

## Kenai Peninsula Borough

## **Meeting Agenda**

## **Planning Commission**

Jeremy Brantley, Chair – Ridgeway/Funny River/Sterling District
Pamela Gillham – Kalifornsky/Kasilof District
Virginia Morgan, Parliamentarian – Cooper Landing/Hope/East
Peninsula District
Dawson Slaughter – South Peninsula District
Jeffery Epperheimer - Nikiski District
Diane Fikes – City of Kenai
Franco Venuti – City of Homer
Paul Whitney – City of Soldotna
Troy Staggs – City of Seward

Monday, November 18, 2024

7:30 PM

Betty J. Glick Assembly Chambers

## Zoom Meeting ID: 907 714 2200

Remote participation will be available through Zoom, or other audio or video means, wherever technically feasible

The hearing procedure for the Planning Commission public hearings are as follows:

1) Staff will present a report on the item.

2) The Chair will ask for petitioner's presentation given by Petitioner(s) / Applicant (s) or their representative - 10 minutes

3) Public testimony on the issue. -5 minutes per person

4) After testimony is completed, the Planning Commission may follow with questions. A person may only testify once on an issue unless questioned by the Planning Commission.

5) Staff may respond to any testimony given and the Commission may ask staff questions.

6) Rebuttal by the Petitioner(s) / Applicant(s) to rebut evidence or provide clarification but should not present new testimony or evidence.

7) The Chair closes the hearing and no further public comment will be heard.

8) The Chair entertains a motion and the Commission deliberates and makes a decision.

All those wishing to testify must wait for recognition by the Chair. Each person that testifies must write his or her name and mailing address on the sign-in sheet located by the microphone provided for public comment. They must begin by stating their name and address for the record at the microphone. All questions will be directed to the Chair. Testimony must be kept to the subject at hand and shall not deal with personalities. Decorum must be maintained at all times and all testifiers shall be treated with respect.

## A. CALL TO ORDER

## **B. ROLL CALL**

## C. APPROVAL OF CONSENT AND REGULAR AGENDA

All items marked with an asterisk (\*) are consent agenda items. Consent agenda items are considered routine and non-controversial by the Planning Commission and will be approved by one motion. There will be no separate discussion of consent agenda items unless a Planning Commissioner so requests in which case the item will be removed from the consent agenda and considered in its normal sequence on the regular agenda.

If you wish to comment on a consent agenda item or a regular agenda item other than a public hearing, please advise the recording secretary before the meeting begins, and she will inform the Chairman of your wish to comment.

1. Time Extension Request

**KPB-6442** a. Red Boat Subdivision; KPB File 2022-150

C1. TE Red Boat Sub Packet Attachments:

- 2. Planning Commission Resolutions None
- 3. Plats Granted Administrative Approval

<u>KPB-6443</u>	a. Barron Wood Subdivision 2023 Replat; KPB File 2023-105
	b. Birch Forest No. 3; KPB File 2022-151R1
	c. Brown's Acre Estates 2024 Addition; KPB File 2024-028
	d. City Park Subdivision 2023 Replat; KPB File 2023-145
	e. Glacial Waters Subdivision Camp Addition; KPB File 2023-125
	f. Hauk's View Subdivision No. 2; KPB File 2024-010
	g. Jakes Estates ROW Replat; KPB File 2023-115
	h. Moose Range Meadows 2024 Addition; KPB File 2024-045
	i. RNK Subdivision; KPB File 2024-032
	j. Wellness Tract 2023 Replat; KPB File 2024-009
Attachments:	C3. Administrative Approvals

4. Plats Granted Final Approval (KPB 20.10.040)

<u>KPB-6444</u>	a. Holiday Park Subdivision 2024 Replat; KPB File 2024-061	
	b. Lost Lake Subdivision 2023 Replat; KPB File 2023-111	
	c. Peakaview subdivision 2024 Replat; KPB File 2024-038	
	d. Slikok Creek Alaska Poindexter-Opperman Replat; KPI	B File
	2023-100	
	e. Whisper Lake Subdivision 2024 Replat; KPB File 2024-055	
Attachments:	C4. Final Approvals	

## 5. Plat Amendment Request - None

6. Commissioner Excused Absences

City of Seward - Seat Vacant

7. Minutes

<u>KPB-6445</u>	October 28, 2024 PC Meeting Minutes
Attachments:	C7. 102824 PC Meeting Minutes

## **D. OLD BUSINESS - None**

## **E. NEW BUSINESS**

1. <u>KPB-6446</u> Ordinance 2024-29: Amending KPB 2.56.030 to incorporate the 2024 Homer Transportation Plan as an element of the official comprehensive plan for the portion of the Borough within the boundaries of the City of Homer.

Attachments: E1. Ordinance 2024-29 Packet

 <u>KPB-6447</u> Building Setback Encroachment Permit; KPB File 2024-116 Segesser Surveys / Musgrove Request: Permits a portion of the house to remain approximately 4' within the 20' building setback on Lot 5, Tukakna Sky Subdivision, Plat KN 82-110 Location: Tyena Ka Road & Kwanta Hah Circle; Kalifornsky Area
 <u>Attachments:</u> E2. BSEP Tukakna Sky Sub Packet

3.	<u>KPB-6448</u>	Conditional Land Use Permit Modification; MS2015-005
		Applicant: Sean Cude
		Request: Modification to PC Resolution 2014-20 to allow excavation
		into the water table and for temporary localized dewatering.
		Location: 36498 Virginia Drive; Kalifornsky Area
	Attachments:	E3. CLUP Modification_MS2015-005_Packet R
		E3. CLUP Modification - MS2015-005_Desk Packet
		E3. CLUP Modification - MS2015-005_DWHOA Desk Packet_R
		090924 CLUP Modification PC Meeting Packet

## F. PLAT COMMITTEE REPORT

Plat Committee will review 7 plats

## G. OTHER - None

## H. PUBLIC COMMENT/PRESENTATION

(Items other than those appearing on the agenda or scheduled for public hearing. Limited to five minutes per speaker unless previous arrangements are made)

## I. DIRECTOR'S COMMENTS

#### J. COMMISSIONER COMMENTS

#### **K. ADJOURNMENT**

## MISCELLANEOUS INFORMATIONAL ITEMS NO ACTION REQUIRED

KPB-64612025 Planning Commission Meeting Dates

Attachments: Misc. Information

## NEXT REGULARLY SCHEDULED PLANNING COMMISSION MEETING

The next regularly scheduled Planning Commission meeting will be held Monday, December 16, 2024 in the Betty J. Glick Assembly Chambers of the Kenai Peninsula Borough George A. Navarre Administration Building, 144 North Binkley Street, Soldotna, Alaska at 7:30 p.m.

## CONTACT INFORMATION KENAI PENINSULA BOROUGH PLANNING DEPARTMENT

4

## Phone: 907-714-2215 Phone: toll free within the Borough 1-800-478-4441, extension 2215 Fax: 907-714-2378 e-mail address: planning@kpb.us website: http://www.kpb.us/planning-dept/planning-home

A party of record may file an appeal of a decision of the Planning Commission in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances. An appeal must be filed with the Borough Clerk within 15 days of the notice of decision, using the proper forms, and be accompanied by the filing and records preparation fees. Vacations of right-of-ways, public areas, or public easements outside city limits cannot be made without the consent of the borough assembly.

Vacations within city limits cannot be made without the consent of the city council. The assembly or city council shall have 30 calendar days from the date of approval in which to veto the planning commission decision. If no veto is received within the specified period, it shall be considered that consent was given.

A denial of a vacation is a final act for which the Kenai Peninsula Borough shall give no further consideration. Upon denial, no reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.

# C. CONSENT AGENDA

## \*1. Time Extension Requests

a. Red Boat Subdivision; KPB File 2022-150

#### TIME EXTENSION REQUEST RED BOAT SUBDIVISION

KPB File No.	2022-150	
Applicant / Owner:	Red Boat Club LLC	
Surveyor:	Jason Young	
General Location:	Ridgeway Area	

#### STAFF REPORT

PC Meeting: Administrative Approval

#### 2022

The Planning Department received a completed preliminary plat submittal on September 29, 2022. The preliminary plat was scheduled for review by the Plat Committee on October 24, 2022. The Plat Committee granted conditional approval of the preliminary plat for two years. On November 16, 2022, the surveyor submitted a paper plat final for review.

#### <u>2023</u>

Platting staff reviewed the final plat and sent a review letter to the surveyor and owner on January 9, 2023.

#### <u>2024</u>

On September 3, 2024, Platting staff notified the surveyor of the upcoming expiration date. The Planning Department received the request October 8, stating the landowner was contemplating whether they wanted to finalize the plat. Staff contacted the surveyor, who confirmed that the owner does want to finalize, and to expect a final plat mylar within a few weeks.

This time extension request is the first time extension request associated with this subdivision plat. Per KPB 20.25.110 only two 2-year time extension requests may be granted. This time extension request will extend the subdivision approval to October 24, 2026. If the plat is not recorded before October 24, 2026, or the second and final time extension is not requested, then the approval will expire and a new plat submittal will be required to complete the subdivision

There have been no changes in the area that would affect this plat.

STAFF RECOMMENDATIONS: Extend preliminary plat approval for two years to October 24, 2026, subject to the following:

- 1. Copy of plat with current utility reviews being submitted with the final plat
- 2. Plat must comply with current Kenai Peninsula Borough Code.

NOTE: Per KPB 20.25.110(A), upon application by the subdivider prior to the two-year deadline for final plat submittal, a time extension for two years beyond the initial two-year period for submittal of the final plat may be granted by the planning director. A second and final two-year extension may be granted by the planning director when requested by the subdivider prior to expiration of the previous approval, allowing for a total approval time of six years. Expiration of time extensions will require the submission of, and action on, a new preliminary plat.

END OF STAFF REPORT

**APPROVED** 

Robert Ruffner the Planning Director

**1**0-21-2024 Date September 03, 2024

RE: Red Boat Subdivision KPB # 2022-150

Edge Survey & Design,

Red Boat Subdivision KPB # 2022-150 will expire on 10/24/2024. Please submit a signed time extension request form to the Planning Department if you wish to keep this file active. I have attached a *Time Extension Request Form* to this letter, and below is a link if you prefer to fill out online.

https://www.kpb.us/images/KPB/PLN/Plan\_Comm/Forms/Time\_Extension\_Request.pdf

**Per KPB 20.25.110(A),** upon application by the subdivider prior to the two-year deadline for final plat submittal, a time extension for two years beyond the initial two-year period for submittal of the final plat may be granted by the planning director. A second and final two-year extension may be granted by the planning director when requested by the subdivider prior to expiration of the previous approval.

If this file is not going to be finalized, please let me know so we can remove it from our active files. If you have any questions on this. Please feel free to contact the platting department.

\*\*Please note this expiration notice is a courtesy. It is the responsibility of the surveyor/landowner to keep the file current under the new code. The borough shall not be held liable for any files that expire.

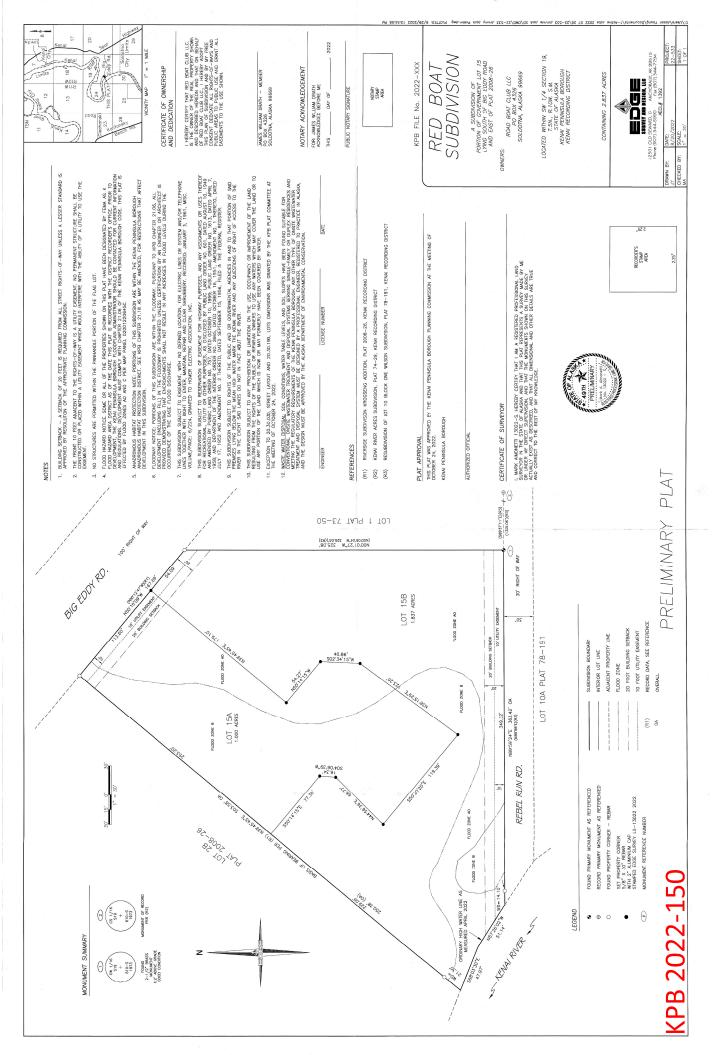
Thank you for your time.

Sincerely,

Jennifer Sather Senior Clerk, Planning Department Phone: 907-714-2200 {Office} Fax: 907-714-2378



Kenai Peninsula Borough 144 N. Binkley St. Soldotna, AK 99669 kpb.us PUBLIC RECORDS LAW DISCLOSURE: This email and responses to this email may be subject to provisions of Alaska Statutes and may be made available to the public upon request.



# C. CONSENT AGENDA

- \*3. Plats Granted Administrative Approval
  - a. Barron Wood Subdivision 2023 Replat; KPB File 2023-105
  - b. Birch Forest No. 3; KPB File 2022-151R1
  - c. Brown's Acre Estates 2024 Addition; KPB File 2024-028
  - d. City Park Subdivision 2023 Replat; KPB File 2023-145
  - e. Glacial Waters Subdivision Camp Addition; KPB File 2023-125
  - f. Hauk's View Subdivision No. 2; KPB File 2024-010
  - g. Jakes Estates ROW Replat; KPB File 2023-115
  - h. Moose Range Meadows 2024 Addition; KPB File 2024-045
  - i. RNK Subdivision; KPB File 2024-032
  - j. Wellness Tract 2023 Replat; KPB File 2024-009



## ADMINISTRATIVE APPROVAL

Subdivision: Baron Wood Subdivision 2023 Replat KPB File 2023-105 Kenai Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on November 13, 2023. Approval for the plat is valid for two years from the date of approval.

The final plat complied with conditions of preliminary approval and KPB Title 20 (Subdivisions); therefore, per KPB 20.60.220, administrative approval has been granted by the undersigned on Wednesday, October 23, 2024.

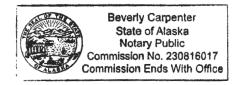
Vince Piagentini Platting Manager

State of Alaska Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this <u>2.3</u> day of <u>October</u> 2024 by Vince Piagentini.

Notary Public for the State of Alaska

My commission expires: <u>with shire</u>





## **ADMINISTRATIVE APPROVAL**

Subdivision: Birch Forest No 3 KPB File 2022-151R1 Kenai Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on April 22, 2024. Approval for the plat is valid for two years from the date of approval.

The final plat complied with conditions of preliminary approval and KPB Title 20 (Subdivisions); therefore, per KPB 20.60.220, administrative approval has been granted by the undersigned on Wednesday, November 6, 2024.

Vince Piagentini Platting Manager

State of Alaska Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this <u>6</u> day of <u>November</u> 2024 by Vince Piagentini.

Notary Public for the State of Alaska

My commission expires: WITH OFFICE





## **ADMINISTRATIVE APPROVAL**

Subdivision: Brown's Acre Estates 2024 Addition KPB File 2024-028 Kenai Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on April 8, 2024. Approval for the plat is valid for two years from the date of approval.

The final plat complied with conditions of preliminary approval and KPB Title 20 (Subdivisions); therefore, per KPB 20.60.220, administrative approval has been granted by the undersigned on Wednesday, October 23, 2024.

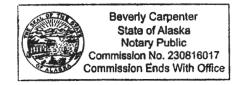
Vince Piagentini Platting Manager

State of Alaska Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this <u>23</u> day of <u>Octobes</u> 2024 by Vince Piagentini.

Notary Public for the State of Alaska

My commission expires: with office





## ADMINISTRATIVE APPROVAL

Subdivision: City Park Subdivision 2023 Replat KPB File 2023-145 Kenai Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on February 26, 2024. Approval for the plat is valid for two years from the date of approval.

The final plat complied with conditions of preliminary approval and KPB Title 20 (Subdivisions); therefore, per KPB 20.60.220, administrative approval has been granted by the undersigned on Wednesday, October 23, 2024.

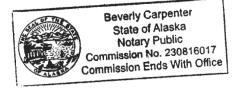
Vince Piagentini **Platting Manager** 

State of Alaska Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this <u>23</u> day of <u>October</u> 2024 by Vince Piagentini.

tary Public for the State of Alaska

My commission expires: with office





## **ADMINISTRATIVE APPROVAL**

Subdivision: Glacial Waters Subdivision Camp Addition KPB File 2023-125 Kenai Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on December 11, 2023. Approval for the plat is valid for two years from the date of approval.

The final plat complied with conditions of preliminary approval and KPB Title 20 (Subdivisions); therefore, per KPB 20.60.220, administrative approval has been granted by the undersigned on Wednesday, October 23, 2024.

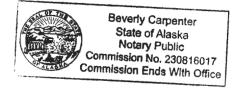
Vince Piagentini Platting Manager

State of Alaska Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this <u>23</u> day of <u>Outpur</u> 2024 by Vince Piagentini.

Notary Public for the State of Alaska

My commission expires: with office





## **ADMINISTRATIVE APPROVAL**

Subdivision: Hauck's View Subdivision #2 KPB File 2024-010 Kenai Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on February 12, 2024. Approval for the plat is valid for two years from the date of approval.

The final plat complied with conditions of preliminary approval and KPB Title 20 (Subdivisions); therefore, per KPB 20.60.220, administrative approval has been granted by the undersigned on Wednesday, October 23, 2024.

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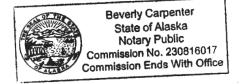
Vince Piagentini Platting Manager

State of Alaska Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this <u>28</u> day of <u>October</u> 2024 by Vince Piagentini.

Notary Public for the State of Alaska

My commission expires with office





## **ADMINISTRATIVE APPROVAL**

Subdivision: Jake Estates ROW Replat KPB File 2023-115 Kenai Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on February 26, 2024. Approval for the plat is valid for two years from the date of approval.

The final plat complied with conditions of preliminary approval and KPB Title 20 (Subdivisions); therefore, per KPB 20.60.220, administrative approval has been granted by the undersigned on Wednesday, October 23, 2024.

Vince Piagentini Platting Manager

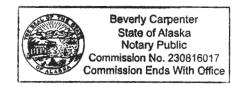
State of Alaska Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this <u>2.3</u> day of <u>October</u> 2024 by Vince Piagentini.

round

Notary Public for the State of Alaska

My commission expires: <u>with office</u>





## ADMINISTRATIVE APPROVAL

Subdivision: Moose Range Meadows 2024 Addition KPB File 2024-045 Kenai Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on May 28, 2024. Approval for the plat is valid for two years from the date of approval.

The final plat complied with conditions of preliminary approval and KPB Title 20 (Subdivisions); therefore, per KPB 20.60.220, administrative approval has been granted by the undersigned on Thursday, October 24, 2024.

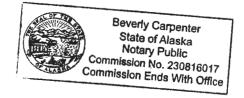
Vince Piagentini Platting Manager

State of Alaska Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this <u>24</u> day of <u>October</u> 2024 by Vince Piagentini.

Notary Public for the State of Alaska

My commission expires: <u>with office</u>





## ADMINISTRATIVE APPROVAL

Subdivision: **RNK Subdivision** KPB File 2024-032 Homer Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on April 22, 2024. Approval for the plat is valid for two years from the date of approval.

The final plat complied with conditions of preliminary approval and KPB Title 20 (Subdivisions); therefore, per KPB 20.60.220, administrative approval has been granted by the undersigned on Wednesday, October 23, 2024.

Vince Piagentini **Platting Manager** 

State of Alaska Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 23\_ day of October 2024 by Vince Piagentini.

Notary Public for the State of Alaska

My commission expires: <u>with office</u>



## ADMINISTRATIVE APPROVAL

Subdivision: Wellness Tract 2023 Replat KPB File 2024-009 Kenai Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on February 12, 2024. Approval for the plat is valid for two years from the date of approval.

The final plat complied with conditions of preliminary approval and KPB Title 20 (Subdivisions); therefore, per KPB 20.60.220, administrative approval has been granted by the undersigned on Wednesday, November 6, 2024.

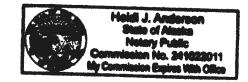
Vince Piagentini Platting Manager

State of Alaska Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this \_\_\_\_\_\_ day of November\_\_\_\_\_ 2024 by Vince Piagentini.

Public for the State of Alaska

My commission expires: WITH OFFICE



# C. CONSENT AGENDA

## \*4. Plats Granted Final Approval

- a. Holiday Park Subdivision 2024 Replat; KPB File 2024-061
- b. Lost Lake Subdivision 2023 Replat; KPB File 2023-111
- c. Peakaview subdivision 2024 Replat; KPB File 2024-038
- d. Slikok Creek Alaska Poindexter-Opperman Replat; KPB File 2023-100
- e. Whisper Lake Subdivision 2024 Replat; KPB File 2024-055



## FINAL APPROVAL OF PLAT SUBMITTED UNDER 20.10.040

Subdivision: Holiday Park Subdivision 2024 Replat KPB File 2024-061 Kenai Recording District

The Kenai Peninsula Borough Planning Department has reviewed the above referenced subdivision plat in accordance with 20.10.040 Borough Code of Ordinances. The final plat meets the conditions of the preliminary approval and complies with KPB Title 20; therefore, final approval has been granted by the undersigned on Friday, November 1, 2024.

Vince Piagentini Platting Manager

State of Alaska Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this \_\_\_\_ day of \_\_\_\_\_ 2024 by Vince Piagentini.

Notary Public for the State of Alaska

My commission expires: WITH OFFICE





## FINAL APPROVAL OF PLAT SUBMITTED UNDER 20.10.040

Subdivision: Lost Lake Subdivision 2023 Replat KPB File 2023-111 Seward Recording District

The Kenai Peninsula Borough Planning Department has reviewed the above referenced subdivision plat in accordance with 20.10.040 Borough Code of Ordinances. The final plat meets the conditions of the preliminary approval and complies with KPB Title 20; therefore, final approval has been granted by the undersigned on Wednesday, November 6, 2024.

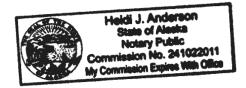
Vince Piagentini Platting Manager

State of Alaska Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this  $\underline{G^{1}}$  day of <u>November</u> 2024 by Vince Piagentini.

Notary Public for the State of Alaska

My commission expires: WITH office





## FINAL APPROVAL OF PLAT SUBMITTED UNDER 20.10.040

Subdivision: Peakaview Subdivision 2024 Replat KPB File 2024-038 Homer Recording District

The Kenai Peninsula Borough Planning Department has reviewed the above referenced subdivision plat in accordance with 20.10.040 Borough Code of Ordinances. The final plat meets the conditions of the preliminary approval and complies with KPB Title 20; therefore, final approval has been granted by the undersigned on Wednesday, October 23, 2024.

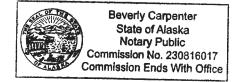
Vince Piagentini Platting Manager

State of Alaska Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this <u>23</u> day of <u>October</u> 2024 by Vince Piagentini.

Notary Public for the State of Alaska

My commission expires: <u>With office</u>





## FINAL APPROVAL OF PLAT SUBMITTED UNDER 20.10.040

Subdivision: Slikok Creek Alaska Poindexter-Opperman Replat KPB File 2023-100 Kenai Recording District

The Kenai Peninsula Borough Planning Department has reviewed the above referenced subdivision plat in accordance with 20.10.040 Borough Code of Ordinances. The final plat meets the conditions of the preliminary approval and complies with KPB Title 20; therefore, final approval has been granted by the undersigned on Friday, November 1, 2024.

Vince Piagentini Platting Manager

State of Alaska Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this \_\_\_\_\_ day of \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_2024 by Vince Piagentini.

Notary Public for the State of Alaska

My commission expires: with Office





## FINAL APPROVAL OF PLAT SUBMITTED UNDER 20.10.040

Subdivision: Whisper Lake Subdivision 2024 Replat KPB File 2024-055 Kenai Recording District

The Kenai Peninsula Borough Planning Department has reviewed the above referenced subdivision plat in accordance with 20.10.040 Borough Code of Ordinances. The final plat meets the conditions of the preliminary approval and complies with KPB Title 20; therefore, final approval has been granted by the undersigned on Thursday, October 24, 2024.

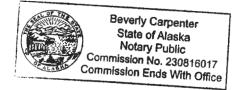
Vince Piagentini Platting Manager

State of Alaska Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this <u>24</u> day of <u>October</u> 2024 by Vince Piagentini.

Notary Public for the State of Alaska

My commission expires <u>with office</u>



# C. CONSENT AGENDA

\*7. Minutes

a. October 28, 2024 Planning Commission Meeting

## Kenai Peninsula Borough Planning Commission

Betty J. Glick Assembly Chambers, Kenai Peninsula Borough George A. Navarre Administration Building

#### OCTOBER 28, 2024 7:30 P.M. UNAPPROVED MINUTES

## AGENDA ITEM A. CALL TO ORDER

Commissioner Brantley called the meeting to order at 7:30 p.m.

## AGENDA ITEM B. ROLL CALL

Commissioners Present Jeremy Brantley, Sterling / Funny River Virginia Morgan, Cooper Landing/Hope/Eastern Peninsula District Pamela Gillham, Kalifornsky/Kasilof District Jeffery Epperheimer, Nikiski District Dawson Slaughter, South Peninsula District Diane Fikes, City of Kenai Paul Whitney, City of Soldotna Franco Venuti, City of Homer

With 8 members of a 9-member seated commission in attendance, a quorum was present.

#### Staff Present Robert Ruffner, Planning Director Walker Steinhage, Deputy Borough Attorney Vince Piagentini, Platting Manager Samantha Lopez, Kenai River Center Manager Ryan Raidmae, Planner Aaron Hughes, Land Management Officer Jennifer Robertson, LMD Administrative Assistant Ann Shirnberg, Planning Administrative Assistant

## AGENDA ITEM C. CONSENT & REGULAR AGENDA

## \*3. Plats Granted Administrative Approval

- a. Alexander Wilson Homestead 2024 Addition; KPB File 2024-023
- b. Bear Cove Airpark Addition; KPB File 2024-014
- c. Butterfly Meadows No. 3; KPB File 2023-056
- d. SLEV Plat Associated w/ the South 400' of the East 400' of Gov. Lot 1; KPB File 2019-025V

#### \*4. Plats Granted Final Approval

- a. Mariners Walk Subdivision 2022 Replat; KPB File 2022-085R1
- b. River View Subdivision 2024 Replat; KPB File 2023-135
- c. Stoneburr Subdivision Holben Replat; KPB File 2024-044

#### \*6. Commissioner Excused Absences

a. City of Soldotna – Vacant

#### \*7. Minutes

a. October 14, 2024 Planning Commission meeting minutes

Chair Brantley asked Ms. Shirnberg to read the consent agenda items into the record. He then asked if anyone wished to speak to any of the items on the consent agenda. Seeing and hearing no one wishing to comment, Chair Brantley brought it back to the commission for a motion.

**MOTION:** Commissioner Epperheimer moved, seconded by Commissioner Gillham to approve the consent and regular agendas.

Hearing no objection or further discussion, the motion was carried by the following vote:

#### MOTION PASSED BY UNANIMOUS VOTE:

I		
I	Yes - 8	Brantley, Epperheimer, Fikes, Gillham, Morgan, Slaughter, Whitney, Venuti,
L	100 0	Brandoy, Epperneiner, rikee, einnam, mergan, elaughter, vrintrey, venau,

#### AGENDA ITEM E. NEW BUSINESS

#### ITEM #1. – BUILDING SETBACK ENCROACHMENT PERMIT WILLOW BROOK NORTH ADDITION LOT 1 BLOCK 5

KPB File No.	2024-102
Planning Commission Meeting:	October 28, 2024
Applicant / Owner:	Steve & Randy Milliron / Soldotna
Surveyor:	John Segesser / Segesser Surveys
General Location:	North of Kalifornsky Beach Rd off of Even Ln
Parent Parcel No.:	055-041-19
Legal Description:	Lot 1 Block 5 Willow Brook North Addition KN 98-42
Assessing Use:	Residential
Zoning:	Rural Unrestricted
Resolution	2024-16

Staff report given by Platting Manager Vince Piagentini.

Chair Brantley opened the item for public comment.

<u>Steve Milliron; P.O. Box 757 Soldotna, AK 99669:</u> Mr. Milliron is the applicant and made himself available for questions.

Seeing and hearing no one else wishing to comment, public comment was closed and discussion was opened among the committee.

**MOTION:** Commissioner Gillham moved, seconded by Commissioner Epperheimer to adopt Planning Commission Resolution 2024-16, granting a building setback encroachment permit to a portion of the 20-foot building setback on Lot 1, Block 5, Willow Brook North Addition, Plat KN 98-42, adopting and incorporating by reference the staff report, staff recommendations and citing findings 4, 6 & 9 in support of standard one, findings 5 & 9 in support of standard two and findings 5, 6 & 9 in support of standard three.

Hearing no objection or further discussion, the motion was carried by the following vote: **MOTION PASS BY UNANIMOUS VOTE**:

#### ITEM #2. – BUILDING SETBACK ENCROACHMENT PERMIT LUKE'S WILDERNESS ACRES LOT 8 / BRITTANY SPILLETT

KPB File No.	2024-110
Planning Commission Meeting:	October 28, 2024
Applicant / Owner:	Brittany & Nick Spillett / Anchor Point, Alaska

30

Surveyor:	Jason Schollenberg / Peninsula Surveying, LLC
General Location:	Old Sterling Highway and Luke Rd / Anchor Point area
Parent Parcel No.:	169-134-08
Legal Description:	Lot 8 Luke's Wilderness Acres
Assessing Use:	Residential
Zoning:	Unrestricted
Resolution	2024-17

Staff report given by Platting Manager Vince Piagentini.

Chair Brantley opened the item for public comment.

Brittany Spillett; P.O. Box 1022, Soldotna, AK 99669: Ms. Spillett is the applicant and made herself available for questions.

Seeing and hearing no one else wishing to comment, public comment was closed and discussion was opened among the committee.

**MOTION:** Commissioner Whitney moved, seconded by Commissioner Slaughter to adopt Planning Commission Resolution 2024-17, granting a building setback encroachment permit to a portion of the 20-foot building setback on Lot 8, Luke's Wilderness Acres, Plat HM 96-42, adopting and incorporating by reference the staff report, staff recommendations and citing findings 1 & 4 in support of standard one, findings 2, 5 & 6 in support of standard two and finding 3 in support of standard three.

Hearing no objection or further discussion, the motion was carried by the following vote: **MOTION PASS BY UNANIMOUS VOTE**.

	BI SHANMOOD VOIE.
Yes - 8	Brantley, Epperheimer, Fikes, Gillham, Morgan, Slaughter, Whitney, Venuti,

## ITEM #3 – ORDINANCE 2024-19-18

#### AUTHORIZING THE ACQUISITION OF REAL PROPERTY LOCATED ADJACENT TO THE CHAPMAN SCHOOL CAMPUS IN ANCHOR POINT FOR FUTURE SCHOOL, US, AND APPROPRIATING \$850,0000.00 FROM THE GENERAL FUND FOR THE PURCHASE

Staff report given by Land Management Officer Aaron Hughes

Chair Brantley opened the item for public comment. Seeing and hearing no one wishing to comment, public comment was closed and discussion was opened among the committee.

**MOTION:** Commissioner Gillham moved, seconded by Commissioner Whitney to forward to the Assembly a recommendation to adopt Ordinance 2024-19-18: Authorizing the acquisition of real property located adjacent to the Chapman School Campus in Anchor Point for future school use, and appropriating \$850,000.00 from the general fund for the purchase.

Hearing no objection or further discussion, the motion was carried by the following vote: **MOTION PASSED BY UNANIMOUS VOTE**:

Yes - 8 Brantley, Epperheimer, Fikes, Gillham, Morgan, Slaughter, Whitney, Venuti

#### ITEM #4 – ORDINANCE 2024-\_

#### AMENDING THE DIAMOND WILLOW – FAIRFIELD LOCAL OPTION ZONING DISTRICT TO CREATE THE DIAMOND WILLOW – KENAI WELLNESS ESTATES ADDITION LOCAL OPTION ZONING DISTRICT BY CHANGING THREE PARCES FROM A SINGLE FAMILY RESIDENTIAL DISTRICT (R-1) TO A MIXED-USE DISTRICT (C-3)

Staff report given by Planner Ryan Raidmae

Chair Brantley opened the item for public comment.

<u>Robert Reiman; P.O. Box 201271, Anchorage AK 99520:</u> Mr. Reiman is the legal representative for the applicant and made himself available for questions.

<u>Travis Penrod; 36860 Virginia Drive, Kenai AK 99611:</u> Mr. Penrod is the president of the Diamond Willow Home Owners Association and he spoke in support of this LOZD.

Seeing and hearing no one else wishing to comment, public comment was closed and discussion was opened among the committee.

**MOTION:** Commissioner Epperheimer moved, seconded by Commissioner Gillham to forward to the Assembly a recommendation to adopt Ordinance 2024-\_\_: Amending the Diamond Willow–Fairfield Local Option Zoning District to create the Diamond Willow–Kenai Wellness Estates Addition Local Option Zoning District by changing three parcels from a Single Family Residential District (R-1) to a Mixed-Use District (C-3)

Hearing no objection or further discussion, the motion was carried by the following vote: **MOTION PASSED BY UNANIMOUS VOTE**:

Yes - 8 Brantley, Epperheimer, Fikes, Gillham, Morgan, Slaughter, Whitney, Venuti

#### AGENDA ITEM F. PLAT COMMITTEE REPORT

Commissioner Gillham report that the committee reviewed and granted preliminary approval to 7 plats.

## AGENDA ITEM H. PRESENTATIONS / PUBLIC COMMENTS ON ITEMS NOT APPEARING ON THE AGENDA

Chair Brantley asked if there was anyone who wished to comment on anything that was not on the agenda. There was no one who wished to comment.

## AGENDA ITEM K. ADJOURNMENT

Commissioner Gillham moved to adjourn the meeting at 8:17 P.M.

Ann E. Shirnberg Administrative Assistant

# E. NEW BUSINESS

1. Ordinance 2024-29: Amending KPB 2.56.030 to incorporate the 2024 Homer Transportation Plan as an element of the official comprehensive plan for the portion of the Borough within the boundaries of the City of Homer.

## Kenai Peninsula Borough Planning Department

## MEMORANDUM

TO:	Peter Ribbens, Assembly President Members, KPB Assembly
THRU:	Peter A. Micciche, Mayor
FROM:	Robert Ruffner, Planning Director
DATE:	October 30, 2024
SUBJECT:	Ordinance 2024, Amending KPB 2.56.030 to Incorporate the 2024 Homer Transportation Plan as an Element of the Official Comprehensive Plan for that Portion of the Borough within the Boundaries of the City of Homer (Mayor)

The City of Homer (the City) has been working with Kinney Engineering since 2022 to update the transportation and trails elements of the City's Comprehensive Plan.

On October 7, 2024, the Kenai Peninsula Borough Planning Department received a transmittal letter from the City's Development Director, Julie Engebretsen. The letter requested the Kenai Peninsula Borough update its comprehensive plan to remove the now outdated 2005 Homer Area Transportation Plan and the 2004 Homer Non-Motorized Transportation and Trails Plan. These two plans are to be replaced by the singular 2024 Homer Transportation Plan as adopted by Homer Ordinance 24-31(S). The Ordinance amends KPB 2.56.030 accordingly.

Pursuant to KPB 21.01.025 Comprehensive plans – Amendments, the Kenai Peninsula Borough Planning Commission is scheduled to hear and make a recommendation to the Assembly on the requested changes at its regularly scheduled meeting on November 18<sup>th</sup>.

Your consideration is appreciated.

Introduced by:	Mayor
Date:	11/12/24
Hearing:	01/07/25
Action:	
Vote:	

## KENAI PENINSULA BOROUGH ORDINANCE 2024-

## AN ORDINANCE AMENDING KPB 2.56.030 TO INCORPORATE THE 2024 HOMER TRANSPORTATION PLAN AS AN ELEMENT OF THE OFFICIAL COMPREHENSIVE PLAN FOR THAT PORTION OF THE BOROUGH WITHIN THE BOUNDARIES OF THE CITY OF HOMER

- WHEREAS, the Kenai Peninsula Borough (KPB) as a second-class borough provides for planning on an areawide basis in accordance with Alaska Statutes (AS) Chapter 29.40; and
- **WHEREAS,** AS 29.40.030(b) provides that the Assembly, after receiving the recommendations of the Planning Commission, will periodically undertake a review of the comprehensive plan and update the plan as necessary; and
- **WHEREAS,** the KPB's comprehensive plan was last updated in 2019, via Ordinance 2019-25, and should be amended with new planning documents as described in the executive summary; and
- WHEREAS, AS Chapter 29.40 describes the comprehensive plan as a compilation of policy statements, goals, standards, and other planning documents such as transportation plans, community facilities' plans, and land use plans to be used for the systematic and organized development of the KPB; and
- WHEREAS, on September 24, 2024, the Homer City Council Enacted Homer Ordinance 24-31(s), "An Ordinance of the Homer City Council Adopting the 2024 Homer Transportation Plan, Amending the Homer Comprehensive Plan to Include the Transportation Plan and Recommending Adoption by the Kenai Peninsula Borough"; and
- WHEREAS, the Planning Commission at its regularly scheduled meeting of \_\_\_\_\_\_;

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

**SECTION 1.** That KPB 2.56.030 is hereby amended as follows:

## 2.56.030. - Homer comprehensive plan adopted.

- A. The assembly adopts the "2018 Homer Comprehensive Plan" approved by Homer Ordinance 18-47 on November 26, 2018 as the official borough comprehensive plan for that portion of the borough within the boundaries of the City of Homer.
- [B. THE ASSEMBLY ADOPTS THE HOMER NON-MOTORIZED TRANSPORTATION AND TRAIL PLAN AS AN ELEMENT OF THE BOROUGH'S COMPREHENSIVE PLAN FOR THAT PORTION OF THE BOROUGH WITHIN THE BOUNDARIES OF THE CITY OF HOMER.]
- [C]<u>B.</u> The assembly adopts and incorporates the [2006] <u>2024</u> Homer Area Transportation Plan into [CHAPTER 3 OF] the borough's comprehensive plan for that portion of the borough within the boundaries of the City of Homer.]
- [D] <u>C.</u> The assembly adopts and incorporates the Homer Town Center Plan in Chapter 1 of the borough's comprehensive plan for that portion of the borough within the boundaries of the City of Homer.
- [E]D. The assembly adopts and incorporates the Homer Spit Comprehensive Plan as an element of that portion of the borough within the boundaries of the city limits of Homer.
- **SECTION 2.** That this ordinance shall be effective immediately.

## ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS \* DAY OF \* 2024.

ATTEST:

Peter Ribbens, Assembly President

Michele Turner, CMC, Borough Clerk

Yes:

No:

Absent:

# Transportation Plan

June 2024

# HOMER City Hall

Prepared For:

#### **City of Homer**

Prepared By:

#### **Kinney Engineering, LLC**

3909 Arctic Blvd, Ste 400 Anchorage, AK 99503 907-346-2373 AECL1102

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# Introduction

The City of Homer is the largest city on the southern Kenai Peninsula and serves as a central hub for goods and services for nearby communities. Within the city limits, Homer has a population of about 5,719; however, an estimated 12,200 individuals reside within a 15-mile radius of Homer. With the arrival of seasonal residents and visitors during tourist season, the community experiences significant increases in vehicular traffic.

This **Homer Transportation Plan** presents the goals and objectives for the Homer transportation network and describes policies, actions, and projects

that will help to achieve those goals over the next 20 years. The Transportation Plan falls under the umbrella of the Homer Comprehensive Plan which looks at land use and development throughout the City and provides a broad overview on the interaction between land use and transportation. This Transportation Plan will provide additional detail regarding the transportation network and will support the City's land use and development goals. *Table 1* presents previous City of Homer plans that relate to the transportation plan and *Table 2* presents pending and ongoing projects.

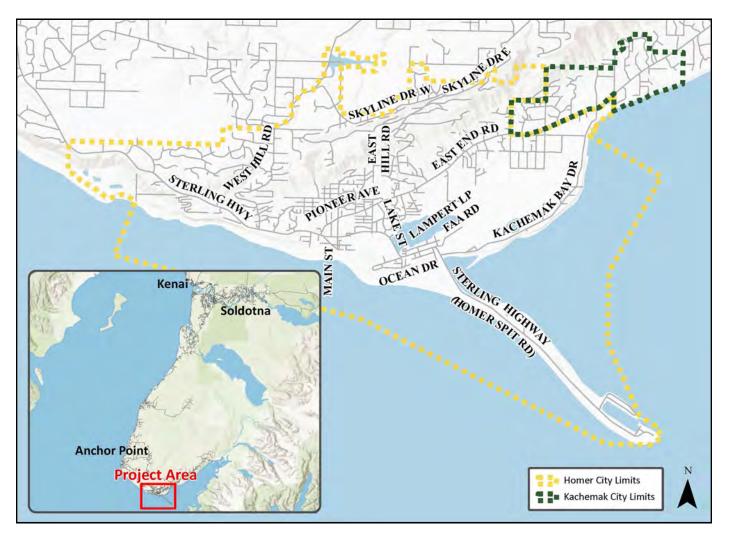


Figure 1: Homer Vicinity Map

RELATED PLANS	DESCRIPTION
City of Homer Non-Motorized Transportation and Trails Plan 2022 Implementation Plan (2022)	Guides the development of a non-motorized network in Homer.
Green Infrastructure - Storm Water Management Plan (2021)	Examines the benefits of integrating green infrastructure for stormwater mitigation.
Homer Spit Parking Study (2021)	Examines parking concerns on the Homer Spit and makes suggestions for improvements.
All-Hazard Mitigation Plan (2018)	Outlines actions taken during hazardous situations, including tsunami evacuation routes.
Homer Comprehensive Plan (2018)	Establishes goals, standards, and policies for land use and development.
Climate Action Plan (2007)	Outlines how to reduce energy usage and greenhouse gas emissions.
Homer Area Transportation Plan (2005)	Identifies needs, guides planning, and aids funding efforts for roads and trails capital improvement projects.
<b>Homer Non-Motorized Transportation and</b> Provides a development manual for creating and integrating a non-motorized transportation and trail system over the period from 2004 to 2024.	

Table 1: Past Plans

PLANS AND PROJECTS	DESCRIPTION
Homer Comprehensive Plan Update (pending)	Updates the 2018 plan, establishing goals, standards, and policies for land use and development.
Homer All Ages & Abilities Pedestrian Path Project (ongoing)	Connects the Senior Center, medical district, and Central Business District with an accessible pathway for year-round, non-motorized access.
Homer Harbor Expansion Project (ongoing)	Addresses Homer's need for additional harbor space to moor large vessels.
Stormwater Management Projects (ongoing)	Uses green infrastructure and natural systems to improve water quality and prevent flooding/erosion. There are currently four projects in the conceptual phase.

Table 2: Pending and Ongoing Plans and Projects

#### The Transportation Plan includes the following key sections:

**Public Involvement Summary.** Describes how input from the public was solicited and incorporated into this plan.

**State of the System.** Describes the transportation infrastructure within the City, including state roads, City roads, and non-motorized trails, paths, and sidewalks; evaluates how the transportation network operates, including consideration of seasonal impacts, as well as the impacts of schools, hospitals, and events such as the Farmers Market on system operations; discusses the transportation needs of persons of all ages and abilities; and describes the existing evacuation routes for emergency events such as tsunamis and wildfires.

**Transportation System Guidelines.** Presents brief summaries of current best practices for transportation systems pertinent to the City of Homer.

*Goals and Objectives.* Presents the goals and objectives for the City of Homer transportation network. These goals address community desires for increased safety when using different modes of transportation and better connectivity for all users.

*Recommendations.* Presents policies, actions, and projects that need to be implemented to reach the City's goals.

*Funding.* Describes potential sources of funding for the recommended policies, actions, and projects.

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# Public Involvement Summary

In the fall of 2022, as part of the Transportation Plan effort, the City of Homer and community stakeholders conducted multiple public outreach events as well as focused group discussions with target populations in mind. Outreach activities included:

- Discussion at Homer High School
- Discussion at Senior Center
- Booth at Rotary Health Fair
- Discussions with representatives from:
  - Independent Living Center
  - Local taxi companies
  - Heavy equipment and freight operators
- Presentations to City of Homer commissions and Council

#### In addition, comments from the public at large were solicited in four other ways:

- An online mapping tool where community members could identify specific locations of interest as well as share specific concerns and offer potential solutions. Nearly 500 specific comments were made using this tool.
- 2 Comments from the Non-Motorized Transportation Symposium held by Homer Drawdown (a community effort focused on local efforts to mitigate climate change) on October 1, 2022, were added to the online mapping tool.
- An online survey, which asked specific questions about how individuals travel, their concerns while traveling, and what travel options they preferred. This survey was also available in print. Nearly 300 people responded to this survey.

A public open house focused on identifying goals and objectives for the Transportation Plan.



Figure 2: Transportation Plan Open House (November 9, 2022)

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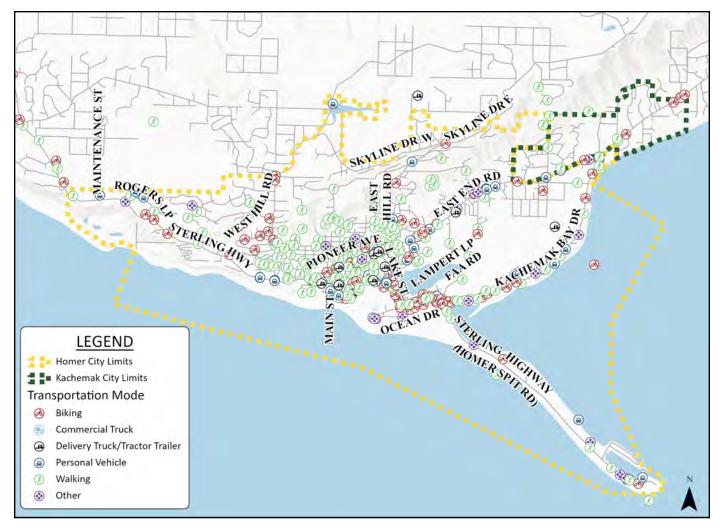


Figure 3: Online Map of Public Comments

The received comments were used to develop draft goals and objectives for the Transportation Plan, and to identify policies, projects, and activities that meet the needs of the community and support the goals and objectives.

*Appendix A* includes a more detailed summary of the public involvement efforts.

### State of the Transportation System

State roads make up the backbone of the City of Homer transportation system, providing key connections between local city roads for walking, biking, driving, and the movement of freight. Alaska Department of Transportation and Public Facilities' (DOT&PF) roads emphasize moving traffic quickly over relatively longer distances and connect to areas outside of the city. City of Homer roads emphasize access to residences, businesses, and other attractions. Both state- and city-owned roads are needed to provide safe transportation options for residents, visitors, and the movement of freight.

Nearby communities connected to the City of Homer via the Sterling Highway and East End Road include Anchor Point, Diamond Ridge, Happy Valley, Kachemak City, Kachemak Selo, Voznesenka, Razdolna, Nikolaevsk, and Fritz Creek. Homer also provides goods and services to communities across Kachemak Bay, including Halibut Cove, Seldovia, Nanwalek, and Port Graham. In addition to the roadway network, Homer is reached via public ferries, private boats, and the Homer Airport.

#### **ROAD SYSTEM**

#### **Functional Classification**

Roads are divided into three main functional classes: arterials, collectors, and local roads. In Alaska, the DOT&PF assigns classifications for all state-owned roads and local agencies assign classifications for locally-owned roads. These classifications help to define the purpose of each road within the road network and relate to roadway design decisions, such as design speed and walking and biking amenities. Arterial roads are generally designed to carry higher volumes of vehicles at higher speeds over longer distances. Often, separated paths or wide shoulders are provided for walking and biking. Local roads carry lower volumes of traffic at lower speeds, are focused on providing access to homes and businesses, and carry travelers for only a short distance.

Figure 4 presents the functional classification for both the DOT&PF roads and the city-owned roads in Homer.

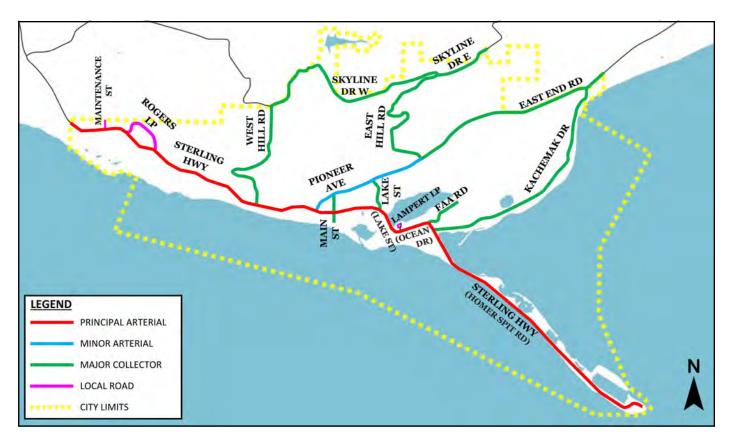


Figure 4: Roadway Functional Classification (State Roads)

Often, pedestrians and bicyclists share the road with vehicles, although sometimes a sidewalk or wide shoulder may be provided. Collector roads distribute trips between local and arterial roads, with appropriate spaces for walking and biking.

#### **DOT&PF** Routes

There are fourteen DOT&PF-owned roads within the City of Homer city limits as shown in Figure 5. Of the state roads, only the Sterling Highway is part of the National Highway System (NHS), but it includes portions of Lake Street, Ocean Drive, and Homer Spit Road. Maintenance Street and Lampert Loop are access roads that lead to state-owned lands. Table 3 (page 10) summarizes the existing walking and biking infrastructure along DOT&PF roads and Figure 6 (page 11) maps the facilities. There are many routes without dedicated infrastructure for walking and biking.

DOT&PF prioritizes the maintenance of their roads as shown in Figure 7 (page 11). Roads with a priority level of one are maintained first, with maintenance on the other roads following sequentially. The priority level for the Sterling Highway is level 1; most of the other DOT&PF roads in Homer fall under the priority levels 3 and 4, with sidewalks given similar priority depending on the availability of resources.

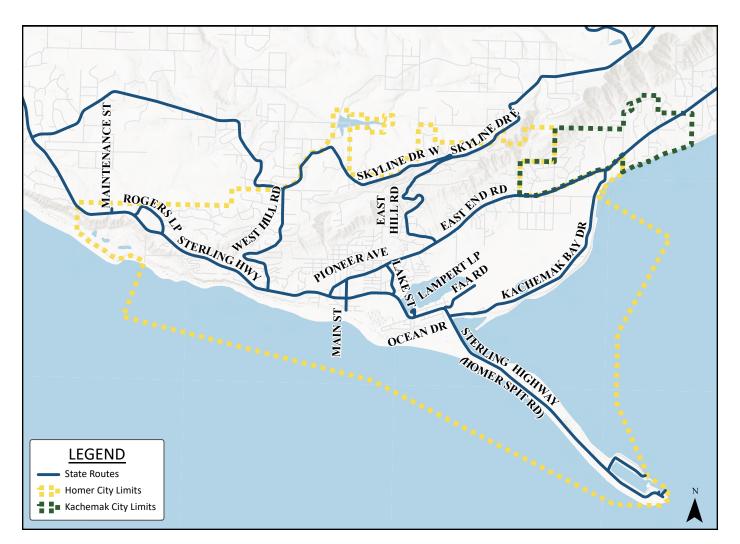


Figure 5: DOT&PF State Routes

ROUTE NAME	SUB-SEGMENT EXTENTS	NON-MOTORIZED INFRASTRUCTURE			
	Bluff Road to Rogers Loop	None			
	Rogers Loop to Glenview Street	Sidewalk (north side)			
	Glenview Street to Brown Bear Loop	Sidewalks			
Sterling Highway	Brown Bear Loop to Lake Street/Ocean Drive	Separated pathway (west side)			
	Lake Street/Ocean Drive to Kachemak Drive	Bike lane (south/west side)			
	Kachemak Drive to end of Homer Spit Road	Separated pathway			
Pioneer Avenue	Sterling Highway to Lake Street	Sidewalk			
East End Road	Lake Street to East Hill Road	Sidewalk			
	East Hill Road to McLay Road	Separated pathway (north side)			
Lake Street	Sterling Highway to East End Road	Sidewalk (east side), bike lanes			
Kachemak Drive	Sterling Highway to East End Road	None			
West Hill Road	Sterling Highway to Skyline Drive West	None			
East Hill Road	East End Road to Skyline Drive West	None			
Skyline Drive West	Diamond Ridge Road to East Hill Road	None			
Skyline Drive East	East Hill Road to Woodman Lane	None			
Main Street	Bunnell Avenue to Pioneer Avenue	None			
FAA Road Sterling Highway to Airport Parking Entrance		Bike lane (north side)			
Rogers Loop	Sterling Highway to Sterling Highway	None			
Maintenance Street	Sterling Highway to Road End	None			
Lampert Loop	Lampert Lane to Lambert Lane	None			

Table 3: Description of Non-Motorized Facilities along State Routes

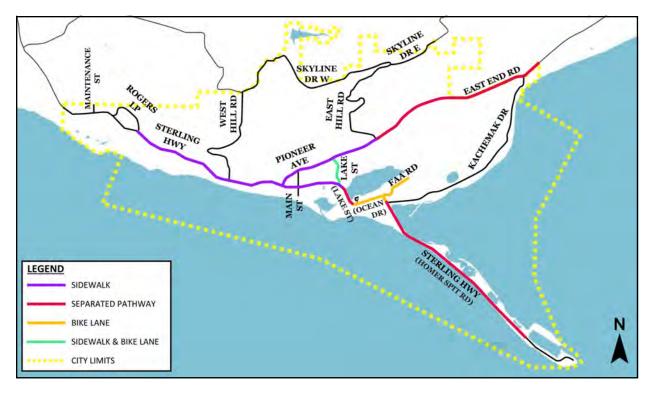


Figure 6: Non-Motorized Facilities along State Routes

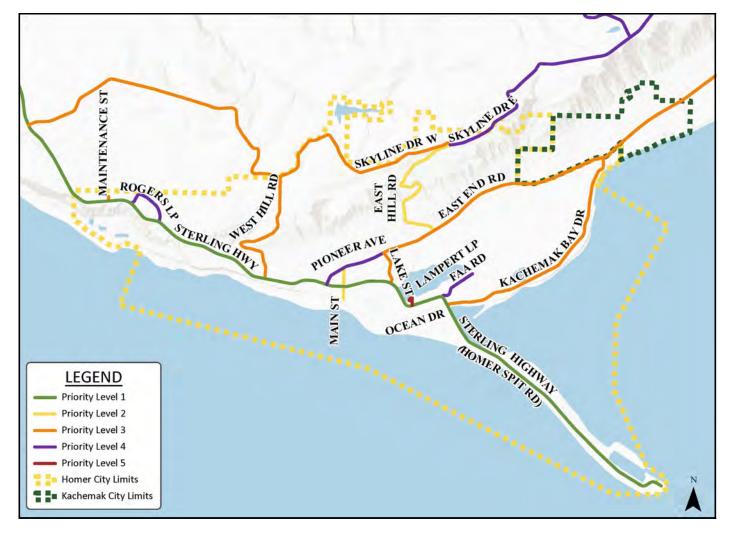


Figure 7: DOT&PF Maintenance Priority Map

#### **City-Owned Routes**

The city roads in Homer provide access to homes, local businesses, and attractions for residents and visitors. Since the 2005 Homer Area Transportation Plan, the City of Homer has been working to build a well-connected network of local and collector roads. This effort will allow users to get to their destinations without traveling out of their way and relieve arterial roads from carrying short-distance trips. Additionally, a well-connected network allows everyone access to signalized intersections on the major arterials, reducing safety concerns and delay associated with turning left onto busier roads such as the Sterling Highway, Pioneer Avenue, and East End Road. These connections can also reduce the challenges associated with school drop off and pick up.

Examples of connections that have been made since the 2005 plan include the extension of Grubstake Avenue from Heath Street to Lake Street and the extension of Greatland Street to Pioneer Avenue.

#### Traffic Volumes

The 2021 annual average daily traffic (AADT) volumes are shown in Figure 8. The highest volume roads carry around 8,500 to 9,500 vehicles per day and include the Sterling Highway between Pioneer Avenue and FAA Road, as well as East End Road between Lake Street and East Hill Road.

Monthly traffic volumes within Homer vary widely throughout the year due to the influx of visitors primarily in the summer. At the most extreme, Homer Spit Road traffic volumes drop to 40 to 45% of the yearly average in December and January and rise to 215% of the yearly average in July. In the busiest areas of town where residents travel daily (Sterling Highway between Pioneer Avenue and FAA Road, as well as East End Road between Lake Street and East Hill Road), traffic varies less: volumes drop to 75 to 85% of the yearly average in November through February and increases to 115 to 135% of the yearly average in June through August.

The 2024 Homer Transportation Plan is a 20-year plan, with a planning year of 2045. An annual traffic growth rate was forecasted by first identifying the relationship between historical population and traffic volumes and then applying that relationship to population growth forecasts for the Kenai Peninsula Borough to determine traffic volumes. This method yields a very low growth rate (0.1% per year) since the borough population is forecasted to not grow very much over this time period. A second traffic forecasting method looked at the historical growth rate from 2012 through 2019 and applied the same rate to future growth. This method yields a modest growth rate of 1.0% per year (equivalent to a 30% increase from 2021 to 2045).

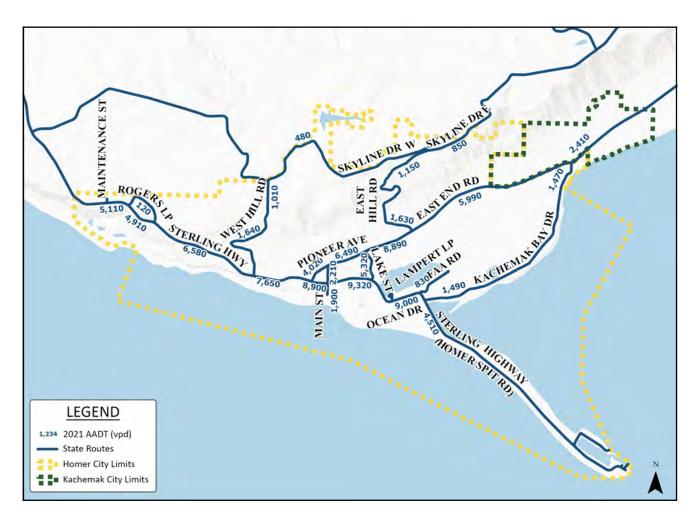


Figure 8: 2021 AADT State Roads

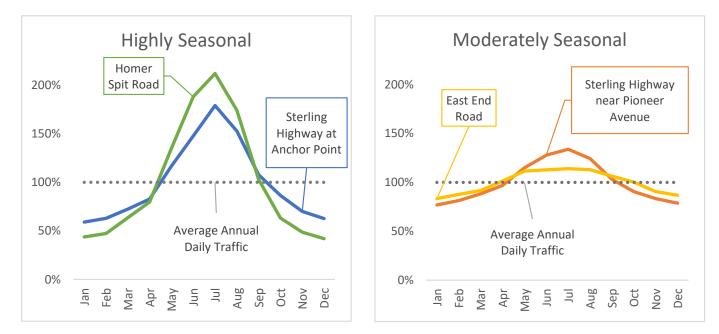


Figure 9: Monthly Traffic Volume as a Percentage of Average Annual Daily Traffic

#### **Operational Quality of State Roads**

The state roads represent roads used for higher speed, longer distance travel within Homer. Table 4 presents the planning level volume-to-capacity (v/c) ratio and an estimate of vehicular level of service (LOS) for state roads in Homer using 2021 peak hour directional volumes.

The **level of service** concept describes the user experience for different modes of travel (pedestrians, bicycles, transit, and vehicles). Level of service uses different metrics for different modes and for different types of facilities and rates them all on a scale of A (best conditions for individual users) to F (worst conditions). Often, LOS C or D is comfortable for most users, balancing delay for most users. For the state roadways in Homer, vehicle level of service is generally a measure of how much vehicle speed drops due to interactions with other vehicles.

The **v/c ratio** compares the capacity of the roadway (the volume of traffic the roadway is designed to carry) to the traffic volume actually being carried by the roadway. Generally, v/c values of 0.85 or less indicate that traffic on the road is operating reasonably well.

As shown in Table 4, all state roadways in 2021 operated within capacity and under the target threshold v/c ratio of 0.85. The 2021 values also represent operations in 2045 under the low growth rate scenario. To determine operations in 2045 under the moderate growth scenario, the directional peak hour volumes were increased by 1.0% annually. There are only two state road segments (the Sterling Highway between Glenview and Lake Streets and East End Road from Lake Street to Ben Walters Lane) where the v/c ratio is expected to exceed the 0.85 threshold in 2045 under the moderate growth scenario.

#### What improvements are needed?

*Roadway Ownership and Maintenance* City of Homer residents desire improved walking and biking on many state-owned roads. This includes both construction of separated paths, sidewalks, and bike lanes and improved year-round maintenance of these facilities (removing dirt and debris in the summer and snow and ice in the winter). In the case of Pioneer Avenue, the City of Homer has formed an agreement with DOT&PF (known as a TORA) for Homer to maintain Pioneer Avenue, so that the city can respond to the community desires. Another possible option for some roads could be to pursue a transfer of ownership from the state to the City.

#### Winter Maintenance and Snow Storage

Traditionally, the City of Homer has placed snow storage at the ends of dead-end roads or in vacant lots. However, as development occurs and roadways get connected, there are fewer locations like this to use. Similarly, when sidewalks are plowed, the snow is pushed to the center of the road and then picked up and carried to snow dumps. As the number of sidewalks increases, this maintenance burden will increase. These issues will need to be addressed as the City of Homer continues to develop its transportation system.

#### Electric Vehicles

As the number of electric vehicles increases, there will be a need for public charging station infrastructure.

		DIRECTIONAL PEAK HOUR CAPACITY (VEHICLES PER HOUR)	2021			2045 (MODERATE GROWTH)		
ROUTE NAME	EXTENTS		DIRECTIONAL PEAK HOUR VOLUME (VEHICLE PER HOUR)	v/c	ESTIMATED VEHICLE LOS	DIRECTIONAL PEAK HOUR VOLUME (VEHICLE PER HOUR)	V/C	ESTIMATED VEHICLE LOS
	Bluff Road to Maintenance Street	1350	280	0.20	А	360	0.25	В
	Maintenance Street to Rogers Loop	2200	280	0.15	А	360	0.15	А
	Rogers Loop to West Hill Road	2200	430	0.20	А	540	0.25	В
Sterling	West Hill Road to Glenview Street	1130	540	0.50	С	680	0.60	D
Highway	Glenview Street to Lake Street	830	650	0.80	С	830	1.00	F
	Lake Street to Lake Street/Ocean Drive	1080	570	0.55	С	730	0.65	D
	Lake Street/Ocean Drive to Kachemak Drive	1080	570	0.55	С	730	0.65	D
	Kachemak Drive to Road End	1350	450	0.35	В	570	0.40	С
Pioneer Avenue	Sterling Highway to Lake Street	850	410	0.50	В	510	0.60	В
	Lake Street to Ben Walters Lane	810	570	0.70	D	720	0.90	E
East End Road	Ben Walters Lane to East Hill Road	1080	570	0.55	С	720	0.65	D
	East Hill Road to Sabrina Road	1080	380	0.35	В	480	0.45	С
East End Road	Sabrina Road to McLay Road	1350	380	0.30	В	480	0.35	В
Lake Street	Sterling Highway to East End Road	810	320	0.40	С	410	0.50	С
Kachemak Drive	Sterling Highway to East End Road	1080	160	0.15	А	200	0.20	А
West Hill Road	Sterling Highway to Skyline Drive West	950	120	0.10	А	150	0.15	А
East Hill Road	East End Road to Skyline Drive West	950	140	0.15	А	180	0.20	А
Skyline Drive West	Diamond Ridge Road to East Hill Road	1080	40	0.05	A	50	0.05	А
Skyline Drive East	East Hill Road to Eagleaerie Avenue	1080	90	0.10	A	110	0.10	А
Main Street	Bunnell Avenue to Pioneer Avenue	810	120	0.15	А	150	0.20	А
FAA Road	Sterling Highway to Airport Parking Entrance	810	60	0.10	А	80	0.10	А

Table 4: Planning-Level Operational Analysis for State Roadways (Improvements may be needed to address future congestion for the highlighted segment. Network connections and improved bicycle or pedestrian facilities should be considered.)

E1-20

#### Walking and Biking

The City of Homer has also been actively adding walking and biking infrastructure to city-owned roads. Projects that are currently underway include the addition of sidewalks along Ben Walters Lane and Svedlund Street, where many pedestrians travel to school, shopping, and other activities. On Kachemak Drive, where motorized and non-motorized users are forced into conflicts due to higher speeds, narrow roads, and low visibility, the City of Homer has been advocating a project to construct a separated pathway. The City has also been working to improve safe travel for persons of all ages and abilities. One project to address this is the Homer All-Ages and Abilities Pedestrian Pathway (HAP) (see Figure 10), made up of two interconnected loops that join the Senior Center, main medical district, library, post office, police station, grocery store, and pharmacy, as well as connecting with existing trails. These projects will improve the non-motorized transportation network, but there are still many places that need more work. For example, the 2004 Homer Non-Motorized Transportation and Trail Plan identified a sidewalk gap on Main Street south of Pioneer Avenue that still needs to be addressed.

#### What improvements are needed?

#### Walking and Biking

While the City of Homer has been improving sidewalk connections, lengthy sidewalk gaps still exist. Additionally, Homer's reliance on official and unofficial trails for pedestrian connectivity often include unimproved footpaths that are narrow and with surfaces that are not firm and stable. While these trails provide route alternatives for some Homer residents and visitors, there are a significant number of individuals who cannot safely use these connections as they currently exist. Constructed trails have not always been designed to be usable year-round and are often avoided by pedestrians who are concerned about trip hazards, icing during winter months, wildlife interactions, and personal safety concerns, particularly at night. Many community members would rather use neighborhood streets than the trail system. Future construction of walking and biking facilities should consider ease of winter and summer maintenance.



Figure 10: Homer All-Ages and Abilities Pedestrian Pathway (HAP)

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#### E1-21

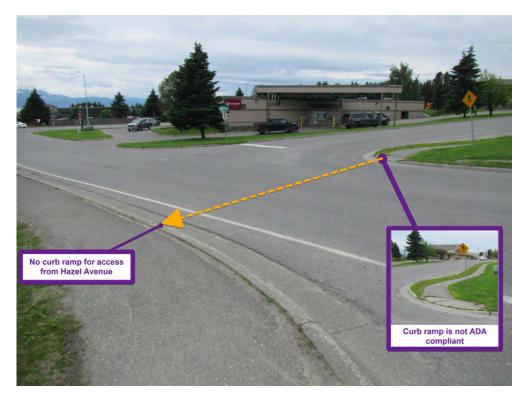


Figure 11: Obstructed Path of Travel near the Homer Public Library and Post Office

#### What improvements are needed? (continued)

Homer has a significant population that walks or bikes regularly. Needs related to walking and biking that were identified by the public through the online mapping tool include:

- Bike lanes or sidewalks
- Paths that would provide shorter connections, safer travel, or more scenic routes
- Neighborhood connectors
- New crosswalks, improved crosswalks and relocated crosswalks
- New or improved streetlights
- More traffic calming measures
- Reduced speeds
- Additional signs
- Improved wayfinding
- Improved winter and summer maintenance

Appendix B provides maps of specific trails or paths that were proposed using the online mapping tool.

#### Connectivity and "Path of Travel"

Defined as a "Path of Travel" within the Americans with Disabilities Act,<sup>1</sup> (ADA) a continuous and unobstructed pedestrian route (or "path of travel") is essential when

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1 CFR 28.1.35.151(b)(4)
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considering accessibility realities within the pedestrian network as a whole. Often, a single barrier can make an entire route no longer function as intended.

Identifying, planning, designing, and constructing continuous pedestrian travel corridors is central to creating equitable and accessible connections for all members of the community. These continuous travel corridors should also take into consideration the routes pedestrians prefer based on their own experiences with a path of travel that is direct and that they deem safe.

An example of a location with a lack of accessible connectivity is between the Homer Public Library and destinations to the east, such as the Homer Post Office, the Homer Police Department, as well as destinations along Grubstake Avenue such as Ulmer's Drug and Ace Hardware, the Center for Alaskan Coastal Studies, the Department of Motor Vehicles, and other shops and restaurants. Important social service agencies also located within a one mile radius of the library include the Rec Room, Kachemak Bay Family Planning Clinic, Haven House, South Peninsula Behavioral Health Services, Alaska Social Services, Homer Courthouse as well as low-income housing. The sidewalk running along Hazel Avenue from the library has a non-ADA-compliant curb ramp at Heath Street that is steep and guides users toward vehicular travel lanes. Pedestrians must cross Heath Street to access the sidewalk along Heath Street; however, there is no curb ramp for the Heath Street sidewalk at Hazel Avenue, forcing users to use the roadway (see Figure 11). One community member with a visual impairment reported being struck by a motor vehicle at this intersection, resulting in severe injuries. Comments from the online mapping survey also included: "Sidewalk ramps and connections feel way off" and "Getting from the library to the post office seems like it should be an easy task. It is not." When routes of pedestrian movement or "paths of travel" are disrupted, access to services and amenities are also significantly disrupted.

"Path of Travel" should also consider the route from the roadway right-of-way to the front door of a business or residence. Some development has been built without constructing walkway connections to sidewalks, which is a barrier to walking. Private development and the City need to work together to eliminate these obstacles as new development is built.

#### Winter Maintenance and Snow Storage

The equipment needed for maintaining sidewalks, paths, and trails free from snow and ice depends on design elements, such as width and steepness, as well as whether it is connected to or separated from the roadway. There are several paths that are currently difficult for the City of Homer to maintain. For example, the Harbor Boardwalk has a wooden deck that cannot be cleared by a snowblower due to the damage it would cause the wood; instead, it must be cleared by hand. Other examples are sidewalks that are not directly adjacent to a road cannot be cleared with a grader blade, so a tool cat or hand-pushed snow blower must be used. Roads and trails with steep grades also require special consideration, adding to the maintenance time after each snow fall. As new walking and biking facilities are constructed, the design should consider efficient ways to accommodate the needed maintenance equipment.

#### **Recreational Trails**

The City of Homer currently has 5.41 miles of trails within the city limits, most of which provide a walking connection between neighborhoods and all of which can be used for recreation. Some of these trails are maintained year-round, while others cannot be maintained in the winter. In addition, Calvin and Coyle Woodland Park (on property owned by the Kachemak Heritage Land Trust) includes 1.5 miles of recreational trail. The Woodard Creek Watershed Plan (November 2016) includes several priority projects to develop trails that either provide access from neighborhoods to the watershed area or provide views of the watershed. Just outside of the city limits, the Diamond Creek Recreation Area (DCRA) is a 275-acre property which the City has acquired and designated as park land. DCRA is immediately adjacent to the State of Alaska Homer Demonstration Forest. The Kachemak Nordic Ski Club maintains winter trails that cross both properties and provide connections between Rogers Loop, the Sterling Highway, Diamond Ridge Road, and West Hill Road. In summer, the trails become very wet and some areas are unusable. The Diamond Creek Recreation Area Management Plan (May 2013) describes goals, objectives, and strategies for constructing summer-use trails in the recreation area.

#### **Truck Routes**

Truck traffic through the City of Homer has been increasing due to construction activity along East End Road. Many of these trucks travel on Pioneer Avenue to access East End Road from the Sterling Highway. Truck volumes were measured on Pioneer Avenue for a 10-day period in October 2022. An average of 150 trucks a day drove along Pioneer Avenue during that period, which represented about 3% of the total traffic. The trucks were present mostly during the day; 85 to 90% of the trucks traveled between 7 AM and 6 PM.

#### What improvements are needed?

#### Truck Routing

With the ongoing construction activities occurring on or along East End Road, heavy vehicles are frequently driving between Sterling Highway and East End Road along Pioneer Avenue. Pioneer Avenue has a downtown feel with many restaurants, cafes, and shops and is characterized by frequent driveways and moderate pedestrian activity. Thus, heavy vehicles using Pioneer Avenue frequently interact with other vehicles and with pedestrians.

Consideration should be given to establishing a truck route through Homer that uses roads where there are fewer interactions. Two potential routes include:

- Sterling Highway to Lake Street to East End Road; however, intersection improvements would be needed to accommodate turning vehicles.
- Sterling Highway to Kachemak Drive; however, this route is longer than the current route and interactions between bicyclists and vehicles has been noted as a concern for this route.

#### Special Traffic Generators

Special traffic generators are facilities that generate irregular traffic patterns through the day, impacting the road network surrounding them.

#### Schools

The City of Homer is served by seven elementary and secondary schools. Table 5 lists start and end times for each school. Areas surrounding the schools experience an increase in traffic congestion during pick up and drop off times, and this congestion can be amplified when school start and end times occur at the same time as other traffic peaks, such as commute times. While the congestion lasts for relatively short periods of time (15 to 30 minutes), queues affect both state and local roads and result in undesirable driver behavior. Possible mitigations include changes to start and end times and adjustments to on-site queue and parking management. Schools with known traffic concerns include Homer High School, Paul Banks Elementary School, and West Homer Elementary School.

NAME OF SCHOOL	START TIME	END TIME
Paul Banks Elementary (K-2)	7:50 am	2:30 pm
West Homer Elementary (3-6)	8:00 am	2:50 pm
Little Fireweed (K-2)	7:50 am	2:25 pm
Fireweed Academy (3-6)	8:00 am	2:50 pm
Homer Middle School	9:00 am	3:50 pm
Homer Flex High School	9:00 am	3:35 pm
Homer High School	9:00 am	3:50 pm

Table 5: Homer Schools Start and End Times

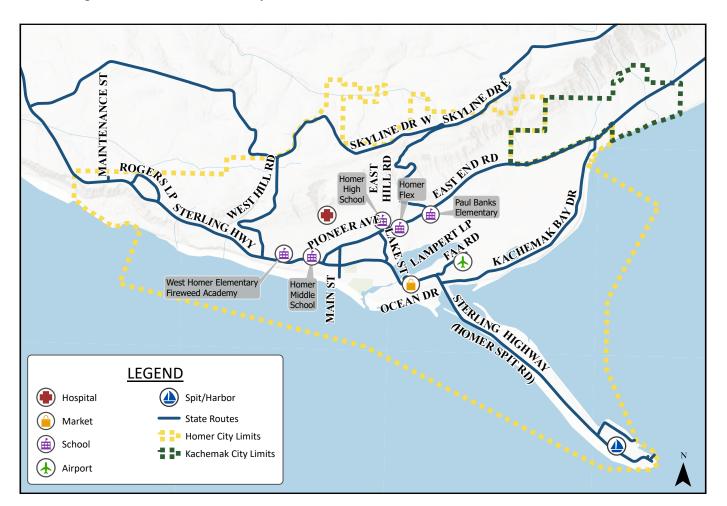


Figure 12: Special Traffic Generators within the City of Homer

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#### Hospital Shifts

The main hospital in Homer is the South Peninsula Hospital. During shift changes, the road network near the hospital experiences a sharp peak in traffic volumes. Recent changes to school start times for middle and high school have mitigated some of the traffic concerns associated with hospital shifts. Small changes in shift times could have a large impact on reducing or increasing congestion related to the hospital. The hospital could also be a key generator for transit trips for staff, patients, and hospital visitors.

#### Farmers Market

The Homer Farmers Market, located on Ocean Drive, just east of Lake Street, begins Memorial Day weekend and continues until the end of September. It's open on Saturdays and Wednesdays. The Farmers Market attracts both Homer residents and visitors, which results in increased vehicle and non-motorized traffic in the surrounding area. Community members reported backups on Ocean Drive due to traffic turning into and out of the Farmers Market, especially on Saturdays. One possible mitigation would be to require the Farmers Market to hire traffic officers to provide traffic control.

#### Homer Spit

The Spit is a major seasonal destination. It is a 4.5-mile long landform that juts out into Kachemak Bay. The Spit is a popular destination for boating, fishing, and camping, and there are also restaurants and shops located on the Spit. Because the Spit is narrow, there is only one route onto and off of the Spit, and parking and traffic problems are common in the summer. The City of Homer works to control parking issues through fee schedules and has encouraged non-motorized travel along the Spit by creating trails, but community members still report problems here. Because of the seasonality and unpredictability of traffic along the Spit, parking and traffic problems are likely to need continuous improvements.

#### The City of Homer Port & Harbor

The City of Homer Port & Harbor provides service to many vessels and is busiest during the summer months. The port is located at the tip of the Homer Spit and is within a short walking or driving distance from many businesses, attractions, and beautiful beaches. The Alaska Ferry brings many people to Homer through this port. The short distance from attractions provides an incentive for visitors to disembark and enjoy the Spit, even on short layovers. There is a significant increase in both vehicle and non-motorized traffic as cruise ship passengers leave the port to experience Homer.

#### Homer Airport

The Homer Airport is accessed via FAA Road, which connects to the Sterling Highway as the road makes a 90 degree turn from Ocean Drive to Homer Spit Road. The airport, owned by DOT&PF, includes both an asphalt runway and a floatplane facility on Beluga Lake. The airport serves approximately 30,000 passengers a year. The terminal building is owned and managed by the City of Homer.



Figure 13: Homer Spit path



#### TRANSIT

#### **Existing Transit System**

Currently, Homer has no year-round, accessible public transit that meets community transportation needs. Local taxi companies play a significant role in transporting Homer residents and visitors around the community. A few local organizations and residential facilities, such as the Homer Senior Center and the Center for Alaskan Coastal Studies, provide vans for their programs. There have been multiple efforts by private companies to run shuttles, but they have been financially unsustainable.

Homer's lone connection to a year-round public transit system is the Ninilchik-based BUMPS (Basic Unified Multi-Path Service) bus, which serves Homer three days per week. The BUMPS bus, operated by the Ninilchik Traditional Council, travels roundtrip connecting Homer to Ninilchik, Soldotna, and Kenai, and communities along the route and stopping at major retail outlets in each community.

Two local non-profit organizations provide free and/or subsidized taxi vouchers to ensure individuals have access to vital goods and services. The Independent Living Center (ILC) provides a low-cost taxi voucher program to eligible area residents, while the Homer Food Pantry fills urgent individual funding gaps for transportation. The ILC program began in 2000. Trip numbers have been relatively stable over the last 20 years. For fiscal year 2022, the ILC voucher program logged 5,846 passenger trips, with an operating budget of over \$78,000. For fiscal year 2024, ILC anticipates over 200 different riders will use the program and a budget that will exceed \$100,000. Likewise, in 2021, the Homer Food Pantry distributed over \$5,000 in free taxi vouchers, while also distributing over \$30,000 in gas vouchers to area residents. The gas voucher program has recently been suspended as the costs became prohibitive for the organization.

#### What improvements are needed?

Area residents without a vehicle have few options for accessing goods and services and traveling to participate in local community activities. Additionally, a transit system could help to address seasonal congestion as well as the environmental impacts of personal automobile dependence.

#### Transportation for Young Adults

Young adults and providers who serve them point to a lack of transportation options as a community issue affecting youth.

Many students are dependent on the school bus to transport them home, which does not allow them to participate in after school activities. This concern was shared by respondents affiliated with Homer High School, the Homer Public Library, entities supporting youth employment, and the Homer REC Room. The lack of transportation options for youth and young adults is a major barrier to educational, occupational, and social opportunities.

#### Affordable Transportation

Transportation support provided by ILC and the Homer Food Pantry illustrate community need for subsidized public transportation. One measure of this need is the user numbers for the ILC taxi voucher program which have remained steady over the last four years even though national transit usership dropped precipitously during COVID.<sup>2</sup> The ILC taxi voucher program provides assistance for essential trips by users for whom private transportation is not affordable.

#### Seasonal Congestion and Parking

Many groups pointed to seasonal high traffic volumes and congestion on roadways as reasons for a seasonal shuttle connecting the Spit to the business district. Two problems frequently mentioned were: difficulty "turning left anywhere in town" and "parking on the Spit." Left turns were identified as a specific concern along Pioneer Avenue from most feedback groups, including taxi operators, senior citizens, BUMPS operators, community forums, and the online mapping survey.

Parking issues on the Spit also warrant ongoing attention as evidenced by the recent Homer Spit Parking Study and subsequent proposals to construct new parking areas. Providing public or private seasonal shuttle services could help to address these issues.

#### Environmental Impacts

In 2022, from Memorial Day weekend to Labor Day, 817,000 vehicle trips were counted at the Spit data collection location, equivalent to approximately 153,000 gallons of gasoline consumed and the release of 1,400 metric tons in C02 emissions. If even 10% of those trips could be made by transit, there would be a reduction in CO2 emissions of 140 metric tons.

2 *Changes in Mobility by State.* Bureau of Transportation Statistics. (n.d.)

#### **EVACUATION ROUTES**

#### Tsunamis

Earthquakes can trigger an underwater landslide in Kachemak Bay, which means it is essential to evacuate within minutes of a tsunami warning being issued. The City of Homer has three tsunami evacuation routes, shown in Figure 14. The routes from the Homer Spit and areas south of Beluga Slough use Kachemak Drive to get to East End Road. Areas north of Beluga Slough use Lake Street and Heath Street to get to Pioneer Avenue. These evacuation routes are marked with official blue and white Tsunami Evacuation Route road signs.

#### Wildfires

Wildfires are a growing concern in Homer. According to a climate

risk analysis done by the Woodwell Climate Research Center the length of the wildfire season will increase as Alaska's climate changes. While the City of Homer does not have specific wildfire evacuation routes laid out, their Emergency Operations Plan does allow the Incident Commander to issue evacuation orders as necessary. In the event of a wildfire, the City of Homer would partner with state fire response to evacuate the rural areas of the City.

#### What improvements are needed?

As road improvements are made to identified evacuation routes, the ability to evacuate areas at risk of a tsunami or wildfire needs to be a consideration in the road design. Improving the network of neighborhood connections will facilitate wildfire evacuation.



Figure 14: City of Homer Tsunami Evacuation Routes

#### **TRANSPORTATION FUNDING**

The City of Homer Accelerated Roads and Trails (HART) Program is funded by a voter-approved sales tax and properties assessments. The fund is used to reconstruct substandard city roads, upgrade existing roads, and to construct new streets and non-motorized trails. The current program was authorized by voters for a 20-year period, through December 31, 2027. Roads (including associated non-motorized infrastructure such as sidewalks) are allocated 90% of the available fund and trails are allocated the remaining 10%. The HART funds can be used for projects that the City funds completely, as the City contribution to grant-funded projects, and as the City contribution to projects where the developer is required to construct a street to full arterial or collector road standards (see Title 11.04.050).

The HART funds allow the City of Homer to improve the transportation system in accordance with City of Homer transportation planning documents. The criteria for use of HART funds are reviewed every other year by the Homer Planning Commission. The use of the HART funds is reviewed by the City Council annually.

The HART fund authorization period will end within the first five years of this plan and will need to be reauthorized in order to continue to fund projects that meet the City's goals as identified in this plan.



Figure 15: City of Homer Poopdeck trail at the Homer Public Library.



Figure 16: Greatland Street Improvements were a HART funded project in 2017.

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## Transportation System Guidelines

EACL

#### DESIGNING FOR PERSONS OF ALL AGES AND ABILITIES

Homer residents and community leaders have a long-standing commitment to developing transportation corridors and mobility networks that are inclusive for individuals of all ages and abilities; however, mobility barriers need continued attention.

Over the last 20 years, the need for transportation networks to support mobility for all ages and abilities were explicitly stated in the City's planning documents. The 2004 Homer Non-Motorized Transportation and Trail Plan called for "creating an interconnected, accessible, non-motorized transportation system in Homer." Similarly, the 2005 Homer Area Transportation Plan (originally drafted in 1999), explained that "an accessible, non-motorized transportation system increases opportunities for mobility." The 2008 Homer Comprehensive Plan, echoed in the 2018 Homer Comprehensive Plan Update, noted that "without linked sidewalks, trails, crosswalks, and pedestrian ways, it is often difficult for seniors to navigate on foot and often impossible for those with disabilities that require a wheelchair."

#### Specific Needs

#### Seniors

Homer is relatively unique in its senior population when compared to Alaska in general and the nation at large. According to 2021 data from the U.S. Census Bureau<sup>1</sup>, roughly 20.3% of the Homer population is age 65 and older, compared to 13% statewide. While the median age of Homer residents is about 39 years of age, there is also a significant portion of residents that are nearing retirement age. Homer's aging population of persons 60 years and older shows a continuing upward trend.

A recent report from the U.S. Department of Health and Human Services quantifies mobility realities for aging individuals. The *2020 Profile of Older Americans*<sup>2</sup> reports that 40% of adults aged 65 and older experience "difficulty with mobility" and experience challenges "walking and climbing stairs." Likewise, 22% of the aging population self-report "difficulty seeing," 31% report "difficulty hearing," and an additional 27% report "difficulty with cognition." All these factors need to be considered within Homer's transportation planning.

Previously identified non-motorized corridors near the Senior Center and surrounding neighborhood need particular attention to create dedicated, safe, and inclusive infrastructure with connections made to the business district, shopping, and restaurants, as well as to the medical district.

#### Individuals with Disabilities

According to the most recent nationwide data collected, 1 in 4 adults, roughly 61 million Americans, experience a significant disability that impacts "major life activities." Of those identified disabilities, the majority involve mobility issues, followed by cognition, vision, and hearing. Those experiencing a disability also have a far greater likelihood of experiencing job insecurity, housing insecurity, low income households, as well as transportation insecurity. As identified by the Alaska Mental Health Trust Authority, lack of transportation and mobility options increases the likelihood of individuals with disabilities experiencing social isolation, unemployment, lack of independence, limited access to medical care, limited access to rehabilitation programs, as well as significant barriers to accessing goods and services as part of everyday activities.<sup>3</sup> The non-motorized transportation network is of particular importance when considering how individuals with disabilities travel within the community.4

<sup>1</sup> *Census Bureau Profile for Homer, Alaska.* U. S. Census Bureau. (n.d.).

<sup>2</sup> *2020 Profile of Older Americans.* Administration for Community Living. (May 2021).

<sup>3</sup> *2022 Alaska Scorecard,* Alaska Mental Health Trust Authority. (April 2023).

<sup>4</sup> *CDC: 1 in 4 US adults live with a disability*. Centers for Disease Control and Prevention. (2018, August 16).

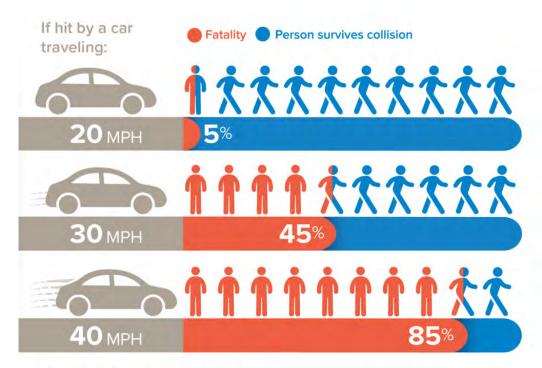
#### Speed, Safety, and Crash Outcomes

Aging adults and individuals with disabilities are far more likely to experience serious injury or death within transportation networks. Both groups are typically more reliant on the pedestrian environment to meet daily mobility needs and as such are more vulnerable. Studies also indicate a much higher rate of injury for both groups when involved in pedestrian-vehicle collisions. According to recent studies, individuals using wheelchairs have a 36% higher mortality rate in pedestrian/vehicle crashes than the general population. Similarly, the risk of severe injury or death for a 70-year-old pedestrian involved in a vehicular collision at 25 mph is similar to the risk for a 30-year-old pedestrian at 35 mph.<sup>5</sup>

In all cases of pedestrian and vehicular crashes, speed is a clear determining factor for injury and fatality outcomes for pedestrians. The vehicle speed to pedestrian injury rate increases exponentially as vehicle speed increases. Injury rates increase when size and mass of vehicles are also taken into account. All Ages & Abilities Design Best Practice and the ADA

"Designing for all abilities: The design of sidewalk environments is important to all pedestrians, but is particularly important to those with disabilities who have limited travel choices and rely most on the pedestrian environment. For example, older adults, persons with vision impairments, and children frequently rely on the sidewalk to travel independently within their community for shopping, recreation, exercise, and walking to school."

Federal Highway Administration



National Traffic Safety Board (2017) Reducing Speeding-Related Crashes Involving Passenger Vehicles. Available from: https://www.ntsb.gov/safety/safety-studies/Documents/SS1701.pdf

Figure 17: Pedestrian Injury Rates by Speed of Vehicle

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<sup>5</sup> Kraemer, J. D., & Benton, C. S. (2015, November 20). *Disparities in road crash mortality among pedestrians using wheelchairs in the USA: Results of a Capture-recapture analysis*. BMJ open.



Figure 18: Curb Ramps that Direct the User into the Crosswalk

Homer's infrastructure can be planned and constructed with users of all ages and abilities in mind, using ADA compliance as a minimum standard as well as consulting the U.S. Access Board's *(Proposed) Public Rights-of-Way Accessibility Guidelines* (PROWAG) and FHWA's *Accessible Sidewalks and Street Crossings* recommendations as design best practice.

While ADA guidelines set minimum standards for slope, width, length, and surface conditions for an accessible pedestrian route, the experience of users of all ages and abilities should also be considered. Diagonal curb ramps at intersections, for instance, meet minimum ADA requirements and are employed at various locations throughout the City of Homer. However, they are not the ideal design because they direct wheelchair users, and possibly visually impaired pedestrians, towards the middle intersection. Parallel or perpendicular curb ramps that direct users into the crosswalk are the preferred design. Diagonal curb ramps, however, do provide an acceptable, cost-effective solution in retrofit situations when other types of ramps may be cost-prohibitive.

Another common barrier frequently encountered is steep sidewalk cross slopes, particularly at driveways. ADA requires a maximum cross slope of 2% but this has been frequently exceeded. Severe cross slopes require wheelchair users and other pedestrians to work against the effects of gravity to maintain their lateral balance. Pedestrians using crutches or canes may be forced to turn sideways to keep their base of support at a manageable angle. Plans and specifications need to clearly call out the maximum allowable grades and contractors need to be held accountable for constructing in accordance with the documents.



Figure 19: Driveway Entrance with Level Cross Slope



Figure 20 : Driveway Entrance with Steep Cross Slope

#### **PEDESTRIAN CROSSWALKS**

Difficult road crossings can be a barrier, separating otherwise connected walking and biking networks. Areas where improved pedestrian crossings are desired include:

- Homer Spit (specific locations along the last mile of roadway)
- Pioneer Avenue (at Svedlund Street, Kachemak Way, Heath Street, and Lake Street)
- East End Road (at Ben Walters Lane and Paul Banks Elementary School)
- Sterling Highway (on Lake Street at both ends of the Beluga Lake causeway)

The *Alaska Traffic Manual* gives guidance on where marked pedestrian crosswalks are desirable as well as the type of traffic control that is desirable (e.g., pavement markings, signs, signals).

An engineering study considers pedestrian volume, street width, traffic volumes, traffic approach speed, sight distance, availability of gaps in the traffic stream, and crash experience as part of making recommendations for a specific location. These guidelines are based on safety studies and are designed to ensure that drivers see pedestrians as they enter crosswalks and that drivers and pedestrians have similar expectations.

In general, traffic volumes are low enough in Homer that marked crosswalks can be considered for anywhere speed limits are 35 mph or lower. Where pedestrians have difficulty finding enough opportunities to cross between vehicles, a median refuge island could be useful. Alternatively, an electrical warning device could be used to alert drivers to yield to pedestrians (Figure 21). Where vehicle speeds are higher, a pedestrian hybrid beacon could be considered.



Figure 21: Electrical Warning Devices (Rectangular Rapid Flashing Beacon, or RRFB) on University of Alaska Fairbanks Campus

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#### **TRAFFIC CALMING**

Traffic calming treatments can be used to reduce the speeds of vehicles in a specific area. Speed management can allow drivers more time to react and reduce the severity of a crash.<sup>6</sup> In general, traffic calming devices are only suitable for local or collector roads. An engineering study will consider vehicle volume, speed limits compared to actual vehicle speeds, the presence of school zones or other pedestrian generators, crash history, and the availability of sidewalks. In addition to reconstruction, traffic calming elements can be incorporated into initial design projects.

#### Traffic Calming and Complete Streets

Traffic calming is often used to improve safety and comfort for walking and biking through retroactive treatments that decrease vehicle speeds in a neighborhood or along a corridor. Designing for Complete Streets is proactive and includes: considering walking and biking when setting design speeds; appropriately separating users in time and space; improving connectivity and access for walking, biking, and transit; and implementing safety treatments.

Complete Streets provides a mechanism for considering the land use context of the neighborhood in determining needed improvements. For example, the types of improvements needed will vary depending on if the area is residential, commercial, industrial, or mixed; natural, rural, suburban, or town center.

Complete Streets is one of several safety-focused approaches to transportation planning. Figure 22 briefly describes several of these.

#### **Complete Streets**

Designing and operating streets to enable safe use and support mobility for all users (including drivers, pedestrians, bicyclists, public transportation riders)

#### **Designing for People**

Design streets to balance the needs of diverse users in order to shape an enticing environment that ensures access, safety, comfort, and enjoyment for everyone.

#### **Streets as Places**

Design and construction of public streets focused on building places that improve the quality of life and the environment rather than simply move vehicles from place to place

#### **Vision Zero**

Strategy to eliminate all traffic fatalities and severe injuries, while increasing safe, healthy, equitable mobility for all

Figure 22: Safety-focused approaches to transportation planning



<sup>6</sup> Xu, G. (2022). Speed Management is Key to Road Safety. Public Roads, Vol 85 No. 4. FHWA.

#### **Traffic Calming Devices**

Traffic calming treatments are most effective in the immediate area surrounding each device. As such, a series of devices should be installed to keep speeds low throughout a corridor. The following sections describe effective strategies for calming traffic.

#### Speed Humps and Tables

Speed humps are parabolic raised areas of pavement. They are typically between 12 and 22 feet in length with a relative rise of 3 inches and extending the width of the travel way. Speed humps are designed to reduce 85<sup>th</sup> percentile speeds between 25 to 35 miles per hour. Speed tables have a similar size and shape to speed humps; however, they have a flat top. The flat surface is usually textured and can be used as a crosswalk for pedestrians. Speed humps and tables are most effective when used in a series or with other traffic calming measures.

**Advantages:** These traffic calming devices are compatible with bike lanes if the speed humps and tables do not encroach into the bike lanes. Large vehicles can traverse speed humps and tables at low speeds.

**Disadvantages:** Speed humps and tables can be damaged by snowplows and graders, and may require additional costs. Supplemental signs and markers also require additional maintenance efforts. Emergency response times are affected by these devices and emergency personnel have been injured while traversing speed humps.

#### On Street Parking

On street parking reduces street width and can be applied alongside other traffic calming measures. Parallel parking is the most effective form of on-street parking as it increases side friction to traffic flow.

**Advantages:** On street parking provides convenient access to local businesses. First responders prefer this traffic calming device to all other devices.

**Disadvantages:** This can reduce road visibility and intersection sight distance. Vehicles must be removed from the road during snow plowing operations.



Figure 23: Speed Hump on Beluga Pl

#### Bulb-Out

A bulb-out is when the curb is extended horizontally into the street, making the roadway narrower. Alone, it is not effective at reducing vehicle speeds, but bulb-outs can be effective when used with other traffic calming measures.

**Advantages:** Bulb-outs provide a lot of improvements for pedestrians. They control parking encroachment into crosswalks, increase pedestrian sight distance, and reduce pedestrian crossing distances. These changes mean that pedestrians are more likely to cross when gaps between traffic are desirable. Mid-block bulb-outs can be used for beautification and landscaping.

**Disadvantages:** Bulb-outs can be damaged by snowplows and graders and may require a metal armor plate at likely strike points.

#### Chicanes

Chicanes are a series of at least three mid-block curb extensions that create S-shaped curves on the roadway. They reduce speed by forcing drivers to move horizontally and slow down around curves. To be effective, they must be placed in such a way that deflects traffic rather than simply narrowing the roadway.

**Advantages:** Bike lanes are compatible with chicanes. Large vehicles and emergency response vehicles can negotiate chicanes. Chicanes can also be used for landscaping which may further reduce speed by eliminating long sight lines.

**Disadvantages:** Chicanes require additional maintenance efforts. They can also result in increased response times to emergency calls.

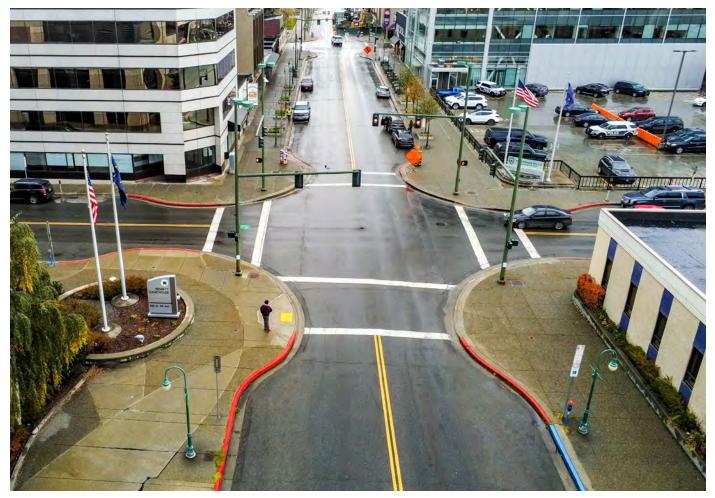


Figure 24: Curb Bulb-outs in Downtown Anchorage, Alaska

#### Traffic Circles

Traffic circles are circular islands in the middle of an intersection. They slow down traffic by causing drivers to deflect right upon approach, make a short left "turn" around the circle, and then to do a sharp right turn to exit the intersection.

**Advantages:** Bike lanes are compatible with traffic circles. Landscaping on the traffic circles may reduce speed by eliminating long sight lines.

**Disadvantages:** Traffic circles require additional maintenance efforts and may be difficult to negotiate for larger vehicles. The slower speed necessary to navigate the circle may result in increased response time to emergency calls. Trucks and emergency vehicles may need truck aprons to accommodate vehicles with a larger turn radius.

#### Speed Feedback Signs

These signs monitor the speeds of passing vehicles and display the speeds on a variable message board. When a vehicle traveling at a speed that exceeds the posted speed limit passes, the sign will flash or display a message such as "slow down".

**Advantages:** Bike lanes and large vehicles are compatible with speed feedback signs. This traffic calming treatment may address the public perception of speeding better than any other treatment.

**Disadvantages:** There are ongoing maintenance and operation costs in providing electrical service to the sign.

#### Supplemental Traffic Calming Measures

**Sidewalks and Crosswalks –** Increase pedestrian compliance which reduces conflicts between pedestrians and vehicles.

Landscaping – Increase vehicle and pedestrian visibility.

**Education and Enforcement** – These can be used as a precursor to physical measures to help roadway users know how to navigate upcoming traffic calming measures.



Figure 25: Traffic Circle on Gillam Way in Fairbanks



*Figure 26: Speed Feedback Sign on Gillam Way in Fairbanks* 



# Goals and Objectives for the Transportation System

The City of Homer recognizes the critical role that transportation plays in shaping the community's livability, sustainability, and economic vitality. The goals and objectives for the Transportation Plan were developed with input from the city staff and members of the community. The goals describe the fundamental outcomes of the Transportation Plan, while the objectives are more specific and measurable outcomes that support the goals. The following goals and objectives represent the community's commitment to building a safe, sustainable, and accessible transportation system that meets the needs of all members of the community.

#### **GOAL 1: INCREASE SAFETY OF INTERACTIONS BETWEEN DIFFERENT MODES OF TRAVEL**

Community members want travel within the city to be safer, including for people walking, biking, and driving, as well as for the movement of goods.

### *Objective 1A: Improve safety at conflict points between pedestrians and motor vehicles, especially at intersections*

Safety can be improved at conflict points (where pedestrian and motor vehicle paths cross) by making crossing locations more visible, encouraging motor vehicles to yield to pedestrians, and reducing the crossing distance.

# *Objective 1B: Provide for safe use of the right-of-way by all transportation modes, considering the land use context and type of vehicle*

Safety can be improved by policies that help to define the network for different users (such as defining truck routes or defining maximum speeds for e-bikes on pathways) and through infrastructure improvements to help separate users with different weight and speed characteristics (such as building bike lanes, pathways, and sidewalks).

### *Objective 1C: Improve user understanding of how to safely share the public right-of-way*

Public awareness campaigns are another method to improve safety. One example of education that has been shown to reduce crashes is safety education for children regarding safe pedestrian and bicycle behaviors.

#### GOAL 2: PROVIDE A CONNECTED NETWORK OF LOCAL AND COLLECTOR ROADS AND TRAILS THAT BALANCES MODES BASED ON LAND USE CONTEXTS

Community members desire a connected network for all users. Connected walking and biking networks provide more opportunities for walking and biking. A connected collector road network helps to reduce the number of short trips on the arterial road network. This reduces the need for increasing the number of traffic lanes or installing more restrictive traffic control on arterial networks. A connected collector road network works hand-inhand with the walking and biking networks to reduce the overall cost of the transportation network and address climate impacts. As new connections are built, the design for each user type should reflect the land use context. For example, frequent safe pedestrian crossings are needed in commercial areas.

### *Objective 2A: Identify a priority pedestrian network that connects key generators and develop a plan to build these connections*

Community members desire to walk more frequently. Building or improving pedestrian facilities that connect to locations where people want to walk (such as schools, the library, and shopping areas) will improve options for walking.

# *Objective 2B: Identify a priority low-stress bicycle network that connects key generators, develop a plan to build these connections, and encourage appropriate bicycle parking*

Community members desire to bicycle for transportation more frequently. Building or improving low-stress bicycle facilities that connect to locations where people want to travel and providing appropriate bicycle parking at those locations (such as schools, the library, and shopping areas) will improve options for biking.

The Low-Stress Bicycle Network describes a connected system (or network) of shared roadways, bike lanes, sidewalks, paths, and trails that are suitable for bicyclists of all ages and abilities.

### *Objective 2C: Identify key gaps in the collector road network and develop a plan to build these connections*

Prioritizing building or improving collector roads that allow drivers to access a signal on a major arterial or travel directly between adjacent neighborhoods will decrease delay and trip length without necessitating major improvements to the arterial network.

Goals and Objectives for the Transportation System | Page 33

# *Objective 2D: Identify and address opportunities for parking once and then walking, ride-sharing, or using transit*

Park-and-ride facilities allow visitors to get out of their car or RV and travel to attractions using transit. Consolidated parking that serves several businesses allows people to park once and then visit several businesses without driving between each one.

#### GOAL 3: MAINTAIN TRANSPORTATION NETWORK TO BE USABLE YEAR-ROUND

Community members desire roads and walking and biking facilities to be maintained so they are usable in the winter and in summer.

# *Objective 3A: Reconstruct and proactively maintain pedestrian facilities to ensure year-round usability*

Sidewalks, paths, and trails are less usable when drainage, lighting, and wayfinding are inadequate. Addressing problems with the existing pedestrian system will help to make them usable year-round. Additionally, establishing standards for winter and summer maintenance for specific locations will help users know what to expect.

# *Objective 3B: Reconstruct and proactively maintain bicycle facilities to ensure year-round usability*

Shared roadways, bike lanes, paths, and trails are less usable when drainage, lighting, and wayfinding are inadequate. Addressing problems with the existing bicycle network will help to make it usable year-round. Additionally, establishing standards for winter and summer maintenance will help users know what to expect.

#### *Objective 3C: Reconstruct and proactively maintain City of Homer roadways to ensure year-round usability*

Inadequate drainage can also impact the usability of roadways. Improving drainage during roadway reconstruction can help keep the pavement in good condition for a longer period of time. Establishing maintenance standards for city roads and ways for the public to alert the city when there are concerns at specific locations can help make roadways usable year-round.

#### *Objective 3D: Work with DOT&PF to improve winter maintenance on state-owned sidewalks, paths, or bike lanes*

The public has identified maintenance of the sidewalks, paths, or bike lanes along DOT&PF-owned roadways as a top priority

for improvement. Transferring maintenance responsibility is one possible solution. There may be some roads currently under state ownership that should be under city ownership. It is necessary for the COH and ADOTPF to cooperate in jointly planning for roads in the COH (and broader) area.

# *Objective 3E: Manage resources to maximize and balance maintenance efforts*

Improving the efficiency of maintenance activities allows better maintenance without increasing resources. Designing new roadways, sidewalks, paths, or trails to accommodate the existing equipment or buying new equipment that makes it easier to clear debris and snow from existing infrastructure could help balance maintenance efforts and make them more efficient.

# *Objective 3F: Update and enforce design standards for walking, biking, road, and public transportation networks*

Enforcing and updating standards for infrastructure that serves all modes during design reviews will ensure consistency and improve travel options.

# *Objective 3G: Include appropriate improvements for each travel mode as part of reconstruction or new construction projects within the public right-of-way*

As roads are constructed or reconstructed, infrastructure should be considered for each mode. New or improved infrastructure should be consistent with the land use context (such as providing sidewalks in urban areas and wide shoulders or separated paths in rural areas), meet design standards, and help to complete the priority network for that mode.

#### GOAL 4: PROVIDE EXPANDED TRANSPORTATION OPTIONS FOR RESIDENTS AND VISITORS

Community members desire a transportation system that provides additional transportation options and reduces environmental impacts.

# *Objective 4A: Support the development of a public transportation network*

Public transit provides additional travel options and reduces travel by a single occupant in a vehicle. The City could support the private development of transit by building transit stops or park-and-ride facilities.

# Recommendations

To achieve the goals and objectives of the Transportation Plan, the following policies and projects should be implemented. Many will be accomplished using working groups or task forces. These are not arranged in order of priority. Many will be accomplished using working groups or task forces.

## **POLICIES**

#### **Truck Network**

Goals and Objectives	Objective 1B Provide for safe use of the right-of-way by all transportation modes, considering the land use context and type of vehicle
Policy Description	<b>Establish Truck Routes for the City of Homer to reduce the number of through trucks traveling on</b> <b>Pioneer Avenue</b> , taking into consideration land use context, pavement structure, and heavy vehicle turning requirements.
Benefits	Could reduce truck-pedestrian interactions. Establishes understanding between different agencies and companies for where trucks should be traveling.
Challenges	Truck routes must be designed to accommodate truck movements. Designating truck routes for DOT&PF roads will need DOT&PF approval. Consult with trucking companies and the public to ensure concerns are addressed.

A freight network map for all of Alaska lists the highways that are essential for freight routes, including the entire section of the Sterling Highway all the way to the end of the Homer Spit. DOT&PF Title 17 AAC 25.014 describes the type of trucks that are allowed on these freight routes. The federal and state governments leave non-highway truck route decisions to local governments.



Figure 27: Dump truck turning from Lake Street onto East End Road

#### **E-Bike Legislation**

Goals and Objectives	Objective 1B Provide for safe use of the right-of-way by all transportation modes, considering the land use context and type of vehicle
Policy Description	<b>Consider legislation governing the use of electric bikes (e-bikes)</b> to reduce the possibility of unsafe interactions with other modes.
	E-bikes are popular for many reasons: they allow riders to go farther with less effort than traditional bikes, they are environmentally friendly, and they cost less to use than cars. <sup>1</sup>
	However, e-bikes present a unique dilemma as they are a hybrid between a human powered bicycle and a motorcycle. Currently, e-bikes fall under the Alaska definition of "motor-driven cycle", which requires an operating license and has a minimum age requirement of 14. The classification also prohibits e-bikes from sidewalks or bike paths.
	Local governments, however, can enact their own legislation regulating e-bikes.
	A task force would be a good way to implement this effort; input from the cycling community should be solicited. The Municipality of Anchorage has a policy that could be used as a starting point.
Benefits	Increases safety of e-bike usage.
	Supports transportation mode options.
	Reduces conflicts between e-bikes users and other users.
	Encourages increased e-bike usage.
Challenges	Balancing regulations and allowances for E-bikes to satisfy the residents of Homer.

#### **Bicycle Parking**

Goals and Objectives	Objective 2B Identify a priority low-stress bicycle network that connects key generators, develop a plan to build these connections, and encourage appropriate bicycle parking
Policy Description	Adopt a bicycle parking ordinance for new and existing buildings that specifies the amount and location of secure, convenient bicycle parking available. Bicycle trips require safe and secure bicycle parking at either end of the trip. Adopting a bicycle parking ordinance for new and existing buildings would make the City of Homer a more bicycle friendly community. A task force would be a good way to implement this effort.
Benefits	Reduces the likelihood of bike theft. Protects vegetation (which would otherwise be used for bike parking if other options weren't made available). Encourages community members to bike more often.
Challenges	Determining where to place bicycle parking and where different types (short- versus long-term) of bicycle parking should be.

As an example, Sitka, which received a Silver Bicycle Friendly Community Award from the League of American Bicyclists, used these APBP guidelines to improve their bike parking by recommending a minimum number of bicycle parking spaces for each land use category. A local biking advocacy group in Sitka also conducted a survey of community members to identify where bicycle parking was needed. New bike racks were installed in places identified by the community as part of Sitka's Walk, Bike, Win! downtown commuter challenge. These changes resulted in Sitka becoming a more bike friendly community.

#### E1-43

<sup>1 (</sup>ABC10), A. M. S. A. (2022, August 27). *E-bikes are gaining popularity in the US. here's why.* abc10.com. Retrieved March 31, 2023

#### Transfer of Responsibility Agreements for State Roads

Goals and Objectives	Objective 3D Work with DOT&PF to improve winter maintenance on state-owned sidewalks, paths, or bike lanes
Policy Description	<b>Pursue additional Transfer of Responsibility Agreements (TORAs) to allow the city to maintain</b> <b>roads and pathways that are currently maintained by DOT&amp;PF.</b> If the City has the resources (staffing and equipment) to take on the added responsibility, the City should then enter into discussions with the DOT&PF regarding transferring maintenance responsibility. The pathways along the Sterling Highway, East End Road, Lake Street, and Main Street could benefit from a TORA with the State of Alaska.
Benefits	Maintain roads and pathways to a higher standard than current maintenance efforts.
Challenges	City of Homer needs sufficient staffing and equipment to take on added maintenance responsibility. Payments from DOT&PF to City of Homer under a TORA agreement are not guaranteed to cover all of the City's costs. Coming to a mutually beneficial agreement between DOT&PF and the City of Homer.

DOT&PF and the City of Homer currently have two TORAs: one for the Homer Spit and one for Pioneer Avenue. These two TORAs allow the City of Homer to maintain these state roads to the standards desired by community members.

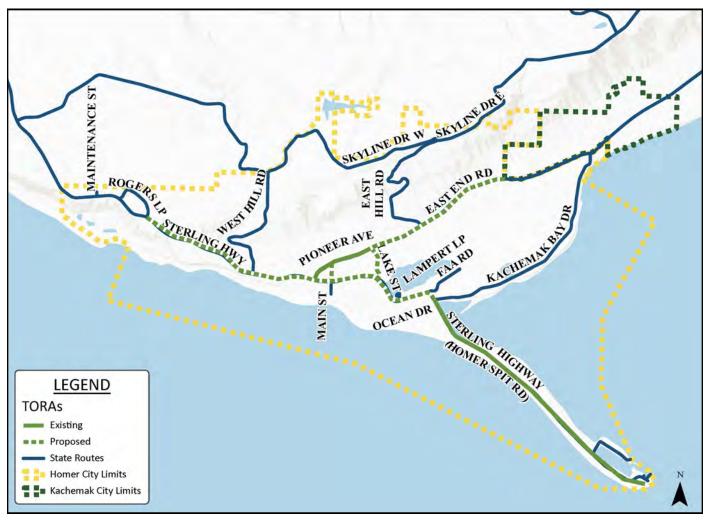


Figure 28: Existing and Proposed Transfer of Responsibility Agreements

## Ownership of State Roads

Goals and Objectives	Objective 3D Work with DOT&PF to improve winter maintenance on state-owned sidewalks, paths, or bike lanes
Policy Description	<b>Develop an agreement with the state to transfer ownership of some state roads to the city.</b> Under these agreements, the state pays to have the road constructed to Homer's standards, and then the City takes over ownership and maintenance responsibility. Main Street is a good example of a road that functions more like a local road. As such, it may be in the best interests of the City of Homer to take over ownership of Main Street. Pioneer Avenue is another example of a street the City may want to take over.
Benefits	The City can maintain the road to the community's standards. The City can control design decisions, such as the presence of a sidewalk or pathway.
Challenges	Coming to an agreement that is equally beneficial for the state and city.

#### Maintenance Standards

Goals and Objectives	Objective 3E Manage resources to maximize and balance maintenance efforts
Policy Description	Set maintenance standards for the City of Homer to meet public expectation, such as how frequently or under what circumstances roads, sidewalks, paths, and trails will be plowed in winter and swept in summer.
Benefits	Helps define the level of effort needed so the City can plan for maintenance equipment and budget to meet that need. Standards can also be communicated to the public.
Challenges	Determining priorities for sidewalks, paths, and trails within the existing road priorities. Deciding a reasonable maintenance time frame that satisfies the public and is achievable by the maintenance crew.

## Update Non-Motorized Facility Design Standards

Goals and Objectives	Objective 2A Identify a priority pedestrian network that connects key generators and develop a plan to build these connections Objective 2B Identify a priority low-stress bicycle network that connects key generators, develop a plan to build these connections and encourage appropriate bicycle parking Objective 3F Update and enforce design standards for walking, biking, road, and public transportation networks
Policy Description	<b>Update design standards for walking and biking infrastructure to ensure they are connected and</b> <b>are maintainable.</b> New development should include connections to sidewalks and paths. Standards for the way sidewalks and paths are built in the future can ensure that the available equipment can be effective in maintaining future paths. A task force could help to implement this policy.
Benefits	Reviewing development plans for connectivity to sidewalks and paths will remove obstacles to walking and biking. Designing new roads, sidewalks, paths, and trails to meet the operational characteristics of the City's maintenance equipment will increase the effectiveness of maintenance efforts.
Challenges	Keeping standards up to date to include new equipment. Adapting to locations where design standards cannot be met.

# Complete Streets/All Ages and Abilities Policy

Goals and Objectives	Objective 3G Include appropriate improvements for each travel mode as part of reconstruction or new construction projects within the public right-of-way
Policy Description	<b>Develop a Complete Streets policy for Homer.</b> "Complete streets" is an approach to planning, designing, building, and maintaining streets that supports safe travel and access for all ages and abilities of all modes, including pedestrians, bicyclists, motorists, and transit riders. A complete streets policy ensures that all users are considered at all phases of all projects.
Benefits	Can be applied to all streets for assessment. Will determine if a street is missing important safety elements.
Challenges	Determining appropriate treatments for variety of contexts. Attaining funding.

## **Transit Options**

Goals and Objectives	Objective 4A Support the development of a public transportation network
Policy Description	Seek out partners to provide public transportation service in the Homer area. Of particular interest are year-round transit options that serve area residents and seasonal options that encourage visitors and employees to park their vehicles and travel to the Homer Spit and other highly visited areas by bus and on foot.
	There are numerous examples of small community systems throughout the state, including Glacier Valley Transit, Soaring Eagle Transit, Sunshine Transit, Valley Transit, CARTS, and BUMPS.
Benefits	Helps people without access to vehicles get to jobs, shops, and services, and also increases travel options for everyone.
	Reduces environmental impacts by reducing vehicle miles traveled.
Challenges	Federal funding is available for systems providing year-round service.
	Attaining funding.
	Seasonal variation in demand.
	Requires public and non-profit partnership.

## Traffic Calming

Goals and Objectives	Objective 1B Provide for safe use of the right-of-way by all transportation modes, considering the land use context and type of vehicle
Policy Description	<b>Develop a Traffic Calming Manual that describes treatments that are effective and acceptable to the City</b> <b>of Homer.</b> Traffic calming treatments discourage cut-through traffic and encourage vehicles to travel at speeds that are appropriate for the land use context. The Traffic Calming Manual should describe the data needs for the analysis and how it should be collected; address the types of treatments available, lighting and signage needs, and when and where a treatment is appropriate; and describe how to select treatments for a specific location.
Benefits	Walking and biking along a road, as well as recreating near a road, is safer and more comfortable when adjacent vehicles are traveling at slower speeds.
Challenges	Attaining funding. Educating the public. Potential for additional maintenance burden.

#### **PROJECTS**

## Bicycle Safety Campaign

Goals and Objectives	Objective 1C Improve user understanding of how to safely share the public right-of-way
Project Description	Support efforts of a private partner to develop an effective education campaign that targets teaching bike safety to children. Safety education campaigns have been shown to be effective where new information is presented and where the target audience has not already formed habits. Thus, children are the best targets for bicycle safety campaigns. <sup>2</sup>
Benefits	Reduces crashes and conflicts due to interactions between bicycles and vehicles.
Challenges	Finding appropriate private partner. Homer Bicycle Club has a "Homer Shares the Road" campaign that could be built upon.
Related Projects	N/A

## Parking Study

Goals and Objectives	Objective 2D Identify and address opportunities for parking once and then walking, ride-sharing, or using transit
Project Description	<b>Conduct a parking study to determine the location and benefits of centralized parking lots.</b> Many members of the community voiced frustrations with parking options, especially along the Spit and in the Central Business District (CBD). Parking along the Spit is particularly difficult in the summer when the port is in constant use by residents, businesses, and tourists. When there are visitors to the CBD, they must drive between stops, which increases congestion and discourages them from visiting multiple businesses. The lack of centralized parking options negatively affects local business owners in these areas by limiting the amount of foot traffic to their businesses. Building parking facilities in association with transit will allow visitors to get out of their car or RV and travel to attractions using walking or transit.
	Reduces the amount of vehicle traffic in congested areas.
Benefits	Encourages visitors to the CBD and Spit to visit more than one business and increase economic growth by connecting attractions and businesses.
	Potentially provides extra space for beautification and more local businesses by adding centralized parking locations.
Challenges	Cooperation of private entities.
	Determining the location of bus stops and parking lots that work well for transit users and the transit operator. Costs to acquire land for shared off-street parking.
<b>Related Projects</b>	Policy 9 Transit Options

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<sup>2</sup> Improving the effectiveness of road safety campaigns: Current and new practices. IATSS Research, Vol 34 No. 2. (March 2011).

## Improve Drop-Off and Pick-Up Locations at Schools

Goals and Objectives	Objective 1AImprove safety at conflict points between pedestrians and motor vehicles, especially at intersectionsObjective 2AIdentify a priority pedestrian network that connects key generators and develop a plan to build these connectionsObjective 2BIdentify a priority low-stress bicycle network that connects key generators, develop a plan to build these connections and encourage appropriate bicycle parking	
Project Description Study schools with circulation concerns and develop plans to improve them. Traffic congest school pick-up and drop-off times is a safety concern for several schools in Homer. Improving bus cirpick-up and drop-off areas, bicycle parking, sidewalk connections, and signage could reduce these pick-up and drop-off areas.		
	Reduces congestion on roads near schools.	
Benefits	Protects children and increases drivers' awareness of them during pick-up and drop-off.	
Deficitio	Encourages student to walk or bike to school by improving pedestrian facilities.	
	Encourages practice of healthy habits and decreases use of motor vehicles, thereby improving air quality.	
Challenges	Right-of-way and utilities may limit feasible alternatives.	
Challenges	Coordination with Kenai Peninsula Borough, Kenai Peninsula School District, and DOT&PF.	
<b>Related Projects</b>	Project 4 Neighborhood Connectivity to Schools	

## Neighborhood Connectivity to Schools

Goals and Objectives	Objective 2AIdentify a priority pedestrian network that connects key generators and develop a plan to build these connectionsObjective 2BIdentify a priority low-stress bicycle network that connects key generators, develop a plan to build these connections and encourage appropriate bicycle parkingObjective 2BIdentify a priority low-stress bicycle network that connects key generators, develop a plan to build these connections and encourage appropriate bicycle parkingObjective 2BIdentify a priority low-stress bicycle network that connects key generators, develop a 	
Project Description	<b>Encourage Kenai Peninsula Borough to build improved trails between schools and surrounding</b> <b>neighborhoods.</b> Several survey comments requested established trails from neighborhoods to the nearby schools. West Homer Elementary, Middle, and High schools all have natural surroundings to the north. It seems that students have been traversing these areas despite the lack of a maintained and designated trail. To ensure the safety of children walking to school, and to create more connectivity to the schools, a set of trails between the schools and the surrounding neighborhoods should be identified, constructed, and maintained.	
Benefits	Provides a safe passage for children walking to school, encouraging active transportation, and providing additional travel options.	
Challenges	Coordination with Kenai Peninsula Borough.	
Related Projects	Project 3 Improve Drop-Off and Pick-Up Locations at Schools	
Related Projects	Project 9 Identify Additional Priorities for Walking & Biking Infrastructure	

## Pioneer Avenue as an Extension of the HAP Loop

Goals and Objectives	Objective 1AImprove safety at conflict points between pedestrians and motor vehicles, especially at intersectionsObjective 2AIdentify a priority pedestrian network that connects key generators and develop a plan to build these connectionsObjective 2BIdentify a priority low-stress bicycle network that connects key generators, develop a plan to build these connections and encourage appropriate bicycle parkingObjective 3GInclude appropriate improvements for each travel mode as part of reconstruction or new 	
Project Description	<b>Evaluate pedestrian crossing improvements for Pioneer Avenue intersections.</b> Community members identified the main intersections along Pioneer Avenue as being high stress locations for pedestrian crossings. An engineering study is needed to determine whether existing crossing treatments should be improved and what treatment(s) should be applied. Examples of treatments to be considered include high-visibility pavement markings, curb extensions, and rectangular rapid flashing beacons. There is already a plan in place to improve the intersections along Pioneer Avenue at Main Street and at Svedlund Street as part of the HAP Loop project.	
Benefits	Eliminates barriers to walking and improves safety.	
Challenges	Attaining funding. Right-of-way and utilities may be a concern.	
Related Projects	HAP Loop Project (ongoing) Project 6 Old Town Connections as an Extension of HAP Loop	

## Old Town Connections as an Extension of HAP Loop

Goals and Objectives	Objective 2A Identify a priority pedestrian network that connects key generators and develop a plan to build these connections Objective 2B Identify a priority low-stress bicycle network that connects key generators, develop a plan to build these connections and encourage appropriate bicycle parking
Project Description	<b>Evaluate connecting HAP Loop through Old Town.</b> Old Town is home to many hotels, restaurants, and local businesses. The HAP Loop provides access to the eastern part of Old Town but fails to connect the neighborhoods to the west. This project would evaluate the addition of pedestrian facilities in west Old Town with connections to the HAP Loop. It would also evaluate the need for improvements to the pedestrian crossing at the intersections of Sterling Highway and Pioneer Avenue.
Benefits	Increases non-motorized accessibility, provide travelers with more options. Improves the areas near many hotels, which will provide seasonal visitors with more travel options. Could reduce the amount of motorized traffic traveling on and across the Sterling Highway at Pioneer Avenue, an intersection that was identified as being difficult in the summer.
Challenges	Attaining funding. Right-of-way and utilities may be a concern. Coordination with DOT&PF is required for Main Street.
Related Projects	HAP Loop Project (ongoing) Project 5 Pioneer Avenue as an Extension of the HAP Loop



# Kachemak Drive Reconnaissance Engineering Study

Goals and Objectives	Objective 1A Improve safety at conflict points between pedestrians and motor vehicles, especially at intersections Objective 1B Provide for safe use of the right-of-way by all transportation modes, considering the land use context and type of vehicle	
Project Description	<b>Conduct a reconnaissance engineering study to identify concerns, needs, and obstacles for</b> <b>improving Kachemak Drive for non-motorized travel and to develop potential solutions.</b> The safety of non-motorized transportation and interactions between motorized vehicles along Kachemak Drive was a repeated concern of survey participants. A two-lane road with a 35-mph speed limit and limited shoulders, this route is popular for walking, biking, and driving, but the interactions between users is uncomfortable and there is limited right-of-way for improvements.	
Benefits	Improves safety.	
Challenges	Attaining funding. Limited right of way. Coordination with DOT&PF.	
Related Projects	Project 9 Identify Additional Priorities for Non-Motorized Infrastructure	

# Regularly Update Existing Trails Maps

Goals and Objectives	Objective 2A Identify a priority pedestrian network that connects key generators and develop a plan to build these connections Objective 2B Identify a priority low-stress bicycle network that connects key generators, develop a plan to build these connections and encourage appropriate bicycle parking Objective 3A Reconstruct and proactively maintain pedestrian facilities to ensure year-round usability Objective 3B Reconstruct and proactively maintain bicycle facilities to ensure year-round usability	
Project Description	<b>Regularly update existing trails maps in GIS for online use and for creating print maps.</b> Trails such as the Beluga Trail and Reber Trail extend the non-motorized network. Trails are only effective when potential users are aware of them. Updating maps to include information about the difficulty level and type of maintenance, will help individuals to understand which routes are best for them.	
Benefits	Informs the public of the trail routes available to them. Helps to identify gaps within the non-motorized network and inform the public as they are filled.	
Challenges	Staffing. Coordination with trail user groups, such as Homer Trails Alliance and Katchemak Nordic Ski Club.	
Related Projects	Project 9 Identify Additional Priorities for Non-Motorized Infrastructure	

# Identify Additional Priorities for Walking & Biking Infrastructure

Goals and Objectives	Objective 3A Reconstruct and proactively maintain non-motorized facilities to ensure year-round usability	
	Identify priority areas for non-motorized travel and develop a plan for constructing sidewalks, paths, and trails in those areas. Wayfinding and streetscape improvements should be included. Survey respondents identified numerous sidewalks, paths, and trails that they would like to see constructed. These include:	
	Connections between neighborhoods along Skyline Drive and those near the hospital and the high school	
	Sidewalk or bike lanes along East Hill and West Hill Roads	
Project Description	Pathways further out on the Sterling Highway and on East End Road	
	Path along routes parallel to Ocean Drive	
	Paths around the airport and connecting to areas along East End Road	
	Traffic calming along Skyline Drive	
	Access to beaches	
	Connections from outlying areas into Homer (ex: Diamond Creek Trails)	
	Satisfies the public desire for trails, sidewalks, and bike lanes.	
Benefits	Improves pedestrian safety.	
	Adds to the transportation network.	
	Attaining funding.	
Challenges	Coordination with DOT&PF.	
	Increased maintenance burden.	
Related Projects	Project 8 Regularly Update Existing Trails Maps	

## **Complete East-West Connections**

Goals and Objectives	Objective 2C Identify key gaps in the collector road network and develop a plan to build these connections	
Project Description	<b>Build additional east-west connections.</b> This will add to the collector network and provide alternative routes to the heavily traveled arterial roadways. The road construction should include walking and biking infrastructure and traffic calming.	
Benefits Improves the collector network and reduces the stress on arterials like Pioneer Avenue.		
Challenges       Attaining funding         Right-of-way and utilities may be a concern         Local public opposition due to change in neighborhood traffic volumes and speeds		
Related Projects	Project 3 Improve Drop-Off and Pick-Up Locations at Schools	

# Abbreviations

AADT	Annual Average Daily Traffic
AASHTO	American Association of State Highway Transportation Officials
ADA	Americans with Disabilities Act
APBP	Association of Pedestrian and Bicycle Professionals
BUMPS	Basic Unified Multi-Path Service
CBD	Central Business District
DOT&PF	Alaska Department of Transportation and Public Facilities
EPA	United States Environmental Protection Agency
FAA	Federal Aviation Administration
FHWA	Federal Highway Administration
HAP	Homer All Ages and Abilities Pedestrian Pathway
IATSS	International Association of Traffic and Safety Sciences
ILC	Independent Living Center
KE	Kinney Engineering
LOS	Level of Service
M&O	Maintenance and Operations
NHS	National Highway System
TORA	Transfer of Responsibility Agreement
USDOT	United States Department of Transportation

# **Definition of Terms**

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**Arterial Road:** Functional classification describing roads that are generally designed to carry higher volumes of vehicles at higher speeds over longer distances. Often, separated paths or wide shoulders are provided for walking and biking.

**Americans with Disabilities Act (ADA):** A civil rights law that prohibits discrimination against people with disabilities.

**All Ages and Abilities:** Refers to a design effort to make a transportation system that everyone can access safely.

**Average Annual Daily Traffic (AADT):** A measurement of the number of vehicles traveling on a segment of highway each day, averaged over the year.

**Collector Road:** Functional classification describing roads that distribute trips between local and arterial roads.

**Complete Streets:** An approach to planning, designing, building, and maintaining streets that supports safe travel and access for all users.

**Land Use Context:** Principle of transportation planning that allows the surrounding land uses to be considered in choosing transportation network elements for each mode of travel, such as walking, biking, parking, freight delivery, etc.

**Level of Service (LOS):** Performance measure concept used to quantify the operational performance of a transportation facility (sidewalk, bikeway, roadway, etc.) and present the information to users and operating agencies. The actual performance measure used varies by the type of facility; however, all use a scale of A (best conditions for individual users) to F (worst conditions).

**Local Road:** Functional classification describing roads that carry lower volumes of traffic at slower speeds, are focused on providing access to homes and businesses, and carry travelers for only a short distance. Often, pedestrians and bicyclists share the road with vehicles, although sometimes a sidewalk or wide shoulder may be provided.

**Low-Stress Bicycle Network:** Connected system of bicycle facilities (such as shared roadways, bike lanes, sidewalks, paths, and trails) suitable for bicyclists of all ages and abilities.

**Mobility:** The ability to move freely throughout a transportation network.

**Monthly Average Daily Traffic (MADT):** A measurement of the number of vehicles traveling on a segment of highway each day, averaged over a month.

**Path of Travel:** A continuous and unobstructed pedestrian route.

**Peak Hour Factor (PHF):** Measure of traffic variability over an hour period calculated by dividing the hourly flowrate by the peak 15-minute flowrate. PHF values can vary from 0.25 (all traffic for the hour arrives in the same 15-minute period) to 1.00 (traffic is spread evenly throughout the hour).

**Public Parking:** Locations available for all members of the public to park a vehicle. Public parking may be free, or users may be required to pay a fee to park.

**Speed Reduction:** Lowering the speed limit on roadways as a traffic calming measure.

**Traffic Calming:** Treatments that discourage cut-through traffic and encourage vehicles to travel at speeds that are appropriate for the land use context.

**Transit:** Transportation mode using buses or shuttles that charges set fares and is available to the public.

**Vehicle Capacity:** The maximum number of vehicles per hour that a roadway can sustain based on roadway geometry, environmental conditions, traffic volumes, and traffic control.

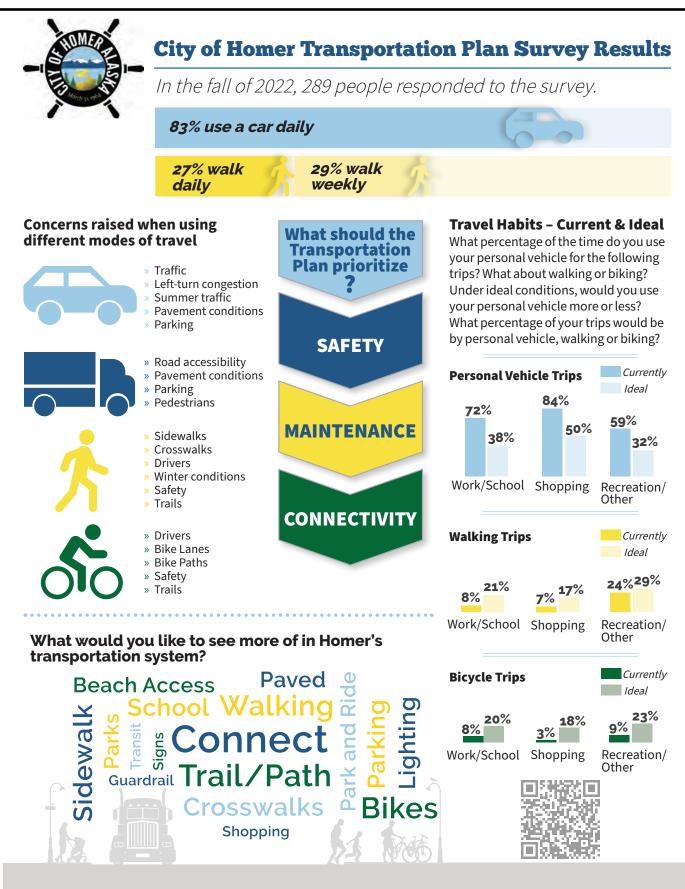
**Volume to Capacity Ratio (v/c):** Compares the capacity of a roadway to how many vehicles per hour are actually using a roadway. Values of 0.85 or less are optimal.



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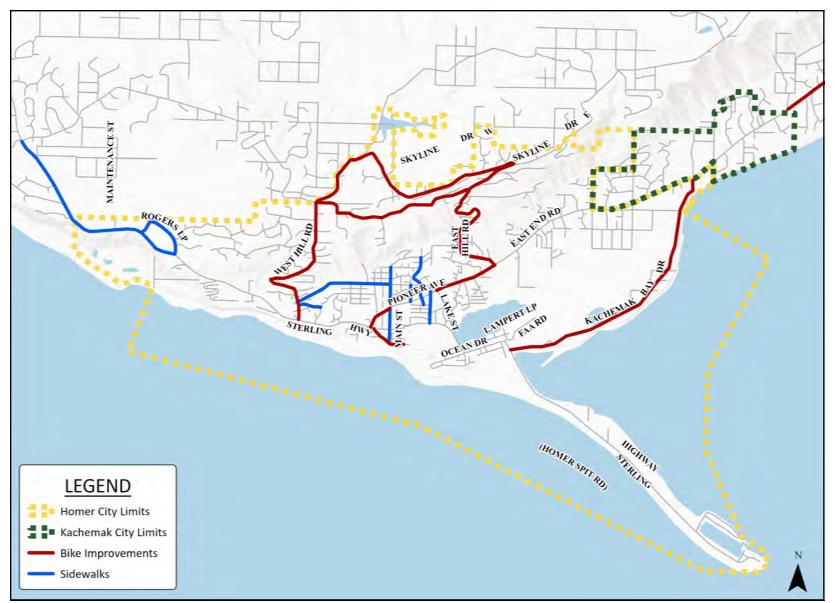
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## **Appendix A: Summary of Public Involvement**

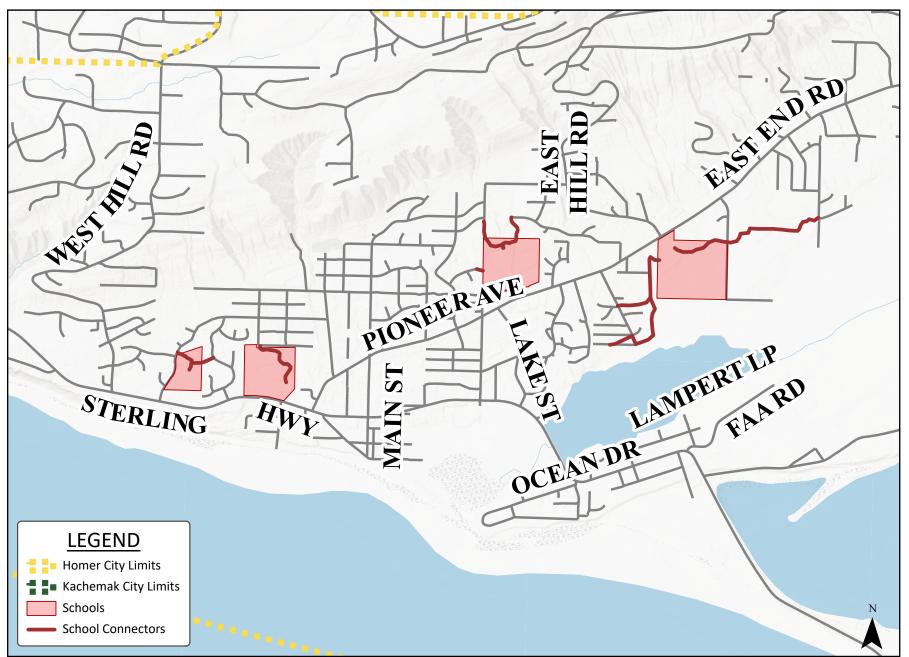


# Appendix B: Desired Walking or Biking Improvements from Public Comment

Respondents made comments in an online map. Requests for sidewalk improvements were focused in the central Homer area. Requests for bike facilities focused on longer distance connections.



93



Respondents made comments in an online map. Many requests focused on connecting schools to neighborhoods through path or trail improvements.

DR N DR SKYLINE SKYLINE EASTENDRD HILL RD EAST NG PIONEERAVE KACHEMAK OCEAN DR LANPERT LP STERLING HWY MAIN LEGEND Homer City Limits Kachemak City Limits \*\*\*\*\*\*\*\*\*\*\*\* **Hillside Connectors**  Neighborhood Connection N Streets

Respondents made comments in an online map. Many requests focused on connecting neighborhoods, including connecting upper hillside with lower hillside, through path or trail improvements.

Respondents made comments in an online map. Several comments focused on creating connections between local streets and the beach.

- \* from Waddell Street, Hidden Way, and Crittenden Drive
- \* extension of Main Street or Charles Way
- \* from Ocean Drive Loop
- \* from Kachemak Drive near Lampert Lake
- \* from the north end of Kachemak Drive where it turns away from the beach to connect to East End Road



**City of Homer** 

www.cityofhomer-ak.gov

Planning 491 East Pioneer Avenue Homer, Alaska 99603

Planning@ci.homer.ak.us (p) 907-235-3106 (f) 907-235-3118

October 7, 2024

Robert Ruffner, Planning Director Kenai Peninsula Borough 144 North Binkley Street Soldotna, AK 99669

Dear Mr. Ruffner,

I am pleased to present the 2024 Homer Transportation Plan for inclusion in the City of Homer's Comprehensive Plan. The City of Homer contracted with Kinney Engineering to update the Transportation Plan in 2022, and spent two years conducting extensive public process to create the plan. The new document is a major update to the 2005 Homer Area Transportation Plan and the Homer Non-Motorized Transportation and Trails Plan (2004). This 2024 Homer Transportation Plan replaces both of those documents as part of the Homer Comprehensive Plan.

Please let me know if I can provide any further assistance in the adoption process through the Kenai Peninsula Borough Planning Commission and Assembly.

Sincerely,

While Congeloctoon

Julie Engebretsen Community Development Director

<u>Attachments</u> 2024 Homer Transportation Plan Ordinance 24-31(S)

1 2	CITY OF HOMER	
3	HOMER, ALASKA	ity Managar
4	ORDINANCE 24-31(S)	ity Manager
5	ORDINANCE 24-31(5)	
6	AN ORDINANCE OF THE HOMER CITY COUNCIL ADOPTING THE	
7		
8	2024 HOMER TRANSPORTATION PLAN, AMENDING THE HOMER COMPREHENSIVE PLAN TO INCLUDE THE TRANSPORTATION	
9		
10	PLAN AND RECOMMENDING ADOPTION BY THE KENAI PENINSULA BOROUGH.	
11	Bokoosii.	
12	WHEPEAS The Kenzi Deningula Percurah as a Second Class Percurah shall	provide for
13	WHEREAS, The Kenai Peninsula Borough as a Second Class Borough shall planning on an area wide basis in accordance with AS 29.40; and	provide for
14	planning on an area wide basis in accordance with AS 29.40, and	
15	WHEREAS, As provided in Kenai Peninsula Borough Code 21.01.025, c	ition in the
16	Borough requesting extensive comprehensive plan amendments may recommend	
17	Peninsula Borough Planning Commission a change to the city comprehensive plan	
18	remission a change to the city comprehensive plan	i, and
19	WHEREAS, The City of Homer has prepared an extensive comprehensive pla	n undata in
20	the form of the 2024 Homer Transportation Plan; and	n update in
21	the form of the 2024 Homer Transportation Plan, and	
22	WHEREAS, The 2024 Homer Transportation plan will guide the developmen	tmotorized
23	and non-motorized transportation for the City of Homer; and	tinotonzeu
24	and non-motorized transportation for the city of nomer, and	
25	WHEREAS, City of Homer Commissions participated in the plan creation ar	d provided
26	comments; and	iu provideu
27		
28	WHEREAS, There was extensive public participation, including a yearlong f	ocus of the
29	grass roots group Homer Drawdown and a survey that included over five hundred	
30	and	responses,
31		
32	WHEREAS The Homer Planning Commission conducted a public hearing on	May 1 2024
33	and recommended approval by the Kenai Peninsula Borough; and	May 1, 2024
34	and recommended approval by the Kenarr emissia borough, and	
35	WHEREAS, The Homer City Council, based upon the recommendation of	the Homer
36	Planning Commission, recommends that the Kenai Peninsula Borough Planning C	
37	and Assembly adopt the 2024 Homer Transportation Plan.	ommission
38		
39	NOW, THEREFORE, THE CITY OF HOMER ORDAINS:	
40		
41	Section 1. The 2024 Homer Transportation Plan is hereby adopted as an ele	ment of the
42	City of Homer Comprehensive Plan, superseding the 2004 Homer Nor	
43	Transportation and Trails Plan and the 2005 Homer Area Transportation Plan.	

#### E1-64

Page 2 of 3 ORDINANCE 24-31(S) CITY OF HOMER

44 Section 2. The previously adopted Homer Master Roads and Streets Plan (1986), and 45 the Homer Town Center Development Plan (2006), Homer Spit Plan (2010) and the Homer Comprehensive Plan (2018) remain part of the Homer Comprehensive Plan. 46

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Section 3. Subsection (b) of Homer City Code 21.02.010, Comprehensive Plan-Adoption, is amended to read as follows:

50 b. The following documents, as initially approved and subsequently amended, are 51 adopted by reference as comprising the Homer Comprehensive Plan. 52

- 1. Homer Comprehensive Plan (2018)
  - 2. Homer Master Roads and Streets Plan (1986)

3. Homer Non-Motorized Transportation and Trail Plan (2004)

- Homer-Area Transportation Plan (2005 2024) 43.
- 54. Homer Town Center Development Plan (2006)
- <del>6</del>5. Homer Spit Plan (2010)
- 57 58

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59 Section 4. The City hereby recommends that the Kenai Peninsula Borough Planning Commission and Assembly adopt the 2024 Homer Transportation Plan as extensive 60 comprehensive plan amendments under Kenai Peninsula Borough Code 21.01.025, and as an 61 element of the Official Borough Comprehensive Plan within the City of Homer planning area of 62 the Borough. 63 64

65 Section 5. Sections 1 through 3 of this ordinance shall take effect upon the adoption of 66 the 2024 Homer Transportation Plan by the Kenai Peninsula Borough Assembly. The remainder of this ordinance shall take effect upon its adoption by the Homer City Council. 67 68

69 Section 6. Section 3 of this ordinance is of a permanent and general character and shall be included in the city code. The remainder of this ordinance is not of a permanent nature and 70 is a non-code ordinance. 71

ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this 24 day of August, 2024.

TTUR

ATTEST:

RENEE KRAUSE, MMC, CITY CLERK

**CITY OF HOMER** 

KEN CASTNER, MAYOR

Page 3 of 3 ORDINANCE 24-31(S) CITY OF HOMER

87	
88	YES: 5 NO: Ø
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90	ABSTAIN: 💋
91	ABSENT:
92	
93	First Reading: 7/22/24 Public Hearing: 8/12/24 Second Reading: 8/19/24 + 9/23/24
94	Public Hearing: 81224
95	Second Reading: 8/19/24 4 9/23/24
96	Effective Date: 9/24/24

Introduced by:	Mayor
Date:	10/08/19
Hearing:	11/05/19
Action:	Enacted
Vote:	6 Yes, 3 No, 0 Absent

#### KENAI PENINSULA BOROUGH ORDINANCE 2019-25

#### AN ORDINANCE AMENDING KPB 2.56.006 AND KPB 2.56.007, ADOPTING THE 2019 KENAI PENINSULA BOROUGH COMPREHENSIVE PLAN

- **WHEREAS,** the Kenai Peninsula Borough provides for planning on an areawide basis in accordance with AS 29.40.010; and
- **WHEREAS**, Alaska Statute 29.40.020(b)(1) requires the planning commission to prepare and submit to the assembly a proposed comprehensive plan for the systematic and organized development of the borough; and
- **WHEREAS,** the assembly is required by AS 29.40.030(b) to periodically undertake an overall review of the comprehensive plan and update the plan as necessary; and
- WHEREAS, goal 1.1, objective 7, of the 2005 Kenai Peninsula Borough Comprehensive Plan is to regularly update the comprehensive plan to reflect changing conditions, trends, laws, regulations and policies; and
- WHEREAS, the existing comprehensive plan was last updated in 2005; and
- **WHEREAS,** the social, economic, and environmental conditions of the Kenai Peninsula Borough have changed over the past fourteen years; and
- **WHEREAS,** in February of 2017 the Kenai Peninsula Borough contracted with the consulting firm of Agnew::Beck to facilitate a public process and update the existing comprehensive plan; and
- WHEREAS, throughout 2017 over 2,000 residents of the borough shared their ideas with the project team, the team conducted more than 50 interviews and small group discussions with local organizations, they conducted a random sample telephone survey of 600 households within the borough, and the team had a booth or other presence at 20 public events throughout the borough; and
- **WHEREAS,** the planning commission conducted a public hearing for the proposed 2019 comprehensive plan at its August 26, 2019 regular meeting; and
- **WHEREAS,** the planning commission at its September 23, 2019 meeting, recommended enactment of the 2019 comprehensive plan;

#### E1-67

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

**SECTION 1.** That KPB 2.56.006 is hereby amended as follows:

#### 2.56.006. Kenai Peninsula Borough Comprehensive Plan adopted.

The document entitled "[2005] <u>2019</u> Kenai Peninsula Borough Comprehensive Plan" is adopted as the Comprehensive Plan of the Kenai Peninsula Borough.

**SECTION 2.** That KPB 2.56.007 is hereby amended as follows:

#### 2.56.007. Borough plan amendments.

- A. The following plans are incorporated as elements of the [2005] <u>2019</u> comprehensive plan, subject to the applicable goals, objectives, and [ACTIONS] <u>strategies</u> listed [IN CHAPTER 6 OF] <u>within</u> the [2005] <u>2019</u> Kenai Peninsula Borough Comprehensive Plan. The classification of borough land shall be consistent with the intent of the following land use plans, provided such classifications are consistent with the findings of fact required by KPB 17.10.080(I).
  - 1. "Community Land Use Plan for Borough Lands in Hope, 1987."
  - 2. "Community Recommendations on a Land Use Plan for Borough Lands, Hope and Sunrise, 1992 Additions."
  - 3. "Community Land Use Plan for Borough Lands in Sunrise, 1988."
  - 4. "Community Recommendations on a Land Use Plan for Borough Lands at Cooper Landing, 1992", as amended by Ordinance 2018-06.
  - 5. "1996 Cooper Landing Land Use Plan Update."
- B. The document entitled "Comprehensive Plan for Moose Pass, 1993" with boundaries amended by <u>the</u> map dated July 1994 is incorporated as an element of the [2005] <u>2019</u> comprehensive plan, subject to the applicable goals, objections, and [ACTIONS LISTED IN CHAPTERS 1 AND 6] <u>strategies</u> within the 2019 comprehensive plan.
- C. The document entitled "Kenai Peninsula Borough Trail Plan, 1998" is incorporated as an element of the [2005] <u>2019</u> comprehensive plan, <u>subject</u> to the applicable goals, objections, and strategies within the 2019 comprehensive plan.
- D. The document entitled "Seward Highway Corridor Partnership Plan, A Strategy for Management, Economic Development, and Conservation 1998" is incorporated as an element of the [2005] <u>2019</u> comprehensive plan, subject to the applicable goals, objections, and strategies within the 2019 comprehensive plan.

- "Cooper Landing Walkable Community Project" dated March 2010 is E. hereby adopted as [APPENDIX K IN CHAPTER 5, TRANSPORTATION,] an element of the [2005] 2019 Kenai Peninsula Borough Comprehensive Plan, subject to the applicable goals, objections, and strategies within the 2019 comprehensive plan.
- **SECTION 3.** That the comprehensive plan shall be reviewed periodically and updated to reflect changing conditions, trends, laws and policies of the borough.

SECTION 8. That this wild an antak shaff bet imperiately exponite constants.

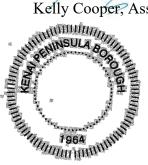
#### ENACTED BY THEASSEMBLY OF THEKENANAEN KNUSU BOROROL GHIST HI BAD DA NOVEMBER 581 2019.

ATTEST:

Johni Blankenship, MMC, Borough Clerk



Kelly Cooper, Assembly President



Yes: Carpenter, Cox, Dunne, Johnson, Smalley, Cooper

No: Blakeley, Bjorkman, Hibbert

Absent: None

Kenai Peninsula Borough, Alaska New Text Underlined; [DELETED TEXT BRACKETED] Ordinance 2019-25 Page 3 of 3 Yes: Bjorkman, Blakeley, Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, Cooper E1-69 No: None

# E. NEW BUSINESS

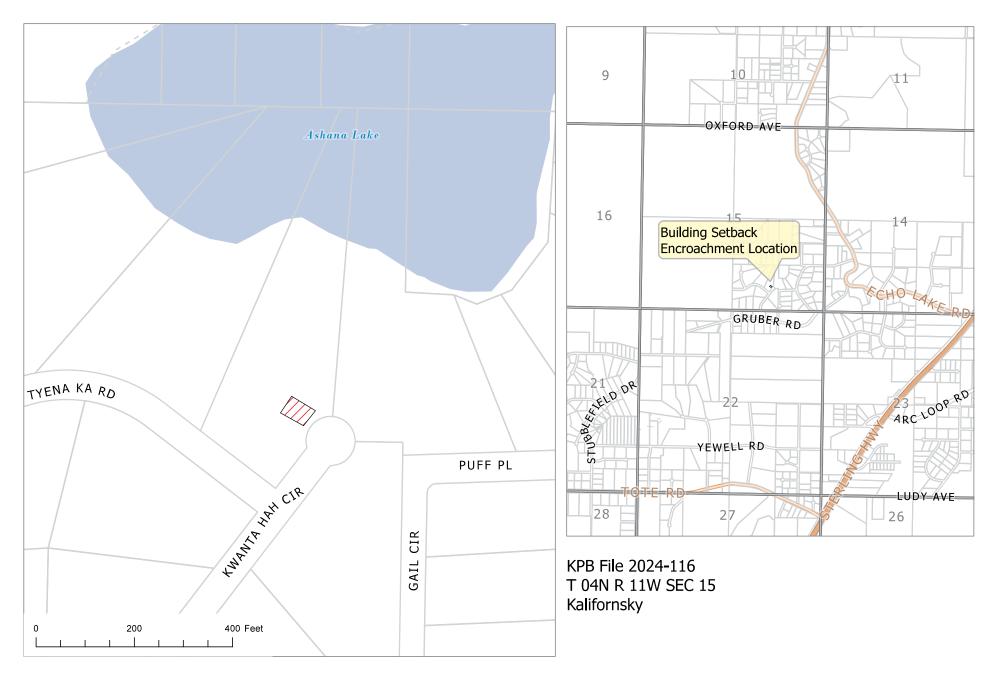
2. Building Setback Encroachment Permit; KPB File 2024-116 Segesser Surveys / Musgrove Request: Permits a portion of the house to remain approximately 4' within the 20' building setback on Lot 5, Tukakna Sky Subdivision, Plat KN 82-110 Location: Tyena Ka Road & Kwanta Hah Circle Kalifornsky Area





Vicinity Map

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



KENAI PENINSULA BOROUGH



TYENA KA RO

300 Feet

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Aerial Map

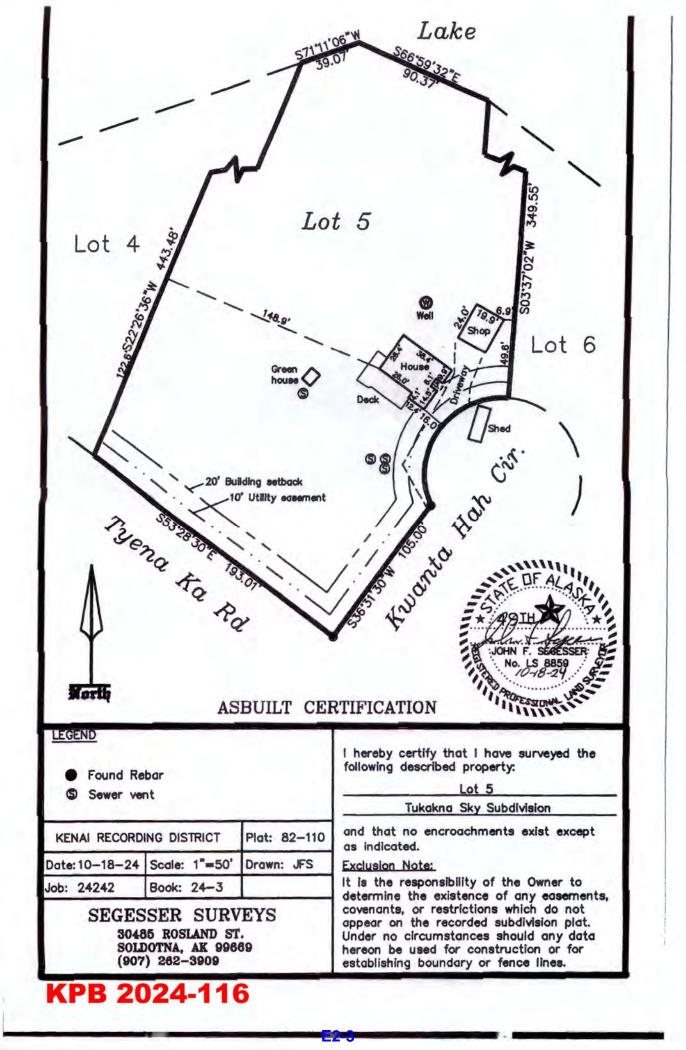
PUFF PL

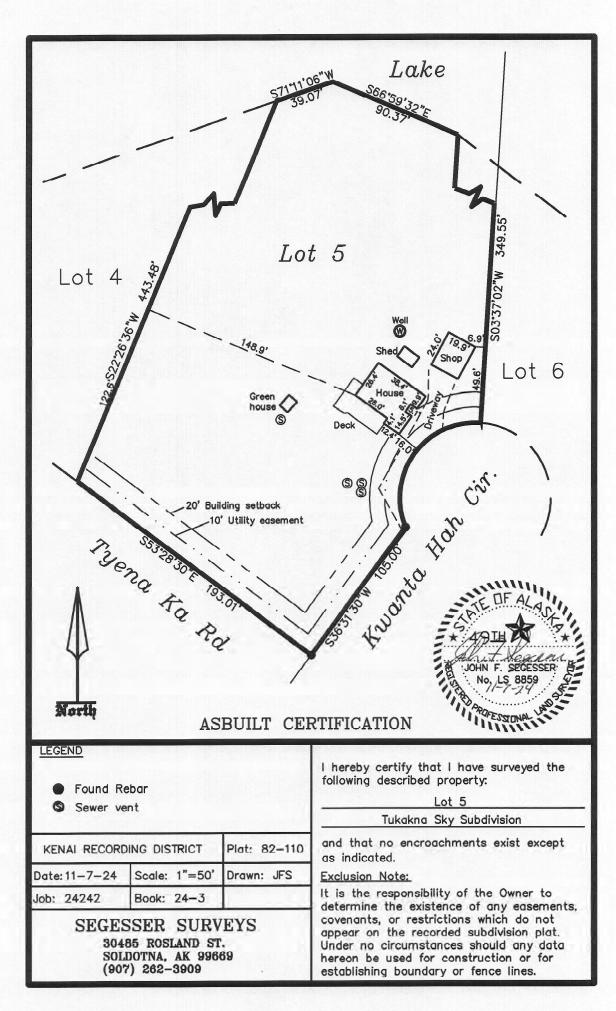
Building Setback Encroachment



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E2-4

Homes are built already.

1. Does not interfere wired maintenance

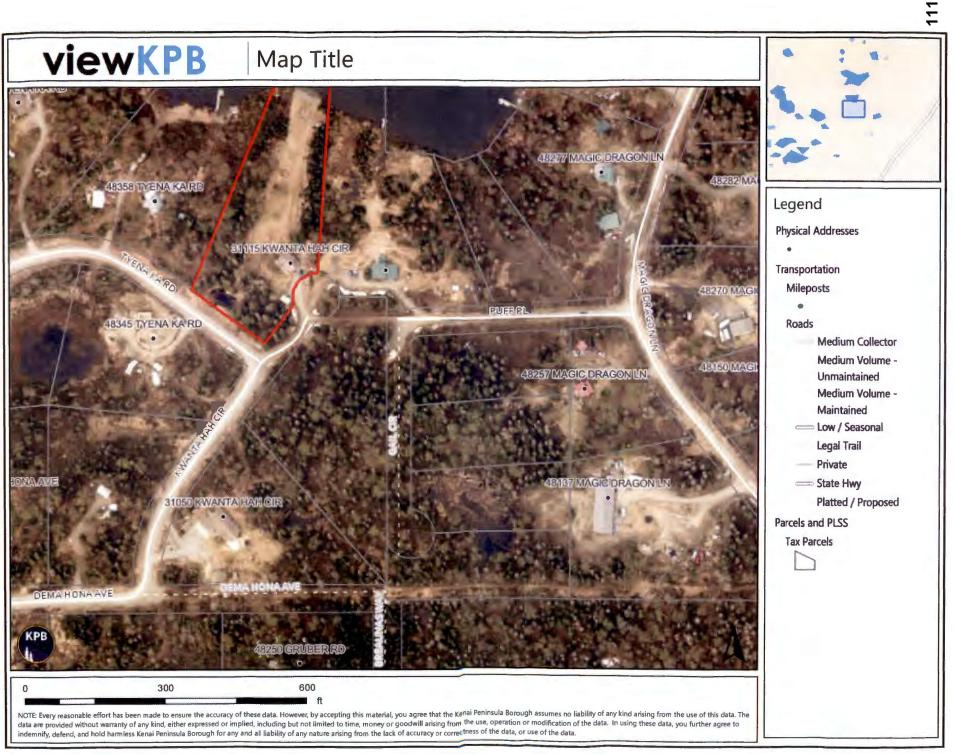
2 Does not interfere wy Site lines or distances

3- Does not create a safety hazard.

