and exits, breakage detectors for windows which emits a loud alarm, plus the system alerts me by telephone at which time I will determine what course of action to take troopers or fire department, if I cannot be reached an alternative number is automatically called. I have 24/7 video surveillance to monitor all entrances and exits and windows.

3.6. Describe your policies and procedures for preventing diversion of marijuana or marijuana product, including by employees:

Exterior entrances and exits will have exterior lights and 24/7 video surveillance, plus all doors will have security switches and a breakage alarm for the windows. The owner and employee have a key fob with sos button that will notify the state troopers of any breach of premises. I understand I will have to notify AMCO, Department of Commerce as soon as possible within 24 hours of any unauthorized access to the premises. All doors will have commercial grade locks.

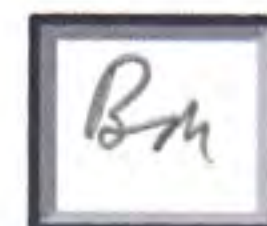
3.7. Describe your policies and procedures for preventing loitering:

A sign depicting NO LOITERING if this not sufficient I will notify state troopers.

You must be able to certify the statement below. Read the following and then sign your initials in the box to the right:

Initials

3.8. I certify that if any additional security devices are used, such as a motion detector, pressure switch, and duress, panic, or hold-up alarm, to enhance security of the licensed premises, I will have written policies and procedures describing their use.





Alaska Marijuana Control Board

Form MJ-00: Application Certifications**What is this form?**

This application certifications form is required for all marijuana establishment license applications. Each person signing an application for a marijuana establishment license must declare that he/she has read and is familiar with AS 17.38 and 3 AAC 306.

This form must be completed and submitted to AMCO's main office by each proposed licensee (as defined in 3 AAC 306.020(b)(2)) before any license application will be considered complete.

Section 1 – Establishment Information

Enter information for the business seeking to be licensed, as identified on the license application.

Licensee:	Bay Leaf Enterprises LLC	License Number:	31148		
License Type:	Limited Cultivation Facility				
Doing Business As:	Bay Leaf Enterprises LLC				
Premises Address:	33695 Nash Rd				
City:	Seward	State:	AK	ZIP:	99664

Section 2 – Individual Information

Enter information for the individual licensee.

Name:	Boyd McClure
Title:	Owner

Section 3 – Other Licenses

Ownership and financial interest in other licenses:

Yes No

Do you currently have or plan to have an ownership interest in, or a direct or indirect financial interest in another marijuana establishment license?

☐☒

If "Yes", which license numbers (for existing licenses) and license types do you own or plan to own?



Alaska Marijuana Control Board

Form MJ-00: Application Certifications**Section 4 – Certifications**

Read each line below, and then sign your initials in the box to the right of each statement:

Initials

I certify that I have not been convicted of a felony in any state or the United States, including a suspended imposition of sentence, for which less than five years have elapsed from the time of the conviction to the date of this application.

I certify that I am not currently on felony probation or felony parole.

I certify that I have not been found guilty of selling alcohol without a license in violation of AS 04.11.010.

I certify that I have not been found guilty of selling alcohol to an individual under 21 years of age in violation of 04.16.051 or AS 04.16.052.

I certify that I have not been convicted of a misdemeanor crime involving a controlled substance, violence against a person, use of a weapon, or dishonesty within the five years preceding this application.

I certify that I have not been convicted of a class A misdemeanor relating to selling, furnishing, or distributing marijuana or operating an establishment where marijuana is consumed within the two years preceding this application.

I certify that my proposed premises is not within 500 feet of a school ground, recreation or youth center, a building in which religious services are regularly conducted, or a correctional facility, as set forth in 3 AAC 306.010(a).

I certify that my proposed premises is not located in a liquor licensed premises.

I certify that I meet the residency requirement under AS 43.23 for a permanent fund dividend in the calendar year in which I am initiating this application.

I certify that all proposed licensees (as defined in 3 AAC 306.020(b)(2)) have been listed on my online marijuana establishment license application. Additionally, if applicable, all proposed licensees have been listed on my application with the Division of Corporations.

I certify that I understand that providing a false statement on this form, the online application, or any other form provided by AMCO is grounds for denial of my application.



Alaska Marijuana Control Board

Form MJ-00: Application Certifications

Read each line below, and then sign your initials in the box to the right of each statement:

Initials

I certify and understand that I must operate in compliance with the Alaska Department of Labor and Workforce Development's laws and requirements pertaining to employees.



I certify and understand that I must operate in compliance with each applicable public health, fire, safety, and tax code and ordinance of this state and the local government in which my premises is located.



Read each line below, and then sign your initials in the box to the right of only the applicable statement:

Initials

Only initial next to the following statement if this form is accompanying an application for a marijuana testing facility license:

I certify that I do not have an ownership in, or a direct or indirect financial interest in a retail marijuana store, a marijuana cultivation facility, or a marijuana products manufacturing facility.



Only initial next to the following statement if this form is accompanying an application for a retail marijuana store, a marijuana cultivation facility, or a marijuana products manufacturing facility license:

I certify that I do not have an ownership in, or a direct or indirect financial interest in a marijuana testing facility license.

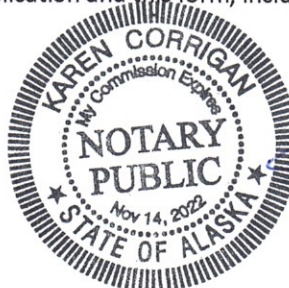


All marijuana establishment license applicants:

As an applicant for a marijuana establishment license, I declare under penalty of unsworn falsification that I have read and am familiar with AS 17.38 and 3 AAC 306, and that the online application and this form, including all accompanying schedules and statements, is true, correct, and complete.

Boyd D. McClure
Signature of licensee

Boyd McClure
Printed name of licensee



[Signature]
Notary Public in and for the State of Alaska

My commission expires: 11-14-2022

Subscribed and sworn to before me this 5th day of NOVEMBER, 2021.

Alaska Department of Commerce, Community, and Economic Development

Division of Corporations, Business, and Professional Licensing

PO Box 110806, Juneau, AK 99811-0806

This is to certify that

Bay Leaf enterprises LLC

P.O. Box 1396, Seward , AK 99664

owned by

Bay Leaf enterprises LLC

is licensed by the department to conduct business for the period

September 27, 2021 to December 31, 2022
for the following line(s) of business:

11 - Agriculture, Forestry, Fishing and Hunting



This license shall not be taken as permission to do business in the state without having complied with the other requirements of the laws of the State or of the United States.

This license must be posted in a conspicuous place at the business location.
It is not transferable or assignable.

Julie Anderson
Commissioner

Alcohol & Marijuana Control Office

Initiating License Application

9/29/2021 6:33:57 PM


License Number: 31148**License Status:** New**License Type:** Limited Marijuana Cultivation Facility**Doing Business As:** Bay Leaf enterprise LLC**Business License Number:** 2140298**Designated Licensee:** Boyd McClure**Email Address:** danmcclure99664@gmail.com**Local Government:** Kenai Peninsula Borough**Local Government 2:****Community Council:****Latitude, Longitude:** 60.079000, -149.227000**Physical Address:**
33695 Na h rd
Seward, AK 99664
UNITED STATES**Licensee #1****Type:** Entity**Alaska Entity Number:** 10174099**Alaska Entity Name:** Bay Leaf enterprises LLC**Phone Number:** 907-769-1133**Email Address:** danmcclure99664@gmail.com**Mailing Address:** P.O. Box 1396
Seward, AK 99664-1396
UNITED STATES**Entity Official #1****Type:** Individual**Name:** Boyd McClure
[REDACTED]
[REDACTED]**Phone Number:** 907-769-1133**Email Address:** danmcclure99664@gmail.com**Mailing Address:** P.O. Box 1396
Seward, AK 99664
UNITED STATES**Affiliate #1****Type:** Individual**Name:** Boyd McClure
[REDACTED]
[REDACTED]**Phone Number:** 907-769-1133**Email Address:** danmcclure99664@gmail.com**Mailing Address:** P.O. Box 1396
Seward, AK 99664-1396
UNITED STATES


Kenai Peninsula Borough

Office of the Borough Clerk

MEMORANDUM

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

THRU: Michele Turner, CMC, Acting Borough Clerk 

FROM: Jenny Ratky, Borough Clerk Admin. Asst. 

DATE: Tuesday, January 17, 2023

RE: Bay Leaf Enterprises LLC– Limited Marijuana Cultivation Facility - New License 31148

Kenai Peninsula Borough Code 7.30.010 provides that the Assembly shall review and make recommendations to the state on applications for new licenses located within the Borough. Accordingly, the attached application filed by Bay Leaf Enterprises LLC is being submitted to you for review and recommendation.

RECOMMENDATION:


That the Assembly approves the issuance of a letter of non-objection to the Alcohol Marijuana Control Office regarding the new Limited Marijuana Cultivation Facility license as requested by **Bay Leaf Enterprises LLC** with the recommendation that the following conditions be placed on the state license pursuant to 3 AAC 306.060(b):

1. The marijuana establishment shall conduct their operation consistent with the site plan submitted to the Kenai Peninsula Borough.
2. There shall be no parking in borough rights-of-way generated by the marijuana establishment.
3. The marijuana establishment shall remain current in all Kenai Peninsula Borough tax obligations consistent with KPB 7.30.020(A).

Kenai Peninsula Borough
Office of the Borough Mayor

MEMORANDUM

TO: Brent Johnson, Assembly President
Members of the Borough Assembly

FROM: Mike Navarre, Borough Mayor 

DATE: January 05, 2023

RE: Appointment to Advisory Planning Commission

In accordance to KPB 21.02.060, the applicant listed below has been verified as a resident within the boundaries to be represented, as well as a registered voter within the precincts covered by the commission boundaries.

I hereby submit my recommendation for confirmation by the Assembly.

ANCHOR POINT ADVISORY PLANNING COMMISSION

Jill Gunnerson

Seat E

Term Expires 09/30/2024

Thank you for your consideration.

Kenai Peninsula Borough
Office of the Borough Clerk

MEMORANDUM

TO: Mike Navarre, Borough Mayor
THRU: Robert Ruffner, Planning Director
FROM: Michele Turner, Acting Borough Clerk (MT)
DATE: 01/05/2023
RE: Advisory Planning Commission Applications for Appointment

The notice of vacancy for Advisory Planning Commission Seats were advertised on August 1, 2022. The application period closed on August 30, 2022. Seats have remained open until filled.

Per KPB 21.02.060, the applicants listed below have been verified as:

- 1.) residents within the commission boundaries in which they are applying, and
- 2.) registered voters within the precincts covered by the commission boundaries.

The following applications are being submitted for your consideration.

ANCHOR POINT ADVISORY PLANNING COMMISSION

Seat E
Seat E

Jill Gunnerson
Barry White

Thank you.

Kenai Peninsula Borough

Planning Department

Advisory Planning Commission Application Submitted 2022-12-09 12:36:14


APC/Seat: Anchor Point – Seat E (Term Expires 09/30/2024)

Name Jill Gunnerson	Mobile Phone 907-244-6482
Home Phone	Work Phone 9072446482
Email jillgunnerson@gmail.com	Date of Birth [REDACTED]
SSN	Voter #
Residence Address 33015 Shorebird Ln Anchor Point , Alaska 99556	Mailing Address Po box 774 Anchor Point , AK 99556
How long have you lived in the area served by this Advisory Planning Commission? 16 years	What knowledge, experience, or expertise will you bring to this board? I am currently a realtor. I have years of experience working with a local surveyor. I have my bachelor's degree in psychology. I know how to work the borough GIS mapping system and familiar with reading plats. I like doing research and working together to find solutions.

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: January 05, 2023

Assembly Request / Response

None

Agreements and Contracts

Authorization to Award a Contract for RFP23-007 BAB Roof Replacement

Other

Withdrawal from FEMA's voluntary floodplain Community Rating System Program

Soldotna Public Safety Communication Center: Text-to-911

Litigation Status Report—Quarter Ending 12/31/22

Kenai Peninsula Borough

Purchasing & Contracting

MEMORANDUM

TO: Mike Navarre, Borough Mayor

THRU: John D. Hedges, Purchasing & Contracting Director *JH*

FROM: Carmen Vick, Project Manager *CV*

DATE: December 30, 2022

RE: Authorization to Award a Contract for RFP23-007 BAB Roof Replacement

On December 2, 2022, the Kenai Peninsula Borough Purchasing & Contracting Department formally solicited proposals for RFP23-007 BAB Roof Replacement. The request for proposals was advertised in the Peninsula Clarion and the Anchorage Daily News on December 2, 2022.

The project consists of procuring professional architectural and engineering design and CA services for the purpose of preparing comprehensive estimates and construction documents to be used for soliciting bids for construction to replace the roof at the Kenai Peninsula Borough Administration Building, 144 N Binkley St, Soldotna, AK 99669.

On the due date of December 20, 2022, two (2) proposals were received and reviewed by a review committee as follows:

<u>FIRMS</u>	<u>LOCATION</u>	<u>TOTAL SCORE</u>
K+A Designstudios	Kenai, Alaska	272
Architects Alaska	Anchorage, Alaska	251

The highest-ranking proposal, which includes a cost factor, was submitted by K+A Designstudios with a lump sum cost proposal of \$93,243.00. The proposal review committee recommends award of a contract to K+A Designstudios of Kenai, Alaska. Your approval for this award is hereby requested.

Funding of this contract will be charged to account number 407.94910.23472.49311.

Mike Navarre

Mike Navarre, Borough Mayor

1/5/2023

Date

NA

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No.	407.94910.23472.49311
Amount	\$93,243.00
By: <i>CV SD for Bt</i>	Date: 12/30/2022

Kenai Peninsula Borough
Donald E. Gilman River Center

MEMORANDUM

TO: Brent Johnson, Assembly President
KPB Assembly Members

THRU: Mike Navarre, Mayor *MN*
Robert Ruffner, Planning Director *RR* for RR

FROM: Samantha Lopez, River Center Manager *SL*

DATE: December 30, 2022

RE: Withdrawal from FEMA's voluntary floodplain Community Rating System Program

This memo serves to inform the Assembly that the Kenai Peninsula Borough (KPB) has chosen to end its participation in the Federal Emergency Management Agency's (FEMA) Community Rating System (CRS) Program.

The KPB participates in FEMA's National Flood Insurance Program (NFIP), a program that provides federally backed flood insurance within communities that enact and enforce floodplain regulations. KPB has participated in the NFIP since 1988, and has since developed a very successful floodplain management program.

In 2010, the borough joined FEMA's optional CRS program. The CRS is a voluntary program that NFIP communities can participate in to provide discounts to flood insurance policyholders throughout their communities. Communities are "classed" based on a number of variables: level of management, total floodplain acreage, community outreach, etc. The more regulation and involvement a community has, the lower their "class", and the higher insurance premium discounts will be.

During participation, KPB was a Class 9 CRS community, affording policyholders a 5% discount on their flood insurance premiums. At present, there are 210 flood insurance policies throughout the borough, resulting in a cumulative annual savings of \$4,671.30, and saving each policyholder an average of \$22.24 per year. During a cost/benefit analysis, staff found that the resources required to continue in the CRS exceeded the intended benefits of the program. While we recognize

and appreciate the value that the CRS program has provided, it is also recognized that the CRS was not designed for smaller communities, where the hours to maintain the program far exceed the savings generated by it.

The borough will continue to implement various components of the CRS program, focusing more on education, outreach and administration of our current, comprehensive floodplain program. Lastly, because the borough will continue to participate in the NFIP, leaving the CRS program will not affect the borough's ability to rejoin in the future, nor its ability to obtain flood insurance or disaster assistance.

Thank you for your consideration.



Donald E. Gilman River Center

514 Funny River Road, Soldotna, Alaska 99669 • (907) 714-2460 • (907) 260-5992 Fax

A Division of the Planning Department

Mike Navarre
Borough Mayor

December 20, 2022

John Graves, CFM
Senior NFIP Specialist
John.graves@fema.dhs.gov

Subject: Withdrawal from Community Rating System Program (CRS)

Mr. Graves:

This letter serves as formal notification that the Kenai Peninsula Borough (020012) will be ending our participation in the voluntary Community Rating System (CRS) Program, effective immediately. During a recent cost/benefit analysis, we found that staff resources required to continue program participation, by way of documenting points and compliance, exceeded the identified benefits of the program.

With only 210 NFIP policies within the Special Flood Hazard Area in the Kenai Peninsula Borough, we believe that staff time is more appropriately focused on education, outreach and administration of our current, comprehensive floodplain program. We recognize and appreciate the value the CRS program has provided for us in previous years, with its comprehensive approach to floodplain management and the educational opportunities on safe building practices that minimize flood damage and hazards. We will continue to implement various components of the program; however, it will be without the extensive re-certification process required to maintain compliance in the program.

The Kenai Peninsula Borough would also like to reserve the right to join the program in the future should we find that the value of doing so would benefit our broader community.

Please let us know should you have questions.

Sincerely,

Mayor Mike Navarre

cc: Scott Van Hoff, Regional Flood Insurance Liaison, Scott.vanhoff@fema.dhs.gov
Mitch Paine, Floodplain Management Specialist, Mitch.paine@fema.dhs.gov
Harmony Curtis, Alaska NFIP Coordinator, harmony.curtis@alaska.gov
Bradley Arkens, CRS Resource Specialist, Bradley.Arkens@verisk.com
Teresa Alvelo, CRS Resource Specialist, Teresa.Alvelo@verisk.com



INSURANCE SERVICES OFFICE, INC.

1000 Bishops Gate Blvd, Suite 300, P.O. Box 5404, Mt. Laurel, New Jersey 08054
Phone: (856) 787-0412 or (800) 444-4554 FAX 1-800-777-3929

Mail Correspondence to: P.O. Box 551 Homedale Idaho 83628 (541) 786-4724

January 6, 2023

Nancy Carver
Floodplain Planner
Kenai Peninsula Borough
514 Funny River Road
Soldotna, AK 99669

Dear Nancy:

This is to advise that I am recommending to DHS/FEMA, by copy of this letter, that the Community Rating System (CRS) Classification for the Kenai Peninsula Borough retrograde from the current CRS Class 9 to CRS Class 10 effective October 1, 2023.

This anticipated retrogression is due to the community's voluntary withdraw from the CRS Program.

Should conditions change and your community would like to reapply to the Community Rating System Program, a new application will need to be completed. Please advise if I can be of any assistance in this effort or can answer any questions regarding CRS.

Respectfully yours,

Teresa Alvelo

Teresa Alvelo, CFM
Verisk/ISO CRS Specialist

cc: Mike Navarre, Mayor
Scott Van Hoff, Regional Flood Liaison
Mitch Paine, CFM, FEMA Region X
Harmony Curtis, Alaska NFIP Coordinator
Amanda Gowans, ISO/CRS Technical Coordinator



Soldotna Public Safety Communication Center

KENAI PENINSULA BOROUGH 911 LAUNCHES TEXT-TO-911

CALL IF YOU CAN; TEXT IF YOU CAN'T Beginning January 16, 2023 most citizens in the Kenai Peninsula Borough will be able to send a short message service (SMS) text message to 911 for emergency help **when unable to make a 911 voice call**. This service is available to wireless customers when within range of a cell tower.

Text-to-911 was not developed as a replacement to a voice call to 911 in an emergency situation, but rather as an enhancement to reach 911 services in three specific situations: 1) The caller is hearing/voice impaired 2) a medical emergency renders the person incapable of speech, or 3) when speaking out loud would put the caller in danger, such as a home invasion, a domestic violence incident, or an active shooter scenario. When in an emergency situation, all wireless callers should remember to **CALL IF YOU CAN; TEXT IF YOU CAN'T**.

Kenai Peninsula Borough citizens should keep the following important information in mind if they have to text 911:

- Customers should use the texting option **ONLY** when calling 911 is **NOT** an option.
- Calling 911 is still the most efficient way to reach emergency help. Texting is not always instantaneous, which is critical during a life-threatening emergency. It may take slightly longer to dispatch emergency services in a text-to-911 situation because of the time involved: Someone must enter the text; the message must go over the network and the 911 telecommunicator must read the text and then text back the caller.
- Providing location information and nature of the emergency in the first text message is imperative, since the 911 center will initially only receive a cell tower location.
- Text abbreviations, emoticons or slang should never be used so that the intent of the dialogue can be as clear as possible.

- Customers must be in range of cell towers. If customers are outside or near the edge of a coverage area, the message may not reach the 911 center.
- Texts to 911 from areas where the service is not available will receive a “bounce back” message telling them to make a voice call.
- Wireless customers must have mobile phones that are capable of sending text messages. The texting function should only be used for emergency situations that require an immediate response from police, fire or emergency medical services. For non-emergency situations, customers should contact their local public safety agency via a 10-digit non-emergency number.
- Text-to-911 should only be used to communicate between emergency help and the texter. No pictures, video, other attachments, or other recipients can be appended to the message.
- Please note that technology keeps improving. At this time, the entire iPhone 14 lineup with Apple Watch Series 8 and Apple Watch SE do have the capability to route emergency texts to 911 via satellite connections if the device determines that there is no cell coverage available. The iPhone itself will make this determination and launch a wizard to assist the user with establishing a satellite connection to local Text-to-911 services.

Contact: Tammy Goggia-Cockrell, 911 Emergency Communications Coordinator

Soldotna Public Safety Communications Center

Email: TGoggia@kpb.us

Office: (907) 714-2496

For more detailed information go to [SPSCC Facebook Page](#)



Text-to-911

CALL IF YOU CAN; TEXT IF YOU CAN'T

Text-to-911 is a new service in the Kenai Peninsula Borough that will help those who are deaf, hard of hearing, speech impaired, and anyone who might be unsafe if they were to be heard by an intruder or abusive partner. While texting to 911 is a vital tool that increases accessibility to emergency services, the preferred method for those who can speak is to call.

If you do need to text 911 in an emergency:

- Open the text messaging program on your cell phone
- Create a new message
- Enter the numbers 911 in the "To" field
- Send the location of the emergency – including city – and the type of emergency help needed – police, fire, or medical – in the first message
- Keep text messages brief and concise.
- Type complete words, no abbreviation
- Stay with your phone and be prepared to answer questions and follow instructions from 911 call takers

There are limitations to Text-to-911 including:

- The system can only receive text, no pictures, videos, or emoji's.
- Texting can be slower than making a voice call.

Please help keep 911 available for those who need it. Do not send test texts. Text-to-911 is not for anonymous tips.



Legal Department

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2120 • (907) 714-2379 Fax

Mike Navarre
Borough Mayor

LITIGATION STATUS REPORT

TO: Brent Johnson, Assembly President
Debbie Cary, President, Board of Education
Members, Kenai Peninsula Borough Assembly
Members, Kenai Peninsula Borough School District

THRU: Mike Navarre, Mayor *MN*

FROM: Sean Kelley, Borough Attorney *SK*

DATE: January 5, 2023

RE: Litigation Status Report – Quarter Ending 12/31/22

This report includes brief descriptions of pending non-routine court cases, as well as administrative appeals and code compliance enforcement actions set for hearing before the administrative hearing officer.

A. The following is a summary of the non-routine litigation which name the Borough and/or School District as parties. This list does not include the real property tax foreclosures and numerous standard tax collection cases pursued by the Borough:

1. Halstead v. Anderson and Kenai Peninsula School District, Case No. 3KN-18-00744CI. Plaintiff has sued Mr. Anderson and the Kenai Peninsula Borough School District for damages relating to Mr. Anderson's sexual abuse of her as a minor. The complaint against the school district claims the school district failed to protect her from Mr. Anderson and seeks damages and actual attorney fees. Trial has been scheduled for the week of September 18, 2023. Discovery is ongoing.
2. Kenai Peninsula Borough School District v. Fischer, Case No. 3KN-19-00185CI. This is a subrogation case that was filed against a School District employee to recover substantial health care costs paid by the health care plan ("Plan"). The school district engaged the services of Jermain, Dunnagan & Owens to

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January 5, 2023

Re: Litigation Status Report

serve as counsel in this matter. The trial set for September 26, 2022, was vacated due to summary judgment entered in favor of plaintiff. Judgment was entered in favor of plaintiff on October 20, 2022. Post-judgment motion litigation is continuing.

3. Furie Operating Alaska, LLC. v. State of Alaska, Department of Revenue, and State Assessment Review Board, Case No. 3AN-21-06462CI. The owner of oil and gas production property appealed the State Assessment Review Board's decision upholding the tax assessment of the property performed by the State of Alaska, Department of Revenue pursuant to AS 43.56. The borough entered an appearance in this matter and has engaged Jessica Dillon a partner at the firm Dillon & Findley in Anchorage to act as lead counsel in this matter. This appeal has been consolidated with the taxpayer's 2022 tax assessment appeal. A non-jury trial is currently scheduled in this matter for the week of July 24, 2023.
4. Smith v. CES, Case No. 3KN-22-00444CI. This is a complaint for medical malpractice filed by the plaintiffs against CPGH, various doctors, nurses and CES for actions taken in response to a medical situation and subsequent treatments rendered. KPB filed a motion to dismiss CES and its employees from this action which is being briefed by the parties prior to the court's ruling. CES is not a separate entity from the Borough and, at a minimum, the complaint will need to be corrected prior to the Borough answering the complaint in this matter.
5. Martin v. KPB, Case No. 3KN-22-00644CI. This is a complaint for automobile-related personal injury filed on behalf of plaintiff, Ms. Martin. The Borough has entered an appearance in this matter and answered the complaint. An informal conference has been scheduled for January 10, 2023, to establish the pretrial deadlines and trial date.
6. Wastell v. KPB, Pierce, Case No. 3KN-22-00765CI. This is a complaint filed on behalf of the plaintiff for damages stemming from alleged sexual harassment and other acts committed by former Borough Mayor Pierce. The plaintiff alleges the Borough is liable for damages due to the fact that the Borough Mayor should be considered an employee of the Borough, and alleging that the Borough failed to adequately protect the Plaintiff who was also an employee of the Borough at the time of the alleged wrongful acts. KPB's motion to dismiss Plaintiff's claims for punitive damages has been briefed by the parties and is pending the court's ruling. An answer to the complaint will

Page -3-

January 5, 2023

Re: Litigation Status Report

be filed once the court rules on the motion to dismiss. A pretrial scheduling conference will then be held to establish pretrial and trial deadlines. No trial date has been set.