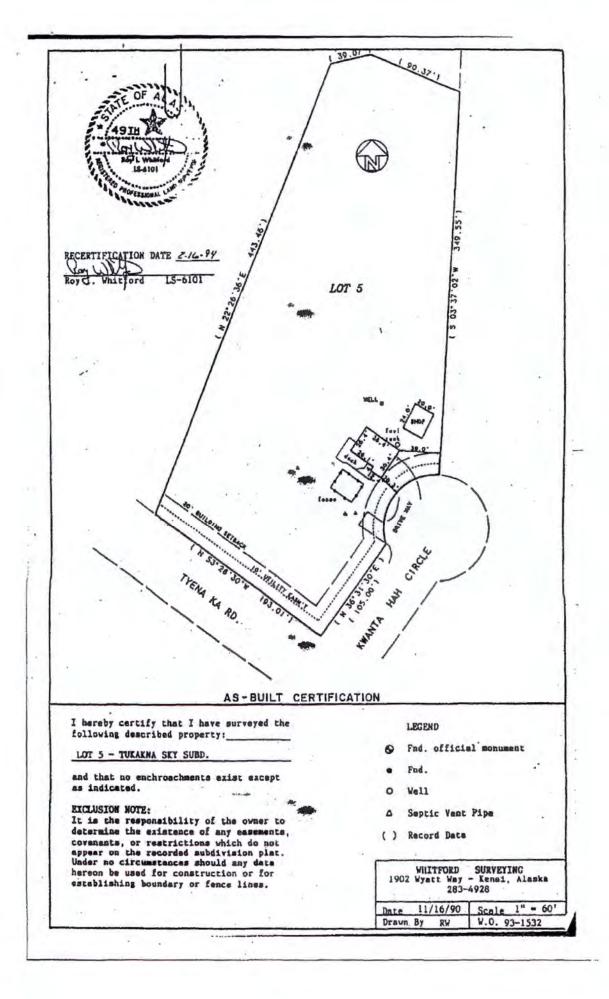


10/21/2024 11:15:39 AM

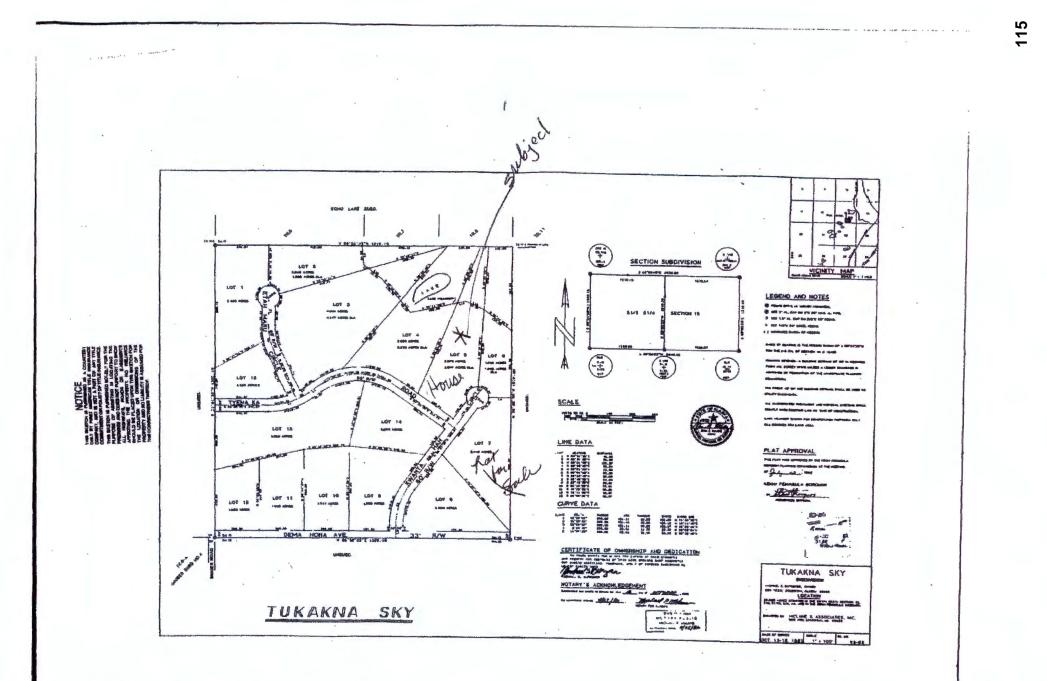
Only 2 homes use the cul-de-sac.

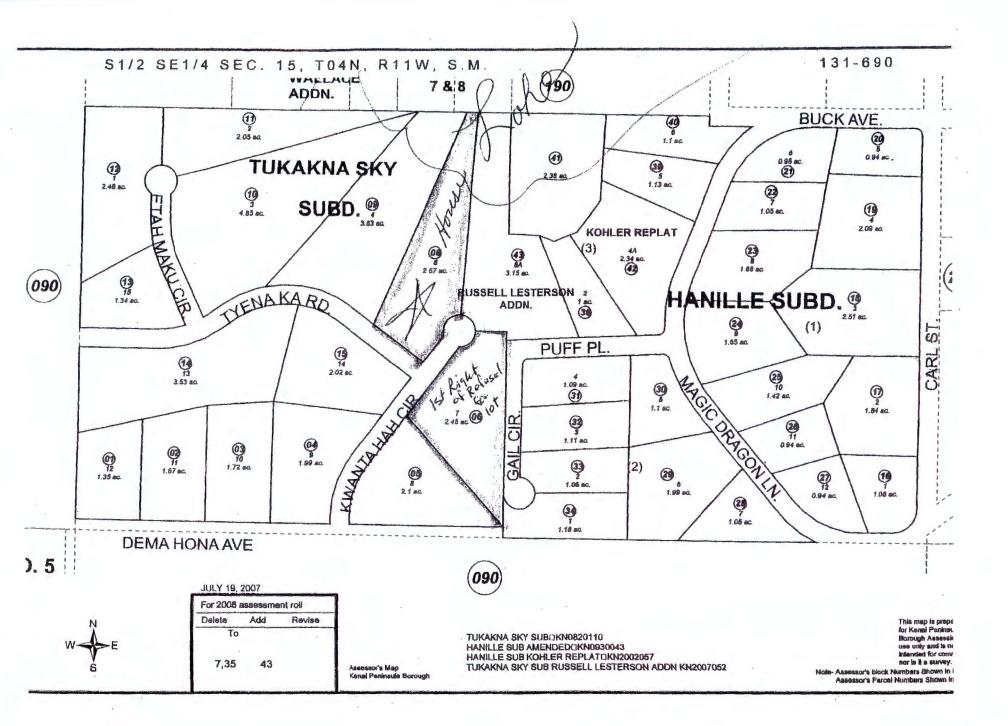






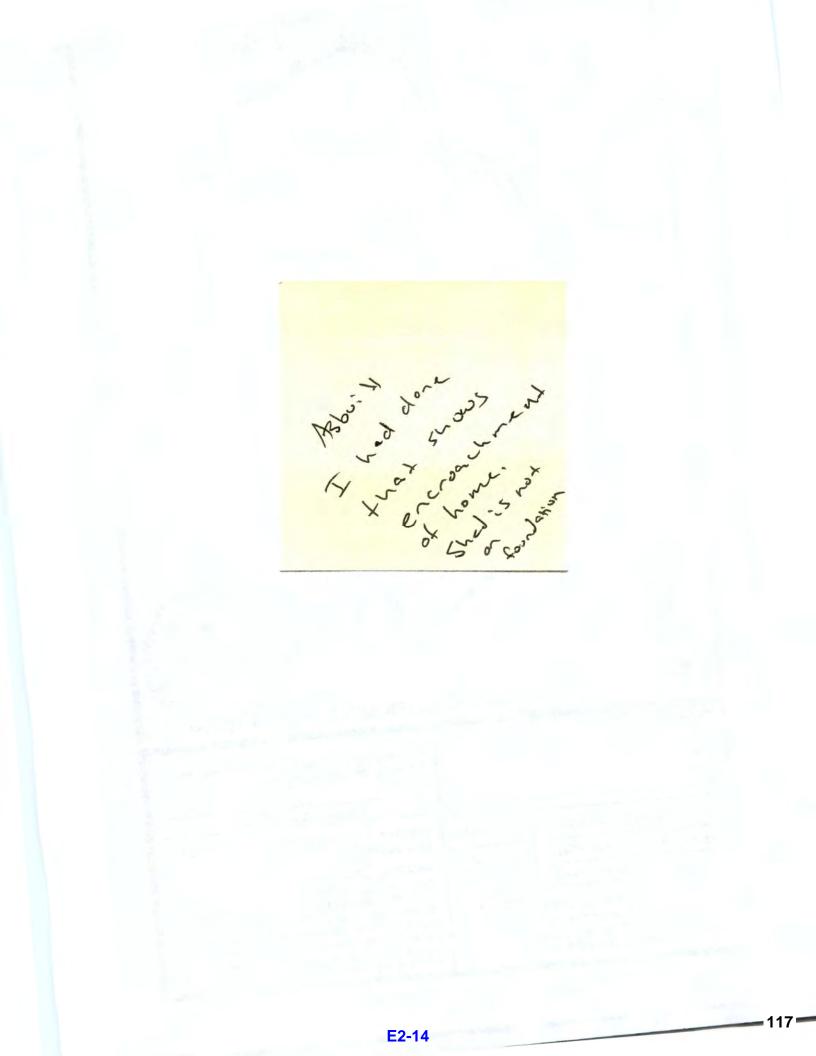
Plat of mar 3 homes only 3 cul-de-sac. Sharing cul-de-sac. 114 E2-11

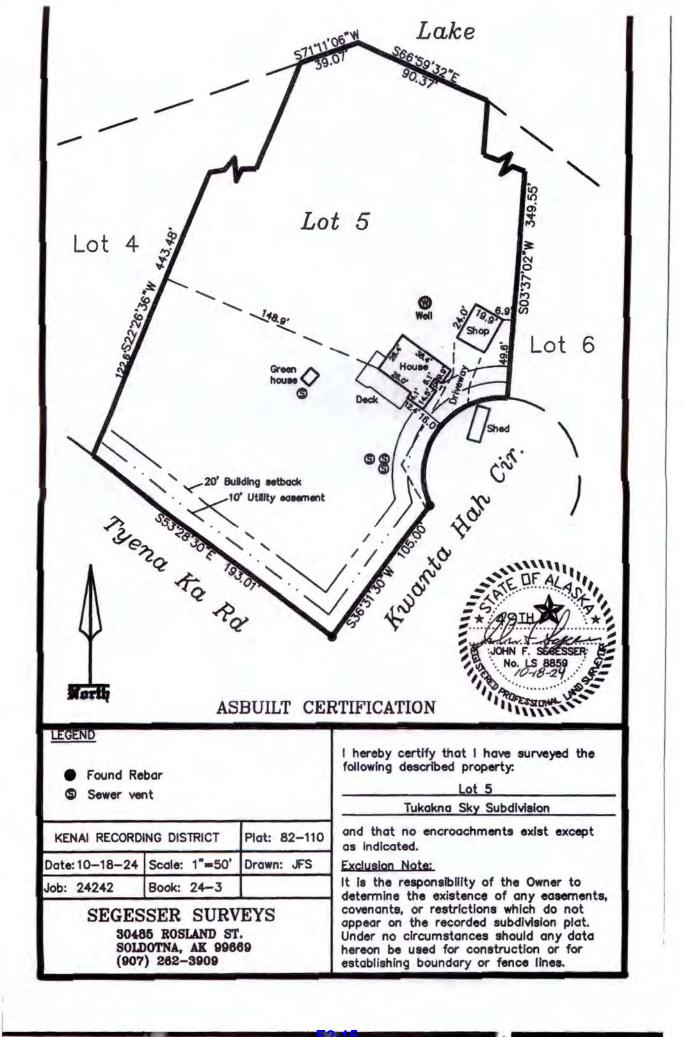




#### E2-13

116





From:	Piagentini, Vincent
То:	Carpenter, Beverly
Subject:	FW: <external-sender>31115 Kwanta Hah Circle Soldotna Alaska 99669</external-sender>
Date:	Tuesday, October 22, 2024 4:31:49 PM
Attachments:	From Home Down To Where Road Approaches Two Driveways.pdf
	End Of Maintained Part Of Road Where Two Driveways Split.pdf
	Driveway From End Of Maintained Part Of The Road.pdf
	Neighbors Driveway Adjacent That Goes Up The Hill To The Right.pdf
	VINCE -10222024154708.pdf
	image001.png
	image002.png

#### Beverly

This is additional finding and pictures to go along with one of the building setback encroachment petitions in the bin to be processed. They came in today and I told them they needed more findings and pictures would help also.

#### Vince Piagentini PLS

Platting Manager, Planning Department Phone: 907-714-2200 {Office} Phone: 907-714-2212 {Direct} Fax: 907-714-2378



Kenai Peninsula Borough 144 N. Binkley St. Soldotna, AK 99669 kpb.us

From: Katherine Uei <katieuei@gmail.com>
Sent: Tuesday, October 22, 2024 4:15 PM
To: Piagentini, Vincent <vpiagentini@kpb.us>; james musgrove <jamesmusgrove907@gmail.com>
Subject: <EXTERNAL-SENDER>31115 Kwanta Hah Circle Soldotna Alaska 99669

**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.

Hey Vince

It was nice meeting with you today. I want to thank the planning and zoning department for looking into this and helping us. James (current owner) bought the home in 2020 and was given an inaccurate as built (See attached) from Swan Surveying. He is not the original owner or builder. He had no idea this was an issue. Now that he is selling we are aware of the issues with the new as built. James Musgrove (current owner) is in the process of hiring someone to move the shed out of the cul-de-sac. This will be done prior to November 18th with proof provided via pictures. What time November 18th is the hearing?

The following standards shall be considered for all building setback encroachment permit applications.

1-The building setback encroachment may not interfere with road maintenance. A) Road Maintenance stops right at approaching the cul-de-sac. This is approximately 100 foot from the home. Road maintenance will not be affected by this change. See parcel viewer picture attached where the road meets the cul-de-sac is where the maintenance stops. The borough has never maintained the cul-de-sac.

2-The building setback encroachment may not interfere with sight lines and distances. A) The road maintenance stops approximately 100 foot from the home. Off the main road the culde-sac is not developed as a cul-de-sac. It has never been developed into a cul-de-sac standard for the borough to maintain. There are two driveways (Subject properties & adjacent property) coming through the cul-de-sac now. The neighbors property has a driveway that is elevated and mine is lower. The driveways span far apart from one another quite a bit. This change will not affect any site lines or distances.

3-The building setback encroachment may not create a safety hazard.

A) The road maintenance stops approximately 100 foot from the home before the cul-de-sac. The borough does not maintain the cul-de-sac. Currently the subject property driveway and the adjacent driveway span far from each other. Neither property owner goes into each other's driveway. There is no safety hazard. Both driveways have great line of sight going in and out to the maintained road. They can both safely enter and exit.

The home has a slab foundation. Every addition was built with a permanent foundation. There is no way to move the home due to the way it was built. I have attached a picture of the home's foundation below.

Picture of Corner Of Home Thaat Is Encroaching 4 Foot.pdf

This is the concrete slab from inside that corner of the home.pdf

## Katherine Uei

Cell (907) 398-3864

https://www.facebook.com/katieuei/



"Real estate is the simplest, most consistent and easiest way to substantially increase your net worth!"

"You can have everything in life you want if you'll just help enough other people to get what they want!" -- Zig Ziglar

"Honesty and integrity will govern our actions Commitments made will be fulfilled\_Everyone will be treated with dignity and respect"

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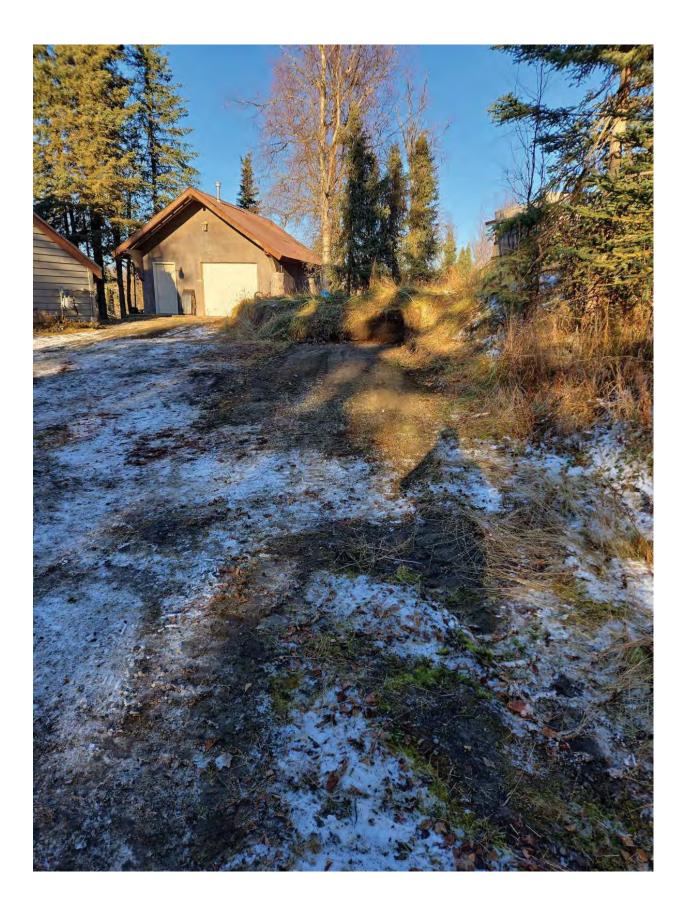


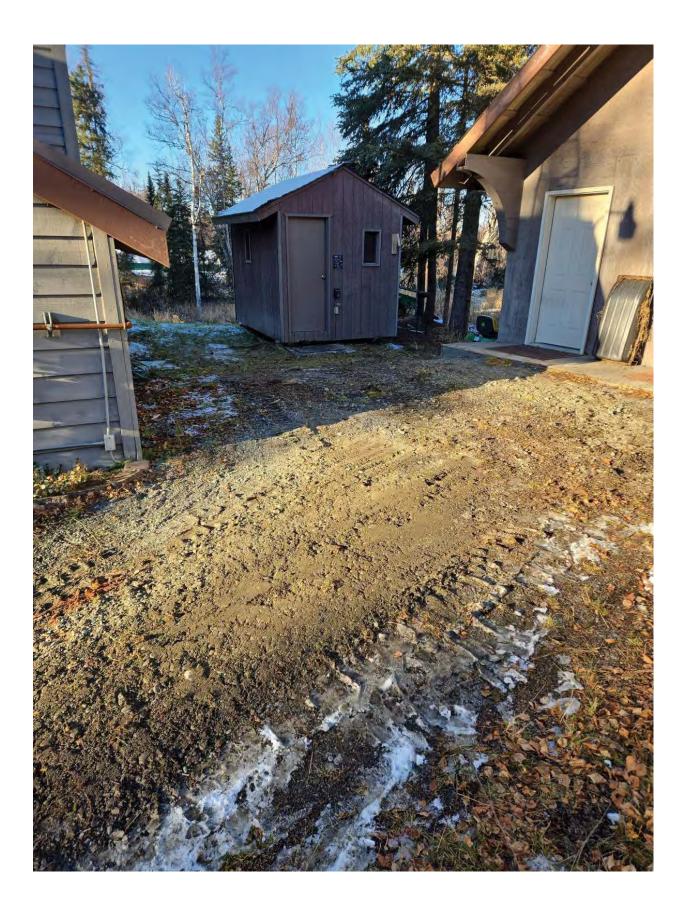


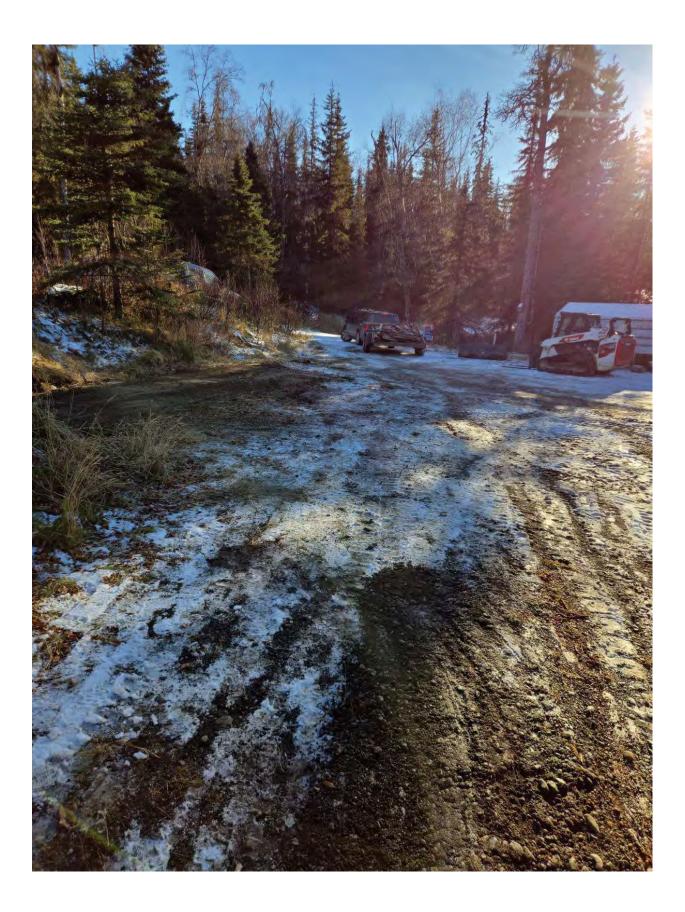


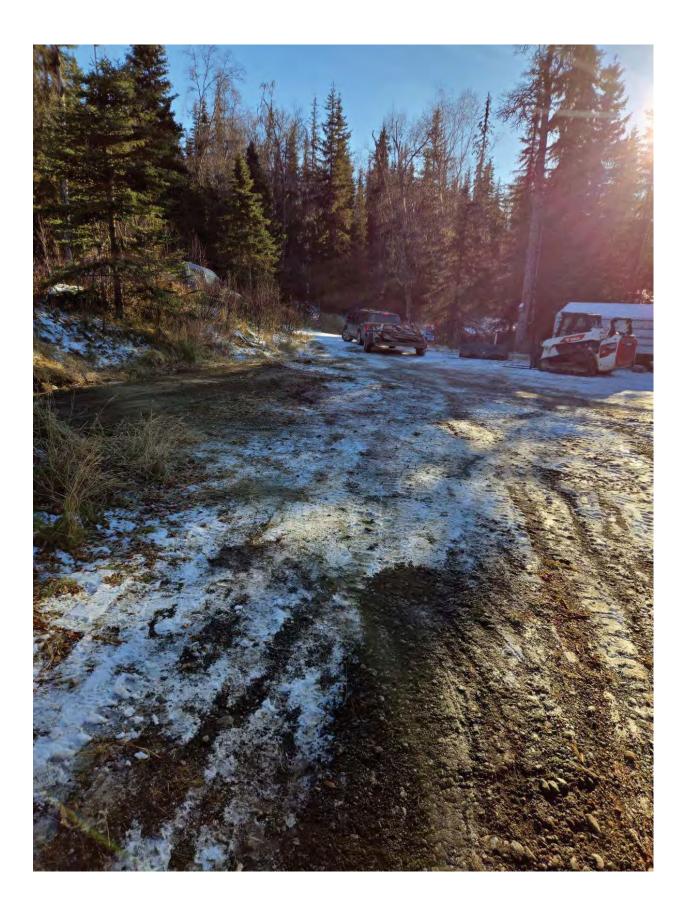


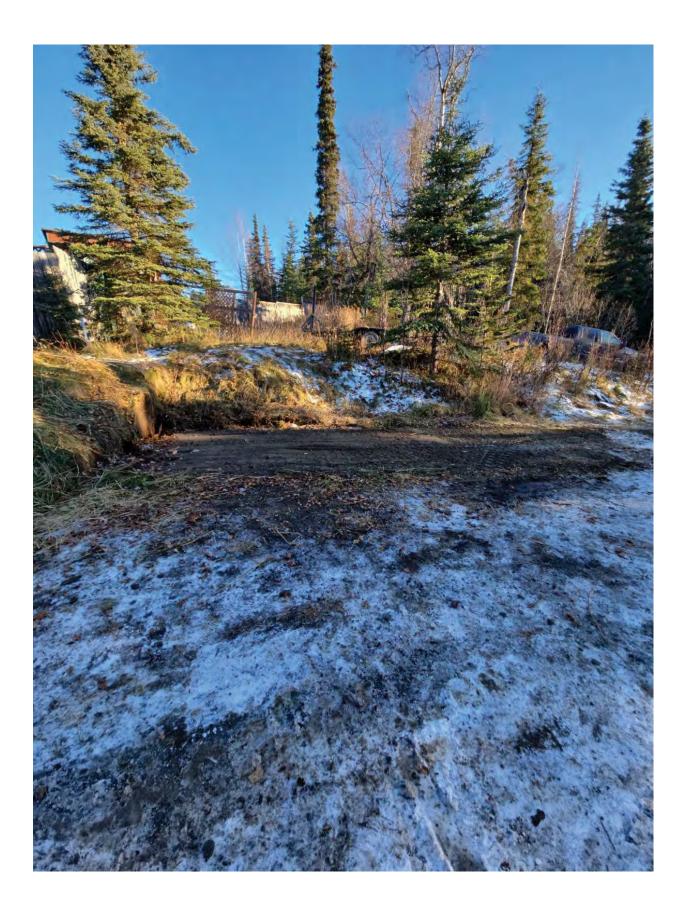


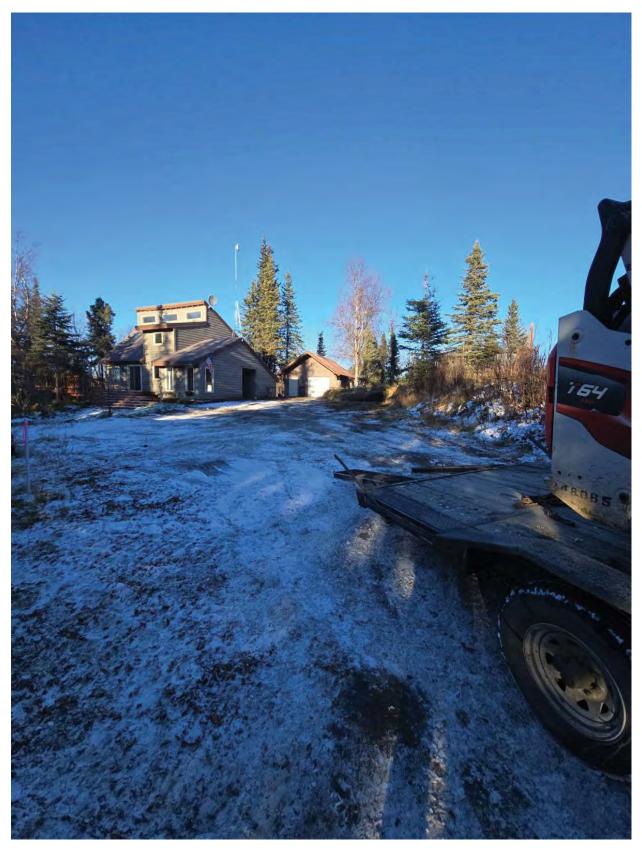












Sent from my iPhone

#### AGENDA ITEM E. NEW BUSINESS

#### ITEM #2. – BUILDING SETBACK ENCROACHMENT PERMIT LOT 5 TUKAKNA SKY SUBDIVISION

KPB File No.	2024-116
Planning Commission	November 18, 2024
Meeting:	
Applicant / Owner:	James Musgrove, Soldotna, AK
Surveyor:	John Segesser, Segesser Surveys
General Location:	Kalifornsky area
Parent Parcel No.:	131-690-08
Legal Description:	T 4N R 11W SEC 15 SEWARD MERIDIAN KN 0820110 TUKAKNA SKY SUB
	LOT 5
Assessing Use:	Residential
Zoning:	Rural Unrestricted
Resolution	2024-20

#### **STAFF REPORT**

#### Specific Request / Purpose as stated in the petition:

I am not the original owner. When I bought the home in 2020, I was provided an as-built that showed the home ha no encroachments. I did not know upon purchase that the home was built in the building setback. I recently hired a surveyor to do an updated as-built on 10/16/24 and discovered the home encroached 4 feet in to the building setback. The cul-de-sac I line in is fully developed with homes on all three lots within the cul-de-sac There are no vacant lots to develop. I would like this permit to be approved because I am innocent and had no idea until recent that this was an issue needing to be corrected. Thank you for your time in advance and for helping me with this unfortunate discovery.

#### Site Investigation:

There are several existing structures on Lot 5 by the current as-built. The house is shown at it's closest point to be 16.0 feet from the property line and 4.0' across the setback line. There is a shop and a greenhouse shown. There is a shed shown sitting in the cul-de-sac right-of-way, the shed has been moved as shown on the new as-built submitted and dated 11-7-24.

No future improvements were noted with the application.

The cul-de-sac is not developed completely, the road stops at the start of the cul-de-sac bulb. Borough maintenance end where the road ends also, from that point driveways go to the two houses at the end of the cul-de-sac.

There are no sight distance issues in the area of the cul-de-sac that are apparent from the KPB GIS aerial views and staff did not visit the site.

#### Staff Analysis:

Tukakna Sky Subdivision KN 82-110 subdivided the SW1/4 SE1/4 of Section 15, T4N, R11W, SM., AK, Kenai Peninsula Borough into 15 lots and 4 dedications.

Tukakna Sky Subdivision also created a 20 foot building setback along all street right-of-ways unless a lesser standard is approved by resolution. No resolution has been noted.

Page 1 of 4

The terrain of the lot has the house sitting at the low side of the cul-de-sac. The road comes in relatively level and as you come to the shop the lot drops to the north towards the lake.

Sight distances and existing traffic are not affected much as the road ends in a cul-de-sac that is not developed and ends in a driveway at the two respective houses on the end of the cul-de-sac. No obstructions appear to block the sight distance as a vehicle comes out of the drive as the road is beyond the property line of the lot. Maintenance is not an issue either as the borough maintenance stops at the start of the bulb.

#### Applicant Discussion:

I would like this permit to be approved because I am innocent and had no idea until recent that this was an issue needing to be corrected. Thank you for your time in advance and for helping me with this unfortunate discovery.

#### Applicant Findings:

- 1. Only two homes use the cul-de-sac.
- 2. As-built I was provided when I bought the home was incorrect.
- 3. Plat map of only 3 homes sharing cul-de-sac road.
- 4. As-built I had done that shows encroachment of home, shed is not on foundation. Shed has been moved.
- 5. Road maintenance stops right at approaching the cul-de-sac. This is approximately 100 foot from the home.
- 6. Road maintenance will not be affected by this change. See parcel viewer picture attached where the road meets the cul-de-sac is where the maintenance stops.
- 7. The borough has never maintained the cul-de-sac.
- **8.** Off the main road the cul-de-sac is not developed as a cul-de-sac. It has never been developed into a cul-de-sac for the borough to maintain.
- **9.** There are two driveways (subject properties & adjacent property) coming through the cul-de-sac now. The neighbor's property has a driveway that is elevated and mine is lower.
- **10.** The driveways span far apart from one another quite a bit. This change will not affect any site lines or distances
- 11. Neither property owner goes into each other's driveway. There is no safety hazard.
- 12. Both driveways have great line of sight going in and out to the maintained road, they can both safely enter and exit.

#### **Staff Findings:**

#### 20.10.110. – Building setback encroachment permits.

E. The following standards shall be considered for all building setback encroachment permit applications. Staff recommends the Commission select the findings they determine are applicable to the standards and vote on them:

1. The building setback encroachment may not interfere with road maintenance. **Findings 5 -7 appear to support this standard.** 

2. The building setback encroachment may not interfere with sight lines or distances. **Findings 5, 8 - 10** appear to support this standard.

3. The building setback encroachment may not create a safety hazard. Findings 5, 7, 10 – 12 appear to support this standard.

F. The granting of a building setback encroachment permit will only be for the portion of the improvement or building that is located within the building setback and the permit will be valid for the life of the structure or for a period of time set by the Planning Commission. The granting of a building setback permit will not remove any portion of the 20 foot building setback from the parcel.

G. The Planning Commission shall approve or deny a building setback encroachment permit. If approved, a resolution will be adopted by the planning commission and recorded by the planning department within the time frame set out in the resolution to complete the permit. The resolution will require an exhibit drawing showing, and dimensioning, the building setback encroachment permit area. The exhibit drawing shall be prepared, signed and sealed, by a licensed land surveyor.

KPB Roads Dept. comments	Out of Jurisdiction: No
	Roada Diractor: Criabal Scott
	Roads Director: Griebel, Scott Comments:
	RSA does not manage setback. Not aware of any current impacts to
	maintenance. Appears unlikely that the platted cul-de-sac would be fully
	developed given current access. No further RSA comments or objections.
SOA DOT comments	No comment
KPB River Center review	A. Floodplain
	Reviewer: Hindman, Julie
	Floodplain Status: Not within flood hazard area
	Comments: No comments
	B. Habitat Protection
	Reviewer: Aldridge, Morgan
	Habitat Protection District Status: Is NOT within HPD
	Comments: waterbody on which this parcel is located is not regulated by KPB
State of Alaska Fish and Game	No comment
Addressing	Reviewer: Leavitt, Rhealyn
	Affected Addresses: 31115 KWANTA HAH CIR
	31115 KWANTA HAH CIR
	Existing Street Names are Correct: Yes
	List of Correct Street Names:
	Existing Street Name Corrections Needed:
	Existing Street Name Corrections Needed.
	All New Street Names are Approved: No
	List of Approved Street Names:
	List of Street Names Denied:
	Comments:
	NO COMMENT
Code Compliance	Reviewer: Ogren, Eric
	Comments: the location of the structure is partly with in the 20 ft set back on
	a cul-de-sac. It would not be sight line issue. Code compliance would support
	the granting of the permit, providing no further expansion is allowed.
Planner	Reviewer: Raidmae, Ryan
	There are not any Local Option Zoning District issues with this proposed plat.
	Material Site Comments:
	There are not any material site issues with this proposed plat.

#### KPB department / agency review:

Page 3 of 4

Assessing	Reviewer: Wilcox, Adeena Comments: No Objection
Advisory Planning Commission	

#### Utility provider review:

	other provider review.		
HEA			
ENSTAR			
ACS			
GCI			
SEWARD ELECTRIC			
CHUGACH ELECTRIC			
TELALASKA			

#### **RECOMMENDATION:**

Based on the standards to grant a building setback encroachment permit, **staff recommends** to grant approval for the portion of structures within the 20 foot building setback as shown on the 2015 as-built survey, subject to the six conditions listed below:

- 1. Compliance with KPB 20.10.110 sections F and G.
- 2. Removal of all encroachments within the right-of-way dedication.
- 3. Providing a current as-built to be used as an exhibit drawing prepared, signed, and sealed by a licensed land surveyor.
- 4. The recording fees be submitted to the Kenai Peninsula Borough Planning Department for the recording of Resolution 2024-20.
- 5. Failure to provide an as-built so that it may be recorded within one year approval will result in a new application, hearing, and approval.
- 6. Additional encroachments found on the new as-built will require a new hearing.

#### NOTE:

20.10.110.(H) A decision of the planning commission may be appealed to the hearing officer by a party of record, as defined by KPB 20.90, within 15 days of the date of notice of decision in accordance with KPB 21.20.250.

#### END OF STAFF REPORT

#### KENAI PENINSULA BOROUGH PLANNING COMMISSION RESOLUTION 2024-20 KENAI RECORDING DISTRICT

GRANT A BUILDING SETBACK ENCROACHMENT PERMIT TO A PORTION OF THE TWENTY FOOT BUILDING SETBACK FOR LOT 5, TUKAKNA SKY SUBDIVISION (KN 0820110); IN NE 1/4 S15, T04N, R11W; SEWARD MERIDIAN, ALASKA, WITHIN THE KENAI PENINSULA BOROUGH; KPB FILE NO. 2024-116

WHEREAS, per KPB 20.30.240 – Building Setbacks, a minimum 20-foot building setback shall be required for fee simple non-arterial rights-of-way in subdivisions located outside incorporated cities; and

WHEREAS, James Lee Musgrove of Soldotna, AK requested a building setback encroachment permit to the 20-foot building setback granted by Tukakna Sky Subdivision (KN 0820110); and

WHEREAS, per the petition; and

WHEREAS, the encroaching structure does not affect sight distance along the right-of-way; and

WHEREAS, on Monday, November 18, 2024, the Kenai Peninsula Borough Planning Commission considered the background information, all comments received, and recommendations from KPB Planning Department staff regarding the proposed exception; and

WHEREAS, the Planning Commission found that granting the building setback encroachment permit will not be detrimental to the public interest; and

WHEREAS, 20.10.110 of the Kenai Peninsula Borough Code of Ordinances authorizes the Planning Commission to accomplish building setback encroachment permits by Resolution.

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

Section 1. That the 20-foot building setback limit on KN 0820110 Lot 5 is hereby excepted to accommodate only the encroaching portion of the House.

Section 2. That any new, replacement, and/or additional construction will be subject to the 20foot building setback limit.

Section 3. That the 20-foot building setback limit shall apply to the remainder of said lot.

<u>Section 4</u>. That a current as-built survey or sketch prepared, signed, and sealed by a licensed land surveyor showing the location of the encroachment within the building setback be attached to, and made a part of this resolution, becoming page 2 of 2.

<u>Section 5</u>. That this resolution is void if not recorded in the appropriate Recording District within 90 days of adoption.

<u>Section 6</u>. That this resolution becomes effective upon being properly recorded with petitioner being responsible for payment of recording fees.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON THIS DAY OF \_\_\_\_\_\_, 2024.

Jeremy Brantley, Chairperson Planning Commission ATTEST:

Ann Shirnberg, Administrative Assistant

Return to: Planning Department Kenai Peninsula Borough 144 North Binkley Street Soldotna, Alaska 99669

Kenai Peninsula Borough Planning Commission Resolution 2024-20

Page 1 of 2

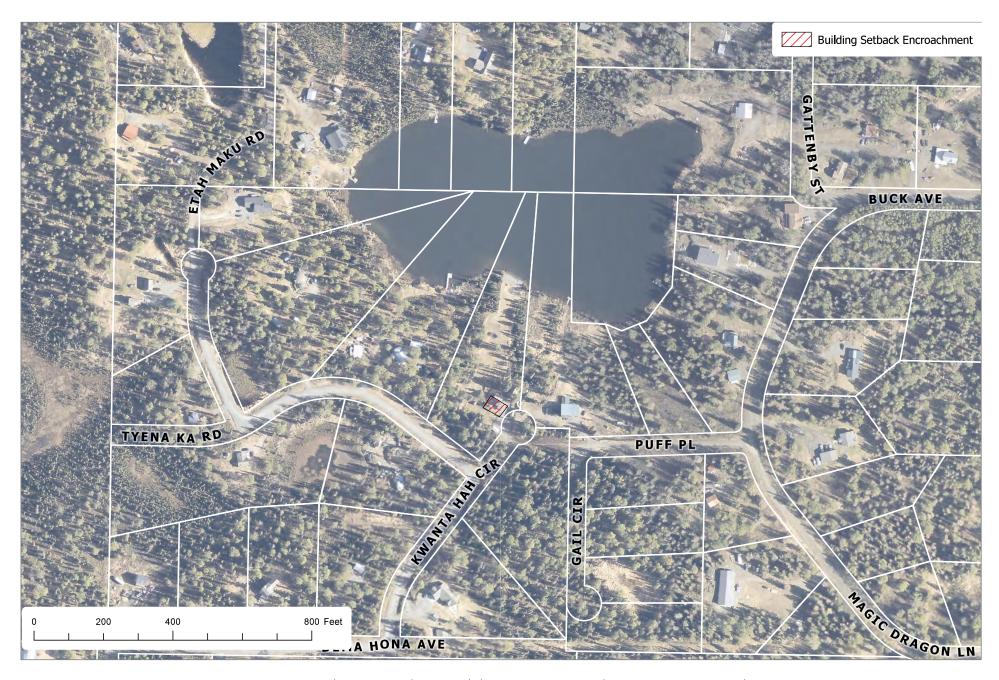




KENAI PENINSULA BOROUGH



Aerial Map



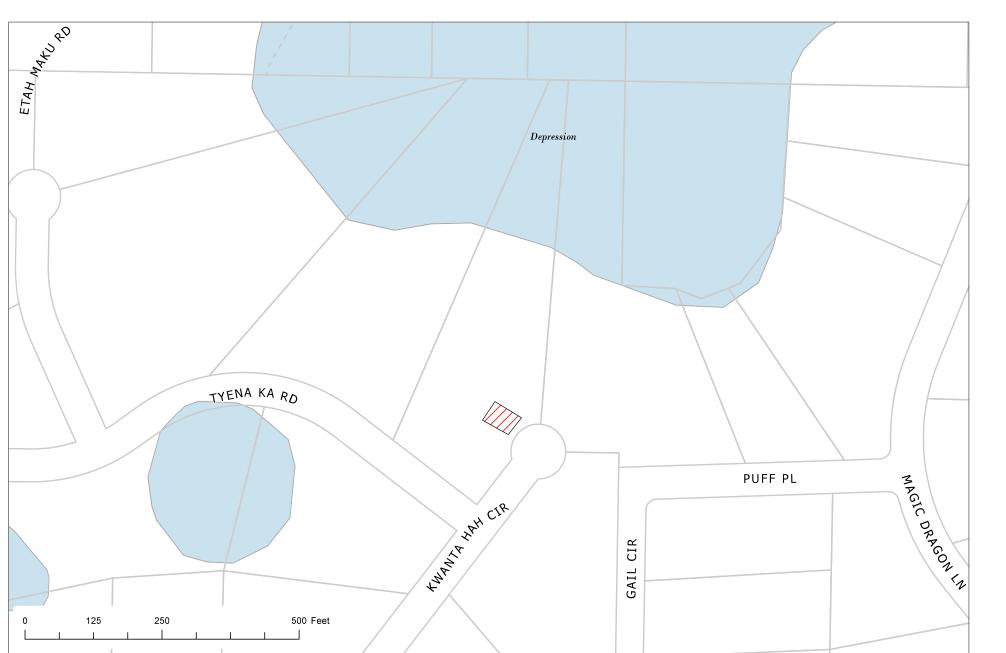
The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.



KENAI PENINSULA BOROUGH



Wetlands



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KPB File 2024-116

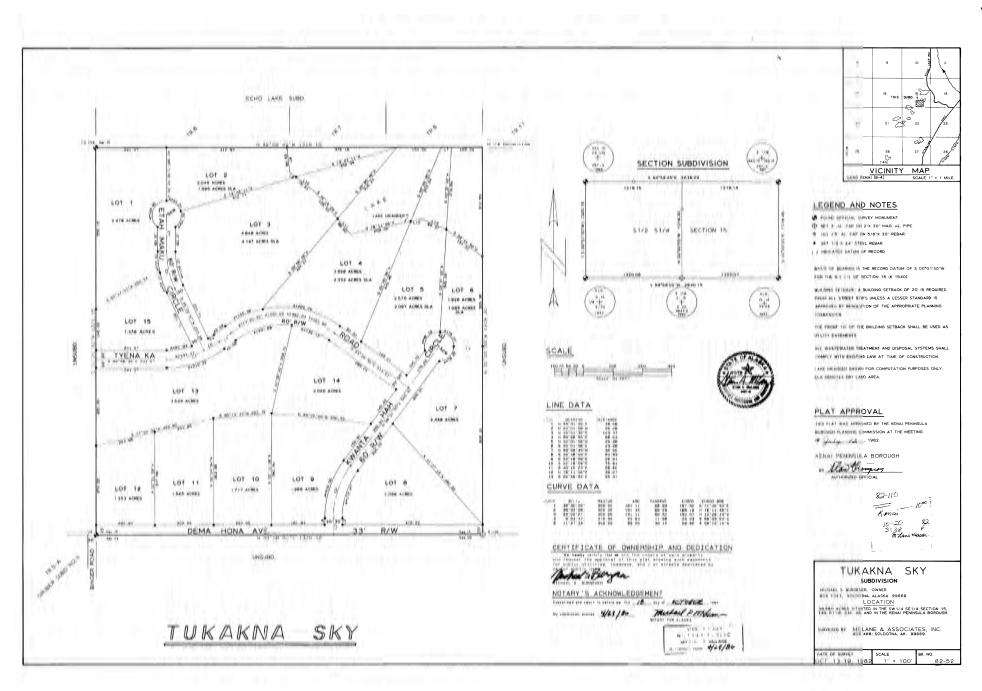
10/24/2024







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### (MEETING MATERIALS FOR THE NOVEMBER 18, 2024 MEETING)

# E. NEW BUSINESS

 Conditional Land Use Permit Modification; MS2015-005 Applicant: Sean Cude Request: Modification to PC Resolution 2014-20 to allow excavation into the water table and for temporary localized dewatering. Location: 36498 Virginia Drive Kalifornsky Area





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E3-1



## **KENAI PENINSULA BOROUGH**

LOZ and Materials Sites Map

SBC 2012 Irrevocable **Trust LLC** 

Project Area KPB Parcel(s): 05527001

> PEU CLUP

EXPIRED

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**KENAI PENINSULA BOROUGH** Planning

Borough

Federal

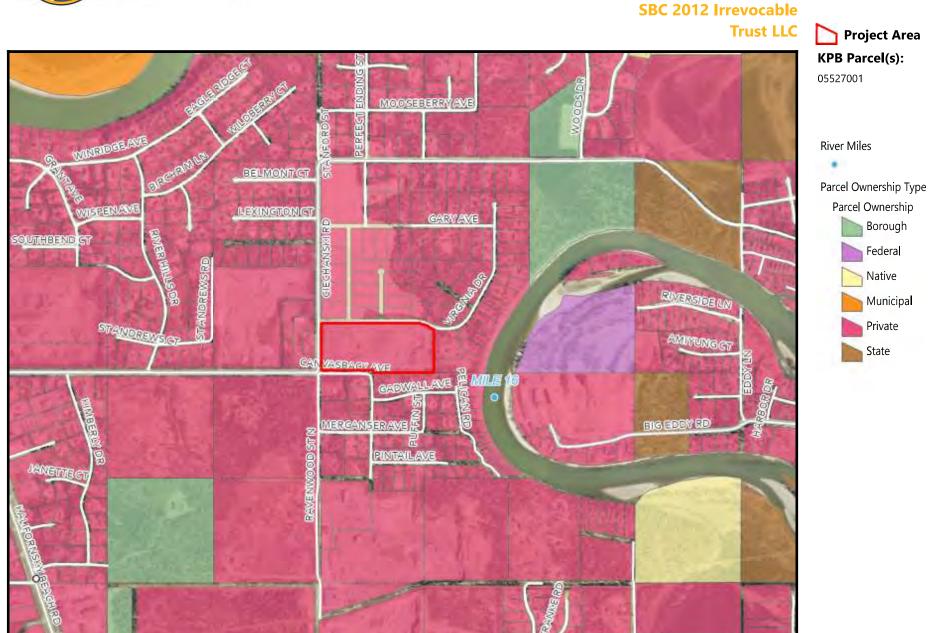
Native

Private

State

Municipal

**Ownership Map** 

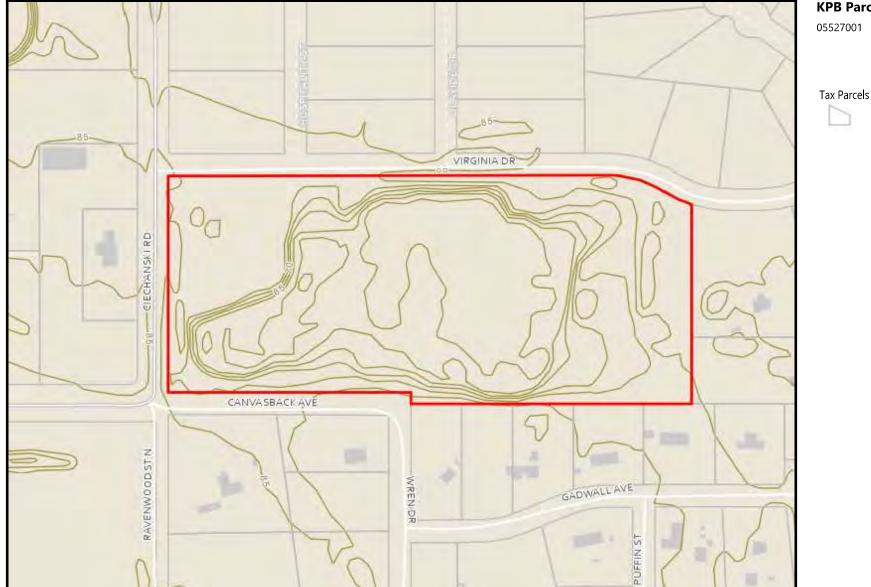


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Terrain Map SBC 2012 Irrevocable Trust LLC Project Area KPB Parcel(s):





Wetlands Map

## SBC 2012 Irrevocable

Trust LLC

Project Area KPB Parcel(s): 05527001



Map created by Raidmae, Ryan 47 day, August 16, 2024

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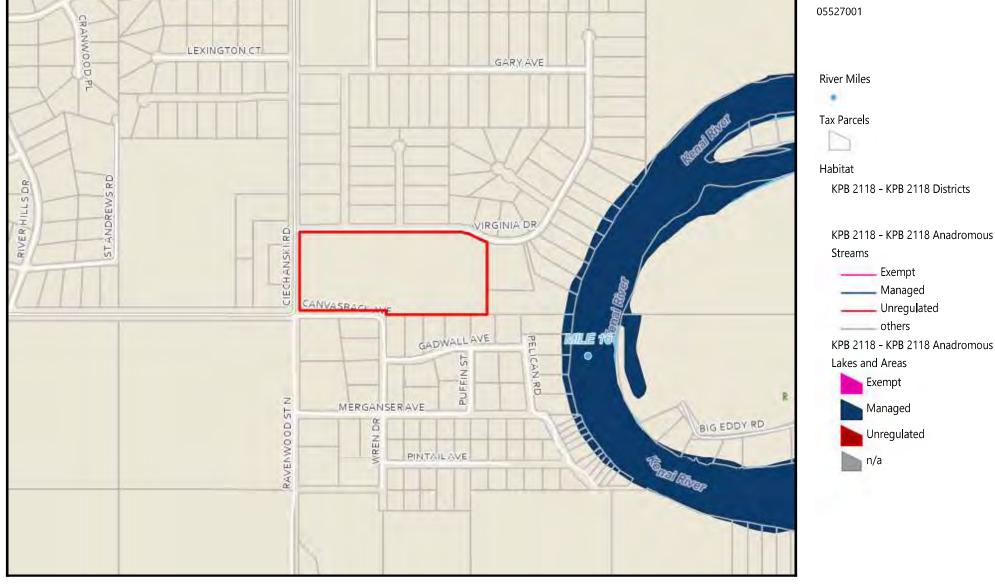


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## **Habitat Protection Area Map** SBC 2012 Irrevocable **Trust LLC**

Project Area KPB Parcel(s): 05527001



Map created by Raidmae, Ryan inday, August 26, 2024

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

KP	PB 2'	1.29	
Conditional Land	Use	Permit	Application

For a new or modified Sand, Gravel or Material Site

١.		l				
	Applicant SBC 2012 Irrevocable Trust LLC	Landowner SBC 2012 Irrevocable Trust LLC				
	Address		42115 Kalifornsky Beach Road Ste B			
	City, State, Zip	City,	State, ZipSoldotna Alaska 99669			
	TelephoneCellCell		honeCell_907-398-7375			
	Emailsean@sbcdevelopmentgroup.com	Email	sean@sbcdevelopmentgroup.com			
11.	II. PARCEL INFORMATION KPB Tax Parcel ID#_05527001 Legal DescriptionT5N R11W Section 24 SM KN2015-012 Diamond Willow Estates Subdivision Part 13 Tract 13					
	If permit is <u>not</u> for entire parcel, describe specific location wit acres", or "5 acres in center of parcel". modification to 8.8 acres of the currently permitted area	thin pa	rcel to be material site, e.g.; *N1/2 SW1/4 NE1/4 10			
,,	\$1,000.00 permit processing fee payable to: Kenai Peninsula	a Boro				
$\checkmark$	Site Plan, to scale, prepared by a professional surveyor (lice) parcel boundaries		location/depth of testholes, and depth to groundwater,			
	□ location of boundary stakes within 300 ft. of		if encountered			
	excavation area (to be in place at time of application) <ul> <li>proposed buffers, or requested buffer waiver(s)</li> </ul>		location of all wells within 300 ft. of parcel boundary location of water bodies on parcel, including riparian wetlands			
	□ proposed extraction area(s), and acreage to be mined		surface water protection measures			
	<ul> <li>proposed location of processing area(s)</li> <li>all encumbrances, including easements</li> </ul>		north arrow and diagram scale			
	points of ingress and egress	٥	preparer's name, date and seal			
	□ anticipated haul routes					
$\checkmark$	Site Plan Worksheet (attached)					
$\checkmark$	Reclamation Plan (attached) and bond, if required. Bond bonding requirements pursuant to AS 27.19.050	requir	ement does not apply to material sites exempt from			
	<u>Please Note:</u> If a variance from the conditions of KPB 21.29 is requested, a variance application must be attached. (A variance is NOT the same thing as a waiver.)					
IV. (	CERTIFICATION STATEMENT					
	The second secon					

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

Applicant

Date

andowner (required if not applicant)

Date

## Site Plan Worksheet for Conditional Land Use Permit Application

Use additional space provided on next page, if necessary. Indicate item # next to comments.

	ApplicantSBC 2012 Irrevocable Trust Owner Owner
	KPB Tax Parcel ID # 05527001 Parcel Acreage 19.36
1.	Cumulative acres to be disturbed (excavation <u>plus</u> stockpiles, berms, etc.) <u>19.36</u> acres
2.	Material to be mined (check all that apply): 🖌 gravel 🖌 sandpeatother(list)
3.	Equipment to be used (check all that apply):
4.	Proposed buffers as required by KPB 21.29.050.A.2 (check all types and directions that apply):
	So ft. of natural or improved vegetation       N S S E W         minimum 6 ft. earthen berm       ✓ N ✓ S E ✓ W         minimum 6 ft. fence       N ✓ S E W         other       N S E W
5.	Proposed depth of excavation: <u>45 (elev. 48)</u> ft. Depth to groundwater: <u>30 (elev. 66)</u> ft.
6.	How was groundwater depth determined? monitor wells
7.	A permit modification to enter the water table will be requested in the future: $\frac{x}{y}$ YesNo
8.	Approx. annual quantity of material, including overburden, to be mined: <a>50,000</a> cubic yards
9.	Is parcel intended for subdivision? X Yes No
10.	Expected life span of site? 20 years
11.	If site is to be developed in phases, describe: the excavation acreage, anticipated life span,
	and reclamation date for each phase: (use additional space on page 4 if necessary) As mining above groundwater is complete, excavation below groundwater will begin at the eastern section of
	the site and move westerly. The slopes will be dressed at 2:1 and portion above ground water will be seeded.
	The intent is to reclaim the property to support at least 2 water front residential lots.
12. A.	Voluntary permit conditions proposed (additional buffers, dust control, limited hours of operation, etc.)

B. \_\_\_\_\_\_ C. \_\_\_\_\_

Page 2 of 4

## Material Site Reclamation Plan for Conditional Land Use Permit Application

- 1. All disturbed land shall be reclaimed upon exhausting the material on-site, so as to leave the land in a stable condition.
- 2. All revegetation shall be done with a "non-invasive" plant species.
- 3. Total acreage to be reclaimed each year: up to 2 acres
- 4. List equipment (type and quantity) to be used in reclamation:

Excavator, dozer, loader

Describe time schedule of reclamation measures:

Reclamation will be completed annually before the September growing season. In order to minimize erosion,

seeding will be applied as necessary each season to the areas that achieve final grade.

6. considered in preparing and implementing the reclamation plan. The following measures must be although not all will be applicable to every plan –  $\square$  "check" all that apply to your plan.

Topsoil that is not promptly redistributed to an area being reclaimed will be separated and stockpiled for future use. This material will b e protected from erosion and contamination by acidic or toxic materials and preserved in a condition suitable for later use.

✓ The area will be backfil led, 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.

Sufficient guantities of stockpiled or imported topsoil will be spread over the reclaimed area to a depth of four inches to promote nat ural 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 shall be reasonably free from roots, clods, sticks, and bran ches greater than 3 in ches in diameter. Areas having slopes greater than 2:1 require special consideration and design for stabilization by a licensed engineer.



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.

Peat and topsoil mine operations shall ensure a minimum of two inches of suitable growing medium is left or replaced on the site upon completion of the reclamation activity ( unless otherwise authorized).

Ponding will be used as a reclamation method. (Requires approval by the planning commission.)

### ADDITIONAL APPLICATION COMMENTS

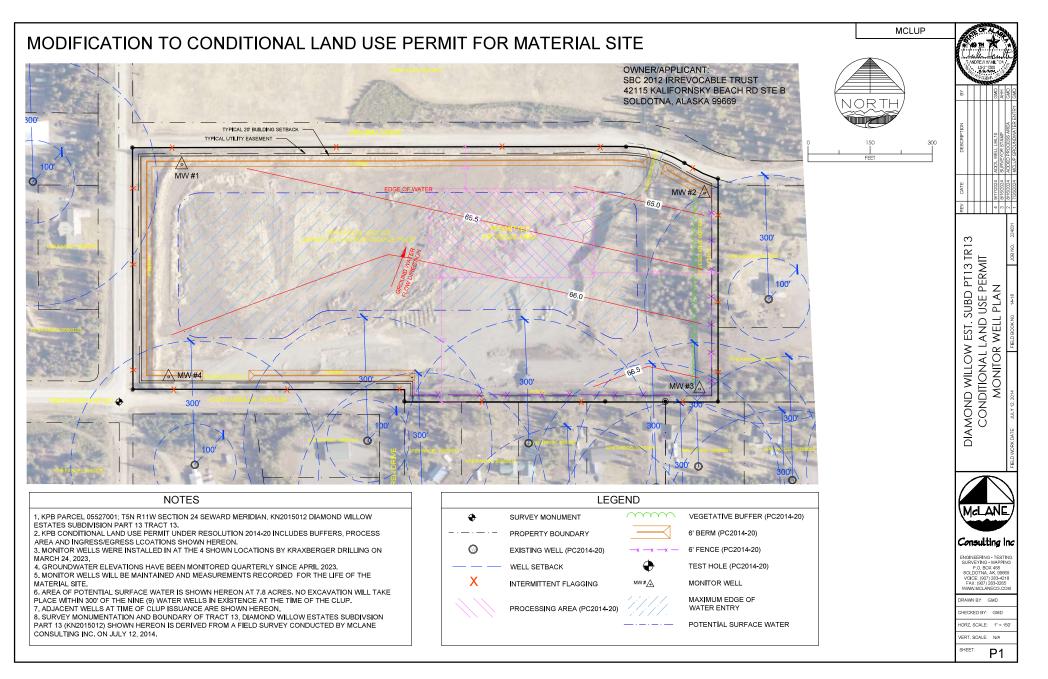
(Please indicate the page and item # for which you are making additional comments.)

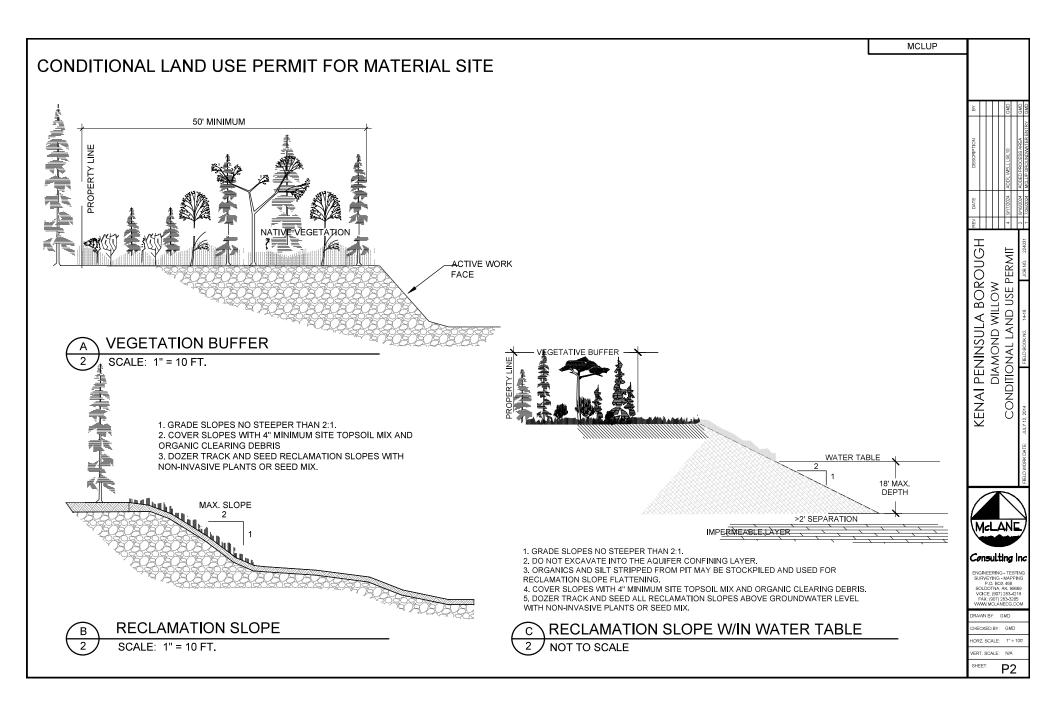
This application is requesting a modification to PC2014-20 to allow excavation in the water table and for temporary,

localized dewatering during excavation practices. Dewatering will be intermittent and all waters will be outlet within the

same property.

Page 4 of 4





## MCLANE

CONSULTING, INC.

July 24, 2024 Revised September 17, 2024

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

- SUBJECT: PC Resolution 2014-20 KPB Tax Parcel No. 055-270-01
- RE: Conditional Land Use Permit Modification Application

To Whom It May Concern:

SBC 2012 Irrevocable Trust, LLC, the property owner of KPB 055-270-01, is applying for modification of CLUP approved by PC Resolution 2014-20. The modification would allow for excavation in the water table on approximately 8.8 acres 7.8 acres of the 19.36 acre of the permitted property. Upon completion of excavation in the water table, this site will be reclaimed as a manmade lake.

SBC contracted McLane Consulting, Inc. to measure groundwater monitor wells and analyze the measurements in accordance with KPB 21.29. Four monitor wells were installed in March 2023 by Kraxberger Drilling on behalf of SBC in accordance with recommendations by McLane Consulting. McLane Consulting has measured the monitor wells using standard surveying and engineering practices on the dates as shown below. Measurements to date are as follows:

Monitor Well	Ground Elevation	Top of MW	GW Elev. 4/14/2023	GW Elev. 7/21/2023	GW Elev. 11/1/2023	GW Elev. 1/31/2024	GW Elev. 5/1/2024
1	93.1	96.4	64.6	66.2	66.2	65.0	64.8
2	91.4	94.6	63.9	65.5	65.4	64.4	64.1
3	89.2	92.5	63.6	67.3	67.0	65.7	66.3
5	88.5	91.6	64.9	66.7	66.7	65.6	65.3

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

Excavation is only proposed within the upper unconfined aquifer, not to exceed approximately 45' below original ground. The proposed bottom of excavation elevation is 48.0' and original ground for this site is averaged at 93.0'. Local confining layer is estimated at approximate elevation 45.0, by reviewing well driller logs within the CLUP vicinity on the ADNR WELTS website. The confining layer consists of dense blue-gray silt (a non-marketable material) and is greater than 15' thick in this area. Proposed excavation within the groundwater table at this site will not breach the confining layer.

## E3-13

## MCLANE

#### CONSULTING, INC.

SBC has proposed to utilize dewatering during the lower limits of excavation within the groundwater table. Dewatering will be conducted on a temporary and intermittent basis within the property while extracting below the groundwater table. Excavation dewatering temporarily depresses shallow groundwater within the immediate area of the dewatering but groundwater level will recover to predewatering elevations upon termination of dewatering. Waters from the dewatering process will be outlet within the permit property to re-enter the groundwater table. Attachment B is a dewatering plan that includes a representative dewatering layout, dewatering equipment sizing, drawdown, and recharge calculations.

Per KPB 21.29.050.A.5, the groundwater data has been evaluated by a licensed, qualified civil engineer. This letter is to certify that the excavation plan has met all four (4) criteria set forth in KPB 21.29 to excavate within the water table. This CLUP Modification will not negatively impact the quantity of the aquifer serving the existing water sources.

If you have questions, please contact me.

Sincerely,

U DeBardelaber

Gina DeBardelaben, PE McLane Consulting, Inc.

Attachments: Attachment A. MCLUP Exhibits, 2 pages Attachment B. Dewatering Plan



## SBC 2012 IRREVOCABLE TRUST Ciechanski - Virginia Drive Conditional Land Use Permit Excavation Dewatering Plan

SBC has proposed to utilize dewatering during the lower limits of excavation within the groundwater table. Excavation dewatering will be utilized on an as-needed basis during material extraction within the groundwater table. This plan is to provide information and parameters for that process. Dewatering parameters are as follows:

Pump Intake:	6" diameter <u>maximum</u>
Rate of Pump:	2200 GPM (4.901620 cfs)
Length of Dewatering:	10 day <u>maximum</u>

Excavation dewatering temporarily depresses shallow groundwater within the immediate area of the dewatering, but the groundwater level will recover to pre-dewatering elevations upon termination of dewatering. If dewatering was removed from the site, the aquifer would experience the well drawdown shown in Table A.

(if dewatering was removed from site)			
Distance from	Len	gth of Dewa	tering
Dewatering Point	1-day	7-day	10-day
300 feet	1.22 ft	1.98 ft	2.12 ft
0.25 mile	0.22 ft	0.84 ft	0.97 ft
0.50 mile	0.02 ft	0.40 ft	0.51 ft
1.0 mile	0.0 ft	0.07 ft	0.12 ft

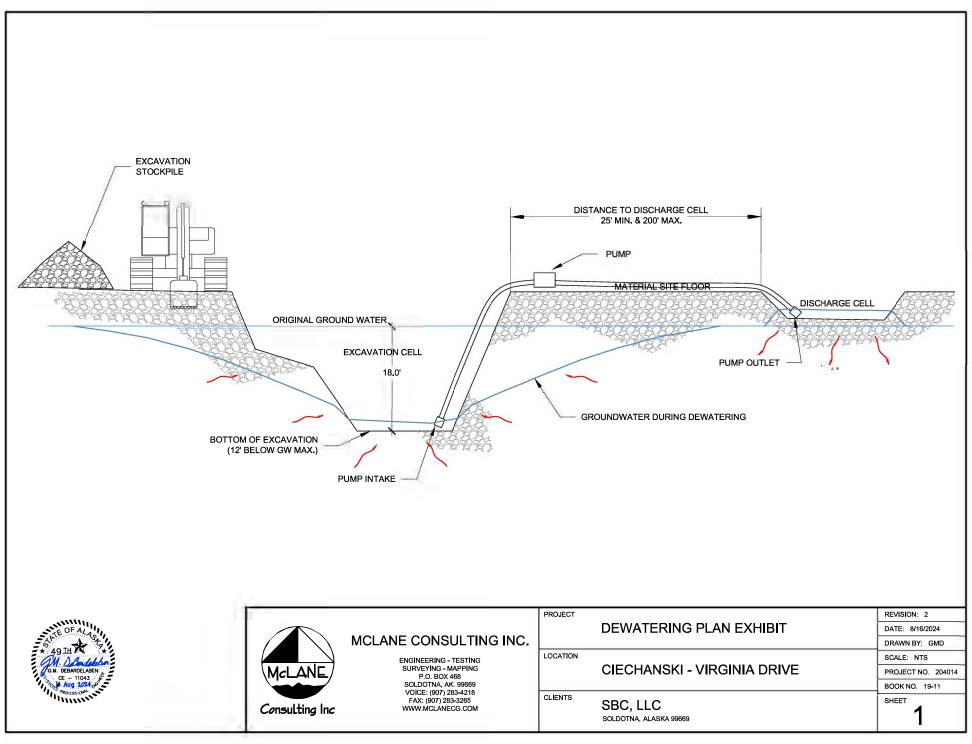
## **TABLE A.** Well Drawdown without Immediate Adjacent Discharge

Dewatering will <u>not</u> be removed from the subject property. Waters from the dewatering process will be discharged within the permit property to re-enter the groundwater table, therefore providing rapid recharge to the aquifer which negates the effects on surrounding groundwater elevations. Therefore, the aquifer would experience the well drawdown shown in Table B.

**TABLE B**. Well Drawdown <u>with</u> Immediate Adjacent Discharge (dewatering is discharged adjacent to removal dewatering location)

0 0			Ų
Distance from	Len	gth of Dewa	tering
Dewatering Point	1-day	7-day	10-day
300 feet	0.0 ft	0.04 ft	0.10 ft
0.25 mile	0.0 ft	0.0 ft	0.0 ft
0.50 mile	0.0 ft	0.0 ft	0.0 ft
1.0 mile	0.0 ft	0.0 ft	0.0 ft

An exhibit of the proposed pumping layout is included on Sheet 1.



E3-16

## Modification to a Conditional Land Use Permit Materials Site Staff Report [UPDATED FOR 11/18/2024]

PC Res No.	2024-12 Revised
Planning Commission Meeting:	Monday, November 18, 2024
Applicant	SEAN CUDE
Mailing Address	42115 Kalifornsky Beach Rd., Soldotna, AK 99669
Legal Description	DIAMOND WILLOW ESTATES SUB PART 13 TRACT 13
Physical Address	36498 Virginia Drive
KPB Parcel Number	05527001

### Introduction

On July 31, 2024, the Planning Department received an application to modify an existing material site permit. The submittal of the application was prior to enactment of Ordinance 2022-36 (Substitute), which amended KPB 21.25 and 21.29 and which took effect on October 1, 2024. The relevant code by which to evaluate the application is provided in the packet. Citations to the KPB Code within this staff report are to the KPB Code provisions as they existed prior to October 1, 2024.

The modification application is limited to material extraction in the water table and to allow for localized dewatering to occur within the boundaries of the permitted parcel and to allow for postmining reclamation pond(s). The scope of the modification is therefore limited solely to these changes with respect to water. This was previously heard at the regularly scheduled Planning Commission of Sept. 9, 2024. The item was postponed until the Nov. 18, 2024, meeting. At the Sept. 9<sup>th</sup> meeting, several items were not available for public review until the desk packet was published and one item, the dewatering plan, was not included in either the regular or desk packets. All of those items are included in the packet the Nov. 18<sup>th</sup> meeting. Staff supported the postponement and is providing a revised resolution for consideration. Staff is also offering this updated staff report.

#### Project Description

The applicant wishes to modify an existing Conditional Land Use Permit previously issued through Resolution 2014-20. The application is for material extraction in the water table and for temporary localized dewatering during excavation. Dewatering will be intermittent, and all waters will be contained within parcel 05527001.

The subject parcel has been a material site since approximately 1982. Since then, most of the useable material has been removed to a depth of 27 feet below pre-existing ground elevation, which is also near the elevation of the water table. According to the staff report that was submitted with Resolution 2014-20, the material site has had multiple owners and there is evidence that the site was partially reclaimed with fill that contained construction debris and or garbage.

The property is bordered on the Northside by the 60-foot-wide right of way of Virginia Drive. On the Eastside of the property is the residential neighborhood of Diamond Willow Estates Part 11. Diamond

Willow Estates is a subdivision that is included in the Local Option Zoning District of Diamond Willow – Fairfield, which is adjacent to the subject parcel. On the Southside of the property is the residential neighborhood of Ravenwood, Subdivision 2 and 4, along with the 60-foot-wide right of way of Canvasback Avenue. On the West side of the property is the 83-foot-wide right of way of Ciechanski Road.

The site plan completed by McLane Consulting Inc., states that ground water is approximately 27 feet below original ground level based on 4 monitor wells that were installed on March 24, 2023 by Kraxberger Drilling. The application states that the proposed depth of material excavation will be 45 feet, which will equate to 18 feet below the seasonal high-water table. The applicant has requested an exemption for dewatering within the permitted area and has provided the required information as stated in 21.29.050(A)(4)(d). As a condition of dewatering, the contractor shall post a bond for liability for potential accrued damages, in the amount of \$90,000 or \$10,000 a well.

Plan notes state that there are no wetlands or surface waters within the property boundaries. A central area will be maintained as a processing area, which will be at least 300 feet from the East, South, and West property lines. Per Resolution 2014-20, a buffer waiver has already been granted from the 300-foot processing distance on the Northside of the property. The site plan also indicates that there are 9 wells located within 300 feet of the property line.

The application states that final reclamation will include ponding to support at least two waterfront residential lots. The applicant has requested that the Planning Commission grant approval according to 21.29.060(C)(6).

The applicant estimates a life span of 20 years for the site and an annual extraction quantity of less than 50,000 cubic yards of material.

## Public Notice

Public notice of the application was mailed on October 30, 2024, to the 324 landowners or leaseholders of the parcels within a half-mile of the subject parcel. Public notice was sent to the postmaster covering the Kalifornsky vicinity requesting that it be posted at the Post Office.

## Agency Review

Agency review was distributed on August 14, 2024, to pertinent KPB staff and other agencies.

## Findings of Fact pursuant to KPB 21.25 and 21.29:

Note in this staff report, rather than reiterating all findings in the permit, we limit our findings to the relevant changes requested in the modification, in an attempt to keep this clear the finding reference numbers are consistent with the draft resolution, which contains all findings both previously supporting the existing permit and those proposed through this modification request, for clarity. Hence some numbers are skipped. The draft resolution is to be the commission's template, and the final resolution serves as the permit if granted.

- 1. Ordinance 2022-36 (Substitute), which amended KPB Chapter 21.25 and 21.29 took effect on October 1, 2024.
- 2. The application for a modification of the CLUP was submitted on July 31, 2024, prior to October 1, 2024, therefore the application must be analyzed under the KPB Code provisions as they

existed prior to October 1, 2024.

- 3. KPB 21.25 allows for land in the rural district to be used as a sand, gravel, or material site once a permit has been obtained from the Kenai Peninsula Borough.
- 4. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
- 5. KPB 21.29 provides that a conditional land use permit is required for material extraction that disturbs more than 2.5 cumulative acres or that processes material.
- 6. A public hearing of the Planning Commission was held on Monday, November 18, 2024 and notice of the meeting was published, posted, and mailed in accordance with KPB 21.25.060 and KPB 21.11.
- Another public hearing of the Planning Commission was held on November 18, 2024, and notice of the meeting was published, posted, and mailed in accordance with KPB 21.25.060 and KPB 21.11.
- 8. The proposed cumulative disturbed area within the parcel is approximately 19.36 acres.

## Water Source Separation

- 17. Material extraction is prohibited within 100 horizontal feet of any water source existing prior to the original permit issuance.
- 18. The site plan indicates that there are 9 wells located within 300 feet of the property line.
- The applicant is required to maintain a 2-foot vertical separation from the seasonal high-water table from any excavation areas not permitted by the planning commission under KPB 21.29.050(A)(5).
- 20. The application indicates that the seasonal high-water table is 27 feet below original grade which was determined by the placement of monitor wells.
- 21. The applicant may not dewater by pumping, ditching or some other form of drainage unless an exemption is granted by the planning commission.
- 22. The applicant has requested an exemption for dewatering within the permitted area and has provided the information required by KPB 21.29.050(A)(4)(d).
- 23. As a condition of dewatering, the contractor shall post a bond for liability for potential accrued damages, in the amount of \$90,000, \$10,000 per well.

## Excavation in the Water Table

- 24. The application states that work is anticipated to be completed in the water table.
- 25. The applicant's depth of excavation will be 45 feet deep, and go 18 feet into the water table.
- 26. The application included 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.
- 27. A minimum of three water monitoring tubes or well casings have been installed to determine flow direction, flow rate, and water elevation.
- 28. For at least four quarters prior to submitting the application, groundwater elevation, flow direction, and flow rate for the subject parcel, were measured in quarterly intervals by a duly licensed and qualified independent civil engineer or professional hydrogeologist.
- 29. Monitoring tubes or wells must be kept in place, and measurements taken, for the duration of any excavation in the water table.
- 30. Operations will not breach an aquifer-confining layer.

## **Waterbodies**

31. The site plan states that there are no wetlands or surface waters within the proposed excavation area.

## Fuel Storage

32. The applicant is required to store fuel containers larger than 50 gallons in impermeable berms and basins capable of retaining 110 percent of storage capacity. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.

## **Reclamation**

- 37. The applicant has submitted a reclamation plan consistent with KPB 21.29.050(12)(a).
- 38. The applicant has indicated that ponding will be used as a reclamation method, which may be used as a reclamation method as approved by the planning commission.
- 39. Extraction at this material site is expected to be less than 50,000 cubic yards of material per year.

## Other Permits

The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the Borough's floodplain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives.

## **CONCLUSIONS OF LAW - STANDARDS -**

The planning commission should evaluate the modification based on the following six standards found in KPB21.29.040. Staff concluded and recommends that the commission only consider the standards relative to the request for modification Standards 1, 2, and 6 relate to the request for material extraction in the water-table, localized onsite dewatering and a modification to the reclamation plan that includes surface water pond(s).

- 1. The proposed activity must protect against lowering of water sources serving other properties. Findings 17-31 and Conditions 6-15 appear to meet this standard.
- 2. The proposed activity must protect against physical damage to adjacent properties. Findings 9-14, 32 and 34 and Conditions 2-4, and 16 appear to meet this standard.
- 3. **The proposed activity must minimize the off-site movement of dust**. Has previously been found to be meet under the existing permit and resolution.
- 4. **The proposed activity must minimize noise disturbance to other properties**. Has previously been found to be meet under the existing permit and resolution.
- 5. **The proposed activity must minimize visual impacts**. Has previously been found to be meet under the existing permit and resolution.
- 6. **The proposed activity must provide for alternate post-mining land uses**. Findings 37-38 and Condition 20 appear to meet this standard.

## Permit Conditions

The permit conditions in the staff report mirror those of the proposed ordinance. For clarity, we provide [bracketed strikeouts] where the permit conditions are to be deleted, and <u>UNDERLINED TEXT IN ALL</u> <u>CAPS</u> to indicate new conditions as a result of the requested modification

- 1. <u>ALL CONDITIONS OF THE EXISTING CLUP THAT ARE NOT EXPRESSLY MODIFIED AS</u> <u>PROVIDED BELOW REMAIN IN FULL EFFECT.</u>
- 2. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
- 3. The permittee shall place and maintain a 6-foot berm along the north property line adjacent to Virginia Drive, the west property line along Ciechanski Road, and along a portion of the south property line along Canvasback Avenue; place and maintain a 6- foot fence along the remainder of the south property line adjacent to Ravenwood Subdivision; and maintain a minimum of 50 feet of undisturbed, natural vegetation between the excavation perimeter and the east property line until excavation takes place in that area, the vegetative buffer shall then be replaced with a 6-foot fence that shall be maintained.
- 4. The permittee shall maintain at least a 2:1 slope between the inner buffer zones and pit floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable stabilizing material is replaced within 30 days from the time of removal.
- 5. The permittee may not operate materials processing equipment within 300 feet of the west, south, or east parcel boundaries; or within 100 feet of the north boundary. Rock crushing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
- 6. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
- 7. The permittee shall maintain a 2-foot vertical separation from the seasonal high-water table <u>WITHIN 300 HORIZONTAL FEET OF ANY WATER SOURCE EXISTING PRIOR TO THE</u> <u>ISSUANCE OF THIS PERMIT.</u>
- 8. [The permittee shall not dewater either by pumping, ditching or any other form of draining unless an exemption is granted by the planning commission.] <u>THE PERMITTEE IS GRANTED AN</u> <u>EXEMPTION FOR DEWATERING WITHIN THE PERMITTED AREA AND HAS PROVIDED THE</u> REQUIRED INFORMATION AS STATED IN 21.29.050(A)(4)(D).
- 9. PRIOR TO DEWATERING, THE PERMITTEE SHALL POST A BOND FOR LIABILITY FOR POTENTIAL ACCRUED DAMAGES, IN THE AMOUNT OF \$90,000.
- 10. THE PERMITTEE MAY EXCAVATE IN THE WATER TABLE GREATER THAN 300 HORIZONTAL FEET FROM AN EXISTING WATER SOURCE PER KPB 21.29.050(A)(5) AND SUBJECT TO CONDITIONS 10-13.
- 11. <u>THE PERMITTEE MUST PROVIDE CERTIFICATION BY A QUALIFIED INDEPENDENT CIVIL</u> <u>ENGINEER OR PROFESSIONAL HYDROGEOLOGIST THAT THE EXCAVATION PLAN WILL</u> <u>NOT NEGATIVELY IMPACT THE QUANTITY OF AN AQUIFER SERVING EXISTING WATER</u> <u>SOURCES.</u>
- 12. THE PERMITTEE IS REQUIRED TO MAINTAIN A MINIMUM OF THREE WATER MONITORING TUBES OR WELL CASINGS AS DETERMINED BY A QUALIFIED INDEPENDENT CIVIL ENGINEER OR PROFESSIONAL HYDROGEOLOGIST ADEQUATE TO CHARACTERIZE FLOW DIRECTION, FLOW RATE, AND WATER ELEVATION.
- 13. <u>THE PERMITTEE MUST KEEP THE MONITORING TUBES OR WELLS IN PLACE AND MUST</u> <u>TAKE MEASUREMENTS FOR THE DURATION OF ANY EXCAVATION IN THE WATER</u> <u>TABLE.</u>
- 14. THE PERMITTEE'S OPERATIONS SHALL NOT BREACH AN AQUIFER-CONFINING LAYER.
- 15. The permittee shall maintain an undisturbed buffer, and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains.
- 16. The permittee shall ensure that fuel storage containers larger than 50 gallons shall be contained

in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.

- 17. The permittee shall notify the planning department of any further subdivision or return to acreage of this parcel. The planning director may issue a written exemption from the permit 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.
- 18. The permittee shall conduct operations in a manner so as not to damage borough roads as required by KPB 14.40.175, and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
- 19. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
- 20. The permittee shall reclaim the site as described in the reclamation plan for this parcel and approved by the planning commission.
- 21. The permittee is responsible for determining the need for any other municipal, state or federal permits and acquiring the same. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits.
- 22. The permittee shall operate in accordance with the application and site plan as approved by the planning commission. If the permittee revises or intends to revise operations so that they are no longer consistent with the original application, a permit modification is required in accordance with KPB 21.29.090.
- 23. This conditional land use permit may be subject to annual review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.25.090, the planning commission may revoke a permit issued pursuant to this chapter if the permittee fails to comply with the provisions of KPB 21.29 or the conditions of the permit. The planning director will provide at least 30 days written notice to the permittee of a revocation hearing before the planning commission.
- 24. Once effective, this conditional land use permit is valid for five years. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.
- 25. <u>ALL PERMITS, PERMIT EXTENSIONS, MODIFIED PERMITS, PRIOR EXISTING USES, AND</u> <u>TERMINATIONS SHALL BE RECORDED.</u>
- 26. THE PLANNING DEPARTMENT IS RESPONSIBLE FOR FILING THE PLANNING COMMISSION RESOLUTION. THE PERMITTEE WILL PROVIDE THE RECORDING FEE FOR THE RESOLUTION TO THE PLANNING DEPARTMENT.

#### Staff Recommendation

After review of the application and submitted materials, it appears that the six standards contained in KPB 21.29.040 will be met by imposition of the conditions in KPB 21.29.050, and staff recommends approval subject to those conditions and filing of the PC Resolution in the appropriate recording district.

Whether the Planning Commission decides to approve or deny the application, Staff recommends the Planning Commission include findings of fact to support its decision.

#### **Attachments**

- 1. Maps
- 2. Modification Application
- 3. Site Plan
- 4. Groundwater Study
- 5. Dewatering Plan

- 6. Staff Report PC Res No. 2024-12
- 7. Resolution 2024-12
- 8. Public Hearing Notice
- 9. Comments
- 10. Application 07/25/2014
- 11. Site Plan 07/12/2024
- 12. Staff Report 08/25/2014
- 13. Approved Minutes 08/25/2024
- 14. Existing Permit Recorded as 2015-003393-0
- 15. Exhibit A Board of Adjustment, Decision on Appeal
- 16. Exhibit B Kenai Peninsula Borough Planning Commission Resolution 2014-20
- 17. Comments 08/25/2014

NOTE: Any party of record may file an appeal of a decision of the Planning Commission in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances, Chapter 21.20.250. An appeal must be filed with the Borough Clerk within 15 days of date of the notice of the decision using the proper forms and be accompanied by the filing and records preparation fee.

END OF STAFF REPORT

#### KENAI PENINSULA BOROUGH PLANNING COMMISSION RESOLUTION 2024-12 (REVISED) KENAI RECORDING DISTRICT

#### A RESOLUTION GRANTING APPROVAL OF A MODIFICATION TO A CONDITIONAL LAND USE PERMIT TO OPERATE A SAND, GRAVEL, OR MATERIAL SITE FOR A PARCEL DESCRIBED AS T 05N R 11W SEC 24 SW KN 2015012 DIAMOND WILLOW ESTATES SUB PART 13 TRACT 13, KENAI RECORDING DISTRICT, THIRD JUDICIAL DISTRICT, STATE OF ALASKA

- WHEREAS, on February 13, 2015, the Kenai Peninsula Borough Board of Adjustment reversed the decision of the Kenai Peninsula Borough Planning Commission and granted approval of a conditional land use permit (permit) to operate a sand, gravel, or material site for a parcel described as T 05N R 11W Sec 24 SW KN 2015012 Diamond Willow Estates Sub Part 13 Tract 13, Kenai Recording District, Third Judicial District, State of Alaska (KPB PIN 05527001) (the CLUP) (Exhibit A), subject to the conditions and recommendations of Resolution 2014-20 (Exhibit B); and
- **WHEREAS,** KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough; and
- **WHEREAS**, KPB 21.29 provides that a permit is required for material extraction which disturbs more than 2.5 cumulative acres, enters the water table, or material processing; and
- WHEREAS, KPB 21.29.070 allows operators to request modifications to their permit conditions based on changes in operations; and
- WHEREAS, on July 31, 2024, the applicant, Sean Cude, submitted to the Borough Planning Department an application for a modification to the CLUP for a portion of KPB Parcel 05527001, which is located within the rural district; and
- WHEREAS, public notice of the application was mailed on or before August 21,2024, to the 324 landowners or leaseholders within a half-mile of the subject parcel pursuant to KPB 21.25.060; and
- **WHEREAS,** public notice was sent to the postmaster in the Kalifornsky area requesting that it be posted at the local Post Office; and
- WHEREAS, public notice of the project was posted pursuant to KPB 1.08.180(B)(1)(3); and
- **WHEREAS**, a public hearing was held at the September 9, 2024, meeting of the Kenai Peninsula Borough Planning Commission; and
- **WHEREAS,** during the public hearing, planning staff requested a postponement, due to the fact that the applicant could not attend the meeting as scheduled; and
- **WHEREAS,** during public testimony, the testifiers asked the Planning Commission to reschedule the hearing, giving property owners enough time to gather additional evidence; and
- WHEREAS, public notice of the application was mailed on or before October 30, 2024, to the 324 landowners or leaseholders within a half-mile of the subject parcel pursuant to KPB 21.25.060; and



- **WHEREAS,** public notice was sent to the postmaster in the Kalifornsky area requesting that it be posted at the local Post Office; and
- **WHEREAS**, public notice of the project was posted pursuant to KPB 1.08.180(B)(1)(3); and
- **WHEREAS**, a public hearing was held at the November 18, 2024 meeting of the Kenai Peninsula Borough Planning Commission;

#### NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH:

Section 1. That the land use and operations are described and shall be conducted on KPB Parcel Number(s) 05527001, T 05N R 11W SEC 24 SW KN 2015012 DIAMOND WILLOW ESTATES SUB PART 13 TRACT 13. The total area to be disturbed under this activity is approximately 19.36 acres; of that, this modification will affect approximately 8.8 acres. The applicant, Sean Cude, is granted a permit to excavate approximately 18 feet below the seasonal high water-table elevation, conduct localized dewatering activities within the site boundaries and reclaim a portion of the excavation with surface water pond(s), consistent with the permit conditions contained within this Resolution, including the site plan, dewatering plan and reclamation plan.

#### Section 2. Findings of Fact pursuant to KPB 21.25 and 21.29:

- 1. Ordinance 2022-36 (Substitute), which amended KPB Chapter 21.25 and 21.29 took effect on October 1, 2024.
- 2. The application for a modification of the CLUP was submitted on July 31, 2024, prior to October 1, 2024, therefore the application must be analyzed under the KPB Code provisions as they existing prior to October 1, 2024.
- 3. KPB 21.25 allows for land in the rural district to be used as a sand, gravel, or material site once a permit has been obtained from the Kenai Peninsula Borough.
- 4. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
- 5. KPB 21.29 provides that a conditional land use permit is required for material extraction that disturbs more than 2.5 cumulative acres or that processes material.
- 6. A public hearing of the Planning Commission was held on September 9, 2024, and notice of the meeting was published, posted, and mailed in accordance with KPB 21.25.060 and KPB 21.11.
- Another public hearing of the Planning Commission was held on November 18, 2024, and notice of the meeting was published, posted, and mailed in accordance with KPB 21.25.060 and KPB 21.11.
- 8. The proposed cumulative disturbed area within the parcel is approximately 19.36 acres.

#### Parcel Boundaries

9. All boundaries of the subject parcel 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. The site plan indicates the property boundary within 300 feet of the work area was staked in 2024.

#### Buffer Zone

- 10. A buffer zone shall be maintained around the excavation perimeter or parcel boundaries. The site plan and application propose the following buffers, which shall not overlap an easement:
  - a. North: minimum 6 ft. earthen berm
  - b. South: minimum 6 ft. earthen berm, minimum 6 ft. fence



Kenai Peninsula Borough Planning Commission Resolution 2024-12 <u>NEW TEXT UNDERLINED;</u> [Deleted Text Bracketed]

- c. East: 50 ft. of natural or improved vegetation
- d. West: minimum 6 ft. earthen berm
- 11. 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.
- 12. Per KPB 21.19.050(A)(2)(c), buffers provided using vegetation and/or a 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.
- 13. Buffers shall not cause surface water diversion which negatively impacts adjacent properties or waterbodies.
- 14. 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.

## <u>Processing</u>

- 15. The applicant indicates that material processing will take place on the property. Any equipment used for conditioning or processing materials will be operated at least 300 feet from the East, South and West property lines. Any equipment used for crushing rock or other materials will not be operated between 10:00 p.m. and 6:00 a.m., to minimize noise disturbance to other properties.
- 16. The 300-foot processing buffer to the Northern property line was waived to allow a 100-foot buffer through Resolution 2014-20.

## Water Source Separation

- 17. Material extraction is prohibited within 100 horizontal feet of any water source existing prior to the original permit issuance.
- 18. The site plan indicates that there are 9 wells located within 300 feet of the property line.
- The applicant is required to maintain a 2-foot vertical separation from the seasonal high-water table from any excavation areas not permitted by the planning commission under KPB 21.29.050(A)(5).
- 20. The application indicates that the seasonal high-water table is 27 feet below original grade which was determined by the placement of monitor wells.
- 21. The applicant may not dewater by pumping, ditching or some other form of drainage unless an exemption is granted by the planning commission.
- 22. The applicant has requested an exemption for dewatering within the permitted area and has provided the information required by KPB 21.29.050(A)(4)(d).
- 23. As a condition of dewatering, the contractor shall post a bond for liability for potential accrued damages, in the amount of \$90,000, \$10,000 per well.

## Excavation in the Water Table

- 24. The application states that work is anticipated to be completed in the water table.
- 25. The applicant's depth of excavation will be 45 feet deep, and go 18 feet into the water table.
- 26. The application included 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.
- 27. A minimum of three water monitoring tubes or well casings have been installed to determine flow direction, flow rate, and water elevation.
- 28. For at least four quarters prior to submitting the application, groundwater elevation, flow direction, and flow rate for the subject parcel, were measured in quarterly intervals by a duly licensed and qualified independent civil engineer or professional hydrogeologist.
- 29. Monitoring tubes or wells must be kept in place, and measurements taken, for the duration of any excavation in the water table.



30. Operations will not breach an aquifer-confining layer.

## Waterbodies

31. The site plan states that there are no wetlands or surface waters within the proposed excavation area.

## Fuel Storage

32. The applicant is required to store fuel containers larger than 50 gallons in impermeable berms and basins capable of retaining 110 percent of storage capacity. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.

## Haul Route

33. The site plan indicates that the material haul route will be as follows: Haul route will access the site from two locations (Northeast corner of property at Virginia Drive and Southwest corner of property at Canvasback Ave).

### <u>Roads</u>

34. 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.

### Dust Control

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

#### Hours of Operation

36. Rock crushing equipment may only be operated between 6:00 a.m. and 10:00 p.m.

## **Reclamation**

- 37. The applicant has submitted a reclamation plan consistent with KPB 21.29.050(12)(a) and 21.29.060.
- 38. The applicant has indicated that ponding will be used as a reclamation method, which may be used if approved by the planning commission.
- 39. Extraction at this material site is expected to be less than 50,000 cubic yards of material per year.

## Other Permits

40. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the Borough's floodplain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives.

## <u>Signage</u>

- 41. 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.
- Section 3. That based on the above findings, the Planning Commission concludes as a matter of law that the application has met all the requirements of KPB 21.25 and KPB 21.29, and through imposition of the conditions under KPB 21.29.050, the Planning Commission concludes as a matter of law that the application meets the six standards found in KPB 21.29.040:
  - 1. The proposed activity must protect against lowering of water sources serving other properties.
    - a. This Standard is met by imposition of Conditions 6-15.
    - b. Conditions 6-15 are supported by Findings 17-31.
  - 2. The proposed activity must protect against physical damage to adjacent properties.
    - a. This Standard is met by imposition of Conditions 2-4, and 16.
      - b. Conditions 2-4; are supported by Findings 9-14, 32 and 34.
  - 3. The proposed activity must minimize the off-site movement of dust.
    - a. This Standard is met by the conditions of the existing CLUP, and those conditions are not affected by this Modification.
    - b. This Standard is also met by imposition of Condition 19.
    - c. Condition 19 is supported by Findings 10, 15 and 35.
  - 4. The proposed activity must minimize noise disturbance to other properties.
    - a. This Standard is met by the conditions of the existing CLUP, and those conditions are not affected by this Modification.
    - b. This Standard is also met by imposition of Conditions 3 and 5.
    - c. Conditions 3 and 5 are supported by Findings 10, 12, 15, and 36.
  - 5. The proposed activity must minimize visual impacts.
    - a. This Standard was met by the conditions of the existing CLUP, and those conditions are not affected by this Modification.
    - b. This Standard is also met by imposition of Condition 3.
    - c. Condition 3 is supported by Findings 10 and 12.
  - 6. The proposed activity must provide for alternate post-mining land uses.
    - a. This Standard is met by Condition 20.
    - b. Condition 20 is supported by Findings 37-38.

## Section 4: Permit Conditions

- 1. <u>ALL CONDITIONS OF THE EXISTING CLUP THAT ARE NOT EXPRESSLY MODIFIED AS</u> <u>PROVIDED BELOW REMAIN IN FULL EFFECT.</u>
- 2. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
- 3. The permittee shall place and maintain a 6-foot berm along the north property line adjacent to Virginia Drive, the west property line along Ciechanski Road, and along a portion of the south property line along Canvasback Avenue; place and maintain a 6- foot fence along the remainder of the south property line adjacent to Ravenwood Subdivision; and maintain a minimum of 50 feet of undisturbed, natural vegetation between the excavation perimeter and the east property line until excavation takes place in that area, the vegetative buffer shall then be replaced with a 6-foot fence that shall be maintained.
- 4. The permittee shall maintain at least a 2:1 slope between the inner buffer zones and pit floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if

suitable stabilizing material is replaced within 30 days from the time of removal.

- 5. The permittee may not operate materials processing equipment within 300 feet of the west, south, or east parcel boundaries; or within 100 feet of the north boundary. Rock crushing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
- 6. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
- The permittee shall maintain a 2-foot vertical separation from the seasonal high-water table <u>WITHIN 300 HORIZONTAL FEET OF ANY WATER SOURCE EXISTING PRIOR TO THE</u> <u>ISSUANCE OF THIS PERMIT.</u>
- 8. [The permittee shall not dewater either by pumping, ditching or any other form of draining unless an exemption is granted by the planning commission.] <u>THE PERMITTEE IS GRANTED AN</u> <u>EXEMPTION FOR DEWATERING WITHIN THE PERMITTED AREA AND HAS PROVIDED THE</u> <u>REQUIRED INFORMATION AS STATED IN 21.29.050(A)(4)(D).</u>
- 9. PRIOR TO DEWATERING, THE PERMITTEE SHALL POST A BOND FOR LIABILITY FOR POTENTIAL ACCRUED DAMAGES, IN THE AMOUNT OF \$90,000.
- 10. THE PERMITTEE MAY EXCAVATE IN THE WATER TABLE GREATER THAN 300 HORIZONTAL FEET FROM AN EXISTING WATER SOURCE PER KPB 21.29.050(A)(5) AND SUBJECT TO CONDITIONS 10-13.
- 11. <u>THE PERMITTEE MUST PROVIDE CERTIFICATION BY A QUALIFIED INDEPENDENT CIVIL</u> <u>ENGINEER OR PROFESSIONAL HYDROGEOLOGIST THAT THE EXCAVATION PLAN WILL</u> <u>NOT NEGATIVELY IMPACT THE QUANTITY OF AN AQUIFER SERVING EXISTING WATER</u> <u>SOURCES.</u>
- 12. THE PERMITTEE IS REQUIRED TO MAINTAIN A MINIMUM OF THREE WATER MONITORING TUBES OR WELL CASINGS AS DETERMINED BY A QUALIFIED INDEPENDENT CIVIL ENGINEER OR PROFESSIONAL HYDROGEOLOGIST ADEQUATE TO CHARACTERIZE FLOW DIRECTION, FLOW RATE, AND WATER ELEVATION.
- 13. <u>THE PERMITTEE MUST KEEP THE MONITORING TUBES OR WELLS IN PLACE AND MUST</u> <u>TAKE MEASUREMENTS FOR THE DURATION OF ANY EXCAVATION IN THE WATER</u> TABLE.
- 14. THE PERMITTEE'S OPERATIONS SHALL NOT BREACH AN AQUIFER-CONFINING LAYER.
- 15. The permittee shall maintain an undisturbed buffer, and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains.
- 16. The permittee shall ensure that fuel storage containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.
- 17. The permittee shall notify the planning department of any further subdivision or return to acreage of this parcel. The planning director may issue a written exemption from the permit 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.
- 18. The permittee shall conduct operations in a manner so as not to damage borough roads as required by KPB 14.40.175, and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
- 19. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
- 20. The permittee shall reclaim the site as described in the reclamation plan for this parcel and approved by the planning commission.
- 21. The permittee is responsible for determining the need for any other municipal, state or federal permits and acquiring the same. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits.
- 22. The permittee shall operate in accordance with the application and site plan as approved by the planning commission. If the permittee revises or intends to revise operations so that they are no longer consistent with the original application, a permit modification is required in accordance



with KPB 21.29.090.

- 23. This conditional land use permit may be subject to annual review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.25.090, the planning commission may revoke a permit issued pursuant to this chapter if the permittee fails to comply with the provisions of KPB 21.29 or the conditions of the permit. The planning director will provide at least 30 days written notice to the permittee of a revocation hearing before the planning commission.
- 24. Once effective, this conditional land use permit is valid for five years. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.
- 25. <u>ALL PERMITS, PERMIT EXTENSIONS, MODIFIED PERMITS, PRIOR EXISTING USES, AND</u> <u>TERMINATIONS SHALL BE RECORDED.</u>
- 26. THE PLANNING DEPARTMENT IS RESPONSIBLE FOR FILING THE PLANNING COMMISSION RESOLUTION. THE PERMITTEE WILL PROVIDE THE RECORDING FEE FOR THE RESOLUTION TO THE PLANNING DEPARTMENT.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON THIS 18TH DAY OF NOVEMBER, 2024.

Jeremy Brantley, Chairperson Planning Commission

ATTEST:

Ann Shirnberg Administrative Assistant

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



- B. Owners of preexisting CAFOs must apply to be registered as a prior existing use prior to June 2, 2003. If the application is denied or untimely filed, the operator must comply with provisions of this chapter. Such registration shall include the same information required by KPB 21.28.010, and an affidavit by the owner as to the date since which such nonconforming use has existed. A fee may be charged as set by planning commission resolution.
- C. The planning director shall make determinations regarding prior existing use status. Notice and an opportunity to make written comments regarding prior existing use status shall be issued to owners of property in a one-half mile radius of the site. After receiving written comments, the planning director may decide whether to register the prior existing use or refer the matter to the planning commission for public hearing. Notice of the public hearing shall be given to persons filing written comments with the planning director prior to the hearing. If the planning director makes a determination, written findings shall be included in the decision which shall be distributed to all persons making written comments. The planning director's decision granting or denying registration may be appealed to the planning commission within 15 days of the date of the notice of decision.

(Ord. No. 2002-14, § 3, 6-4-02)

### 21.28.060. Permit revocation and renewal.

- A. A permit issued pursuant to this chapter may be revoked by the hearing officer pursuant to KPB 21.50 if the permittee fails to comply with the provisions of this chapter. The borough clerk shall provide at least 15 days' written notice to the permittee of a revocation hearing. The notice shall provide specific grounds for the proposed revocation. If the permittee provides written evidence to the planning director demonstrating reasonable compliance with this chapter within the 15-day period, then the revocation hearing may be canceled, at the discretion of the planning director.
- B. CAFO operators must apply for permit renewal every five years after the resolution originally granting the permit is recorded. Failure to apply for renewal subjects the operator to permit revocation proceedings. The mayor may reestablish a task force to review the renewal. An appeal of the denial may be taken to the planning commission within 15 days of distribution of the written notice of denial. A renewal application shall be processed pursuant to KPB 21.28.010-030 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 renewal application.

(Ord. No. 2011-34, § 9, 10-11-11; Ord. No. 2002-14, § 3, 6-4-02)

## **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.

(Ord. No. 2013-29, § 11, 8-6-13; Ord. No. 2006-01(S), § 1, 8-1-06)

#### 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.

(Ord. No. 2006-01(S), § 1, 8-1-06)

### 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. 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 of test holes, and depth of groundwater, if encountered;
- 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. Location of any processing areas on parcel, if applicable;
- k. North arrow;
- I. The scale to which the site plan is drawn;
- m. Preparer's name, date and seal;
- n. 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.
- 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.

(Ord. No. 2011-32, § 33, 9-20-11; Ord. No. 2006-01(S), § 1, 8-1-06)

#### 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 properties;
  - 3. Minimizes off-site movement of dust;
  - 4. Minimizes noise disturbance to other properties;
  - 5. Minimizes visual impacts; and
  - 6. Provides for alternate post-mining land uses.

(Ord. No. 2006-01(S), § 1, 8-1-06)

#### 21.29.050. Permit conditions.

A. The following mandatory conditions apply to counter permits and CLUPs issued for sand, gravel or material sites:

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- 1. *Parcel boundaries.* All boundaries of the subject parcel 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.
- 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.
  - 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.
- 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 property 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.
  - 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.
  - 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 independent 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 quarterly intervals by a duly licensed and qualified independent civil engineer or professional hydrogeologist, for at least four quarters 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 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.
- 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.

- 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 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 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 permit conditions apply to the subject parcel and operation, regardless of a change in ownership. A change in voluntary permit conditions may be proposed at permit renewal or amendment.
- 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.

(Ord. No. 2022-27, § 2, 8-9-22; Ord. No. 2006-01(S), § 1, 8-1-06)

## 21.29.060. Reclamation plan.

- A. All material site permit applications require a reclamation plan.
- 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.
- C. The following measures must be considered in preparing and implementing 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.

(Supp. No. 89)

- 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 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 topsoil mine operations shall ensure a minimum of two 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.

(Ord. No. 2006-01(S), § 1, 8-1-06)

#### 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.

(Ord. No. 2011-34, § 10, 10-11-11; Ord. No. 2011-32, § 34, 9-20-11; Ord. No. 2006-01(S), § 1, 8-1-06)

#### 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.

(Ord. No. 2006-01(S), § 1, 8-1-06)

#### 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.

(Ord. No. 2006-01(S), § 1, 8-1-06)

#### 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.

(Ord. No. 2006-01(S), § 1, 8-1-06)

#### 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.

(Ord. No. 2011-34, § 11, 10-11-11; Ord. No. 2006-01(S), § 1, 8-1-06)

#### 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 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.

(Ord. No. 2006-01(S), § 1, 8-1-06)

#### 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, washing, and crushing by use of machinery.
  - 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;

(Supp. No. 89)

Created: 2023-09-05 15:23:36 [EST]

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

(Ord. No. 2022-27, § 3, 8-9-22)

## **CHAPTER 21.40 NORTH FORK ONE ZONING DISTRICT**

#### 21.40.010. Purpose.

The purpose of this chapter is to provide a safe, quiet, aesthetic residential neighborhood through land use regulation.

(Ord. No. 99-54, § 1, 10-12-99)

#### 21.40.020. Title.

This chapter shall be titled the "North Fork One Zoning District."

(Ord. No. 99-54, § 1, 10-12-99)

#### 21.40.030. Area.

- A. Within the rural district, the North Fork One zoning district is established and encompasses the parcels set forth in this section within the Homer Recording District, Third Judicial District, State of Alaska:
- B. The following parcels comprise the single-family residential (R-1) zone:

A parcel of land located in the SE ¼ of the NE ¼ of Section 3, T5S, R15W, S.M. Alaska;

A parcel of land located in the NE ¼ of the NE ¼ of Section 3, T5S, R15W, S.M. Alaska;

A parcel of land located in the W ½ of the NW ¼ of Section 2, T5S, R15W, S.M. Alaska;

Trident Subdivision, Block 1, Lots 1—8, according to Plat 76-69 filed in the Homer Recording District; and

(Supp. No. 89)

Created: 2023-09-05 15:23:36 [EST]



144 North Binkley Street, Soldotna, AK 99669 | (P) 907-714-2200 | (F) 907-714-2378 | www.kpb.us

October 30, 2024

«OWNER» «ATTENTION» «MAILING\_ADDRESS» «MAILING\_CITY», «MAILING\_STATE»«MAILING\_ZIPCODE»

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

Public notice is hereby given that a Conditional Land Use Permit application has been received to develop a material site (gravel pit) on a property located in the Kalifornsky area. These applications are reviewed by the Kenai Peninsula Borough Planning Commission in accordance with KPB 21.25 and KPB 21.29. You are receiving this notice because you are a landowner within a half-mile radius of the subject property, and are invited to provide comment at the below public hearing.

Applicant: Landowner:	SEAN CUDE SBC 2012 IRREVOCABLE TRUST	
Parcel Number(s):	05527001	
Legal Description:	DIAMOND WILLOW ESTATES SUB PART 13 TRACT 13	
Address:	36498 Virginia Drive	
Project Description:	This application is requesting a modification to PC2014-20 to allow excavation in	
	the water table and for temporary, localized dewatering.	
<u>Public Hearing:</u>		
Date and Time:	Monday, November 18, 2024 at 7:30 p.m.	
Location:	Kenai Peninsula Borough	
	Betty Glick Assembly Chambers	
	144 N. Binkley, Soldotna, AK 99669	
Zoom Meeting ID:	Meeting ID 907 714 2200	
Zoom Link:	https://us06web.zoom.us/j/9077142200	
Telephonic:	1-888-788-0099 or 1-877-853-5247	

**Public Comment:** You can provide verbal comment at the hearing (see information above). You may also submit written comments by emailing them to rraidmae@kpb.us. **Written comments must be received by 1:00 pm Friday, November 15, 2024.** Note that persons who participate in the public hearing, either by written or verbal comment, may appeal the Planning Commission's decision within 15 days of the date of notice of the decision.

The meeting packet will be posted the week prior to the meeting. Once it has been posted, you can view the application and additional maps at <u>kpb.legistar.com/Calendar</u>. For additional information, contact Ryan Raidmae at rraidmae@kpb.us or 907-714-2462.

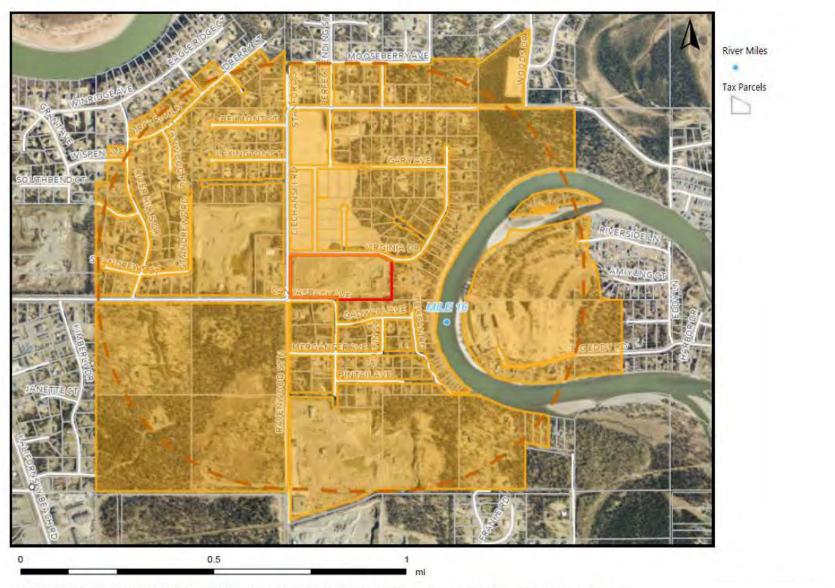
Please see the attached vicinity map of the proposed activities.



KENAI PENINSULA BOROUGH

Planning

#### Parcels Within 1/2 mile of Proposed CLUP SBC 2012 Irrevocable Trust LLC



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

Updated: October 30, 2024

KPB KENAI PENINSULA Borough	RECEIVED AUG 27 2024 KPB PLANKING DEPT.	Planning Department
To Bethy Colick - This	te stours	714-2200   (F) 907-714-2378   www.kpb.us a Drig for y & Orle Alls to de work of Alls 2415 side af Alcovining 24 file August 21, 2024 blue
SOLDOTNA, AK99669, OFIMS UP JON CANGE	mination	to wellwater

6

MATCH KENAL PENINSULA BOROUGH PLANNING COMMISSION MATCH NOTICE OF PUBLIC HEARING CHOWLE PUBLIC

Public notice is hereby given that a Conditional Land Use Permit application has been received to develop a material site (gravel pit) on a property located in the Kalifornsky area. These applications are reviewed by the Kenai Peninsula Borough Planning Commission in accordance with KPB 21.25 and KPB 21.29. You are receiving this notice because you are a landowner within a half-mile radius of the subject property, and are invited to provide comment at the below public hearing.

Applicant:	SEAN CUDE
Landowner:	SBC 2012 IRREVOCABLE TRUST
Parcel Number(s):	05527001
Legal Description:	DIAMOND WILLOW ESTATES SUB PART 13 TRACT 13
Address:	36498 Virginia Drive
Project Description:	This application is requesting a modification to PC2014-20 to allow excavation in
	the water table and for temporary, localized dewatering.
Public Hearing:	Monday, September 9, 2024 at 7:30 p.m.
Date and Time:	Monday, September 9, 2024 at 7:30 p.m.
Location:	Kenai Peninsula Borough 2. Filtragreen
	Betty Glick Assembly Chambers 3. Centrifergue from
	144 N. Binkley, Soldotha, AK 99669
Zoom Meeting ID:	Meeting ID 907 714 2200 4. Duging Daks
Zoom Link:	https://us06web.zoom.us/i/9077142200 $- \int f(Q, Q, Q$
Telephonic:	1-888-788-0099 or 1-877-853-5247 5 . 1 / William Jong (

**Public Comment:** You can provide verbal comment at the hearing (see information above). You may also submit written comments by emailing them to rraidmae@kpb.us. **Written comments must be received by 1:00 pm Friday, September 6, 2024.** Note that persons who participate in the public hearing, either by written or verbal comment, may appeal the Planning Commission's decision within 15 days of the date of notice of the decision.

The meeting packet will be posted the week prior to the meeting. Once it has been posted, you can view the application and additional maps at <u>kpb.legistar.com/Calendar</u>. For additional information, contact Ryan Raidmae at rraidmae@kpb.us or 907-714-2462.

Please see the attached vicinity map of the proposed activities.

WNS.

Aaron Morse
Lopez, Samantha
<external-sender>Aggregate Mine - Diamond Willow Estates (HOA)</external-sender>
Tuesday, September 10, 2024 11:40:01 AM
DWHOA Mine.pdf

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

Samantha, thank you fo the visit and getting introduced. This what I send Robert after missing the date for a handout to the planning commission. We knew Bill Gibs as he and his wife open up their homestead to the subdivision. So we have wittnesed the changes from 1990 for a hole in the ground  $\sim$ 50'/50' on the edge of their hayfield to an aggregate mine site.

All in all it gives me a very poor oppinion of planning commision works as this is not a bush community where anything goes.

Make it a great day,

#### Aaron Morse

Principal Talent Acquisition - Advisory LLC Global Access 24/7 Digitally 154 East Redoubt Avenue Soldotna, AK 99669 Direct: 907.252.6444 SMS Global: 907-252-0841 Cell SMS Email: aaron@talentacquisitionadvisory.com/ Web: www.talentacquisitionadvisory.com/ Planning Commission Monday September 9/9/2024 Diamond Willow Estates Sub Part 13 Tract 13 – by: Aaron Morse

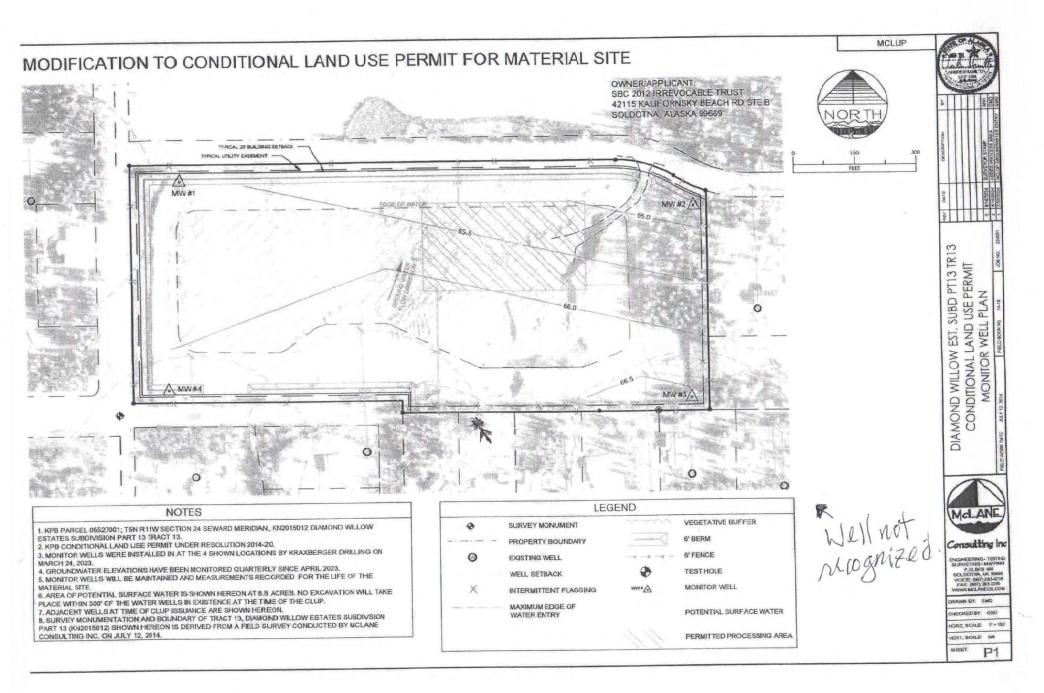
 An aggregate mine is a location where aggregates, which include sand, gravel, and crushed stone, are produced. These aggregates are used in construction for buildings, roads, dams, and other infrastructure. The mining process involves extracting rock from quarries or mines, reducing it in size using crushers and screens, and sometimes washing the finished aggregate.

II. This application for Land use permit site for material is not accurate. It does not include an existing critical well. It also does not acknowledge a contaminated area now.

III. The surrounding site wells do not include reference analysis meeting or exceeding to drinking water standards of contamination.

IV. Permitting and regulatory requirements, (protecting surface and ground water contamination.) Part 2 to include EPA, DEC, Alaska Water Quality are not present.

V. Allowing reopening the mine site as outlined in the map in the middle of a multimillion dollar residential area creates an opportunity for contamination to the water table aquifer that could contaminate and poison the water for land owners in the Borough of Kenai.



## 2 PERMITTING AND REGULATORY REQUIREMENTS

This section provides a brief description of the DEC Alaska Pollutant Discharge Elimination System (APDES) Multi-Sector General Permit, DEC's Excavation Dewatering General Permit, the Alaska Water Quality Criteria, and Alaska Department of Natural Resources (DNR) Temporary Water Use Permit (TWUP) and Material Sale application as they apply to gravel pits. This is not intended to be a complete list

Key Points - Chapter 2

Links to Key Documents:

- EPA's Multi-Sector General Permit: http://cfpub.epa.gov/npdes/stormwater/msgp.cfm
- DEC's Excavation Dewatering General Permit: http://www.dec.alaska.gov/water/WPSDocs/2009DB0003\_pmt.pdf
- Alaska Water Quality Criteria (18 AAC 70): http://www.dec.state.ak.us/regulations/index.htm
- EPA's NPDES Website: <u>http://cfpub.epa.gov/npdes/</u>

of regulatory requirements but instead to provide a brief introduction to major regulations for gravel pits with respect to stormwater. Appendix D presents a summary of state and federal permits that may apply to material extraction operations in Alaska.

DEC permit requirements:

DNR permit requirements:

- APDES MSGP
- Excavation dewatering
- Water quality criteria
- Temporary Water Use Permit
   Material Sale Application
- ria

# 2.1 APDES Multi-Sector General Permit and Other APDES Requirements

Certain stormwater discharges, including those from industrial sites such as gravel pits, are regulated under the DEC APDES program. Both the discharge of stormwater and the discharge of dewatering effluent (uncontaminated groundwater) from gravel pit operations are permitted under the APDES Multi-Sector General Permit (MSGP) under Sector J (Mineral Mining and Dressing).

To apply for permit coverage under the MSGP, a facility operator must complete and submit to DEC a Notice of Intent (NOI) form. To comply with the permit, the facility operator must prepare and follow a Storm Water Pollution Prevention Plan (SWPPP). To discontinue permit coverage, a facility operator must complete and submit to DEC a Notice of Termination form.

There are certain circumstances where a general permit is either not available or not applicable to a specific operation or facility. In this type of situation, a facility operator must obtain coverage under an individual permit. DEC will develop requirements specific to the facility.

Some permits may remain in effect that had been issued by the Environmental Protection Agency (EPA) under an old permit that has since expired. For example, for North Slope Oil and Gas Exploration activities, gravel pits/material sites used for construction of pads and roads were permitted under a Slope-wide NPDES General Permit AKG33-0000. However, pursuant to

From:	Lisa Cannon
To:	Raidmae, Ryan
Subject:	<external-sender>public hearing 9/9/24 comment</external-sender>
Date:	Friday, August 30, 2024 7:41:46 AM
Attachments:	image001.png image002.png

**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.

How temporary will this be? Will the water table be significantly impacted? We already have continual well problems in our 4plexes on Damon and Clarence and do not need more problems.

CALLAHAN CARTER LIVING TRUST AMENDED AND RESTATED CARTER R CALLAHAN & LISA M CANNON, CO-TT 849 JACKSON ST STE 2C NAPA, CA94559 August 21, 2024

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

Public notice is hereby given that a Conditional Land Use Permit application has been received to develop a material site (gravel pit) on a property located in the Kalifornsky area. These applications are reviewed by the Kenai Peninsula Borough Planning Commission in accordance with KPB 21.25 and KPB 21.29. You are receiving this notice because you are a landowner within a half-mile radius of the subject property, and are invited to provide comment at the below public hearing.

SEAN CUDE
SBC 2012 IRREVOCABLE TRUST
05527001
DIAMOND WILLOW ESTATES SUB PART 13 TRACT 13
36498 Virginia Drive
This application is requesting a modification to PC2014-20 to allow excavation in the water table and for temporary, localized dewatering.
Monday, September 9, 2024 at 7:30 p.m.
Kenai Peninsula Borough
Betty Glick Assembly Chambers
144 N. Binkley, Soldotna, AK 99669
Meeting ID 907 714 2200
https://us06web.zoom.us/j/9077142200
1-888-788-0099 or 1-877-853-5247

Public Comment: You can provide verbal comment at the hearing (see information above). You may also submit written comments by emailing them to rraidmae@kpb.us. Written comments must be received by 1:00 pm Friday, September 6, 2024. Note that persons who participate in the public hearing, either by written or verbal comment, may appeal the Planning Commission's decision within 15 days of the date of notice of the decision.

Thank you, Lisa Co-Trustee Carter Callahan Living Trust



#### LISA M. CANNON

President & CEO 849 Jackson Street, Suite 2C Napa, CA 94559 Phone: (707) 944-0220 x3 Text: (916) 826-6385 E-mail: Lisa@rajadevelopment.com

From:	Colleen Sonnevil
То:	Raidmae, Ryan
Subject:	<external-sender>Public Comment Conditional Land Use Permit</external-sender>
Date:	Thursday, September 5, 2024 10:01:08 PM

**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.

Kenai Peninsula Borough Planning Commission;

We request the Conditional Land Use Permit be denied.

We and all our neighbors within the half-mile radius boundaries of the map provided us two weeks ago are on drinking water and bathing wells. For our safety and peace of mind it is necessary that if application is approved the proposed gravel pit should be required to install monitoring wells and a groundwater monitoring program to identify in advance any potential impacts to surrounding private drinking water wells. Previously private professional testing of well water in the area has been found pure of natural and foreign contamination.

As a good neighbor, it is also reasonable to require gravel pit operator and owner to out source an annual test of wells in the mapped radius. If contamination or lower water level is found; Sean Cude: owner(s) should be required to provide the homeowner/owners with potable drinking water until a successful pure water drilling of a new well on homeowners property is accomplished with Sean Cude covering the cost.

If permit is approved we request the above requirements be put in writing, notarized and filed with the courts.

In conclusion if the gravel pit is approved impacts must require mitigation.

Sincerely, Colleen and Gary Sonnevil 36646 River Hills Dr Kenai, Alaska 99611

907-398-9151

September 5, 2024

## TO: Kenai Peninsula Borough Planning Department

RE: Proposal by applicant Sean Cude

Parcel: 05527001

Legal Description: DIAMOND WILLOW ESTATES SUB PART 13 TRACT 13

Address: 36498 Virginia Drive

**Project Description:** This application is requesting a modification to PC2014-20 to allow excavation in the water table and for temporary, localized dewatering.

To Whom It May Concern,

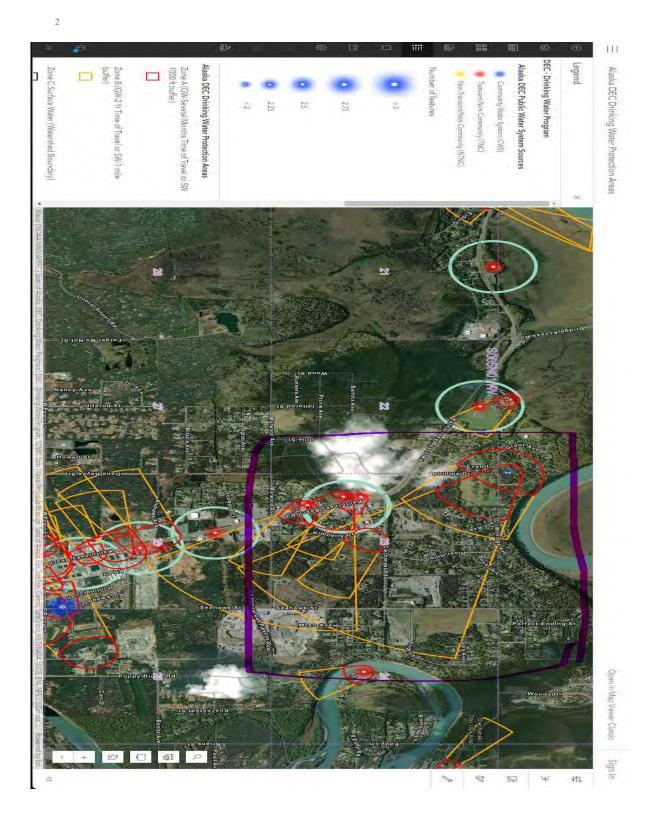
I am writing in opposition to proposal by applicant Sean Cude, Parcel 05527001, regarding for the above project description. This application is requesting a modification to PC2014-20 to allow excavation in the water table and for temporary, localized dewatering. Please see stated reasons below as well as included documentation/map.

1. The Department of Environmental Services for the State of Alaska has documented drinking water protection areas. The proposed site of excavation into the water table is in a 1-mile buffer zone outlined by the State of Alaska, Department of Environmental Conservation. Please see the attached map to show this area. Also note, there are many surrounding drinking water protection areas as well as buffer zones in the vicinity of the documented address of 36498 Virginia Drive. I have included a map for a visual from the ADEC website, as well as a link to the website for your convenience. Due to this, special consideration should be taken when granting permission to disturb the water table. A quote from the website "The Drinking Water Protection Areas were created to meet the requirements of the 1996 Safe Drinking Water Act. It is hoped that this data will be used at the local level to initiate and/or prioritize proactive protection strategies for the public water systems in their jurisdiction."<sup>1</sup>

While the history of gravel pit operations within the Kenai Peninsula Borough have been challenged many times, I sincerely hope that this commission considers the community needs of individual homeowners and not just the special interests of business owners. When will the welfare of the **many** of a community be valued as highly as the few. Please consider the recommendations made by ADEC when deciding to disrupt the water table.

2. Dewatering can affect the up-gradient and down-gradient effects of well within the vicinity of the gravel pit, which can affect well pressure of nearby residential homes and well pressure. The gravel pit owner should have in place a plan exceeding the \$10,000 limit and 8 wells listed to include the surrounding residential wells within at least a half mile to 1 mile radius. Please see attached Environmental Protection Agency article I have included for your review if desired.

3. The provided proposal does not address the consideration for testing the water before and after to ensure that contamination has not occurred related to the gravel pit operation if approved, a plan in place for any ramifications for nearby residential areas.



E3-52

I appreciate your time in reviewing my letter. I am a concerned resident of this area, and I have great concern for maintaining safe drinking water for our community. Balance is key, when business interests outweigh community interests and health, I feel it my duty not only as a property owner near this proposal, but as a community member. It is a vital resource for sustaining life and health.

This proposal if approved could grant permission for this gravel pit operation for up to 20 years. The decision you make today can have long-lasting indefinite effects to this community.

Thank you for your consideration.

Julie Bunch

46781 Mooseberry Avenue

Kenai, Alaska 99611

<sup>1</sup>State of Alaska, Division of Environmental Health, Drinking Water Program, Alaska DEC Drinking Water Protection Areas,

https://www.arcgis.com/home/item.html?id=13ed2116e4094f9994775af9a62a1e85, accessed 9/5/2024

<sup>2</sup>State of Alaska, Division of Environmental Health, Drinking Water Program, Alaska DEC Drinking Water Protection Areas,

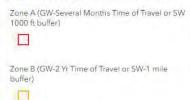
https://www.arcgis.com/apps/mapviewer/index.html?webmap=13ed2116e4094f9994775af9a62a1e85, accessed 9/5/2024.

<sup>3</sup>"Getting Up to Speed" for section C, "Ground Water Contamination" is adapted from US EPA Seminar Publication. Wellhead Protection: A Guide for Small Communities. Chapter 3. EPA/625/R-93/002.

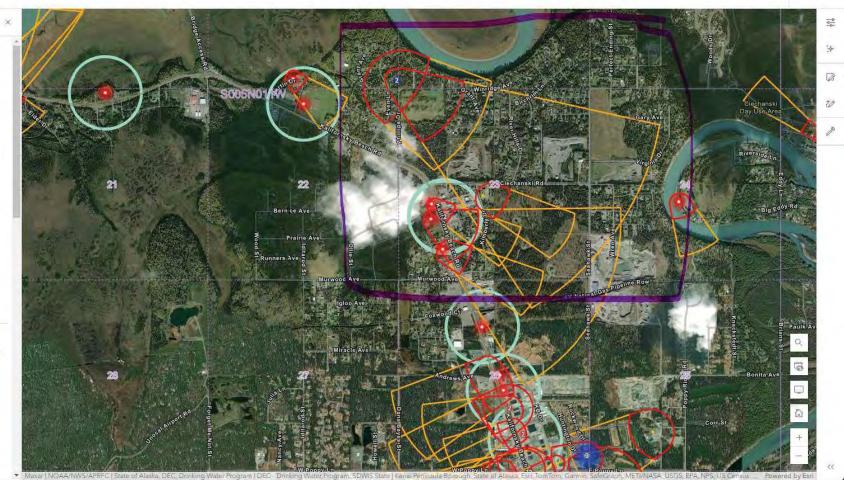
https://dnr.alaska.gov/mlw/cdn/pdf/factsheets/water-rights-in-alaska.pdf?v=1, accessed 9/5/2024.

#### Alaska DEC Drinking Water Protection Areas





Zone C Surface Water (Watershed Boundary)



Open in Map Viewer Classic Sign In

-

# Getting Up to Speed GROUND WATER CONTAMINATION



round water contamination is nearly always the result of human activity. In areas where population density is high and human use of the land is intensive, ground water is especially vulnerable. Virtually any activity whereby chemicals or wastes may be released to the environment, either intentionally or accidentally, has the potential to pollute ground water. When ground water becomes contaminated, it is difficult and expensive to clean up.

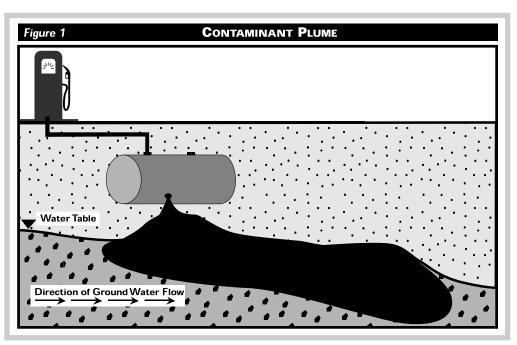
To begin to address pollution prevention or remediation, we must understand how surface waters and ground waters interrelate. Ground water and surface water are interconnected and can be fully understood and intelligently managed only when that fact is acknowledged. If there is a water supply well near a source of contamination, that well runs the risk of becoming contaminated. If there is a nearby river or stream, that water body may ical or chemical properties, do not always follow ground water flow.) It is possible to predict, to some degree, the transport within an aquifer of those substances that move along with ground water flow. For example, both water and certain contaminants flow in the direction of the topography from recharge areas to discharge areas. Soils that are porous and permeable tend to transmit water and certain types of contaminants with relative ease to an aquifer below.

Just as ground water generally moves slowly, so do contaminants in ground water. Because of this slow movement, contaminants tend to remain concentrated in the form of a **plume** (see Figure 1) that flows along the same path as the ground water. The size and speed of the plume depend on the amount and type of contaminant, its solubility and density, and the velocity of the surrounding ground water.

also become polluted by the ground water.

#### How Does Ground Water Become Contaminated?

Depending on its physical, chemical, and biological properties, a contaminant that has been released into the environment may move within an aquifer in the same manner that ground water moves. (Some contaminants, because of their phys-





Ground water and contaminants can move rapidly through fractures in rocks. Fractured rock presents a unique problem in locating and controlling contaminants because the fractures are generally randomly spaced and do not follow the contours of the land surface or the hydraulic gradient. Contaminants can also move into the ground water system through macropores—root systems, animal burrows, abandoned wells, and other systems of holes and cracks that supply pathways for contaminants.

In areas surrounding pumping wells, the potential for contamination increases because water from the zone of contribution, a land area larger than the original recharge area, is drawn into the well and the surrounding aquifer. Some drinking water wells actually draw water from nearby streams, lakes, or rivers. Contaminants present in these surface waters can contribute contamination to the ground water system. Some wells rely on artificial recharge to increase the amount of water infiltrating an aquifer, often using water from storm runoff, irrigation, industrial processes, or treated sewage. In several cases, this practice has resulted in increased concentrations of nitrates, metals, microbes, or synthetic chemicals in the water.

Under certain conditions, pumping can also cause the ground water (and associated contaminants) from another aquifer to enter the one being pumped. This phenomenon is called **interaquifer leakage**. Thus, properly identifying and protecting the areas affected by well pumping is important to maintain ground water quality.

Generally, the greater the distance between a source of contamination and a ground water source, the more likely that natural processes will reduce the impacts of contamination. Processes such as oxidation, biological degradation (which sometimes renders contaminants less toxic), and adsorption (binding of materials to soil particles) may take place in the soil layers of the unsaturated zone and reduce the concentration of a contaminant before it reaches ground water. Even contaminants that reach ground water directly, without passing through the unsaturated zone, can become less concentrated by dilution (mixing) with the ground water. However, because ground water usually moves slowly, contaminants generally undergo less dilution than when in surface water.

#### Sources of Ground Water Contamination

Ground water can become contaminated from natural sources or numerous types of human activities. (See Tables 1 and 2 and Figure 1.) Residential, municipal, commercial, industrial, and agricultural activities can all affect ground water quality. Contaminants may reach ground water from activities on the land surface, such as releases or spills from stored industrial wastes; from sources below the land surface but above the water table, such as septic systems or leaking underground petroleum storage systems; from structures beneath the water table, such as wells; or from contaminated recharge water.

#### Natural Sources

Some substances found naturally in rocks or soils, such as iron, manganese, arsenic, chlorides, fluorides, sulfates, or radionuclides, can become dissolved in ground water. Other naturally occurring substances, such as decaying organic matter, can move in ground water as particles. Whether any of these substances appears in ground water depends on local conditions. Some substances may pose a health threat if consumed in excessive quantities; others may produce an undesirable odor, taste, or color. Ground water that contains unacceptable concentrations of these substances is not used for drinking water or other domestic water uses unless it is treated to remove these contaminants.

#### Septic Systems

One of the main causes of ground water contamination in the United States is the effluent (outflow) from septic tanks, cesspools, and privies.

# Getting Up to Speed: GROUND WATER CONTAMINATION

Category	Contaminar	Contaminant Source		
Agriculture	Animal burial areas	Irrigation sites		
	Animal feedlots	Manure spreading areas/pits		
	Fertilizer storage/use	Pesticide storage/use		
Commercial	Airports	Jewelry/metal plating		
	Auto repair shops	Laundromats		
	Boat yards	Medical institutions		
	Construction areas	Paint shops		
	Car washes	Photography establishments		
	Cemeteries	Railroad tracks and yards		
	Dry cleaners	Research laboratories		
	Gas stations	Scrap and junkyards		
	Golf courses	Storage tanks		
Industrial	Asphalt plants	Petroleum production/storage		
	Chemical manufacture/storage	Pipelines		
	Electronics manufacture	Septage lagoons and sludge sites		
	Electroplaters	Storage tanks		
	Foundries/metal fabricators	Toxic and hazardous spills		
	Machine/metalworking shops	Wells (operating/abandoned)		
	Mining and mine drainage	Wood preserving facilities		
Residential	Fuel oil	Septic systems, cesspools		
	Furniture stripping/refinishing	Sewer lines		
	Household hazardous products	Swimming pools (chemical storage)		
	Household lawns			
Other	Hazardous waste landfills	Recycling/reduction facilities		
	Municipal incinerators	Road deicing operations		
	Municipal landfills	Road maintenance depots		
	Municipal sewer lines	Storm water drains/basins		
	Open burning sites	Transfer stations		

Approximately one-fourth of all homes in the United States rely on septic systems to dispose of their human wastes. Although each individual system releases a relatively small amount of waste into the ground, the large number and widespread use of these systems makes them a serious contamination source. Septic systems that are improperly sited, designed, constructed, or maintained can contaminate ground water with bacteria, viruses, nitrates, detergents, oils, and chemicals. Along with these contaminants are the commercially available septic system cleaners containing syn-

thetic organic chemicals (such as 1,1,1trichloroethane or methylene chloride). These cleaners can contaminate water supply wells and interfere with natural decomposition processes in septic systems.

Most, if not all, state and local regulations require specific separation distances between septic systems and drinking water wells. In addition, computer models have been developed to calculate suitable distances and densities.



#### Improper Disposal of Hazardous Waste

Hazardous waste should always be disposed of properly, that is to say, by a licensed hazardous waste handler or through municipal hazardous waste collection days. Many chemicals should not be disposed of in household septic systems, including oils (e.g., cooking, motor), lawn and garden chemicals, paints and paint thinners, disinfectants, medicines, photographic chemicals, and swimming pool chemicals. Similarly, many substances used in industrial processes should not be disposed of in drains at the workplace because they could contaminate a drinking water source. Companies should train employees in the proper use and disposal of all chemicals used on site. The many different types and the large quantities of chemicals used at industrial locations make proper disposal of wastes especially important for ground water protection.

#### Releases and Spills from Stored Chemicals and Petroleum Products

Underground and aboveground storage tanks are commonly used to store petroleum products and other chemical substances. For example, many homes have underground heating oil tanks. Many businesses and municipal highway departments also store gasoline, diesel fuel, fuel oil, or chemicals in on-site tanks. Industries use storage tanks to hold chemicals used in industrial processes or to store hazardous wastes for pickup by a licensed hauler. Approximately 4 million underground storage tanks exist in the United States and, over the years, the contents of many of these tanks have leaked and spilled into the environment.

If an underground storage tank develops a leak, which commonly occurs as the tank ages and corrodes, its contents can migrate through the soil and reach the ground water. Tanks that meet federal/state standards for new and upgraded systems are less likely to fail, but they are not foolproof. Abandoned underground tanks pose another problem because their location is often unknown. Aboveground storage tanks can also pose a threat to ground water if a spill or leak occurs and adequate barriers are not in place. Improper chemical storage, sloppy materials handling, and poor-quality containers can be major threats to ground water. Tanker trucks and train cars pose another chemical storage hazard. Each year, approximately 16,000 chemical spills occur from trucks, trains, and storage tanks, often when materials are being transferred. At the site of an accidental spill, the chemicals are often diluted with water and then washed into the soil, increasing the possibility of ground water contamination.

#### Landfills

Solid waste is disposed of in thousands of municipal and industrial landfills throughout the country. Chemicals that should be disposed of in hazardous waste landfills sometimes end up in municipal landfills. In addition, the disposal of many household wastes is not regulated.

Once in the landfill, chemicals can leach into the ground water by means of precipitation and surface runoff. New landfills are required to have clay or synthetic liners and leachate (liquid from a landfill containing contaminants) collection systems to protect ground water. Most older landfills, however, do not have these safeguards. Older landfills were often sited over aquifers or close to surface waters and in permeable soils with shallow water tables, enhancing the potential for leachate to contaminate ground water. Closed landfills can continue to pose a ground water contamination threat if they are not capped with an impermeable material (such as clay) before closure to prevent the leaching of contaminants by precipitation.

#### ■ Surface Impoundments

Surface impoundments are relatively shallow ponds or lagoons used by industries and municipalities to store, treat, and dispose of liquid wastes. As many as 180,000 surface impoundments exist in the United States. Like landfills, new surface impoundment facilities are required to have liners, but even these liners sometimes leak.

# Getting Up to Speed: GROUND WATER CONTAMINATION

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Product	Toxic or Hazardous Components
Antifreeze (gasoline or coolants systems)	Methanol, ethylene glycol
Automatic transmission fluid	Petroleum distillates, xylene
Battery acid (electrolyte)	Sulfuric acid
Degreasers for driveways and garages	Petroleum solvents, alcohols, glycol ether
Degreasers for engines and metal	Chlorinated hydrocarbons, toluene, phenols, dichloroperchloroethylene
Engine and radiator flushes	Petroleum solvents, ketones, butanol, glycol ether
Hydraulic fluid (brake fluid)	Hydrocarbons, fluorocarbons
Motor oils and waste oils	Hydrocarbons
Gasoline and jet fuel	Hydrocarbons
Diesel fuel, kerosene, #2 heating oil	Hydrocarbons
Grease, lubes	Hydrocarbons
Rustproofers	Phenois, heavy metals
Car wash detergents	Alkyl benzene sulfonates
Car waxes and polishes	Petroleum distillates, hydrocarbons
Asphalt and roofing tar	Hydrocarbons
Paints, varnishes, stains, dyes	Heavy metals, toluene
Paint and lacquer thinner	Acetone, benzene, toluene, butyl acetate, methyl ketones
Paint and varnish removers, deglossers	Methylene chloride, toluene, acetone, xylene, ethanol, benzene, methano
Paint brush cleaners	Hydrocarbons, toluene, acetone, methanol, glycol ethers, methyl ethyl ketones
Floor and furniture strippers	Xylene
Metal polishes	Petroleum distillates, isopropanol, petroleum naphtha
Laundry soil and stain removers	Hydrocarbons, benzene, trichloroethylene, 1,1,1-trichloroethane
Other solvents	Acetone, benzene
Rock salt	Sodium concentration
Refrigerants	1,1,2-trichloro-1,2,2-trifluoroethane
Bug and tar removers	Xylene, petroleum distillates
Household cleansers, oven cleaners	Xylenols, glycol ethers, isopropanol
Drain cleaners	1,1,1-trichloroethane
Toilet cleaners	Xylene, sulfonates, chlorinated phenols
Cesspool cleaners	Tetrachloroethylene, dichlorobenzene, methylene chloride
Disinfectants	Cresol, xylenols
Pesticides (all types)	Naphthalene, phosphorus, xylene, chloroform, heavy metals, chlorinated hydrocarbons
Photochemicals	Phenols, sodium sulfite, cyanide, silver halide, potassium bromide
Printing ink	Heavy metals, phenol-formaldehyde
Wood preservatives (creosote)	Pentachlorophenois
Swimming pool chlorine	Sodium hypochlorite
Lye or caustic soda	Sodium hydroxide
Jewelry cleaners	Sodium cvanide

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Source: "Natural Resources Facts: Household Hazardous Wastes," Fact Sheet No. 88-3, Department of Natural Science, University of Rhode Island, August 1988.



#### Sewers and Other Pipelines

Sewer pipes carrying wastes sometimes leak fluids into the surrounding soil and ground water. Sewage consists of organic matter, inorganic salts, heavy metals, bacteria, viruses, and nitrogen. Other pipelines carrying industrial chemicals and oil brine have also been known to leak, especially when the materials transported through the pipes are corrosive.

#### Pesticide and Fertilizer Use

Millions of tons of fertilizers and pesticides (e.g., herbicides, insecticides, rodenticides, fungicides, avicides) are used annually in the United States for crop production. In addition to farmers, homeowners, businesses (e.g., golf courses), utilities, and municipalities use these chemicals. A number of these pesticides and fertilizers (some highly toxic) have entered and contaminated ground water following normal, registered use. Some pesticides remain in soil and water for many months to many years. Another potential source of ground water contamination is animal wastes that percolate into the ground from farm feedlots. Feedlots should be properly sited and wastes should be removed at regular intervals.

Between 1985 and 1992, EPA's Office of Pesticides and Toxic Substances and Office of Water conducted a National Pesticide Survey to determine the number of drinking water wells nationwide that contain pesticides and nitrates and the concentration of these substances. The survey also analyzed the factors associated with contamination of drinking water wells by pesticides and nitrates. The survey, which included samples from more than 1,300 public community and rural domestic water supply wells, found that approximately 3.6 percent of the wells contained concentrations of nitrates above the federal maximum contaminant level, and that over half of the wells contained nitrates above the survey's minimum reporting limit for nitrate (0.15 mg/L).

The survey also reported that approximately 0.8 percent of the wells tested contained pesticides at

levels higher than federal maximum contaminant levels or health advisory levels. Only 10 percent of the wells classified as rural were actually located on farms. There is a higher incidence of contamination by agricultural chemicals in farm wells used for drinking water.

After further analysis, EPA estimated that for the wells that contain pesticides, a significant percentage probably contain chemical concentrations that exceed the federal health-based limits (e.g., maximum contaminant levels or health advisory levels). Approximately 14.6 percent of the wells tested contained levels of one or more pesticides above the minimum reporting limit set in the survey. The most common pesticides found were atrazine and metabolites (breakdown products) of dimethyl tetrachloroterephthalate (DCPA, commonly known as Dacthal), which is used in many utility easement weed-control programs and for lawn care.

#### Drainage Wells

Drainage wells are used in wet areas to help drain water and transport it to deeper soils. These wells may contain agricultural chemicals and bacteria.

#### ■ Injection Wells/Floor Drains

Injection wells are used to collect storm water runoff, collect spilled liquids, dispose of wastewater, and dispose of industrial, commercial, and utility wastes. These wells are regulated by the U.S. EPA's Underground Injection Control Program. In New England, these wells may not be used to inject hazardous wastes from industrial, commercial, and utility operations. The injection wells used in this region are typically shallow and include sumps and dry wells used to handle storm water.

Floor drains were historically used by businesses to handle spills. Today, if a business operates or handles waste fluids that drain to a septic system, dry well, or floor drain, it is required to submit information regarding its operation to the U.S. EPA or its state environmental protection agency. Disposal wells that pose threats to drinking water supplies are prohibited and must be closed, con-



nected to a public sewage system, or connected to a storage tank.

#### Improperly Constructed Wells

Problems associated with improperly constructed wells can result in ground water contamination when contaminated surface or ground water is introduced into the well.

#### Improperly Abandoned Wells

These wells can act as a conduit through which contaminants can reach an aquifer if the well casing has been removed, as is often done, or if the casing is corroded. In addition, some people use abandoned wells to dispose of wastes such as used motor oil. These wells may reach into an aquifer that serves drinking supply wells. Abandoned exploratory wells (e.g., for gas, oil, or coal) or test hole wells are usually uncovered and are also a potential conduit for contaminants.

#### Active Drinking Water Supply Wells

Poorly constructed wells can result in ground water contamination. Construction problems, such as faulty casings, inadequate covers, or lack of concrete pads, allow outside water and any accompanying contaminants to flow into the well. Sources of such contaminants can be surface runoff or wastes from farm animals or septic systems. Contaminated fill packed around a well can also degrade well water quality. Well construction problems are more likely to occur in older wells that were in place prior to the establishment of well construction standards and in domestic and livestock wells.

#### Poorly Constructed Irrigation Wells

These wells can allow contaminants to enter ground water. Often pesticides and fertilizers are applied in the immediate vicinity of wells on agricultural land.

#### Mining Activities

Active and abandoned mines can contribute to ground water contamination. Precipitation can leach soluble minerals from the mine wastes (known as spoils or tailings) into the ground water below. These wastes often contain metals, acid, minerals, and sulfides. Abandoned mines are often used as wells and waste pits, sometimes simultaneously. In addition, mines are sometimes pumped to keep them dry; the pumping can cause an upward migration of contaminated ground water, which may be intercepted by a well.

#### EFFECTS OF GROUND WATER CONTAMINATION

Contamination of ground water can result in poor drinking water quality, loss of water supply, degraded surface water systems, high cleanup costs, high costs for alternative water supplies, and/or potential health problems.

The consequences of contaminated ground water or degraded surface water are often serious. For example, estuaries that have been impacted by high nitrogen from ground water sources have lost critical shellfish habitats. In terms of water supply, in some instances, ground water contamination is so severe that the water supply must be abandoned as a source of drinking water. In other cases, the ground water can be cleaned up and used again, if the contamination is not too severe and if the municipality is willing to spend a good deal of money. Follow-up water quality monitoring is often required for many years.

Because ground water generally moves slowly, contamination often remains undetected for long periods of time. This makes cleanup of a contaminated water supply difficult, if not impossible. If a cleanup is undertaken, it can cost thousands to millions of dollars.

Once the contaminant source has been controlled or removed, the contaminated ground water can be treated in one of several ways:

- Containing the contaminant to prevent migration.
- Pumping the water, treating it, and returning it to the aquifer.

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- Leaving the ground water in place and treating either the water or the contaminant.
- Allowing the contaminant to attenuate (reduce) naturally (with monitoring), following the implementation of an appropriate source control.

Selection of the appropriate remedial technology is based on site-specific factors and often takes into account cleanup goals based on potential risk that are protective of human health and the environment. The technology selected is one that will achieve those cleanup goals. Different technologies are effective for different types of contaminants, and several technologies are often combined to achieve effective treatment. The effectiveness of treatment depends in part on local hydrogeological conditions, which must be evaluated prior to selecting a treatment option.

Given the difficulty and high costs of cleaning up a contaminated aquifer, some communities choose to abandon existing wells and use other water sources, if available. Using alternative supplies is probably more expensive than obtaining drinking water from the original source. A temporary and expensive solution is to purchase bottled water, but it is not a realistic long-term solution for a community's drinking water supply problem. A community might decide to install new wells in a different area of the aquifer. In this case, appropriate siting and monitoring of the new wells are critical to ensure that contaminants do not move into the new water supplies.

#### **Potential Health Problems**

A number of microorganisms and thousands of synthetic chemicals have the potential to contaminate ground water. Drinking water containing bacteria and viruses can result in illnesses such as hepatitis, cholera, or giardiasis. Methemoglobinemia or "blue baby syndrome," an illness affecting infants, can be caused by drinking water that is high in nitrates. Benzene, a component of gasoline, is a known human carcinogen. The serious health effects of lead are well known—learning disabilities in children; nerve, kidney, and liver problems; and pregnancy risks. Concentrations in drinking water of these and other substances are regulated by federal and state laws. Hundreds of other chemicals, however, are not yet regulated, and many of their health effects are unknown or not well understood. Preventing contaminants from reaching the ground water is the best way to reduce the health risks associated with poor drinking water quality.

#### **R**EGULATIONS TO **P**ROTECT **G**ROUND **W**ATER

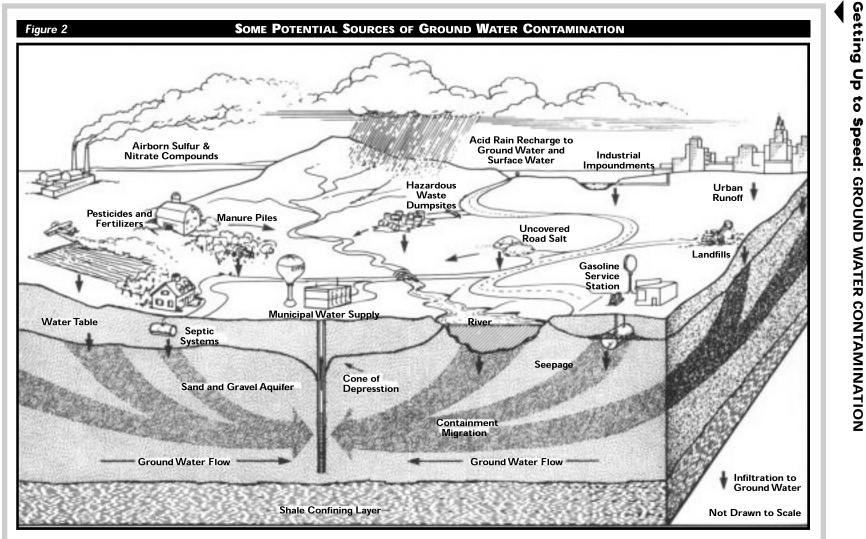
Several federal laws help protect ground water quality. The Safe Drinking Water Act (SDWA) established three drinking water source protection programs: the Wellhead Protection Program, Sole Source Aquifer Program, and the Source Water Assessment Program. It also called for regulation of the use of underground injection wells for waste disposal and provided EPA and the states with the authority to ensure that drinking water supplied by public water systems meets minimum health standards. The Clean Water Act regulates ground water that is shown to have a connection with surface water. It sets standards for allowable pollutant discharges to surface water. The **Resource Conservation and Recovery Act (RCRA)** regulates treatment, storage, and disposal of hazardous and nonhazardous wastes. The **Comprehensive Environmental Response**, Compensation, and Liability Act (CERCLA, or **Superfund)** authorizes the government to clean up contamination or sources of potential contamination from hazardous waste sites or chemical spills, including those that threaten drinking water supplies. CERCLA includes a "community right-toknow" provision. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) regulates pesticide use. The Toxic Substances Control Act (TSCA) regulates manufactured chemicals.

Getting Up to Speed: GROUND WATER CONTAMINATION

# **KEY TERMS**

- Clean Water Act
- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or Superfund)
- Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)
- Interaquifer Leakage
- Plume
- Resource Conservation and Recovery Act (RCRA)
- Safe Drinking Water Act
- Toxic Substances Control Act (TSCA)
- Zone of Contribution

"Getting Up to Speed" for section C, "Ground Water Contamination" is adapted from US EPA Seminar Publication. Wellhead Protection: A Guide for Small Communities. Chapter 3. EPA/625/R-93/002.



Source: Paly. Melissa and Lee Steppacher. The Power to Protect: Three Stories about Ground Water. U.S.E.P.A. Massachusetts Audubon Society and NEIWPCC.

Ryan Raidame, KPB Planner, is submitting a comment on behalf of Travis Penrod. Travis has submitted evidence, attached, that an existing well was missed on the site plan provided by McLane Consulting Ince. The well is located on KPB PID: 055-580-18, legally described as T 5N R 11W SEC 24 SEWARD MERIDIAN KN 0840234 RAVENWOOD SUB NO 4 LOT 10 BLK 5.