B. The following is a summary of open or recently resolved administrative appeals from Planning Commission decisions:

1. Case No. 2020-01 PCA, Beachcomber. Neighboring property owners appealed a Planning Commission's decision approving a modification of a conditional use material site permit. The Borough filed a notice of non-participation in the matter and is not a party to the appeal. This case is stayed currently.
2. Case No. 2022-04 PCA, Bilben, et al. v. KPB PC, Beachcomber LLC, et al. This case involves a second appeal to the Office of Administrative Hearings ("OAH") of the Planning Commission's approval of a conditional land use permit ("CLUP") after the matter was remanded from the superior court. The Borough did not participate in the superior court appeal because only private interests were at stake. The superior court issued its decision remanding the matter to the Planning Commission for additional findings. Subsequently, Beachcomber, LLC filed an appeal to the Alaska Supreme Court. The Supreme Court denied the petition for review and the matter went before the Planning Commission on remand. In January 2022, the Planning Commission determined not to reopen the record for new evidence or public comment, and to deliberate in adjudicative session. On April 11, 2022, the Planning Commission voted to deny the CLUP on remand. Beachcomber, LLC appealed to OAH. After briefing and a hearing, OAH released its Decision on December 6, 2022, upholding the Planning Commission's denial of the CLUP.
3. Case No. 2022-05 PCA, Kossler. This is an appeal of the Planning Commission's decision to uphold the June 23, 2022, Plat Committee's conditional preliminary approval of East Oyster Cove Subdivision Preliminary Plat as requested by applicant, Alaska Mental Health Trust Authority. The OAH has issued the pre-hearing briefing schedule and tentatively scheduled the hearing for February 9, 2023.
4. Case No. 2022-06 PCA, Taylor. The Planning Commission conditionally approved a building setback encroachment permit. Neighboring property owners appealed to OAH. The Borough filed a Motion to Dismiss, which

Page -4-

January 5, 2023

Re: Litigation Status Report

OAH denied. OAH issued the pre-hearing briefing schedule and tentatively scheduled the hearing for February 23, 2023.

C. Settlements executed on behalf of the Borough in the quarter ending 12/31/22.

1. None

Introduced by:	Ecklund
Date:	01/03/23
Action:	Tabled
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2023-005**

**A RESOLUTION OF INTENT BY THE KENAI PENINSULA BOROUGH ASSEMBLY
ESTABLISHING THAT FINANCING OF ENERGY AND RESILIENCE
IMPROVEMENT PROJECTS THROUGH ASSESSMENTS SERVES A VALID PUBLIC
PURPOSE AND RELATED MATTERS (PACER PROGRAM)**

WHEREAS, the Alaska State Legislature enacted the Municipal Property Assessed Clean Energy and Resilience Act ("PACER Act"), Alaska Statutes 29.55, as amended, restated, supplemented or otherwise modified from time-to-time, authorizing local governments to establish an energy and resilience improvement assessment program; and

WHEREAS, the PACER Act allows local governments to finance the installation or modification of permanent improvements, fixed to existing privately owned commercial or industrial property, to achieve reduced energy consumption or demand in areas designated by local governments; and

WHEREAS, installation or modification by property owners of energy and resilience improvement upgrades to commercial or industrial property in the Kenai Peninsula Borough will serve a public purpose by reducing energy costs, stimulating the economy, improving property valuation, reducing greenhouse gas emissions and creating jobs; and

WHEREAS, the Kenai Peninsula Borough, finds that it is convenient and advantageous to establish a program under the PACER Act and designate the geographic area on an areawide basis within the Kenai Peninsula Borough's jurisdiction as an area within which Kenai Peninsula Borough and the record owners of qualified real property may participate under a program established by the PACER Act and enter into financing arrangements in connection therewith;

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

SECTION 1. The recitals to this resolution are true and correct and are incorporated into this resolution for all purposes.

SECTION 2. For purposes of this resolution, "PACER assessment" shall mean those assessments authorized by the PACER Act.

SECTION 3. The Kenai Peninsula Borough hereby determines that establishing a property assessed clean energy and resilience program and financing energy and resilience improvement projects through PACER assessment serves a valid public purpose by reducing energy costs, stimulating the economy, improving property valuation, reducing greenhouse gas emissions, and creating jobs.

SECTION 4. The Kenai Peninsula Borough intends to allow privately owned commercial or industrial property owners to make contractual PACER assessment to repay financing for qualified energy and resilience improvement projects under, and pursuant to, the terms of a municipal property assessed clean energy and resilience program subject to, and pursuant to, the PACER Act (“PACER Program”).

SECTION 5. Qualified energy and resilience new construction or improvement projects under the PACER Program will include those projects which are fixed to new construction or existing privately owned commercial or industrial property and that (1) are energy improvement projects designed to reduce energy consumption or demand, energy costs, or emissions affecting local air quality, including a product, device, or interacting group of products or devices that use energy technology to generate electricity, provide thermal energy, or regulate temperature; or (2) improve building resilience; resilience improvement projects include projects for seismic improvements, storm water management, flood mitigation and protection, fire hardening, fire or wind resistance, erosion management, snow load management, micro grids for energy storage and backup power generation, water or wastewater efficiency including reuse and energy recovery, electric vehicle charging stations, retrofitting that improves the envelope, structure, or systems of the building, and any other improvement project approved by a municipality as a resilience improvement project.

PACER assessment may not be imposed to repay financing of facilities for undeveloped lots or lots undergoing development at the time of an assessment.

SECTION 6. To the extent permitted by law, the entire geographic area within Kenai Peninsula Borough’s jurisdiction may be available for energy and resilience improvement projects under the PACER Program.

SECTION 7. Financing for qualified energy and resilience new construction and improvement projects under the PACER Program will be provided by third-party capital providers under a written contract with property owners. The contracts will provide for capital providers to advance funds to property owners on such terms as are agreed between the capital providers and property owners for installation or modification of energy improvement projects, and service the debt secured by PACER assessment through the Kenai Peninsula Borough. The proposed arrangements for financing energy improvement projects may authorize property owners to (1) purchase directly the related equipment and materials for energy improvement and resilience projects; and (2) contract directly, including through

lease, a power purchase agreement, or other service contract, for energy and resilience improvement projects.

The Kenai Peninsula Borough does not intend to finance or fund any loan under the PACER Program, rather, the Kenai Peninsula Borough intends to serve only as a Program sponsor to facilitate loan repayment by including PACER assessment on real property tax bills for the improved property, and shall incur no liability for the loan.

Benefited property owners will execute written contracts with the Kenai Peninsula Borough to impose a PACER Program assessment to repay financing of an energy improvement project located on such property. The contract between a property owner and the Kenai Peninsula Borough will authorize Kenai Peninsula Borough to service the debt by PACER assessment for the benefit of the capital provider and enforce the PACER assessment lien as provided in AS 29.45.320 - 29.45.470 for enforcement of property tax liens. In the case of third-party capital financing of energy improvement project(s), an agreement will be entered into by the Kenai Peninsula Borough and the third-party capital provider.

A person or entity that acquires property subject to an assessment under the PACER Program will assume the obligation to pay such PACER assessment.

SECTION 8. Subject to law, the Kenai Peninsula Borough shall collect, and enforce PACER assessments in the same manner as other property tax liens.

SECTION 9. The report on the proposed PACER Program, as required by AS 29.55.110, will be available for public inspection on the Internet website of www.kpb.us and in the Borough's Finance Department at 144 N. Binkley Street, Soldotna, AK 99669.

SECTION 10. The local official administering the PACER Program is the Borough Assessor, or designee, and the appropriate assigned assessor, who will collect the proposed PACE assessment with property taxes imposed on the assessed property.

SECTION 11. The Kenai Peninsula Borough will hold a public hearing on the proposed PACER Program and report.

SECTION 12. That this resolution takes effect immediately upon adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 3RD DAY OF JANUARY 2023.

Brent Johnson, Assembly President

ATTEST:

Michele Turner, CMC, Acting Borough Clerk

Vote on motion to table:

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

No: None

Absent: None

Kenai Peninsula Borough Assembly

MEMORANDUM

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

FROM: Cindy Ecklund, Assembly Member (NM) for CE

DATE: December 21, 2022

SUBJECT: Resolution 2023-005, Resolution of Intent by The Kenai Peninsula Borough Assembly Establishing that Financing of Energy and Resilience Improvement Projects through Assessments Serves a Valid Public Purpose and Related Matters (PACER Program) (Ecklund)

The Alaska State Legislature enacted the Municipal Property Assessed Clean Energy and Resilience Act, Alaska Statutes 29.55, as amended, restated, supplemented or otherwise modified from time to time ("PACER Act"), authorizing local governments to establish an energy and resilience improvement assessment program.

The PACER Act allows local governments to finance the installation or modification of permanent improvements, fixed to new construction or existing privately owned commercial or industrial property, to achieve reduced energy consumption or demand in areas designated by local governments.

Installation or modification by property owners of energy and resilience improvement upgrades to commercial or industrial property in the Kenai Peninsula Borough will serve a public purpose by reducing energy costs, stimulating the economy, improving property valuation, reducing greenhouse gas emissions and creating jobs.

The Resolution of Intent includes a finding by Kenai Peninsula Borough Assembly that it is convenient and advantageous to establish a program under the PACER Act and designate the geographic area on an areawide basis within the Kenai Peninsula Borough's jurisdiction as an area within which Kenai Peninsula Borough and the record owners of qualified real property may participate under a program established by the PACER Act and enter into financing arrangements in connection therewith.

Your consideration is appreciated.

Warner, Avery

From: Cindy Ecklund
Sent: Tuesday, January 3, 2023 1:08 PM
To: Turner, Michele
Subject: Fwd: <EXTERNAL-SENDER>CPACE legislation

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.

----- Forwarded message -----

From: Willy Dunne <wdunne907@gmail.com>
Date: Wed, Dec 28, 2022 at 8:31 AM
Subject: <EXTERNAL-SENDER>CPACE legislation
To: Tupper, Mike <mtupper@kpb.us>, Lane Chesley <lchesley@kpb.us>, Ecklund, Cindy <cecklund@kpb.us>
CC: Johnson, Brent <bjohnson@kpb.us>, Scott Waterman <scottwaterman.rsac@gmail.com>, Navarre Mike <mnavarre@kpb.us>

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.

Dear Assembly Members,

I am very glad to see the CPACE (aka PACER) program moving forward via KPB Resolution 2023-005. This program has proved beneficial in other Alaska municipalities as well as many states around the US. My participation in CPACE workshops over the past few years has convinced me that it is a valuable program worthy of being adopted here.

Thanks to Cindy Ecklund for sponsoring this and the RSAC for promoting the idea. It will benefit business owners and the Borough. I look forward to seeing enabling ordinances soon.

Willy Dunne

--

Cindy L. Ecklund
907-362-2276

Warner, Avery

From: Cindy Ecklund
Sent: Tuesday, January 3, 2023 1:07 PM
To: Turner, Michele
Subject: <EXTERNAL-SENDER> Fwd: PACER resolution of intent

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.

----- Forwarded message -----

From: Peter Crimp <petercrimp@gmail.com>
Date: Sun, Jan 1, 2023 at 1:22 PM
Subject: Re: PACER resolution of intent
To: Cindy Ecklund <ecklundc@gmail.com>
CC: Hig Higman <hig314@gmail.com>, Lori Landstrom <ljlandstrom81@gmail.com>, Scott Waterman <scottwaterman.rsac@gmail.com>

Here's the comment that I just submitted to the KPB.
-Peter

Dear Assembly President Johnson,

As a 20-year energy professional and 40-year Alaska resident, I support the establishment of a program under the State PACER Act for the Kenai Peninsula Borough. At negligible cost to the Borough the program has the potential to save business owners money, improve Borough property values and market competitiveness, protect property from earthquakes and other hazards, and create construction and engineering jobs. I am impressed with the innovative program's approach--including reducing risk to lenders and extending the period for businesses to capture benefits--through attaching the debt for improvements to the property and repaying through property taxes. It has been my experience that properly planned energy projects usually realize savings above debt service starting at year one.

Thank you for your consideration.

Peter Crimp, Principal

Crimp Energy Consulting, Homer, AK

petercrimp@gmail.com :: ph 907-440-6709

On Dec 29, 2022, at 9:54 PM, Hig <hig314@gmail.com> wrote:

Thanks Cindy - sounds good.

-Hig

On Thu, Dec 29, 2022 at 9:06 PM Cindy Ecklund <ecklundc@gmail.com> wrote:

Hig,

The State Statute section the new legislation is under is Chapter 55 - Municipal Programs. The KPB resolution mirrors the Mat-Su Resolution of intent except where it uses the new term PACER. I think were good. Hopefully the rest of the Assembly thinks so too.

Cindy

On Thu, Dec 29, 2022 at 4:53 PM Hig <hig314@gmail.com> wrote:

What I'm seeing is this first Whereas:

"the Alaska State Legislature enacted the Municipal Property Assessed Clean Energy and Resilience Act ("PACER Act"), Alaska Statutes 29.55, as amended, restated, supplemented or otherwise modified from time-to-time, authorizing local governments to establish an energy and resilience improvement assessment program;"

specifically mentions municipal properties rather than commercial properties,

However, down lower there's this clause:

"The Kenai Peninsula Borough intends to allow privately owned commercial or industrial property owners to make contractual PACER assessment to repay financing for qualified energy and resilience improvement projects under, and pursuant to, the terms of a municipal property assessed clean energy and resilience program subject to, and pursuant to, the PACER Act ("PACER Program")."

I'm not totally sure what that means, but maybe this implies that the definition of "municipal" will be extended to include eligible commercial properties, thus PACER would be like C-PACE but with "resiliency" and also applying to what would conventionally be called municipal properties?

Or am I misreading "municipal" entirely? I generally think of that as publicly owned property, but maybe I've got that wrong?

-Hig

On Thu, Dec 29, 2022 at 12:18 PM Cindy Ecklund <ecklundc@gmail.com> wrote:

Hig,

The new state plan documents are not out yet but as I understand the amended State statute they included the word resilience into the statute and will call the program PACER now instead of C-PACE. I called the state a month ago and they don't expect the new documents to be out until January or February. In Washington the program is called C-PACER but for now PACER is what the state said on the phone.

Peter please correct me if you know of other info.

Cindy

On Thu, Dec 29, 2022 at 11:40 AM Hig <hig314@gmail.com> wrote:

Hi Cindy and Peter,

Looking at the PACER resolution([here](#)) it looks like this is not C-PACE, and that PACER is a separate program that is similar but allows municipal properties rather than commercial

properties to apply for loans like this. Peter - are you up on how PACER and C-PACE relate?

I have someone in Homer (Nancy Hillstrand) who sounds pretty game to comment, but just realized I'm not clear on this detail, so I'd like to get it straightened out before I respond to her with more details.

-Hig

On Wed, Dec 28, 2022 at 8:16 PM Hig <hig314@gmail.com> wrote:
That's great Cindy,

I'll see if I can find someone else...

-Hig

On Wed, Dec 28, 2022 at 11:10 AM Lori Landstrom <ljlandstrom81@gmail.com> wrote:
Good news, I think I've found a Seward small business owner willing to speak on 1/3. Cindy has been apprised and is in contact with Kellyann.
let's do this.

Lori

"Diversity is being invited to the party. Inclusion is being asked to dance."

-Verna Myers

On Wed, Dec 28, 2022 at 9:39 AM Cindy Ecklund <ecklundc@gmail.com> wrote:
Peter,

It's been awhile since you presented to the Assembly. A short email in support that includes your experience in the area would be a good reminder.

Hopefully a business somewhere on KPB has been following the program and has some interest already. We can only try!

Thanks again,
Cindy L. Ecklund

On Wed, Dec 28, 2022 at 9:13 AM Peter Crimp <petercrimp@gmail.com> wrote:
Hi Cindy.

Looks great. I'm available to write a letter of support or help someone else do so. Since Hig and I spoke at the Assembly meeting earlier this year, would it be better for the message to come from someone else?

Agreed that it would be best for a commercial property owner to express interest, but it's a very short timeline. I'll check with a friend who owns a business in Homer and see if he would be willing.

Peter

On Dec 27, 2022, at 2:08 PM, Cindy Ecklund <ecklundc@gmail.com> wrote:

Hi,

This will be on the agenda 1/3/23. It would be helpful for some positive communication to the Assembly prior to that date. Even better would be finding someone who would be interested in applying for the program to communicate their interest.

Soon,
Cindy L. Ecklund

----- Forwarded message -----

From: **Kelley, Sean** <skelley@kpb.us>
Date: Tue, Dec 27, 2022 at 10:35 AM
Subject: PACER resolution of intent
To: Ecklund, Cindy <CEcklund@kpb.us>
CC: Turner, Michele <MicheleTurner@kpb.us>, Cindy Ecklund <ecklundc@gmail.com>

Hi Cindy,

Sorry to include both of your emails but this is a bit time sensitive. Michele is going to hold packet until we know if you want to go forward with the resolution of intent.

I have attached a PDF version of both the resolution and accompanying memo. If you approve, you can either click through the Docusign buttons to initial and complete OR you can respond to this email or call Michele and give her approval to initial for you. Whatever you prefer works for us.

Thank you,

Sean

--

Sean Kelley

Borough Attorney

Kenai Peninsula Borough

(907)714-2120

This message, and any attachments, is private and may contain information that is confidential and subject to the Attorney-Client privilege or protected as Attorney Work Product. If you are not the person for whom this message is intended, please delete it and notify me immediately. Please do not copy or send this message to anyone else. Any unauthorized use by others is prohibited. Thank you.

--

Cindy L. Ecklund

907-362-2276

<PACER Reso of Intent RESO & MEMO.pdf>

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Cindy L. Ecklund

907-362-2276

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Hig (Bretwood Higman, PhD)

hig314@gmail.com

907 290 6992

Ground Truth Alaska (www.groundtruthalaska.org)

Nuka Research (www.nukaresearch.com)

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Cindy L. Ecklund

907-362-2276

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:	Postponed to 12/13/22
Vote:	9 Yes, 0 No, 0 Absent
Date:	12/13/22
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

- 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:

Michele Turner, CMC, Acting 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: 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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Re: Tupper Amendment #2 to O2022-36

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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Re: Tupper Amendment #3 to O2022-36

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

FROM: Mike Tupper, Assembly Member *MT*

DATE: November 15, 2022

SUBJECT: **Tupper Amendment #4 Replacement** 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) and (2), 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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Re: Tupper Amendment #4 to O2022-36 Replacement

- 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.**
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;

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Re: Tupper Amendment #4 to O2022-36 Replacement

- 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.
- e. All permits shall be issued with a condition which prohibits any material extraction inside the boundaries of a mapped tsunami hazard zone within 500 linear feet of any existing private well or water source.**

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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 Re: Tupper Amendment #5 to O2022-36

~~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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Re: Tupper Amendment #5 to O2022-36

~~**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: 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.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Brent Johnson, Assembly Presider BJ

DATE: October 25, 2022

SUBJECT: **LAYDOWN Johnson 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 21.25.050, as follows:

21.25.050. Permit considerations—Public hearing required.

Within 30 days of receiving an application, the planning director or designee shall review the submitted application for completeness and compliance with this chapter. If it is incomplete or does not meet the requirements of this chapter, the planning director shall notify the applicant in writing. The planning director shall thereafter either return the application to the applicant or schedule the application to be considered by the planning commission at the next appropriate scheduled meeting. **Upon receiving an application, the planning director or designee will forward a copy of the application to the Kachemak Bay National Estuarine Research Reserve ("KBNERR") for review and comment. KBNERR will have thirty days to provide its review and comment prior to submission of the application to the planning commission if the application is otherwise complete.**

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Brent Johnson, Assembly President BJ

DATE: October 25, 2022

SUBJECT: **LAYDOWN Johnson 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 21.29.005, 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, **including the health of aquatic systems that support salmon.** It is the further purpose of this chapter to promote compatible, orderly development.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Brent Johnson, Assembly President BJ

DATE: October 25, 2022

SUBJECT: **LAYDOWN Johnson 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);
4. Reclamation plan consistent with KPB 21.29.060;
5. The depth of excavation;

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Re: LAYDOWN Johnson Amendment #3

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;
 - 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 **[1]** ;

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Re: LAYDOWN Johnson Amendment #3

- e. Ground water protection measures for anadromous streams, especially with regard to juvenile salmon, as identified by shallow groundwater flowpaths and critical areas of aquifer connectivity, such as recharge, where this information is available.**
- 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

FROM: Brent Johnson, Assembly Presiden BJ

DATE: October 25, 2022

SUBJECT: **LAYDOWN Johnson 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 21.29.040, 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 and other impacts of earth materials extraction to properties in the vicinity through setbacks, buffer zones, ~~[and]~~ street-level visual screening ~~[:]~~ **and protection of salmon-rearing waters.** Prior to granting a counter permit or conditional land use permit under this chapter, the planning director or planning commission, as applicable, must make the following findings:

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 ~~[:]~~ **and the health of anadromous streams, particularly with regard to juvenile salmon;**
3. That sufficient setbacks, buffer zones, and other safeguards **such as avoidance of critical groundwater flowpaths and recharge areas** are being provided consistent with this chapter; and

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Re: LAYDOWN Johnson Amendment #4

4. That the use provides for a reclamation plan consistent with this chapter.

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Brent Johnson, Assembly President BJ

DATE: October 25, 2022

SUBJECT: **LAYDOWN Johnson 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.

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

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October 25, 2022

Re: LAYDOWN Johnson Amendment #5

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 **and groundwater** protection. Use of surface **and ground** 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 this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Brent Johnson, Assembly President BJ

DATE: October 25, 2022

SUBJECT: **LAYDOWN Johnson 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 21.29.057, as follows:

21.29.057(A). 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

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October 25, 2022

Re: LAYDOWN Johnson Amendment #6

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

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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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
 - ~~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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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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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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- 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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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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- 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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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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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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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

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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October 13, 2022

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.

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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October 13, 2022
Re: Administrative Amendment #9

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.

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: -Street-level noise and visual screening (as</p>	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:</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 	

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	<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: 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:</p> <ul style="list-style-type: none"> -Reclamation requirements; -Hours of operation; & -Buffer area. <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

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. 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', written over a light blue horizontal line.

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

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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

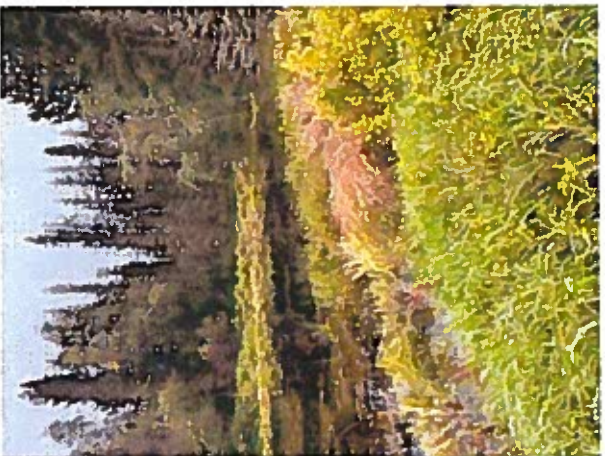
From: DR Lee <dr.lee@live.com>
Sent: Thursday, September 1, 2022 12:09 PM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>Fwd: Gravel pit in back of 50-51 Greenridge Drive causing flooding and eroding my property. Ordinance 2022-36

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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, tunnelling, 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

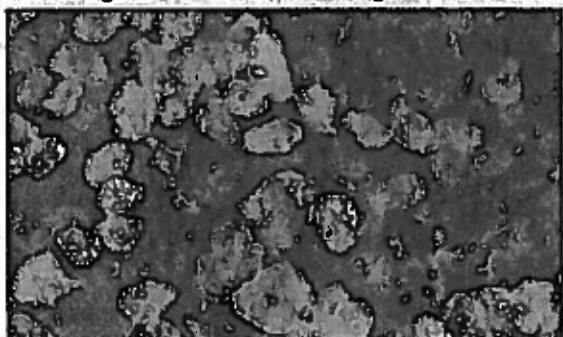
Sand's Tiny Secrets — Size, Material, & Shape

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.

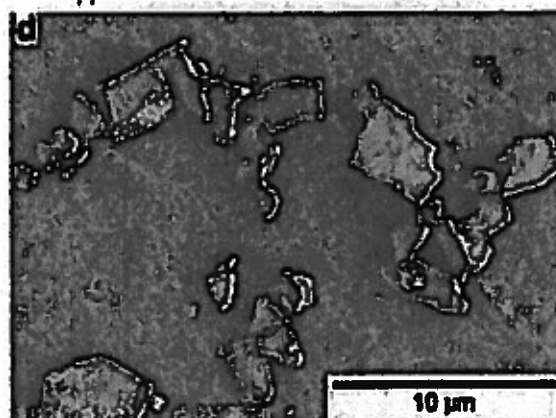
Most sand with which we are familiar is heavily weathered. It has the familiar shape of

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.