PENROD TRAVIS & CRYSTAL 36860 VIRGINIA DR. Kenai, Alaska 99661

# 055-580008 9

#### Well Drilling Log --- Kraxberger Drilling Inc. ---- (907) 262 - 4720 48230 Gas Well Road Soldotna, Alaska 99669

	DWELL	5503	
LK 5 DOD #4	Builder:	Latitude: N 60	30,555
A		Longitude: W 151	08.430
e completed 1/16/2015	Driller RRK		
Static level: 32 Casi	ng length: 40		
Dia	meter(in) 6		
	Rig type AR		
	DOD # 4 A e completed 1/16/2015 Static level: 32 Casin	DOD # 4 Builder: A e completed 1/16/2015 Driller RRK Static level: 32 Casing length: 40 Diameter(in) 6	A Builder: Latitude: N 60 A Longitude: W 151 e completed 1/16/2015 Driller RRK Static level: 32 Casing length: 40 Diameter(in) 6

5-34 SAND & GRAVEL

34-36 WET SAND & GRAVEL

36-38 WET CEMENTED SAND & GRAVEL

#### Well Drilling Log ---- Kraxberger Drilling Inc. ---- (907) 262-4720 35055 Gas Well Road Soldotna, AK 99669

CLIENTNAME: LIUSKA, BRUCE/DARLENE

LEGAL1: LOT 10 BLK 5 LEGAL2: RAVENWOOD #4

PARCEL#:

ROADAREA: GADWELL

**CITY: SOLDOTNA** 

BUILDERNAME:

DEPTH: 38

DATE: 1/16/2015

**DRILLER: RRK** 

YIELDGPM: 8

STATICLEVEL: 32

CASINGLENGTH: 40

CASINGSTICKUP: 2

O-2 TOPSOI & CLAY 2-5 SAND 5-34 SAND & GRAVEL 34-36 WET SAND & GRAVEL 36-38 WET CEMENTED SAND & GRAVEL

**DIAMETER: 6 RIGTYPE: AR** CASINGTYPE: GROUT: WELLCOMPLETION: OPEN END

LOGID: 5503

PUMPINFO:

**IRON PPM:** SCREEN:

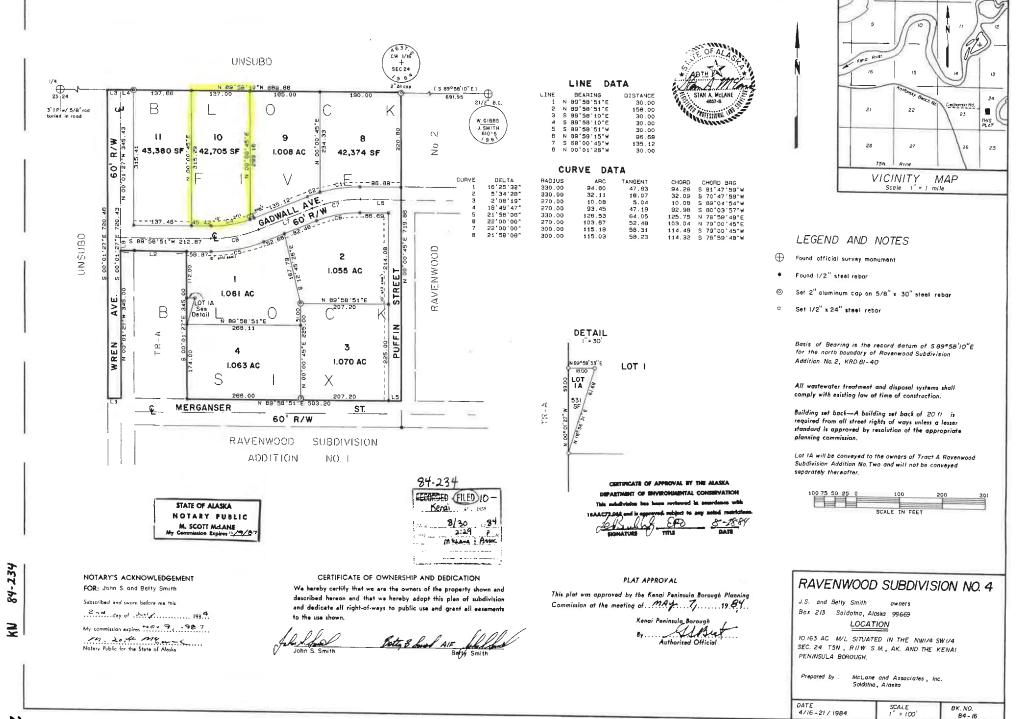
CLASS:

LATITUDE:

LONGITUDE: 0

#### **DRILLING REPORT:**

## KPB NOTE: THIS SUBDIVISION IS ZONED R-1 SINGLE-FAMILY RESIDENTIAL (KPB 21.44.160).



Well Drilling Log	• Kraxberger Drilling Inc (907) 262-4720 35055 Gas Well Road Soldotna, AK 99669	
CLIENTNAME: SBC #1	LOGID: 7598	
LEGAL1: DIAMOND WILLOW ESTAT	ES PUMPINFO:	
LEGAL2: SUB PART 13 TRACT 13		
PARCEL#: 05527001	DIAMETER: 6"	
ROADAREA N/E CORNER TEST WELL		
CIECHANSKI ROAD	RIGTYPE: AR	
36498 VIRGINIA DRIVE	CASINGTYPE: STEEL	
CITY: KENAI	GROUT:	
BUILDERNAME:	WELLCOMPLETION:	
DEPTH: 31		
DATE: 3/24/2023		
DRILLER: RRK	IRON PPM:	
YIELDGPM: 1	SCREEN:	
STATICLEVEL: 27 TO GROUND	CLASS:	
CASINGLENGTH: 34	LATITUDE:	
CASINGSTICKUP: 3 FEET	LONGITUDE:	

#### DRILLING REPORT:

0-1 SAND 1-26 SAND AND GRAVEL 26-28 CEMENTED GRAVEL 28-30 SAND AND GRAVEL 30-31 WET SAND AND GRAVEL 31-38 TAN STICKY CLAY PULLED CASING BACK TO 31 HOLE FILLED IN STATIC 27 TO GROUND. CASING 34. 3 FEET

STICK UP

Well Drilling Log K	raxberger Drilling Inc (907) 262-4720 35055 Gas Well Road Soldotna, AK 99669
CLIENTNAME: SBC #2	LOGID: 7597
LEGAL1: DIAMOND WILLOW ESTATES	PUMPINFO:
LEGAL2: SUB PART 13 TRACT 13	
PARCEL#: 05527001	
ROADAREA S/E CORNER TEST WELL	DIAMETER: 6"
CIECHANSKI ROAD	RIGTYPE: AR
36498 VIRGINIA DRIVE	CASINGTYPE: STEEL
CITY: KENAI	GROUT:
BUILDERNAME:	WELLCOMPLETION:
DEPTH: 25	
DATE: 3/24/2023	
DRILLER: RRK	IRON PPM:
YIELDGPM:	SCREEN
STATICLEVEL: 26	CLASS:
CASINGLENGTH: 28	LATITUDE:
CASINGSTICKUP: 3 FEET	LONGITUDE:
	DRILLING REPORT:

0-19 SAND AND GRAVEL 19-20 ROCK 20-25 CEMENTED GRAVEL 25-28 TAN SANDY CLAY

3 FOOT OPEN HOLE INTO CLAY

Well Drilling Log Kraxberger Drilling Inc (907) 262-4720
35055 Gas Well Road
Soldotna, AK 99669

CLIENTNAME: SBC #3 LEGAL1: DIAMOND WILLOW ESTATES LEGAL2: SUB PART 13 TRACT 13 PARCEL#: 05527001 ROADAREA S/W CORNER TEST WELL CIECHANSKI ROAD CITY: KENAI

BUILDERNAME:

DEPTH: 34

DATE: 3/24/2023

DRILLER: RRK

YIELDGPM: 8

STATICLEVEL: 24

CASINGLENGTH: 37

CASINGSTICKUP: 3 FEET

0-8 FILL, TOPSOIL, CLAY, WOODG, GRAVEL 8-26 SAND AND GRAVEL 26-30 SAND 30-33 WET SAND 33-34 GRAVEL SAND AND WATER LOGID: 7596

PUMPINFO:

DIAMETER: 6" RIGTYPE: AR CASINGTYPE: STEEL GROUT: WELLCOMPLETION:

> IRON PPM: SCREEN: CLASS: LATITUDE: LONGITUDE:

#### DRILLING REPORT:

Well Drilling Log ---- Kraxberger Drilling Inc. ---- (907) 262-4720 35055 Gas Well Road Soldotna, AK 99669

CLIENTNAME: SBC #4 LEGAL1: DIAMOND WILLOW ESTATES LEGAL2: SUB PART 13 TRACT 13 PARCEL#: 05527001 ROADAREA N/W CORNER CIECHANSKI ROAD CITY: KENAI BUILDERNAME: DEPTH: 34 DATE: 3/24/2023 DRILLER: RRK YIELDGPM: 3 STATICLEVEL: 28 CASINGLENGTH: 37 CASINGSTICKUP: 3 FEET

0-19 FILL, TOPSOIL, CLAY 19-25 GRAVEL AND SAND 25-30 CEMENTED GRAVEL AND SAND 30-34 WET GRAVEL AND SAND LOGID: 7595 PUMPINFO:

DIAMETER: 6" RIGTYPE: AR CASINGTYPE: STEEL GROUT: WELLCOMPLETION:

> IRON PPM: SCREEN: CLASS: LATITUDE: LONGITUDE:

#### **DRILLING REPORT:**

September 6, 2024

To the Kenai Peninsula Borough Planning Commission.

Regarding the application to modify PC2014-20 to allow excavation in the water table and for temporary, localized dewatering.

I have lived on River Hills Drive approximately a third of a mile west of this location since 1993. I own two parcels including my home and an undeveloped adjacent parcel. I am opposed to this modification to allow operations in the water table. This area has increased in population significantly during the time I have lived here and continues to grow as the area is in close proximity to services and the communities of both Kenai and Soldotna. Gravel operations are deleterious to the quality of life in residential areas including noise, potential for fuel spills and increased traffic not to mention impacts on property values.

In recent years residents in this growing community have taken steps to protect their neighborhoods and property values with local option zoning, however, they are powerless to protect themselves from outside their immediate boundaries and rely on the Planning Commission to do so.

Operation in the water table not only has the potential to impact quantity of drinking water but pollution from fuel spills has the potential to contaminate that water. While water wells to assess the water table have been put in place on the property no mention has been made of monitoring for a potential pollution plume nor to maintain this monitoring beyond the life of the project. Any permitted project should include not only such monitoring but a financial bond that would mitigate any damage caused to not only the handful of wells in close proximity but property owners in the entire area. The \$80,000 bond suggested is far short of the millions of dollars of potential impacts to nearby residents and does not address property values nor clean-up in the case of potential spills.

Ponding and lake front property is often used as an excuse to leave deep steep sided borrow pits instead of reclamation from mining. These pits do not provide the natural vegetation and associated wildlife of natural lakes. Such pits are a hazard to children and wildlife who enter such water with steep drop offs (I lived near such pits as a child and remember the hazards). I am opposed to this proposed end plan.

The application refers to limiting crushing of materials during the middle of the night yet allows for excavation around the clock. From this same location a number of years ago operations continued into early morning hours (not from crushing but from heavy equipment use). This noise impacted my location approximately a third of a mile away. Other long term residents can attest to this disturbance that made sleeping near impossible. They can also attest to working with the operator of a new gravel pit in our area over 20 years ago who agreed to limiting hours of operation to protect the neighborhood. There should be no extraction or heavy equipment operations prior to 07:00 AM nor after 07:00 PM in a residential neighborhood. No operations on Sundays were even agreed to by this operator and written into the permit.

Last, I would like to address the short notice given to residents to respond to this application. Less than three weeks from date of notification (approximately 2 weeks from date of letter being received to written comment closure) is inadequate for residents to assess and comment on the many potential issues this application presents.

Sincerely,

David Athons

36655 River Hills Drive, Kenai AK



Linvid Donata + adonataist@@ggwa+ coma

# modification to PC2014-20 36498 Virginia Street, Sean Code...Attention Betty Click

a musuage

David Donald <ddonald4488@gmail.com> To: rraidmae@kbp.us Thu, Sep 5, 2024 at 5:48 PM

I live at 47425 Augusta National Road therefore live within half a mile radius of the above mentioned gravel pit. I have a well and have owned this property since 1987.

I am against anyone digging in the ground water.

If this is passed there should be safe guards put in place and a montering system put in place to protect all wells in the area.

IN the event of a disaster how much insurance will the operator be required to have? Will the borough have any responsibility in relief for the homeowners?

David N Donald 9-5-24



From:	mgrtotravel@aol.com
То:	Raidmae, Ryan
Subject:	<external-sender>Notice of Public Hearing, dated August 21, 2024. Meeting ID 907 714 2200</external-sender>
Date:	Thursday, September 5, 2024 10:29:48 PM
Attachments:	Borough"s notice of hearing - gravel pit.pdf

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

(Sent

9/5/24).

August 27, 2024.

Mr. Ryan Raidmae (Via Email Correspondence). Kenai Peninsula Borough, Planning Department

Subject: Notice of Public Hearing; Monday Sept 9, 2024. Re: SBC 2012 Parcel Number 05527001. Modification of operation to PC2014-20.

Dear Mr. Raidmae;

I am in receipt of notice dated August 21, 2024 for hearing scheduled September 9, 2024.

As an affected landowner, the sooner the application is posted (and possibly along with C21.29) so that one might learn more as well as make informed decision on the subjects at hand, namely:

1. Excavation in the water table and temporary localized dewatering.

2. Current similar operation(s) in this region, with inspection or <u>incident reports (if</u> any).

3. Safety protocols, including discharge of waste while **maintaining integrity from** ground water contamination.

4. Would future wells now have to be deeper out of necessity? At what cost to landowner and future homeowners?

5. Lack of financial responsibility. Who really owns this particular operation in the event of any fall outs?

6. What monitoring system would suffice, and at whose expense?

7. What amount of bond would be sufficient toward indemnifying and enabling the Borough in the event of a fall out? While

one may not readily have available the statutes and regulations differentiating State mining and dredging on private land,

it stands to reason that **unreasonable and unknown risk** (especially where there were apparent concerns in the past) calls

for bonding. How much bonding would have to be commensurate with the exposure as in this case. A **\$50mil bond** might

be in order or enough to provide a water system (or systems) to the affected community (or communities) in the event of a fall out.

8. <u>Application, (Mandatory) Procedure and Requirements</u> for consideration of applicant entity:

The application is forth coming, hence making it difficult to comment or make an informed decision.

until then.

9. <u>Meeting set back requirements</u>, or maintaining a justifiable buffer does not appear evidenced or feasible, given the

apparent width of the pit. It might be helpful to the operator as well as the public for this to be clarified.

10. Basis for consideration of application as related to the **wells in operation**, and the mandated distance.

a) It is important to call out that the pit is embedded in a residential zoned district,

b) Approved new subdivisions (Kenai Wellness and Sunville Acres Addition) predate this application by the gravel pit.

c) Creating a lot (especially a residential one) is not exclusive of the creation of a well. A residential lot needs its well. Hence

these wells (as many as ten) are visibly in breach by the proposed gravel pit.

These lots have all the apparatus of on-going

<u>development such as gas and electric (applied for, and in progress before</u> <u>the application in question). I have payment receipts.</u>

Consideration should be given to above fact. Further, the subdivisions bordering Virginia Drive have been openly advertised in the

media and person to person under the representation of two real estate agencies - Real Brokers of Alaska and Keller Williams, AK.

To supplement these concerted efforts, giant banners have stood in place identifying the landmark of **residential development**;

"Ciechanski Residences". This action predates the application by the gravel pit operation. The lots were approved for residential

dwelling, meaning water wells in tow. Consequently the lots in such situation must be counted or regarded as wells "in existence".

In conclusion, objectivity and fair play would enable and compel us to reevaluate our discounting of active (and in-progress) lots and

development sites. We owe this duty toward supporting the very community that we strive to strengthen and promote in our

highly celebrated and published "Strategic Development Goals".

This submission is not relegating gravel pits or superseding development sites (especially active and in-progress ones).

We need gravel to build the houses we live in. This may sound like a case of the

"Chicken and the egg", but it is hardly so!

We should consider sparing the Chicken in this case! <u>THE LOTS SUPERSEED</u> THE NEW PROCEDURE BEING ADVOCATED.

<u>BY THE GRAVEL PIT</u>.

In conclusion, it is important to note that this comment is not an act of "jumping on a bandwagon of complainers".

We all have a lot at stake. In this scenario Consolidated Development has the most to lose in any event of a failed integrity

in or of operations. Hence; where and what are the safety and safeguards? Clarifying this might help prevent any unjustifiable

negative perception by homeowners or anxiety as may be related to this important subject at hand.

**It is important to me!** Thank you for your consideration and the opportunity for an input.

Respectfully,

*Ray Oyemi* Consolidated Development & Mgmt., LLC.

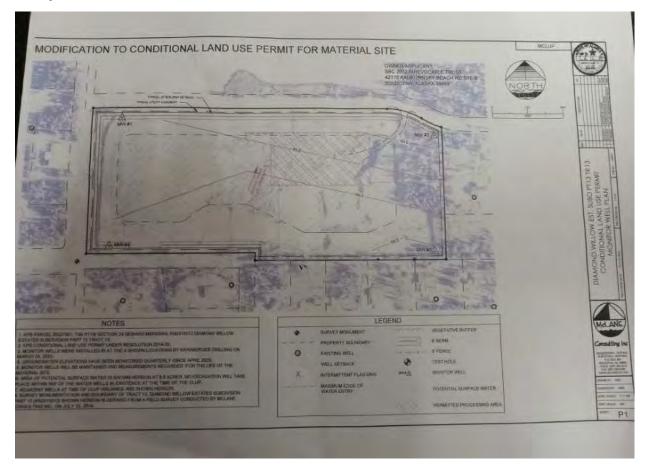
From:	<u>Aaron Agosti</u>
To:	Raidmae, Ryan
Subject:	<external-sender>Virginia dr. Conditional land use modification</external-sender>
Date:	Monday, September 9, 2024 2:17:45 AM

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.

#### Sir/Ma'am,

I am writing in regards to the work request on the Virginia Drive gravel pit. This just came to my attention yesterday and I wanted to voice my concern. As someone who grew up down Virginia Drive, and currently have family residing there, I feel this development could be detrimental to areas in its immediate surroundings along with others near by. I am also on the HOA board for the Even lane community well, and after looking at maps on surrounding water tables, feel there could be a significant potential for contamination to the water table not only for the Virginia Drive residence, but also other outlining neighborhoods with water tables adjacent. Given these concerns, I respectfully request that comprehensive environmental impact studies be conducted before any further work is approved in this area. Thank you for considering my concerns, and I appreciate your attention to this matter.

#### -Aaron Agosti



Law Offices Of **ROBERT K. REIMAN** P.O. Box 201271 Anchorage, Alaska 99520 (907) 748-1132 reiman@alaska.net

September 8, 2024

Planning Commission Kenai Peninsula Borough Attn: Ryan Raidmae 144 N. Brinkley Street Soldotna, AK 99669-7520

BY HAND-DELIVERY rraidmae@kpb.us

Re: Application for modification of CLUP by SBC 2012 Irrevocable Trust LLC New Business Item on Agenda for September 9, 2024

Dear Commissioners:

This letter is submitted as additional written testimony at the request of and on behalf of Consolidated Development & Management, LLC, owner of adjacent property within the blue line on the attached Exhibit A. This additional testimony is required because of the complete failure of the staff to disclose or address Consolidated's ongoing development efforts on the property directly to the North and adjoining the site of the proposed amended CLUP. Consolidated is also the owner of the real property adjoining the site to the East.

As can be seen from the map attached as Page 150 (E4-2) to the meeting agenda, the property immediately to the North of the subject property is a part of a R-1 local area zone that borders the property of three sides. Consolidated recently replatted that property to the North from a large parcel and is presently pursuing development of that property. The lots highlighted in yellow on Exhibit A are accessible from Virginia Drive and currently have easy access to electric power. It should be noted that Consolidated was not allowed to access its property directly from Ciechanski Road due to traffic considerations, but was required by the Planning Department to dedicate and construct an access road as a condition to development of those lots.

Consolidated's property is now on the KPB tax roles as individual lots and is being taxed as such. In total, Consolidated owns real property adjacent to the property at issue here that is tax assessed at \$1,747,600, in 2024, resulting in property taxes payable to the KPB totaling \$15,992.24. Presently, Consolidated has yet to construct the necessary road access to 24 of the 37 lots owned (unconstructed roadways are highlighted as green). His current plan is to develop residential homes on 9 of the lots located on Virginia Drive (as identified on Exhibit A in yellow) to fund the development of the roads and utilities, which will significantly increase the tax valuation of the property. Ultimately, when fully developed, the tax valuation on Consolidated's 34 lots will be in the neighborhood of \$10,000,000 in property valuation or more. By comparison, the property for which the CLUP is sought in currently \$82,500, which generated 2024 real property taxes for the

Letter to KPB Planning Commission September 8, 2024 Page 2 of 5

borough in the amount of \$758.38. Granting this application for a CLUP will not result in any appreciable additional taxes. The Planning Commission should take note of the fiscal effect to the Kenai Peninsula Borough of allowing this amended CLUP and thereby frustrating Consolidated's development plans.

As a preliminary matter to its comments on the proposed CLUP, Consolidated objects to the approval of this application at this present time and would request any consideration of this application be tabled for at least 90 days. It is difficult, if not impossible, for Consolidated to make any comprehensive comments absent full disclosure to the public of the information required of the applicant in its application pursuant to KPB Code 21.29.050(A). Specifically, there is insufficient data provided concerning the potential impacts of the dewatering on the local groundwater. Subsection (4)(d) provides as follows:

(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 <u>the operator provides a statement under seal and supporting data from a duly licensed and qualified independent 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.</u>

The identity, qualifications and statement of the engineer is not provided. The public cannot evaluate whether the engineer makes the statement with any qualifications, or on what factual basis this conclusion was made. Nor can the public have that data reviewed by another engineer. Staff merely states that a statement from an engineer was provided. Subsection (5) states:

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 quarterly intervals by a duly licensed and qualified independent civil engineer or professional hydrogeologist, for at least four quarters 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.

Letter to KPB Planning Commission September 8, 2024 Page 3 of 5

Again, the information made available to the public does not include (1) the certification of an engineer, (2) the basis of recommendations of the engineer or hydrologist as to the location of monitoring wells, or (3) the data establishin the groundwater elevation and flow direction and rate for four quarterly periods prior to this date. Further, staff merely cites this requirement has been met, without any means for the public to evaluate the substance of that compliance. The public has the right to review and evaluate this data with the services of an independent engineer or hydrologist prior to any public hearing on this application.

Consolidated makes the following specific comments on the staff's report and its failure to properly consider the effect of the CLUP and the required additional waivers on Consolidated and its development.

<u>Processing</u>. Per KPB Code 21.29.050(A)(3) a gravel extraction operation must maintain a buffer of 300 feet between its processing operations and adjoining properties. The KPB staff provides for such a buffer between the processing operations proposed in the application to the East, West and South, but allows a reduced buffer of less than 150 feet from Consolidated's property to the North. The rationale for doing so is apparently that such a waiver of the 300 feet buffer was requested in the application. Consolidated objects to this reduced buffer as it will unreasonably interfere with its development plans. It is noted that the required 300 feet buffer from other property is typically required regardless of any specific current use being made of the property. The approximate location of the 300 feet buffer from Consolidated Exhibit B.

<u>Dewatering and excavation in the groundwater</u>. A CLUP generally doers not allow for excavation in the groundwater or dewatering. This requires a specific waiver of the Planning Commission. Consolidated objects to this waiver being granted.

The map of the excavation and dewatering plan on page 159 of the Commissions packet shows the direction of the groundwater flow as being in a generally North direction toward the residential development of Consolidated. It also shows that monitoring wells are planned at the corners of the property, which is wholly inappropriate given the direction of the water flow which will be interrupted. Since excavation into groundwater is planned within less than 150 feet of the Consolidated's property boundary, and the on-site well locations required for development of Consolidated's residential lots will be within 300 feet for at least two if not more lots, the proximity to its property of the excavation into groundwater is unacceptable to Consolidated. This is especially true given that there are no monitoring wells within the direction of the water flow from the proposed excavation.

The staff also states that the excavation into the groundwater shall not be allowed to penetrate any aquifer confining layer, but it is unclear whether there has been any analysis of the existence or location of any such layer. Merely prohibiting such an action does not assure that it will not occur. In such an event, the cost to adjacent landowners and to future landowners could be extreme.

Letter to KPB Planning Commission September 8, 2024 Page 4 of 5

Contamination of the groundwater is also a potential risk that is not addressed in some form given the proximity to residential development and drinking wells. At a minimum adequate monitoring wells should be established and regularly tested so that any contamination can be addressed early. Contamination can be from the form of petroleum lubricants from equipment or fuel. The applicant need have a fuel spill response plan in place, with sufficient absorbents on hand to address any spill that could occur. Current KPB regulations only prohibit discharge of such petroleum hydrocarbons, but require no monitoring or spill response plan.

Bonding. KPB Code 21.29.050(A)(4)(d) requires bonding for damages that the dewatering operation may cause. In this case the staff proposed an \$80,000 bond to provide security to the 8 surrounding wells. The KPB regulations only require an adequate bond be provided. The KPB staff does not explain how they arrived at the figure of \$80,000. Consolidated would submit that this amount is inadequate, unless the applicant has provided other proof of financial responsibility for damages in that may result in excess of that amount. It is noted that adjacent landowners would have a right of action for damages to the aquifer regardless of any requirements imposed by KPB Code or bond provided. However, absent the fiscal responsibility of the operator of the gravel extraction operation, such a cause of action is illusory.

<u>Reclamation bonding</u>. In addition to the bonding that would be necessary to protect adjacent landowners from damage to the aquifer, the reclamation bonding should be reviewed as consistent with current costs that would be anticipated with reclamation of the property that has an additional 400,000 yards of material removed over the next five years as proposed.

<u>Compliance history</u>. One other issue is the compliance history of the applicant. This is not addressed by the staff, and Consolidated does not have personal knowledge of that history. Given the importance of the aquifer for residential drinking water in the area, any prior failure to abide by permit conditions should be, if not disqualifying, then cause for a much higher scrutiny and performance standard being required. The applicant and the Planning Commission are entitled to full disclosure by staff of the compliance history of the applicant, its principal(s) and its predecessor(s).

<u>Conclusion</u>. The fact of the matter is that the property for which the CLUP is proposed is too small for a gravel extraction operation in a residential area when that operation requires additional waivers to allow the operator to invade the groundwater resource and conduct dewatering and material processing operations. The impact on adjacent property owners of the dust, noise and traffic that will result, in addition to the risk of affecting the groundwater, is devastating to nearby property values. KPB Code 21.29.040 states as follows:

## 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.

Letter to KPB Planning Commission September 8, 2024 Page 5 of 5

> 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 properties;
- 3. Minimizes off-site movement of dust;
- 4. Minimizes noise disturbance to other properties;
- 5. Minimizes visual impacts; and
- 6. Provides for alternate post-mining land uses.

While the KPB Code limits the requirements that the Planning Commission may impose, there is no requirement that the KPB grant a permit that impacts groundwater. It is the exception to the general rule. The facts of this case, including the location of the property surrounded in large part by a R-1 zoned property, mitigate against the Planning Commission granting any waivers of the processing setback requirements or of the prohibitions of dewatering and excavation in groundwater generally applicable. The value of the adjacent property will be adversely affected to the detriment of its owners and the Kenai Peninsula Borough. This is not a remote operation with large buffers, and should not be treated as such.

While Consolidated certainly knew of the existence of a gravel operation near its residential development, it also relied on the fact that the available gravel resource had largely been mined, and anticipated that the property would be reclaimed in accordance with the existing CLUP. For staff and this Commission to ignore the investment made and ongoing development plans of Consolidated would be grossly unfair and a violation of its duty to protect the interests and expectations of all property owners.

Thank you on behalf of my client for your consideration of this written testimony in your deliberations.

Best regards,

bert K Reim

Encl. Exhibits A and B

cc: client



Exhibit A

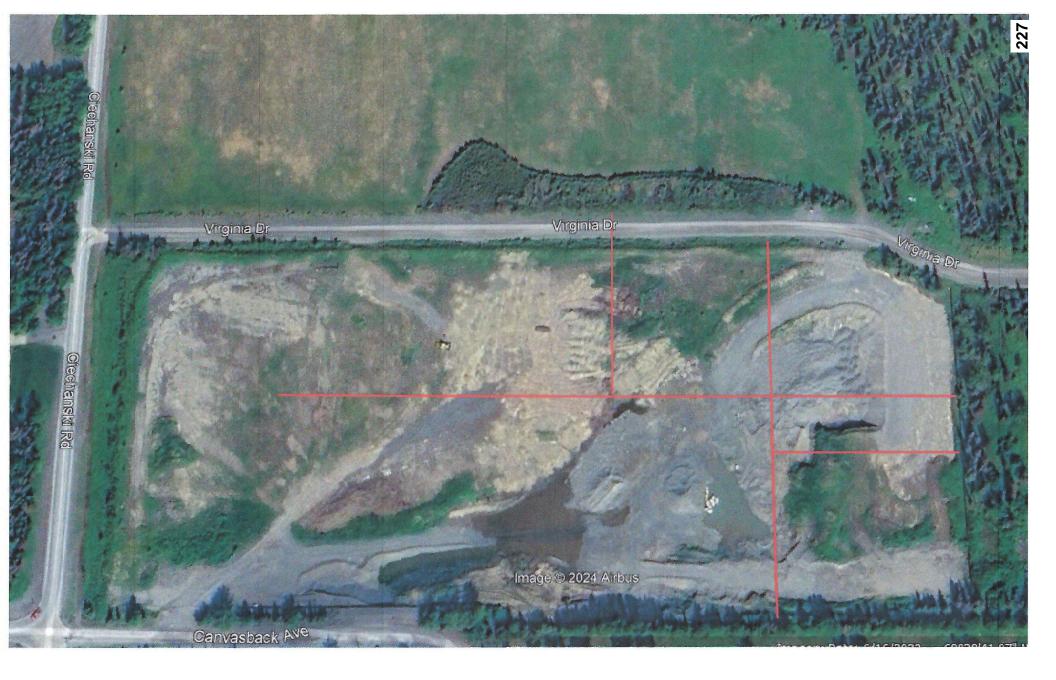


Exhibit &

From:	<u>M Henry</u>
To:	Raidmae, Ryan
Subject:	<external-sender>public comment for hearing on Nov 18th, gravel pit at 36498 Virginia Dr</external-sender>
Date:	Thursday, November 7, 2024 8:55:32 PM

**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.

My name is Michael Henry, and I want to submit comments for the hearing on Nov. 18th regarding the gravel pit application to excavate below the water table. I live in the Diamond Willow Estates subdivision, on Lexington Court. I will not be able to attend in person, and may not be able to attend the meeting via Zoom, because I will be traveling for work during the week of this meeting.

I am very concerned about an excavation as large as the gravel pit, excavating into the water table so close to the Kenai River, in a residential area. I'm concerned that doing this could destabilize the ground immediately around the area of the gravel pit, especially between the pit and the river, negatively impacting any houses. It would certainly involve release of toxins from the gravel pit into the water, which would then be released back into the Kenai River which is CRITICAL habitat for marine fisheries and mammals.

This could also negatively impact the water table in our area, which could affect our wells, and circulate toxins into our drinking water.

Just some initial research I did validated the above initial concerns I had. The little bit of research I did revealed the following:

1) Excavating through the water table near a river can lead to significant impacts like increased groundwater inflow into the excavation pit, causing instability in the excavation walls, potential flooding, disruption of the natural groundwater flow, and potentially lowering the water level in the river itself, especially if large volumes of water are pumped out to manage the excavation site.

2) <u>dewatering pumps</u> with large air-handling capacity assist in most water removal across construction sites. Once industries finish dewatering construction sites, **they release the water into lakes, ponds, and other bodies with lower groundwater levels.** (Ironclad environmental Solutions)

3) If you're not careful about groundwater disposal, the pumped water may end in a stream or a waterbody. Water at excavation sites may contain waste and toxins, severely affecting the local ecosystem of a sensitive area. Stagnant water pools are also a breeding ground for mosquitoes and other disease-carrying pests. (Ironclad environmental Solutions)

4) According to USGS; If water is withdrawn from the ground at a faster rate that it is replenished, either by **infiltration** from the surface or from **streams**, then the water table can become lower, resulting in a "cone of depression" around the well. Depending on geologic and hydrologic conditions of the aquifer, the impact on the level of the water table can be short-lived or last for decades, and it can fall a small amount or many hundreds of feet. Excessive

pumping can lower the water table so much that the wells no longer supply water—they can "go dry."

In this case, it's not just a well being dug, but actually excavating beyond the water table, potentially having very significant negative affects for all the residential wells in the area, if the excavation penetrates the impermeable confining layer of the water table.

I request this modification to allow excavating below, and/or IN the water table by DENIED.

Sincerely

Michael and Molly Henry

Tim & Elaine Agosti 36894 Virginia Drive Kenai, AK 99611 Mobile: 907-240-4401

November 7, 2024

Ryan Raidmae rraidmae@kpb.us Kenai Peninsula Borough Planning Commission 144 North Binkley Street Soldotna, AK 99669

Reference : Application requesting modification to PC2014-20 to allow excavation in the water table and for temporary, localized de-watering

We are homeowners at 36894 Virginia Dr (lots 14 and 15, Diamond Willow Estates), and are <u>strongly opposed</u> to this application. We have lived here for over twenty six years and raised five boys in this neighborhood. We chose this area because of its rural, family friendly character and that it was not a "trashy" subdivision. The single family homes in this subdivision were a key decision factor. Additionally, we stopped a similar action many years ago because of the threat to the water table and the water wells in the area. We do NOT want this to happen!

This action also is a first step in an attempt to weaken our Diamond Willow HOA and change our R1 local option zoning.

We respectfully request that the planning commission *reject* this proposed application

Thank you.

Respectfully,

Tim Agosti

Tim Agosti Elaine Agosti

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

# KPB 21.29 Conditional Land Use Permit Application

For a Sand, Gravel or Material Site

### I. APPLICANT INFORMATION

Applicant		Landowner SBC 2012 Irrevocable Trust			
Address 42115 Kalifornsky Beach Road		Address 42115 Kalifornsky Beach Road			
City, State, Zip Soldotna, Alaska 99669		City, State, Zip Soldotna, AK 99669			
Telephone Cell		Telephone Cell 398-737			
Email_seancude@yahoo.com		EmailEmail_	oo.com		

#### II. PARCEL INFORMATION

KPB Tax Parcel ID# 05527098&05527050,51&5: Legal Description Diamond Willow Estates Subd. Part 11 Tr A2A,

Diamond Willow Estates Part 10 Lot C, D & E

If permit is <u>not</u> for entire parcel, describe specific location within parcel to be material site, e.g.; "N1/2 SW1/4 NE1/4 – 10 acres", or "5 acres in center of parcel".

### III. APPLICATION INFORMATION I "Check" boxes below to indicate items included.

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

Site Plan, to scale, prepared by a professional surveyor (licensed and registered in Alaska) showing, where applicable:

- parcel boundaries
- location of boundary stakes within 300 ft. of excavation area (to be in place at time of application)
- proposed buffers, or requested buffer waiver(s)
- proposed extraction area(s), and acreage to be mined
- proposed location of processing area(s)
- all encumbrances, including easements
- points of ingress and egress
- anticipated haul routes

Site Plan Worksheet (attached)

- location/depth of testholes, and depth to groundwater, if encountered
   location of all wells within 300 ft. of parcel boundary
- Iocation of water bodies on parcel, including riparian wetlands
- surface water protection measures
- north arrow and diagram scale
- preparer's name, date and seal

Reclamation Plan (attached) and bond, if required. bonding requirements pursuant to AS 27.19.050 Bond requirement does not apply to material sites exempt from

<u>Please Note</u>: If a variance from the conditions of KPB 21.29 is requested, a variance application must be attached. (A variance is NOT the same thing as a waiver.)

#### IV. CERTIFICATION STATEMENT

The information contained on this form and attachments are true and complete to the best of my knowledge. I grant permission for processing the permit application.

oplicant

7/25/14

Date

Landowner (required if not applicant)

Date

Revised 10/26/12 Page 34

# Site Plan Worksheet for Conditional Land Use Permit Application

Use additional space provided on next page, if necessary. Indicate item # next to comments.

Applicant Sean Cude	Owner SBC 2012 Irrevocable Trust
KPB Tax Parcel ID # 055	527098 & 05527050, 51 & 5 Parcel Acreage 19.36
	ed (excavation <u>plus</u> stockpiles, berms, etc.) <u>4.8</u> acres that apply):
	Il that apply): excavation processing other
	y KPB 21.29.050.A.2 (check all types and directions that apply)
<ul> <li>✓ 50 ft. of natural or improv</li> <li>✓ minimum 6 ft. earthen be</li> <li>✓ minimum 6 ft. fence</li> <li>✓ other</li> </ul>	
5. Proposed depth of excavation:	20'(el. 65) ft. Depth to groundwater: 22' (el. 63) ft.
6. How was groundwater depth d	letermined?test hole in existing excavation floor
	he water table will be requested in the future: Yes × No
	erial, including overburden, to be mined: <a> </a>
9. Is parcel intended for subdivision	on? Yes X No
). Expected life span of site? 20	years
1. If site is to be developed in pha	ases, describe: the excavation acreage, anticipated life span,
	phase: (use additional space on page 4 if necessary) side of the site has previously been mined and is being incrementally
reclaimed by the current owner. Phase	sing from west ot east and north to south is proposed to demonstrate
orderly development and reclamation	n of the site. Seeding will be applied as necessary each season to areas
that achieve final grade to minimize	erosion and dust.
<ol> <li>Voluntary permit conditions pro operation, etc.)</li> </ol>	oposed (additional buffers, dust control, limited hours of
A	-
В	

Revised 10/26/12

C. .

# Material Site Reclamation Plan for Conditional Land Use Permit Application

- All disturbed land shall be reclaimed upon exhausting the material on-site, so as to leave the land in a stable condition.
- 2. All revegetation shall be done with a "non-invasive" plant species.
- 3. Total acreage to be reclaimed each year: up to 4 \_\_\_\_\_acres
- 4. List equipment (type and quantity) to be used in reclamation:

Dozer, loader, grader

5. Describe time schedule of reclamation measures:

Reclamation will be completed annually before growing season ends (September).

Seeding will be applied as necessary each season to the areas that achieve final grade to minimize erosion

and dust

6. The following measures must be considered in preparing and implementing t he reclamation plan, although not all will be applicable to every plan – although not all will be applicable to every plan – although not all will be applicable to every plan – although not all will be applicable to every plan – although not all will be applicable to every plan – although not all will be applicable to every plan – although not all will be applicable to every plan – although not all will be applicable to every plan – although not all will be applied by the every plan – although not all will be applied by the every plan – although not all will be applied by the every plan – although not all will be applied by the every plan – although not all will be applied by the every plan – although not all will be applied by the every plan – although not all will be applied by the every plan – although not all will be applied by the every plan – although not all will be applied by the every plan – although not all will be applied by the every plan – although not all will be applied by the every plan – although not all will be applied by the every plan – although not all will be applied by the every plan – although not all will be applied by the every plan – although not all will be applied by the every plan – although not all will be applied by the every plan – although not although not all will be applied by the every plan – although not although not

Topsoil that is not promptly redistributed to an area being reclaimed will be separated and stockpiled for future use. This material will b e protected from erosion and contamination by acidic or toxic materials and preserved in a condition suitable for later use.

The area will be backfil led, 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.

Sufficient quantities of stockpiled or imported topsoil will be spread over the reclaimed area to a depth of four inches to promote nat ural 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 shall be reasonably free from roots, clods, sticks, and bran ches greater than 3 in ches in diameter. Areas having slopes greater than 2:1 require special consideration and design for stabilization by a licensed engineer.

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.

Peat and topsoil mine operations shall ensure a minimum of two inches of suitable growing medium is left or replaced on the site upon completion of the reclamation activity (unless otherwise authorized).

Ponding will be used as a reclamation method. (Requires approval by the planning commission.)

Revised 10/26/12

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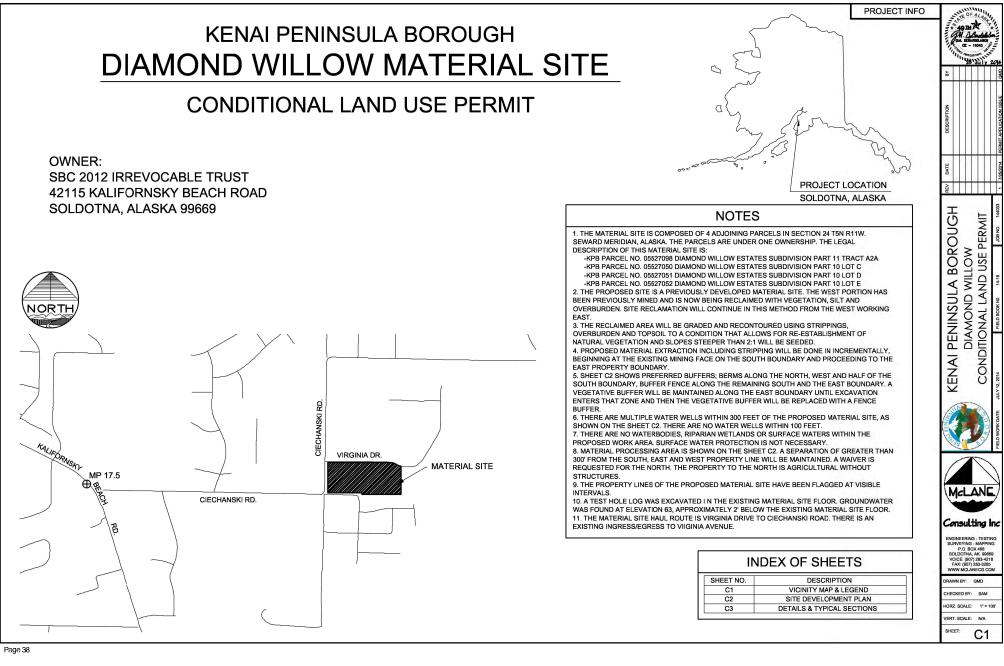
## ADDITIONAL APPLICATION COMMENTS

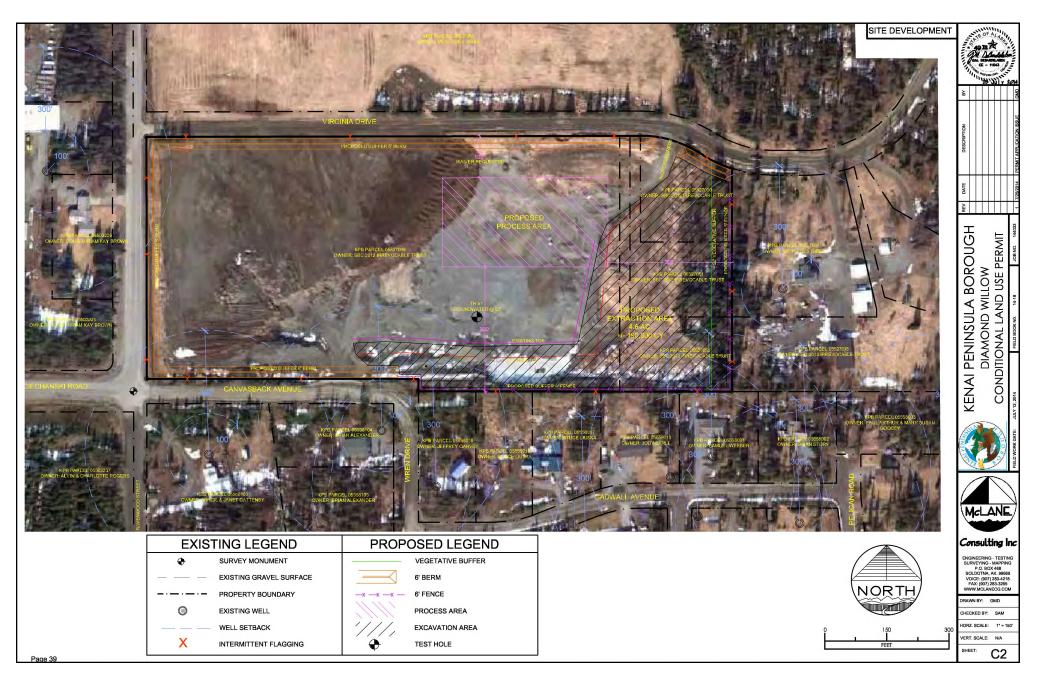
(Please indicate the page and item # for which you are making additional comments.)

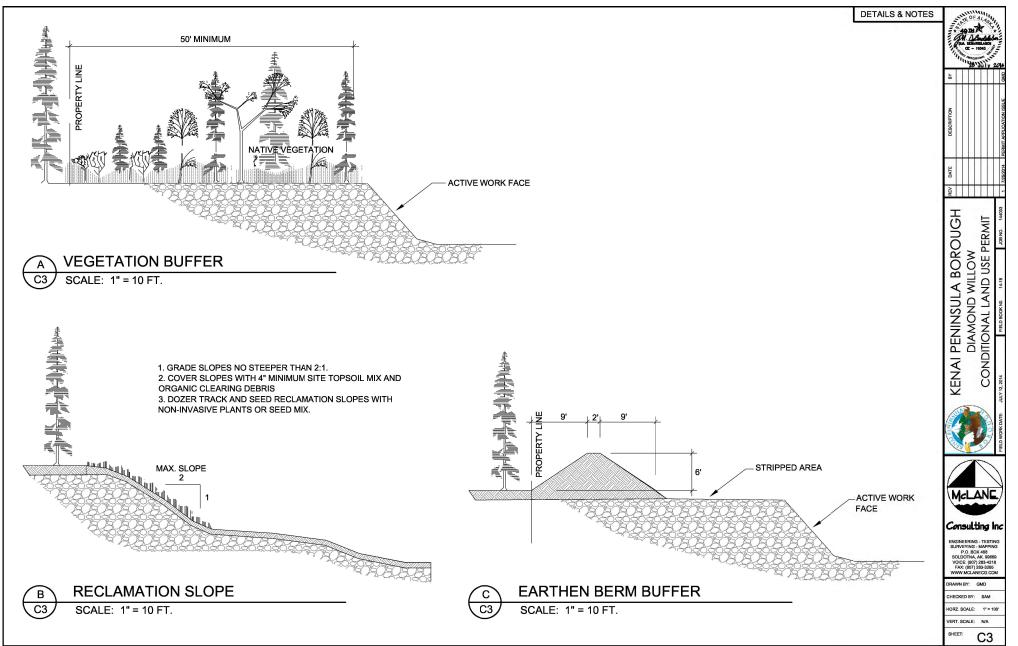
The current owner has cleaned up, dressed and graded the site since purchase. They have also backfilled the previously

exposed groundwater areas with clean gravel fill. Historical photos are provided for reference.

Revised 10/26/12 Page 37 37







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#### AGENDA ITEM F. PUBLIC HEARING

 Resolution 2014-20; An application for a conditional land use permit for material extraction on a parcel in the Kalifornsky area.

STAFF REPORT

PC MEETING: August 25, 2014

Applicant: Sean Cude

Landowner: SBC 2012 Irrevocable Trust

Parcel ID#: 055-270-98, 055-270-50, 055-270-51, and 055-270-52

- Legal Description: Tract A2A, Diamond Willow Estates Subdivision Part 11 according to Plat 2012-93, Kenai Recording District, Third Judicial Court, State of Alaska; and Lots C, D, & E, Diamond Willow Estates Subdivision Part – 10 according to Plat 2008-135, Kenai Recording District, Third Judicial Court, State of Alaska.
- Location: The extraction area will be on the south side of Virginia Drive, east of Ciechanski Road, and north of Ravenwood Subdivision.

BACKGROUND INFORMATION: The applicant wishes to obtain a permit for sand, gravel, and peat extraction on 19.36 acres within the parcels listed above. Material extraction has taken place on what is now Tract A2A in the past and much of the material on that site has been exhausted with the exception of the south east portion of the parcel. In the past material extraction has also taken place on portions of what are now Lots C, D, & E. Aerial photos from 1985 and 1996 shows that excavation on the subject property was mostly limited to what is now Lot E. Much of the proposed new extraction will take place on these three lots.

Ordinance 98-33, adopted February 16, 1999, required that all existing material sites apply to be registered as a prior existing use prior to January 1, 2001. A couple of years later, planning staff discovered that excavation was occurring on this site without a permit and without being registered as a prior existing use. The planning commission held a public hearing on May 10, 2004 for a conditional land use permit for an 18 acre excavation area on the property that is now the subject of this application. The application was denied with the following findings:

- 1. It appears the site is being backfilled with garbage supported by pictures of septic pipes, crushed septic tanks, which were mixed with the gravel.
- Testimony during the public hearing was that the owner/operator was backfilling with garbage, including used septic pipes and used and deteriorating septic tanks.
- The owner testified that he was not aware of the Kenai Peninsula Borough material site ordinance.
- 4. Virginia Drive appears to be rutted consistent with gravel truck usage.
- 5. A photograph of an oil spill near several drums appears to be consistent with leaking barrels.
- The applicant's statement to reclaim as a hay field does not appear to be reasonable based on information supplied to the commission.

A new application was submitted and the planning commission held a public hearing on September 13, 2004 for a conditional land use permit for the same 18 acre excavation area. The staff report for that application indicated that the applicant willfully operated the material site as if it was permitted between May 10, 2004 and September 2, 2004. The application was again denied. The current applicant purchased the property on December 20, 2012.

#### KPB 21.29.030(A) states:

... The planning director may determine that certain contiguous parcels are eligible for a single permit. ...

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The planning director has reviewed this application and has determined that these four parcels are <u>not</u> eligible for a single permit. He has recommended to the applicant that he submit a new plat that combines these four parcels into just one parcel and have the final plat recorded prior to issuance of the Conditional Land Use Permit. This decision was based upon the inability to maintain access to Lots D and E, which are platted as flag lots. And the wastewater disposal statement on the plat for Lots C, D, & E, that states:

Soil conditions, water table levels, and soil slopes in this subdivision have been found suitable for conventional onsite wastewater treatment and disposal systems serving single family of [*sic*] duplex residences, and meeting the regulatory requirements of the Kenai Peninsula Borough. ...

The applicant is willing to re-subdivide the four parcels into one parcel, but would like to ensure that the CLUP would be approved before incurring the cost of re-subdividing.

The submitted site plan indicates that the material site haul route is Virginia Drive to Ciechanski Road. There is an existing driveway onto Virginia Drive, which is a Borough maintained road. The site plan and application indicates that a 6-foot berm will be placed along the north property line adjacent to Virginia Drive, the west property line along Ciechanski Road, and along a portion of the south property line along Canvasback Avenue. A 6-foot fence will be placed along the remainder of the south property line adjacent to Ravenwood Subdivision. Along the east property line, 50 feet of undisturbed natural vegetation will be maintained until excavation takes place in that area the vegetative buffer will then be replaced with a 6-foot fence.

The applicant's proposed depth of excavation is up to 20 feet below the natural existing grade. The application states that a test hole was excavated in the existing material site floor and groundwater was found at approximately 2 feet below the existing material site floor. The applicant indicates that material processing will take place on the site. All processing will be located greater than 300 feet from the west, south, and east parcel boundaries. The applicant is requesting a waiver to allow processing up to 100 feet from the north parcel boundary. KPB 21.29.050(A3) states:

... 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 property at the time.

The applicant has stated that the adjacent land to the north is agricultural. The Assessor's office classifies it as vacant land.

The applicant anticipates a life span of 20 years for the site and that the annual excavation quantity will be less than 50,000 cubic yards of material. The submitted application indicates that approximately 14 acres of the west side of the site has previously been mined and is being incrementally reclaimed. Phasing from west to east and north to south is proposed to demonstrate orderly development and reclamation of the site. Reclamation will be completed annually before growing season ends. Seeding will be applied as necessary each growing season to areas that achieve final grade to minimize erosion and dust.

PUBLIC NOTICE: Public notice of the application was mailed on August 5, 2014 to the 284 landowners or leaseholders within one-half mile of the subject parcel. Public notice was sent to the postmaster in Kenai and Soldotna requesting that it be posted at these Post Offices. Public notice of the application was published in the August 14, 2014 & August 21, 2014 issues of the Peninsula Clarion.

KPB AGENCY REVIEW: Application information was provided to pertinent KPB staff and other agencies on August 7, 2014.

## ATTACHMENTS

- Attachment A: Conditional Land Use application with site plan
- Attachment B: Aerial maps
- Attachment C: Area land use map
- Attachment D: Area ownership map
- Attachment E: Public Notice
- Attachment F: Plat KN 2008-135

Attachment G: Agency comments

Attachment H: Public comments

FINDINGS OF FACT

- KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough.
- 2. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
- On July 25, 2014 the applicant, Sean Cude, submitted to the Borough Planning Department a conditional land use permit application for KPB Tax Parcel Numbers 055-270-98, 055-270-50, 055-270-51, and 055-270-52, which are located within the rural district.
- KPB 21.29 provides that a conditional land use permit is required for material extraction that disturbs more than 2.5 cumulative acres.
- The proposed cumulative disturbed area within the parcel is approximately 19.36 acres, including existing disturbed areas.
- KPB 21.29.030(A) states the planning director may determine that certain contiguous parcels are eligible for a single permit.
- The planning director has reviewed this application and has determined that these four parcels are not eligible for a single permit.
- 8. Tax Parcel Numbers 055-270-50, 055-270-51, and 055-270-52 are located within Diamond Willow Estates Subdivision Part – 10 which states, in part, "Wastewater disposal Soil conditions, water table levels, and soil slopes in this subdivision have been found suitable for conventional onsite wastewater treatment and disposal systems serving single family of [sic] duplex residences, and meeting the regulatory requirements of the Kenai Peninsula Borough."
- Tax Parcel Numbers 055-270-51 and 055-270-52 are configured as flag lots. The proposed excavation would not be compatible with the designed access for these lots.
- A new plat that combines these four parcels into just one parcel would eliminate Tax Parcel Numbers 055-270-50, 055-270-51, and 055-270-52, thus eliminating the possibility of a buyer of these lots relying on the information on the plat.
- 11. A new plat that combines these four parcels into just one parcel would make the new parcel eligible for a conditional land use permit for a material site.
- 12. To meet material site standard 21.29.040(A1), the proposed activity must protect against aquifer disturbance by maintaining a 2-foot vertical separation from the seasonal high water table and by ensuring that no material extraction takes place within 100 horizontal feet of any existing water source.
- An excavated test hole in the existing material site floor found groundwater at approximately 2 feet below the existing material site floor.
- 14. The proposed excavation will be to the same elevation as the existing material site floor.
- 15. The site plan indicates that there are no known wells located within 100 feet of the proposed excavation area.
- The site plan indicates that there are several wells located within 300 feet of the proposed material site.
- To meet material site standard 21.29.040(A2), the proposed activity must be conducted in a manner to protect against physical damage to adjacent properties by complying with the required permit conditions of KPB 21.29.050.
- To meet material site standard 21.29.040(A3), the proposed activity must be conducted in a manner which minimizes the off-site movement of dust by complying with required permit condition KPB 21.29.050(10), Dust Control.
- 19. Ingress and egress at the material site will be Virginia Drive which is a Borough maintained road.
- 20. To meet material site standard 21.29.040(A4), the proposed activity must be conducted in a

manner which minimizes noise disturbance to other properties by complying with permit condition KPB 21.29.050(2), Buffer Zone; KPB 21.29.050(3), Processing; and KPB 21.29.050(11), Hours of Operation.

- 21. The applicant indicates that material processing will take place on the site. As indicated on the submitted site plan all processing will be located greater than 300 feet from the west, south, and east parcel boundaries and 100' from the north boundary, which adjacent to a large vacant parcel.
- To meet material site standard 21.29.040(A5), the proposed activity must be conducted in a manner which minimizes visual impacts by complying with the permit condition KPB 21.29.050(2), Buffer Zone.
- 23. The submitted site plan and application indicates that a 6-foot berm, 6-foot fence, or a 50-foot vegetated buffer will be maintained on all boundaries.
- The bonding requirement of KPB 21.29.050(12b) will apply to this material site if extraction in any one year exceeds 50,000 cubic yards of material.
- A public hearing of the Planning Commission was held on August 25, 2014 and notice of the meeting was published, posted, and mailed in accordance with KPB 21.25.060 and KPB 21.11.

#### STAFF RECOMMENDATION

Staff recommends that the Planning Commission approve the requested waiver allowing material processing to take place up to 100 feet from the north property line. Staff further recommends that the Planning Commission approve the conditional land use permit with listed conditions and adopt the findings of fact, subject to the following:

- 1. Filing of the PC Resolution in the appropriate recording district after the deadline to appeal the Planning Commission's approval has expired (15 days from the date of the notice of decision) unless there are no parties with appeal rights and after the recording of a plat designating the area contained in these four parcels as just one parcel containing approximately 19.36 acres.
- 2. The Planning Department is responsible for filing the Planning Commission resolution.
- 3. The applicant will provide the recording fee for the resolution to the Planning Department.

#### THE LAND USE AND OPERATIONS ARE DESCRIBED AND SHALL BE CONDUCTED AS FOLLOWS:

- A. An area currently known as KPB Tax Parcel Numbers 055-270-98, 055-270-50, 055-270-51, and 055-270-52. The total disturbed area within this area is up to 19.36 acres.
- B. Legal Description: Tract A2A, Diamond Willow Estates Subdivision Part 11 according to Plat 2012-93, Kenai Recording District, Third Judicial Court, State of Alaska; and Lots C, D, & E, Diamond Willow Estates Subdivision Part – 10 according to Plat 2008-135, Kenai Recording District, Third Judicial Court, State of Alaska.
- C. The applicant, Sean Cude, proposes to: 1. Extract gravel from the subject parcel; 2. Reclaim the site to a stable condition upon depletion of material.

#### PERMIT CONDITIONS

- 1. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
- 2. The permittee shall place and maintain a 6-foot berm along the north property line adjacent to Virginia Drive, the west property line along Ciechanski Road, and along a portion of the south property line along Canvasback Avenue; place and maintain a 6-foot fence along the remainder of the south property line adjacent to Ravenwood Subdivision; and maintain a minimum of 50 feet of undisturbed, natural vegetation between the excavation perimeter and the east property line until excavation takes place in that area, the vegetative buffer shall then be replaced with a 6-foot fence that shall be maintained.
- 3. The permittee shall maintain at least a 2:1 slope between the inner buffer zones and pit floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 30 days from the time of removal.
- 4. The permittee may not operate materials processing equipment within 300 feet of the west, south, or east parcel boundaries; or within 100 feet of the north boundary. Rock crushing equipment

shall not be operated between 10:00 p.m. and 6:00 a.m.

- The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
- The permittee shall maintain a 2-foot vertical separation from the seasonal high water table.
- The permittee shall not dewater either by pumping, ditching or any other form of draining unless an exemption is granted by the planning commission.
- 8. The permittee shall ensure that fuel storage containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.
- The permittee shall conduct operations in a manner so as not to damage borough roads as required by KPB 14.40.175, and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
- 10. The permittee shall notify the planning department of any further subdivision or return to acreage of this parcel. The planning director may issue a written exemption from the permit 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.
- 11. The permittee shall apply water or calcium chloride, as needed, on haul roads within the boundaries of the subject parcel.
- 12. The permittee shall reclaim the site as described in the reclamation plan for this parcel and as approved by the planning commission.
- 13. The permittee is responsible for determining the need for any other municipal, state or federal permits and acquiring the same. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits.
- 14. This conditional land use permit is subject to annual review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.25.090, the planning commission may revoke a permit issued pursuant to this chapter if the permittee fails to comply with the provisions of this chapter or the conditions of the permit. The planning director shall provide at least 30 days written notice to the permittee of a revocation hearing before the planning commission.
- Once effective, this conditional land use permit is valid for five years. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.

NOTE: Any party of record may file an appeal of a decision of the Planning Commission to the Board of Adjustment in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances, Chapter 21.20.250. A "party of record" is any person or government agency that provides oral or written testimony during the Planning Commission public hearing. Petition signers are not considered parties of record unless separate oral or written testimony is provided (KPB Code 21.20.210.A.6b1). An appeal must be filed with the Borough Clerk within 15 days of the notice of decision, using the proper forms, and be accompanied by the \$300 filing and records preparation fee. (KPB Code 21.25.100)

END OF STAFF REPORT

#### KENAI PENINSULA BOROUGH PLANNING COMMISSION ASSEMBLY CHAMBERS GEORGE A. NAVARRE ADMINISTRATION BUILDING 144 NORTH BINKLEY STREET SOLDOTNA, ALASKA 99669

August 25, 2014 - 7:30 P.M.

#### APPROVED MINUTES

#### AGENDA ITEM A. CALL TO ORDER

Vice Chairman Martin called the meeting to order at 7:30 p.m.

#### AGENDA ITEM B. ROLL CALL

Commissioners Present Paulette Bokenko-Carluccio, City of Seldovia JoAnne Collins, Anchor Point / Ninilchik Rick Foster, Southwest Borough Sandra Holsten, East Peninsula James Isham, Sterling Harry Lockwood, Ridgeway Blair Martin, Kalifornsky Beach Robert Ruffner, Clam Gulch / Kasilof Franco Venuti, City of Homer

With 9 members of a 13 member Commission in attendance, a quorum was present.

Staff Present Max Best, Planning Director Patti Hartley, Administrative Assistant Carrie Henson, E911 Addressing Officer Bruce Wall, Planner

Others Present Tim Agosti Dug & Karen Bundy Kim Cox Sean Cude Justin Evans **Dennis Gease** Scott Huff, Integrity Surveys Darlene Liuska Jeanette Maly Tim McGrady Sam McLane, McLane Consulting, Inc. Crystal Penrod Travis Penrod via Video Call Barbara Roberts Chris Wehr Kelly Wolf

# AGENDA ITEM C. APPROVAL OF REGULAR AGENDA AND ADOPTION OF THE CONSENT AGENDA

AGENDA ITEM C. CONSENT AGENDA KENAI PENINSULA BOROUGH PLANNING COMMISSION AUGUST 25, 2014 MEETING MINUTES

PAGE 1

- 1. Time Extension Request
  - a. Nikishka Subdivision Peak 2013 Addn. KPB File 2013-056; McLane/Peak Oilfield Location: On Curry Circle in Nikiski

#### STAFF REPORT

PC Meeting: 8/25/2014

This subdivision was approved on April 8, 2013, and approval was valid through April 8, 2014.

A final was submitted for review to the planning department on August 14, 2013. .

On behalf of the owner the surveyor is requesting a 1-year time extension on July 29, 2014 which will allow this plat to be finalized.

There have been no changes in the area that would affect this plat.

STAFF RECOMMENDATIONS: Extend preliminary plat approval for one year through August 25, 2015, subject to the following:

- 1. Copy of plat with a current utility review being submitted with the final plat.
- 2. Plat must comply with any subsequent changes to Kenai Peninsula Borough Code up to February 11, 2014.

An appeal of a decision of the Planning Commission may be filed to the Board of Adjustment in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances, Chapter 21.20.250. An appeal must be filed with the borough clerk within 15 days of date of notice of the decision; using the proper forms; and, be accompanied by the \$300 filing and records preparation fee.

END OF STAFF REPORT

### \* Approved by Adoption of the Consent Agenda

#### AGENDA ITEM C. CONSENT AGENDA

- 1. Time Extension Request
  - b. Mystic Fields Subdivision Phase 2
     KPB 2013-106; Integrity/Downs
     Location: off Gas Well Road, Soldotna area

#### STAFF REPORT

PC Meeting: 8/25/14

The Plat Committee granted conditional preliminary approval for the overall subdivision on February 11, 2013. The surveyor advised the Committee during the public hearing that the plat would be developed in stages (phases). Plat approval was valid through February 11, 2014.

Phase One was submitted for review on March 15, 2013. The first phase complied with preliminary plat approval so final approval was granted per KPB 20.16.180. The first phase was recorded on May 2, 2013. Recording the first phase extended preliminary plat approval to May 2, 2014.

The second phase was submitted for final review on February 4, 2014. All items required for final approval were resolved in August; however, preliminary plat approval expired.

The utility reviews are current.

KENAI PENINSULA BOROUGH PLANNING COMMISSION AUGUST 25, 2014 MEETING MINUTES

There have been no known changes in the area that would affect this plat.

STAFF RECOMMENDATIONS: Extend preliminary plat approval for one year through August 25, 2015.

NOTE: An appeal of a decision of the Planning Commission may be filed to the board of adjustment, in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances, Chapter 21.20.250. An appeal must be filed with the borough clerk within 15 days of date of notice of the decision; using the proper forms; and, be accompanied by the \$300 filing and records preparation fee.

END OF STAFF REPORT

\* Approved by Adoption of the Consent Agenda

AGENDA ITEM C. CONSENT AGENDA

\*2. Planning Commission Resolutions - None

AGENDA ITEM C. CONSENT AGENDA

- \*3. Plats Granted Administrative Approval
  - a. Slate Subdivision Jensen Addition; KPB File 2014-055
  - b. Soldotna Junction Subdivision Autozone Replat; KPB File 2013-170

#### \* Approved by Adoption of the Consent Agenda

AGENDA ITEM C. CONSENT AGENDA

\*4. Plats Granted Final Approval Under 20.04.070 - None

AGENDA ITEM C. CONSENT AGENDA

\*5. Plat Amendment Request - None

AGENDA ITEM C. CONSENT AGENDA

\*6. Utility Easement Vacations - None

AGENDA ITEM C. CONSENT AGENDA

- \*7. Commissioner Excused Absences
  - a. Philip Bryson, City of Kenai
  - b. Cindy Ecklund, City of Seward
  - c. Jason Tauriainen, Northwest Borough
  - d. Paul Whitney, City of Soldotna

AGENDA ITEM C. CONSENT AGENDA

\*8. Minutes

KENAI PENINSULA BOROUGH PLANNING COMMISSION AUGUST 25, 2014 MEETING MINUTES

PAGE 3

- a. August 11, 2014 Plat Committee Minutes
- b. August 11, 2014 Planning Commission Minutes

Staff suggested amending the regular agenda by moving Agenda Item 3 – Street Renaming to Agenda Item 2. Also the clerk made a correction to the August 11, 2014 minutes in that Commissioner Venuti was inadvertently left off of the voting record throughout the minutes. The minutes have been corrected. **Staff recommends** approval of the amended regular agenda and revised August 11, 2014 meeting minutes.

**MOTION:** Commissioner Holsten moved, seconded by Commissioner Isham to approve the consent, amended regular agenda and the corrected August 11, 2014 meeting minutes. Seeing and hearing no discussion or objection, the motion passed by unanimous consent.

#### AGENDA ITEM D. PUBLIC COMMENT / PRESENTATIONS / COMMISSIONERS

Vice Chairman Martin asked if there were members of the public who would like to address the commission for items not listed on the agenda. Hearing none, the meeting continued.

AGENDA ITEM E. UNFINISHED BUSINESS - None

AGENDA ITEM F. PUBLIC HEARINGS

1. Vacate a portion of Twin Road, a 60-foot right-of-way dedicated by Weaver Subdivision Part Seven, adjacent to Lots 1, 4, 9, 12, and Tract B-2 (Plat KN 2012-77), and vacate any associated utility easement; within Section 11, Township 5 North, Range 9 West, Seward Meridian, Alaska and within the Kenai Peninsula Borough; Location: Sterling; KPB File 2014-101

Staff Report given by Max Best

PC Meeting: 8/25/14

Purpose as stated in petition:

<u>Petitioners</u>: Daniel T. and Robbyn L. Michel, Matthew A. and Charley D. Tegerdine, Charles and Gail Brand all of Sterling, Alaska

Notification:

Public notice appeared in the August 14 issue of the Peninsula Clarion. Public notice was published in the August 21 issues of the Peninsula Clarion, Homer News, Seward Journal as part of the tentative agenda.

Thirteen certified mailings were sent to owners of property within 300 feet of the parcels. All receipts have been returned.

Fifteen regular mailings were sent to agencies and interested parties. Five notices were sent to KPB Departments. Notices were mailed to the Sterling Post Office and Soldotna Community Library to be posted in public locations. The notice and maps were posted on the Borough bulletin board and Planning Department public hearing notice web site.

#### Comments Received:

Homer Electric Association: Reviewed/no comments.

#### Staff Discussion:

The preliminary plat that would finalize the vacation was scheduled for the August 11, 2014 Plat Committee meeting. Since the design of the preliminary plat was significantly dependent on approval of the right-of-way vacation, staff asked the Committee to postpone action until after the Planning Commission and Assembly review. The Committee concurred with postponement.

KENAI PENINSULA BOROUGH PLANNING COMMISSION AUGUST 25, 2014 MEETING MINUTES

Per the vacation petition, the right-of-way proposed for vacation is not constructed, is not in use for access, and alternative right-of-way is being provided. Fixed wing imagery shows the portion of Twin Road proposed for vacation has been at least partially cleared. The preliminary plat that will finalize the proposed vacation does not dedicate alternative right-of-way.

KPB Roads Department submitted a statement of no comments for the preliminary plat that will finalize the vacation of a portion of Twin Road.

#### Findings:

- 1. Sufficient rights-of-way exist to serve surrounding properties.
- 2. No surrounding properties will be denied access.
- 3. Per the submittal, the right-of-way proposed for vacation is not in use for access.
- 4. Per the submittal, the right-of-way proposed for vacation has not been constructed.
- 5. The rights-of-way do not appear to be in use for utilities.
- 6. All subdivision plats finalizing vacations are sent to utility companies for review and easement requirements.
- 7. To date, one utility company has provided a letter of non-objection.
- 8. Per KPB GIS mapping, the portion of Twin Road within the subject block is not maintained by the KPB Roads Department.
- 9. Lots 10 and 11 Weaver Subdivision Part Seven and Lot 8 Weaver Subdivision Part Six are the only other lots fronting Twin Road that are not part of the vacation petition.
- 10. Two of the petitioners own Lots 10 and 11 Weaver Subdivision Part Seven.
- 11. Lot 8 Weaver Subdivision Part Six fronts the KPB maintained portion of Entrada Drive.
- 12 The block is longer than allowed by KPB 20.30.170.
- 13. Removing the cul-de-sac bulb at the new terminus of Twin Road so it can be extended per KPB 20.30.030 will not affect the current block size of approximately 1,800 feet.
- 14. Alternative right-of-way for the block is available on KPB maintained Skeeter Street and Entrada Drive, which is partially KPB maintained.

STAFF RECOMMENDATION: Based on the above findings, staff recommends approval of the vacation as petitioned, subject to:

- 1. Remove the cul-de-sac bulb at the new terminus of Twin Road leaving it open ended for future extension per KPB 20.30.030.
- 2. Written statements of non-objection to the proposed vacation from ACS, ENSTAR, and GCI.
- 3. Re-submittal of a preliminary plat for Plat Committee review in accordance with Chapter 20 of the KPB Code within one year of vacation approval.

# If the vacation is approved, the Kenai Peninsula Borough Assembly has thirty days in which they may veto Planning Commission approval of the vacation.

#### Per KPB 20.70.120:

- A. Denial of a vacation petition is a final act for which no further consideration shall be given by the Kenai Peninsula Borough.
- B. Upon denial by the planning commission, no reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.

#### END OF STAFF REPORT

Vice Chairman Martin read the rules by which public testimony is taken.

Vice Chairman Martin opened the meeting for public comment.

KENAI PENINSULA BOROUGH PLANNING COMMISSION AUGUST 25, 2014 MEETING MINUTES

#### 1. <u>Scott Huff, Integrity Surveys</u>

Mr. Huff is the surveyor for this project. He agreed with staff recommendations and stated they would remove the cul-de-sac bulb. The purpose of this vacation is to move the right-of-way and combine parcels so that the owner can have one large parcel to have better use of their property. He was available to answer questions.

Vice Chairman Martin asked if there were questions for Mr. Huff. Hearing none the public hearing continued.

Seeing and hearing no one else wishing to speak, Vice Chairman Martin closed the public comment period and opened discussion among the Commission.

**MOTION:** Commissioner Holsten moved, seconded by Commissioner Carluccio to vacate a portion of Twin Road, a 60-foot right-of-way and vacate any associated utility easements within Section 11 subject to staff recommendations and findings.

#### Findings

- 1. Sufficient rights-of-way exist to serve surrounding properties.
- 2. No surrounding properties will be denied access.
- 3. Per the submittal, the right-of-way proposed for vacation is not in use for access.
- 4. Per the submittal, the right-of-way proposed for vacation has not been constructed.
- 5. The rights-of-way do not appear to be in use for utilities.
- 6. All subdivision plats finalizing vacations are sent to utility companies for review and easement requirements.
- 7. To date, one utility company has provided a letter of non-objection.
- 8. Per KPB GIS mapping, the portion of Twin Road within the subject block is not maintained by the KPB Roads Department.
- 9. Lots 10 and 11 Weaver Subdivision Part Seven and Lot 8 Weaver Subdivision Part Six are the only other lots fronting Twin Road that are not part of the vacation petition.
- 10. Two of the petitioners own Lots 10 and 11 Weaver Subdivision Part Seven.
- 11. Lot 8 Weaver Subdivision Part Six fronts the KPB maintained portion of Entrada Drive.
- 12 The block is longer than allowed by KPB 20.30.170.
- 13. Removing the cul-de-sac bulb at the new terminus of Twin Road so it can be extended per KPB 20.30.030 will not affect the current block size of approximately 1,800 feet.
- 14. Alternative right-of-way for the block is available on KPB maintained Skeeter Street and Entrada Drive, which is partially KPB maintained.

Commissioner Foster noted that ACS and ADF&G submitted non-objection to the vacation which was included in the Commissioner's lay down packet.

**VOTE:** The motion passed by unanimous consent.

BRYSON	CARLUCCIO	COLLINS	ECKLUND	FOSTER	HOLSTEN	ISHAM
ABSENT	YES	YES	ABSENT	YES	YES	YES
LOCKWOOD	MARTIN	RUFFNER	TAURIAINEN	VENUTI	WHITNEY	9 YES
YES	YES	YES	ABSENT	YES	ABSENT	4 ABSENT

### AGENDA ITEM F. PUBLIC HEARINGS

- 3. Rename existing streets in conjunction with the Enhanced 911 Street Naming and Addressing Methods within the Kenai Peninsula Borough. Streets under consideration at this meeting are described as follows:
  - a. Unnamed Private Rd within subsequent McFarland Subdivisions; T 5N R8W SECTION
     18; Seward Meridian, AK; in the Sterling Community; off of Midway Dr; ESN 302

Staff Report given by Carrie Henson

### PC MEETING 08/25/2014

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Applicant: Kenai Peninsula Borough

Existing right-of-way names: Unnamed Private Rd

Name proposed by staff: Goerig Rd

Reason for Change: Services three or more structures

Background:

Name	Unnamed Private Rd
ESN	302
Community	Sterling
YR Dedicated	N/A
Constructed	Yes
Total Lots	7
Residential	3
E911 Address	5
Mailing	0
Decision	Name

#### Review and Comments:

No comments from agencies have been received prior to the writing of this staff report.

One comment was received from a property owner to discuss not naming the private road and coming up with an alternative solution.

Another comment was received suggesting Two Acres Road.

## Staff Discussion:

During field verification of the Sterling Community this private driveway was found to service three or more structures. It is staff policy to name all private roads that service three or more structures to help facilitate timely emergency response.

Staff had a lengthy discussion with Mr. Groeneweg, one of the property owners serviced by the private road. He told staff that his driveway is no longer a part of this private road as he has blocked it off and a new access point has been created on his neighbor's property that services the remaining lots but since there are only two residents currently being services by this new access then there is no need to name it as a private road as the two residences can be labeled with two uniform address signs at the intersection of the private driveway and Midway Dr.

**Staff recommends** that it is in the best interest of the public to take no action on this item and to not name the private driveway.

Five E911 addresses but no mailing addresses would be affected by this road renaming.

Public notice was published on August 14, 2014 in the Peninsula Clarion; Public notice was also published on August 21, 2014 as part of the tentative agenda in the Peninsula Clarion, Homer News, and Seward Journal.

Notices were sent by regular mail to the six property owners as shown on the KPB tax roll in accordance with Section 14.10.055 Borough Code of Ordinances. Notices were sent to interested parties and agencies as well as local post offices and/or community libraries for posting on the public bulletin board. Public notice was published on the Planning Department web site and on the bulletin board in the Borough Administration Building.

KENAI PENINSULA BOROUGH PLANNING COMMISSION AUGUST 25, 2014 MEETING MINUTES

The following statements were included in the public notice to adjoining owners. The first two statements were included in the ad published in the newspaper. Staff believes this is sufficient notification that a name other than the name recommended by staff may be approved during the hearing.

PLEASE NOTE: The Planning Commission may approve a name suggested by landowners, interested parties, or the planning staff. An entirely different name can also be suggested and approved by the Commission during the public hearing.

NOTE: Upon adoption of a street name change resolution, no reapplication or petition concerning the name of the same street may be filed within one calendar year of the final adoption, except in the case where new evidence or circumstances exist that were not available, present or reasonably ascertainable when the original resolution was adopted (KPB 14.10.050).

Reapplications/petitions are submitted per KPB 14.10.050, which includes a \$300 filing fee.

The name change will become official upon the adoption of a resolution by the Planning Commission at the next available meeting following the approval of the name change.

Staff's policy is to recommend the first approved suggestion unless a majority of owners submits an approved suggestion. Staff defers to the majority of adjoining property owners for the new street name SUBJECT TO the requested name being in compliance with KPB 14.10.

**STAFF RECOMMENDATION:** take no action and do not name the private driveway.

END OF STAFF REPORT

Vice Chairman Martin opened the meeting for public comment.

1. <u>Greg Groeneweg, 37449 Midway</u> Mr. Groeneweg was available for questions.

Vice Chairman Martin asked if there were questions for Mr. Groeneweg. Hearing none the public hearing continued.

Seeing and hearing no one else wishing to speak, Vice Chairman Martin closed the public comment period and opened discussion among the Commission.

**MOTION:** Commissioner Ruffner moved, seconded by Commissioner Lockwood to take no action on renaming this private drive.

**VOTE:** The motion passed by unanimous consent.

BRYSON	CARLUCCIO	COLLINS	ECKLUND	FOSTER	HOLSTEN	ISHAM
ABSENT	YES	YES	ABSENT	YES	YES	YES
LOCKWOOD	MARTIN	RUFFNER	TAURIAINEN	VENUTI	WHITNEY	9 YES
YES	YES	YES	ABSENT	YES	ABSENT	4 ABSENT

#### AGENDA ITEM F. PUBLIC HEARINGS

3. Rename existing streets in conjunction with the Enhanced 911 Street Naming and Addressing Methods within the Kenai Peninsula Borough. Streets under consideration at this meeting are described as follows:

 Tobacco Ln originally named by KN0740031 Tract A Woodrow Boles Homestead; T 4N R11W SECTION 23; Seward Meridian, AK; in the Kalifornsky community; off of Arc Loop Rd; ESN 302

Staff Report given by Carrie Henson

PC MEETING 08/25/2014

Applicant: Kenai Peninsula Borough Roads Department

Existing right-of-way names: Tobacco Ln

Name proposed by staff: Boles Ave

<u>Reason for Change:</u> Sign keeps getting stolen

Background:

Name	Tobacco Ln
ESN	302
Community	Kalifornsky
YR Dedicated	1974
Constructed	Yes
Total Lots	20
Residential	14
E911 Address	9
Mailing	0
Decision	Rename

#### **Review and Comments:**

No comments from agencies have been received prior to the writing of this staff report.

Two comments were received from property owners, one property owner submitted three street name suggestions, the other is completely opposed to any name change.

#### Staff Discussion:

The Borough Roads Department has requested that we rename Tobacco Ln because the sign keeps getting stolen.

Staff suggested Boles Ave because that is the name on many of the original plats dedicating Tobacco Ln. Avenue is the appropriate suffix per the code.

One property owner suggested Tri Citys, Evolution, or Triton as alternative street names. Evolution is the only approved name.

Another comment was received from a property owner who suggested Mosquito Swarm Rd, Mosquito Run Ave or Misquito Swamp Rd. These suggested road names are not approved names as Mosquito is already a used street name.

**Staff recommends** that it is in the best interest of the public to rename Tobacco Ln to Evolution Ave.

Nine E911 addresses but no mailing addresses will be affected by this road renaming.

Public notice was published on August 14, 2014 in the Peninsula Clarion; Public notice was also published on August 21, 2014 as part of the tentative agenda in the Peninsula Clarion, Homer News, and Seward Journal.

Notices were sent by regular mail to the sixteen property owners as shown on the KPB tax roll in accordance KENAI PENINSULA BOROUGH PLANNING COMMISSION AUGUST 25, 2014 MEETING MINUTES PAGE 9

with Section 14.10.055 Borough Code of Ordinances. Notices were sent to interested parties and agencies as well as local post offices and/or community libraries for posting on the public bulletin board. Public notice was published on the Planning Department web site and on the bulletin board in the Borough Administration Building.

The following statements were included in the public notice to adjoining owners. The first two statements were included in the ad published in the newspaper. Staff believes this is sufficient notification that a name other than the name recommended by staff may be approved during the hearing.

PLEASE NOTE: The Planning Commission may approve a name suggested by landowners, interested parties, or the planning staff. An entirely different name can also be suggested and approved by the Commission during the public hearing.

NOTE: Upon adoption of a street name change resolution, no reapplication or petition concerning the name of the same street may be filed within one calendar year of the final adoption, except in the case where new evidence or circumstances exist that were not available, present or reasonably ascertainable when the original resolution was adopted (KPB 14.10.050).

Reapplications/petitions are submitted per KPB 14.10.050, which includes a \$300 filing fee.

The name change will become official upon the adoption of a resolution by the Planning Commission at the next available meeting following the approval of the name change.

Staff's policy is to recommend the first approved suggestion unless a majority of owners submits an approved suggestion. Staff defers to the majority of adjoining property owners for the new street name SUBJECT TO the requested name being in compliance with KPB 14.10.

STAFF RECOMMENDATION: rename Tobacco Ln to Evolution Ave.

END OF STAFF REPORT

Vice Chairman Martin opened the meeting for public comment. Seeing and hearing no one wishing to speak, Vice Chairman Martin closed the public comment period and opened discussion among the Commission.

**MOTION:** Commissioner Carluccio moved, seconded by Commissioner Isham to rename Tobacco Ln to Evolution Avenue.

Commissioner Holsten asked if the only reason the name was being changed was because the sign keeps getting stolen. Ms. Henson replied that staff received conflicting reports about that. The Roads Department says it was getting stolen however the property owner says it wasn't getting stolen except for one time a long time ago. Commissioner Holsten asked if she followed up with the Roads Department and asked when the sign was stolen. Ms. Henson replied no.

Commissioner Foster asked they could get another Tobacco named sign and give it one more chance since there is opposition to this road renaming. Ms. Henson replied yes, she can let the Roads Department know that the Planning Commission decided to keep the road name and to let her know if the sign is stolen again.

**AMENDMENT MOTION**: Commissioner Foster moved, seconded by Commissioner Ruffner to retain the street name as Tobacco but change the suffix from Ln to Ave.

AMENDMENT VOTE: The motion passed by unanimous consent.

BRYSON	CARLUCCIO	COLLINS	ECKLUND	FOSTER	HOLSTEN	ISHAM
ABSENT	YES	YES	ABSENT	YES	YES	YES
LOCKWOOD	MARTIN	RUFFNER	TAURIAINEN	VENUTI	WHITNEY	9 YES
YES	YES	YES	ABSENT	YES	ABSENT	4 ABSENT

KENAI PENINSULA BOROUGH PLANNING COMMISSION AUGUST 25, 2014 MEETING MINUTES

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MAIN MOTION VOTE: The motion as amended passed by unanimous consent.

BRYSON	CARLUCCIO	COLLINS	ECKLUND	FOSTER	HOLSTEN	ISHAM
ABSENT	YES	YES	ABSENT	YES	YES	YES
LOCKWOOD	MARTIN	RUFFNER	TAURIAINEN	VENUTI	WHITNEY	9 YES
YES	YES	YES	ABSENT	YES	ABSENT	4 ABSENT

AGENDA ITEM F. PUBLIC HEARING

2. Resolution 2014-20; An application for a conditional land use permit for material extraction on a parcel in the Kalifornsky area.

Staff Report given by Bruce Wall

PC MEETING: August 25, 2014

Applicant: Sean Cude

Landowner: SBC 2012 Irrevocable Trust

Parcel ID#: 055-270-98, 055-270-50, 055-270-51, and 055-270-52

- Legal Description: Tract A2A, Diamond Willow Estates Subdivision Part 11 according to Plat 2012-93, Kenai Recording District, Third Judicial Court, State of Alaska; and Lots C, D, & E, Diamond Willow Estates Subdivision Part – 10 according to Plat 2008-135, Kenai Recording District, Third Judicial Court, State of Alaska.
- **Location**: The extraction area will be on the south side of Virginia Drive, east of Ciechanski Road, and north of Ravenwood Subdivision.

BACKGROUND INFORMATION: The applicant wishes to obtain a permit for sand, gravel, and peat extraction on 19.36 acres within the parcels listed above. The remainder of this site has previously been excavated and is currently being reclaimed. Material extraction has taken place on what is now Tract A2A in the past and much of the material on that site has been exhausted with the exception of the south east portion of the parcel. In the past material extraction has also taken place on portions of what are now Lots C, D, & E. Aerial photos from 1985 and 1996 shows that excavation on the subject property was mostly limited to what is now Lot E. Much of the proposed new extraction will take place on these three lots.

Ordinance 98-33, adopted February 16, 1999, required that all existing material sites apply to be registered as a prior existing use prior to January 1, 2001. A couple of years later, planning staff discovered that excavation was occurring on this site without a permit and without being registered as a prior existing use. The planning commission held a public hearing on May 10, 2004 for a conditional land use permit for an 18 acre excavation area on the property that is now the subject of this application. The application was denied with the following findings:

- 1. It appears the site is being backfilled with garbage supported by pictures of septic pipes, crushed septic tanks, which were mixed with the gravel.
- 2. Testimony during the public hearing was that the owner/operator was backfilling with garbage, including used septic pipes and used and deteriorating septic tanks.
- 3. The owner testified that he was not aware of the Kenai Peninsula Borough material site ordinance.
- 4. Virginia Drive appears to be rutted consistent with gravel truck usage.
- 5. A photograph of an oil spill near several drums appears to be consistent with leaking barrels.
- 6. The applicant's statement to reclaim as a hay field does not appear to be reasonable based on information supplied to the commission.

A new application was submitted and the planning commission held a public hearing on September 13, 2004 for a conditional land use permit for the same 18 acre excavation area. The staff report for that application indicated that the applicant willfully operated the material site as if it was permitted between May 10, 2004 and KENAI PENINSULA BOROUGH PLANNING COMMISSION AUGUST 25, 2014 MEETING MINUTES PAGE 11

September 2, 2004. The application was again denied. The current applicant purchased the property on December 20, 2012.

#### KPB 21.29.030(A) states:

... The planning director may determine that certain contiguous parcels are eligible for a single permit. ...

The planning director has reviewed this application and has determined that these four parcels are <u>not</u> eligible for a single permit. He has recommended to the applicant that he submit a new plat that combines these four parcels into just one parcel and have the final plat recorded prior to issuance of the Conditional Land Use Permit. This decision was based upon the inability to maintain access to Lots D and E, which are platted as flag lots. And the wastewater disposal statement on the plat for Lots C, D, & E, that states:

Soil conditions, water table levels, and soil slopes in this subdivision have been found suitable for conventional onsite wastewater treatment and disposal systems serving single family of [*sic*] duplex residences, and meeting the regulatory requirements of the Kenai Peninsula Borough. ...

If the permit is approved tonight, staff will revise the resolution after the final plat is recorded to reflect the new parcel number and legal description of the property and have the chairman sign it at that time.

The applicant is willing to re-subdivide the four parcels into one parcel, but would like to ensure that the CLUP would be approved before incurring the cost of re-subdividing.

The submitted site plan indicates that the material site haul route is Virginia Drive to Ciechanski Road. There is an existing driveway onto Virginia Drive, which is a Borough maintained road. The site plan and application indicates that there will be a 6 foot berm along all the roads adjacent to the property, a 6 foot fence adjacent to Ravenwood Subdivision, and a 6 foot fence along the east property line once the required 50 of vegetation is removed.

The applicant's proposed depth of excavation is up to 20 feet below the natural existing grade. The application states that a test hole was excavated in the existing material site floor and groundwater was found at approximately 2 feet below the existing material site floor. The applicant indicates that material processing will take place on the site. All processing will be located greater than 300 feet from the west, south, and east parcel boundaries. The applicant is requesting a waiver to allow processing up to 100 feet from the north parcel boundary. KPB 21.29.050(A3) states:

... 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 property at the time.

The applicant has stated that the adjacent land to the north is agricultural. The Assessor's office classifies it as vacant land.

The applicant anticipates a life span of 20 years for the site and that the annual excavation quantity will be less than 50,000 cubic yards of material. The submitted application indicates that approximately 14 acres of the west side of the site has previously been mined and is being incrementally reclaimed. Phasing from west to east and north to south is proposed to demonstrate orderly development and reclamation of the site. Reclamation will be completed annually before growing season ends. Seeding will be applied as necessary each growing season to areas that achieve final grade to minimize erosion and dust.

PUBLIC NOTICE: Public notice of the application was mailed on August 5, 2014 to the 284 landowners or leaseholders within one-half mile of the subject parcel. Public notice was sent to the postmaster in Kenai and Soldotna requesting that it be posted at these Post Offices. Public notice of the application was published in the August 14, 2014 & August 21, 2014 issues of the Peninsula Clarion.

KPB AGENCY REVIEW: Application information was provided to pertinent KPB staff and other agencies onKENAI PENINSULA BOROUGH PLANNING COMMISSION AUGUST 25, 2014 MEETING MINUTESPAGE 12

August 7, 2014.

A letter was received from the Department of Environmental Conservation. The letter and accompanying map is included in the desk packet. It states that the proposed material site is near Willowbrook North Well #3, which is part of a registered public water system source. Willowbrook North has been notified of this application.

Thirteen letters of concern or opposition from the public were received. These letters with attachments are included in the desk packet.

## **ATTACHMENTS**

Attachment A:	Conditional Land Use application with site plan
Attachment B:	Aerial maps
Attachment C:	Area land use map
Attachment D:	Area ownership map
Attachment E:	Public Notice
Attachment F:	Plat KN 2008-135
Attachment G:	Agency comments
Attachment H:	Public comments

FINDINGS OF FACT

- 1. KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough.
- 2. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
- 3. On July 25, 2014 the applicant, Sean Cude, submitted to the Borough Planning Department a conditional land use permit application for KPB Tax Parcel Numbers 055-270-98, 055-270-50, 055-270-51, and 055-270-52, which are located within the rural district.
- 4. KPB 21.29 provides that a conditional land use permit is required for material extraction that disturbs more than 2.5 cumulative acres.
- 5. The proposed cumulative disturbed area within the parcel is approximately 19.36 acres, including existing disturbed areas.
- 6. KPB 21.29.030(A) states the planning director may determine that certain contiguous parcels are eligible for a single permit.
- 7. The planning director has reviewed this application and has determined that these four parcels are not eligible for a single permit.
- 8. Tax Parcel Numbers 055-270-50, 055-270-51, and 055-270-52 are located within Diamond Willow Estates Subdivision Part 10 which states, in part, "Wastewater disposal Soil conditions, water table levels, and soil slopes in this subdivision have been found suitable for conventional onsite wastewater treatment and disposal systems serving single family of [*sic*] duplex residences, and meeting the regulatory requirements of the Kenai Peninsula Borough."
- 9. Tax Parcel Numbers 055-270-51 and 055-270-52 are configured as flag lots. The proposed excavation would not be compatible with the designed access for these lots.
- 10. A new plat that combines these four parcels into just one parcel would eliminate Tax Parcel Numbers 055-270-50, 055-270-51, and 055-270-52, thus eliminating the possibility of a buyer of these lots relying on the information on the plat.
- 11. A new plat that combines these four parcels into just one parcel would make the new parcel eligible for a conditional land use permit for a material site.
- 12. To meet material site standard 21.29.040(A1), the proposed activity must protect against aquifer disturbance by maintaining a 2-foot vertical separation from the seasonal high water table and by ensuring that no material extraction takes place within 100 horizontal feet of any existing water source.
- 13. An excavated test hole in the existing material site floor found groundwater at approximately 2 feet below the existing material site floor.
- 14. The proposed excavation will be to the same elevation as the existing material site floor.
- 15. The site plan indicates that there are no known wells located within 100 feet of the proposed excavation area.
- 16. The site plan indicates that there are several wells located within 300 feet of the proposed

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material site.

- 17. To meet material site standard 21.29.040(A2), the proposed activity must be conducted in a manner to protect against physical damage to adjacent properties by complying with the required permit conditions of KPB 21.29.050.
- 18. To meet material site standard 21.29.040(A3), the proposed activity must be conducted in a manner which minimizes the off-site movement of dust by complying with required permit condition KPB 21.29.050(10), Dust Control.
- 19. Ingress and egress at the material site will be Virginia Drive which is a Borough maintained road.
- 20. To meet material site standard 21.29.040(A4), the proposed activity must be conducted in a manner which minimizes noise disturbance to other properties by complying with permit condition KPB 21.29.050(2), Buffer Zone; KPB 21.29.050(3), Processing; and KPB 21.29.050(11), Hours of Operation.
- 21. The applicant indicates that material processing will take place on the site. As indicated on the submitted site plan all processing will be located greater than 300 feet from the west, south, and east parcel boundaries and 100' from the north boundary, which adjacent to a large vacant parcel.
- 22. To meet material site standard 21.29.040(A5), the proposed activity must be conducted in a manner which minimizes visual impacts by complying with the permit condition KPB 21.29.050(2), Buffer Zone.
- 23. The submitted site plan and application indicates that a 6-foot berm, 6-foot fence, or a 50-foot vegetated buffer will be maintained on all boundaries.
- 24. The bonding requirement of KPB 21.29.050(12b) will apply to this material site if extraction in any one year exceeds 50,000 cubic yards of material.
- 25. A public hearing of the Planning Commission was held on August 25, 2014 and notice of the meeting was published, posted, and mailed in accordance with KPB 21.25.060 and KPB 21.11.

# STAFF RECOMMENDATION

Staff recommends that the Planning Commission approve the requested waiver allowing material processing to take place up to 100 feet from the north property line. Staff further recommends that the Planning Commission approve the conditional land use permit with listed conditions and adopt the findings of fact, subject to the following:

- 1. Filing of the PC Resolution in the appropriate recording district after the deadline to appeal the Planning Commission's approval has expired (15 days from the date of the notice of decision) unless there are no parties with appeal rights and after the recording of a plat designating the area contained in these four parcels as just one parcel containing approximately 19.36 acres.
- 2. The Planning Department is responsible for filing the Planning Commission resolution.
- 3. The applicant will provide the recording fee for the resolution to the Planning Department.

THE LAND USE AND OPERATIONS ARE DESCRIBED AND SHALL BE CONDUCTED AS FOLLOWS:

- A. An area currently known as KPB Tax Parcel Numbers 055-270-98, 055-270-50, 055-270-51, and 055-270-52. The total disturbed area within this area is up to 19.36 acres.
- B. Legal Description: Tract A2A, Diamond Willow Estates Subdivision Part 11 according to Plat 2012-93, Kenai Recording District, Third Judicial Court, State of Alaska; and Lots C, D, & E, Diamond Willow Estates Subdivision Part – 10 according to Plat 2008-135, Kenai Recording District, Third Judicial Court, State of Alaska.
- C. The applicant, Sean Cude, proposes to: 1. Extract gravel from the subject parcel; 2. Reclaim the site to a stable condition upon depletion of material.

#### PERMIT CONDITIONS

- 1. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
- 2. The permittee shall place and maintain a 6-foot berm along the north property line adjacent to Virginia Drive, the west property line along Ciechanski Road, and along a portion of the south property line along Canvasback Avenue; place and maintain a 6-foot fence along the remainder of the south property line adjacent to Ravenwood Subdivision; and maintain a minimum of 50 feet of undisturbed, natural vegetation between the excavation perimeter and the east property line until

excavation takes place in that area, the vegetative buffer shall then be replaced with a 6-foot fence that shall be maintained.

- 3. The permittee shall maintain at least a 2:1 slope between the inner buffer zones and pit floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 30 days from the time of removal.
- 4. The permittee may not operate materials processing equipment within 300 feet of the west, south, or east parcel boundaries; or within 100 feet of the north boundary. Rock crushing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
- 5. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
- 6. The permittee shall maintain a 2-foot vertical separation from the seasonal high water table.
- 7. The permittee shall not dewater either by pumping, ditching or any other form of draining unless an exemption is granted by the planning commission.
- 8. The permittee shall ensure that fuel storage containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.
- 9. The permittee shall conduct operations in a manner so as not to damage borough roads as required by KPB 14.40.175, and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
- 10. The permittee shall notify the planning department of any further subdivision or return to acreage of this parcel. The planning director may issue a written exemption from the permit 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.
- 11. The permittee shall apply water or calcium chloride, as needed, on haul roads within the boundaries of the subject parcel.
- 12. The permittee shall reclaim the site as described in the reclamation plan for this parcel and as approved by the planning commission.
- 13. The permittee is responsible for determining the need for any other municipal, state or federal permits and acquiring the same. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits.
- 14. This conditional land use permit is subject to annual review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.25.090, the planning commission may revoke a permit issued pursuant to this chapter if the permittee fails to comply with the provisions of this chapter or the conditions of the permit. The planning director shall provide at least 30 days written notice to the permittee of a revocation hearing before the planning commission.
- 15. Once effective, this conditional land use permit is valid for five years. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.

NOTE: Any party of record may file an appeal of a decision of the Planning Commission to the Board of Adjustment in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances, Chapter 21.20.250. A "party of record" is any person or government agency that provides oral or written testimony during the Planning Commission public hearing. Petition signers are not considered parties of record unless separate oral or written testimony is provided (KPB Code 21.20.210.A.6b1). An appeal must be filed with the Borough Clerk within 15 days of the notice of decision, using the proper forms, and be accompanied by the \$300 filing and records preparation fee. (KPB Code 21.25.100)

# END OF STAFF REPORT

Vice Chairman Martin opened the meeting for public comment.

# 1. Justin Evans, 47207 Lexington Ct

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Mr. Evans had already submitted comments regarding this conditional land use permit. He also was representing Mr. Roger Koppes and read his written comments into the record. Mr. Koppes address was PO Box 2739, Kenai. His letter is as follows:

#### "Dear KPB Planning Commission:

It has come to my attention through a Borough notice that Mr. Sean Cude of SBC 2012 Irrevocable Trust has submitted a Conditional Land Use Permit Application for a material site permit (gravel pit) in the vicinity of Virginia Drive, Diamond Willow Estates Subdivision Part 11 Tr A2A, Diamond Willow Estates Part 10 Lot C, D & E. My wife and I are residents of Diamond Willow Estates, located along Virginia Avenue and Gary Avenue. We are also concerned parents of four young children.

I am writing to express my opposition to the use of this abandoned gravel pit for further site excavation. Mr. Cude and I had an informal discussion about his plans for the property, shortly after he purchased the pit from Mercedes Gibbs. At that time he informed me that he intended to "reclaim" the pit by filling it in. He indicated that his intention was to establish a residence on the property and possibly create a personal use air strip.

The abandoned pit that Mr. Cude owns is accessed via Virginia Dr., which is also the only point of access for residents of Diamond Willow Estates Subdivision. Since residing in this area, we have seen a constant stream of heavy truck traffic entering the "reclamation" area. These trucks have dumped dirt, trees and man-made building materials (including fiberglass and foam board insulation, plastic fencing, drywall, metal pipes, etc.) into the pit area. Neighbors in the area, including myself, have recent photos of those materials.

I spoke to Mr. Cude by phone about the man-made materials entering the pit. He informed me that he was concerned about that happening and I should call him when I see it. I have called Mr. Cude two other occasions since, to inform him about material that should have been destined only to a proper landfill. My calls have not been returned and those materials continue to be pushed by bulldozers further into the pit property and covered up.

Heavy truck traffic along Virginia has also been a continuous problem. During rainy periods and during late winter break-up, the heavy trucks and excavation equipment along Virginia have created impassable conditions for personal and emergency services vehicles. That has created a safety risk to all as we have no other way to exit/enter/evacuate or receive emergency services during those periods of severe road damage. The borough has had to respond to these issues on at least two occasions that I am aware of.

The road as it is today is simply not capable of handling the heavy truck traffic. Additional heavy truck traffic promoted by an active pit will render this road useless.

In addition to the illegal dumping and roadway issues, my greatest concern is the degradation of the personal water wells of all residents of this and surrounding subdivisions. I have four young children between the ages of 6 and 12. As of now, our well water appears potable. The dumping of the aforementioned man-made materials laden with chemicals and non-natural substances into this pit - combined with further excavation on this property-may exacerbate the ground water/aquifer risk, accelerating the decline of potable water in the area. The safety of all local residents, but particularly its little residents will be compromised.

Additionally, this pit is extraordinarily close to the Kenai River. That brings an entirely new

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set of environmental risks and concerns Borough citizens to the table should any ground water contamination occur. I oppose approval of any further excavation of this area as it is clear that there is **no oversight** for dumping on his property, nor is there a clear plan for the sustainability of Virginia Drive. In review, my concerns are:

- 1. Ground water, well water, aquifer and Kenai River safety as it relates to current and future man-made waste disposed in the pit.
- 2. Roadway access, maintenance and sustainability on a 'no outlet' road, due to increased heavy vehicle traffic.
- 3. Emergency services and evacuation route blockage during periods of inclement weather, precipitated by inevitable road degradation caused by heavy vehicle traffic to/from an active pit.
- 4. The inevitable decline of property values of homes and the potential loss of potable water in the area due to an active gravel pit.
- 5. Increased Borough cost of road maintenance/construction and the loss of revenue in the form of property tax due to declining property values.
- 6. Increased Borough cost and liability should hazardous materials be introduced into any portion of the water system.

I am asking the KPB Planning Department and the KPB Planning Commission to deny the present application. If Mr. Cude wishes to continue his pursuit further, a legitimate and public risk assessment should be conducted by Borough legal personnel, roads personnel, emergency services personnel and environmental managers. This risk assessment should be performed in a thorough, transparent and independent way.

Thank you for your time and attention to this matter. We are relying on you to make the proper decision and say "no" to this application; for the future of all neighborhood children and the good of the Borough.

#### Roger A. Koppes

Vice Chairman Martin asked if there were questions for Mr. Evans. Hearing none the public hearing continued.

2. <u>Travis Penrod via Video Call</u>

Ms. Penrod stated that her husband was a Colonel in the United States Air Force and is currently out of State. She asked permission from the Chairman to allow her husband to testify electronically.

Vice Chairman Martin granted permission for Mr. Penrod to testify electronically.

Mr. Penrod started his testimony by telling what had been going on in the pit since Mr. Cude purchased the property in 2012. Shortly after the purchase was made, he began digging large sums of gravel in the bottom of the pit using heavy equipment, dozers and excavators. He took this large sum of gravel that was primarily dug out of the water aquifer at the bottom of the pit. Mr. Cude stock piled it against the south side of the pit. As soon as the excavating started taking place, Mr. Penrod called the Borough and explained that they wanted this stopped immediately. He spoke with Max Best who told him that it was private property and there wasn't anything to be done. Mr. Best stated that he spoke with the property owner personally and that they would approve the development that the new owner was going to be doing.

Shortly, thereafter, Sean Cude drove his truck into his driveway and they spoke personally. Mr. Cude

told him that his sole purpose for digging up the gravel was to put in a private driveway along the south border of the pit so that he could get back to his property on the river. He told him that he was planning on building a million plus dollar house that would be a great asset to the neighborhood and that they would all approve. He also privately confided in him that the reason the driveway had to be so large was so that he could land his private Cessna 206 on the runway so he could park it at his house. Mr. Penrod stated that he continued to dig and made an enormous pond in the aquifer in the bottom of the pit.

The next summer when Mr. Cude said he was going to be building his house; instead he began to haul gravel out of the bottom of the pit that was piled up. Mr. Penrod immediately called Max Best who told him that he allowed Mr. Cude to haul gravel out of the bottom of the pit. Mr. Penrod commented that it was in direct violation and that he could not be digging and if he was going to do anything he needed to push that gravel back into the hole like he said.

Mr. Penrod spoke with Mr. Cude on several occasions throughout the last few years. Mr. Cude told him personally that he was planning on backfilling that pit as fast as he could because he doesn't want that ugly eyesore in his neighborhood either because he was planning on living there as well. If Mr. Cude is hauling gravel out then he was not backfilling it as he said he would do.

Mr. Penrod stated that last year Mr. Cude also told him that he had bought property out on Longmere Lake and that he was going to put his airplane there so he wouldn't need his property on Virginia Dr. as a runway anymore. Mr. Cude stated that he wasn't sure what he was going to be doing with that lot but Mr. Penrod felt he was sure but wasn't willing to share it with him.

This summer (2014) a road was placed to the bottom of the pit and trucks began hauling overburden (organic material) and dumping it into the aquifer. On the permit, Mr. Cude stated that he filled the aquifer with clean gravel but he did not. Mr. Penrod stated that he filled it with organics and nasty material and created a giant mud hole. He felt that not only did he make the mud hole but he contaminated the water which is associated with all of their drinking water. Instead of having two feet of clean gravel on top of the aquifer, Mr. Cude actually made a giant mud hole which is completely unacceptable and a direct violation of the permit that he was filing for at this time.

Mr. Penrod stated that all these reasons were reasons that they need to pursue to get this permit not approved so that their neighborhood can get back to being a quiet place as it should be.

Vice Chairman Martin asked if there were questions for Mr. Penrod.

Commissioner Holsten thanked Mr. Penrod for his service. She asked if the operator has been putting manmade materials in the pit since 2012. Mr. Penrod replied that they have been hauling manmade materials into the pit to backfill the pit but it is hard to tell what was actually put into the pit. (*Clerk's note: The speaker stepped away from the microphone to get a little closer to the commission so that he could hear what the commissioners were asking. The clerk could not hear his answer nor did it get recorded on the recording.* 

A jar of muddy water was passed around to show the commission that there was no gravel in the mud.

There being no further comments or questions, the public hearing continued.

3. Crystal Penrod, 36860 Virginia Drive

Ms. Penrod stated they also own 36770 Virginia Dr. She presented additional photos of the site which were passed around for the commission to see. As the lovely water sample from their aquifer was being passed around, she challenged each of the commission to find clean gravel. Ms. Penrod stated they have dealt with this problem for 15 years. It was 15 years ago that an illegal gravel pit had dug and removed over a million cubic yards of gravel.

Ms. Penrod stated that they have lived at this location for 19 years and have been there for this whole material site thing. They have a son in college who has a starter future home down the street from them and will live there when he is through with his engineering degree at UAA.

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Ms. Penrod stated that this started out with Warren Finley and Max Best 15 years ago. They have fought this since then. The current operator has continued to dig in the water aquifer, dumping pollutants and have continued to do the same thing as previous operators have done. She felt that there has been zero enforcement by the Borough. They have called, they have begged, they have pleaded and asked them to please do their job and please don't make them lose their homes. The digging and the gravel removal continues with the breech of their water, the aquifer and now the contaminants of the dumping materials.

Ms. Penrod stated that Mr. Cude purchased this property through a Title Company and as such was given a copy of the covenants of the neighborhood. She stated that he is absolutely part of the subdivision because of the way it was subdivided. He has to become compliant with the covenants or the Homeowners Association will seek litigation. Ms. Penrod stated the applicant was aware of the covenants prior to the sale and knew what he was getting into. She stated the he knew they would not put up with having something this awful in the neighborhood again. He knowingly was uncompliant and started digging a year ago and knew exactly what was going on when he dug in the pit and that they were not going to put up with it.

Ms. Penrod stated this was never a permitted permit. The previous operator stopped the operations but not before a million cubic yards of gravel was taken out. She stated they will fight this. If this permit is approved then they will proceed with litigation. The small amount of gravel of 50,000 cubic yards that Mr. Cude was proposing to be removed was a small pittance in comparison to all of the homeowners having their property devalued, having their water ruined and having the roads deteriorating. They finally got their Borough road that was decent to drive on as shown in the submitted photos but now the first half of the road is almost impassible at times because it is so muddy, pitted and rotten from the operator's trucks and traffic.

Ms. Penrod stated that the dumping of organic material into the well is just icing on the cake for them. She stated that due to the pit and the affects to the aquifer, they have purchase bottled water which has been delivered to them for the last 15 years. Her household of three goes through about eight bottles a month at \$8 a piece so that was about \$768 per year and approximately \$11,520 over the course of the last 15 years.

Ms. Penrod stated that they have to constantly be watching this and constantly taking the time to obtain evidence which is not their job. They should be able to live in their neighborhood and not worry about someone coming in with rock crushers and big trucks. She thanked the commission for their time and consideration and hoped they would look at the photos and sample water and gives them their neighborhood back.

Vice Chairman Martin asked if there were questions for Ms. Penrod.

Mr. Venuti asked if she has had her water tested. Ms. Penrod replied that they tested it between the 5-10 years ago which showed higher levels than normal of sulfates. They stopped having it tested. It was expensive to do that so they immediately switched to bottled water. She stated they have to flush their water out if they were gone from their home for more than 24 hours. Mr. Venuti asked when was the last time they had their water tested. Ms. Penrod replied that it was about 5-6 years ago.

Commissioner Foster asked if she realized that the Borough doesn't regulate covenants. The Borough would do something if an ordinance was broken. Ms. Penrod replied yes but if they looked into it then they could see that several ordinances have been broken. Commissioner Foster asked if the Diamond Willow Estes Homeowner's Association covenants were created in 1975. Ms. Penrod replied yes, she believed so. Commissioner Foster asked if there was any gravel extraction at that time. Ms. Penrod replied no, there were no permits were on the record with the Borough at that time. The current gravel pit was a hayfield at that time. Commissioner Foster asked if legal action was taken by the Homeowners Association with the previous owner at the initial onset of this gravel pit. Ms. Penrod replied they put their faith into the Borough 15 years ago. Eventually the Borough denied the permit and denied the appeal. She stated that Mercedes Gibbs was the previous owner but has continued to do things. Ms. Penrod stated they call and is told by Mr. Best that it is not KENAL PENINSULA BOROUGH PLANNING COMMISSION AUGUST 25, 2014 MEETING MINUTES PAGE 19

their property or business. She stated it is their business but Ms. Gibbs is the wife of a homesteader so she has places there but Mr. Cude does not.

Commissioner Holsten asked if they or anyone else in the neighborhood have their water tested prior to the initial gravel pit going in. Ms. Penrod replied yes, when they started building their home 20 years ago and were thrilled that they did not have to have any type of filter or any type of sand screen. They had beautiful clean and drinkable water but that is no more. It hasn't been like that for 15 years.

Commissioner Isham stated those sulfites tests are quite specific. He asked if they were testing for sulfites when they first tested their water. Ms. Penrod replied that her husband took their water in at the time and told them the situation and that they wanted to know what was going on and where they are at now. They knew where they were at in the beginning and that they wanted to know where they were at each time the water tested. She stated that at the time, they had a very young child and they were not willing to put that type of contaminate in him. They were told that it was not quite to level where it was completely undrinkable.

There being no further comments or questions, the public hearing continued.

4. Dennis Gease, 36710 Virginia Dr

Mr. Gease has lived at this location for 14 years. He was approaching 80 years of age and his memory was waving a little bit. It seemed like he has been here before with the same situation and the same pit. Mr. Gease believed the previous permit was denied. He asked the following four questions.

- 1. Mr. Gease referred to the following statement. *"The applicant's depth of excavation is up to 20 feet below the natural existing grade. The application states that a test hole was excavated..."* He asked who suggests or devises where the applicable grade was.
- 2. Mr. Gease referred to the following statement. "The applicant anticipates a life span of 20 years for the site and that the annual excavation quantity will be less than 50,000 cubic yards of material. The bonding requirement of KPB 21.29.050(12b) will apply to this material site if exaction in any one year exceeds 50,000 cubic yards of material." He asked if the applicant was taking out less or more than 50,000 yards. Also he asked what the bond was for and who bonds him.
- 3. Mr. Gease referred to the following statement. *"The permittee shall conduct operations in a manner so as not to damage borough roads as required by KPB 14.40.175 and will be subject to remedies set forth in KPB 14.40 for violation of this condition."* He asked what the violations were and who enforces this law. They have had these violations for the past 10 years and have never seen any corrective action taken on the violations.
- 4. Mr. Gease stated that they saw what happened 10 years ago after the denial of the permit and operations continued with no action taken. He asked what kind of enforcement the Borough does and what legal action can they do if the Borough doesn't do it. Mr. Gease noted that the applicant anticipates a life span of 20 years for this project however he understood that this permit would be valid for five years. He asked if there would be a possibility of another hearing in five years if this permit was issued. The applicant could take out 200,000 yards of gravel on 4.8 acres. It seems awfully difficult for him to envision this. He could see it if he was starting over on 20 acres but he is on 4.8 acres where he wants to remove 50,000 cubic yards for 20 years.
- Mr. Gease respectfully asked that these questions be answered and that this permit be denied.

Vice Chairman Martin asked if there were questions for Mr. Gease. Hearing none the public hearing continued.

5. <u>Tim Agosti, 36894 Virginia Dr.</u>

Mr. Agosti stated that as a homeowner he was opposed to the material extraction permit because of KENAI PENINSULA BOROUGH PLANNING COMMISSION AUGUST 25, 2014 MEETING MINUTES PAGE 20

the effects it will have on the local aquifer, water well and the surrounding wells. The homeowners in the area oppose an extraction permit by the previous landowner for the same reasons as well as other issues that occurred with the previous owner.

Mr. Agosti felt the current landowner has done a good faith effort in backfilling and grading the site however when they initially started the grading a great deal of gravel was moved and pushed up to create an airplane landing strip. Some of the gravel used was from stockpiles from the previous owner however much of the gravel was taken from the bottom of the existing pit. He stated it was new excavation which exposed the local aquifer. This exposed aquifer was later backfilled with overburden and organic material.

Mr. Agosti stated that the application also that the exposed groundwater were backfilled with clean gravel fill. He stated that he, his wife and his neighbors have personally witnessed that the significant portion of that exposed aquifer was filled with organic overburden and not clean gravel. There was a minor area recently where gravel was pushed into the exposed water aquifer which was also taken from the bottom of the pit.

Mr. Agosti stated that there is a possibility with further excavation to the west and south and with typical heavy equipment that uses oil and diesel fuel that the local aquifer and groundwater may become contaminated. He felt that these contaminates may or could leach into the Kenai River.

Mr. Agosti stated that the residents of the area would also be impacted by the extraction equipment, noise and dust contaminates. He asked that there be proposed action to minimize the effects of these items.

Finally, Mr. Agosti stated that Virginia Dr. would see the excessive use of truck hauling and ask that there be a requirement that the Borough grade and maintain it more frequently than normal.

Vice Chairman Martin asked if there were questions for Mr. Agosti.

Mr. Venuti asked if he had his water tested lately. Mr. Agosti replied no, he has not had his water tested lately. He stated they are using bottled water. Mr. Venuti asked when the last time was that he had his water tested. Mr. Agosti replied that it has been several years.

There being no further comments or questions, the public hearing continued.

#### 6. Barbara Roberts

Ms. Roberts is part of the Willowbrook North Homeowners Association. She was notified just last week of the subject application so she did not have an opportunity to discuss this issue with the board of Willow Brook North Homeowners Assoc. Ms. Roberts presented a source water assessment report that talks about the hydrologic susceptibility and vulnerability assessment for their subdivision. The total subdivision has 100 homes in it. The map that she would like to pass around shows susceptibility area for their subdivision which zeros right into the subject gravel pit. It is called "Source Water Assessment, A Hydrogeologic Susceptibility and Vulnerability Assessment for Willow Brook North Drinking Water System." As a subdivision owner she requested this permit application not be approved.

Vice Chairman Martin asked if there were questions for Ms. Roberts.

Commissioner Ruffner asked if the public water well had to be tested. Ms. Roberts replied yes, it is tested on a regular basis. She stated they do have water rights on this well. Commissioner Ruffner stated that one proactive thing that can be done is to file for water rights through DNR. Commissioner Ruffner asked if their public water system has always passed DEC requirements. Ms. Roberts replied yes, they have good water at this time and would like to keep their good water. The type of backfill that might be used in the gravel pit could affect their water, it doesn't sound like the owners have used good backfill up to this point.

There being no further comments or questions, the public hearing continued.

#### Chris Wehr, 36680 Virginia Dr., Kenai 7.

Mr. Wehr expressed concern with what was put into this gravel pit. He has seen creosoted treated railroad ties, pressure treated lumber, macadam and tires. Last year, he requested that the Borough come and check the site since he had seen big huge bags on the site that would be carried on the back of a semi with the big loops. It had salt written on the side of them, 1,100 kilograms and if his math was right then it was over 2,200 pounds. Mr. Wehr went and investigated what it was. It appeared to be with concrete so he had no earthly idea of what was in the bags. It could have been concrete or half salt but he had no idea. He requested the Borough to come to the site to check it out but unfortunately no one was available due to the vacancy of the position. Over the weekend they bulldozed the bags to the bottom of the pit. Yes, the Borough did come to the site later but it was too late. Other things he has seen go into the pit has been raw sewage that was pumped onto the ground, fish carcasses, and moose carcasses. It isn't necessarily the other businesses that are bringing material to be bull dozed in there but are the things that aren't watched over the weekend or at night. There are people who are dumping things at night; it is a free for all in a lot of ways.

Mr. Wehr also expressed the concern that this pit could affect the river. He lives directly on a bluff and the reason he bought the property is that it was cheap because they couldn't' get a mortgage on it figuring that it would be in the Kenai in 30 years. They bought it considering it was a good buy.

Mr. Wehr's was also concerned were with heavy traffic, possible blasting, all the other equipment moving and the possibility of his bluff going down the river. The applicant is asking for 20 years but he won't be here in 20 years so for the future of their kids and grandkids he asked that the permit be denied. He was available to answer questions.

Vice Chairman Martin asked if there were questions for Mr. Wehr. Hearing none the public hearing continued.

#### Karen Bundy, 37523 Wanda Gail Dr. 8,

Ms. Bundy does not live on Virginia Dr. but passes there every day. She has been a nurse for 40 years so health concerns are her main concerns and really worries about the children. There are so much that goes on in the world that they don't know what the repercussions are for 20, 30 or 40 years. They can think of mesothelioma in the asbestos industry or silico which they don't know at this point what was going to happen with the little children breathing it. So when they are adults, 30 or 40 years from now and they have lived around a gravel pit they might find out what they got but now it was too late because they have an incurable disease.

Ms. Bundy also expressed worry about the water supply because as she drives by the pit she had always thought the pit was a dump because of all the stuff that was dumped in there. She stated that her husband told her it was fill that they were putting in the gravel pit. This was what the neighborhood that has monitored the activity has been looking at.

Originally, Ms. Bundy stated she wasn't against the gravel pit but thought the 20 year was excessively a long time. The purchase price of a home in this area would be going down because of the gravel pit. After listening to the neighborhood she has more concerns then when she wrote her letter. She pleaded with the commission that they think about the health of the community and of their children. Ms. Bundy asked that the commission think about denying this permit or at least thinking about it.

Ms. Bundy stated she doesn't know the applicant but admires anyone who has a business in this political arena. It is hard to have a business nowadays but if the applicant doesn't live in the community then he is not directly affected. She felt it was not fair for children and residents in a beautiful place like Alaska to have to deal with all of this.

Vice Chairman Martin asked if there were questions for Ms. Bundy. Hearing none the public hearing continued.

#### 9. Darlene Liuska, 4676 Gadwell Ave

Ms. Liuska stated that her backyard backs up to the gravel pit. When she moved to the area they were told that this gravel pit was an illegal inactive pit. She now gets the notice that the new owner PAGE 22

wants to open the pit and not only take gravel out of it but also process it there.

Ms. Liuska stated that she and her husband are concerned about what this might do to their water and of the constant noise that would be going on. It was bad enough having the trucks going in and out dumping and banging all the time. She wanted to go on record that she totally disapproves this action and asked that the permit be denied.

Vice Chairman Martin asked if there were questions for Ms. Liuska. Hearing none the public hearing continued.

#### 10. <u>Sean Cude</u>

Mr. Cude is the contractor and owner of the pit. He has owned this property for two years and has been trying to take care of the problems and issues that were left on this property. He has brought a lot of fill to help reclaim the property which was more than most contractors. These problems stem back to a non-responsible operator. He has a vested interest in the neighborhood since he owns a 3.6 acre Kenai River lot.

Mr. Cude pointed out that this parcel is not part of the subdivision and homeowners association. He presented paperwork which states that Tract A is not part of the subdivision. The covenants clearly states that Tract A is excluded according to the original plat. Mr. Cude encouraged everyone to read the plat.

Mr. Cude stated that there has already been approximately 14 acres that has removed under previous ownership which was operated without a conditional use permit or not meeting any of the requirements. He assured the commission that he would comply with all conditions and that he wasn't opposed to changing the access road by a different route rather than coming down Virginia Dr.

Vice Chairman Martin asked if there were questions for Mr. Cude.

Commissioner Isham asked when he purchased the property. Mr. Cude replied that he purchased the property in December 2012.

Commissioner Carluccio asked what was being used for backfill. Mr. Cude replied that most of the fill comes from Borough Maintenance projects coming from the local neighborhoods. The local contractors bring truckloads of organic material to the site. Commissioner Carluccio asked if he had seen some of the pictures that show that there was other debris that has been dumped in the pit. Mr. Cude replied yes, he has seen the pictures.

Commissioner Carluccio asked if the groundwater that was coming up was part of the aquifer. Mr. Cude deferred to Mr. McLane who is his engineer and can speak specifically to that.

Commissioner Holsten asked for his comments regarding the accusations of what was being dumped in the pit like creosote logs, big concrete pieces, pressurized treated lumber, tires, etc. She felt those items did not quite strike the organic standard. Mr. Cude encouraged her to come to the site and see what has been dumped into the pit. He assured her that there are only trees and organic materials that have been dumped into the pit. There is a sign that clearly states that no dumping without permission. Someone has to call them since there is no dumping of garbage, no refuse but trees and organic materials only. Commissioner Holsten asked if there was only a sign to preclude someone from dumping their junk in the pit. She asked if there was someone on site to manage access to the pit. Mr. Cude replied that they have had no reason to fence it and have it manned by someone.

Commissioner Foster stated that he said there was a lot of road maintenance debris being dumped in the pit yet there was a testifier who claimed there was asphalt road material being dumped in the pit. Mr. Cude replied there was not supposed to be any asphalt material going in there but only organic materials.

Commissioner Ruffner asked what his plans were for crushing, shaking, and hours of operation.Mr. CudeKENAI PENINSULA BOROUGH PLANNING COMMISSION AUGUST 25, 2014 MEETING MINUTESPAGE 23

replied that he has no problem with having working hours of operation. He stated there would be no crushing but will be screening the material. Commissioner Ruffner asked what he thought was reasonable regarding hours of operation. Mr. Cude replied that he proposed to have 8:00 a.m. to 5:00 p.m. as his hours of operation. Commissioner Ruffner stated that it would be regular business hours.

Commissioner Holsten asked what he proposed for better access. Mr. Cude replied that there was the possibility of accessing the pit on Ciechanski Rd and Canvasback Ave and therefore avoiding Virginia Dr.

Commissioner Venuti asked if there was an employee onsite that monitors what was brought into the site. Mr. Cude replied that he would have during the hours of operation if the site was permitted. Commissioner Venuti understood that there was no one at this time onsite who was monitoring what was brought into the pit. Mr. Cude replied that was correct.

Commissioner Holsten asked if someone notices if there was inappropriate stuff that was being bull dozed in the pit. Mr. Cude replied that they are not going to push over contaminates. He encouraged the commission to come look at the site to see what has been dumped there.

There being no further comments or questions, the public hearing continued.

11. Sam McLane, McLane Consulting, Inc, 38240 Kenai Spur Highway

Mr. McLane stated that they prepared the application for the applicant and personally dug the test hole. He stated that he has lived here for a long time and driven by it. The hole has been there a long time.

Mr. McLane stated that he was down in the pit floor in early July. At that time it had a pretty gravelly floor and a large gravel bank on the south side. The aquifer was in gravel when he dug the test hole. One test hole was dug to see where the water table was located.

Mr. McLane stated he was at the meeting to mainly answer questions. One of the things he noticed over the years was that he thought his firm did the Virginia Dr. improvement design for the Borough Roads Service area. What they have seen on Virginia Dr. is that there is no berm which allows access to the pit. He stated that with a permitted plan there will be a berm all around there so that the will only be one access point.

Vice Chairman Martin asked if there were questions for Mr. McLane.

Commissioner Carluccio asked if it was customary to drill only one test hole. Mr. McLane replied that the ordinance requirement was to determine depth to groundwater, aquifer. Commissioner Carluccio asked what the depth was that he found the aquifer. Mr. McLane replied that it was about 2 feet from the pit floor. Commissioner Carluccio asked for comments regarding the muddy hole that everyone was talking about. She asked where it was in relationship to where the test hole was dug. Mr. McLane replied that there wasn't a muddy hole when he was there. It had been recently graded, there was gravel on the bottom and there was some softer areas. He wasn't making a complete inspection of what was there and didn't dig a hole near what was the reclaimed area.

Commissioner Holsten asked when the test hole was dug. Mr. McLane replied that it was early July 2014.

Commissioner Venuti asked if he saw any debris other than gravel or good material. Mr. McLane replied that he wasn't really looking at that but he did notice that it was typical of what goes in old gravel pits. Most of it was old top soil, silt, moss, and a few stumps and roots.

Mr. Best asked if he was in the lowest portion of the pit floor when he dug the test hole. Mr. McLane replied yes, it was pretty level within a foot or so. Mr. Best asked what he did to advise his client to stay away from the water table. Mr. McLane stated that if this site was permitted then he would advise his client to install a monitor well because it wasn't seasonal high when he was in the pit in July.

There being no further comments or questions, the public hearing continued. KENAI PENINSULA BOROUGH PLANNING COMMISSION AUGUST 25, 2014 MEETING MINUTES

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## 12. Jeanette Maly, 36770 Virginia Dr.

Ms. Maly reminded the commission that this was never a legal gravel pit. It wasn't right to permit something that was never legal and asked that this be allowed to go back to the hay field that it used to be when they bought their property. There are so many gravel pits around and anyone can go anywhere to get gravel where there are not people living. She didn't understand why they won't enforce this. This was their life that they are dealing with; it is their homes. Ms. Maly felt that Mr. Cude was not being truthful by the pictures and will not be truthful in the operations of the pit.

Vice Chairman Martin asked if there were questions for Ms. Maly. Hearing none the public hearing continued.

13. Kim Cox, 47204 Lexington Ct

Ms. Cox stated they bought their home brand new. They have monitored activity of the pit practically every night as take a walk by there. Their household well draws its water from the aquifer. When the aquifer was interrupted they started noticing that there was rusty septic tanks and other unhealthy debris being used as fill in the pit. She stated that the applicant asked the commission to take a look at the site but now the stuff that is on top is not rusty septic tanks. The septic tanks are covered over in the pit. She felt that this pit affects their water, their kids and grandkids.

Vice Chairman Martin asked if there were questions for Ms. Cox.

Commissioner Foster asked if she noticed the rusty septic tanks after the applicant purchased the property. Ms. Cox replied yes, he had the pit for two years. The site has been being reclaimed and filled but the thanks have not been removed.

Hearing no further questions or comments, the public hearing continued.

14. Kelly Wolf, 34800 Kustatan

Mr. Wolf requested that the commission postpone action on this permit and do a field trip to go look at the site. Today, he drove down Virginia Dr. which is a public road.

Seeing and hearing no one else wishing to speak, Vice Chairman Martin closed the public comment period and opened discussion among the Commission.

**MOTION:** Commissioner Ruffner moved, seconded by Commissioner Isham to approve Resolution 2014-20 thereby approving the Conditional Land Use Permit for a material site.

Commissioner Isham stated that several of the testifiers claimed that this was an illegal pit and asked for comments regarding that from staff. Mr. Best replied that back when the subdivision ordinance was first brought into the Code there was a process to do grandfathered pits which is now called prior existing. There was a specific amount of time where someone had to come in and tell the Borough that they had a prior existing pit and then staff would check that out. A letter was then issued by the Planning Director verifying and certifying that it was a prior existing. He doesn't recall, since he wasn't the director at that time but there was an investigation done and the Code Enforcement Officer, John Mohorcich inspected the site and determined that the parcel qualified as a prior existing use. That was put in the file and subsequently the Fire Training Center was built and they hauled gravel. It was investigated that that particular time and only found that the determination from the Borough that it was a prior existing and no letter was issued. Mr. Best stated that staff contacted the owner and the pit operator at that time but neither one of them could produce the letter from the Borough and neither could they find it in the reading file. He also stated that it was determined at that time to stop the activities as a pit. At that time and after further investigation, it was determined to be an illegal pit and was ordered to stop activities. There was a pile of gravel that had been processed and ready to go which was allowed to be taken out of the pit. Permission was granted that they could take that pile of gravel but not dig anymore.

Commissioner Venuti stated that back in 2004, there were allegations that the pit was backfilled with garbage and there was an oil spill. He asked if anyone had gone to the site to see if that was accurate. Mr. Best replied that the allegations were made but thought they were transferred over to DEC because they were the KENAI PENINSULA BOROUGH PLANNING COMMISSION AUGUST 25, 2014 MEETING MINUTES PAGE 25

ones who regulate that type of activity. He stated that the type of fill and the types of contamination that were brought about were not within the Borough's purview or authority to do anything about. It was not a permitted pit so he believed those allegations were transferred over to DEC. He did not know what the outcome was at that time.

Commissioner Lockwood asked for clarification of what the Borough's enforcement capabilities are, if any. Mr. Best replied that their enforcement has changed. In 2011-2012, a new Code Enforcement, KPB 21.50 was adopted. Now there is a complaint process and a fine schedule that is enforceable. He felt that the prior KPB 21.50 was not very effective but now there is a process. They had to pretty much catch them doing what they were doing. Every time they asked an operator to stop, they stopped.

Mr. Best stated there were those accusations in 2004 where there was an operator who operated for quite some time and was fined for his activities within the pit. He wasn't sure the operator ever paid the fines since he had gone out of business. There is now a process that is a little more user friendly. The Code Enforcement Officer is sent out to the site to take pictures, investigate, dig holes or do whatever needs to be done. There is now a \$300 per day fine for violating permit conditions or operating a pit without a permit.

Commissioner Lockwood pointed out that they are not the Planning & Zoning Commission and they don't have authorization through the Borough Assembly to have zoning because the people have never voted for it. If they want to take more control in situations like this then the Borough needs to have a Planning & Zoning Ordinance.

Commissioner Foster stated that it appeared that there have been violations within the last two years of taking gravel out and putting fill that should not be put in there. He asked if there have been any investigations by the Planning Department to check this out. Mr. Best replied that they have followed up with all the phone calls in the past several years. Ms. Cady used to investigate all calls and now Mr. Wall fills that capacity. What was reported to him was that the activities had ceased or they weren't taking gravel off site, they were building an airstrip, they were taking out of the existing pile that they had permission.

Commissioner Foster asked who was liable for the offense of the alleged improper fill going in an unpermitted pit. He also asked who would be responsible for getting rid of the improper fill. Mr. Best replied that type of activity is not regulated by the Borough. The fill of whatever is a DEC issue. They don't deal with fill according to the Material Site Excavation Ordinance but is the excavation of material. He stated those allegations need to be taken to DEC and testing needs to be done to determine if there are contaminates in the pit. Responsibility would probably be with the original and current owner but wasn't sure about that since he was not an attorney and wasn't sure how they process those types of things.

Commissioner Holsten asked how the bond works if it goes below 50,000 cubic yards a year. Mr. Best replied that the bonding requirements are through the Statewide Bonding pool through the State of Alaska. If someone excavates more than 50,000 cubic yards then they need to go to the State of Alaska through the Division of Mining, Land and Water and obtain a bond to excavate more than 50,000 cubic yards. Under that amount someone is exempt from the requirement of bonding and an annual mining letter is filed that says that they are going to do less than 50,000 cubic yards.

Commissioner Holsten asked about who would determine the damage of the road. Mr. Best replied that it would be inspected and handled through the Roads Service Area. They would probably investigate it to determine that the truck traffic had damaged the road.

Commissioner Isham referred to page 36 of the packet which was a material site reclamation plan. It states that *"the material shall be reasonably free from roots, clods, sticks and branches greater than 3 inches."* He asked if the Borough would be responsible for what goes into the pit if this permit is issued. Mr. Best replied that particular standard was done for the overburden and top soil that goes over the top. Commissioner Isham asked if that was something the Borough would regulate. Mr. Best replied yes, that was correct.

Commissioner Carluccio asked for clarification that it appeared that an operator can put anything in the hole when reclaiming it and cover it up but the Borough is only concerned about the top couple of inches. Mr. Best replied yes, that was correct because they could leave it as a hole and top soil it and seed it. He stated the KENAI PENINSULA BOROUGH PLANNING COMMISSION AUGUST 25, 2014 MEETING MINUTES PAGE 26

Borough does not regulate the backfill. Commissioner Carluccio understood that the Borough's doesn't regulate it or require it. Mr. Best replied that was correct. Commissioner Carluccio wondered why someone would fill it. Mr. Best replied that it was because holes are unsightly and a hay field is much nicer. Commissioner Carluccio stated that it also seemed they may have punctured the aquifer and were trying to fill it up.

Commissioner Ruffner thought that Mr. Gease's questions have been answered except for who does the site inspections. Mr. Best replied that there are annual site inspections. If they felt that they are close to the water table then they will dig holes with a shovel in the bottom of the floor and monitor it to see if there was water. Commissioner Ruffner asked if it was a \$300 a day violation if they were less than two feet from the seasonal high water table or it flooded the pit. Mr. Best replied that if they found that then they would tell the operator to refill it. There was an operator in Anchor Point who exposed the water table and they made him put in clean fill and cover it back up and reclaim it with good clean fill. He stated they would make them fill it back up and stay out of it. They have only fined one person in the past. Typically, the operators comply and put the material back.

Commissioner Ruffner asked for clarification regarding the berming and fence aspect of this pit. One of the big concerns he heard was that there was no control over the pit. Mr. Wall replied that once the permit is approved and issued, the applicant will be required to place a six foot berm along Virginia Dr., Ciechanski Rd. and along Canvasback Ave. The operator would also need to put a six foot fence along the south property line where it abuts up against Ravenwood Subdivision. A six foot fence would be required to be installed along the east property line which would abut up against Mrs. Gibbs and the other applicant's property once he removes vegetation beyond the fifty foot buffer.

Commissioner Ruffner asked if it would be safe to assume then that if the conditional land use permit was approved that in relatively short order they wouldn't be able to see what was going on in the pit with the six foot berms. Mr. Wall replied that was correct. Those berms and the fencing would greatly reduce unauthorized access to the pit. He stated that access would be limited to the ingress / egress of the pit. Commissioner Ruffner asked if there was only going to be one access. Mr. Wall replied that currently he was proposing the existing access which is Virginia Dr. He stated the applicant did propose an alternative access during his testimony if the commission desired that.

Commissioner Foster asked what the fence material was. Mr. Wall replied that the applicant did not specify the material. The ordinance states that it needs to be sufficient in height and obscurity to provide buffering. Then Commissioner Foster said that it wouldn't be chain link. Mr. Wall replied yes, it would not be chain link. He stated that the ordinance states, "*The vegetation fence should 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.*" The Planning Commission would have the ability to specify the type of material.

Commissioner Carluccio asked if it was only going to be a berm along Virginia Dr. Mr. Wall replied yes, that was what was being proposed. Commissioner Carluccio asked how wide and how close to the road was the 6 foot high berm going to be. Mr. Wall replied that they require a 2:1 slope and could go right up to the property line. The 2:1 slope would be 24 feet in width if someone was six feet tall. Commissioner Carluccio asked what would prevent ATV's, etc. from coming over the berm and playing around in the pit if it was unfenced and not in operation. Mr. Wall believed that a berm would not prevent that until it was vegetated with something that would prevent that. Commissioner Carluccio asked why he was not recommending a fence. Mr. Wall was proposing what the applicant had proposed however the Planning Commission could certainly require a fence along that property line.

Vice Chairman Martin asked what the guidelines were for granting the permit with four separate parcels. Mr. Wall replied that there are four parcels, Tract A2A, Lots C, D, and E. Lots C, D, and E appear to be configured as residential lots. The ordinance state that multiple parcels can be considered at one parcel if it was determined that it was appropriate. In this case, it was determined that it was not appropriate. He stated that one of the conditions of approval requires that this property be replated into one parcel.

Mr. Venuti asked if the six foot berm and fence will need to be place before operations can proceed. Mr. Best replied yes, that was correct.

Commissioner Foster stated that he has always been concerned about the role of the City or the Borough with covenants. The applicant stated that these parcels are not part of the covenants however it was clear that Lots C, D and E are part of the covenants which is where all the gravel was going to come from. There is the concern that there will be litigation if this is approved. He asked where the Borough would want to be in this situation knowingly be granting not only the subdivision of putting these lots together but also with the permit in this kind of situation. He asked staff if they have ever been in this type of situation before. Mr. Best replied no, as far as covenants they try to stay out of that arena. Commissioner Holsten asked what he meant by staying out of the arena. She asked if they try not to approve things are in violation or contrary to the covenants. Mr. Best replied that was something the neighborhood would have to settle on their own. He didn't think it played into the applicable standards that they apply to extract material. One of the standards that they try to uphold is not whether it was against the covenants. They try to look at it from the perspective of the six standards that they have set and have they met them.

Commissioner Foster stated this property is not within the City but this is a subdivision where there are sufficient owners that apparently opposed to it. He asked if a Local Option Zoning could occur if the subdivision applied for it. Mr. Best replied yes, that was correct. They could have applied by having 12 contiguous lots and could have included those three lots. The three quarters of the property that are within the Local Option Zone informed would have to adhere to that. A property owner can be brought in even when they don't want to be when there are three quarters of the people that are interested in keeping it that way. The reason he says the three lots was because the average of the 12 or more lots have to fall within 50% of that average either above or below. They have to be similar in size. He stated had the landowners applied for this earlier then they could have tied up those three lots in a local option zone that the Borough would have administered through zoning.

Commissioner Carluccio asked for clarification regarding the denial of this permit in the past. Mr. Best replied that he wasn't totally involved in it at that time but knows that information was in the packet. The operator wasn't operating properly so the commission denied the permit application. Commissioner Carluccio asked if it was denied because he was operating before the permits were issued. Mr. Best replied, yes that was correct.

Commissioner Isham asked if it was fair to say that the permit was never regulated in the past other than leasing and abusing the land which was done by Jason Foster. He asked if it hadn't been regulated and if this was approved then it would be regulated. Mr. Best replied yes, that was correct.

Commissioner Ruffner stated that the application was for 4-5 acres for extraction but the berm would go around the red striped area as shown on the aerial photo. Mr. Best replied yes, that was his understanding from the site plan that was administered by McLane for Mr. Cude that the berm would go entirely around the parcel and along the fenced area. Commissioner Ruffner acknowledged that the applicant was nodding his head in agreement. He stated there are certain voluntary permit conditions that the applicant has to agree to and then there are a couple of things that the Commission can purview and add stipulations to the permit. He asked if the berm and fence were in the domain of the commission. Mr. Best replied that was correct.

Commissioner Ruffner asked if the applicant could come back and address the commission.

Commissioner Ruffner stated that there is a big open pit where stuff has been going in and out. One of things he sees with the berm is that ATV's could go over them pretty easy. Mr. Cude stated that ATV's could go over them right now. He wasn't sure how much it would cost to build a fence and asked if there was the possibility of adding a fence along Virginia Dr. and Ciechanski Rd. Mr. Cude replied that anything was doable. Commissioner Ruffner understood that it has to do with money. Mr. Cude replied that was correct. The least expensive would be to berm it up with only limited access through one or two gates. He felt the site could be monitored. Even with a fence, ATV's can still find a way to access the pit if they want to. The berm will look nicer once it is vegetated. Mr. Cude presented a plat map that actually shows that those three lots are not part of the covenants. Commissioner Ruffner asked if his first order of business, prior to digging gravel was to install berms and fence. Mr. Cude replied that it was a permit requirement that they can extract anything out of there until the berm and all the requirements are met.

Vice Chairman Martin asked if there were further questions for Mr. Cude. Hearing none deliberation among the commission continued.

Commissioner Carluccio asked what type of vegetation would go on the berm. Mr. Best replied that typically it would be grass, a few birch, a little spruce and then 10-15 years those grow up. It takes time but first it starts with grass and fireweed.

Commissioner Foster asked if anyone was interested in taking Mr. Wolf's or the applicant's suggestion of postponing and people going on personal field trips of checking it out.

Vice Chairman Martin replied that he has seen the site. Commissioner Isham also responded that he has seen the site.

Commissioner Holsten stated that she wouldn't know what they were looking at underneath what was on top of the pit now.

Commissioner Carluccio stated that she would be willing to go look at it.

Commissioner Collins stated that she has been past this site several times.

There being no further comments or questions, Vice Chairman Martin called for a roll call vote.

**VOTE:** The motion failed by majority consent.

BRYSON	CARLUCCIO	COLLINS	ECKLUND	FOSTER	HOLSTEN	ISHAM
ABSENT	NO	YES	ABSENT	NO	NO	YES
LOCKWOOD NO	MARTIN YES	RUFFNER YES	TAURIAINEN ABSENT	VENUTI NO	WHITNEY ABSENT	4 YES 5 NO 2 ABSENT

### Crystal Penrod

Ms. Penrod asked for additional time for clarification. She stated that the Covenants state that as soon as someone subdivides property then the exemption is gone. That means that Mr. Cude's property is under the regulations of the covenants. Also, she stated that Mr. Best was the Planning Director when everything happened that was shown in the notebook.

Mr. Best read the appeal process.

NOTE: Any party of record may file an appeal of a decision of the Planning Commission to the Board of Adjustment in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances, Chapter 21.20.250. A "party of record" is any person or government agency that provides oral or written testimony during the Planning Commission public hearing. Petition signers are not considered parties of record unless separate oral or written testimony is provided (KPB Code 21.20.210.A.6b1). An appeal must be filed with the Borough Clerk within 15 days of the notice of decision, using the proper forms, and be accompanied by the \$300 filing and records preparation fee. (KPB Code 21.25.100)

Ms. Hartley stated that Findings of Fact in support of denial needed to be cited.

Commissioner Holsten suggested the two following findings in support of denial.

- 9. Tax Parcel Numbers 055-270-51 and 055-270-52 are configured as flag lots. The proposed excavation would not be compatible with the designed access for these lots.
- 16. The site plan indicates that there are several wells located within 300 feet of the proposed material site.

Vice Chairman Martin called a 10 minute recent at 9:30 p.m. Vice Chairman Martin reconvened the meeting at 9:41 p.m.

Commissioner Venuti suggested the following findings of fact in support of denial.

- 9. Tax Parcel Numbers 055-270-51 and 055-270-52 are configured as flag lots. The proposed excavation would not be compatible with the designed access for these lots.
- 16. The site plan indicates that there are several wells located within 300 feet of the proposed material site.
- 26. The water assessment that was put together by the Alaska State Department of Environmental Conservation which shows the potential degradation of local water supply.
- 27. The condition of the road impacts from this operation would be detrimental to the Borough interests and public safety.

**MOTION:** Commissioner Foster moved, seconded by Carluccio to cite the following findings of fact in support of the denial of Resolution 2014-20

- 1. Tax Parcel Numbers 055-270-51 and 055-270-52 are configured as flag lots. The proposed excavation would not be compatible with the designed access for these lots.
- 2. The site plan indicates that there are several wells located within 300 feet of the proposed material site.
- 3. The water assessment that was put together by the Alaska State Department of Environmental Conservation which shows the potential degradation of local water supply.
- 4. The condition of the road impacts from this operation would be detrimental to the Borough interests and public safety.

BRYSON	CARLUCCIO	COLLINS	ECKLUND	FOSTER	HOLSTEN	ISHAM
ABSENT	YES	YES	ABSENT	YES	YES	YES
LOCKWOOD	MARTIN	RUFFNER	TAURIAINEN	VENUTI	WHITNEY	9 YES
YES	YES	YES	ABSENT	YES	ABSENT	4 ABSENT

**VOTE:** The motion passed by unanimous consent.

AGENDA ITEM G. ANADROMOUS WATERS HABITAT PROTECTION (KPB 21.18) - None

AGENDA ITEM H. VACATIONS NOT REQUIRING A PUBLIC HEARING - None

AGENDA ITEM I. SPECIAL CONSIDERATIONS- None

AGENDA ITEM J. SUBDIVISION PLAT PUBLIC HEARINGS

Chairman Pro Tem Ruffner reported that the Plat Committee reviewed and conditionally approved 7 preliminary plats and postponed 5 preliminary plats. The 5 postponed plats are complicated and have to do with the Bureau of Indian Affairs.

- AGENDA ITEM K. OTHER/NEW BUSINESS
- AGENDA ITEM L. ASSEMBLY COMMENTS None

AGENDA ITEM M. LEGAL REPRESENTATIVE COMMENTS - None

AGENDA ITEM N. DIRECTOR'S COMMENTS

Mr. Best had no comments since he missed the last meeting but he did manage to get his oldest son married and out of the house.

Vice Chairman Martin asked if there were questions for Mr. Best. Hearing none the meeting continued.

KENAI PENINSULA BOROUGH PLANNING COMMISSION AUGUST 25, 2014 MEETING MINUTES PAGE 30

## AGENDA ITEM O. COMMISSIONER COMMENTS

Commissioner Ruffner stated he attended the K-Beach area flooding meeting. It was an informative meeting to talk about the flooding issues and how it relates to their roll particularly in the platting arena. One of the few things that the Borough responsibilities are with wetlands and flooding is to mark those on the plats. He felt that was one of the things they should all be watching out for.

Commissioner Lockwood stated he missed the last meeting because he was in Minneapolis visiting his one year old granddaughter.

Commissioner Holsten asked for excused absences from the next three meetings. (September 8, 22 and October 13). She encouraged the commission when they are in Cooper Landing for the next meeting to go look at the gun range and think about the location in the middle of their town. They have been working on relocating it. The Borough has been excellent in trying to help get that moved. It looks hopeful if the municipal land selections get approved

Commissioner Carluccio stated she really misses having Mari Anne Gross on the Commission and the counsel she gave.

Commissioner Foster stated that they don't have too many options when they look at the material site ordinance. One of the situations was that there weren't anyone from the public in attendance when this came up for rewrite. It was only the operators who came and gave their opinions. Unfortunately, they only see the public when there is a material site that meets all the requirements. He suggested that the landowners check into a Local Option Zone for their neighborhood. It is the best thing going for subdivisions that want to preserve and get some zoning in the Borough. The Borough will support the Local Option Zone but it may be too late for the situation that was on tonight's agenda.

Ms. Hartley reminded the commission that the next meeting of September 8 will be held in Cooper Landing at the Cooper Landing Community Hall.

Commissioner Foster asked for an excused absence from the next meeting of September 8.

AGENDA ITEM P. PENDING ITEMS FOR FUTURE ACTION

AGENDA ITEM Q. ADJOURNMENT

**MOTION:** Commissioner Foster moved, seconded by Commissioner Carluccio to adjourn the meeting at 9:48 p.m. Seeing and hearing no discussion or objection, the motion passed by unanimous consent.

Patti Hartley

# 2015-003393-0

Recording District 302 Kenai

04/24/2015 03:22 PM Page 1 of 13

#### CONDITIONAL LAND USE PERMIT FOR MATERIAL EXTRACTION KENAI PENINSULA BOROUGH PLANNING DEPARTMENT KENAI RECORDING DISTRICT

A L A

S K

Legal Description: Tract 13, Diamond Willow Estates Subdivision Part 13, according to Plat 2015-12, Kenai Recording District, Third Judicial Court, State of Alaska.

- WHEREAS, On July 25, 2014 Sean Cude submitted a conditional land use permit application to the Planning Department for the property currently described as above; and
- WHEREAS, KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough; and
- WHEREAS, KPB 21.29 provides that a conditional land use permit is required for material extraction which disturbs more than 2.5 cumulative acres; and
- WHEREAS, the above described property is greater than 2.5 acres and is located within the rural district; and
- WHEREAS, public notice of the application was mailed on August 5, 2014 to the 284 landowners or leaseholders within one-half mile of the subject parcel pursuant to KPB 21.25.060; and
- WHEREAS, public notice was sent to the postmasters in Soldotna & Kenai requesting that it be posted at the Soldotna & Kenai Post Offices; and
- WHEREAS, public notice of the application was published in the August 14, 2014 & August 21, 2014 issues of the Peninsula Clarion; and
- WHEREAS, a public hearing was held at the August 25, 2014 meeting of the Kenai Peninsula Borough Planning Commission; and
- WHEREAS, the Kenai Peninsula Borough Planning Commission denied the request at their August 25, 2014 meeting; and
- WHEREAS, the denial was appealed to the Kenai Peninsula Borough Board of Adjustments; and
- WHEREAS, the Kenai Peninsula Borough Board of Adjustments heard the appeal on January 21, 2015; and
- WHEREAS, on February 13, 2015, the Kenai Peninsula Borough Board of Adjustments reversed the decision of the Kenai Peninsula Borough Planning Commission and

Kenai Peninsula Borough Planning Commission Conditional Land Use Permit

granted approval of the conditional land use permit (Exhibit A) subject to the conditions and recommendations of Resolution 2014-20 (Exhibit B);

**NOW, THEREFORE**, the Kenai Peninsula Borough Planning Department gives notice to the public that the conditional land use permit for the above mentioned parcel is approved subject to the following conditions:

PERMIT CONDITIONS

- 1. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
- 2. The permittee shall place and maintain a 6-foot berm along the north property line adjacent to Virginia Drive, the west property line along Ciechanski Road, and along a portion of the south property line along Canvasback Avenue; place and maintain a 6-foot fence along the remainder of the south property line adjacent to Ravenwood Subdivision; and maintain a minimum of 50 feet of undisturbed, natural vegetation between the excavation perimeter and the east property line until excavation takes place in that area, the vegetative buffer shall then be replaced with a 6-foot fence that shall be maintained.
- 3. The permittee shall maintain at least a 2:1 slope between the inner buffer zones and pit floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 30 days from the time of removal.
- 4. The permittee may not operate materials processing equipment within 300 feet of the west, south, or east parcel boundaries; or within 100 feet of the north boundary. Rock crushing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
- 5. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
- 6. The permittee shall maintain a 2-foot vertical separation from the seasonal high water table.
- 7. The permittee shall not dewater either by pumping, ditching or any other form of draining unless an exemption is granted by the planning commission.
- 8. The permittee shall ensure that fuel storage containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.
- 9. The permittee shall conduct operations in a manner so as not to damage borough roads as required by KPB 14.40.175, and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
- 10. The permittee shall notify the planning department of any further subdivision or return to acreage of this parcel. The planning director may issue a written exemption from the permit 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.
- 11. The permittee shall apply water or calcium chloride, as needed, on haul roads within the boundaries of the subject parcel.
- 12. The permittee shall reclaim the site as described in the reclamation plan for this parcel and as approved by the planning commission.
- 13. The permittee is responsible for determining the need for any other municipal, state or federal permits and acquiring the same. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and

Kenai Peninsula Borough Planning Commission Conditional Land Use Permit

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abiding by related permits.

- 14. This conditional land use permit may be subject to annual review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.25.090, the planning commission may revoke a permit issued pursuant to this chapter if the permittee fails to comply with the provisions of KPB 21.29 or the conditions of the permit. The planning director will provide at least 30 days written notice to the permittee of a revocation hearing before the planning commission.
- 15. Once effective, this conditional land use permit is valid for five years. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.

Pursuant to the Board of Adjustments decision on February 13, 2015, this Conditional Land Use Permit shall become effective on signing by the Planning Director.

lanning Difector Maxwell J.

April 15, 2015 Date

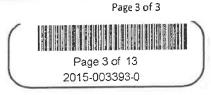
ATTEST:

Patti Hartley

Administrative Assistant

Return to: Kenai Peninsula Borough Planning Department 144 N. Binkley Soldotna AK 99669

Kenai Peninsula Borough Planning Commission Conditional Land Use Permit



# EXHIBIT A

#### BOARD OF ADJUSTMENT

#### **KENAI PENINSULA BOROUGH**

In the Matter of the Appeal of the Kenai Peninsula Borough Planning Commission Approval of conditional land use permit for KPB Tax Parcel ID #055-270-88, 055-270-50, 055-270-51 and 055-270-52, a 19.36 acre site located at Tract A2A, Diamond Willow Estates Subdivision Part 11 according to Plat 2012-93, Kenai Recording District, Third Judicial District, State of Alaska; and Lots C, D & E, Diamond Willow Estates Subdivision Part 10 according to Plat 2008-135, Kenai Recording District, Third Judicial District, State of Alaska.

Joe Kashi, attorney for Sean Cude,

Applicant.

The Board hereby unanimously issues this written decision with the following members present and participating in the hearing and deliberations: Betty Glick (Chair), Mildred Martin (Vice Chair), Tom Clark, Ron Long and Hal Smalley.

#### DECISION ON APPEAL AND FINDINGS OF THE BOARD OF ADJUSTMENT

On January 21, 2015, the Kenai Peninsula Borough ("KPB" or "Borough") Board of Adjustment ("Board") heard the above-titled appeal from denial by the Borough Planning Commission ("Commission") of the application of Sean Cude for a conditional land use permit ("CLUP") on KPB Tax Parcels numbered 055-270-98, 055-270-50, 055-270-51, and 055-270-52. The Board met later that same day in adjudicatory session to deliberate and adopt its decision.

Having considered the Record, written and oral arguments of the parties and applicable Alaska law and KPB Code, the Board unanimously reverses the decision of

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Kenai Peninsula Borough Board of Adjustment Decision

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# E3-135

the Commission and grants the CLUP at issue subject to the conditions recommended by Borough staff.<sup>1</sup>

#### A. PROCEDURAL HISTORY AND BACKGROUND

On August 24, 2014, the Commission denied approval of a CLUP for a sand, gravel, or material site. R. 12-14. The subject property is owned by SBC 2012 Irrevocable Trust and the material site applicant is Sean Cude. R. 2.

The configuration of the proposed site is an approximate 15-acre material site (Tract A2A) which has been substantially exhausted (R.15, 23, 28). Abutting this parcel are lots C, D, and E, each between 1 and 2 acres, where further excavation is proposed. R.15, 23, 28. See also Opening Statement of the Kenai Peninsula Borough, dated November 26, 2014. The applicant's proposed depth of excavation is 20 feet below the natural existing grade. R. 2. Excavation is not proposed below the floor of the existing pit. R.17. Mr. Cude indicated in his application and the parties noted in their statements that material processing will take place on the site. R. 2, 5. Mr. Cude's application asserts that all processing will be located greater than 300 feet from the west, south, and east parcel boundaries. R. 2, 5.

Mr. Cude also included a request for a waiver and an exception from excavation requirements in his application, both of which were denied by the Commission. Specifically, Mr. Cude requested a waiver permitting processing up to 100 feet from the north parcel boundary. See R. 2, 5, 16. He also requested an exception under KPB 21.29.050(A)(2)(e) to the buffer requirements allowed for contiguous parcels for the boundary shared by the existing pit and lots C, D, and E. While the Borough staff recommended granting the waiver, it recommended denying the requested exception. See KPB Opening Statement, R.75. Instead, staff recommended that lots C, D, and E be eliminated through a replat and combined with the larger existing pit. R.16. Based upon testimony at the hearing, Mr. Cude has agreed to this approach and has initiated the combination process.

Borough staff recommended approval of Mr. Cude's application based upon 25 findings of fact and 15 conditions. These findings and conditions are, after careful

<sup>1</sup> Mr. Cude submitted a written motion to supplement the record on November 26, 2014. This motion sought to admit certain photographs that were not presented to the Commission, as well as a letter from Lori Aldrich, State of Alaska Department of Environmental Conservation Solid Waste Regional Program Manager, regarding Mr. Cude's compliance with the Alaska Department of Environmental Conservation's Solid Waste Program on the subject parcels. The Board determined that pursuant to KPB 21.20.290 and 21.20.270, record supplementation was not warranted and the motion was denied. Additionally, Mr. Cude withdrew the motion to supplement the record based upon discussions with the Borough planning staff prior to the hearing. The Board did grant approval to use some of the photographs demonstrably as visual aids during the hearing.

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Kenai Peninsula Borough Board of Adjustment Decision



Page 5 of 13 2015-003393-0 review and analysis by this Board, hereby incorporated into this Board's findings and its final decision.

The Commission received approximately 14 letters of objection or concern to the requested CLUP and one agency comment letter. Ten people testified before the Commission against granting the CLUP, noting concerns regarding prior and/or anticipated negative impacts on water quality, property values, traffic flow and safety, site reclamation, and general nuisances resulting from noise and dust. Tr. 4-33, 44-45; R.31-56. At the appeal hearing before this Board, these same concerns were reiterated during oral argument.

# B. STANDARD OF REVIEW

The Board applies the following standards in reviewing the Commission's decision: The Board exercises its independent judgment on matters that relate to the interpretation or construction of ordinances or other provisions of law. KPB 21.30.020. The Board defers to the judgment of the Commission regarding findings of fact if they are supported in the record by substantial evidence ("substantial evidence" is "relevant evidence a reasonable mind might accept as adequate to support a conclusion"). KPB 21.20.320(2). Where the Board decides that a finding of fact made by the Commission is not supported by substantial evidence, the Board may make a different finding on the factual issues, based upon the evidence in the record developed before the Commission if it concludes a different finding was supported by substantial evidence, or may remand the matter to the Commission.

#### C. LEGAL ANALYSIS

After reviewing the statements of the parties, the record, and listening to oral testimony, the Board has determined that the Commission's decision denying the CLUP exceeded the scope of authority granted the Commission. While the Board certainly sympathizes with the concerns expressed by the Commission and during oral testimony, these concerns fall outside the discretion afforded the Commission and the Board as a matter of local law.

The Borough has, for the most part, transferred zoning authority to the cities within its borders. While the Borough does maintain zoning authority over areas outside the regulatory arm of the cities but within Borough boundaries, which constitute the Borough rural zoning district, the local legislature permits almost wholly unrestricted use of these areas and has limited restrictions on use to only those expressly provided in the Kenal Peninsula Borough Code. See KPB 21.04.010(B).

Among the few restrictions that apply to the rural zoning district, KPB 21.29 requires users to obtain a permit for material extraction in certain situations. See KPB 21.29.020. While there are different permit requirements depending upon the nature of the extraction, a Conditional Land Use Permit is required for material extraction disturbing more than 2.5 acres or entering the water table. KPB 21.29.020(B). In order to obtain a CLUP, or an extraction permit of the type at issue, an applicant must submit

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a permit planning application that provides information identified in the Code. KPB 21.29.030. The Code actually requires significant documentation of the intended extraction on site, including but not limited to plans regarding the life span of the extraction, a buffer plan, a reclamation plan, and so on. While the Code requires applicants to submit significant documentation in order to obtain a CLUP, the Code does not provide the Commission discretion to deny a CLUP when the application has been properly submitted. Instead, the Code preserves the unrestricted nature of the rural zoning district and limits the Borough to the imposition of certain conditions to extraction. See 21.29.040.

Specifically, the Code provides that:

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:

- Protects against the lowering of water sources serving other properties;
- Protects against physical damage to other properties;
- Minimizes off-site movement of dust;
- Minimizes noise disturbance to other properties;
- 5. Minimizes visual impacts; and
- 6. Provides for alternate post-mining land uses.

KPB 21.29.040 (emphasis added). Here, the Commission did not deny or identify, evidence suggesting that Mr. Cude failed to meet the CLUP application requirements. Instead, the Commission's findings only identified concerns surrounding extraction that fell outside Code requirements. For example, the Commission's findings and concerns regarding water degradation ignored the applicant's compliance with KPB 21.29.040(A4), which ensures no material extraction takes place within 100 horizontal feet of any existing water source. Again, the Commission may only apply conditions under KPB 21.29.050 when issuing a CLUP, it may not impose additional conditions despite the positive impact such conditions may have in the rural zoning district or the community at large. See KPB 21.29.050. To the extent the parties disagree with these limitations, it is the Kenai Peninsula Borough Assembly through the local legislative process, and not this Board or the Commission, that holds the power to change the CLUP permit approval process.

The differences between the traditional role of a "conditional use permit" and the CLUP required by the Borough further highlights the limited authority granted to the Borough to regulate extraction within the rural zoning district. Although the Borough has

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Kenai Peninsula Borough Board of Adjustment Decision

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#### E3-138

entitled its extraction permit a "conditional use permit," the permitting process differs greatly from the traditional "conditional use" permitting process. Generally, a conditional use permit is designed to permit certain uses otherwise prohibited in a zoning district. By way of example, a local residential zoning district may permit day care facilities within that district but only where a conditional use permit is obtained. The community with zoning authority may, expect its planning commission to grant or, deny the, conditional use permit after balancing several factors identified by ordinance, including the best interest of the district and the community. In such cases, the permit at issue grants the permit applicant greater rights than other land owners in the zoning district at issue. Consequently, the permitting community would have an obligation to ensure that the district's interests warrant granting one landowner more freedom of use than another.

Here, the Borough's CLUP process has the opposite effect. A CLUP actually imposes greater rather than less restrictions upon the permitted parcels. While the district is predominately unregulated and unrestricted, an applicant's parcels are subject to specific and express conditions that are not automatically imposed on other parcels in the same district. Thus, the government must ensure that the application of greater restrictions upon the applicant are in fact justified and imposed in a fair and objective way. The KPB Code preserves this fairness by granting the Borough staff, the Commission, and this Board very limited discretion in denying and even conditioning CLUPs.

#### D. CONCLUSION

For all of the reasons stated above, the Board hereby reverses the Commission's decision and grants the conditional use permit application filed June 25, 2014, by Sean Cude subject to the conditions and recommendations by Resolution 2014-20.

#### NOTICE OF RIGHT TO APPEAL

Pursuant to KPB 21.20.360 and AS 29.40.060, this decision constitutes the final administrative decision of the Kenai Peninsula Borough in this matter. Any party aggreeved by this decision has thirty (30) days from the date of distribution of this decision to file an appeal in the Superior Court for the State of Alaska in Kenai, Alaska, in accordance with Part VI of the Alaska Rules of Appellate Procedure.

Dated this 13 day of February, 2015.

Betty J. Glick, Chair KPB Board of Adjustment

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Kenai Peninsula Borough Board of Adjustment Decision



## E3-139

ATTEST: Johni Blankenship, Boreugh Clerk MMC



Kenai Peninsula Borough Board of Adjustment Decision



E3-140

# EXHIBIT B

#### KENAI PENINSULA BOROUGH PLANNING COMMISSION RESOLUTION 2014-20 KENAI RECORDING DISTRICT

A resolution granting approval of a conditional land use permit to operate a sand, gravel, or material site for a parcel described as Tract A2A, Diamond Willow Estates Subdivision Part 11 according to Plat 2012-93, Kenai Recording District, Third Judicial Court, State of Alaska; and Lots C, D, & E, Diamond Willow Estates Subdivision Part – 10 according to Plat 2008-135, Kenai Recording District, Third Judicial Court, State of Alaska

- WHEREAS, KPB 21.25 allows for land in the rural district to be used as a same gravel or material site once a permit has been obtained from the Kenai Peninsua Boough, and
- WHEREAS, KPB 21.29 provides that a conditional land use permit is required for material extraction which disturbs more than 2.5 cumulative acres; and
- WHEREAS, on July 25, 2014 the applicant, Sean Cude, submitted a conditional land use permit application to the Planning Department for an aerial, ite greater than 2.5 acres on KPB Tax Parcel Numbers 055-270-98, 055-055-055-055-270-51, and 055-270-52, which are located within the rural district; and
- WHEREAS, public notice of the application was failed on August 5, 2014 to the 284 landowners or leaseholders within one-half mile of the subject parcel pursuant to KPB 21.25.060; and
- WHEREAS, public notice was sen to the postmasters in Soldotna & Kenai requesting that it be posted at the Soldotna Kenai Post Offices; and
- WHEREAS, public notice of the application was published in the August 14, 2014 & August 21, 2014 issues of the Pennsula Clarion; and
- WHEREAS, a public hearing was held at the August 25, 2014 meeting of the Kenai Peninsula Borough Planning Commission;

NOW, THEREFORE IT RESOLVED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOR UGH:

**SECTION 1.** That the Planning Commission makes the following findings of fact pursuant to KPB 21.25 and 21.29:

#### Findings of Fact

- 1. KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough.
- 2. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
- 3. On July 25, 2014 the applicant, Sean Cude, submitted to the Borough Planning Department a conditional land use permit application for KPB Tax Parcel Numbers 055-270-98, 055-270-50, 055-270-51, and 055-270-52, which are located within the rural district.
- 4. KPB 21.29 provides that a conditional land use permit is required for material extraction that disturbs more than 2.5 cumulative acres.
- 5. The proposed cumulative disturbed area within the parcel is approximately 19.36 acres,

Kenai Peninsula Borough Planning Commission Resolution 2014-20

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including existing disturbed areas.

6. KPB 21.29.030(Å) states the planning director may determine that certain contiguous parcels are eligible for a single permit.

- 7. The planning director has reviewed this application and has determined that these four parcels are not eligible for a single permit.
- 8. Tax Parcel Numbers 055-270-50, 055-270-51, and 055-270-52 are located within Diamond Willow Estates Subdivision Part 10 which states, in part, "Wastewater disposal Soil conditions, water table levels, and soil slopes in this subdivision have been found suitable for conventional onsite wastewater treatment and disposal systems serving single family of [*sic*] duplex residences, and meeting the regulatory requirements of the Kenai Peninsula Borough."
- 9. Tax Parcel Numbers 055-270-51 and 055-270-52 are configured as flag lots. The proposed excavation would not be compatible with the designed access for these lots.
- 10. A new plat that combines these four parcels into just one parcel would eliminate Tax Parcel Numbers 055-270-50, 055-270-51, and 055-270-52, thus eliminating the possibility of a buyer of these lots relying on the information on the plat.
- 11. A new plat that combines these four parcels into just one parcel would make the new parcel eligible for a conditional land use permit for a material site.
- 12. To meet material site standard 21.29.040(A1), the proposed activity rust protect against aquifer disturbance by maintaining a 2-foot vertical separation from the second righ water table and by ensuring that no material extraction takes place within 100 hon ontail eet of any existing water source.
- 13. An excavated test hole in the existing material site for hund groundwater at approximately 2 feet below the existing material site floor.
- 14. The proposed excavation will be to the same elevation as the existing material site floor.
- 15. The site plan indicates that there are no known yells located within 100 feet of the proposed excavation area.
- 16. The site plan indicates that there are several walls located within 300 feet of the proposed material site.
- 17. To meet material site standard 22 29 40 2), the proposed activity must be conducted in a manner to protect against physical an age to adjacent properties by complying with the required permit conditions of KPB 21.22 050.
- To meet material site standard 20040(A3), the proposed activity must be conducted in a manner which minimizes the site movement of dust by complying with required permit condition KPB 21.29 00(10), Dur Control.
- 19. Ingress and egress and impraterial site will be Virginia Drive which is a Borough maintained road.
- 20. To meet material tite standard 21.29.040(A4), the proposed activity must be conducted in a manner which minimizes noise disturbance to other properties by complying with permit condition KPE 21.29 050(2), Buffer Zone; KPB 21.29.050(3), Processing; and KPB 21.29.050(11) House of Operation.
- 21. The approach indicates that material processing will take place on the site. As indicated on the submitted ite plan all processing will be located greater than 300 feet from the west, south, and east parcel boundaries and 100' from the north boundary, which adjacent to a large vacant parcel.
- 22. To meet material site standard 21.29.040(A5), the proposed activity must be conducted in a manner which minimizes visual impacts by complying with the permit condition KPB 21.29.050(2), Buffer Zone.
- 23. The submitted site plan and application indicates that a 6-foot berm, 6-foot fence, or a 50-foot vegetated buffer will be maintained on all boundaries.
- 24. The bonding requirement of KPB 21.29.050(12b) will apply to this material site if extraction in any one year exceeds 50,000 cubic yards of material.
- 25. A public hearing of the Planning Commission was held on August 25, 2014 and notice of the meeting was published, posted, and mailed in accordance with KPB 21.25.060 and KPB 21.11.

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

Kenai Peninsula Borough Planning Commission Resolution 2014-20

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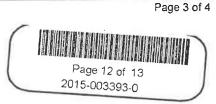
- A. An area currently known as KPB Tax Parcel Numbers 055-270-98, 055-270-50, 055-270-51, and 055-270-52. The total disturbed area within this area is up to 19.36 acres.
- B. Tract A2A, Diamond Willow Estates Subdivision Part 11 according to Plat 2012-93, Kenai Recording District, Third Judicial Court, State of Alaska; and Lots C, D, & E, Diamond Willow Estates Subdivision Part 10 according to Plat 2008-135, Kenai Recording District, Third Judicial Court, State of Alaska.
- C. The applicant, Sean Cude, proposes to: 1. Extract gravel from the subject parcel; 2. Reclaim the site to a stable condition upon depletion of material.

#### PERMIT CONDITIONS

- 1. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
- 2. The permittee shall place and maintain a 6-foot berm along the north property line adjacent to Virginia Drive, the west property line along Ciechanski Road, and along a portion of the south property line along Canvasback Avenue; place and maintain a 6-foot frace long the remainder of the south property line adjacent to Ravenwood Subdivision; and maintain a minimum of 50 feet of undisturbed, natural vegetation between the excavation permeter and the east property line until excavation takes place in that area, the vegetative buter shall then be replaced with a 6-foot fence that shall be maintained.
- 3. The permittee shall maintain at least a 2:1 slope between the inner other zones and pit floor on all inactive site walls. Material from the area designated to the 2:1 slope may be removed if suitable, stabilizing material is replaced within 30 day from the time of removal.
- 4. The permittee may not operate materials processing equipment within 300 feet of the west, south, or east parcel boundaries; or within the feet of the north boundary. Rock crushing equipment shall not be operated between 10: p. and 5:00 a.m.
- 5. The permittee shall not extract material within 0 horzontal feet of any water source existing prior to issuance of this permit.
- 6. The permittee shall maintain a 2-foot vertical separation from the seasonal high water table.
- 7. The permittee shall not dewater either by pumping, ditching or any other form of draining unless an exemption is granted by the planning commission.
- 8. The permittee shall ensure that fuels brage containers larger than 50 gallons shall be contained in impermeable berms and basic 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.
- The permittee shall conduct operations in a manner so as not to damage borough roads as required by Kr B 14. 0.175, and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
   The permittee shall multiply the planning department of any further subdivision or return to acreage
- 10. The permittee shall notify the planning department of any further subdivision or return to acreage of this process the planning director may issue a written exemption from the permit 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.
- 11. The permittee shall apply water or calcium chloride, as needed, on haul roads within the boundaries of the subject parcel.
- 12. The permittee shall reclaim the site as described in the reclamation plan for this parcel and as approved by the planning commission.
- 13. The permittee is responsible for determining the need for any other municipal, state or federal permits and acquiring the same. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits.
- 14. This conditional land use permit is subject to annual review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.25.090, the planning commission may revoke a permit issued pursuant to this chapter if the permittee fails to comply with the provisions of this chapter or the conditions of the permit. The planning director shall provide at least 30 days written notice to the permittee of a revocation

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hearing before the planning commission.

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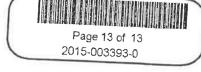
15. Once effective, this conditional land use permit is valid for five years. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.

ADOPTED	ΒY	THE	PLANNING	COMMISSION	OF	THE	KENAI	PENINSULA	BOROUGH	ON
THIS			DAY	OF			2014	4.		

ATTEST:	Blair Martin, Vice Chairperson Planning Commission
Patti Hartley Administrative Assistant	SON
PLEASE RETURN Kenai Peninsula Borough Planning Department 144 North Binkley St. Soldotna, AK 99669	RK-
40'	

Kenai Peninsula Borough Planning Commission Resolution 2014-20

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#### Bruce,

Thank you for the opportunity to comment. Given the location(s) provided, the proposed material site is near a registered public water system (PWS) source (see attached "DEC PWS Map.pdf"). For this reason, please ensure that the PWS is notified of the proposed activities. PWS contact information can be found using the PWSID-link provided in the table below, or by searching for the 6-digit PWSID using <u>Drinking Water Watch</u>. Also, please ensure the applicant adheres to the recommendations and requirements provided in the <u>DEC User's Manual of Best Management Practices for Gravel/Rock Extraction</u>, as applicable. Be advised that extraction activities could result in additional water quality monitoring for the identified PWS.

PWSID	PWS Name	Source ID	Source Name	the second se	Activity Status	Facility ID	Federal Classification	DEC-EPS	DWPA Zone
249434	WILLOWBROOK NORTH	WL003	WELL #3	GW	Active	48027	Community water system (C)	Jamie Bjorkman	в

#### KEY

GW = Groundwater

SW = Surface water

GU = Groundwater under the direct influence of surface water (GWUDISW)

DWPA = Drinking Water Protection Area

Zone A = Several-month time of travel for contributing GW, or 1,000-foot buffer of contributing SW body and its immediate tributaries.

Zone B = Two-year time of travel for contributing GW, or 1-mile buffer of contributing SW body and its immediate tributaries

Zone C = Watershed boundary for contributing SW body and its immediate tributaries.

Zone D = No such zone exists.

Zone E = 1,000-foot buffer of contributing SW body and its immediate tributaries for a source using GWUDISW. Combined with Zone A/B for the contributing GW.

Zone F = 1-mile buffer of contributing SW body and its immediate tributaries for a source using GWUDISW. Combined with Zone A/B for the contributing GW. Zone G = Watershed boundary for contributing SW body and its immediate tributaries for a source GWUDISW. Combined with Zone A/B for the contributing GW. Provisional DWPA = 1,000-foot radius from a PWS source.

#### Regards,

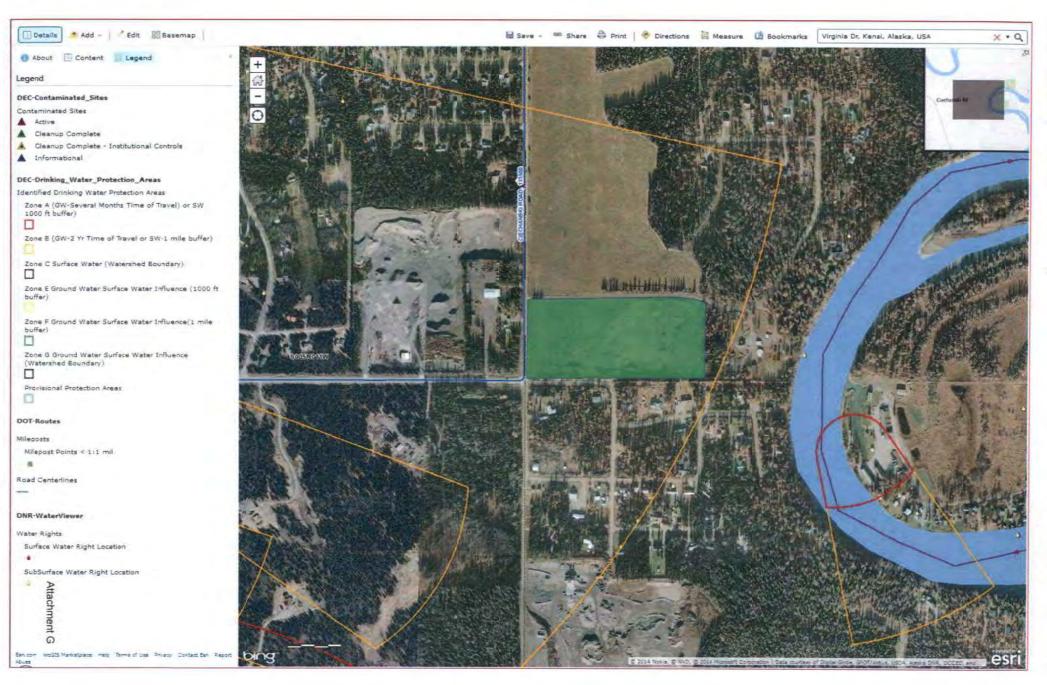
Charley Palmer, Hydrologist State of Alaska – Dept. of Environmental Conservation (DEC) Division of Environmental Health - Drinking Water Program Public Drinking Water Protection

555 Cordova Street Anchorage, AK 99501

Direct: 907-269-0292 Main: 907-269-7656 (Toll-free 1-866-956-7656) Web: http://dec.alaska.gov/eh/dw/index.htm

#### Links of interest:

GIS Web Maps and Services: http://dec.alaska.gov/das/GIS/apps.htm Groundwater Protection & Water Wells Stakeholder Workgroup: http://dec.alaska.gov/eh/dw/DWP/DWP\_WaterWells\_Mtng.html Private Water Wells: http://dec.alaska.gov/eh/dw/DWP/DWP\_PrivateWells.html Gravel/Rock Extraction: http://dec.alaska.gov/water/wnpspc/protection\_restoration/BestMgmtPractices/gravel.htm Sign up for Drinking Water Protection announcements: http://list.state.ak.us/soalists/DEC.Drinking.Water.Protection/jl.htm



From:	Pokryfki Family <gepokryfki@gmail.com></gepokryfki@gmail.com>
Sent:	Sunday, August 24, 2014 10:57 PM
To:	Planning Dept,
Subject:	Proposed gravel pit permit to Mr. Sean Cude on the corner of Ciechanski and Virginia
	Drive

To Whom It May Concern,

My wife and I are home owners living on Belmont ct., in the close proximity of the proposed gravel pit in Virginia drive. We are seriously concerned about the possibility of having the gravel pit being re-opened and I would like to let you know that we are opposed to seeing this pit being allowed to operate.

We are aware of the history of the proposed site of this pit, which was illegally dug back in 2004-2007 and the fact that the dug out left from the initial operation has reached our water aquifer, still exposed in the bottom of the pit, where the shallow soil layer has created a swampy area.

Our home, as many other of this neighborhood, is on well water and with all the pits already active we have serious concerns about the quality and safety of our drinkable water, and we really do not want to see an additional one opened so close to our home.

Our area is a residential area already quite populated and with much potential residential expansion in the future. Water safety is and will be a concern for all of us.

Also, we are worried about the increasing of noise disturbance and pollution in our neighborhood, not to mention the added trucks and heavy equipment traffic which will pose supplemental unneeded hazards to the local residents, especially to children and people who enjoy walking and biking.

We personally feel this kind of expansion should take place in less populated areas, and we hope that the voice of the people who will be directly affected by this proposed pit will be heard and considered denying this permit to Mr. Sean Cude on the corner of Ciechanski and Virginia Drive.

Thank you,

Emanuela Pokryfki & Greg Pokryfki

Attachment H

1

From:Best, MaxSent:Monday, August 25, 2014 8:33 AMTo:'mri@alaska.net'Cc:Wall, Bruce; Hartley, PatriciaSubject:RE: Conditional Land Use Permit

Thank you for your comments, I will forward them to the Planning Commission.

-----Original Message-----From: <u>mri@alaska.net</u> [mailto:mri@alaska.net] Sent: Friday, August 22, 2014 2:53 PM To: Best, Max Subject: Conditional Land Use Permit

Mr. Best,

We are landowners at 36610 Virginia Drive. We are opposed to the conditional land use permit for Diamond Willow Estates subd Part 11 Tr A2A, which Sean Cude has applied for.

We don't want the heavy truck traffic, the declining road conditions, the constant dust, the noise disturbance or the breach of our water supply aquifer.

Please do not authorize this conditional land use permit.

Thank you, Jeannine & Aaron Morse 907-260-6433 Office

Attachment H

1

From:	Best, Max	
Sent:	Friday, August 22, 2014 1:07 PM	
To:	'jscross@alaska.net'; Wolf, Kelly; Planning Dept,	
Cc:	Hartley, Patricia; Wall, Bruce	
Subject:	RE: Application for Conditional Use Permit / Sean Cude 05527098, 05527051, 05527052	05527050,

Mr. Cross,

Thank you for your comments, they will forwarded to the Planning Commission for consideration. Max Best.

-----Original Message-----From: jscross@alaska.net [mailto:jscross@alaska.net] Sent: Friday, August 22, 2014 1:04 PM To: Best, Max; Wolf, Kelly; Planning Dept, Subject: Application for Conditional Use Permit / Sean Cude 05527098, 05527050, 05527051, 05527052

James S. Cross 47000 Lexington Court Kenai, Alaska 99611

To Whom It May Concern,

My name is James S. Cross, and I presently reside at 47000 Lexington Court. I own the lot at this address, KPB Parcel # 05542215. I have resided here since March, 2008.

I am writing to express my concerns regarding the Conditional Land Use Permit Application filed for Kenai Peninsula Borough (KPB) parcel #'s 05527098, 05572050, 05572051, and 05572052. I live approximately ¼ of a mile from these parcels, and they are visible from my property / home.

This area is home to approximately 400 residences, a handful of small commercial establishments, and at least three existing gravel pits. Two have regular activities removing gravel and similar products. I believe the existing residents of the area are generally tolerant of the existing gravel pit facilities, but we do put up with several issues. There is increased traffic along Cienchanski Road by trucks and heavy equipment. This traffic also stirs up additional dust in the area, as most of the side roads off Cienchanski are unimproved. The inactive gravel pit located east of the parcels in the application, owed by Quality Asphalt Paving (KPB parcel # 05503246) is a notorious nuisance location. This pit is unattended, and the local teenagers in the area have turned the pit into an unofficial dirt track for motorbikes, 4-wheelers, etc. These activities occur virtually every night during the summer months, stirring up large amounts of dust and noise for the surrounding residences. The parcels in this application also have a somewhat notorious history. In 2004 the KPB Planning Department denied use of these parcels for material extraction when it denied its Resolution 2004-22. The existing pit was opened up under very questionable circumstances and already has some bad history.

I wholeheartedly support development within the KPB and understand the needs for these types of materials to support this growth. However, I have lived and worked here long enough to know that these types of resources are available from other nearby locations that are closer to better roads, and farther removed from residential areas. In addition to supporting local commercial development, I believe the KPB Planning Department has a responsibility to preserve and promote existing residential areas, and to preserve areas conducive to future residential development. The residents of

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the KPB deserve to be able to build and live in residential areas without the worries and concerns caused by nearby commercial development, particularly ones that affect the land and create visual and audible eyesores.

I urge the KPB Planning Department to deny this and any future Conditional Land Use Permit Applications filed for KPB parcel #'s 05527098, 05572050, 05572051, and

05572052 that plan to do material extraction. I believe the residents in the area put up with enough inconvenience from the existing gravel pits / operators in the immediate area. The last thing the residents of this area need is another eyesore / ear sore.

Thank you for your consideration of this matter.

James S Cross

AUG 2 1 2014 BY

Hand-delivered and emailed on 8/21/14 to: Max Best - Head of Borough Planning Bruce Wall – Planner bwall@borough.kenai.ak.us

Re: Proposed Gravel Pit Permit by Sean Cude on corner of Ciechanski and Virginia Drive

As homeowners who live just west of Ciechanski, we are opposed to the proposed gravel pit referenced above being developed further.

Previous excavation of that site compromised the ground water from which our household well draws its water when the aquifer was exposed at the bottom of the pit.

Furthermore; after the aquifer was uncovered, and after much time went by, we witnessed how it was supposedly "reclaimed" with rusty septic tanks and other unhealthy debris being used as fill.

If a permit is issued for this pit by the Borough; then we hope the Borough would be more diligent in over-seeing and upholding the reclamation plan that has been set forth.

Sincerely,

Ken & Kim Cox

Ken & Kim Cox 47204 Lexington Court Kenai, AK 99611

Hand-delivered on 8/21/14 to: Max Best - Head of Borough Planning Bruce Wall – Planner

Re: Proposed Gravel Pit Permit by Sean Cude on corner of Ciechanski and Virginia Drive

As neighborhood residents directly west of Ciechanski, we would not be happy with the Planning Borough letting the proposed gravel pit on Virginia Drive go forward.

Our biggest concern is the possibility of our ground water being disturbed into the aquifer from which we get our well water.

Secondly, we have tolerated gravel pits in our backyard already for years. Between the dirt, noise and pollution we would be very reluctant to allow this proposed pit to increase in size, regardless of who owns it.

Sincerely,

Jim J. English HTI27 LexingTon CT. Kenai, AK. 99611 Jim J. English

Attachment H

From:	karen lee bundy ≺klj_ccm@yahoo.com≻
Sent:	Wednesday, August 20, 2014 1:38 PM
To:	Planning Dept,
Subject:	Proposed expansion of gravel pit operation on Virginia Dr.

Planning Commission:

I live on Wanda Gail Dr. and am writing to express my concerns related to the proposed expansion of the gravel pit operation on Virginia Dr. I am a health care professional who has a lot of concerns primarily related to breathing an increase in rock dust air. This gravel pit is near subdivisions. The potential dangers of breathing the rock dust for an extended period of time (20 years is the proposed time frame of the permit application) is reason for concern. How can I be assured the air quality is monitored and within safe limits?

My other concerns are an increase in noise pollution, big trucks tearing up the roads and the general eye sore of a rock pit in a nice residential area where there are children to protect from these health hazards. Our citizens should be allowed to enjoy our homes and surroundings here in Alaska. I drive by the gravel pit every day. This gravel pit expansion is not what anyone would want in their own backyard.

At the very least, I would like to see the permit limited to yearly renewal based on proof the owner has maintained the required compliance. I am looking forward to attending the public hearing on Monday, Aug. 25.

Sincerely, Karen Lee Bundy

1

From:	Dave Bredin <dave.bredin@enstarnaturalgas.com></dave.bredin@enstarnaturalgas.com>
Sent:	Wednesday, August 20, 2014 11:51 AM
To:	Wolf, Kelly; Best, Max; Mattson, Stacey; bwall@borough.kenai.us; Planning Dept,
Subject:	Proposed Gravel Pit - Ciechanski and Virginia Drive, Sean Crude

Please do not allow another active gravel pit at Diamond Willow Estates subdivision, Chiechanski and Virginia Drive area! I own property 1500' from the existing pit and it is an eyesore and long term liability to the neighborhood. The existing pit there hasn't been operated properly, safely or environmentally responsibly. A new pit means more noise, dusty air, truck traffic in a residential area, and potential for air and groundwater contamination. A 20 year operating life and 50 year reclamation = 70 years or more of problems for the short term financial gain of a few people. Don't permit it!

Should you elect to permit a gravel pit at this location - permit it properly! Hold the operators responsible for their activities and enforce their actions. Require extensive ground water monitoring, air quality monitoring, 8:00AM to 5:00PM noise level restrictions (have you ever listened to equipment back up alarms beeping all night long?), traffic plans, daily dust suppression in the pit and on the nearby roads, daily road sweeping, perimeter safety fencing with controlled access, 24 hour video monitoring, a funded reclamation plan that totally reclaims the property to existing grade and ground quality conditions. Bonding should be required until proof of responsible operation is obtained. Proper permitting and adequate enforcement is absolutely necessary if the gravel pit is to be put into operation.

Dave Bredin 6600 Kincaid Rd Anchorage, AK 99502 907-440-7869

KPB Property owner of lot 3, block 5 Ravenwood subdivision, Pelican Street

E3-154

1

#### Wall, Bruce

From:	Brian Alexander <wfomgd@gmail.com></wfomgd@gmail.com>
Sent:	Wednesday, August 20, 2014 9:58 AM
To:	Best, Max; Mattson, Stacey; Wall, Bruce
Subject:	Conditional land use permit for material site on Ceichanski opposition

I am very opposed to the proposed permit for material excavation and processing .

I have endured several years of non stop noise and air pollution from thousands of truck loads of material being removed and who knows what being dumped back into this site already. Not to mention what it has done to my water quality. I am also very concerned w the close proximity to the kenai river. As for reclamation they have been dumping load after load of construction debris in the existing pit for years and have yet to réclame or plant anything ... Just a constant rumble of trucks coming and going and loud boom from slamming dump truck gates day after day all year long ... Not to mention extreme wear and tear on our access roads .

I close in asking that you please not grant this permit as this otherwise nice peaceful Neighborhood has endured enough of this invasion of our peace.

Sincerely Brian Alexander 36505 Canvasback Ave Kenai , Ak 99611 907-283-3006

Sent from my iPhone

### Donald & Mary Savage 13851 Duggan Road Central Point, OR 97524 Phone: 541 601-7840

August 15, 2014

Kenai Peninsula Borough Planning Department 144 N Brinkley Street Soldotna, Alaska 99669-7520

Re: Sean Cude Land Use Permit Application

To Whom It May Concern:

In regards to the attached application for gravel removal, I would like to be advised as to the portion of land Mr. Cude wants to dig. I is my impression the pit was almost completely dug out already. If Mr. Cude plans to dig deeper I will object to this application as he will be deep enough to disturb the ground water. When he refills the hole he could use vegetation or other items that would pollute every ones well in the area.

Since I am in the same business in Oregon I am very familiar with the process and in Oregon we are restricted, and it is illegal to putting vegetation as a back fill. I would appreciate a response to my concerns as we own a home on Gary Street approximately 2000 feet away.

Thank you in advance.

male forage Regards,

Donald J Savage

Attachment H

298

August 21, 2014

## RE: PROPOSED GRAVEL PIT ON VIRGINIA DRIVE (SEAN CUDE)



AUG 2 2 2014

KENAI PENINSULA BOROUGH PLANNING DEPARTMENT

Dear Planning Commission Members,

My name is Jeanette Maly and I have lived in this community for more than 25 years. I am a Registered Nurse and have likely taken care of most of you and your families at one time or another during your time of need. I am asking now that you return that kindness. Our neighborhood has fought illegal gravel pit and dumping activity for the past dozen years. The previous owner of this property, Mercedes Gibbs, used devious tactics to mine over a million cubic yards of gravel-all without a proper Borough permit. To add insult to injury, she then allowed dumping of horrible toxic materials into the open pit, where our water aquifer and the Kenai River were exposed, and we could get no help with stopping that either. Now she has sold this "pit" to Sean Cude, who also owns Peninsula Scrapyard, Peninsula Pumping, and other businesses in the area. He claimed to have plans for a big house and runway, but soon filed to harvest even more material from the already cavernous pit. What will be next? Scrap cars and metal being processed there? Sewage from his pumping business discharged? We have seen in the past that we cannot trust local or state officials to protect us with the law, and are very concerned that this will get out of hand quickly. Our water and that of the Kenai River have already been threatened. Our Borough road has already deteriorated from the large trucks traveling on Virginia Drive to dump into the existing pit. Our air quality is already in great decline due to the dust and pollution from the trucks and equipment that are present daily. We have small children in our neighborhood that ride bikes and play in these same streets. A neighborhood is no place for this type of industrial activity. Our covenants even restrict this type of behavior, and though the Borough is NOT responsible for enforcing these, our Homeowner's Association has already met with an attorney to start proceedings against Mr. Cude should this permit be approved. Why would he set himself up for a lawsuit worth far more than the materials he could mine from this pit? We have no idea. I am asking as a homeowner and longtime community member that you decline his application for mining and help us save our neighborhood and roads from further damages. Thank you for your time and thought on my behalf.

Sincerely

flanett thaly

Jeanette Maly 36770 Virginia Drive

Attachment H

E3-157

August 22, 2014



# AUG 2 2 2014

KENAI PENINSULA BOROUGH PLANNING DEPARTMENT

Kenai Peninsula Borough Planning Department Material Site Permits

To Whom It May Concern:

I was born and raised in the Diamond Willow Estates subdivision, and upon completion of my Engineering degree from the University of Alaska Anchorage, plan to live here indefinitely. I am against the material site permit application Sean Cude has submitted. He has been dumping illegally into this area for over a year, and is polluting our water aquifer with junk by dumping into the open water in the pit floor. Please deny his application at this time and prevent our Homeowner's Association from having to pursue litigation in court. Thank you.

Sincerely,

Some Percel

Tanner B. Penrod 36770 Virginia Drive

Attachment H

21 Aug 2014

RECEIVED

AUG 2 2 2014

#### **Diamond Willow Estates Gravel Pit Request**

Dear Kenai Borough Planning Commission,

Sean Cude Has recently applied for a Gravel Pit permit in our housing addition.

#### THIS REQUEST MUST NOT BE GRANTED!

The previous owners operated this pit illegally! For nearly twenty years the homeowners of Diamond Willow Estates have endured tens of thousands of dump trucks coming in and out of our housing addition, on our only exit road, Virginia Drive. The operation was not only illegal, but was carried out in a reckless manner.

This information is documented in the two previous attempts to get a gravel pit permit at this location.

In short: They were digging clean gravel out of our communities' water aquifer.

This exposed ground water was then, backfilled with organic material, much of which had

contaminated refuse such as: demolished septic tanks, vehicle tires, asphalt, and housing demolition. The residents of Diamond Willow estates have tried on numerous occasions get Borough, State and Federal officials to hold the people involved in this operation accountable with little or no action.

When Sean Cude purchased his property in Diamond Willow estates, his actions were just as grievous as the previous. He brought in heavy equipment and began digging thousands of yards of clean gravel out of our communities water aquifer and stock piling it against the south side of the pit. This created a large, exposed body of water directly linked to our drinking water and the Kenai River. Immediately we called the DEC and the Borough and demanded this activity to be stopped! I spoke directly to Max Best.

In this conversation Mr Best assured me that Sean Cude was acting within his rights and that if we would let him continue we would "approve" of Sean's development activities.

Shortly After my conversation with Max Best, Sean Cude came driving to my house and we had a conversation. He told me that his sole purpose for digging up the gravel was to put in a private driveway along the south border of the pit. He told me that the following summer he was going to be building a million plus dollar house. He said it would be beautiful and would make the property values in the area go up and the residents would appreciate him moving to the neighborhood.

He further confided in me, the reason the driveway had to be so large was so he could land his private Cessna 206 on it. He also said, he would be

KENAI PENINSULA BOROUGH PLANNING DEPARTMENT

Attachment H

reclaiming the pit as fast as he could because he doesn't want that ugly eyesore in his neighborhood either. His exact words were, "I can't get rid of that ugly turd fast enough!"

Because Max Best said, Sean was legal to develop his land in this manner, reluctantly, we allowed it to continue. For weeks on end heavy equipment dug gravel out of the ground water and stock piled it against the south side of the pit.

The following summer (2013?), instead of a home being built, dump trucks began to haul out the gravel stock piled in the pit!

I called Max Best and told him of the illegal activity being conducted on Mr. Cude's property. Max Best replied that he was allowing Sean to remove only "stock piled" gravel. In response, I told Max Best that the stock piled gravel was d ug out of the water aquifer and if anything, that gravel should be placed back in that hole to protect the ground water, not illegally removed from the property. I further reminded Max that the previous summer Sean told me his plan was to reclaim the pit as fast as he could. Removing gravel is counter to that plan! Shortly after my conversation with Max Best, this activity stopped and we held off on the expensive endeavor of legal action.

This summer (2014) a road was placed to the bottom of the pit and trucks began hauling overburden (organic material) and dumping it next to the exposed ground water. A few weeks ago this material was dozed into the the aquifer creating an enormous, contaminated mud hole. I personally witnessed a child (10-12) trudging out of this mud hole, leaving his motorized dirt bike stuck, nearly buried in the muck.

Shortly after this occurrence, we received a notice that Sean Cude has applied for a gravel pit permit, at this location, for the next twenty years.

#### The claims made by Max Best and Sean Cude were lies!

The permit application states the ground water was backfilled with clean gravel and is two feet from the surface. This is a lie! I personally witnessed it being backfilled with overburden, creating a giant mud hole with ground water still exposed.

The permit application states that there is a 6 foot berm or fence around the pit. That is a lie! The pathetic fence is all but pushed over and the berm has been do zed into the pit which removed the drainage ditch that protects our road.

The illegal operation of this gravel pit has decreased our property value, puts our water supply at risk and the extensive heavy equipment and commercial dump truck activity, in our residential area, endangers ourselves and the lives of our children.

The activity conducted at this property site has been appalling. The decision of the borough to recommend this permit is a testament to how deep the corruption goes and to what little regard the borough has towards its tax paying citizens. I implore the planning commission to deny, for the third time, this gravel pit!

If this gravel pit is approved, the previous and current owners as well as the Borough will be held accountable for damages and disruption to the residence of Diamond Willow Estates to the full extent of the law!

My wife and I have built our home and our son's future home in Diamond Willow Estates. We are going to live there for the rest of our lives. We have suffered with this gravel pit debacle for nearly twenty years. We plan to use any and all means available to fight this activity for as long as it takes for justice to be served. We will be tireless and unwavering in this pursuit!!

Sincerely,

Travis G. Penrod Diamond Willow Estates

Attachment H



RECEIVED

AUG 2 2 2014

Kenai Peninsula Borough Planning Commission Sean Cude (SBC Living Trust) Material Site Permit

KENAI PENINSULA BOROUGH PLANNING DEPARTMENT

Dear Commission Members,

We are once again faced with a material site permit application in our neighborhood. As many of you know, we have been fighting this particular battle for more than 15 years, and it seems to never end. The new owner of record, Sean Cude, purchased this property with a story of large houses on the river and runways, claiming to "want this eyesore of a pit gone as soon as possible." Well, they say if it sounds too good to be true...

Mr. Cude and his company, S&R Enterprises, began removing material from this property almost immediately after he purchased the land in December of 2012. Of course, this being ILLEGAL, calls were made to the Planning Department head, Max Best, who advised us to "wait and see" what Mr. Cude was planning. Suffice it to say, he dug further into our water aquifer, again exposing our aquifer and the Kenai River to untold hazards in the bottom of this open pit. Large equipment, recreational vehicles and dump trucks loaded with all types of debris drove around and through this area, surely polluting the very source we depend on for our neighborhood water supply. He now wishes to get a permit--after the fact--to do further damage to this property, while continuing to dump sometimes-illegal material in and around our water supply.

The facts are simple here. Mr. Cude purchased property INSIDE a subdivision with Covenants and restrictions prohibiting this type of activity. The Homeowner's Association has met with our attorney and will pursue litigation should this permit be granted. I have no idea why he would chose to pursue a gravel permit when the ensuing lawsuit will cost him far more than he could ever hope to make selling said gravel.

To address the discrepancies in the application and staff findings, I present the following information along with photographic evidence to follow:

 NO FENCNG or BERM is in place currently around ANY of the pit area. In fact, Mr. Cude REMOVED the Berm from the Virginia Drive side and made a dangerously sloping edge to the bottom of the pit floor. There is no longer a ditch on this side, just a slope to slide off in the winter that is quite dangerous.

- Excavation has EXCEEDED depth of water table, leaving exposed water in the pit floor. Mr. Cude dumped a load of organic material-NOT GRAVEL-over this water leaving a muddy mess and contamination. The "test hole" is the size of HALF the pit floor.
- No request to enter the water table-but he already has done so
- Says he will "reclaim" and seed to prevent erosion—has done NOTHING since 2012 to ensure this, and our road and lack of ditches prove this. Nothing has been seeded or protected.
- He fails to mention TRUCKS in reclamation process, which travel our borough road constantly causing noise, dust pollution and destroy the road bed--our ONLY route into the neighborhood
- He has started dumping ILLEGAL materials like previous owner. See pictures of metal beams, scrap metal, plastic fencing, etc. Dumped over a week ago, and still there today.
- Planning the use of gravel crushing machine in a neighborhood with Covenants that prohibit such
- The 300' buffer is NOT observed for several properties as shown on borough map included in record-there are at least five homeowners whose boundaries he is violating
- ٠ In the Plat Notes it states that this site was a previously developed materials site-NOT TRUE-the Borough records will show there was NEVER a legal permit issued for this pit, ALL activity past and present has been done ILLEGALLY
- There is definitely surface water..see attached pictures
- The "Agricultural land without structures" is the border of our neighborhood. Noise will not be tolerated as per our Covenants

The list of infractions and lies could go on and on and on...the bottom line here is that Mr. Cude is trying to lie his way into a material site permit, when we know that he is not willing to follow the guidelines set forth by the Borough to keep everything legal. He purchased property that was part of a neighborhood with covenants, and will be held to those by the homeowner's association should he push further for this permit. We are asking for a denial of application, and a cease and desist for further illegal material removal and dumping.

Thank you for your time on our behalf.

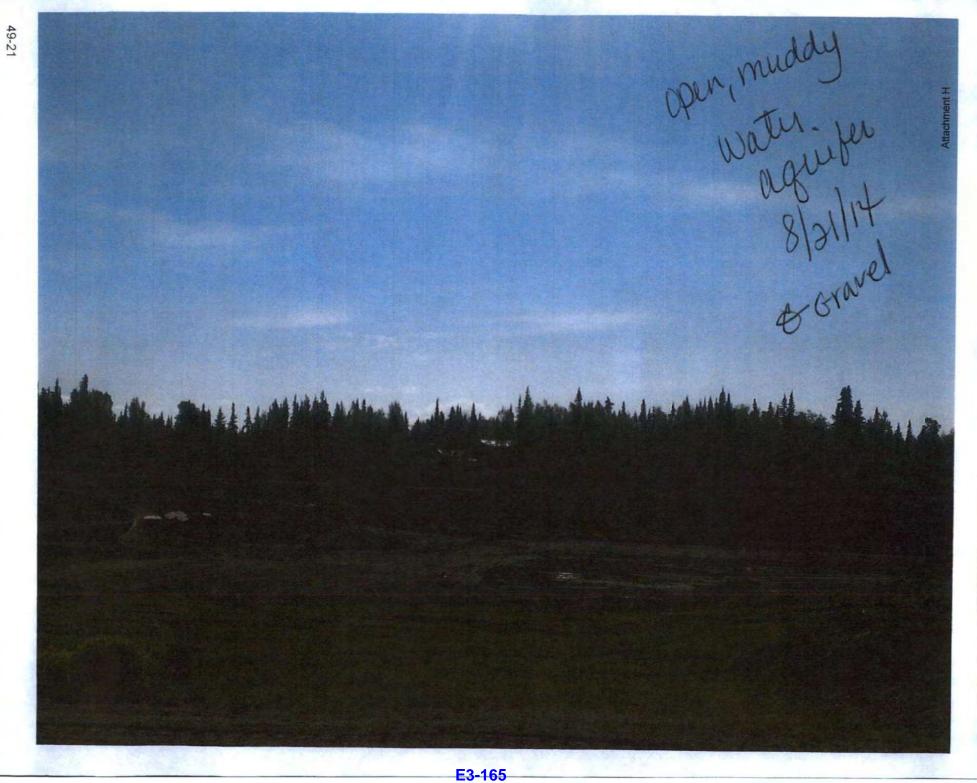
Sincerely,

Crystal Penrod Diamond Willow Estates Homeowner's Association 36860 Virginia Drive

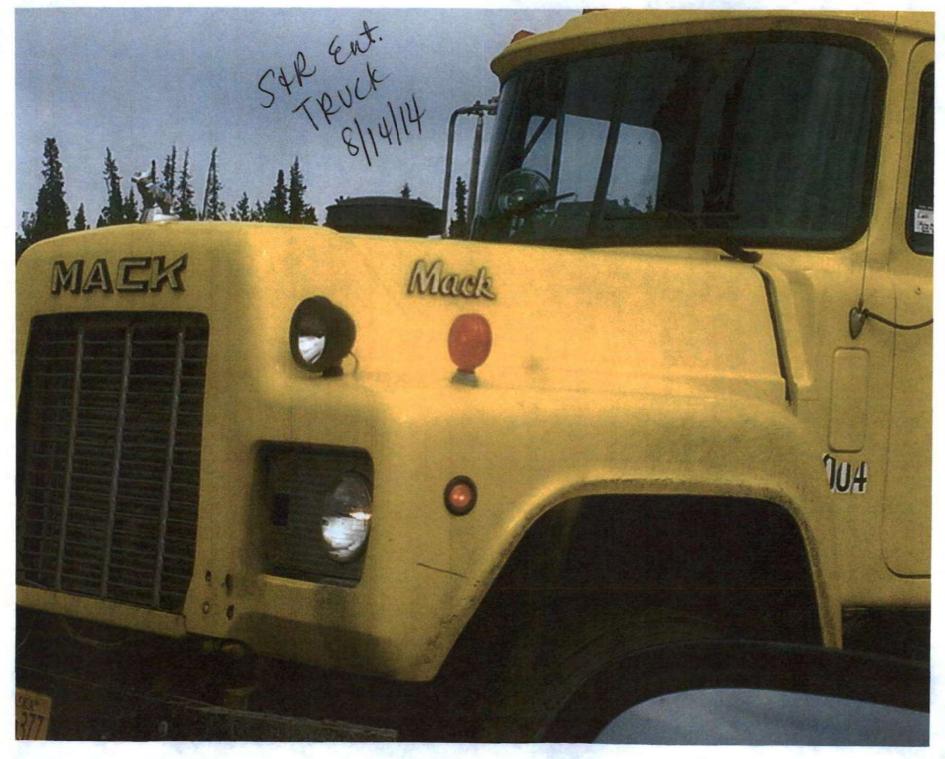
\* More Pictures available Monday E3-163



49-20

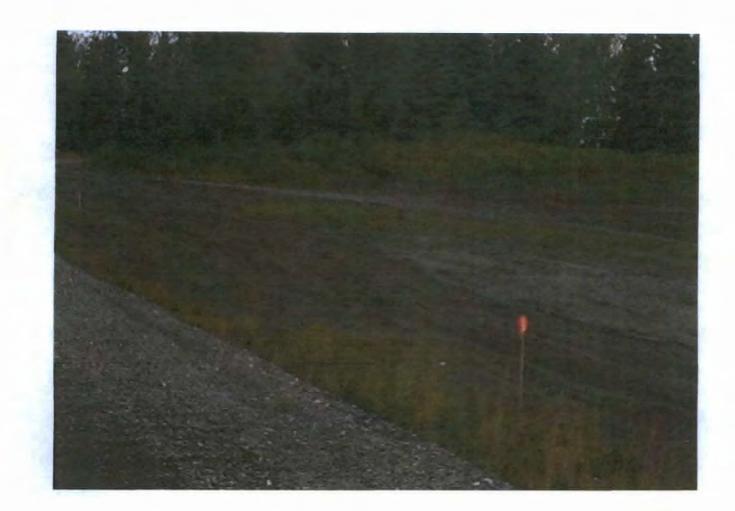






49-23

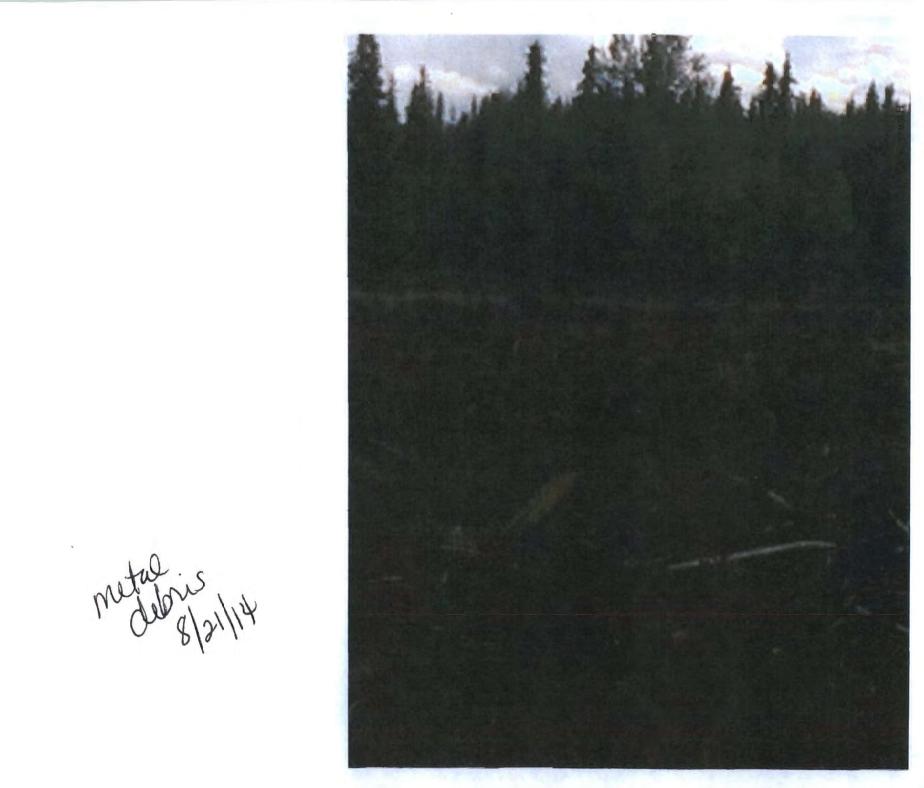




# \* removal of Virginia n Ditch \*

Attachment H





49-26

# **DESK PACKET**

# (MATERIALS SUBMITTED AFTER MEETING PACKET PUBLICATION)

3. Conditional Land Use Permit Modification; MS2015-005 Applicant: Sean Cude Request: Modification to PC Resolution 2014-20 to allow excavation into the water table and for temporary localized dewatering.

Location: 36498 Virginia Drive, Kalifornsky Area

From:	Theresa Franklin
To:	Raidmae, Ryan
Cc:	Theresa Franklin
Subject:	<external-sender>Diamond Willow Estates Sub Part 13 Tract 13</external-sender>
Date:	Monday, November 11, 2024 6:16:28 PM

**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 Peninsula Borough Planning Commission,

We are writing this letter regarding the proposed project request for 36498 Virginia Drive Kenai AK. The application states that it is requesting a modification to PC2014-20 to allow excavation in the water table and for temporary localized dewatering. We live in this neighborhood and are very concerned how this would impact us directly. We believe that excavation into the water table will affect our well water, which is our only source of water for our home. Virginia Drive is the only road that gives us access to our neighborhood, and with the type of equipment that would be used for this project there is a high possibility that our road can be blocked for a long period of time and it would be difficult to keep maintained. We also have a concern on how this would impact the Kenai River which is in the vicinity of this proposed project. We don't see any positive reason why this project should move forward.

We hope that you will consider the negative impact this would have on our neighborhood, our well water, our road and the Kenai River. We are strongly opposed to this project and we hope that you will vote no on this proposal.

Thank you for your consideration,

Daniel & Theresa Franklin P O Box 2848 Soldotna, AK 99669 Physical Address: 46731 Gary Ave, Kenai

TO : KENA: PENINGUA Borough Planning Commission

My Name is Kurr Brinkmon and I reside at 36738 Virginia Dr. Kenni Alusica 99611. I am very much against any Further Excavarion / mining of parcel 05527001, SEAN Cude, SBC 2012 Informable Trust. I am very concerned about the quality of my water and of all others IN This residentual area. I find it difficult to below that by drilling/mining/Excavating Approximantly 18 ft below the warder table will NOT affect our quality of water. I would hope that as planning commission Gri you have all read BEST MANAGEMENT practices for gravel/rock aggregrere Extraction per Alaska DECUSEr Manuel Especially Secien 4.1.3 There are also wells within the 300 ft buffer of this property That in itself should shut this process down. The proposed Egress on Virginia Ave is also a major issue. This would NOT be a SAFE OPTION. ESpecially Since those of us that live here use this as our only means of travel within the Sub Linson.

I also have issues with the phrase temorary localized dewatering. The work tEmpery is NOT a 20 yr plan. IN any meaning of the word would you consider 2041. TEmporary ! I believe this gravel pit Should NOT be brought back to life and proceed. It has served its Purpose. I Appreciare your Consideration Simcovery Kurf Brinkman

From:	Aurora Gibbs
То:	Raidmae, Ryan
Subject:	<external-sender>Parcel #05527001</external-sender>
Date:	Thursday, November 14, 2024 5:14:46 PM

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 evening,

This email needs to be addressed to the Kenai Peninsula Borough Planning Commission and is in reference to parcel #05527001, the Gibbs Homestead, 36498 Virginia Drive.

My name is Aurora A. Gibbs and I am the daughter of James E. Gibbs. I was born in 1979 in Soldotna, Alaska to James and Patricia Ellery Gibbs and have spent part of my life living on our family's homestead, going to school in the community, and being homeschooled while my Grandfather, William Gibbs, was alive and owned the property in question. I have an interest in the property as a direct descendant of William and Virginia Gibbs and James E. Gibbs. My Grandparents, William and Virginia, homesteaded with their four children, James, Janice, Joyce, and Gary Gibbs. They all have direct descendants. My Grandfather, William Gibbs's death on June 20, 2001 in the Philippines was not recorded by the Philippine Government. Around six years later the U.S. Embassy in Manila, Philippines issued to my Father, James E. Gibbs, as next of kin, a legal document recording his Father's death.

No one has consulted or asked permission from anyone of my family members regarding this conditional land use application to develop a material site on our family's homestead. I do not believe it's in our family's best interests.

Please take this into account as you deliberate on the merits of this conditional land use application for my family's homestead. Should you have any questions or concerns I may be reached either by this email address or by the landline below.

Thank you, Aurora A. Gibbs (302) 423-5763

Sent from my iPhone

From:	Crystal Penrod
To:	Raidmae, Ryan
Cc:	Kenai River Center; Travis Penrod
Subject:	<external-sender>Fwd: PWSID AK2249434, Source Water-Gravel Pit Impacts Public Inquiry</external-sender>
Date:	Friday, November 15, 2024 12:00:44 PM
Attachments:	image001.png image002.png Gravel Pit Inquiry Proximity Map.pdf 1998 Well Log Well #1 WELTS ID 24495.pdf 2008 Well Log Well #3 WELTS ID 33103.pdf dec-eh-dw-recommendations-for-general-project-activities-near-a-pws-source.pdf gravel-rock-extraction-bmp-manual.pdf

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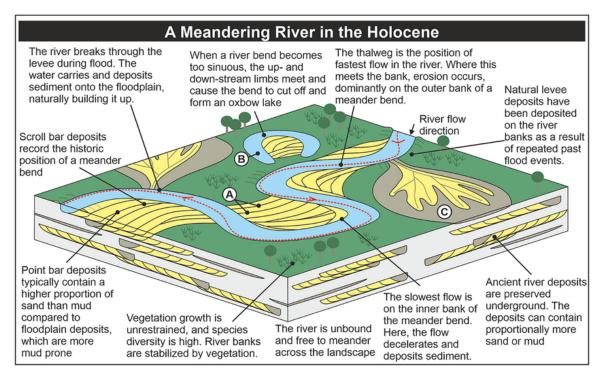
Please add this information to our submission for the meeting this Monday the 18th. Thank you! Crystal Penrod

------ Forwarded message ------From: Needs, Ian J (DEC) <<u>ian.needs@alaska.gov</u>> Date: Monday, September 9, 2024 Subject: PWSID AK2249434, Source Water-Gravel Pit Impacts Public Inquiry To: Crystal Penrod <<u>diamondwillowhomeowners@gmail.com</u>> Cc: "Christian, Cindy L (DEC)" <<u>cindy.christian@alaska.gov</u>>, "Miller, Christopher C (DEC)" <<u>chris.miller@alaska.gov</u>>, "Hicks, Nahoni N W (DEC)" <<u>nahoni.hicks@alaska.gov</u>>

Hello Mr. Penrod,

Upon looking into the hydrologic and geologic conditions in the area, I have the following feedback to provide about the risks to PWSID AK2249434, Willowbrook North:

- The two wells that serve as the source for PWSID AK2249434, wells 1 and 3 (shown in the attached proximity map), have depths of 149 feet and 150 feet respectively. Well 1 is screened from 144-149 feet below ground surface (bgs), and Well 3 is screened from 145-150 feet bgs.
- Both well logs include soil descriptions and intervals from drilling. Both wells are considered to be screened in a "confined aquifer", due to the various clay layers overlying the screened interval noted in the well log.
- Even though the aquifer in the immediate vicinity of the well is confined, that doesn't mean that the proposed project does not present a risk to the drinking water source for PWSID AK2249434. The proposed project occurs within the "Zone B" Drinking Water Protection Area (DWPA) for this PWS, inferring that there is the potential for a 2 year travel time for water at the site to reach the PWS source.
- Aquifers in alluvial floodplains, such as this, are often made up of discontinuous confining layers and aquifers due to the migration and meandering of the river over geologic time. Aquifers in this setting are often relic "paleo-channels" of the river that have a much higher hydraulic conductivity, and may be impacted by the entrance of pollutants far away. The image below depicts this setting.



Source: Russell, Catherine & Waters, Colin & Himson, Stephen & Holmes, Rachael & Burns, Annika & Zalasiewicz, Jan & Williams, Mark. (2021). Geological evolution of the Mississippi River into the Anthropocene. The Anthropocene Review. 8. 205301962110455. 10.1177/20530196211045527.

• The proposed gravel extraction project beneath the water table would likely occur in such a paleo-channel, as these are often represented as gravel. If contaminants are introduced in a dewatered gravel pit, then the pit was rewatered, the contaminants would be likely to spread via these channels.

Considering the above information about the hydrogeological setting of the project, and the potential risk to the PWS source at Willowbrok North, the Drinking Water Program has the following recommendations:

- Pit operations should follow the applicable "Recommendations for general project activities associated with, or near, a public water system source" as presented in the attached PDF, and highlighted below:
  - 2. Where the project/permit intersects a DWPA, notify the associated PWS contact and provide the following: a) A brief description of the project location and associated activities; and b) Project contact information.
  - 3. Within the identified DWPA, control stormwater and wastewater discharge such that it is directed away from the PWS.
  - 4. Within the identified DWPA, restrict project/permit activities that could significantly and/or
    permanently change the natural surface water or groundwater levels of the water sources immediately
    contributing to the PWS.
    - It is understood that the very nature of the project includes significantly changing groundwater levels in the area, but it should be mitigated as much as possible.
  - 5. Within the identified DWPA, implement voluntary best management practices suited to your project where equipment storage, maintenance and operation, or other potential sources of contamination are located to minimize the potential for PWS source contamination.
    - This should be specifically implemented in areas that are dewatered beneath the water table, or that drain into areas that are dewatered.
  - 7. All non-proprietary data related to the project/permit, including but not limited to, water quality results (field and lab), survey data, water levels, subsurface lithologic descriptions and depth, and groundwater flow direction and gradient information, should be made available to the permitting agency upon request.
    - The ADEC Drinking Water Program was notified on 9/9/2024 that a hydrologic study had been conducted to evaluate the gravel pit. <u>This information should be provided to ADEC Drinking Water Program Staff. Contact Ian Needs, ian.needs@alaska.gov to provide any groundwater</u>

## E3-176

data or study findings.

- 8. Keep a list of PWS contacts and agency spill reporting contacts readily available. Immediately notify contacts of any potential contamination event, such as spills or excess erosion.
- Pit operations should follow the attached Best Management Practices for Gravel/Rock Aggregate Extraction Projects.
  - A plan of how the BMPs would be followed would be helpful for understanding what the project operators are doing to minimize their impact on groundwater and surface water quality in the area.

It is also recommended that the project operators be in contact with DEC's Division of Water- Stormwater Discharge Program to learn if permits are required for this project. Contact: Stormwater Discharge Program Manager: Jim Rypkema 907-334-2288.

Please feel free to reach out with any questions.

Respectfully,

Ian



## Ian Needs, E.I.T.

Hydrologist 3 DEC-EH | Drinking Water Program

Phone: (907) 269-0292

Info: http://dec.alaska.gov/eh/dw

Anchorage, AK

Diamond Willow Homeowners Association 36860 Virginia Drive Kenai, AK 99611 Travis Penrod, Chair Timothy Agosti, Vice Chair --Diamond Willow Homeowners Association 36860 Virginia Drive Kenai, AK 99611 Travis Penrod, Chair Timothy Agosti, Vice Chair

Jeff Webb
Raidmae, Ryan
<pre><external-sender>Parcel #05527001</external-sender></pre>
Friday, November 15, 2024 12:10:35 PM

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,

My name is Jeff Webb. My wife Jennifer and I live at 36750 Virginia Drive, Kenai, Alaska. I'm writing this email so I can be on record as opposing the proposed Conditional Land Use Permit regarding parcel number 05527001 located at 36498 Virginia Drive.

Allowing Mr. Cude to mine gravel in the water table at this location could have a serious impact on the drinking water not only in my neighborhood, but in several other neighborhoods in the area.

Allowing Mr. Cude to set up a gravel processing plant in that gravel mine will cause a lot noise and vibration. These will not merely be nuisances to his neighbors, they could potentially cause serious damage to the Kenai River bluff a few hundred yards to the West which is already eroding badly.

Mr. Cude wishes to move the access road back to Virginia Drive, which is the only road in and out of the neighborhood. I was fortunate enough to have purchased my home after the access was moved to Canvasback Ave., but as other people have testified, moving the access back to Virginia Dr. would leave us potentially stranded when one of Cude's trucks or equipment eventually breaks down in the middle of the road. The condition of the road right now is bad enough, its hard to imagine how much worse it will be if you allow the access to be changed to Virginia with all the heavy traffic this will cause.

During the last hearing in September when this then-delayed application was discussed, Mr. Cude's engineer talked about why the application was delayed at the last possible moment. They were careless in their original application and omitted at least one domestic water well located less than 300 feet from the proposed site of where Mr. Cude wants to dig into the water table. This makes me question whether or not Mr. Cude and the engineers he has working on this project are capable enough to mine gravel in the water table, or if they even care about the damage they could cause to people's property if something they do in that gravel pit goes horribly wrong.

Over the last few years, Mr. Cude has been filling this gravel pit in because it was essentially mined-out. Without performing a survey, I would estimate that around 50% of the pit has been filled in with God-knows-what, since there is no oversight from the Borough on what gets dumped there. During the hearing in September, it seemed like the Borough was surprised to hear that this was even happening during the last several years. This is concerning because if the Borough accepts Mr. Cude's application, I have zero faith that the Borough will hold Mr. Cude accountable when his mining operation does irreparable damage to the drinking water of dozens, or possibly hundreds of people who live in the area and pay their Borough property taxes.

In closing, I would like to reiterate that my wife and I are strongly opposed to this application's approval. The Borough has a duty to protect our property and our health as citizens and taxpayers. This application must be denied because Mr. Cude can't ensure that either of those will be protected if he is allowed to mine gravel in the water table in this gravel pit.

Thank you,

Jeff Webb 36750 Virginia Drive Kenai, AK 99611 (907)252-1677

From:	mgrtotravel@aol.com
То:	Raidmae, Ryan
Cc:	RAY OYEMI
Subject:	<external-sender>To: KPB Commission. Comments in the matter of gravel pit a</external-sender>
Date:	Friday, November 15, 2024 12:12:25 PM

**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.

Reasons to pause: Avoid catastrophic damage to the 53+ acres development, seven years in the making next door.

1. Waiver requests should be considered with diligence - common interest and safety.

2. Best practices should be outlined, enforced and monitored.

3. The community within a community development has made significant progress: Lots in escrow, some committed, waiting to

Commence building.

Wells are in place:

a) A5 well functional and designed to service an Assisted Living Community and A4 and A3 is ready! House well 1A Virgina Drive is also ready and is functional to code.

b). This community was unanimously approved by the Planning Commission.

c). Community house well of 36570 Virginia Drive has been serving its community of two homes - 36570 and 36590 over the years for the homesteader's generations.

d). In that close and tight proximity, there is hardly a way to abate rock crushing noise in a vicinity housing assisted living, retirement homes and any quiet enjoyment.

e) The common interest of this community should not be abandoned.

Thank you for your diligence.

Ray Oyemi For Consolidated Dev. & Mgmt.

REVISED 4 PGS.

325

To: KPB Commission. Comments in the matter of gravel pit a

From: mgrtotravel@aol.com (mgrtotravel@aol.com)

- To: rraidmae@kpb.us
- Cc: mgrtotravel@aol.com

Date: Friday, November 15, 2024 at 01:12 PM PST

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Ray Oyemi Lay Cyerne For Consolidated Dev. & Mgmt.

A perfect fit for a river view lot



At Ciechanski & Virginia Dr. Off K-Beach, on the way to Boat Launch



# Affordable Luxury. Move In & Age In Place.

Photo similar images of 3rd party's finished products. See us for more of their lines or bring us your dream home plans



# Welcome Home To Your New Community.

**ADA Compliant Homes** 







# **Bring Your Cherished Loved Ones**

From:	Shirley Satterfield
To:	Raidmae, Ryan
Subject:	<external-sender>Fwd: Public Comment - Opposition to Sean Cude 36498 Virginia Drive Material Site Application</external-sender>
Date:	Friday, November 15, 2024 11:43:03 AM

**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.

Subject: Public Comment - Opposition to Sean Cude 36498 Virginia Drive Material Site Application

Mr. Raidmae,

I am writing to express my strong opposition to the proposed development of a gravel pit and crushing plant near our neighborhood and the adjacent Kenai River. The potential impact of this project on our community, environment, and local wildlife cannot be overstated.

The proximity of the gravel pit and crushing plant to the Kenai River as well as the depth of excavation that penetrates into the neighborhood's groundwater table raises serious concerns about the potential for contamination of our water supply. The groundwater table is vital to our community and should be protected. Increased sediment and pollutants from the operation could irreparably damage this important water resource.

- 1. Has the Department of Natural Resources and the Alaska Department of Environmental Conservation been contacted for applicable review and permitting?
- 2. Where are the engineering and geotechnical reports for the proposed development stored for public access? The Notice of Public Hearing letter failed to mention where to go to view additional reports pertaining to this application.
- 3. Has consideration been given to the impacts that a large, deep excavation that is allowed to remain in this condition would have on the surrounding neighborhood and environment?
- 4. Who would be responsible for monitoring the groundwater table and adjacent water wells before/during/after the mining activities?
- 5. What entity is responsible for enforcement of groundwater monitoring? And
- 6. What entity is financially responsible for the impacts of contamination in the groundwater table?

The operations involved in gravel extraction and crushing are known to generate significant noise, dust and emissions. This could adversely affect air quality in our neighborhood, leading to health problems, especially for children, the elderly, and those with respiratory conditions. The noise generated by heavy machinery and trucks would severely affect the quality of life for residents in our community. The constant noise from operations would disrupt daily life, outdoor activities, and peaceful enjoyment of our homes.

Increased truck traffic from the gravel pit and crushing plant would lead to greater congestion on local roads, posing safety risks to pedestrians and cyclists. Virginia Drive was not designed to accommodate such heavy industrial traffic, and the potential for accidents is a serious concern. Who will be responsible for maintaining Virginia Drive as trucking operations will surely deteriorate the gravel roadway?

The establishment of a gravel pit and crushing plant in our vicinity would likely lead to a decline in property values. The appeal of living near a river and a natural landscape would be undermined by the industrial activities associated with the proposed development.

The area of this proposed material site/gravel pit and crushing plant has grown considerably over the last 20 years with more residential housing and increased traffic. The impacts that this type of activity would have on the surrounding neighborhoods is significant and I believe it's the wrong time and place for this type of activity/application. Given the significant environmental risks and the detrimental impact on our community, I oppose the approval of this project. We must prioritize the health, safety, and well-being of our residents and the protection of our local ecosystem.

Thank you for considering my concerns.

Sincerely,

Shirley & Steve Satterfield T 5N R 11W SEC 24 Seward Meridian KN 2006104 Diamond Willow Estates Sub Part 8 Amended Lot 3

# **DESK PACKET**

# (MATERIALS SUBMITTED AFTER MEETING PACKET PUBLICATION)

E3. Conditional Land Use Permit Modification; MS2015-005 Diamond-Willow HOA Information

### Planning Commission Meeting 18 Nov 2024

Dear Planning Commission,

I am writing this on behalf of the Diamond Willow Homeowners Association (DWHA). In this letter I will address reasons why this extension of the Conditional Land Use Permit should be denied. In this argument I will focus on reasons to distrust the engineering report and show inaccuracies in the engineered site map using an independent survey and engineer report DWHA had completed. I will show the present certified water wells in close proximity to the pit (within 100 feet). Lastly, I will discuss motives of the Gravel Pit Developer and the unrealistic claim of removing the reclaimed material so the gravel beneath it can be removed.

The Engineering firm that completed the original Conditional Land Use Permit (CLUP) application and CLUP extension application was McLane Engineering. Sam McLane was not truthful when he testified at the original Planning Commission Meeting on August 25, 2014.

He stated that he was down in the pit floor in early July. At that time it had a pretty gravelly floor and a large bank on the south side. The aquifer was in gravel when he dug the test hole. One test hole was dug to see where the water table was located.

When asked by Commissioner Carluccio, "what the depth was that he found the aquifer." Mr. McLane replied that it was about 2 feet from the pit floor.

This statement was not accurate. Presented in this packet is imagery provided by Joseph Kashi at the appeal hearing that shows a much different picture. Image # 1 shows the site before Sean Cude's construction crew started digging in the water table and there is no exposed water. Image #2 (dated 2014) shows the same site with a large body of water in the floor of the pit with a large stockpile of gravel on the southern edge of the property. The third picture illustrates the same site with reclaimed material spread into the exposed aquifer making it a "muddy mess" as described by homeowner's testimony. At no time during the summer of 2014, when the initial application was filed, was this "ground water" not exposed. Mr. McLane was not telling the truth when he testified to the Planning Commission.

Knowing that McLane Engineering was dishonest, DWHA questioned the integrity of the site map presented in the packet, which is requesting to expand the pit 18 feet below the water table. DWHA had an independent survey and engineering report conducted. The surveying company was Edge Survey and Design and the engineering firm was Trihydro (both respected companies in our local area). This study used three neighborhood water wells in close proximity to the gravel pit, which are shown on the surveyor's imagery (Image #4 close-up). From these wells, the surveyor took very precise measurements which data can be found on Image # 5. This data was given to Trihydro Engineering to complete the calculations. The results can be seen on Image #6. This study shows a significant difference in the flow direction from the CLUP site plan (image #7). What is most disturbing is the ground water elevation discrepancy is almost 10 feet. This difference is significant enough that it cannot be explained by water aquifer changes throughout the seasons. The most logical explanation is that McLane Engineering did not use precise measuring tools and means to acquire the data used in preparing the site map. It is reasonable to assume that the method of acquiring the data was the same method Sam McLane used in determining the depth of gravel above the water table in the original CLUP proposal (Dishonest Guesswork). This validation of an erroneous site map should be cause alone to deny the CLUP expansion.

In addition to the calculation discrepancies, the site map excluded a primary well that is approximately 60 ft away from the pit boundary. This well was mistakenly or deliberately excluded from the CLUP site map as shown on image #7 by a black X. It would be difficult to assume that this well was not known by package preparer because it was presented by the property owner at the Appeal hearing that overturned the Planning Commission's decision to deny the CLUP. Both Sean Cude and McLane Engineering attended the appeal hearing. (The well log and picture is attached to this letter). Once recognized, this well's 300 foot buffer will extend half way across the pit. The presence of this well is another reason to deny this CLUP extension.

Also, in the neighboring area there are 3 additional wells on adjacent properties that are within 100 feet of the pit boundaries (shown on Image #4 close-up). The purposes of these wells are for residential and commercial use as Public Water Systems (The Public Water System's applications and well logs are attached to this letter). These are legitimate wells that produce water volumes, which greatly exceed the purpose to which the property owners intended. With these water wells in place, the extension of the CLUP must be denied because the required setback of 300 feet from these wells is nearly the entire size of the existing gravel pit.

The last item I would like to discuss is the likely motives for this pit expansion by the owner. In order to theorize this it is necessary to look at the undertaking Sean Cude is proposing. Firstly, the pit is more than half reclaimed which took ¼ of a century to fill (picture #8). In order to acquire the gravel under this reclaimed area, that material has to be removed. Simple math puts the volume of this material at 250,000-300,000 yards. To put it into perspective, it is 25,000 ten-yard dump trucks loads. The effort to accomplish this would be enormous and the cost would be staggering. It is also important to realize that much of this gravel has been compromised by introducing reclaimed material to it (see picture #3) The effort and cost of this proposal far exceeds the value of the gravel that can be obtained by extraction out of the water aquifer.

Realizing this situation, it can only be assumed that the real reason is nefarious. Sean is wishing to operate a rock crusher within 100 feet of the Northeast corner. He also is asking to dewater inside the pit, supposedly, to get better access to the gravel. It must be mentioned that processing of material was never granted by the Panning Commission. The CLUP was denied. The Appeal Committee authorized the gravel extraction, but a legitimate authority never granted a waiver to process material within 100 feet of the northeast border. Consequently, Sean has never processed material at this site. Operating a rock

crusher and dewatering within 100 feet of this border would be extremely disruptive to the neighborhood, especially the property across the street. This proposal must also take into account the property on the Northern border is no longer an empty field but a plotted and approved housing development. It must be asked; what person, in their right mind, would buy property and invest in an upscale home next to an operating rock crusher where active dewatering is occurring? The answer... No one! So, what is going to happen to this property if Consolidated Development cannot execute its development plan? It will have to be sold at a fraction of its value because, who in their right mind, would buy property and build a home next to an operational gravel pit with rock crusher, active dewatering and hundreds of trucks operating down the only road that accesses the neighborhood? The answer seems clear; the most logical purchaser of this property would be the person operating the gravel pit and has full control to discontinue the heinous activity once the property has been acquired. This is only speculation. The only alternative reason would be a personal vendetta against a neighborhood that has actively opposed the gravel pit for over 20 years. Whatever the actual reason, it will be devastating to the neighborhood safety and quality of life. This is just another reason to deny the expansion of this CLUP.

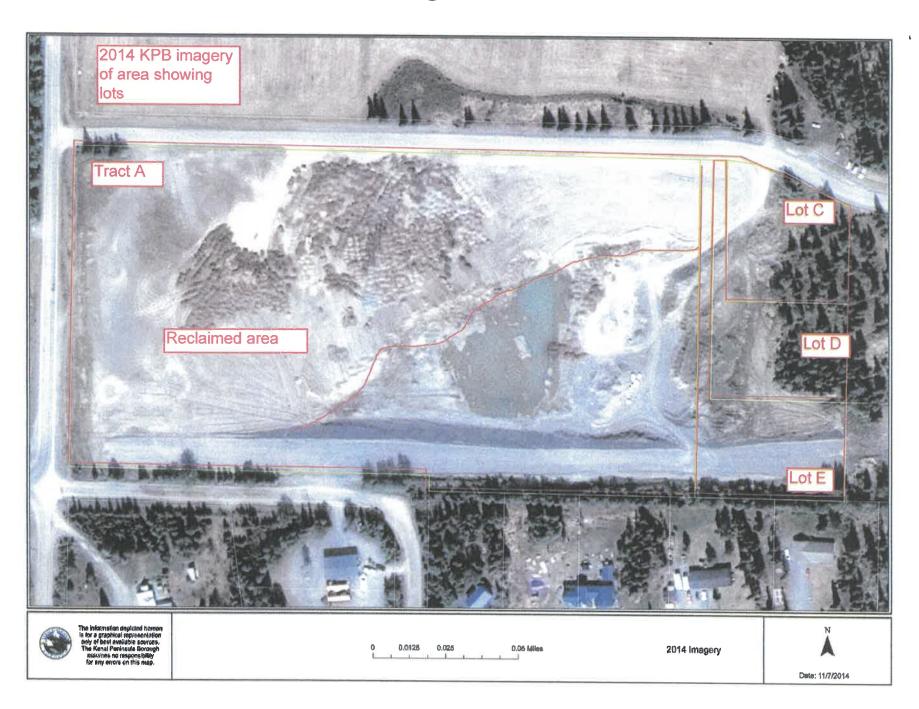
This argument to deny this CLUP expansion is clear. Identifying discrepancies in the site application, taking into account the numerous water wells close to the pit, determining the enormous difficulty of accessing the gravel beneath the reclaimed area and reflecting on ulterior motives, the only logical conclusion is to deny the extension of this CLUP.

\* One more thing. Picture # 9 was taken Oct 4, 2024. It shows that there is still exposed water in the gravel pit! Sean Cude cannot be trusted and the Kenai Peninsula Borough is unwilling to hold him accountable!

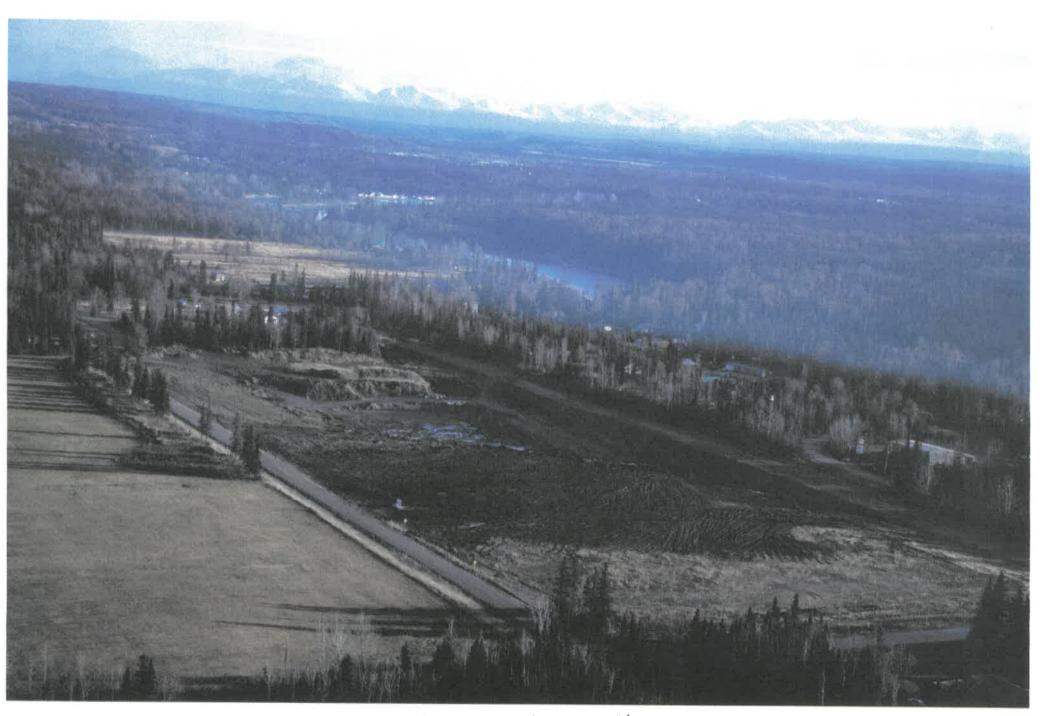
in

Travis Penrod, Chairman Diamond Willow Homeowners Association

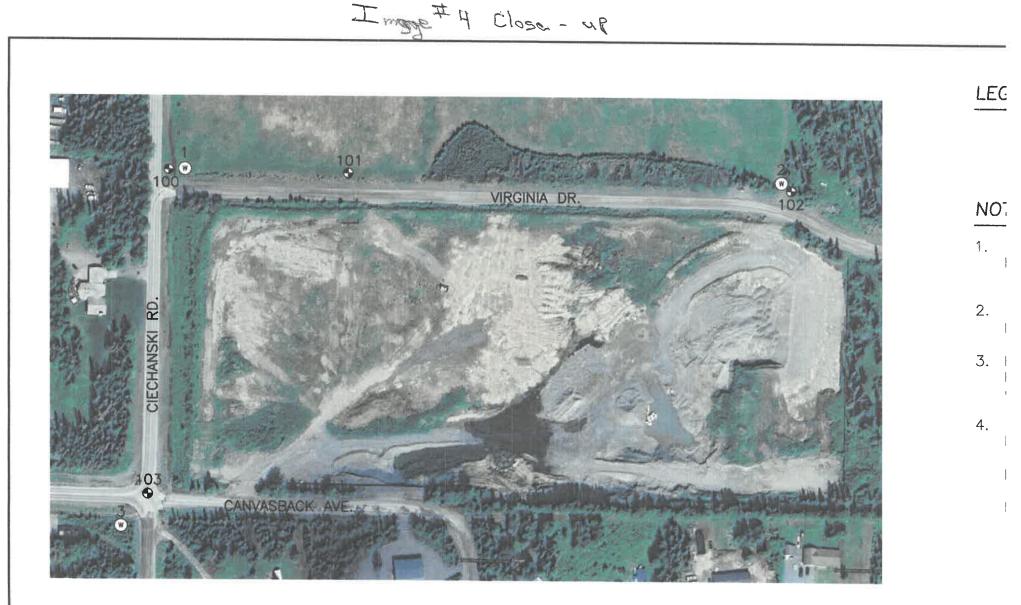




Imede # 5



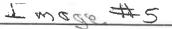
Picture # 3



## WELL DATA

WELL	NORTHING	EASTING	LATITUDE	LONGITUDE	TOP OF CASE ELEVATION	ADJACENT GROUND ELEVAT
1	2380567.49	1434054.04	60'30'40.6697"	151'08'42.3497"	86.60'	83.44'
2	2380544.69	1435297.85	60'30'40.6576"	151'08'17.5009"	90.44'	88.13'
3	2379825.48	1433920.18	60'30'33.3401"	151'08'44.7650"		86.84'

**53-73**2000





#### LEGEND

CONTROL POINT

WELL

#### NOTES

- THIS DRAWING IS BASED ON A FIELD SURVEY PERFORMED BY EDGE SURVEY AND DESIGN LLC. NOVEMBER 12th and 13th, 2024.
- 2. TOP OF CASING ELEVATION MEASURED AT NORTHERN MOST POINT INDICATED BY A CROW'S FOOT MARKER.
- 3. ELEVATIONS SHOWN HEREON ARE NAVD88 ORTHOMETRIC HEIGHTS AS DETERMINED BY AN NGS OPUS SOLUTION HOLDING GEOID 12B.
- 4. THE BASIS OF COORDINATES IS ALASKA STATE PLANE ZONE 4, NAD 83, EPOCH 2010.00, U.S. SURVEY FEET. AS DERIVED FROM AN 4 HOUR OPUS POSITION ON CONTROL POINT 100, A 1.5" YELLOW PLASTIC CAP.

POINT 100 HAS COORDINATES OF:

LAT: 60°30'40.6697" N LONG: 151°08'42.3497" W

N: 2380565.55, E: 1434020.39 Z: 85.10'

#### WELL DATA

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1	2380567.49	1434054.04	60'30'40.6697"	151'08'42.3497"	86.60'	83.44'
2	2380544.69			151'08'17.5009"		88.13'
3	2379825.48	1433920.18	60'30'33.3401"	151'08'44.7650"	89.24'	86.84'

#### CONTROL POINTS

CONTROL POINT	NORTHING	EASTING	ELEVATION	DESCRIPTION
100	2380565.55	1434020.39	85.10	YELLOW PLASTIC CAP
101	2380559.83	1434394.48	83.70	STEEL CAP
102	2380528.24	1435317.09	89.55	STEEL CAP
103	2379892.61	1433976.13	86.66	MONUMENT



SUTVEY AND DESIGN, LLG           8000 KING STREET         ANCHORAGE, AK, 99518           Phone (907) 344-5990         Fax (907) 344-7794	
MONITORING WELL SURVEY	

Ν

DRAWN BY: JY	DATE: 11/13/2024	PROJECT: 24-631
CHECKED BY:	SCALE:	SHEET:
RS	1'=100'	1 OF 1

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#### LEGEND

•	CONTROL	POINT
۲	WELL	

100'

50

#### NOTES

- 1. THIS DRAWING IS BASED ON A FIELD SURVEY PERFORMED BY EDGE SURVEY AND DESIGN LLC. NOVEMBER 12th and 13th, 2024.
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  - POINT 100 HAS COORDINATES OF: LAT: 60°30'40.6697" N LONG: 151°08'42.3497" W N: 2380565.55, E: 1434020.39 Z: 85.10'

1'' = 100'

#### WELL DATA

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## SURVEY AND BESIGN, LLC BOOD KING STREET Phote (907) 344-5990 Fax (907) 344-7794

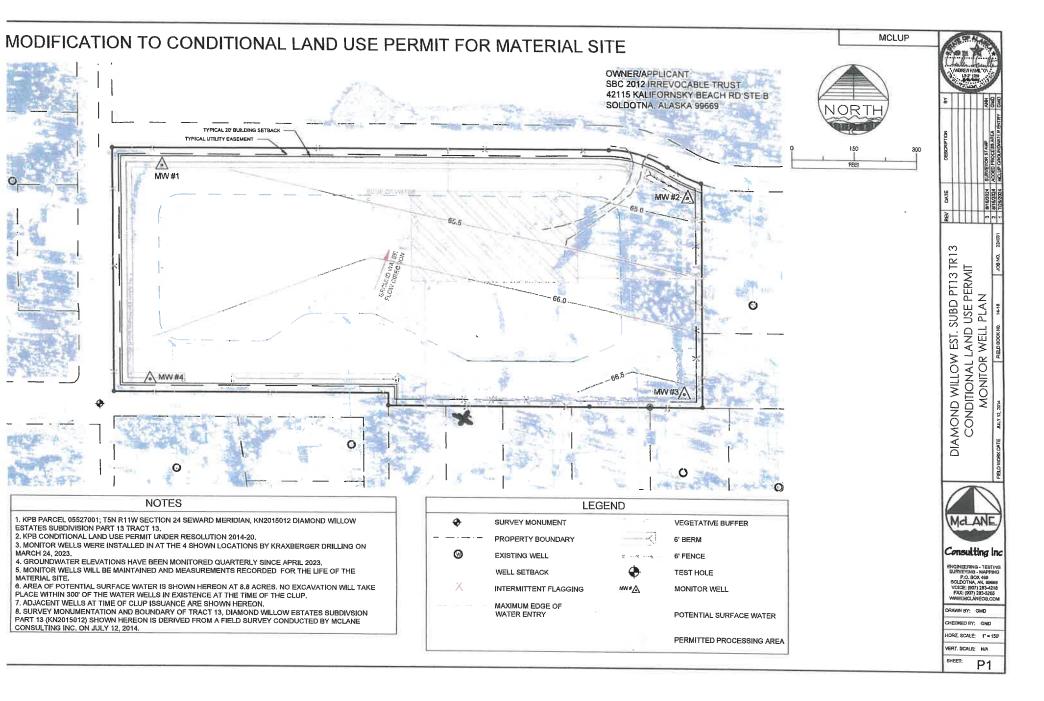
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100'

#### MONITORING WELL SURVEY

DRAWN BY:	DATE:	PROJECT:
JY	11/13/2024	24-631
CHECKED BY:	SCALE:	SHEET:
RS	1'=100'	1 OF 1





Picture \$ 8



Picture # 9



INVITE INTELLET THE INVITE OF CHICK OF PRODUCE DE MINIMUM CONCERNE.

BRYSON	CARLUCCIO	COLLINS	ECKLUND	FOSTER	HOLSTEN	ISHAM
ABSENT	YES	YES	ABSENT	YES	YES	YES
LOCKWOOD	MARTIN	RUFFNER	TAURIAINEN	VENUTI	WHITNEY	9 YES
YES	YES	YES	ABSENT	YES	ABSENT	4 ABSENT

AGENDA ITEM F. PUBLIC HEARING

2. Resolution 2014-20; An application for a conditional land use permit for material extraction on a parcel in the Kalifornsky area.

Staff Report given by Bruce Wall

PC MEETING: August 25, 2014

- Applicant: Sean Cude
- Landowner: SBC 2012 Irrevocable Trust

Parcel ID#: 055-270-98, 055-270-50, 055-270-51, and 055-270-52

- Legal Description: Tract A2A, Diamond Willow Estates Subdivision Part 11 according to Plat 2012-93, Kenai Recording District, Third Judicial Court, State of Alaska; and Lots C, D, & E, Diamond Willow Estates Subdivision Part – 10 according to Plat 2008-135, Kenai Recording District, Third Judicial Court, State of Alaska.
- Location: The extraction area will be on the south side of Virginia Drive, east of Ciechanski Road, and north of Ravenwood Subdivision.

BACKGROUND INFORMATION: The applicant wishes to obtain a permit for sand, gravel, and peat extraction on 19.36 acres within the parcels listed above. The remainder of this site has previously been excavated and is currently being reclaimed. Material extraction has taken place on what is now Tract A2A in the past and much of the material on that site has been exhausted with the exception of the south east portion of the parcel. In the past material extraction has also taken place on portions of what are now Lots C, D, & E. Aerial photos from 1985 and 1996 shows that excavation on the subject property was mostly limited to what is now Lot E. Much of the proposed new extraction will take place on these three lots.

Ordinance 98-33, adopted February 16, 1999, required that all existing material sites apply to be registered as a prior existing use prior to January 1, 2001. A couple of years later, planning staff discovered that excavation was occurring on this site without a permit and without being registered as a prior existing use. The planning commission held a public hearing on May 10, 2004 for a conditional land use permit for an 18 acre excavation area on the property that is now the subject of this application. The application was denied with the following findings:

- 1. It appears the site is being backfilled with garbage supported by pictures of septic pipes, crushed septic tanks, which were mixed with the gravel.
- 2. Testimony during the public hearing was that the owner/operator was backfilling with garbage, including used septic pipes and used and deteriorating septic tanks.
- 3. The owner testified that he was not aware of the Kenai Peninsula Borough material site ordinance.
- 4. Virginia Drive appears to be rutted consistent with gravel truck usage.
- 5. A photograph of an oil spill near several drums appears to be consistent with leaking barrels.
- 6. The applicant's statement to reclaim as a hay field does not appear to be reasonable based on information supplied to the commission.

A new application was submitted and the planning commission held a public hearing on September 13, 2004 for a conditional land use permit for the same 18 acre excavation area. The staff report for that application indicated that the applicant willfully operated the material site as if it was permitted between May 10, 2004 and KENAI PENINSULA BOROUGH PLANNING COMMISSION AUGUST 25, 2014 MEETING MINUTES PAGE 11

September 2, 2004. The application was again denied. The current applicant purchased the property on December 20, 2012.

#### KPB 21.29.030(A) states:

... The planning director may determine that certain contiguous parcels are eligible for a single permit. ...

The planning director has reviewed this application and has determined that these four parcels are <u>not</u> eligible for a single permit. He has recommended to the applicant that he submit a new plat that combines these four parcels into just one parcel and have the final plat recorded prior to issuance of the Conditional Land Use Permit. This decision was based upon the inability to maintain access to Lots D and E, which are platted as flag lots. And the wastewater disposal statement on the plat for Lots C, D, & E, that states:

Soil conditions, water table levels, and soil slopes in this subdivision have been found suitable for conventional onsite wastewater treatment and disposal systems serving single family of [*sic*] duplex residences, and meeting the regulatory requirements of the Kenai Peninsula Borough. ...

If the permit is approved tonight, staff will revise the resolution after the final plat is recorded to reflect the new parcel number and legal description of the property and have the chairman sign it at that time.

The applicant is willing to re-subdivide the four parcels into one parcel, but would like to ensure that the CLUP would be approved before incurring the cost of re-subdividing.

The submitted site plan indicates that the material site haul route is Virginia Drive to Ciechanski Road. There is an existing driveway onto Virginia Drive, which is a Borough maintained road. The site plan and application indicates that there will be a 6 foot berm along all the roads adjacent to the property, a 6 foot fence adjacent to Ravenwood Subdivision, and a 6 foot fence along the east property line once the required 50 of vegetation is removed.

The applicant's proposed depth of excavation is up to 20 feet below the natural existing grade. The application states that a test hole was excavated in the existing material site floor and groundwater was found at approximately 2 feet below the existing material site floor. The applicant indicates that material processing will take place on the site. All processing will be located greater than 300 feet from the west, south, and east parcel boundaries. The applicant is requesting a waiver to allow processing up to 100 feet from the north parcel boundary. KPB 21.29.050(A3) states:

... 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 property at the time.

The applicant has stated that the adjacent land to the north is agricultural. The Assessor's office classifies it as vacant land.

The applicant anticipates a life span of 20 years for the site and that the annual excavation quantity will be less than 50,000 cubic yards of material. The submitted application indicates that approximately 14 acres of the west side of the site has previously been mined and is being incrementally reclaimed. Phasing from west to east and north to south is proposed to demonstrate orderly development and reclamation of the site. Reclamation will be completed annually before growing season ends. Seeding will be applied as necessary each growing season to areas that achieve final grade to minimize erosion and dust.

PUBLIC NOTICE: Public notice of the application was mailed on August 5, 2014 to the 284 landowners or leaseholders within one-half mile of the subject parcel. Public notice was sent to the postmaster in Kenai and Soldotna requesting that it be posted at these Post Offices. Public notice of the application was published in the August 14, 2014 & August 21, 2014 issues of the Peninsula Clarion.

 KPB AGENCY REVIEW: Application information was provided to pertinent KPB staff and other agencies on

 KENAI PENINSULA BOROUGH PLANNING COMMISSION AUGUST 25, 2014 MEETING MINUTES
 PAGE 12

August 7, 2014.

A letter was received from the Department of Environmental Conservation. The letter and accompanying map is included in the desk packet. It states that the proposed material site is near Willowbrook North Well #3, which is part of a registered public water system source. Willowbrook North has been notified of this application.

Thirteen letters of concern or opposition from the public were received. These letters with attachments are included in the desk packet.

#### **ATTACHMENTS**

Attachment A:	Conditional Land Use application with site plan
Attachment B:	Aerial maps
Attachment C:	Area land use map
Attachment D:	Area ownership map
Attachment E:	Public Notice
Attachment F:	Plat KN 2008-135
Attachment G:	Agency comments
Attachment H:	Public comments

FINDINGS OF FACT

- 1. KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough.
- 2. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
- 3. On July 25, 2014 the applicant, Sean Cude, submitted to the Borough Planning Department a conditional land use permit application for KPB Tax Parcel Numbers 055-270-98, 055-270-50, 055-270-51, and 055-270-52, which are located within the rural district.
- 4. KPB 21.29 provides that a conditional land use permit is required for material extraction that disturbs more than 2.5 cumulative acres.
- 5. The proposed cumulative disturbed area within the parcel is approximately 19.36 acres, including existing disturbed areas.
- 6. KPB 21.29.030(A) states the planning director may determine that certain contiguous parcels are eligible for a single permit.
- 7. The planning director has reviewed this application and has determined that these four parcels are not eligible for a single permit.
- 8. Tax Parcel Numbers 055-270-50, 055-270-51, and 055-270-52 are located within Diamond Willow Estates Subdivision Part 10 which states, in part, "Wastewater disposal Soil conditions, water table levels, and soil slopes in this subdivision have been found suitable for conventional onsite wastewater treatment and disposal systems serving single family of [*sic*] duplex residences, and meeting the regulatory requirements of the Kenai Peninsula Borough."
- 9. Tax Parcel Numbers 055-270-51 and 055-270-52 are configured as flag lots. The proposed excavation would not be compatible with the designed access for these lots.
- 10. A new plat that combines these four parcels into just one parcel would eliminate Tax Parcel Numbers 055-270-50, 055-270-51, and 055-270-52, thus eliminating the possibility of a buyer of these lots relying on the information on the plat.
- 11. A new plat that combines these four parcels into just one parcel would make the new parcel eligible for a conditional land use permit for a material site.
- 12. To meet material site standard 21.29.040(A1), the proposed activity must protect against aquifer disturbance by maintaining a 2-foot vertical separation from the seasonal high water table and by ensuring that no material extraction takes place within 100 horizontal feet of any existing water source.
- 13. An excavated test hole in the existing material site floor found groundwater at approximately 2 feet below the existing material site floor.
- 14. The proposed excavation will be to the same elevation as the existing material site floor.
- 15. The site plan indicates that there are no known wells located within 100 feet of the proposed excavation area.

16. The site plan indicates that there are several wells located within 300 feet of the proposed

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material site.

- 17. To meet material site standard 21.29.040(A2), the proposed activity must be conducted in a manner to protect against physical damage to adjacent properties by complying with the required permit conditions of KPB 21.29.050.
- 18. To meet material site standard 21.29.040(A3), the proposed activity must be conducted in a manner which minimizes the off-site movement of dust by complying with required permit condition KPB 21.29.050(10), Dust Control.
- 19. Ingress and egress at the material site will be Virginia Drive which is a Borough maintained road.
- 20. To meet material site standard 21.29.040(A4), the proposed activity must be conducted in a manner which minimizes noise disturbance to other properties by complying with permit condition KPB 21.29.050(2), Buffer Zone; KPB 21.29.050(3), Processing; and KPB 21.29.050(11), Hours of Operation.
- 21. The applicant indicates that material processing will take place on the site. As indicated on the submitted site plan all processing will be located greater than 300 feet from the west, south, and east parcel boundaries and 100' from the north boundary, which adjacent to a large vacant parcel.
- 22. To meet material site standard 21.29.040(A5), the proposed activity must be conducted in a manner which minimizes visual impacts by complying with the permit condition KPB 21.29.050(2), Buffer Zone.
- 23. The submitted site plan and application indicates that a 6-foot berm, 6-foot fence, or a 50-foot vegetated buffer will be maintained on all boundaries.
- 24. The bonding requirement of KPB 21.29.050(12b) will apply to this material site if extraction in any one year exceeds 50,000 cubic yards of material.
- 25. A public hearing of the Planning Commission was held on August 25, 2014 and notice of the meeting was published, posted, and mailed in accordance with KPB 21.25.060 and KPB 21.11.

#### STAFF RECOMMENDATION

Staff recommends that the Planning Commission approve the requested waiver allowing material processing to take place up to 100 feet from the north property line. Staff further recommends that the Planning Commission approve the conditional land use permit with listed conditions and adopt the findings of fact, subject to the following:

- 1. Filing of the PC Resolution in the appropriate recording district after the deadline to appeal the Planning Commission's approval has expired (15 days from the date of the notice of decision) unless there are no parties with appeal rights and after the recording of a plat designating the area contained in these four parcels as just one parcel containing approximately 19.36 acres.
- 2. The Planning Department is responsible for filing the Planning Commission resolution.
- 3. The applicant will provide the recording fee for the resolution to the Planning Department.

THE LAND USE AND OPERATIONS ARE DESCRIBED AND SHALL BE CONDUCTED AS FOLLOWS:

- A. An area currently known as KPB Tax Parcel Numbers 055-270-98, 055-270-50, 055-270-51, and 055-270-52. The total disturbed area within this area is up to 19.36 acres.
- B. Legal Description: Tract A2A, Diamond Willow Estates Subdivision Part 11 according to Plat 2012-93, Kenai Recording District, Third Judicial Court, State of Alaska; and Lots C, D, & E, Diamond Willow Estates Subdivision Part – 10 according to Plat 2008-135, Kenai Recording District, Third Judicial Court, State of Alaska.
- C. The applicant, Sean Cude, proposes to: 1. Extract gravel from the subject parcel; 2. Reclaim the site to a stable condition upon depletion of material.

#### PERMIT CONDITIONS

- 1. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
- 2. The permittee shall place and maintain a 6-foot berm along the north property line adjacent to Virginia Drive, the west property line along Ciechanski Road, and along a portion of the south property line along Canvasback Avenue; place and maintain a 6-foot fence along the remainder of the south property line adjacent to Ravenwood Subdivision; and maintain a minimum of 50 feet of undisturbed, natural vegetation between the excavation perimeter and the east property line until

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excavation takes place in that area, the vegetative buffer shall then be replaced with a 6-foot fence that shall be maintained.

- 3. The permittee shall maintain at least a 2:1 slope between the inner buffer zones and pit floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 30 days from the time of removal.
- 4. The permittee may not operate materials processing equipment within 300 feet of the west, south, or east parcel boundaries; or within 100 feet of the north boundary. Rock crushing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
- 5. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
- 6. The permittee shall maintain a 2-foot vertical separation from the seasonal high water table.
- 7. The permittee shall not dewater either by pumping, ditching or any other form of draining unless an exemption is granted by the planning commission.
- 8. The permittee shall ensure that fuel storage containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.
- The permittee shall conduct operations in a manner so as not to damage borough roads as required by KPB 14.40.175, and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
- 10. The permittee shall notify the planning department of any further subdivision or return to acreage of this parcel. The planning director may issue a written exemption from the permit 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.
- 11. The permittee shall apply water or calcium chloride, as needed, on haul roads within the boundaries of the subject parcel.
- 12. The permittee shall reclaim the site as described in the reclamation plan for this parcel and as approved by the planning commission.
- 13. The permittee is responsible for determining the need for any other municipal, state or federal permits and acquiring the same. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits.
- 14. This conditional land use permit is subject to annual review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.25.090, the planning commission may revoke a permit issued pursuant to this chapter if the permittee fails to comply with the provisions of this chapter or the conditions of the permit. The planning director shall provide at least 30 days written notice to the permittee of a revocation hearing before the planning commission.
- 15. Once effective, this conditional land use permit is valid for five years. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.

NOTE: Any party of record may file an appeal of a decision of the Planning Commission to the Board of Adjustment in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances, Chapter 21.20.250. A "party of record" is any person or government agency that provides oral or written testimony during the Planning Commission public hearing. Petition signers are not considered parties of record unless separate oral or written testimony is provided (KPB Code 21.20.210.A.6b1). An appeal must be filed with the Borough Clerk within 15 days of the notice of decision, using the proper forms, and be accompanied by the \$300 filing and records preparation fee. (KPB Code 21.25.100)

#### END OF STAFF REPORT

Vice Chairman Martin opened the meeting for public comment.

#### 1. Justin Evans, 47207 Lexington Ct

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Mr. Evans had already submitted comments regarding this conditional land use permit. He also was representing Mr. Roger Koppes and read his written comments into the record. Mr. Koppes address was PO Box 2739, Kenai. His letter is as follows:

#### "Dear KPB Planning Commission:

It has come to my attention through a Borough notice that Mr. Sean Cude of SBC 2012 Irrevocable Trust has submitted a Conditional Land Use Permit Application for a material site permit (gravel pit) in the vicinity of Virginia Drive, Diamond Willow Estates Subdivision Part 11 Tr A2A, Diamond Willow Estates Part 10 Lot C, D & E. My wife and I are residents of Diamond Willow Estates, located along Virginia Avenue and Gary Avenue. We are also concerned parents of four young children.

I am writing to express my opposition to the use of this abandoned gravel pit for further site excavation. Mr. Cude and I had an informal discussion about his plans for the property, shortly after he purchased the pit from Mercedes Gibbs. At that time he informed me that he intended to "reclaim" the pit by filling it in. He indicated that his intention was to establish a residence on the property and possibly create a personal use air strip.

The abandoned pit that Mr. Cude owns is accessed via Virginia Dr., which is also the only point of access for residents of Diamond Willow Estates Subdivision. Since residing in this area, we have seen a constant stream of heavy truck traffic entering the "reclamation" area. These trucks have dumped dirt, trees and man-made building materials (including fiberglass and foam board insulation, plastic fencing, drywall, metal pipes, etc.) into the pit area. Neighbors in the area, including myself, have recent photos of those materials.

I spoke to Mr. Cude by phone about the man-made materials entering the pit. He informed me that he was concerned about that happening and I should call him when I see it. I have called Mr. Cude two other occasions since, to inform him about material that should have been destined only to a proper landfill. My calls have not been returned and those materials continue to be pushed by bulldozers further into the pit property and covered up.

Heavy truck traffic along Virginia has also been a continuous problem. During rainy periods and during late winter break-up, the heavy trucks and excavation equipment along Virginia have created impassable conditions for personal and emergency services vehicles. That has created a safety risk to all as we have no other way to exit/enter/evacuate or receive emergency services during those periods of severe road damage. The borough has had to respond to these issues on at least two occasions that I am aware of.

The road as it is today is simply not capable of handling the heavy truck traffic. Additional heavy truck traffic promoted by an active pit will render this road useless.

In addition to the illegal dumping and roadway issues, my greatest concern is the degradation of the personal water wells of all residents of this and surrounding subdivisions. I have four young children between the ages of 6 and 12. As of now, our well water appears potable. The dumping of the aforementioned man-made materials laden with chemicals and non-natural substances into this pit - combined with further excavation on this property-may exacerbate the ground water/aquifer risk, accelerating the decline of potable water in the area. The safety of all local residents, but particularly its little residents will be compromised.

Additionally, this pit is extraordinarily close to the Kenai River. That brings an entirely new

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set of environmental risks and concerns Borough citizens to the table should any ground water contamination occur. I oppose approval of any further excavation of this area as it is clear that there is **no oversight** for dumping on his property, nor is there a clear plan for the sustainability of Virginia Drive. In review, my concerns are:

- 1. Ground water, well water, aquifer and Kenai River safety as it relates to current and future man-made waste disposed in the pit.
- 2. Roadway access, maintenance and sustainability on a 'no outlet' road, due to increased heavy vehicle traffic.
- 3. Emergency services and evacuation route blockage during periods of inclement weather, precipitated by inevitable road degradation caused by heavy vehicle traffic to/from an active pit.
- 4. The inevitable decline of property values of homes and the potential loss of potable water in the area due to an active gravel pit.
- 5. Increased Borough cost of road maintenance/construction and the loss of revenue in the form of property tax due to declining property values.
- 6. Increased Borough cost and liability should hazardous materials be introduced into any portion of the water system.

I am asking the KPB Planning Department and the KPB Planning Commission to deny the present application. If Mr. Cude wishes to continue his pursuit further, a legitimate and public risk assessment should be conducted by Borough legal personnel, roads personnel, emergency services personnel and environmental managers. This risk assessment should be performed in a thorough, transparent and independent way.

Thank you for your time and attention to this matter. We are relying on you to make the proper decision and say "no" to this application; for the future of all neighborhood children and the good of the Borough.

Roger A. Koppes

Vice Chairman Martin asked if there were questions for Mr. Evans. Hearing none the public hearing continued.

2. Travis Penrod via Video Call

Ms. Penrod stated that her husband was a Colonel in the United States Air Force and is currently out of State. She asked permission from the Chairman to allow her husband to testify electronically.

Vice Chairman Martin granted permission for Mr. Penrod to testify electronically.

Mr. Penrod started his testimony by telling what had been going on in the pit since Mr. Cude purchased the property in 2012. Shortly after the purchase was made, he began digging large sums of gravel in the bottom of the pit using heavy equipment, dozers and excavators. He took this large sum of gravel that was primarily dug out of the water aquifer at the bottom of the pit. Mr. Cude stock piled it against the south side of the pit. As soon as the excavating started taking place, Mr. Penrod called the Borough and explained that they wanted this stopped immediately. He spoke with Max Best who told him that it was private property and there wasn't anything to be done. Mr. Best stated that he spoke with the property owner personally and that they would approve the development that the new owner was going to be doing.

Shortly, thereafter, Sean Cude drove his truck into his driveway and they spoke personally. Mr. Cude

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told him that his sole purpose for digging up the gravel was to put in a private driveway along the south border of the pit so that he could get back to his property on the river. He told him that he was planning on building a million plus dollar house that would be a great asset to the neighborhood and that they would all approve. He also privately confided in him that the reason the driveway had to be so large was so that he could land his private Cessna 206 on the runway so he could park it at his house. Mr. Penrod stated that he continued to dig and made an enormous pond in the aquifer in the bottom of the pit.

The next summer when Mr. Cude said he was going to be building his house; instead he began to haul gravel out of the bottom of the pit that was piled up. Mr. Penrod immediately called Max Best who told him that he allowed Mr. Cude to haul gravel out of the bottom of the pit. Mr. Penrod commented that it was in direct violation and that he could not be digging and if he was going to do anything he needed to push that gravel back into the hole like he said.

Mr. Penrod spoke with Mr. Cude on several occasions throughout the last few years. Mr. Cude told him personally that he was planning on backfilling that pit as fast as he could because he doesn't want that ugly eyesore in his neighborhood either because he was planning on living there as well. If Mr. Cude is hauling gravel out then he was not backfilling it as he said he would do.

Mr. Penrod stated that last year Mr. Cude also told him that he had bought property out on Longmere Lake and that he was going to put his airplane there so he wouldn't need his property on Virginia Dr. as a runway anymore. Mr. Cude stated that he wasn't sure what he was going to be doing with that lot but Mr. Penrod felt he was sure but wasn't willing to share it with him.

This summer (2014) a road was placed to the bottom of the pit and trucks began hauling overburden (organic material) and dumping it into the aquifer. On the permit, Mr. Cude stated that he filled the aquifer with clean gravel but he did not. Mr. Penrod stated that he filled it with organics and nasty material and created a giant mud hole. He felt that not only did he make the mud hole but he contaminated the water which is associated with all of their drinking water. Instead of having two feet of clean gravel on top of the aquifer, Mr. Cude actually made a giant mud hole which is completely unacceptable and a direct violation of the permit that he was filing for at this time.

Mr. Penrod stated that all these reasons were reasons that they need to pursue to get this permit not approved so that their neighborhood can get back to being a quiet place as it should be.

Vice Chairman Martin asked if there were questions for Mr. Penrod.

Commissioner Holsten thanked Mr. Penrod for his service. She asked if the operator has been putting manmade materials in the pit since 2012. Mr. Penrod replied that they have been hauling manmade materials into the pit to backfill the pit but it is hard to tell what was actually put into the pit. (*Clerk's note: The speaker stepped away from the microphone to get a little closer to the commission so that he could hear what the commissioners were asking. The clerk could not hear his answer nor did it get recorded on the recording.* 

A jar of muddy water was passed around to show the commission that there was no gravel in the mud.

There being no further comments or questions, the public hearing continued.

3. Crystal Penrod, 36860 Virginia Drive

Ms. Penrod stated they also own 36770 Virginia Dr. She presented additional photos of the site which were passed around for the commission to see. As the lovely water sample from their aquifer was being passed around, she challenged each of the commission to find clean gravel. Ms. Penrod stated they have dealt with this problem for 15 years. It was 15 years ago that an illegal gravel pit had dug and removed over a million cubic yards of gravel.

Ms. Penrod stated that they have lived at this location for 19 years and have been there for this whole material site thing. They have a son in college who has a starter future home down the street from them and will live there when he is through with his engineering degree at UAA.

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Ms. Penrod stated that this started out with Warren Finley and Max Best 15 years ago. They have fought this since then. The current operator has continued to dig in the water aquifer, dumping pollutants and have continued to do the same thing as previous operators have done. She felt that there has been zero enforcement by the Borough. They have called, they have begged, they have pleaded and asked them to please do their job and please don't make them lose their homes. The digging and the gravel removal continues with the breech of their water, the aquifer and now the contaminants of the dumping materials.

Ms. Penrod stated that Mr. Cude purchased this property through a Title Company and as such was given a copy of the covenants of the neighborhood. She stated that he is absolutely part of the subdivision because of the way it was subdivided. He has to become compliant with the covenants or the Homeowners Association will seek litigation. Ms. Penrod stated the applicant was aware of the covenants prior to the sale and knew what he was getting into. She stated the he knew they would not put up with having something this awful in the neighborhood again. He knowingly was uncompliant and started digging a year ago and knew exactly what was going on when he dug in the pit and that they were not going to put up with it.

Ms. Penrod stated this was never a permitted permit. The previous operator stopped the operations but not before a million cubic yards of gravel was taken out. She stated they will fight this. If this permit is approved then they will proceed with litigation. The small amount of gravel of 50,000 cubic yards that Mr. Cude was proposing to be removed was a small pittance in comparison to all of the homeowners having their property devalued, having their water ruined and having the roads deteriorating. They finally got their Borough road that was decent to drive on as shown in the submitted photos but now the first half of the road is almost impassible at times because it is so muddy, pitted and rotten from the operator's trucks and traffic.

Ms. Penrod stated that the dumping of organic material into the well is just icing on the cake for them. She stated that due to the pit and the affects to the aquifer, they have purchase bottled water which has been delivered to them for the last 15 years. Her household of three goes through about eight bottles a month at \$8 a piece so that was about \$768 per year and approximately \$11,520 over the course of the last 15 years.

Ms. Penrod stated that they have to constantly be watching this and constantly taking the time to obtain evidence which is not their job. They should be able to live in their neighborhood and not worry about someone coming in with rock crushers and big trucks. She thanked the commission for their time and consideration and hoped they would look at the photos and sample water and gives them their neighborhood back.

Vice Chairman Martin asked if there were questions for Ms. Penrod.

Mr. Venuti asked if she has had her water tested. Ms. Penrod replied that they tested it between the 5-10 years ago which showed higher levels than normal of sulfates. They stopped having it tested. It was expensive to do that so they immediately switched to bottled water. She stated they have to flush their water out if they were gone from their home for more than 24 hours. Mr. Venuti asked when was the last time they had their water tested. Ms. Penrod replied that it was about 5-6 years ago.

Commissioner Foster asked if she realized that the Borough doesn't regulate covenants. The Borough would do something if an ordinance was broken. Ms. Penrod replied yes but if they looked into it then they could see that several ordinances have been broken. Commissioner Foster asked if the Diamond Willow Estes Homeowner's Association covenants were created in 1975. Ms. Penrod replied yes, she believed so. Commissioner Foster asked if there was any gravel extraction at that time. Ms. Penrod replied no, there were no permits were on the record with the Borough at that time. The current gravel pit was a hayfield at that time. Commissioner Foster asked if legal action was taken by the Homeowners Association with the previous owner at the initial onset of this gravel pit. Ms. Penrod replied they put their faith into the Borough 15 years ago. Eventually the Borough denied the permit and denied the appeal. She stated that Mercedes Gibbs was the previous owner but has continued to do things. Ms. Penrod stated they call and is told by Mr. Best that it is not KENAI PENINSULA BOROUGH PLANNING COMMISSION AUGUST 25, 2014 MEETING MINUTES PAGE 19

their property or business. She stated it is their business but Ms. Gibbs is the wife of a homesteader so she has places there but Mr. Cude does not.

Commissioner Holsten asked if they or anyone else in the neighborhood have their water tested prior to the initial gravel pit going in. Ms. Penrod replied yes, when they started building their home 20 years ago and were thrilled that they did not have to have any type of filter or any type of sand screen. They had beautiful clean and drinkable water but that is no more. It hasn't been like that for 15 years.

Commissioner Isham stated those sulfites tests are quite specific. He asked if they were testing for sulfites when they first tested their water. Ms. Penrod replied that her husband took their water in at the time and told them the situation and that they wanted to know what was going on and where they are at now. They knew where they were at in the beginning and that they wanted to know where they were at each time the water tested. She stated that at the time, they had a very young child and they were not willing to put that type of contaminate in him. They were told that it was not quite to level where it was completely undrinkable.

There being no further comments or questions, the public hearing continued.

4. Dennis Gease, 36710 Virginia Dr

Mr. Gease has lived at this location for 14 years. He was approaching 80 years of age and his memory was waving a little bit. It seemed like he has been here before with the same situation and the same pit. Mr. Gease believed the previous permit was denied. He asked the following four questions.

- 1. Mr. Gease referred to the following statement. "The applicant's depth of excavation is up to 20 feet below the natural existing grade. The application states that a test hole was excavated..." He asked who suggests or devises where the applicable grade was.
- 2. Mr. Gease referred to the following statement. "The applicant anticipates a life span of 20 years for the site and that the annual excavation quantity will be less than 50,000 cubic yards of material. The bonding requirement of KPB 21.29.050(12b) will apply to this material site if exaction in any one year exceeds 50,000 cubic yards of material." He asked if the applicant was taking out less or more than 50,000 yards. Also he asked what the bond was for and who bonds him.
- 3. Mr. Gease referred to the following statement. *"The permittee shall conduct operations in a manner so as not to damage borough roads as required by KPB 14.40.175 and will be subject to remedies set forth in KPB 14.40 for violation of this condition."* He asked what the violations were and who enforces this law. They have had these violations for the past 10 years and have never seen any corrective action taken on the violations.
- 4. Mr. Gease stated that they saw what happened 10 years ago after the denial of the permit and operations continued with no action taken. He asked what kind of enforcement the Borough does and what legal action can they do if the Borough doesn't do it. Mr. Gease noted that the applicant anticipates a life span of 20 years for this project however he understood that this permit would be valid for five years. He asked if there would be a possibility of another hearing in five years if this permit was issued. The applicant could take out 200,000 yards of gravel on 4.8 acres. It seems awfully difficult for him to envision this. He could see it if he was starting over on 20 acres but he is on 4.8 acres where he wants to remove 50,000 cubic yards for 20 years.
- Mr. Gease respectfully asked that these questions be answered and that this permit be denied.

Vice Chairman Martin asked if there were questions for Mr. Gease. Hearing none the public hearing continued.

5. Tim Agosti, 36894 Virginia Dr.

Mr. Agosti stated that as a homeowner he was opposed to the material extraction permit because of KENAI PENINSULA BOROUGH PLANNING COMMISSION AUGUST 25, 2014 MEETING MINUTES PAGE 20

the effects it will have on the local aquifer, water well and the surrounding wells. The homeowners in the area oppose an extraction permit by the previous landowner for the same reasons as well as other issues that occurred with the previous owner.

Mr. Agosti felt the current landowner has done a good faith effort in backfilling and grading the site however when they initially started the grading a great deal of gravel was moved and pushed up to create an airplane landing strip. Some of the gravel used was from stockpiles from the previous owner however much of the gravel was taken from the bottom of the existing pit. He stated it was new excavation which exposed the local aquifer. This exposed aquifer was later backfilled with overburden and organic material.

Mr. Agosti stated that the application also that the exposed groundwater were backfilled with clean gravel fill. He stated that he, his wife and his neighbors have personally witnessed that the significant portion of that exposed aquifer was filled with organic overburden and not clean gravel. There was a minor area recently where gravel was pushed into the exposed water aquifer which was also taken from the bottom of the pit.

Mr. Agosti stated that there is a possibility with further excavation to the west and south and with typical heavy equipment that uses oil and diesel fuel that the local aquifer and groundwater may become contaminated. He felt that these contaminates may or could leach into the Kenai River.

Mr. Agosti stated that the residents of the area would also be impacted by the extraction equipment, noise and dust contaminates. He asked that there be proposed action to minimize the effects of these items.

Finally, Mr. Agosti stated that Virginia Dr. would see the excessive use of truck hauling and ask that there be a requirement that the Borough grade and maintain it more frequently than normal.

Vice Chairman Martin asked if there were questions for Mr. Agosti.

Mr. Venuti asked if he had his water tested lately. Mr. Agosti replied no, he has not had his water tested lately. He stated they are using bottled water. Mr. Venuti asked when the last time was that he had his water tested. Mr. Agosti replied that it has been several years.

There being no further comments or questions, the public hearing continued.

#### 6. Barbara Roberts

Ms. Roberts is part of the Willowbrook North Homeowners Association. She was notified just last week of the subject application so she did not have an opportunity to discuss this issue with the board of Willow Brook North Homeowners Assoc. Ms. Roberts presented a source water assessment report that talks about the hydrologic susceptibility and vulnerability assessment for their subdivision. The total subdivision has 100 homes in it. The map that she would like to pass around shows susceptibility area for their subdivision which zeros right into the subject gravel pit. It is called "Source Water Assessment, A Hydrogeologic Susceptibility and Vulnerability Assessment for Willow Brook North Drinking Water System." As a subdivision owner she requested this permit application not be approved.

Vice Chairman Martin asked if there were questions for Ms. Roberts.

Commissioner Ruffner asked if the public water well had to be tested. Ms. Roberts replied yes, it is tested on a regular basis. She stated they do have water rights on this well. Commissioner Ruffner stated that one proactive thing that can be done is to file for water rights through DNR. Commissioner Ruffner asked if their public water system has always passed DEC requirements. Ms. Roberts replied yes, they have good water at this time and would like to keep their good water. The type of backfill that might be used in the gravel pit could affect their water, it doesn't sound like the owners have used good backfill up to this point.

There being no further comments or questions, the public hearing continued.

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#### 7. Chris Wehr, 36680 Virginia Dr., Kenai

Mr. Wehr expressed concern with what was put into this gravel pit. He has seen creosoted treated railroad ties, pressure treated lumber, macadam and tires. Last year, he requested that the Borough come and check the site since he had seen big huge bags on the site that would be carried on the back of a semi with the big loops. It had salt written on the side of them, 1,100 kilograms and if his math was right then it was over 2,200 pounds. Mr. Wehr went and investigated what it was. It appeared to be with concrete so he had no earthly idea of what was in the bags. It could have been concrete or half salt but he had no idea. He requested the Borough to come to the site to check it out but unfortunately no one was available due to the vacancy of the position. Over the weekend they bulldozed the bags to the bottom of the pit. Yes, the Borough did come to the site later but it was too late. Other things he has seen go into the pit has been raw sewage that was pumped onto the ground, fish carcasses, and moose carcasses. It isn't necessarily the other businesses that are bringing material to be bull dozed in there but are the things that aren't watched over the weekend or at night. There are people who are dumping things at night; it is a free for all in a lot of ways.

Mr. Wehr also expressed the concern that this pit could affect the river. He lives directly on a bluff and the reason he bought the property is that it was cheap because they couldn't' get a mortgage on it figuring that it would be in the Kenai in 30 years. They bought it considering it was a good buy.

Mr. Wehr's was also concerned were with heavy traffic, possible blasting, all the other equipment moving and the possibility of his bluff going down the river. The applicant is asking for 20 years but he won't be here in 20 years so for the future of their kids and grandkids he asked that the permit be denied. He was available to answer questions.

Vice Chairman Martin asked if there were questions for Mr. Wehr. Hearing none the public hearing continued.

#### 8, Karen Bundy, 37523 Wanda Gail Dr.

Ms. Bundy does not live on Virginia Dr. but passes there every day. She has been a nurse for 40 years so health concerns are her main concerns and really worries about the children. There are so much that goes on in the world that they don't know what the repercussions are for 20, 30 or 40 years. They can think of mesothelioma in the asbestos industry or silico which they don't know at this point what was going to happen with the little children breathing it. So when they are adults, 30 or 40 years from now and they have lived around a gravel pit they might find out what they got but now it was too late because they have an incurable disease.

Ms. Bundy also expressed worry about the water supply because as she drives by the pit she had always thought the pit was a dump because of all the stuff that was dumped in there. She stated that her husband told her it was fill that they were putting in the gravel pit. This was what the neighborhood that has monitored the activity has been looking at.

Originally, Ms. Bundy stated she wasn't against the gravel pit but thought the 20 year was excessively a long time. The purchase price of a home in this area would be going down because of the gravel pit. After listening to the neighborhood she has more concerns then when she wrote her letter. She pleaded with the commission that they think about the health of the community and of their children. Ms. Bundy asked that the commission think about denying this permit or at least thinking about it.

Ms. Bundy stated she doesn't know the applicant but admires anyone who has a business in this political arena. It is hard to have a business nowadays but if the applicant doesn't live in the community then he is not directly affected. She felt it was not fair for children and residents in a beautiful place like Alaska to have to deal with all of this.

Vice Chairman Martin asked if there were questions for Ms. Bundy. Hearing none the public hearing continued.

#### 9. Darlene Liuska, 4676 Gadwell Ave

Ms. Liuska stated that her backyard backs up to the gravel pit. When she moved to the area they were told that this gravel pit was an illegal inactive pit. She now gets the notice that the new owner

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wants to open the pit and not only take gravel out of it but also process it there.

Ms. Liuska stated that she and her husband are concerned about what this might do to their water and of the constant noise that would be going on. It was bad enough having the trucks going in and out dumping and banging all the time. She wanted to go on record that she totally disapproves this action and asked that the permit be denied.

Vice Chairman Martin asked if there were questions for Ms. Liuska. Hearing none the public hearing continued.

#### 10. Sean Cude

Mr. Cude is the contractor and owner of the pit. He has owned this property for two years and has been trying to take care of the problems and issues that were left on this property. He has brought a lot of fill to help reclaim the property which was more than most contractors. These problems stem back to a non-responsible operator. He has a vested interest in the neighborhood since he owns a 3.6 acre Kenai River lot.

Mr. Cude pointed out that this parcel is not part of the subdivision and homeowners association. He presented paperwork which states that Tract A is not part of the subdivision. The covenants clearly states that Tract A is excluded according to the original plat. Mr. Cude encouraged everyone to read the plat.

Mr. Cude stated that there has already been approximately 14 acres that has removed under previous ownership which was operated without a conditional use permit or not meeting any of the requirements. He assured the commission that he would comply with all conditions and that he wasn't opposed to changing the access road by a different route rather than coming down Virginia Dr.

Vice Chairman Martin asked if there were questions for Mr. Cude.

Commissioner Isham asked when he purchased the property. Mr. Cude replied that he purchased the property in December 2012.

Commissioner Carluccio asked what was being used for backfill. Mr. Cude replied that most of the fill comes from Borough Maintenance projects coming from the local neighborhoods. The local contractors bring truckloads of organic material to the site. Commissioner Carluccio asked if he had seen some of the pictures that show that there was other debris that has been dumped in the pit. Mr. Cude replied yes, he has seen the pictures.

Commissioner Carluccio asked if the groundwater that was coming up was part of the aquifer. Mr. Cude deferred to Mr. McLane who is his engineer and can speak specifically to that.

Commissioner Holsten asked for his comments regarding the accusations of what was being dumped in the pit like creosote logs, big concrete pieces, pressurized treated lumber, tires, etc. She felt those items did not quite strike the organic standard. Mr. Cude encouraged her to come to the site and see what has been dumped into the pit. He assured her that there are only trees and organic materials that have been dumped into the pit. There is a sign that clearly states that no dumping without permission. Someone has to call them since there is no dumping of garbage, no refuse but trees and organic materials only. Commissioner Holsten asked if there was only a sign to preclude someone from dumping their junk in the pit. She asked if there was someone on site to manage access to the pit. Mr. Cude replied that they have had no reason to fence it and have it manned by someone.

Commissioner Foster stated that he said there was a lot of road maintenance debris being dumped in the pit yet there was a testifier who claimed there was asphalt road material being dumped in the pit. Mr. Cude replied there was not supposed to be any asphalt material going in there but only organic materials.

Commissioner Ruffner asked what his plans were for crushing, shaking, and hours of operation. Mr. Cude KENAI PENINSULA BOROUGH PLANNING COMMISSION AUGUST 25, 2014 MEETING MINUTES PAGE 23

replied that he has no problem with having working hours of operation. He stated there would be no crushing but will be screening the material. Commissioner Ruffner asked what he thought was reasonable regarding hours of operation. Mr. Cude replied that he proposed to have 8:00 a.m. to 5:00 p.m. as his hours of operation. Commissioner Ruffner stated that it would be regular business hours.

Commissioner Holsten asked what he proposed for better access. Mr. Cude replied that there was the possibility of accessing the pit on Ciechanski Rd and Canvasback Ave and therefore avoiding Virginia Dr.

Commissioner Venuti asked if there was an employee onsite that monitors what was brought into the site. Mr. Cude replied that he would have during the hours of operation if the site was permitted. Commissioner Venuti understood that there was no one at this time onsite who was monitoring what was brought into the pit. Mr. Cude replied that was correct.

Commissioner Holsten asked if someone notices if there was inappropriate stuff that was being bull dozed in the pit. Mr. Cude replied that they are not going to push over contaminates. He encouraged the commission to come look at the site to see what has been dumped there.

There being no further comments or questions, the public hearing continued.

11. Sam McLane, McLane Consulting, Inc, 38240 Kenai Spur Highway

Mr. McLane stated that they prepared the application for the applicant and personally dug the test hole. He stated that he has lived here for a long time and driven by it. The hole has been there a long time.

Mr. McLane stated that he was down in the pit floor in early July. At that time it had a pretty gravely floor and a large gravel bank on the south side. The aguifer was in gravel when he dug the test hole. One test hole was dug to see where the water table was located.

Mr. McLane stated he was at the meeting to mainly answer questions. One of the things he noticed over the years was that he thought his firm did the Virginia Dr. improvement design for the Borough Roads Service area. What they have seen on Virginia Dr. is that there is no berm which allows access to the pit. He stated that with a permitted plan there will be a berm all around there so that the will only be one access point.

Vice Chairman Martin asked if there were questions for Mr. McLane.

Commissioner Carluccio asked if it was customary to drill only one test hole. Mr. McLane replied that the ordinance requirement was to determine depth to groundwater, aquifer. Commissioner Carluccio asked what the depth was that he found the aquifer. Mr. McLane replied that it was about 2 feet from the pit floor. Commissioner Carluccio asked for comments regarding the muddy hole that everyone was talking about. She asked where it was in relationship to where the test hole was dug. Mr. McLane replied that there wasn't a muddy hole when he was there. It had been recently graded, there was gravel on the bottom and there was some softer areas. He wasn't making a complete inspection of what was there and didn't dig a hole near what was the reclaimed area.

Commissioner Holsten asked when the test hole was dug. Mr. McLane replied that it was early July 2014.

Commissioner Venuti asked if he saw any debris other than gravel or good material. Mr. McLane replied that he wasn't really looking at that but he did notice that it was typical of what goes in old gravel pits. Most of it was old top soil, silt, moss, and a few stumps and roots.

Mr. Best asked if he was in the lowest portion of the pit floor when he dug the test hole. Mr. McLane replied yes, it was pretty level within a foot or so. Mr. Best asked what he did to advise his client to stay away from the water table. Mr. McLane stated that if this site was permitted then he would advise his client to install a monitor well because it wasn't seasonal high when he was in the pit in July.

There being no further comments or questions, the public hearing continued. KENAI PENINSULA BOROUGH PLANNING COMMISSION AUGUST 25, 2014 MEETING MINUTES

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#### .12. Jeanette Maly, 36770 Virginia Dr.

Ms. Maly reminded the commission that this was never a legal gravel pit. It wasn't right to permit something that was never legal and asked that this be allowed to go back to the hay field that it used to be when they bought their property. There are so many gravel pits around and anyone can go anywhere to get gravel where there are not people living. She didn't understand why they won't enforce this. This was their life that they are dealing with; it is their homes. Ms. Maly felt that Mr. Cude was not being truthful by the pictures and will not be truthful in the operations of the pit.

Vice Chairman Martin asked if there were questions for Ms. Maly. Hearing none the public hearing continued.

13. Kim Cox, 47204 Lexington Ct

Ms. Cox stated they bought their home brand new. They have monitored activity of the pit practically every night as take a walk by there. Their household well draws its water from the aquifer. When the aquifer was interrupted they started noticing that there was rusty septic tanks and other unhealthy debris being used as fill in the pit. She stated that the applicant asked the commission to take a look at the site but now the stuff that is on top is not rusty septic tanks. The septic tanks are covered over in the pit. She felt that this pit affects their water, their kids and grandkids.

Vice Chairman Martin asked if there were questions for Ms. Cox.

Commissioner Foster asked if she noticed the rusty septic tanks after the applicant purchased the property. Ms. Cox replied yes, he had the pit for two years. The site has been being reclaimed and filled but the thanks have not been removed.

Hearing no further questions or comments, the public hearing continued.

14. Kelly Wolf, 34800 Kustatan

Mr. Wolf requested that the commission postpone action on this permit and do a field trip to go look at the site. Today, he drove down Virginia Dr. which is a public road.

Seeing and hearing no one else wishing to speak, Vice Chairman Martin closed the public comment period and opened discussion among the Commission.

**MOTION:** Commissioner Ruffner moved, seconded by Commissioner Isham to approve Resolution 2014-20 thereby approving the Conditional Land Use Permit for a material site.

Commissioner Isham stated that several of the testifiers claimed that this was an illegal pit and asked for comments regarding that from staff. Mr. Best replied that back when the subdivision ordinance was first brought into the Code there was a process to do grandfathered pits which is now called prior existing. There was a specific amount of time where someone had to come in and tell the Borough that they had a prior existing pit and then staff would check that out. A letter was then issued by the Planning Director verifying and certifying that it was a prior existing. He doesn't recall, since he wasn't the director at that time but there was an investigation done and the Code Enforcement Officer, John Mohorcich inspected the site and determined that the parcel qualified as a prior existing use. That was put in the file and subsequently the Fire Training Center was built and they hauled gravel. It was investigated that that particular time and only found that the determination from the Borough that it was a prior existing and no letter was issued. Mr. Best stated that staff contacted the owner and the pit operator at that time but neither one of them could produce the letter from the Borough and neither could they find it in the reading file. He also stated that it was determined at that time to stop the activities as a pit. At that time and after further investigation, it was determined to be an illegal pit and was ordered to stop activities. There was a pile of gravel that had been processed and ready to go which was allowed to be taken out of the pit. Permission was granted that they could take that pile of gravel but not dig anvmore.

Commissioner Venuti stated that back in 2004, there were allegations that the pit was backfilled with garbage and there was an oil spill. He asked if anyone had gone to the site to see if that was accurate. Mr. Best replied that the allegations were made but thought they were transferred over to DEC because they were the KENAI PENINSULA BOROUGH PLANNING COMMISSION AUGUST 25, 2014 MEETING MINUTES PAGE 25

ones who regulate that type of activity. He stated that the type of fill and the types of contamination that were brought about were not within the Borough's purview or authority to do anything about. It was not a permitted pit so he believed those allegations were transferred over to DEC. He did not know what the outcome was at that time.

Commissioner Lockwood asked for clarification of what the Borough's enforcement capabilities are, if any. Mr. Best replied that their enforcement has changed. In 2011-2012, a new Code Enforcement, KPB 21.50 was adopted. Now there is a complaint process and a fine schedule that is enforceable. He felt that the prior KPB 21.50 was not very effective but now there is a process. They had to pretty much catch them doing what they were doing. Every time they asked an operator to stop, they stopped.

Mr. Best stated there were those accusations in 2004 where there was an operator who operated for quite some time and was fined for his activities within the pit. He wasn't sure the operator ever paid the fines since he had gone out of business. There is now a process that is a little more user friendly. The Code Enforcement Officer is sent out to the site to take pictures, investigate, dig holes or do whatever needs to be done. There is now a \$300 per day fine for violating permit conditions or operating a pit without a permit.

Commissioner Lockwood pointed out that they are not the Planning & Zoning Commission and they don't have authorization through the Borough Assembly to have zoning because the people have never voted for it. If they want to take more control in situations like this then the Borough needs to have a Planning & Zoning Ordinance.

Commissioner Foster stated that it appeared that there have been violations within the last two years of taking gravel out and putting fill that should not be put in there. He asked if there have been any investigations by the Planning Department to check this out. Mr. Best replied that they have followed up with all the phone calls in the past several years. Ms. Cady used to investigate all calls and now Mr. Wall fills that capacity. What was reported to him was that the activities had ceased or they weren't taking gravel off site, they were building an airstrip, they were taking out of the existing pile that they had permission.

Commissioner Foster asked who was liable for the offense of the alleged improper fill going in an unpermitted pit. He also asked who would be responsible for getting rid of the improper fill. Mr. Best replied that type of activity is not regulated by the Borough. The fill of whatever is a DEC issue. They don't deal with fill according to the Material Site Excavation Ordinance but is the excavation of material. He stated those allegations need to be taken to DEC and testing needs to be done to determine if there are contaminates in the pit. Responsibility would probably be with the original and current owner but wasn't sure about that since he was not an attorney and wasn't sure how they process those types of things.

Commissioner Holsten asked how the bond works if it goes below 50,000 cubic yards a year. Mr. Best replied that the bonding requirements are through the Statewide Bonding pool through the State of Alaska. If someone excavates more than 50,000 cubic yards then they need to go to the State of Alaska through the Division of Mining, Land and Water and obtain a bond to excavate more than 50,000 cubic yards. Under that amount someone is exempt from the requirement of bonding and an annual mining letter is filed that says that they are going to do less than 50,000 cubic yards.

Commissioner Holsten asked about who would determine the damage of the road. Mr. Best replied that it would be inspected and handled through the Roads Service Area. They would probably investigate it to determine that the truck traffic had damaged the road.

Commissioner Isham referred to page 36 of the packet which was a material site reclamation plan. It states that *"the material shall be reasonably free from roots, clods, sticks and branches greater than 3 inches."* He asked if the Borough would be responsible for what goes into the pit if this permit is issued. Mr. Best replied that particular standard was done for the overburden and top soil that goes over the top. Commissioner Isham asked if that was something the Borough would regulate. Mr. Best replied yes, that was correct.

Commissioner Carluccio asked for clarification that it appeared that an operator can put anything in the hole when reclaiming it and cover it up but the Borough is only concerned about the top couple of inches. Mr. Best replied yes, that was correct because they could leave it as a hole and top soil it and seed it. He stated the KENAI PENINSULA BOROUGH PLANNING COMMISSION AUGUST 25, 2014 MEETING MINUTES PAGE 26

Borough does not regulate the backfill. Commissioner Carluccio understood that the Borough's doesn't regulate it or require it. Mr. Best replied that was correct. Commissioner Carluccio wondered why someone would fill it. Mr. Best replied that it was because holes are unsightly and a hay field is much nicer. Commissioner Carluccio stated that it also seemed they may have punctured the aquifer and were trying to fill it up.

Commissioner Ruffner thought that Mr. Gease's questions have been answered except for who does the site inspections. Mr. Best replied that there are annual site inspections. If they felt that they are close to the water table then they will dig holes with a shovel in the bottom of the floor and monitor it to see if there was water. Commissioner Ruffner asked if it was a \$300 a day violation if they were less than two feet from the seasonal high water table or it flooded the pit. Mr. Best replied that if they found that then they would tell the operator to refill it. There was an operator in Anchor Point who exposed the water table and they made him put in clean fill and cover it back up and reclaim it with good clean fill. He stated they would make them fill it back up and stay out of it. They have only fined one person in the past. Typically, the operators comply and put the material back.

Commissioner Ruffner asked for clarification regarding the berming and fence aspect of this pit. One of the big concerns he heard was that there was no control over the pit. Mr. Wall replied that once the permit is approved and issued, the applicant will be required to place a six foot berm along Virginia Dr., Ciechanski Rd. and along Canvasback Ave. The operator would also need to put a six foot fence along the south property line where it abuts up against Ravenwood Subdivision. A six foot fence would be required to be installed along the east property line which would abut up against Mrs. Gibbs and the other applicant's property once he removes vegetation beyond the fifty foot buffer.

Commissioner Ruffner asked if it would be safe to assume then that if the conditional land use permit was approved that in relatively short order they wouldn't be able to see what was going on in the pit with the six foot berms. Mr. Wall replied that was correct. Those berms and the fencing would greatly reduce unauthorized access to the pit. He stated that access would be limited to the ingress / egress of the pit. Commissioner Ruffner asked if there was only going to be one access. Mr. Wall replied that currently he was proposing the existing access which is Virginia Dr. He stated the applicant did propose an alternative access during his testimony if the commission desired that.

Commissioner Foster asked what the fence material was. Mr. Wall replied that the applicant did not specify the material. The ordinance states that it needs to be sufficient in height and obscurity to provide buffering. Then Commissioner Foster said that it wouldn't be chain link. Mr. Wall replied yes, it would not be chain link. He stated that the ordinance states, *"The vegetation fence should 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."* The Planning Commission would have the ability to specify the type of material.

Commissioner Carluccio asked if it was only going to be a berm along Virginia Dr. Mr. Wall replied yes, that was what was being proposed. Commissioner Carluccio asked how wide and how close to the road was the 6 foot high berm going to be. Mr. Wall replied that they require a 2:1 slope and could go right up to the property line. The 2:1 slope would be 24 feet in width if someone was six feet tall. Commissioner Carluccio asked what would prevent ATV's, etc. from coming over the berm and playing around in the pit if it was unfenced and not in operation. Mr. Wall believed that a berm would not prevent that until it was vegetated with something that would prevent that. Commissioner Carluccio asked why he was not recommending a fence. Mr. Wall was proposing what the applicant had proposed however the Planning Commission could certainly require a fence along that property line.

Vice Chairman Martin asked what the guidelines were for granting the permit with four separate parcels. Mr. Wall replied that there are four parcels, Tract A2A, Lots C, D, and E. Lots C, D, and E appear to be configured as residential lots. The ordinance state that multiple parcels can be considered at one parcel if it was determined that it was appropriate. In this case, it was determined that it was not appropriate. He stated that one of the conditions of approval requires that this property be replated into one parcel.

Mr. Venuti asked if the six foot berm and fence will need to be place before operations can proceed. Mr. Best replied yes, that was correct.

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Commissioner Foster stated that he has always been concerned about the role of the City or the Borough with covenants. The applicant stated that these parcels are not part of the covenants however it was clear that Lots C, D and E are part of the covenants which is where all the gravel was going to come from. There is the concern that there will be litigation if this is approved. He asked where the Borough would want to be in this situation knowingly be granting not only the subdivision of putting these lots together but also with the permit in this kind of situation. He asked staff if they have ever been in this type of situation before. Mr. Best replied no, as far as covenants they try to stay out of that arena. Commissioner Holsten asked what he meant by staying out of the arena. She asked if they try not to approve things are in violation or contrary to the covenants. Mr. Best replied that was something the neighborhood would have to settle on their own. He didn't think it played into the applicable standards that they apply to extract material. One of the standards that they try to uphold is not whether it was against the covenants. They try to look at it from the perspective of the six standards that they have set and have they met them.

Commissioner Foster stated this property is not within the City but this is a subdivision where there are sufficient owners that apparently opposed to it. He asked if a Local Option Zoning could occur if the subdivision applied for it. Mr. Best replied yes, that was correct. They could have applied by having 12 contiguous lots and could have included those three lots. The three quarters of the property that are within the Local Option Zone informed would have to adhere to that. A property owner can be brought in even when they don't want to be when there are three quarters of the people that are interested in keeping it that way. The reason he says the three lots was because the average of the 12 or more lots have to fall within 50% of that average either above or below. They have to be similar in size. He stated had the landowners applied for this earlier then they could have tied up those three lots in a local option zone that the Borough would have administered through zoning.

Commissioner Carluccio asked for clarification regarding the denial of this permit in the past. Mr. Best replied that he wasn't totally involved in it at that time but knows that information was in the packet. The operator wasn't operating properly so the commission denied the permit application. Commissioner Carluccio asked if it was denied because he was operating before the permits were issued. Mr. Best replied, yes that was correct.

Commissioner Isham asked if it was fair to say that the permit was never regulated in the past other than leasing and abusing the land which was done by Jason Foster. He asked if it hadn't been regulated and if this was approved then it would be regulated. Mr. Best replied yes, that was correct.

Commissioner Ruffner stated that the application was for 4-5 acres for extraction but the berm would go around the red striped area as shown on the aerial photo. Mr. Best replied yes, that was his understanding from the site plan that was administered by McLane for Mr. Cude that the berm would go entirely around the parcel and along the fenced area. Commissioner Ruffner acknowledged that the applicant was nodding his head in agreement. He stated there are certain voluntary permit conditions that the applicant has to agree to and then there are a couple of things that the Commission can purview and add stipulations to the permit. He asked if the berm and fence were in the domain of the commission. Mr. Best replied that was correct.

Commissioner Ruffner asked if the applicant could come back and address the commission.

Commissioner Ruffner stated that there is a big open pit where stuff has been going in and out. One of things he sees with the berm is that ATV's could go over them pretty easy. Mr. Cude stated that ATV's could go over them right now. He wasn't sure how much it would cost to build a fence and asked if there was the possibility of adding a fence along Virginia Dr. and Ciechanski Rd. Mr. Cude replied that anything was doable. Commissioner Ruffner understood that it has to do with money. Mr. Cude replied that was correct. The least expensive would be to berm it up with only limited access through one or two gates. He felt the site could be monitored. Even with a fence, ATV's can still find a way to access the pit if they want to. The berm will look nicer once it is vegetated. Mr. Cude presented a plat map that actually shows that those three lots are not part of the covenants. Commissioner Ruffner asked if his first order of business, prior to digging gravel was to install berms and fence. Mr. Cude replied that it was a permit requirement that they can extract anything out of there until the berm and all the requirements are met.

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Vice Chairman Martin asked if there were further questions for Mr. Cude. Hearing none deliberation among the commission continued.

Commissioner Carluccio asked what type of vegetation would go on the berm. Mr. Best replied that typically it would be grass, a few birch, a little spruce and then 10-15 years those grow up. It takes time but first it starts with grass and fireweed.

Commissioner Foster asked if anyone was interested in taking Mr. Wolf's or the applicant's suggestion of postponing and people going on personal field trips of checking it out.

Vice Chairman Martin replied that he has seen the site. Commissioner Isham also responded that he has seen the site.

Commissioner Holsten stated that she wouldn't know what they were looking at underneath what was on top of the pit now.

Commissioner Carluccio stated that she would be willing to go look at it.

Commissioner Collins stated that she has been past this site several times.

There being no further comments or questions, Vice Chairman Martin called for a roll call vote.

**VOTE:** The motion failed by majority consent.

BRYSON	CARLUCCIO	COLLINS	ECKLUND	FOSTER	HOLSTEN	ISHAM
ABSENT	NO	YES	ABSENT	NO	NO	YES
LOCKWOOD NO	MARTIN YES	RUFFNER YES	TAURIAINEN ABSENT	VENUTI NO	WHITNEY ABSENT	4 YES 5 NO 2 ABSENT

## Crystal Penrod

Ms. Penrod asked for additional time for clarification. She stated that the Covenants state that as soon as someone subdivides property then the exemption is gone. That means that Mr. Cude's property is under the regulations of the covenants. Also, she stated that Mr. Best was the Planning Director when everything happened that was shown in the notebook.

Mr. Best read the appeal process.

NOTE: Any party of record may file an appeal of a decision of the Planning Commission to the Board of Adjustment in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances, Chapter 21.20.250. A "party of record" is any person or government agency that provides oral or written testimony during the Planning Commission public hearing. Petition signers are not considered parties of record unless separate oral or written testimony is provided (KPB Code 21.20.210.A.6b1). An appeal must be filed with the Borough Clerk within 15 days of the notice of decision, using the proper forms, and be accompanied by the \$300 filing and records preparation fee. (KPB Code 21.25.100)

Ms. Hartley stated that Findings of Fact in support of denial needed to be cited.

Commissioner Holsten suggested the two following findings in support of denial.

- 9. Tax Parcel Numbers 055-270-51 and 055-270-52 are configured as flag lots. The proposed excavation would not be compatible with the designed access for these lots.
- 16. The site plan indicates that there are several wells located within 300 feet of the proposed material site.

Vice Chairman Martin called a 10 minute recent at 9:30 p.m. Vice Chairman Martin reconvened the meeting at 9:41 p.m.

Commissioner Venuti suggested the following findings of fact in support of denial.

- 9. Tax Parcel Numbers 055-270-51 and 055-270-52 are configured as flag lots. The proposed excavation would not be compatible with the designed access for these lots.
- 16. The site plan indicates that there are several wells located within 300 feet of the proposed material site.
- 26. The water assessment that was put together by the Alaska State Department of Environmental Conservation which shows the potential degradation of local water supply.
- 27. The condition of the road impacts from this operation would be detrimental to the Borough interests and public safety.

**MOTION:** Commissioner Foster moved, seconded by Carluccio to cite the following findings of fact in support of the denial of Resolution 2014-20

- 1. Tax Parcel Numbers 055-270-51 and 055-270-52 are configured as flag lots. The proposed excavation would not be compatible with the designed access for these lots.
- 2. The site plan indicates that there are several wells located within 300 feet of the proposed material site.
- 3. The water assessment that was put together by the Alaska State Department of Environmental Conservation which shows the potential degradation of local water supply.
- 4. The condition of the road impacts from this operation would be detrimental to the Borough interests and public safety.

**VOTE:** The motion passed by unanimous consent.

BRYSON	CARLUCCIO	COLLINS	ECKLUND	FOSTER	HOLSTEN	ISHAM
ABSENT	YES	YES	ABSENT	YES	YES	YES
LOCKWOOD	MARTIN	RUFFNER	TAURIAINEN	VENUTI	WHITNEY	9 YES
YES	YES	YES	ABSENT	YES	ABSENT	4 ABSENT

AGENDA ITEM G. ANADROMOUS WATERS HABITAT PROTECTION (KPB 21.18) - None

AGENDA ITEM H. VACATIONS NOT REQUIRING A PUBLIC HEARING - None

AGENDA ITEM I. SPECIAL CONSIDERATIONS- None

AGENDA ITEM J. SUBDIVISION PLAT PUBLIC HEARINGS

Chairman Pro Tem Ruffner reported that the Plat Committee reviewed and conditionally approved 7 preliminary plats and postponed 5 preliminary plats. The 5 postponed plats are complicated and have to do with the Bureau of Indian Affairs.

AGENDA ITEM K. OTHER/NEW BUSINESS

AGENDA ITEM L. ASSEMBLY COMMENTS - None

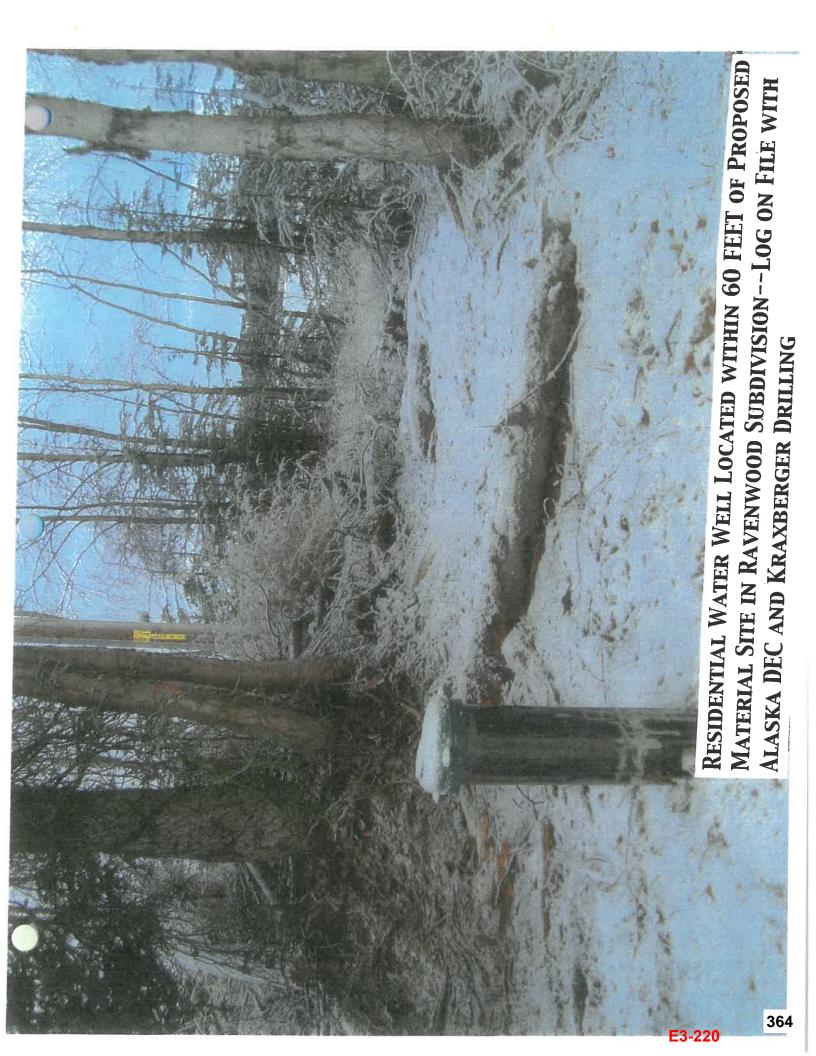
AGENDA ITEM M. LEGAL REPRESENTATIVE COMMENTS - None

AGENDA ITEM N. DIRECTOR'S COMMENTS

Mr. Best had no comments since he missed the last meeting but he did manage to get his oldest son married and out of the house.

Vice Chairman Martin asked if there were questions for Mr. Best. Hearing none the meeting continued.

KENAI PENINSULA BOROUGH PLANNING COMMISSION AUGUST 25, 2014 MEETING MINUTES PAGE 30



Well Drilling Log ---- Kraxberger Drilling Inc. ---- (907) 262-4720 35055 Gas Well Road Soldotna. AK 99669 LOGID: 5503 CLIENTNAME: LIUSKA, BRUCE/DARLENE PUMPINFO: LEGAL1: LOT 10 BLK 5 LEGAL2: RAVENWOOD #4 PARCEL#: DIAMETER: 6 ROADAREA: GADWELL RIGTYPE: AR CASINGTYPE: CITY: SOLDOTNA GROUT: BUILDERNAME: WELLCOMPLETION: OPEN END DEPTH: 38 DATE: 1/16/2015 DRILLER: RRK **IRON PPM:** YIELDGPM: 8 SCREEN: STATICLEVEL: 32 CLASS: CASINGLENGTH: 40 LATITUDE: CASINGSTICKUP: 2 LONGITUDE: 0

**DRILLING REPORT:** 

O-2 TOPSOI & CLAY 2-5 SAND 5-34 SAND & GRAVEL 34-36 WET SAND & GRAVEL 36-38 WET CEMENTED SAND & GRAVEL

Search O Frugens

Well Drill	ling Log Kruxbery 48230 Gas Soldotna. Al	Well Road	(907) 262 - 4720 H	
Owner:	LIUSKA, BRUCE/DARLENE	Road Area	Well log #	
Legal description	LOT 10 BLK 5	GADWELL	5503	
	RAVENWOOD #4	Builder <sup>.</sup>	Latitude N 60	30,555
City	SOLDOTNA		Longitude: $W$ 151	08 430
Depth: Yield (gpm) Well completion	8 Static level: 3	5/2015 Driller RRK 32 Casing length: 40 Diameter(in) 6 Rig type AR		
O-2 TOPSOI & C	LAY .			
2-5 SAND				
5-34 SAND & GR	AVEL			
34-36 WET SAND	& GRAVEL			

36-38 WET CEMENTED SAND & GRAVEL

Well Drilling Log Kraxberger Drilling Inc (907) 262-4720
35055 Gas Well Road
Soldotna, AK 99669

CLIENTNAME: TRAVIS PENROD

LEGAL1:

LEGAL2:

PARCEL#: 05503257

ROADAREA: 47125 CIECHANSKI RD

CITY: KENAI

BUILDERNAME:

DEPTH: 38

DATE: 11/7/2024

DRILLER: RRK

YIELDGPM: 10

STATICLEVEL: 28

CASINGLENGTH: 40

CASINGSTICKUP: 2 FT

0-2 TOPSOIL AND CLAY 2-21 GRAVEL AND SAND 21-23 CEMENTED GRAVEL 23-30 GRAVEL AND SAND 30-36 WET GRAVEL AND SAND 36-38 GRAVEL SAND AND WATER PUMPINFO: DIAMETER: 6 RIGTYPE: AR CASINGTYPE: STEEL GROUT: WELLCOMPLETION: IRON PPM: 1.0 PPM SCREEN:

LOGID: 7805

CLASS:

LATITUDE:

LONGITUDE:

DRILLING REPORT:

eved pitergong pA

Alaska Department of Environmental Conservatio Division of Environmental Health	RECEIVED		
Drinking Water Program System Classification Form	NOV 1 3 2024		
I. System Owner	ADEC Kenai Area Office		
First Name: Travis & Cristal Last Name: Re			
Company Name: KEAR RIVOR Ganglens	Fax:		
Mailing Address: 363(5) Vincenia De			
Mailing Address: <u>36367 Vincentia</u> De City: <u>Keth</u> State: <u>At</u>	Zip Code: $\Im 561$		
Email Address: Egg. Slowth & galad.	(0 M)		
II. Water System Operator			
First Name: Torac Last Name: R	Phone: 902 301 5777		
Certification: Transient Non Comma mito			
Mailing Address: 3686 Virginii, Dr			
City: Kanger State: AF	Zip Code: 37611		
III. Facility Information (attach additional sheets if needed)			
Facility Name/PWSID: KENEL RIDGE GARDONE FARMON	\$ Markey Phone: (77) 39(51) 21		
AKA: Physical Address: 47125 Circhansti Rd			
Legal Description: Lot: Block: Subdivision:			
Location: Meridian: Section: Towns	hip: Range: Tax Lot:		
Days per year of operation: $120$ (Number of days) Dates of operation: $150$ to $1550$ (if seasonal)	Does the facility sell water to any person or business?		
Resident population served (Served at primary home via (daily average*): pipes, delivery, or self-haul)	Water treatment description (below):		
Non-transient population(Served more thanserved (daily average*):6 months/year)	For Systems Receiving Hauled Water		
Transient population served (daily average*): $\underline{50}$ (Served less than 6 months/year)	PWSID(s) of system(s) water is obtained from:		
Number of service connections:	PWSID(s) of approved water hauler(s) used to		
* Daily average refers to an average population that includes deliver water (name if a hauler is not approved): only the days water is served to the public.			
Describe system, system operations, and how water is used below (atta	ch additional sheets if needed):		
38' went, 6' casian With Hand orans printing			
IV. Owner's Certification	×		
I submit the above information concerning the above referenced water	system. By my signature, I certify the		
information above is correct (18 AAC \$0.1900).	buller HIDer I Dunn		
Owner's Signature Date Printed N	ame Title		
W Owner s Signature Date Frinted N	Varian: 1.26.2022		

-

\$

Version: 1-26-2022

LOGID: 7807 CLIENTNAME: CONSOLIDATED DEVELOPMENT **PUMPINFO:** LEGAL1: DIAMOND WILLOW EST SUB LEGAL2: WELLNESS EST ADDN LOT A5 PARCEL#: DIAMETER: 6 **ROADAREA**: **RIGTYPE: AR** CASINGTYPE: STEEL CITY: KENAI GROUT: **BUILDERNAME:** WELLCOMPLETION: DEPTH: 41 DATE: 11/11/2024 DRILLER: RRK IRON PPM: 1.0 PPM YIELDGPM: 25 SCREEN: STATICLEVEL: 28 CLASS: CASINGLENGTH: 44 LATITUDE: CASINGSTICKUP: 3 FT LONGITUDE:

0-5 TOPSOIL AND CLAY 5-17 GRAVEL AND SAND 17-20 CEMENTED GRAVEL AND SAND 20-28 GRAVEL AND SAND 28-38 WET GRAVEL AND SAND 38-41 GRAVEL SAND AND WATER **41 CEMENTED GRAVEL** 

**DRILLING REPORT:** 

Consolidates doosloanst

lecu

LOGID: 7806 CLIENTNAME: CONSOLIDATED CONTRACTOR PUMPINFO: LEGAL1: DIAMOND WILLOW EST SUB LEGAL2: SUNVILLE ACRES #2 LOT 1A PARCEL#: DIAMETER: 6 **ROADAREA**: **RIGTYPE: AR** CITY: KENAL GROUT: **BUILDERNAME:** WELLCOMPLETION: DEPTH: 38 DATE: 11/8/2024 DRILLER: RRK YIELDGPM: 10 SCREEN: STATICLEVEL: 31 CLASS: CASINGLENGTH: 37 LATITUDE: CASINGSTICKUP: 2 FT LONGITUDE:

0-2 TOPSOIL AND CLAY 2-19 SAND AND GRAVEL 19-20 BROWN CLAY 20-34 GRAVEL AND SAND 34-35 WET GRAVEL AND SAND 35-37 WET SAND 37-38 CEMENTED GRAVEL 38 SILTY SAND

CASINGTYPE: STEEL

**IRON PPM: 1.0-1.5 PPM** 

**DRILLING REPORT:** 

toward a cold bated Marson 1/00

CLIENTNAME: SBC #1

LEGAL1: DIAMOND WILLOW ESTATES

LEGAL2: SUB PART 13 TRACT 13

PARCEL#: 05527001

ROADAREA N/E CORNER TEST WELL CIECHANSKI ROAD 36498 VIRGINIA DRIVE

CITY: KENAI

BUILDERNAME:

DEPTH: 31

DATE: 3/24/2023

DRILLER: RRK

YIELDGPM: 1

STATICLEVEL: 27 TO GROUND

CASINGLENGTH: 34

CASINGSTICKUP: 3 FEET

DIAMETER: 6" RIGTYPE: AR CASINGTYPE: STEEL GROUT: WELLCOMPLETION:

> IRON PPM: SCREEN: CLASS: LATITUDE: LONGITUDE:

**DRILLING REPORT:** 

0-1 SAND

1-26 SAND AND GRAVEL

26-28 CEMENTED GRAVEL

28-30 SAND AND GRAVEL

30-31 WET SAND AND GRAVEL

31-38 TAN STICKY CLAY

PULLED CASING BACK TO 31 HOLE FILLED IN

STATIC 27 TO GROUND. CASING 34. 3 FEET

STICK UP

More test tig

LOGID: 7598

PUMPINFO:

Well Drilling Log ---- Kraxberger Drilling Inc. ---- (907) 262-4720 35055 Gas Well Road Soldotna, AK 99669 CLIENTNAME: SBC #2 LOGID: 7597

LEGAL1: DIAMOND WILLOW ESTATES

LEGAL2: SUB PART 13 TRACT 13

PARCEL#: 05527001

ROADAREA S/E CORNER TEST WELL CIECHANSKI ROAD 36498 VIRGINIA DRIVE

CITY: KENAI

BUILDERNAME:

DEPTH: 25

DATE: 3/24/2023

DRILLER: RRK

YIELDGPM:

STATICLEVEL: 26

CASINGLENGTH: 28

CASINGSTICKUP: 3 FEET

0-19 SAND AND GRAVEL 19-20 ROCK 20-25 CEMENTED GRAVEL 25-28 TAN SANDY CLAY 3 FOOT OPEN HOLE INTO CLAY DIAMETER: 6" RIGTYPE: AR CASINGTYPE: STEEL GROUT: WELLCOMPLETION:

> IRON PPM: SCREEN: CLASS: LATITUDE: LONGITUDE:

**DRILLING REPORT:** 

Pit Test Well

PUMPINFO:

Well Drilling Log K	Well Drilling Log Kraxberger Drilling Inc (907) 262-4720 35055 Gas Well Road Soldotna, AK 99669		
CLIENTNAME: SBC #3	LOGID: 7596		
LEGAL1: DIAMOND WILLOW ESTATES	PUMPINFO:		
LEGAL2: SUB PART 13 TRACT 13			
PARCEL#: 05527001 ROADAREA SAW CORNER TEST WELL CIECHANSKI ROAD	DIAMETER: 6" RIGTYPE: AR CASINGTYPE: STEEL GROUT: WELLCOMPLETION:		
CITY: KENAI BUILDERNAME: DEPTH: 34			
DATE: 3/24/2023			
DRILLER: RRK	IRON PPM:		
YIELDGPM: 8	SCREEN:		
STATICLEVEL: 24	CLASS:		
CASINGLENGTH: 37	LATITUDE:		
CASINGSTICKUP: 3 FEET	LONGITUDE:		
	DRILLING REPORT:		

0-8 FILL, TOPSOIL, CLAY, WOODG, GRAVEL 8-26 SAND AND GRAVEL 26-30 SAND 30-33 WET SAND 33-34 GRAVEL SAND AND WATER

How trast tig

CLIENTNAME: SBC #4 LEGAL1: DIAMOND WILLOW ESTATES LEGAL2: SUB PART 13 TRACT 13

PARCEL#: 05527001

ROADAREA N/W CORNER CIECHANSKI ROAD

CITY: KENAI

BUILDERNAME:

DEPTH: 34

DATE: 3/24/2023

DRILLER: RRK

YIELDGPM: 3

STATICLEVEL: 28

CASINGLENGTH: 37

CASINGSTICKUP: 3 FEET

0-19 FILL, TOPSOIL, CLAY 19-25 GRAVEL AND SAND 25-30 CEMENTED GRAVEL AND SAND 30-34 WET GRAVEL AND SAND DIAMETER: 6" RIGTYPE: AR CASINGTYPE: STEEL GROUT: WELLCOMPLETION:

PUMPINFO:

LOGID: 7595

IRON PPM: SCREEN: CLASS: LATITUDE: LONGITUDE:

**DRILLING REPORT:** 

4.4 New test

51

Joseph L. Kashi Attorney at Law 205 East Beluga Soldotna, AK 99669 907-260-7732 (voice) 907-260-7739 (fax)

In the matter of appeal of the Kenai Peninsula ) Borough Planning Commission denial of a ) conditional land use permit that was requested ) for KPB Tax Parcel ID# 055-270-98, 055- ) 270-50, 055-270-51, and 055-270-52, a 19.36 ) acre site located in the Kalifornsky area (Tract ) A2A, Diamond Willow Estates Subdivision ) Part 11according to Plat 2012-93, Kenai ) Recording District, Third Judicial Court, State ) of Alaska; and lots C, D, & E, Diamond ) Willow Estates Subdivision Part - 10 ) according to Plat 2008-135, Kenai Recording ) District, Third Judicial Court, State of ) Alaska).