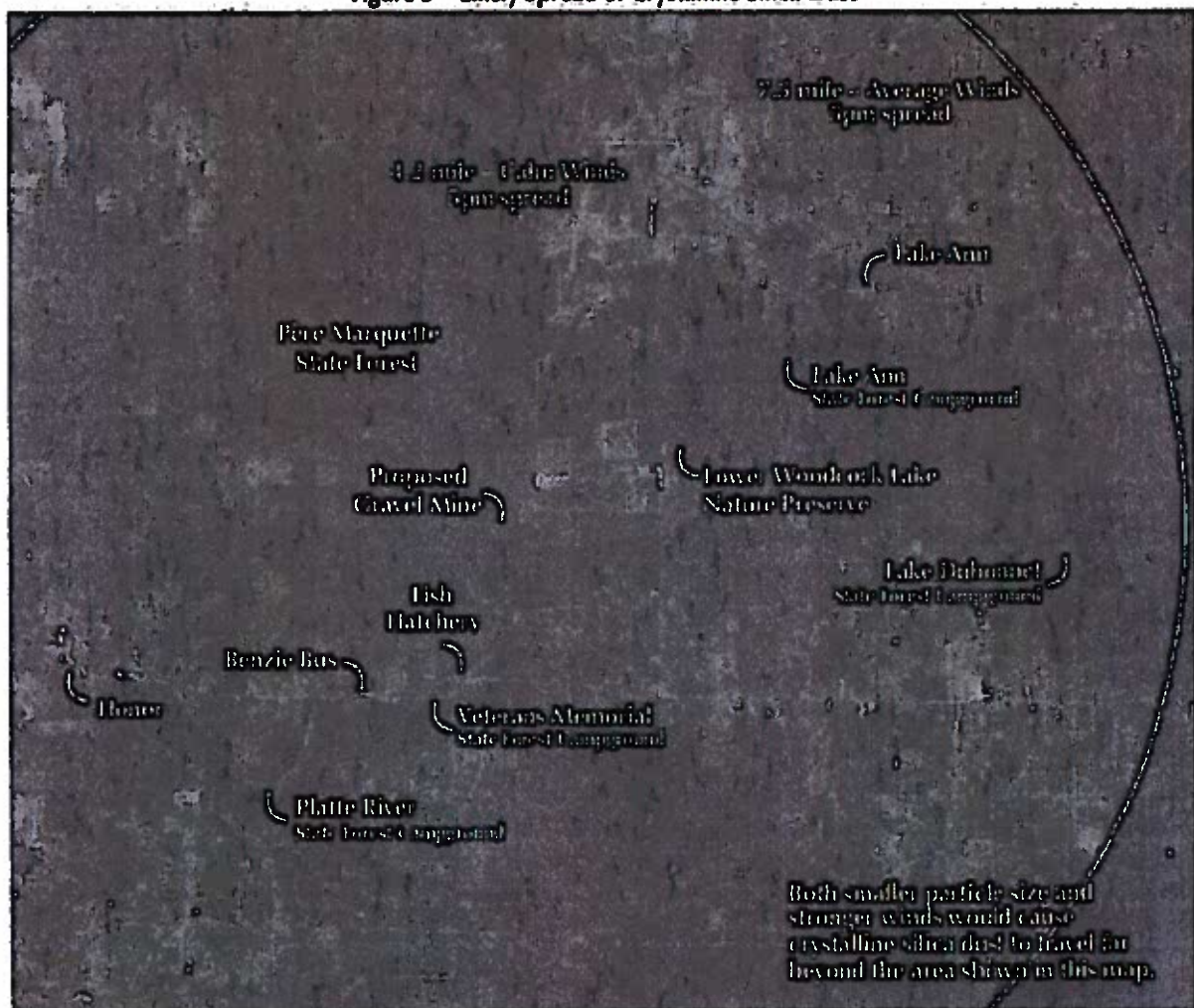
This area's Average windspeed over the past three years for May – October, the average Maximum sustained winds, and average Gusts are shown in Figure 4. The miles that silica dust can be spread relates to particulate size.¹¹

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.



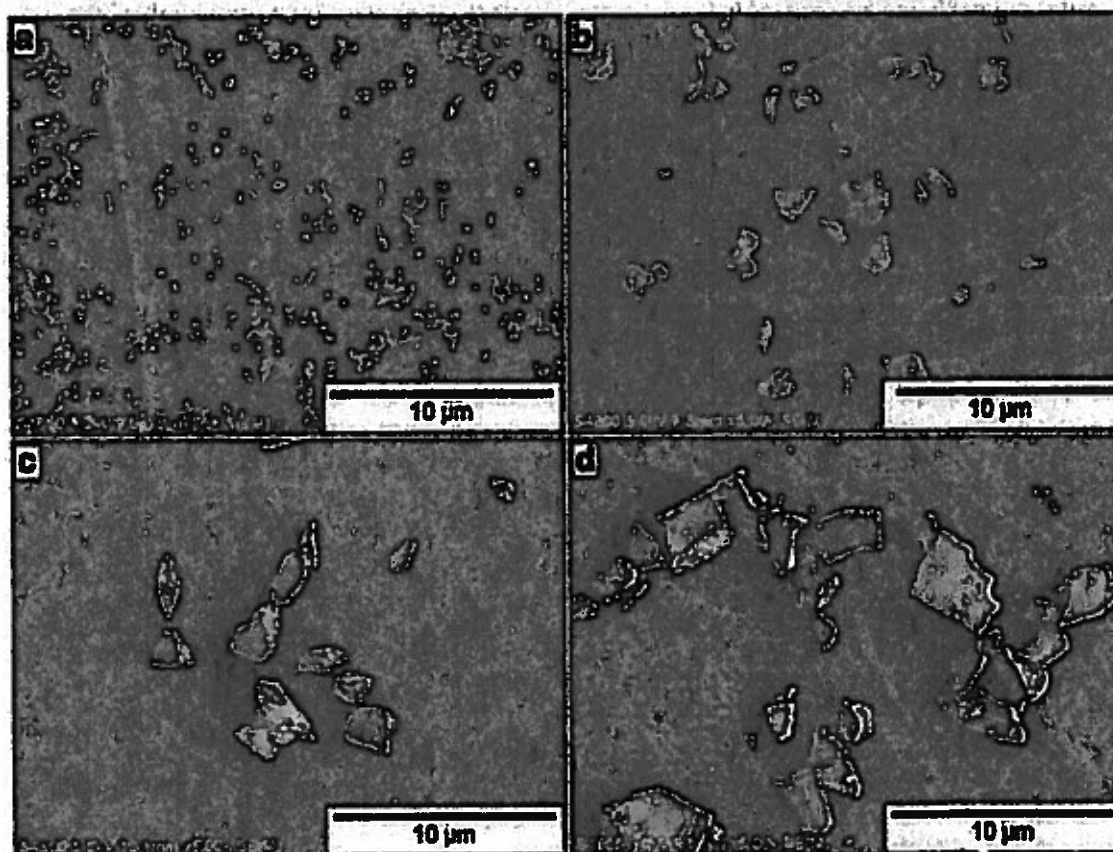
Appendix A

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.mitchamp.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

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Appendix B (p.2)


**OSHA SUSAN HARWOOD GRANT
RESPIRABLE CRISTALLINE 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

Sign-Up

- Demographic Information

Pretest

- We measure trainee's existing knowledge

Presentation

- OSHA approved training module

Posttest

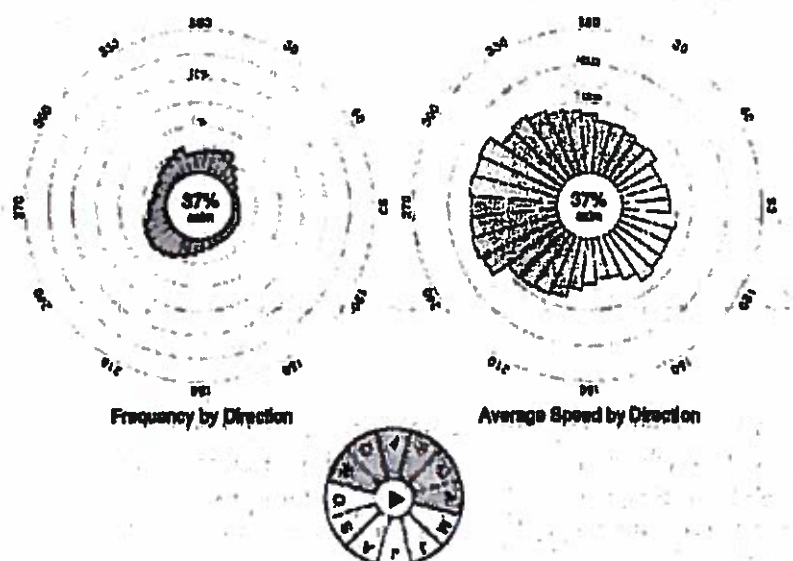
- To assess the knowledge gain after the training

Opinion Survey

- We would like to hear your opinion and feedback on the training

This material was produced under a grant (SH-05039-SH8) from the Occupational Health Administration, U.S. Department of Labor. It does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does the mention of trade names, commercial products, or organization imply endorsement by the U.S. Government.

KTVC: Cherry Capital Airport

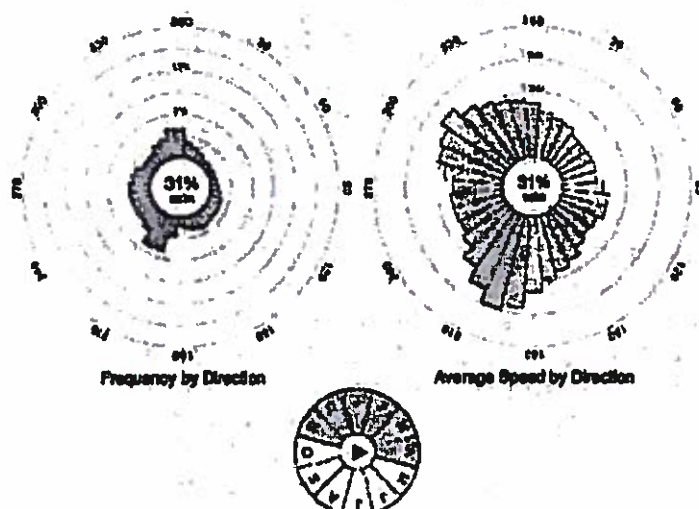


44.7430, -85.585 WeatherSpook Wunderground VFRMap FlightFinder NavMonitor

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 KSPQ, 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 KSPQ the wind is pretty much always from the west. The most common direction is 280°, 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 average speed and color is proportional to frequency. At KSPQ 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 a breeze (15kts at KSPQ). 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 extend or wedge 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)

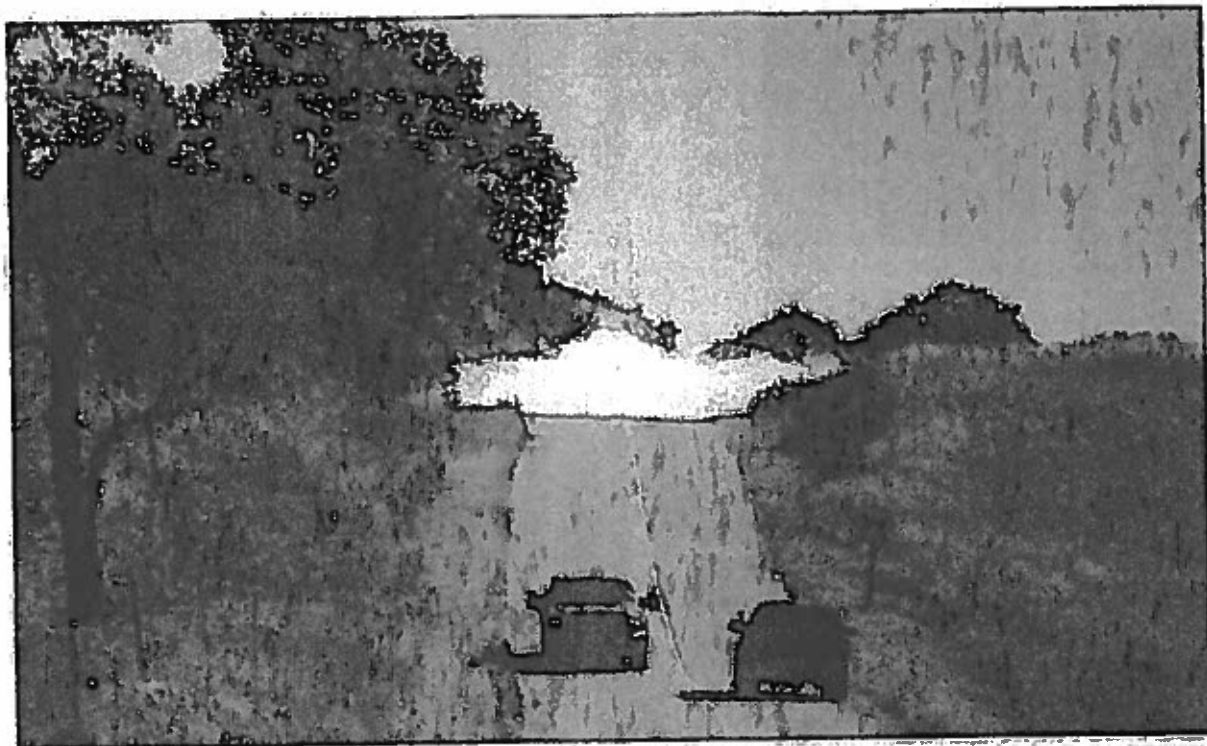
"The site alone is appalling with the noise, dust, contamination of the stream near the gravel pit, the pond, wildlife absent and natural resources. Why is this gravel pit still in operation, from failing to comply with the agreement from 21 March 2018?" "Why should the residents be subjected to all 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."

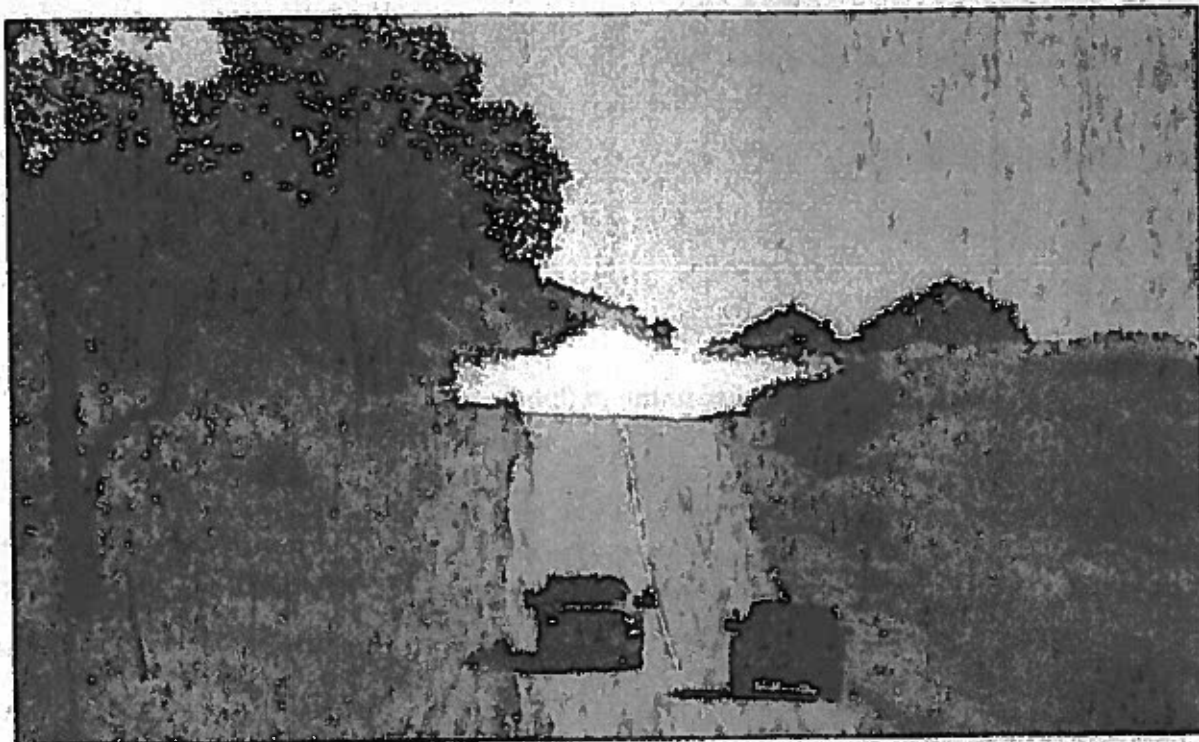
I think the issue is best summed up by one Bohne Road resident in a letter to the Township, urging them not to renew the mine permit:

"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)





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URL of this page: [//medlineplus.gov/ency/article/000134.htm](https://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 Hadjiliadis, 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

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 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

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.

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

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 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

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.

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

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 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 down-size 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 is 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

From: Blankenship, Johni
Sent: Monday, October 24, 2022 10:38 AM
To: Warner, Avery
Subject: Fwd: <EXTERNAL-SENDER>Gravel pit Ordinance

Sent from my iPhone

Begin forwarded message:

From: Janet Simons <ibjanetsimons@gmail.com>
Date: October 24, 2022 at 3:29:34 AM AKDT
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>Gravel pit Ordinance

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.

Good morning!

I strongly recommend that ALL gravel pit permits be reviewed every 5 years and the owner be required to justify it's renewal and that the site location is suitable for a commercial business and compatible with the surrounding neighborhood. It must be in full compliance with all applicable state and borough ordinance's concerning public safety, noise, operating hours, dust control and road maintenance on roads used to access the sight. They should also be in full compliance with OSHA and the EPA and ensure they do not effect ground water levels to adjacent properties.

Thank you,
Janet Simons

Sent from my iPhone

From: Blankenship, Johni
Sent: Monday, October 24, 2022 10:38 AM
To: Warner, Avery
Subject: Fwd: <EXTERNAL-SENDER>Gravel Pit Ordnance Update

Sent from my iPhone

Begin forwarded message:

From: David Weber <weber@xyz.net>
Date: October 24, 2022 at 5:55:57 AM AKDT
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>Gravel Pit Ordnance Update

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.

Having lived in Upper Deitz Estates for 20 + years and having endured a active sand pit in our subdivision in past years I highly recommend that the borough adopt a plan that reviews all permits every 5 years and revokes permits that are not actively used and not in full compliance with all State,Borough, E P A and OSHA regulations.

David Weber
58875 Deitz Ln
Homer Ak 99603
907 299 2204
Sent from my iPhone

Deborah Anderson
41140 China Poot St
Homer, AK 99603
(414)335-9396
paragondeb@gmail.com

October 21, 2022

Kenai Peninsula Borough

Re: Conditional Land Use Permits, Material Site Permits & Fees regarding Applications, Conditions, and Procedures

The gravel pit at the top of our road is inactive and has been for at least 10 years well past the 365-day requirement. When the gravel pit was last active, we did not have as many houses in our subdivision as we do now (28 out of 40 lots); or as many children and grandchildren in the neighborhood either. We do not have a Borough maintained roads through our subdivision, they are owner maintained from road dues collected with matched grants from the Borough. If the gravel pit at the top of the road would start operating again like it did back at the beginning stages of our subdivision, our road as we know it now would not survive the brutal abuse of the constant traffic of trucks all day, every day. Your notice of decision seems to be for property owners within 100 ft of pit operation, however, trucks impact every property owner in our subdivision (there is only one way in and out on our roads not maintained by the Borough - China Poot St & Deitz Lane). I want to see clear and concise rules for how road groups on roads not maintained by the Borough would be able recover costs incurred from the Gravel Pit, or would the Gravel Pit be responsible for the maintenance directly? If this gravel pit would reopen, is the current owner responsible for reclamation of past problems whether they were responsible at the time of damage?

I strongly recommend that ALL gravel pit permits be reviewed every 5 years and the owner be required to justify its renewal and that the site location is suitable for a commercial business and compatible with the surrounding neighborhood. The location should be in full compliance with all applicable state and borough ordinance's concerning public safety, noise (gravel pit & trucking/J-braking), operating hours, use of rock crusher, dust control (in the gravel pit, trucking) and road maintenance on roads used to access the site. They should also be in full compliance with OSHA and the EPA and ensure they do not affect ground water levels/tables to adjacent properties. In our case, the gravel pit sits at the top of China Poot, above all the other lots, on a downward sloping hill. If they were to disrupt the water table by their operation, that would affect everyone downhill that has water rights. Please inform me of any future meeting on this subject!

Sincerely,

Deborah Anderson
Property Owner

Warner, Avery

From: Blankenship, Johni
Sent: Monday, October 24, 2022 11:44 AM
To: Warner, Avery
Subject: FW: <EXTERNAL-SENDER>gravel pit rules

From: Dan Anderson <paragondan58@gmail.com>
Sent: Sunday, October 23, 2022 2:22 PM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>gravel pit rules

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.

This note comes to you about how gravel pit rules and how they affect my neighborhood. I live on China Poot Street in Homer. At the top of China Poot Street a once operated gravel pit sits. When I built on my property 15 years ago, which is situated down hill from the pit, I remember loaded trucks rumbling down the road only to return empty to repeat over again. At the time I was building there were several lot's along the uphill road that weren't improved at the time, they since have had improvements on them. Our neighborhood has a very active road group that maintains China Poot Street. This is accomplished with road dues and grant's. Several of the neighbors have equipment that jump in when a poor spot in the road appears, which isn't very often any more as the neighborhood as a whole over time made China Poot Street a very good gravel road, with care, time and money. All the meetings/conversations about China Poot Street have borne fruit, in the way of a good road. Over the years several of the neighbors down hill from the pit have installed high tunnel greenhouses. Most use some sort of ground water collection system to water their greenhouses. Personally, we have filled long ago for our water rights, along with most if not all of the others. A few like myself have dug out holding ponds to retain water to supply our greenhouses, during the dry months. I even put in a cistern tank as backup. One of the fears is that, if the pit was to reactivate, the flow of the groundwater may be disrupted. With the aforementioned snapshot of our China Poot neighborhood while considering anything with the said pit at the top of our road. Also keep in focus the impact of heavy repeated loads on our road, the noise and dust it creates, and a possible disruption of the water flow that the greenhouses desperately rely on. Our personal greenhouse produces many meals of healthy vegetables and fruits. Not only for my family but for others that are less fortunate than our family. During harvest times we encourage several other families to come and pick what they can use, some I know for sure don't have the capital to purchase these items in the store, or the time and means to grow thier own. Thank You Ahead of Time for taking time to read this and most importantly keeping the above in the discussion about any future decisions regarding the gravel pit at the top of China Poot Street.

Dan Anderson
41140 China Poot Street
Homer, Alaska 99603
(414)788-5197

From: curt wilcox <curtwilcox@hotmail.com>

Sent: Saturday, October 22, 2022 11:52 AM

To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us> **Subject:** <EXTERNAL-SENDER>Gravel pit ordinance comments

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 whom it concerns:

I'd like to title this comment "My next door neighbor, a gravel pit."

In the summer of 2019 the construction company QAP took possession of the old Cone gravel pit next door to my residence on Beaver Loop. The first activity to announce their presence was to dig up the buffer zone. The previous owner Chester Cone had left the buffer zone intact and QAP saw this as an opportunity to mine some easy gravel. I alerted the city of Kenai to no avail. I have the correspondence via email available.

Since there was no enforcement of the city code this gravel pit operator apparently thought anything goes within the city and Borough of Kenai. They cleared the anadromous stream on their property and placed culverts to construct driveways to access the asphalt batch plant they didn't have a special use permit for. They hauled old asphalt from their road project and buried it with other debris that has drainage into the Kenai River. I have photos of this all and have contacted the city and borough on several occasions asking for enforcement to no avail. I think QAP was eventually fined \$200 and had to plant some alders along the anadromous stream they cleared. I would have thought operating an asphalt batch plant without a special use permit would have had some consequences. I would like to say to those proposing new gravel pit ordinances is there has to be enforcement of those ordinances or you'll get a neighbor just like mine. Mine seems to say we'll do what we want and in our location anyway, we don't care about the Kenai River as well.

Curt Wilcox 3329 Beaver Loop Rd, Kenai, AK







October 24, 2022

Johni Blankenship
Kenai Peninsula Borough Clerk
144 N. Binkley Street
Soldotna, Alaska, 99669

RE: Public Comment on Proposed Ordinance 2022-36 Amending KPB
Chapter 21.25 and KPB Chapter 21.29 Regarding Conditional Use
Permits and Material Site Permits

To Whom it May Concern:

Cook Inlet Region, Inc. (CIRI) is writing to provide comments regarding Proposed Ordinance 2022-36 (PO 2022-36) which repeals and rewrites Kenai Peninsula Borough Code of Ordinances chapters 21.25 and 21.29 regarding conditional land use permits and material site permits. CIRI is an Alaska Native corporation which owns over 300,000 acres of land within the Kenai Peninsula Borough (KPB), including a significant amount of sand and gravel resources. CIRI works with local sand and gravel operators to responsibly develop these resources, and currently has two active sand and gravel pits within the KPB.

Many of CIRI's sand and gravel operators are small, local businesses which often implement a flexible business model that involves rotating between multiple sand and gravel pits based on project demand. Because each gravel site contains unique grades of material, operators need to be able to cycle between sites in order meet the specific demands of each project. Given this business model and the operators' need for flexibility, CIRI is concerned that the 365-day discontinuance period for prior existing uses contained in PO 2022-36 is too short. CIRI believes that PO 2022-36 should be amended to extend the discontinuance period to five years, which would match the length of a CLUP.

CIRI understands and appreciates KPB's interest in updating its process for conditional land use and material site permits, as well as its efforts to ensure the implementation of appropriate environmental and monitoring requirements. However, to the extent that PO 2022-36 imposes additional regulatory and compliance costs on sand and gravel operations, that cost will be passed through to the end user of the resources. This will result in higher costs for construction projects within the KPB, including public projects like road construction and maintenance. In addition, an extended permitting timeline may impact the timely completion of projects that are already restricted by short construction windows.

Addressee
Date
Page 2 of 2

Thank you for your consideration and the opportunity to provide comments on
PO 2022-36.

Cook Inlet Region, Inc.

A handwritten signature in dark ink, appearing to read "S. Settle", written in a cursive style.

Suzanne Settle
Vice President, Energy, Land and Resources

October 23, 2022

Upper Dietz Road Group

41140 China Poot St., Homer AK 99603

Kenai Peninsula Borough

assemblyclerk@kpb.us

RE: 21.29.120 Proposed changes

KPB Council & Staff,

Thank you Kenai Peninsula Borough professionals, who are updating standards and practices across the Borough on many issues. This letter is addressing gravel pit permitting, monitoring, reclamation and all phases of Conditional Land Use Permits -CLUPs or over the counter permitting for gravel pits.

Upper Dietz Road Group was formed by private land owners for the purpose of maintaining the roads in our neighborhood which are not Borough-maintained directly, but rather by using matching road grants to road groups funneled through, and administered by Kachemak City. Because we directly pay for our road maintenance and coordinate as neighbors to contract services, we see the impact that commercial use had on our roads.

The history of our steep street includes a gravel pit operation at the top of China Poot Street that has not been operating for many years. When this gravel pit was in use, it created considerable disruption to the neighborhood which included, but was not limited to Jake Braking noise, operation noise, dust issues, child safety concerns and damage to our roads due to weight of the trucks up and down the road. We are also concerned about our water table and surface water issues that a gravel pit operation is in danger of creating.