Sean Cude

Appellant.

## BOARD OF ADJUSTMENT KENAI PENINSULA BOROUGH

CASE NO. 2014-01

## MOTION TO SUPPLEMENT THE RECORD

Appellant hereby moves to supplement the record with the following items in order to assure

a full, fair, and accurate determination of the facts of this case:

- A letter from Lori Aldrich, State of Alaska Department of Environmental Conservation Solid Waste Regional Program Manager, to Max Best, Kenai Peninsula Borough Planning Director, regarding appellant's compliance with Alaska Department of Environmental Conservation's Solid Waste Program.
- Photographs of the recent and current condition of the above lots generally contemporaneous with what was seen by Borough Staff and those Commissioners visiting the site.
- 3. Time sequenced aerial photographs of the above lots.

Cude Case No. 2014-01

Motion to Supplement the Record

Page 1

4. The original plat of the Diamond Willow Estates Subdivision with the initial Tract A, which contains the current Tract A2A and lots C, D, and E.

The letter is demonstrative of appellant's positive reputation and compliant record with handling sensitive materials and operations, a fact that the Borough Planning Staff was aware of when it made its recommendation to approve the conditional land use permit.

The photographs will provide the Board with evidence of the current neat and reclaimed site conditions as opposed to the long-remediated 2004 circumstances, a factor which proved to be persuasive to the Staff and the commissioners, Vice Chairman Martin, Commissioner Isham, and Commissioner Collins, who observed current site conditions prior their unanimous vote to approve the permit. The photographs will show what the commissioners would have seen at the time and also the current condition of the proposed site.

In addition, the aerial photographs will show the Board the development of the gravel pit throughout its roughly forty year history and the growth of the neighborhood around it.

The original plat is a matter of public record which the Borough Planning Staff had at the time of the hearing. The original plat is essential to make sense of the covenants and their reference to Tract A.

Dated this 26<sup>h</sup> Day of November

oseph L. Kashi, AK Bar #7811107 Attorney for Defendant

Cude Case No. 2014-01

Motion to Supplement the Record

Page 2





DIVISION OF ENVIRONMENTAL HEALTH Solid Waste Program

> 555 Cordova Street Anchorage, Alaska 99501 Phone: 907.269.7622 Fax: 907.269.7600 submitted via email

November 7, 2014

Mr. Max Best Planning Director Kenai Peninsula Borough 144 North Binkley St. Soldotna, AK 99669

Re: Gravel Permit - Sean Cude, ADEC Solid Waste Program Compliance

Dear Mr. Best:

In regard to his request for a permit for gravel extraction at a gravel pit on Ciechanski Road in Soldotna, Sean Cude requested that I submit comments to you regarding his record of environmental compliance with the Alaska Department of Environmental Conservation (ADEC) Solid Waste Program.

As NRD, Inc., Mr. Cude operates an Inert Waste Monofill at mile 18 of the Kenai Spur Highway in Kenai. The monofill has been permitted by ADEC since 2006. Annual inspections have concluded that the landfill is well maintained. In the last year, many of the materials stored at the site have also been removed, which significantly reduces any possible environmental impacts at the site. Our most recent inspection, on September 25, 2014, showed only two minor violations, which were both addressed immediately.

In addition, Mr. Cude is operating an exempt waste fill in the excavated part of the gravel pit. Exempt wastes are materials that are specifically exempted by the Solid Waste regulations and do not require a permit for disposal. I have attached a copy of our guidance document that explains which wastes are exempt. In the time that Mr. Cude has operated the fill area, we have not received any complaints regarding improper waste being disposed at the site.

NRD has been very responsive to any requests made by the ADEC Solid Waste Program, and we have never received a citizen complaint regarding their facilities.

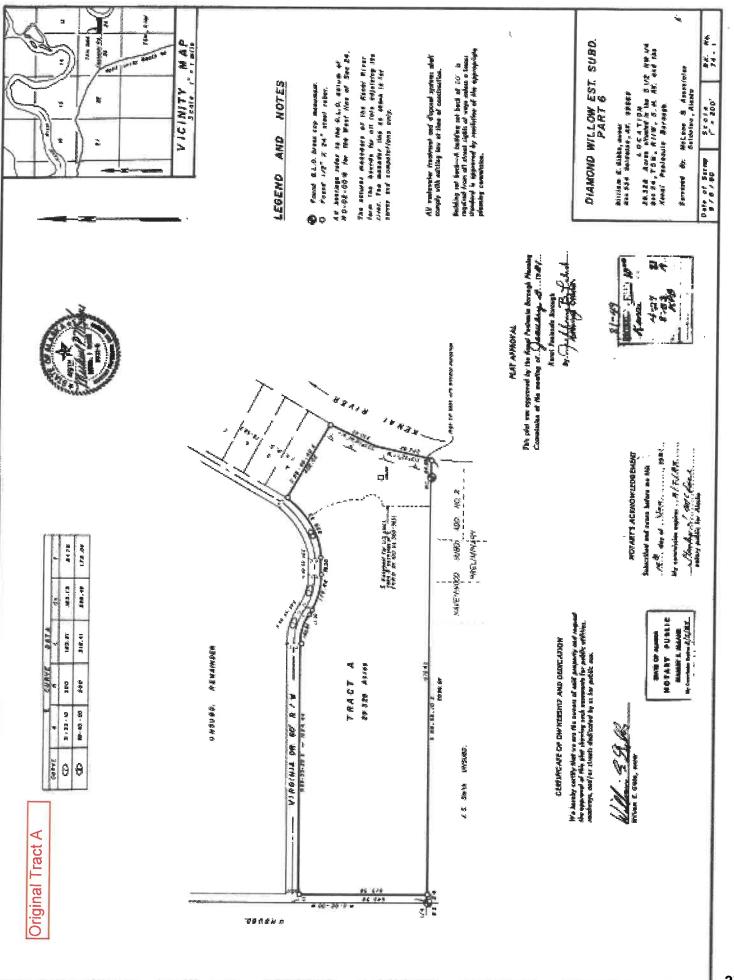
Please contact me at (907) 269-7622 or by email at <u>lori.aldrich@alaska.gov</u> if you have any comments or would like additional information.

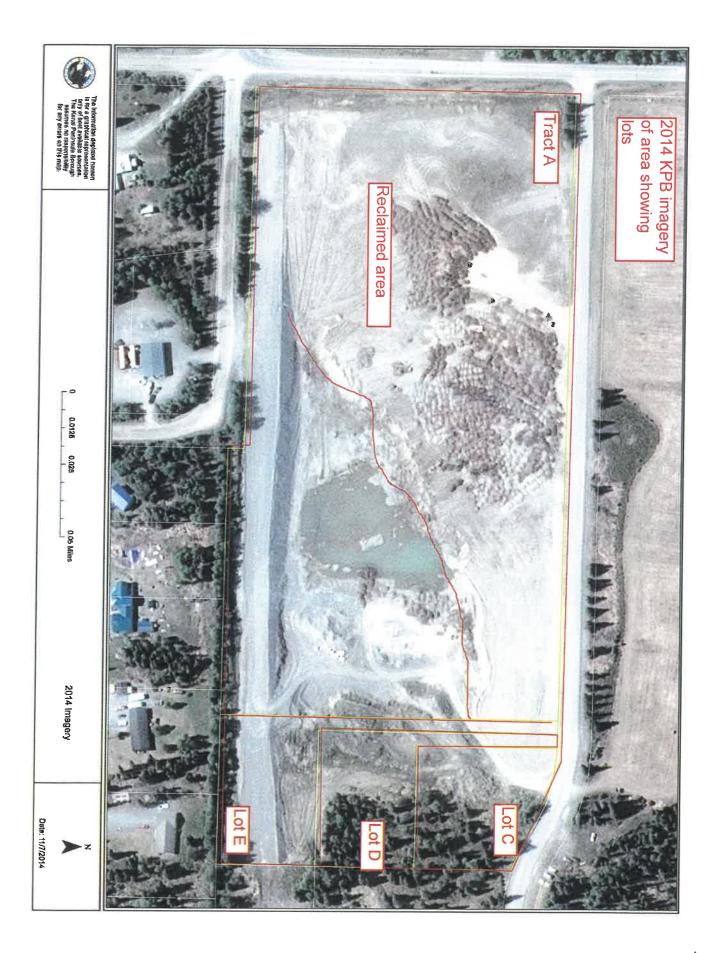
Sincerely,

Lori Aldrich Solid Waste Regional Program Manager

att: Exempt Solid Wastes, ADEC 2011

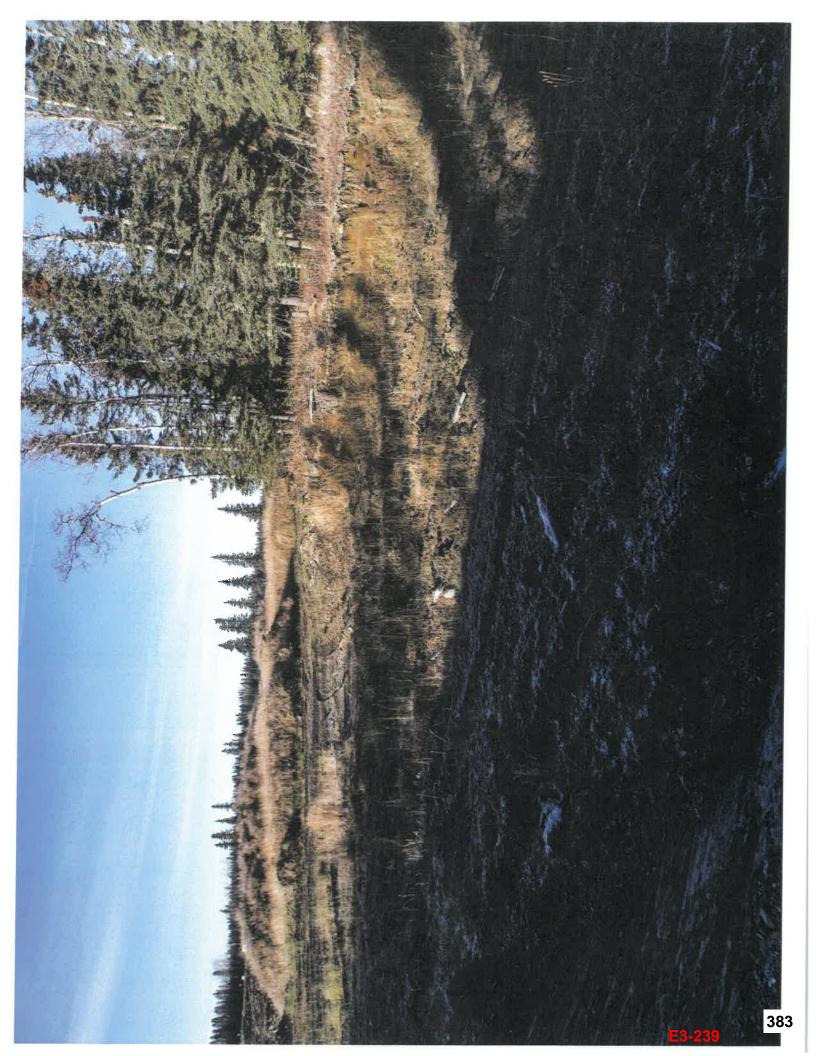


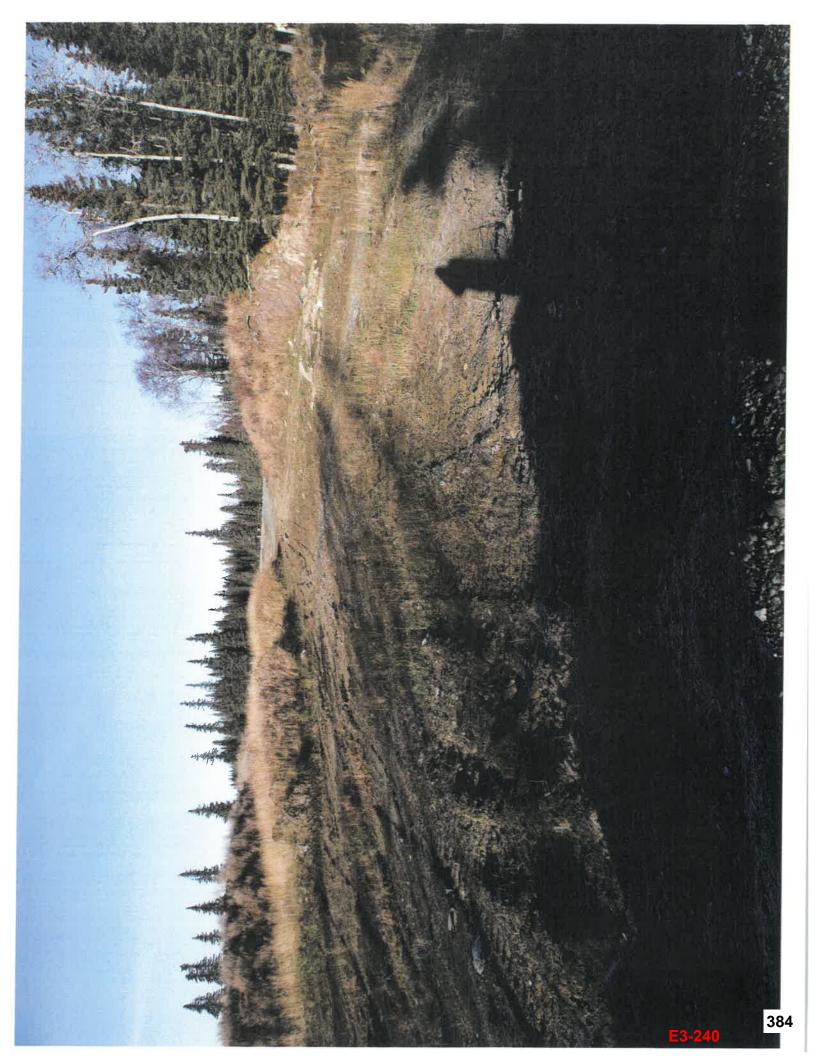




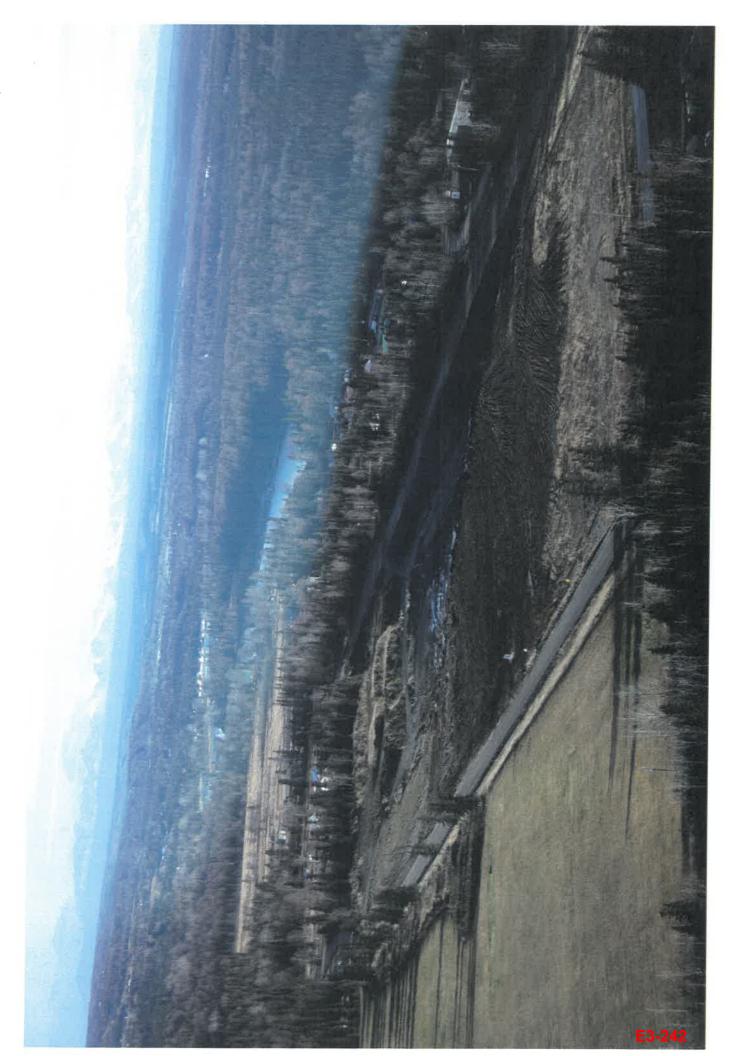
The following three photos show current 2014 conditions of Lots C, D, and E arising from prior gravel extraction operations by earlier operators







The following photos show current site conditions after reclamation efforts by Appellant, the new owner of the property.





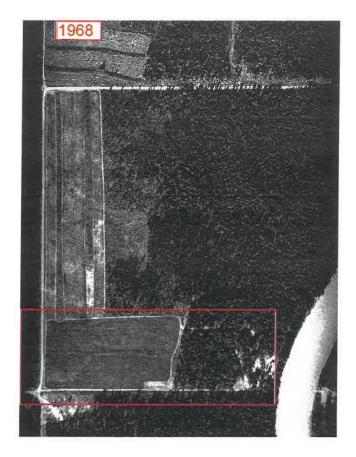






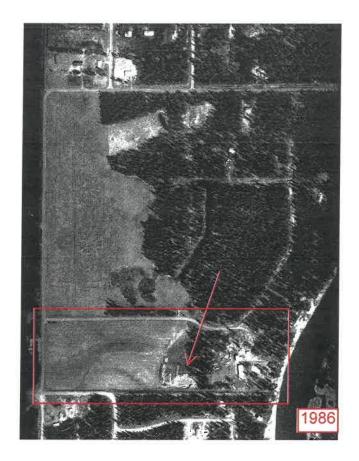
The following photos show the development of the property as a gravel pit since 1975. Appellant purchased the property in 2012.







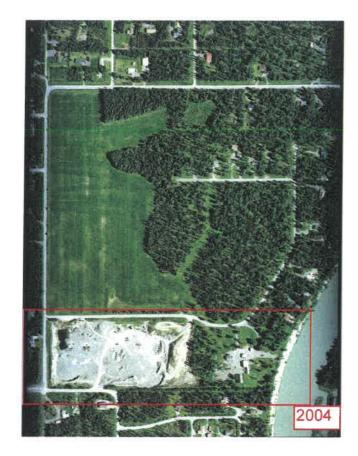








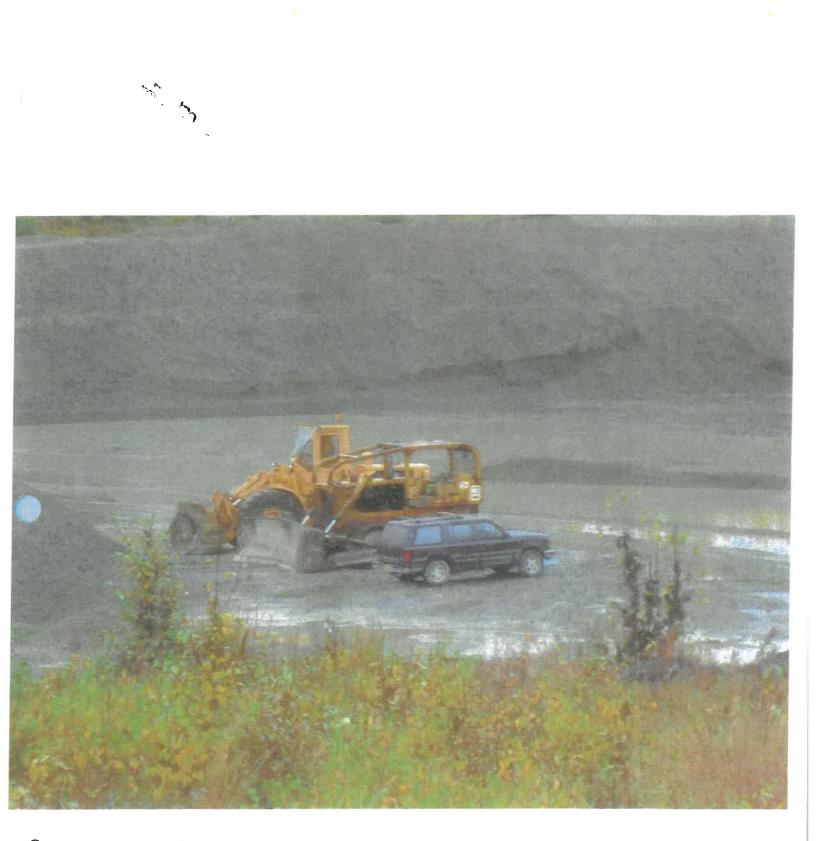




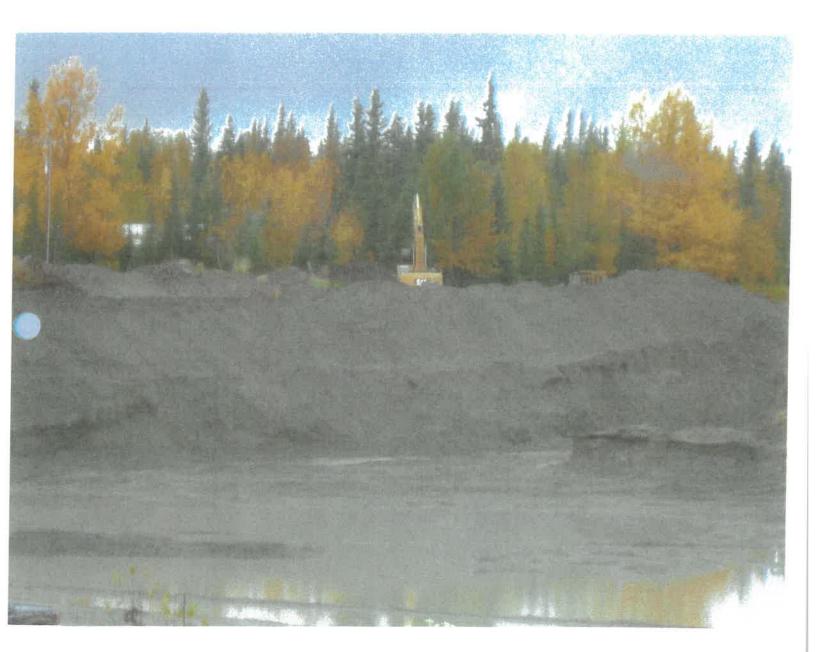
400







SEAN CUDE'S COMPANY EQUIPMENT AND WORKER VEHICLE IN FLOOR OF PIT SHOWING EXPOSED WATER AQUIFER AND THREAT OF CONTAMINATION TO DRINKING WATER FROM EQUIPMENT LEAKAGE SEPTEMBER 2012



SEAN CUDE'S COMPANY EQUIPMENT EXCAVATING GRAVEL FROM UNPERMITTED SITE IN DIAMOND WILLOW ESTATES--ALSO NOTE Exposed Water Aquifer From Cude's Previous Gravel Extraction September 2012



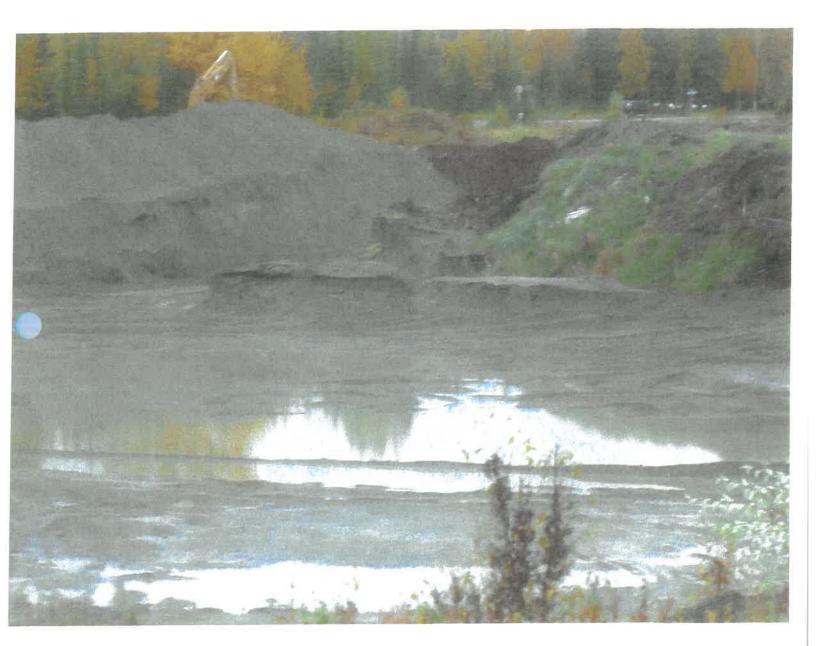
SEAN CUDE'S COMPANY VEHICLE (YELLOW) SHOWING EXPOSED WATER AQUIFER FROM HIS CONTINUED EXCAVATION INTO THE WATER AND STOCKPILING MATERIAL ONSITE, NO PERMIT IN PLACE, IN FULL KNOWLEDGE OF MAX BEST--BOROUGH PLANNER SEPTEMBER 2012



SEAN CUDE'S COMPANY EQUIPMENT EXCAVATING GRAVEL FROM UNPERMITTED SITE OUT OF WATER AQUIFER AND STOCKPILING ON SITE SEPTEMBER 2012



Enormous Area of Open Water Aquifer as Exposed by Sean Cude September 2012



ENORMOUS AREA OF OPEN WATER AQUIFER AS EXPOSED BY SEAN CUDE SEPTEMBER 2012



SEAN CUDE'S COMPANY EQUIPMENT STOCKPILING GRAVEL Illegally Dug from Water Aquifer and Adjacent Residential Property September 2012

409

## 1/21/2015

Good morning. My name is Roger Koppes. My wife and I and our four children reside in the Diamond Willow Estates Subdivision. I am here to testify today in support of the denial of the conditional use land permit. The original decision to deny the land permit for a gravel pit adjacent to Virginia drive should stand. As residents of this area, we oppose this pit for a multitude of reasons, but I would like to discuss the road situation specifically.

The access point to this proposed gravel pit is Virginia Drive, a residential access gravel road. The road has no outlet. It is the sole entry and exit point for all residents along Virginia Drive and Gary Avenue and the proposed gravel pit is at the entrance of this residential road.

I stated in my first letter to this board that the heavy truck traffic along Virginia Drive has been a continuous problem. During rainy periods and during late winter break-up, the heavy truck traffic that has been hauling in waste materials in the reclamation area of this pit has created impassable conditions. Trailers, carrying heavy equipment and heavy haul trucks have become stuck and jack-knifed across Virginia Drive during inclement weather, blocking all entry/exit and evacuation routes for all residents of this subdivision. My wife and I have also had to risk getting stuck in our own personal vehicles, being forced to leave the roadway due to it being blocked. We were left with no option but to enter the muddier reclamation area to bypass the immobilized heavy vehicles in order to reach our home and our children.

The current situation has created a safety risk to all as we have no way to evacuate our families for medical or other reasons and at times we have had no way to receive emergency vehicle traffic in any safe manner. The borough has been forced to respond to severe road damage on at least two occasions that I have personally witnessed.

The road as it is today is simply not capable supporting additional heavy haul truck traffic; trucks loaded with tons of gravel or construction material removed from the proposed pit. The permit applicant alleges that this road is engineered and capable of supporting his heavy vehicle traffic. The witnessed evidence to this point clearly demonstrates otherwise.

Additionally, I am not aware of borough road maintenance or emergency services personnel conducting any type of un-biased survey or study regarding the impact of additional heavy vehicle traffic on this road.

In summary, I oppose this gravel pit operation for many reasons but the heart of my testimony is regarding roadway sustainability, cost and access. As stated before, Virginia Drive is a no outlet road. Emergency services and evacuation routes have been blocked within the past three years, since this roadway was expanded. And the borough has had to spend more

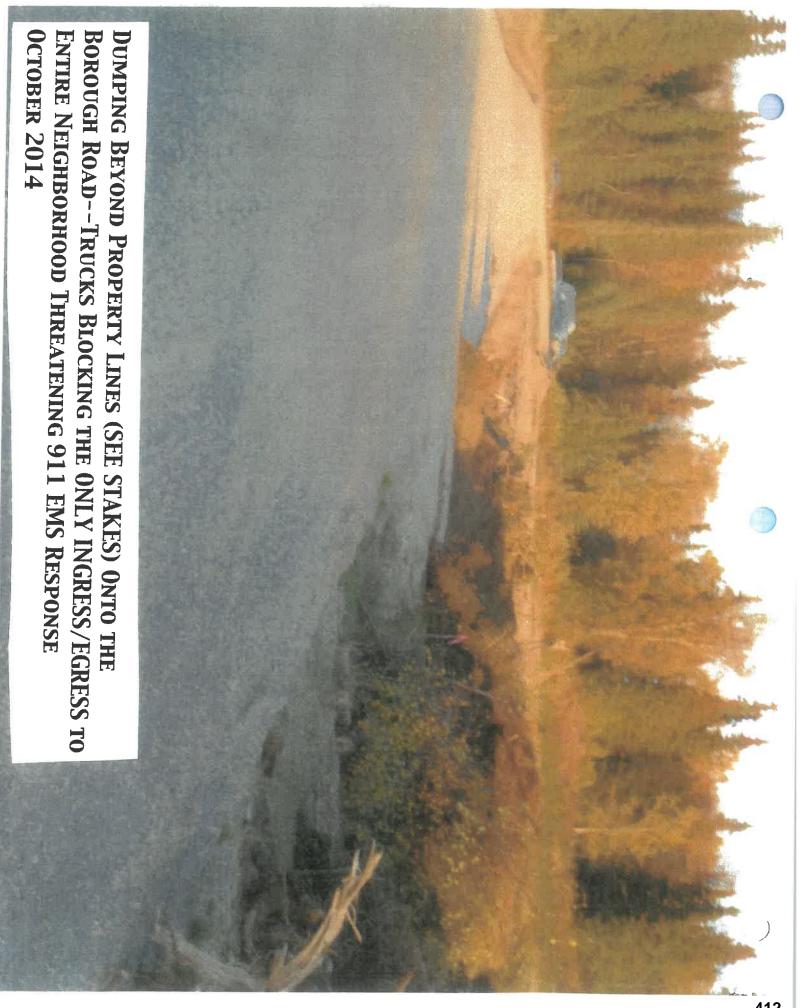
taxpayer money on roadway repair and maintenance due to the previous haul truck traffic damage.

Increased haul truck and heavy vehicle traffic in support of this proposed gravel pit will only exacerbate the risks to this residential subdivision and its residents, while adding to the burden of the Kenai Peninsula Borough and its taxpayers to keep the road in proper order.

To overturn the decision to deny the permit application would be to deny logic, due process and the overwhelming will of the majority. The board previously and justly ruled against this permit. It must do so again.

Thank you,

**Roger Koppes** 





**CLOSER VIEW OF BOROUGH ROAD DAMAGE FROM SBC PIT ACTIVITY** SEPTEMBER 2014



BOROUGH ROAD SHOWING EXTENSIVE DAMAGE FROM SBC PIT ACTIVITIES SEPTEMBER 2014



ABOVE: RND, Inc site on Kenai Spur Hwy...more illegal solid waste dumping on Sean Cude property... is this is how the Kenai Peninsula Borough plans to police our "reclamation" site also? 3-4-2015



ABOVE: More illegal dumping allowed by Borough and Alaska DEC Solid Waste at Cude's NRD site on Spur Highway...why has Alaska DEC allowed this to continue? 3-4-2015



"ALASKA

submitted via email

November 7, 2014

Mr. Max Best Planning Director Kenai Peninsula Borough 144 North Binkley St. Soldotna, AK 99669

Re: Gravel Permit - Sean Cude, ADEC Solid Waste Program Compliance

Dear Mr. Best:

In regard to his request for a permit for gravel extraction at a gravel pit on Ciechanski Road in Soldotna, Sean Cude requested that I submit comments to you regarding his record of environmental compliance with the Alaska Department of Environmental Conservation (ADEC) Solid Waste Program.

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In addition, Mr. Cude is operating an exempt waste fill in the excavated part of the gravel pit. Exempt wastes are materials that are specifically exempted by the Solid Waste regulations and do not require a permit for disposal. I have attached a copy of our guidance document that explains which wastes are exempt. In the time that Mr. Cude has operated the fill area, we have not received any complaints regarding improper waste being disposed at the site.

NRD has been very responsive to any requests made by the ADEC Solid Waste Program, and we have never received a citizen complaint regarding their facilities.

Please contact me at (907) 269-7622 or by email a lori.aldrich@alaska.gov if you have any comments or would like additional information.

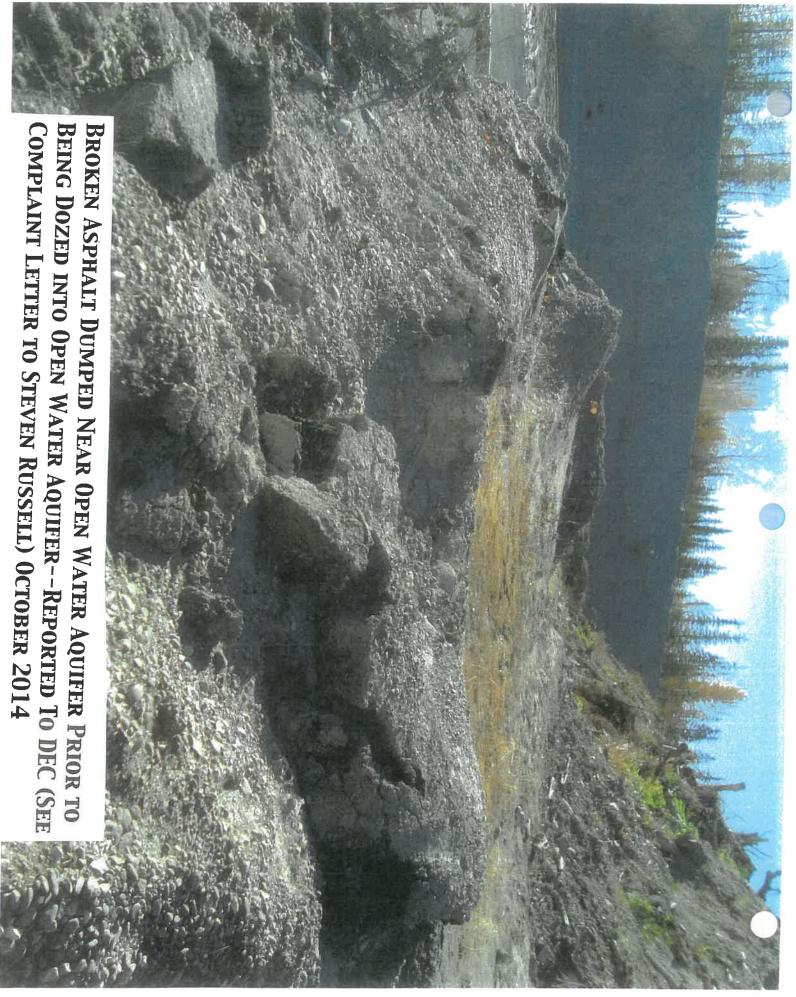
Sincerely,

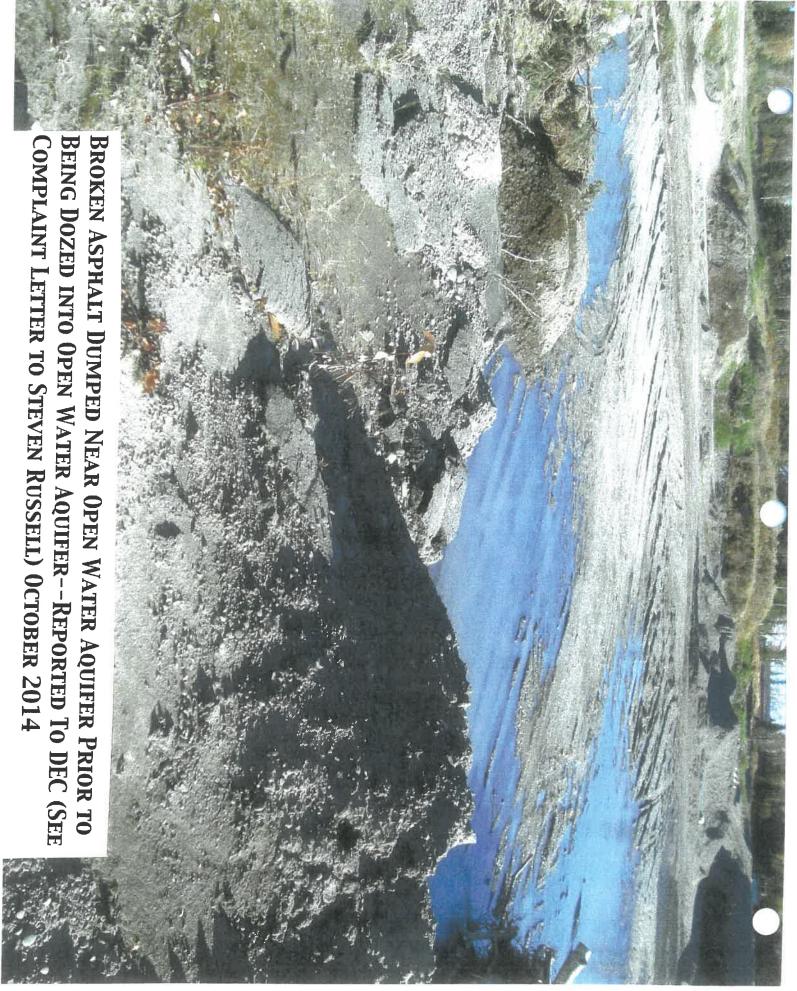
Lori Aldrich

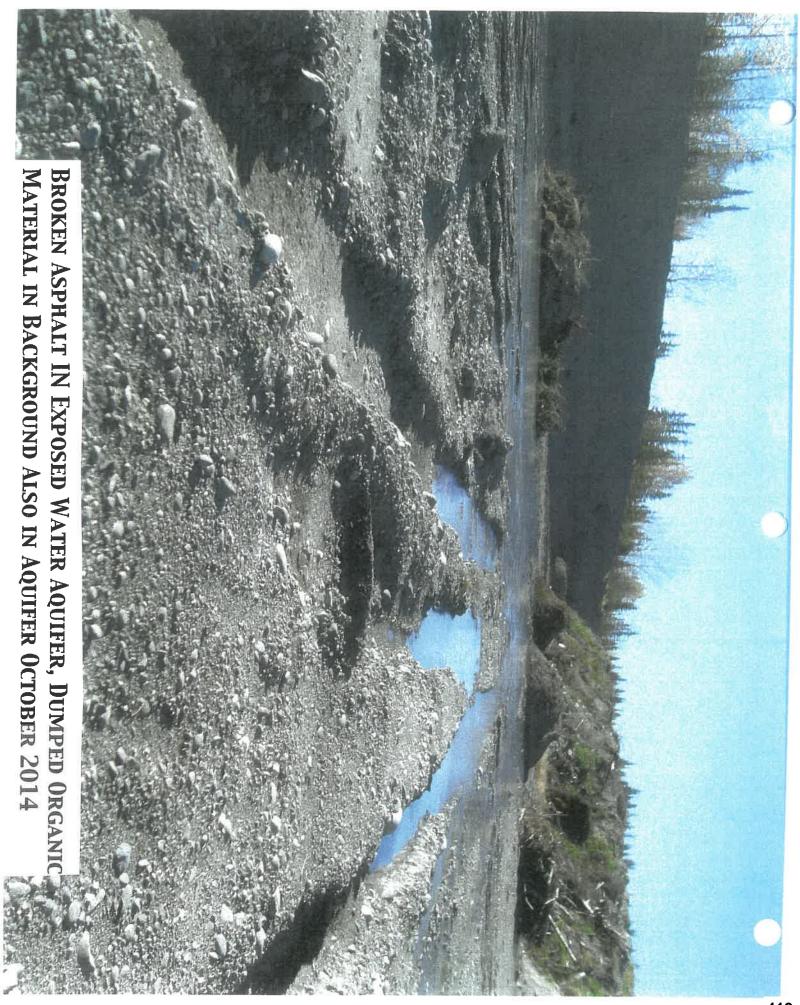
Solid Waste Regional Program Manager

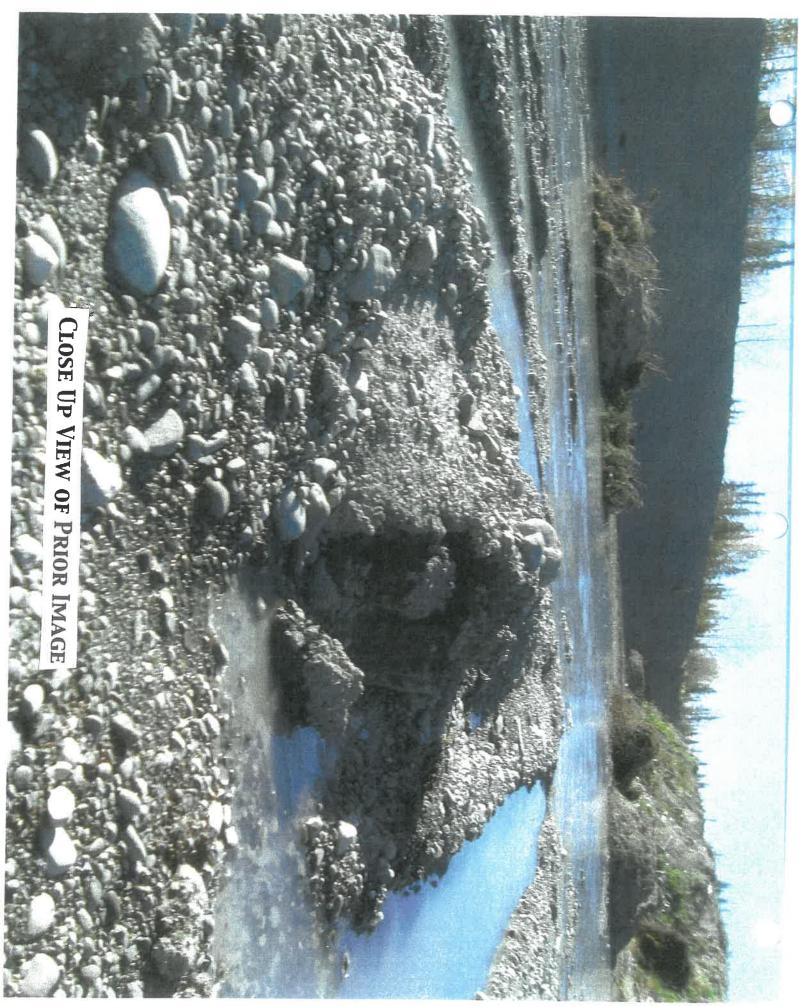
att: Exempt Solid Wastes, ADEC 2011

ALASKA DEC LETTER REFERRED TO REPEATEDLY BY SEAN CUDE AND ATTORNEY IN DIAMOND WILLOW ESTATES APPLICATION---NOTE: THIS LETTER DOES NOT REFER TO HIS OPERATIONS ON THIS PROPERTY...BUT TO OTHER COMMERCIAL PROPERTY LOCATED IN SOLDOTNA THAT IS UNRELATED TO THIS MATERIAL SITE APPLICATION (AS VERIFIED BY LORI ALDRICH, AK DEC) SEE ATTACHED LETTER OF COMPLAINT FILED WITH STEVEN RUSSELL CONCERNING DIAMOND WILLOW ESTATES PROPERTY 416 E3-272





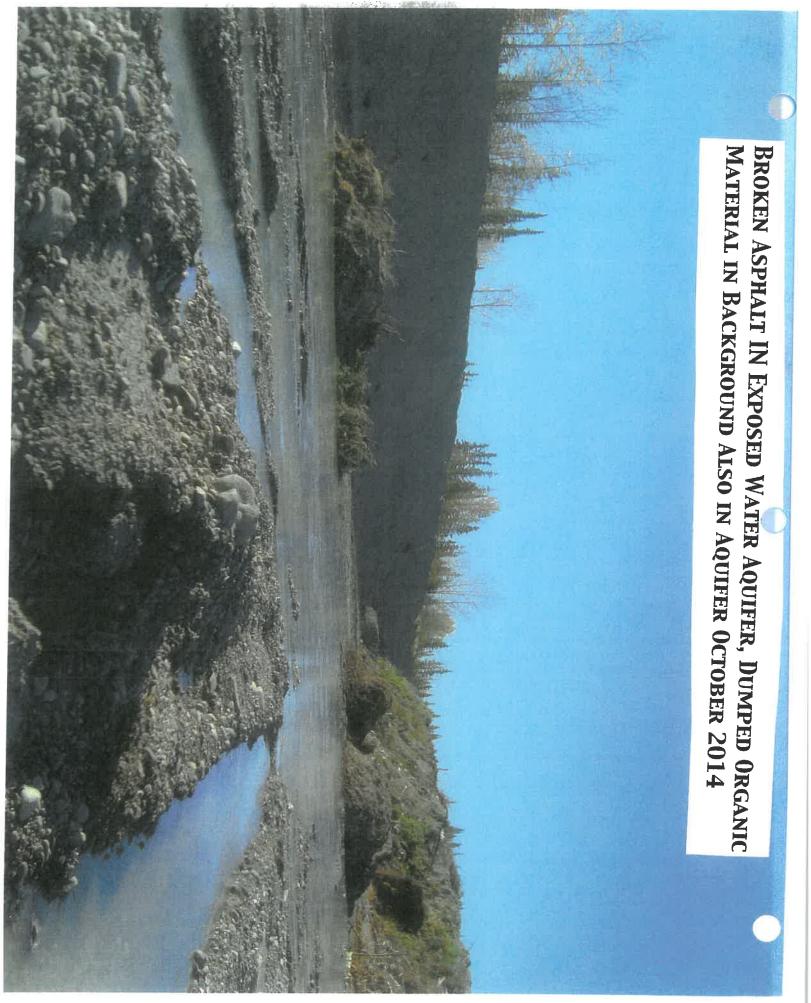




Sep 18 2014



MUD AND ORGANIC MATERIALS BEING SPREAD ACROSS OPEN WATER AQUIFER IN ATTEMPT TO "HIDE" WATER SEPTEMBER 2014





Sewer Pipe and Rock Dumped and Buried in SBC Pit September 2014



**Refuse Including Painted Lumber Dumped and Buried Into SBC Pit September 2014** 



**CRUSHED SEPTIC TANK WITH CONTAMINATED SEWER ROCK DUMPED AND BURIED INTO SBC PIT SEPTEMBER 2014** 





BROKEN SEPTIC TANK IN FOREGROUND WITH OTHER DEBRIS AND GARBAGE IN BACKGROUND DUMPED AND BURIED MAY 2013



**CRUSHED SEPTIC TANK AND DEBRIS DUMPED AND BURIED IN SBC PIT MAY 2013** 



5.ez 18, 2014



TRUCK DUMPING ORGANIC RECLAMATION MATERIAL INTO THE OPEN WATER AQUIFER IN SBC PIT SEPTEMBER 2014



TRUCK DUMPING ORGANIC MATERIAL INTO THE OPEN WATER Aquifer in Floor of SBC Pit September 2014 I, Justin Evans at 47207 Lexington Ct Kenai, AK, am again testifying in support of the KPB planning commissions' denial of the conditional land use permit.

The findings of fact in the first denial still hold true. In addition to those facts entered into record, I would also like to point to KPB code 21.29.050 (A3). This code states that it is the <u>DISCRETION</u> of the planning commission to waive the 300' processing distance requirement. This code alone is enough of a reason to deny the permit.

With the amount of opposition to this illegal processing site I implore this commission to not waive this requirement and hold in the denial of the permit.

Not only is this an illegal site but it is also in violation of the established neighborhood covenants. As stated by Commissioner Foster during the first meeting, he has always been concerned about the role of the city or borough with covenants. Commissioner Foster wisely pointed out that Lots C,D and E are clearly part of the covenant and that these lots are the proposed site for the extraction. When the Planning director, Max Best, was asked about this situation he responded by saying the borough had not been involved in this type of situation before and the borough tried to stay out of it. From this exchange it is very clear that the borough has no plan for this situation and at the least should develop some plan before arbitrarily moving forward. So I ask that the borough take the recommendation of its planning director and "stay out of it" by not approving this permit and leaving it as is, a protected neighborhood.

To further strengthen the opposition of this gravel pit, I point to the unified stance of the affected neighborhood. The neighborhood took up the suggestion of Commissioner Lockwood from the initial hearing. The commissioner was for the public to vote on some type of zoning laws. This suggestion then was brought up by Commissioner Lockwood and Director Best. From these recommendations from the planning commission the neighborhood applied for and was granted a

local zoning option with the exception of the affected lots pending the outcome of this appeal.

It is, without a doubt, the will of the people to deny this land permit and as representatives of the people the borough must agree with their neighbors and uphold the planning's decision to deny this permit.

Thank You,

Justin Evans

January 21, 2015

Board of Adjustment Kenai Peninsula Borough Case No. 2014-01

We stand in agreement with each point and reason listed on the Planning Commission's decision to deny a permit to Sean Cude to excavate any more gravel from the pit on the east side of Ciechanski. We specifically wish to address the issue of the breeched aquifer.

At the Planning Commission Meeting, we testified to having witnessed heavy equipment cut into the aquifer on the northwest corner of said site. That aquifer which flows into wells in our subdivision on Lexington Court remained exposed on top of the gravel for several years. We also testified that once reclamation began there were objects such as rusty septic tanks and chunks of asphalt left in the bottom of the pit. As reclamation continued, other contaminates such as human garbage and trash were also witnessed being used as backfill.

As responsible landowners and taxpayers, we should be protecting our natural resources to the utmost of our ability. Our main concern is that we do not see any real accountability or monitoring of the excavation or reclamation of this pit. The threat of further degradation through highly probable fuel spillage, accidents or leaky equipment that close to the aquifer, especially in a residential area, is too high!

The irreversible and detrimental impact of contaminated water on the health and well-being of our families and neighbors is at risk. We therefore implore the Board of Adjustment to uphold the Planning Commission's decision to deny a permit for this gravel pit.

Sincerely,

Ken and Kim Cox 47204 Lexington Court Kenai, AK 99611 Kenai Peninsula Borough Board of Adjustment Members

Dear Ladies and Gentlemen of the Board:

I apologize for not being in attendance this morning, but am currently a Senior at the University of Alaska College of Engineering and cannot miss my classes. This material site permit application process and resulting stress has been going on for half of my life. I grew up on Virginia Drive, and have my own property there also, with a small house I can live in after I graduate from college. I have seen my parents Travis and Crystal Penrod, along with our neighbors fight this illegal activity with little help from the Borough. It seems like the message being sent is illegal, unethical behavior is to be rewarded, while the law abiding citizens are left to suffer the consequences. I am looking forward to living in the Kenai area for the rest of my life, and want to build a larger home on my property on Virginia. Will I still be fighting this battle when I have kids of my own? This seems like a reasonable question, and one I would like to ask the Borough. I am in favor of upholding the Planning Commission's decision to DENY this permit, and would hope that with the law and honesty on our side, we would prevail. Thank you for your consideration.

Sincerely,

Tanner B. Penrod 36770 Virginia Drive



# legal gravel pit Gibbs/Cude

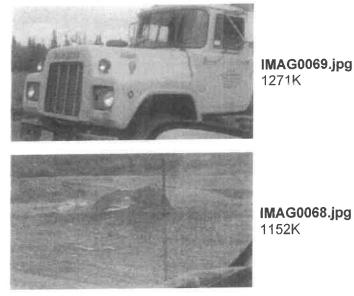
ALASKA BEAD & GEM <abgsalaska@gmail.com>

Mon, Jul 1, 2013 at 4:26 PM

To: mbest@borough.kenai.ak.us

See attached photos of illegal gravel removal today by S and R(Sean Cude). From pit on Virgonia Dr. This is the second notification Mr. Best. **Crystal Penrod** 





IMAG0068.jpg

Best, Max <MBest@borough.kenai.ak.us> To: ALASKA BEAD & GEM <abgsalaska@gmail.com>

Crystal,

We are investigating.

Max.

From: ALASKA BEAD & GEM [mailto:abgsalaska@gmail.com] Sent: Monday, July 01, 2013 4:26 PM To: Best, Max Subject: Illegal gravel pit Gibbs/Cude

See attached photos of illegal gravel removal today by S and R(Sean Cude). From pit on Virgonia Dr. This is the

Tue, Jul 2, 2013 at 10:34 AM

# ALASKA BEAD & GEM <abgsalaska@gmail.com>

: "Best, Max" <MBest@borough.kenai.ak.us>

Hello again, Max...

While I'm not certain what exactly you are "investigating", Mr. Cude has nearly cleared the entire stored gravel from the pit. He is also digging in a new area, and removing gravel almost daily. What is the Borough waiting for??? His equipment is in the pit in plain sight, and his yellow "S & R" trucks come and go all the time...do you need me to send pictures? Just wondering how much more has to happen here before you finally take action. Waiting for results... Crystal Penrod

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We are investigating.

Max.

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See attached photos of illegal gravel removal today by S and R(Sean Cude). From pit on Virgonia Dr. This is the second notification Mr. Best. **Crystal Penrod** 

A Pen. O Inexa Sead Shoem www.ABGS.vpweb.com ABGSAlaska@gmail.com 907-242-1466 Mobile Haska's Largest Bead Event

Best, Max <MBest@borough.kenai.ak.us> To: ALASKA BEAD & GEM <abgsalaska@gmail.com> Mon, Aug 12, 2013 at 7:46 AM

Hi Crystal,

He is only allowed to remove the old existing stockpiles, nothing else. I will send code enforcement to the pit.

lax.

From: ALASKA BEAD & GEM [mailto:abgsalaska@gmail.com] Sent: Sunday, August 11, 2013 10:25 PM To: Best, Max Subject: Re: Illegal gravel pit Gibbs/Cude

Hello again, Max...

While I'm not certain what exactly you are "investigating", Mr. Cude has nearly cleared the entire stored gravel from the pit. He is also digging in a new area, and removing gravel almost daily. What is the Borough waiting for??? His equipment is in the pit in plain sight, and his yellow "S & R" trucks come and go all the time...do you need me to send pictures? Just wondering how much more has to happen here before you finally take action. Waiting for results...

Crystal Penrod

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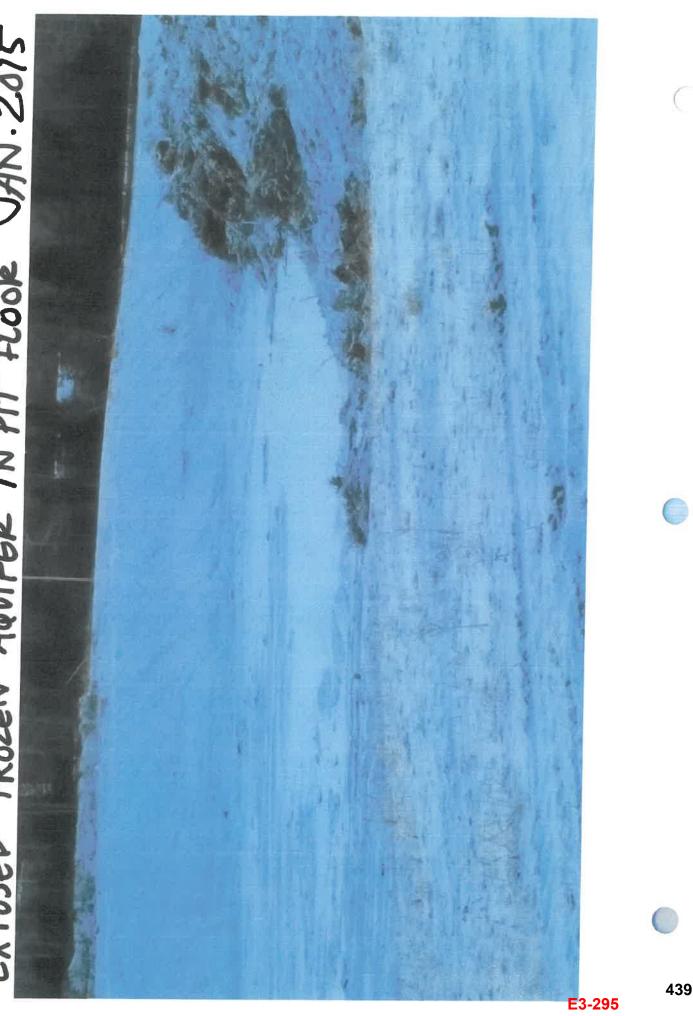
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Crystal Penrod Alaska Bead & Gem www.ABGS.vpweb.com ABGSAlaska@gmail.com 907-242-1466 Mobile "Alaska's Largest Bead Event!"

SEAN CUDE FROM RESIDENTIAL LOT AND STOCKPILING GRAVEL T 5N R 11W SEC 24 SEWARD MERIDIAN KN 2008135 DIAMOND ONTO ADJACENT PROPERTY--NOTE PROXIMITY TO PROPERTY LINE WILLOW ESTATES SUB PART 10 LOT E SHOWING EXCAVATION BY CTAVES TANTIADE DATE

# EXPOSED FROZEN AQUIFER IN PIT ROOK VAN. 2015



# 21 January 2015

Dear Board of Adjustment,

My Name is Travis Penrod and I own and live at 36860 Virginia Drive with my wife, Crystal. I also own a small house at 36770 Virginia Drive, which is designated for my Son, Tanner who will be graduating from UAA's college of engineering in the near future. We all plan to live here for the rest of our lives. We have built these homes, ourselves, from the ground up and have nearly 20 years of our lives and life's savings invested in this effort. My wife and I will fight relentlessly and pursue any legal means available to protect our quality of life at our home.

I whole-heartedly support the Board of Adjustment upholding the Borough Planning Commission's decision to deny Sean Cude the Conditional Land Use Permit (CLUP) for material extraction. You have heard testimony from different landowners on their agreement with the Planning Commission's decision to deny the CLUP. The reasons for denial are valid; The Pit does pose a significant threat to our water, (the open water aquifer plus illegal reclamation practices with the addition of a material site permit would be a recipe for disaster). Continued operation of trucks on our only ingress/egress road (Virginia Drive) does do extensive damage and poses a threat to Emergency Services Response as well a threat to our children playing in the area. Finally, the three flag lots that Mr. Cude wants added to the CLUP, if it is approved, are in violation of the covenants of the subdivision. I would like to mention the Mr. Cude as already excavated extensively on lot E, which was professed to me by Bruce Wall the Borough Planner.

The Main point I would like to stress is the actual process, which is being pursued. A local contractor, Sean Cude, has purchased a 20-Acre piece of property from Mercedes Gibbs in which all the I gravel has been removed. Had there been any gravel left, Jason Foster would have excavated it ten years earlier. That is why Jason Foster resorted to digging in the water aquifer for more material. This was one of the reasons his CLUP was denied. Sean Cude is currently reclaiming this site with material, allegedly, not requiring DEC permitting or oversight. He also bought residential property adjacent to the larger tract of land. Mr. Cude, then digs tens of thousands of yards of gravel from the floor of the pit breaching the water aquifer and stock piles it against the south wall of the pit. He also excavates large amounts of gravel from the residential lot E, which he has purchased, and stockpiled it. This lot is conveniently located behind dense forest and can't be seen from the road. This enable Mr. Cude's illegal activity to go undetected by the local resident. I personally did not know this had taken place until Bruce Wall told me that this digging had occurred. Now, this contractor pushes reclamation material (much of which is littered with illegal dumping material) into the exposed water aquifer. He then puts a feather dusting of gravel over the top to hide the carnage. But, he does a poor job of that because exposed, contaminated water is still showing in portions of the pit. He then applies for a CLUP for a material site knowing full well that the material he plans to use commercially from this site came from an illegal source. The most horrific part of this situation is that the Borough Planning Department, knowing full well, the details of this CLUP, is actively pursuing Mr. Cude's approval of this material site. If this CLUP is approved, it will set a precedent for other unethical contractors to do the same. If the Board of Adjustment were to overturn the Planning Commissions decision to deny the gravel pit, you would be putting your stamp of approval on the same grievous activity.

The reality is: If Mr. Cude were to receive this material site, he would erect a six-foot fence or berm around the entire property, meeting the condition of his CLUP. Out of the view of the local residents and ing a reclamation site that is not under the oversight of the DEC, Mr. Cude would be able to dig in the ground water as much he wanted and reclaim it with any material he desired with no consequences. The "No Trespassing" signs Mr Cude has placed around the perimeter will keep the local residence out, which,

up to this point, has been the only safeguard to the illegal activity. I personally, have been notified by the State Troopers, that at the property owner's request, if I, or my wife, step foot on this site I will be

ecuted for criminal trespassing. If Sean Cude were allowed to operate the gravel pit it would have an unacceptable risk of creating an ecological disaster. The gravel pit operator and the Borough would be to blame, but the local property owners would bear the brunt of the contamination with little or no recourse.

With this in mind, I implore you to uphold the Planning Commissions decision to deny Sean Cude this Conditional Land Use Permit.

Sincerel r r

Travis G. Penrod 36860 Virginia Drive Kenai, Alaska 99611





# CONDITIONAL LAND USE PERMIT FOR MATERIAL EXTRACTION KENAI PENINSULA BOROUGH PLANNING DEPARTMENT KENAI RECORDING DISTRICT

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Legal Description: Tract 13, Diamond Willow Estates Subdivision Part 13, according to Plat 2015-12, Kenai Recording District, Third Judicial Court, State of Alaska.

- WHEREAS, On July 25, 2014 Sean Cude submitted a conditional land use permit application to the Planning Department for the property currently described as above; and
- WHEREAS, KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough; and
- WHEREAS, KPB 21.29 provides that a conditional land use permit is required for material extraction which disturbs more than 2.5 cumulative acres; and
- WHEREAS, the above described property is greater than 2.5 acres and is located within the rural district; and
- WHEREAS, public notice of the application was mailed on August 5, 2014 to the 284 landowners or leaseholders within one-half mile of the subject parcel pursuant to KPB 21.25.060; and
- WHEREAS, public notice was sent to the postmasters in Soldotna & Kenai requesting that it be posted at the Soldotna & Kenai Post Offices; and
- WHEREAS, public notice of the application was published in the August 14, 2014 & August 21, 2014 issues of the Peninsula Clarion; and
- WHEREAS, a public hearing was held at the August 25, 2014 meeting of the Kenai Peninsula Borough Planning Commission; and
- WHEREAS, the Kenai Peninsula Borough Planning Commission denied the request at their August 25, 2014 meeting; and
- WHEREAS, the denial was appealed to the Kenai Peninsula Borough Board of Adjustments; and
- WHEREAS, the Kenai Peninsula Borough Board of Adjustments heard the appeal on January 21, 2015; and
- WHEREAS, on February 13, 2015, the Kenai Peninsula Borough Board of Adjustments reversed the decision of the Kenai Peninsula Borough Planning Commission and

Kenai Peninsula Borough Planning Commission Conditional Land Use Permit

Page 1 of 3

granted approval of the conditional land use permit (Exhibit A) subject to the conditions and recommendations of Resolution 2014-20 (Exhibit B);

NOW, THEREFORE, the Kenai Peninsula Borough Planning Department gives notice to the public that the conditional land use permit for the above mentioned parcel is approved subject to the following conditions:

PERMIT CONDITIONS

- 1. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
- 2. The permittee shall place and maintain a 6-foot berm along the north property line adjacent to Virginia Drive, the west property line along Ciechanski Road, and along a portion of the south property line along Canvasback Avenue; place and maintain a 6-foot fence along the remainder of the south property line adjacent to Ravenwood Subdivision; and maintain a minimum of 50 feet of undisturbed, natural vegetation between the excavation perimeter and the east property line until excavation takes place in that area, the vegetative buffer shall then be replaced with a 6-foot fence that shall be maintained.
- 3. The permittee shall maintain at least a 2:1 slope between the inner buffer zones and pit floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 30 days from the time of removal.
- 4. The permittee may not operate materials processing equipment within 300 feet of the west, south, or east parcel boundaries; or within 100 feet of the north boundary. Rock crushing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
- 5. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
- 6. The permittee shall maintain a 2-foot vertical separation from the seasonal high water table.
- 7. The permittee shall not dewater either by pumping, ditching or any other form of draining unless an exemption is granted by the planning commission.
- 8. The permittee shall ensure that fuel storage containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.
- 9. The permittee shall conduct operations in a manner so as not to damage borough roads as required by KPB 14.40.175, and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
- 10. The permittee shall notify the planning department of any further subdivision or return to acreage of this parcel. The planning director may issue a written exemption from the permit 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.
- 11. The permittee shall apply water or calcium chloride, as needed, on haul roads within the boundaries of the subject parcel.
- 12. The permittee shall reclaim the site as described in the reclamation plan for this parcel and as approved by the planning commission.
- 13. The permittee is responsible for determining the need for any other municipal, state or federal permits and acquiring the same. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and

Kenai Peninsula Borough Planning Commission Conditional Land Use Permit

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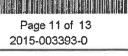


including existing disturbed areas.

- KPB 21.29.030(A) states the planning director may determine that certain contiguous parcels are 6. eligible for a single permit.
- The planning director has reviewed this application and has determined that these four parcels 7. are not eligible for a single permit.
- Tax Parcel Numbers 055-270-50, 055-270-51, and 055-270-52 are located within Diamond 8. Willow Estates Subdivision Part - 10 which states, in part, "Wastewater disposal Soil conditions, water table levels, and soil slopes in this subdivision have been found suitable for conventional onsite wastewater treatment and disposal systems serving single family of [sic] duplex residences, and meeting the regulatory requirements of the Kenai Peninsula Borough."
- Tax Parcel Numbers 055-270-51 and 055-270-52 are configured as flag lots. The proposed 9. excavation would not be compatible with the designed access for these lots.
- A new plat that combines these four parcels into just one parcel would eliminate Tax Parcel 10. Numbers 055-270-50, 055-270-51, and 055-270-52, thus eliminating the possibility of a buyer of these lots relying on the information on the plat.
- A new plat that combines these four parcels into just one parcel would make the new parcel 11. eligible for a conditional land use permit for a material site.
- To meet material site standard 21.29.040(A1), the proposed activity just protect against aquifer disturbance by maintaining a 2-foot vertical separation from the second ligh water table and by 12. ensuring that no material extraction takes place within 100 hor containeet of any existing water source.
- An excavated test hole in the existing material site for mund groundwater at approximately 2 13. feet below the existing material site floor.
- 14.
- The proposed excavation will be to the same electron as the existing material site floor. The site plan indicates that there are no known yells located within 100 feet of the proposed 15. excavation area.
- The site plan indicates that there are several wells located within 300 feet of the proposed 16. material site.
- To meet material site standard 2229.40 (2), the proposed activity must be conducted in a 17. manner to protect against physical and ge to adjacent properties by complying with the required permit conditions of KPB 21.2 050.
- To meet material site standa 200040(A3), the proposed activity must be conducted in a 18. site movement of dust by complying with required permit manner which minimizes the condition KPB 21.29.20(10), Dut Control.
- Ingress and egress at the material site will be Virginia Drive which is a Borough maintained road. 19.
- To meet material standard 21.29.040(A4), the proposed activity must be conducted in a 20. manner which minimizes noise disturbance to other properties by complying with permit condition KPB 21.2 050(2), Buffer Zone; KPB 21.29.050(3), Processing; and KPB Housef Operation.
- 21.29.050(1) House Operation. The applicates that material processing will take place on the site. As indicated on the 21. submitted te plan all processing will be located greater than 300 feet from the west, south, and east parcel boundaries and 100' from the north boundary, which adjacent to a large vacant parcel.
- To meet material site standard 21.29.040(A5), the proposed activity must be conducted in a 22. manner which minimizes visual impacts by complying with the permit condition KPB 21.29.050(2), Buffer Zone.
- The submitted site plan and application indicates that a 6-foot berm, 6-foot fence, or a 50-foot 23. vegetated buffer will be maintained on all boundaries.
- The bonding requirement of KPB 21.29.050(12b) will apply to this material site if extraction in 24. any one year exceeds 50,000 cubic yards of material.
- A public hearing of the Planning Commission was held on August 25, 2014 and notice of the 25. meeting was published, posted, and mailed in accordance with KPB 21.25.060 and KPB 21.11.
- That the land use and operations are described and shall be conducted as follows: **SECTION 2.**

Kenai Peninsula Borough Planning Commission Resolution 2014-20





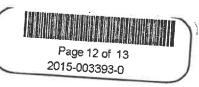
- An area currently known as KPB Tax Parcel Numbers 055-270-98, 055-270-50, 055-270-51, and Α. 055-270-52. The total disturbed area within this area is up to 19.36 acres.
- Β. Tract A2A, Diamond Willow Estates Subdivision Part 11 according to Plat 2012-93, Kenai Recording District, Third Judicial Court, State of Alaska; and Lots C, D, & E, Diamond Willow Estates Subdivision Part - 10 according to Plat 2008-135, Kenai Recording District, Third Judicial Court, State of Alaska.
- C. The applicant, Sean Cude, proposes to: 1. Extract gravel from the subject parcel; 2. Reclaim the site to a stable condition upon depletion of material.

### PERMIT CONDITIONS

- The permittee shall cause the boundaries of the subject parcel to be staked at sequentially 1. visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
- The permittee shall place and maintain a 6-foot berm along the north property line adjacent to 2. Virginia Drive, the west property line along Ciechanski Road, and along a portion of the south property line along Canvasback Avenue; place and maintain a 6-foot incoming the remainder of the south property line adjacent to Ravenwood Subdivision; and Maintain a minimum of 50 feet of undisturbed, natural vegetation between the excavation primete and the east property line until excavation takes place in that area, the vegetative butter shall that be replaced with a 6-foot fence that shall be maintained.
- The permittee shall maintain at least a 2:1 slope between the inter over zones and pit floor on 3. all inactive site walls. Material from the area designated to the 2:1 slope may be removed if suitable, stabilizing material is replaced within 30 day, from the time of removal.
- The permittee may not operate materials processing equipment within 300 feet of the west, south, or east parcel boundaries; or within 1 to feet of the north boundary. Rock crushing equipment shall not be operated between 10: o p.p. and 6:00 a.m. The permittee shall not extract material within 100 horzontal feet of any water source existing 4.
- 5. prior to issuance of this permit.
- 6.
- The permittee shall maintain a 2-foot very al separation from the seasonal high water table. The permittee shall not dewater either promping, ditching or any other form of draining unless an exemption is granted by the planning commission. 7.
- The permittee shall ensure the fuel sorage containers larger than 50 gallons shall be contained in impermeable berms and basic capable of retaining 110 percent of storage capacity to minimize the potential for uncertained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be pieced directly on the ground, but shall be stored on a stable impermeable 8. surface.
- The permittee state operations in a manner so as not to damage borough roads as 9. required by KEB 14.00.175, and will be subject to the remedies set forth in KPB 14.40 for violation of this condition
- The permittee that for the planning department of any further subdivision or return to acreage of this planning director may issue a written exemption from the permit amendment 10. 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.
- The permittee shall apply water or calcium chloride, as needed, on haul roads within the 11. boundaries of the subject parcel.
- The permittee shall reclaim the site as described in the reclamation plan for this parcel and as 12. approved by the planning commission.
- The permittee is responsible for determining the need for any other municipal, state or federal 13. permits and acquiring the same. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits.
- This conditional land use permit is subject to annual review by the planning department to 14. ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.25.090, the planning commission may revoke a permit issued pursuant to this chapter if the permittee fails to comply with the provisions of this chapter or the conditions of the permit. The planning director shall provide at least 30 days written notice to the permittee of a revocation

Kenai Peninsula Borough Planning Commission Resolution 2014-20

Page 3 of 4



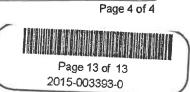
hearing before the planning commission.

đ,

15. Once effective, this conditional land use permit is valid for five years. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON THIS\_\_\_\_\_\_, 2014.

ATTEST:	Blair Martin, Vice Chairperson Planning Commission
Patti Hartley Administrative Assistant	2010
PLEASE RETURN Kenai Peninsula Borough Planning Department 144 North Binkley St. Soldotna, AK 99669	



E3-302

# EXHIBIT B

### KENAI PENINSULA BOROUGH PLANNING COMMISSION RESOLUTION 2014-20 KENAI RECORDING DISTRICT

A resolution granting approval of a conditional land use permit to operate a sand, gravel, or material site for a parcel described as Tract A2A, Diamond Willow Estates Subdivision Part 11 according to Plat 2012-93, Kenai Recording District, Third Judicial Court, State of Alaska; and Lots C, D, & E, Diamond Willow Estates Subdivision Part – 10 according to Plat 2008-135, Kenai Recording District, Third Judicial Court, State of Alaska.

- WHEREAS, KPB 21.25 allows for land in the rural district to be used as a sans, gravel or material site once a permit has been obtained from the Kenai Peninsus Boough, and
- WHEREAS, KPB 21.29 provides that a conditional land use permit is required for material extraction which disturbs more than 2.5 cumulative acres; and
- WHEREAS, on July 25, 2014 the applicant, Sean Cude, su mitted conditional land use permit application to the Planning Department for a material site greater than 2.5 acres on KPB Tax Parcel Numbers 055-270-98, 055-270-50, 055-270-51, and 055-270-52, which are located within the rural district; and
- WHEREAS, public notice of the application was railed on August 5, 2014 to the 284 landowners or leaseholders within one-half mile of the subject parcel pursuant to KPB 21.25.060; and
- WHEREAS, public notice was sen to the postmasters in Soldotna & Kenai requesting that it be posted at the Soldotna Kenai Post Offices; and
- WHEREAS, public notice of the application was published in the August 14, 2014 & August 21, 2014 issues of the Pennsula Clarion; and
- WHEREAS, a public hearing was held at the August 25, 2014 meeting of the Kenai Peninsula Borcugh Planning Commission;

NOW, THEREFORE DE IT RESOLVED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That the Planning Commission makes the following findings of fact pursuant to KPB 21.25 and 21.29:

**Findings of Fact** 

- 1. KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough.
- 2. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
- 3. On July 25, 2014 the applicant, Sean Cude, submitted to the Borough Planning Department a conditional land use permit application for KPB Tax Parcel Numbers 055-270-98, 055-270-50, 055-270-51, and 055-270-52, which are located within the rural district.
- KPB 21.29 provides that a conditional land use permit is required for material extraction that disturbs more than 2.5 cumulative acres.
- 5. The proposed cumulative disturbed area within the parcel is approximately 19.36 acres,

Kenai Peninsula Borough Planning Commission Resolution 2014-20

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E3-303

Page 10 of 13 2015-003393-0

ATTEST: Johni Blankenship, Borough Clerk MMC



Kenai Peninsula Borough Board of Adjustment Decision

6



E3-304

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entitled its extraction permit a "conditional use permit," the permitting process differs greatly from the traditional "conditional use" permitting process. Generally, a conditional use permit is designed to permit certain uses otherwise prohibited in a zoning district. By way of example, a local residential zoning district may permit day care facilities within that district but only where a conditional use permit is obtained. The community with zoning authority may expect its planning commission to grant or deny the conditional use permit after balancing several factors identified by ordinance, including the best interest of the district and the community. In such cases, the permit at issue grants the permit applicant greater rights than other land owners in the zoning district at issue. Consequently, the permitting community would have an obligation to ensure that the district's interests warrant granting one landowner more freedom of use than another.

Here, the Borough's CLUP process has the opposite effect. A CLUP actually imposes greater rather than less restrictions upon the permitted parcels. While the district is predominately unregulated and unrestricted, an applicant's parcels are subject to specific and express conditions that are not automatically imposed on other parcels in the same district. Thus, the government must ensure that the application of greater restrictions upon the applicant are in fact justified and imposed in a fair and objective way. The KPB Code preserves this fairness by granting the Borough staff, the Commission, and this Board very limited discretion in denying and even conditioning CLUPs.

## D. CONCLUSION

For all of the reasons stated above, the Board hereby reverses the Commission's decision and grants the conditional use permit application filed June 25, 2014, by Sean Cude subject to the conditions and recommendations by Resolution 2014-20.

# NOTICE OF RIGHT TO APPEAL

Pursuant to KPB 21.20.360 and AS 29.40.060, this decision constitutes the final administrative decision of the Kenai Peninsula Borough in this matter. Any party aggrieved by this decision has thirty (30) days from the date of distribution of this decision to file an appeal in the Superior Court for the State of Alaska in Kenai, Alaska, in accordance with Part VI of the Alaska Rules of Appellate Procedure.

Dated this 13 day of February, 2015.

I. Glick, Chair

Betty J. Glick, Chair KPB Board of Adjustment

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Kenai Peninsula Borough Board of Adjustment Decision



a permit planning application that provides information identified in the Code. KPB 21.29.030. The Code actually requires significant documentation of the intended extraction on site, including but not limited to plans regarding the life span of the extraction, a buffer plan, a reclamation plan, and so on. While the Code requires applicants to submit significant documentation in order to obtain a CLUP, the Code does not provide the Commission discretion to deny a CLUP when the application has been properly submitted. Instead, the Code preserves the unrestricted nature of the rural zoning district and limits the Borough to the imposition of certain conditions to extraction. See 21.29.040.

Specifically, the Code provides that

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:

- Protects against the lowering of water sources serving other properties;
- Protects against physical damage to other properties;
- 3. Minimizes off-site movement of dust;
- 4. Minimizes noise disturbance to other properties;
- 5. Minimizes visual impacts; and
- 6. Provides for alternate post-mining land uses.

KPB 21.29.040 (emphasis added). Here, the Commission did not deny or identify evidence suggesting that Mr. Cude failed to meet the CLUP application requirements, instead, the Commission's findings only identified concerns surrounding extraction that fell outside Code requirements. For example, the Commission's findings and concerns regarding water degradation ignored the applicant's compliance with KPB 21.29.040(A4), which ensures no material extraction takes place within '100 horizontal feet of any existing water source. Again, the Commission may only apply conditions under KPB 21.29.050 when issuing a CLUP, it may not impose additional conditions despite the positive impact such conditions may have in the rural zoning district or the community at large. See KPB 21.29.050. To the extent the parties disagree with these. limitations, it is the Kenai Peninsula Borough Assembly through the local legislative process, and not this Board or the Commission, that holds the power to change the CLUP permit approval process.

The differences between the traditional role of a "conditional use permit" and the CLUP required by the Borough further highlights the limited authority granted to the Borough to regulate extraction within the rural zoning district. Although the Borough has

Kenal Peninsula Borough Board of Adjustment Decision



review and analysis by this Board, hereby incorporated into this Board's findings and its final decision.

The Commission received approximately 14 letters of objection or concern to the requested CLUP and one agency comment letter. Ten people testified before the Commission against granting the CLUP, noting concerns regarding prior and/or anticipated negative impacts on water quality, property values, traffic flow and safety, site reclamation, and general nulsances resulting from noise and dust. Tr. 4-33, 44-45; R.31-56. At the appeal hearing before this Board, these same concerns were reiterated during oral argument.

# B. STANDARD OF REVIEW

The Board applies the following standards in reviewing the Commission's decision: The Board exercises its independent judgment on matters that relate to the interpretation or construction of ordinances or other provisions of law. KPB 21.30.020. The Board defers to the judgment of the Commission regarding findings of fact if they are supported in the record by substantial evidence ("substantial evidence" is "relevant evidence a reasonable mind might accept as adequate to support a conclusion"). KPB 21.20.320(2). Where the Board decides that a finding of fact made by the Commission is not supported by substantial evidence, the Board may make a different finding on the factual issues, based upon the evidence in the record developed before the Commission if it concludes a different finding was supported by substantial evidence, or may remand the matter to the Commission.

### C. LEGAL ANALYSIS

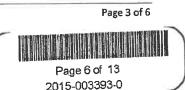
After reviewing the statements of the parties, the record, and listening to oral testimony, the Board has determined that the Commission's decision denying the CLUP exceeded the scope of authority granted the Commission. While the Board certainly sympathizes with the concerns expressed by the Commission and during oral testimony, these concerns fall outside the discretion afforded the Commission and the Board as a matter of local law.

The Borough has, for the most part, transferred zoning authority to the cities within its borders. While the Borough does maintain zoning authority over areas outside the regulatory arm of the cities but within Borough boundaries, which constitute the Borough rural zoning district, the local legislature permits almost wholly unrestricted use of these areas and has limited restrictions on use to only those expressly provided in the Kenai Peninsula Borough Code. See KPB 21.04.010(B).

Among the few restrictions that apply to the rural zoning district, KPB 21.29 requires users to obtain a permit for material extraction in certain situations. See KPB 21.29.020. While there are different permit requirements depending upon the nature of the extraction, a Conditional Land Use Permit is required for material extraction disturbing more than 2.5 acres or entering the water table. KPB 21.29.020(B). In order to obtain a CLUP, or an extraction permit of the type at Issue, an applicant must submit

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Kenai Peninsula Borough Board of Adjustment Decision



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the Commission and grants the CLUP at issue subject to the conditions recommended by Borough staff.<sup>1</sup>

### A. PROCEDURAL HISTORY AND BACKGROUND

On August 24, 2014, the Commission denied approval of a CLUP for a sand, gravel, or material site. R. 12-14. The subject property is owned by SBC 2012 Irrevocable Trust and the material site applicant is Sean Cude. R. 2.

The configuration of the proposed site is an approximate 15-acre material site (Tract A2A) which has been substantially exhausted (R.15, 23, 28). Abutting this parcel are lots C, D, and E, each between 1 and 2 acres, where further excavation is proposed. R.15, 23, 28. See also Opening Statement of the Kenai Peninsula Borough, dated November 26, 2014. The applicant's proposed depth of excavation is 20 feet below the natural existing grade. R. 2. Excavation is not proposed below the floor of the existing pit. R.17. Mr. Cude indicated in his application and the parties noted in their statements that material processing will take place on the site: R. 2, 5. Mr. Cude's application asserts that all processing will be located greater than 300 feet from the west, south, and east parcel boundaries. R. 2, 5.

Mr. Cude also included a request for a waiver and an exception from excavation requirements in his application, both of which were denied by the Commission. Specifically, Mr. Cude requested a waiver permitting processing up to 100 feet from the north parcel boundary. See R. 2, 5, 16. He also requested an exception under KPB 21.29.050(A)(2)(e) to the buffer requirements allowed for contiguous parcels for the boundary shared by the existing pit and lots C, D, and E. While the Borough staff recommended granting the waiver, it recommended denying the requested exception. See KPB Opening Statement, R.75. Instead, staff recommended that lots C, D, and E. be eliminated through a replat and combined with the larger existing pit. R.16. Based upon testimony at the hearing, Mr. Cude has agreed to this approach and has initiated the combination process.

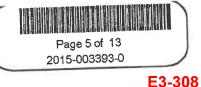
Borough staff recommended approval of Mr. Cude's application based upon 25 findings of fact and 15 conditions. These findings and conditions are, after careful

<sup>1</sup> Mr. Cude submitted a written motion to supplement the record on November 26, 2014. This motion sought to admit certain photographs that were not presented to the Commission, as well as a letter from Lori Aldrich, State of Alaska Department of Environmental Conservation Solid Waste Regional Program Manager, regarding Mr. Cude's compliance with the Alaska Department of Environmental Conservation's Solid Waste Program on the subject parcels. The Board determined that pursuant to KPB 21.20.290 and 21.20.270, record supplementation was not warranted and the motion was denied. Additionally, Mr. Cude withdrew the motion to supplement the record based upon discussions with the Borough planning staff prior to the hearing. The Board did grant approval to use some of the photographs demonstrably as visual aids during the hearing.

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Kenal Peninsula Borough Board of Adjustment Decision

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# **EXHIBIT A**

# **BOARD OF ADJUSTMENT**

### **KENAI PENINSULA BOROUGH**

In the Matter of the Appeal of the Kenai Peninsula Borough Planning Commission Approval of conditional land use permit for KPB Tax Parcel ID #055-270-98, 055-270-50, 055-270-51 and 055-270-52, a 19.36 acre site located at Tract A2A, Diamond Willow Estates Subdivision Part 11 according to Plat 2012-93, Kenai Recording District, Third Judiclal District, State of Alaska; and Lots C, D & E, Diamond Willow Estates Subdivision Part 10 according to Plat 2008-135, Kenai Recording District, Third Judiclal District, State of Alaska:

Joe Kashi, attorney for Sean Cude,

Applicant.

The Board hereby unanimously issues this written decision with the following members present and participating in the hearing and deliberations: Betty Glick (Chair), Mildred Martin (Vice Chair), Tom Glark, Ron Long and Hal Smalley.

### DECISION ON APPEAL AND FINDINGS OF THE BOARD OF ADJUSTMENT

On January 21, 2015, the Kenai Peninsula Borough ("KPB" or "Borough") Board of Adjustment ("Board") heard the above-titled appeal from denial by the Borough Planning Commission ("Commission") of the application of Sean Cude for a conditional land use permit ("CLUP") on KPB Tax Parcels numbered 055-270-98, 055-270-50, 055-270-51, and 055-270-52. The Board met later that same day in adjudicatory session to deliberate and adopt its decision.

Having considered the Record, written and oral arguments of the parties and applicable Alaska law and KPB Code, the Board unanimously reverses the decision of

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Kenai Peninsula Borough Board of Adjustment Decision





abiding by related permits.

- 14. This conditional land use permit may be subject to annual review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.25.090, the planning commission may revoke a permit issued pursuant to this chapter if the permittee fails to comply with the provisions of KPB 21.29 or the conditions of the permit. The planning director will provide at least 30 days written notice to the permittee of a revocation hearing before the planning commission.
- 15. Once effective, this conditional land use permit is valid for five years. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.

Pursuant to the Board of Adjustments decision on February 13, 2015, this Conditional Land Use Permit shall become effective on signing by the Planning Director.

Maxwell J.

April 15, 2015 Date

ATTEST:

Patti Hartlev

Administrative Assistant

Return to: Kenai Peninsula Borough Planning Department 144 N. Binkley Soldotna AK 99669



<b>Owner Name</b>	KP	<b>B</b> Assessed
Sandhill	\$	106,800.00
Bates	\$	380,400.00
Hatt	\$	21,200.00
Grossl	\$	355,400.00
Sandhill	\$	18,400.00
Sarren	\$	30,000.00
Sarren	\$	348,100.00
Schultz	\$	347,800.00
Blanning	\$	374,500.00
Wheeler	\$	355,900.00
Gordon	\$	308,800.00
SMV	\$	333,200.00
AK Growth	\$	30,000.00
Jones	\$	137,700.00
LaPlante	\$	322,900.00
Bever	\$	381,800.00
Agosti	\$	33,400.00
Agosti	\$	505,900.00
Sandhill	\$	21,600.00
Sandhill	\$	26,500.00
Heaven	\$	28,800.00
Newton	\$	301,000.00
Koppes	\$	308,600.00
Shirnberg	\$	332,800.00
Blackburn	\$	293,300.00
Robinson	\$	426,100.00
Keysaw	\$	369,400.00
Penrod	\$	406,500.00
McGrady	\$	490,000.00
McGrady	\$	28,800.00
Penrod	\$	169,700.00
Webb	\$	558,100.00
Brinkman	\$	814,000.00
Gease	\$	974,400.00
Wehr	\$	337,500.00
Boles	\$	283,300.00
Morse	\$	423,200.00
Satterfield	\$	184,500.00

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CDM	\$	199,400.00
Oyemi	\$	235,600.00
CDM	\$	328,400.00
Oyemi	\$	311,400.00
CDM	\$	33,800.00
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CDM	\$	20,200.00
CDM	\$	28,800.00
CDM	\$	28,800.00
CDM	\$	28,800.00
Pokryfki	\$	507,200.00
Grinnell	\$	30,800.00
Grinnell	\$	472,700.00
Vaitoa	\$	463,300.00
CDM	\$	27,900.00
CDM	\$	27,900.00
CDM	\$	27,800.00
CDM	\$	25,500.00
CDM	\$	21,600.00
CDM	\$	21,500.00
CDM	\$	40,800.00
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CDM	\$	15,400.00
CDM	\$	17,200.00
CDM	\$	15,400.00
CDM	\$	16,600.00
CDM	\$	22,700.00
CDM	\$	16,100.00
CDM	\$	16,000.00
CDM	\$	16,000.00
CDM	\$	16,300.00

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CDM	\$ 16,300.00
CDM	\$ 16,000.00
CDM	\$ 16,100.00
CDM	\$ 16,100.00
CDM	\$ 22,800.00
Penrod	\$ 414,000.00
Price	\$ 358,100.00
KP Borough	\$ 843,100.00
Gabriel	\$ 948,100.00
Gattenby	\$ 255,500.00
Hanke	\$ 44,300.00
Watkins	\$ 209,300.00
Pearcy	\$ 250,800.00
Alexander	\$ 201,900.00
Alexander	\$ 32,500.00
Elliott	\$ 25,300.00
Borgen	\$ 95,400.00
Thornton	\$ 81,700.00
Harrison	\$ 239,200.00
Leydonn	\$ 25,100.00
Leydonn	\$ 208,100.00
Earll	\$ 397,100.00
Turvin	\$ 328,700.00
Stuive	\$ 316,600.00
Stone	\$ 265,400.00
Stone	\$ 25,900.00
Coffield	\$ 321,600.00
Hensley	\$ 25,900.00
Kitowski	\$ 404,600.00
Shaishnikoff	\$ 261,300.00
Heid	\$ 243,600.00
Fogarty	\$ 24,700.00
Fogarty	\$ 487,800.00
Wallace	\$ 197,200.00
Jaramillo	\$ 366,300.00
Jaramillo	\$ 18,500.00
Bartell	\$ 79,500.00
Rakes	\$ 273,700.00
Keen	\$ 46,100.00

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Erocor	1.0	16 200 00
Fraser	\$	16,300.00
Endries	\$	16,300.00
Stonaker	\$	197,600.00
Lehner	\$	162,300.00
Walson	\$	18,500.00
Daniels	\$	193,500.00
Jones	\$	67,200.00
Sidecar630	\$	18,500.00
Grabowski	\$	257,200.00
Fraser	\$	208,500.00
Sagami	\$	18,200.00
Sagami	\$	18,300.00
Simonis	\$	17,300.00
Merchant	\$	139,700.00
Merchant	\$	18,500.00
Merchant	1\$	18,500.00
Merchant	\$	11,100.00
Andry	\$	274,600.00
Andry	\$	11,100.00
Davis	\$	24,600.00
Matiaco	\$	162,700.00
Aho	\$	53,200.00
Sagami	\$	150,900.00
Sagami	\$	22,500.00
Simonis	\$	16,300.00
Simonis	\$	13,400.00
Simonis	\$	13,500.00
Krull	\$	13,200.00
Simonis	\$	46,300.00
Simonis	\$	44,100.00
Simonis	\$	48,400.00
O'Malley	\$	301,700.00
Butcher	\$	47,500.00
Leydon	\$	56,100.00
Endevour	\$	47,400.00
Murray	\$	273,900.00
Eggertz	\$	388,900.00
Bredin	\$	315,300.00
Bloom	\$	629,400.00
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Montoya	\$ 271,000.00
Birchard	\$ 257,300.00
Leck	\$ 3,106,000.00
Andersen	\$ 296,400.00
Gabriel	\$ 485,900.00
Gabriel	\$ 34,700.00
Gabriel	\$ 36,500.00
Pate	\$ 335,000.00
Pate	\$ 87,700.00
Juliussen	\$ 467,400.00
Osborn	\$ 34,700.00
Osborn	\$ 724,700.00
Duniphin	\$ 433,400.00
Williford	\$ 349,800.00
Valenzuela	\$ 437,000.00
Schaffner	\$ 350,000.00
Haman	\$ 34,900.00
Haman	\$ 36,800.00
Fandrei	\$ 407,400.00
Total	\$44,663,800.00

approx. 1/2 of homes in range of water damage

Joseph L. Kashi Attorney at Law 205 East Beluga Soldotna, AK 99669 907-260-7732 (voice) 907-260-7739 (fax)

In the matter of appeal of the Kenai Peninsula ) Borough Planning Commission denial of a ) conditional land use permit that was requested ) for KPB Tax Parcel ID# 055-270-98, 055- ) 270-50, 055-270-51, and 055-270-52, a 19.36 ) acre site located in the Kalifornsky area (Tract ) A2A, Diamond Willow Estates Subdivision ) Part 11according to Plat 2012-93, Kenai ) Recording District, Third Judicial Court, State ) of Alaska; and lots C, D, & E, Diamond ) Willow Estates Subdivision Part - 10 ) according to Plat 2008-135, Kenai Recording ) District, Third Judicial Court, State of ) Alaska).

Sean Cude

Appellant.

# BOARD OF ADJUSTMENT KENAI PENINSULA BOROUGH

CASE NO. 2014-01

# **REPLY STATEMENT**

Appellant replies to the Opening Statements made in the appeal of the Kenai Peninsula Borough Planning Commission's 5-4 denial of Appellant's conditional land use permit ("CLUP").

As recently as its December 12, 2014 response to the Appellant's Motion to Supplement, the Kenai Peninsula Borough supports the Appellant's application here and urges the Board of Adjustment to reverse the Planning Commission's denial and grant Appellant's CLUP application.

However, eleven individuals describing themselves as "Diamond Willow Homeowners" (DWH) submitted an opening statement in support of the commission's 5-4 decision to deny the CLUP. The DWH statement include a list of purported "findings of fact" that DWH asserts as supporting the commission's decision.

Unfortunately, DWH's eleven point "factual finding" list contains zero statements actually

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adopted by the Planning Commission as findings of fact nor even those proposed by the Planning Staff. A mere summary listing of conclusory allegations, personal invective, and surmise derived from perceptions about long-ago operators cannot rise to the level of proven facts pertinent to this application, with this new owner, at this much later time. There are no facts set out by Appellees.

DWH misrepresents the record, as discussed below. In considering the DWH position, it is appropriate for this BOA to note that what DWH asserts as the Planning Commission's "factual findings" is merely a recitation of DWH's previous conclusory arguments, including sensationalistic claims asserting "desecration and severe loss" and "heinous disregard". The record below regarding the new owner, Appellant Cude, does not support DWH's emotionally-charged exaggerations. It is the function of this BOA to make its decision upon objective fact and balanced perspective.

Whatever the alleged sins from years ago by a long-gone operator, the Appellees simply have the wrong address on their sensationalistic claims. Mr. Cude, who has only owned the land for a very few years. He and Ms. Gibbs before him have been reclaiming the largest area of the pit where gravel excavation was largely concluded by previous operators. The area affected by this CLUP application is the remaining partially excavated four acres, about 1/5 of the original pit, which is now largely reclaimed to road level with clean KPB and State of Alaska fill, in the process bringing it back to the neat road-grade hay field that the Appellees state that they desire.

Appellant Cude, in his Opening Statement, has voluntarily proposed additional restrictions to minimize disturbance and difficulties and his volunteered additional safeguards are well above and beyond those required by the Borough and the State of Alaska.

The Board's sole focus must be upon the applicable ordinances and whether Appellant's CLUP application and the Planning Commission's initial 5-4 denial meet those mandatory legal standards. As the Borough Attorney has noted, to consider and act upon any factors other than those Cude, Case No. 2014-01 Reply Statement Page 2

explicitly provided by the existing KPB Ordinance and by State of Alaska regulations is to invite reversible legal error. That wastes everyone's time and resources, and brings the entire planning and zoning process into disrepute. The Borough Planning Staff determined, and the Borough Attorney has argued here, that Appellant Cude's CLUP application has met all legal standards and conditions and should be granted.

The 5-4 Commission denial and the Planning Commission's findings in support of denial do not meet those mandatory legal standards. This BOA decision should be based solely upon the applicable ordinances and proven facts rather than mere unproven allegations.

KPB Chapter 21.29 details the procedures and requirements for obtaining a CLUP for material sites and material extraction. KPB 21.29.040 sets out the purposes and standards of regulation of sand, gravel, or material site permits by stating:

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 properties;
- 3. Minimizes off-site movement of dust;
- 4. Minimizes noise disturbance to other properties;
- 5. Minimizes visual impacts; and

6. Provides for alternate post-mining land uses.

(Emphasis added).

KPB 21.29.050 sets forth the mandatory permit conditions that an application for a CLUP for sand, gravel, or material sites must comply with prior to approval by the commission. These are the sole legally mandatory conditions provided by ordinance and the sole legal basis for decision.

Although KPB 21.29.050(A14) also provides for additional voluntary conditions proposed

by an applicant, KPB 21.29.040 explicitly states that only the conditions set out in the ordinance

may be required for, or involuntarily imposed upon, a permit application to meet the standards in

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that section. Therefore, the commission may consider only whether an application meets the standards and conditions in these ordinances, and cannot impose different conditions or determining factors other than those specified by existing law. The BOA cannot consider extraneous concerns such as those contained in the DWH argument to the Planning Commission and reasserted in the DWH Opening Statement. The Borough Attorney's office has recognized this legally mandatory aspect in its Opening Statement arguing in support of Appellant's request to this BOA to reverse the 5-4 Planning Commission denial of the Appellant's CLUP.

At the risk of tediousness, Appellant sets out below a point by point analysis of the DWH Opening Statement and list of alleged "findings of fact." The record will show that this list does not contain a single finding of fact adopted by the commission. R 136-137. None of the alleged items in the DWH list were proven, nor even supported by anything actually factual on the record. Perhaps that is why DWH does not cite to the record at all. The DWH Opening Statement cannot properly support denial of the CLUP because DWH's statement and assertions are not aligned with the legal standards and conditions upon which the commission must base its decision.

The homeowners first refer to removal of gravel from the site prior to Appellant's purchase of the property and claim that this resulted in the opening of the water aquifer at the floor of the pit. Even if true, activities conducted years prior to the CLUP application by a prior owner bear no relevance to Appellant's application. No regulatory authority visiting the pit, including both the Borough and the State of Alaska, ever noted concerns nor found fault with Appellant Cude's application and none found that Appellant Cude had ever breached the aquifer, and there is no proof that Appellant has ever done this or likely would do so. The record only contains apocalyptic allegations by DWH. In any event, the occasional presence of some water in any excavation, no more than does a post-storm puddle on a gravel road, prove a breached aquifer without more.

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Next, DWH references the removal of gravel from the site prior to the CLUP application. DWH omits the crucial detail that Appellant had the Borough Planning Director's explicit permission to remove some previously-processed gravel. R 148. Appellant's approved removal of small amounts previously-processed gravel from the pit prior to his application does not support a denial of his CLUP.

DWH also claims that Appellant allegedly dumped a list of nine illegal waste items. These claims lack any factual basis and have no direct evidence in support of them. This was not a finding by the Planning Commission for the simple reason that there was no evidence to support claims that Appellant did this or permitted it. Appellant has the full support of DEC and was recently praised in writing by State of Alaska Department of Environmental Conservation's ("DEC") Solid Waste Program Regional Manager for his several compliant operations. Appellant invited the commission to visit the site to help dispel any doubts about illegal dumping. Transcript P 35, L 23-25. While the entire commission did not view the Appellant's site, the three commissioners who stated that they had visited the site voted unanimously in favor of granting Appellant's CLUP application. R 152.

While there is no evidence that Appellant dumped, or sanctioned dumping, anything illegal at the site, Appellant could not control what unknown persons may have done. Appellant has since removed and remedied at his own cost any improper items of which he is aware. To further deter any such problem, Appellant Cude proposes installing surveillance cameras on the site accessible to the Borough staff at any time to deter further trespass and unapproved disposal on his property, which in any event costs him money to remedy and remove.

DWH claims that Appellant purposefully dumped and filled allegedly illegal materials into an open water aquifer. Again, this statement lacks a factual finding or any basis in fact. In any event, the allegation makes no sense. Why would Appellant Cude spend the money to deliberately bring

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illegal materials on to his site, risk his good reputation with the State of Alaska on his several projects, and foul his newly acquired property by burying such items rather than taking them to the Borough landfill? This unproven allegation, too, would seem to be the product of overheated rhetoric and personal attack, or be applicable only to some long-ago operator rather than Appellant Cude. What surrounding residents may have previously done without permission should not occur again as the proposed surveillance camera system accessible to the Borough and State authorities will enable identification of any trespassers, dumpers, and potential saboteurs.

DWH then makes a more serious, and very inappropriate, misrepresentation of fact: DWH represents to this BOA that a DEC hydrologist testified against the CLUP. DWH states: "Threat to our open water aquifer as testified by Charlie Palmer [*sic*], licensed hydrologist with the State of Alaska Department of Environmental Conservation who presented a formal hydrology report on the dangers of allowing a material site with this open water aquifer exposed."

However, the record shows that the hydrologist, Mr. Palmer, merely submitted a neutral email comment to ensure that his office at DEC would receive notice. R 29. At no point did Mr. Palmer testify to a "threat" to an aquifer by Appellant Cude nor did he make or present a "formal hydrology report" pertaining to this pit and the pending CLUP or refer to the remaining small unreclaimed area as an exposed water aquifer or as the possible cause of any alleged dangers.

The DWH opening statement seriously, and rather evidently, mischaracterizes Mr. Palmer's neutral comment that was intended to ensure proper notice. Mr. Palmer's neutral Email does not support the denial of Appellant's CLUP nor does it support the DWH position. DWH's misrepresentation of that Email is a prime, unfortunately typical, example of DWH's unsuppoprted factual misrepresentations before the Planning Commission and this Board purporting to be fact.

DWH's next statement describes alleged damage to a Borough-maintained road. DWH

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claims that a road is "permanently scarr[ed]" and has "layers of mud and organic materials on top of the gravel that inhibit safe driving conditions." However, there is no evidence that Appellant caused any damage to the referenced Borough road or even yet used it for anything other than minimal traffic. The Borough, which owns and maintains the referenced road, certainly has not made any objection or claim. Alleged past damage by some other operation does not indicate that Appellant will damage any roads if the CLUP is granted.

The large Quality Asphalt Paving pit lies just across the street and the even larger Davis pit is just down the road. Yet, there has been no evidence of any demonstrable road damage caused by these much larger existing operations and their trucks.

Appellant Cude would be a minimal addition, at most. In any event, if the CLUP is granted, Appellant's access will avoid the DWH area and the originally proposed access road, Virginia Drive, and instead use a very short distance on Canvasback and then directly access paved Ciechanski Road. The roads in question are Borough maintained roads. The applicable KPB Road Service Area received notice of the proposed CLUP but did not raise any concerns about any alleged past damages or about possible future damage to Borough roads. Appellant's initial application already adequately addressed this concern by meeting the applicable conditions and standards regarding Borough roads and Appellant's recently proposed voluntary charge of access completely obviates any concern regarding Virginia Drive. Appellant will comply with the requirement of KPB 21.29.050(A)(8) to conduct operations in a manner so as to not damage borough roads as required by KPB 14.40.175. There is no basis here for denial.

The DWH Opening Statement then addresses "dust and noise pollution in the surrounding neighborhoods." The record does not contain any evidence or finding to suggest that the material site would cause any dust and noise pollution that violates Borough ordinances. It is worth recalling

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that this pit, and the much larger nearby QAP and Davis pits have been in operation for decades, long before most residents ever built. People knew the character of the area, and the several gravel pits, before buying and building. Merely reviewing the recorded Diamond Willow covenants, contained in any title report and legal notice of record, clearly show that this pit has always been reserved from residential use and set aside for this sort of use.

Despite already meeting State and Borough standards, Appellant is willing to further accommodate expressed concerns by voluntarily curtailing his operations by not processing the material with a rock crusher on site, in order to specifically to further minimize dust and noise pollution. Transcript P 37, L 13-18. Thus, those DWH concerns will be adequately addressed because Appellant's proposed site not only complies with all of the standards and conditions in the Borough ordinances that ensure that dust and noise pollution will be sufficiently limited but goes beyond what is legally required of him. KPB 21.29.040(A)(3), KPB 21.29.040(A)(4), KPB 21.29.050(A)(10), KPB 21.29.050(A)(2)(c), KPB 21.29.050(A)(13).

DWH then makes the outlandish claim, and unfortunately there is no other word that comes to mind, that Appellant's CLUP would cause the "desecration and severe loss of the Kenai River bluff..." This property is not even directly on, nor visible from, the Kenai River, but well behind it. The record is devoid of evidence or factual findings to support this allegation. DWH alleges that this statement was testified to "by homeowners on Virginia Drive," but only one commenter, Chris Wehr, addressed concerns about the river, stating, "my concern is with all the heavy traffic, possible blasting, all the other equipment moving, my bluff going to be going down the river." Transcript P 30, L 7-9. Aside from the lack of any plausible reason why concluding a small gravel pit some distance away might cause such a problem, natural erosion of the river bank is a much more likely cause of any loss to Mr. Wehr, and the likelihood of erosional loss has always been evident to

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persons who choose to build on an eroding river bluff. There was not even an allegation of any such problem plausibly attributable to the much larger former operations in the now-reclaimed portion of the pit while it was being excavated to pave Ciechanski Road.

There is no factual finding nor basis in fact to support Mr. Wehr's concerns and there is certainly no basis to support the allegations of "desecration and severe loss of the Kenai River bluff." If anything, Appellant Cude's own river lot is closer. This is an example of the DWH tendency to appeal to hyperbole. Further, Appellant has as much incentive to protect the bluff, not damage it, because he owns a river front lot on the bluff immediately adjacent to the proposed CLUP. R 146.

DWH next alleges that the three flag lots, C, D, and E, previously mined for gravel, are residential. This is factually incorrect. The flag lots do not have any current Borough or city zoning or classification with regards to residential use or any other activity. R 8. The only existing legal classification of the recently-platted flag lots is found in the Diamond Willow Estates Building and Use Restrictions, which exempts these flag lots, as part of the original Tract A, from covenant restrictions to residential use and permits industrial use. R 55. In any event, even if there were applicable covenant restrictions or classifications on these flag lots, and there are not, then as Mr. Best explained and the homeowners concede later in their opening statment, covenants are not a factor that the commission should consider and are not a standard they must uphold. Transcript P 61 L 20-25, P 62 L 1-3. These three flag lots, C, D, and E, having been previously mined for gravel and in part deeply re-filled with dirt and organics, are no longer suitable for residential uses and cannot physically support the construction of a significant structure.

DWH then asserts that the Borough will be exposed to increased expenses to maintain the proposed access routes due to alleged damage caused by heavy trucks and equipment. This statement

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also lacks a basis in fact, as discussed above. Appellant is bound to comply with the condition in KPB 21.29.050(A)(8) to conduct operations in a manner so as to not damage borough roads as required by KPB 14.40.175 and will be subject to fines and other remedies set forth in KPB Chapter 14.40 if any operations do damage the roads. Speculative increase in Borough maintenance expenses due to alleged road damage is not a factor the commission or the Board should consider where the Borough itself disclaims concern.

The last item on the DWH list alleges "heinous disregard" on the part of Appellant towards the Diamond Willow Estates Building and Use restrictions and threatens litigation. This, again, is a baseless accusation. As discussed above, the lots in the proposed site are exempt from the covenants' residential use restrictions and the Borough does not consider covenants as an applicable factor, as the homeowners concede. Threatening litigation is counterproductive and an inappropriate consideration here. The record contains no factual support for the claim that Appellant has in any way violated applicable provisions subdivision's covenants. Indeed, the proposed CLUP is already exempt from them as a matter of record since 1975 and gravel has been extracted since 1982.

In addition, DWH raises a Local Option Zoning ("LOZ") issue because the LOZ allegedly "will further compromise the validity of the CLUP request from Mr. Cude." While the various Local Option Zoning districts were rather evidently proposed to hinder Appellant's CLUP process, the CLUP application predates the LOZ.

Because this allegation is only recently asserted by DWH after the CLUP decision by the Planning Commission, Appellant will refer merely to public record of the Assembly and Planning Commission actions in that regard, and asks that judicial notice be taken of that record. The public record will show that the Assembly has deferred action on all LOZ applications in the area until the BOA's decision. Also as a matter of public record, the Planning Commission has recommended that

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the Assembly remove all lots affected by this CLUP from any and all proposed LOZ districts, thus avoiding any conflict with the CLUP.

DWH's Opening Statement opposing grant of the CLUP demonstrates a fundamental absence of supporting evidence. The direct evidence in the record simply does not support DWH's rather florid allegations and does not track the requirements of the CLUP ordinance. All appropriate DWH concerns are adequately addressed by applicable Borough ordinances, and even more so by the additional protections volunteered by Appellant Cude, who in any event is a new owner being tied to alleged long-ago wrongs by other operators. The proposed conclusion of gravel excavation on the last 20% of a largely reclaimed pit dating to 1982 or earlier meets the standards and conditions imposed by both KPB and State of Alaska. Appellant's proposed inclusion of video surveillance always accessible to the Borough will ensure continued compliance.

DWH's alleged "findings of fact" lack any objectively proven facts and does not contain a single finding of fact made by the 5-4 Planning Commission denial. As the Borough Attorney separately argues, the 5-4 Planning Commission denial fails to track the mandatory legal standards of the KPB Ordinance, rather mistakenly asserting other concerns or conditions not part of the KPB Ordinance and thus not a valid legal basis for denial.

The Board of Adjusters should reverse the commission's decision and approve the CLUP permit as Borough Staff recommended after visiting the site and extensively considering the application.

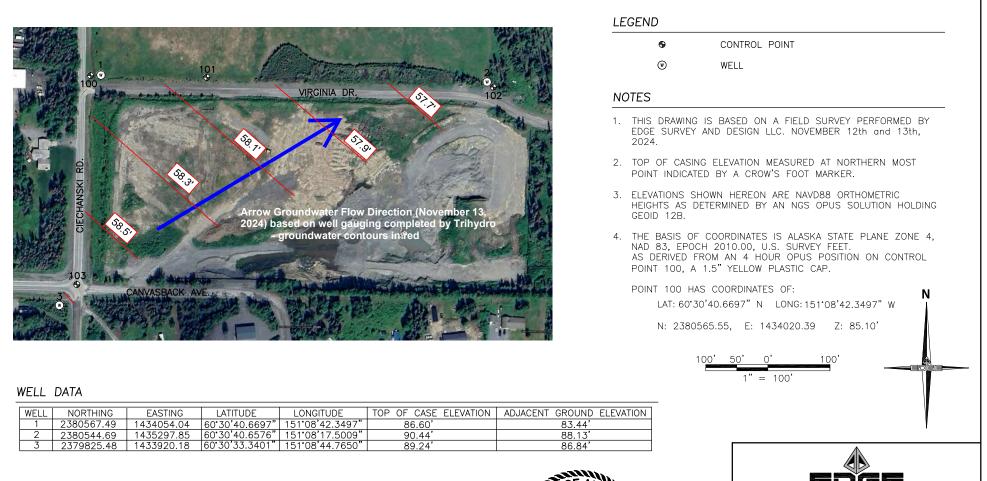
Dated this 16<sup>th</sup> Day of December, 2014

Joseph L. Kashi, AK Bar #7811'107 Attorney for Defendant

Cude, Case No. 2014-01

Reply Statement

Page 11



#### CONTROL POINTS

CONTROL POINT	NORTHING	EASTING	ELEVATION	DESCRIPTION
100	2380565.55	1434020.39	85.10	YELLOW PLASTIC CAP
101	2380559.83	1434394.48	83.70	STEEL CAP
102	2380528.24	1435317.09	89.55	STEEL CAP
103	2379892.61	1433976.13	86.66	MONUMENT



SURVEY AND DESIGN, LLC SURVEY AND DESIGN, LLC 8000 KING STREET Phone (907) 344-5990 Fax (907) 344-7794	
MONITORING WELL SURVEY	

DRAWN BY:	DATE:	PROJECT:
JY	11/13/2024	24-631
CHECKED BY: RS	SCALE: 1'=100'	SHEET: 1 OF 1

33103

# WS&SCO. WATER SYSTEMS & SERVICE CO.

47360 EMERALD AVE. KENAI, ALASKA 99611 907-776-8066



Commercial Well #3

ADDING STORE

Lot	Block	Subdivision	Borough	Section Qtrs.		Section	Township	Range	Meridian
266		Willow Brook North							
Well	Owner:							· .	
		nael Gebgard			Well De	p <b>th:</b>	D	ate Of Co	ompletion:
		ow Brook Home Owner	s Association		Denth of F		fi	Q / 17	7 / 08
		. Box 584 ai, Alaska 99611			Depth of C	Casing $150$	ft 45ft	<u> </u>	<u> </u>
	Data:							<u> </u>	Casing Top
Dept From	n: To	Material,	Type, Color		· •	Ground Sur	Casing 2	' above g	round level
0	2	Top Soil			Depth to	Static W	ater Level:		
2	7	1 ·			50				
7	32	Gravel / Sand			Method	of Drillin	2:	· · · · · · · · · · · · · · · · · · ·	
32	56	Clay					_Cable Tool		Other
56	74	Sand / Gravel					,		
74 97	97	Clay Silt			Use of W		Monitor X	Dublic	Other
115	129	Clay			Dom	I		ruone	_ Other
129	150	Gravel / Sand			Casing	Size:	6	in. to 14	5 ft
					Type: We	elded Stee		in. to	ft
					Well Int	ake Open	ing Type:		
					1	-	$\underline{X}$ Screened	0	pen Hole
		Well # 1 has stati When well # 3 wa							
		110 gpm, well # 1			Screen I	40	6dia Length	m. <u>6</u>	in.
		of 3'.		•••••	Scr	een set at	<u>145' to 150'</u>		
					Grout T	ype: Cas	ing Seal		
			0000		Volume U	sed 1001	bs Dep	th to Top 3	<u>50'</u>
		SB 5-11-15	NUNN		Develop	ment Met	hod: <u>Air</u> , Pu	mp. Bailin	a
		LAS 222°	14				Maritalian (		
					Draw Do	own Test	& Yield:		ft of Draw
					Down		<u>10</u> gpm		
				Tested	with 5 hp	pump. D	epth of 100'	from top	of casing

Thank you for choosing Water Systems & Service for your water well needs.

Touce Augen Authorized Representative

1250

<u>9/17/08</u> Date



33103

# W S & S CO. WATER SYSTEMS & SERVICE CO.

47360 EMERALD AVE. KENAI, ALASKA 99611 907-776-8066



Project: Lot 266 Willow Brook North - Willow Brook Home Owners Association Project No.: Commercial Well # 3 Completed By: Water Systems & Service Co. Date: 9/17/08

WELL CASING:	WATER LEVEL:	PUMP:
Diameter: <u>6</u> in.	Static: 50 ft.	Type: Sub.
Depth: <u>145</u> ft.	Drawdown: <u>17</u> ft.	Size: 5 hp
Hgt. Above Ground: 2 ft.	Recovery: <u>15</u> min.	Depth: <u>100</u> ft

<u>SCREEN:</u> Depth: <u>145</u> to <u>150</u> ft. Slot Size: <u>40</u> Length: <u>5</u> ft.

A LAND

Final installed pump depth 130'

#### WATER SYSTEM FLOW TEST

Time	Elapsed <u>Time Min.</u>	Depth to <u>Water, ft</u>	Drawdown/ <u>Recovery</u>	<u>Flow</u>	Total <u>Gallons</u>
1:30 pm	0	50 (swl)	0	0 gpm	0
2:00	30	67	17	110	3300
2:30	60	67	17	110	6600
3:00	90	67	17	110	9900
<u>3:30</u>	120	67	17	110	13200
4:00	150	67	17	110	16500
4:30	180	67	17	110	19800
5:00	210	67	17	110	23100
5:30	240	67	17	110	26400

Recovery

5:30 pm	0	67	0	0	
5:40	10	54	13		
5:50	20	57	17		
6:00	30	57	17		
6:15	45	57	17		
6:30	60	57	17		

Authorized Representative

\_<u>9/17/08</u> Date







WAILE STOLLMS & SERVICE Rt 1. Box 1517 Kenel Alaska 1

1517 Kenel, Alasia 99611 907-776-8066

LAJ 22294

community well

Dated this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_, 1998

Hall Quality Builders P.O. Box 2829 Kenai, Alaska 99611

Dear XXX Hall Quality Builders

The following is a well log which is located on Lot <u>266</u> Block <u>, Willow Brook North Commorcial Well #1</u> Subdivision, located in the Kenai Recording Destrict. As you have requested said well to be drilled, we are submitting the following information regarding your well:

	Τσ Το Το Το Το Το Το Το	8 32 54 74 98 115 130	Feet Feet Feet Feet Feet Feet	Gravel/ Sand Clay Sand/ Gravel Clay
Static vater	level at	-49		- <u>20</u>

A submersible pump with a rating of <u>10</u> h.p. was set as requested and the well yield has the capacity of <u>150</u> g.p.m. A screen was ASSENX set as requested or required.

We thank you for choosing Water Systems & Service Company to serve your water well needs. If you have any further questions or problems, please call

Sincerely,

lincoretto X Kyn

Kenneth D. Dyer or Antionette R. Dyer Owners 585-11-15 D D D D

WATER	SYSTEMS	8	SERVICE	COMPANY

# WOOD UU.

382 902

WATER SYSTEMS & SERVICE Rt. 1, Box 1517 Kongl Ajaska 99611

907-776-8066

Project: Hall Quality Builders Commercial Well # 1
Project No.: Lot 266 Willow Brook North
Comp. By: Water Systems & Service Co.
Date: 5/30/98

WELL CASING:WATER LEVEL:PUMPDiameter:6"Static: 49'TypeDepth:149'Drawdown:28'DeptHgt.aboveGround:2.5'Recovery:45 min

PUMP: Type: 10 HP Depth 147+

<u>SCREEN:</u> 1 Depth: 144' to 149' Size: # 40

#### WATER SYSTEM FLOW TEST

<u>Time</u>	Elapsed <u>Time Mín.</u>	Depth To Water, Ft.	Drawdown/ <u>Recovery</u>	Flow	Total Gallons
10:00 Am	0	49 (SW1)	0	0 GPM	0
10:30	30	61	12'	150	4500
11:00	60	64	15'	150	9000
11:30	90	66	17'	150	13500
12:00 pm	120	69	20'	150	18000
12:30	150	71	22'	150	22500
1:00	180	74	25 '	150	27000
1:30	210	76	27 '	150	31500
2:00	240	77	28'	150	36000

#### Recovery

10:00am 5,	/31/980	77	0	0	
10:10	10	72			
10:20	20	66	11:1		
10:30	30	59	1.8.1		
10:45	45	49	28'		
11:00	60	49	281		

5-31.98 01 Šignature Date

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Î.

		ok North Lot 2 Elapsed	Depth To	Drawdown/		Total
	Time	<u>Time Min</u>	Water, Ft.	Recovery	Flow	Gallon
	3:00	300	77	28 '	150	45000
	4:00	360	77	281	150	54000
	5:00	420	77	28'	150	63000
	6:00	480	77	28'	150	72000
	7:00	540	77	28'	150	81000
	8:00	600	<b>77</b> '	28'	150	90000
	9:00	660	77	28 '	150	99000
	10:00	720	77	28'	150	108000
	11:00	780	77	28 '	150	117000
5/31/98	3 12:00am	840	77	28 '	150	126000
	1:00	900	7 <b>7</b>	28'	150	135000
	2:00	960	7 <b>7</b>	28'	150	144000
	3:00	1020	77	28'	150	153000
	4:00	1080	77	28'	150	162000
	5:00	1140	77	28'	150	171000
	6:00	1200	77	281	150	180000
	7:00	1260	77	28'	150	189000
	8:00	1320	77	281	150	198000
	9:00	1380	77	28'	150	207000
	10:00	1440	77	28 '	150	216000

# Flow Test continued from Commercial Well # 1

,



DIVISION OF ENVIRONMENTAL HEALTH Drinking Water Program

> 555 Cordova Street Anchorage, Alaska, 99501 Main: 907.269.7656 Toll free: 866.756.9656 Fax: 907.269.7650

July 14, 2022

# Recommendations for general project activities associated with, or near, a public water system source

The following recommendations are intended to address potential impacts of projects, to be permitted or otherwise, in which planned activities are associated with, or near, a public water system (PWS) source (e.g., water well, spring, surface water intake, etc.). The key aspects of these recommendations are to identify nearby PWS sources, establish appropriate points of contact for the applicant and PWS, and implement best management practices.

#### Authority:

#### **<u>18 AAC 80</u>**.015. Well protection, source water protection, and well decommissioning.

- a) A person may not
  - (1) cause pollution or contamination to enter a public water system; or
  - (2) create or maintain a condition that has a significant potential to cause or allow the pollution or contamination of a public water system.

#### Recommendations:

- Identify on a legible map if any part of the project is within a Drinking Water Protection Area (DWPA) for a PWS source. DWPAs can be found using the interactive web map application, "Alaska DEC Drinking Water Protection Areas", located at <u>https://dec.alaska.gov/das/GIS/apps.htm</u>. Links to basic instructions for using this web map can be found on the map description page. If you experience problems accessing the map, please contact the Drinking Water Source Protection group at (907) 269-7549, or <u>chris.miller@alaska.gov</u>.
- 2) Where the project/permit intersects a DWPA, notify the associated PWS contact and provide the following:
  - a) A brief description of the project location and associated activities; and
  - b) Project contact information.

PWS contact information can be obtained using the hyperlink from within the pop-up information for each PWS source in the web map, or directly by using the online application called "Drinking Water Watch", found at <u>https://dec.alaska.gov/DWW/</u>.

3) Within the identified DWPA, control stormwater and wastewater discharge such that it is directed away from the PWS.

- 4) Within the identified DWPA, restrict project/permit activities that could significantly and/or permanently change the natural surface water or groundwater levels of the water sources immediately contributing to the PWS.
- 5) Within the identified DWPA, implement voluntary best management practices suited to your project where equipment storage, maintenance and operation, or other potential sources of contamination are located to minimize the potential for PWS source contamination.
- 6) Restrict or limit equipment storage, maintenance and operation, and other potential sources of contamination, within the following high-priority DWPA Zones:
  - a) Zone A DWPA (several-months-time-of-travel for contributing groundwater, or 1,000-foot buffer of the contributing surface water body and its immediate tributaries);
  - b) Zone E DWPA (1,000-foot buffer of the contributing surface water body and its immediate tributaries for a source using groundwater under the direct influence of surface water (GWUDISW)); or
  - c) Provisional DWPA (1,000-foot radius around a PWS source).
- 7) All non-proprietary data related to the project/permit, including but not limited to, water quality results (field and lab), survey data, water levels, subsurface lithologic descriptions and depth, and groundwater flow direction and gradient information, should be made available to the permitting agency upon request.
  - a) When associated with the development, construction, modification, or operation of a PWS, follow the requirements in DEC Drinking Water regulations 18 AAC 80, <u>https://dec.alaska.gov/eh/dw/regulations/</u>.
- 8) Keep a list of PWS contacts and agency spill reporting contacts readily available.
  - a) Immediately notify contacts of any potential contamination event, such as spills or excess erosion.

Sincerely,

Charley Palmer, *Hydrologist 3* DEC Drinking Water Source Protection E-mail: <u>charley.palmer@alaska.gov</u> Phone: (907) 269-0292

<u>Alternate contacts</u>: Chris Miller, Environmental Program Specialist 4, <u>chris.miller@alaska.gov</u> Kenna Billups, Environmental Program Specialist 2, <u>kenna.billups@alaska.gov</u>

# Alaska DEC User's Manual BEST MANAGEMENT PRACTICES FOR GRAVEL/ROCK AGGREGATE EXTRACTION PROJECTS

Protecting Surface Water and Groundwater Quality in Alaska September 2012



Developed for:

Developed by: Shannon & Wilson, Inc. 2355 Hill Road Fairbanks. Alaska 99709 Alaska Department of Environmental Conservation Division of Environmental Health-Drinking Water Program and

Division of Water 555 Cordova Street Anchorage, Alaska 99501 Alaska DEC User's Manual

# BEST MANAGEMENT PRACTICES FOR GRAVEL/ROCK AGGREGATE EXTRACTION PROJECTS:

#### PROTECTING SURFACE WATER AND GROUNDWATER QUALITY IN ALASKA

September 2012

Developed by: Shannon & Wilson, Inc. 2355 Hill Road Fairbanks, Alaska 99709

For: Alaska Department of Environmental Conservation Division of Environmental Health Drinking Water Program and Division of Water 555 Cordova Street Anchorage, Alaska 99501

#### PREFACE

This document is a revision to the *User's Manual: Best Management Practices for Gravel Pits and the Protection of Surface Water Quality in Alaska*, dated June 2006. Revisions were made in 2012 to provide updated information regarding permitting processes and agencies, and to address the growing need for best management practices pertaining to the protection of groundwater.

#### ACKNOWLEDGEMENTS

This 2012 revision of the *User's Manual* is the result of the collective efforts and contributions of a number of individuals and organizations. The Alaska Department of Environmental Conservation would like to thank all of those that contributed to the development of this document. Special thanks go to the 2012 Revision Interagency Review Team:

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Misha Vakoc and the Region 10 United States Environmental Protection Agency, Office of Water

Cover Photo Credits:

Top photo: Used with permission of Central Paving Products, Palmer, Alaska

#### DISCLAIMER

This document is intended to be used as a general guide to assist the aggregate mining community in designing and implementing effective best management practices for protecting surface water and groundwater quality. It is not intended to be the only source of such information or to provide legal advice of any nature. Users of this document are encouraged to seek legal, technical, and engineering advice from qualified professionals who are familiar with their project area. The organizations and individuals contributing to the preparation of this document expressly disclaim any responsibility or liability for any acts or omissions taken by any party as a result of this document's use.

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## ACRONYMS

	Alester Administration Code	
AAC	Alaska Administrative Code	
ADR	Alaska Department of Revenue	
DEC	Alaska Department of Environmental Conservation	
AMD	Acid Mine Drainage	
APDES	Alaska Pollutant Discharge Elimination System	
BMP	Best Management Practices	
CGP	Construction General Permit	
DMLW	Division of Mining, Land, and Water	
DNR	Alaska Department of Natural Resources	
EDGP	Excavation Dewatering General Permit	
EPA	United States Environmental Protection Agency	
FBATFE	Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives	
	rederar Bureau or medilor, robacco, rinearins, and Explosives	
НМС	Hazardous Materials Control	
НМС	Hazardous Materials Control	
HMC MSGP	Hazardous Materials Control Multi-Sector General Permit	
HMC MSGP NOI	Hazardous Materials Control Multi-Sector General Permit Notice of Intent	
HMC MSGP NOI NOA	Hazardous Materials Control Multi-Sector General Permit Notice of Intent Naturally Occurring Asbestos	
HMC MSGP NOI NOA NPDES	Hazardous Materials Control Multi-Sector General Permit Notice of Intent Naturally Occurring Asbestos National Pollutant Discharge Elimination System	
HMC MSGP NOI NOA NPDES NTU	Hazardous Materials Control Multi-Sector General Permit Notice of Intent Naturally Occurring Asbestos National Pollutant Discharge Elimination System Nephelometric Turbidity Units	
HMC MSGP NOI NOA NPDES NTU PWS	Hazardous Materials Control Multi-Sector General Permit Notice of Intent Naturally Occurring Asbestos National Pollutant Discharge Elimination System Nephelometric Turbidity Units Public Water System	
HMC MSGP NOI NOA NPDES NTU PWS SWPPP	Hazardous Materials Control Multi-Sector General Permit Notice of Intent Naturally Occurring Asbestos National Pollutant Discharge Elimination System Nephelometric Turbidity Units Public Water System Storm Water Pollution Prevention Plan	
HMC MSGP NOI NOA NPDES NTU PWS SWPPP TAH	Hazardous Materials Control Multi-Sector General Permit Notice of Intent Naturally Occurring Asbestos National Pollutant Discharge Elimination System Nephelometric Turbidity Units Public Water System Storm Water Pollution Prevention Plan Total Aromatic Hydrocarbon	

# **1 INTRODUCTION**

# 1.1 Purpose of the Manual

Aggregate is an important resource for Alaskan communities, used extensively in road building, foundation preparation, concrete, and other applications. Alaskan communities also depend on the quality of their surface and groundwater for drinking and livelihood. Aggregate mines occur throughout Alaska, and their improper operation can result in adverse impacts to surface water and groundwater quality. The primary purpose of this manual is to help protect the quality of Alaska's water from such impacts. One of the most effective

#### Key Points – Chapter 1

- The manual provides information on permitting and best management practices for gravel and rock aggregate operations to protect surface water and groundwater quality.
- The manual provides meaningful and comprehensive guidelines that will reduce impacts to water quality.

ways to control impacts is the use of effective best management practices (BMPs). BMPs are physical, chemical, structural, and/or managerial techniques to minimize water pollution. This manual provides owners and operators of gravel/rock extraction operations in Alaska with guidance regarding permitting processes, as well as a comprehensive list and description of BMPs which can be implemented to help meet permit requirements, protect the quality of water, and reduce conflict with the public.

# 1.2 Organization of the Manual

This manual is organized into the sections described below:

Chapter 1 –	Introduction, including how to use the manual.		
Chapter 2 –	Provides information on state and federal permit requirements.		
Chapter 3 –	Describes how to determine potential impacts.		
Chapter 4 –	Gives guidelines and recommendations for protecting surface water and groundwater quality.		
Chapter 5 –	Describes how to choose Best Management Practices.		
Chapter 6 –	Contains BMPs for preventing chemical pollution.		
Chapter 7 –	Contains BMPs for erosion control and stormwater management.		
Chapter 8 –	Contains operational BMPs.		
Chapter 9–	Contains BMPs for reclamation.		
Chapter 10–	Provides a list of references used in the manual.		
Appendix A -	Provides definitions for terms used in the User's Manual.		
Appendix B -	- Lists contacts throughout Alaska for additional information on gravel pit BMPs and requirements.		
Appendix C -	- Provides additional resources of information.		
Appendix D -	- Provides limited information regarding state and federal permit requirements.		
Appendix E -	- Is an index of BMPs presented in this manual.		

# **1.3 How to Use the Manual**

This manual is appropriate for use by owners and operators of gravel and rock aggregate extraction projects throughout Alaska. The techniques and practices given in this manual can be applied to both small and large-scale operations. Personnel that do not have extensive expertise in designing and implementing control measures may benefit from review of the entire manual. Personnel that have previous experience with the planning, design, and implementation of BMPs may benefit primarily from the BMP guidance given in Chapters 6 through 9, indexed in Appendix E – Best Management Practice Index.

# 2 PERMITTING AND REGULATORY REQUIREMENTS

This section provides a brief description of the DEC Alaska Pollutant Discharge Elimination System (APDES) Multi-Sector General Permit, DEC's Excavation Dewatering General Permit, the Alaska Water Quality Criteria, and Alaska Department of Natural Resources (DNR) Temporary Water Use Permit (TWUP) and Material Sale application as they apply to gravel pits. This is not intended to be a complete list

#### Key Points – Chapter 2

Links to Key Documents:

- EPA's Multi-Sector General Permit: <u>http://cfpub.epa.gov/npdes/stormwater/msgp.cfm</u>
- DEC's Excavation Dewatering General Permit: <u>http://www.dec.alaska.gov/water/WPSDocs/2009DB0003\_pmt.pdf</u>
- Alaska Water Quality Criteria (18 AAC 70): <u>http://www.dec.state.ak.us/regulations/index.htm</u>
- > EPA's NPDES Website: <u>http://cfpub.epa.gov/npdes/</u>

of regulatory requirements but instead to provide a brief introduction to major regulations for gravel pits with respect to stormwater. Appendix D presents a summary of state and federal permits that may apply to material extraction operations in Alaska.

DEC permit requirements:

- APDES MSGP
- Excavation dewatering
- Water quality criteria

DNR permit requirements:

- Temporary Water Use Permit
- Material Sale Application

# 2.1 APDES Multi-Sector General Permit and Other APDES Requirements

Certain stormwater discharges, including those from industrial sites such as gravel pits, are regulated under the DEC APDES program. Both the discharge of stormwater and the discharge of dewatering effluent (uncontaminated groundwater) from gravel pit operations are permitted under the APDES Multi-Sector General Permit (MSGP) under Sector J (Mineral Mining and Dressing).

To apply for permit coverage under the MSGP, a facility operator must complete and submit to DEC a Notice of Intent (NOI) form. To comply with the permit, the facility operator must prepare and follow a Storm Water Pollution Prevention Plan (SWPPP). To discontinue permit coverage, a facility operator must complete and submit to DEC a Notice of Termination form.

There are certain circumstances where a general permit is either not available or not applicable to a specific operation or facility. In this type of situation, a facility operator must obtain coverage under an individual permit. DEC will develop requirements specific to the facility.

Some permits may remain in effect that had been issued by the Environmental Protection Agency (EPA) under an old permit that has since expired. For example, for North Slope Oil and Gas Exploration activities, gravel pits/material sites used for construction of pads and roads were permitted under a Slope-wide NPDES General Permit AKG33-0000. However, pursuant to Section 401 of the Clean Water Act, the state of Alaska certifies EPA permits, which then become enforceable by the state.

# 2.2 Excavation Dewatering General Permit

Authorization for excavation dewatering is covered under DEC's Excavation Dewatering State Permit (Permit No. 2009DB0003). The general permit covers wastewater disposal from excavations on sites located less than one mile from a contaminated site and excavations located more than one mile from a contaminated site not eligible for coverage under the ADPES MSGP. Eligible projects covered under this general permit include gravel extraction.

A Notice of Disposal must be submitted to DEC when a total excavation dewatering discharge volume equal to or greater than 250,000 gallons is planned. A Notice of Disposal is not required if the total discharge volume is less than 250,000 gallons. However, it is important to note that the water quality standards in 18 AAC 70 and the terms and conditions of the general permit still apply. If DEC determines that a known contaminated site is located within one mile of a proposed dewatering activity and the wastewater discharge volume is equal to or greater than 250,000 gallons, additional information regarding the contaminated site including hydrogeologic conditions at the site may be needed. Monitoring wells and/or proposed treatment may be additionally required. Monitoring requirements are listed in the general permit.

Management practices must ensure that the dewatering operation is conducted so that the terms of the general permit are met. Some BMPs are outlined in the permit. This may include leaving the dewatering site, including any settling ponds, in a condition that will not cause degradation to the receiving water beyond that resulting from natural causes. If an earthen channel to transport wastewater from a dewatering operation to the receiving water is used, construction equipment should not be driven in the channel, which will result in re-suspended sediment. Fuel handling and storage facilities shall be managed to ensure petroleum products are not discharged into receiving waters.

The DEC dewatering permit was intended to authorize short-term discharges associated with construction. Gravel pits tend to be on-going projects, sometimes planned in phases. Although DEC has not issued an individual permit for a gravel operation, it is an option for larger, on-going gravel extraction with wastewater discharge associated with it.

# 2.3 Alaska Water Quality Criteria

Water quality criteria adopted by the State of Alaska are found in the Water Quality Standards in 18 AAC 70.020(b) and the DEC's Alaska Water Quality Criteria Manual for Toxic and Other Deleterious Organic and Inorganic Substances (May 26, 2011). These criteria were taken from the EPA criteria documents and Alaska Drinking Water Regulations in 18 AAC 80. Although these EPA criteria documents are no longer adopted directly into state regulation, they contain valuable information on the science used to create the criteria limits and may affect how the criteria are applied or modified. DEC can use these criteria as limits in the absence of mixing zones or other water quality standard exceptions in 18 AAC 70.

Pollutants that might be expected in the discharge from gravel pits are sediment, turbidity, total metals, and petroleum hydrocarbons. Table 2-1 and Table 2-2 contain numeric surface water quality standards for sediment, turbidity, and petroleum products in freshwater and marine waters. Narrative criteria are not included in Table 2-1 and Table 2-2. Criteria for total metals can be found in *Alaska's Water Quality Criteria Manual for Toxic and Other Deleterious Organic and Inorganic Substances* (2011). Alaska regulations (18 AAC 70) should be consulted for a full list of requirements, both numeric and descriptive criteria, and uses.

# 2.4 Temporary Water Use Permit

A water right is a legal right to use surface or groundwater under the Alaska Water Use Act (AS 46.15). A water right allows a specific amount of water from a specific water source to be diverted, impounded, or withdrawn for a specific use. When a water right is granted, it becomes appurtenant to the land where the water is being used for as long as the water is used. If the land is sold, the water right transfers with the land to the new owner, unless the DNR approves its separation from the land. In Alaska, because water is a common property resource wherever it naturally occurs, landowners do not have automatic rights to groundwater or surface water.

A temporary water use authorization may be needed if the amount of water to be used is a significant amount, the use continues for less than five consecutive years, and the water to be used is not appropriated. This authorization does not establish a water right but will avoid conflicts with fisheries and existing water right holders. To obtain water rights in Alaska, you need to submit an application for water rights to the DNR office in the area of the water use. After your application is processed, you may be issued a permit to drill a well or divert the water.

# 2.5 Material Sales Application

Material Sales Applications are required for extracting material from state-owned land. To determine if a site is on state-owned land, visit or contact the DNR Public Information Center:

DNR Public Information Center 550 West 7th Avenue, Suite 1260 Anchorage, AK 99501-3557 Phone: 907-269-8400 Fax: 907-269-8901 DNR Public Information Center 3700 Airport Way Fairbanks, AK 99709-4699 Phone: 907-451-2700 Fax: 907-451-2706

DNR Public Information Office 400 Willoughby Street, 4th Floor Juneau, AK 99801 Phone: 907-465-3400

There are three different types of state material sales:

• The first and smallest is a "limited" material sale which cannot be for more than 200 cubic yards per 12 month period per person. This is a revocable, nonexclusive contract for personal or commercial use.

- The second type is the "negotiated" sale, which generally cannot exceed 25,000 cubic yards per year per person or company. Material purchased under this type of sale can be sold or used for commercial purposes. The term of the sale is generally one year, but can be longer depending on circumstances.
- The third and larges is the "competitive" sale. The sale contract can be issued for an unlimited amount of material to be taken over many years. Award will be determined by public auction if there are multiple bidders for the same location. If no competitive interest is expressed during the public notification period, no auction is necessary and the sale can proceed to contract upon completion of the decision making process. Material purchased through competitive sale can be sold or used for commercial purposes.

Material Sale Applications care available from and may be submitted to any of the DNR Public Information offices listed above. Applicable State statute and regulations include, but are not limited to: AS 38.05.110-120, AS 38.05.550-565, and 11 AAC 71. Additional information on Material Sale Applications can be found at <a href="http://dnr.alaska.gov/mlw/factsht/material\_sites.pdf">http://dnr.alaska.gov/mlw/factsht/material\_sites.pdf</a>.

Pollutant	Water Use	Criteria
	Water Supply – Agriculture	For sprinkler irrigation, water must be free of particles of 0.074 mm or coarser. For irrigation or water spreading, may not exceed 200 mg/l for an extended period of time.
Sediment	Growth and Propagation of Fish, Shellfish, Other Aquatic Life, and Wildlife	Percent accumulation of fine sediment in the range of 0.1 mm to 4.0 mm in the gravel bed of waters used by an anadromous or resident fish for spawning may not be increased more than 5% by weight above natural conditions. In no case may the 0.1 mm to 4.0 fine sediment range in those gravel beds exceed a maximum of 30% by weight.
	Water Supply – Drinking, culinary, and food processing	Nephelometric turbidity units (NTU) may not exceed 5 above natural conditions when the natural turbidity is 50 NTU or less. May not have more than 10% increase in turbidity when natural turbidity is more than 50 NTU, not to exceed a maximum increase of 25 NTU.
	Water Supply – Aquaculture & Growth and Propagation of Fish, Shellfish, Other Aquatic Life, and Wildlife	May not exceed 25 NTU above natural conditions. For all lake waters, may not exceed 5 NTU above natural conditions.
Turbidity	Water Recreation – Contact	May not exceed 5 NTU above natural conditions when the natural turbidity is 50 NTU or less. May not have more than 10% increase in turbidity when natural turbidity is more than 50 NTU, not to exceed a maximum increase of 15 NTU. For all lake waters, may not exceed 5 NTU above natural conditions.
	Water Recreation – Secondary recreation	May not exceed 10 NTU above natural conditions when the natural turbidity is 50 NTU or less. May not have more than 20% increase in turbidity when natural turbidity is more than 50 NTU, not to exceed a maximum increase of 15 NTU.

Table 2-1: Summary of Selected Freshwater Criteria from 18 AAC 70.020(b)<sup>1</sup>

Pollutant	Water Use	Criteria
		For all lake waters, may not exceed 5 NTU above
		natural conditions.
	Water Supply – Aquaculture &	Total aqueous hydrocarbons (TAqH) in the water
Petroleum	Growth and Propagation of Fish,	column may not exceed 15 $\mu$ g/L.
Hydrocarbons	Shellfish, Other Aquatic Life, and	Total aromatic hydrocarbons (TAH) in the water column
	Wildlife	may not exceed 10 µg/L.

Table 2-1: Summary of Selected Freshwater Criteria from 18 AAC 70.020(b)<sup>1</sup>

<sup>1</sup>Refer to regulations for full description of criteria and designated uses: DEC, 18 AAC 70, Water Quality Standards (Amended as of April 8, 2012) http://dec.alaska.gov/commish/regulations/pdfs/18%20AAC%2070.pdf

#### Table 2-2: Summary of Selected Marine Criteria from 18 AAC 70.020(b)<sup>1</sup>

Pollutant	Water Use	Criteria
Sediment	_	No numeric criteria. See 18 AAC 70 for descriptive criteria.
	Water Supply – Aquaculture & Water Recreation (Contact and Secondary)	May not exceed 25 NTU.
Turbidity	Growth and Propagation of Fish, Shellfish, Other Aquatic Life, and Wildlife & Harvesting for Consumption of Raw Mollusks or Other Raw Aquatic Life	May not reduce depth of the compensation point for photosynthetic activity by more than 10%. May not reduce the maximum secchi disk depth by more than 10%.
Petroleum Hydrocarbons	Water Supply – Aquaculture & Growth and Propagation of Fish, Shellfish, Other Aquatic Life, and Wildlife	TAqH in water column may not exceed 15 $\mu$ g/L. TAH in water column may not exceed 10 $\mu$ g/L.

<sup>1</sup>Refer to regulations for full description of criteria and designated uses:

DEC, 18 AAC 70, Water Quality Standards (Amended as of April 8, 2012) http://dec.alaska.gov/commish/regulations/pdfs/18%20AAC%2070.pdf

# **3 DETERMINING POTENTIAL IMPACTS**

Potential pollutants of surface and groundwater from gravel pits include sediment, turbidity, total metals, and/or petroleum hydrocarbons. An increase in turbidity within a stream environment may result in a potential decrease in available free oxygen necessary to support aquatic life. An increase in the concentration of total suspended solids, such as silt or decaying plant matter, can destroy water supplies for human, animal, and other wildlife consumption. Increased sediments in water can also potentially damage fish gills by

#### Key Points – Chapter 3

- Prevent potential impacts by gathering information and understanding the characteristics of the mine site:
  - Topography
  - o Climate
  - Vegetation
  - Soil properties
  - o Extraction material properties
  - Groundwater conditions
  - Proximity to
    - Public water system sources
    - Surface water bodies
      - Contaminated sites

abrasion, and smother or bury fish redds, effectively killing them.

It is easier and cheaper to prevent impacts to the environment before they happen, rather than attempting to fix them after they have occurred. When planning a mining operation, it is important to determine what impacts that operation might have on the surrounding environment and vice versa. A preliminary assessment should be performed which gathers information on general site conditions, Alaska-specific conditions, and the proximity of public water system sources, surface water bodies, and contaminated sites. Much of the information that should be gathered can be obtained over the internet from sites given below, and by a qualified person performing a thorough field reconnaissance of the mine site.

### 3.1 General Site Conditions

Before developing a mining plan, it is important to gather information on general site conditions, including local topography, climate, vegetation, soil properties, extraction material properties, and groundwater conditions. In looking at topography, consider the proposed operation with respect to slopes, slope aspects, and natural drainages. Also consider climate, particularly precipitation and wind. These factors will greatly influence the sensitivity of the site to erosion and sediment transport, which can be detrimental to water quality (see Chapter 7). The type of local vegetation, as well as the type, distribution, and thickness of soil are also important to understand because vegetation is one of the best sustainable means of preventing erosion. Local vegetation is already suited to the environment and, if planted in appropriate soil, will require little maintenance and facilitate cost effective reclamation. The type, depth, and thickness of the material to be extracted should also be understood in order to appropriately plan cuts, benches, etc. It is also important to know if the material to be extracted contains naturally occurring asbestos (NOA), which can be a hazard to mine workers and users of the product, or acid-

forming minerals that could contribute to acid mine drainage. The presence of NOA can negatively impact worker health and significantly affect the market available for the resulting aggregate. Basic groundwater characteristics should also be determined, such as groundwater depth, gradient, and the presence or absence of confining layers. It is necessary to have a basic understanding of all these factors (topography, climate, vegetation, soil properties, extraction material properties, and groundwater conditions) in order to understand how a mining operation and the natural environment will interact with one another. It is the understanding of that interaction which allows the development of a mining plan that prevents impacts to surface and groundwater quality.

# 3.2 Alaska-Specific Conditions

The environments found in Alaska are highly diversified and often extreme. Temperature, precipitation, and wind are key factors that must be taken into account when planning a mining operation, keeping in mind that conditions at one mine site in Alaska may be very different from another at a different location. The mean minimum temperature in Alaska in January ranges from about 23°F in the southeast to -31°F in parts of Northcentral. Figure 3-1 shows mean annual precipitation in Alaska. As shown in this figure, Southeast Alaska and parts of Southcentral receive over 2,000 mm (approximately 78 inches) of precipitation a year. In areas of high precipitation such as these, BMPs targeted to divert or manage stormwater runoff are more critical. Seasonal temperature and precipitation, and when they can effectively be planted.

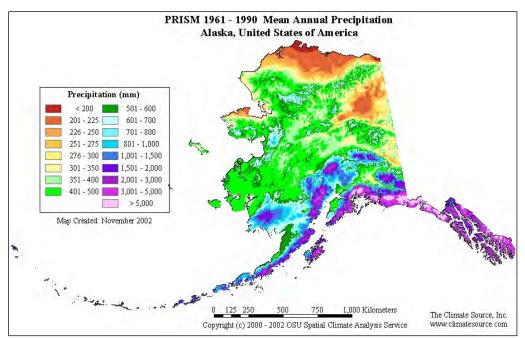


Figure 3-1: Mean Annual Precipitation in Alaska

High winds can increase erosion of exposed soil. A normal storm track along the Aleutian Island chain, the Alaska Peninsula, and all of the coastal area of the Gulf of Alaska exposes these parts of the state to a large majority of the storms crossing the North Pacific, resulting in a variety of

wind problems. Direct exposure results in the frequent occurrence of winds in excess of 50 mph during all but the summer months. Wind velocities approaching 100 mph are not common but do occur, usually associated with mountainous terrain and narrow passes. Winter storms moving eastward across the southern Arctic Ocean cause winds of 50 mph or higher along the arctic coast. Except for local strong wind conditions, winds are generally light in the interior sections (Western Regional Climate Center 2006). Erosion control BMPs should be used in areas with high winds or during high wind seasons.

# 3.3 Proximity Mapping

Surface runoff and groundwater flow are not constrained by mine site boundaries. Surface and groundwater interact with one another and, although it may not be visible, groundwater can flow from one side of a mine site to another, picking up or dropping off pollutants along the way. Mining changes the natural landscape and therefore can change the flow patterns of surface water and groundwater. It is therefore important to ascertain the proximity of public water system sources, surface water bodies, and existing and potential sources of contamination.

The Alaska Department of Environmental Conservation (DEC) has established drinking water protection areas which act as recommended buffer zones, which are available at their website, given below. Drinking water protection areas should be shown on maps submitted with permit applications wherever proposed project area boundaries fall within drinking water protection area buffer zones. Surface water bodies such as lakes, rivers, and streams can be identified on many web-based maps, such as Google Earth<sup>TM</sup>. Some surface water bodies are considered by DEC to be impaired waters, meaning that they are too polluted or otherwise degraded to meet water quality standards. For these water bodies, a Total Maximum Daily Load (TMDL) for pollutants has been determined or will be developed. A TMDL is the maximum amount of a pollutant that a water body can receive in a day and still meet water quality standards. If a mine operation will place pollutants into impaired waters, via permitted discharge or otherwise, it is important to know the TMDLs for that water body. The location of impaired waters and the associated TMDLs can also be found on the DEC website, given below.

In areas of contamination, mining operations can expose contaminants in groundwater or cause them to migrate to previously unaffected areas by altering the groundwater flow regime. DEC has identified and mapped many contaminated sites, and these can be found on the website below. Other potential sources of contamination to consider are industrial sites where contamination has occurred but has not been detected or reported, abandoned mine sites, and untouched locations with natural acidic drainage.

The locations of drinking water protection areas, locations of impaired waters, TMDL information, identified contaminated sites, and other GIS data associated with DEC permits are available at <a href="http://dec.alaska.gov/das/GIS/apps.htm">http://dec.alaska.gov/das/GIS/apps.htm</a>.

# 4 GENERAL GUIDELINES AND RECOMMENDATIONS FOR PROTECTING SURFACE WATER AND GROUNDWATER QUALITY

Some of the best ways to prevent mining impacts to surface and groundwater quality are to maintain distance between mining operations and the water to be protected, and to monitor water quality. This chapter presents recommended setbacks for mining operations from public water system (PWS) source areas, surface water bodies, and the groundwater table. Where proposed mining is closer to these waters than the recommended setbacks, it is recommended that a detailed hydrogeologic study be performed by a qualified person to evaluate potential impacts and design effective mitigation alternatives.

#### Key Points – Chapter 4

- Surface water and groundwater quality can be protected in part by:

   Setbacks/Separation from:
   PWS source areas
   Surface water bodies
   Groundwater table
   Monitoring of:

   Quantity
   Temperature
   pH
   Specific conductance
   Contaminants
  - Detailed hydrogeologic studies

## 4.1 Setbacks

Depending on the site, permits may require specific horizontal setbacks from water bodies or vertical separation distance from the groundwater table. All requirements of any permit should be met at all times. The following sections provide some general guidance for instances where setbacks are not specifically addressed in permitting.

## 4.1.1 Public Water System (PWS) Source Areas

DEC has established drinking water protection areas and recommended buffer zones for public water system (PWS) sources, which can be found at <u>http://dec.alaska.gov/das/GIS/apps.htm</u>. There are also PWS sources for which drinking water protection areas have not yet been delineated. For those PWS sources, it is recommended that the buffer zone be considered a 1,000-foot radius around the source area. It is recommended that excavation limits be restricted to areas outside any PWS source buffer zone. Equipment storage, maintenance, and operation should be as limited as possible within designated buffer zones, and appropriate BMPs should be used to prevent water contamination (see Chapter 6).

### 4.1.2 Lakes, Rivers, and Streams

Due to the interconnected nature of surface water, an impact to one part of a stream or river can have dramatic consequences downstream or upstream and affect the quality of surface and groundwater far from a mine site. Appropriate setbacks from surface water bodies will vary from case to case, but in general, a minimum setback of 200 feet is recommended between excavation limits and the ordinary high water level of surface water bodies, including lakes, rivers, and streams. For in-water work, a U.S. Army Corps of Engineers Section 404 permit for discharging dredged or fill material would be required. BMPs for in-stream work would be site-specific and

addressed in the permit. Mine sites that affect levee-protected areas may require a U.S. Army Corps of Engineers Section 404 permit.

# 4.1.3 Groundwater and Working Below the Water Table

In general, it is recommended that mines maintain a minimum of four (4) feet of vertical separation distance between extraction operations and the seasonal high water table, and that they restrict activities that could significantly change the natural groundwater gradient.

If mining must be done below the water table, groundwater may become exposed. Upon issuance of a local government conditional use permit, if available, allowing extraction of materials from below the seasonal high water table, no extraction should be performed below the first aquitard encountered within the saturated zone. During the active operation phase of a gravel pit, the top portion of the groundwater is considered treatment works, as authorized under 18 AAC 60 or 18 AAC 72, as long as it does not come in contact with hazardous contaminants. When operation at the gravel pit ceases, the exposed groundwater will once again become a water of the state. At that time, the water will need to comply with water quality standards based on the applicable designed use.

Notice to discharge is required under the Excavation Dewatering General Permit (EDGP) for discharges to land of equal to or greater than 250,000 gallons, or discharges to land at a rate equal to or greater than 40 gallons per minute. For discharges less than this volume and rate, notice under the Excavation Dewatering General Permit is not required; however, the discharge requirements in the permit must be followed. The Multi-Sector General Permit (MSGP) covers excavation pit dewatering discharges to surface waters. However, if an operation is within 1 mile from a contaminated site, the MSGP does not apply and authorization under the EDGP may be required. The DEC will provide more information on conditions and best management practices for a specific site in its permit. If excavation dewatering is needed, BMPs will be required to minimize adverse impacts to the receiving waters resulting from dewatering activities. Some general BMPs for dewatering are presented in Chapter 8.

# 4.2 Monitoring

Monitoring is the best way to measure the impact of a mining operation on surface water or groundwater quality, and is often required by permit. If required by permit, parameters to be monitored will be specified. Monitored parameters often include:

- surface water and groundwater elevation,
- surface water and groundwater flow,
- surface water and groundwater temperature,
- turbidity,
- pH,
- specific conductance, and
- likely contaminants.

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The appropriate or required timeframe for monitoring will vary from case to case, but in general a good practice is to monitor relevant parameters at least 1 year prior to mining, throughout mining, and at least 1 year after reclamation is complete. Monitoring prior to mining provides a baseline record of preexisting conditions and establishes a range of seasonal variability and responsiveness to external influences among measured parameters. Once mining has started, this baseline data cannot be obtained. Monitoring during mining allows early detection of impacts and provides opportunities to evaluate BMP effectiveness and implement additional or different BMPs as needed. Monitoring after reclamation can provide early indications of slow onset problems that may develop after mining shuts down, such as acid drainage. A thorough monitoring program protects both water quality and the mining operation. It is much easier to resolve disputes quickly and fairly with a complete and comprehensive set of data in hand. Modern datalogging equipment can be used to measure and record many parameters at a high frequency with relatively low labor costs. High frequency data provides the ability to evaluate and document impacts from things like climactic and flood events.

Water quality sampling and hydrologic data collection should be accomplished under the supervision of a qualified professional engineer, hydrogeologist, or hydrologist and follow a written sampling plan approved by the permitting agency. All data should be made available to permitting agencies upon request, with the understanding that the permitting agency may provide the data to other public agencies and to the general public upon request.

DEC has prepared a document entitled Monitoring Well Guidance, which provides recommendations for monitoring well construction, maintenance, and decommissioning (http://dec.alaska.gov/spar/csp/guidance/Monitoring%20Well%20Guidance.pdf).

# 4.3 Detailed Hydrogeologic Studies

Where proposed mining is closer to PWS sources, surface water bodies, or groundwater than the setbacks recommended in this chapter, it is recommended that a detailed hydrogeologic study be performed to evaluate surface and groundwater relationships and potential impacts, and to design effective mitigation alternatives. The hydrogeologic study should be conducted by a qualified person and address the following general framework, modified from Fellman (1982):

- 1. Geology, topography, and drainage
- 2. Surface Water
  - Location
  - type (e.g., river/stream, gradient, flow volume, seasonal variability in flow, etc.)
  - present surface water quality and quantity
  - present use of surface water
- 3. Groundwater
  - depth to groundwater
  - aquifer type (e.g., confined, unconfined, multiple aquifers, perched water, geologic material description, etc.)

- groundwater gradients, flow rates, flow directions
- surface water and groundwater interaction
- present groundwater quality and quantity
- present use of groundwater
- 4. Determine possible effects of mine development on water quality and quantity
- 5. Develop strategies to mitigate possible effects
- 6. Establish a monitoring program

# 5 HOW TO CHOOSE BEST MANAGEMENT PRACTICES

This chapter discusses types of BMPs, BMP selection criteria, and some issues to consider when selecting BMPs. In most cases, one BMP will not meet all the goals of a project. Appropriate BMPs for a project may vary seasonally, may be site specific, and may depend on the phase of mine operation. Chapters 6 through 9 provide detailed BMPs for preventing chemical pollution, controlling erosion and sediment, managing stormwater, mine operations, and mine reclamation. This chapter discusses the process of selecting appropriate BMPs.

#### <u>Key Points – Chapter 5</u>

- Source controls are usually more cost effective, easier to implement, and more effective than treatment controls.
- The selection of a BMP will most likely be driven by cost, effectiveness, availability, feasibility, durability, compatibility, and operation.
- Several factors, including climate and soil type, impact the effectiveness of a BMP.
- Using BMPs at your site may result in more money in your pocket and more fish in Alaska's streams.

The first steps in selection of BMPs are to understand the site, understand regulatory requirements (see Chapter 2), and determine potential impacts (see Chapter 3). Local, regional, and statewide issues, concerns and requirements should also be considered, as these will also influence aspects of planning, the selection of the BMPs, and the time frame for implementation. With intelligent mine planning, BMPs can be implemented in such a way that they complement one another and efficiently achieve impact mitigation goals.

# 5.1 Types of BMPs

Stormwater BMPs are implemented at two general levels:

- *Source controls*: practices that prevent pollutants from coming in contact with stormwater.
- *Treatment controls*: practices that treat stormwater once it has come into contact with pollutants.

Source controls are given priority over treatment controls, as they are generally more cost effective, easier to implement, and more effective at minimizing pollution. Source controls include things like vegetating bare slopes to prevent wind and stormwater from transporting sediment, restricting mine traffic to haul roads, and using wheel washers to avoid tracking sediment. Treatment controls are practices that reduce pollutants in water through chemical or physical systems, like settling ponds or oil-water separators.

# 5.2 Selection Criteria

To determine best practices for a specific project, a menu of potential BMPs should be identified with the goals of the project in mind. Selection criteria for BMPs can include:

- Effectiveness
- Implementation cost
- Temporary vs. permanent
- Cost of construction
- Long-term cost (operation and maintenance)
- Suitability for the site, including environmental compatibility
- Regulatory acceptability
- Availability
- Durability
- Longevity
- Ability to achieve vegetation schedule
- Technical feasibility
- Public acceptability
- Risk/liability

Of these criteria, cost, effectiveness, availability, feasibility, durability, compatibility and operation will most likely drive the selection of a particular BMP. Each of these factors is discussed below. Information was obtained from Oregon Department of Environmental Quality's *Erosion and Sediment Control Manual* (April 2005).

*Cost*. Things to include in the evaluation of cost effectiveness of a BMP include material costs, preparation costs, installation costs, maintenance costs, and cost of government requirements.

*Effectiveness*. BMPs should only be implemented if they will be effective. Not all BMPs work in all types of conditions.

*Availability*. The BMP materials must be readily available from a local supplier or be capable of immediate shipment to the area within the timeframe designated by the plans. This may be a significant issue in Alaska, specifically in areas not accessible by a road year round.

*Feasibility*. The BMP materials must be capable of relatively quick and easy application with minimal training required. Each BMP should be considered for its flexibility or applicability to a variety of field conditions. Factors to be considered relative to feasibility include:

- The number of steps needed to apply the BMP;
- Whether machinery is required;
- Whether locally available materials can be utilized; and
- The time required for the BMP to be operational, including time needed to not be affected by rainfall.

*Durability and Compatibility*. Given the nature of the site conditions, the BMP materials must maintain their structural integrity throughout use. History of durability in Alaska or cold weather climate is important. Environmental compatibility is also highly important. For example, if using a vegetative cover BMP, the plants chosen for the vegetative cover must be compatible with

native plants and the climate. The State of Alaska suggests using native plants. The Alaska Plant Materials Center (contact information listed in Appendix B) has published, "A Revegetation Manual for Alaska," which can be found at <u>http://dnr.alaska.gov/ag/RevegManual.pdf</u>.

*Operation*. Regardless of the BMPs selected, follow-up is always required. Maintenance and repair requirements, and their cost, should be considered. Training of staff for BMP operation may be required for optimal effectiveness of the BMP selected.

Information regarding the required material, equipment, costs, specifications (including operation and feasibility) and compatibility for individual BMPs is provided in Chapters 6 through 9.

# 5.3 General Considerations

Some issues to consider when choosing BMPs include the following:

- Consider how selected BMPs will work when implemented together as part of a system.
- Climate, particularly precipitation and winds, may have the biggest impact on what type of BMPs are needed for stormwater, erosion, and sediment control.
- Where possible, significant grading operations or exposure of soil should be planned during periods of low rainfall.
- Total exposed soil areas and duration of exposure should be reduced during high rainfall times.
- Wheel washing activities may be needed during high rain events to reduce tracking of sediments.
- Sediment control measures such as berms and silt fencing may not alone adequately reduce discharge during high rainfall.
- Higher than normal amounts of runoff may need to be diverted during high rain events.
- BMPs may need increased inspection and maintenance in areas or times of high rainfall.

# 5.4 Special Conditions

In addition to the issues discussed previously in this section, some projects may need to consider special operations in choosing appropriate BMPs. Some situations that require special consideration include the dewatering of an excavation pit, mining of gravel below the water table, gravel washing operations, and working in streams and rivers.

# 5.5 Benefits of Best Management Practices

Properly selected and maintained BMPs can result in economic and environmental advantages for gravel extraction businesses in Alaska.

Some of the **economic benefits** gained from an aggressive soil stabilization plan for a gravel pit may include:

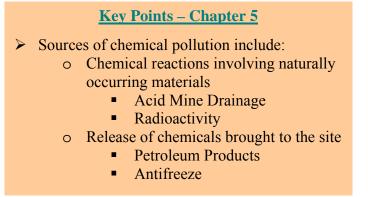
- Stabilized slopes require less repair and are safer for operators;
- Reducing short- and long-term erosion will result in less soil loss;
- Reduction in restoration costs at the end of the project;
- Negative public opinion can be minimized;
- Liability exposure can be decreased; and
- The potential for monetary fines from non-compliance to a permit can be reduced or eliminated.

Some of the **environmental benefits** of effective BMPs are:

- Protection of fish spawning areas, their food sources and habitat;
- Reduction of toxic materials that are introduced into the environment by their attachment and transport by sediment particles;
- Lowered impact on commercial fisheries from decreased sediment;
- Improved water storage capacities in lakes and wetlands; and
- Protection of receiving waters with designated uses such as for drinking water, recreation and wildlife habitat.

# 6 BEST MANAGEMENT PRACTICES FOR PREVENTING CHEMICAL POLLUTION

Chemical pollution can occur at mine sites due to reactions that release chemicals from the naturally occurring materials, such as acid mine drainage, or by the release of chemicals brought to the site, such as diesel fuel or antifreeze. This chapter provides BMPs to mitigate common forms of both types of chemical pollution. Chemical pollutants can be mitigated with both source and treatment controls. However, as discussed in Chapter 5,



source controls are generally more cost effective, easier to implement, and more effective in minimizing pollution.

# 6.1 Pollution From Native Materials

# 6.1.1 Acid Mine Drainage

Acid mine drainage (AMD) results from weathering of acid-forming minerals, such as pyrite  $(FeS_2)$ , in the presence of water and oxygen. The weathering reaction forms sulfuric acid  $(H_2SO_4)$ , which can drastically lower the pH of surface and groundwater and allow toxic levels of metals to leach into it. While it may occur on natural rock outcrops, it can be exacerbated by excavation for mining or road building.

The first step in preventing AMD is determining if and where acid forming materials are located on your site. Published geologic maps and qualified professionals can help you determine if acid forming materials, such as pyrite, are likely to exist on your site. AMD is most intense in environments where the acid-forming material is cyclically wetted and dried. The key concept in preventing AMD is preventing the weathering reaction in acid-forming materials that generates acid. This is done by limiting the material's exposure to oxygen or water, or both. AMD can be prevented as follows:

- Separate spoils containing acid forming materials for immediate disposal.
- Dispose of the acid-forming material in a designated area with a liner and cap sufficient to keep the weathering reaction from occurring.
- Immediately deal with seams of acid forming minerals remaining in highwalls. This can be done by covering the exposure with water in a permanent impoundment. The impoundment will need to be treated with a buffering agent such as lime until the reaction stabilizes.

If AMD is already occurring at a site, it may be mitigated in part by active or passive measures. Active measures include direct chemical treatment systems. In these systems, chemicals, like lime, are added to the drainage to neutralize acidity and cause metals to precipitate. This often results in a metal-laden sludge which must also be disposed of appropriately. Passive systems, which typically are designed for longer term (decades long) treatment, include constructed anaerobic wetlands and limestone drains. Passive measures are preferred, as they have lower overall maintenance costs.

- To construct an anaerobic wetland, mix limestone with an organic substrate, such as chicken litter. The limestone will reduce the acidity and, in anaerobic conditions, bacteria will remove some of the metal ions. Plants may also incorporate metal ions, helping to fix them to that location.
- A limestone drain is a conduit filled with coarse limestone fragments through which AMD passes. If kept anoxic (covered and saturated), the limestone will reduce acidity without causing metals to precipitate. Precipitates will form when the water comes into contact with oxygen outside the drain, and sludge can be collected in a pond there. The sludge can be placed as a lined and capped fill or sold, if metal content is sufficient. If the drain is open to the air, precipitates may armor the limestone and reduce efficacy.

# 6.1.2 Radioactive Tailings

Uranium is a naturally occurring radioactive element. It is also soluble in water. If present in uncovered tailings, Uranium can migrate into surface and groundwater, creating increased risk of radiation exposure. Tailings or other excavated materials that may contain Uranium should be isolated from surface and groundwater interaction. This can be accomplished by surrounding the Uranium-bearing fill with a clay liner and cap.

# 6.2 Petroleum Products

## 6.2.1 Storage and Handling

- Petroleum product storage and handling should not be performed within PWS source buffer zones, within 200 feet of surface water bodies, or directly adjacent to mining pits, particularly if groundwater is exposed.
- Fuel transfer should always be supervised by an employee to prevent overfill or spillage.
- Storage tanks should be inspected at least once per month.
- Storage tanks should have a secondary containment structure that is impervious to the contents of the tank, that is large enough to accommodate precipitation events, and that has a sump or valve for draining rainwater.
- Water accumulated in containment areas should be visually inspected for the presence of a rainbow sheen, indicating petroleum product contamination. If rainbow sheen is present, the water should be removed for appropriate disposal or allowed to evaporate,

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but it should not be discharged. It is illegal to apply any type of oil dispersant without prior state authorization from DEC (this includes soap/dish detergent).

## 6.2.2 Used Oil

- Used oil can be burned for energy in a properly vented used-oil burner or transported off site for disposal or recycling.
- Check local regulations prior to burning used oil for energy or disposal in a burner or incinerator.
- Do not pour oil into the ground.
- Do not use oil for dust abatement.
- Do not use oil for weed control.

# 6.2.3 Designated Equipment Maintenance Areas

- Restrict equipment maintenance activity to one area at a site, outside PWS source buffer zones.
- Use drip pans when disconnecting lines to collect dripping fluids.
- Place oil-laden parts on a drip pan instead of the ground.

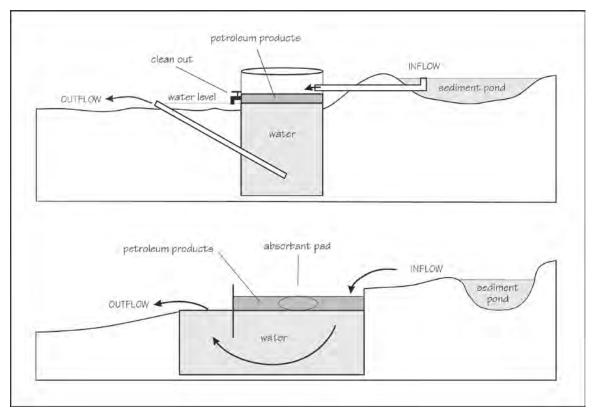
## 6.2.4 Hazardous Material Control (HMC)

- Prevent spills by implementing BMPs for the use, storage, and handling of petroleum products.
- Have a Hazardous Materials Control (HMC) Plan that addresses all types of spills possible at the site, such as fuel, hydraulic oil, grease, antifreeze, leaching chemicals, etc.
- Train employees on the HMC plan and practice it annually.
- Have spill response equipment on hand, including:
  - o pads, booms, absorbents, shovels
  - containers (drums, dumpsters, etc.) to hold spilled waste and used absorbent products
  - o protective equipment, like gloves
- Do not use water to dilute spills.
- For larger spills, use soil and booms to contain and divert spilled product away from surface water and mining pits.
- Have a defined, appropriate off-site disposal agreement in place and train staff on waste management.

# 6.2.5 Oil/Water Separators

If petroleum products spilled on a site make their way into stormwater runoff, they can be removed through the use of oil/water separators. Oil is less dense than water and will float to the surface if the two are mixed. Figure 6-1 shows two examples of possible oil/water separator designs that make use of this principal. Separated oil can be removed with absorbent pads or by skimming and disposed of appropriately. Keys to successful implementation of oil/water separators include:

- sufficient surface area for the oil to remain on the surface of the water,
- low enough water velocity to avoid mixing, and
- adequate residence time in the sediment pond for sediment to settle out before separation, and



• regular maintenance and clean out.

Figure 6-1: Oil Water Separator Details (Modified from Washington State Department of Natural Resources, 1997.)

# 6.3 Hazardous Waste

Activities at a mine site may generate hazardous waste. Hazardous waste is any waste material that could be dangerous to human health and the environment. It is the mine's responsibility to determine whether a waste is hazardous or not. The federal government publishes lists of hazardous wastes and regulations regarding them. They may be found at <a href="http://www.epa.gov/osw/laws-regs/regs-haz.htm">http://www.epa.gov/osw/laws-regs/regs-haz.htm</a>.

# 7 EROSION CONTROL, SEDIMENT CONTROL, AND STORMWATER MANAGEMENT

Stormwater is water runoff from rain and melting snow. Runoff can be sheet flow off of a site or it can drain to streams and ditches that route it to rivers, lakes, and marine water. In some areas, runoff is routed to storm drains, which ultimately discharge to surface waters. When stormwater flows across exposed soils, construction sites, or pavement, it can pick up and carry sediment, oil, bacteria, road runoff

#### Key Points – Chapter 5

- Rain, wind, and melting snow can dislodge sediment and carry it to surface water bodies, degrading their quality.
- ➤ Use BMPs in this section to:
  - Prevent erosion
  - Control eroded sediment
  - Manage and treat stormwater

and other pollutants. Sediment and associated pollutants can clog ditches and culverts, destroy habitat and reduce oxygen for fish, and be toxic to aquatic life. Stormwater runoff is a common cause of water pollution and is a challenge to control. The key to limiting impacts is to prevent erosion, capture and control sediment that does erode, and proactively manage stormwater runoff, including runoff that comes to your site from other properties. It is important to remember that stormwater can run off of other properties and onto your site, bringing increased erosion potential and contaminants with it.

**Erosion Control** is any practice that protects the soil surface and prevents the soil particles from being detached by rainfall, snowmelt, or wind.

**Sediment Control** is any practice that traps the soil particles after they have been detached and moved by wind or water. Treatment controls, as well as source controls, can be used in controlling the transport of sediment. Such controls include passive systems that rely on filtering or settling the particles out of the water or wind that is transporting them.

**Stormwater Management** is the practice of collecting stormwater, diverting it away from disturbed areas, collecting it for treatment (if necessary), and discharging it to a receiving area with the capacity to absorb it.

In general, erosion control and good stormwater management practices are more effective than sediment controls, and are preferred because they keep the soil in place and enhance the protection of the site resources.

When implementing erosion and sediment control BMPs, the following principles should be adhered to as much as possible:

- Fit the natural topography, soils, and vegetation of the site;
- Minimize disturbances to natural vegetation;
- Minimize soil exposure during high precipitation storm events;
- Vegetate disturbed areas;

- Minimize concentrated flows and divert runoff away from slopes or critical areas;
- Minimize slope steepness and slope length;
- Utilize channel linings or temporary structures in drainage channels to slow runoff velocities;
- Keep sediment on-site using settling ponds, check dams, or sediment barriers; and
- Monitor and inspect the site frequently and correct problems promptly.

Erosion control systems cannot perform adequately without the control of runoff. It is important to control flow of runoff to prevent scouring exposed soil. Diverting stormwater away from potential pollutant sources and/or managing runoff from a site are one category of source control BMPs. Numerous factors may affect the amount of runoff generated from a site, including the following:

- Precipitation;
- Soil permeability;
- Watershed area; and
- Ground cover.

The risk of high sediment discharge is greatest in the spring when vegetative cover is not yet established and snowmelt runoff occurs. As winter ends, ensure all appropriate BMP structures are in place and that any elements damaged over the winter are repaired.

# 7.1 Erosion Control

# 7.1.1 Vegetation

From temporary stockpiles to permanent reclamation of slopes, vegetation is one of the very best guards against soil erosion. Vegetation is so effective because, if implemented properly, it is self-sustaining and works to protect the soil in a variety of ways. Vegetation absorbs some of the energy of falling rain. Its roots hold soil in place and maintain the moisture-holding capacity of the soil. It reduces groundwater infiltration through evapotranspiration, which is the sum of water reintroduced into the atmosphere by evaporation and plant transpiration. In transpiration, water moves up through a plant and is released into the atmosphere as water vapor through stomata in its leaves. At the ground surface, the presence of vegetation reduces surface flow velocities. Additional benefits of vegetation can include noise reduction, dust control, and improved visual appearance. Some guidelines for vegetation are:

- If an area is already vegetated and does not need to be disturbed, do not clear it.
- If an area must be cleared for mining, clear only the amount needed for expansion within one year.
- As an area is cleared, save the sod or slash and stake it down over the cleared slopes to temporarily filter runoff until the area is mined.

- Replace topsoil, revegetate, and reclaim mined areas as soon as possible.
- Use native species whenever and wherever possible. It would be ideal to use the same species that were cleared, but the growth rates of the native plants and the need for more immediate erosion control may make that impractical.
- Use plant species that are appropriate for the application and climate, and plant them at the appropriate time of year. Table 7-1 summarizes plant species that are commonly used at sites in Alaska.

The Alaska Plant Materials Center, under the DNR Division of Agriculture, has created a manual to help those involved in revegetation efforts select appropriate seed mixes and methods for revegetation. Gravel/rock aggregate extraction site operators should refer to this document, *A Revegetation Manual for Alaska* (2008) for detailed guidance on region-appropriate plant species and revegetation methods. It can be found at: <u>http://dnr.alaska.gov/ag/RevegManual.pdf</u>.

Additional information, including local sources for native plants and seeds, can be found on the Alaska Plant Materials Center website: <u>http://plants.alaska.gov/index.php</u>.

Species	Cultivar Or Equivalent	Availability <sup>1</sup>	Site Conditions Adaptation	Growth Form <sup>2</sup>	Height Average	Region Of Use <sup>3</sup>
Bluegrass, Alpine <u>Poa alpina</u>	Gruening	Fair	Dry	Bunch	6 in.	All
Bluegrass, Glaucous <u>Poa glauca</u>	Tundra	Fair	Dry	Bunch	10 in.	A,I,W
Bluegrass, Kentucky Poa pratensis	Merion	Excellent	Lawns	Sod	10 in.	I,SC,SE
Bluegrass, Kentucky Poa pratensis	Nugget	Good	Lawns	Sod	10 in.	I,SC,SE
Bluegrass, Kentucky Poa pratensis	Park	Excellent	Lawns	Sod	10 in.	I,SC,SE
Fescue, Red Festuca rubra	Arctared	Very Good	Dry to Wet	Sod	18 in.	All
Fescue, Red Festuca rubra	Boreal	Excellent	Dry to Wet	Sod	18 in.	W,I,SE,SC, SW
Fescue, Red Festuca rubra	Pennlawn	Excellent	Dry to Wet	Sod	12 in.	I,SC
Hairgrass, Bering <u>Deschampsia</u> beringensis	Norcoast	Good	Dry to Wet	Bunch	20 in.	All
Hairgrass, Tufted <u>Deschampsia</u> caespitosa	Nortran	Good	Dry to Wet	Bunch	20 in.	All
Polargrass Arctagrostis latifolia	Alyeska	Fair	Wetter Areas	Sod	24 in.	A,I,W,SC
Polargrass Arctagrostis latifolia	Kenai	Fair	Wetter Areas	Sod	24 in.	SC,SE,SW
Reedgrass, Bluejoint Calamagrostis canadensis	Sourdough	Fair	All	Sod	36 in.	All

Table 7-1: Species/	Cultivar Characteristic	Chart (adapted from	A Revegetation Manua	al for Alaska, 2008)

1. Availability varies from year to year and within any given year.

2. Growth form and height will vary with conditions.

3. Region of Use: W = Western Alaska; I = Interior Alaska; SE = Southeast Alaska; SC = Southcentral Alaska; SW = Southwest Alaska; A = Arctic Alaska; All = All of Alaska.

#### 7.1.1.1 Water and Fertilizer

Adequate water and nutrients are essential for successful revegetation. If it is suspected that the topsoil may be lacking in nutrients when it is time to plant, it may be worthwhile to have a chemical analysis done on it in order to determine what types of fertilizers would be helpful. When using fertilizers, try to apply them under conditions in which they are less likely to wash off into streams, rivers, and lakes. Losing fertilizer to surface water can have negative impacts on the ecological balance and is a waste of fertilizer.

#### 7.1.1.2 Erosion Control Blankets and Mulching

Erosion control blankets are geotextiles made from natural materials, such as jute, coconut husk fibers, and straw, or synthetic materials like plastic. They help to hold seed and soil in place until vegetation is established. Erosion control blankets are very effective, but often prohibitively expensive for large areas. Mulching and hydroseeding are cheaper and also effective, though less effective in steep, erosion prone areas. A good practice is to use a combination of erosion control blankets in oversteepened and erosion-prone areas and to use mulch elsewhere to stabilize soil while vegetation becomes established. The effectiveness of blankets is greatly reduced if rills and gullies develop, so proper anchoring and ground preparation are important. The type of blanket selected depends on the longevity required, the gradient, climate, and other factors. The drawing below is one example. Follow the manufacturer's specifications for installation and stapling requirements.

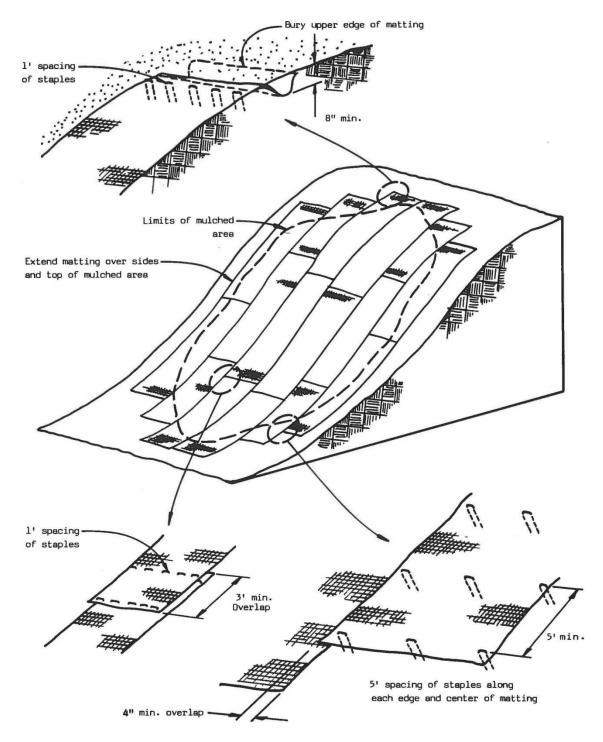


Figure 7-1: Erosion Control Blanket Installation (Modified from Idaho Department of Lands, 1992.)

## 7.1.2 Wind Protection

Wind protection is any structure or method to block or reduce wind flow. The purpose of the BMP is to reduce the exposure of dust-generating material to wind. Techniques that reduce the exposure of dust-generating material to wind, or reduce the velocity of wind, will help in controlling dust generation and distribution (such as onto area vegetation or into surface waters)

and in maintaining air quality. This BMP is appropriate for active and inactive sites with exposed soils, and is particularly useful around operations such as screening or crushing activities. Generally, wind protection includes:

- berms with trees and vegetation either placed or left in place;
- barriers, such as fences, around activities that might produce dust, such as screening and crushing (these barriers create a low pressure shadow which allows particles to settle to the ground rather than being released in the air and possibly settling off-site);

Windbreaks, whether composed of natural vegetation or fencing, will reduce wind speed for a distance of as much as 30 times the windbreak's height. For maximum protection, a windbreak setback should be two to five times the mature height of the trees. Other activities that might help reduce releases of dust include placing erodible mined materials in bays or bunkers, creating temporary enclosures or other containment, and covering transportation loads with tarps.



Figure 7-2: Wind Protection Example (Photo: Alaska Sand and Gravel)

# 7.1.3 Grading

Grading is used for surface re-contouring, site operations, for implementing erosion control practices, and reclamation. A good grading plan will address sediment and runoff control needs, as well as final site stabilization or revegetation goals. Prepare a grading plan that details:

- slope angles and grade lengths;
- how graded areas are to be stabilized and protected from runoff;
- where and how excess earth material will be stored or disposed;
- berms for visual and wind protection;
- what potential new erosion and sediment loss conditions must be addressed;
- what drainage areas, patterns, and runoff velocities might be affected, and what provisions must be made, such as check dams or settling ponds; and
- seasonal or weather conditions that are of concern.

If possible, grading should not be done during an extreme rainfall event. Also to the extent possible, stabilize graded areas with hydroseed, vegetation, crushed stone, riprap, or other appropriate ground cover as soon as grading is completed. Use mulch or straw to temporarily stabilize areas where final grading must be delayed, and optimize finished slope angles for successful revegetation. During final grading, roughen slopes to retain water, increase infiltration, and facilitate root growth. In areas with high water tables, install underground drainage to prevent seepage, and thus keep the surface dry. Stable channels and floodways must be maintained to convey all runoff from the developed area to an adequate outlet, to avoid causing increased unintended erosion, ground instability, or off-site sedimentation.

# 7.1.4 Chemical Soil Binders

Chemical soil binders can be used as a cost effective alternative to geotextiles, or as an additive to mulches, as a means of protecting soil from erosion while vegetation becomes established. The binders are typically long chain polymers that work by binding soil particles together. The material usually comes in a liquid or powder form, is effective for 90 to 180 days, and costs on the order of \$50 per acre. The chemical soil binder used should be tailored to the specific soil conditions found at the site. They should not be used where they might wash into surface water bodies or where forbidden by permit.

# 7.1.5 Biotechnical Slope Stabilization

Biotechnical stabilization uses live layers of brush imbedded in the ground to reduce surficial erosion and the risk of shallow slope failures. Steps:

- Cut branches and stems of trees and bushes up to 3 inches in diameter, preferably during the dormant season (fall or early spring).
- Lay the branches and stems between lifts of compacted soil in a criss-cross fashion so the structure extends the full width of the fill. Branches should protrude from the face of the fill slope.
- Space horizontal brush layers no more than 3 to 5 feet apart vertically. Closer spacing may be appropriate near the base of the slope.

- Alternate layers of brush and compacted fill from the toe to the top of the slope.
- Ideally, the cuttings will root and live shoots will develop, which will help control erosion.

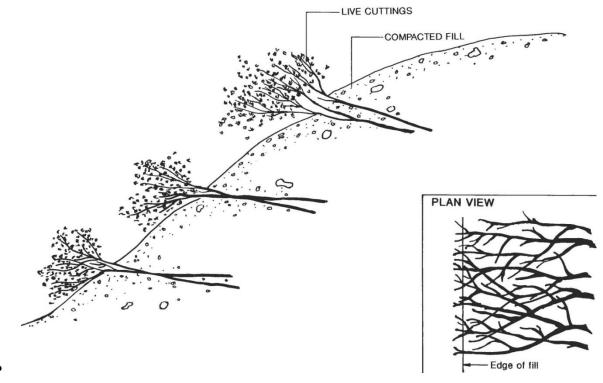


Figure 7-3: Biotechnical Stabilization Detail (Modified from Idaho Department of Lands, 1992.)

## 7.1.6 Covering, Tarps, Geotextiles, and Caps

Slopes and stock piles can be covered with a variety of materials for a number of purposes. Some reasons to cover piles include immediate dust and erosion control, establishment of vegetation for sustainable erosion control, chemical stabilization of acid-forming material (reducing water and oxygen), and preventing contaminant release by reducing infiltration. Materials and applications are discussed below.

Tarps – for short term dust and erosion control.

Tarps (tarpaulins) are a synthetic fabric usually made of vinyl, vinyl-coated polyester, or polyethylene. They can be placed over piles and fixed with pins, stakes, ropes, or ties, and weights like sandbags or tires. Edges should overlap like shingles to shed water. Tarps are effective in temporarily reducing erosion from light wind and stormwater. They tend, however, to degrade quickly. If long term erosion control is needed, other BMPs such as vegetation and geotextiles should be considered.

Geotextiles - for erosion control while establishing vegetation.

The term geotextile encompasses a wide variety of fabrics, some made of natural materials and some synthetic. Geotextile manufacturers can typically recommend

appropriate products for specific applications. Typical uses of synthetic geotextiles at mine sites include use in silt fences (see page 34) and use as a liner for structures like trench drains (see page 38). Natural geotextiles, such as a coconut fiber mesh, can be used to reduce erosion on piles or slopes while vegetation is being established. They degrade over time, but their function is usually taken up by the vegetation they helped to foster.

*Caps* – for reducing infiltration and availability of oxygen.

Capping material to seal in contaminants, reduce infiltration, or reduce oxygen exposure is typically accomplished with a layer of very low permeability sediment, such as clay. Cap design thickness depends very much on the performance requirements of the cap, the environment, and the properties of material used in the cap. Caps are often on the order of a couple of feet thick. In situations where contaminants like acid rock drainage are involved, cap performance should be monitored. Permanent caps can be covered with topsoil and vegetated.

## 7.1.7 Riprap Stabilization

Riprap is loose, hard, angular rock (stone) placed over soil to help protect against erosion. It is generally used to protect ditches and channels (Figure 7-4), shorelines and stream banks, or drainage outlets. General guidelines to install riprap stabilization include:

- Place a layer of filter material (geotextile, sand, or fine gravel) between the soil to be protected and the riprap to prevent soil from migrating into the riprap.
- For the riprap, select a mixture of stone sizes. The mixture should contain mostly large stones, with enough smaller clasts to fill most of the void between the larger ones. The appropriate size of the riprap will depend on the site. Faster flows will require larger stones to protect against erosion. Some technical guidance on proper sizing of stones for riprap based on water velocity and other factors is provided in *Stream Restoration Design, Part 654 of the National Engineering Handbook*, published by the United States Department of Agriculture Natural Resource Conservation Service, available at <a href="http://www.nae.usace.army.mil/reg/nrtbs/TECHNICAL-SUPPLEMENTS/TS14C.pdf">http://www.nae.usace.army.mil/reg/nrtbs/TECHNICAL-SUPPLEMENTS/TS14C.pdf</a>.
- Carefully place the riprap so as not to damage the filter material liner.
- In general, the thickness of the riprap layer should be 1.5 times the diameter of the largest stone, and no less than 6 inches thick.
- For shore or bank protection, riprap should be placed along the slope from a depth of 3 feet below the water line to a point above the high water mark where vegetation can be established.
- Routinely inspect riprap stabilization and repair it immediately if it becomes damaged or moves. If disruption is frequent, larger stones may be needed.

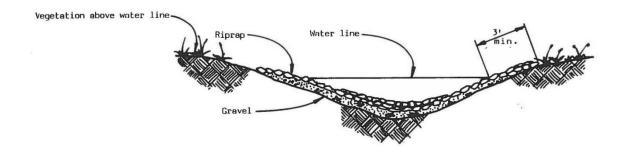


Figure 7-4: Riprap Stabilized Channel or Ditch (Modified from Idaho Department of Lands, 1992.)

# 7.1.8 Outlet Protection

Outlet protection prevents scouring and sediment disruption at the location of outlets. It is typically established using riprap stabilization techniques (see page 31) to create an apron immediately below where the outlet releases to the receiving area. If needed, outlet protection can be upgraded to include sediment screens (Figure 7-5) or devices to prevent upstream fish migration.



Figure 7-5: Outlet Protection Example

# 7.2 Sediment Control

# 7.2.1 Sediment Barriers

Sediment barriers are used along the bottom of stockpiles or disturbed areas that trap sediment while allowing water to pass through. Three common types of sediment barriers are straw bale barriers, silt fences, and brush barriers. All of these are temporary measures and should be used to keep sediment contained until the source can be better controlled.

#### 7.2.1.1 Straw Bales

Straw bales can be used to make successful sediment barriers, but are often poorly installed and therefore ineffective. Keys to good installation are:

- Set straw bales in a 6-inch-deep trench with vertical walls, dug along a topographic contour (Figure 7-6).
- Anchor the bales using rebar or steel pickets.
- For higher flow, combine with a gravel check dam (Figure 7-7).

Straw bales are best used as a short-term solution to relatively small sediment problems. They will float until they are wet and will typically last only 3 months once they become wet. Straw bale barriers in swales generally should not receive flows greater than about 0.3 cubic yards per second, and sediment should be removed once it reaches half the dam height. Keep in mind that when straw bale barriers fail, which they ultimately will if they are neglected and never removed, there if often more damage done than if no barrier had been installed. Straw wattles can be used for similar purposes as straw bale barriers, and have similar installation guidelines and limitations.

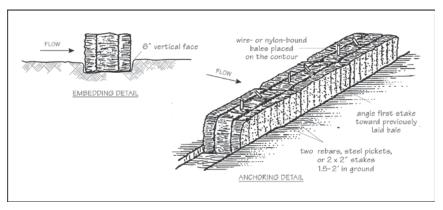


Figure 7-6: Straw Bale Sediment Barrier Detail

(Modified from Washington State Department of Natural Resources, 1997, and Idaho Department of Lands, 1992)

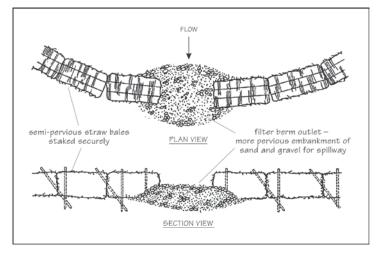


Figure 7-7: Straw Bale Sediment Barrier Detail (Modified from Washington State Department of Natural Resources, 1997, and Idaho Department of Lands, 1992)

#### 7.2.1.2 Silt Fences

A silt fence is a temporary liner or barrier that slows down or prevents silt or other sediments from moving away from disturbed areas. It is placed perpendicular to slopes below disturbed areas that may be affected by erosion. Using synthetic fabric or geotextile, the silt fence is staked in place and reinforced. Typically, silt fences are less than three feet in height to prevent failure with too much water pressure. Ideally, a silt fence is installed by trenching to anchor the filter fabric with backfill. A trench lined with the bottom of the filter fabric and filled with gravel will provide stability to the BMP. Very often silt fences will become ineffective in heavy rain events or when not monitored; therefore, regular monitoring will help make sure that the BMP is working. Remove all accumulated debris and sediment when they reach half of the height of the silt fence.



Figure 7-8: Silt Fence Example (Photo: City and Borough of Sitka)

## 7.2.1.3 Brush Barriers / Slash Filter Windrows

Brush barriers or slash filter windrows can be used below roads, overburden stockpiles, or other bare areas with moderate to steep slopes to filter coarse sediment and reduce water velocity. They are relatively inexpensive, as they can be built with brush cleared from areas prior to mining. They are constructed by piling brush, sticks, and branches in to long rows below areas of concern and can be supported by logs or large rocks.

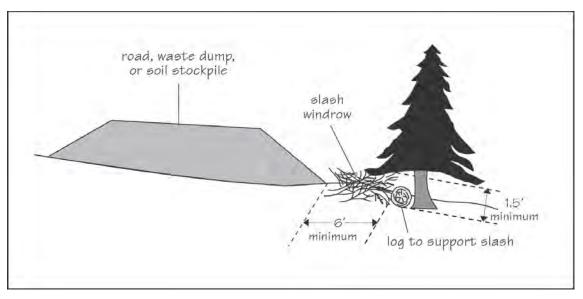


Figure 7-9: Slash Filter Windrow Detail

(Modified from Washington State Department of Natural Resources, 1997, and Idaho Department of Lands, 1992)

## 7.2.2 Check Dams, Sediment Filters

#### 7.2.2.1 Check Dams

Check dams are used in ditches to slow surface flow, capture sediment, and minimize incision of the ditch.

- They typically consist of 2- to 4-inch-diameter coarse crushed rock, depending on the anticipated water velocity.
- Spacing of the dams depends on the gradient of the ditch.
- The top of the dam should be lower than the channel margins so that water can spill over it and stay in the channel.
- Gabion (wire mesh) baskets can be used to help keep the rocks in the dam from becoming displaced.
- Filter fabric (geotextile) can be placed on the upstream side to trap additional sediment, but it must be anchored in place and its mesh should be sized to avoid clogging. Filter fabric must be cleaned when it becomes clogged.
- Maintenance is required, including excavating captured sediment and maintaining the rock levels.

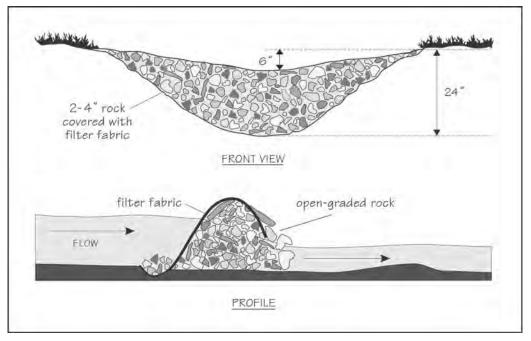


Figure 7-10: Rock Check Dam Detail (Modified from Washington State Department of Natural Resources, 1997.)

## 7.2.2.2 Filter Berms

Filter berms are very similar to check dams, but are used in channels with low flow. They are designed to filter out finer sediment. In an ideal berm, fine sand, coarse sand, and gravel are placed sequentially from the upstream side to the downstream end of the berm. The sand will need to be replaced periodically as it becomes clogged with sediment.

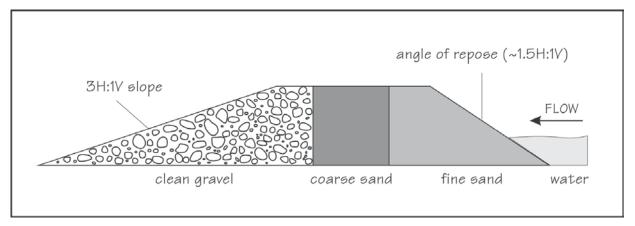


Figure 7-11: Filter Berm Detail (Modified from Washington State Department of Natural Resources, 1997.)

# 7.2.3 Dust Abatement

## 7.2.3.1 Using Water

In dry conditions, dust from haul roads can become a problem. It can get into equipment and blow into surface water bodies. A periodic light spray of water is the most common tool used to control dust. The ground should not be saturated, but just wet enough that dust does not rise from

it when it is disturbed by traffic or wind. This is often accomplished with water trucks, but can also be done with a sprinkler system. If water is in short supply, chemical dust suppressants, such as magnesium chloride, could be considered. Be sure to check state and local law prior to using chemical dust suppressants.

## 7.2.3.2 Drop Height

It is a good practice to minimize the distance material is dropped from loaders, excavators, and conveyors. This reduces the amount of dust released into the air, reduces noise, and reduces the risk of worker injury.

## 7.2.3.3 Dust Skirts

Dust skirts are rubber skirts placed around the outlets of conveyors or hoppers that run down to piles, shielding falling aggregate from wind. This reduces dust emissions and prevents material segregation. Dust skirts are useful where drop height is difficult or impossible to control.

## 7.2.3.4 Naturally Occurring Asbestos

Asbestos is a naturally occurring mineral that is present in some rocks and soils in Alaska. If it becomes airborne in the form of dust from activities like excavation, blasting, or crushing, it is a very serious respiratory hazard. Asbestos inhalation has been linked to numerous illnesses including asbestosis (fibrous scarring of the lungs), mesothelioma, and lung cancer. The possibility of encountering naturally occurring asbestos (NOA) at a mine site should be investigated before ground is broken. The California Geological Survey has published a document called *Guidelines for Geologic Investigations of Naturally Occurring Asbestos in California*. This document may be a useful starting point for determining if NOA exists on your site. It can be obtained at:

http://www.consrv.ca.gov/cgs/minerals/hazardous\_minerals/asbestos/Asbestos\_Guidelines\_SP12 <u>4.pdf</u>. If NOA is present, the dust abatement BMPs listed above will not likely be sufficient to reduce airborne asbestos to an acceptable level.

# 7.3 Stormwater Management

# 7.3.1 Diversion

# 7.3.1.1 Diversion Ditches

Ditches are open drainages that vary in size and depth to capture stormwater runoff and carry it offsite, or to onsite treatment. These can be particularly useful for managing stormwater that runs onto your site from adjacent properties. Ditches can route the flow around your work area, minimizing the exposure of your excavation to stormwater pollutants. Although some ditches may only carry water during rain events, others may be permanently wetted. Ditches may help remove sediments from stormwater, which might otherwise impact rivers, lakes, streams, or other aquatic sites. Naturally occurring vegetation left in ditches may aid substantially in removing sediments from stormwater as it leaves vegetated areas. Vegetation growing on the bank of the ditch can help to remove sediment as surface run-off flows through it.

- Ditches are commonly used to divert stormwater and to keep project sites as dry as possible to inhibit erosion.
- Ditches should be planned to carry more water than at peak flows, especially if they are to be vegetated.
- Oversized ditches may be allowed to naturally vegetate and will probably need less maintenance.
- Severe turns or grade changes along the course of ditches will likely need additional protection. Vegetation (trees or shrubs) may help prevent erosion during peak flows; riprap (see page 32) or other armoring may be necessary.
- Incorporate vegetated swales or check dams to help filter out sediment pollutants.
- In some areas of Alaska, fish (like salmon) have moved into ditches. Avoid this by creating a preventative barrier to fish passage to a constructed ditch.
- If ditches regularly fill with sediments, then use upstream source and sediment controls as needed.



Figure 7-12: Ditch Example (Photo by permission of Central Paving Products, Anchorage Alaska)

## 7.3.1.2 Trench Drains

Trench drains can be used to help with stormwater control and dewatering unstable slopes. They are generally ditches that are lined with a geotextile filter fabric and backfilled with crushed drain rock or clean gravel. A perforated pipe can be placed near the bottom of the trench backfill

to move water to the outlet more quickly. Trench drains do require an outlet to remove water. They may also require periodic maintenance. If a pipe is used, it is recommended that cleanouts along the pipe be installed.

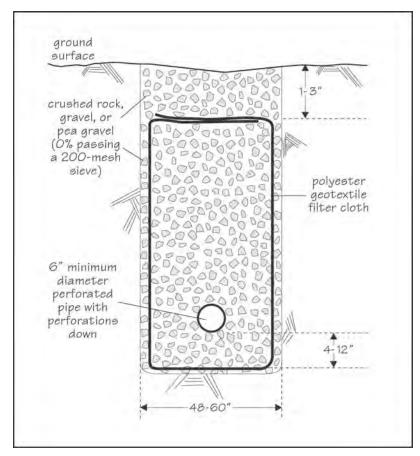


Figure 7-13: Trench Drain Detail (Modified from Washington State Department of Natural Resources, 1997.)

## 7.3.1.3 Culverts

Culverts are used to move water under roadways or to divert water around areas or structures. They can be made of metal or plastic; for roadways, metal is typically used. In complex or critical cases, design professionals should be consulted. In general, culverts should:

- have headwalls at the inlet side and erosion protection at outlet locations (see page 32),
- be large enough to carry maximum stream volumes as well as additional seasonal runoff,
- be installed in firm, compacted soil with a minimum cover of 12 inches; and
- be inspected on a regular basis and cleaned or repaired when necessary.

Depending on the location and purpose of a culvert, a local or state permit may be required. Be sure to check before starting culvert construction.

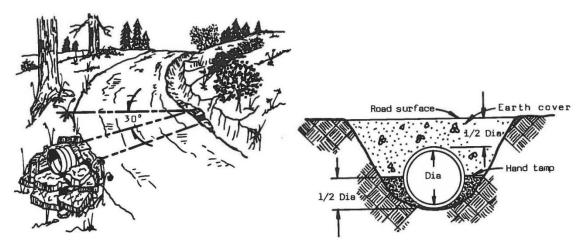


Figure 7-14: Culvert Detail (Modified from Idaho Department of Lands, 1992.)

## 7.3.2 Treatment

## 7.3.2.1 Settling Pond / Retention Basin

Settling ponds are either permanent or semi-permanent structures, such as dugouts, impoundments, or raised tanks, which remove silt and suspended clays from water used for washing aggregate, and/or from sediment-loaded stormwater. Some keys to effective settling ponds are:

- Construct two or more ponds in series, with the coarsest material removed by the first pond, and the finer suspended solids by subsequent ponds. This approach allows one or more ponds to operate while another is being cleaned. (Settling ponds only remove roughly 80 percent of the trapped sediment that flows into them.)
- Locate the ponds in low areas and natural drainageways, but not in streams or wetlands.
- Design ponds for easy access and maintenance.
- Depending on the site conditions and potential for pollutants in the water, it may be appropriate to line settling ponds with plastic.
- Ponds should be cleaned out before they are more than 1/3 full of sediment.
- The distance the water travels within the settling pond should be three to five times the width of the pond.
- Baffles can add to the flow length and pond efficiency.
- Potential materials for construction include earth, riprap, pipe, collars, seed for stabilization of disturbed soil, and new or recycled metal tanks.
- Settling ponds should not be placed where the risk associated with a failure would pose significant risks for people or natural environments such as streams.



Figure 7-15: Settling Pond Example (Photo: City and Borough of Sitka)

## 7.3.2.2 Flocculants

Chemical flocculants can reduce the size of settling ponds for a given site by increasing the rate at which particles settle out of water. They work by causing fine particles, like clays, to bind together into larger particles which settle out faster. It is important to choose the right flocculent for the type of fines that will be present in the water to be treated. It is also important to maintain a proper mixture of flocculent in the pond. It must be mixed, but not over-agitated. Ideally, at least 2 ponds are used; one with a retention time of about 20 minutes and another with a retention time of 3 to 8 hours. Ponds will need to be cleaned regularly. Most flocculants are non-toxic to aquatic organisms and fish, but the manufacturer should be consulted regarding the environmental effects of any given flocculent prior to use.

#### 7.3.2.3 Constructed Wetlands

An alternative to a settling pond is a constructed wetland. Constructed wetlands have the added benefit of vegetation to help filter sediment and some pollutants, but they require much greater land area and often require more cost to properly design and upkeep. As they drain to natural waterways, structures must be put in place to prevent fish from entering, and cleaning is more difficult and time consuming due to the presence of vegetation. If a wetland is to be constructed, an environmental professional should be consulted.

# 7.3.3 Dispersion

#### 7.3.3.1 Discharge to Receiving Waters

If stormwater is discharged directly to a surface water body, a permit is required. The water must meet the quality standards set in the permit. It should not induce physical or thermal erosion at the site of discharge, and should not create thermal barriers to fish movement.

#### 7.3.3.2 Land Application

Land application sends stormwater through dispersal systems that allow turbid water to infiltrate into vegetated areas. The technique can be used to handle all sediment-laden stormwater or just to increase capacity in conjunction with other systems.

- Perforated pipes can be used as a distribution system, laid parallel to slope contours (Figure 7-16).
- Land application should not be used on steep slopes, and turbid water must not be allowed to enter creeks or wetland.
- Land application systems often cannot handle surges in water volume during storms. Soils may not accept stormwater if they are already saturated.
- Infiltration analyses can help determine the capacity and infiltration rate of a site's soils and improve design. Qualified professionals can assist in these analyses and designs.
- Concentration of outflows from land application systems should be avoided, as it may induce erosion.

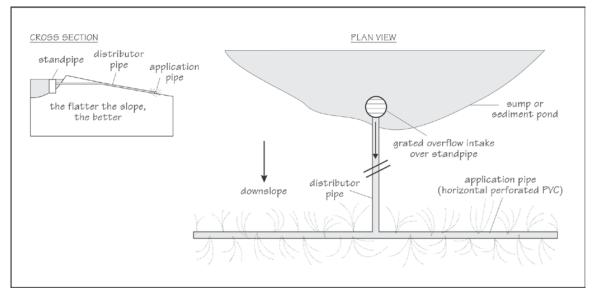


Figure 7-16: Land Application System (Modified from Washington State Department of Natural Resources, 1997.)

#### 7.3.3.3 Level Spreaders

Level spreaders can be used in locations where concentrated runoff from unvegetated ground needs to be controlled and dispersed over a broad area. They help to reduce water velocities, lessen erosion, allow sediment to settle out, and enhance infiltration. Level spreaders work best in areas with permeable soil. Some guidelines for level spreaders are:

- Do not construct level spreaders on slopes steeper than 3H:1V.
- Level spreaders should be constructed in undisturbed soil.

- Constructed length should be 15 feet for every 0.1 cubic feet per second of discharge water.
- Constructed width should be a minimum of 6 feet from the centerline to the outside edge of the spreader. See Figure 7-17.

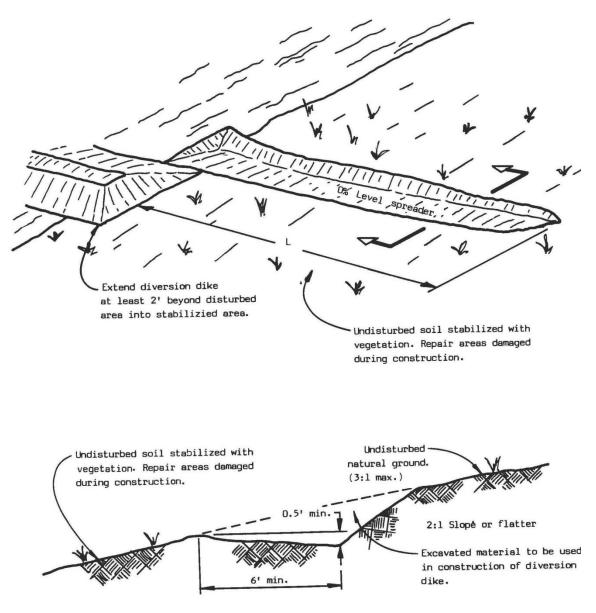


Figure 7-17: Level Spreader Detail (Modified from Idaho Department of Lands, 1992.)

# 8 OPERATIONAL BEST MANAGEMENT PRACTICES

Mining Plans should be developed to avoid and/or mitigate potential impacts to surface water,

groundwater, and the environment in general. This

chapter contains operational BMPs, which can be

**Key Points – Chapter 8** 

This chapter contains general BMPs for setting up a mine site and mining activities.

applied to the layout of a mine site and various mining activities to reduce surface water and groundwater impacts.

# 8.1 BMPs for the Mine Site

# 8.1.1 Buffer Zone

As a BMP, a buffer zone is either a natural or enhanced vegetated area around a disturbed site, or near sensitive areas such as a stream, wetland, or inhabited area. It provides distance and adds time to reduce flow and velocity of storm water. If dewatering is performed, buffers reduce offsite groundwater impacts. Buffer zones also reduce noise pollution, allow for dust settling, provide wildlife corridors, and reduce visual impacts. Once established, buffer zones that allow natural succession require little maintenance.

- Preserve or place a buffer zone around the site perimeter, adjacent to streams or other waters, along access corridors, and at the edges of disturbed areas.
- Help reduce sediment and pollution by placing a buffer zone alongside stormwater drainages.
- Retain or plant native trees and shrubs around the perimeter of disturbed areas to help reduce dust, noise, and provide a visual barrier.
- For windbreak protection, tree densities of greater than 20 percent are needed.
- Use other methods to reduce or control flow of surface water such as flow barriers, diversions, sediment traps, check dams, and vegetative plantings, or silt fences when natural buffers are not possible.



Figure 8-1: Buffer Zone Example (Photo by permission of City and Borough of Sitka)

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## 8.1.2 Berms

Well designed berms may provide some reduction of pollutants and will help reduce noise, dust, and the visual impact of the site within the community. Berms can be used around the perimeter of the property or adjacent to areas sensitive to impacts such as wetlands or surface water bodies. A berm can be used as a site control for surface water entering or leaving a site.

- The elongated and raised structure may be composed of selected material from onsite or offsite.
- Berm heights should be at least 6 feet. For berms taller than 6 feet, vary berms and contour side hills to provide a more natural appearance.
- Plan that berm heights, contours, and vegetation would blend in with naturally occurring conditions.
- If the berm remains in place long-term or permanently, add topsoil to help hold vegetation and provide for natural succession. Seed berm with native grasses or top with other native shrubs, trees, or other indigenous vegetation to reduce draining and drying of the berm.



• Establish ground cover quickly and stabilize soils with mulch, blankets, or other methods.

Figure 8-2: Berm Example (Photo: City and Borough of Sitka)

# 8.1.3 Fences

Fences prevent unauthorized entry to a mine site. This protects the mine's equipment from sabotage, helps to manage risk associated with unauthorized people wandering onto the site and getting injured, and prevents wildlife from entering the site and becoming entrapped in pits or falling from high walls. Common fence types are barbed wire and chain link. Fences should be constructed in such a way and to a height sufficient to prevent people or animals from scaling or jumping over them.

# 8.1.4 Signage

Use signs to inform and remind mine employees of sensitive areas on the site, such as established setbacks from streams or hazardous areas. Also use signs to warn the public and site visitors of mine hazards.

# 8.1.5 Access and Haul Roads

The use of designated haul roads is recommended for all aggregate site operations. Welldesigned and constructed haul roads can make site operations safer, more productive, and cause less wear and tear on equipment. Some keys to effective haul roads are:

- Keep haul roads dry by elevating them and cross-sloping the surface to facilitate drainage.
- For two-way traffic, road widths should be 3 times the width of the largest haul truck.
- Use road shoulder barriers/berms for safety and erosion control.
- Design the banking of curves and curve transitions to minimize the centrifugal forces on vehicles negotiating the curve.
- Maintain safe steepness grades.
- Place intersections at flat, straight alignments.
- Establish a regular grading program to minimize erosion, sediment build-up, noise, and dust. Haul roads may also require periodic scarifying, sanding, and resurfacing.
- Potholes, washboarding, and frost heaving should be repaired immediately to minimize noise, dust, and equipment wear.
- Apply approved dust suppressants such as water or calcium chloride, if necessary.



Figure 8-3: Haul Road Example (Photo: Alaska Department of Environmental Conservation)

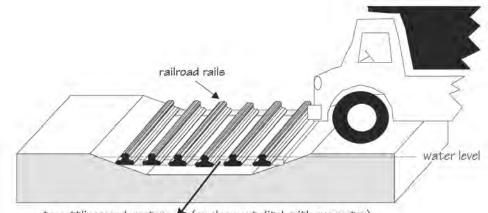
## 8.1.5.1 Wheel Washer

Wheel washers can be used where materials are being transported off site via paved public roads to help remove dirt, dust, mud, and rocks from trucks prior to mine exit. The reduction of

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dirt/dust transported onto paved public roads reduces the dust impacting air quality and the dust covering vegetation and settling into nearby bodies of water. It also reduces windshield damage from thrown rocks. Wheel washers may not be needed if other sediment control mechanisms are in place (stabilized exits, concrete pads), the haul road is paved, or the public roads are dirt/gravel surfaces.

A Wheel washer can be as simple as several railroad rails submerged in a pit, draining to a settling pond (Figure 8-4). Wheel washer design should result in shaking dirt or mud off of a vehicle passing through the pit. Placement of rumble strips, railroad rails, a cattle guard, or steel bars at 2- to 8-inch intervals can provide the agitation needed for removal of dirt, rocks and mud. More advanced designs or high volume facilities may invest in a concrete foundation and mechanized sprayers (Figure 8-5).



to settling pond system  $\not\models$  (or clean out ditch with excavator)

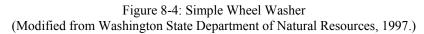




Figure 8-5: Wheel Washer with Sprayers (Photo from January-February issue of Erosion Control Magazine article "Controlling Fugitive Dust on Roadways" by Carol Brzozowski)

## 8.1.5.2 Stabilized Construction Exits

Stabilized construction exits provide a transition from dirt roads on a mine site to paved roads, to reduce the tracking of mud onto public right of ways. They are an alternative to a wheel washer, and while less effective, may be sufficient for many situations. To construct a stabilized construction exit:

- Excavate a pad that is about 6 inches deep, as wide as the haul road, and at least 50 feet long.
- Lay down a filter fabric geotextile over the excavated area.
- Cover the geotextile with 6 to 12 inches of 2- to 3-inch-diameter angular drain rock.
- Dress the exit with additional stone as needed.

## 8.1.5.3 Street Cleaning

This BMP involves sweeping or other pavement cleaning practices for entrances or roadways in front of a site, loading areas, haul roads, parking areas, truck aprons, and where materials are being transported on paved roads. Used in concert with other BMPs, street cleaning aids to remove substances that might otherwise pollute rivers, lakes, and streams. Modern sweeper equipment is capable of removing very fine sediment particles. By using the most sophisticated sweepers, greater reductions in sediment and accompanied pollutants can be realized. By using this BMP, some pollutants can be captured before they become soluble with rainwater. The cost for sweeping using simple mechanical techniques is relatively low, but a more efficient sweeper system can be expensive to own and operate.

- Street cleaning is not effective on unpaved surfaces.
- Do not use water to wash paved areas clean if run-off would migrate to rivers, lakes, or streams.

# 8.1.6 Vibration Reduction

Blasting, screening, and crushing, as well as movement of heavy equipment on site and from the site may produce ground vibrations. Vibrations can affect unstable slopes and can potentially damage nearby structures such as houses. Since transport of materials is one of the primary causes of vibration, levels can be reduced by maintaining roads free of potholes, reducing speeds, and limiting the weight of loads carried by trucks. For blasting activities, which tend to generate stronger vibrations, it is important to monitor vibrations at nearby locations that may be impacted. A blasting specialist can give guidance for charge weights and sequencing that might minimize effects for operations in community areas with other businesses or residents. In some cases, vibrations from blasting can increase the turbidity of groundwater, which can impact nearby wells. If PWS sources or residential wells are within 1000 feet of a proposed blasting operation, vibration and groundwater turbidity before and after blasting should be monitored at the well sites.

# 8.1.7 Dumps and Stockpiles

Mines with thick overburden generate large amounts of waste soil and rock. This material is generally stockpiled either permanently or for later use in reclamation. Dumps and stockpiles, if poorly placed or constructed, can easily result in landslides and increased sediment loads to nearby surface waters. The following are some guidelines for placement and construction of stockpiles:

- Select a location that is geologically stable. Qualified professionals may be required to assess landslide hazard.
- Select a location that is away from waterways, seeps, and springs.
- Strip all vegetation from the storage area, as it will rot under the stockpile and create a plane of weakness and increase the chances of downslope movement.
- Vegetation removed from the stockpile area can be used around the perimeter of the stockpile to filter runoff.
- Install a blanket drain (drain rock and geotextile) at the base of the pile on any slope where drainage problems are anticipated, and key it into competent material within the slope.
- Construct diversion ditches above stockpiles on steep ground.
- Place the fill in 12- to 18-inch lifts and compact it with a sheep's foot or vibratory roller.
- Shape the pile to prevent water from ponding and to direct water to a drainage system.
- Final slopes should be between 2H:1V and 3H:1V or flatter. Flatter slopes are easier to access for reclamation. Slope designs may be optimized with the help of qualified professionals.
- Terraces may be constructed to slow runoff water velocities.
- When shaping is complete, seed and mulch the pile to establish vegetation.

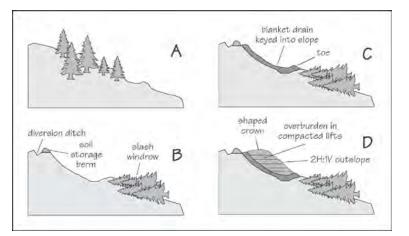


Figure 8-6: Stockpile Construction (Modified from Washington State Department of Natural Resources, 1997.)

# 8.1.8 Employee Training

BMPs are only effective if they are properly implemented and maintained. This is accomplished through employee training. Field employees should be taught basic stormwater management and pollution prevention principals. Begin by clearly communicating the company's expectation that its employees should take personal responsibility for helping assure BMP effectiveness. Encourage and recognize their efforts to watch and monitor for BMP effectiveness. Management should lead by example. Create a learning culture for employees to help assure that stormwater management and pollution concerns are quickly and effectively addressed.

## 8.1.9 Environmental Timing Windows

Project activities such as blasting or clearing may impact fish or wildlife during certain times of the year. One way to help reduce impacts during critical times of the year is to adjust the project work schedule to minimize effects on seasonal life stages for fish or wildlife (such as in spawning fishes, or nesting waterfowl). Adjust project schedule to avoid impacts to fish and wildlife when project activities expose large quantities of soil or for long term operations. Help reduce siltation of natural watercourses and fish habitat by timing operations and project activities such as blasting and clearing land to avoid sensitive periods for fish and other wildlife. Coordinate with the appropriate agency to determine timing windows.

# 8.1.10 Scheduled Maintenance and Repairs

Scheduled maintenance and repair is a practice that maintains mine efficiency and protects water quality. Scheduled maintenance of equipment helps to reduce down time and helps to protect water quality by reducing oil and coolant leakage. Likewise, scheduled maintenance of BMPs can keep erosion and sediment under control so that the mine satisfies permit obligations and avoids more costly remedial measures.

# 8.1.11 Self Environmental Audit

The idea of a self environmental audit reflects a non-regulatory approach to helping assure the well-being of water resources in Alaska. This practice is designed to enhance protection of human health and the environment by encouraging operators to voluntarily and promptly discover, disclose, correct, and prevent potential violations of federal and state environmental requirements. The voluntary discovery, prompt disclosure, correction, remediation, and prevention of negative impacts on water quality are key elements of this BMP. Another key element of the self environmental audit is cooperation with state or federal entities with regard to site operations. There are potential economic benefits to self environmental auditing such as benefits to operators when "good faith" efforts are accomplished that address the needs and concerns of resource managers. There are low to moderate costs associated with possible delays in project activities, but these are offset by avoiding fines or more costly remediation measures if problems are not found early.

# 8.2 BMPs for Mine Activities

## 8.2.1 Test Holes

Follow all regulations at the state and federal level when drilling test holes to determine the depth and extent of deposits to be mined. Avoid contaminating groundwater by:

- placing holes in areas that do not flood and that have good surface drainage away from the hole;
- keeping holes away from chemical storage areas, landfills, and septic tanks;
- properly installing and decommissioning abandoned observation wells to avoid subsurface contaminant entry; and
- properly backfilling holes with bentonite and/or cement grout and surface seal.

# 8.2.2 Land Clearing and Grubbing

Clearing and grubbing the land is necessary to prepare a mine site for extraction, but increases the risk of environmental impacts from stormwater runoff. Permit coverage is required prior to beginning the land clearing and grubbing work. To reduce environmental impacts:

- Only clear areas of land that will be used immediately. Vast tracts of cleared land dramatically increase the risk of environmental impacts from stormwater runoff and the associated costs to control runoff from the mining site. Land that is not cleared is better at taking care of itself.
- Implement stormwater management, erosion, and sediment control BMPs before and concurrently with clearing so that sediment laden runoff does not leave the site.
- On slopes, divert slope water around disturbed areas using ditches.
- If possible, clear land and grub during dryer, less windy times of the year.
- Establish, mark, and remember to stay out of buffer zones; stay outside of recommended or permit-required distances from streams, rivers, lakes, wells, etc.

## 8.2.3 Stripping

Stripping is the removal of topsoil and overburden. If a mine plan employs contemporaneous reclamation (see Chapter 9) then topsoil and overburden can be placed onto previously mined areas as it is removed, which reduces handling costs and maintains useful soil properties. Otherwise, topsoil and overburden should be stockpiled for use in reclamation (see page 54 and page 56 for topsoil storage and stockpiles). Make separate stockpiles for topsoil and other overburden. In overburden soil, try to preserve soil horizons in the stockpiles so that the soil layers can be placed back in the order in which they were removed. Make sure stockpiles are located and built in a way that provides easy access for reclamation. As with land clearing, it is best not to disturb an area until it is ready to be worked.

## 8.2.4 Aggregate Washing and Process Pond Sludge

Aggregate often requires washing to separate sands and to remove fines. These types of operations typically discharge to processing ponds. Water in a processing pond is often very turbid and should not be discharged to surface water bodies prior to treatment. A series of settling ponds, for example, could be used to remove silt and suspended clays from water used for washing aggregate. Note that aggregate washing operations need an APDES permit from DEC if discharging offsite or if discharge may cause a chemical change in the groundwater.

Processing ponds will accumulate fine sediment and need to be cleaned, especially if they are designed to infiltrate water to the soils. Process pond sludge should be tested to determine metal content and pH prior to evaluating disposal options. Depending on the level of possible contaminants, disposal options may include drying the sludge and either placing it on site, on containment with a cap, or removing it to an off-site approved waste management facility.

## 8.2.5 Flow-Through Pits

Flow through pits, where a creek comes in one side of the pit and out the other, require an individual Army Corps of Engineers Section 404 permit. DEC's certification of the Corps permit might grant a short-term variance for water quality standards or specify conditions to ensure that the water leaving the pit meets Alaska Water Quality Standards. For information on permitting requirements, see Appendix D.

## 8.2.6 Dewatering

Dewatering is sometimes necessary for gravel pit operations in Alaska during gravel extraction or while cleaning settling or retention ponds. When dewatering 250,000 gallons or more and/or when operations occur within 1-mile of a contaminated site, notice to use the DEC's Excavation Dewatering General Permit (EDGP) is required. The DEC will provide more information on conditions and best management practices for a specific site in its permit, but some generally recommended BMPs for dewatering include:

- Consider the proximity of the pit to contaminated or potentially contaminated sites and to local water wells. If substantial draw down may occur due to dewatering, a contaminant plume from a contaminated site may move or be exacerbated. The DEC Contaminated Site Program staff should be contacted in advance in this instance. A detailed hydrogeologic study may be necessary.
- Wells, well points, or other systems may be most effective in drawing down the aquifer prior to mining, and reducing effects to aquifers. These methods are often preferred over using a sump or trash pump to dewater a pit while mining, because clean water is extracted and that simplifies discharge.
- Where offsite impacts to shallow aquifer are likely, infiltration trenches or wells can help to mitigate offsite drawdowns.

- For pit seepage, keep a perimeter trench around the outside of the excavation's floor. This trench will collect the groundwater seeping out of the pit walls and create a sump from which less turbid and uncontaminated water can be pumped.
- Make sure that dewatering does not result in or otherwise cause re-suspension of sediments in receiving waters. It is very important that any fluid leaving the site be free of any contaminants or additives such as fuel, antifreeze, solvents, corrosion inhibitors, toxic substances, oil, and grease, and anything which causes foaming in the effluent.
- Perform equipment maintenance away from the pit perimeter.
- Dispose of waste away from the open pit.
- Store fuels and hazardous materials away from the open pit.

Dewatering should not be done in such a way that it results in thermal or physical erosion, typically a problem at the site of discharge. Dewatering should be avoided or carefully (professionally) designed if it will result in offsite impacts such as contamination of surface or ground water, well impacts to neighboring properties, changes in flow patterns of surface water or aquifers, or if it causes flooding or damage to property or vegetation. Dewatering should not be done if discharge will result in thermal barriers to fish movement or otherwise exclude fish from aquatic habitat.

Monitoring of groundwater levels, pumping, turbidity, and other factors may be required by permit. A well-planned monitoring program is a valuable means of assuring the BMP is being conducted properly and that the true effect of dewatering is known. Active treatment of wastewater prior to discharge may be necessary to assure compliance with water quality standards. Should accidental discharge of contaminants occur, the operator should first correct the situation, then report the discharge to the Alaska Department of Environmental Conservation immediately to determine what, if any, mitigation is needed. Groundwater monitoring may be indicated in permitting before, during, or after de-watering.

# 9 RECLAMATION

This chapter describes various strategies and BMPs for reclamation. The primary goal of mine reclamation is to return a site to a condition that will not pose a hazard to public health and the environment. Reclamation plans are site specific, but they will generally include:

- removal of all mine facilities,
- a grading plan that establishes stable slopes and adequate drainage,
- self-sustaining vegetative cover,
- monitoring of performance during and after reclamation to ensure objectives are being achieved.

#### Key Points – Chapter 9

- Reclamation restores mined land to a stable condition that will not harm humans or the environment.
- Reclamation plans must be approved by Alaska DNR.
- There are different types of reclamation strategies:
  - o Contemporaneous
  - o Segmental
  - Post-Mining
- Proper handling, storage, and replacement of topsoil are crucial to revegetation.

By law, reclamation plans must be approved by the commissioner of natural resources from the Alaska Department of Natural Resources (DNR), Division of Mining, Land, and Water. This applies to state, federal, municipal, and private land and water in Alaska. Alaska DNR has published a book of Mining Laws and Regulations, which may be found at <a href="http://dnr.alaska.gov/mlw/mining/2009Reg\_book.pdf">http://dnr.alaska.gov/mlw/mining/2009Reg\_book.pdf</a>.

## 9.1 Reclamation Strategies

### 9.1.1 Contemporaneous Reclamation

In contemporaneous reclamation, material is transported from a newly mined area directly to a previously mined area in one circuit (Figure 9-1). This method is preferred, because it minimizes handling of overburden and avoids creating large areas of unreclaimed land. It is optimal where a relatively small amount of material is extracted in comparison to the overburden moved, as it allows easy reproduction of soil and subsoil profiles. It may, however, be impractical for sites with very thin soil or where material like sand and gravel must be mixed from various parts of the mine in order to meet product specifications.

mining
direction
(B)
The second states the second
overburden
SO'-high
haul road
(about 70' YA VA
6 thick)

Figure 9-1: Contemporaneous Reclamation

(Modified from Washington State Department of Natural Resources, 1997, and U.S. Bureau of Land Management,

1992)

- 1) removal of topsoil;
- 2) spreading topsoil on graded wastes;
- 3) loading of overburden;
- 4) hauling of overburden;
- 5) dumping of overburden;
- 6) loading of product;
- 7) hauling of product;
- 8) reclaimed land.

## 9.1.2 Segmental Reclamation

In segmental reclamation, the mine site is divided into segments and the order of mining and reclamation among the segments is determined. Prior to mining, topsoil from the first segment is stockpiled. After all resources have been extracted from the first segment and the slopes have been reshaped in accordance with the reclamation plan, topsoil is stripped from the second segment and placed on the first segment and vegetation is planted. This continues until the final segment is mined, and then it is reclaimed with the stockpile of topsoil from the first segment. This reclamation strategy minimizes handling of topsoil and avoids creating large areas of unreclaimed land, but may be impractical for sites with very thin soil or where material like sand and gravel must be mixed from various parts of the mine in order to meet product specifications.

## 9.1.3 Post-Mining Reclamation

Post-mining reclamation is reclaiming a site after all resources have been extracted. While it may be necessary under certain circumstances, it is generally discouraged because it results in large areas being left unreclaimed for long periods of time. In post-mining reclamation, revegetation is typically slower and more expensive, stockpiled topsoils may deteriorate over time and become less fertile, and bonding liabilities are typically higher.

# 9.2 Reclamation BMPs

## 9.2.1 Preservation of Topsoil

Topsoil plays a crucial role for erosion control and is important for rehabilitation and permit requirements. Proper movement and storage of the soil is crucial for preservation and reuse.

Topsoil and other overburden should be removed separately before mining and retained for reclamation. Placing several inches of organic-rich soil over lower quality subsoil can dramatically improve the success of revegetation. If adequate topsoil is not preserved during mining, miners may need to import suitable topsoil, which can be costly. Topsoils must be properly handled and stored to preserve their porosity and biological content, including bacteria, fungi, algae, insects, and worms. Without these properties, the soil will be less helpful to revegetation. Some keys to topsoil preservation are:

- Store topsoil and other soil layers separately so they retain their characteristics and are easier to replace in the same order in which they were excavated.
- Do not strip topsoil when it is excessively wet or dry.
- Do not subject stored topsoil to excessive heavy equipment traffic.
- Storage piles should be constructed to minimize size and compaction.
- Avoid creating soil storage piles in excess of 25 feet in height.
- Do not use natural drainage ways as stockpile areas.
- Add some plant matter like grasses and chipped tree limbs to the pile to increase aeration, but not excessive amounts, as that will make the soil nitrogen deficient.
- Vegetate soil stockpiles. It is a good opportunity to do test seedings in preparation for final reclamation. Make sure seeds and plants used in revegetation are not or do not contain invasive plant species.

## 9.2.2 Overburden Storage

Overburden is often stockpiled for later use in reclamation backfill. This is a good practice, although long-term overburden stockpiles can contribute heavy sediment load to stormwater runoff. To avoid this, they should be:

- properly constructed for good slope stability (see Grading on page 28), and
- vegetated to prevent erosion.

# 9.2.3 Backfilling

Backfilling an excavated area may increase stability and help reduce erosion that otherwise might potentially affect surface water. Reducing slope angles can substantially reduce erosional effects and long term stability concerns. Backfilling can be considered when the final face heights in an excavated area are higher and steeper than permit specifications or general standards. Some guidelines for backfilling include:

- Do not backfill or approach an existing slope if stability is in question or the slope is unsafe, as it threatens worker safety.
- Keep backfill slopes at angles of 2 or more horizontal to 1 vertical.

- Unless otherwise specified, fill layers should be placed in lifts of no more than 6-9 inches and then stabilized by compacting, adding water to maintain moisture as needed. Compaction efforts can be made with equipment such as a sheep's foot roller or a smooth vibrating drum roller.
- Avoid flooding or erosion by providing good drainage with robust sediment control.
- Ideally, backfill concurrently with gravel extraction using overburden mined elsewhere on the site.
- Backfill materials may include overburden, waste rock, topsoil, clean excavation spoils from offsite, or select clean construction debris.
- Backfill materials should be free of contamination, brush, rubbish, organics, logs, stumps, and other material not suitable for stable fills.
- If previously stockpiled topsoil is used, it may need to be mixed with quality, clean fill material from sources offsite, as the moisture content of stored material may change and result in poor compaction.
- Establish healthy vegetative cover to avoid erosion (see Grading on page 28 and Vegetation on page 24).
- Use plastic sheeting, mulches, matting, or seeding with native species of grass or other vegetation to protect bare slopes against erosion or if permanent planting is delayed.

## 9.2.4 Benching

In reclamation, benching is a way of reducing slope lengths, enhancing stability, and facilitating revegetative efforts in soft or hard rock where bedding and structure are not prohibitively oriented. In some situations, it may be preferable to backfilling. A typical benched slope is shown in Figure 9-2. Some keys to benching are:

- Vertical bench cuts should be between 2 and 4 feet high.
- The vertical cut of the upper bench should begin immediately above the horizontal cut of the bench below.
- Benches should be horizontal and parallel to cut slopes or roadways.
- Excavation of each bench should be done in the opposite direction from the bench before, from the top of the slope to the bottom, to reduce the buildup of unconsolidated material at the side of the cut.

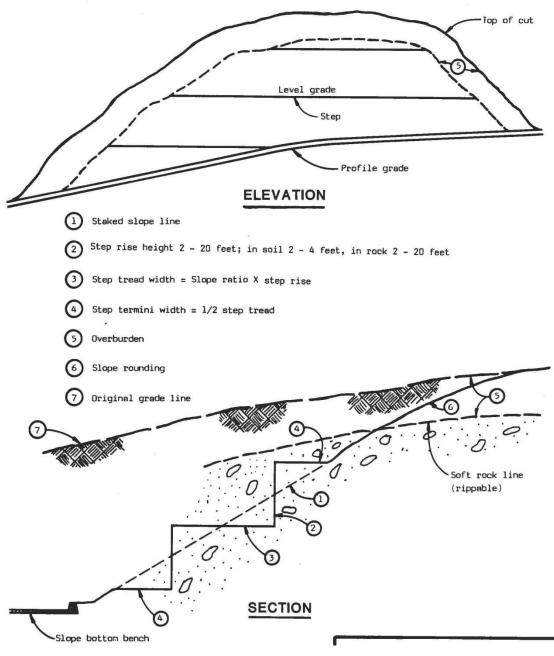


Figure 9-2: Benching Detail (Modified from Idaho Department of Lands, 1992.)

## 9.2.5 Reclamation Blasting

Reclamation blasting is a technique that uses selective blasting to reclaim highwalls and benches to forms that blend in better with their surroundings. Holes are carefully placed and charged with explosive to essentially turn rock faces into scree slopes. The use of a blasting contractor familiar with this technique is highly recommended.

## 9.2.6 Draining Pit Floors

If desired, pit floor drainage can be improved by ripping or blasting.

- Ripping can be accomplished in soft rock or compacted soil or mine waste with vertical shanks mounted on heavy equipment.
- Blasting can be used for harder rock. It can be made into its own program, or if used in production, the last production shot can be drilled an extra 10 feet and some of the fractured material can be left in place.

Both methods will improve drainage and make it easier for roots to penetrate.

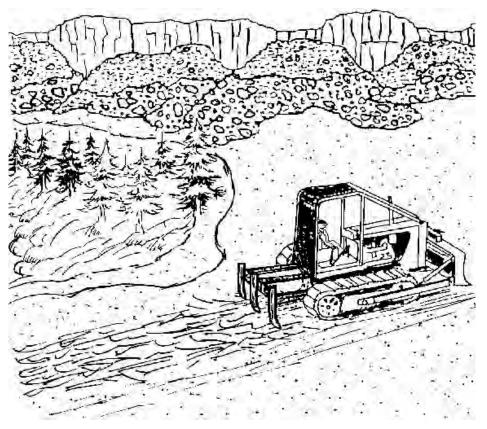


Figure 9-3: Ripping With A Dozer (Modified from Washington State Department of Natural Resources, 1997.)

# 9.2.7 Topsoil Replacement

Proper replacement of topsoil on reclaimed surfaces is crucial to revegetation. Some topsoil replacement concepts are:

- Ideally, extract topsoil from its place of origin and place it directly onto an area already mined, backfilled, and graded for reclamation. In this scenario, soil is handled only once, has less moisture loss, and does not compact during storage within stockpiles
- Before spreading the topsoil, establish the erosion and sedimentation control structures such as berms, diversions, dikes, waterways, and sediment basins.

- Soil horizons in stockpiles should be placed in their original order for best results.
- Maintain grades on the areas to be topsoiled, and just before spreading the topsoil, loosen the subgrade slightly for bonding of the topsoil and subsoil.
- Do not spread topsoil when it is frozen or muddy.
- Topsoil should not be compacted.
- A minimum soil replacement depth of 12 inches is recommended for most reclamation applications.
- The minimum recommended soil depth for timber production is 4 feet over rock and 2 feet over gravel of soft overburden.
- If the volume of topsoil available for the site is low, restrict application to low areas that will conserve soil, retain moisture, and catch wind-blown seeds.
- After topsoil is placed, the soil can be analyzed to determine what soil amendments (nutrients and fertilizers) are necessary for proper vegetative growth.

## 9.2.8 Refuse/Soil Disposal

If excess overburden remains that will not be used in reclamation, it should be disposed of with care. It should not be placed in natural drainages, like drainage hollows on slopes, as it would be more likely to fail and impact surface water. Options for disposal may include sale as a fill material or proper construction of a permanent, vegetated stockpile.

# 9.2.9 Covering Acid-Forming Materials

If a site contains acid-forming materials, it has the potential to release acid mine drainage. This can be prevented during reclamation by identifying acid forming materials, isolating them, placing them on a liner (plastic or clay) and covering them with a cap (such as a clay) to prevent the chemical reaction which produces acid mine drainage (see page 19) from taking place. If exposures of acid-forming materials are left in a highwall, try to create an environment that does not result in repeated wetting and drying of the material, as these are the conditions most conducive to acid formation. In appropriate topography, a permanent impoundment with an initial addition of a buffering agent (such as lime) could be used.

## 9.2.10 Revegetation

Revegetation is one of the last but most important steps in mine reclamation, as it reduces erosion, reduces storm-water runoff, provides habitat for animals, and increases the value of the property. Guidance for vegetation is discussed in Chapter 7.

# 9.2.11 Creating Wildlife Habitat Using Ponds

Mine site reclamation often involves the creation of ponds. Ponds can easily be made into good wildlife habitat by following some general guidelines:

- Keep submerged slopes at 5 horizontal to 1 vertical or flatter to allow development of wetland plant species.
- Make the outline of ponds irregular to increase plant habitat.
- Build up islands in the ponds to provide nesting areas.
- Place structures like downed trees on the shoreline, and anchor them in place to provide fish habitat.

"North Slope Gravel Pit Performance Guidelines," Technical Report Number 93-9, by Robert F. McLean (1993) is a useful resource regarding the creation of wildlife habitat.

## 9.2.12 Well Decommissioning

Wells that will no longer be used for production or monitoring should be properly decommissioned. The purpose of decommissioning wells is to prevent the unnatural migration of water between different geologic formations in the subsurface. Wells that are not properly decommissioned leave pathways for possible future contaminant transport. Typically, wells can be decommissioned by:

- Sealing them in place with a bentonite grout or cement,
- Removing them and replacing them with bentonite chips, grout, or cement, or
- Redrilling them and backfilling the redrilled hole with bentonite chips, grout, or cement.

It is important that the hole previously occupied by a well is backfilled with bentonite chips, grout, or cement, and not hole cave, as cave does not provide an adequate seal between formations. For Alaska DEC requirements, review 18 AAC 80. For monitoring wells, the Alaska DEC has published a document called *Monitoring Well Guidance*, which includes details on proper techniques for decommissioning monitoring wells.

(http://dec.alaska.gov/spar/csp/guidance/Monitoring%20Well%20Guidance.pdf). A well decommissioning form is available through the Alaska DNR Water Forms web site, http://dnr.alaska.gov/mlw/forms/.

# **10 REFERENCES**

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Missouri Department of Natural Resources Division of Environmental Quality, 2008, *Preventing Pollution at Rock Quarries: A Guide to Environmental Compliance and Pollution Prevention for Quarries in Missouri*: Jefferson City, Mo., 42 p., available: <u>http://dnr.mo.gov/pubs/pub340.pdf</u>.

Nevada Bureau of Land Management, 2008, *Guidance for Hardrock Mining Reclamation/Closure Activities*: Reno, Nev., 44 p., available: <u>http://www.blm.gov/pgdata/etc/medialib/blm/nv/minerals/mining.Par.2513.File.dat/Closure\_Guide.pdf</u>.

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# APPENDICES

- Appendix A Definitions
- Appendix B Contact Information
- Appendix C Resources for Information
- Appendix D State and Federal Permit Requirements
- Appendix E Best Management Practice Index

## Appendix A – Definitions

Below is a compilation of definitions used or pertaining to this User's Guide. Additional definitions can be found in the Alaska Water Quality Standards (18 AAC 70).

**Best Management Practices (BMPs)** – Schedules of activities, prohibitions of practices, maintenance procedures, and structural and/or managerial practices, that when used singly or in combination, prevent or reduce the release of pollutants and other adverse impacts to waters of the state. The types of BMPs are source control and treatment control.

**Mining Operations** – Typically consists of three phases, any one of which individually qualifies as a "mining activity." The phases are the exploration and construction phase, the active phase, and the reclamation phase.

**Nonpoint Source Pollution** – Any source of pollution other than a point source (18 AAC 70.990(42)). Point source pollution is a discernible, confined, and discrete conveyance, including a pipe, ditch, channel, tunnel, conduit, well, container, rolling stock, or vessel or other floating craft, from which pollutants are or could be discharged (18 AAC 70.990(46)).

**Reclamation** – The process of returning a site to a condition that will not pose a hazard to public health and the environment.

**Residues** – Floating solids, debris, sludge, deposits, foam, scum, or any other material or substance remaining in a body of water as a result of direct or nearby human activity (18 AAC 70.990(49)).

**Sediment** – Solid material of organic or mineral origin that is transported by, suspended in, or deposited from water. Sediment includes chemical and biochemical precipitates and organic material, such as humus (18 AAC 70.990(51)).

**Settleable Solids** – Solid material of organic or mineral origin that is transported by and deposited from water, as measured by the volumetric Imhoff cone method and at the method detection limits specified in method 2540(F), *Standard Methods for the Examination of Water and Wastewater*, 18th edition (1992) (18 AAC 70.990(52)).

**Source Control BMPs** – Source control BMPs **prevent** pollution, or other adverse effects of stormwater, from occurring. Source controls can be further classified as operational or structural. Examples of source control BMPs include methods as various as using mulches and covers on disturbed soil, slope grading, land clearing practices, putting roofs over outside storage areas, and berming areas to prevent stormwater run-off and pollutant runoff.

**Stormwater** – Storm water runoff, snowmelt runoff, and surface runoff and drainage (MSGP 2000).

**Total Suspended Solids** – Solids in water that can be trapped by a filter. Total suspended solids can include a wide variety of material, such as silt, decaying plant and animal matter, industrial wastes, and sewage. High concentrations of suspended solids can cause many problems for

stream health and aquatic life and can block light from reaching submerged vegetation. As the amount of light passing through the water is reduced, photosynthesis slows down. Reduced rates of photosynthesis cause less dissolved oxygen to be released into the water by plants and possibly lead to fish kills. High total suspended solids can also cause an increase in surface water temperature, because the suspended particles absorb heat from sunlight.

**Treatment Control BMPs** – Treatment control BMPs include facilities or operations that remove pollutants by simple gravity settling of particulate pollutants, filtration, biological uptake, and soil adsorption. Treatment control BMPs can accomplish significant levels of pollutant load reductions if properly designed and maintained. An example of a treatment control would be a sediment basin.

**Turbidity** – Turbidity means an expression of the optical property that causes light to be scattered and absorbed rather than transmitted in straight lines through a water sample. Turbidity in water is caused by the presence of suspended matter such as clay, silts, finely divided organic and inorganic matter, plankton, and other microscopic organisms (18 AAC 70.990(64)).

**Waters** – Alaska statutes (AS) 46.03.900(36) defines waters to include lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, straits, passages, canals, the Pacific Ocean, Gulf of Alaska, Bering Sea, and Arctic Ocean, in the territorial limits of the state, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially in or bordering the state or under the jurisdiction of the state.

### Appendix B – Contact Information

#### **State and Federal Contacts**

The following are state and federal contacts for additional information regarding mining and BMPs.

Alaska Department of Environmental Conservation Drinking Water Program

http://dec.alaska.gov/eh/dw/index.htm

#### **ANCHORAGE**

555 Cordova Street Anchorage, Alaska 99501 Toll Free 1-866-956-7656 907-269-7656

#### FAIRBANKS

610 University Avenue Fairbanks, AK 99709-3643 Toll Free 1-800-770-2137 907-451-2108

#### <u>Soldotna</u>

43335 Kalifornsky Beach Rd Suite 11 Soldotna, AK 99669-9792 907-262-3408

#### WASILLA

1700 E. Bogard Rd., Bldg. B Suite 103 Wasilla, AK 99654 907-376-1850

Alaska Department of Environmental Conservation Wastewater Discharge Authorization – Storm Water Program http://dec.alaska.gov/water/wnpspc/stormwater/Index.htm

<u>ANCHORAGE</u> 555 Cordova Street Anchorage, AK 99501 (907) 334-2288

Alaska Department of Environmental Conservation Nonpoint Source Water Pollution Control <u>http://dec.alaska.gov/water/wnpspc/index.htm</u>

For TMDL information: http://dec.alaska.gov/water/tmdl/tmdl\_index.htm

<u>JUNEAU</u> 410 Willoughby Ave., Suite 303 P.O. Box 111800 Juneau, Alaska 99801 907-465-5180 <u>ANCHORAGE</u> 555 Cordova Street Anchorage, Alaska 99501 907-269-3059

FAIRBANKS

610 University Avenue Fairbanks, AK 99709-3643 907-451-2125 907-269-3059 Alaska Department of Environmental Conservation Contaminated Sites Program http://dec.alaska.gov/spar/csp/index.htm

<u>JUNEAU</u> 410 Willoughby Ave., Suite 303 P.O. Box 111800 Juneau, Alaska 99801 907-465-5390

#### ANCHORAGE

555 Cordova Street Anchorage, Alaska 99501 907-269-7503

#### FAIRBANKS

610 University Avenue Fairbanks, AK 99709 907-451-2143

Alaska Department of Natural Resources Division of Mining, Land & Water 550 West 7th Avenue, Suite 1260 Anchorage, Alaska 99501 907-269-8400 http://dnr.alaska.gov/mlw/ Alaska Department of Natural Resources Plant Materials Center 5310 S. Bodenburg Spur Palmer, Alaska 99645 907-745-4469 http://plants.alaska.gov/

Environmental Protection Agency, Region 10 NPDES Storm Water Coordinator 1200 Sixth Avenue Seattle, WA 98101 206-553-6650 http://yosemite.epa.gov/R10/WATER.NSF/webpage/Storm+Water?OpenDocument

Army Corps of Engineers, Alaska District Regulatory Branch P.O. Box 6898 Anchorage, Alaska 99506-0898 907-753-2712 http://www.poa.usace.army.mil/reg/

### **Local Government Contacts**

Contact information for local governments in major cities throughout Alaska. Please contact the local governmental organization in your area.

Fairbanks North Star Borough	Matanuska-Susitna Borough
809 Pioneer Road	Land and Resource Management Division
P.O. Box 71267	350 East Dahlia Avenue
Fairbanks, Alaska 99707-1267	Palmer, Alaska 99645
907-459-1000	907-745-4801
http://www.co.fairbanks.ak.us/	http://www.matsugov.us/communitydevelopment/land-and-
	resource-management
	-

City & Borough of Juneau Engineering Department 155 South Seward Street Juneau, Alaska 99801 907-586-0800 http://www.juneau.lib.ak.us/engi neering/

Kenai Peninsula Borough 144 North Binkley Soldotna, Alaska 99669 907-262-4441 http://www.borough.kenai.ak.us/ City & Borough of Sitka Public Works Department 100 Lincoln Street Sitka, Alaska 99835 907-747-1804 http://www.cityofsitka.com/government/departments/publicw orks/index.html

Municipality of Anchorage Public Works Department 4700 Elmore Road Anchorage, Alaska 99507 907-343-8120 http://www.muni.org/departments/works/pages/default.aspx

### Appendix C – Resources for Information

### **BMP Methods**

Barksdale, R.D., Editor. (1991): The Aggregate Handbook; National Stone Association.

Buttleman, C.G. (1992): A Handbook for Reclaiming Sand and Gravel Pits in Minnesota; *Minnesota Department of Natural Resources*, Division of Minerals.

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Redburn Environmental & Regulatory Services, *Granite Creek Watershed Project Review Guidelines and Pollution Control Recommendations for Future Development*, for City and Borough of Sitka, June 2005.

### Additional Information

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Wright, Stoney J. and Hunt, Peggy, 2008, *A Revegetation Manual for Alaska*, Alaska Plant Materials Center, Division of Agriculture, Alaska Department of Natural Resources, 74 p.

### **Dewatering Information**

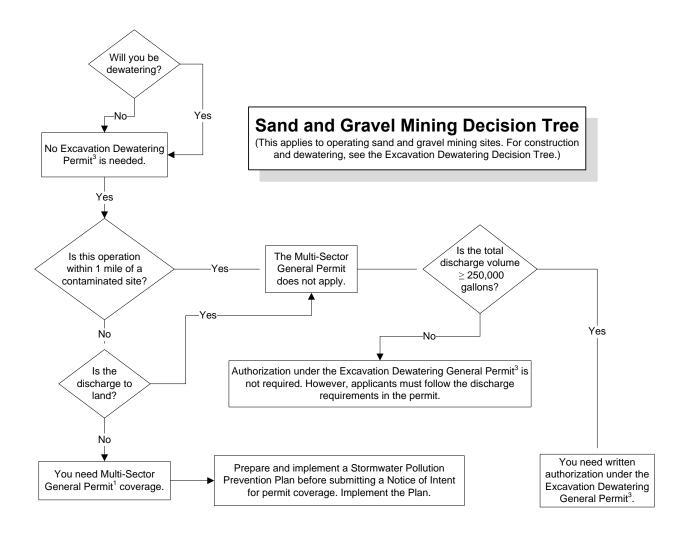
Powers, J.P., Corwin, A.B., Schmall, P.C., and Kaeck, W.E., (2007): Construction Dewatering and Groundwater Control: New Methods and Applications, Third Edition, John Wiley & Sons, Inc., Hoboken, NJ, USA.

### Appendix D – State and Federal Permit Requirements

The table in this appendix provides an overview of state and federal requirements for gravel pit operations. **Not all requirements or permits might be identified or applicable**. In addition, local regulations or permits may be required. Please check with the responsible agency and local government agency to identify which apply to your operation.

Issue	Agency Requirement			
Mining License	AK Dept. of Revenue	Provide copy of approved aggregate/sand & gravel mining license.		
Letter of Intent	DNR	File the letter of intent required by AS 27.19.050 (b) annually on a form provided by the department before the mining begins.		
Mining Permit	DNR	Provide copy of approved aggregate/sand & gravel mining permit, if extraction activity is conducted on state land.		
Reclamation	DNR	Provide copy of approved state reclamation plan, if required (not required if less than 5 acres).		
Water Quality – Run-off	DEC	Prepare SWPPP and submit NOI to obtain coverage under Multi-Sector general permit pursuant to APDES requirements. Dewatering discharges can be covered under DEC's construction general permit and Multi Sector General Permit, if less than 250,000 gallons or greater than one mile from contaminated site and is not otherwise contaminated.		
Water Quality – Wetlands, Lakes & Streams	US Army Corps of Engineers	Any activity in wetlands, lakes, and streams requires Corps permit.		
Water Quality – Groundwater	DEC	There is no prohibition on creation of man-made lakes or dredging into the water table. Dredging taking place into water table must be conducted in compliance with DEC notice of intent for the Multi-sector General Permit or APDES requirements, and DEC requirements for storage, spills and disposal of oil, antifreeze and hydrocarbons. Creation of man-made body of water may require Corps permit.		
Water Quality – Dewatering	DEC	For dewatering that exceeds a total volume of 250,000 gallons or a rate of 40 gallons per minute and is within a mile of a DEC-listed contaminated site.		
Water Quantity – Dewatering	DNR	Water Use Permit may be required.		
Air Quality Control	EPA DEC	EPA Air Quality Control Permit required for asphalt plant and crushers. DEC has dust control regulations; no permits are required.		
Burning	DNR DEC	Combustibles must be stockpiled separate from non-combustibles. Burning permit required from DNR. Burning must be conducted in compliance with DEC air quality standards.		
Hazardous Materials Oil, Antifreeze & Hydrocarbon Storage (<1,200 gal.), Spills	EPA DEC	Use of hazardous material regulated by EPA standards. Regulated by DEC Oil and Hazardous Substances Pollution Control Regulation (18 AAC 75).		
& Disposal Oil, Antifreeze & Hydrocarbon Storage (>1,200 gal.), Spills & Disposal	EPA	Regulated by EPA standards.		
Explosives – Storage and Use	FBATFE	Regulated by FBATFE.		

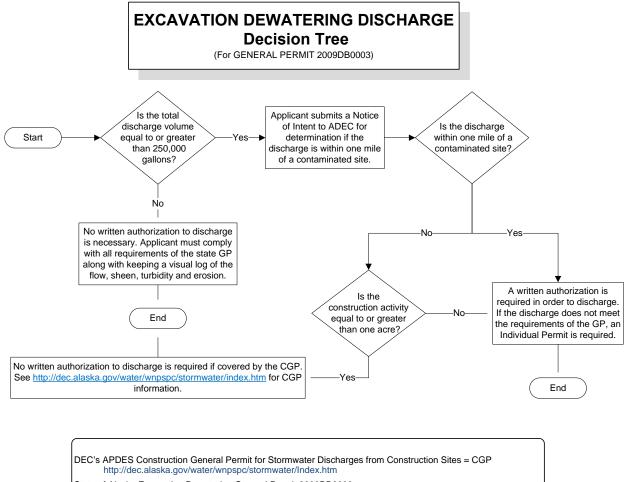
Issue	Responsible Agency	Agency Requirement				
Revised - Jun	e 2012.					
Key:	Key:					
DNR	DNR = Alaska Department of Natural Resources					
DEC	DEC = Alaska Department of Environmental Conservation					
EPA	EPA = United States Environmental Protection Agency					
APDES	APDES = Alaska Pollutant Discharge Elimination System					
FBATFE = Federal Bureau of Alcohol, Tobacco, Firearms & Explosives						



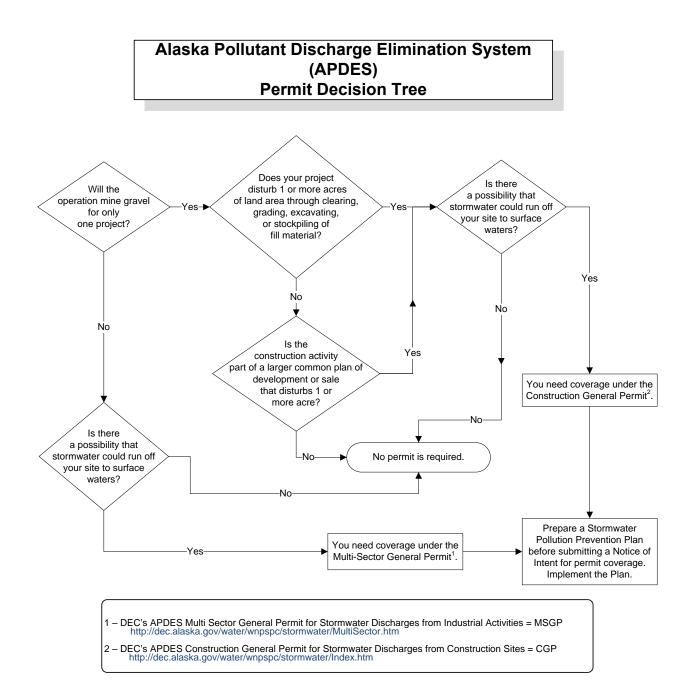


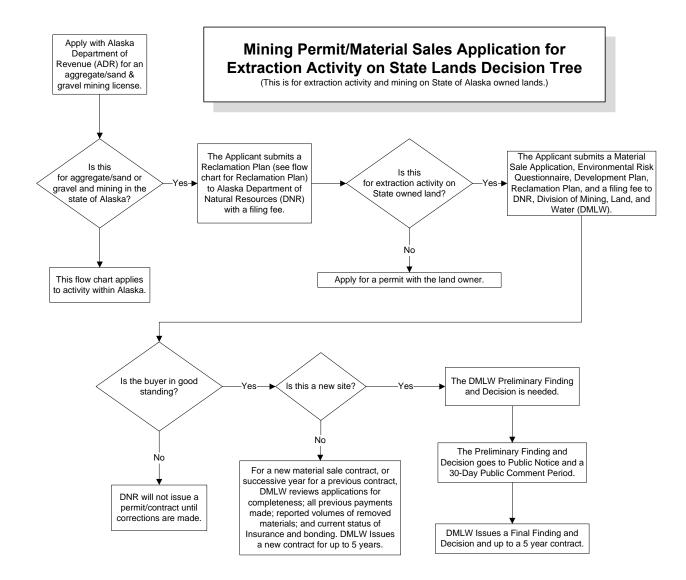
2 – DEC's APDES Construction General Permit for Stormwater Discharges from Construction Sites = CGP http://dec.alaska.gov/water/wnpspc/stormwater/Index.htm

3 – State of Alaska Excavation Dewatering General Permit 2009DB0003 http://dec.alaska.gov/water/WPSDocs/2009DB0003\_pmt.pdf



State of Alaska Excavation Dewatering General Permit 2009DB0003 http://dec.alaska.gov/water/WPSDocs/2009DB0003\_pmt.pdf

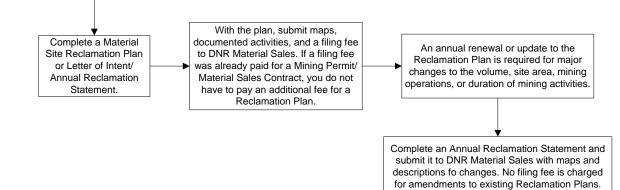




All operations must complete a reclamation plan for actions that will be implemented to close a gravel or rock material site after mining actions are completed. The Reclamation Plan must be filed prior to the start of sand, gravel, or rock mining.

### **Reclamation Plan Decision Tree**

(This is for all mining operations, including sand and gravel extraction, in accordance with Alaska Statute 27.19.)



### Appendix E – Best Management Practice Index

This appendix presents an alphabetical index of best management practices found within this manual. These BMPs have been selected for specific application to mining operations in Alaska. There are, however, many "general reference" BMPs that can also be useful. Recommended websites include the following:

National Menu of Best Management Practices for Stormwater Phase II, United States Environmental Protection Agency,

http://cfpub.epa.gov/npdes/stormwater/menuofbmps/menu.cfm, December 1999;

*Water Related BMP's in the Landscape*, Watershed Science Institute, <u>http://www.abe.msstate.edu/csd/NRCS-BMPs/</u>, October 2001;

*Stormwater Management Manual for Western Washington*, Volumes 1-5 Washington State Department of Ecology, <u>http://www.ecy.wa.gov/biblio/9911.html</u>, June 2001.

Also see Appendix C- Resources for Information.

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# PWSID AK2249434, Willowbrook North, Gravel Pit Inquiry 9/9/2024



### 9/9/2024

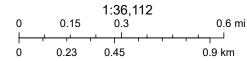
 $\oplus$ 

SDWIS Drinking Water Facilities - Public

Community Water System (C)

Zone A (GW-Several Months Time of Travel or SW 1000 ft buffer)

Zone B (GW-2 Yr Time of Travel or SW-1 mile buffer)



E3-430

State of Alaska Department of Environmental Conservation - Environmental Health - Drinking Water Program, Kenai Peninsula Borough, State of Alaska,



#### LEGEND

•	CONTROL POINT
W	WELL

#### NOTES

- 1. THIS DRAWING IS BASED ON A FIELD SURVEY PERFORMED BY EDGE SURVEY AND DESIGN LLC. NOVEMBER 12th and 13th, 2024.
- 2. TOP OF CASING ELEVATION MEASURED AT NORTHERN MOST POINT INDICATED BY A CROW'S FOOT MARKER.
- 3. ELEVATIONS SHOWN HEREON ARE NAVD88 ORTHOMETRIC HEIGHTS AS DETERMINED BY AN NGS OPUS SOLUTION HOLDING GEOID 12B.
- 4. THE BASIS OF COORDINATES IS ALASKA STATE PLANE ZONE 4, NAD 83, EPOCH 2010.00, U.S. SURVEY FEET. AS DERIVED FROM AN 4 HOUR OPUS POSITION ON CONTROL POINT 100, A 1.5" YELLOW PLASTIC CAP.

POINT 100 HAS COORDINATES OF

NT 100 HAS COO LAT: 60°30'40.60 N: 2380565.55	697"N LONG			
100'	50' 0'	100'		
	1" = 100'			
]				
		SURVEY AND DE SURVEY AND DE KING STREET ANG 07) 344-5990	CHORAGE, AK 99518	
	мо	NITORING WE	ELL SURVEY	
	DRAWN BY:	DATE:	PROJECT:	

DRAWN BY: JY		PROJECT: 24-631	
CHECKED BY:	SCALE: SHEET:		
RS	1'=100' 1 OF 1		

#### WELL DATA

Γ	WELL	NORTHING	EASTING	LATITUDE	LONGITUDE	TOP OF CASE ELEVATION	ADJACENT GROUND ELEVATION
	1	2380567.49	1434054.04	60°30'40.6697"	151°08'42.3497"	86.60'	83.44'
Γ	2	2380544.69	1435297.85	60*30'40.6576"	151'08'17.5009"	90.44'	88.13'
Γ	3	2379825.48	1433920.18	60°30'33.3401"	151'08'44.7650"	89.24'	86.84'

#### CONTROL POINTS

CONTROL POINT	NORTHING	EASTING	ELEVATION	DESCRIPTION
100	2380565.55	1434020.39	85.10	YELLOW PLASTIC CAP
101	2380559.83	1434394.48	83.70	STEEL CAP
102	2380528.24	1435317.09	89.55	STEEL CAP
103	2379892.61	1433976.13	86.66	MONUMENT



FILE: PEN\_1\_5.05\_.240 OP1731520864412

#### NGS OPUS SOLUTION REPORT

\_\_\_\_\_

All computed coordinate accuracies are listed as peak-to-peak values. For additional information: https://www.ngs.noaa.gov/OPUS/about.jsp#accuracy

USER:	jason@edgesurvey.net	DATE:	November	13,	2024
RINEX FILE:	pen_317w.240	TIME:	18:05:16	UTC	

SOFTWARE:	page5 2008.25 m	master273.pl	160321	S	TART:	2024/1	1/12	22:4	17:0	00
EPHEMERIS:	igu23402.eph [u	ltra-rapid]			STOP:	2024/1	1/13	03:1	.3:0	00
NAV FILE:	brdc3170.24n			OBS	USED:	11915	/ 13	966	:	85%
ANT NAME:	HEMS631	NONE	#	FIXED	AMB:	66	/	81	:	81%
ARP HEIGHT:	1.539		70	VERALL	RMS:	0.014	(m)			

REF FRAME:	REF FRAME: NAD_83(2011)(EPOCH:2010.0000)		ITRF2014 (EPOCH:2024.8662		
Х:	-2756865.602(m)	0.016(m)	-2756866.901(m)	0.016(m)	
Υ:	-1519029.946(m)	0.017(m)	-1519028.995(m)	0.017(m)	
Ζ:	5528767.126(m)	0.012(m)	5528767.254(m)	0.012(m)	
LAT:	60 30 40.64483	0.007(m)	60 30 40.62780	0.007(m)	
E LON:	208 51 16.97908	0.021(m)	208 51 16.88342	0.021(m)	
W LON:	151 8 43.02092	0.021(m)	151 8 43.11658	0.021(m)	
EL HGT:	31.454(m)	0.016(m)	31.899(m)	0.016(m)	
ORTHO HGT:	25.941(m)	0.094(m)	[NAVD88 (Computed using GE	OID12B)]	

85.10

#### UTM COORDINATES STATE PLANE COORDINATES

		UTM (Zone 05)	SPC (5004 AK	4)
Northing (Y)	[meters]	6709789.639	725597.831	2380565.55
Easting (X)	[meters]	601842.173	437090.291	1434020.39
Convergence	[degrees]	1.61458056	-0.99694722	
Point Scale		0.99972709	0.99994848	
Combined Factor		0.99972217	0.99994356	

US NATIONAL GRID DESIGNATOR: 5VPH0184209790(NAD 83)

#### BASE STATIONS USED

PID	DESIGNATION	LATITUDE	LONGITUDE D	ISTANCE (m)
DR4398 G	CGO GILMORE CREEK GEO CORS GRP	N645841.015	W1472957.841	531239.1
DQ7572 A	KSI SITKA CORS ARP	N570255.893	W1352020.256	988166.6
DM7489 A	C27 AC27MNEIL_AK2004 CORS GRP	N591509.028	W1540946.287	219555.1

#### NEAREST NGS PUBLISHED CONTROL POINT

TT0506	U 80	N6031005.50 W15104057.30	3529.0



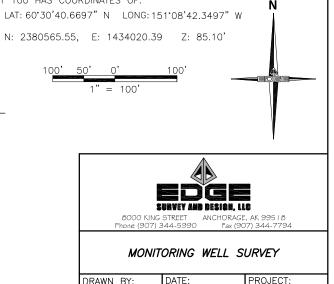
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POINT 100 HAS COORDINATES OF:



DRAWN BY: JY		PROJECT: 24-631
CHECKED BY:	SCALE:	SHEET:
RS	1'=100'	1 OF 1

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2015-003393-0

Recording District 302 Kenai

04/24/2015 03:22 PM Page 1 of 13

## CONDITIONAL LAND USE PERMIT FOR MATERIAL EXTRACTION KENAI PENINSULA BOROUGH PLANNING DEPARTMENT KENAI RECORDING DISTRICT

ALA

SK

A

Legal Description: Tract 13, Diamond Willow Estates Subdivision Part 13, according to Plat 2015-12, Kenai Recording District, Third Judicial Court, State of Alaska.

- WHEREAS, On July 25, 2014 Sean Cude submitted a conditional land use permit application to the Planning Department for the property currently described as above; and
- WHEREAS, KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough; and
- WHEREAS, KPB 21.29 provides that a conditional land use permit is required for material extraction which disturbs more than 2.5 cumulative acres; and
- WHEREAS, the above described property is greater than 2.5 acres and is located within the rural district; and
- WHEREAS, public notice of the application was mailed on August 5, 2014 to the 284 landowners or leaseholders within one-half mile of the subject parcel pursuant to KPB 21.25.060; and
- WHEREAS, public notice was sent to the postmasters in Soldotna & Kenai requesting that it be posted at the Soldotna & Kenai Post Offices; and
- WHEREAS, public notice of the application was published in the August 14, 2014 & August 21, 2014 issues of the Peninsula Clarion; and
- WHEREAS, a public hearing was held at the August 25, 2014 meeting of the Kenai Peninsula Borough Planning Commission; and
- WHEREAS, the Kenai Peninsula Borough Planning Commission denied the request at their August 25, 2014 meeting; and
- WHEREAS, the denial was appealed to the Kenai Peninsula Borough Board of Adjustments; and
- WHEREAS, the Kenai Peninsula Borough Board of Adjustments heard the appeal on January 21, 2015; and
- WHEREAS, on February 13, 2015, the Kenai Peninsula Borough Board of Adjustments reversed the decision of the Kenai Peninsula Borough Planning Commission and

Kenai Peninsula Borough Planning Commission Conditional Land Use Permit

Page 1 of 3

granted approval of the conditional land use permit (Exhibit A) subject to the conditions and recommendations of Resolution 2014-20 (Exhibit B);

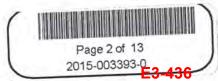
NOW, THEREFORE, the Kenai Peninsula Borough Planning Department gives notice to the public that the conditional land use permit for the above mentioned parcel is approved subject to the following conditions:

## PERMIT CONDITIONS

- The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
- 2. The permittee shall place and maintain a 6-foot berm along the north property line adjacent to Virginia Drive, the west property line along Ciechanski Road, and along a portion of the south property line along Canvasback Avenue; place and maintain a 6-foot fence along the remainder of the south property line adjacent to Ravenwood Subdivision; and maintain a minimum of 50 feet of undisturbed, natural vegetation between the excavation perimeter and the east property line until excavation takes place in that area, the vegetative buffer shall then be replaced with a 6-foot fence that shall be maintained.
- 3. The permittee shall maintain at least a 2:1 slope between the inner buffer zones and pit floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 30 days from the time of removal.
- 4. The permittee may not operate materials processing equipment within 300 feet of the west, south, or east parcel boundaries; or within 100 feet of the north boundary. Rock crushing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
- 5. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
- The permittee shall maintain a 2-foot vertical separation from the seasonal high water table.
- 7. The permittee shall not dewater either by pumping, ditching or any other form of draining unless an exemption is granted by the planning commission.
- 8. The permittee shall ensure that fuel storage containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.
- 9. The permittee shall conduct operations in a manner so as not to damage borough roads as required by KPB 14.40.175, and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
- 10. The permittee shall notify the planning department of any further subdivision or return to acreage of this parcel. The planning director may issue a written exemption from the permit 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.
- 11. The permittee shall apply water or calcium chloride, as needed, on haul roads within the boundaries of the subject parcel.
- 12. The permittee shall reclaim the site as described in the reclamation plan for this parcel and as approved by the planning commission.
- 13. The permittee is responsible for determining the need for any other municipal, state or federal permits and acquiring the same. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and

Kenai Peninsula Borough Planning Commission Conditional Land Use Permit

Page 2 of 3



abiding by related permits.

- 14. This conditional land use permit may be subject to annual review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.25.090, the planning commission may revoke a permit issued pursuant to this chapter if the permittee fails to comply with the provisions of KPB 21.29 or the conditions of the permit. The planning director will provide at least 30 days written notice to the permittee of a revocation hearing before the planning commission.
- Once effective, this conditional land use permit is valid for five years. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.

Pursuant to the Board of Adjustments decision on February 13, 2015, this Conditional Land Use Permit shall become effective on signing by the Planning Director.

Difector Maxwell

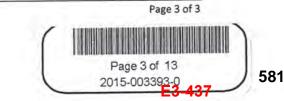
April 15, 2015

ATTEST:

Patti Hartley

Administrative Assistant

Return to: Kenai Peninsula Borough Planning Department 144 N. Binkley Soldotna AK 99669



## **EXHIBIT A**

#### BOARD OF ADJUSTMENT

#### **KENAI PENINSULA BOROUGH**

In the Matter of the Appeal of the Kenai Peninsula Borough Planning Commission Approval of conditional land use permit for KPB Tax Parcel ID #055-270-98, 055-270-50, 055-270-51 and 055-270-52, a 19.36 acre site located at Tract A2A, Diamond Willow Estates Subdivision Part 11 according to Plat 2012-93, Kenai Recording District, Third Judicial District, State of Alaska; and Lots C, D & E, Diamond Willow Estates Subdivision Part 10 according to Plat 2008-135, Kenai Recording District, Third Judicial District, State of Alaska:

Joe Kashi, attorney for Sean Cude,

Applicant.

The Board hereby unanimously issues this written decision with the following members present and participating in the hearing and deliberations: Betty Glick (Chair), Mildred Martin (Vice Chair), Tom Clark, Ron Long and Hai Smalley.

#### DECISION ON APPEAL AND FINDINGS OF THE BOARD OF ADJUSTMENT

On January 21, 2015, the Kenai Peninsula Borough ("KPB" or "Borough") Board of Adjustment ("Board") heard the above-titled appeal from denial by the Borough Planning Commission ("Commission") of the application of Sean Cude for a conditional land use permit ("CLUP") on KPB Tax Parcels numbered 055-270-98, 055-270-50, 055-270-51, and 055-270-52. The Board met later that same day in adjudicatory session to deliberate and adopt its decision.

Having considered the Record, written and oral arguments of the parties and applicable Alaska law and KPB Code, the Board unanimously reverses the decision of

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Kenai Peninsula Borough Board of Adjustment Decision



Page 1 of 6

the Commission and grants the CLUP at issue subject to the conditions recommended by Borough staff.<sup>1</sup>

## A. PROCEDURAL HISTORY AND BACKGROUND

On August 24, 2014, the Commission denied approval of a CLUP for a sand, gravel, or material site. R. 12-14. The subject property is owned by SBC 2012 Irrevocable Trust and the material site applicant is Sean Cude. R. 2.

The configuration of the proposed site is an approximate 15-acre material site (Tract A2A) which has been substantially exhausted (R.15, 23, 28). Abutting this parcel are lots C, D, and E, each between 1 and 2 acres, where further excavation is proposed. R.15, 23, 28. See also Opening Statement of the Kenai Peninsula Borough, dated November 26, 2014. The applicant's proposed depth of excavation is 20 feet below the natural existing grade. R. 2. Excavation is not proposed below the floor of the existing pit. R.17. Mr. Cude indicated in his application and the parties noted in their statements that material processing will take place on the site. R. 2, 5. Mr. Cude's application asserts that all processing will be located greater than 300 feet from the west, south, and east parcel boundaries. R. 2, 5.

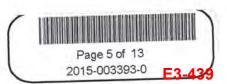
Mr. Cude also included a request for a waiver and an exception from excavation requirements in his application, both of which were denied by the Commission. Specifically, Mr. Cude requested a waiver permitting processing up to 100 feet from the north parcel boundary. See R. 2, 5, 16. He also requested an exception under KPB 21.29.050(A)(2)(e) to the buffer requirements allowed for contiguous parcels for the boundary shared by the existing pit and lots C, D, and E. While the Borough staff recommended granting the waiver, it recommended denying the requested exception. See KPB Opening Statement, R.75. Instead, staff recommended that lots C, D, and E be eliminated through a replat and combined with the larger existing pit. R.16. Based upon testimony at the hearing, Mr. Cude has agreed to this approach and has initiated the combination process.

Borough staff recommended approval of Mr. Cude's application based upon 25 findings of fact and 15 conditions. These findings and conditions are, after careful

<sup>1</sup> Mr. Cude submitted a written motion to supplement the record on November 26, 2014. This motion sought to admit certain photographs that were not presented to the Commission, as well as a letter from Lori Aldrich, State of Alaska Department of Environmental Conservation Solid Waste Regional Program Manager, regarding Mr. Cude's compliance with the Alaska Department of Environmental Conservation's Solid Waste Program on the subject parcels. The Board determined that pursuant to KPB 21.20.290 and 21.20.270, record supplementation was not warranted and the motion was denied. Additionally, Mr. Cude withdrew the motion to supplement the record based upon discussions with the Borough planning staff prior to the hearing. The Board did grant approval to use some of the photographs demonstrably as visual aids during the hearing.



Kenai Peninsula Borough Board of Adjustment Decision



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review and analysis by this Board, hereby incorporated into this Board's findings and its final decision.

The Commission received approximately 14 letters of objection or concern to the requested CLUP and one agency comment letter. Ten people testified before the Commission against granting the CLUP, noting concerns regarding prior and/or anticipated negative impacts on water quality, property values, traffic flow and safety, site reclamation, and general nuisances resulting from noise and dust. Tr. 4-33, 44-45; R.31-56. At the appeal hearing before this Board, these same concerns were reiterated during oral argument.

## B. STANDARD OF REVIEW

The Board applies the following standards in reviewing the Commission's decision: The Board exercises its independent judgment on matters that relate to the interpretation or construction of ordinances or other provisions of law. KPB 21.30.020. The Board defers to the judgment of the Commission regarding findings of fact if they are supported in the record by substantial evidence ("substantial evidence" is "relevant evidence a reasonable mind might accept as adequate to support a conclusion"). KPB 21.20.320(2). Where the Board decides that a finding of fact made by the Commission is not supported by substantial evidence, the Board may make a different finding on the factual issues, based upon the evidence in the record developed before the Commission if it concludes a different finding was supported by substantial evidence, or may remand the matter to the Commission.

#### C. LEGAL ANALYSIS

After reviewing the statements of the parties, the record, and listening to oral testimony, the Board has determined that the Commission's decision denying the CLUP exceeded the scope of authority granted the Commission. While the Board certainly sympathizes with the concerns expressed by the Commission and during oral testimony, these concerns fall outside the discretion afforded the Commission and the Board as a matter of local law.

The Borough has, for the most part, transferred zoning authority to the cities within its borders. While the Borough does maintain zoning authority over areas outside the regulatory arm of the cities but within Borough boundaries, which constitute the Borough rural zoning district, the local legislature permits almost wholly unrestricted use of these areas and has limited restrictions on use to only those expressly provided in the Kenai Peninsula Borough Code. See KPB 21.04.010(B).

Among the few restrictions that apply to the rural zoning district, KPB 21.29 requires users to obtain a permit for material extraction in certain situations. See KPB 21.29.020. While there are different permit requirements depending upon the nature of the extraction, a Conditional Land Use Permit is required for material extraction disturbing more than 2.5 acres or entering the water table. KPB 21.29.020(B). In order to obtain a CLUP, or an extraction permit of the type at issue, an applicant must submit

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a permit planning application that provides information identified in the Code. KPB 21.29.030. The Code actually requires significant documentation of the intended extraction on site, including but not limited to plans regarding the life span of the extraction, a buffer plan, a reclamation plan, and so on. While the Code requires applicants to submit significant documentation in order to obtain a CLUP, the Code does not provide the Commission discretion to deny a CLUP when the application has been properly submitted. Instead, the Code preserves the unrestricted nature of the rural zoning district and limits the Borough to the imposition of certain conditions to extraction. See 21.29.040.

Specifically, the Code provides that:

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:

- Protects against the lowering of water sources serving other properties;
- 2. Protects against physical damage to other properties;
- Minimizes off-site movement of dust;
- Minimizes noise disturbance to other properties;
- 5. Minimizes visual impacts; and
- Provides for alternate post-mining land uses.

KPB 21.29.040 (emphasis added). Here, the Commission did not deny or identify, evidence suggesting that Mr. Cude failed to meet the CLUP application requirements. Instead, the Commission's findings only identified concerns surrounding extraction that fell outside Code requirements. For example, the Commission's findings and concerns regarding water degradation ignored the applicant's compliance with KPB 21.29.040(A4), which ensures no material extraction takes place within '100 horizontal feet of any existing water source. Again, the Commission may only apply conditions under KPB 21.29.050 when issuing a CLUP, it may not impose additional conditions despite the positive impact such conditions may have in the rural zoning district or the community at large. See KPB 21.29.050. To the extent the parties disagree with these limitations, it is the Kenai Peninsula Borough Assembly through the local legislative process, and not this Board or the Commission, that holds the power to change the CLUP permit approval process.

The differences between the traditional role of a "conditional use permit" and the CLUP required by the Borough further highlights the limited authority granted to the Borough to regulate extraction within the rural zoning district. Although the Borough has

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entitled its extraction permit a "conditional use permit," the permitting process differs greatly from the traditional "conditional use" permitting process. Generally, a conditional use permit is designed to permit certain uses otherwise prohibited in a zoning district. By way of example, a local residential zoning district may permit day care facilities within that district but only where a conditional use permit is obtained. The community with zoning authority may expect its planning commission to grant or, deny the conditional use permit after balancing several factors identified by ordinance, including the best interest of the district and the community. In such cases, the permit at issue grants the permit applicant greater rights than other land owners in the zoning district at issue. Consequently, the permitting community would have an obligation to ensure that the district's interests warrant granting one landowner more freedom of use than another.

Here, the Borough's CLUP process has the opposite effect. A CLUP actually imposes greater rather than less restrictions upon the permitted parcels. While the district is predominately unregulated and unrestricted, an applicant's parcels are subject to specific and express conditions that are not automatically imposed on other parcels in the same district. Thus, the government must ensure that the application of greater restrictions upon the applicant are in fact justified and imposed in a fair and objective way. The KPB Code preserves this fairness by granting the Borough staff, the Commission, and this Board very limited discretion in denying and even conditioning CLUPs.

## D. CONCLUSION

For all of the reasons stated above, the Board hereby reverses the Commission's decision and grants the conditional use permit application filed June 25, 2014, by Sean Cude subject to the conditions and recommendations by Resolution 2014-20.

## NOTICE OF RIGHT TO APPEAL

Pursuant to KPB 21.20.360 and AS 29.40.060, this decision constitutes the final administrative decision of the Kenai Peninsula Borough in this matter. Any party aggrieved by this decision has thirty (30) days from the date of distribution of this decision to file an appeal in the Superior Court for the State of Alaska in Kenai, Alaska, in accordance with Part VI of the Alaska Rules of Appellate Procedure.

Dated this 13 day of February, 2015.

Betty J. Glick, Chair KPB Board of Adjustment

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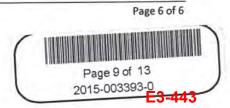
ATTEST:

Johni Blankenship, MMC Borough Clerk



Kenai Peninsula Borough Board of Adjustment Decision

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# EXHIBIT B

## KENAI PENINSULA BOROUGH PLANNING COMMISSION RESOLUTION 2014-20 KENAI RECORDING DISTRICT

A resolution granting approval of a conditional land use permit to operate a sand, gravel, or material site for a parcel described as Tract A2A, Diamond Willow Estates Subdivision Part 11 according to Plat 2012-93, Kenai Recording District, Third Judicial Court, State of Alaska; and Lots C, D, & E, Diamond Willow Estates Subdivision Part – 10 according to Plat 2008-135, Kenai Recording District, Third Judicial Court, State of Alaska.

- WHEREAS, KPB 21.25 allows for land in the rural district to be used as a sand gravel or material site once a permit has been obtained from the Kenai Peninsua Boough, and
- WHEREAS, KPB 21.29 provides that a conditional land use permit is required for material extraction which disturbs more than 2.5 cumulative acres; and
- WHEREAS, on July 25, 2014 the applicant, Sean Cude, submitted a conditional land use permit application to the Planning Department for a material site greater than 2.5 acres on KPB Tax Parcel Numbers 055-270-98, 055-270-50, 055-270-51, and 055-270-52, which are located within the rural district; and
- WHEREAS, public notice of the application was mailed on August 5, 2014 to the 284 landowners or leaseholders within one-half mile of the subject parcel pursuant to KPB 21.25.060; and
- WHEREAS, public notice was sent to the postmasters in Soldotna & Kenai requesting that it be posted at the Soldotna & Kenai Post Offices; and
- WHEREAS, public notice of the application was published in the August 14, 2014 & August 21, 2014 issues of the Pennsula Clarion; and
- WHEREAS, a public hearing was held at the August 25, 2014 meeting of the Kenai Peninsula Borough Planning Commission;

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

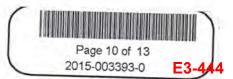
SECTION 1. That the Planning Commission makes the following findings of fact pursuant to KPB 21.25 and 21.29:

Findings of Fact

- KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough.
- 2. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
- On July 25, 2014 the applicant, Sean Cude, submitted to the Borough Planning Department a conditional land use permit application for KPB Tax Parcel Numbers 055-270-98, 055-270-50, 055-270-51, and 055-270-52, which are located within the rural district.
- KPB 21.29 provides that a conditional land use permit is required for material extraction that disturbs more than 2.5 cumulative acres.
- 5. The proposed cumulative disturbed area within the parcel is approximately 19.36 acres,

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including existing disturbed areas.

- KPB 21.29.030(A) states the planning director may determine that certain contiguous parcels are 6. eligible for a single permit.
- The planning director has reviewed this application and has determined that these four parcels 7. are not eligible for a single permit.
- Tax Parcel Numbers 055-270-50, 055-270-51, and 055-270-52 are located within Diamond 8. Willow Estates Subdivision Part - 10 which states, in part, "Wastewater disposal Soil conditions, water table levels, and soil slopes in this subdivision have been found suitable for conventional onsite wastewater treatment and disposal systems serving single family of [sic] duplex residences, and meeting the regulatory requirements of the Kenai Peninsula Borough."
- Tax Parcel Numbers 055-270-51 and 055-270-52 are configured as flag lots. The proposed 9. excavation would not be compatible with the designed access for these lots.
- A new plat that combines these four parcels into just one parcel would eliminate Tax Parcel 10. Numbers 055-270-50, 055-270-51, and 055-270-52, thus eliminating the possibility of a buyer of these lots relying on the information on the plat.
- A new plat that combines these four parcels into just one parcel would make the new parcel 11. eligible for a conditional land use permit for a material site.
- To meet material site standard 21.29.040(A1), the proposed activity must protect against aquifer 12. disturbance by maintaining a 2-foot vertical separation from the seasonal high water table and by ensuring that no material extraction takes place within 100 honcontaineet of any existing water source.
- An excavated test hole in the existing material site for hund groundwater at approximately 2 13. feet below the existing material site floor.
- existing material site floor. The proposed excavation will be to the same elevel 14.
- The site plan indicates that there are no known wells located within 100 feet of the proposed 15. excavation area.
- The site plan indicates that there are several wells located within 300 feet of the proposed 16. material site.
- To meet material site standard 21,29, 40(12), the proposed activity must be conducted in a manner to protect against physical tapage to adjacent properties by complying with the required 17. permit conditions of KPB 21.22 050.
- To meet material site standard 2 29.040(A3), the proposed activity must be conducted in a 18. r-site movement of dust by complying with required permit manner which minimizes the condition KPB 21.29.050(10), Dust Control. Ingress and egress at the material site will be Virginia Drive which is a Borough maintained road. To meet material site standard 21.29.040(A4), the proposed activity must be conducted in a
- 19.
- 20. manner which minimizes noise disturbance to other properties by complying with permit KPB 21.29050(2), Buffer Zone; KPB 21.29.050(3), Processing; and KPB condition 21.29.050(11) Hours of Operation. The applicant indicates that material processing will take place on the site. As indicated on the
- 21. submitted site plan all processing will be located greater than 300 feet from the west, south, and east parcel boundaries and 100' from the north boundary, which adjacent to a large vacant parcel.
- To meet material site standard 21.29.040(A5), the proposed activity must be conducted in a 22. manner which minimizes visual impacts by complying with the permit condition KPB 21.29.050(2), Buffer Zone.
- The submitted site plan and application indicates that a 6-foot berm, 6-foot fence, or a 50-foot 23. vegetated buffer will be maintained on all boundaries.
- The bonding requirement of KPB 21.29.050(12b) will apply to this material site if extraction in 24. any one year exceeds 50,000 cubic yards of material.
- A public hearing of the Planning Commission was held on August 25, 2014 and notice of the 25. meeting was published, posted, and mailed in accordance with KPB 21.25.060 and KPB 21.11.

That the land use and operations are described and shall be conducted as follows: SECTION 2.

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- A. An area currently known as KPB Tax Parcel Numbers 055-270-98, 055-270-50, 055-270-51, and 055-270-52. The total disturbed area within this area is up to 19.36 acres.
- Tract A2A, Diamond Willow Estates Subdivision Part 11 according to Plat 2012-93, Kenai Β. Recording District, Third Judicial Court, State of Alaska; and Lots C, D, & E, Diamond Willow Estates Subdivision Part - 10 according to Plat 2008-135, Kenai Recording District, Third Judicial Court, State of Alaska.
- The applicant, Sean Cude, proposes to: 1. Extract gravel from the subject parcel; 2. Reclaim the C. site to a stable condition upon depletion of material.

#### PERMIT CONDITIONS

- The permittee shall cause the boundaries of the subject parcel to be staked at sequentially 1. visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
- 2. The permittee shall place and maintain a 6-foot berm along the north property line adjacent to Virginia Drive, the west property line along Ciechanski Road, and along a portion of the south property line along Canvasback Avenue; place and maintain a 6-foot fonce along the remainder of the south property line adjacent to Ravenwood Subdivision; and maintain a minimum of 50 feet of undisturbed, natural vegetation between the excavation perimeter and the east property line until excavation takes place in that area, the vegetative buffer shall then be replaced with a 6-foot fence that shall be maintained.
- The permittee shall maintain at least a 2:1 slope between the inner basic zones and pit floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 30 days from the time of removal. The permittee may not operate materials processing equil ment within 300 feet of the west, 3.
- 4. south, or east parcel boundaries; or within 100 feet of the north boundary. Rock crushing equipment shall not be operated between 10:00 p.m. and 6:00 a.m. The permittee shall not extract material within 100 honzontal feet of any water source existing
- 5. prior to issuance of this permit.
- 6.
- The permittee shall maintain a 2-foot vertical separation from the seasonal high water table. The permittee shall not dewater either by pumping, ditching or any other form of draining unless 7. an exemption is granted by the planning commission.
- The permittee shall ensure that fuel storage containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable 8. surface.
- The permittee shall conduct operations in a manner so as not to damage borough roads as 9. required by KB 14.0.175, and will be subject to the remedies set forth in KPB 14.40 for violation of this condition
- The permittee shall usify the planning department of any further subdivision or return to acreage of this parcet. The planning director may issue a written exemption from the permit amendment 10. 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.
- The permittee shall apply water or calcium chloride, as needed, on haul roads within the 11. boundaries of the subject parcel.
- The permittee shall reclaim the site as described in the reclamation plan for this parcel and as 12. approved by the planning commission.
- The permittee is responsible for determining the need for any other municipal, state or federal 13. permits and acquiring the same. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits.
- This conditional land use permit is subject to annual review by the planning department to 14. ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.25.090, the planning commission may revoke a permit issued pursuant to this chapter if the permittee fails to comply with the provisions of this chapter or the conditions of the permit. The planning director shall provide at least 30 days written notice to the permittee of a revocation

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hearing before the planning commission.

15. Once effective, this conditional land use permit is valid for five years. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.

ADOPTED	BY	THE	PLANNING	COMMISSION	OF	THE	KENAI	PENINSULA	BOROUGH	ON
THIS	1	DAY OF				_, 2014	4.			

ATTEST: Patti Hartley Administrative Assistant PLEASE RETURN Kenai Peninsula Borough Planning Department 144 North Binkley St. Soldotna, AK 99669

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conditional use permits. For example, DOT projects typically need more than two years. The public hearing has been held and the permit issued for the DOT Soldotna Bridge Project. However, some problems have arisen with this project, and construction has not yet begun. Another DOT project needing more than two years is the Stariski Bridge. The two-year period will probably not be sufficient for the River Quest conditional use permit.

Chairman Bryson opened the meeting for public comment. Seeing and hearing no one wishing to speak, Chairman Bryson closed the public comment and opened discussion among the Commission.

**MOTION:** Vice Chairman Clark moved, seconded by Commissioner Johnson, to recommend enactment of Ordinance 2004-14.

Chairman Bryson asked if the extended time would apply only in certain cases or to all conditional use permits. Mr. Mohorcich explained that if the Planning Commission determined a project needed more than one year to be completed, findings would need to be cited to justify extending the one-year period. He thought staff would probably make recommendations to the commission to extend the deadline beyond the normal one-year time frame. The extended deadline did not apply to all conditional use permits. Extending the deadline would be at the discretion of the commission.

Chairman Bryson asked if extending time for permits would be project specific. Mr. Mohorcich replied yes.

Commissioner Massion asked if applicants could request multiple time extensions. Mr. Mohorcich replied they could. The intent is to allow applicants additional time if the project cannot be completed within the normal one-year time frame. For example, the Soldotna DOT Bridge Project will be brought back to the commission because it will not be constructed within the two-year period. If the ordinance is enacted, the commission could grant up to six years for a permit, if necessary.

Commissioner Troeger thought the proposed ordinance was reasonable, and he supported the motion. He added that the problem with the Soldotna Bridge was not the permit. The problem was acquiring additional right-of-way. This matter is now in the court system.

**VOTE:** The motion passed by unanimous consent.

BRYSON	CLARK	FOSTER	GROSS	HOHL	HUTCHINSON	ISHAM
YES	YES	YES	YES	YES	ABSENT	YES
JOHNSON	MARTIN	MASSION	PETERSEN	TAURIAINEN	TROEGER	11 YES
YES	YES	YES	YES	ABSENT	YES	2 ABSENT

## AGENDA ITEM F. PUBLIC HEARINGS

4. Permit Application for a Sand, Gravel or Material Site; Kalifornsky Beach/Ciechanski; KPBPC Resolution 2004-22

Staff report as reviewed by Kevin Williamson.

PC MEETING: May 10, 2004

- APPLICANT: Mercedes A. Gibbs P.O. Box 554 Soldotna, AK 99669
- OWNER: Mercedes A. Gibbs P.O. Box 554 Soldotna, AK 99669

**LOCATION:** T05N R11W S24, Seward Meridian, KPB 05527035; Parcel: 27.73 acres; Portion to be Gravel Pit: approx. 18 acres.

## BACKGROUND INFORMATION:

This is an existing material site operation. The applicant proposes to ingress and egress the subject parcel from Canvasback Avenue and Virginia Drive and excavate in the western portion of the 18-acre portion of the parcel and

KENAI PENINSULA BOROUGH PLANNING COMMISSION MAY 10, 2004 MEETING

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move east. The applicant proposes to excavate 9,000 cubic yards of gravel per year. A copy of the application and support information is included as Attachment A.

Surrounding properties are predominately privately owned. Copies of the land ownership and land use maps for the area are included as Attachment B and C. A year 2000 aerial is included as Attachment D.

The applicant proposes a 6-foot earthen berm and 50 feet of natural or improved vegetation on the north, south, east and western boundaries for buffers. The applicant proposes to excavate to 40 feet deep. There are four (4) wells within 300 feet of the portion of the parcel to be a gravel pit. The applicant estimates the distance to groundwater to be 48 feet. This estimation of depth was determined by a well drilled on the parcel.

According to the applicant's Alaska Department of Natural Resources Letter of Intent, the applicant will reclaim by backfilling, grading, and recontouring the excavation area using strippings, overburden, and topsoil to a condition that allows for the re-establishment of renewable resources on the site within a reasonable period of time. It will be stabilized to a condition that will allow sufficient moisture to be retained for natural revegetation. Stockpiled topsoil will be spread over the reclaimed area, which will eventually be used as a hay field.

This land is within the Kenai River watershed. The Kenai River, which is anadramous, runs as close as 800 feet to the east. The applicant proposes an extra buffer as well as a 500 foot setback from the Kenai River as voluntary permit conditions.

The excavation site is 100 percent classified 'upland' according to the National Wetland Index.

**KPB AGENCY REVIEW:** Permit information was distributed to KPB agencies on April 23, 2004. One comment was received from the Kenai River Center, and is included as Attachment E. Any comments received by Planning Department staff will be presented to the Planning Commission as lay-down items at the May 10, 2004 meeting.

**PUBLIC NOTICE:** Public notice was mailed to property owners within a one-half mile radius of the subject site on April 23, 2004. A copy of the public notice is included as Attachment F. One letter was received from a property owner as of April 29, 2004, and is included as Attachment G. Any comments received by Planning Department staff will be presented to the Planning Commission as lay-down items at the May 10, 2004 meeting.

**CODE OR REGULATION:** 21.25 requires a permit from the Kenai Peninsula Borough to use land as a sand, gravel or material site. 21.25.030 defines a sand, gravel or material site as *"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."* 

**STAFF RECOMMENDATION:** Staff recommends the Planning Commission adopt the following Findings of Fact and approve the land use permit with the listed conditions:

## **Findings of Fact**

- 1. The applicant completed and submitted to the Borough Planning Department a permit application and paid the appropriate fee established by the Planning Commission.
- 2. Staff determined the application contained the required information and was complete.
- 3. The proposed activity complies with 21.26.020.A.1 Aquifer disturbance. The applicant will not extract material within 100 feet of an individual's existing water source, nor within two feet of the water table within 100 to 300 feet of an individual's existing water source.
- 4. The proposed activity complies with 21.26.020.A.2. Roads. The applicant will not damage borough roads as required by KPB 14.40.070.C.
- 5. The proposed activity complies with 21.26.020.A.3 Adjacent Properties. The activity, as proposed will be conducted in a manner to reduce physical injury to adjacent properties by complying with conditions of KPB 21.26.030.
- 6. A 6-foot earthen berm buffer on the north, south, east, and western boundaries is appropriate for the parcel location and comply with 21.26.030.A.2.
- 7. The applicant has filed a letter of intent for reclamation as required in 21.26.030.A.2.
- 8. A public hearing of the Planning Commission is being held on May 10, 2004 and proper notice in accordance with KPB 21.25.060 was furnished to interested parties.

## **Permit Conditions**

- 1. The approved land use and operations are described and shall be conducted as follows: **T05N R11W S24**, **Seward Meridian**, **KPB 05527035**; **Parcel: 27.73 acres**; **Portion to be Gravel Pit: approx. 18 acres**, the permittee, Mercedes A. Gibbs proposes to: 1) excavate material; 2) build berms from material; 3) sell gravel commercially; 4) reclaim the area by backfilling and contouring to stable condition. *Finding: This is an administrative condition necessary to define the limits of the permitted activity*.
- 2. The permittee shall maintain a 6-foot earthen berm buffer on the north, south, east, and western borders. *Finding: This condition shall ensure compliance with KPB 21.26.030.A.1.*
- 3. The permittee shall reclaim by contouring all disturbed land upon exhausting the material on-site in accordance with state statutes to leave the land in a stable condition. Reclamation shall occur for all exhausted areas of the site exceeding one acre before a five-year renewal permit is issued. *Finding: This condition shall ensure compliance with KPB 21.26.030.A.2*
- 4. The operation shall not negatively impact an aquifer serving another property. Operations shall not breach an aquifer-confining layer. *Finding: This condition shall ensure compliance with KPB 21.26.030.A.3.*
- 5. The permittee shall store fuel in lined, impermeable areas. *Finding: This condition shall ensure compliance with KPB 21.26.030.A.4*
- 6. The permittee shall maintain a horizontal distance of at least 100 feet from any wells or water sources for consumptive use existing prior to the effective date of this permit. The permittee shall limit material extraction to no deeper than two feet above the seasonal high water table for extraction occurring between 100 and 300 feet from any well or water source for consumption use prior to the effective date of this permit. *Finding: This condition shall ensure compliance with KPB 21.26.030.A.5*
- 7. The permittee shall not damage borough roads as required by KPB 14.40.070 and will be subject to the remedies set forth in KPB 14.40 for violation of this condition. *Finding: This condition shall ensure compliance with KPB 21.26.030.A.6*
- 8. The permittee is responsible for determining the need for any other municipal, state or federal permits and acquiring the same. The permittee must abide by all applicable municipal, state, and federal laws. *Finding: This condition shall ensure compliance with KPB 21.25.170.*
- 9. If changes to the approved project described above are proposed prior to or during siting, construction or operation the permittee is required to notify the KPB Planning Department to determine if additional approval would be required. *Finding: This is an administrative condition necessary to ensure continued compliance with the terms and conditions of the permit.*
- 10. This Land Use Permit is subject to annual review by the Planning Department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.25.090, the Planning Commission may revoke a permit issued pursuant to this chapter if the permittee fails to comply with the provisions of this chapter or the conditions of the permit. The Planning Director shall provide at least 30 days written notice to the permittee of a revocation hearing before the Planning Commission. *Finding: This is an administrative condition necessary to ensure continued compliance with the terms and conditions of the permit and KPB 21.25.080.*
- 11. Once effective, this Land Use Permit is valid for five years. The permittee must apply for a permit renewal within five years of the date this permit is granted in accordance with the provisions of KPB 21.26.050. *Finding: This condition shall ensure compliance with KPB 21.26.050.*
- 12. The permittee hereby agrees to comply with the terms, conditions and requirements of the KPB 21.25 and 21.26, and any regulations adopted pursuant to this chapter. *Finding: This condition shall ensure compliance with KPB 21.25.050.*
- 13. This Land Use Permit shall become effective on signing by the Planning Commission Chairman or Vice Chairman, after review, concurrence and notarized signing by the permittee and property owner. *Finding: This administrative condition is necessary to facilitate issuance and acceptance of the permit terms and conditions.*

## Voluntary Permit Conditions

- 1. The permittee has agreed to a 500-foot setback from the Kenai River within which no material site operations are permitted.
- 2. The permittee has agreed to an additional buffer on all borders 50 feet of natural or improved vegetation.

NOTE: Any party of record may file an appeal of a decision of the Planning Commission to the Assembly sitting as a Board of Adjustment in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances, Chapter 21.20.250.

Parties of record include those who provide written and verbal testimony during the Planning Commission public hearing. Petition signers are not considered parties of record unless separate written or verbal testimony is provided (KPB Code 21.20.210.6.b.1).

An appeal must be filed with the Borough Clerk within 15 days of the notice of decision, using the proper forms, and be accompanied by the \$300 filing and records preparation fee.

END OF STAFF REPORT

Chairman Bryson opened the meeting for public comment.

1. Crystal Penrod, 36860 Virginia Drive

Travis Penrod distributed pictures to the commission. (*Clerk's Note: Copies were not provided for the subject file.*) Ms. Penrod hoped the commission would consider the pictures as if they were taken next to the commissioners' homes. The pictures were taken less than one-quarter mile from her home.

Ms. Penrod said the pit was opened three years ago without a permit. Almost all the gravel has been removed from the pit. The applicant wants to get a permit for work that has already been done. The photos show the site is already an 18-acre plus gravel pit. The owner has allowed the property to become a site for dumping junk cars, septic tanks, septic (sewer) pipe, asphalt, concrete, and many items that do not belong in a gravel pit that is going to be reclaimed.

The water aquifer feeding the neighborhood wells was breached last year. Ms. Penrod was told water was being pumped from the aquifer to rinse the gravel being sold. She now knew this was not legal. Water is continuing to be pumped into water trucks to rinse gravel. The pit has a large area filled with water, which is the exposed aquifer that serves neighborhood wells. According to the Kenai River Center, this water is connected to the Kenai River.

The applicant said she planned to reclaim the pit in the future. The photos show junk cars, a connex trailer, and several other items that cannot be buried. The area looks more like a landfill than a gravel pit. Trucks arrive daily and dump large loads of asphalt, cement, sewer pipe, culvert segments, and other nonorganic material that clearly refute the applicant's claim of wanting to return the land to agricultural status.

The excavator responsible for the pit is Jason Foster. Ms. Penrod contacted Mr. Foster by telephone. He did not want to comply with Borough Code. He threatened her husband, Travis Penrod.

As a property owner, Ms. Penrod wanted the water aquifer filled with clean, safe gravel. Also, the leaking oil barrels, diesel tanks, septic tanks (visible in the photos), and other items that do not belong in the pit need to be removed.

When the pit opened three years ago, Ms. Penrod did not want to interfere. The area has good gravel. She realized the applicant and operator needed to make a living. Ms. Penrod was willing to accept the gravel pit operation as long as the owner and operator were responsible, but they are not being responsible. Several property owners have two lots; some people own two homes. Ms. Penrod did not want to move, drill a new well, or drink bottled water for the rest of her life.

Ms. Penrod wanted all the activity in the pit to stop until the water aquifer is filled with clean gravel, and the pit is cleaned to DEC specifications. She asked the borough to protect her legal rights as a property owner. She asked the commission to look at what has been done and try to understand the homeowners' point of view.

Commissioner Isham asked if leaking oil drums were shown in the pictures. Ms. Penrod replied yes. Commissioner Isham asked if she had reported this to DEC. Ms. Penrod replied yes. She reported this to DEC more than once. DEC has been slow to respond. DEC said she could file a formal complaint, which she is in the process of doing. She was concerned about the barrels because they were in the bottom of the pit, which is close to the water table.

2. Billy Thompson, 46040 Ciechanski Road

Mr. Thompson asked the commission to look at the pictures before approving expansion of the gravel pit, which is an eye sore in a highly populated area. He did not like to tell people what to do with their land. He asked the commission to look at the property.

Commissioner Hohl noted the staff report recommended a six-foot earthen berm as a buffer. The applicant provided a sketch showing the earthen berm and natural vegetative buffers. She asked Mr. Thompson if he had a preference for buffers. Mr. Thompson replied no. He noted the application said the gravel pit would be refilled in a reasonable time. He inquired about the definition of reasonable time. He doubted it would be refilled in the foreseeable future. He asked if there was a time table for refilling the pit. Chairman Bryson replied no.

Mr. Thompson understood the neighbors were upset about the gravel pit. He did not think anyone was notified when operations started in the pit. The roads are being impacted. Dump trucks run through the stop signs.

3. Travis Penrod

Mr. Penrod has lived in the area 12 years. He appreciated the opportunity to comment. He noted this was not a standard gravel pit. He has been an operating engineer for three years and has worked for a construction company in Anchorage. His family has been in the construction business in Alaska for about 40 years.

Mr. Penrod commented the pictures showed sewer pipe and broken cast iron pipe a few feet from the water. This material has been pushed further down by other debris. This material was deliberately dumped in the pit and covered up. The owner and operator are not trying to accommodate the neighborhood and operate the pit so that it will have minimal impact.

Mr. Penrod spoke with Byron Bondurant, a groundwater hydrologist. He believed the operation would affect property owners' well water. Property owners' wells are very close to the same water table currently being excavated into. The Kenai River, the water table, and the gravel between the river and water table are connected hydrologically. Mr. Penrod and a neighbor looked at a hole in the pit about the size of a cul-de-sac, which was filled with water that looked similar to water from the Kenai River.

Mr. Penrod was concerned about protecting the community's water systems. He commented about the cavalier attitude of the agencies with whom he has spoken. The pictures provided to the commission were taken recently. The pit needs to be cleaned up, and it needs to be inspected by someone who will conduct tests to determine if the material dumped in the pit is contaminated. Backfilling with solid waste is not legal. Material from another site is being dumped into the pit. He offered to answer questions.

Commissioner Johnson asked if the sewer pipe was four-inch pipe. Mr. Penrod replied the metal pipe pushed over the edge appeared to be four-inch cast iron pipe. The pipe buried under debris appeared to be three-inch pipe. The tanks in the middle of the pit were old septic tanks. He questioned why old septic tanks were brought to the pit. Many activities occur on the weekend and late at night.

Commissioner Massion asked Mr. Penrod if he referred to Mr. Foster when describing who was conducting activities in the pit. Mr. Penrod replied the contractor in the pit at this time is Jason Foster, Quality Excavating. Mr. Penrod understood Foster Construction removed most of the material from the pit. He commented that the pit has almost reached its limit. Excavators are reaching into the water to get gravel.

4. Dennis Gease, 36710 Virginia Drive

Mr. Gease concurred with the previous speakers. He noted the applicant proposed a six-foot earthen berm and 50 feet of natural or improved vegetation on all sides. He asked when this would be done.

Mr. Gease noted that other permits had time limits, such as a year. He did not understand why reasonable period of time could not be defined for the subject permit.

5. Stephanie Crosby, 815 Auk, Kenai

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Ms. Crosby used to live on Virginia Drive and planned to move back in the future. The area along Virginia Drive is beautiful except for the gravel pit, which has junk and is an eyesore. Polluting the water table is not fair to the residents. The owner should have had a permit before the operation began. Granting a permit at this time would justify what they are doing, and she did not think this was fair.

6. Tim Agosti, 36894 Virginia Drive

Mr. Agosti moved to the area six years ago from Anchorage for the quality of life. When he first moved onto his property, the pit was mostly a hay field. Foster Construction mined the gravel a few years ago for the Kalifornsky Beach expansion. The pit is mined out. There is some left over reject material in the pit. One photo documented an excavator removing gravel on the southern side of the pit on a steep bank. Many children walk through the pit although it is private property. All the access areas have not been fenced. He voiced concern that the southern wall of the pit might collapse, and someone could get hurt.

Mr. Agosti thought the gravel mining operation should stop until the problems are resolved, and the permit conditions are satisfied.

7. Wendy McGrady, 36830 Virginia Drive

Ms. McGrady has lived in the area for almost eight years. She is living in her dream home and where she wanted to raise her grandchildren. Now her grandchildren cannot ride their bikes on the road because of the cement and concrete trucks that run through the stop signs.

The road is not paved. Parts of the road are very worn. Excavation in the pit is very close to the road. If it rains heavily, the road might collapse from the traffic. The owner/operator has not maintained the road. Excavation keeps getting closer to the edge of the road, which has obvious stress marks. Ms. McGrady voiced concern that vehicles might fall through if the road is not maintained.

Dumping pipes, etc. into the pit is still being done at night.

Ms. McGrady asked the commission to consider whether to allow the applicant to continue when she did not initially have a permit. Property owners were not informed of the gravel pit being excavated.

Commissioner Hohl asked which road was being undercut. Ms. McGrady replied Virginia Drive.

8. Donna Shirnberg, 46680 Gary Avenue (off Virginia Drive)

Ms. Shirnberg lived in her house three years. The gravel pit existed when she moved into her house. She was concerned that the applicant did not obtain the necessary permits for the gravel pit. She concurred with the previous speakers.

9. Betty Culpepper, 46055 Ciechanski Road

When Ms. Culpepper first moved to Alaska, she bought a house in Nikiski. She had to give that house away because the water system was breached. She was assured when she moved into her house on Ciechanski there would not be any problems. She lived across the hayfield. The noise from the pit from all the truck traffic is horrible. The trucks run the stop signs.

10. B.J. Culpepper, 46055 Ciechanski Road

Mr. Culpepper concurred with the previous speakers. He did not want the water table to be disturbed. He did not want to have to dodge large trucks. Large gravel falls out of the trucks into the middle of the road. He wanted the gravel pit operation to be stopped, if possible.

Chairman Bryson inquired about the distance of Mr. Culpepper's house from the 90-degree turn on Ciechanski. Mr. Culpepper estimated about one-quarter of a mile. He commented about the loud noise from the gravel pit. Chairman Bryson asked Mr. Culpepper if he lived on the east/west portion of Ciechanski. Mr. Culpepper replied yes.

Commissioner Hohl asked Mr. Culpepper if he had spoken with the Road Service Area about the deterioration of the road. Chairman Bryson noted that Ciechanski Road was a state maintained road.

#### 11. Oliver Amend

Mr. Amend owned property in the area. He started the process to open the gravel pit. Operations in the pit began because of necessity, not profit. The pit is almost expired. He has tried to accommodate the neighbors. He has spoken with several property owners about the long-term plans for the pit.

The pit existed prior to 1986. River Hills was developed with material from the pit. The pit was grandfathered in. Mr. Amend was not notified until about a 1.5 months ago that the pit was illegally operating because of enactment of some ordinance in January 2001 requiring an application to re-permit the grandfather rights, which was not done. The pit was shut down. An application was submitted so the pit operation can continue.

Material from the pit was used to upgrade Ciechanski Road and many subdivisions in the area, e.g., Kalifornsky Beach, Redoubt Forest Drive, etc. Mr. Amend estimated 50,000 yards of usable material was still in the pit. He wanted to keep the pit active. The west side of the pit is being filled; about 70,000 yards has been brought in. The pit is in the process of being reclaimed. The intent is to level the pit and reclaim it as a hayfield.

An area near Virginia Drive was opened up so organic backfill material could be brought in. The pipe in the pit is from residential properties and is being stored temporarily. Old septic tanks are in the pit to minimize contract expenses. The connex is a storage locker for utensils and tools used by the contractor. The car is a restorable vehicle. Any spillage from an oil barrel has been contained. The exposed ground water is in a clay zone and is contained. Mr. Amend spoke with DEC about the ground water. The sewer pipe is from residences. He was not aware of the overhang on the side of the pit until this evening. It will be sloped. He wanted to be in compliance and keep the pit active.

The pit was in existence and has been in use when people moved into the area. Material in the pit was used to pay enormous medical expenses. Operating the pit is not lucrative.

Three gravel pits (the subject pit, Terry Best pit, and the Davis pit) are in the area. The Best and Davis pits have shakers. The noise appears to be coming from the Kalifornsky Beach side. The Davis pit has a concrete and batch plant. The Ciechanski pit used to have a batch plant, and this is where the asphalt came from. Mr. Amend had not planned to remove the asphalt. If he is required to remove the asphalt, he will deal with it. When the material was batched, the state rejected some of it. He estimated less than 100 yards of asphalt were in the pit.

Mr. Amend voiced regret the neighbors were upset. His long-term goal is to reclaim the property as a hay field.

Commissioner Johnson referred to the pictures of the oil drums and recalled testimony that the oil spill had been contained. He inquired about the containment procedures. Mr. Amend was not sure. He knew some hydraulic oil was on the ground, and this was picked up. He did not know how the material was disposed. The ground was dry and did not have residual oil when he was in the pit.

Commissioner Isham asked if DEC inspected the spill. Mr. Amend did not know. DEC was notified because of the water table. Gravel had been extracted to the water table. The gravel was processed through a shaker to obtain sewer rock. DEC gave Mr. Amend some instructions regarding the water table. Mr. Amend is in the process of following DEC's instructions.

Commissioner Isham asked Mr. Amend if he spoke with DEC about the oil spill. Mr. Amend replied no. This evening was the first he had heard about the oil spill. He thought the size of the affected area was minimal.

Commissioner Hohl asked Mr. Amend if the 55-gallon drums were being stored in lined, impermeable areas. A permit condition is that fuel shall be stored in lined, impermeable areas. Mr. Amend replied that a diesel tank was in the pit several years ago to fuel vehicles. He has not seen the tank lately. Vehicles are fueled at

local service stations. He agreed to use containment equipment in the future.

Commissioner Troeger noted the letter of intent to DNR (Department of Natural Resources) said the site would be reclaimed by backfilling, grading, and recontouring the excavation area. The letter says the depth of excavation will be about 40 feet, and the site is about 18 acres. He could foresee a 40-foot deep, 18-acre hole in the ground. He asked Mr. Amend how he intended to recontour the 40-foot deep hole. The staff report said the pit would be reclaimed by using strippings, overburden, and topsoil to a condition that allows for the re-establishment of renewable resources. Mr. Amend replied he had been accepting material. Before the operation was stopped, about 8,000 yards fill was received. About 70,000 yards have been taken on the eastern side of the pit. The pit is required to be sloped 2:1. As material is received, the site will continue to be sloped. Landscaping will be done.

Chairman Bryson commented that material received depends on what someone else is willing to haul to the pit. Only large projects could provide sufficient fill material for such a large site. Mr. Amend agreed. The pit has received material from projects like the Kalifornsky Beach job, Ciechanski paving project, adjacent subdivisions, etc. Development is occurring in the area all the time. There is no charge to bring material into the pit.