It seems that these are some of the issues being addressed by the current process to update KPB ordinances and rules. Please be sure to include concise language that requires all projects are in compliance with OSHA and EPA standards relating to protection of all water. Also protect all adjacent property individual landowner rights including noise and road damage concerns. CLUP's need to be re-evaluated every five years to be sure they are operating within standards and subject to new standards when appropriate. Reclamation is an important issue for thorough rules and oversight.

Sincerely submitted by Upper Dietz Road Group,

Kary Adkins 58835 Buds Ct

Dan & Deborah Anderson 41140 China Poot St

Eric & Tracie Brown 41145 China Poot St

Thomas Brown Home & Lot
Jay & Amanda Cherok 58865 Deitz Ln
Matt Dickerson 40852 China Poot St
Mark Dickson & Ann Oberlitner 58987 Deitz Ln
Mannfried Funk & Marcia Kuszmaul 40963 China Poot St
Ty & Christie Gates 41102 China Poot St
Jaime A. Hernandez & Rhema Smith 40656 China Poot St
Judith James 40951 China Poot St.
Ron & Sherry Johnson 40667 China Poot St
Daniel & Susan LaPlant 40941 China Poot St
Anthony Maurer 40921 China Poot St
Neil McArthur 58953 Deitz Ln
Rodney & Sandee McLay 40872 China Poot St
Ka Mulky 40657 China Poot St
Jackie Norvell 40989 China Poot St
Ben Park & Mary Tricamo-Park 40944 China Poot St
Sherman Peterson 40871 China Poot St
Larry & Kathi Rappuhn 58850 Deitz Ln
Dennis & Sandy Rollins 40670 China Poot St
John & Cynthia Shankel Lot Owner
Janet & Les Simons 41272 China Poot St
Craig Sutphin 41089 China Poot St
Burl & Kristen Tonga 58825 Deitz Ln
Charlie & Beth Trowbridge 40710 China Poot St
Dave & Melanie Webb 40762 China Poot St
Dave & Maxine Weber 58875 Dietz Ln

Warner, Avery

From: Blankenship, Johni
Sent: Monday, October 24, 2022 1:20 PM
To: Warner, Avery
Subject: FW: <EXTERNAL-SENDER>Re: proposed gravel pit ordnance changes

From: Deborah Anderson <paragondeb@gmail.com>
Sent: Monday, October 24, 2022 1:14 PM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>Re: proposed gravel pit ordnance changes

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Deborah Anderson
41140 China Poot St
Homer, AK 99603
(414)335-9396

paragondeb@gmail.com

October 21, 2022

Kenai Peninsula Borough

Re: Conditional Land Use Permits, Material Site Permits & Fees regarding Applications, Conditions, and Procedures

The gravel pit at the top of our road is inactive and has been for at least 10 years well past the 365-day requirement. When the gravel pit was last active, we did not have as many houses in our subdivision as we do now (28 out of 40 lots); or as many children and grandchildren in the neighborhood either. We do not have a Borough maintained roads through our subdivision, they are owner maintained from road dues collected with matched grants from the Borough. If the gravel pit at the top of the road would start operating again like it did back at the beginning stages of our subdivision, our road as we know it now would not survive the brutal abuse of the constant traffic of trucks all day, every day. Your notice of decision seems to be for property owners within 100 ft of pit operation, however, trucks impact every property owner in our subdivision (there is only one way in and out on our roads not maintained by the Borough - China Poot St & Deitz Lane). I want to see clear and concise rules for how road

groups on roads not maintained by the Borough would be able recover costs incurred from the Gravel Pit, or would the Gravel Pit be responsible for the maintenance directly? If this gravel pit would reopen, is the current owner responsible for reclamation of past problems whether they were responsible at the time of damage?

I strongly recommend that ALL gravel pit permits be reviewed every 5 years and the owner be required to justify its renewal and that the site location is suitable for a commercial business and compatible with the surrounding neighborhood. The location should be in full compliance with all applicable state and borough ordinance's concerning public safety, noise (gravel pit & trucking/J-braking), operating hours, use of rock crusher, dust control (in the gravel pit, trucking) and road maintenance on roads used to access the site. They should also be in full compliance with OSHA and the EPA and ensure they do not affect ground water levels/tables to adjacent properties. In our case, the gravel pit sits at the top of China Poot, above all the other lots, on a downward sloping hill. If they were to disrupt the water table by their operation, that would affect everyone downhill that has water rights. Please inform me of any future meeting on this subject!

Sincerely,

Deborah Anderson
Property Owner

|
--

Sent from Gmail Mobile

Warner, Avery

From: Blankenship, Johni
Sent: Monday, October 24, 2022 4:10 PM
To: Warner, Avery
Subject: FW: <EXTERNAL-SENDER>Comment on gravel pit ordinance

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

From: laura sievert <laurasievert@hotmail.com>
Sent: Monday, October 24, 2022 3:11 PM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>Comment on gravel pit ordinance

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 the Assembly:

Over the last year or so I have commented on and sent photo evidence of violations of existing gravel pit regulations in the Cone pit and Glen Martin's pit that abut my property on Beaver Loop.

Before finalizing the ordinance currently being considered, I would urge you to go out and walk around those pits in order to see the need not only for regulations, but also for enforcement of those regulations. As I've stated before, the violations are both long term- dumped asphalt, kiddie pool oil catchers under leaking vehicles, junked equipment, etc, and also short term- such as removal of required buffer zones. That violation was done in a couple of hours and the city of Kenai could do nothing.

I hope that you can craft an ordinance that prevents such activity. I would also propose that very large monetary bonds be posted before mining commences, and that the pits undergo periodic inspection by the Borough.

Thank you.

Laura Sievert 3329 Beaver Loop, Kenai

Warner, Avery

From: Blankenship, Johni
Sent: Monday, October 24, 2022 5:01 PM
To: Warner, Avery
Subject: FW: <EXTERNAL-SENDER>Public Comment on KPB Ordinance 2022-36

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

From: Kaitlin Vadla <kaitlinvadla@gmail.com>
Sent: Monday, October 24, 2022 4:55 PM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>Public Comment on KPB 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.

I support the introduction and further discussion of 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.

As chair of Soldotna's Planning and Zoning Commission, I have seen multiple conflicting land-use and property value issues over the years. The city's geographic purview is quite small compared to the borough's and we look to the assembly's discussion and passage of this ordinance as we seek to incorporate best practices when updating our municipal code regarding material site permits in the near future.

I hope the borough retains measures in this ordinance that help level the playing field for all current and future entrepreneurs who wish to provide KPB residents with much needed materials like gravel. Currently, pits that have been allowed to operate under outdated rules have an unfair advantage. My hope is that this ordinance will retain these grandfathered pits ability to operate, while bringing them gradually into compliance with at least the bare minimum safety and environmental standards.

Kaitlin Vadla
Clam Gulch

Kenai Peninsula Borough

Material Site Subcommittee

Public Comment Submitted 2022-10-24 22:34:55

Name
Joshua Ross
Email Address
rocky@legacyak.net
Subject
O2022-36
Message
<p>Based on a quick review of who is in favor of and who is opposed to this ordinance, I will be sending in a letter in opposition of proposed changes.</p> <p>I believe these changes are unnecessary, don't solve any issues (if there are any) and will dramatically increase aggregate costs on the southern peninsula. Rarely is more government involvement the best answer to any issue. Should issues with the current ordinance/permitting process exist, at a minimum, the assembly must seek professional input from local aggregate handling businesses.</p> <p>Increasing costs associated with handling aggregates WILL eliminate many smaller businesses, make land development more difficult and expensive, and further increase building expenses for homeowners and builders alike. The trickle down impacts of increasing cost of litteral foundations are impossible to estimate.</p>

Good evening.

My name is Dan DeRaeve. I am the owner and President of Peninsula Sand & Gravel. We have a PEU gravel pit a couple miles east of Sterling.

First of all I'd like to say that I feel for the people in Anchor Point that have the problem with their home sites. I think they may have a legitimate complaint and if so, I hope they get their issues resolved.

On the other hand I don't understand why the assembly is considering lumping all gravel pits together and taking away our PEU status. It seems that because of a few isolated incidents and bad actors a great many will suffer. It makes more sense to me to deal with the individual problems and leave the pit owners that are not involved out of it.

I am also concerned about the water table restrictions. This greatly reduces the gravel resources for pit owners and in some cases will put some smaller pit owners out of business. For the others it will drive the cost of operations up substantially and ultimately drive the cost of gravel up. As gravel pit owners, we cannot shoulder the burden of the cost of the added restrictions. All we can do is raise the cost of our products which will affect everyone. Everyone uses the material that comes out of these gravel pits in one form or another. Whether it be gravel, sand, concrete, brick, and block for our homes or pavement, concrete and many forms of gravel products for our roads, bridges, buildings and airports.

So I am asking the KPB assembly members to carefully consider these things before you make your decisions. I thank you for your time and considerations.

Sincerely,

Dan DeRaeve

Warner, Avery

From: Blankenship, Johni
Sent: Tuesday, October 25, 2022 8:49 AM
To: Warner, Avery
Subject: FW: <EXTERNAL-SENDER>public hearing Oct 25,2022 for Conditional Land Permits

From: Steve Ruther <Steve.Ruther@outlook.com>
Sent: Monday, October 24, 2022 5:51 PM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>public hearing Oct 25,2022 for Conditional Land Permits

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

We have received notice that we may comment on proposed amendments to Conditional Land Use Permits as we are a land owner within 2,640 feet of an existing material site. It is most disruptive to our business when trucks hauling gravel or other such material drive by our location and use their gears to slow down for the stop light at East Poppy Lane and Kalifornsky Beach Road. By downshifting in this manner their trucks emit a loud rumbling engine noise that can actually interrupt normal personal and phone conversations in our office. We would appreciate an advisory that all trucks within business or residential area be forbidden to create this noise pollution.

Thank you,

Steve & Karen Rutherford

FLOOR-EVER, INC.
47201 EAST POPPY LANE
SOLDOTNA, AK 99669
907-260-9270 office
907-953-9270 cell

Kenai Peninsula Borough

Material Site Subcommittee

Public Comment Submitted 2022-10-24 17:31:32

Name
Mark Tornai
Email Address
mdtornai@gmail.com
Subject
Amendments to material site ordinance
Message
<p>The Counter Permit should remain no more than 2.5 acre size and retain a new language concerning a 2 year time with one 12 month extension.</p> <p>Justification: To allow a material site greater than 2.5 acres would have multiple negative impacts to the properties in the vicinity. Without any prior public input, this change is irresponsible and will be a great disservice to the residents of the borough. Also, it would not be in accordance with the Comprehensive Plan.</p>

Warner, Avery

From: Blankenship, Johni
Sent: Tuesday, October 25, 2022 9:50 AM
To: Warner, Avery
Subject: FW: <EXTERNAL-SENDER>02022-36 Material site Permitting

From: Douglas B Schade <dougschade50@gmail.com>
Sent: Tuesday, October 25, 2022 9:10 AM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>02022-36 Material site Permitting

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To the Mayor, President and Members of the Kenai Peninsula Borough Assembly

RE: Opposition to Proposed Ordinance 2022-36

In regard to the upcoming ordinance 02022-36, I believe this ordinance if in acted is going to cause the general public undo (significant) harm. As Stated in the Memorandum from the Planning Director Robert Ruffner: (especially dimensional or durational descriptions like the 365-day period for the prior-existing use abandonment are intended to act as "springboards" for the Assembly) In effects this gives the KPB the right to cancel the PEU permits.

By doing so the cost for new homes, upgrading roads and current roads are going to skyrocket. When you take the little "guy" out of the system and only allow the big producers with the capital to conform with the new requirements, you are limiting competing, and the remaining operator will need to pass the cost on to the customer. For an example: In 2011 the cost for gravel delivered in the Homer area was around \$105.00 for 10 yards. This summer (2022) the same load, from the same pit, was around \$225.00, an increase way above the standard cost of living increases. On average, the current cost of a new home start is going to run around \$30,000 to \$50,000 for the driveway, sewer and foundation. The new ordinance can be expected to increase a new home start by at least 30%. That is a increase of \$9,000.00 to \$15,000.00 per home start. It also stands to reason that this ordinance will increase the cost to build and maintain our current and new road system, but by how much is really undetermined at this time.

I understand the assembly is responding to complaints from the general public about the noise and dust of the pits, many of which have been in use for years. However, it should be noted that due to the increased need of housing, many of these people bought in subdivisions which had been built around the gravel source; largely in order to keep the cost down. The new homeowners are now complaining that the gravel pit is disturbing them, but they were able to afford the new home because of the gravel pit. There are better ways for the KPB and its citizens to work on being better neighbors, without the significant economic costs.

Please remember these operators have been keeping the PEU pits in operation, which gives a constant supply of affordable gravel to the general public. In these difficult economic times, where people are struggling to make ends meet, this is not a prudent measure.

Thank you for your time and consideration.

Douglas B Schade

34705 Lusky Rd

Homer Ak 99603

907-235-8939

907-399-8734

Sent from [Mail](#) for Windows

Warner, Avery

From: Blankenship, Johni
Sent: Tuesday, October 25, 2022 10:14 AM
To: Warner, Avery
Subject: FW: <EXTERNAL-SENDER>Proposed Ordinance 2022-36

From: Natasha Schade <schade@horizonsatellite.com>
Sent: Tuesday, October 25, 2022 10:12 AM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>Proposed Ordinance 2022-36

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To the Mayor, President and Members of the Kenai Peninsula Borough Assembly

RE: Opposition to Proposed Ordinance 2022-36

In regard to the upcoming ordinance 02022-36, this ordinance if enacted will cause the general public substantial undo economic harm. As Stated in the Memorandum from the Planning Director Robert Ruffner: (especially dimensional or durational descriptions like the 365-day period for the prior-existing use abandonment are intended to act as "springboards" for the Assembly) In effects this gives the KPB the right to cancel the PEU permits.

By doing so the cost for new homes, upgrading current roads and development of new roads will skyrocket, thus effecting small business and consumer alike. Even to the point of forcing smaller businesses out of the market. When you take the little "guy" out of the system and only allow the big producers with the capital to conform with the new requirements, you are limiting competition, and the remaining operator will need to pass the cost on to the customer. For an example: In 2011 the cost for gravel delivered in the Homer area was around \$105.00 for 10 yards. This summer (2022) the same load, from the same pit, was around \$225.00, an increase way above the standard cost of living increases. On average, the current cost of a new driveway, sewer, and foundation will run approximately \$30,000 to \$50,000. The new ordinance can be expected to increase a that same work by at least 30%. That is an increase of \$9,000.00 to \$15,000.00 per home start, just for the groundwork. It also stands to reason that this ordinance will increase the cost to build and maintain our current and road system, but by how much is really undetermined at this time.

From my understanding, the assembly is responding to complaints from the general public about the noise and dust of the pits, many of which have been in use for years and even decades prior to the public encroachment. It should be noted that due to the increased demand and cost of housing, many people purchased in subdivisions and built around these gravel sources in order to keep their own purchase and build costs down. The new homeowners are now complaining that the gravel pit is disturbing them. However, it is because of that gravel pit, they were able to afford the land and new home. There are better ways for the KPB and its citizens to work on being better neighbors without the significant economic costs that will result from this proposed ordinance.

Please remember these operators have been keeping the PEU pits in operation, which gives a constant supply of affordable gravel to the general public. In these difficult economic times, when people are struggling to make ends meet, this is not a prudent measure.

Thank you for your time and consideration.

Natasha Schade
34705 Lusky Rd.
Homer, AK 99603
(907)235-2695
(907)399-1065

Warner, Avery

From: Blankenship, Johni
Sent: Tuesday, October 25, 2022 11:11 AM
To: Warner, Avery
Subject: FW: <EXTERNAL-SENDER>Materials Site Assembly Public Comment for 10/25/22 Meeting: Please forward for reading at tonight's meeting

From: ullr 907 <ullr907@yahoo.com>
Sent: Tuesday, October 25, 2022 10:53 AM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>Materials Site Assembly Public Comment for 10/25/22 Meeting: Please forward for reading at tonight's meeting

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 the Kenai Borough Materials Site Subcommittee:

My name is Daniel Hawksworth. I am a permanent resident of Hope, Alaska and have resided near the KPB Materials Site adjacent to the Hope Airstrip for over 20 years.

For the entire duration of my residency here, the KPB has allowed flagrant and continuous violations of it's permitted use agreement with one particular contractor, AG & Building Supply, Owned by Robert Davidson of Hope, Alaska.

I have submitted volumes of documentation over the years to Julie Dennison at the Land Management division of the KPB. Julie has been a champion of perpetually attempting to bring this contractor into compliance, but unfortunately, a lack of funding and resources means there are no "teeth" so to speak, to enforce permit agreements and violations of the terms of use agreements made with the KPB to operate at this site.

A great example of this would be the numerous pieces of dilapidated heavy equipment like bulldozers that have been allowed to occupy this Materials Site as a personal equipment storage space for AG & Building Supply. Despite not being used or relating to any permitted work, these relics have and continue to leak copious amounts of oils directly onto the ground without any attempt to contain them at whatever location within the Materials Site the contractor chooses to park them.

Another example would be the same contractor, AG & Building Supply, routinely operating in violation of the permit agreement, the posted regulations and standards the KPB requires to operate on the site as well as Alaska OSHA and M-SHAW regulations regarding slope angle and benching of excavation work. Vertical excavation is not allowed, yet the contractor repeatedly engages in such unsafe practices without penalty. It is only after repeated requests are made to the KPB, and even then, very infrequently, is the contractor required to restore the excavated slope into compliance with regulations. A 30 foot vertical fall hazard without any attempt to delineate the area is simply gross negligence and carelessness by the part of the contractor.

The Land Management division clearly lacks the resources needed to oversee the proper operating procedures of its permitted users. So similarly, we see a lack of resources to correct other site related issues. And I am only speaking to one site, so I imagine this to be quite a common and widespread issue on the Kenai Peninsula.

No enforcement of site hours of operation. No enforcement of improper activities on the site such as camping or target shooting. No attempts to maintain or replace signage around the site. No gates or securing of access of the site. No enforcement of dumping of prohibited materials. No method of accurately reporting the amount of materials being removed from the site. These are all issues I routinely witness at the Hope Materials Site.

To the Subcommittee, I ask you to please listen to what KPB residents that live near your Materials Sites are telling you. I ask you to please take actions that will allow for and fund the enforcement of Site Use Agreement violations. I ask you to take actions that have consequence to the violator. I ask that you take actions that show you acknowledge the concerns of neighbors of these Materials Sites, such as noise, hours of operation, dust control, unauthorized usage such as shooting, partying, and driving of off road vehicles. I ask you to limit access to all of the Materials Sites after hours by the use of locking gates, I ask you to hold contractors accountable for repeated bad behavior at these Materials Sites by terminating permits and contractual agreements (ie for road maintenance contracts) and not entering into any future agreements with repeat Site violators.

As the saying goes, KPB Materials Site Subcommittee members, it's time to grow a pair.

Sincerely,

Daniel Hawksworth
Hope, AK

Warner, Avery

From: Blankenship, Johni
Sent: Tuesday, October 25, 2022 9:10 PM
To: Warner, Avery
Subject: FW: New Public Comment to Assembly Members

From: Kenai Peninsula Borough <webmaster@borough.kenai.ak.us>
Sent: Tuesday, October 25, 2022 4:32 PM
To: BoroughAssembly <Borough-Assembly@kpb.us>; Mayor's Department <MayorDepartmental@kpb.us>
Subject: New Public Comment to Assembly Members

Your Name: Buck Allen Jones

Your Email: eastrdsv@hotmail.com

Subject: Gravel Pit Ordinance

Message:

Increasing regulation on material source sites drives up the cost of gravel, asphalt, and concrete. This drives up the cost of all new development and infrastructure maintenance, public and private. As older pits are exhausted, new ones need to take their place or gravel must be trucked from farther and farther away. This is the primary reason borough CIP's are running over budget in the Homer area. Gravel is currently being trucked from Stariski. All new regulation comes with an increased cost to be paid by the customer.

Warner, Avery

From: Blankenship, Johni
Sent: Tuesday, October 25, 2022 9:10 PM
To: Warner, Avery
Subject: FW: <EXTERNAL-SENDER>Material site public hearings

From: kristine shine <kboenisch@hotmail.com>
Sent: Tuesday, October 25, 2022 5:30 PM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>Material site public hearings

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Hello,

You sent a letter in the mail to me regarding being a landowner within 2640 feet of a Permitted material site. I won't be attending the meeting but am wondering is this in reference to something across the river from me or the sand site near me on Lou Morgan? If it's in regards to the sand site which seems purposely hidden within our neighborhood, I'd like to say those heavy trucks traveling down Harbin and Panoramic View have done a huge amount of damage to those dirt roads. I'm sure car repairs are necessities for those of us who have to travel those roads to get to the Sterling Hwy. These outfits doing this digging of natural resources should have to use the paved roads. And if found to be taking side dirt roads should have to pay some fine to contribute to the resurfacing of the dirt roads. It was a rainy Fall. Harbin and Panoramic View were hellacious to travel on. And the road only got resurfaced with dirt and rock a couple times.

Lastly, what is this digging doing to our aquifer? How far down are you allowing these outfits to dig? I'll email back to see what these answers are unless you are sending letters out to us regarding the summary of these public hearings.

Thank you for your attention to these matters.

Sincerely,
Kristine Shine
37520 Polo Alto Ct. (Morgan's Landing State Park)
Sterling, AK

Warner, Avery

From: Blankenship, Johni
Sent: Tuesday, October 25, 2022 3:50 PM
To: Warner, Avery
Subject: FW: <EXTERNAL-SENDER>Comments on KPB Ordinance 2022-36 regarding Material Site Permits, Applications, Conditions and Procedures

From: Nancy Pease <nancypease2@gmail.com>
Sent: Tuesday, October 25, 2022 3:47 PM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Cc: Thomas Pease <thomaspease@alaskan.net>; David Pease <peased907@gmail.com>
Subject: <EXTERNAL-SENDER>Comments on KPB Ordinance 2022-36 regarding Material Site Permits, Applications, Conditions and Procedures

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: Borough Assembly and Staff Planners

Re: Assembly Ordinance 2022-36 Amending KPB Chapter 21.25 and KPB Chapter 21.29 regarding Conditional Land Use Permits and Material Site Permits

My family owns property in Seldovia near Kenai Peninsula Borough (KPB) property that has materials resources. We generally support the efforts to develop a permitting system for materials sites in order to protect surrounding property values and land uses, as well as air and water quality.

Regarding the specifics of proposed KPB Ordinance 2022-36:

1. Amend the Standards Section of 21.29.040.A to expressly acknowledge adjoining property values and existing uses:

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 **adequate to maintain adjoining property values and existing land uses**. 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: ...

This language is necessary to consider the measurable effect of any protection measures. Protection measures should not be mere tokens.

2. Amend the Buffer Zone section, 21.29.050.A.1 to ensure an effective buffer zone:

1. *Buffer Zone.*

A buffer area of ~~32-~~**60** feet must be established between the area of excavation and the parcel boundaries, except the minimum shall be 100 feet adjoining residential land uses. The buffer area ~~may~~ **shall** 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;

This language is necessary to ensure that the buffer minimizes noise and vibrations as well as visual impacts. 32 feet is only half a standard road Right-of-Way. No one should have a materials extraction site closer than "just across the road". And at least one type of the physical screening/buffering elements should be mandated. Otherwise, a strip of bare earth would be permitted: and that has no buffer effect.

3. Amend 21.29.B.1.c to ensure visual screening:

2. When a buffer area has been denuded prior to review of the application by the planning commission or planning director revegetation may be required **and an 8-foot high berm or fence shall be required until the vegetation has achieved a screening effect.**

This language provides that a denuded buffer will have an effective manmade visual screen until vegetation re-grows.

4. Amend 21.29.057.C.7.d to protect simple drinking water systems:

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. **Protected drinking water sources include surface collection points that are in use prior to the permit application.**

This language protects springs, small creeks, and seeps that residents tap for drinking water, not just drilled wells.

Thank you for this opportunity to comment on protection measures for lands and waters adjoining potential materials extraction sites.

Nancy Pease and family

Property owners in the Seldovia area

nancypease2@gmail.com

October 25, 2022

Kenai Peninsula Borough Planning Department

We are writing to oppose the proposed ordinance change that would allow permits for gravel pits up to 10 acres. The Counter Permit should remain at no more than 2.5 acres in size and retain a new language of a 2-year time period with one 12 month extension.

This is very much a noise, visual, and quality of life issue for neighborhood homes and residents in the borough. These gravel pits have a grave negative impact on water and wildlife as well.

My husband and I live in New York but purchased our land in Anchor Point as a retirement destination. We have been to many places in Alaska but were always charmed by the areas of Homer and Anchor Point. We purposely purchased in a subdivision with the hope that our retirement home would be within a lovely residential area with other houses and neighbors. It is disheartening to see the proliferation of these gravel pits that make the area seem like a construction zone. A 10-acre gravel pit would literally be 5 times the size of my lot! I cannot imagine any family wanting to live so close to a noisy, dusty gravel pit. The noise and pollution of all the heavy equipment is not conducive to healthy living.

We understand the need for building, maintenance, and expansion, but those needs have to be balanced with preservation of Alaska's natural resources and quality of life for residents. Would any of you be pleased with a noisy, dirty, loud gravel pit close to your family's house? Would you feel safe with your children and pets next door to one?

We implore you to seriously consider the devastating consequences if this ordinance is passed.

Sincerely,

Edward J. and Denise Burgin

213 N. 4th Street, Bethpage, NY 11714

(owners of property at Creekside Heights)

516 938 8013

Warner, Avery

From: Blankenship, Johni
Sent: Wednesday, October 26, 2022 10:22 AM
To: Warner, Avery
Subject: FW: <EXTERNAL-SENDER>2022-36 regulations to the pits

From: Victoria Chase <victoria.chase@LIVE.COM>
Sent: Wednesday, October 26, 2022 10:11 AM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>2022-36 regulations to the pits

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.