Vice Chairman Clark inquired about the quality control Mr. Amend could offer to ensure old culverts, sewer pipes, etc. are not buried in the water table. Vice Chairman Clark asked if this kind of material was being sorted as it was dumped. Mr. Amend did not know where the pipe came from. He was trying to work with the contractors who bring material into the pit. He understood the pipe was new pipe being used for containment and was not sewer related. The pipe is segregated in the middle of the pit.

Commissioner Isham noted the application was for Mercedes Gibbs. He asked Mr. Amend if he was the operator of the pit. Mr. Amend said he first started before Mr. Gibbs passed away. He approved everything Mr. Amend did. Initially, the pit was excavated to pay for Mr. Gibbs' tremendous medical expenses. He noted that the other hay field would not be developed as a gravel pit.

Chairman Bryson denied a request from the audience to rebut the previous speaker's testimony.

12. Jason Foster, Quality Earthmovers

Mr. Foster said he was the current operator of the gravel pit. He commented that some testimony given earlier this evening was incorrect. He had proof the pit has been in use since 1986. Some new subdivisions being developed nearby are using material from the pit. Other large gravel pits are in the area, like Davis Block and Best Transit. Davis Block and Best Transit use screening plants and crushers. The subject pit does not have a screening plant. The pit is not operated late at night. Work in the pit sometimes continues until 9. The pit is a small operation with just one dump truck.

A fuel tank is in the pit. The owner of the tank required a lined, impermeable area with a dike. This impermeable area is still in the pit. The tank was returned to the owner at their request.

A hydraulic hose broke on a loader, which caused the spill on the ground. The spill occurred in the winter. Mr. Foster cleaned all the spilled material he could find. He intended to assess this minor situation quickly and correctly. He invited DEC to visit the pit, but apparently the spill was not important enough to warrant a site visit.

The pit has tires for his equipment. Brand new sewer pipe for installation of new sewer systems is stored in the pit. Lumber is stored in the pit. One sewer tank is in the pit. When it was brought to the pit, Mr. Foster did not have the paperwork necessary to haul it to the Borough landfill. He has since received the paperwork and will haul the tank to the landfill. Some trashed culvert is in the center of the pit; it will be hauled to a proper location. Some intact culverts taken from driveways are in the pit. These culverts are sold to people putting in new driveways.

Mr. Foster wanted excavation of the pit to continue. He intended to haul material into the pit for proper reclamation. Virginia Drive has had no impact from undercuts. He is required to stay 60 feet away from the road. There is a 2:1 slope from Virginia Drive and Ciechanski. His company has not been cited for running

stop signs or excavating too close to the road. The only bank that might be of concern is on a corner which has been recently excavated. There is a berm on top this area, and it is private property.

Commissioner Johnson had a photo of oil on the ground next to some drums. He asked if this was the area where the hydraulic hose broke. Mr. Foster replied yes. He tried to contain most of the oil so it could be placed in waste oil drums. The pit now has one waste oil drum. Also, an environmentally approved yellow plastic drum with rollers is in the pit that is used for oil leakage or spills. This barrel is contained and completely sealed.

Commissioner Johnson inquired about the May 10, 2004 date on the picture, which could be in error. Mr. Foster said there was only one waste oil drum in the pit that he was aware of. Several 55-gallon drums with the tops cut out are used for storage of utensils, tools, etc. in the pit. One drum of good oil for use in the equipment is in the pit. He realized some spillage might be around the waste oil drum. He seriously doubted there was any significant impact from the good oil because it was not wasted.

Commissioner Johnson recalled comments by Mr. Amend about an oil spill that had been cleaned up. He asked if this was the same spill. Mr. Foster replied yes. This spill was from a blown hydraulic hose. Hydraulic hoses are under a tremendous amount of pressure. If the hose has any weak spot, oil will blow out of the hose. The spill occurred in the late fall. Some snow and frost were in the ground. He cleaned up everything he could see. Now that the frost is gone, he could assess whether further clean up is needed. Mr. Foster did not object to bringing DEC into the pit to look at the work done to date to keep oil off the ground.

Commissioner Johnson recalled testimony that good sewer pipe was stored in the pit. He inquired about the pipe that appears to be waste sewer pipe. Mr. Foster replied waste sewer pipe was in the center of the pit with the sewer tank and waste culvert. Pipe stored next to good sewer pipe will be re-used for pilings, tubes, etc.

Commissioner Johnson recalled testimony about used sewer tanks being stored in the pit until they could be moved. The photos show five thrashed sewer tanks. He asked if these tanks had been moved, and if not, he inquired when they would be moved. Mr. Foster obtained the paperwork needed to take material to the Borough landfill. He planned to take the tanks to the landfill.

Vice Chairman Clark asked if other contractors were dumping in the pit. Mr. Foster replied they have to get permission from the owners. Bringing in clean fill is encouraged.

Vice Chairman Clark commented that Mr. Foster was at a disadvantage because he had not seen the photos provided to the commission. It appears someone dumped a load or two of pipe, and a loader shoved this material to the side and partially buried it. The photos show what appears to be four-inch sewer pipe from a bad leech field dumped in the pit. Mr. Foster did not know about that. Some four-inch pilings with a cement base from a deck were brought into the pit.

Chairman Bryson asked Mr. Foster if he was associated with Foster Construction or North Star Paving. Mr. Foster replied he used to be. He has had his own business for four years.

Commissioner Hohl inquired about the 60-foot distance from the street right-of-way. Mr. Foster was unsure of the exact amount, but it was a substantial distance. The road has never been close to being undercut. The only place a berm is not along Virginia Avenue is where the pit is currently being filled.

Vice Chairman Clark asked if the area that does not have a 2:1 slope is the face he is currently working on. Mr. Foster replied yes.

Seeing and hearing no one else wishing to speak, Chairman Bryson closed the public comment and opened discussion among the Commission.

**MOTION:** Vice Chairman Clark moved, seconded by Commissioner Isham, to adopt KPBPC Resolution 2004-22.

Chairman Bryson believed the property had been before the commission previously. He recalled that it involved a borrow pit and a prior existing use. He knew for a fact that the area had been used prior to the mid-1980s. He believed the borrow area was involved with a homestead. He understood this matter had been brought to the

commission to substantiate grandfather rights or something similar. He staff for clarification. Mr. Williamson replied that during his annual review of gravel pits, he became aware of the subject pit. No permit had been issued, and he could not find a file reflecting its status. He spoke with Rachel Clark and Max Best about the property. Staff does not know why this parcel does not have a file. It is evident to staff that the property had a prior existing use. Mr. Williamson contacted the contractor from the Pyramid Fire Training Facility, who has used gravel from the pit. The contractor remembered the borough determined the pit had grandfather rights. Staff could find no such information in the files so the process to permit the site was initiated.

Chairman Bryson commented an application should be on file if the owner claimed grandfather rights. He was surprised staff did not have paperwork for this property.

Vice Chairman Clark recalled comments about the pit being reclaimed in a reasonable amount of time, which is also reflected in the DNR reclamation sheet. The handwritten notice (Page 103) says the time line for completion was variable and could not be defined. He asked for staff comments. Mr. Williamson remarked that this was the nature of reclaiming gravel pits. Operation of the pit depends on demand for gravel, which is unpredictable. Excavation will dictate the amount of fill needed. He believed development was occurring consistently.

Chairman Bryson compared the aerial photo (Page 107) with the site sketch (Page 104). The photo shows a field to the west that has not been excavated. The sketch shows the area to the west has already been excavated. He asked which document was the most current. Mr. Williamson replied the aerial was taken in 2000. The sketch is more current.

Commissioner Isham asked what was allowed to be used as backfill. He asked if anything besides tree stumps, soil, and trees could be used as backfill. He asked if concrete, asphalt, or similar items were acceptable for backfill. He asked if the berms would be in place before or after the permit is issued. Mr. Williamson exchanged e-mail with Tim Stevens at the local DEC office. Mr. Stevens visited the pit. He wanted to know if water from the gravel pit was leaving the pit and contaminating other surface water. He determined this was not happening. He was concerned about the asphalt. DEC referred Mr. Williamson to the Leslie Simmons, Solid Waste Program, in Anchorage. He added that this was the program to which the residents needed to file a formal complaint with their photographs. This program is complaint driven. Ms. Simmons referred him to AS 18 AAC 60.005, which contains a list of acceptable fill material. Asphalt is allowed as a fill material depending upon how it is conditioned.

If the permit is approved, some buffer needs to be in place before the operation can begin. Mr. Williamson visited the pit. Most of the pit has berms or some vegetation in place. Excavation is allowed into the 2:1 slope, but it must be reestablished within two years.

Chairman Bryson noted he was familiar with the area. He commented that it appeared the access off Canvasback was a more gradual exit and entrance into the pit. The aerial shows what appears to be a scale house. Canvasback looks like it could be used for ingress/egress. He questioned why Virginia Drive was being used at all. It looked like there was plenty of room for the trucks to use Canvasback and stay off the residential road. Mr. Williamson did not know.

Vice Chairman Clark commented that asphalt was frequently used as fill. He asked if asphalt used as fill was usually a ground product rather than slab form. Mr. Williamson thought so. He understood the chemicals in the asphalt needed to be conditioned.

Vice Chairman Clark understood the owner could not do anything until the permit was issued. Mr. Williamson replied dirt and berms could be moved. The owner cannot excavate, condition, or quarry, which is the definition of a material site in the code. The applicant is allowed to stockpile.

Chairman Bryson believed some berms were in place. He inquired about the location of the earthen berms. Mr. Williamson believed the southern side had about 20 feet of vegetation and berms. The western border has berms, but they probably need to be fortified. There is a gap at the egress along Virginia Drive; this area is currently being filled. The berm in this area probably needs to be fortified also. The fence is a dilapidated barbed wire fence and is not proper fencing.

Commissioner Foster referred to the reclamation plan (Page 99), which described the mining operation.

• Two acres will be mined per year.

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- 10 acres are currently mined (not including the disturbed area that has not been reclaimed).
- 2 acres are supposed to be reclaimed within a year.

The time line in the reclamation plan was not specified because the applicant could not determine this date. Commissioner Foster asked if the applicant was required to reclaim the entire mined area. He asked if the mined area exceeded 10 acres at this time. Mr. Williamson explained that the state reclamation form left reclamation to the discretion of the operator. The area could be left as a pond. The state advised Mr. Williamson that they did not have sufficient staff to enforce the reclamation plans. He considered the reclamation plan an estimation based on the experience of the operator and the amount of business conducted. He knew more than 10 acres had been disturbed, but he did not know if all this acreage had been mined. The parcel contained about 18 acres.

Commissioner Johnson commented that the applicant did not keep well informed about governing agencies. He did not know about the gravel ordinance that was adopted about three years ago. He did not seem to keep well informed about what is occurring in his pit. Oil spills have occurred. Septic pipe and septic tanks have been brought to the pit. Commissioner Johnson did not have confidence that the operator would become responsible and keep in compliance with the ordinance. The commission must adhere to the code and typically has minimal flexibility. However, it appears the subject pit is in violation due to the septic tanks and the oil spill. Commissioner Johnson said he would vote against the motion.

Commissioner Hohl asked if the borough would have some enforcement ability if the applicant did not adhere to the reclamation plan of backfilling with stripping, overburden, and topsoil. Mr. Williamson replied yes. He noted that like the state, the borough process was mostly complaint driven. The nature of gravel pits is the variability of activities that can take place outside of usual office hours. Much weight is placed on the ethics of the operator.

Vice Chairman Clark asked if stockpiling or storing old septic tanks on the pit floor violated the code. Also, an oil spill occurred. He inquired requirements of the code for these matters. Mr. Williamson said as soon as the permit became effective they would be required to store all fuels and petroleum products in lined, impermeable areas. This is also a DEC issue. Nothing in the gravel ordinance prohibits the operator from storing equipment in the gravel pit. Vice Chairman Clark commented that the tanks were obviously garbage. Mr. Williamson remarked that the solid waste ordinance only dealt with the operation of the borough solid waste site.

Chairman Bryson believed DEC had guidelines concerning disposal of waste from septic systems.

Commissioner Foster inquired about the bonding requirement in the reclamation plan. He inquired about storage of items, such as septic tanks, when the water table has been breached in the same pit. He asked if the bonding would require some kind of quality assurance/quality control about what is used for backfill. Mr. Williamson replied the code required bonding in two instances:

- 1) Reclamation If the operator disturbs less than five acres and extracts less than 50,000 cubic yards in a year, a bond will not have to be posted.
- 2) Dewatering If the operator wants to dewater, a sealed document from a certified engineer must be obtained stating that the activities will not damage the public welfare or lower the water table. Bonding is to be posted and included with the engineer's report.

Neither instance is applicable to the subject material site.

Commissioner Petersen voiced concern about a pit of this size not having any paperwork, records, or grandfather rights. He was surprised that someone who has been operating a gravel pit for that long was not aware of the gravel ordinance.

Commissioner Isham was concerned about the possible violation regarding the oil spill. He did not hear acknowledgement that the oil spill occurred and DEC was notified. He heard comments about the clean up, but he did not hear anyone say they reported the spill. If DEC was aware of the spill and were satisfied it had been taken care of, he could probably support the motion. Until he is assured the oil spill has been reported, he could not support the motion.

**VOTE:** The motion failed by a majority vote.

BRYSON	CLARK	FOSTER	GROSS	HOHL	HUTCHINSON	ISHAM
NO	YES	NO	NO	NO	ABSENT	NO
JOHNSON	MARTIN	MASSION	PETERSEN	TAURIAINEN	TROEGER	8 NO
NO	YES	NO	YES	ABSENT	NO	3 YES
						2 ABSENT

Chairman Bryson read the appeal procedure.

Chairman Bryson entertained a motion to attach findings (in support of their previous decision).

**MOTION:** Commissioner Johnson moved, seconded by Commissioner Troeger to adopt the following findings:

## Findings

- 1. It appears the site is being backfilled with nonorganic material per the photographs shown to the commission.
- 2. Neighbors testified during the public hearing that the owner/operator was backfilling with nonorganic material.
- 3. The owner testified that he was not aware of the Kenai Peninsula Borough material site ordinance.
- 4. Virginia Drive appears to be rutted consistent with gravel truck usage.
- 5. A photograph of an oil spill near several drums appears to be consistent with leaking barrels.

Regarding organic and inorganic material, Chairman Bryson explained that typically topsoil is considered organic. Sand and gravel being extracted from a gravel pit are considered inorganic.

Commissioner Johnson modified Findings 1 and 2.

## Findings

- 1. It appears the site is being backfilled with garbage supported by pictures of septic pipes, crushed septic tanks, which were mixed with the gravel.
- 2. Testimony during the public hearing was that the owner/operator was backfilling with garbage, including used septic pipes and used and deteriorating septic tanks.

Chairman Bryson asked the commission if they wished to add findings. No response was heard. He asked if staff had further input. Mr. Williamson recalled comments from the borough attorney that were relevant to the U.S. Constitution. The Planning Commission is responsible for upholding public safety and welfare, and findings need to be cited that public safety and welfare is being jeopardized by the activity.

Commissioner Isham asked if gravel pits were required to have a 2:1 ratio on the sides. He asked if a straight cliff could be cut into the bank. If a 2:1 ratio is required, it appears the pit does not meet this requirement, and this could be considered a safety violation and could be considered a visible nuisance. Mr. Williamson replied the owner thought the pit was being operated under grandfather provisions. All grandfathered pits are allowed to excavate up to the property lines. No slopes or buffers are required for grandfathered pits. Excavation into the ground water is allowed with no restrictions, and dewatering is allowed. The applicant was not legally bound by the conditions in Chapter 21.26. Mr. Williamson was unsure if these restrictions could be included in the findings.

Commissioner Johnson commented the applicant was operating without a permit. Commissioner Johnson asked if the owner had to stop operating and go through the process to obtain a permit. Mr. Williamson replied yes. He needed to visit the site to determine if a violation(s) had occurred. If a violation had occurred, he would notify the code compliance officer. The code compliance officer verifies the violation. Staff then tries to seek voluntary compliance. If this is unsuccessful, staff and the borough attorney would confer and determine if a cease and desist order should be issued, which would include a fine schedule.

Commissioner Johnson inquired about fines for operating gravel pits without a permit. Mr. Williamson explained fines could be applied only after the owner/operator has been notified they are operating without a permit, and the pit continues to operate.

Commissioner Johnson understood that if the owner operates a pit without a permit and staff notifies the owner they are operating a pit without a permit and the operator stops, the operator would not be fined. Mr. Williamson indicated yes. Chairman Bryson added that if the operator obtained a permit, the operator would be required to conform to the current requirements for borrow pits. Mr. Williamson agreed.

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Commissioner Massion understood the applicant could not mine gravel at this time. He asked if the pit could be cleaned up. Mr. Williamson replied yes.

Commissioner Hohl believed grandfather pits could excavate to the property line but not if the extraction impacted a borough road. If gravel was excavated in a matter than created a cliff or bluff up to the property line that was next to a road, it could endanger public safety. Mr. Williamson understood the Road Department did not allow undercutting of a borough road.

Commissioner Troeger thought the operator and owner had been irresponsible in the operation of the pit up to this point. He was unsure if the operator/owner would be more responsible if they had a permit. To enforce a permit requires considerable effort by the borough and DEC (State Department of Environmental Conservation). Apparently DEC has been ineffective thus far. With due respect to borough staff, Commissioner Troeger did not believe the Borough Code provided effective means of administering the permits. Enforcement of other provisions of the code is similar. This process is all complaint driven. The agencies responsible for ensuring the subject site is operated properly are apparently ineffective. This is a result of the way borough ordinances are written and the structure of the state administration right now.

If the applicant cleaned up and improved the pit, Commissioner Hohl asked when he could re-apply for a permit. Mr. Williamson believed a new application could be submitted 15 days after the notice of Planning Commission decision.

Vice Chairman Clark commented that usually the commission dealt with water table issues in conjunction with gravel pits. By not granting a permit, the commission has limited the applicant's motivation to clean up the pit and continue to backfill and reclaim the pit. The operator could remove the equipment and some drums and do nothing further. The commission could have amended some staff recommendations and approve the permit if certain conditions were met, which would have probably improved the situation. Vice Chairman Clark questioned the statements about reclaiming the property for a hay field, which would require more than 1,000,000 yards of material. He noted that some reclamation would have improved the situation. He wondered if the pit would be improved at all.

Chairman Bryson entertained discussion related to the motion.

Commissioner Troeger cited a finding to be included in the motion.

## Finding

6. The applicant's statement to reclaim as a hay field does not appear to be reasonable based on information supplied to the commission.

Commissioner Troeger commented that a hay field could not be created from asphalt.

**FRIENDLY AMENDMENT:** Commissioner Troeger added Finding 6 to the motion. Commissioner Johnson concurred. No objection was heard.

While re-stating the findings, Ms. Sweppy advised the commission that the photographs shown to the commission were not provided for the subject file. Chairman Bryson asked Mr. Williamson to get copies of the photographs for the file. Mr. Williamson asked if the Planning Commission could accept digital photographs as part of the record. He did not believe digital photographs could be accepted in a court of law. Vice Chairman Clark asked if the borough attorney ruled on this matter in any other case. Mr. Williamson was aware of such a ruling. It was determined that digital photographs were not allowed to be included in the record. Chairman Bryson commented digital photographs might not be permissible in court, but they were shown to the commission.

Commissioner Foster suggested the findings include appropriate portions of the code, e.g., the proposed activity does not comply with 21.26.020.A.2. Roads and the proposed activity does not comply with 21.26.030.A.4. fuel shall be stored in lined, impermeable areas.

Chairman Bryson entertained an amendment for the findings. Commissioner Johnson concurred with Commissioner Foster's suggestion.

Commissioner Johnson thought Mr. Penrod would be willing to loan staff the photographs so copies could be made.

Commissioner Petersen wondered if the finding about the owner not being aware of the ordinance was appropriate. Commissioner Johnson noted this was Finding 3. He cited this finding because someone who was operating a gravel pit and did not have the responsibility to be aware of the local government ordinance on gravel pits, which was well advertised, was not responsible to operate a gravel pit. Chairman Bryson thought this issue would be brought to the authority that enacted and could change the ordinance.

Commissioner Troeger noted that people the audience were present to speak about the Anadromous Stream Habitat Protection permit. Commissioner Troeger asked to suspend the rules so the commission could address Agenda Item J.2. at this time. No objection was heard.

**MOTION:** Commissioner Johnson moved, seconded by Commissioner Isham, to table the motion to adopt the findings for further reconsideration during this meeting. Seeing and hearing no objection or discussion, the motion passed by unanimous consent.

Mr. Czarnezki thanked the commission for moving the conditional use permit so it could be addressed at this point.

AGENDA ITEM J. ANADROMOUS HABITAT PROTECTION (KPB 21.18)

2. A Conditional Use Permit pursuant to KPB 21.18 to construct a 16-foot long by 15-foot wide elevated light penetrating (ELP) platform, with two ELP stairways into Slikok Creek, and a 4-foot by 5-foot platform, with one stairway into the creek. The applicant would like to provide a platform that protects streambank vegetation while allowing K-Beach Elementary School students to continue to use this site for Adopt-A-Stream water quality tests. This work will occur along the left bank of Slikok Creek at river mile 0.5, adjacent to Those Portions of Govt Lot 3 & NW ¼ Lying East and Southeast of College Road Excluding Slikok Creek Alaska Sub, T05N R11W, S36, S.M., AK; KPB Parcel I.D.: 060-013-08); KPB PC Resolution 2004-18

Staff report as read by John Czarnezki.

PC MEETING: May 10, 2004

- Applicants: Marit Hartvigson, PO Box 3655, Soldotna, AK 99669; and Bill Berkhahn, State of Alaska, Department of Natural Resources, Division of Parks and Outdoor Recreation, 550 West 7<sup>th</sup> Avenue, Suite 1340, Anchorage, AK 99501.
- Property Owner: University of Alaska, Statewide Office of Land Management 3890 University Lake Drive, Suite 103 Anchorage, AK 99508
   Project Location: Section 36, T. 5 N., R. 11 W., S.M., AK Those Portions of Govt Lot 3 & NW ¼ Lying East and Southeast of College Road Excluding Slikok Creek Alaska Sub KPB Parcel 060-013-08 USGS MAP: Kenai B-3

## KPB Assessing Usage: School

**Proposed Action:** The proposed project requests the removal of an existing wooden platform and the construction of a 16-foot long by 15-foot wide elevated light penetrating (ELP) platform, with two ELP stairways into Slikok Creek, and a 4-foot by 5-foot platform, with one stairway into the Creek.

## Background Information

**Site Visit:** John Czarnezki (KPB/KRC) and Bill Berkhahn (AK DNR Parks) met on-site on April 1, 2004. It was noted at this time, that Mr. Berkhahn was working with Marit Hartvigson to obtain permission from the University to construct the ELP platform.

**Application Completeness and Compliance:** The proposed project will occur above the ordinary high water line of Slikok Creek, and within the 50-foot Habitat Protection Area which requires a KPB Conditional Use Permit. The proposed project area is not within a mapped floodplain and will not require a KPB Floodplain Development Permit.

KENAI PENINSULA BOROUGH PLANNING COMMISSION MAY 10, 2004 MEETING

MAIN MOTION VOTE: The motion as amended passed by unanimous consent.

BRYSON	CARLUCCIO	COLLINS	ECKLUND	FOSTER	HOLSTEN	ISHAM
ABSENT	YES	YES	ABSENT	YES	YES	YES
LOCKWOOD	MARTIN	RUFFNER	TAURIAINEN	VENUTI	WHITNEY	9 YES
YES	YES	YES	ABSENT	YES	ABSENT	4 ABSENT

AGENDA ITEM F. PUBLIC HEARING

2. Resolution 2014-20; An application for a conditional land use permit for material extraction on a parcel in the Kalifornsky area.

Staff Report given by Bruce Wall

PC MEETING: August 25, 2014

Applicant: Sean Cude

Landowner: SBC 2012 Irrevocable Trust

Parcel ID#: 055-270-98, 055-270-50, 055-270-51, and 055-270-52

- Legal Description: Tract A2A, Diamond Willow Estates Subdivision Part 11 according to Plat 2012-93, Kenai Recording District, Third Judicial Court, State of Alaska; and Lots C, D, & E, Diamond Willow Estates Subdivision Part – 10 according to Plat 2008-135, Kenai Recording District, Third Judicial Court, State of Alaska.
- Location: The extraction area will be on the south side of Virginia Drive, east of Ciechanski Road, and north of Ravenwood Subdivision.

BACKGROUND INFORMATION: The applicant wishes to obtain a permit for sand, gravel, and peat extraction on 19.36 acres within the parcels listed above. The remainder of this site has previously been excavated and is currently being reclaimed. Material extraction has taken place on what is now Tract A2A in the past and much of the material on that site has been exhausted with the exception of the south east portion of the parcel. In the past material extraction has also taken place on portions of what are now Lots C, D, & E. Aerial photos from 1985 and 1996 shows that excavation on the subject property was mostly limited to what is now Lot E. Much of the proposed new extraction will take place on these three lots.

Ordinance 98-33, adopted February 16, 1999, required that all existing material sites apply to be registered as a prior existing use prior to January 1, 2001. A couple of years later, planning staff discovered that excavation was occurring on this site without a permit and without being registered as a prior existing use. The planning commission held a public hearing on May 10, 2004 for a conditional land use permit for an 18 acre excavation area on the property that is now the subject of this application. The application was denied with the following findings:

- 1. It appears the site is being backfilled with garbage supported by pictures of septic pipes, crushed septic tanks, which were mixed with the gravel.
- 2. Testimony during the public hearing was that the owner/operator was backfilling with garbage, including used septic pipes and used and deteriorating septic tanks.
- 3. The owner testified that he was not aware of the Kenai Peninsula Borough material site ordinance.
- 4. Virginia Drive appears to be rutted consistent with gravel truck usage.
- 5. A photograph of an oil spill near several drums appears to be consistent with leaking barrels.
- 6. The applicant's statement to reclaim as a hay field does not appear to be reasonable based on information supplied to the commission.

A new application was submitted and the planning commission held a public hearing on September 13, 2004 for a conditional land use permit for the same 18 acre excavation area. The staff report for that application indicated that the applicant willfully operated the material site as if it was permitted between May 10, 2004 and

September 2, 2004. The application was again denied. The current applicant purchased the property on December 20, 2012.

#### KPB 21.29.030(A) states:

... The planning director may determine that certain contiguous parcels are eligible for a single permit. ...

The planning director has reviewed this application and has determined that these four parcels are <u>not</u> eligible for a single permit. He has recommended to the applicant that he submit a new plat that combines these four parcels into just one parcel and have the final plat recorded prior to issuance of the Conditional Land Use Permit. This decision was based upon the inability to maintain access to Lots D and E, which are platted as flag lots. And the wastewater disposal statement on the plat for Lots C, D, & E, that states:

Soil conditions, water table levels, and soil slopes in this subdivision have been found suitable for conventional onsite wastewater treatment and disposal systems serving single family of [*sic*] duplex residences, and meeting the regulatory requirements of the Kenai Peninsula Borough. ...

If the permit is approved tonight, staff will revise the resolution after the final plat is recorded to reflect the new parcel number and legal description of the property and have the chairman sign it at that time.

The applicant is willing to re-subdivide the four parcels into one parcel, but would like to ensure that the CLUP would be approved before incurring the cost of re-subdividing.

The submitted site plan indicates that the material site haul route is Virginia Drive to Ciechanski Road. There is an existing driveway onto Virginia Drive, which is a Borough maintained road. The site plan and application indicates that there will be a 6 foot berm along all the roads adjacent to the property, a 6 foot fence adjacent to Ravenwood Subdivision, and a 6 foot fence along the east property line once the required 50 of vegetation is removed.

The applicant's proposed depth of excavation is up to 20 feet below the natural existing grade. The application states that a test hole was excavated in the existing material site floor and groundwater was found at approximately 2 feet below the existing material site floor. The applicant indicates that material processing will take place on the site. All processing will be located greater than 300 feet from the west, south, and east parcel boundaries. The applicant is requesting a waiver to allow processing up to 100 feet from the north parcel boundary. KPB 21.29.050(A3) states:

... 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 property at the time.

The applicant has stated that the adjacent land to the north is agricultural. The Assessor's office classifies it as vacant land.

The applicant anticipates a life span of 20 years for the site and that the annual excavation quantity will be less than 50,000 cubic yards of material. The submitted application indicates that approximately 14 acres of the west side of the site has previously been mined and is being incrementally reclaimed. Phasing from west to east and north to south is proposed to demonstrate orderly development and reclamation of the site. Reclamation will be completed annually before growing season ends. Seeding will be applied as necessary each growing season to areas that achieve final grade to minimize erosion and dust.

PUBLIC NOTICE: Public notice of the application was mailed on August 5, 2014 to the 284 landowners or leaseholders within one-half mile of the subject parcel. Public notice was sent to the postmaster in Kenai and Soldotna requesting that it be posted at these Post Offices. Public notice of the application was published in the August 14, 2014 & August 21, 2014 issues of the Peninsula Clarion.

KPB AGENCY REVIEW: Application information was provided to pertinent KPB staff and other agencies on

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August 7, 2014.

A letter was received from the Department of Environmental Conservation. The letter and accompanying map is included in the desk packet. It states that the proposed material site is near Willowbrook North Well #3, which is part of a registered public water system source. Willowbrook North has been notified of this application.

Thirteen letters of concern or opposition from the public were received. These letters with attachments are included in the desk packet.

## ATTACHMENTS

Attachment A:	Conditional Land Use application with site plan
Attachment B:	Aerial maps
Attachment C:	Area land use map
Attachment D:	Area ownership map
Attachment E:	Public Notice
Attachment F:	Plat KN 2008-135
Attachment G:	Agency comments
Attachment H:	Public comments

FINDINGS OF FACT

- 1. KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough.
- 2. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
- 3. On July 25, 2014 the applicant, Sean Cude, submitted to the Borough Planning Department a conditional land use permit application for KPB Tax Parcel Numbers 055-270-98, 055-270-50, 055-270-51, and 055-270-52, which are located within the rural district.
- 4. KPB 21.29 provides that a conditional land use permit is required for material extraction that disturbs more than 2.5 cumulative acres.
- 5. The proposed cumulative disturbed area within the parcel is approximately 19.36 acres, including existing disturbed areas.
- 6. KPB 21.29.030(A) states the planning director may determine that certain contiguous parcels are eligible for a single permit.
- 7. The planning director has reviewed this application and has determined that these four parcels are not eligible for a single permit.
- 8. Tax Parcel Numbers 055-270-50, 055-270-51, and 055-270-52 are located within Diamond Willow Estates Subdivision Part 10 which states, in part, "Wastewater disposal Soil conditions, water table levels, and soil slopes in this subdivision have been found suitable for conventional onsite wastewater treatment and disposal systems serving single family of [*sic*] duplex residences, and meeting the regulatory requirements of the Kenai Peninsula Borough."
- 9. Tax Parcel Numbers 055-270-51 and 055-270-52 are configured as flag lots. The proposed excavation would not be compatible with the designed access for these lots.
- 10. A new plat that combines these four parcels into just one parcel would eliminate Tax Parcel Numbers 055-270-50, 055-270-51, and 055-270-52, thus eliminating the possibility of a buyer of these lots relying on the information on the plat.
- 11. A new plat that combines these four parcels into just one parcel would make the new parcel eligible for a conditional land use permit for a material site.
- 12. To meet material site standard 21.29.040(A1), the proposed activity must protect against aquifer disturbance by maintaining a 2-foot vertical separation from the seasonal high water table and by ensuring that no material extraction takes place within 100 horizontal feet of any existing water source.
- 13. An excavated test hole in the existing material site floor found groundwater at approximately 2 feet below the existing material site floor.
- 14. The proposed excavation will be to the same elevation as the existing material site floor.
- 15. The site plan indicates that there are no known wells located within 100 feet of the proposed excavation area.
- 16. The site plan indicates that there are several wells located within 300 feet of the proposed

material site.

- 17. To meet material site standard 21.29.040(A2), the proposed activity must be conducted in a manner to protect against physical damage to adjacent properties by complying with the required permit conditions of KPB 21.29.050.
- 18. To meet material site standard 21.29.040(A3), the proposed activity must be conducted in a manner which minimizes the off-site movement of dust by complying with required permit condition KPB 21.29.050(10), Dust Control.
- 19. Ingress and egress at the material site will be Virginia Drive which is a Borough maintained road.
- 20. To meet material site standard 21.29.040(A4), the proposed activity must be conducted in a manner which minimizes noise disturbance to other properties by complying with permit condition KPB 21.29.050(2), Buffer Zone; KPB 21.29.050(3), Processing; and KPB 21.29.050(11), Hours of Operation.
- 21. The applicant indicates that material processing will take place on the site. As indicated on the submitted site plan all processing will be located greater than 300 feet from the west, south, and east parcel boundaries and 100' from the north boundary, which adjacent to a large vacant parcel.
- 22. To meet material site standard 21.29.040(A5), the proposed activity must be conducted in a manner which minimizes visual impacts by complying with the permit condition KPB 21.29.050(2), Buffer Zone.
- 23. The submitted site plan and application indicates that a 6-foot berm, 6-foot fence, or a 50-foot vegetated buffer will be maintained on all boundaries.
- 24. The bonding requirement of KPB 21.29.050(12b) will apply to this material site if extraction in any one year exceeds 50,000 cubic yards of material.
- 25. A public hearing of the Planning Commission was held on August 25, 2014 and notice of the meeting was published, posted, and mailed in accordance with KPB 21.25.060 and KPB 21.11.

## STAFF RECOMMENDATION

Staff recommends that the Planning Commission approve the requested waiver allowing material processing to take place up to 100 feet from the north property line. Staff further recommends that the Planning Commission approve the conditional land use permit with listed conditions and adopt the findings of fact, subject to the following:

- 1. Filing of the PC Resolution in the appropriate recording district after the deadline to appeal the Planning Commission's approval has expired (15 days from the date of the notice of decision) unless there are no parties with appeal rights and after the recording of a plat designating the area contained in these four parcels as just one parcel containing approximately 19.36 acres.
- 2. The Planning Department is responsible for filing the Planning Commission resolution.
- 3. The applicant will provide the recording fee for the resolution to the Planning Department.

THE LAND USE AND OPERATIONS ARE DESCRIBED AND SHALL BE CONDUCTED AS FOLLOWS:

- A. An area currently known as KPB Tax Parcel Numbers 055-270-98, 055-270-50, 055-270-51, and 055-270-52. The total disturbed area within this area is up to 19.36 acres.
- B. Legal Description: Tract A2A, Diamond Willow Estates Subdivision Part 11 according to Plat 2012-93, Kenai Recording District, Third Judicial Court, State of Alaska; and Lots C, D, & E, Diamond Willow Estates Subdivision Part – 10 according to Plat 2008-135, Kenai Recording District, Third Judicial Court, State of Alaska.
- C. The applicant, Sean Cude, proposes to: 1. Extract gravel from the subject parcel; 2. Reclaim the site to a stable condition upon depletion of material.

## PERMIT CONDITIONS

- 1. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
- 2. The permittee shall place and maintain a 6-foot berm along the north property line adjacent to Virginia Drive, the west property line along Ciechanski Road, and along a portion of the south property line along Canvasback Avenue; place and maintain a 6-foot fence along the remainder of the south property line adjacent to Ravenwood Subdivision; and maintain a minimum of 50 feet of undisturbed, natural vegetation between the excavation perimeter and the east property line until

excavation takes place in that area, the vegetative buffer shall then be replaced with a 6-foot fence that shall be maintained.

- 3. The permittee shall maintain at least a 2:1 slope between the inner buffer zones and pit floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 30 days from the time of removal.
- 4. The permittee may not operate materials processing equipment within 300 feet of the west, south, or east parcel boundaries; or within 100 feet of the north boundary. Rock crushing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
- 5. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
- 6. The permittee shall maintain a 2-foot vertical separation from the seasonal high water table.
- 7. The permittee shall not dewater either by pumping, ditching or any other form of draining unless an exemption is granted by the planning commission.
- 8. The permittee shall ensure that fuel storage containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.
- 9. The permittee shall conduct operations in a manner so as not to damage borough roads as required by KPB 14.40.175, and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
- 10. The permittee shall notify the planning department of any further subdivision or return to acreage of this parcel. The planning director may issue a written exemption from the permit 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.
- 11. The permittee shall apply water or calcium chloride, as needed, on haul roads within the boundaries of the subject parcel.
- 12. The permittee shall reclaim the site as described in the reclamation plan for this parcel and as approved by the planning commission.
- 13. The permittee is responsible for determining the need for any other municipal, state or federal permits and acquiring the same. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits.
- 14. This conditional land use permit is subject to annual review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.25.090, the planning commission may revoke a permit issued pursuant to this chapter if the permittee fails to comply with the provisions of this chapter or the conditions of the permit. The planning director shall provide at least 30 days written notice to the permittee of a revocation hearing before the planning commission.
- 15. Once effective, this conditional land use permit is valid for five years. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.

NOTE: Any party of record may file an appeal of a decision of the Planning Commission to the Board of Adjustment in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances, Chapter 21.20.250. A "party of record" is any person or government agency that provides oral or written testimony during the Planning Commission public hearing. Petition signers are not considered parties of record unless separate oral or written testimony is provided (KPB Code 21.20.210.A.6b1). An appeal must be filed with the Borough Clerk within 15 days of the notice of decision, using the proper forms, and be accompanied by the \$300 filing and records preparation fee. (KPB Code 21.25.100)

## END OF STAFF REPORT

Vice Chairman Martin opened the meeting for public comment.

1. Justin Evans, 47207 Lexington Ct

Mr. Evans had already submitted comments regarding this conditional land use permit. He also was representing Mr. Roger Koppes and read his written comments into the record. Mr. Koppes address was PO Box 2739, Kenai. His letter is as follows:

#### "Dear KPB Planning Commission:

It has come to my attention through a Borough notice that Mr. Sean Cude of SBC 2012 Irrevocable Trust has submitted a Conditional Land Use Permit Application for a material site permit (gravel pit) in the vicinity of Virginia Drive, Diamond Willow Estates Subdivision Part 11 Tr A2A, Diamond Willow Estates Part 10 Lot C, D & E. My wife and I are residents of Diamond Willow Estates, located along Virginia Avenue and Gary Avenue. We are also concerned parents of four young children.

I am writing to express my opposition to the use of this abandoned gravel pit for further site excavation. Mr. Cude and I had an informal discussion about his plans for the property, shortly after he purchased the pit from Mercedes Gibbs. At that time he informed me that he intended to "reclaim" the pit by filling it in. He indicated that his intention was to establish a residence on the property and possibly create a personal use air strip.

The abandoned pit that Mr. Cude owns is accessed via Virginia Dr., which is also the only point of access for residents of Diamond Willow Estates Subdivision. Since residing in this area, we have seen a constant stream of heavy truck traffic entering the "reclamation" area. These trucks have dumped dirt, trees and man-made building materials (including fiberglass and foam board insulation, plastic fencing, drywall, metal pipes, etc.) into the pit area. Neighbors in the area, including myself, have recent photos of those materials.

I spoke to Mr. Cude by phone about the man-made materials entering the pit. He informed me that he was concerned about that happening and I should call him when I see it. I have called Mr. Cude two other occasions since, to inform him about material that should have been destined only to a proper landfill. My calls have not been returned and those materials continue to be pushed by bulldozers further into the pit property and covered up.

Heavy truck traffic along Virginia has also been a continuous problem. During rainy periods and during late winter break-up, the heavy trucks and excavation equipment along Virginia have created impassable conditions for personal and emergency services vehicles. That has created a safety risk to all as we have no other way to exit/enter/evacuate or receive emergency services during those periods of severe road damage. The borough has had to respond to these issues on at least two occasions that I am aware of.

The road as it is today is simply not capable of handling the heavy truck traffic. Additional heavy truck traffic promoted by an active pit will render this road useless.

In addition to the illegal dumping and roadway issues, my greatest concern is the degradation of the personal water wells of all residents of this and surrounding subdivisions. I have four young children between the ages of 6 and 12. As of now, our well water appears potable. The dumping of the aforementioned man-made materials laden with chemicals and non-natural substances into this pit - combined with further excavation on this property-may exacerbate the ground water/aquifer risk, accelerating the decline of potable water in the area. The safety of all local residents, but particularly its little residents will be compromised.

Additionally, this pit is extraordinarily close to the Kenai River. That brings an entirely new

set of environmental risks and concerns Borough citizens to the table should any ground water contamination occur. I oppose approval of any further excavation of this area as it is clear that there is **no oversight** for dumping on his property, nor is there a clear plan for the sustainability of Virginia Drive. In review, my concerns are:

- 1. Ground water, well water, aquifer and Kenai River safety as it relates to current and future man-made waste disposed in the pit.
- 2. Roadway access, maintenance and sustainability on a 'no outlet' road, due to increased heavy vehicle traffic.
- 3. Emergency services and evacuation route blockage during periods of inclement weather, precipitated by inevitable road degradation caused by heavy vehicle traffic to/from an active pit.
- 4. The inevitable decline of property values of homes and the potential loss of potable water in the area due to an active gravel pit.
- 5. Increased Borough cost of road maintenance/construction and the loss of revenue in the form of property tax due to declining property values.
- 6. Increased Borough cost and liability should hazardous materials be introduced into any portion of the water system.

I am asking the KPB Planning Department and the KPB Planning Commission to deny the present application. If Mr. Cude wishes to continue his pursuit further, a legitimate and public risk assessment should be conducted by Borough legal personnel, roads personnel, emergency services personnel and environmental managers. This risk assessment should be performed in a thorough, transparent and independent way.

Thank you for your time and attention to this matter. We are relying on you to make the proper decision and say "no" to this application; for the future of all neighborhood children and the good of the Borough.

## Roger A. Koppes

Vice Chairman Martin asked if there were questions for Mr. Evans. Hearing none the public hearing continued.

2. <u>Travis Penrod via Video Call</u>

Ms. Penrod stated that her husband was a Colonel in the United States Air Force and is currently out of State. She asked permission from the Chairman to allow her husband to testify electronically.

Vice Chairman Martin granted permission for Mr. Penrod to testify electronically.

Mr. Penrod started his testimony by telling what had been going on in the pit since Mr. Cude purchased the property in 2012. Shortly after the purchase was made, he began digging large sums of gravel in the bottom of the pit using heavy equipment, dozers and excavators. He took this large sum of gravel that was primarily dug out of the water aquifer at the bottom of the pit. Mr. Cude stock piled it against the south side of the pit. As soon as the excavating started taking place, Mr. Penrod called the Borough and explained that they wanted this stopped immediately. He spoke with Max Best who told him that it was private property and there wasn't anything to be done. Mr. Best stated that he spoke with the property owner personally and that they would approve the development that the new owner was going to be doing.

Shortly, thereafter, Sean Cude drove his truck into his driveway and they spoke personally. Mr. Cude

told him that his sole purpose for digging up the gravel was to put in a private driveway along the south border of the pit so that he could get back to his property on the river. He told him that he was planning on building a million plus dollar house that would be a great asset to the neighborhood and that they would all approve. He also privately confided in him that the reason the driveway had to be so large was so that he could land his private Cessna 206 on the runway so he could park it at his house. Mr. Penrod stated that he continued to dig and made an enormous pond in the aquifer in the bottom of the pit.

The next summer when Mr. Cude said he was going to be building his house; instead he began to haul gravel out of the bottom of the pit that was piled up. Mr. Penrod immediately called Max Best who told him that he allowed Mr. Cude to haul gravel out of the bottom of the pit. Mr. Penrod commented that it was in direct violation and that he could not be digging and if he was going to do anything he needed to push that gravel back into the hole like he said.

Mr. Penrod spoke with Mr. Cude on several occasions throughout the last few years. Mr. Cude told him personally that he was planning on backfilling that pit as fast as he could because he doesn't want that ugly eyesore in his neighborhood either because he was planning on living there as well. If Mr. Cude is hauling gravel out then he was not backfilling it as he said he would do.

Mr. Penrod stated that last year Mr. Cude also told him that he had bought property out on Longmere Lake and that he was going to put his airplane there so he wouldn't need his property on Virginia Dr. as a runway anymore. Mr. Cude stated that he wasn't sure what he was going to be doing with that lot but Mr. Penrod felt he was sure but wasn't willing to share it with him.

This summer (2014) a road was placed to the bottom of the pit and trucks began hauling overburden (organic material) and dumping it into the aquifer. On the permit, Mr. Cude stated that he filled the aquifer with clean gravel but he did not. Mr. Penrod stated that he filled it with organics and nasty material and created a giant mud hole. He felt that not only did he make the mud hole but he contaminated the water which is associated with all of their drinking water. Instead of having two feet of clean gravel on top of the aquifer, Mr. Cude actually made a giant mud hole which is completely unacceptable and a direct violation of the permit that he was filing for at this time.

Mr. Penrod stated that all these reasons were reasons that they need to pursue to get this permit not approved so that their neighborhood can get back to being a quiet place as it should be.

Vice Chairman Martin asked if there were questions for Mr. Penrod.

Commissioner Holsten thanked Mr. Penrod for his service. She asked if the operator has been putting manmade materials in the pit since 2012. Mr. Penrod replied that they have been hauling manmade materials into the pit to backfill the pit but it is hard to tell what was actually put into the pit. (*Clerk's note: The speaker stepped away from the microphone to get a little closer to the commission so that he could hear what the commissioners were asking. The clerk could not hear his answer nor did it get recorded on the recording.* 

A jar of muddy water was passed around to show the commission that there was no gravel in the mud.

There being no further comments or questions, the public hearing continued.

3. Crystal Penrod, 36860 Virginia Drive

Ms. Penrod stated they also own 36770 Virginia Dr. She presented additional photos of the site which were passed around for the commission to see. As the lovely water sample from their aquifer was being passed around, she challenged each of the commission to find clean gravel. Ms. Penrod stated they have dealt with this problem for 15 years. It was 15 years ago that an illegal gravel pit had dug and removed over a million cubic yards of gravel.

Ms. Penrod stated that they have lived at this location for 19 years and have been there for this whole material site thing. They have a son in college who has a starter future home down the street from them and will live there when he is through with his engineering degree at UAA.

Ms. Penrod stated that this started out with Warren Finley and Max Best 15 years ago. They have fought this since then. The current operator has continued to dig in the water aquifer, dumping pollutants and have continued to do the same thing as previous operators have done. She felt that there has been zero enforcement by the Borough. They have called, they have begged, they have pleaded and asked them to please do their job and please don't make them lose their homes. The digging and the gravel removal continues with the breech of their water, the aquifer and now the contaminants of the dumping materials.

Ms. Penrod stated that Mr. Cude purchased this property through a Title Company and as such was given a copy of the covenants of the neighborhood. She stated that he is absolutely part of the subdivision because of the way it was subdivided. He has to become compliant with the covenants or the Homeowners Association will seek litigation. Ms. Penrod stated the applicant was aware of the covenants prior to the sale and knew what he was getting into. She stated the he knew they would not put up with having something this awful in the neighborhood again. He knowingly was uncompliant and started digging a year ago and knew exactly what was going on when he dug in the pit and that they were not going to put up with it.

Ms. Penrod stated this was never a permitted permit. The previous operator stopped the operations but not before a million cubic yards of gravel was taken out. She stated they will fight this. If this permit is approved then they will proceed with litigation. The small amount of gravel of 50,000 cubic yards that Mr. Cude was proposing to be removed was a small pittance in comparison to all of the homeowners having their property devalued, having their water ruined and having the roads deteriorating. They finally got their Borough road that was decent to drive on as shown in the submitted photos but now the first half of the road is almost impassible at times because it is so muddy, pitted and rotten from the operator's trucks and traffic.

Ms. Penrod stated that the dumping of organic material into the well is just icing on the cake for them. She stated that due to the pit and the affects to the aquifer, they have purchase bottled water which has been delivered to them for the last 15 years. Her household of three goes through about eight bottles a month at \$8 a piece so that was about \$768 per year and approximately \$11,520 over the course of the last 15 years.

Ms. Penrod stated that they have to constantly be watching this and constantly taking the time to obtain evidence which is not their job. They should be able to live in their neighborhood and not worry about someone coming in with rock crushers and big trucks. She thanked the commission for their time and consideration and hoped they would look at the photos and sample water and gives them their neighborhood back.

Vice Chairman Martin asked if there were questions for Ms. Penrod.

Mr. Venuti asked if she has had her water tested. Ms. Penrod replied that they tested it between the 5-10 years ago which showed higher levels than normal of sulfates. They stopped having it tested. It was expensive to do that so they immediately switched to bottled water. She stated they have to flush their water out if they were gone from their home for more than 24 hours. Mr. Venuti asked when was the last time they had their water tested. Ms. Penrod replied that it was about 5-6 years ago.

Commissioner Foster asked if she realized that the Borough doesn't regulate covenants. The Borough would do something if an ordinance was broken. Ms. Penrod replied yes but if they looked into it then they could see that several ordinances have been broken. Commissioner Foster asked if the Diamond Willow Estes Homeowner's Association covenants were created in 1975. Ms. Penrod replied yes, she believed so. Commissioner Foster asked if there was any gravel extraction at that time. Ms. Penrod replied no, there were no permits were on the record with the Borough at that time. The current gravel pit was a hayfield at that time. Commissioner Foster asked if legal action was taken by the Homeowners Association with the previous owner at the initial onset of this gravel pit. Ms. Penrod replied they put their faith into the Borough 15 years ago. Eventually the Borough denied the permit and denied the appeal. She stated that Mercedes Gibbs was the previous owner but has continued to do things. Ms. Penrod stated they call and is told by Mr. Best that it is not

their property or business. She stated it is their business but Ms. Gibbs is the wife of a homesteader so she has places there but Mr. Cude does not.

Commissioner Holsten asked if they or anyone else in the neighborhood have their water tested prior to the initial gravel pit going in. Ms. Penrod replied yes, when they started building their home 20 years ago and were thrilled that they did not have to have any type of filter or any type of sand screen. They had beautiful clean and drinkable water but that is no more. It hasn't been like that for 15 years.

Commissioner Isham stated those sulfites tests are quite specific. He asked if they were testing for sulfites when they first tested their water. Ms. Penrod replied that her husband took their water in at the time and told them the situation and that they wanted to know what was going on and where they are at now. They knew where they were at in the beginning and that they wanted to know where they were at each time the water tested. She stated that at the time, they had a very young child and they were not willing to put that type of contaminate in him. They were told that it was not quite to level where it was completely undrinkable.

There being no further comments or questions, the public hearing continued.

4. Dennis Gease, 36710 Virginia Dr

Mr. Gease has lived at this location for 14 years. He was approaching 80 years of age and his memory was waving a little bit. It seemed like he has been here before with the same situation and the same pit. Mr. Gease believed the previous permit was denied. He asked the following four questions.

- 1. Mr. Gease referred to the following statement. *"The applicant's depth of excavation is up to 20 feet below the natural existing grade. The application states that a test hole was excavated..."* He asked who suggests or devises where the applicable grade was.
- 2. Mr. Gease referred to the following statement. *"The applicant anticipates a life span of 20 years for the site and that the annual excavation quantity will be less than 50,000 cubic yards of material. The bonding requirement of KPB 21.29.050(12b) will apply to this material site if exaction in any one year exceeds 50,000 cubic yards of material."* He asked if the applicant was taking out less or more than 50,000 yards. Also he asked what the bond was for and who bonds him.
- 3. Mr. Gease referred to the following statement. *"The permittee shall conduct operations in a manner so as not to damage borough roads as required by KPB 14.40.175 and will be subject to remedies set forth in KPB 14.40 for violation of this condition."* He asked what the violations were and who enforces this law. They have had these violations for the past 10 years and have never seen any corrective action taken on the violations.
- 4. Mr. Gease stated that they saw what happened 10 years ago after the denial of the permit and operations continued with no action taken. He asked what kind of enforcement the Borough does and what legal action can they do if the Borough doesn't do it. Mr. Gease noted that the applicant anticipates a life span of 20 years for this project however he understood that this permit would be valid for five years. He asked if there would be a possibility of another hearing in five years if this permit was issued. The applicant could take out 200,000 yards of gravel on 4.8 acres. It seems awfully difficult for him to envision this. He could see it if he was starting over on 20 acres but he is on 4.8 acres where he wants to remove 50,000 cubic yards for 20 years.
- Mr. Gease respectfully asked that these questions be answered and that this permit be denied.

Vice Chairman Martin asked if there were questions for Mr. Gease. Hearing none the public hearing continued.

5. <u>Tim Agosti, 36894 Virginia Dr.</u> Mr. Agosti stated that as a homeowner he was opposed to the material extraction permit because of the effects it will have on the local aquifer, water well and the surrounding wells. The homeowners in the area oppose an extraction permit by the previous landowner for the same reasons as well as other issues that occurred with the previous owner.

Mr. Agosti felt the current landowner has done a good faith effort in backfilling and grading the site however when they initially started the grading a great deal of gravel was moved and pushed up to create an airplane landing strip. Some of the gravel used was from stockpiles from the previous owner however much of the gravel was taken from the bottom of the existing pit. He stated it was new excavation which exposed the local aquifer. This exposed aquifer was later backfilled with overburden and organic material.

Mr. Agosti stated that the application also that the exposed groundwater were backfilled with clean gravel fill. He stated that he, his wife and his neighbors have personally witnessed that the significant portion of that exposed aquifer was filled with organic overburden and not clean gravel. There was a minor area recently where gravel was pushed into the exposed water aquifer which was also taken from the bottom of the pit.

Mr. Agosti stated that there is a possibility with further excavation to the west and south and with typical heavy equipment that uses oil and diesel fuel that the local aquifer and groundwater may become contaminated. He felt that these contaminates may or could leach into the Kenai River.

Mr. Agosti stated that the residents of the area would also be impacted by the extraction equipment, noise and dust contaminates. He asked that there be proposed action to minimize the effects of these items.

Finally, Mr. Agosti stated that Virginia Dr. would see the excessive use of truck hauling and ask that there be a requirement that the Borough grade and maintain it more frequently than normal.

Vice Chairman Martin asked if there were questions for Mr. Agosti.

Mr. Venuti asked if he had his water tested lately. Mr. Agosti replied no, he has not had his water tested lately. He stated they are using bottled water. Mr. Venuti asked when the last time was that he had his water tested. Mr. Agosti replied that it has been several years.

There being no further comments or questions, the public hearing continued.

## 6. Barbara Roberts

Ms. Roberts is part of the Willowbrook North Homeowners Association. She was notified just last week of the subject application so she did not have an opportunity to discuss this issue with the board of Willow Brook North Homeowners Assoc. Ms. Roberts presented a source water assessment report that talks about the hydrologic susceptibility and vulnerability assessment for their subdivision. The total subdivision has 100 homes in it. The map that she would like to pass around shows susceptibility area for their subdivision which zeros right into the subject gravel pit. It is called "Source Water Assessment, A Hydrogeologic Susceptibility and Vulnerability Assessment for Willow Brook North Drinking Water System." As a subdivision owner she requested this permit application not be approved.

Vice Chairman Martin asked if there were questions for Ms. Roberts.

Commissioner Ruffner asked if the public water well had to be tested. Ms. Roberts replied yes, it is tested on a regular basis. She stated they do have water rights on this well. Commissioner Ruffner stated that one proactive thing that can be done is to file for water rights through DNR. Commissioner Ruffner asked if their public water system has always passed DEC requirements. Ms. Roberts replied yes, they have good water at this time and would like to keep their good water. The type of backfill that might be used in the gravel pit could affect their water, it doesn't sound like the owners have used good backfill up to this point.

There being no further comments or questions, the public hearing continued.

# 7. Chris Wehr, 36680 Virginia Dr., Kenai

Mr. Wehr expressed concern with what was put into this gravel pit. He has seen creosoted treated railroad ties, pressure treated lumber, macadam and tires. Last year, he requested that the Borough come and check the site since he had seen big huge bags on the site that would be carried on the back of a semi with the big loops. It had salt written on the side of them, 1,100 kilograms and if his math was right then it was over 2,200 pounds. Mr. Wehr went and investigated what it was. It appeared to be with concrete so he had no earthly idea of what was in the bags. It could have been concrete or half salt but he had no idea. He requested the Borough to come to the site to check it out but unfortunately no one was available due to the vacancy of the position. Over the weekend they bulldozed the bags to the bottom of the pit. Yes, the Borough did come to the site later but it was too late. Other things he has seen go into the pit has been raw sewage that was pumped onto the ground, fish carcasses, and moose carcasses. It isn't necessarily the other businesses that are bringing material to be bull dozed in there but are the things that aren't watched over the weekend or at night. There are people who are dumping things at night; it is a free for all in a lot of ways.

Mr. Wehr also expressed the concern that this pit could affect the river. He lives directly on a bluff and the reason he bought the property is that it was cheap because they couldn't' get a mortgage on it figuring that it would be in the Kenai in 30 years. They bought it considering it was a good buy.

Mr. Wehr's was also concerned were with heavy traffic, possible blasting, all the other equipment moving and the possibility of his bluff going down the river. The applicant is asking for 20 years but he won't be here in 20 years so for the future of their kids and grandkids he asked that the permit be denied. He was available to answer questions.

Vice Chairman Martin asked if there were questions for Mr. Wehr. Hearing none the public hearing continued.

## 8, Karen Bundy, 37523 Wanda Gail Dr.

Ms. Bundy does not live on Virginia Dr. but passes there every day. She has been a nurse for 40 years so health concerns are her main concerns and really worries about the children. There are so much that goes on in the world that they don't know what the repercussions are for 20, 30 or 40 years. They can think of mesothelioma in the asbestos industry or silico which they don't know at this point what was going to happen with the little children breathing it. So when they are adults, 30 or 40 years from now and they have lived around a gravel pit they might find out what they got but now it was too late because they have an incurable disease.

Ms. Bundy also expressed worry about the water supply because as she drives by the pit she had always thought the pit was a dump because of all the stuff that was dumped in there. She stated that her husband told her it was fill that they were putting in the gravel pit. This was what the neighborhood that has monitored the activity has been looking at.

Originally, Ms. Bundy stated she wasn't against the gravel pit but thought the 20 year was excessively a long time. The purchase price of a home in this area would be going down because of the gravel pit. After listening to the neighborhood she has more concerns then when she wrote her letter. She pleaded with the commission that they think about the health of the community and of their children. Ms. Bundy asked that the commission think about denying this permit or at least thinking about it.

Ms. Bundy stated she doesn't know the applicant but admires anyone who has a business in this political arena. It is hard to have a business nowadays but if the applicant doesn't live in the community then he is not directly affected. She felt it was not fair for children and residents in a beautiful place like Alaska to have to deal with all of this.

Vice Chairman Martin asked if there were questions for Ms. Bundy. Hearing none the public hearing continued.

## 9. Darlene Liuska, 4676 Gadwell Ave

Ms. Liuska stated that her backyard backs up to the gravel pit. When she moved to the area they were told that this gravel pit was an illegal inactive pit. She now gets the notice that the new owner

wants to open the pit and not only take gravel out of it but also process it there.

Ms. Liuska stated that she and her husband are concerned about what this might do to their water and of the constant noise that would be going on. It was bad enough having the trucks going in and out dumping and banging all the time. She wanted to go on record that she totally disapproves this action and asked that the permit be denied.

Vice Chairman Martin asked if there were questions for Ms. Liuska. Hearing none the public hearing continued.

## 10. <u>Sean Cude</u>

Mr. Cude is the contractor and owner of the pit. He has owned this property for two years and has been trying to take care of the problems and issues that were left on this property. He has brought a lot of fill to help reclaim the property which was more than most contractors. These problems stem back to a non-responsible operator. He has a vested interest in the neighborhood since he owns a 3.6 acre Kenai River lot.

Mr. Cude pointed out that this parcel is not part of the subdivision and homeowners association. He presented paperwork which states that Tract A is not part of the subdivision. The covenants clearly states that Tract A is excluded according to the original plat. Mr. Cude encouraged everyone to read the plat.

Mr. Cude stated that there has already been approximately 14 acres that has removed under previous ownership which was operated without a conditional use permit or not meeting any of the requirements. He assured the commission that he would comply with all conditions and that he wasn't opposed to changing the access road by a different route rather than coming down Virginia Dr.

Vice Chairman Martin asked if there were questions for Mr. Cude.

Commissioner Isham asked when he purchased the property. Mr. Cude replied that he purchased the property in December 2012.

Commissioner Carluccio asked what was being used for backfill. Mr. Cude replied that most of the fill comes from Borough Maintenance projects coming from the local neighborhoods. The local contractors bring truckloads of organic material to the site. Commissioner Carluccio asked if he had seen some of the pictures that show that there was other debris that has been dumped in the pit. Mr. Cude replied yes, he has seen the pictures.

Commissioner Carluccio asked if the groundwater that was coming up was part of the aquifer. Mr. Cude deferred to Mr. McLane who is his engineer and can speak specifically to that.

Commissioner Holsten asked for his comments regarding the accusations of what was being dumped in the pit like creosote logs, big concrete pieces, pressurized treated lumber, tires, etc. She felt those items did not quite strike the organic standard. Mr. Cude encouraged her to come to the site and see what has been dumped into the pit. He assured her that there are only trees and organic materials that have been dumped into the pit. There is a sign that clearly states that no dumping without permission. Someone has to call them since there is no dumping of garbage, no refuse but trees and organic materials only. Commissioner Holsten asked if there was only a sign to preclude someone from dumping their junk in the pit. She asked if there was someone on site to manage access to the pit. Mr. Cude replied that they have had no reason to fence it and have it manned by someone.

Commissioner Foster stated that he said there was a lot of road maintenance debris being dumped in the pit yet there was a testifier who claimed there was asphalt road material being dumped in the pit. Mr. Cude replied there was not supposed to be any asphalt material going in there but only organic materials.

Commissioner Ruffner asked what his plans were for crushing, shaking, and hours of operation. Mr. Cude

replied that he has no problem with having working hours of operation. He stated there would be no crushing but will be screening the material. Commissioner Ruffner asked what he thought was reasonable regarding hours of operation. Mr. Cude replied that he proposed to have 8:00 a.m. to 5:00 p.m. as his hours of operation. Commissioner Ruffner stated that it would be regular business hours.

Commissioner Holsten asked what he proposed for better access. Mr. Cude replied that there was the possibility of accessing the pit on Ciechanski Rd and Canvasback Ave and therefore avoiding Virginia Dr.

Commissioner Venuti asked if there was an employee onsite that monitors what was brought into the site. Mr. Cude replied that he would have during the hours of operation if the site was permitted. Commissioner Venuti understood that there was no one at this time onsite who was monitoring what was brought into the pit. Mr. Cude replied that was correct.

Commissioner Holsten asked if someone notices if there was inappropriate stuff that was being bull dozed in the pit. Mr. Cude replied that they are not going to push over contaminates. He encouraged the commission to come look at the site to see what has been dumped there.

There being no further comments or questions, the public hearing continued.

11. Sam McLane, McLane Consulting, Inc, 38240 Kenai Spur Highway

Mr. McLane stated that they prepared the application for the applicant and personally dug the test hole. He stated that he has lived here for a long time and driven by it. The hole has been there a long time.

Mr. McLane stated that he was down in the pit floor in early July. At that time it had a pretty gravelly floor and a large gravel bank on the south side. The aquifer was in gravel when he dug the test hole. One test hole was dug to see where the water table was located.

Mr. McLane stated he was at the meeting to mainly answer questions. One of the things he noticed over the years was that he thought his firm did the Virginia Dr. improvement design for the Borough Roads Service area. What they have seen on Virginia Dr. is that there is no berm which allows access to the pit. He stated that with a permitted plan there will be a berm all around there so that the will only be one access point.

Vice Chairman Martin asked if there were questions for Mr. McLane.

Commissioner Carluccio asked if it was customary to drill only one test hole. Mr. McLane replied that the ordinance requirement was to determine depth to groundwater, aquifer. Commissioner Carluccio asked what the depth was that he found the aquifer. Mr. McLane replied that it was about 2 feet from the pit floor. Commissioner Carluccio asked for comments regarding the muddy hole that everyone was talking about. She asked where it was in relationship to where the test hole was dug. Mr. McLane replied that there wasn't a muddy hole when he was there. It had been recently graded, there was gravel on the bottom and there was some softer areas. He wasn't making a complete inspection of what was there and didn't dig a hole near what was the reclaimed area.

Commissioner Holsten asked when the test hole was dug. Mr. McLane replied that it was early July 2014.

Commissioner Venuti asked if he saw any debris other than gravel or good material. Mr. McLane replied that he wasn't really looking at that but he did notice that it was typical of what goes in old gravel pits. Most of it was old top soil, silt, moss, and a few stumps and roots.

Mr. Best asked if he was in the lowest portion of the pit floor when he dug the test hole. Mr. McLane replied yes, it was pretty level within a foot or so. Mr. Best asked what he did to advise his client to stay away from the water table. Mr. McLane stated that if this site was permitted then he would advise his client to install a monitor well because it wasn't seasonal high when he was in the pit in July.

There being no further comments or questions, the public hearing continued.

# 12. Jeanette Maly, 36770 Virginia Dr.

Ms. Maly reminded the commission that this was never a legal gravel pit. It wasn't right to permit something that was never legal and asked that this be allowed to go back to the hay field that it used to be when they bought their property. There are so many gravel pits around and anyone can go anywhere to get gravel where there are not people living. She didn't understand why they won't enforce this. This was their life that they are dealing with; it is their homes. Ms. Maly felt that Mr. Cude was not being truthful by the pictures and will not be truthful in the operations of the pit.

Vice Chairman Martin asked if there were questions for Ms. Maly. Hearing none the public hearing continued.

13. Kim Cox, 47204 Lexington Ct

Ms. Cox stated they bought their home brand new. They have monitored activity of the pit practically every night as take a walk by there. Their household well draws its water from the aquifer. When the aquifer was interrupted they started noticing that there was rusty septic tanks and other unhealthy debris being used as fill in the pit. She stated that the applicant asked the commission to take a look at the site but now the stuff that is on top is not rusty septic tanks. The septic tanks are covered over in the pit. She felt that this pit affects their water, their kids and grandkids.

Vice Chairman Martin asked if there were questions for Ms. Cox.

Commissioner Foster asked if she noticed the rusty septic tanks after the applicant purchased the property. Ms. Cox replied yes, he had the pit for two years. The site has been being reclaimed and filled but the thanks have not been removed.

Hearing no further questions or comments, the public hearing continued.

14. Kelly Wolf, 34800 Kustatan

Mr. Wolf requested that the commission postpone action on this permit and do a field trip to go look at the site. Today, he drove down Virginia Dr. which is a public road.

Seeing and hearing no one else wishing to speak, Vice Chairman Martin closed the public comment period and opened discussion among the Commission.

**MOTION:** Commissioner Ruffner moved, seconded by Commissioner Isham to approve Resolution 2014-20 thereby approving the Conditional Land Use Permit for a material site.

Commissioner Isham stated that several of the testifiers claimed that this was an illegal pit and asked for comments regarding that from staff. Mr. Best replied that back when the subdivision ordinance was first brought into the Code there was a process to do grandfathered pits which is now called prior existing. There was a specific amount of time where someone had to come in and tell the Borough that they had a prior existing pit and then staff would check that out. A letter was then issued by the Planning Director verifying and certifying that it was a prior existing. He doesn't recall, since he wasn't the director at that time but there was an investigation done and the Code Enforcement Officer, John Mohorcich inspected the site and determined that the parcel qualified as a prior existing use. That was put in the file and subsequently the Fire Training Center was built and they hauled gravel. It was investigated that that particular time and only found that the determination from the Borough that it was a prior existing and no letter was issued. Mr. Best stated that staff contacted the owner and the pit operator at that time but neither one of them could produce the letter from the Borough and neither could they find it in the reading file. He also stated that it was determined at that time to stop the activities as a pit. At that time and after further investigation, it was determined to be an illegal pit and was ordered to stop activities. There was a pile of gravel that had been processed and ready to go which was allowed to be taken out of the pit. Permission was granted that they could take that pile of gravel but not dig anymore.

Commissioner Venuti stated that back in 2004, there were allegations that the pit was backfilled with garbage and there was an oil spill. He asked if anyone had gone to the site to see if that was accurate. Mr. Best replied that the allegations were made but thought they were transferred over to DEC because they were the

ones who regulate that type of activity. He stated that the type of fill and the types of contamination that were brought about were not within the Borough's purview or authority to do anything about. It was not a permitted pit so he believed those allegations were transferred over to DEC. He did not know what the outcome was at that time.

Commissioner Lockwood asked for clarification of what the Borough's enforcement capabilities are, if any. Mr. Best replied that their enforcement has changed. In 2011-2012, a new Code Enforcement, KPB 21.50 was adopted. Now there is a complaint process and a fine schedule that is enforceable. He felt that the prior KPB 21.50 was not very effective but now there is a process. They had to pretty much catch them doing what they were doing. Every time they asked an operator to stop, they stopped.

Mr. Best stated there were those accusations in 2004 where there was an operator who operated for quite some time and was fined for his activities within the pit. He wasn't sure the operator ever paid the fines since he had gone out of business. There is now a process that is a little more user friendly. The Code Enforcement Officer is sent out to the site to take pictures, investigate, dig holes or do whatever needs to be done. There is now a \$300 per day fine for violating permit conditions or operating a pit without a permit.

Commissioner Lockwood pointed out that they are not the Planning & Zoning Commission and they don't have authorization through the Borough Assembly to have zoning because the people have never voted for it. If they want to take more control in situations like this then the Borough needs to have a Planning & Zoning Ordinance.

Commissioner Foster stated that it appeared that there have been violations within the last two years of taking gravel out and putting fill that should not be put in there. He asked if there have been any investigations by the Planning Department to check this out. Mr. Best replied that they have followed up with all the phone calls in the past several years. Ms. Cady used to investigate all calls and now Mr. Wall fills that capacity. What was reported to him was that the activities had ceased or they weren't taking gravel off site, they were building an airstrip, they were taking out of the existing pile that they had permission.

Commissioner Foster asked who was liable for the offense of the alleged improper fill going in an unpermitted pit. He also asked who would be responsible for getting rid of the improper fill. Mr. Best replied that type of activity is not regulated by the Borough. The fill of whatever is a DEC issue. They don't deal with fill according to the Material Site Excavation Ordinance but is the excavation of material. He stated those allegations need to be taken to DEC and testing needs to be done to determine if there are contaminates in the pit. Responsibility would probably be with the original and current owner but wasn't sure about that since he was not an attorney and wasn't sure how they process those types of things.

Commissioner Holsten asked how the bond works if it goes below 50,000 cubic yards a year. Mr. Best replied that the bonding requirements are through the Statewide Bonding pool through the State of Alaska. If someone excavates more than 50,000 cubic yards then they need to go to the State of Alaska through the Division of Mining, Land and Water and obtain a bond to excavate more than 50,000 cubic yards. Under that amount someone is exempt from the requirement of bonding and an annual mining letter is filed that says that they are going to do less than 50,000 cubic yards.

Commissioner Holsten asked about who would determine the damage of the road. Mr. Best replied that it would be inspected and handled through the Roads Service Area. They would probably investigate it to determine that the truck traffic had damaged the road.

Commissioner Isham referred to page 36 of the packet which was a material site reclamation plan. It states that *"the material shall be reasonably free from roots, clods, sticks and branches greater than 3 inches."* He asked if the Borough would be responsible for what goes into the pit if this permit is issued. Mr. Best replied that particular standard was done for the overburden and top soil that goes over the top. Commissioner Isham asked if that was something the Borough would regulate. Mr. Best replied yes, that was correct.

Commissioner Carluccio asked for clarification that it appeared that an operator can put anything in the hole when reclaiming it and cover it up but the Borough is only concerned about the top couple of inches. Mr. Best replied yes, that was correct because they could leave it as a hole and top soil it and seed it. He stated the

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Borough does not regulate the backfill. Commissioner Carluccio understood that the Borough's doesn't regulate it or require it. Mr. Best replied that was correct. Commissioner Carluccio wondered why someone would fill it. Mr. Best replied that it was because holes are unsightly and a hay field is much nicer. Commissioner Carluccio stated that it also seemed they may have punctured the aquifer and were trying to fill it up.

Commissioner Ruffner thought that Mr. Gease's questions have been answered except for who does the site inspections. Mr. Best replied that there are annual site inspections. If they felt that they are close to the water table then they will dig holes with a shovel in the bottom of the floor and monitor it to see if there was water. Commissioner Ruffner asked if it was a \$300 a day violation if they were less than two feet from the seasonal high water table or it flooded the pit. Mr. Best replied that if they found that then they would tell the operator to refill it. There was an operator in Anchor Point who exposed the water table and they made him put in clean fill and cover it back up and reclaim it with good clean fill. He stated they would make them fill it back up and stay out of it. They have only fined one person in the past. Typically, the operators comply and put the material back.

Commissioner Ruffner asked for clarification regarding the berming and fence aspect of this pit. One of the big concerns he heard was that there was no control over the pit. Mr. Wall replied that once the permit is approved and issued, the applicant will be required to place a six foot berm along Virginia Dr., Ciechanski Rd. and along Canvasback Ave. The operator would also need to put a six foot fence along the south property line where it abuts up against Ravenwood Subdivision. A six foot fence would be required to be installed along the east property line which would abut up against Mrs. Gibbs and the other applicant's property once he removes vegetation beyond the fifty foot buffer.

Commissioner Ruffner asked if it would be safe to assume then that if the conditional land use permit was approved that in relatively short order they wouldn't be able to see what was going on in the pit with the six foot berms. Mr. Wall replied that was correct. Those berms and the fencing would greatly reduce unauthorized access to the pit. He stated that access would be limited to the ingress / egress of the pit. Commissioner Ruffner asked if there was only going to be one access. Mr. Wall replied that currently he was proposing the existing access which is Virginia Dr. He stated the applicant did propose an alternative access during his testimony if the commission desired that.

Commissioner Foster asked what the fence material was. Mr. Wall replied that the applicant did not specify the material. The ordinance states that it needs to be sufficient in height and obscurity to provide buffering. Then Commissioner Foster said that it wouldn't be chain link. Mr. Wall replied yes, it would not be chain link. He stated that the ordinance states, "*The vegetation fence should 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.*" The Planning Commission would have the ability to specify the type of material.

Commissioner Carluccio asked if it was only going to be a berm along Virginia Dr. Mr. Wall replied yes, that was what was being proposed. Commissioner Carluccio asked how wide and how close to the road was the 6 foot high berm going to be. Mr. Wall replied that they require a 2:1 slope and could go right up to the property line. The 2:1 slope would be 24 feet in width if someone was six feet tall. Commissioner Carluccio asked what would prevent ATV's, etc. from coming over the berm and playing around in the pit if it was unfenced and not in operation. Mr. Wall believed that a berm would not prevent that until it was vegetated with something that would prevent that. Commissioner Carluccio asked why he was not recommending a fence. Mr. Wall was proposing what the applicant had proposed however the Planning Commission could certainly require a fence along that property line.

Vice Chairman Martin asked what the guidelines were for granting the permit with four separate parcels. Mr. Wall replied that there are four parcels, Tract A2A, Lots C, D, and E. Lots C, D, and E appear to be configured as residential lots. The ordinance state that multiple parcels can be considered at one parcel if it was determined that it was appropriate. In this case, it was determined that it was not appropriate. He stated that one of the conditions of approval requires that this property be replated into one parcel.

Mr. Venuti asked if the six foot berm and fence will need to be place before operations can proceed. Mr. Best replied yes, that was correct.

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Commissioner Foster stated that he has always been concerned about the role of the City or the Borough with covenants. The applicant stated that these parcels are not part of the covenants however it was clear that Lots C, D and E are part of the covenants which is where all the gravel was going to come from. There is the concern that there will be litigation if this is approved. He asked where the Borough would want to be in this situation knowingly be granting not only the subdivision of putting these lots together but also with the permit in this kind of situation. He asked staff if they have ever been in this type of situation before. Mr. Best replied no, as far as covenants they try to stay out of that arena. Commissioner Holsten asked what he meant by staying out of the arena. She asked if they try not to approve things are in violation or contrary to the covenants. Mr. Best replied that was something the neighborhood would have to settle on their own. He didn't think it played into the applicable standards that they apply to extract material. One of the standards that they try to uphold is not whether it was against the covenants. They try to look at it from the perspective of the six standards that they have set and have they met them.

Commissioner Foster stated this property is not within the City but this is a subdivision where there are sufficient owners that apparently opposed to it. He asked if a Local Option Zoning could occur if the subdivision applied for it. Mr. Best replied yes, that was correct. They could have applied by having 12 contiguous lots and could have included those three lots. The three quarters of the property that are within the Local Option Zone informed would have to adhere to that. A property owner can be brought in even when they don't want to be when there are three quarters of the people that are interested in keeping it that way. The reason he says the three lots was because the average of the 12 or more lots have to fall within 50% of that average either above or below. They have to be similar in size. He stated had the landowners applied for this earlier then they could have tied up those three lots in a local option zone that the Borough would have administered through zoning.

Commissioner Carluccio asked for clarification regarding the denial of this permit in the past. Mr. Best replied that he wasn't totally involved in it at that time but knows that information was in the packet. The operator wasn't operating properly so the commission denied the permit application. Commissioner Carluccio asked if it was denied because he was operating before the permits were issued. Mr. Best replied, yes that was correct.

Commissioner Isham asked if it was fair to say that the permit was never regulated in the past other than leasing and abusing the land which was done by Jason Foster. He asked if it hadn't been regulated and if this was approved then it would be regulated. Mr. Best replied yes, that was correct.

Commissioner Ruffner stated that the application was for 4-5 acres for extraction but the berm would go around the red striped area as shown on the aerial photo. Mr. Best replied yes, that was his understanding from the site plan that was administered by McLane for Mr. Cude that the berm would go entirely around the parcel and along the fenced area. Commissioner Ruffner acknowledged that the applicant was nodding his head in agreement. He stated there are certain voluntary permit conditions that the applicant has to agree to and then there are a couple of things that the Commission can purview and add stipulations to the permit. He asked if the berm and fence were in the domain of the commission. Mr. Best replied that was correct.

Commissioner Ruffner asked if the applicant could come back and address the commission.

Commissioner Ruffner stated that there is a big open pit where stuff has been going in and out. One of things he sees with the berm is that ATV's could go over them pretty easy. Mr. Cude stated that ATV's could go over them right now. He wasn't sure how much it would cost to build a fence and asked if there was the possibility of adding a fence along Virginia Dr. and Ciechanski Rd. Mr. Cude replied that anything was doable. Commissioner Ruffner understood that it has to do with money. Mr. Cude replied that was correct. The least expensive would be to berm it up with only limited access through one or two gates. He felt the site could be monitored. Even with a fence, ATV's can still find a way to access the pit if they want to. The berm will look nicer once it is vegetated. Mr. Cude presented a plat map that actually shows that those three lots are not part of the covenants. Commissioner Ruffner asked if his first order of business, prior to digging gravel was to install berms and fence. Mr. Cude replied that it was a permit requirement that they can extract anything out of there until the berm and all the requirements are met.

Vice Chairman Martin asked if there were further questions for Mr. Cude. Hearing none deliberation among the commission continued.

Commissioner Carluccio asked what type of vegetation would go on the berm. Mr. Best replied that typically it would be grass, a few birch, a little spruce and then 10-15 years those grow up. It takes time but first it starts with grass and fireweed.

Commissioner Foster asked if anyone was interested in taking Mr. Wolf's or the applicant's suggestion of postponing and people going on personal field trips of checking it out.

Vice Chairman Martin replied that he has seen the site. Commissioner Isham also responded that he has seen the site.

Commissioner Holsten stated that she wouldn't know what they were looking at underneath what was on top of the pit now.

Commissioner Carluccio stated that she would be willing to go look at it.

Commissioner Collins stated that she has been past this site several times.

There being no further comments or questions, Vice Chairman Martin called for a roll call vote.

**VOTE:** The motion failed by majority consent.

BRYSON	CARLUCCIO	COLLINS	ECKLUND	FOSTER	HOLSTEN	ISHAM
ABSENT	NO	YES	ABSENT	NO	NO	YES
LOCKWOOD NO	MARTIN YES	RUFFNER YES	TAURIAINEN ABSENT	VENUTI NO	WHITNEY ABSENT	4 YES 5 NO 2 ABSENT

### Crystal Penrod

Ms. Penrod asked for additional time for clarification. She stated that the Covenants state that as soon as someone subdivides property then the exemption is gone. That means that Mr. Cude's property is under the regulations of the covenants. Also, she stated that Mr. Best was the Planning Director when everything happened that was shown in the notebook.

Mr. Best read the appeal process.

NOTE: Any party of record may file an appeal of a decision of the Planning Commission to the Board of Adjustment in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances, Chapter 21.20.250. A "party of record" is any person or government agency that provides oral or written testimony during the Planning Commission public hearing. Petition signers are not considered parties of record unless separate oral or written testimony is provided (KPB Code 21.20.210.A.6b1). An appeal must be filed with the Borough Clerk within 15 days of the notice of decision, using the proper forms, and be accompanied by the \$300 filing and records preparation fee. (KPB Code 21.25.100)

Ms. Hartley stated that Findings of Fact in support of denial needed to be cited.

Commissioner Holsten suggested the two following findings in support of denial.

- 9. Tax Parcel Numbers 055-270-51 and 055-270-52 are configured as flag lots. The proposed excavation would not be compatible with the designed access for these lots.
- 16. The site plan indicates that there are several wells located within 300 feet of the proposed material site.

Vice Chairman Martin called a 10 minute recent at 9:30 p.m. Vice Chairman Martin reconvened the meeting at 9:41 p.m.

Commissioner Venuti suggested the following findings of fact in support of denial.

- 9. Tax Parcel Numbers 055-270-51 and 055-270-52 are configured as flag lots. The proposed excavation would not be compatible with the designed access for these lots.
- 16. The site plan indicates that there are several wells located within 300 feet of the proposed material site.
- 26. The water assessment that was put together by the Alaska State Department of Environmental Conservation which shows the potential degradation of local water supply.
- 27. The condition of the road impacts from this operation would be detrimental to the Borough interests and public safety.

**MOTION:** Commissioner Foster moved, seconded by Carluccio to cite the following findings of fact in support of the denial of Resolution 2014-20

- 1. Tax Parcel Numbers 055-270-51 and 055-270-52 are configured as flag lots. The proposed excavation would not be compatible with the designed access for these lots.
- 2. The site plan indicates that there are several wells located within 300 feet of the proposed material site.
- 3. The water assessment that was put together by the Alaska State Department of Environmental Conservation which shows the potential degradation of local water supply.
- 4. The condition of the road impacts from this operation would be detrimental to the Borough interests and public safety.

BRYSON	CARLUCCIO	COLLINS	ECKLUND	FOSTER	HOLSTEN	ISHAM
ABSENT	YES	YES	ABSENT	YES	YES	YES
LOCKWOOD	MARTIN	RUFFNER	TAURIAINEN	VENUTI	WHITNEY	9 YES
YES	YES	YES	ABSENT	YES	ABSENT	4 ABSENT

**VOTE:** The motion passed by unanimous consent.

AGENDA ITEM G. ANADROMOUS WATERS HABITAT PROTECTION (KPB 21.18) - None

AGENDA ITEM H. VACATIONS NOT REQUIRING A PUBLIC HEARING - None

AGENDA ITEM I. SPECIAL CONSIDERATIONS- None

AGENDA ITEM J. SUBDIVISION PLAT PUBLIC HEARINGS

Chairman Pro Tem Ruffner reported that the Plat Committee reviewed and conditionally approved 7 preliminary plats and postponed 5 preliminary plats. The 5 postponed plats are complicated and have to do with the Bureau of Indian Affairs.

- AGENDA ITEM K. OTHER/NEW BUSINESS
- AGENDA ITEM L. ASSEMBLY COMMENTS None

AGENDA ITEM M. LEGAL REPRESENTATIVE COMMENTS - None

AGENDA ITEM N. DIRECTOR'S COMMENTS

Mr. Best had no comments since he missed the last meeting but he did manage to get his oldest son married and out of the house.

Vice Chairman Martin asked if there were questions for Mr. Best. Hearing none the meeting continued.

or Sidelinger Trail. Ms. Sweppy responded that the troopers could respond by boat or air. This is out of the way but is a duplicate name that needs to be changed. The Planning Commission has the final say on the street naming and can retain Munson Trail or approve another name. Staff recommends changing this name because it is a duplicate. The staff will abide by commissioners decision.

Commissioner Foster asked why the other suggested name of Public Well Trail wasn't taken into consideration when recommending this street name. Ms. Sweppy answered that it was the original recommendation but then additional comments were received. Ms. Sweppy contacted the landowner who suggested Public Well Trail and she did not mind changing the name to Sidelinger Trail. Ms. Sweppy stated that none of the landowners opposed Sidelinger Trail.

Commissioner Johnson asked what is a sidelinger? Ms. Sweppy stated that it was the adjoining property owner's last name.

There being no further discussion the commission proceeded to vote.

**VOTE:** The motion passed by majority vote.

BRYSON	CLARK	FOSTER	GROSS	HOHL	HUTCHINSON	ISHAM
YES	NO	NO	NO	YES	YES	YES
JOHNSON YES	MARTIN NO	MASSION ABSENT	PETERSEN YES	TAURIAINEN YES	TROEGER YES	7 YES 5 NO 1 ABSENT

# AGENDA ITEM F. PUBLIC HEARINGS

2. A land-use permit application was received by the Borough to operate a gravel site in the Kalifornsky Beach/Ciechanski area; Location: T05N R11W S24, Seward Meridian, KPB 05527035; Parcel: 27.73 acres; Portion to be Gravel Pit: approx. 18 acres; Applicant: Mercedes A. Gibbs; Owner: Mercedes A. Gibbs.

Staff Report as read by Kevin Williamson

PC MEETING: September 13, 2004

- APPLICANT: Mercedes A. Gibbs PO Box 554 Soldotna, AK 99669
- OWNER: Mercedes A. Gibbs PO Box 554 Soldotna, AK 99669
- **LOCATION:** T05N R11W S24, Seward Meridian, KPB 05527035; Parcel: 27.73 acres; Portion to be Gravel Pit: approx. 18 acres.

## **BACKGROUND INFORMATION:**

This is a reapplication for a material site permit. The applicant proposes to ingress and egress the subject parcel from Canvasback Ave. and Virginia Dr. and excavate in the western portion of the 18-acre portion of the parcel and move east. The applicant proposes to excavate 9,000 cubic yards of gravel per year. A copy of the application and support information is included as Attachment A.

Surrounding properties are predominately private owned. Copies of the land ownership and land use maps for the area are included as Attachment B and C. A year 2003 aerial is included as Attachment D.

The applicant proposes a 6ft earthen berm and 50 feet of natural or improved vegetation on the north, south, east and western boundaries for buffers. The applicant proposes to excavate to 40 feet deep. There are four (4) wells within 300 feet of the portion of the parcel to be a gravel pit. The applicant estimates the distance to groundwater to be 48 feet. This estimation of depth was determined by a well drilled on the parcel.

KENAI PENINSULA BOROUGH PLANNING COMMISSION SEPTEMBER 13, 2004 MEETING

According to the applicant's Alaska Department of Natural Resources Letter of Intent, the applicant will reclaim by backfilling, grading, and recontouring the excavation area 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 to be retained for natural revegetation. Stockpiled topsoil will be spread over the reclaimed area, which will eventually be used as a hay field.

This land is within the Kenai River watershed. The Kenai River, which is anadramous, runs as close as 800 feet to the east. The applicant proposes an extra buffer as well as a 500 foot setback from the Kenai River as voluntary permit conditions.

The excavation site is one hundred percent classified 'upland' according to the National Wetland Index.

**KPB AGENCY REVIEW:** Permit information was distributed to KPB agencies on August 12, 2004. The code enforcement officer's inspection report is included as Attachment G. Any comments received by Planning Department staff will be presented to the Planning Commission as lay-down items at the September 13, 2004 meeting.

**PUBLIC NOTICE:** Public Notice was mailed to property owners within a one-half mile radius of the subject site on August 12, 2004. A copy of the public notice is included as Attachment E. One letter was received from property owners as of September 2, 2004, and is included as Attachment F. Any comments received by Planning Department staff will be presented to the Planning Commission as lay-down items at the September 13, 2004 meeting.

**CODE OR REGULATION:** 21.25 requires a permit from the Kenai Peninsula Borough to use land as a sand, gravel or material site. 21.25.030 defines a sand, gravel or material site as "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."

**STAFF RECOMMENDATION:** Staff recommends the Planning Commission adopt the following Findings of Fact and disapprove the land use permit:

# Findings of Fact

- 1. The first application was disapproved on May 10, 2004 based on the following Findings of Fact:
  - a. It appears the site is being backfilled with garbage supported by pictures of septic pipes, crushed septic tanks, which were mixed with the gravel.
  - b. Testimony during the public hearing was that the owner/operator was backfilling with garbage, including used septic pipes and used and deteriorating septic tanks.
  - c. The owner testified that he was not aware of the Kenai Peninsula Borough material site ordinance.
  - d. The proposed activity does not comply with 21.26.020.A.2 and 21.26.030.A.6 in that Virginia Avenue appears to be rutted consistent with gravel truck usage.
  - e. The proposed activity does not comply with 21.26.030.A.4, Fuel storage does not appear to be contained in lined, impermeable areas. Oil spilled near several drums appears to be consistent with leaking barrels.
  - f. The applicant's statement to reclaim as a hay field does not appear to be reasonable based on information supplied to the commission.
- 2. The applicant completed and submitted to the Borough Planning Department a permit application for the second time and paid the appropriate fee established by the Planning Commission.
- 3. Staff determined the application contained the required information and was complete.
- 4. Staff determined between May 10, 2004 and September 2, 2004 the applicant willfully operated the material site as if it was permitted, and therefore is in violation.

5. The proposed activity does not comply with 21.25.050.B. Before granting the permit, the commission must find at a minimum that the proposed activity complies with the requirements of this chapter.

# Permit Conditions

- The approved land use and operations are described and shall be conducted as follows: T05N R11W S24, Seward Meridian, KPB 05527035; Parcel: 27.73 acres; Portion to be Gravel Pit: approx. 18 acres, the permittee, Mercedes A. Gibbs proposes to 1. Excavate material; 2. Build berms from material; 3. Sell gravel commercially; 4. Reclaim the area by backfilling and contouring to stable condition. *Finding: This is an administrative condition necessary to define the limits of the permitted activity.*
- 2. The permittee shall maintain a 6-ft earthen berm buffer on the north, south, east, and western borders. *Finding: This condition shall ensure compliance with KPB 21.26.030.A.1.*
- 3. The permittee shall reclaim by contouring all disturbed land upon exhausting the material on-site in accordance with state statutes to leave the land in a stable condition. Reclamation shall occur for all exhausted areas of the site exceeding one acre before a five-year renewal permit is issued. *Finding: This condition shall ensure compliance with KPB 21.26.030.A.2.*
- 4. The operation shall not negatively impact an aquifer serving another property. Operations shall not breach an aquifer-confining layer. *Finding: This condition shall ensure compliance with KPB 21.26.030.A.3*
- 5. The permittee shall store fuel in lined, impermeable areas. *Finding: This condition shall ensure compliance with KPB 21.26.030.A.4*
- 6. The permittee shall maintain a horizontal distance of at least 100 feet from any wells or water sources for consumptive use existing prior to the effective date of this permit. The permittee shall limit material extraction to no deeper than two feet above the seasonal high water table for extraction occurring between 100 and 300 feet from any well or water source for consumption use prior to the effective date of this permit. *Finding: This condition shall ensure compliance with KPB 21.26.030.A.5*
- 7. The permittee shall not damage borough roads as required by KPB 14.40.070 and will be subject to the remedies set forth in KPB 14.40 for violation of this condition. *Finding: This condition shall ensure compliance with KPB* 21.26.030.A.6
- 8. The permittee is responsible for determining the need for any other municipal, state or federal permits and acquiring the same. The permittee must abide by all applicable municipal, state, and federal laws. *Finding: This condition shall ensure compliance with KPB 21.25.170.*
- 9. If changes to the approved project described above are proposed prior to or during siting, construction or operation the permittee is required to notify the KPB Planning Department to determine if additional approval would be required. *Finding: This is an administrative condition necessary to ensure continued compliance with the terms and conditions of the permit.*
- 10. This Land Use Permit is subject to annual review by the Planning Department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.25.090, the Planning Commission may revoke a permit issued pursuant to this chapter if the permittee fails to comply with the provisions of this chapter or the conditions of the permit. The Planning Director shall provide at least 30 days written notice to the permittee of a revocation hearing before the Planning Commission. *Finding: This is an administrative condition necessary to ensure continued compliance with the terms and conditions of the permit and KPB 21.25.080.*
- 11. Once effective, this Land Use Permit is valid for five years. The permittee must apply for a permit renewal within five years of the date this permit is granted in accordance with the provisions of KPB 21.26.050. *Finding: This condition shall ensure compliance with KPB 21.26.050.*
- 12. The permittee hereby agrees to comply with the terms, conditions and requirements of the KPB 21.25 and 21.26,

and any regulations adopted pursuant to this chapter. *Finding: This condition shall ensure compliance with KPB 21.25.050*.

13. This Land Use Permit shall become effective on signing by the Planning Commission Chairman or Vice Chairman, after review, concurrence and notarized signing by the permittee and property owner. *Finding: This administrative condition is necessary to facilitate issuance and acceptance of the permit terms and conditions.* 

# **Voluntary Permit Conditions**

- 1. The permittee has agreed to a 500 foot setback from the Kenai River within which no material site operations are permitted.
- 2. The permittee has agreed to an additional buffer on all borders 50 feet of natural or improved vegetation.
- NOTE: This decision may be appealed to the Borough Assembly, sitting as a board of adjustment within fifteen (15) days of the notice of decision, in accordance with the procedures of KPB 21.20.

# END OF STAFF REPORT

Chairman Bryson clarified finding of fact #1c. It states that the owner was not aware of the Kenai Peninsula Borough material site ordinance but it should state that the operator was not aware of the Kenai Peninsula Borough material site ordinance. Mr. Williamson commented that those are the findings of fact that the Planning Commission presented to the staff at the last Planning Commission hearing.

Chairman Bryson opened the meeting for public comment.

## 1. Tim Agosti, 36894 Virginia Drive, Kenai

Mr. Agosti stated that at the previous Assembly meeting of May 10, it was revealed that the site did not have grandfather rights so Mr. Foster had to reapply for a permit which was one of the findings from the previous meeting. It was also discussed that in one corner of the gravel site groundwater was reached. Mr. Agosti is concerned for the wells that are within the 35-45 foot range. The application for this land use permit indicates that groundwater was reached at 42 feet deep. Mr. Agosti stated that the neighbors spoke with a professional hydrologist and he stated that all the groundwater is the same. All the wells would be affected if the groundwater were contaminated. Mr. Agosti is urging that no more gravel be removed from this site and that all operations be stopped because groundwater has already been reached. He referred to the photos where it shows the violation of the current contractor removing gravel. Mr. Agosti does not want this permit granted.

Commissioner Hutchinson asked Mr. Agosti if there was a written report from the hydrologist. Mr. Agosti stated that another landowner who will be testifying has a letter.

Commissioner Johnson asked if the site has been cleaned up since the last public hearing. Mr. Agosti replied that according to his knowledge some barrels of hydraulic fluids and fuels that are used for the equipment have been put on a trailer. He has not inspected the site himself to know if it has been cleaned up.

## 2. Crystal Penrod, 36860 Virginia Drive, Kenai

Ms. Penrod asked permission to pass packets of evidence to the Commissioners. Permission was granted. Ms. Penrod continued with her testimony. She states, as was mentioned by Mr. Agosti, the operators of the pit has been in operation all summer even after the cease and desist order was issued. Ms. Penrod referred to Mr. Foster's comments in the Clarion newspaper. She feels that not only is he not abiding by the Commissions requirements but also he appears to have no regard to the landowners' safety in dumping things in the pit. There are oil spills at the bottom of the pit. Ms. Penrod stated that Mr. Foster also has no concern for the roads or the Borough code. Mr. Finley did order a cease and desist order in May.

In the packet are photos taken in June of many trucks going in and out of the gravel pit even after the cease and desist order was in place. Ms. Penrod stated that Mr. Foster commented that he would take the fine and to contact his attorney. She is concerned over the inability of action to stop operations of this pit. Ms. Penrod understands that this fine is ongoing and the Borough Attorney, Colette Thompson is pursuing Mr. Foster legally through appropriate channels to collect the fine. According to Ms. Penrod the pit is still in operations and is active dumping illegally as they noticed when they left to come to this meeting. There was equipmentpushing debris into the water as well as a big green area going down into the water. She states that the workers don't seem to care and that they feel they are untouchable. There is still dumping happening in the pit; sewer tanks are arriving weekly. Ms. Penrod has not noticed too much clean up other that some waste barrels being put on a trailer. She is not sure if the spill area is contained and properly disposed of.

Ms. Penrod referred to the packet of a sketch of the measurements of the pit, which is a more realistic view of what was excavated. She also referred to photos showing the perimeter of the pit showing shear cliffs. Ms. Penrod is concerned for the safety of the kids who play and ride four wheelers in this area. There are no fences or safety measures taken to protect the area. She is concerned about the water and wants to make sure it is not contaminated. Ms. Penrod reported that a sample of the water has been sent off to be tested but have not received the results yet.

There are covenants in the neighborhood that Ms. Gibbs is liable for even though her husband was a homesteader. Ms. Penrod is concerned about how many more times they will need to go through this process where a permit has not been issued and operations are continuing illegally. She hopes that the commission will look at all the activity that has been going on and rule in favor of the property owners.

Commissioner Clark asked who was the one who gave the covenant information, the State Recorder's Office and who else? Ms. Penrod stated that it was the State Recorders office and the Borough's Assessing office that gave them the copies of the covenants.

Commissioner Clark responded that if the homestead is actually included in the subdivision as part of the covenants and restrictions and not just the neighboring property then there is means for a civil case. Ms. Penrod explained that once a homestead has been guaranteed, at that point covenants are established and divided within the subdivision then that person is liable.

Chairman Bryson asked Ms. Toll if she had the original subdivision plat with regard to the homestead portion. Ms. Toll replied no, she does not have it with her.

# 3. Jason Foster, Quality Earthmovers, Inc., PO Box 1966, Soldotna

Mr. Foster handed the Commissioners a notebook of his documentation. Mr. Foster operates the gravel pit and has continued to do operations this summer but very little. He has only received a fine two times. At those times just a small amount of gravel was removed. Mr. Foster did excavate a large gravel project for Cook Inlet School but did not charge them anything for it. He has bought \$20,000 in materials for this site. Mr. Foster stated that although there were a few violations it was not his attention to blatantly violate everything. The pit has not been in full operations and there has not been a loader in the pit for 2½ months. Mr. Foster feels that there has not been near the problem that the landowners have just explained. He states that the neighbors have been on them for quite sometime and it has been very aggravating.

Mr. Foster feels they are one of the cleanest pits in the area and would challenge anyone to show that they are not. He referred the Commissioners to the letters from Department of Environmental Conservation Division (DECD). Mr. Foster met with representatives from DECD last Friday when they had a machine that shows contaminations in the soils. After running tests DECD stated that it was a very clean site. DECD did ask them to remove two batteries, which were removed. They also said it was fine that the barrels remain on the trailer as they appeared not to be leaking.

Mr. Foster is in the realms of the law to store the septic tanks in the pit until they are disposed of at the dump. His business has a policy and a card to dump them but they do have to cut them in half and crush them to 50% of the original size. It is sometimes not convenient with the hours that they work so they store them in the pit until things slow down. Many tanks have been removed and disposed of at the dump. The tanks are placed in the middle of the pit and not on top until they can be removed. The DECD have investigated the site twice and found no solid waste infractions.

Randy from the Soldotna office of DECD has most recently investigated the site. Mr. Foster showed Randy where the spill was that was mentioned in the May 10 meeting. Randy checked that spot and stated that it

was properly cleaned up. Randy also stated that it is one of the cleanest sites he has seen. Mr. Foster stated that there are no fuel barrels, no active fueling or greasing of the vehicles at the site; it is done at their shop in town. He reiterated that yards of gravel are not being excavated and that this site is not used very much.

Mr. Foster thought the site to be originally an 18-acre pit but the owners recently had it surveyed and it is only 8 acres. He has already reclaimed at least a quarter of this pit of about 2 acres. Mr. Foster will continue to reclaim as long as he can operate the pit. He states that obviously, equipment can be brought back into the pit to reclaim the property. Mr. Foster referred the commission to the pictures in the notebook showing the reclamation that has been done on this site. He stated that it does take time.

Mr. Foster has sold gravel to many landowners on Ciechanski Road who are very supportive of the pit. He does a lot of work in the community and does a stand up job as well as keeping sites clean.

Mr. Foster commented on the reports that water was being pumped to fill a hydro seeder. It seemed strange to Mr. Foster that complaints were coming in about planting grass. If the water that was being pumped out was contaminated then it obviously wouldn't grow grass very well. Mr. Foster dug a hole 25 feet deep just on the other side of the pit and hit solid clay. Mr. Foster commented that water is at different depths all over this area.

Commissioner Hutchinson asked if Randy, the DECD person gave the pit a good bill of health in one day. Mr. Foster replied that he was over Friday and was asked that two batteries be removed and a spot to of oil to be measured at 17" in diameter be cleaned up. Mr. Foster stated he shoveled it up and put it in properly contained containers. Randy came back to the pit today to make sure things were cleaned up. Commissioner Hutchinson stated that he has experience working with surveys and environmental sites and it normally takes thousands of dollars and weeks to accomplish a clean bill of health. Commissioner Hutchinson wants to know how Mr. Foster received that in one day. Mr. Foster explained that Randy stated that there was not enough contamination or problems with the pit and could not justify a formal investigation. Mr. Foster also explained that Randy informed this to the Penrods as well.

Commissioner Clark asked Mr. Foster if he was stripping overburden and taking full face or stripping off the existing floor going deep. Mr. Foster stated that he is going off an existing floor. He stated that one area of the pit was originally where all the over burden was pushed from the original part of the pit into a larger thicker pile which they are using for topsoil. Commissioner Clark asked how deep of an excavation did he have on those two acres. Mr. Foster stated he has never measured it. Commissioner Clark asked if he was going 5-6 feet deep on those two acres. Mr. Foster stated he was not sure he understood the question because everything is more than 5-6 feet deep. The bank that gravel is being taken out of has a heap of topsoil on it that is higher than the natural ground ever was. It was stripped off the previous area of the pit. The elevation of the pit is higher than what can be dug out.

Commissioner Clark stated that if you take 34 feet at 2 acres you come to 102,000 yards. He is assuming of the 20,000-yard estimate total volume that Mr. Foster is not taking the full 34-foot face because at 2 acres there are over 100,000 yards. Mr. Foster stated that there is no more 34-foot face except one, which is in the center of the pit.

Chairman Bryson asked Mr. Foster about the water table and how much gravel is estimated below it. Mr. Foster answered that they have dug as deep as 25 feet with an excavator and found nothing but gravel. He hasn't seen the clay level yet; only gravel.

Commissioner Johnson stated that at the May 10 meeting, they saw pictures of barrels that appeared to have some oil spills. He asked Mr. Foster if the oil spill cleanup was the extent of the cleanup that DECD recommended. Mr. Foster answered that those oil spills were cleaned up shortly after the May 10, 2004 meeting. The one DECD asked to have cleaned up was an oil spill from a cylinder that raises and lowers from a dump truck. Commissioner Johnson asked Mr. Foster how the original oil spill was cleaned up. Mr. Foster responded that the oil spill was put in a contained 10-mil+ liner then put in a fish tote with a lid on it. All materials are then shipped and burned in an ASR facility in Anchorage.

Commissioner Johnson asked about how it was cleaned up; was it a shovel job or backhoe job? Mr. Foster

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answered that it was cleaned up with a bobcat.

Commissioner Johnson asked if the septic pipes had been cleaned up. Mr. Foster stated that he hand picked them and took them to the landfill. Commissioner Johnson asked about the septic tank decay and if any septic tanks were removed since the May 10, 2004 meeting. Mr. Foster answered that he removed two and more will be removed as time permits. Commissioner Johnson asked if other than the septic tanks and septic pipes has other garbage be picked up since the May meeting. Mr. Foster replied, yes everything has been cleaned up that should have been cleaned up. Everything that wasn't being used has been cleaned up.

Commissioner Johnson has one more item. According to testimony from others and Mr. Foster a cease and desist order has been ordered yet Mr. Foster stated that a loader has not been in the pit for 2½ months and that there have been small violations. Commissioner Johnson asked Mr. Foster if gravel has been removed from the pit since the May 10<sup>th</sup> meeting. Mr. Foster answered yes, a few small amounts. The loader was gone for 2½ month because it was broken down but had used a small excavator to remove the small amount of gravel.

Commissioner Johnson asked about how much gravel was extracted for these small loads. Mr. Foster answered that he hauled approximately 430 yards, which equals to about 20 truckloads.

Commissioner Isham asked Mr. Foster what the green shaded area was in the picture showing the pumping of water into the truck for hydro seeding. Mr. Foster responded that the water is being pumped out of the water table into the tank that mixes up the mulch, the seed and the fertilizer for the hydro seeding. The shaded area is a dye from hydro seeding. It is not from discharging but from over spill or unclogging the pipes.

Commissioner Clark stated that there was concern of the debris that was being put into the pit. He asked Mr. Foster if he was the only one dumping in the pit. Mr. Foster stated that there have been a few people from the neighborhood requesting to dump there. He lets them know that it is strictly an organic dumpsite. Mr. Foster stated that they are allowed to dump concrete but keeps other people from doing that. They have not had any problems since the pipe issue. Some materials (wood) have been dumped but have been removed. The owner has applied for a permit to dump more conventional building materials.

Commissioner Clark asked when the building debris got removed. Mr. Foster stated that it was removed about a week ago.

Commissioner Hutchinson stated he was out at the pit taking photographs and it looks like there is concrete being dumped there. He asked Mr. Foster if concrete was being dumped at the site. Mr. Foster stated that his company dumps concrete but does not allow anyone else to.

## 4. Louise Tiedeman

Ms. Tideman first purchased their home at the end of April and moved in May. When she first moved in the road was a mess with a mud hole on the road by the pit. Ms. Tideman stated that she saw trucks going in and out of the pit on Sunday afternoons. She does not understand that if the pit isn't being used very much, why are there trucks going in and out of it. Also, Ms. Tideman doesn't understand why Mr. Foster wants to dig deeper when he is digging up water. According to Ms. Tideman, Mr. Foster does not own property in this area; he is only leasing it and will not have to pay repercussions with these actions. She feels that if he owned the land then he would care a little more about the business that he is conducting. Ms. Tideman appreciates the commission listening to the landowners concerns.

## 5. Oliver Amend

Mr. Amend stated that he started this whole mess and wants to be good neighbors with the landowners. He initiated this gravel pit for good reasons. Now that there is a hole in the ground he would like to fill it up and bring it back to the way it was. Mr. Amend commented that Mr. Foster's family has been in the area since the 1950's and has been working with Jason's family for a long time. Mr. Foster has grown up in this area working with this equipment and is very capable of doing it. Mr. Amend stated that he is retired from Unocal and has done this type of work. He works to do spill cleanups, excavations, pipe lines, gas lines, electric lines, knows a lot of soils, and does numerous cleanups for the oil companies. He cleaned up the oil spill that was in this pit with Mr. Foster, which is waiting to be shipped out for disposal. The way the spill was cleaned up is DECD approved.

Mr. Amend believes the water that is standing in the pit is not connected to the water table. He stated that when they dug 25 feet they ran into solid clay. Mr. Amend expressed that they had one problem that someone had dumped plywood into the pit. He did not know it wasn't acceptable to put plywood in the pit but found out it was so they removed the plywood.

Mr. Amend commented on the aquifer and stated that it is not connected to the river or wells. There are no chemicals in the water. They want to be good stewards of the land and found that 8.6 acres is to be disturbed with this gravel pit. Mr. Amend would like Mr. Foster to be able to operate the gravel pit and them reclaim the property. He commented that the roads were torn up back in the early 80's, which was before Mr. Foster did any work. Mr. Amend commented that it doesn't seem fair that the rules were changed in 2001 and now they have to apply for a permit since they are no longer grand fathered.

Commissioner Johnson commented that he doesn't understand the pit operations. It seems to him that Mrs. Gibbs is the owner, Mr. Amend is the overseer and Mr. Foster is the contractor that hauls gravel out of the pit. There is some responsibility that Mr. Amend has in facilitating and not knowing that a permit was needed is not being responsible. Commissioner Johnson asked Mr. Amend what his responsibility was in this chain of command. Mr. Amend stated that he doesn't have a TV, doesn't have a computer and rarely reads a newspaper and did not find out that the 2001 rules had changed until this past April. He stated that he ran the farm when Mr. Gibbs was alive and continues to run the farm for Mrs. Gibbs.

Commissioner Clark asked if there was an as built from the surveyor regarding the 8.6 acres opposed to the 18 acres. Mr. Amend stated no, they physically measured it, estimated and has closed that up since starting.

Chairman Bryson asked if the 8+ acres was intended to be from the floor. Mr. Amend stated yes but expanded it a little.

## 6. Dennis Gease, PO Box 2451, Kenai

Mr. Gease has a prepared speech with questions that he would like answered but first he must refute Mr. Foster that he is not operating the pit for the last 2½ months. Mr. Gease swears he has been hauling gravel out of the pit within the last 10-15 days. He attended the May 10 meeting and still has the same concerns now as he did then. Mr. Gease went through the first application and now this one and the only difference is that he is now asking for a 48-foot well depth. He went back to an application for a gravel pit that was approved for Davis Block that is located just around the corner and approval was given at the well depth of 25 feet deep because water was found at 30 feet deep. According to Davis Block's application they plan to reclaim the property within three years but Mr. Foster's application states that the property will be reclaimed in a reasonable time. Mr. Gease would like to know what a reasonable time is and wants to have a specific time. It needs to be written into the permit if a permit is issued.

Mr. Gease also stated that Mr. Foster proposes a 6-foot berm around the gravel pit. There are two sides that have no berm around it. Mr. Gease feels that if they say they are going to do something, and then they should do it.

Mr. Gease would like to know who would be responsible if the water gets contaminated. Will the Borough, Mr. Foster, or Mrs. Gibbs be responsible? He is retired and put his life savings into building his house. Mr. Gease will be very unhappy if something happens to it.

## 7. Sawang Smith

Ms. Smith lives on Ciechanski, bought her house in 1986 and put her life savings into the house. She states that no one wants to buy it because of the gravel pit.

## 8. Travis Penrod, 36860 Virginia Drive, Kenai

Mr. Penrod wants to clarify that it is not 8.8 acres; it's 613 feet long, 1224 foot lengthwise, 720,000 sq. feet. An acre of property is approximately 40,000 sq. feet. Mr. Foster stated that they have reclaimed 2.7 acres. Mr. Penrod went and measured the portion reclaimed and by the water it measures 41 feet and 47 feet on one side and is 236 feet long. Mr. Penrod states that there is about 9,500 sq feet less than a quarter of an acre. Mr. Foster is filling against the slope bank and has only filled in half of that.

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Mr. Penrod stated that the worst crime that has been committed is the type of material that is being dumped in the pit. He referred the Commission to the photos in the handout packet. The plywood has been removed but there is roofing materials still there. Mr. Penrod is concerned with the chemicals that are being dumped and it affecting the water table. All the wells have the same water regardless of a 35 or 40 foot well. The water table does go up and down about the same as the Kenai River. There is no way to keep contaminates out of the water table when it is pure gravel going to the banks of the Kenai River. Mr. Penrod states that there is no clay layer but pure gravel and the water will be contaminated if chemicals go into it. He stated that his biggest concern is contaminates going into the water. If that happens then everyone is out and the real estate is worth nothing.

Mr. Penrod commented that the stripping of topsoil backfill is laced with contaminates. Laurie Aldridge informed Mr. Foster that the items being dumped were illegal. She sent Mr. Penrod a letter and stated that Mr. Foster was very compliant and will clean it up. Mr. Penrod went back to check and the materials were still there. He stated that removing water from the site is not allowed without an appropriate permit per Kelly Westfall. Mr. Penrod watched Mr. Foster dump the hydro seeding material into the water aquifer. Even though it is not highly toxic a person would not want to give it to anyone or to their dog.

Mr. Penrod stated that the activity in the pit is appalling especially since the pit does not have a permit and was ordered to cease and desist. Mr. Penrod states that denying the permit is the only thing to do.

Commissioner Johnson expressed to Mr. Penrod while his testimony and many others is condemning, on the other hand the DECD has been on the site twice and they have not been condemning. Mr. Penrod stated that no one from Solid Waste or Landfill area has inspected but Laurie Aldridge is going from the pictures that he has sent her but was not specifically at the site Mr. Penrod stated that he did talk to the ones that have come to the site but they are going off the testimony of the excavators. They state there are no contaminates within the water and no testing to the water is being done.

Commissioner Johnson stated that according to testimony, a gentleman did come and inspect the property from DECD. Mr. Penrod commented that this man picked up the bag of mulch and called the manufacturer and they said there were no contaminates. They asked if the contractor is putting anything additional into to mulch and they said no.

Commissioner Johnson commented that at the last meeting the permit was denied and a satisfactory resolution was not found. He wonders if stipulations should have been placed on the permit and the permit granted. If that was done then the Borough could enforce the conditions and oversee that things were being done correctly. Commissioner Johnson asked Mr. Penrod if it would be better for the Commission to deny the permit or grant the permit with stipulations. Mr. Penrod answered that the pit is fully excavated. He has seen the loader dig to the water level and drag it back over the water. Mr. Penrod stated that the pit is fully excavated and to continue to remove gravel would be done illegally. He suggests that a 50-foot buffer be in place, slope it down and fill it with good clean gravel but this gravel pit is used up. It is a great dumpsite.

Commissioner Clark asked Mr. Penrod when he spoke with Kelly Westfall from DNR if a temporary water permit was issued. Mr. Penrod stated that it was around July but was unaware of a water usage permit being issued. It was actually Mrs. Penrod that spoke with Kelly Westfall several times between May and now. She stated that no one that is in and out of this gravel pit has a water usage permit and they are pumping illegally.

Seeing and hearing no one else wishing to speak, Chairman Bryson closed the public comment and opened the discussion among the Commission.

Commissioner Troeger asked if the commission could take a 10-minute recess. Chairman Bryson granted a 10-minute recess.

Chairman Bryson called the meeting back to order at 9:15 p.m.

**MOTION:** Commissioner Clark moved, seconded by Commissioner Peterson to adopt the unnumbered Resolution 2004-\_\_\_\_ granting the land use permit for operations of a gravel site.

Commissioner Martin would like to address the letter that mentions him as being involved in illegal pit operations.

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Commissioner Martin stated that his father owns the 80-acre subdivision across the highway from Ciechanski Road and is unfamiliar with his operations. Commissioner Martin cannot tell his father what to do or how to deal with the Borough. He commented that even though it is his father, he has noting to do with this subdivision.

Chairman Bryson stated that Mr. Martin clarified his potential appearance of partiality and will allow him to participate in the discussion. He asked if the commissioners had any concerns with this item. Hearing none, Commissioner Martin continued the commission discussion on the main motion.

Commissioner Isham is not familiar with how a cease and desist order works and asked the staff the following questions. Is that order per incident or does it cover the whole pit? Is it enforced until the permit is approved or disapproved? How does this affect the operations? Is Borough Legal involved in this matter?

Mr. Williamson answered that the cease and desist order was issued because he is operating a pit without a permit. It is accumulated daily from the date the cease and desist order was issued. He stated that this has been given to legal and it is in process.

Commissioner Isham asked staff if the permit was granted tonight, would the cease and desist order stop? Mr. Williamson believes the date the permit is granted with the Planning Commission chairman's signature would be the ending date.

Commissioner Hutchinson stated he would be voting against this motion because the current operators have not lived up to the promises they have made. They do not have a permit and should not have a permit. He feels the commission should listen to the neighbors.

Commissioner Johnson asked the staff how long it was before the applicant reapplied after the permit was denied at the last public hearing? Mr. Williamson stated that the reapplication was received about June 1, 2004, which equals to about 20 days.

Commissioner Johnson asked if there is an amount of time that has to lapse before a reapplication is filed. Mr. Williamson answered yes; he has to wait the 15-day appeals period. Commissioner Johnson commented that he reapplied as soon as he could. He asked if it took this long to go through the process and if it arrived here in Seward out of a fluke? Mr. Williamson stated yes, it was just a luck of the draw. It is assigned the first meeting that is timely to the applicant

Commissioner Johnson stated that it has been insinuated that a fine has been given and it has been alleged that the fine is \$100 a day. Mr. Williamson answered, yes, that is correct. Commissioner Johnson asked if the fine of \$100 a day was from the time he was turned down or was seen operating the pit. Mr. Williamson stated that the fine starts the day the Code Compliance Officer issues the cease and desist order if he continues to act out of compliance. Commissioner Johnson asked if Mr. Foster has paid any of the fines. Mr. Williamson commented, no, not to his knowledge. Commissioner Johnson asked if this was referred to the Borough Legal Department and what happens next. Mr. Williamson knows of this happening only once before with Carroll Martin and his subdivision. As far as the details, it is between the legal department and the legal representation of Mr. Martin. He stated that for now the Legal Department will deliberate with the Planning Department. Commissioner Johnson asked if the Planning Department.

Chairman Bryson asked staff if the Borough Ordinances differentiates between using the pit as a gravel pit or waste purposes? Mr. Williamson stated that there is a differentiation because a Conditional Use Permit is not needed to store things on personal property. The Borough Code, Solid Waste Code does not include private property waste, which is a state responsibility. It only covers the Borough owned landfill. The gravel code does not address water contamination or water quality issues except to provide the minimum protection of water rights.

Commissioner Clark asked staff if a reapplication was filed June 1<sup>st</sup>? Mr. Williamson answered, June 1<sup>st</sup> for the reapplication. Commissioner Clark asked if the reapplication was complete? Mr. Williamson stated that the proposal was complete but the application was not complete because of the compliance issue. The way the gravel code is enforced is to seek voluntary compliance. Mr. Williamson stated that there have been other pits that have been overlooked in the past and have not permitted themselves. Once it is brought to the Planning Department's attention, Planning asks that operations be stopped. Once someone complies, stops operations and prepares for compliance of

the code then it is brought to the Planning Commission for approval or disapproval. Mr. Williamson stated that in this case the proposal was in compliance but his actions were not.

Commissioner Clark asked if his actions were the reason it took 105 days as opposed to 45 days to come back to the Commission. Mr. Williamson stated also that there were personal schedule conflicts as far as being the gravel pit administrator. Commissioner Clark asked if it was the Borough staff that delayed this. Mr. Williamson commented, yes.

Commissioner Johnson commented that he sees that he could go two ways with this. One is to vote against it or vote to approve the permit. At the last hearing, Commissioner Johnson voted against it with the objective that the operator would clean the site up and reapply which did not work. Commissioner Johnson asked Mr. Williamson if restrictions and conditions could be placed on the permit that Mr. Foster would need to comply by? A couple of suggestions that Commissioner Johnson gave was to place the berms where the commission would want them and to have him clean the site up, then get it inspected by Mr. Finley or Mr. Williamson. Mr. Williamson stated that no we cannot propose conditions other than what is allowed in the code or the operator gives conditions voluntarily.

Commissioner Johnson stated that basically the commission could either deny or approve this permit. He asked if the permit were approved, would he have to meet the conditions that are currently out of compliance. Mr. Williamson stated yes, there would be further monitoring by the borough and the public.

Commissioner Johnson stated that if the permit is either denied or approved, the operator could not operate the pit legally until he is brought into compliance. Mr. Williamson stated that is correct.

Commissioner Clark asked Mr. Williamson if the operator has a water permit from DNR to run the hydro seeder? Mr. Williamson stated that he is not aware that he has a water permit but according to Borough Code, it is required by the Borough that he cannot pump without certification from an engineer. That was another non-compliance issue.

Commissioner Hohl stated that it seems much easier for the Borough to monitor whether or not the pit is operating while the operator brings it into compliance than to monitor all the conditions of the permit. If the permit is not approved then the Borough just has to see if it is in operation. If the permit is approved then there is each condition that the Borough has to monitor. Mr. Williamson stated that it is a complicated situation because a lot of it depends on the staff and minimum standards of the code and places so much on the ethics of the operator. It is further complicated if the surrounding community is not convinced and supportive of the permit.

Commissioner Troeger asked what the date was that the cease and desist order was issued? Mr. Williams stated that Warren Finley, the Code Compliance Officer issued the order on June 25, 2004, which is when the fines began.

Commissioner Troeger asked if there was a timeframe given for compliance in that letter? Was the applicant given a specific amount of time to come into compliance? Mr. Williamson stated he does not have that information. Commissioner Troeger asked if the applicant appeal this enforcement letter? Mr. Williamson stated that to his knowledge the applicant did not appeal. Mr. Ostrander responded that a letter was initially sent from the Code Compliance Officer requesting that they cease and desist operations. After that point a separate enforcement order which allowed an appeal period of 15 days, which there was no appeal during that 15-day period.

Commissioner Johnson asked if the permit is denied can the applicant reapply again in 15 days. Mr. Williamson stated, yes, that is correct and it can happen indefinitely. Commissioner Johnson asked if he does not operate illegally and meets all other requirements and reapplies would the findings state that he is in compliance? Mr. Williamson stated that is correct.

Chairman Bryson asked the commissioners if there were any questions for Warren Finley. Hearing none, discussion continued among the commissioners.

Commissioner Clark is concerned that this property is going to look just as it does now because Mr. Foster does not have any incentive to clean it up and backfill the hole to Virginia Drive. He feels it is too bad that the commission cannot place conditions beyond what is in the code on the permit. Commissioner Clark would favor granting the permit if the conditions were met.

Chairman Bryson commented that staff has clarified that using the facility as a disposal site is not within the ordinance

requirements. It just happens to be an activity that is going on at the same time. His assumption is that backfilling could be utilized by contractors whether a permit is issued or not.

Commissioner Clark commented that if the permit is granted then reclamation is required and enforceable.

Commissioner Hutchinson stated that the reclamation of the property has not been defined not only by time but also by whom. There are too many unknowns and too many broken promises.

Commissioner Johnson concurs with Commissioner Hutchinson. Chairman Bryson reviewed the motion that the permit be approved with staff comments incorporated.

**VOTE:** The motion failed by majority consent.

BRYSON	CLARK	FOSTER	GROSS	HOHL	HUTCHINSON	ISHAM
NO	NO	NO	NO	NO	NO	NO
JOHNSON NO	MARTIN NO	MASSION ABSENT	PETERSEN YES	TAURIAINEN NO	TROEGER NO	1 YES 11 NO 1 ABSENT

Mr. Williamson explained the appeal process.

AGENDA ITEM F. PUBLIC HEARINGS

3. A land-use permit application was received by the Borough to operate a gravel site in the Sterling area; Location: Dawn Estates Pearse Addn Lot 6B T05S R09W S29, Seward Meridian, KPB 06332017; Parcel: 8 acres; Portion to be Gravel Pit: approx. 2.5 acres.

Staff Report as read by Kevin Williamson

PC MEETING: September 13, 2004

- APPLICANT: Anthony Pearse PO Box 294 Sterling, AK 99672
- OWNER: Anthony Pearse PO Box 294 Sterling, AK 99672

**LOCATION:** Dawn Estates Pearse Addn Lot 6B T05S R09W S29, Seward Meridian, KPB 06332017; Parcel: 8 acres; Portion to be Gravel Pit: approx. 2.5 acres.

## **BACKGROUND INFORMATION:**

The applicant proposes to ingress the subject parcel from Edgington Road and Fannie Mae and start excavation at the northern boundary of the parcel. The applicant proposes to excavate 2.5 acres and approximately 20,000 cubic yards of gravel. The applicant plans to excavate to road level, contour to build houses or sell as house lots. The expected life span of the pit is 5 years. A copy of the application and support information is included as Attachment A.

Surrounding properties are predominately private owned. Copies of the land ownership and land use maps for the area are included as Attachment B and C. A 2003 aerial is included as Attachment D.

The applicant proposes to excavate to 25 feet deep. There are no wells within 300 feet of the parcel. The applicant estimates the distance to groundwater to be 60 feet, which was estimated using two well logs indicating 68 feet and 57 feet respectively for groundwater depth.

The applicant proposes 50 feet of natural or improved vegetation on the north, east, and western boundaries for buffers. The applicant requests a variance to waive the buffer zone requirement for the southern property line because the property to the south is a developed and permitted material site owned by the same persons.

1. <u>Variance Request.</u> KPB 21.26.030 (A) Buffer Zone. The applicant is requesting that the property lines

KENAI PENINSULA BOROUGH PLANNING COMMISSION SEPTEMBER 13, 2004 MEETING

BRYSON	CARLUCCIO	COLLINS	ECKLUND	FOSTER	HOLSTEN	ISHAM
YES	YES	YES	YES	YES	YES	YES
LOCKWOOD YES	MARTIN YES	RUFFNER YES	VENUTI YES	WHITNEY YES		12 YES

### AGENDA ITEM F. PUBLIC HEARING

5. Ordinance 2014-35; approving Diamond Willow - Fairfield Single-Family Residential (R-1) Local Option Zoning District, and amending KPB 21.46.040

Staff Report given by Bruce Wall

PC MEETING: November 10, 2014

**Location:** Parcels along Belmont Court and Lexington Court, certain parcels along the Pine Cone Way right-of-way, certain parcels along Virginia Drive, parcels along Gary Avenue, and certain parcels along Ciechanski Road.

BACKGROUND INFORMATION: A petition has been submitted by property owners of 55 parcels for the formation of an R-1, Single-Family Residential local option zoning district (LOZ), which is more than three-fourths of the 72 parcels within the proposed district. The petition requirements have been met to get the zoning request before the planning commission.

Three comment letters have been received. The most recent letter from the KPB Land Management Division was included in the desk packet along with a map with the Borough owned lots circled.

Also included in the desk packet was a map showing the boundaries of the proposed LOZ along with the boundaries of another proposed LOZ that will be heard at the December PC meeting.

KPB 21.44.050 states that the planning commission shall recommend to the assembly <u>approval</u>, <u>disapproval</u>, or <u>modifications</u> of the proposed local option zoning district.

Tract A2A and Lot A2, on the south end of the proposed district, are not included on this petition because they were included on another LOZ petition that has been submitted. That petition will be on the Planning Commission's December agenda. Lot 1A is not a part of either of these two petitions.

On the north end of the proposed district Tract B1, Tract B2-1, Lot B2-6, and Lot 22 are included on another LOZ petition that is still being circulated.

On the west side of the proposed district is Lot 1, J&P Subdivision and Lot 1 thru 7 of the Aurora Addition to the J&P Subdivision. The Borough currently owns the lots in the Aurora Addition. Only 2 of these lots are included in the petition. Marcus Mueller has stated that the Land Management Division takes a neutral position with respect to a local option zoning proposal that involves tax foreclosed properties.

On the south end of the map; Tract A2A, Lots C, D, & E were the subject of a Conditional Land Use Permit Application that was denied by the Planning Commission. That denial has been appealed and will be heard by the Board of Adjustment on January 21, 2015. If the permit had been approved, the applicant would have been required to submit a plat that would have combined these 4 parcels into one. The owner of that property has recently submitted that plat to the planning department. The Plat Committee should see that preliminary plat in December.

Contents of the commission packet: Memo to the Assembly Proposed Ordinance 2014-35 Map showing the acreage of each lot in the proposed LOZ Map showing the land use in the vicinity of the proposed LOZ Aerial photo of the proposed LOZ Map showing the land ownership in the vicinity of the proposed LOZ Map showing lots with and without the owner's signature on the petition Comments Copy of the submitted petition Information sheets, explaining the R-1 zone and home occupations, provided to petition signers Map showing the proposed Diamond Willow – Fairfield LOZ and Diamond Willow – Ravenwood LOZ

PUBLIC NOTICE: Public notice of the application was mailed on October 20, 2014 to the 140 property owners within the proposed district and within 300 feet of the boundaries of the district. Public notice of the application was published in the October 30, 2014 & November 6, 2014 issues of the Peninsula Clarion.

**STAFF RECOMMENDATION:** Staff recommends that the Planning Commission open the public hearing, take testimony and postpone action until brought back by staff.

#### END OF STAFF REPORT

Chairman Bryson opened the meeting for public comment.

1. Travis Penrod, 36860 Virginia Dr. & 36770 Virginia Dr.

Mr. Penrod is the person who circulated the petition and got the signatures. He had a great deal of knowledge on the subject so he was available to answer questions if the commissioners had any.

Mr. Penrod stated that the Local Option Zoning was an option that was given to them by the Borough to help protect their property. They received the information and figured out how it all worked and started the process. He met with Mr. Wall, the Borough Planner to make sure the local option zoning petition met all the requirements and that they collected the right amount of signatures. It was then submitted it to the Borough to be processed.

Mr. Penrod mentioned that every resident, every house and every structure in this subject local option zone meets the R1 residential standard which is what they were applying for so that no one would have to be grandfathered in. All the property is either a vacant lot or is residences that meet the R1 standards. He stated that the residents who have built homes were planning on living in a residential area. He also stated that the neighborhood covenants support the same thing as the LOZ even though the Borough doesn't recognize covenants.

Mr. Penrod understood that the Planning Department recommended postponing action on this LOZ but he requested that this move forward meeting all the timelines that were mentioned. They all know there is an appeal with the material site permit but that appeal is grandfathered in so this petition can continue. It can be approved and passed. He stated that the gravel pit permit was grandfathered in if the appeal was overturned. Everyone knows that the subdivision plat of Tracts C, D & E was submitted prior to this LOZ petition. He stated that if they get the LOZ approved then any future development would have to comply with the R1 Residential zoning which protects them from any future industrial development.

Mr. Penrod requested that this process continue to the Assembly meeting on November 25, 2014. He was available to answer questions.

Chairman Bryson asked if there were questions for Mr. Penrod. Hearing none the public hearing continued.

2. Oliver Amend

Mr. Amend owns 11 lots that were excluded from this R1zoning. There was someone else at the meeting who owned 12 lots that were excluded from the zoning petition which equals 23 lots plus they have another 6 lots for a total of 29 lots. He felt that was not a majority that backs up Mr. Penrod's claims of 75% of the landowners supporting the LOZ petition.

Mr. Amend bought his lots and was investing several million dollars in the development of those lots so he wants to keep the property covenants the way they are. There are only 10 places within the Kenai Peninsula Borough where there was R1 zoning. This is a residential area and that is their goal.

Mr. Amend had previously allowed Mr. Penrod to go into the pit and take pictures. There has never been one instance over the years of having citations issued from ADEC or EPA for violations of his development. He stated everything has been done above board.

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Chairman Bryson asked if there were questions for Mr. Amend.

Commissioner Martin asked if he could elaborate on the lots numbers that he owned. Mr. Amend replied that he owns the lots on the north end which are Tract B1, Tract B2-1, B2-2 B2-6 and Lot 22. Chairman Bryson asked if the lots were north of Ciechanski Rd. Mr. Amend replied that they are south of Ciechanski Rd. Mr. Best clarified that Mr. Amend owns Tract B1, B2-1, B2-2, B2-6 and Lot 22. Mr. Amend replied that he also owns six lots that were just submitted to the Planning Department. Mr. Best also clarified that Tract B2-1 has a preliminary plat that will be subdivided into six lots. Commissioner Martin asked if Tract B1 was scheduled to be subdivided. Mr. Best replied no, Tract B2-1 is in as a preliminary plat of six lots. Mr. Wall also stated that Mr. Amend owns Tract B2-2 which is included in on the LOZ petition.

Commissioner Foster asked if he supported the residential concept but did not want the local option zoning. Mr. Amend replied that he supported the covenants the way they are since they are more restrictive than a R1 zone. Commissioner Foster asked if he understood that the Borough does not enforce or protect the covenants and takes a civil suit if a situation arises. Mr. Amend felt they could govern it themselves.

There being no further questions, the public hearing continued.

3. Justin Evans, 47207 Lexington Ct.

Mr. Evans is a homeowner within the Diamond Willow Estates. He supported the local option zoning since it was a protection for any future civil suits that they may have.

Mr. Evans was told by his realtor that the gravel pit was an illegal dig and was being filled in when he purchased his property in 2007. That was one of the reasons they purchased their property because it was in a residential area with homeowners and families. He wants to make sure that the area stays as a residential area so he urged the commission to vote in favor of granting the Local Option Zone.

Mr. Evans asked that they allow things that are grandfathered in to be worked out with the appeal. He requested that they get this done which is why the Borough and Assembly was here to help protect homes and families. He was available to answer questions.

Chairman Bryson asked if there were any questions for Mr. Evans. Hearing none the public hearing continued.

4. Jacob Newton, 46738 Gary Ave

Mr. Newton purchased his home less than two years ago and was under the assumption that the pit was being filled in and would continue to be filled in until it was a field. He supported the R1 Local Option Zoning.

Chairman Bryson asked if there were questions for Mr. Newton. Hearing none the public hearing continued.

5. <u>Dave Tiedeman, 36750 Virginia</u>

Mr. Tiedeman bought his property in 2004 and also thought the pit was being filled in at that time which was why they were encouraged to buy the property. There have been problems in that pit from back in 2004 which had to be addressed back then. Everyone thought it was taken care of but it keeps raising its ugly head. This is obvious a residential area that needs to be protected.

Mr. Tiedeman stated there are concerns of more extraction of gravel being done out at the other field. He sees a precedent being made if the owner gets to go back in and dig. He thought they were setting a bad precedent for a very nice residential area that needs to be protected.

Chairman Bryson asked if there were questions for Mr. Tiedeman. Hearing none the public hearing continued.

6. Louise Soltis

Ms. Soltis is the wife of Mr. Tiedeman and stated they have lived on their property for 10 years. She felt what was going on here is something that they will see a lot of over the next five years. This area has a lot of vacant land; it is not just going to be their residential area that will be vulnerable. There will be a lot more people moving to this area so it makes a lot more sense to have lots where people can build homes rather than allowing one person go in and dig up gravel. The digging makes a lot of

noise and is left with a big mess when the digging is done.

Ms. Soltis urged the commission to push through on making this a housing area zone and protect those residents who have made this their homes and who plan to retire and live in this area. It is a beautiful area that she would hate to see destroyed. She asked for the Commission's support to help those who have made this their home and do not wish to see the area destroyed. Ms. Soltis was available to answer questions.

Chairman Bryson asked if there were questions for Ms. Soltis. Hearing none the public hearing continued.

#### 7. Mercedes Gibbs

Ms. Gibbs is against the R1 zoning petition. She has been in the area for almost 40 years.

Ms. Gibbs stated that it was a necessity when she owned and operated the gravel pit. They never planned to have the other field be a gravel pit because she liked the area and she and her family planned to stay there. She stated that several contractors contacted her about the hay field becoming a gravel pit but she did not want that being a gravel pit anymore. Ms. Gibbs sold the gravel pit because the new owner wants a nice area and also has the capacity to operate it and reclaim it. She doesn't know why people want to stop them since the new owner has the capacity to fill up the gravel pit and make a nice field. Ms. Gibbs questioned if the residents just wanted to have a big hole left. She never planned to have another gravel pit.

Chairman Bryson asked if there were questions for Ms. Gibbs. Hearing none the public hearing continued.

### 8. <u>Dennis Gease, 36710 Virginia</u>

Mr. Gease has lived there for 10 years and stated that he loves the area. He stated he would have no problem if what Ms. Gibbs testified was true, that the pit would be filled up, seeded over and become a grass field but that is not what has happened over the last 10 years. They go from one startup of that pit to an appeal which carries on for a few years and then another startup with an appeal. This has been going on for 10 years.

Mr. Gease stated that the landowners with the support of a member of the planning commission agreed to try and zone this area which is permitted by the Borough. They went through all the constraints of getting paperwork filled out and turned in which is why they are at this meeting. They wished that the commission would take this request under advisement and zone it residential as requested. He was available to answer questions.

Chairman Bryson asked if there were questions for Mr. Gease.

Commissioner Lockwood commented that the commission does not have Borough zoning rights which is why it is called the Borough Planning Commission and not the Borough Planning and Zoning Commission. There is no zoning outside the city limits because the Borough population has not voted for zoning. Mr. Wall clarified that the Borough has zoning authority which is why they are able to enact the local option zones. He stated there is also the Habitat Protection District which in practice acts as a zoning district. The Borough Assembly has the power to zone property with or without the property owners consent. They can do that outside the Local Option Zone petition process but the Assembly has chosen not to do that yet. Commissioner Lockwood asked why the commission isn't called the Borough Planning & Zoning Commission. Chairman Bryson stated that when zoning was transferred to the different municipalities, it went through the Borough who delegated that authority to the cities who wished to incorporate that in their charters. He stated that any zoning for this area passes through the Borough.

Hearing no further questions or comments, the public hearing continued.

Mr. Gease asked if they were following the right procedure. Chairman Bryson replied yes, the Local Option Zoning is a valid procedure and activity.

# 9. Sean Cude

Mr. Cude was the landowner asking the Planning Commission to not include his three lots within the R1 zoning which are Lots C, D and E. The three parcels are currently in the appeal process for a

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conditional use gravel permit and a replat has already been submitted to the Borough to combine those lots in with Tract A2A. The three parcels have previously been mined for gravel and should have never been resubdivided back into 2008 for residential lots as they do not meet the proper requirements for a residential lot. He stated he submitted photos were included in the packet.

Mr. Cude stated that this R1 zoning stems from an application for a conditional use permit which is currently under the appeal process. The Deputy Borough Attorney, Holly Montague stated on her entry of appearance that the Planning Commission decision is inconsistent with the criteria in KPB Chapter 21.29. He felt that he should have a fair appeal process and that no decision should be made until that process is complete.

Mr. Cude stated that Diamond Willow Estates already has covenants in place. As someone would drive through the neighborhood they would see several covenant violations like a house with three car garages when it clearly states no more than two; lots more than 50% cleared; fishing lodges; large shops; and dual houses on one lot. It is obvious that none of these issues have been of concern until he applied for his conditional use permit.

Mr. Cude also pointed out that several homes have been built in the neighborhood after the pit was established. He thought almost everyone who testified at this meeting moved into that neighborhood and the entire Fairfield Subdivision was built after the pit was established. There is never any promise that any pit will get reclaimed but the subject one has been reclaimed probably more than any pit in the area and better kept. Mr. Cude stated that according to Borough records, Mr. Penrod chose to live there and build homes in 1998 and 2003 after the pit was established.

Mr. Cude felt that the R1 Zoning was realistically and intended for and appropriate for neighborhoods having no protections not for someone to just come in and pick out certain parcels and avoid certain people to make sure they get enough signatures received and make sure the areas are contiguous. He stated that the lots as shown on the map are not contiguous. He stated that there could be a single lot in the middle of the subdivision that is not included in the zoning because there were not enough signatures obtained with this subject R1 zoning petition and the other pending petition. This is clearly not what the R1 zoning was intended for to pick and pull certain parcels to stop certain things.

Mr. Cude stated that he has done extensive work and has been one of the most responsible operators of this site since his ownership of the property which has all come under opposition. He felt he was getting blamed for filling in and digging it out. No matter what he does, Mr. Penrod will not be happy. Mr. Cude stated that at the last meeting, Ms. Penrod brought a jar of gravel that was taken from his site without his permission while trespassing. He filed a no trespassing on Mr. Penrod who claimed he was burying asphalt.

Mr. Cude stated there was a letter that was received from the Solid Waste Regional Program Manager that discussed his history and compliance as an operator with no DEC problems or compliance issues. He has never had an environmental violation in his 20 years as a contractor. Mr. Cude was all about making the community a better place. Last year, he recycled over 10,000 cars in the State of Alaska to try to make this a better place to live.

Mr. Cude understood that everyone wants to see this cleaned up but this does come with a cost. He also owns one of the most expensive 3.7 acre river lots in the subdivision so he has a vested interest to make sure that the site gets clean and reclaimed.

Mr. Cude hoped that they could work together to get this site cleaned up so that it doesn't become an eyesore in the years to come. He does not want to be involved in the R1 zoning.

Chairman Bryson asked if there were questions for Mr. Cude.

Commissioner Ruffner asked what his understanding of who has standing and if the appeal process went forward in his favor. Mr. Cude replied that he felt a decision should not be made whether his lots should be part of it until the appeal process is done. Secondly, his lots do not meet residential standards. The three lots should not have been originally pulled out and made into residential lots back in 2008. One of the conditions with the conditional use permit was that they would have to resubdivide those three lots into the Tract A2A

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which has been submitted to the Borough for review.

Commissioner Ruffner asked if he felt he was first in line to have a decision made on his proposal. Mr. Cude replied yes, that was what stemmed this R1 zoning. Commissioner Ruffner asked if it was his understanding that he was first in line even if something happened at this meeting. Mr. Cude deferred to Mr. Kashi who was representing Mr. Cude. Mr. Kashi deferred to the Borough Attorney or Planning Director for their opinion. Mr. Best stated he posed that question to the Legal Department and haven't received an answer but expected that it could be challenged since Mr. Cude started his process for a material site prior to the local option zoning petition.

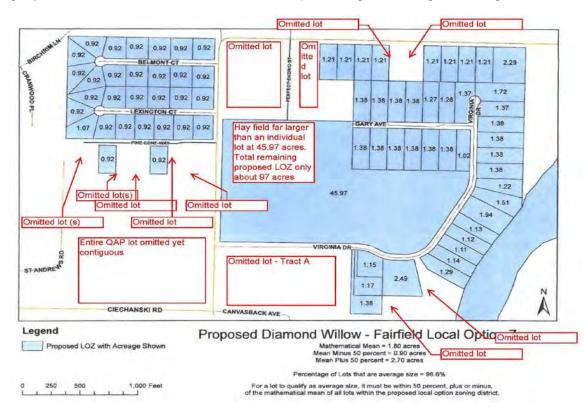
Commissioner Martin asked if it made sense to him if the commission made an addendum to remove the four lots from the LOZ. Mr. Cude stated that the next petition includes his river lot and a large parcel on the other side. It comes back to it not being contiguous. He felt it was picking and pulling pieces and done without notifying all the owners. Mr. Cude was never asked if he wanted to sign the petition. He found out about the petition from another neighbor.

There being no further comments or questions, the public hearing continued.

### 10. Joe Kashi, Attorney at Law

Mr. Kashi represented Mr. Cude. He liked the idea of local option zoning and thought he may like it in his own neighborhood. Having said that he felt this subject petition was going to be a very bad precedent. Mr. Kashi submitted packets of information with photos to the Commission.

Mr. Kashi stated this was a very inappropriate gerrymander. In the color map as shown below, there are numerous lots that have been omitted from the LOZ petition. The lots are supposed to be reasonably average in size. Most of these are one acre lots but one 45.97 acre lot that doesn't fit in the ordinance. He felt that the only reason that lot was included was to make it contiguous with the three lots that Mr. Cude asked to be removed from the LOZ. The mere fact of putting that lot in there prevents it from complying to the provisions of the ordinance because it is not the right size. Secondly, it would only make it allegedly contiguous but at the same time there are a bunch of gerrymanders in there. This is not the kind of compact contiguous zoning the Borough should have.



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Mr. Kashi stated that the three lots that are being proposed to be combined with Tract A do not fit. Tract A has always been excluded from the restrictive covenants that have been in place for 40 years and has always been used for gravel purposes. His client only bought this lot two years ago and there has been a huge cleanup since that point. He stated that ADEC submitted a letter saying that everything was in nice shape and Mr. Cude has done a good job around the State.

Mr. Kashi stated that most of the fill that is going in the pit is clean dirt and coming from the Kenai Peninsula Borough and the City of Kenai. He felt this is a bad precedent not only in terms of zoning but also in terms of cleaning up the lot. Mr. Kashi explained a few photos that he and his client took of the subject gravel pit property. He showed photos of Quality Asphalt's pit which is nearby and compared it to a photo of the subject parcel. They are trying to do the right thing and felt that if it is shut down then it won't happen. There will only be the remnant of the hole there and the property not reclaimed.

Another reason those lots are not appropriate is that they are not supposed to be under the ordinance surrounded by incompatible uses. Mr. Kashi stated that A-1 Enterprises and three other gravel pits are next to them in the area. His client has two-thirds of the property filled and questioned why everyone was beating on his client when they should be looking at Quality Asphalt's pit or the other ones in the area. He stated his client is trying to clean up the property.

One last thing would be that it would be ideal if they would have more operators who comply with DEC. Mr. Kashi referred to November 7, 2014 letter which talks about his client's excellent record as an operator in terms of avoiding environmental operations and cleaning it up. He asked who they want there and who do they expect to pay for it; doe they want to leave it as it is or give them a chance to clean it up. Do they want to have a gerrymander with fingers all over the place that sets a bad precedent or otherwise. Do they want to a place for the Borough, the City of Kenai and DOT to have a place to dump their materials? Those are the questions that have to be asked. He sympathizes with the landowners who live there and agreed he would not want a gravel pit in his backyard. Mr. Kashi referred to the Robinson Loop Rd gravel pit that has been reclaimed and was now a horse ranch. He stated his client is trying to do a nice job.

Mr. Kashi stated that this was not the way to make things work. It is not the way zoning works. He believes in zoning and has tried to do that clear back when he was Borough attorney but this isn't the way to do it. Mr. Kashi believes in environmental stuff but there has to be a way to pay for it. It doesn't happen magically.

Chairman Bryson asked if there were questions for Mr. Kashi. Hearing none the public hearing continued.

## 11. Kristin Webber, 46724 Gadwall Ave.

Ms. Webber stated that the gravel pit is almost directly behind her house. When they bought their house about four years ago, they were told that it was an illegal gravel pit and it was being filled. She stated it is even loud when the pit is being filled. Her preference would be that they just leave it the way it is but she definitely doesn't want them to fill it by mining it with a rock crusher. Ms. Webber has a two year old and hopefully one on the way soon. She thought everyone in the area assumed the gravel pit was closed.

Chairman Bryson asked if there were questions for Ms. Webber. Hearing none the public hearing continued.

12. Crystal Penrod, 36860 Virginia Dr.

Ms. Penrod stated that she and her husband are the sole organizers behind this zoning petition. There has been a lot of testimony regarding the gravel pit of which she apologized because they weren't at the meeting for the gravel pit issue but was at the meeting for the local zoning issue. She stated that gravel pits are common in this area but that was for another day.

Ms. Penrod stated they are at this meeting to talk about the zoning of their neighborhood. She and her husband have lived in their house since 1995-96 and subsequently bought another piece of property with a starter house on it for their son. They have ties to this neighborhood and aren't going anywhere. There are a lot of families in the area that are also in this same situation. These are retirement homes and people who are permanent in the area. The river is behind them and it is

beautiful. All the lots in the area in the last ten years have either sold and have been built on or are in the process of that. Ms. Penrod stated that the borough only owns property in this area because of people who did not pay their taxes. She did say that there are a few vacant lots.

Ms. Penrod stated that for the most part this is a residential area. The Fairfield neighborhood has joined in on their neighborhood as well as the older Ravenwood Subdivision on the other side of Virginia. They are asking the commission and what they are trying to accomplish is to get this area designated as a R1 Residential area. What that means is that they have gone through the entire neighborhoods extensively. She felt that not one single home is out of the R1 zoning restriction which is because they have good covenants. When the property was developed all the landowners signed on to those covenants.

Ms. Penrod felt that they did their best in circulating this petition to contact every homeowner in the area. They did not contact Mr. Cude because they felt like that he would not be in agreement with them. She stated that Mr. Cude made it very clear that he doesn't like who they are and what they stand for however it is not their mission to shut him down or cause him any harm. They wish him no ill will. They are good people. Her husband serves in the US military and is often deployed. Ms. Penrod was a stay at home mom until recently and stated that they want to live here extensively and wants to remain here. She requested the commission's help to protect their property so that nothing in the future can come in such as a used car lot, cement plant or anything industrial that would cause harm to the neighborhood. They are trying to protect their property values, wanting to protect it for their children and that is what they are asking.

Ms. Penrod stated that Mr. Wall helped select the lots that were to be included in the zone. He guided them through the whole process so this has all been done through the Borough. This is a three petition process and Petition 2 will be heard at the December PC meeting. She hoped to get enough signatures on the third petition so that could move forward. Ms. Penrod stated that they eventually want the whole area to be zoned as R1 Residential as it should be since they are all family homes and all families with children.

Ms. Penrod showed the original plat from the 1970's and stated that Mr. William Gibbs was the homesteader of the original plat. The original plat was quite different than what has been in the packets. She stated he intended it to be a neighborhood and did not intend it to be industrial. There have been several more housing lots that were developed in that 40+ acre field which it was intended that the lots be purchased to put homes on it, not businesses, not industrial, and no commercial. The original plat shows that it was to be developed as a neighborhood. They are not asking the commission to put anyone out of business and not talking about any other outside issues. No one has to pay for it and there is no money involved.

Ms. Penrod reiterated that they are asking them to help protect their neighborhood. To protect it so that their children can ride their bikes in the street without them being run over by dump trucks so that they can know whatever happens, that their homes will be their homes until they decide they don't want to do that anymore. She didn't think that was unrealistic to ask because this area is a residential area and because it is quite obviously that it is a neighborhood. The neighborhood has come together and they have endured some scrutiny by proposing the local option zone. They knew that there would be people that would be upset with them. Ms. Penrod commented that they don't have an attorney but they do have a homeowners association that they are building. They are neighborhood of people and they just want to know that they can protect their homes and that they can live there without expecting heavy equipment or industrial activity to interrupt their lives. She would appreciate it if the commission would pass the LOZ petition as is so that they can continue to move forward.

Chairman Bryson asked if there were questions for Ms. Penrod.

Commissioner Isham stated that it appeared that Mr. Cude's three lots were included in the LOZ without his knowledge. Ms. Penrod replied that there has to be contiguous properties and have to be in the same area. She stated that Mr. Wall told them what they needed in order to get the zoning petition moving forward. It is based on a math formula. You have to do the mathematical mean and Mr. Wall worked with them on it and he puts the property values in. It is all about acreage and position on the map. She stated that the Borough properties are included in the R1 zone but are counted against them because the borough remains neutral to

the local option zone. They have to have 75% of the signatures which are a lot but can't count on the Borough as a signature. She deferred to Mr. Wall who could tell them the formula that is used.

Commissioner Foster asked if she supported staff's recommendation to postpone. Ms. Penrod replied that they do not support postponement. They all want this to move forward. It has been proven that they obtained the signatures and they would like to move forward with it. There are two other petitions where the second petition has already been turned in. They want to go ahead and establish these neighborhoods. She stated there is an appeal process that is ongoing and if Mr. Cude's appeal is granted then the landowners can also appeal which means it could go on for months.

There being no further questions, the public hearing continued.

13. Joe Kashi

Mr. Kashi supplemented the previous submitted information with additional photos and information. He stated that they have enough lots to have petitioned to have an industrial local option zone but they haven't done that.

Ms. Penrod stated that they could not have done that because they would have had to have 75% of the owners sign the petition.

There being no further questions, the public hearing continued. Seeing and hearing no one else wishing to speak, Chairman Bryson closed the public comment period and opened discussion among the Commission.

**MOTION:** Commissioner Martin moved, seconded by Commissioner Isham to continue the public hearing until brought back by staff.

Commissioner Carluccio asked why staff requested postponement. Mr. Wall replied that there were a number of issues on it that seemed complex that staff hoped would get resolved. One issue being the gravel pit appeal and the other issue is the second local option zone that will be heard in December. He also stated that the Legal Department requested that those complex details be resolved prior to moving the LOZ forward.

Chairman Bryson asked if it was priority of petitions. Mr. Wall replied that wasn't specifically addressed with Legal. It is kind of a messy situation with all of those things going on at the same time.

Commissioner Holsten asked if the Commission can opt to adjust the zone since the landowners have met the standards for a local option zone. Mr. Wall replied yes, that was correct. The landowners have met the petition requirements to get it before the Planning Commission and ultimately the Assembly. He stated that the Ordinance requires that the Planning Commission make a recommendation to the Assembly to approve it, disapprove it or modify it. The Planning Commission has a lot of leeway with that modification provision to change the boundaries and make that recommendation to the Assembly.

Commissioner Holsten understood that they can remove Lots C, D & E from the LOZ and then the appeal on the gravel pit would no longer be pertinent to this issue. Mr. Wall replied that was correct.

Commissioner Holsten stated she was bothered by delaying this petition unless she hears more convincing arguments. She understood that if the appeal is granted to Mr. Cude then these three lots would not qualify and his action will take precedence over this zoning request. Furthermore, if they take those three lots out of the zone then it doesn't affect him if the zoning is passed. Mr. Wall replied that was correct.

Commissioner Carluccio stated that in the past they have told landowners that there was local option zoning that could be done before they had to worry about additional gravel pits coming in. She thought that they were doing a disservice to the landowners who took the time to put together their petition by delaying this action especially that the commission has the ability to remove these three lots if they decided to which would make the delaying action moot. She stated she would not support delaying this petition.

Commissioner Foster agreed with Commissioner Carluccio. He thought the worst thing that could happen is that this goes forward to the Assembly and they send it back to the Commission for further review. He stated he did not support postponement.

Commissioner Isham asked how Lots C, D & E were included in the proposed zone without the landowner's knowledge. Mr. Wall replied that the ordinance has certain requirements as far as 66% of the lots need to be of average size and it defines what average is. The information regarding that was included in the PC Packet. Also he included a map which shows the acreage of each lot within the LOZ and also showed the calculation of what the average lot size is. In order to qualify as average size, it needs to be within 50% of the arithmetic mean which puts the low side down to .9 acres and the high side to 2.7 acres. The only parcel that does not qualify is the large parcel of 45.97 acres. All of the other lots fit within that average lot size.

Commissioner Isham asked how Lots C, D & E were included in the LOZ. Mr. Wall replied that the ordinance states that the organizer of the petition would coordinate with staff. It also states that staff was to help determine the appropriate boundary which he felt wasn't done in this case. He overlooked that one sentence but it does meet the letter of the requirements. Once that is done, he generates the petition based on the Assessor's records of the ownership and provides that to the organizer of the petition. It is at that time that the organizer obtains the signatures that are required. Mr. Wall stated that once the petition is received by staff, a public notice is sent to the landowners informing them of the LOZ petition. He stated that it was up to the petition organizer to contact the property owners. It sounded like the focused on the people that they felt they could get the signatures from because of the time constraints. Commissioner Isham thought the process wasn't done at 100% because Mr. Cude wasn't notified. Mr. Wall replied that everything in the Ordinance was followed. He stated that they did receive a public notice with all the property owners that this hearing would be taking place.

Commissioner Martin stated he was in favor of postponement because Lots C, D, & E were included in the Local Option Zone. He also stated that he would be in favor of not postponing if there was a way to amend the zone to exclude those three lots.

Commissioner Holsten stated that the materials say that the Borough is neutral on this issue. In fact, for every one of those lots that the Borough has that they say they are neutral on, then the group had to get three other landowners that they supported the zone. Mr. Wall replied yes, that was correct. It is really a not vote when the Borough says they are neutral on this matter. He agreed that it did require additional signatures from the petitioner. Commissioner Holsten asked how many Borough lots there were. Mr. Wall replied that there were a total of 8 lots. Commissioner Holsten asked if the petitioner had to get 24 additional signatures because of a neutral vote of the Borough. Mr. Wall replied that there were only 3 lots on this petition. When he met with the organizer he realized that it would almost be impossible to get signatures so at that point he removed some of the Borough lots because they recognized that they were going to be no votes.

Commissioner Holsten felt that Lots C, D & E should be removed from this LOZ and move this petition forward.

Commissioner Isham agreed with Commissioner Martin and believed that postponement would be best unless the three lots were removed.

Commissioner Carluccio asked if the amendment can be done on the postponement because it would be voting on the postponement before voting on taking the lots out. Chairman Bryson replied that the postponement motion would need to be voted down. Commissioner Carluccio asked if the motion to postpone was voted down and the lots were not removed then could another motion to postpone be brought forward. Commissioner Foster stated that a Reconsideration motion could be made by the prevailing side.

Chairman Bryson understood there is not a motion to put this on the table and determined that the postponement motion was out of order so that postponement motion was dropped.

Commissioner Carluccio asked if there was a motion since the postponement motion was out of order. Chairman Bryson replied that a motion needs to be put on the table for discussion.

**MOTION:** Commissioner Holsten moved, seconded by Commissioner Ecklund to approve the Diamond Willow – Fairfield Single Family Residential (R-1) Local Option Zoning District with the exclusion of Lots C, D, and E.

Commissioner Carluccio asked if the petition would be invalid if those three lots were removed. Mr. Wall replied that the petition followed all the processes of the ordinance and that gets it in front of the Commission.

Now that the petition is in front of the Commission those initial petition requirements are not relevant. It is just the process of getting it in front of the Commission. The boundaries can be changed and adjusted now that the Commission is reviewing it.

Commissioner Ruffner asked if a few larger lots can be included in the LOZ. Mr. Wall replied that the ordinance requires 66% to be of average size.

Commissioner Ruffner asked if Lots C, D, & E could be brought back into the Local Option Zone once they are removed. Mr. Wall replied that there is another petition to the south of that which will be heard in December. These three parcels would be contiguous to that petition so those three lots could be added to the second petition. Commissioner Ruffner understood that those three lots could be included from the southern portion of the property.

Commissioner Foster asked why the Borough was taking a neutral stand on the development of this Local Option Zone petition. Mr. Best replied that it wasn't necessarily a neutral stand but was basically a no vote. They have the same situation when they do the utility special assessment districts and the road improvement districts where the policy is that they don't sign the petition. He stated that it would be better to not be included in the petition area if they really want to be neutral. To be neutral they should really be neutral and it shouldn't affect the public that wants to do these things. Mr. Best stated that staff is really looking at where they feel as staff this is a good thing. He stated it is kind of contrary to what staff would like to see which would be to add those lots in the LOZ. This is the first petition that wasn't 100%. The ones brought forward before were 100%. These are Borough programs so he felt that the Borough should participate.

Commissioner Ruffner was leaning towards a no vote because he doesn't agree with pulling the three lots out of the LOZ. If this was the petition the landowners put forward and it is what they requested then it needs to be acted upon. This is the tool that the Borough has given them to enact zoning.