Regarding the new regulations to the pits. I have lived near them majority of my life and do not have a problem living near them. It has never bothered me. But also I think The borough does not maintain the roads properly, I think with new regulations and things putting in place within pits I think it will make things much worse.

Get [Outlook for iOS](#)

Warner, Avery

From: Blankenship, Johni
Sent: Friday, October 28, 2022 4:52 PM
To: Warner, Avery
Subject: FW: <EXTERNAL-SENDER>KPB Ordinance 2019-30 / 2019-30 SUB

From: Larry Smith <dlconst.smith@gmail.com>
Sent: Friday, October 28, 2022 4:34 PM
To: Blankenship, Johni <JBlankenship@kpb.us>
Subject: Re: <EXTERNAL-SENDER>KPB Ordinance 2019-30 / 2019-30 SUB

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.

Madam Clerk,

Here we are nearly three years later and my comments still apply to the pending gravel pit Ordinance. Please forward my comments to all Assembly members once again. Thank you.

On Mon, Jan 6, 2020 at 11:52 AM Blankenship, Johni <JBlankenship@kpb.us> wrote:

Larry, your comments will be distributed to the Assembly for consideration.

Thank you, Johni

From: Larry Smith [mailto:dlconst.smith@gmail.com]
Sent: Sunday, January 05, 2020 8:59 PM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>KPB Ordinance 2019-30 / 2019-30 SUB

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.

Madam Clerk,

Please forward my comments on this Ordinance to the Mayor and all Assembly members. Thank you.

My name is Larry Smith. My brother and I own a construction company and three gravel pits in the KPB. I was a contractor / gravel pit owner member of the KPB Material Site Working Group. I was the only member of that group to vote NO on the changes forwarded to the Planning Commission and the Assembly. I oppose this Ordinance and urge you to vote NO on these new and unnecessary regulations.

I oppose this Ordinance for some of the following reasons;

- 1) It attempts to regulate "viewshed" and there is no right to a viewshed. Viewshed is "feel good" language and you will not be able to enforce it;
- 2) Mining noise (equipment noise) is already regulated by the Mining Safety & Health Administration and both Federal and State OSHA. The decibel level proposed is not reasonable for heavy equipment and trucks and you will not be able to enforce it;
- 3) If you pass this ordinance how do you propose to enforce it and what will it cost KPB taxpayers? I asked this question of the Planning Director at the MSWG meeting(s) and was told it would not require any more money or staff.

There are already over 350 material sites and this just seems an unreasonable number to regulate with these new regulations and your existing staff and funding;

- 4) The State of Alaska has a number of material sites in the KPB that have no reclamation. How do you propose to enforce these new regulations with regards to these sites? And, if you can not, how can you then enforce them against private material site owners?;
- 5) Material site owners are not the only ones who make noise and create dust. Aren't you discriminating against material site owners if you do not impose these regulations against every other entity who makes noise and dust? For example, airplanes operating off gravel runways, garbage trucks when picking up large dumpsters and when backing up, maintenance equipment under contract to the KPB Roads department when maintaining KPB roads;
- 5) During the MSWG meetings it was determined that the Planning Commission was improperly administering the buffers relative to material sites. The Planning Commission was stacking buffer zones, six foot high berms and fences when the existing and proposed Ordinance specifically says "OR" relative to these. Will the Planning Commission continue to stack?;

Please vote NO on this Ordinance.

--

Larry Smith

President

D & L Construction Co., Inc.

(907) 262-6160

(907) 262-6163 Fax

(907) 398-4284 Cell

--

Larry Smith

President

D & L Construction Co., Inc.

(907) 262-6160

(907) 262-6163 Fax

(907) 398-4284 Cell

RECEIVED

OCT 28 2022

TO: Assembly Clerk
Soldotna, Ak.

**Borough Clerk's Office
Kenai Peninsula Borough**

October 25, 2022

SUBJECT: Kenai Peninsula Borough (KPB) Material Site Assembly

As a twenty-five-year property owner within 2,640 feet of a Prior Existing Use, Conditional Land Use, Dewater Bar or Counter Permitted material site, of Homer and a forty-year Alaskan I wish to present concerns I have regarding relevant sections of KPB code 21.29, 21.25, 21.50.055.

My concerns follow:

- 1) Extensive and expensive building in Homer of both commercial and residential, secondary homes, and retirement homes are increasing at a rapid pace. How will this fit with gravel pits?
- 2) Designate gravel pits in specific areas, not vast unspecified places
- 3) Traffic and truck frequency, hauling size and weight, and timing constraints must be considered. Also, driveways and traffic impact. Adapt State of Alaska DOT regulations. Require permits and design controls
- 4) Insertion and consideration of wildlife corridors must be included.
- 5) Visual enhancement and screening ordinances need to be designated.
- 6) Step back from wells of at least 500 feet must be required for clean safe water.
- 7) Noise ordinances implemented.
- 8) Monitoring of water quality in wells for metals, contamination, and turbidity, plus the lowering of all water levels must be implemented.
- 9) No permit required for pits of one acre but less than 2.5 acres??? Permits required for each pit regardless of size.
- 10) Place a tax on materials withdrawn. The tax will be used for public purposes, so materials are just not "taken" from the resident population

Please keep me informed of all future action regarding this topic. Please mail all correspondence to 1800 Parkside Dr, Anchorage, AK 99501.

Sincerely,



Barbara N Reilly
40963 Heather St
Homer, Alaska 99603

Warner, Avery

From: Blankenship, Johni
Sent: Wednesday, November 9, 2022 3:39 PM
To: Warner, Avery
Subject: FW: <EXTERNAL-SENDER> MATERIAL SITE AMENDMENTS

Public comment for O2022-36 material site

From: Hans Bilben <catchalaska@alaska.net>
Sent: Wednesday, November 9, 2022 3:35 PM
To: Blankenship, Johni <JBlankenship@kpb.us>
Subject: <EXTERNAL-SENDER> MATERIAL SITE AMENDMENTS

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,
Would you please forward this to Assembly members and Planning.. Thanks

Assembly Members,

At the onset of the process to create a new material site ordinance it became apparent that the wishes of gravel operators and neighboring property owners were miles apart on just what this document might look like. There seemed to be consensus among you that if the two sides could reach common ground on at least some of the sections it would benefit and streamline the process. Ed Martin III (president of KPAC Association) and I agreed to work toward that end. After 4 1/2 years of involvement with the current ordinance, as well as participating in the former material site working group meetings and the current proceedings, I see the ordinance through the eyes of a property owner next to a proposed material site. Ed and I spent many hours discussing, negotiating, and trying to come up with language that could benefit both sides—obviously we don't agree on everything, but we put together a document. That document is now in the agenda as the "Derkevorkian Amendments" and within it are **18 sections** that we both agreed upon as beneficial. The attachment below details which sections that Ed and I agreed upon.

We sincerely hope that you will use this as a starting point, adopt these amendments, and then get on with the process of completing the remainder of the ordinance.

Hans Bilben
Anchor Point

Amendments within the Derkevorkian proposal which were agreed upon by are designated by ++ OK.

Amendments partially agreed upon are designated by +++ with desired changes noted.

21.29.010(C)

++ OK

21.29.015(D)

++ OK

21.29.050(A)(1)(a) +++ Agreement except should read "...provide visual and noise screening..."

(A)(1)(f)

+++ OK

Change and to or and change technology's to technology.

(A)(1)(g)

++ OK

(A)(2)(b)

++ OK

(A)(2)(c)

++ OK

(A)(4)

++ OK

(A)(5)(a)

++ OK

(B)(1)(c)

++ OK

(B)(4)

++ OK

21.29.055(A)

++ OK

(B)

++ OK

21.29.057

++ OK

21.29.063

++ OK

21.29.065

++ OK

21.29.130

Definitions

(A)(8)

++ OK

(A)(21)

++ Ok

Warner, Avery

From: Blankenship, Johni
Sent: Thursday, November 10, 2022 1:15 PM
To: Warner, Avery
Subject: FW: <EXTERNAL-SENDER>Kachemak Bay State Parks Citizen's Advisory Board Comments
Attachments: KBSP CAB RESOLUTION 2022 - 3 .pdf

Avery, please see the attached public comment for O2022-36.

Thank you, Johni

From: Robert Archibald <robert.e.archibald@gmail.com>
Sent: Thursday, November 10, 2022 1:05 PM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>Kachemak Bay State Parks Citizen's Advisory Board Comments

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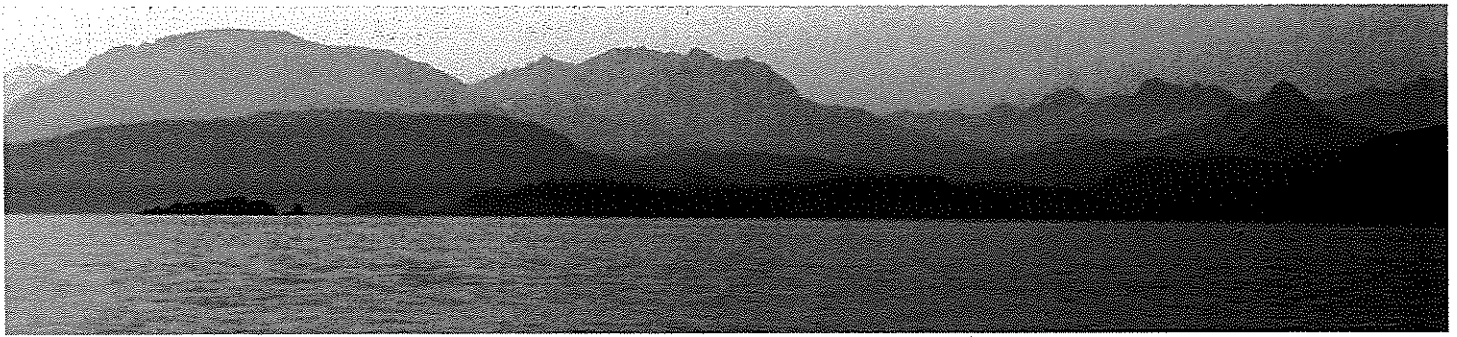
Dear Borough Clerk,

Attached is Resolution 200-3 passed by The Kachemak Bay State Parks and Kachemak Bay State Wilderness Park Citizens Advisory Board, (KBSP & KBWP CAB) on November 9, 2022 concerning updating Ordinance 2022-36, Amending KPB Chapter 21.25 and KPB Chapter 21.29 Regarding Conditional Land Use Permits and Material Site Permits and Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions.

Please pass the attached resolution on to members of the Borough Assembly and Committees dealing with updating these regulations.

Respectfully,

Robert Archibald. Chair
KBSP & KBSWP CAB



**Kachemak Bay State Parks and Kachemak Bay State Wilderness
Park Volunteer Citizen's Advisory Board
95 Sterling Hwy, Suite 2, Homer, AK 99603**

To
Kenai Peninsula Assembly Members
Filed Electronically
assemblyclerk@kpb.us

Resolution 2022 - 3

**A RESOLUTION OF THE KACHEMAK BAY STATE PARKS AND KACHEMAK
BAY STATE WILDERNESS PARK VOLUNTEER CITIZEN'S ADVISORY BOARD
REQUESTING A SET BACK FROM ALASKA STATE PARK BOUNDRIES**

WHEREAS, The Alaska Legislature created the Kachemak Bay State Park and the Kachemak Bay State Wilderness Park, (KBSP & KBSWP) in 1970 to "...protect and preserve [the park's] unique and exceptional scenic value"; and

WHEREAS, KBSP & KBSWP were formed and designated as a special purpose site under the Alaska Constitution article 8, section 7; and

WHEREAS, The Kachemak Bay State Park and Kachemak Bay State Wilderness Park Volunteer Citizen's Advisory Board was created in 1982 to provide a forum for the collection and expression of opinions and recommendations on matters relating to the Kachemak Bay State Park and Kachemak Bay State Wilderness Park to promote thereby the protection of the resources of the Kachemak Bay State Park and Kachemak Bay State Wilderness Park including its scenery, vegetation, wildlife, soils, waters, historic features, and wilderness core and outdoor recreational opportunities; and to promote therefore communication between the public, state, and local government and the administrators of the Kachemak Bay State Park and Kachemak Bay State Wilderness Park; and

WHEREAS, Kachemak Bay State Park and Kachemak Bay State Wilderness Park provide important recreational and economic opportunities for local residents and attracts tens of thousands of visitors each year who support a broad range of local businesses and jobs; and

WHEREAS, The Kenai Peninsula Borough is in the process of updating Ordinance 2022-36, Amending KPB Chapter 21.25 and KPB Chapter 21.29 Regarding Conditional Land Use Permits and Material Site Permits and Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions; and

WHEREAS, The Kachemak Bay State Park Citizen's Advisory Board supports the value of an enjoyable environment in Alaska State Parks; and

WHEREAS, The conclusive effects of Material Site operations to adjoining State Parks have not been in the discussion; and

WHEREAS, Citizens and tourists who visit Alaska State Parks deserve to have a unique experience not affected by industrial operations such as Material Extraction Sites; and

WHEREAS, It is a known fact that Material Extraction Sites create noise, air pollution and truck traffic which affect nearby areas, and

WHEREAS, The water quality to adjoining PARK LANDS and streams can be adversely affected.

NOW, THEREFORE, BE IT RESOLVED THAT THE KACHEMAK BAY STATE
PARKS AND KACHEMAK BAY STATE WILDERNESS PARK VOLUNTEER
CITIZEN'S ADVISORY BOARD

DOES SUPPORT A SET BACK OF 1,000 FEET FROM THE BOUNDARY LINE
OF AN ALASKA STATE PARK, RECREATION SITE OR RECREATION AREA
FOR THE PURPOSE OF MATERIAL EXTRACTION

FURTHERMORE

THIS SET BACK SHOULD INCLUDE NATIVE VEGATATION TO REDUCE
NOISE, AND AIR POLLUTION FROM STATE PARK LANDS

PASSED BY THE KACHEMAK BAY STATE PARK AND KACHEMAK BAY STATE
WILDERNESS PARK VOLUNTEER CITIZEN'S ADVISORY BOARD

ON THIS THE 9th DAY OF NOVEMBER 2022

Respectfully Submitted,

Robert E. Archibald

Robert E. Archibald

Chair

Kachemak Bay State Park and

Kachemak Bay Wilderness Park Volunteer Citizen's Advisory Board

VOTE

Yes - 11

No - 0

Absent - 1

CC.

Warner, Avery

From: Blankenship, Johni
Sent: Monday, November 14, 2022 12:44 PM
To: Warner, Avery
Subject: FW: New Public Comment to Assembly Members

From: Kenai Peninsula Borough <webmaster@borough.kenai.ak.us>
Sent: Monday, November 14, 2022 12:38 PM
To: BoroughAssembly <Borough-Assembly@kpb.us>; Mayor's Department <MayorDepartmental@kpb.us>
Subject: New Public Comment to Assembly Members

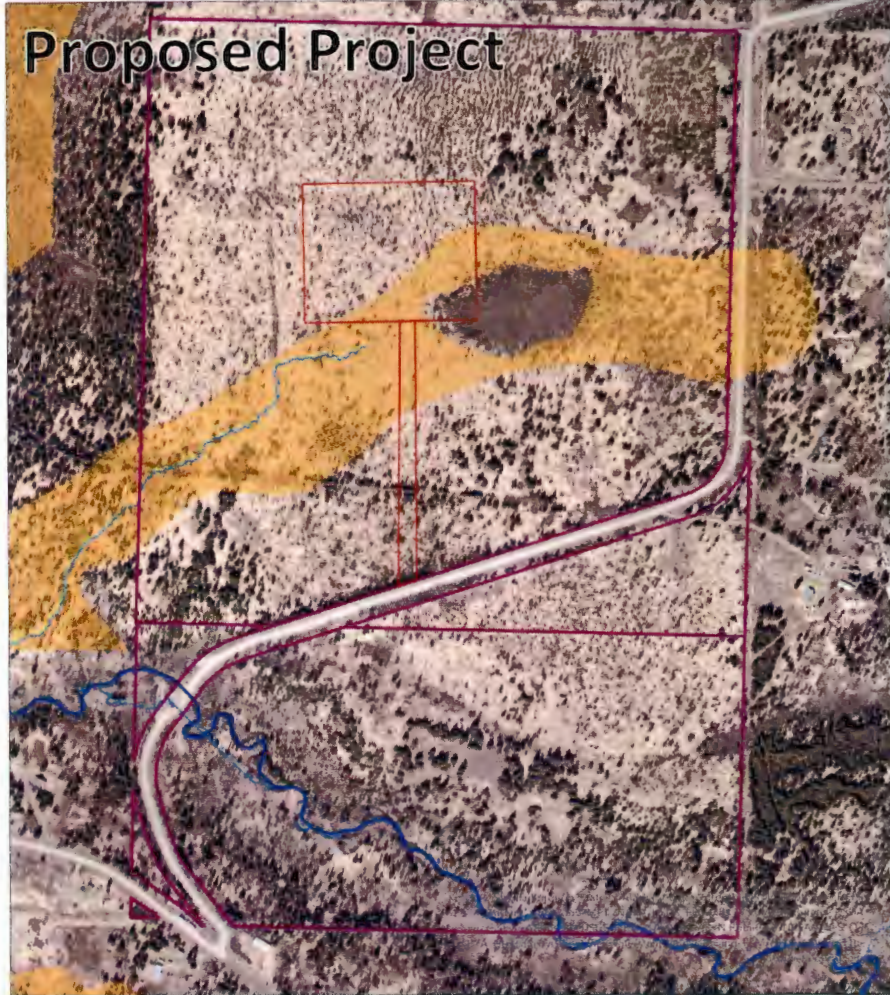
Your Name: Gordon and Sonja Nisler

Your Email: gs2aa@yahoo.com

Subject: 2022-057

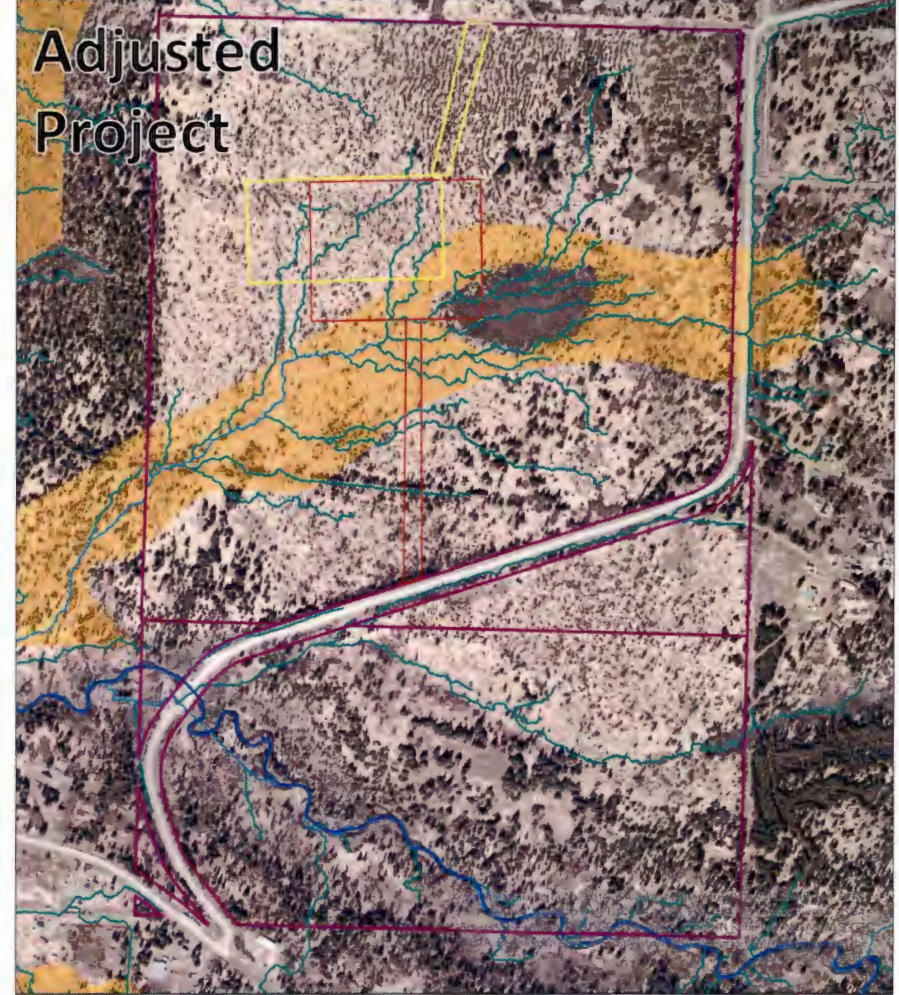
Message:

We would like to express our support for this resolution not only because the state should not go into competition with existing private businesses but also because of the the negative impact on the neighborhood (Coal Creek Subdivision) that a state take out would have. We are worried about extra traffic, safety, road destruction, trash accumulation, no state law enforcement on site as well as many other issues that will destroy the current fabric of the neighborhood. Thanks for your consideration. By the way, we live in this neighborhood.



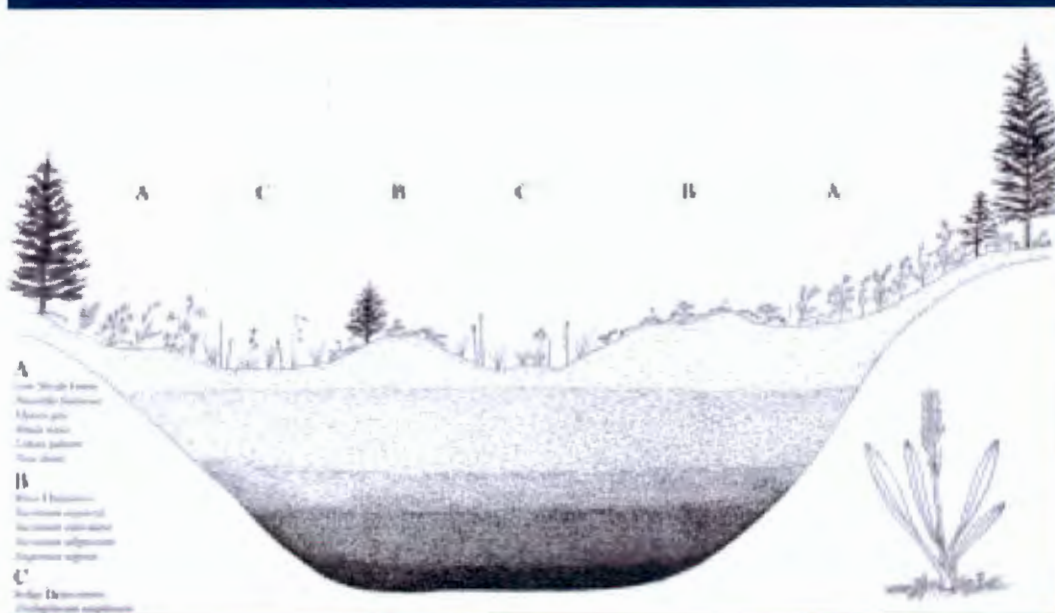
0 125 250 500 Meters

- Proposed Footprint
- KPB Parcel
- Anadromous Streams
- Predicted Streams
- Peatland



0 125 250 500 Meters

- Adjusted Footprint
- Proposed Footprint
- KPB Parcel
- Anadromous Streams
- Predicted Streams
- Flowpaths
- Peatland



Developing a peatland carbon project for the Kenai Peninsula

December 9, 2022

Mr. Brent Johnson, President,
Kenai Peninsula Borough Assembly
and Assembly members

Dear Mr. Johnson and Assembly Members,

Reading about the wish of the Assembly to review the Gravel Pit Ordinance, reminded me of my years of involvement with this.

Drew Scalzi wrote the first one, which the Gravel folks hated, they did not feel it was necessary to control their businesses, and deeply resented the efforts. I got involved thanks to Ann Byes of Anchor Point, who lives near a prime example of gravel pit abuse, where a house stands totally isolated by the deep extractions all around it. She and I were concerned that future extraction would not affect residents nearby, and had asked for at least a 300 ft. distance from a busy gravel pit just outside the quiet subdivision, and those folks are not happy about it. They can get local option zoning within the subdivision, but no protection outside the subdivision.

It is time for the Assembly to consider zoning certain areas as residential, that would not allow gravel pits, or commercial businesses. It is the only way to ensure established subdivisions will be protected from commercial disturbances.

In the past there has been a huge outcry against zoning, but I think the time has come. I see the planning committee listening to impassioned cries against proposed gravel pits, and I can empathize. It is impossible to create an ordinance that will protect them, unless there is zoning.

And somehow we have to recognize there is a need for gravel in order to build anything, roads, homes, etc. That is a vital business on the Peninsula.

I do not envy you what lies ahead. I wish you the best in your endeavors.

Sincerely,

Milli Martin
P.O. Box 2652
Homer, Alaska 99603

Subject: FW: <EXTERNAL-SENDER>Gravel Pit Ordinance 2022-36

From: Kathryn Carssow <kcarssow@live.com>
Sent: Friday, December 9, 2022 3:21 PM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>Gravel Pit Ordinance 2022-36

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Dear Assemblymembers,

Gravel pits, if not designed thoughtfully and developed carefully, pose a serious risk to underground drinking water and aboveground salmon streams, especially damaging to salmon fry habitat. As one whose income was dependent on salmon sportfishing in the Kenai Peninsula Borough, I am concerned that this ordinance be consistent with wise water management. Please incorporate the following considerations into the ordinance:

- Keep surface and groundwater provisions in the ordinance to protect our drinking water and salmon streams from pollution.
- Keep the fairness provision in the ordinance that requires not only new pits but also Prior Existing Use (PEU) pits to file an application and reclamation plan before digging into surface or groundwater.
- Follow the recommendations of the hydrology experts for 1000ft buffers on all sides for drinking water, rather than only requiring a 500ft buffer on one side.

Thank you for your work on this important ordinance.

Sincerely, Kathryn Carssow, Homer

Sent from [Mail](#) for Windows



December 12, 2022

Comments on KPB Proposed Ordinance 2022-36

To

KBP Assembly and Mayor,

The Kachemak Bay Conservation Society, (KBCS) has the following concerns and questions regarding ordinance 2022-36:

1. Page 5, Section 21.29.010-C. Provide backup or refer to regulation on how the 300-foot linear distance was derived. Provide similar reference on rule or regulation for all other specific buffers mentioned in the document. Furthermore, we want to request a **1000 ft. Buffer** of natural vegetation from the boundary line of any state or federal recreation lands.
2. Pages 7, Section 21.29.030, the Site Plan needs to identify any EPA (and Alaska DEH) Wellhead Protection areas.
3. Page 8, Section 21.29.040, A2 add to the end "...and will protect known surface water, groundwater sources and salmon habitats."
4. Page 8, Section 21.29.040, A3, what are "sufficient" setbacks, buffer zones, and other safeguards? Please provide specifics. (See # 1)
5. Page 11, Section 21.29.050. 6 – correct: "4 feet below the proposed excavation" to "4 feet below the lowest elevation of the proposed excavated area"
6. Page 15, Section 21.29.057, 4f. Specify acceptable hydrologic techniques, methods or models for evaluation of subsurface and groundwater hydrology.

KBCS also has grave concerns regarding noise, traffic, air pollution, and safety in neighborhoods.

Respectively Submitted

Roberta Highland, President

Kachemak Bay Conservation Society

Subject: FW: <EXTERNAL-SENDER>Ordinance 2022-36 Commentss

From: Harold Shepherd <halshepherdwpc@gmail.com>
Sent: Monday, December 12, 2022 12:00 PM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>Ordinance 2022-36 Commentss

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.

Water Policy Consulting, LLC (WPC) provides consultation and advisory services to conservation organizations and Alaska Native Villages throughout the state including the Kachemak Bay Watershed related to: Climate Change, water and natural resource management and protection, fish and wildlife protection, human rights, sovereignty, fund raising and environmental justice issues.

Please accept the following comments regarding the Kenai Peninsula Borough material site ordinance (gravel pit rules; Ordinance 2022-36). Groundwater is critically important for people living on the Kenai Peninsula Lowlands as it is the primary source of water for most homes and businesses in this area. In the Lowlands region for example, most residents use domestic wells or developed springs as their water supply which are dependent upon limited groundwater resources, and which is therefore, vulnerable to changes in weather, climate, and/or water use.

Domestic water supply in some areas of the Lowlands, relies on regional reservoirs including the Bridge Creek Reservoir in the Anchor River Watershed which serves as the water supply for the City of Homer. The reservoir relies at least in part on the groundwater that emerges first from springs and thereafter flows through streams and into the Bridge Creek Reservoir.

Groundwater in the lowland also directly affects Salmon because it is critical for adequate stream flow, stream temperatures, and stream nutrients. Approximately half of summer stream flow begins by emerging from seeps and springs, which are sourced from groundwater. This groundwater is cooler than ambient stream water in the summer and warmer than ambient stream water in the winter, providing important thermal refugia for salmonids.

Similarly, groundwater comes into contact with soils and biota as it flows to streams. Alder are particularly important, having a symbiotic relationship with bacteria living in root nodules. The bacteria harvest gaseous nitrogen in the atmosphere, converting it to dissolved nitrogen that can be passed to the alder. The alder then use that nitrogen to build proteins and chlorophyll, the latter essential for the photosynthesis that creates sugars that can then be passed back to the bacteria. As groundwater passes beneath alder, it emerges enriched in nitrogen, which can then enhance productivity in the streamside wetlands and the streams themselves. In order to ensure clean water and healthy salmon in the region we must protect streams and groundwater. Gravel pits – if not designed thoughtfully and developed carefully – can pose a serious risk to salmon streams, especially baby salmon.

WPC therefore supports the following sections of and amendments to Ordinance 2022-36 which should be adopted in its entirety:

- Keep surface and groundwater provisions in the ordinance to protect our drinking water and salmon streams from pollution;
- Keep the fairness provision in the ordinance that requires not only new pits but also Prior Existing Use (PEU) pits to file an application and reclamation plan before digging into surface or groundwater;
- At the last hearing, hydrology experts recommended 1000ft buffers on all sides for drinking water, but the ordinance only requires a 500ft buffer on one side.

These provisions in and changes to the Ordinance will help to ensure that gravel, salmon and our clean water resources are all valued in the discussion.

Conclusion

Groundwater in the Kenai lowlands is directly affected by gravel pits and is hydrologically connected to water needed by people and salmon. The Borough has a responsibility to protect this delicate balance of groundwater as a limited resource in relation to humans and salmon on Alaska's Kenai Peninsula Lowlands.

Please let me know if you have any questions regarding these comments. Thank you.

Hal Shepherd, Principal

Water Policy Consulting, LLC

P.O. Box 15332

Fritz Creek, AK 99603

halshpherdwpc@gmail.com

www.waterpolicyconsulting.com

WPC is located in Homer, Alaska on the traditional lands of the Dena'ina, Alutiiq and Sugpiaq people of Alaska's southcentral region which have been in community here long before the occupations of settler culture, past and present.

COMMENTS FROM LYNNDA KAHN ON Ordinance 2022-36

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.**

Comment – There can be a lot of variability in the water table depending on the time of year you dig the test holes, and the substrate being affected, so a gravel operator can conceivably use this to their advantage. How does the Borough know whether or not a gravel operator ever enters the GW table during the permit term? Is this self-reported or does the Borough make occasional site inspections to ensure extraction never reaches the water table?

Also, what criteria have been used to justify 32-ft? Depending on the depth of excavation at 32-ft from any lot line, if one accounts for the very real likelihood of erosion over time, 32-ft does not appear adequate.

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).

Comment - Requiring a Reclamation Plan is not an onerous request, and the deadline of 2026 seems unwarranted. Since we are only just now approaching Jan. 2023, I recommend a more reasonable deadline of Jan. 1, 2025, which is ample time for any prior existing use operator to develop a Plan.

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.

Comment - What steps would be required to ensure any authorized activities remain at least 4-ft or more above the seasonal high-water table? How would the Borough know, at any given time, whether or not this requirement is not being violated throughout the permit term? Is this self-reported or would the Borough make occasional site inspections to ensure extraction never reaches the 4-ft mark?

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.

Comment - What steps would be required to ensure any authorized activities remain at least 4-ft or more above the seasonal high-water table? How would the Borough know, at any given time, whether or not this requirement is not being violated throughout the permit term? Is this self-reported or would the Borough make occasional site inspections to ensure extraction never reaches the 4-ft mark?

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

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.

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

Comment – KPB should be more explicit and cite exactly which regulations they are referring to, e.g. chapters/sections, so there is no confusion.

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

a. EPA regulations controlling use of hazardous materials must be followed;

Comment – KPB should be more explicit and cite exactly which regulations they are referring to, e.g. chapters/sections, so there is no confusion.

One final comment – As you are aware, Arsenic is present in many areas on the Kenai Peninsula. As such, exposing buried soils to a different environment could result in oxidation and transport of Arsenic. Minerals, such as arsenic, could oxidize when exposed, and could change the chemistry in the water. Groundwater chemistry can greatly influence the mobility of Arsenic in groundwater.

Resolution 2022-2
Recommendations Regarding
Kenai Peninsula Borough Ordinance 2022-36

Whereas, the Kenai River Special Manage Area Advisory Board was created by the Legislature for the purpose of advising the Alaska Department of Natural Resources, Division of Parks, other state and federal agencies, the Kenai Peninsula Borough and other municipalities regarding matters affecting the Kenai River Special Management Area, and

Whereas, the Kenai Peninsula Borough is enacting Kenai Peninsula Borough Ordinance 2022-36 pertaining to earth materials extraction and processing sites, and

Whereas, the Board has reviewed and considered the current draft and proposed amendments offered by members of the Assembly and public comments:

Therefore, the Board respectfully offers the following comments for consideration:

21.29.029. This section allows an applicant to get a Counter permit without public notice for parcels up to 10 acres. The Board opposes that amount as being too large and believes 2 and one-half acres is appropriate.

Ground Water. In considering handling of water on the sites, the regulation should include surface water and surface water drainage as well as underground water levels.

Treatment of Existing Pits. The Board is concerned about exempting existing pits. The Board recommends that the Borough undertake the active management of these pits to ensure the owners implement a reclamation plan and conform to standards. The State of Alaska does not have an adequate budget to ensure existing pit owners comply with reasonable standards.

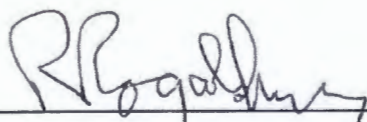
Buffer Zones. The Board believes the proposed 32 foot buffer from edge of the applicant's property boundary to adjacent properties should be increased to 100 feet.

In addition, the Board specifically recommends a buffer of 1,000 feet from any existing developed facility within KRSMA. A developed facility means any campground, boat launch, parking facility, signage or access roads developed or built by State Parks. This distance will better alleviate dust and noise.

Hours of Operation for Pits and Processing Plants. The hours of operation should be limited to 8:00 a.m. to 5:00 p.m. for six days per week so no activity takes place on Sunday.

Necessary Monitoring and Further Research. The Board recommends sufficient budget be allocated for supervision of newly permitted and existing pits. Moreover, the Board recommends the Borough fund necessary scientific research to better assess ground water flows and potential solutions to prevent pollution.

Approved: December 8, 2022



Ron Rogalsky, Chair, Kenai River Special Management Area Board

Subject: FW: <EXTERNAL-SENDER>Gravel pits

Dear Assembly members,

I am a lifelong Alaskan resident, I own a local business and home in Sterling, Alaska. I am very concerned about the proposed changes to the gravel pit rules.

The proposed changes go against both science and common sense. The changes clearly make the financial success of gravel pit owners a priority far and above the safety of all our residents drinking water and the health of our rivers and fish. The livelihood of the entire peninsula and my community relies on fishing and unspoiled natural beauty- not gravel development. My partner is a fishing guide, I am an artist. We live here because of the beautiful scenery and world renowned fishing, it's also why we have millions of tourists every year-they don't come for the gravel pits and they won't keep coming back if we poison the ground water and river and destroy the natural beauty. This is a tourism economy. Land should be developed very carefully here. This place is incredibly special, it's your job as representatives of the people and communities here to keep it that way.

Please keep the surface and groundwater provisions we have in place.

Keep the fairness provision in the ordinance. Small communities need a voice, not to be silenced by the wealthiest residents (the largest house in my whole neighborhood is owned by a gravel pit owner, he lives in a gated mansion with a full runway and a lawn that looks like a golf course).

Please keep a drinking water safety buffer of at least 1000ft on all sides- as is very clearly required for safety by scientific studies. Allowing for only a 500ft buffer on one side (when this is a clear known risk and twice that amount is required) foolishly threatens the health and safety of our community.

The new ordinance allows for careless, unsafe and unsightly land development without community input-for no other reason than simple greed. Please vote against the new gravel pit ordinance.

Thank you for your time,
Laura Dewey

Sent from my iPhone

Warner, Avery

Subject: FW: <EXTERNAL-SENDER>Public Comment Letter Re: An Ordinance Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures

Attachments: KP-CISMA Comment Letter Gravel Ordinances_12.13.2022.pdf

From: Katherine Schake <katherine@homerswcd.org>
Sent: Tuesday, December 13, 2022 9:44 AM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Cc: KP-CISMA <kenaipeninsula.invasives@gmail.com>
Subject: <EXTERNAL-SENDER>Public Comment Letter Re: An Ordinance Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures

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To Whom It May Concern,

Please accept this public comment letter on behalf of the Kenai Peninsula Cooperative Invasive Species Management Area regarding the ordinances amending material extraction site permits and related activities.

This is specifically for the KPB Assembly and Lands Committee, who is meeting tonight (Dec. 13th) to review the ordinance amending: KPB 21.29, KPB 21.25, and KPB 21.50.055.

Thank you,
Katherine

--

Katherine Schake
Invasive Species Program Manager
Homer Soil & Water Conservation District
www.homerswcd.org
432 E. Pioneer Ave
Homer, AK 99603
(907) 205-0235



Warner, Avery

From: Turner, Michele
Sent: Tuesday, December 13, 2022 6:18 PM
To: Warner, Avery
Subject: FW: New Public Comment to Assembly Members

Public comment for O2022-36. Please also update the subcommittee webpage. Thank you!

From: Kenai Peninsula Borough <webmaster@borough.kenai.ak.us>
Sent: Tuesday, December 13, 2022 5:08 PM
To: BoroughAssembly <Borough-Assembly@kpb.us>; Mayor's Department <MayorDepartmental@kpb.us>
Cc: Turner, Michele <MicheleTurner@kpb.us>
Subject: New Public Comment to Assembly Members

Your Name: Mike Patrick

Your Email: mlpatrick335@yahoo.com

Subject: Screening vs crusher noise levels

Message:

<https://www.cdc.gov/niosh/mining/userfiles/works/pdfs/naosa.pdf>, this link will give the assembly some observation data as to the actual noise levels of crushers and screeners. According to these observations there is not a great deal of difference between the two when noise levels are measured. At you work session on zoom someone claimed a significant difference. 12/13/2022.

Noise assessment of stone/aggregate mines: six case studies

Introduction

Exposure to noise and noise-induced hearing loss (NIHL) continues to be problematic for the U.S. mining industry. The problem is particularly severe because large, noisy equipment dominates the industry. Studies have shown that 70 percent to 90 percent of all miners have NIHL great enough to be classified as a hearing disability (NIOSH, 1996). To address the issue, the U.S. Mine Safety and Health Administration (MSHA) published Health Standards for Occupational Noise Exposure (*Federal Register*, 1999). The new regulations include the adoption of a hearing-conservation program similar to that of the U.S. Occupational Safety and Health Administration (OSHA), with an "Action Level" of 85 dB(A) eight-hour time weighted average (TWA8) and a permissible exposure level (PEL) of 90 dB(A) TWA8. The regulations also state that a miner's noise exposure shall not be adjusted because of the use of personal hearing protection, and that all feasible engineering and administrative controls must be used for noise exposure reduction.

The U.S. National Institute for Occupational Safety and Health (NIOSH) has responded to this problem in a

E.R. BAUER AND D.R. BABICH

number of ways, including conducting a cross-sectional survey of noise sources and worker noise exposures in the mining industry. Initially, these surveys were conducted in surface and underground (continuous and longwall) coal mines, in coal preparation plants and in sand and gravel mines. Recently, this has included

surveying stone (aggregate) mining and crushing and processing facilities. The mine sites were selected primarily through personal contacts within the mining industry. Participation in the surveys was voluntary for the mine sites, but 100 percent of the mines contacted participated. All the surveys were completed between May and October 2005. The surveys are designed to monitor worker dose, to measure equipment sound levels and to understand the noise source/worker dose relationship. This is accomplished through full-shift dosimetry readings, equipment noise profiles and, where possible, worker task observations.

Instrumentation and data collection

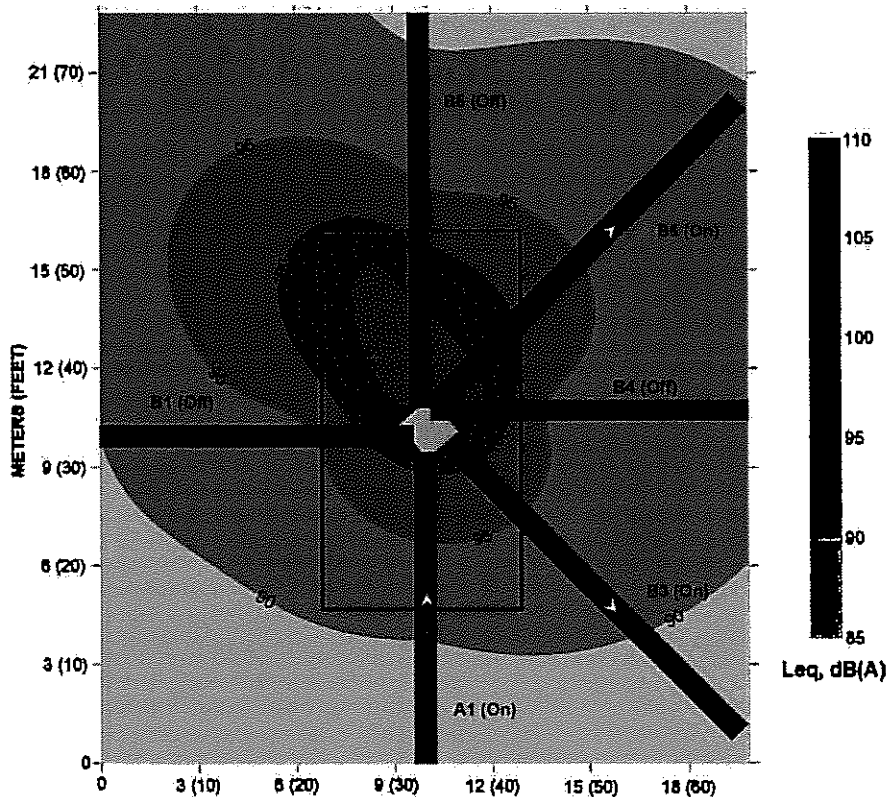
Sound levels in the mines and processing facilities were measured using a Quest Model 2900 sound level meter (SLM) and Brüel & Kjær 2260 Investigator. The instruments were mounted side by side on a tripod, with the microphones 1.5 m (5 ft) from the floor (approximately ear height), angled at 70° from horizontal (in accordance with manufacturers' recommendations) and facing the noise source. An A-weighted equivalent sound pressure level (Leq) and one-third linear octave band frequencies were recorded at each location. Leq, which for these studies was the parameter of interest, is the average integrated sound level accumulated during a specified measurement period using a 3-dB exchange rate. The 3-dB exchange rate is the method most firmly supported by scientific evidence for assessing hearing impairment as a function of noise level and duration (NIOSH, 1998). A slow response rate with an averaging time (length of measurement) of 30 seconds was also employed. Measurements were made around the fans, stationary equipment and processing facilities. Both near and far field measurements were recorded. The term "near" describes measurements made

Abstract

The U.S. National Institute for Occupational Safety and Health (NIOSH) is conducting a cross-sectional survey of equipment sound levels and worker noise exposures in the stone/aggregate mining industry. Six stone/aggregate mines (three surface and three underground) were recently surveyed, and the findings are presented here. The surveys consisted of sound-level measurements conducted around various equipment and machinery (including stone processing and crushing equipment) and full-shift dose measurements to determine worker noise exposures. The findings identify the equipment and machinery that are likely to cause worker overexposures and identify the workers found to be experiencing overexposures. In addition, the benefit of cabs in reducing mobile equipment operator noise exposure is discussed.

FIGURE 1

Sound profile plot for the primary screening tower.



within 1 to 2 m (3 to 6 ft) of the noise source while the "far" measurements were those taken farther than 2 m (6 ft) from the source.

Worker noise exposure was monitored using Quest Q-400 noise dosimeters. The dosimeters were set to monitor an MSHA permissible exposure level (PEL) of 100 percent or an eight-hour time-weighted average (TWA8) of 90 dB(A). (Specific parameters of this setting include: A-weighting, 90 dB Threshold and Criterion Levels, 5-dB Exchange Rate, Slow Response and a 140 dB Upper Limit.) Where possible, noise dose was recorded inside and outside mobile equipment to determine efficiency

located in the surface quarry, and 10 are located in the plant (crushing facilities). The worker classifications include FEL operator, haul-truck operator, primary crusher operator, control-room operator, plant operator, plant helper laborer and water-truck operator.

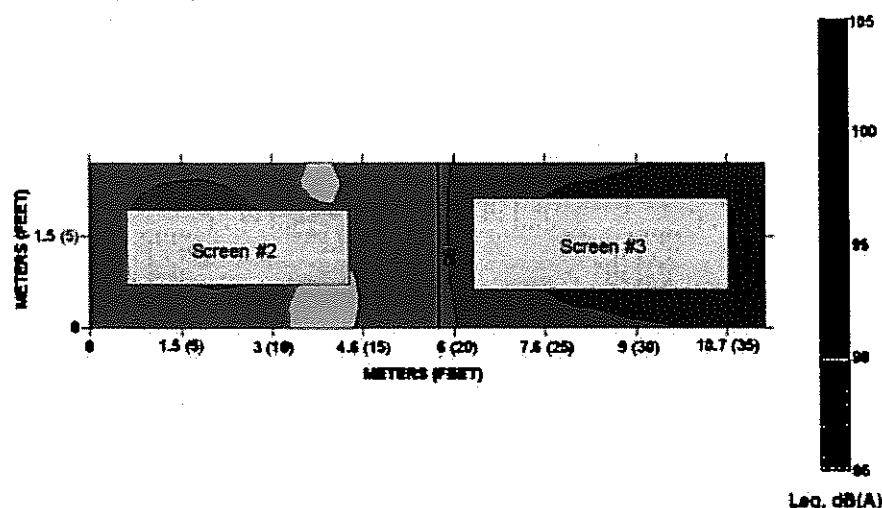
Equipment and plant sound levels: Table 1 lists the range of sound levels measured around various processing equipment and indicates that the sound levels varied greatly throughout the plants. The highest sound levels were recorded at the primary screening tower, surge tunnel, secondary crusher, secondary screening tower and

the fourth level of the agricultural lime crusher. Most of the recorded readings were 93 dB(A) or less. A sound profile plot for the primary screening tower is illustrated in Fig. 1. The measurements ranged from 87 to 96 dB(A) outside the building and 105 to 107 dB(A) inside the screening tower.

Worker exposure: Worker noise exposure was collected using dosimeters worn by the workers for the full (10-hr) shift. Six occupations that were surveyed included the operators of haul trucks, front-end loaders, primary crusher and the control rooms. Plant helpers and operators were also monitored. Results of the worker dose measurements are shown in Table 2. In addition to worker dose, a dosimeter was placed outside the cab on the front

FIGURE 2

Sound profile plot for Telsman screens 2 and 3.



end loaders (FEL) and on the haulage trucks. This provided the exposure that would occur without the protection of cabs. Although the mining and processing equipment sound level measurements suggest that there were areas that are noisy and workers could be over-exposed to noise, because the workers are in cabs or control rooms, all the workers that were monitored experienced doses well below the MSHA PEL of 100 percent (or a TWA of 90 dB(A)).

Case studies No. 2 and No. 3 — surface granite mines

Mine characteristics:

This complex consisted of two surface pits and rock processing facilities that mine and process approximately 1.36 Mt (1.5 million st) annually of crushed stone products. Mining consists of contractor-completed bench drilling and blasting, and mining of the granite gneiss rock. The blasted rock is mined using front-end loaders (FELs) loading into 36.3-t- (40-st-) capacity haul trucks for removal from the pit. The haul trucks dump into a primary crusher located near each pit. After passing through the primary crusher, the rock is transported by conveyor belt to the crushing and screening facilities, resulting in the desired product sizes. Approximately 33 workers are located at the combined surface quarries and crushing facilities. The worker classifications involved in the mining and processing operations include operators of FELs, haul trucks, primary crusher and processing plant.

Equipment and plant sound levels — Case study No. 2: The processing facilities consisted of three stationary plants (A, B and C). Measurements were taken around transfer points, belts, crushers and screens, control rooms, miscellaneous

Table 1

Sound level measurements, case study No. 1, surface limestone.

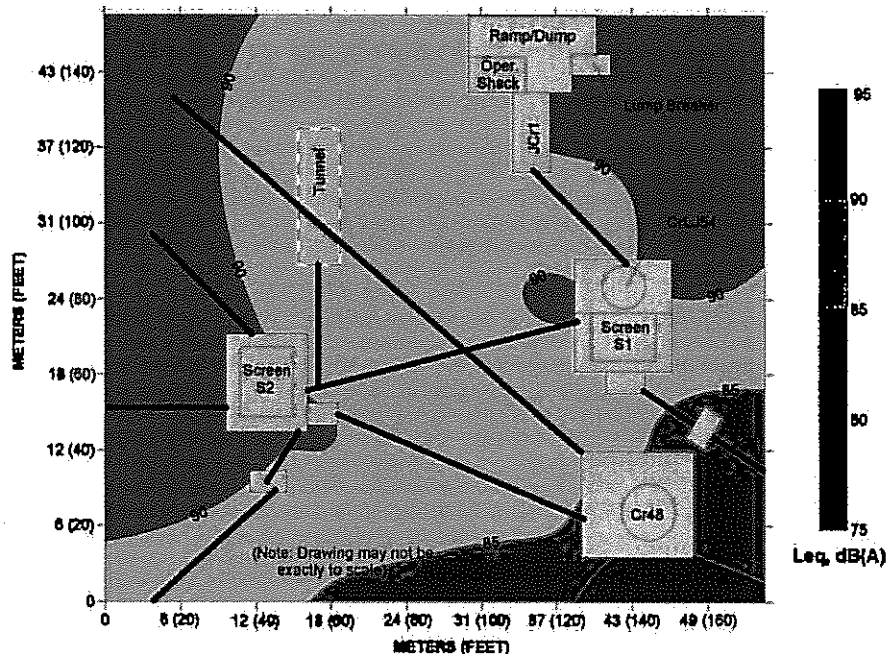
Plant	Equipment	Location	Range Leq, dB(A)
Primary	Screening tower B(N)	Inside	105-107
Primary	Screening tower B(N)	Outside	87-96
Primary	Surge tunnel, surge to sec. crusher	In tunnel	88-101
Secondary	Secondary crusher	Ground level	89-93
Secondary	Secondary crusher	Upper level	97-99
Secondary	Compressor bldg.	Inside, door open	89
Secondary	Compressor bldg.	Inside, door closed	90
Secondary	Compressor bldg.	Outside	91
Secondary	152.4 cm (60 in.) hydrocyclone crushers	Ground level	82-90
Secondary	152.4 cm (60 in.) hydrocyclone crushers	Upper level	84-95
Secondary	Control room	Inside control room	72
Secondary	Screening tower E(N)	Inside	100-106
Ag Lime	Screening tower and control room	Second level	86-99
Ag Lime	Screening tower and control room	Third level	90-93
Ag Lime	Screening tower and control room	Fourth level	91-93
Ag Lime	Screening tower and control room	Inside control room	65
Ag Lime	Screening tower and control room	Fifth level	91-92
Ag Lime	Screening tower and control room	Sixth level	91-93
Ag Lime	Screening tower and control room	Seventh level	91
Ag Lime	Crusher	Ground level outside	76-90
Ag Lime	Crusher	Second level	87-89
Ag Lime	Crusher	Third level	88-89
Ag Lime	Crusher	Fourth level	81-102
Ag Lime	C3 belt tunnel	Inside	77-88
Quarry	Primary crusher	Inside control room	67
Quarry	Primary crusher	Outside	72-95
Primary	Primary plant	Area (No. 71, 72, 74)	74-79
Secondary	Secondary plant	Area (No. 64-70, 83, 84)	72-81
Ag Lime	Ag lime plant	Area (No. 73, 75-82)	67-83

buildings and at the primary crusher. Table 3 lists the results of the sound-level measurements around the stationary equipment and indicates that the sound levels varied greatly throughout the plants. The locations where high sound levels (greater than 90 dB(A)) were recorded included the screens and crushers in Plant A, the screening tower and primary crusher in Plant B and the screen, crusher and tunnel in Plant C. An example of

Table 2

Worker exposure, case study No. 1.

Occupation	Number of recorded doses	Worker range MSHA PEL dose, %	Outside cab range MSHA PEL dose, %
Haul truck operator	3	2.7-14.8	65.9-114.1
FEL operator	3	0.7-41.3	59.0-65.6
Primary crusher operator	1	13.4	NA
Plant operator	1	0.9	NA
Plant helper	3	17.5-33.4	NA
Ag lime control room operator	1	8.2	NA
NA = not applicable			

FIGURE 3**Sound profile plot for portable plant.**

the sound levels measured is illustrated in Fig. 2, which is the sound profile plot for screens 2 and 3 in Plant A. Sound levels from 88 to a little more than 100 dB(A) were recorded.

Worker exposure – Case study No. 2: Workers wore dosimeters for a full shift (10 to 10.5 hrs) to provide noise-exposure data. Dosimeters were also placed out-

side the cabs of the mobile equipment. Table 4 lists the worker doses for the employees at the site. No worker experienced a dose above the MSHA PEL of 100 percent. Table 4 illustrates that for the mobile equipment operators, a reasonable amount of protection from the exterior noise generated by the engines and equipment operation is provided by the cabs. Only the operator of Truck 68 had a dose near 100 percent (98 percent), which was the result of the truck's outside dose of 396 percent and some unknown engine, transmission or exhaust noise problem that was able to enter the cab.

Worker exposure – Case study No. 3: Workers wore dosimeters for a full shift (9.5 to 10.5 hrs) to provide

noise exposure data. Table 6 lists the worker doses for the employees at the site. No worker experienced a dose above the MSHA PEL of 100 percent. Table 6 illustrates that, for the mobile equipment operators, the cabs are providing sufficient protection from the exterior noise generated by the engines and equipment operation.

Case studies No. 4 and No. 5 — underground limestone/sandstone mines

Mine characteristics: This operation consists of two underground mines and a common rock processing facility. Mining consists of face drilling, shooting and mining the main limestone bench, followed by drilling, shooting and removing the limestone floor rock. In addition, in some areas, the sandstone below the limestone is also mined. The blasted rock is loaded by front-end loader into 45.4- or 54.4-t (50- or 60-st-) capacity haul trucks for removal from the mine. The haul trucks dump into one of two primary crushers, which are located midway between the two mines' portals. After passing through

Table 3**Sound level measurements, case study No. 2, surface granite.**

Plant	equipment	Location	Range Leq, dB(A)
A	Belts, transfer points, bins	Ground level	78-91
	Crusher CrT57	Outside	94-97
	Crusher CrLJ45, Eljay	Outside	98-99
	Screen #S2, Telsman	Outside	88-99
	Screen #S3, AEI	Inside	100-102
	Ortner wash plant, W1	Outside	81-85
	Control room	Inside	74
	Control room	Outside	93
B	Belts, transfer points, bins	Ground level	72-88
	Screening tower, screen #S1	Inside	98-112
	Primary jaw crusher, B JCr1	Outside control room	93
	Primary jaw crusher, B JCr1	Inside control room	75
	Primary jaw crusher, B JCr1	Lower levels	88-105
	Electric room	Inside	58
	Oil and pump room	Inside	64
C	Belts, transfer points, bins	Ground level	75-96
	Crusher CrT52	Outside	99-102
	Screen #S6	Outside	85-94
	Electric room	Inside	68
	Tunnel, C10B belt	Inside tunnel	85-97

the primary crusher, the rock moves by conveyor belt either to the secondary crushing facilities or directly to a stockpile for loading and sale to end users. Rock sent to the secondary crushing facility passes through a series of crushers and screens, resulting in the desired product sizes. The combined annual production from both mines is about 1.36 Mt

(1.5 million st) of mostly crushed limestone and some sandstone. A total of 43 workers are located at the site, working two shifts per day. The worker classifications include operators of FELs, haul trucks, jaw crusher, drill, scaler, plant and water truck. Other classifications include supervisor, mechanic, blaster and blaster helper, laborer and utility man.

Equipment and plant sound levels: Measurements were taken around the main and auxiliary fans, primary jaw crushers (old and new), semi-stationary equipment and near the crushers and screens located at the secondary crushing facilities. Table 7 lists the results of the sound level measurements around the stationary and semi-stationary equipment and indicates that in most locations, sound levels greater than 90 dB(A) were present. The highest sound levels were recorded near the fans and the No. 1 cone crusher located in the secondary crushing plant. The only locations where sound levels were consistently less than 90 dB(A) were in the primary crusher operator's control booth, in the secondary crusher operator's control room, in the electrical room below the secondary crusher control room and above the sand plant.

The underground face equipment included a Tamrock floor drill and Cannon face drill (both diesel) and a Gradall scaler. Sound levels around these three pieces of equipment were high, ranging from 89 to 103 dB(A). However, the sound level measured inside the enclosed cab of the Cannon face drill was only 83 dB(A). Figures 4 and 5 include a photograph and a sound profile plot of a JOY Axivane 18.8 kw (25-hp) fan. The sound levels near the fan ranged from 90 to 106 dB(A). Another example is illustrated in Figs. 6 and 7, which are a photograph and sound contour plot for a Tamrock Ranger 500 floor drill. Figure 7 illustrates that sound levels up to 102 dB(A) were recorded near the drill.

Worker exposure: Workers at the mine wore dosimeters for a full shift (10 to 10.5 hrs) to provide noise exposure data. Table 8 lists the worker doses for both surface and underground em-

Table 4

Worker exposure, case study No. 2.

Occupation	Number of recorded doses	Worker range MSHA PEL dose, %	Outside cab range MSHA PEL dose, %
Haul truck operator (65,66,68)	3	3.0-98.0	111.0-396.1
FEL operator (27,32,34)	3	0.4-28.3	33.0-284.8
Primary crusher operator (B J Cr1)	1	2.0	NA
Bin truck operator (7)	1	10.2	22.2

NA = not applicable

ployees. In all cases, except one of the laborers, no worker experienced a dose above the MSHA PEL of 100 percent. The one laborer experienced a dose above 100 percent because he was operating an air wrench while installing sheet metal on the protective canopy at the entrance to mine No. 2. His exposure resulted from a combination of noise sources that included the air wrench, compressor and

FIGURE 4

JOY Axivane 18.6 kw (25-hp) fan (Bauer and Babich,

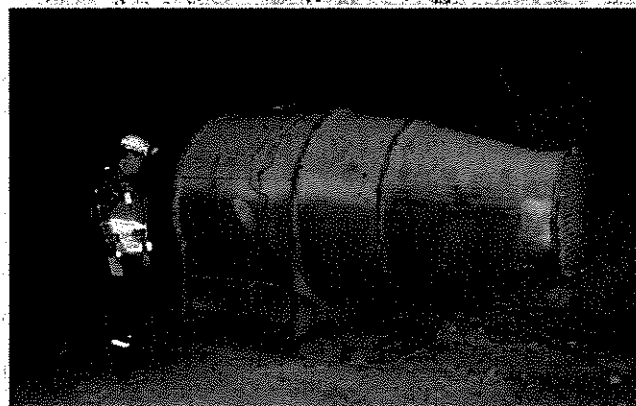


Table 5

Sound level measurements, case study No. 3, surface granite.

Plant	Equipment	Location	Range Leq, dB(A)
Portable	Belts, transfer points, bins	Ground level	77-94
	Crusher CrLJ55, El-Jay	Outside	92-97
	Screen #S1	Outside	88-91
	Screen #S2	Outside	97-104
	Primary crusher, P JCr1	Outside	88-92
	Control room	Inside	71

Table 6

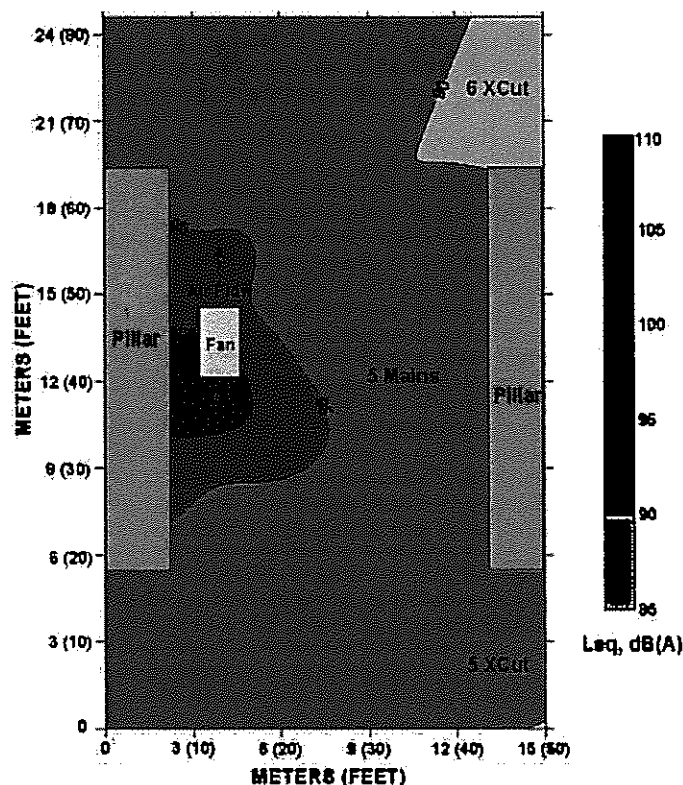
Worker exposure, case study No. 3.

Occupation	Number of recorded doses	Worker range MSHA PEL dose, %	Outside cab range MSHA PEL dose, %
Haul truck operator (69)	1	11.7	118.2
FEL operator (24, 25)	2	13.5-25.4	154.4-159.0
Primary crusher operator (P J Cr1)	1	20.4	NA

NA = not applicable

FIGURE 5

Sound profile plot for Joy Axivane 25-hp fan.



mobile equipment entering and exiting the mine. Table 8 also illustrates that for the mobile equipment operators the cabs are providing a reasonable amount of protection from the exterior noise generated by the engines and equipment operation.

Case study No. 6 — underground limestone mine

Mine characteristics: This operation consists of an underground mine and surface rock-processing facilities. Mining consists of face drilling, shooting and mining the main bench, with some mining of the floor rock. Using front-end loaders, the blasted rock is loaded into 31.8-t- (35-st-) capacity haul trucks for transport from the mine to the primary crusher. After passing through the primary crusher, the rock is transferred by belt to the crushing facility consisting of a shaker, screen and/or cone crusher to obtain the desired product sizes. Annual production for this operation is about 317.5 kt (350,000 st). From 10 to 12 workers are located at the site, working one shift per day. The worker classifications include the operators of FELs, haul trucks, crusher, drills, scaler and water truck. Other classifications include mechanic and blaster and blaster helper.

Equipment and plant sound levels: Measurements were taken around the primary jaw crusher, semi-stationary equipment and near the crushers and screens located at the crushing facilities. Table 9 lists the results of the sound-level measurements. The results indicate that a wide range of sound levels were present. In the mine, the sound levels were consistently less than 90 dB(A) around

Table 7

Sound level measurements, case study No. 4 and No. 5, underground limestone and sandstone.

Mine	Equipment	Location	Range Leq, dB(A)
No. 1	Fan systems 66HPAV2S,		
	1.5 m (5 ft) aux. fan	15 mains at 25 XCut	88-104
No. 1	Main fan (1.5 m (5 ft exhaust))	17 XCut in 8 mains	75-84
No. 1	Joy M96-50D exhaust fan	G mains at 24 XCut	86-109
No. 1	Tamrock ranger 500 floor drill	19 XCut in 9 mains	91-102
No. 2	Main fan (3.7 m (12 ft intake))	7 Mains	95-101
No. 2	Main fan (2.4 m (8 ft exhaust))	1 XCut, in 1 main	84-109
No. 2	Joy Axivane M36-26-1770 fan	5 Main at 5 XCut	90-106
No. 2	Oldenburg cannon face drill	9 XCut in 7 mains	93-103
No. 2	Gradall 5110 scaler	8 Mains at 5 XCut	89-98
Surface	Old jaw crusher (outside)	Outside control booth	83-102
Surface	Old jaw crusher (inside control booth)	Inside control booth	82
Surface	New jaw crusher (outside)	Outside control booth	84-102
Surface	New jaw crusher (inside control booth)	Inside control booth	74
Sec. Crusher	No. 1 cone crusher (2.4 m (8 ft Nordberg))	Bottom of main belt	101-107
Sec. Crusher	No. 2 cone crusher (2.4 m (8 ft))	Below main screen	99-101
Sec. Crusher	No. 3 cone crusher (Symons portable)	Adjacent to No. 2 crusher	95-98
Sec. Crusher	No. 4 lower crusher (1.8 m (6 ft))	Middle of sec. crush. plant	90-96
Sec. Crusher	Main 2.4 x 6.1 m (8 x 20 ft) screen	Above No. 2 crusher	90-99
Sec. Crusher	No. 1 & 2 double screens	Middle of sec. crush. plant	86-98
Sec. Crusher	Sand plant	Bottom of sec. crush. plant	77-98
Sec. Crusher	Control room (outside)	Outside control room	83
Sec. Crusher	Control room (inside)	Inside control room	69
Sec. Crusher	Electrical room (inside)	Below control room	75

the bucket truck and more than 90 dB(A) near the water pump, scaler and face drill. The face drill had the highest measured sound levels, ranging from 86 to 105 dB(A) (Fig. 8). In the processing facilities, sound levels above 90 dB(A) were recorded nearly everywhere except in the jaw crusher control room and at the belt drives (Fig. 9).

Worker exposure: Workers at the mine wore dosimeters for a full shift (9.5 to 10.5 hrs) to provide noise exposure data. Table 10 lists the worker doses for both surface and underground employees. In all cases, no worker experienced a dose above the MSHA PEL of 100 percent. Table 10 also illustrates for the mobile equipment operators that the cabs are providing a reasonable amount of protection from the exterior noise generated by the engines and equipment operation.

Implications for exposure reduction

The sound level measurements suggest that there are areas that are noisy and could subject workers to overexposure to noise. Nearly all workers monitored experienced doses well below the MSHA PEL of 100 percent (or a TWA of 90 dB(A)), even though equipment sound levels were generally above 90 dB(A). These exposure results do not suggest that the workers are "safe" from noise-induced hearing loss, only that the workers are limiting their time of exposure near these high noise sources. Health surveillance of hearing by use of audiometry and exposure monitoring is essential, both base-line and after noise exposure if NIHL is to be reduced in the mining industry.

One laborer experienced a dose of 119 percent while using an air wrench to install a protective canopy at the portal of an underground mine. Mobile equipment and crusher operators were protected from overexposure to noise as illustrated by the results of the dose measurements because the cabs and control rooms had sufficient acoustical treatments to prevent equipment sound levels from reaching the operators. Although only one worker was overexposed, the prevalence of noisy equipment suggests that engineering and administrative noise controls could be used to reduce sound levels and noise ex-

FIGURE 6

Tamrock floor drill.



FIGURE 7

Sound profile plot for Tamrock floor drill.

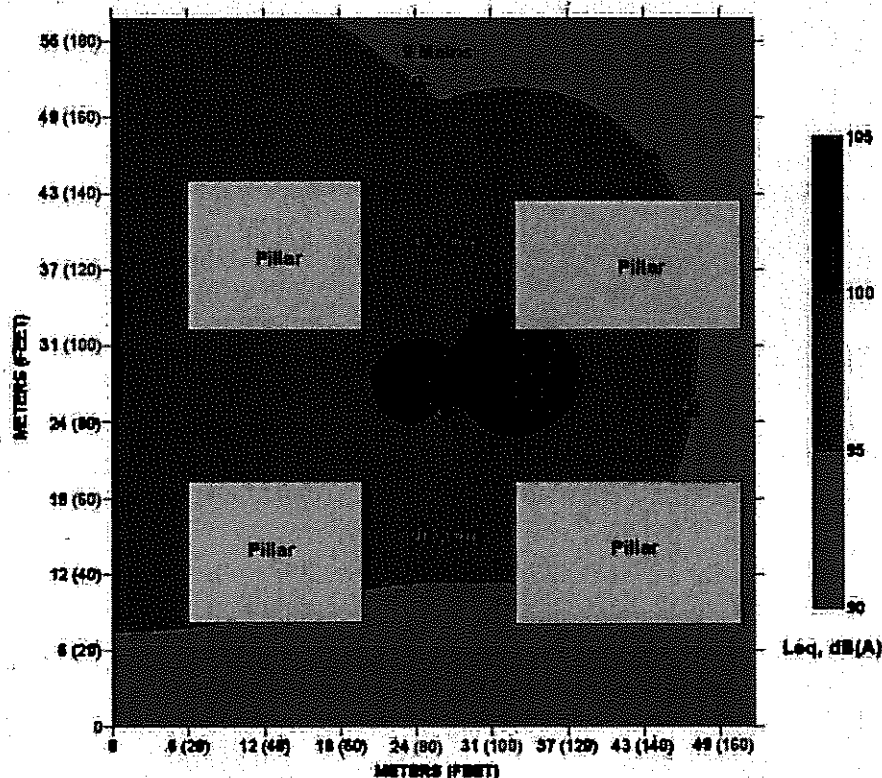


Table 8

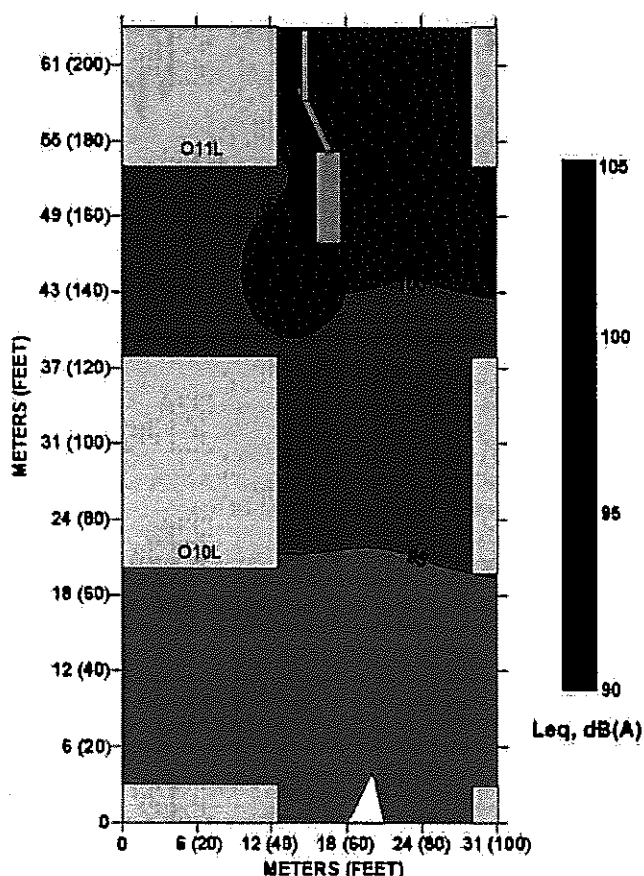
Worker exposure, case studies No. 4 and No. 5.

Occupation	Number of recorded doses	Worker range MSHA PEL dose, %	Outside cab range MSHA PEL dose, %
Haul truck operator	6	0.6-9.5	81.6-187.5
FEL operator	4	2.9-64.2	141.7-262.8
Drill operator	2	26.8-31.4	293.7-487.3
Scaler	2	1.1-1.20	187.8-209.0
Crusher operator	1	5.9	ND
Blaster/blaster helper	2	27.3-28.6	ND
Water truck operator	1	35.8	ND
Laborer	2	59.0-119.3	NA
Sec. crush. plant oper.	1	32.3	NA
Mechanic	1	8.9	NA

ND = not determined
NA = not applicable

FIGURE 8

Sound profile plot for Gardner Denver MK45H face drill.



posures. The use of acoustic material inside cabs, control rooms, screening towers and compressor buildings should be considered. Crushers and other stationary equipment may be addressed using mass-loaded barrier curtains and enclosures. Screen modifications can include acoustically treated decking and new suspension screens, as well. Underground fan systems should be equipped with silencers, muffler ducts, treated fan vanes and quiet motor technology (MSHA, 1999). Administrative controls such as job rotation, worker relocation and improved equipment operation can limit exposure to high sound levels and reduce worker noise exposures.

It would be prudent to restrict time spent in and around the crushing and screening facilities because sound levels as high as 112 dB(A) were recorded. Mobile and semi-mobile (such as drills) equipment operators should be required to keep all doors and windows closed while the equipment is in operation because outside doses up to 487 percent were measured.

All workers should be made aware of the sound levels around all equipment and in the processing plants and be instructed to utilize hearing protection based on NIOSH's recommended exposure limit (REL) of 85 dB, A-weighted, as an 8-hour time-weighted average (TWA8). Exposures at or above this REL are hazardous, creating an excess risk of developing occupational NIHL. For workers whose noise exposures equal or exceed 85 dB(A), NIOSH recommends proper use of hearing protection, among other assessment, training and prevention approaches. Any area that has a sound level of 85 dB(A) or higher has the potential to exceed the NIOSH REL depending on the exposure time (NIOSH, 1998). Because the length of exposure can vary and/or is not known prior to entering a high sound area, the potential adverse ef-

Table 9

Sound level measurements, case study No. 6, underground limestone.

Mine/surface	Equipment	Location	Range Leq, dB(A)
Mine	Blaster's bucket truck	Adjacent to and around	76-81
Mine	Gorman-Rupp diesel water pump	Adjacent to and around	89-98
Mine	Gardner Denver MK45H face drill	Adjacent to and around	86-109
Mine	Gradall XL4300 II scaler	6.1-12.2 m (20-40 ft) away	89-94
Surface	Jaw crusher (upper level)	Outside control booth	91-99
Surface	Jaw crusher (lower level)	Below control room	89-93
Surface	Jaw crusher (control booth)	Inside control booth	73
Surface	Small Tyler double shaker screen	Adjacent to and around	104-111
Surface	Large Tyler screen	Adjacent to and around	94-103
Surface	Hazemag cone crusher	Adjacent to and around	96-102
Surface	Tunnel	Just inside by belt	93
Surface	No. 1 belt drive	Next to drive motor	89
Surface	No. 2 belt drive	Next to drive motor	101
Surface	No. 4 belt drive	Next to drive motor	85
Surface	No. 6 belt drive	Next to drive motor	94
Surface	No. 8 belt drive	Next to drive motor	85
Surface	No. 9 belt drive	Next to drive motor	81
Surface	No. 11 belt drive	Next to drive motor	82
Surface	Ground level	On ground	89-101

fects on a worker's hearing are also not known, and thus it makes sense to use hearing protection when in areas where the sound levels are 85 dB(A) or greater.

Finally, workers should realize that any exposure that results in an MSHA PEL dose above zero percent indicates that during their shift they encountered sound levels above 90 dB(A). Because each individual reacts differently to high noise, there is no assurance that a dose below the MSHA PEL of 100 percent is safe and will not cause hearing loss. In addition, when the TWA of a worker exceeds 85 dB(A), the MSHA Action Level is exceeded and the worker must be enrolled in a hearing conservation program. Therefore, wearing hearing protection is a good idea at all times while operating equipment or working in the crushing and screening facilities.

Summary

Stone (aggregate) mining can be noisy and can subject workers to overexposures if they are not in cabs or control rooms. Sound-level measurements indicated that screens, crushers, drills, fans and mobile equipment generate sound levels high enough to be potential sources of worker overexposure depending on time of exposure. Fortunately, exposure measurements revealed that nearly all workers were avoiding exposures as revealed by doses under the MSHA PEL of 100 percent. Only one laborer was overexposed, a result of operating an air wrench for much of his shift. It can be concluded that mine operators and workers are successfully avoiding noise exposures through a combination of training, hazard awareness, engineering noise controls and administrative noise controls. ■

References

- Bauer, E.R., and Babich, D.R., 2006, "Limestone mining: Is it noisy or not?" *Mining Engineering*, Vol. 58, No. 10, October, pp. 37-42.
- Federal Register, 1999, "Health Standards for Occupational Noise Exposure: Final Rule," Department of Labor, Mine Safety and Health Administration, 30 CFR Parts 56 and 57 et al., Vol. 64, No. 176, Sept. 13, pp. 49548-49634.
- MSHA, 1999, "Noise Control Resource Guides: Surface Mining; Underground Mining; Mills and Preparation Plants," Dept. of Labor, Mine Safety and Health Administration, <http://www.msha.gov/1999noise/noiseresources.htm>.

Table 10

Worker exposure, case study No. 6.

Occupation	Number of recorded doses	Worker range	Outside cab range
		MSHA PEL dose, %	MSHA PEL dose, %
Haul truck operator	2	38.5 and 49.7	168.7 and 175.3
FEL operator (inside)	1	0.3	89.4
FEL operator (outside)	1	14.3	107.2
Drill operator	1	24.6	437.3
Scaler operator	1	50.2	162.3
Crusher operator	1	9.7	219.4
Blaster/Blaster helper	2	13.3 and 15.2	0.7

tion, <http://www.msha.gov/1999noise/noiseresources.htm>.

NIOSH, 1996, "Analysis of Audiograms for a Large Cohort of Noise-Exposed Miners," John Franks, National Institute for Occupational Safety and Health, Cincinnati, OH, Internal Report, 7 p.

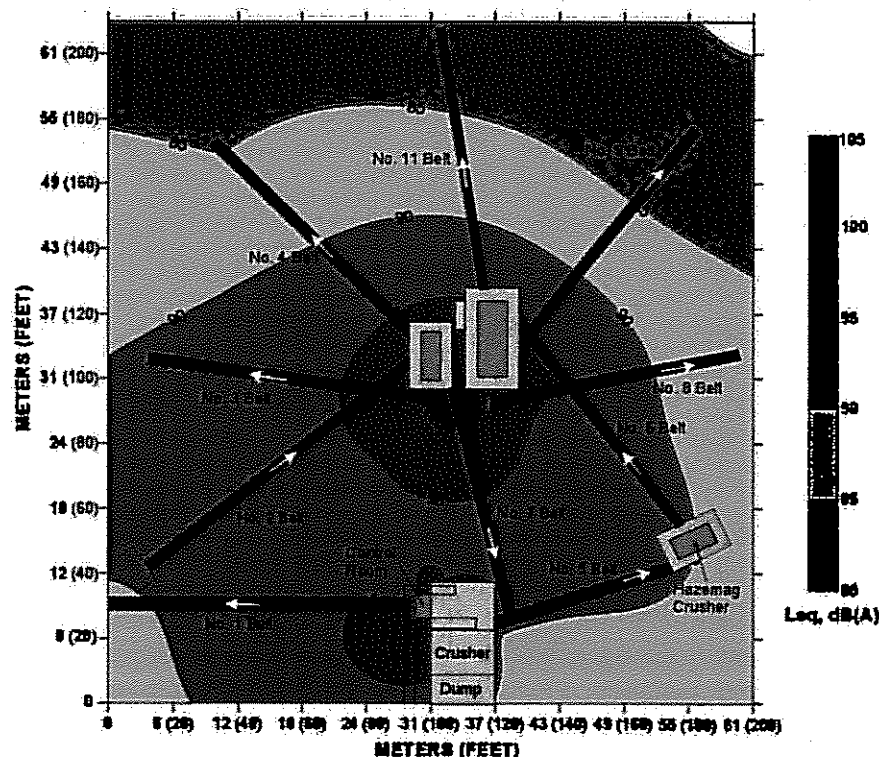
NIOSH, 1998, "Criteria for Recommended Standard, Occupational Noise Exposure, Revised Criteria 1998," National Institute for Occupational Safety and Health, Cincinnati, OH, DHHS (NIOSH) Publication 98-126, 105 p.

Disclaimer

The findings and conclusions in this report have not been formally disseminated by the National Institute for Occupational Safety and Health and should not be construed to represent any agency determination or policy.

FIGURE 9

Sound profile plot of processing facilities (Bauer and Babich, 2006).



To:

Kenai Peninsula Borough Assembly and Committee Members

From:

Tiffany Brand - District Manager

Kenai Soil and Water Conservation District

RE: Gravel Pit Code Revisions

As a proud resident of the Kenai Peninsula since 1996 and land owner for the last 20 years I have watched our communities grow, flourish, and struggle. As a volunteer and professional with many hours and miles spent on our lands, I have also seen the challenge and harm of that development. I foresee the Borough and its encompassed municipalities facing further costly challenges if simple preventative measures are not taken to address the rising issue of noxious non-native(invasive) plant presence and spread. Therefore this letter is written to encourage the Assembly and pertaining Committees to consider adding provisions addressing this issue to the developing Gravel Pit/Material Site Code revision.

The Kenai Soil and Water Conservation District is a long acting public entity with a purpose to promote success and sustainability in our area. In recent years we have operated a successful program entitled "Weed Free Gravel". This certification program involves gravel pits being inspected by a field expert and receiving advice for eliminating any high priority noxious non-native(invasive) plant life present. A Weed Free Gravel Certification is required for some contract work, for example that done near or within federal parks. This program therefore helps qualify those companies for said contracts when they come about. A vital purpose for this requirement is due to the extreme harm and cost that arises from the introduction of invasive plant species. While we are not suggesting the Borough require all pit owners to obtain a certification from this program; we are strongly advising and encouraging provisions be written into code that require pits be inspected, and high priority invasive species be dealt with to prevent inevitable spread.

The Kenai Peninsula, and Alaska as a whole, is unique in many ways; something we are all proud of. In that, operators on the Peninsula travel hundreds of miles, often in one day, from site to site. In addition, our residents also cover a broad area traveling on lands and roadways; not to mention that our highest traffic times on the Peninsula are during the summer season when invasive plant species are at their most viable to spread. Our habitats on the Peninsula are vital to not only our own sustainability, but to the revenue producing industries that thrive here. Invasive plant species threaten those habitats. It is therefore vital that we take action to address and prevent further harm.

One of the most successful measures to prevent the spread of harmful invasive plant species and reduce costly eradications in the future is to target material sites that are moving not only material, but also equipment in and out. This can be done simply and effectively with little effort.

Example Steps for Prevention:

- 1) Have existing and new material sites inspected at the beginning of the season and at least once during mid season depending on the duration of use. Have invasive species identified and eradication methods advised.
- 2) Eradicate invasive plants identified before material is transferred offsite. Examples of simple eradication include burning, burying, and pesticide application. Until invasive plants are eradicated avoid equipment travel and material transfer in the area.
- 3) Survey worksites for invasive plants when bringing equipment and material in or out to avoid transferring back to a main material site. If invasives are discovered contractors may choose to deal with them themselves or request the land owner do so before moving forward.

The damage and spread of invasive plant species is not new to our area, however it is a concern that is rapidly becoming more prevalent as the damage quickly had on a habitat and the costs incurred in the process are substantial. It demands attention and action. The Borough is a vital entity of leadership with the opportunity to instill positive change to address this threat. The Kenai Soil and Water Conservation District and collaborating agencies such as Kenai Watershed Forum and the Kenai Peninsula Cooperative Invasive Species Management Area (KP-CISMA) are available to answer questions and offer assistance in the committee's efforts. At Kenai Soil and Water we have a long time local expert in the field that is also available for consultation. With great merit and in effort to preserve the integrity of the lands governed by the Kenai Peninsula Borough I urge the Assembly and its appointed Committees to add provisions to address the threat of invasive plant species into the current Gravel Pit/Material Site Code revisions.

Thank you for your time.

-Tiffany Brand
District Manager
Kenai Soil and Water Conservation District
110 Trading Bay Suite 160
Kenai, AK 99611
(907) 741-7923

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.

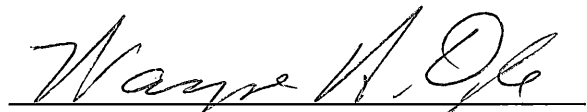
SECTION 5. The work group shall provide a final report to the planning commission, administration and assembly by June 5, 2018, and then discontinue unless extended by the assembly.

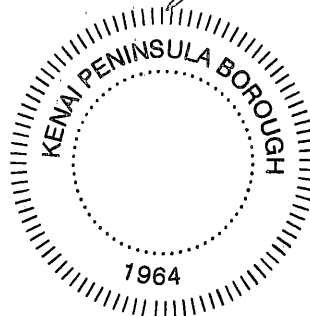
SECTION 6. That this resolution shall take effect immediately upon its adoption.

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: Johnson, Ecklund
Date: 12/13/22
Hearing: 01/17/23
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-46**

**AN ORDINANCE AMENDING KPB 21.02.230 TO MODIFY THE BOUNDARIES OF
THE NIKISKI ADVISORY PLANNING COMMISSION**

- WHEREAS,** the assembly has previously created local advisory planning commissions (“APCs”) within the Kenai Peninsula Borough (the “Borough”) for the purpose of providing recommendations to the Borough Planning Commission on land use planning and public land management issues which may affect the existing and/or future character of their communities; and
- WHEREAS,** Goal 2 of the 2019 Borough Comprehensive Plan is to “Proactively manage growth to provide economic development opportunities on the Kenai Peninsula Borough while preserving what residents and visitors value about the area’s natural features”; and
- WHEREAS,** Goal 2, Objective E states, “Actively work with interested communities outside of the incorporated cities to help develop locally-driven community plans and Strategy 4: Near-Term: Encourage unincorporated communities to engage with their established local Advisory Planning Commission (“APC”) and encourage establishment of new APCs for communities not currently represented”; and
- WHEREAS,** at its regular meeting on September 20, 2022, the assembly enacted Ordinance 2022-41, which established the Nikiski APC; and
- WHEREAS,** since the Nikiski APC’s establishment, there have been no applicants outside of the new boundaries proposed in this ordinance; and
- WHEREAS,** the Nikiski APC encompasses 3,500,000 acres, which is 13 times larger than the other existing APCs within the Borough; and
- WHEREAS,** the Tyonek Native Corporation and the Native village of Tyonek object to inclusion within the boundaries;

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

SECTION 1. That the Kenai Peninsula Borough Code of Ordinances is hereby amended by adding a new section to be numbered 21.02.230, which shall read as follows:

21.02.230. Nikiski Advisory Planning Commission.

An advisory planning commission is established for the community of the borough known as Nikiski with boundaries as follows:

[COMMENCING AT THE TOWNSHIP LINE BETWEEN T5N AND T6N R17W S.M.,
AND THE MEAN HIGH WATER LINE ON THE WESTERLY SHORE OF COOK INLET;

THENCE WESTERLY ALONG THE TOWNSHIP LINE BETWEEN T5N AND T6N TO
THE WESTERLY BOUNDARY OF THE KENAI PENINSULA BOROUGH;

THENCE NORTHERLY AND EASTERLY ALONG THE BOUNDARY OF THE KENAI
PENINSULA BOROUGH THROUGH COOK INLET TO THE PROTRACTED
NORTHEAST CORNER OF T11N R5W IN TURNAGAIN ARM;

THENCE SOUTHEASTERLY TO THE INTERSECTION OF THE SOUTHERLY MEAN
HIGH WATER LINE OF TURNAGAIN ARM AND THE 150TH MERIDIAN WEST OF
GREENWICH WITHIN T10N R4W S.M.;

THENCE SOUTHERLY ALONG THE 150TH MERIDIAN TO THE TOWNSHIP LINE
BETWEEN T8N AND T9N R4W;

THENCE WESTERLY ALONG THE TOWNSHIP LINE BETWEEN T8N AND T9N TO
THE NORTHWEST CORNER OF T8N R9W S.M.;

THENCE SOUTHERLY ALONG THE RANGE LINE BETWEEN R9W AND R10W TO
THE SOUTHEAST CORNER OF T6N R10W S.M.;

THENCE WESTERLY ALONG THE TOWNSHIP LINE BETWEEN T5N AND T6N TO
THE SOUTHEAST CORNER OF SECTION 32 T6N R10W;

THENCE NORTHERLY ALONG THE SECTION LINE BETWEEN SECTIONS 32 AND
33 TO THE NORTHEAST CORNER OF SECTION 32;

THENCE WESTERLY ALONG THE SECTION LINE TO THE NORTHWEST CORNER OF
SECTION 31 T6N R10W ON THE CORPORATE BOUNDARY OF THE CITY OF
KENAI;

THENCE NORTHERLY AND WESTERLY ALONG THE CORPORATE BOUNDARY OF
THE CITY OF KENAI TO THE INTERSECTION WITH THE MEAN LOW WATER LINE
OF COOK INLET AND THE SECTION LINE BETWEEN SECTIONS 23 AND 26 T6N
R12W S.M.;

THENCE WESTERLY ALONG THE SECTION LINE EXTENDED THREE MILES INTO
COOK INLET;

THENCE SOUTHWESTERLY TO THE PROTRACTED SOUTHEAST CORNER OF T6N
R14W IN COOK INLET;

THENCE WESTERLY ALONG THE PROTRACTED TOWNSHIP LINE BETWEEN T5N AND T6N TO THE MEAN HIGH WATER LINE ON THE WESTERLY SHORE OF COOK INLET THE TRUE POINT OF BEGINNING.]

Beginning at the intersection of the southerly mean high water line of Turnagain Arm and the 150th meridian west of Greenwich within T10N R4W S.M.;

Thence southerly along the 150th meridian to the township line between T8N and T9N R4W;

Thence westerly along the township line between T8N and T9N to the northwest corner of T8N R9W S.M.;

Thence southerly along the range line between R9W and R10W to the southeast corner of T6N R10W S.M.;

Thence westerly along the township line between T5N and T6N to the southeast corner of Section 32 T6N R10W;

Thence northerly along the section line between Sections 32 and 33 to the northeast corner of Section 32;

Thence westerly along the section line to the northwest corner of Section 31 T6N R10W on the corporate boundary of the city of Kenai;

Thence northerly and westerly along the corporate boundary of the city of Kenai to the intersection with the mean high water line of Cook Inlet and the section line between Sections 23 and 26 T6N R12W S.M.;

Thence northerly and easterly along the mean high water line on the easterly shore of Cook Inlet, and easterly along the southerly mean high water line of Turnagain Arm, to the point of beginning.

SECTION 2. That this ordinance shall be effective immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY
OF *, 2023.**

Brent Johnson, Assembly President

ATTEST:

Michele Turner, CMC, Acting Borough Clerk

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Members, Kenai Peninsula Borough Assembly

FROM: Brent Johnson, Assembly President BJ
Cindy Ecklund, Assembly Member CE

DATE: December 1, 2022

SUBJECT: Ordinance 2022-46, Amending KPB 21.02.230 to Modify the
Boundaries of the Nikiski Advisory Planning Commission (Johnson,
Ecklund)

Prior to the enactment of Ordinance 2022-41 the assembly discussed concerns regarding the size of the proposed Nikiski Advisory Planning Commission ("APC"). The Nikiski APC encompasses 3,500,000 acres, which is 13 times larger than the other existing APCs within the Borough.

The Tyonek Native Corporation and the Village of Tyonek object to inclusion within the boundaries. No applicant residing outside of the new boundaries proposed in this ordinance have applied to be on the Nikiski APC.

Your consideration is appreciated.



October 6, 2022

Kenai Peninsula Borough Assembly
144 N. Binkley Street
Soldotna, Alaska 99669

Re: Approval of "Nikiski Area" Advisory Planning Commission

Dear Assembly Members:

Tyonek Native Corporation (TNC) is writing on behalf of the community of Tyonek to express its disapproval of the Kenai Peninsula Borough (KPB) Assembly recent decision to approve the "Nikiski Area" Advisory Planning Commission (APC) under Ordinance 2022-41. Tyonek is the largest community on the West Side of Cook Inlet. As the largest private landowner in the Tyonek area, TNC was not contacted nor invited to comment on a decision that directly affects its interests and the traditional lands of both our shareholders and the Tribal members of the Native Village of Tyonek. Moreover, the record demonstrates a complete lack of—let alone meaningful—West Side input and involvement. Nikiski and Tyonek are separate and distinct people, cultures, and businesses – not the basis for uniform planning.

Tyonek Tribal members and TNC shareholders have been independent from the Kenai Peninsula—and Nikiski—since before Alaska became a territory. Our ancestors used and occupied the Tyonek area for generations. Formal use and occupancy was not only recognized but established as early as 1915 when President Woodrow Wilson created the 25,000-acre Moquawkie Reservation. In 1971, the Alaska Native Claims Settlement Act extinguished the Moquawkie Reservation and made these lands available for selection by TNC. TNC received the surface estate of most of those lands. Both TNC and the Native Village of Tyonek have a long history of involvement with oil and gas activities and timber harvesting. Our people have been promoting and protecting our resources while pursuing economic development far earlier than the establishment of Nikiski or any of the area homesteads. In other words, we have been exercising self-determination and planning functions independently for centuries. We have been performing our own land use planning, land management, and economic development – the same functions as APCs. These efforts are current, proactive, and impactful to our community.

In addition to the KPB's failure to ensure reasonable and complete input into this decision, the expansive APC boundaries prove problematic and bear no relationship to

the actual “area of influence” of the petition organizers and the community of Nikiski. Furthermore, the boundary standards at KPB Code Section 21.02.040 fail to contain any meaningful standards whatsoever. A passing reference to “the area of influence” is arbitrary and capricious, and gives no guiding standards to consider and evaluate. Here, the result is an expansive and unprecedented area that goes so far beyond the “area of influence” of the Nikiski organizers. Thus, the APC should have been rejected immediately or drastically reduced in scope. References to the fire service area, senior service area, and recreation area are hollow references of support. The services provided to the West Side and Tyonek pale in comparison to the resources and services provided to Nikiski.

Given that the history and seeming intent of APCs is to give a community a local voice for planning decisions, Chapter 21.02 does not require any diversity of membership or residency within the boundaries of an APC – it merely requires that a nominee: (A) physically reside within the APC boundaries; and (2) be registered to vote in a precinct within the APC. Given that none of the petitioners are from the West Side, it is likely that none of the Commission members of the APC will reside in the West Side. Again, an arbitrary standard when applied to a region—not a community—like the “Nikiski Area” APC.

Through an August 11, 2022 Memorandum, the KPB Director of Planning identified concern raised at a community meeting about “the ability to meaningfully represent such a large area, particularly the west side of Cook Inlet.” The only other APCs represent distinct communities. These include Moose Pass, Hope, Cooper Landing, Anchor Point, Funny River, and others; not entire regions encompassing diverse areas and communities. Here, as evinced by the petition signatories (none of whom reside in Tyonek or the West Side) the imbalance of residents and political power rests entirely in Nikiski proper, leaving out the West Side of Cook Inlet to meaningfully participate in decisions affecting planning and zoning in Tyonek.

The August 11 memorandum also highlights that the Nikiski Area APC was 10 times larger than the size of the alternative proposal (3,500,000 acres vs. 307,400 acres). But even at 307,400 acres, that would be the largest APC in the Borough. In fact, the average size is just over 99,000 acres, with the smallest at a mere 1,505 acres for Hope. The adopted APC for the “Nikiski Area” is 35 times larger than the average APC. The record contains no justification for this egregious anomaly. In fact, it suggests what can only be viewed as an intentional effort to avoid the voice of the Tyonek area.

In consideration of the arbitrary and capricious inclusion of the West Side of Cook Inlet in Nikiski’s APC, TNC requests immediate reconsideration of the Assembly approval of the “Nikiski Area” APC. Given the significant shortcomings of the process, boundaries, and establishment of the Nikiski Area APC, TNC urges the Assembly, Administration, and Planning Commission to consider the problematic nature of the APC when applied to the West Side of Cook Inlet and community of Tyonek. Tyonek was not asked, and does not

support, the Nikiski petition and KPB adoption of the "Nikiski Area" APC. It stands against reason and logic to approve such an ill-conceived and underinformed planning area.

Sincerely,

TYONEK NATIVE CORPORATION

NATIVE VILLAGE OF TYONEK

A handwritten signature in black ink, appearing to read "Stephen Peskosky", with a long, sweeping horizontal stroke at the end.

Stephen Peskosky
Chief Executive Officer

A handwritten signature in blue ink, appearing to read "Johann Bartels", with a stylized, cursive script.

Johann Bartels
President

cc: Mayor Charlie Pierce
Sean Kelley, Borough Attorney
KPB Planning Commission

Introduced by:	Mayor
Date:	08/23/22
Hearing:	09/20/22
Action:	Enacted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-41**

**AN ORDINANCE AMENDING KPB CHAPTER 21.02 TO ESTABLISH AN ADVISORY
PLANNING COMMISSION IN THE NIKISKI AREA**

WHEREAS, the assembly has previously created local advisory planning commissions (“APCs”) within the Kenai Peninsula Borough (“KPB”) for the purpose of providing recommendations to the KPB Planning Commission on land use planning and public land management issues which may affect the existing and/or future character of their communities; and

WHEREAS, Goal 2 of the 2019 KPB Comprehensive Plan is to “Proactively manage growth to provide economic development opportunities on the Kenai Peninsula Borough while preserving what residents and visitors value about the area’s natural features”; and

WHEREAS, Goal 2, Objective E states, “Actively work with interested communities outside of the incorporated cities to help develop locally-driven community plans and Strategy 4: Near-Term: Encourage unincorporated communities to engage with their established local Advisory Planning Commission (“APC”) and encourage establishment of new APCs for communities not currently represented”; and

WHEREAS, a petition, signed by over 20 qualified voters who are residents within the proposed boundaries of the Nikiski APC, has been received by the KPB Clerk requesting the formation of an APC in the Nikiski community; and

WHEREAS, on July 19, 2022, the KPB Planning Director held a community meeting to discuss the proposed boundaries of the Nikiski APC; and

WHEREAS, the petitioned area of interest is 3,500,000 acres as the proposed boundaries of the Nikiski APC and the KPB Planning Department has indicated that additional community input is needed for the effective management of these lands; and

WHEREAS, at its meeting held on August 22, 2022, the KPB Planning Commission recommended approval as amended;

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

SECTION 1. That the Kenai Peninsula Borough Code of Ordinances is hereby amended by adding a new section to be numbered 21.02.230, which shall read as follows:

21.02.230. Nikiski Advisory Planning Commission.

An advisory planning commission is established for the community of the borough known as Nikiski with boundaries as follows:

Commencing at the township line between T5N and T6N R17W S.M., and the mean high water line on the westerly shore of Cook Inlet;

Thence westerly along the township line between T5N and T6N to the westerly boundary of the Kenai Peninsula Borough;

Thence northerly and easterly along the boundary of the Kenai Peninsula Borough through Cook Inlet to the protracted northeast corner of T11N R5W in Turnagain Arm;

Thence southeasterly to the intersection of the southerly mean high water line of Turnagain Arm and the 150th meridian west of Greenwich within T10N R4W S.M.;

Thence southerly along the 150th meridian to the township line between T8N and T9N R4W;

Thence westerly along the township line between T8N and T9N to the northwest corner of T8N R9W S.M.;

Thence southerly along the range line between R9W and R10W to the southeast corner of T6N R10W S.M.;

Thence westerly along the township line between T5N and T6N to the southeast corner of Section 32 T6N R10W;

Thence northerly along the section line between Sections 32 and 33 to the northeast corner of Section 32;

Thence westerly along the section line to the northwest corner of Section 31 T6N R10W on the corporate boundary of the city of Kenai;

Thence northerly and westerly along the corporate boundary of the city of Kenai to the intersection with the mean low water line of Cook Inlet and the section line between Sections 23 and 26 T6N R12W S.M.;

Thence westerly along the section line extended three miles into Cook Inlet;

Thence southwesterly to the protracted southeast corner of T6N R14W in Cook Inlet;

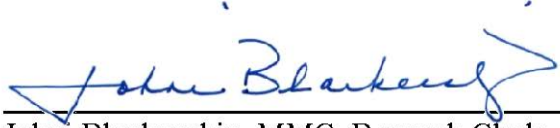
Thence westerly along the protracted township line between T5N and T6N to the mean high water line on the westerly shore of Cook Inlet the true point of beginning.

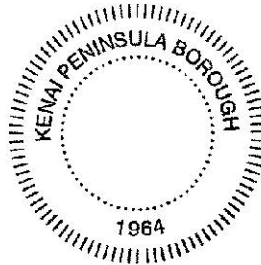
SECTION 2. That this ordinance shall be effective immediately upon enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 20TH DAY OF SEPTEMBER, 2022.


Brent Johnson, Assembly President

ATTEST:


John Blankenship, MMC, Borough Clerk



Yes: Bjorkman, Chesley, Cox, Derkevorkian, Ecklund, Elam, Hibbert, Tupper, Johnson
No: None
Absent: None

Introduced by:	Mayor
Date:	01/03/23
Hearing:	02/07/23
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2023-01**

**AN ORDINANCE AMENDING KPB 2.04.060 TO INCREASE THE
MAYOR’S SALARY TO \$130,000 AND TO PROVIDE FOR AN INFLATION
ADJUSTMENT EVERY THREE YEARS**

- WHEREAS,** the Kenai Peninsula Borough (“Borough”) Mayor’s salary was set at \$79,000 in 1990 and increased to \$99,000 in 2011; and
- WHEREAS,** Ordinance 2011-11 noted that over the 21 years between 1990 and 2011, the salary if adjusted for inflation would have been \$135,000; and
- WHEREAS,** between 2011 and 2022, the salary if adjusted for inflation would have been \$170,000; and
- WHEREAS,** KPB 2.04.060(B) provides that the Borough Mayor’s salary may only be adjusted through the budgeting process preceding the mayoral election; and
- WHEREAS,** as in 2011, the purpose served by increasing the Borough Mayor’s salary is to encourage additional experienced managers to consider public service;

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

SECTION 1. That KPB 2.04.060 is hereby amended as follows:

2.04.060. Salary.

- A. Compensation for the borough mayor shall be [\$99,000] \$130,000 per year.
- B. The mayor's salary may be adjusted at the end of each term of office through the budgeting process preceding the mayoral election. Notwithstanding, at a minimum, the salary will be adjusted every three years in an amount equivalent to the average of the three prior annual percentage changes in the Consumer Price Index for Urban Alaska (CPI). If the applicable CPI is flat or negative, then the salary will not be adjusted.

SECTION 2. That this ordinance will take effect at the beginning of the next full term of office for the Borough Mayor.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY
OF * 2023.**

Brent Johnson, Assembly President

ATTEST:

Michele Turner, CMC, Acting Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Office of Borough Mayor

MEMORANDUM

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

FROM: Mike Navarre, Mayor *MN*

DATE: December 21, 2022

SUBJECT: Ordinance 2023-01, Amending KPB 2.04.060 to Increase the Mayor's Salary to \$130,000 and to Provide for an Inflation Adjustment Every Three Years (Mayor)

The Ordinance will increase the Borough Mayor's salary to \$130,000 per year and includes a process for adjusting the mayor's salary on a regular basis to recognize inflationary impacts.

The Borough Mayor's role as the Chief Administrator includes responsibility for 11 departments and 13 diverse service areas, with all of the challenges associated. It is first and foremost a full-time management position for an area approximately the size of West Virginia, with a population of a little over 58,000. The Kenai Peninsula Borough includes a variety of large and small communities, organized and unorganized, with a diversity of concerns, problems and issues that can change or manifest on a daily basis. The role is equivalent to that of a professional city or borough manager, the only difference is it is an elected position.

The political realities of adjusting the pay of elected officials are always difficult. I believe a consistent process is needed that both recognizes the job responsibilities and compensates fairly, including consideration of inflationary adjustments.

If approved, this salary increase takes effect at the beginning of the next full term of office for the Borough Mayor, approximately October 2023.

Your consideration is appreciated.