Commissioner Foster stated that Ms. Penrod stated that the reason was to protect their property values for any remaining development around there and they are not trying to stop what is currently there so he supported the motion.

Commissioner Carluccio agreed with Commissioner Foster. These three lots could be added to the LOZ to the south which is adjacent to this one if the petitioners want them included. She thought a good percentage of what they want was going to happen with this so she thought they should give them this. They may need to readdress those three lots later on and it will also give the opportunity for the appeal process to go through. She thought this petition should not be held up at this time.

There being no further comments or questions Chairman Bryson called for a roll call vote.'

BRYSON NO	CARLUCCIO YES	COLLINS YES	ECKLUND YES	FOSTER YES	HOLSTEN YES	ISHAM YES
LOCKWOOD NO	MARTIN YES	RUFFNER YES	VENUTI NO	WHITNEY YES		9 YES 3 NO
AGENDA ITEM G. ANADROMOUS WATERS HABITAT PROTECTION (KPB 21.18) - None						
AGENDA ITEM	AGENDA ITEM H. VACATIONS NOT REQUIRING A PUBLIC HEARING - None					
AGENDA ITEM I. SPECIAL CONSIDERATIONS - None						
AGENDA ITEM	AGENDA ITEM J. SUBDIVISION PLAT PUBLIC HEARINGS					
Chairman Ruffner reported that the Plat Committee reviewed and conditionally approved 1 preliminary plat.						
AGENDA ITEM	GENDA ITEM K. OTHER/NEW BUSINESS					
AGENDA ITEM L. ASSEMBLY COMMENTS - None						

**VOTE:** The motion passed by majority consent.

# AGENDA ITEM F. PUBLIC HEARINGS

2. Ordinance 2014-39: approving the Diamond Willow - Ravenwood Single-Family Residential (R-1) Local Option Zoning District (LOZ). Legal Description: The property included in the LOZ under consideration is described as follows: Tract A, Ravenwood Subdivision Addition No. Two, according to Plat 77-41; Lots 1, 2, 3, and 4, Block 4 and Lots 1, 2, 3, 4, 5, 6, and 7, Block 5, Ravenwood Subdivision Addition No. 2, according to Plat 81-47; Lots 1, 1A, 2, 3, and 4, Block 6 and Lots 8, 9, 10, and 11, Block Five, Ravenwood Subdivision No. 4, according to Plat 84-234; Lot 1-A, Ravenwood Subd. #7, according to Plat 97-70; and Lot A2 and Tract A2A, Diamond Willow Estates Subdivision Part 11, according to Plat 2012-93; all located in the Kenai Recording District, Third Judicial District, State of Alaska. Location: Certain parcels along Virginia Dr, Ravenwood St, Canvasback Av, Wren Dr, Merganser Ave, Puffin St, Gadwall Ave, and Pelican Rd. Request: A petition has been received requesting that the subject property be zoned as Single-Family Residential (R-1), and be subject to the uses and development standards set forth in KPB 21.44.160.

# Staff Report given by Bruce Wall

### PC Meeting: 12/15/14

This ordinance would approve the formation of a Single-Family Residential (R-1) Local Option Zoning District (LOZ).

A petition has been submitted by property owners of 19 parcels for the formation of an R-1, Single-Family Residential local option zoning district (LOZ), which is more than three-fourths of the 24 parcels within the proposed district. The petition requirements have been met to get the zoning request before the Planning Commission. Pursuant to KPB 21.44.010, property owners may petition the assembly for greater restriction on land use than otherwise provided in Title 21 of the KPB Code. Furthermore, the proposed LOZ is consistent with Goal 6.5 of the 2005 KPB Comprehensive Plan which is to maintain the freedom of property owners in rural areas of the borough to make decisions and control use of their private land.

This ordinance has been introduced to the assembly. The assembly has scheduled it for a hearing on March 17, 2015. Property owners within the proposed district and within 300' of the proposed district received a notice of this meeting and for a meeting with the assembly in January. The January hearing will not take place for this ordinance.

We have received two comment letters. One representing the owner of the 46 acre parcel directly to the north. The other represents the owner of Tract A2A and Lot A2 which are included within the northern part of the proposed district. The tract and lot numbers are shown on page 108 of your packet.

Tract A2A, which is a part of this petition, and Lots C, D, & E, which are not a part of this petition, were the subject of a Conditional Land Use Permit Application that was denied by the Planning Commission. That denial has been appealed and will be heard by the Board of Adjustments in on January 21<sup>st</sup>.

The LOZ petition and maps showing the boundaries of the proposed district, the lot sizes within the proposed district, parcels whose owners have signed the petition, the current land use, the land ownership, the Diamond Willow – Ravenwood petition were included in the Planning Commissioner's packet.

KPB 21.44.060 states, "The assembly shall approve, disapprove, or modify the proposed local option zoning district. The assembly reserves the right to disapprove a local option zoning district in its legislative capacity notwithstanding the district's meeting the criteria of this chapter."

Staff recommends that the Planning Commission make a recommendation of approval to the assembly on this proposed ordinance.

Consideration of this ordinance is appreciated.

END OF MEMORANDUM & STAFF REPORT

Chairman Bryson opened the meeting for public comment.

### 1. Joe Kashi, Attorney at Law

Mr. Kashi was at the meeting representing Sean Cude. In the many years that he worked for the Borough, he learned that land use and planning issues are always a matter of concern. He stated that people tend to see an apocalypse as they tend to see many matters which are a parent perception which may or may not be based upon the facts. The problem tends to be that everybody's perception is their reality.

Mr. Kashi referred to page 108 of the packet which shows the property that will be within the Ravenwood Local Option Zone. He commented that he takes no opinion on local option zoning (LOZ) and felt that it was a good idea. The way that this subject LOZ is drawn brings the idea of local option zoning into disrepute. The commission needs to consider what is being done and why it was being done. According to the map the commercial boat yard and a mechanic shop was excluded from the subject LOZ and then there is the flag lot with the big lot.

Ms. Kashi presented photos that he discussed with the commission.

Mr. Kashi stated that in this area there is a big Quality Asphalt paving pit and construction company that is not included in the subject LOZ. If concerns to the neighborhood are being looked at then someone should look at the other pits in the area. If anyone has had the opportunity to visit the site, it is pretty evident that this is small potatoes versus taking on a big out of town company. He stated if there are concerns at this pit then someone should take a look at Quality Asphalt or the Davis gravel pit that is nearby. Instead there are those people who are looking at a small area which has been used on and off for over 30 years for the purpose of extraction. There is just a small additional amount that is left to be excavated.

Mr. Kashi showed in the photos where Mr. Gattenby's house was located which is surrounded by unzoned property of the boat yard, Quality Asphalt and Brown Construction. He wasn't sure why anyone would draw the lines like they have been except for the fact that they are trying to achieve a specific result rather than to zone a neighborhood. He felt that zoning a neighborhood is not a bad idea but trying to use zoning as an offensive purpose is not a good idea.

Mr. Kashi suggested that Tracts A2A and A2 be excluded from the LOZ since it doesn't make any sense in this context especially when considering that the area to be zoned is just a small area between the David pit and the big Quality Asphalt pit. These lots are just a small couple of acres with most of the lot already being reclaimed. He felt it also doesn't make sense to include these lots in the residential zoning because most of the property has been excavated. Gravel has been extracted from the site but it just hasn't been concluded.

Mr. Kashi stated that nobody in their right mind was going to build a residence in a partially excavated gravel pit. In a different perspective, the proposed zoning makes no sense having the boat yard, the Quality Asphalt pit, the large area of the Gattenby's property and the flag lot between things.

Mr. Kashi showed a photo that was taken about a month ago after some additional work was done where clean fill was pushed in. He thought there was one piece of culvert that is there that hasn't been removed yet that somebody left at one time. The property has been brought almost up to grade level. Mr. Kashi felt that people want a hay field at somebody else's expense. He lives by a hay field on Robinson Loop and thought it was great. The property has been reclaimed to road level. There is no way someone will get the rest of the area reclaimed if it is expected to be done for several hundred thousands of dollars of their own money and then can't do anything with the property. Again, he reiterated that no one could build a house on the property since it is all fill. A house cannot be built on 30 or 40 feet of uncompacted dirt and fill.

Mr. Kashi stated that it makes no sense in this context by adding Tract A2A and A2 to the LOZ. It will

basically bring the entire local option zoning process into unnecessary controversy for no good reason especially given the neighborhood and what is around it. If local option zoning was wanted then it needed to be moved along in an appropriate way and needed to be done in a calm and rational way based on real facts and based upon the existing character of the neighborhood. These pits have been around for 30 years with most of these pits having had their inception well before people even started building.

Mr. Kashi recommended on behalf of his client that Tracts A2 and A2A which is basically the remnants of Tract A and was always excluded from the existing covenants be removed from the proposed local option zone. He was available to answer questions.

Chairman Bryson asked if there were questions for Mr. Kashi.

Commissioner Isham asked if he wanted to exclude Tract A2A. Mr. Kashi stated that he requested that Tracts A2A and A2 be removed from the proposed LOZ. He believed that Tract A2A was before the Plat Committee to combine lots to bring it closer to the original Tract A. The problem was that someone got carried away with putting flag lots all over the place even though there was no river access. He stated it was being restored to a closer approximation of Mr. Gibb's, the original homesteader, original platting of the property and the original covenants. .Commissioner Isham asked if Mr. Cude owned Tracts A2A and A2. Mr. Kashi replied affirmative.

There being no further comments or questions, the public hearing continued.

2. <u>Virgil Gattenby</u>

Mr. Gattenby owns Tract 1A and is right on the corner of Tract A2A. He spoke with both parties and does not wish to make any enemies since this has been a pretty heated situation. Mr. Gattenby understood that the pit has been in use for a long time but it is not real thrilling to have dump trucks going on the roads on both sides of his property.

Mr. Gatthenby felt it was in the best interest of his family to not be zoned residential. He requested that his petition be removed to be zoned residential just so that he could see how this plays out. Mr. Gattenby also felt he needed to get more educated on this and felt that he was not prepared to make a decision on this at this time. He asked for a little more time to be able to discuss this with individuals more knowledgeable than himself with the status of what his property should be in the future.

Chairman Bryson asked if there were questions for Mr. Gattenby. Hearing none the public hearing continued.

# 3. Tracey Earl, 46740 Gadwall Ave.

Ms. Earl stated that the gravel pit was located right behind her house so she would be greatly affected by how this turns out. In 2007 when they bought their house, they were told by the realtor that the gravel pit was an illegal pit and that it was being filled in so it would no longer be able to be a gravel pit. That made a determination on her purchasing that property knowing that it was being filled in. Ms. Earl stated there hasn't always been clean fill being put into the pit. She has seen blue board, construction materials, asphalt, concrete with rebar, and a refrigerator which she believed has been removed. That is not clean fill as far as she was concerned which could negatively affect her water.

Ms. Earl stated that her house shook when a road was being built in the gravel pit. It was noisy. They moved out of town to have some peace and quiet and didn't know that she would be next to a gravel pit.

Ms. Earl expressed support for the Residential R1 zoning because of the issues she expressed. She knows what has gone on with this pit and what has gone in it however she doesn't know if the applicant was the owner at the time. Ms. Earl bought her house knowing that the pit was being filled in because it was supposedly an illegal pit. She doesn't want a gravel pit in her backyard and if it takes putting in a residential zone then she was all for it.

Chairman Bryson asked if there were questions for Ms. Earl. Hearing none the public hearing continued.

# 4. <u>Travis Penrod, 36860 Virginia Dr.</u>

Mr. Penrod presented photos of the gravel pit that shows something different than what a previous testifier submitted. All the photos were when Mr. Cude owned the property.

Chairman Bryson reminded the testifiers that the testimony taken was for the Local Option Zoning district petition and not the gravel pit.

Mr. Penrod stated that he was the petitioner and organizer of the local option zone petition. The purpose of the local option zoning is to get the entire area zoned as residential, R1. The reason why it should be R1 zoning is to protect property values so that there aren't commercial operations in residential areas. He stated this is a residential area as specified in what was heard from the testimony that was given.

Mr. Penrod stated that Mr. Cude was digging in the water aquifer which was proven by the photos he presented. Also, Mr. Cude was pushing illegal material in the pit which was also proven by the photos that were presented.

The main thing Mr. Penrod wanted to mention is that this LOZ petition needs to be pushed through in its entirety. This pit was never a legal pit; it is a hole that has been dug in the ground with no record anywhere that it was ever a certified pit. It has been illegal from the ground up of which the Borough is at fault for that because nothing was ever done. He stated that zoning this area residential safeguards them and the neighborhood. Mr. Penrod felt that the LOZ would be null and void if Tracts A2A and A2 were removed from the LOZ. A responsible thing that could be done with those tracts would be to create a community park which works well in the R1 zoning regulations. He understood that it wouldn't make sense to build a residential home on it. The most important thing is that the LOZ needs to include those lots.

Chairman Bryson asked if there were questions for Mr. Penrod.

Commissioner Martin asked if it was his desire to see this completely reclaimed and grass growing on it. Mr. Penrod replied that there has been and great amount of horrific activity that has taken place in that pit. The people have had to endure illegal dumping and digging in the water aquifer. There is a potential of having a catastrophe happen in the pit with the proposed new permit. There could be a diesel fuel spill with all the equipment in the pit which would certainly destroy the water that everyone's wells are tied into in this area. He would like everything in the pit to stop, have it groomed and developed into a community park. Commissioner Martin asked if he would like the hole to be left open. Mr. Penrod replied that he would like to see it groomed and developed into a park. He stated that clean fill can be dumped in the pit according to ADEC.

There being no further comments or questions, the public hearing continued.

5. <u>Sean Cude</u>

Mr. Cude stated that he has only been the owner of the gravel pit for two years. It has gotten so out of control there that he has had to put on a "No Trespassing" on Mr. Penrod to keep him out of the pit and out of the facility.

Mr. Cude stated that ADEC, the Borough Roads Department, and the Borough Mayor has been in the pit. There have not been any violations in the two years since he has owned it. He felt that Mr. Penrod would still not be happy if he bought enough gravel from either the Best or Davis pits and put it in the property.

Mr. Cude stated they are talking about four acres out of the final 19 acres. The permit could be revoked if there are violations if the conditional use permit was granted. He has agreed to go above and beyond with various conditions such as reducing it from 20 years to 15 years, to install camera systems down there so that the Borough could monitor him 24/7, and to reduce his hours of operation

from 7 to 7. Mr. Cude felt that no matter what he agreed to he would be unable to make this situation happy. It is his goal to fill this property in, get it back to a hay field and connect it to Tract A2 which is not part of the actual gravel pit. He stated that it would be a connection which would give him a 22 plus acre parcel with Kenai River frontage which would be a very valuable piece of land.

Mr. Cude stated that there is no factual data that any water aquifer issues have happened. There are pits all around there; Davis, Best and QAP. He was the one who was actually reclaiming this lot faster than any of the pit operators in the area. There is always a new problem every time they come around.

Mr. Cude made it clear that he does not want Tract A2A as part of the LOZ since it doesn't meet the requirements of a R1 local option zone. Someone will not be able to build on 20 acres of fill. He was strictly looking at getting the last four acres out of there so that he would have the funds to clean this up properly.

Mr. Cude pointed out that he has allowed several of the local residents in the subdivision to dump their grass clippings and tree clippings of which he doesn't charge anything for it. He is trying to help get this thing filled in but it also comes with a cost.

Mr. Cude understood that his Lots C, D and E were pulled from this until the Assembly decided upon this. He asked that Tracts A2A and A2 be removed from this petition. Just as Mr. Kashi mentioned, local option zoning is great but it needs to be done in a contiguous way and not as a target to stop something that was there.

Mr. Cude stated that Mr. Penrod purchased his property in 1998 when the pit was partially excavated. In 2003, he built a second house which is now there is an issue. This was not an illegal pit when it first got dug out because there wasn't a requirement of the borough at that time. The problem was that Mr. Gibbs, the previous owner did not fill out the grandfather paper rights which is why it didn't get grandfathered in and a permit wasn't required prior to that.

Chairman Bryson asked if there were questions for Mr. Cude. Hearing none, the public hearing continued.

# 6. <u>Samuel Webber, 46724 Gadwall Ave</u>

Mr. Webber stated that his property borders the southern edge of the gravel pit. He expressed some concerns with the gravel pit operating in the area and spoke in favor of the LOZ - R1 Residential zone.

Mr. Webber supported Mr. Penrod's point regarding the exclusion of these properties, Tracts A2A and A2 from the LOZ Residential R1 zone. He also felt that the exclusion of these properties would null and void any effect that this local option has.

Mr. Webber expressed concern about having a gravel pit in his back yard. Back in 2012, when there was fill being either removed or moved around inside of the pit, it was happening directly in back of his house which made his windows rattle. It was quite disturbing while it was going on and he didn't want that to be his new daily normal. He was informed that the pit was illegal and that it was being filled in and that it wasn't going to be a concern with operations beginning again when he bought this property in 2011. Mr. Webber guaranteed that he would never have bought his house if he had known there was an option that this gravel pit would start back up. He does not want to live next to a rock crusher and heavy equipment going 24/7. It was bad enough listening to Davis Block. He expressed concerns about having this directly in his back yard with noise pollution and decreased property values in the amount of millions of dollars. This includes Mr. Penrod's neighborhood and obviously Ravenwood Subdivision; both of which have riverfront property which is extremely valuable. He does not want to put this at risk as far as reduced property values because who will want to buy a residence where they have to listen to a rock crusher going 24/7. This will more than likely going to be their future unless they have this residential R1 option put through to prevent a situation like that.

Mr. Webber has nothing personal against Mr. Cude; he has never talked with him in person before. He was not under the opinion that Mr. Cude should have to just sit on this property and turn it into a hay field and lose money which doesn't make any sense. There have been many ideas that have floated around of going to the neighborhood and getting together some kind of community action to possibly purchase the land from Mr. Cude so that he would not have to take the hit monetarily. The R1 zone option allows them to put in community resources such as soccer fields, baseball fields or anything that would benefit the community at large and obviously increase property values while also making sure that Mr. Cude does not take a monetary hit. These are plausible solutions but these are the only solutions that can happen if the R1 option goes through and if the tracts they are speaking about are not excluded from the R1 option. If they are excluded then they should take the entire R1 option for the rest of it and throw it away; it will be useless to everyone who buys into those neighborhoods.

Chairman Bryson asked if there were questions for Mr. Webber.

Commissioner Ecklund asked him who told him that the gravel pit was illegal and was in the process of being filled in. Mr. Webber replied that they were told that by their real estate agent.

Commissioner Martin asked if he understood that Mr. Cude intended to use the proceeds of the final pits of gravel to help reclaim this property which may get done sooner if he has the authority to do that. Mr. Webber replied that he wished he had the faith that was going to be the final solution. Unfortunately, he doesn't see that happening. He sees this being a pit that runs and is active and plans being changed once the R1 zone option is no longer a threat. Mr. Webber stated that it sounded like a great idea at face value. Unfortunately, he doesn't have a lot of faith that will be the actual end game.

There being no further comments or questions, the public hearing continued.

### 7. Peter Endries, 35280 Rockwood Dr.

Mr. Endries looked at this from a slightly different perspective than everyone else. The piece of property that he owns that they want to be part of this R1 zoning is a little bit further away. Mr. Penrod originally sent him information about the zoning that was being proposed. He thought it wasn't a complete package as far as what this residential zoning would include. Mr. Endries had concerns about this zone because he potentially would like to build a house on his piece of property. He has a small construction company but when he looks at the standards that were forwarded to him he had some personal concerns about having this zoning come through.

Mr. Endries stated that the proposed zone created questions regarding the setback requirements and how much thought was actually put into creating these particular rules. He asked for a definition of what the following statement meant and how site was defined. *"The forester buffer between road and site."* His questions included, 1) What if there weren't any trees there to begin with? 2) Does that mean where he builds his house? 3) It has 20 feet so does that mean that there has to be 20 feet of trees between the road and his house? 4) How big do those have to be and can there be bushes? 5) What happens if he doesn't like trees in his front yard? He thought he would be required to keep ones there or if they are nonexistent, would he have to plant them? There seems to be a lot of questions.

Mr. Endries also expressed concern regarding the standard that states, "No changes in the outside appearance of a building or parcel." So what in the world does that mean; does that mean he can't reside his house. He reiterated that it states that no changes in the outside appearance of a building or parcel can be done so does that mean no one can redo the landscape. Mr. Endries has a problem with the regulation itself but doesn't know where he sits on the issues. These are some very extremely vague rules in his point of view. He also stated that hazards could not be created, in whose opinion and how are those defined?

Mr. Endries stated that outside storage of anything related to the home occupation is prohibited. So basically any in home occupation needs to stay inside the house. In his case, he has a construction

company and has his office in his home yet that is not an approved type of business for this R1 zoning. That means unless he obtains some kind of exception he can't even have an in home office for his construction company. There are occasions that he drives a dump truck home overnight. He tries not to do that but it does happen on occasion. It also states that the home occupation shall not result in noise, vibration, blare fumes, heat, odor, smoke or electrical interference detectable to the normal senses of a parcel. To him it means that someone can't cut lawn with a riding lawn mower.

Mr. Endries stated that the regulations are not well thought out in his opinion. He stated that he would not vote for the R1 zone with the regulations the way they are written since they are too vague.

Chairman Bryson asked if there were questions for Mr. Endries.

Commissioner Holsten asked if he was in the proposed zone. Mr. Endries replied that he was sent a letter notifying him of this meeting. He stated he was part of the third petition that has not gone before the Commission yet. Chairman Bryson asked if he was an adjacent property owner. Mr. Endries replied yes.

Commissioner Isham asked if his lot was part of the subject LOZ or was it adjacent to it. He asked him what his lot number was. Mr. Endries replied that he didn't have that at the top of his head. He was sent a map from Mr. Penrod with his lot included in it. Chairman Bryson asked what street he lives on. Mr. Endries replied that he doesn't live anywhere near this. Commissioner Isham asked if he could identify his lot. Mr. Endries replied that he owns a vacant parcel that is close to proposed zone. Commissioner Isham stated that they were trying to figure out where his lot was located. Mr. Endries replied that his lot was about a 4 acres parcel off of Circle Park St. and Mooseberry Ave.

There being no further comments or questions, the public Hearing continued.

8. Crystal Penrod, Virginia Dr.

Ms. Penrod stated that the photos that her husband presented will show the true tale here. Mr. Cude has allowed illegal dumping and has gone into the water ever since he bought this property. This pit was never a legal gravel pit. It was in 2004 when the illegal digging started; they fought it then and have been fighting it ever since. This pit has not had clean fill dumped in but there have been septic tanks, huge containers of salt, and sewer pipes. She knew that none of it came from the Borough.

Ms. Penrod stated that Mr. Cude purchased this property with covenants which has been verified with the Title Company. Lot A2 has covenants on it. It was not on them that Mrs. Gibbs sold him property that he can't use. She felt sorry for him because there have been more than one person who has fallen prey to that.

Ms. Penrod stated that the covenants in the neighborhood will still apply whether or not the R1 LOZ is approved. They are prepared to follow up with that, they would prefer not to have to do that legally because it is expensive and it is a legal battle. She stated they were given this tool to use and they are trying to use it. The land can still be reclaimed; the LOZ approval does not change that at all but does prevent future industrial and commercial use of the land which is what they are trying to do. They don't want used car lots, porta potty businesses and anything that is industrial in their neighborhood.

Ms. Penrod stated there have been violations on the pit which can be verified through Steve Russell with ADEC and through the drinking water program. Also Bruce Wall, Borough Planner has taken many of their calls regarding asphalt being dumped into their open water aquifer. The only time that her husband was actually in the pit was with the ADEC and the Borough, taking pictures of this violation. She stated they certainly weren't trespassing.

Ms. Penrod reiterated that there are covenants that are attached to this and really want this LOZ to go through as planned. It has just been a mess. She stated they were given this tool by the Borough and really want to see it work. They want to be a good example of how zoning can work and want to get their neighborhood back after 15 long years of battling one thing or another. She stated she

would really appreciate it if the Commission would really take into consideration the whole story.

Chairman Bryson asked if there were questions for Ms. Penrod. Hearing none the public hearing continued.

Seeing and hearing no one else wishing to speak, Chairman Bryson closed the public comment period and opened discussion among the Commission.

**MOTION:** Commissioner Martin moved, seconded by Commissioner Holsten to recommend adoption of Ordinance 2014-39, an ordinance approving the Diamond Willow – Ravenwood Single-Family Residential R-1 Local Option Zone.

Commissioner Ecklund asked how they would prevent a parcel in a residential R1 zone from becoming a home sight. The comments have been that it was a reclaimed gravel pit with 30 feet of fill and someone would not want to build a home on it. Mr. Wall replied that the borough could not prevent that from happening under the current ordinances. The property would be zoned residential and a resident would be allowed. He believed what the applicant was stating was that it wasn't suitable for construction.

Commissioner Isham stated that the owner of Lot 1-A also requested that his lot be removed from the proposed local option zone.

**AMENDMENT:** Commissioner Martin moved, seconded by Commissioner Ecklund to amend the motion to exclude Tracts A2A, A2 and Lot 1-A from the Residential R1 Local Option Zone.

Chairman Bryson asked if it was appropriate at this time to modify the petition. Mr. Best believed that would be appropriate. They are still discussing the approval, disapproval and modify statement in the Code. It would probably be allowed as long as it met the petition requirements for area and average size prevailing.

Chairman Bryson asked how an amendment to the LOZ petition would work. Mr. Best replied that the Commission would forward a recommendation to the Assembly. Chairman Bryson asked if that would be an Assembly decision. Mr. Best replied yes, that is correct. It would be a recommendation of approval with an amendment that would go to the Assembly. Chairman Bryson asked if the petition could still go forward with their approval concerning area. Mr. Best replied yes, that was correct.

Commissioner Holsten asked if the petition would become null and void if lots were subtracted and it no longer met the requirements. Mr. Best didn't believe that once the petition was forwarded to the Assembly that the petition requirements necessarily need to be met but the area size and contiguous portions need to be met. Commissioner Holsten asked if they would be met if the three parcels were excluded from the LOZ. Mr. Wall replied that it does meet the area requirements of the petition.

There being no further comments or questions, Chairman Bryson called for a roll call vote.

**AMENDMENT VOTE:** The motion passed by majority consent.

BRYSON	CARLUCCIO	COLLINS	ECKLUND	FOSTER	HOLSTEN	ISHAM
NO	ABSENT	ABSENT	YES	ABSENT	YES	YES
LOCKWOOD YES	MARTIN YES	RUFFNER ABSENT	VENUTI YES	WHITNEY ABSENT		6 YES 1 NO 5 ABSENT

There being no further comments or questions, Chairman Bryson called for a roll call vote on the main motion.

**VOTE:** The motion passed by unanimous consent.

BRYSON	CARLUCCIO	COLLINS	ECKLUND	FOSTER	HOLSTEN	ISHAM
YES	ABSENT	ABSENT	YES	ABSENT	YES	YES
LOCKWOOD	MARTIN	RUFFNER	VENUTI	WHITNEY		7 YES
YES	YES	ABSENT	YES	ABSENT		5 ABSENT



# **Planning Department**

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

# Kenai Peninsula Borough Planning Commission Meeting Packet

AUGUST 27, 2018 7:30 p.m.

KENAI PENINSULA BOROUGH ASSEMBLY CHAMBERS 144 NORTH BINKLEY ST. SOLDOTNA, ALASKA 99669

# I. SPECIAL CONSIDERATIONS

 Request to Review the July 16, 2018 Plat Committee's Conditional Preliminary Approval of Sunville Acres Addition No. 2 Preliminary Plat KPB File: 2018-063 [McLane / [Consolidated Development & Management, LLC] Location: Off Virginia Dr, Kalifornsky area

### AGENDA ITEM I. SPECIAL CONSIDERATIONS

1. Request to Review the Plat Committee's Conditional Approval of Sunville Acres Addition No. 2 Preliminary Plat; off Virginia Drive, Kalifornsky area

# STAFF REPORT

Planning Commission Meeting: 8/27/18

# REVIEW OF JULY 16, 2018 PLAT COMMITTEE'S CONDITIONAL APPROVAL OF SUNVILLE ACRES ADDITION NO. 2 PRELIMINARY PLAT

On July 25, 2018, a request for the Planning Commission to reverse the Plat Committee's conditional approval of Sunville Acres Addition No. 2 was submitted by Travis Penrod, who is a party of record.

# Errors in the Committee's Decision:

# TRAVIS PENROD'S DISCUSSION: To approve this preliminary plat, the Plat Committee completely disregarded the Alaska State Statute outlined in the letter by Attorney Clayton Walker.

STAFF DISCUSSION: The submittal from Clayton Walker references A.S. 34.08.210. This State Statute refers to Common Interest communities, or condominiums. This would include condominiums and other housing developments comprised of individually owned units in addition to shared facilities and common areas on one parcel of land. Per the preliminary Certificate to Plat, and to staff's knowledge, the proposed subdivision is not affected by any Common Interest Ownership.

The Plat Committee does not review or approve condominium plans.

### TRAVIS PENROD'S DISCUSSION: The Plat Committee also ignored multiple testimonies by letter and in person from the public and the covenants of the housing development Diamond Willow Estates.

STAFF DISCUSSION: Per KPB 21.44.080, The borough will not enforce private covenants, easements, or deed restrictions. Staff requested that the private covenants be noted on the subdivision plat.

TRAVIS PENROD'S DISCUSSION: The Plat Committee Chair, Paulette Carluccio, requested the Plat Committee decision options. Max Best, the Planning Director gave them only one, "Approve the plat". This gave the Plat Committee no option but to reluctantly approve this re-plat request.

In the previous week, I asked the planning department what the decision options were, I was told approve, disapprove or defer the decision to the full Planning Commission. Max Best deceived the Plat Committee by offering only one choice; therefore, the full Planning Commission should review this decision in a public hearing.

STAFF DISCUSSION: Per KPB 2.40.080, the planning commission (and the planning commission acting as the platting board) is authorized to delegate powers to hear and decide cases involving platting to a plat committee composed of those members of the planning commission present for such hearing so long as there are at least 4 members of the planning commission present. Five members of the Plat Committee attended the July 16, 2018 Plat Committee meeting; therefore, the Committee had the authority to review and make determination(s) regarding the preliminary plat.

Staff determined no exceptions to KPB Title 20 were required.

Based on compliance with KPB 20.25, 20.30, 20.40, and 20.60, the Plat Committee concurred with staff that conditional approval of Sunville Acres Addition No. 2 was appropriate. Therefore, in

PAGE 1

accordance with KPB 20.25.100 and AS 29.40.110, the only option was to grant conditional preliminary plat approval.

TRAVIS PENROD'S DISCUSSION: Additionally, the Borough Attorney, present during the hearing stated that the Kenai Peninsula Borough does not interpret housing development covenants. This is untrue because the Borough is required to reference encumbrances (covenants) in the formation of LOZs (KPB 21.44.040a). On June 27, 2018, Bruce Wall specifically referenced Diamond Willow Estates covenants during a neighborhood meeting, sponsored by the Kenai Peninsula Borough, when discussing the creation of a Local Option Zoning District in our neighborhood.

STAFF DISCUSSION: Per KPB 21.44.080, The borough will not enforce <u>private</u> covenants, easements, or deed restrictions.

Enforcement of local option zones, which are created by enacting a KPB ordinance, is under the purview of the Kenai Peninsula Borough.

Per KPB 21.44.150, violations of KPB 21.44 are subject to enforcement by the remedies set forth in KPB 21.50. Each day which the violation exists shall constitute a separate offense.

Per KPB 21.50.040, for any violation of this title the borough may bring a civil action against the violator.

TRAVIS PENROD'S DISCUSSION: One final reason this hearing must be reviewed is the statement by the McLane Engineering representative divulging that Ray Oyemi is planning on developing multi-family residences on this property. Borough code KPB 21.44.180.C2 states the minimum lot size for multi-family residence is 65,340 square feet which would make the lots in this re-plat too small.

STAFF DISCUSSION: Roy Oyemi, owner of the property being replatted, testified during the July 16, 2018 public hearing that he did not plan to have multi-family housing. The plan for development of the subdivision is to construct single family homes that are ADA compliant. This development is in compliance with KPB 21.46.160.

Mr. Oyemi further testified that he had no intention of violating the covenants.

#### **Conditions of Preliminary Plat Approval:**

KPB 20.25 - compliance with the following staff recommendations will bring the plat into compliance with preliminary plat:

- Change the name of the subdivision to carry forward the parent plat name, EX Diamond Willow Estates Subdivision Sunville Acres Addition No. 2.
- Include Lot 1 in the list of lots being replatted.
- Include the parent plat's entire name in the legal description: Diamond Willow Estates Subdivision Sunville Acres Addition.
- Correct the vicinity map per staff's recommendations.

KPB 20.30 - compliance with the following staff recommendations will bring the plat into compliance with subdivision design:

- For clarity, label the right-of-way being dedicated by this platting action.
- Remove Plat Note 2 since the subdivision does not adjoin a State right-of-way.
- For clarity, revise Plat Note 6 . . . certification and inclusion in the road maintenance program.

- Based on the following, the Plat Committee determined that opening and extending Deligero Court approximately 95 feet did not require an exception to KPB 20.30.100:
  - 1. The subdivider owns all lots fronting Deligero Court.
  - 2. All lots in Diamond Willow Estates Subdivision Sunville Acres Addition are vacant at this time.
  - 3. The cul-de-sac is proposed to be extended approximately 95 feet.
  - 4. The plat is dedicating a new cul-de-sac bulb, or turnaround, so the redesigned right-ofway is still a cul-de-sac.
  - 5. With the proposed subdivision, the number of lots served by Deligero Court is six. Lot 2B in the subject plat and Lot 6, KN 2015-69, front KPB maintained Virginia Drive.
  - 6. None of the lots in the proposed subdivision are large enough to be further subdivided without a community water system or community septic system being installed.

Staff suggested using the existing turnaround area for Deligero Court dedicated by KN 2015-69 for snow storage.

- The Plat Committee granted an exception to block length for the parent plat. Since the proposed plat is served by a relatively short cul-de-sac, the proposed subdivision cannot address block length.
- Place the standard note on the plat for the flag lot(s): No structures are permitted within the panhandle portion of the flag lot(s).
- An exception to lots being at least 60 feet wide on the building setback was requested for Lot 4A and Lot 4B with the submittal. Because this subdivision is affected by a Local Option Zoning, staff recommended the building setback conform to the existing zoning regulations. This will make a 30 foot building setback on all lots. Lot 4A and 4B will be at least 60 feet in width on the building setback line. An exception to KPB 20.30.190 is not required.
- This proposed plat is located within the Diamond Willow Fairfield Local Option Zoning District. The zoning designation for this property is Single-Family Residential (R-1). The proposed plat meets the requirements of the R-1 District. The new parcels will continue to be subject to the land use regulations contained in KPB 21.44 generally, and specifically KPB 21.44.160. Add a note stating the subdivision is affected by Diamond Willow – Fairfield Local Option Zoning as shown per KPB 21.46.040.
- Match the building setback with the current zoning setback requirements of 30 feet from the right
  of way. Show and label the 30 foot building setback and correct plat note 4 to reference a 30 foot
  building setback. It may be beneficial to cross reference the building setback with the plat note
  that identifies the Local Option Zoning setbacks.

KPB 20.40 - based on the sizes of the lots in the subdivision, a soils report in compliance with KPB 20.40 is required, and an engineer will sign the plat.

KPB 20.60 - compliance with the following staff recommendations will bring the plat into compliance final plat:

- Submit one full-sized paper copy of the plat for final review prior to submittal of the mylar. Electronic submittals are not acceptable for final reviews.
- Payment of all taxes levied on the property within the subdivision shall be paid prior to recordation
  of the final plat.
- KPB GIS will verify closure complies with 20.60.120. Provide boundary and lot closure computations with the paper final plat.
- Show and label the former lot lines with a unique line style, different than the adjoining lots.
- Compliance with 20.60.150.
- Confirm whether the 10-foot utility easements per Book 100 Page 360 KRD affect the proposed subdivision. If not, work with the title company to remove the easement document from the final Certificate to Plat.
- Revise the Certificate of Ownership and Dedication so the authorized signatory signs the plat on behalf of the LLC.

PAGE 3

• Compliance with 20.60.200.

# FINDINGS

- 1. AS 34.08 contains the regulations for common interest communities, or condominiums.
- 2. The Plat Committee does not review and approval plans for common interest communities, or condominiums.
- 3. KPB 21.44.080 prohibits enforcement of <u>private</u> covenants, easements, or deed restrictions by KPB.
- 4. Local option zones are enacted by KPB ordinance; therefore, enforcement of KPB 21.44 Local Option Zoning is within the purview of KPB.
- 5. This subdivision is within the Diamond Willow Fairfield Local Option Zoning District. This platting action complies with the Diamond Willow Fairfield Local Option Zoning District.
- 6. The Plat Committee concurred with staff that no exceptions to KPB Title 20 for Sunville Acres Addition No. 2 were required.
- Sunville Acres Addition No. 2 conditionally complies with KPB 20.25, 20.30, 20.40, and 20.60; therefore, the Plat Committee granted approval of the preliminary plat, subject to compliance with the stated conditions.
- 8. The property owner testified that he was going to construct single family homes that are ADA compliant, which complies with KPB 21.46.160.

# STAFF RECOMMENDATION:

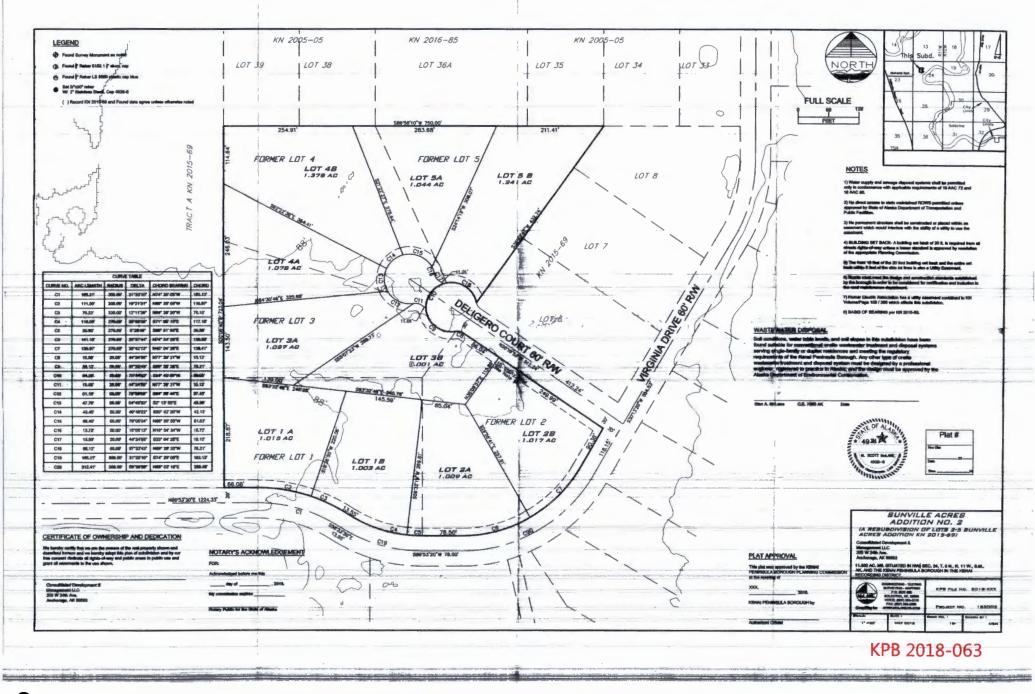
- 1. Based on Findings 1-8, uphold the Plat Committee's conditional approval of Sunville Acres Addition No. 2 preliminary plat.
- 2. If the Planning Commission reverses the Plat Committee's conditional approval of Sunville Acres Addition No. 2, cite findings supporting the motion to reverse the conditional approval.
- 3. Adopt and attach findings to the motion.

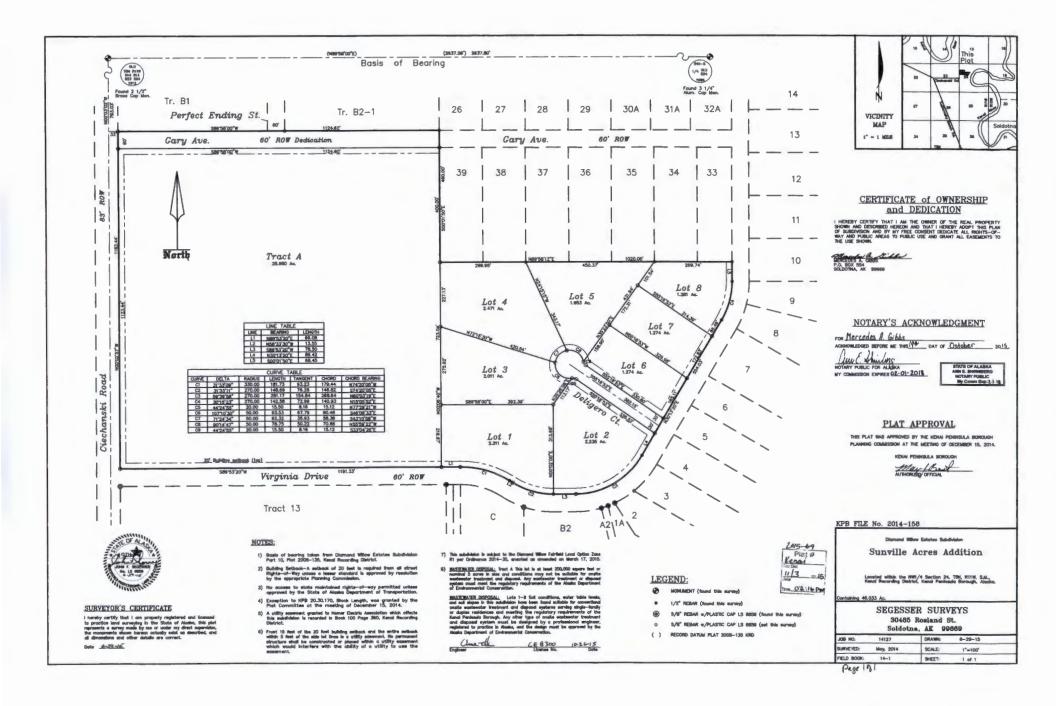
# NOTE: 21.20.250 - APPEAL OF PLANNING COMMISSION DECISION TO HEARING OFFICER.

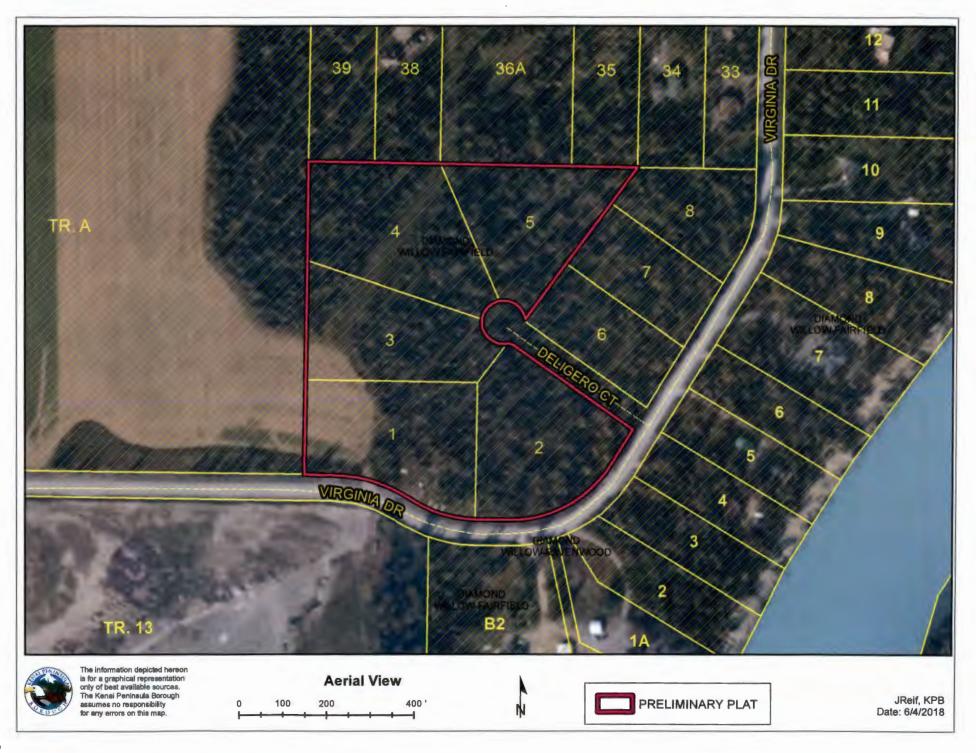
ANY PARTY OF RECORD MAY FILE AN APPEAL OF A DECISION OF THE PLANNING COMMISSION WITHIN 15 DAYS OF THE DATE OF THE NOTICE OF THE DECISION WITH THE BOROUGH CLERK ON THE FORMS PROVIDED, AND BY PAYING THE FILING AND RECORDS PREPARATION FEE IN THE AMOUNT LISTED IN THE MOST CURRENT KENAI PENINSULA BOROUGH SCHEDULE OF RATES, CHARGES AND FEES. AN APPEAL MAY BE FILED BY PERSONAL DELIVERY OR MAIL AS LONG AS IT IS COMPLETE AND RECEIVED IN THE CLERK'S OFFICE BY 5:00 P.M. ON THE DAY THE NOTICE OF APPEAL IS DUE.

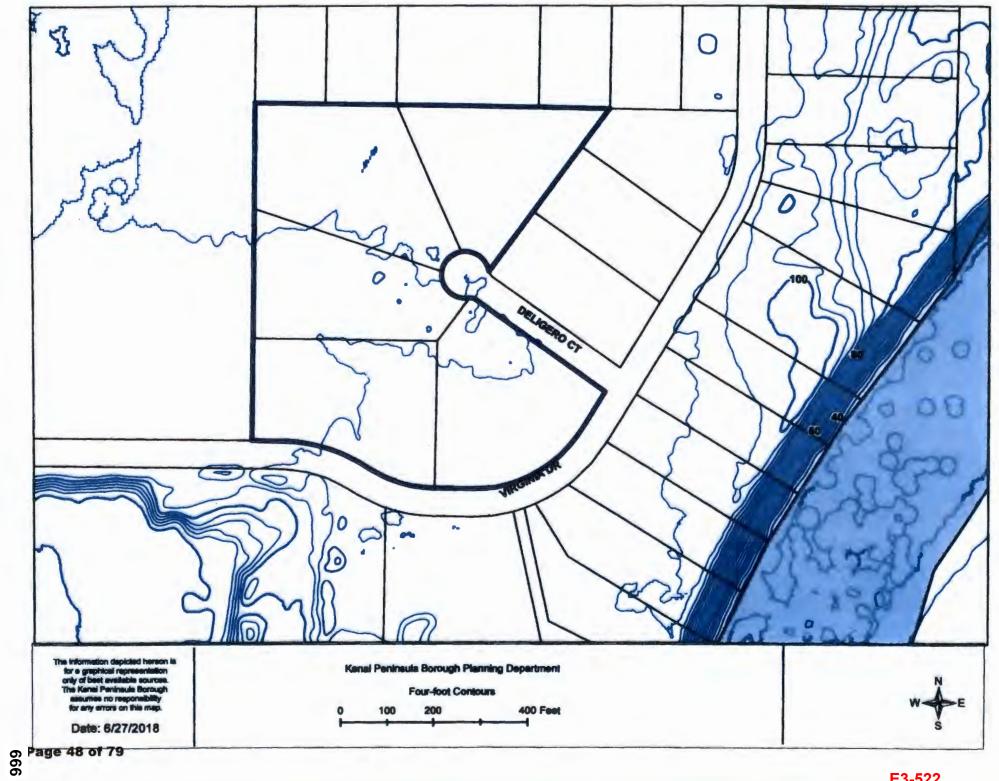
THE NOTICE OF APPEAL MUST 1) STATE THE DECISION FROM WHICH THE APPEAL IS TAKEN; 2) STATE WITH SPECIFICITY THE ERRORS ASSERTED IN THE FINDINGS OF FACT OR CONCLUSIONS OF LAW; AND 3) STATE THE RELIEF SOUGHT ON APPEAL, INCLUDING A STATEMENT OF WHETHER THE DECISION SHOULD BE REVERSED, MODIFIED, OR REMANDED FOR FURTHER PROCEEDINGS.

END OF STAFF REPORT









# Kenai Peninsula Borough Plat Committee Hearing and Review Procedures

TO: Kenai Peninsula Borough Planning Director

FROM: Travis Penrod	_
ADDRESS (Mailing): 30300 Virginia Dr	
Kenei, AK 59611	-
Daytime Phone:	

Hearing and review procedures of Plat Committee decisions are governed by KPB 2.40.080.

Review of a decision of the plat committee may be heard by the planning commission acting as the platting board by filing written notice thereof with the borough planning director on a form provided by the borough planning department. The request for review shall be filed within 10 days after notification of the decision of the plat committee by personal service or service by mail.

A request for review may be filed by any person or agency that participated at the plat committee hearing either by written or oral presentation. The request must have an original signature; filing electronically or by facsimile is prohibited.

The request for review must briefly state the reason for the review request and applicable provisions of borough code or other law upon which the request for review is based. Notice of the review hearing will be issued by staff to the original recipients of the plat committee public hearing notice.

Cases reviewed shall be heard de novo by the planning commission acting as the platting board.

(Ord. No. 2007-34, § 1, 11-20-07; Ord. No. 2002-07, § 1, 4-16-02; Ord. No. 93-51, § 2, 1993; Ord. No. 73-34, §§ 1(part) and 2(part), 1973; KPC § 20.10.005(h))

I am requesting a review of a decision of the Kenai Peninsula Borough Plat Committee as set forth below.

1. Date of written notice of Plat Committee decision: July 18, 2018

Request for Review of a Kenai Peninsula Borough Plat Committee Decision

Page 1 of 2

# KPB File 2018-63 Sunville Acres Addition No 2 Plat Committee Review Request

Dear Kenai Peninsula Borough,

July 25, 2018

As a party of record, I am requesting a review of the Plat Committee decision on KPB File 2018-63 Sunville Acres Addition No 2. To approve this preliminary plat, the Plat Committee completely disregarded the Alaska State Statute outlined in the letter by Attorney Clayton Walker. The Plat Committee also ignored multiple testimonies by letter and in person from the public and the covenants of the housing development Diamond Willow Estates. The Plat Committee Chair, Pualette Carluccio, requested the Plat Committee decision options. Max Best, the Planning Director gave them only one, "Approve the plat". This gave the Plat Committee no option but to reluctantly approve this re-plat request. In the previous week, I asked the planning department what the decision options were, I was told; approve, disapprove or defer the decision to the full Planning Commission. Max Best deceived the Plat Committee by offering only one choice; therefore the full Planning Commission should review this decision in a public hearing. Additionally, the Borough Attorney, present during the hearing stated that the Kenai Peninsula Borough does not interpret housing development covenants. This is untrue because the Borough is required to reference encumbrances (covenants) in the formation of LOZs (KPB 21.44.040a). On June 27, 2018, Bruce Wall specifically referenced Diamond Willow Estates covenants during a neighborhood meeting, sponsored by the Kenai Peninsula Borough, when discussing the creation of a Local Option Zoning District in our neighborhood. One final reason this hearing must be reviewed is the statement by the McLane Engineering representative divulging that Ray Oyemi is planning on developing multi-family residences on this property. Borough code KPB 21.44.180.C2 states the minimum lot size for multi-family residence is 65,340 square feet which would make the lots in this re-plat too small.

Citing these discrepancies, I am formally requesting a review of the Plat Committee decision on KPB File: 2018-063, Sunville Acres Addition No 2. The full Planning Commission, in a public forum, must conduct this review.

Sincerely.

Travis Penrod 36860 Virginia Drive Kenai, AK 99611



# Plat Committee Action Agenda

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

Assembly Chambers George A. Navarre Kenai Peninsula Borough Administration Building

July 16, 2018 6:30 p.m.

#### MEMBERS

Paulette Bokenko-Carluccio PC Member City of Seldovia Term Expires 2018

Cindy Ecklund PC Member City of Seward Term Expires 2020

### ALTERNATES:

Virginia Morgan PC Member East Peninsula Term Expires 2019

Paul Whitney PC Member City of Soldotna Term Expires 2020

A.	CALL	TO ORDER
B.	ROLL	CALL
	1.	Election of Officers Commissioner Carluccio was elected Chairman of the Plat Committee for July, August and September 2018.
		Commissioner Ecklund was elected Vice Chairman of the Plat Committee for July, August and September 2018.
C.	APPR	OVAL OF AGENDA, EXCUSED ABSENCES, AND MINUTES
	1.	Agenda
	2.	Member/Alternate Excused Absences
	3.	Minutes
		a. June 25, 2018 Plat Committee Minutes
	-	ed by unanimous consent to approve the regular agenda, minutes and ernate excused absences.
D.	(Items	IC COMMENT s other than those appearing on the agenda. Limited to five minutes per speaker unless ous arrangements are made.)
E.	SUBD	DIVISION PLAT PUBLIC HEARINGS
		Piper's Haven 2018 Replat
	and	compliance with borough code passed by unanimous consent.

2.	Landess Subdivision No. 3 KPB File 2018-060	2
	[Tinker Creek / Landess]	
	Location: Off Bunno Rd, Sterling	
Main	motion to grant preliminary approval passed by unanimous	
conse		
	ndment motion to grant exception to KPB 20.30.170, Block th passed by unanimous consent.	
Amer	ndment motion to grant exception to KPB 20.30.190, Length of	
flag f	or Tract B passed by unanimous consent.	
3.	Sunville Acres Addition No. 2	3
	KPB File 2018-063	
	[McLane / Consolidated Development & Management, LLC] Location: Off Virginia Dr., Kalifornsky	
Motio	on passed by unanimous consent to approve the preliminary	
plat.		
4.	Lindsey Reader Subdivision and Associated Right of Way	5
	Easement Vacation	
	KPB File 2018-064	
	[McLane / Shield]	
	Location: Off Miller Loop, Nikiski	
	on to approve the preliminary plat per staff recommendations ompliance with borough code passed by unanimous consent.	
5.	North Kenai Subdivision 2018 Addition	7
	KPB File 2018-065	
	[Johnson / Church]	
	Location: Off Monique Ave & Island Shore St., Nikiski	
	on to approve the preliminary plat per staff recommendations ompliance with borough code passed by unanimous consent.	
	SUBDIVISION PLAT PUBLIC HEARING	
FINAL		
	R / NEW BUSINESS	
OTHE	R / NEW BUSINESS ELLANEOUS INFORMATION NO ACTION REQUIRED	

The next regularly scheduled Plat Committee meeting will be held **Monday, August 13, 2018** in the Assembly Chambers of the George A Navarre Kenai Peninsula Borough, 144 North Binkley, Soldotna, Alaska at **5:30 p.m.** 

F.

G.

Η.

I.

## PLANNING DEPARTMENT

4

Phone: 907-714-2215 Fax: 907-714-2378 Phone: toll free within the Borough 1-800-478-4441, extension 2215 e-mail address: planning@kpb.us web site: http://www.kpb.us/planning-dept/planning-home

To: Kenai Peninsula Borough Planning Commission. Draft Statement and Response to Plat Committee Review Request; KPB File 2018-63 Sunville Acres Addition No 2.

<u>Subject</u>: For the specific purposes of CLARITY, ACCURACY and TRANPARENCY; this statement addresses objections raised as well as some concerns expressed by Interested Parties.

<u>Declaration</u>: In my capacity as the Managing Member of Consolidated Development & Management, LLC I am making the following statement and declarations (to the best of my knowledge) toward correcting a few misconceptions developed by or passed on to the affected constituents at large, be it deliberate or unintentional.

"Avoiding needless legal disputes", "True intention for development lots" and "Involving <u>Homeowners</u>" – There was opportunity for this as I reached out more than twice to Mr. Penrod (HOA) before my finally taking a detour from Fairbanks in order to have a one-on-one with him in Anchorage. I still have all of the materials that I shared with him. The meeting was nothing short of abuse, even though I managed to table the feasibility of a development agreement or having him take a peak at my self imposed high standards for the development as I work through – including avoiding the current bad septic experiences going on within the Valley and Peninsula. During this meeting it was difficult to separate the proposed development from gravel pit issues. I have the full text of discussions to back this up. There was no basis for good faith as I experienced from the encounter, and I never heard back from him on the subject. Exhibits A, B and C would shed some light on proposed lot use. Zone issue appears to be magnified to the detriment of worthy replat accomplished and subsequently approved.

<u>Reaching Out</u>: I visited the neighborhood, introduced myself and the project. Impressively, I obtained some measure of interest to join in the new LOZD formation (on correspondence of record).

# <u>Development Project Description:</u> (A highest and best use additional factor for the community and neighborhood at large compared to gravel pits; idle or active).

The proposed Kenai Wellness & Hospitality Estates is positioned as: An active retirement community of Affordable and Attainable ADA Compliant, Upscale single family homes catering to the needs of the rapidly aging population; and offering complimentary needed health and well being related amenities in a neighborhood where residents can "AGE In Place" and live life out within the community. This falls within the concept of 'BUILDING WELL TO LIVE WELL'. It is a unique concept! (Portion of Architect's proposal letter – exhibit # C).

The Site: The distinctive built in parcel configuration as offered in this situation by the subdivision for one phase and Track A for another phase very well supports this much

needed type of development; creating a new complimentary community within a community.

<u>Note:</u> ADA Compliant single family home development is not a 'get rich quick' undertaking; but much needed as we all reach the final semester in living. Staying longer in familiar surroundings becomes much more valuable and meaningful. This is a major anticipated outcome and an attribute of this development.

<u>Outline:</u> I shall proceed with numbered items along the order of the one page Review Request dated July 25 through the "Notice of Decision' packet into staff comments and public comments for quick references to each item being addressed, along with the corresponding pages.

From Mr. Penrod's Request for Review statement:

#### "Max Best, the Planning

•Director gave them only one, Approve the plat. This gave the Plat Committee no option but to reluctantly approve this re-plat request".

Item #1; on request for plat review. Misrepresentation. No coercion. Please see page 38 of the minutes. As a party present, there was due dialogue amongst the Committee.

"One final reason this hearing must be reviewed is the statement by the McLane Engineering representative divulging that Ray Oyemi is planning on developing multi-family residences on this property"

<u>Item #2</u>; same page; Please see floor plan and the subdivision rendering from inception. There was no "divulging" of any hidden agenda. There was an earlier discussion where engineer was present regarding concern that the "extended family floor plan" <u>could be</u> <u>taken as multi-family</u>. However it is one open and continuous residence, no separations even though the garage was in the middle. Other variation of the plan would put the garage to the side and rear. Concern also came up regarding extra bathrooms. This was necessary for privacy and dignity when taking care of aging loved ones who may be cohabitating with family. This was my reason for creating the 'extended family' floor plan that was referenced. Nevertheless modifications and clarifications were made (to distinguish from multi-family).

The initial architect's proposal letter (of about a year ago) and comment is attached herewith regarding the single family development aspect. Exhibit A, B & C, and my file sample floor plan variations. This was never designed to be an all multi-family development.

Item #3; page 26, staff comment on naming. <u>Respectfully considering either "Wellness & Hospitality Estates" to provide an</u> upbeat or destination worthy appeal to an area riddled with gravel pits. An alternative would be "William Gibbs Estates" in order to honor the original homesteader, Mr. William Gibbs.

Items #4 through #7 highly note worthy (pages 31 and 32).

"Per the preliminary Certificate to Plat and to staffs knowledge the proposed subdivision isnot affected by any Common Interest Ownership".

Items 8, 9 and 10 (pages 32 and 33). Uncorrectly Staff addressed consistency and conformity.

"Maintaining property consistency in Diamond Willow Estates is yet another reason to deny this application".

Item # 11 page 33. Misrepresentation. Floor plan confirmed as single family by builders consulted. Floor plan attached for your review. Mr. Penrod thought the floor could be converted by a future owner of building for rooming house use. Besides, this was one of about four designs. Further, such concern falls under Code Enforcement. Ifs, maybes and suppositions are not valid enough in this case.

"In aprivate conversation I personally had with Ray Oyemi, he showed plans of multi-living space (multi-family) dwellings which he planned on developing on these lots".

Item #12 & #13, page 33. See exhibit A, B and C. Proposed use is well displayed for the subdivision. R-1 accommodates both single family and home based occupations. The benefit of new zone is to accommodate the related other uses for the new community which constitute Neighborhood Commercial or Light Commercial – especially for Track A which is documented to have grandfathered commercial use.

> "Until Ray <u>Overni's true</u> intentions for the development of these lots is known. this application must be denied."

My development intention is fully on display. There is no justification to reverse the re-plat approval.

Item #14.

2

# Jeannine Morse. 36630 Virginia Dr.

Ms. Morse and her husband purchased their property in 1990. When they bought that property for their home there were two hayfields on both sides of Virginia Dr. Now there is a gravel piton one side and a hay field on the other side and apparently there is a developer who wants to turn that hay field into a multi-family dwelling. She spoke against this replat because it was against the covenants Their Homeowners Association agrees that this should not be permitted.

Comment: Item # 14. Track A has a grandfathered use as commercial for its past Hay bundled and sale. It was unfair and selfish for a group of persons to have taken another person's lively hood away as it was done from hayfield to R-1. Of record; a family was raised on the hay production.

Item #15 below. Comment: Please see Exhibits A, B and C

#### 3. Aaron Morse. 36630 Virginia Dr.

Mr. Morse stated that they want to maintain the covenants as written and have a peaceful community that they are paying for as in R-1, private dwellings with no multi-family or other commercial services allowed including additional gravel pits. He was available to answer questions.

<u>Item # 16. Comments</u>: Unfair assumption and characterization I am a new neighbor. This would be my home as well. This type of development is not get rich quick undertaking. Most important, the replat makes it feasible to develop affordable ADA compliant homes. Aging generation needs this; and so would the children taking care of these parents in the future. Please let's visit and go over development details and type. You will be proud of the attraction it would add to the community.

#### 4. Item # 16. Jacob & Chelsea Newton, 46738 Gary Ave.

He fett that anyone who buys property in the neighborhood would also share the same ideals that the covenants lay out and not to purchase the property with plans to replat and redistribute the property as they feel necessary in the name of making money. Year around homes are occupied by locals and a couple of snow birds. Most of the everybody in their area agrees that single family homes are the best thing in their neighborhood.

Mr. Newton stated that the owner of the property who plans to replat and subdivide will undoubtedly take any profits made off of the property intransaction out of the borough and back to Anchorage where he resides.

.... keep their neighborhood single family homes. He hoped the committee would listen to the people in the neighborhood and not succumb to the greed of one person. They cannot put a price on the safety, wellbeing and peacefulness of the Diamond Willow Estates. He asked that they not jeopardize that for the profits of <u>one non-local property investor</u>.

Item # 17. Comment: Best understood when development is understood. Some developments Such as this one actually take the well being of individuals into consideration. Please visit and review the LOZD coming up to see extended guidelines and protections of uses.

#### Dennis Gease. 36710 Virginia Dr.

Mr. Gease has lived at this location in Diamond Willow Estates for the past 18 years. In their R-1 subdivision also known as the Diamond Willow Estates, they have spent a considerable amount of time, energy and money to ensure that their homes and investments would be protected from any outside influences. They now have a situation where an outsider from New York and has come to Alaska and was trying to affect changes in their area.

Mr. Gease stated that the binding covenants were put into effect in March 1975, some 43 years ago which every perspective owner received and signed to abide by which included himself. Also the R-1 change was eventually in which gave residents the single family subdivision they now have. This was approved by the Planning & Zoning Commission early 2015 and voted into effect by the Kenai Peninsula Borough Assembly on March 2015. He expected the developer's ploy would change their status in this particular area was for his financial gain and definitely not theirs.

Mr. Gease believed that as longtime tax paying residents of this borough, their financial investment should be protected which was why they want the process of securing their R-1 Single Family status for their subdivision to remain. With this being said and all the other implications that come with this request, his point was that it was imperative that their financial investment be recognized and protected.

Mr. Gease thanked the committee for their attention time and understanding of their problems. He stated God Bless America and especially Alaska and the Kenai Peninsula.

Item # 18 Comment: Careful placement of structures anticipated so as not to infuse more traffic. The planned community itself is well contained.

#### Chris Wehr. 36680 Virginia Dr.

Mr. Wehr expressed concern about the lack of care on their road. It was only by a complaint sometimes that they get anything done to it. They have to power wash their places because of the dusty conditions. There are plenty of other commercial places that would be more suitable for the developer. He was available to answer questions.

Item #19. Comment: A good understanding of the development would reveal that R-1 is not Going away just because of the replat.

#### 7.

#### Jeffrey Siemers, 46731 Gary Ave

Mr. Siemers stated that he and his wife are owners of Lots 38 & 39. He expressed opposition with the Sunville replat into 10 lots. Mr. Siemers requested that that they stick to the R-1 residential code.

#### 8.

### James Gibbs. 46800 Ciechanski

Mr. Gibbs pointed out that his dad made a contract with these people who are testifying at this meeting that they were going to try to keep the subdivision pure and simple and not have multi-family places in it. He hoped the committee would honor the contract that his dad made.

# 9. Jeff Webb. 36750 Virginia Dr.

Mr. Webb stated that he and his wife purchased their house about a year ago and pointed out that they found out there were covenants attached to the property when they were looking at purchasing their house. He wanted to go on record that he was against the subdivision replat.

Chairman Carluccioasked if there were questions for Mr. Webb. Hearing none the public hearing continued.

Item # 20: Comment: Misunderstood situation. This is not gravel pit related. Rather, an Improvement on gravel related problems in the area.

#### 10. Grea Pokryfki, 46715 Gary Ave

Mr. Pokryfki was the newest member of the neighborhood. He knew about the covenants and spoke infavor of the covenants. They bought property or built homes or bought homes inthis area to have separation, trees in between the properties and to have a residential place to live.

Mr. Pokryfki stated that it would be not be an appealing factor to have this property subdivided or rezoned into a gravel pit, condominium or apartment complex. He was available to answer questions.

### Item #21.

<u>Comment</u>: Project Purpose restated along with exhibits and architect's letter. Floor plans re-clarified. A much needed guideance.

# 11. Gina DeBardelaben, Mclane Consulting, Inc.

Ms. DeBardelaben stated that her firm was hired as a surveyor to prepare the plat for Sunville Acres Addition No. 2. <u>Most of what was heard at this meeting was pertaining to zoning and this meeting</u> <u>was for the subdivision plat</u>. There has been a proposed LOZ but has been postponed. The applicants have postponed it to potentially look at something else like some additional zoning options within the borough that was to be created at the staff s recommendation.

Ms. DeBardelaben stated that other comments that were made referred to the lot size of the proposed lots and the actual subdividing in opposition of the covenants. The proposed lots sizes more closely reflect the lot sizes found in Diamond Willow Estates which are from 1 to 1.4 acres. The lots that are being subdivided are 2.5 to 3 acres. <u>She stated that bringing the lot sizes down a little bit was more in line with the rest of Diamond Willow Estates</u>. All of these lots have been created since 1975 when the covenants were filed. <u>There have been 12 plats in Diamond Willow Estates</u> <u>Subdivision</u>.

Ms. DeBardelaben confirmed that Sunville Acres meets the Borough plat code and asked that the committee look at the plat and the plat code. She was available to answer guestions.

#### Item 22 Comment:

Separate living quarters within a single dwelling, with no physical separation. They are certified single family by builder. Taking precaution to be code compliant was one reason for requesting zone change to accommodate the variety of floor plans.

1.8

Chairman Carluccio asked if there were questions for Mr. DeBardelaben.

Commissioner Whitney asked what the future plans were for these lots. Ms. DeBardelaben replied that Consolidated Development owns the lots in Sunville Acres and has been looking at what <u>could be considered</u> multi-family. They are really single family assisted living type structures with separate entrances and living quarters. It would be a family home where an adult would be taking caring of another adult but they would have separate living quarters.

Commissioner Whitney asked if they could be listed under R-1 zone. Ms. DeBardelaben replied that she wasn't sure but the thought was that they needed to be multi-family. She stated that the rezone would cover the properties in Sunville Acres, Tract A which is 27 acres of undeveloped land as well as some other properties across Virginia Dr. to the southeast.

There being no further questions or comments, the public hearing continued.

#### 12. Kurt Brinkman. 36738 Virginia Dr.

Mr. Brinkman spoke against the subdivision replat. He bought the property knowing what the covenants were which was why he bought this lot.

Item #23. Comment: Did not meet with Ms. Penrod. Details and anticipated follow up meeting with Mr. Penrod on development review meeting details never materialized.

#### 13. Crystal Penrod, 36860 Virginia Dr

Ms. Penrod stated that her husband, Travis was the Chairman of the Diamond Willow Homeowner's Association. She bought their two properties with covenants expecting it to be a nice neighborhood to raise their children and grandchildren. Their second home was owned by their son who hopes to five there with his family.

Ms. Penrod addressed that R-1zoning was only for single family residences. She felt that this will open a Pandora's box of multiple things to come if this plat was approved because of the conversations they have had with the new owner and with the Planning Department. This Pandora's box was going to open as soon as this replat goes through so they will end up with the zoning changing and them losing everything that they have worked for, for over 25 years.

Ms. Penrod stated that the lots that have been subdivided were subdivided out of the unsubdivided remainder. It was a big plat and was subdivided so none of those originally subdivided lots have been changed. She commented that there was one property owner who removed a property line between his two adjoining lots to make it one lot. There has never been anyone who has made a lot smaller.

Ms. Penrod expressed concern that the Planning Department has agreed to proceed with a new ordinance for this new owner in order for him to get his mixed commercial zoning. They are flabbergasted that it seems that at every turn they are being bombarded intheir neighborhood by the Borough about wanting to ruin what they have as their good and decent neighborhood.

Ms. Penrod stated that there are no multi-family areas down the street or down the road. All the surrounding neighborhoods are all single family residential homes so this is not an area to be considering this. There are several other places that are for sale currently at about half the price that Mr. Oyemi paid that he could do what he wants in other areas. The neighborhood does not want this replat since they have all invested years, time and money in their property. She asked respectfully that the committee identify that this is a single family residential area and that they deny this subdivision replat. They are required to uphold the covenants of the neighborhood and they will be forced to do so legally if this passes.

Item # 24. Comment: I followed up with Title Company regarding the oversight on receiving As-Builts and covenants with my closing documents, even though my transaction and closing was protracted unlike regular home purchase. I kept the follow up correspondence for record.

14. Ray Oyemi, Consolidated Development & Management

Mr. Oyemi is the owner of the property and expressed that he does not have a plan for multi-family housing. What he has in mind to develop with his architect is a retirement community that has single family homes that are ADA compliant. He was looking to build where he would live himself.

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Chairman Carluccio asked if there were questions for Mr. Oyemi.

Commissioner Ruffner asked The was aware of the issues that have been raised regarding the covenants. Mr. Overni respected the concerns and stated that he has no intention or hidden intent of violating the covenants.

Commissioner Whitney asked when he purchased the property. Mr. Oyemi replied that he purchased the property in December 2016.

Chairman Carluccio asked if he was given a copy of the covenants when he purchased the property. Mr. Overni replied that he didn't remember. He reiterated that there was no intention of violating the covenants and stated that his plan was to have a retirement community that will have single family homes but extended. Itwould be so that someone could live in an extended home to take care of a family member.

Commissioner Fikes asked if he physically received a copy of the covenants of the subdivision when he signed the documents in the title company's office. Mr. Oyemi replied that he could not say if he did, he will need to look through his documents.

There being no further comments or questions, the public hearing continued.

Seeing and hearing no one else wishing to comment, Chairman Carluccio closed the public hearing and opened discussion among the Committee.

Respectfully, Land Jerni 8/11/2018.

August 15, 2018.

KPB Planning Commission 144 North Binkley Street Soldotna, AK 99669.

Re: Plat Review request; KPB File 2018-63; Sunville Acres Addition No 2.

Dear Planning Commissioners;

This is to inform you that I have retained counsel for representation in the matter raised by Mr. Penrod and his representative, the office of Mr. Clayton Walker.

Please note as well that while the matter was not taken lightly, all legal research and indication is that Mr. Penrod and the referenced Home Owners Association's claims have no valid legal claims or merit to warrant your Commission deviating from the performance of its obligation and due process.

As should be expected the matter shall be pursued vigorously in and at all applicable venues.

Consequently, the only suitable and equitable course of action would be to reaffirm the approval granted by the Replat Committee as it was backed by precedents, diligent staff report and comments.

Thank you for your consideration.

Sincerely, Alenn

Ray Oyems CONSOLIDATED DEVELOPMENT & MGMT., LLC 200 W. 34<sup>th</sup> Avenue Ste 367, anchorage, AK 99503 907.301.5185 mgmtpro@att.net

CC: Mr. Robert Reiman, Attorney at Law.

Law Offices Of **ROBERT K. REIMAN** P.O. Box 201271 Anchorage, Alaska 99520 (907) 748-1132 reiman@alaska.net 14

August 16, 2018

Planning Commission Kenai Penninsula Borough Soldotna, Alaska

# Re: Sunville Acres Addition No. 2 Consolidated Development & Management, LLC, applicant

Dear Commissioners:

I am writing on behalf of Consolidated Development & Management, LLC, in regards to the plat committee review request of Travis Penrod concerning the plat approval of KPB File 2018-63 Sunville Acres Addition No. 2. Mr. Oyemi can address in detail the specific issues of his proposal and the criticisms received in the prior hearing. However, this letter is to address the substance of those objections from a legal standpoint. For the reasons stated herein, those objections are without merit.

As Mr. Penrod first incorporates the arguments of Mr. Clayton J. Walker Jr. Of the Alaska Law Offices that ostensibly represents the Diamond Willow Homeowners Subdivision, I will address those arguments in order. Before doing so, I would note that this organization was created on December 3, 2014, and claims to be the entity that owns "the beneficial interest in the Building and Use Restrictions for Diamond Willow Estates." How such an entity created 40 years after the recording of the Building and Use Restrictions for Diamond Willow Estates, which does not mention such an association, can make such a claim is unexplained. It appears to be a blatant misrepresentation of the true facts.

The statutes cited, specifically A.S. 34.08.210 and .250, have nothing to do with the present issue. Contrary to what they would have this planning committee believe, the Diamond Willow Homeowner's Association is not a "common interest community." That term is defined in A.S. 34.08.990 (7) as follows: "common interest community" means real estate with respect to which a person, by virtue of ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in a declaration." There are no unit owners here. In addition, the Building and Use Restrictions for Diamond Willow Estates aren't declarations and the association owns no real estate upon which it is obligated to pay taxes, insurance or other expenses. It is a completely disingenuous to claim that an "interest" in the covenants makes the association a common interest community. Even if it was such an entity, the association would not be governed by A.S. 34.08 because it is applicable only to common interest communities formed

Letter to Planning Commission August 16, 2018 Page 2 of 3

after January 1, 1986, and the Building and Use Restrictions for Diamond Willow Estates which this association claims to "own" were adopted in 1975. This is a spurious argument.

Counsel for the homeowners association then argues that the covenants require the approval of the association to any subdivision, and the association does not approve. As stated above, the association is the creation of apparently only a a couple of people undertaken 40 years after the execution and recording of the covenants. Nowhere is any association of homeowners granted any right of any kind with respect to the property covered by the Building and Use Restrictions for Diamond Willow Estates. That the association has any right to approve or disapprove a subdivision is an absolute legal fiction.

As for the additional argument raised by Mr. Penrod that Mr. Best deceived the platting committee by stating that they only had one option and that was to approve the subdivision plat, this argument strains credibility. I have to assume that this was not the first decision the entire committee had ever made. If my assumption is true, it cannot be suggested that the platting committee did not know it had the power to deny an application for approval of a subdivision plat. While counsel was not present at the hearing, if the claimed statement was in fact made, it can at most be understood as an opinion that the only reasonable decision was to approve the subdivision plat request - an opinion strongly supported by the evidence.

Also, Mr. Penrod makes the argument that the commission should have considered the Building and Use Restrictions for Diamond Willow Estates. As for this argument, the staff and borough attorney correctly pointed out that the KPB does not engage in enforcement of covenants. The remedy for any such violation is in the court system. However, Consolidated Development and Management, LLC, does not believe this subdivision plat is in violation of those covenants for a multitude of reasons. One of those is that the property in question was never a part of Diamond Willow Estates and, therefore, the property in issue here was not intended to be subject to the covenants. Another is that the property in question was not designated as a "lot" when those covenants were adopted for the prohibition on subdivision to have attached. It is noted that the covenants make reference to Tracts and lots that were not specifically identified or referenced in the initial plat of Diamond Willow Estates making it vague. It is further noted that, if any such prohibition might have been applicable, it has been abandoned and is unenforceable as a result of the twelve subsequent subdivisions of land apparently without any consent having been requested, given or required by the other owners, and no reference having been made to it in any of the eleven subsequent plats. If these facts are disputed by Mr. Penrod, it could be anticipated that considerable discovery and development of the evidence would be necessary to adjudicate these issues - something that is not really within the purview of the platting committee regardless of whether they might have considered the covenants relevant to the formation of the LOZ for this area.

Finally, Mr. Penrod argues that Consolidated Development plans to construct multi-family homes on the property which requires greater lot sizes. This is a zoning issue, not a platting issue. The proposed lot sizes all meet or exceed the requirements of the current zoning. If Consolidated Letter to Planning Commission August 16, 2018 Page 3 of 3

Development undertakes to construct any structures in violation of zoning, Mr. Penrod and his association can take this up at such time with the appropriate zoning officials. The mere anticipation that the property may be used in a manner that violates zoning at some point in the future does not justify the preemptive act of denying a subdivision of the property with lot sizes consistent with current zoning.

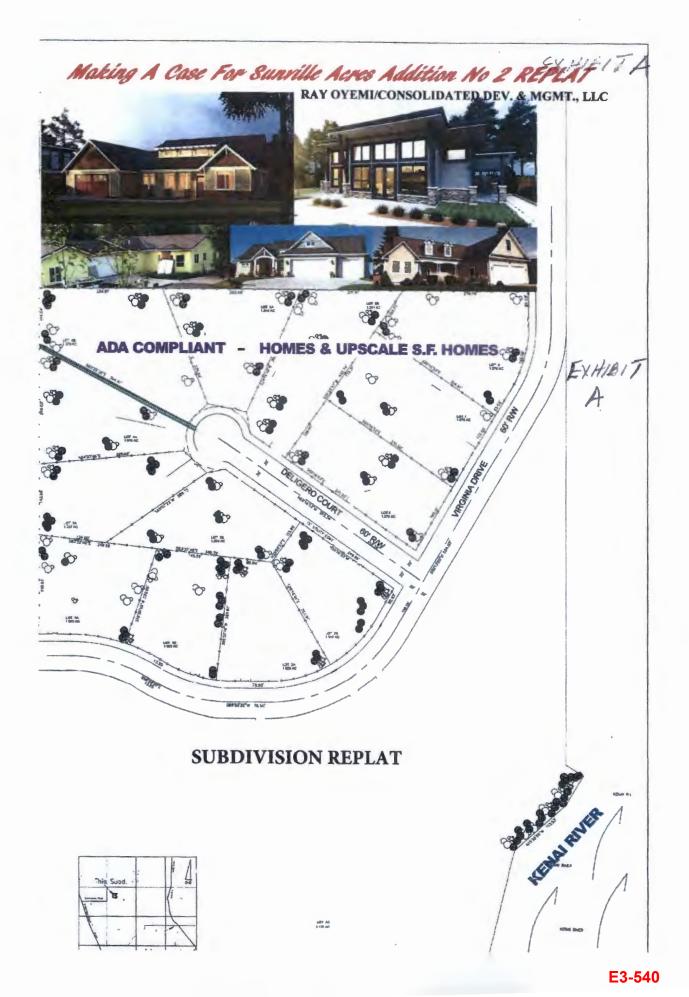
The objections made to the replat of the property in this case are not an attempt to protect the neighborhood from incompatible uses, as the proposed lot sizes are basically identical to those of the surrounding property. It is instead an attempt to prevent the owner from pursuing the economical development of this property for the selfish interests of the neighbors, who apparently believe that their ownership of a small parcel of land should give them the right to control the use of a large tract adjacent to them without any cost to them. As the platting commission determined, this subdivision should be approved and the decision of the platting committee affirmed.

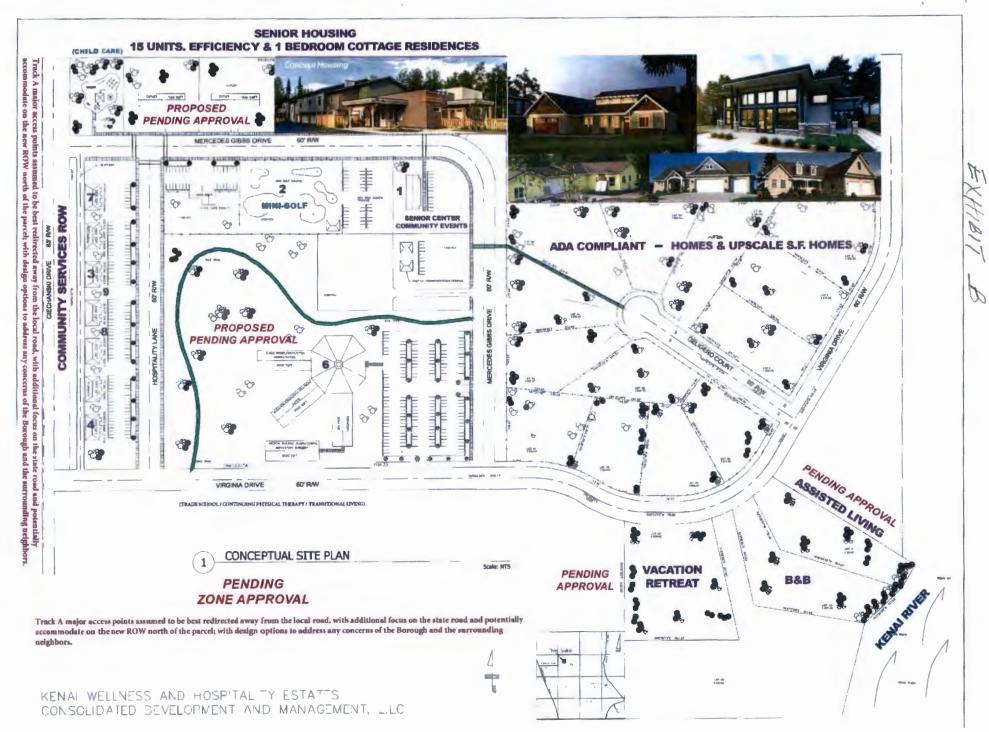
Thank you for your consideration.

Best regards,

Robert K. Reiman

cc: client





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- Wheel Chair Bound Individuals

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EXHIBIT C-2 (PARTIAL PORTION PROPOSAL.)

ARCHITECTS

April 29, 2017

Consolidated Development & Management, LLC. 200 W. 34th Avenue Suite 367 Anchorage, Alaska 99503

ATTN: Mr. Ray Oyemi CEO, Kellogg Executive Scholar

RE: Kenai Wellness & Hospitality Estates Master Planning Fee Proposal

#### Dear Ray

Thank you for meeting with us and bringing this opportunity to assist you with the Master planning and development of your properties associated with the Kenai Wellness & Hospitality Estates. From our discussions, we are excited to be part of what will be a significant development providing affordable housing and amenities to seniors and retirees. As requested we have developed this proposal and design scope which is reflective of your meeting with our team. We have broken our fee proposal down into three distinct areas of work:

Scope 1 - Residential Development Support Scope 2 - Planning Support for Rezoning Effort Scope 3 - Master Planning and Planning support for Rezoning

Scope 1: Residential Development Support

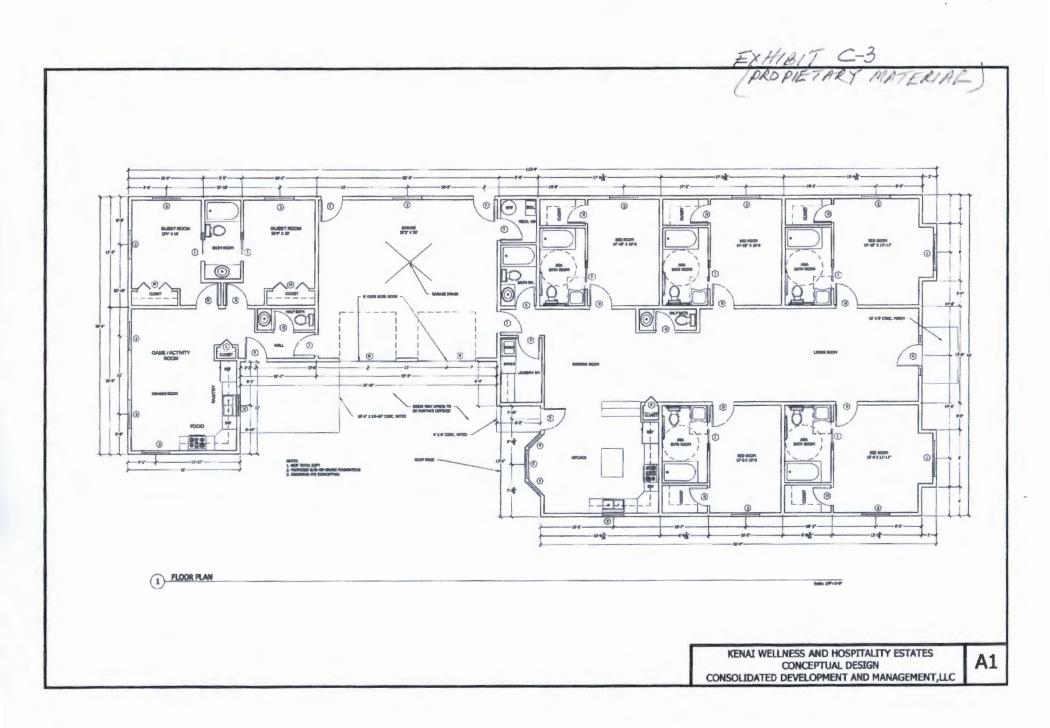
KPB Architects will provide master planning services for the parcel containing (8) lots off Deligero Court and Virginia Drive. We will develop proto-type designs for two and three-bedroom single family homes with attached garages and ADU's - Accessory Dwelling Units. We are estimating that these homes will be single story, 1,800-2,500sf.

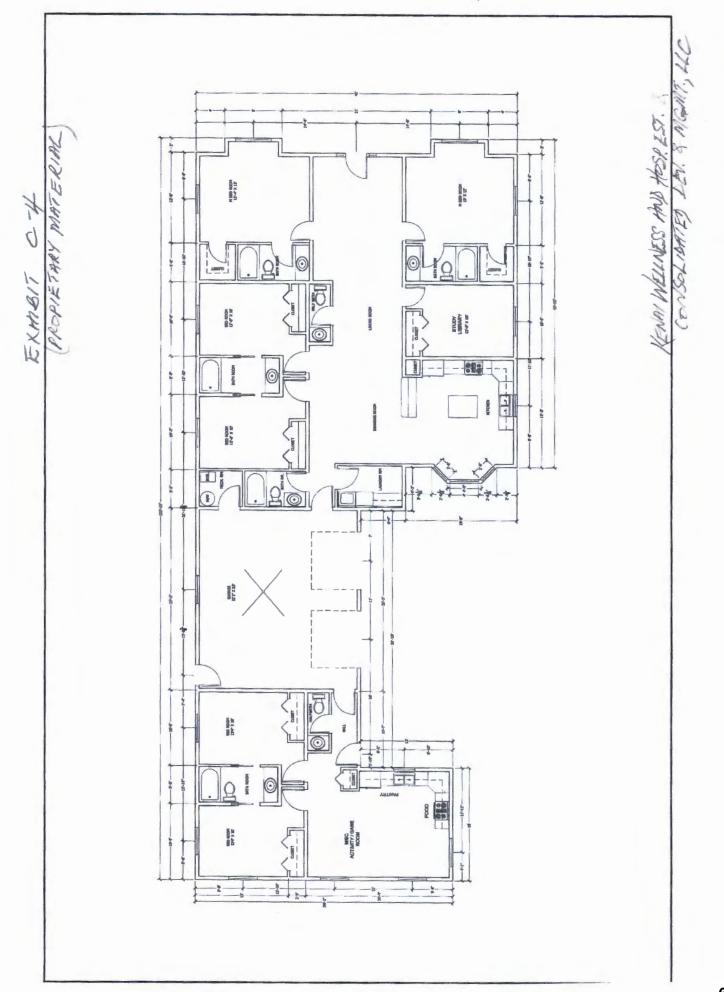
Understanding that these homes are located on the already platted R1 land area we have allocated time in our proposal to assist you in the discussion with the local zoning and building officials in Kenai as it relates to the accessory dwelling unit and its conformity to local codes as well as the potential future subdivision of Lot 1.

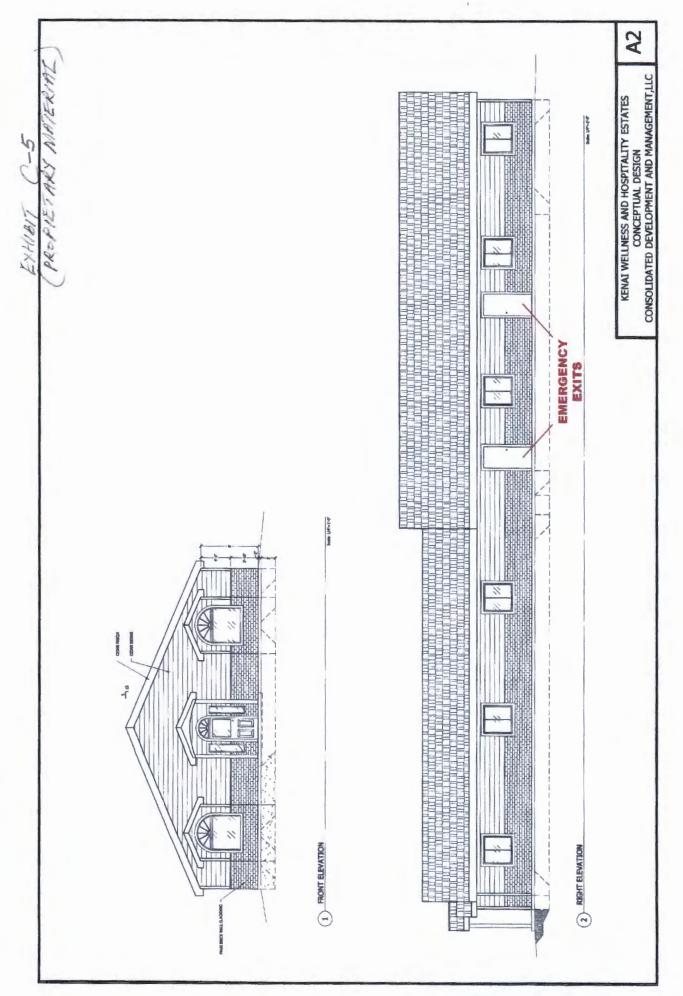
Our scope of services for this task are as follows

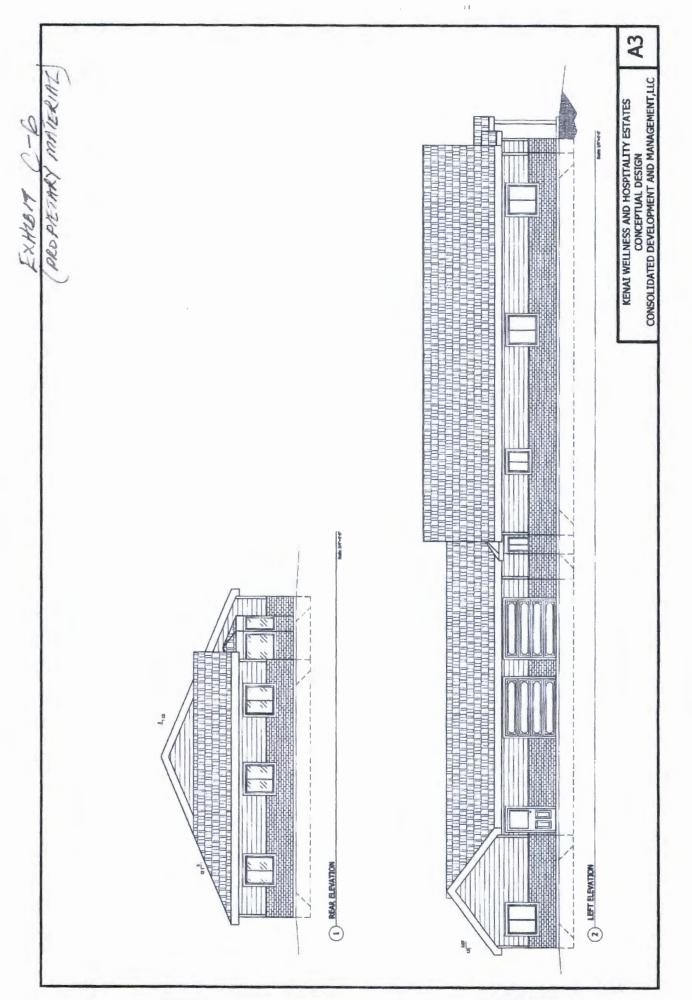
- 1. Develop overall master plan of the 8 lots with driveways and placement of homes.
- 2. Develop Marketing material content for both printed copy and Website Rendered two and three-bedroom Building Floor plans
  - **Rendered Building Elevations** 
    - **Rendered Site Plan**

Assist with the draft of building narratives, and other written content for marketing









### Hartley, Patricia

From:	mgrtotravel@aol.com
Sent:	Friday, August 17, 2018 9:04 AM
То:	Hartley, Patricia
Subject:	Draft and misc questions. Would draft meet your format? How soon before the meeting does my doc become public? Thanks.
Attachments:	KPB draft Review.pdf

Question:

1. With the coming 8/27 hearing, how do I get it across to the Commission that there are two families who would like to sign on to the LOZD but otherwise afraid to do so openly.

2. With all of these going on; has any of the commissions or committees had request for a concerned member of the public willing to testify about some high handed issues but otherwise afraid for his family safety and peace keeping?

Ever any depositions admitted into testimony (whereby the deposed wanted to stay out of public eye. There were two who felt coerced to lie and go along with a particular HOA representations of recent).

Ray.

-----Original Message-----From: Hartley, Patricia <PHartley@kpb.us> To: mgrtotravel <mgrtotravel@aol.com> Sent: Thu, Aug 16, 2018 4:14 pm Subject: RE: Walker Letter

You can send it to me electronically in a PDF format!

**Patti Hartley** Administrative Assistant Ph: (907) 714-2215 Fx: (907) 714-2378



From: mgrtotravel@aol.com [mailto:mgrtotravel@aol.com] Sent: Thursday, August 16, 2018 4:12 PM To: Hartley, Patricia <<u>PHartley@kpb.us</u>> Subject: Re: Walker Letter

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#### AGENDA ITEM E. SUBDIVISION PLAT PUBLIC HEARINGS

 Sunville Acres Addition No. 2 KPB File 2018-063 [McLane / Consolidated Development & Management, LLC]

Staff Report given by Scott Huff

Plat Committee Meeting: 7/16/18

Location:	off Virginia Drive, Kalifornsky area
Proposed Use:	Residential, Mixed Use
Water/Sewer:	On-site
Zoning:	R-1, Single-Family Residential
Assessing Use:	Vacant
Parent Parcel Number(s):	055-270-62, 055-270-63, 055-270-64, 055-270-65, 055-270-66

#### Supporting Information:

The proposed plat subdivides 5 lots into 10 lots ranging in size from 1 to 1.4 acres. A soils report is required, and an engineer will sign the plat. Lots 1A, 1B, 2A, and 2B front KPB maintained Virginia Drive. Lots 2B, 3A, 3B, 4A, 4B, 5A, and 5B front Deligero Court. This platting action is opening and extending Deligero Court by approximately 95 feet.

Per the submittal, one use within the proposed plat is mixed use. A petition to rezone the property to mixed use has been submitted but postponed at this time. The proposed rezone is in the initial stages. Public hearings before the Planning Commission and Assembly have not yet been scheduled. Changing the zoning will require enactment of an ordinance. Staff cautions the owner that use within the subdivision must comply with the requirements of the local option zone in effect. KPB has the responsibility and authority to enforce the local option zone.

Currently these lots are within the Diamond Willow Fairfield LOZ District which is a R-1 Zone. This preliminary plat complies with the R-1 zoning regulations.

Notice of the proposed plat was mailed to the beneficial interest holder on June 6, 2018. The beneficial interest holder will be given 30 days from the date of the mailing of the notification to respond. They are given the opportunity to notify staff if their beneficial interest prohibits or restricts subdivision or requires their signature on the final plat. If no response is received within 30 days, staff will assume they have no requirements regarding the subdivision and it may be finalized.

The property is not within an advisory planning commission.

#### KPB 20.25.070 - Form and contents required.

<u>Platting staff comments</u>: Additional information is provided for the following portions of 20.25.070 or additional information, revision or corrections are required

- A. Within the Title Block
  - 1. Name of the subdivision which shall not be the same as an existing city, town, tract, or subdivision of land in the borough, of which a plat has been previously recorded, or so nearly the same as to mislead the public or cause confusion; *Platting Staff Comments:* **Staff recommends:** Change the name of the subdivision to carry forward the parent plat name, EX Diamond Willow Estates Subdivision Surville Acres Addition No. 2
  - 2. Legal description, location, date, and total area in acres of the proposed subdivision; and
  - Name and address of owner(s), as shown on the KPB records and the certificate to plat, and registered land surveyor;
    - Platting Staff Comments: Staff recommends:

a. Include Lot 1 in the list of lots being replatted.

KENAI PENINSULA BOROUGH PLAT COMMITTEE JULY 16, 2018 MEETING MINUTES

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- b. Include the parent plat's entire name in the legal description: Diamond Willow Estates Subdivision Sunville Acres Addition.
- D. A vicinity map, drawn to scale showing location of proposed subdivision, north arrow if different from plat orientation, township and range, section lines, roads, political boundaries, and prominent natural and manmade features, such as shorelines or streams; *Platting Staff Comments:* **Staff recommends:** 
  - 1. Show the City of Kenai limits.
  - 2. Correct the limits for the City of Soldotna. For example, Section 36 is in the city. The boundary for the city limits in Section 32 follows certain lots in a subdivision.
  - 3. Correct the spelling of Kalifornsky.

KPB Department/Agency Review Comments

- KPB Addressing/Street Name Review:
  - No addresses have been assigned.
  - Existing street names are correct.
- KPB Code Compliance: No comments
- KPB Planner:
  - This proposed plat is located within the Diamond Willow Fairfield Local Option Zoning District. The zoning designation for this property is Single-Family Residential (R-1). The proposed plat meets the requirements of the R-1 District. The new parcels will continue to be subject to the land use regulations contained in KPB 21.44 generally, and specifically KPB 21.44.160. Staff comments Staff recommends that a note be added stating the subdivision is affected by Diamond Willow – Fairfield Local Option Zoning as shown per KPB 21.46.040. It may be beneficial to add the current building setbacks and cross reference the note with the building setback depicted on the face of the plat.
  - o No material site issues.
- State Department of Fish & Game: Not available when the staff report was prepared.
- State Parks: No comments.

#### **KPB 20.30 Design Requirements**

<u>Platting staff comments</u>: Additional information is provided for the following portions of 20.30 or additional information, revision or corrections are required

20.30.030. Proposed street layout-Requirements.

A. The streets provided on the plat must provide fee simple right-of-way dedications to the appropriate governmental entity. These dedications must provide for the continuation or appropriate projection of all streets in surrounding areas and provide reasonable means of ingress for surrounding acreage tracts. Adequate and safe access for emergency and service vehicle traffic shall be considered in street layout.

Platting Staff Comments: For clarity, **staff recommends** the right-of-way being dedicated by this platting action be labeled as such.

C. Preliminary plats fronting state maintained roads will be submitted by the planning department to the State of Alaska Department of Transportation and Public Facilities (DOT) for its review and comments.

State Department of Transportation Comments: Not in the State road system.

Platting Staff Comments: Staff recommends Plat Note 2 be removed.

20.30.070. Lots on major streets-Access requirements.

Lots fronting on arterial streets with less than 200 feet of right-of-way as identified in the arterial road plan adopted by the borough or lots fronting on state maintained roads with less than 200 feet of right-of-way may be required to provide interior or frontage road access after review and recommendation by the Kenai

Peninsula Borough Road Service Area staff and upon a finding by the planning commission that due to size, topography, physical characteristics, or heavy traffic flow, that direct access to the arterial or state maintained road may present a traffic hazard.

KPB Roads Department Comments: No comments.

Platting Staff Comments: **Staff recommends** Plat Note 6 be revised: . . . certification and inclusion in the road maintenance program.

20.30.100. Cul-de-sacs.

A. Streets designed to have one end permanently closed shall be no more than 1000 feet long. The closed end of the cul-de-sac shall have a suitable turnaround with a minimum radius of 50 feet to the property line. The turnaround shall be constructible to a 4 percent grade or less.

Platting Staff Comments: The proposed plat is opening and extending Deligero Court approximately 95 feet. Typically, staff would prepare an exception to KPB 20.30.100 for the Committee's consideration when a culde-sac is proposed to be opened and extended since all property owners purchase lots on a cul-de-sac with the assurance that per KPB Code it is a permanently closed street that serves a limited number of lots.

**Staff recommends** the Committee concur that an exception to extending the cul-de-sac is not required in this case based on:

- 1. The subdivider owns all lots fronting Deligero Court.
- 2. All lots in Diamond Willow Estates Subdivision Sunville Acres Addition are vacant at this time.
- 3. The cul-de-sac is proposed to be extended approximately 95 feet.
- 4. The plat is dedicating a new cul-de-sac bulb, or turnaround, so the redesigned right-of-way is still a cul-de-sac.
- 5. With the proposed subdivision, the number of lots served by Deligero Court is six. Lot 2B in the subject plat and Lot 6, KN 2015-69, front KPB maintained Virginia Drive.
- 6. None of the lots in the proposed subdivision are large enough to be further subdivided without a community water system or community septic system being installed.

The existing turnaround area for Deligero Court dedicated by KN 2015-69 could be used for snow storage.

20.30.170. Blocks-Length requirements.

Blocks shall not be less than 330 feet or more than 1,320 feet in length. Along arterial streets and state maintained roads, block lengths shall not be less than 800 feet. Block lengths shall be measured from centerline intersections.

Platting Staff Comments: The Plat Committee granted an exception to block length for the parent plat. Since the proposed plat is served by a relatively short cul-de-sac, the proposed subdivision cannot address block length.

20.30.190. Lots-Dimensions.

A. The size and shape of lots shall provide usable sites appropriate for the locality in which the subdivision is located and in conformance with the requirements of any zoning ordinance effective for the area in which the proposed subdivision is located. Generally, lots shall be square or rectangular. Lots shall be at least 60 feet wide on the building setback line. The minimum depth shall be no less than 100 feet, and the average depth shall be no greater than three times the average width.

Platting Staff Comments: An exception to lots being at least 60 feet wide on the building setback was requested for Lot 4A and Lot 4B with the submittal. Because this subdivision is affected by a Local Option Zoning, staff is recommending that building setback conform to the existing zoning regulations. This will make a 30 foot building setback on all lots. Lot 4A and 4B will be at least 60 feet in width on the building setback line. An exception to KPB 20.30.190 is not required.

B. The access portion of a flag lot shall not be less than 20 feet wide. A flag lot with the access portion less than 60 feet wide may be subject to a plat note indicating possible limitations on further subdivision based on access issues, development trends in the area, or topography. If the access

portion is less than 60 feet wide, it may not exceed 150 feet in length. The access portion may not be used for permanent structures or wastewater disposal area, must meet the design standards of KPB 20.30.030(A) and 20.30.090 for access, and, if at least 60 feet wide, will be subject to the building setback restrictions of KPB 20.30.240.

Platting Staff Comments: Since the frontage on Deligero Court is less than 60 feet for Lot 4A and Lot 4B, these lots are essentially flag lots. **Staff recommends** the standard note be placed on the plat for the flag lot(s): No structures are permitted within the panhandle portion of the flag lot(s).

20.30.230. Lots-Double frontage prohibited when.

Double frontage lots with depths less than 250 feet will not be approved except where necessitated by topographic or other physical conditions, or to provide reverse frontage along arterial streets. Corner lots are not subject to the double frontage prohibition.

Platting Staff Comments: Lot 2B is slightly less than 250 feet deep, but it is not subject to the depth restriction since it is a corner lot.

20.30.240. Building setbacks.

- A. The commission shall require a building setback of at least 70 feet from the centerline of all fee simple arterial rights-of-way in a subdivision. A minimum 20-foot building setback shall be required for fee simple non-arterial rights-of-way in subdivisions located outside incorporated cities.
- B. The setback shall be graphically depicted and labeled on the lots; if such depiction will interfere with the legibility of the plat, a typical lot showing the depiction and label may be provided on the plat, clearly indicating that the typical setback applies to all lots created by the plat.
- C. The setback shall be noted on the plat in the following format: Building setback- A setback of <u>30</u> feet is required from all street right-of-ways unless a lesser standard is approved by resolution of the appropriate planning commission.

Platting Staff Comments: This subdivision is affected by Local Option Zoning. The current setbacks are 30 feet from the front yard, 20 feet from the rear yard line and 15 feet from the side lot lines. **Staff recommends** the building setback match the current zoning setback requirements of 30 feet from the right of way. Show and label the 30 foot building setback and correct plat note 4 to reference a 30 foot building setback. It may be beneficial to cross reference the building setback with the plat note that identifies the Local Option Zoning setbacks.

#### 20.30.280. Floodplain requirements.

Platting Staff Comments: River Center review issued a statement of no comments.

Per KPB GIS mapping, the plat is not affected by a mapped flood hazard zone. Questions regarding information required to comply with 20.30.280 and 21.06 can be directed to the KPB Floodplain Administrator.

#### 20.30.290. Anadromous habitat protection district.

Platting Staff Comments: Per KPB GIS mapping, the subdivision is not affected by the Anadromous Habitat Protection District.

River Center review issued a statement that this was not within the Habitat Protection District.

Per KPB GIS mapping, no anadromous streams flow through the subdivision.

#### KPB 20.60 - Final Plat

<u>Platting staff comments</u>: Additional information is provided for the following portions of 20.60 or additional information, revision or corrections are required:

20.60.020. Filing-Form and number of copies required. The subdivider shall file a standard number of prints as determined by the planning director. All prints shall be

folded as required by KPB 20.25.030 except those to be recorded with the district recorder. *Platting Staff Comments:* **Staff recommends** one full-sized <u>paper</u> copy of the plat be submitted for final review prior to submittal of the mylar. Electronic submittals are not acceptable for final reviews.

20.60.030. Certificate of borough finance department required.

Platting Staff Comments: All taxes levied on the property within the subdivision shall be paid prior to recordation of the final plat.

If approval is sought between January 1 and the tax due date, there shall be on deposit with the borough finance department an amount sufficient to pay the entire estimated real property tax for the current year. Prior to filing of the final plat, a certificate to this effect shall be provided by the borough finance director or his designee upon request by the planning director. Estimated tax payments shall be applied to the actual bill as of July 1 or such earlier date as the taxes due have been determined.

Taxes owed may include special assessments for utility or road assessment districts established by KPB ordinance.

Staff recommends compliance with 20.60.030.

#### 20.60.120. Accuracy of measurements.

All linear measurements shall be shown to the nearest 1/10 foot, and angular measurements shall be at least to the nearest minute. All lot areas shall be shown to the nearest 10 square feet or to the nearest 1/1,000 of total acres. Meander lines, dry land areas and submerged land areas shall be shown in addition to total area when applicable. All boundary closures shall be to a minimum accuracy of 1:5,000. Boundary and lot closure computations must be submitted with the final plat.

Platting Staff Comments: KPB GIS will verify closure complies with 20.60.120. Staff recommends boundary and lot closure computations be provided with the paper final plat.

#### 20.60.130. Boundary of subdivision.

The boundary of the subdivision shall be designated by a wider border and shall not interfere with the legibility of figures or other data.

Platting Staff Comments: **Staff recommends** the former lot lines be labeled and shown with a unique line style, different then the adjoining lots. It is not required to show the former lot labels. The surveyor can remove these labels if they wish.

#### 20.60.150. Utility easements.

- B. The following note shall be shown on the final plat:
  - No permanent structure shall be constructed or placed within <u>a utility</u> easement which would interfere with the ability of a utility to use the easement.

Platting Staff Comments: Staff recommends compliance with 20.60.150.

#### 20.60.160. Easements.

A. The plat shall clearly show the location, width, and use of all easements. The easements must be clearly labeled and identified and, if already of record, the recorded reference given. If public easements are being granted by the plat, they shall be properly set out in the owner's certification of dedication.

Platting Staff Comments: Per the Certificate to Plat, the subdivision is affected by a general easement of record granted to Homer Electric Association recorded in Book 100 Page 360. The document recorded in Book 100 Page 360 grants multiple 10-foot utility easements, which are shown and labeled on sketches included with the easement document. This is not a general easement with an unknown, or blanket, location. Based on the sketches, the 10-foot easements do not appear to affect the subject plat.

**Staff recommends** the surveyor confirm whether the 10-foot utility easements per Book 100 Page 360 KRD affect the proposed subdivision. If not, **staff recommends** the surveyor work with the title company to remove the easement document from the final Certificate to Plat.

20.60.190. Certificates, statements, and signatures required.

Platting Staff Comments: **Staff recommends** the Certificate of Ownership and Dedication be revised so the authorized signatory signs the plat on behalf of the LLC.

20.60.200. Survey and monumentation.

Platting Staff Comments: Staff recommends compliance with 20.60.200.

SUBJECT TO EXCEPTION(S) GRANTED, STAFF RECOMMENDS:

- GRANT APPROVAL OF THE PRELIMINARY PLAT SUBJECT TO ANY ABOVE RECOMMENDATIONS, AND
- COMPLIANCE WITH KPB 20.25.070 (FORM AND CONTENTS), KPB 20.25.080 (PETITION REQUIRED), KPB 20.30 (DESIGN REQUIREMENTS); AND KPB 20.40 (WASTEWATER DISPOSAL), AND
- COMPLIANCE WITH KPB 20.60 TO ENSURE ADMINISTRATIVE APPROVAL OF THE FINAL PLAT.

NOTE: 20.25.120. - REVIEW AND APPEAL.

A PARTY OF RECORD MAY REQUEST THAT A DECISION OF THE PLAT COMMITTEE BE REVIEWED BY THE PLANNING COMMISSION BY FILING A WRITTEN REQUEST WITHIN 10 DAYS OF NOTIFICATION OF THE DECISION IN ACCORDANCE WITH KPB 2.40.080.

A DECISION OF THE PLANNING COMMISSION MAY BE APPEALED TO THE HEARING OFFICER BY A PARTY OF RECORD WITHIN 15 DAYS OF THE DATE OF NOTICE OF DECISION IN ACCORDANCE WITH KPB 21.20.250.

END OF STAFF REPORT

#### VERBAL STAFF REPORT ADDENDUM

Verbal Staff Report Addendum given by Scott Huff

Plat Committee Meeting: 7/16/18

After the staff report was prepared, the Planning Department received letters from nearby landowners. The majority of the concerns expressed in the letters regarded subdivision covenants. The Certificate to Plat that was received for this subdivision did not specify that the subdivision was affected by covenants or restrictions.

Staff completed research and it appears that the subdivision plat may be affected by Building and Use Restrictions as recoded in Bk 86, Pg. 702 Kenai Recording District. Staff recommends that the surveyor work with the title company to verify if this subdivision is affected by covenants and show or note the covenants on plat as required by KPB 20.60.170.

The covenants recorded in Bk. 86, Pg. 702 affect the W<sup>1</sup>/<sub>2</sub> NW<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub> and Government Lot 3 within Section 24, T5N, R11W, SM. The proposed subdivision plat falls within this area.

The covenants state under Item 1-Land use and Building Type, that "No lot shall be subdivided".

The Kenai Peninsula Borough does not enforce private covenants. A court of lawwhich has jurisdiction over the parties and the subject matter may render a formal judgement for any alleged violations of covenants.

One letter submitted is from Clayton Walker of Alaska Law Offices Inc. The letter references A.S. 34.08.210 and states that, "Alaska only authorizes community associations to subdivide lots within their boundaries". The State Statute referenced, Title 34, Chapter 8, refers to Common Interest Communities. This would include condominiums and other housing developments comprised of individually owned units in addition to shared facilities and common areas.

Per the preliminary Certificate to Plat and to staff's knowledge the proposed subdivision is not affected by any Common Interest Ownership.

END OF VERBAL STAFF REPORT ADDENDUM

Chairman Carluccio read the rules by which public hearings are heard.

Chairman Carluccio opened the meeting for public comment.

1. Travis Penrod, 36860 Virginia Dr

Mr. Penrod had a prepared statement and asked for additional time. He read the following comments.

"I represent the Diamond Willow Homeowners Association (Est Dec 2014) as the Chairman. The property owners in Diamond Willow Estates Subdivision knowingly and willingly purchased their properties with the understanding that there are deed restrictions in the form of covenants attached. It is the requirement of the title company to give a copy of the covenants to purchasers upon closing. My wife, Crystal and I received our copy when we purchased our first lot in 1997 and our second lot in 2001.

The preamble of Diamond Willow Estates Subdivision covenants State: "The purpose of these covenants is to assure that property owners will be fully protected from poor quality surroundings and that they will be assured of pleasant, sanitary and safe sites to erect their homes." This reassurance of our covenants has been little consolation when you reflect on the 25 years fight we have been battling to maintain some form of sanctity to which we were promised.

Ray Oyemi purchased his property in our subdivision knowing full well the conditions of his purchase. He also knew that the R-1Local Option Zone that was established by the Diamond Willow / Fairfield LOZ also restricted these properties. It is safe to say, the price he negotiated for his Diamond Willow Estates property reflect these restrictions.

Ray Oyemi has requested that the borough approve the subdivision of existing subdivided lots in Diamond Willow Estates. It states in the Sunville Acres Addition No. 2 (part of Diamond Willow Estates), KPB File 2018-063, Notice of Subdivision/Replat, "This plat will subdivide 5 lots into 10 lots." This directly opposes the covenants restricting the property in Diamond Willow Estates. The covenants of Diamond Willow Estates, est in 1975 and still valid, states in article 1, "No lot shall be subdivided." This statement is without condition. The KPB planning department has stated to me personally that they do not get involved in covenant disputes, but they do acknowledge their existence. KPB code does reference covenants (encumbrances) in the formation of LOZs (KPB 21.44.040a). It is only logical that these same encumbrances be referenced when conducting plats and replats to avoid needless legal disputes (Diamond Willow Estates Homeowners will be addressing this issue at the next Assembly meeting). With the acknowledgement of the blatant violation of the Diamond Willow Estates Covenants, the Borough Plat Committee must deny this replat request

Your packet, submitted by the Diamond Willow Estates Homeowners, includes every plat and replat in our housing addition (sixteen). Reviewing all sixteen there has never been a subdivided lot re-subdivided into more lots. In forty-three years, this restriction to Diamond Willow Estates has never been violated. The homeowners in our housing addition are not

going to tolerate this direct violation that Ray Oyemi in conjunction with the Kenai Peninsula Borough are attempting to accomplish. This egregious action will be met with legal action as outlined by Clayton Walker, Diamond Willow Homeowners Association Attorney. The KPB Plat Committee must deny this application to prevent certain legal action against Ray Oyemi and the Kenai Peninsula Borough for openly and deliberately violating the established covenants in Diamond Willow Estates Subdivision.

In addition to being in direct violation of the established deed restrictions, this replat would make the size of the new lots inconsistent with the lot size in the Housing addition. If you look at the original preliminary plat that the covenants govern, you will see lot sizes very similar to the existing plat of Sunville Acres. If you examine all the lots adjacent to Sunville Acres you will find the lot sizes are appropriate to the neighborhood. What is not easily recognized in Diamond Willow Estates is that there are four homes that the homeowners also own or control the adjacent lot, effectively making them properties of nearly three acres. These properties border or are very close to Sunville Acres. I personally have spoken with each of these homeowners and they have no intention of selling or developing these lots. In addition, one lot line was vacated to allow for a larger home with a property size of nearly 3 Acres. This property also borders Sunville Acres. All of these mentioned properties can be found, with pictures in the packet Diamond Willow Homeowners delivered to the Borough and should be in front of you. Maintaining property consistency in Diamond Willow Estates is yet another reason to deny this application.

In looking at this application it would be foolish to review it as a "stand alone" document. We, as property owners have already attended a town hall meeting explaining the desire of Mr. Oyemi to change the status of his lots from single family residential (R-1) to Mixed Use District (C-3). In a private conversation I personally had with Ray Oyemi, he showed plans of multi-living space (multi-family) dwellings which he planned on developing on these lots. If these lots were subdivided, as requested in KPB file: 2018-063, they would be too small for this type of structure. The Kenai Peninsula Borough code requires Multi-family units to have a lot size of no less than 65,340 square feet. KPB 21.44.180C2. Until Ray Oyemi's true intentions for the development of these lots is known, this application must be denied.

In closing, I would like to restate comments made by Diamond Willow Homeowner Association's attorney. Mr. Clayton Walker's letter states:

Alaska only authorizes community associations to subdivide lots within their boundaries, A.S. 34.08.210. The lot owner seeking subdivision of a lot must apply to the association for that process. A.S. 34.08.210a. The association can only grant the subdivision if the right was expressly reserved in the governing documents. A.S. 34.08.210. The applicant has no standing to pursue the subdivision application before the board and it must be denied.

As the Chairman of the Diamond Willow Home Owners Association I invite Ray Oyemi to meet with the Homeowners of Diamond Willow Estates so he can communicate his development plans and we can work together with the Association to ensure his plans meet the requirements of the established covenants and are consistent with the existing neighborhood."

Mr. Penrod was available to answer questions.

Chairman Carluccio asked if there were questions for Mr. Penrod. Hearing none the public hearing continued.

2. Jeannine Morse, 36630 Virginia Dr.

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Ms. Morse and her husband purchased their property in 1990. When they bought that property for their home there were two hayfields on both sides of Virginia Dr. Now there is a gravel pit on one side and a hay field on the other side and apparently there is a developer who wants to turn that hay field into a multi-family dwelling. She spoke against this replat because it was against the covenants. Their Homeowners Association agrees that this should not be permitted.

Chairman Carluccio asked if there were questions for Ms. Morse. Hearing none, the public hearing continued.

3. <u>Aaron Morse, 36630 Virginia Dr.</u>

Mr. Morse informed the commission that their taxes are paid. He stated that they had to move their house away from the river for the fact that there was no cooperation between the five government organizations that have restrictions for boats on the river which seriously cause erosion to the bluff and blank. The move of the house has taken place so he thought they didn't have room to move the house again.

Mr. Morse stated that they want to maintain the covenants as written and have a peaceful community that they are paying for as in R-1, private dwellings with no multi-family or other commercial services allowed including additional gravel pits. He was available to answer questions.

Chairman Carluccio asked if there were questions for Mr. Morse. Hearing none the public hearing continued.

4. Jacob & Chelsea Newton, 46738 Gary Ave.

Mr. Newton thanked the commission for their time and service. He and his wife were at the meeting to oppose the replat proposed in the Diamond Willow Estates neighborhood. They were surprised to find out that the neighborhood even had covenants when they purchased their home in 2013. It is not very common in rural Alaska to be told what someone can or can't do with their property.

Mr. Newton stated that they decided that the covenants greatly aligned with their own ideals when they read the covenants thus making it a great place and location to raise a family. He felt that anyone who buys property in the neighborhood would also share the same ideals that the covenants lay out and not to purchase the property with plans to replat and redistribute the property as they feel necessary in the name of making money. Year around homes are occupied by locals and a couple of snow birds. Most of the everybody in their area agrees that single family homes are the best thing in their neighborhood.

Mr. Newton stated that the owner of the property who plans to replat and subdivide will undoubtedly take any profits made off of the property in transaction out of the borough and back to Anchorage where he resides. As teachers in the KPBSD, he and his wife believe that locals citizens have a more vested interest in the community and fiscal climate that they live in. They feel that covenants in Diamond Willow Estates will attract good contributing members to the community.

Mr. Newton commented that they are at the meeting with their son to ask the commission to keep their neighborhood single family homes. He hoped the committee would listen to the people in the neighborhood and not succumb to the greed of one person. They cannot put a price on the safety, wellbeing and peacefulness of the Diamond Willow Estates. He asked that they not jeopardize that for the profits of one non-local property investor.

Chairman Carluccio asked if there were questions for Mr. or Mrs. Newton.

Commissioner Fikes asked when they received a copy of the covenants. Mr. Newton replied that they received it from the Tule Company at the signing of the purchase documents. They actually had to sign something regarding the covenants.

There being no further questions or comments, the public hearing continued.

#### 5. Dennis Gease, 36710 Virginia Dr.

KENAI PENINSULA BOROUGH PLAT COMMITTEE JULY 16, 2018 MEETING MINUTES

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Mr. Gease has lived at this location in Diamond Willow Estates for the past 18 years. In their **R**-1 subdivision also known as the Diamond Willow Estates, they have spent a considerable amount of time, energy and money to ensure that their homes and investments would be protected from any outside influences. They now have a situation where an outsider from New York and has come to Alaska and was trying to affect changes in their area.

Mr. Gease stated that the binding covenants were put into effect in March 1975, some 43 years ago which every perspective owner received and signed to abide by which included himself. Also the R-1 change was eventually in which gave residents the single family subdivision they now have. This was approved by the Planning & Zoning Commission early 2015 and voted into effect by the Kenai Peninsula Borough Assembly on March 2015. He expected the developer's ploy would change their status in this particular area was for his financial gain and definitely not theirs.

Mr. Gease believed that as longtime tax paying residents of this borough, their financial investment should be protected which was why they want the process of securing their R-1 Single Family status for their subdivision to remain. With this being said and all the other implications that come with this request, his point was that it was imperative that their financial investment be recognized and protected.

Mr. Gease thanked the committee for their attention time and understanding of their problems. He stated God Bless America and especially Alaska and the Kenai Peninsula.

Chairman Carluccio asked if there were questions for Mr. Gease. Hearing none the public hearing continued.

6. Chris Wehr, 36680 Virginia Dr.

Mr. Wehr read his following written comments.

"Dear Planning Commission,

My wife and I have resided at 36680 Virginia Dr, Kenai, AK since 8/2006. We request that the Sunville Acres Addition #2 of KPB file 2018-036 be denied for the following reasons.

- 1) Increased traffic on a dirt road making dust, pedestrian safety and overall safety an increased issue and concern.
- It's not consistent with the rest of Diamond Willow being residential. It violates covenant No. 1.
- 3) Not needed for residents benefit. Could violate covenant No. 4.
- 4) Could reduce property values & make sale in the future difficult.
- 5) Would create an eye-sore by removing over 50% of grass lot area not being in original natural state. Covenant #10.
- 6) Would you <u>honestly</u> want this to move in basically across from your home as it is in our case?
- 7) It would have immediate impact and could create huge unforeseen problems in the future.

*Please consider the above reasons, as well as any other residents might contribute and <u>deny</u> <i>the application.*"

Mr. Wehr stated they were given a copy of the covenants before they were ever able to negotiate a price. He had to sign those covenants before they could every finish at the title company.

Mr. Wehr expressed concern about the lack of care on their road. It was only by a complaint sometimes that they get anything done to it. They have to power wash their places because of the dusty conditions. There are plenty of other commercial places that would be more suitable for the developer. He was available to answer questions.

Chairman Carluccio asked if there were questions for Mr. Wehr. Hearing none the public hearing continued.

7. Jeffrey Siemers, 46731 Gary Ave

Mr. Siemers stated that he and his wife are owners of Lots 38 & 39. He expressed opposition with the Sunville replat into 10 lots. Mr. Siemers requested that that they stick to the R-1 residential code.

Chairman Carluccio asked if Questions. Hearing none the public hearing continued.

8. James Gibbs, 46800 Ciechanski

Mr. Gibbs pointed out that his dad made a contract with these people who are testifying at this meeting that they were going to try to keep the subdivision pure and simple and not have multi-family places in it. He hoped the committee would honor the contract that his dad made.

Chairman Carluccio asked if there were questions for Mr. Gibbs. Hearing none the public hearing continued.

9. Jeff Webb, 36750 Virginia Dr

Mr. Webb stated that he and his wife purchased their house about a year ago and pointed out that they found out there were covenants attached to the property when they were looking at purchasing their house. He wanted to go on record that he was against the subdivision replat.

Chairman Carluccio asked if there were questions for Mr. Webb. Hearing none the public hearing continued.

#### 10. Greg Pokryfki, 46715 Gary Ave

Mr. Pokryfki was the newest member of the neighborhood. He knew about the covenants and spoke in favor of the covenants. They bought property or built homes or bought homes in this area to have separation, trees in between the properties and to have a residential place to live.

Mr. Pokryfki stated that it would be not be an appealing factor to have this property subdivided or rezoned into a gravel pit, condominium or apartment complex. He was available to answer questions.

Chairman Carluccio asked if there were questions for Mr. Pokryfki. Hearing none the public hearing continued.

#### 11. Gina DeBardelaben, McLane Consulting, Inc.

Ms. DeBardelaben stated that her firm was hired as a surveyor to prepare the plat for Sunville Acres Addition No. 2. Most of what was heard at this meeting was pertaining to zoning and this meeting was for the subdivision plat. There has been a proposed LOZ but has been postponed. The applicants have postponed it to potentially look at something else like some additional zoning options within the borough that was to be created at the staff's recommendation.

Ms. DeBardelaben stated that other comments that were made referred to the lot size of the proposed lots and the actual subdividing in opposition of the covenants. The proposed lots sizes more closely reflect the lot sizes found in Diamond Willow Estates which are from 1 to 1.4 acres. The lots that are being subdivided are 2.5 to 3 acres. She stated that bringing the lot sizes down a little bit was more in line with the rest of Diamond Willow Estates. All of these lots have been created since 1975 when the covenants were filed. There have been 12 plats in Diamond Willow Estates Subdivision. Some have removed lot lines which is a subdivision.

Ms. DeBardelaben confirmed that Sunville Acres meets the Borougin plat code and asked that the committee look at the plat and the plat code. She was available to answer questions.

Chairman Carluccio asked if there were questions for Mr. DeBardelaben.

Commissioner Whitney asked what the future plans were for these lots. Ms. DeBardelaben replied that Consolidated Development owns the lots in Sunville Acres and has been looking at what could be considered

multi-family. They are really single family assisted living type structures with separate entrances and living quarters. It would be a family home where an adult would be taking caring of another adult but they would have separate living quarters.

Commissioner Whitney asked if they could be listed under R-1 zone. Ms. DeBardelaben replied that she wasn't sure but the thought was that they needed to be multi-family. She stated that the rezone would cover the properties in Sunville Acres, Tract A which is 27 acres of undeveloped land as well as some other properties across Virginia Dr. to the southeast.

There being no further questions or comments, the public hearing continued.

 Kurt Brinkman, 36738 Virginia Dr. Mr. Brinkman spoke against the subdivision replat. He bought the property knowing what the covenants were which was why he bought this lot.

Chairman Carluccio asked if there were questions for Mr. Brinkman. Hearing none the public hearing continued.

13. Crystal Penrod, 36860 Virginia Dr

Ms. Penrod stated that her husband, Travis was the Chairman of the Diamond Willow Homeowner's Association. She bought their two properties with covenants expecting it to be a nice neighborhood to raise their children and grandchildren. Their second home was owned by their son who hopes to live there with his family.

Ms. Penrod addressed that R-1 zoning was only for single family residences. She felt that this will open a Pandora's box of multiple things to come if this plat was approved because of the conversations they have had with the new owner and with the Planning Department. This Pandora's box was going to open as soon as this replat goes through so they will end up with the zoning changing and them losing everything that they have worked for, for over 25 years.

Ms. Penrod stated that the lots that have been subdivided were subdivided out of the unsubdivided remainder. It was a big plat and was subdivided so none of those originally subdivided lots have been changed. She commented that there was one property owner who removed a property line between his two adjoining lots to make it one lot. There has never been anyone who has made a lot smaller.

Ms. Penrod expressed concern that the Planning Department has agreed to proceed with a new ordinance for this new owner in order for him to get his mixed commercial zoning. They are flabbergasted that it seems that at every turn they are being bombarded in their neighborhood by the Borough about wanting to ruin what they have as their good and decent neighborhood.

Ms. Penrod stated that there are no multi-family areas down the street or down the road. All the surrounding neighborhoods are all single family residential homes so this is not an area to be considering this. There are several other places that are for sale currently at about half the price that Mr. Oyemi paid that he could do what he wants in other areas. The neighborhood does not want this replat since they have all invested years, time and money in their property. She asked respectfully that the committee identify that this is a single family residential area and that they deny this subdivision replat. They are required to uphold the covenants of the neighborhood and they will be forced to do so legally if this passes.

Chairman Carluccio asked if there were questions for Ms. Penrod. Hearing none the public hearing continuec.

14. Ray Oyemi, Consolidated Development & Management

Mr. Oyemi is the owner of the property and expressed that he does not have a plan for multi-family housing. What he has in mind to develop with his architect is a retirement community that has single family homes that are ADA compliant. He was looking to build where he would live himself.

Chairman Carluccio asked if there were questions for Mr. Oyemi.

Commissioner Ruffner asked if he was aware of the issues that have been raised regarding the covenants. Mr. Oyemi respected the concerns and stated that he has no intention or hidden intent of violating the covenants.

Commissioner Whitney asked when he purchased the property. Mr. Oyemi replied that he purchased the property in December 2016.

Chairman Carluccio asked if he was given a copy of the covenants when he purchased the property. Mr. Oyemi replied that he didn't remember. He reiterated that there was no intention of violating the covenants and stated that his plan was to have a retirement community that will have single family homes but extended. It would be so that someone could live in an extended home to take care of a family member.

Commissioner Fikes asked if he physically received a copy of the covenants of the subdivision when he signed the documents in the title company's office. Mr. Oyemi replied that he could not say if he did, he will need to look through his documents.

There being no further comments or questions, the public hearing continued.

Seeing and hearing no one else wishing to comment, Chairman Carluccio closed the public hearing and opened discussion among the Committee.

**MOTION:** Commissioner Ruffner moved, seconded by Commissioner Morgan to approve the preliminary plat of Sunville Acres Addition No. 2.

Commissioner Ruffner stated that the staff report states that the plat was compliant with all the borough code and would meet the intent of the limited option zone. There was testimony related to covenants and that it would be in violation to subdivide the property into smaller lots without the homeowner's association involvement. He asked how they could resolve that and if it was something they needed to factor into their decision. Ms. Montague replied that her recommendation would be that they not factor that into their decision. The CCR's are a private agreement between the homeowners. They are meant to be enforced through a court of law so the Plat Committee wasn't meant to step into the position of that court of law and adjudicate that issue.

Chairman Carluccio understood the applicant had applied for a local option zone and asked what the status was on that. Mr. Best replied that there was already an approved local option zone for this area and for the lots that are in question. Chairman Carluccio asked for clarification of what a local option zone gives them. She asked why they would go through all this procedure to get local option zoning unless it was in their favor. Mr. Best replied that it was in their favor. Chairman Carluccio asked how this subject plat factor in. She asked if it met all the requirements of the local option zone. Mr. Best replied yes, there was no prohibition of subdivision. There is a lot size requirement for R-1 and this proposed subdivision is in compliance with the local option zone.

Chairman Carluccio also understood that there was discussion that the applicant would be potentially applying for a different zone for these proposed lots. Mr. Best replied that was a pending issue that has been put on hold. Chairman Carluccio asked how that would factor into this replat. She asked how many lots were required to try to change the local option zone that they already have. It sounds like the applicant wants to have something like a mother / daughter house even though he says he will not have multi-family housing. She asked how they are protected with a local option zone with someone coming in and requesting different zoning. Mr. Best replied that there was an application process for a rezone. Chairman Carluccio asked that someone could just do that. Mr. Best replied yes, just like when this was originally applied for to have a local option zone then someone could apply to have it rezoned or add or subtract lots. He stated that this was not the issue at this meeting. It is if this meets Chapter 20 of the subdivision regulations and the answer is yes it meets the subdivision regulations. Chairman Carluccio asked what their option was if this replat meets all the requirements. Mr. Best replied that their option was to approve the replat.

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Commissioner Morgan understood that he borough does not enforce covenants but they do recognize them. Ms. Montague replied that they recognize that they exist but don't interpret them or enforce them. They are a private agreement that the borough doesn't have any authority to do anything with. Commissioner Morgan asked if the borough could be held liable if they approved the plat and did not uphold or recognize the covenants if this was to proceed legally. Ms. Montague replied no. the borough could not be held liable.

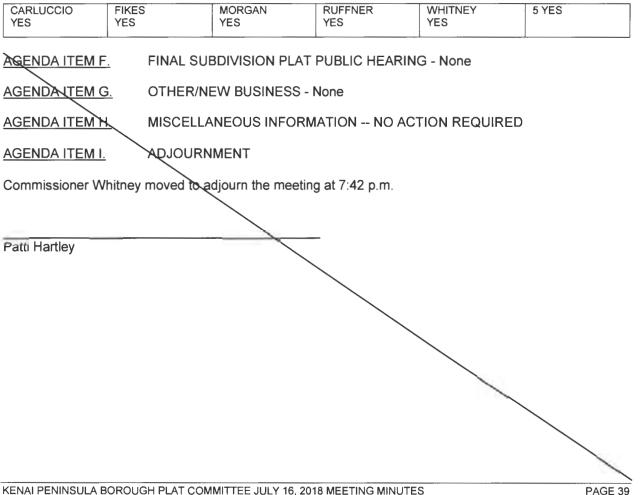
Commissioner Whitney asked if the next step for the homeowner's association would be to take legal action against the subdivider if they approved the plat. Ms. Montague replied that she was not going to venture what the homeowner's association could or couldn't do. It was within their purview what they do. Commissioner Whitney asked if that was their only option. Mr. Best replied that they could appeal to the full planning commission if they don't like the decision.

Commissioner Ruffner concurred with staff's recommendation that an exception to extending the cul-de-sac was not required based on the six findings.

Chairman Carluccio asked how long the applicant would have to formalize this replat. Mr. Best replied that preliminary approval was granted for two years. Chairman Carluccio asked if he could make changes or adjustment to this replat anytime from now until final plat. Mr. Best replied that any major redesign would be brought back to the plat committee.

There being no further comments or questions, Chairman Carluccio called for a roll call vote.

VOTE: The motion passed by unanimous consent.



## SUNVILLE ACRES ADDITION NO. 2 JULY 16, 2018 PLANNING COMMISSION PACKET INFORMATION

## E. SUBDIVISION PLAT PUBLIC HEARING

 Sunville Acres Addition No. 2 KPB File 2018-063 [McLane / Consolidated Development & Management, LLC] Location: Off Virginia Dr., Kalifornsky

#### AGENDA ITEM E. SUBDIVISION PLAT PUBLIC HEARINGS

 Sunville Acres Addition No. 2 KPB File 2018-063 [McLane / Consolidated Development & Management, LLC]

STAFF REPORT	Plat Committee Meeting: 7/16/18
Location: Proposed Use: Water/Sewer: Zoning:	off Virginia Drive, Kalifornsky area Residential, Mixed Use On-site R-1, Single-Family Residential
Assessing Use:	Vacant
Parent Parcel Number(s):	055-270-62, 055-270-63, 055-270-64, 055-270-65, 055-270-66

#### Supporting Information:

The proposed plat subdivides 5 lots into 10 lots ranging in size from 1 to 1.4 acres. A soils report is required, and an engineer will sign the plat. Lots 1A, 1B, 2A, and 2B front KPB maintained Virginia Drive. Lots 2B, 3A, 3B, 4A, 4B, 5A, and 5B front Deligero Court. This platting action is opening and extending Deligero Court by approximately 95 feet.

Per the submittal, one use within the proposed plat is mixed use. A petition to rezone the property to mixed use has been submitted. The proposed rezone is in the initial stages. Public hearings before the Planning Commission and Assembly have not yet been scheduled. Changing the zoning will require enactment of an ordinance. Staff cautions the owner that use within the subdivision must comply with the requirements of the local option zone in effect. KPB has the responsibility and authority to enforce the local option zone.

Notice of the proposed plat was mailed to the beneficial interest holder on June 6, 2018. The beneficial interest holder will be given 30 days from the date of the mailing of the notification to respond. They are given the opportunity to notify staff if their beneficial interest prohibits or restricts subdivision or requires their signature on the final plat. If no response is received within 30 days, staff will assume they have no requirements regarding the subdivision and it may be finalized.

The property is not within an advisory planning commission.

#### KPB 20.25.070 - Form and contents required.

<u>Platting staff comments</u>: Additional information is provided for the following portions of 20.25.070 or additional information, revision or corrections are required

- A. Within the Title Block
  - 1. Name of the subdivision which shall not be the same as an existing city, town, tract, or subdivision of land in the borough, of which a plat has been previously recorded, or so nearly the same as to mislead the public or cause confusion; *Platting Staff Comments:* **Staff recommends:** Change the name of the subdivision to carry forward the parent plat name, EX Diamond Willow Estates Subdivision Sunville Acres Addition No. 2
  - 2. Legal description, location, date, and total area in acres of the proposed subdivision; and
  - 3. Name and address of owner(s), as shown on the KPB records and the certificate to plat, and registered land surveyor;

#### Platting Staff Comments: Staff recommends:

- a. Include Lot 1 in the list of lots being replatted.
- b. Include the parent plat's entire name in the legal description: Diamond Willow Estates Subdivision Sunville Acres Addition.

Page 1 of 6

- D. A vicinity map, drawn to scale showing location of proposed subdivision, north arrow if different from plat orientation, township and range, section lines, roads, political boundaries, and prominent natural and manmade features, such as shorelines or streams; Platting Staff Comments: Staff recommends:
  - 1. Show the City of Kenai limits.
  - 2. Correct the limits for the City of Soldotna. For example, Section 36 is in the city. The boundary for the city limits in Section 32 follows certain lots in a subdivision.
  - 3. Correct the spelling of Kalifornsky.

KPB Department/Agency Review Comments

- KPB Addressing/Street Name Review:
  - No addresses have been assigned.
  - Existing street names are correct.
- KPB Code Compliance: No comments
- KPB Planner:
  - This proposed plat is located within the Diamond Willow Fairfield Local Option Zoning District. The zoning designation for this property is Single-Family Residential (R-1). The proposed plat meets the requirements of the R-1 District. The new parcels will continue to be subject to the land use regulations contained in KPB 21.44 generally, and specifically KPB 21.44.160. Staff comments Staff recommends that a note be added stating the subdivision is affected by Diamond Willow – Fairfield Local Option Zoning as shown per KPB 21.46.040. It may be beneficial to add the current building setbacks and cross reference the note with the building setback depicted on the face of the plat.
  - o No material site issues.
- State Department of Fish & Game: Not available when the staff report was prepared.
- State Parks: No comments.

#### KPB 20.30 Design Requirements

<u>Platting staff comments</u>: Additional information is provided for the following portions of 20.30 or additional information, revision or corrections are required

20.30.030. Proposed street layout-Requirements.

A. The streets provided on the plat must provide fee simple right-of-way dedications to the appropriate governmental entity. These dedications must provide for the continuation or appropriate projection of all streets in surrounding areas and provide reasonable means of ingress for surrounding acreage tracts. Adequate and safe access for emergency and service vehicle traffic shall be considered in street layout.

Platting Staff Comments: For clarity, **staff recommends** the right-of-way being dedicated by this platting action be labeled as such.

C. Preliminary plats fronting state maintained roads will be submitted by the planning department to the State of Alaska Department of Transportation and Public Facilities (DOT) for its review and comments.

State Department of Transportation Comments: Not in the State road system.

Platting Staff Comments: Staff recommends Plat Note 2 be removed.

#### 20.30.070. Lots on major streets-Access requirements.

Lots fronting on arterial streets with less than 200 feet of right-of-way as identified in the arterial road plan adopted by the borough or lots fronting on state maintained roads with less than 200 feet of right-of-way may be required to provide interior or frontage road access after review and recommendation by the Kenai Peninsula Borough Road Service Area staff and upon a finding by the planning commission that due to size, topography, physical characteristics, or heavy traffic flow, that direct access to the arterial or state maintained road may present a traffic hazard.

Page **2** of **6** 

#### KPB Roads Department Comments: No comments.

Platting Staff Comments: **Staff recommends** Plat Note 6 be revised: . . . certification and inclusion in the road maintenance program.

#### 20.30.100. Cul-de-sacs.

A. Streets designed to have one end permanently closed shall be no more than 1000 feet long. The closed end of the cul-de-sac shall have a suitable turnaround with a minimum radius of 50 feet to the property line. The turnaround shall be constructible to a 4 percent grade or less.

Platting Staff Comments: The proposed plat is opening and extending Deligero Court approximately 95 feet. Typically, staff would prepare an exception to KPB 20.30.100 for the Committee's consideration when a cul-de-sac is proposed to be opened and extended since all property owners purchase lots on a cul-de-sac with the assurance that per KPB Code it is a permanently closed street that serves a limited number of lots.

**Staff recommends** the Committee concur that an exception to extending the cul-de-sac is not required in this case based on:

- 1. The subdivider owns all lots fronting Deligero Court.
- 2. All lots in Diamond Willow Estates Subdivision Sunville Acres Addition are vacant at this time.
- 3. The cul-de-sac is proposed to be extended approximately 95 feet.
- 4. The plat is dedicating a new cul-de-sac bulb, or turnaround, so the redesigned right-of-way is still a cul-de-sac.
- 5. With the proposed subdivision, the number of lots served by Deligero Court is six. Lot 2B in the subject plat and Lot 6, KN 2015-69, front KPB maintained Virginia Drive.
- 6. None of the lots in the proposed subdivision are large enough to be further subdivided without a community water system or community septic system being installed.

The existing turnaround area for Deligero Court dedicated by KN 2015-69 could be used for snow storage.

#### 20.30.170. Blocks-Length requirements.

Blocks shall not be less than 330 feet or more than 1,320 feet in length. Along arterial streets and state maintained roads, block lengths shall not be less than 800 feet. Block lengths shall be measured from centerline intersections.

Platting Staff Comments: The Plat Committee granted an exception to block length for the parent plat. Since the proposed plat is served by a relatively short cul-de-sac, the proposed subdivision cannot address block length.

#### 20.30.190. Lots-Dimensions.

A. The size and shape of lots shall provide usable sites appropriate for the locality in which the subdivision is located and in conformance with the requirements of any zoning ordinance effective for the area in which the proposed subdivision is located. Generally, lots shall be square or rectangular. Lots shall be at least 60 feet wide on the building setback line. The minimum depth shall be no less than 100 feet, and the average depth shall be no greater than three times the average width.

Planting Starf Comments: An exception to lots being at least 60 feet wide on the building setback was requested for Lot 4A and Lot 4B with the submittal. Because this subdivision is affected by a Local Option Zoning, staff is recommending that building setback conform to the existing zoning regulations. This will make a 30 foot building setback on all lots. Lot 4A and 4B will be at least 60 feet in width on the building setback line. An exception to KPB 20.30.190 is not required.

B. The access portion of a flag lot shall not be less than 20 feet wide. A flag lot with the access portion less than 60 feet wide may be subject to a plat note indicating possible limitations on further subdivision based on access issues, development trends in the area, or topography. If the access portion is less than 60 feet wide, it may not exceed 150 feet in length. The access portion may not

Page 3 of 6

be used for permanent structures or wastewater disposal area, must meet the design standards of KPB 20.30.030(A) and 20.30.090 for access, and, if at least 60 feet wide, will be subject to the building setback restrictions of KPB 20.30.240.

Platting Staff Comments: Since the frontage on Deligero Court is less than 60 feet for Lot 4A and Lot 4B, these lots are essentially flag lots. **Staff recommends** the standard note be placed on the plat for the flag lot(s): No structures are permitted within the panhandle portion of the flag lot(s).

20.30.230. Lots-Double frontage prohibited when.

Double frontage lots with depths less than 250 feet will not be approved except where necessitated by topographic or other physical conditions, or to provide reverse frontage along arterial streets. Corner lots are not subject to the double frontage prohibition.

Platting Staff Comments: Lot 2B is slightly less than 250 feet deep, but it is not subject to the depth restriction since it is a corner lot.

20.30.240. Building setbacks.

- A. The commission shall require a building setback of at least 70 feet from the centerline of all fee simple arterial rights-of-way in a subdivision. A minimum 20-foot building setback shall be required for fee simple non-arterial rights-of-way in subdivisions located outside incorporated cities.
- B. The setback shall be graphically depicted and labeled on the lots; if such depiction will interfere with the legibility of the plat, a typical lot showing the depiction and label may be provided on the plat, clearly indicating that the typical setback applies to all lots created by the plat.
- C. The setback shall be noted on the plat in the following format: Building setback- A setback of <u>30</u> feet is required from all street right-of-ways unless a lesser standard is approved by resolution of the appropriate planning commission.

Platting Staff Comments: This subdivision is affected by Local Option Zoning. The current setbacks are 30 feet from the front yard, 20 feet from the rear yard line and 15 feet from the side lot lines. **Staff recommends** the building setback match the current zoning setback requirements of 30 feet from the right of way. Show and label the 30 foot building setback and correct plat note 4 to reference a 30 foot building setback. It may be beneficial to cross reference the building setback with the plat note that identifies the Local Option Zoning setbacks.

#### 20.30.280. Floodplain requirements.

Platting Staff Comments: River Center review issued a statement of no comments.

Per KPB GIS mapping, the plat is not affected by a mapped flood hazard zone. Questions regarding information required to comply with 20.30.280 and 21.06 can be directed to the KPB Floodplain Administrator.

#### 20.30.290. Anadromous habitat protection district.

Platting Staff Comments: Per KPB GIS mapping, the subdivision is not affected by the Anadromous Habitat Protection District.

River Center review issued a statement that this was not within the Habitat Protection District.

Per KPB GIS mapping, no anadromous streams flow through the subdivision.

#### KPB 20.60 – Final Plat

<u>Platting staff comments</u>: Additional information is provided for the following portions of 20.60 or additional information, revision or corrections are required:

20.60.020. Filing-Form and number of copies required.

Page 4 of 6

The subdivider shall file a standard number of prints as determined by the planning director. All prints shall be folded as required by KPB 20 25.030 except those to be recorded with the district recorder. *Platting Staff Comments:* **Staff recommends** one full-sized <u>paper</u> copy of the plat be submitted for final review prior to submittal of the mylar. Electronic submittals are not acceptable for final reviews.

#### 20.60.030. Certificate of borough finance department required.

Platting Staff Comments: All taxes levied on the property within the subdivision shall be paid prior to recordation of the final plat.

If approval is sought between January 1 and the tax due date, there shall be on deposit with the borough finance department an amount sufficient to pay the entire estimated real property tax for the current year. Prior to filing of the final plat, a certificate to this effect shall be provided by the borough finance director or his designee upon request by the planning director. Estimated tax payments shall be applied to the actual bill as of July 1 or such earlier date as the taxes due have been determined.

Taxes owed may include special assessments for utility or road assessment districts established by KPB ordinance.

#### Staff recommends compliance with 20.60.030.

20.60.120. Accuracy of measurements.

All linear measurements shall be shown to the nearest 1/10 foot, and angular measurements shall be at least to the nearest minute. All lot areas shall be shown to the nearest 10 square feet or to the nearest 1/1,000 of total acres. Meander lines, dry land areas and submerged land areas shall be shown in addition to total area when applicable. All boundary closures shall be to a minimum accuracy of 1:5,000. Boundary and lot closure computations must be submitted with the final plat.

Platting Staff Comments: KPB GIS will verify closure complies with 20.60.120. **Staff recommends** boundary and lot closure computations be provided with the paper final plat.

#### 20.60.130. Boundary of subdivision.

The boundary of the subdivision shall be designated by a wider border and shall not interfere with the legibility of figures or other data.

Platting Staff Comments: **Staff recommends** the former lot lines be labeled and shown with a unique line style, different then the adjoining lots. It is not required to show the former lot labels. The surveyor can remove these labels if they wish.

20.60.150. Utility easements.

- B. The following note shall be shown on the final plat:
  - No permanent structure shall be constructed or placed within <u>a utility</u> easement which would interfere with the ability of a utility to use the easement.

Platting Staff Comments: Staff recommends compliance with 20.60.150.

#### 20.60.160. Easements.

A. The plat shall clearly show the location, width, and use of all easements. The easements must be clearly labeled and identified and, if already of record, the recorded reference given. If public easements are being granted by the plat, they shall be properly set out in the owner's certification of dedication.

Platting Staff Comments: Per the Certificate to Plat, the subdivision is affected by a general easement of record granted to Homer Electric Association recorded in Book 100 Page 360. The document recorded in Book 100 Page 360 grants multiple 10-foot utility easements, which are shown and labeled on sketches included with the easement document. This is not a general easement with an unknown, or blanket, location. Based on the sketches, the 10-foot easements do not appear to affect the subject plat.

Page 5 of 6

**Starf recommends** the surveyor confirm whether the 10-foot utility easements per Book 100 Page 360 KRD affect the proposed subdivision. If **not staff recommends** the surveyor work with the title company to remove the easement document from the final Certificate to Plat.

20.60.190. Certificates, statements, and signatures required.

Platting Staff Comments: **Staff recommends** the Certificate of Ownership and Dedication be revised so the authorized signatory signs the plat on behalf of the LLC.

20.60.200. Survey and monumentation.

Platting Staff Comments: Staff recommends compliance with 20.60.200.

SUBJECT TO EXCEPTION(S) GRANTED, STAFF RECOMMENDS:

- GRANT APPROVAL OF THE PRELIMINARY PLAT SUBJECT TO ANY ABOVE RECOMMENDATIONS, AND
- COMPLIANCE WITH KPB 20.25.070 (FORM AND CONTENTS), KPB 20.25.080 (PETITION REQUIRED), KPB 20.30 (DESIGN REQUIREMENTS); AND KPB 20.40 (WASTEWATER DISPOSAL), AND
- COMPLIANCE WITH KPB 20.60 TO ENSURE ADMINISTRATIVE APPROVAL OF THE FINAL PLAT.

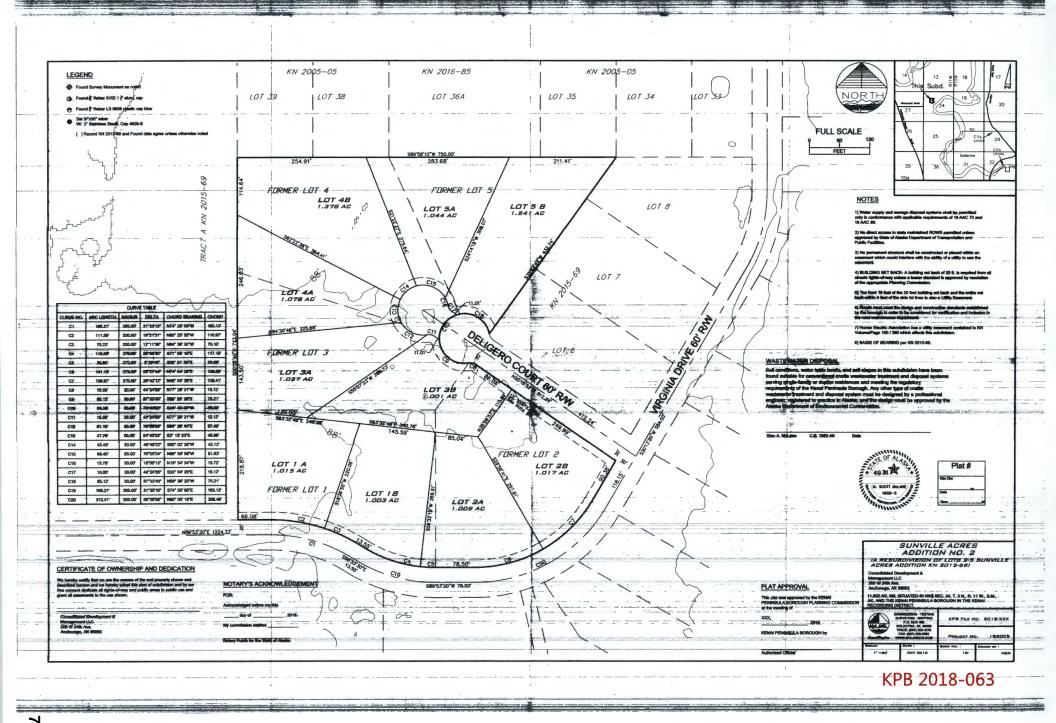
NOTE: 20.25.120. - REVIEW AND APPEAL.

A PARTY OF RECORD MAY REQUEST THAT A DECISION OF THE PLAT COMMITTEE BE REVIEWED BY THE PLANNING COMMISSION BY FILING A WRITTEN REQUEST WITHIN 10 DAYS OF NOTIFICATION OF THE DECISION IN ACCORDANCE WITH KPB 2.40.080.

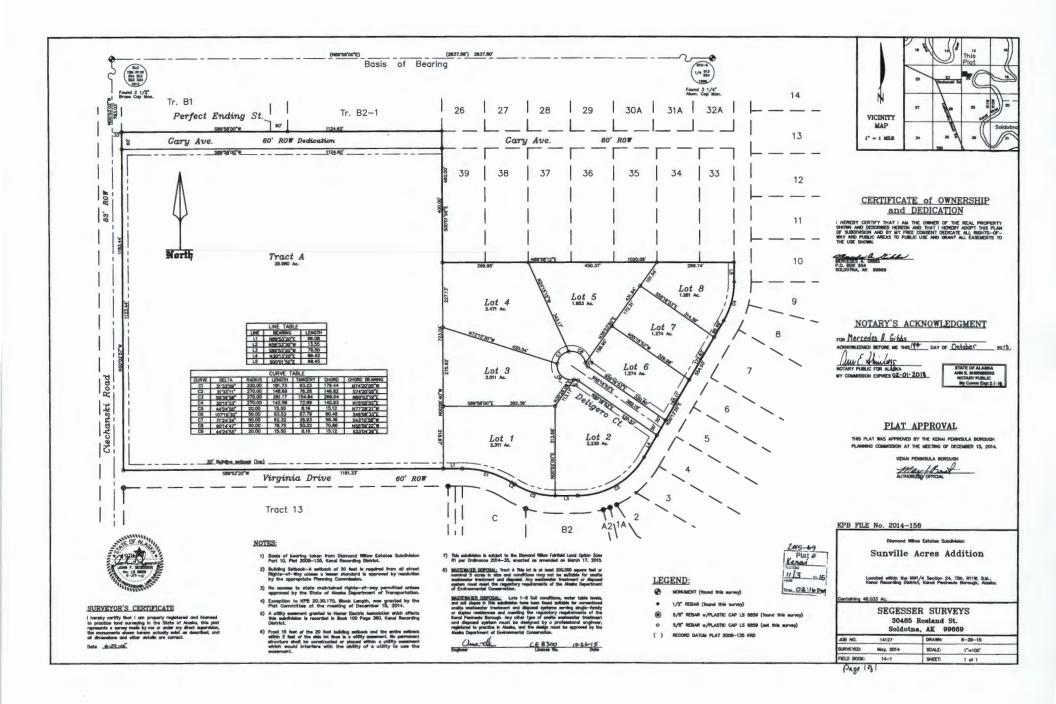
A DECISION OF THE PLANNING COMMISSION MAY BE APPEALED TO THE HEARING OFFICER BY A PARTY OF RECORD WITHIN 15 DAYS OF THE DATE OF NOTICE OF DECISION IN ACCORDANCE WITH KPB 21.20.250.

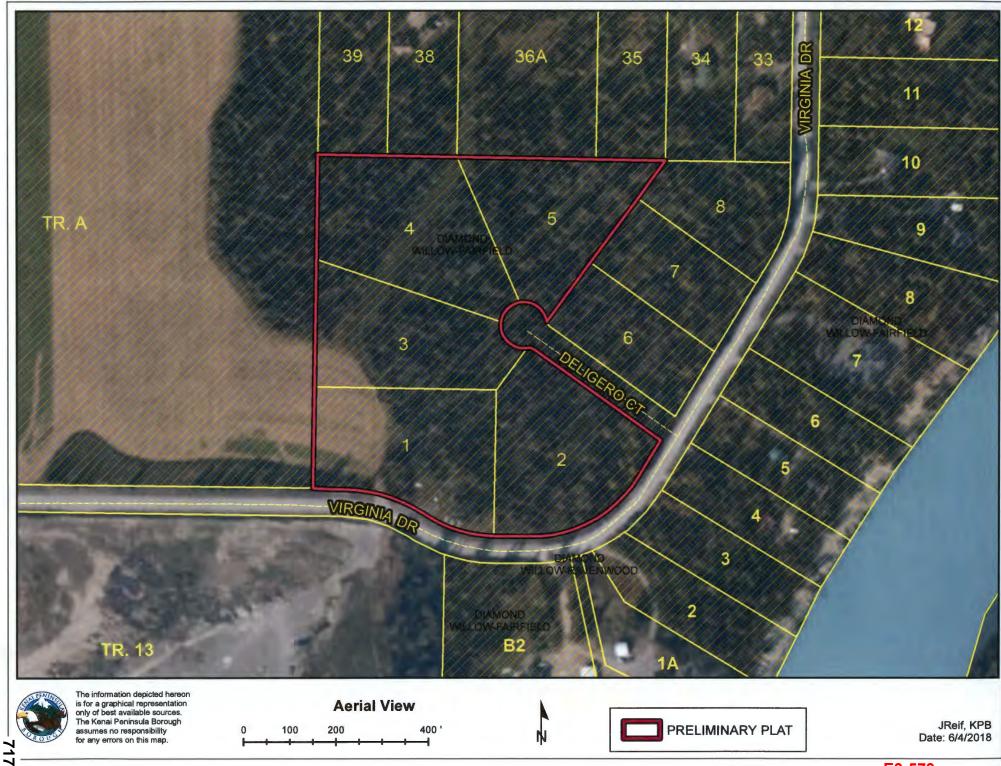
END OF STAFF REPORT

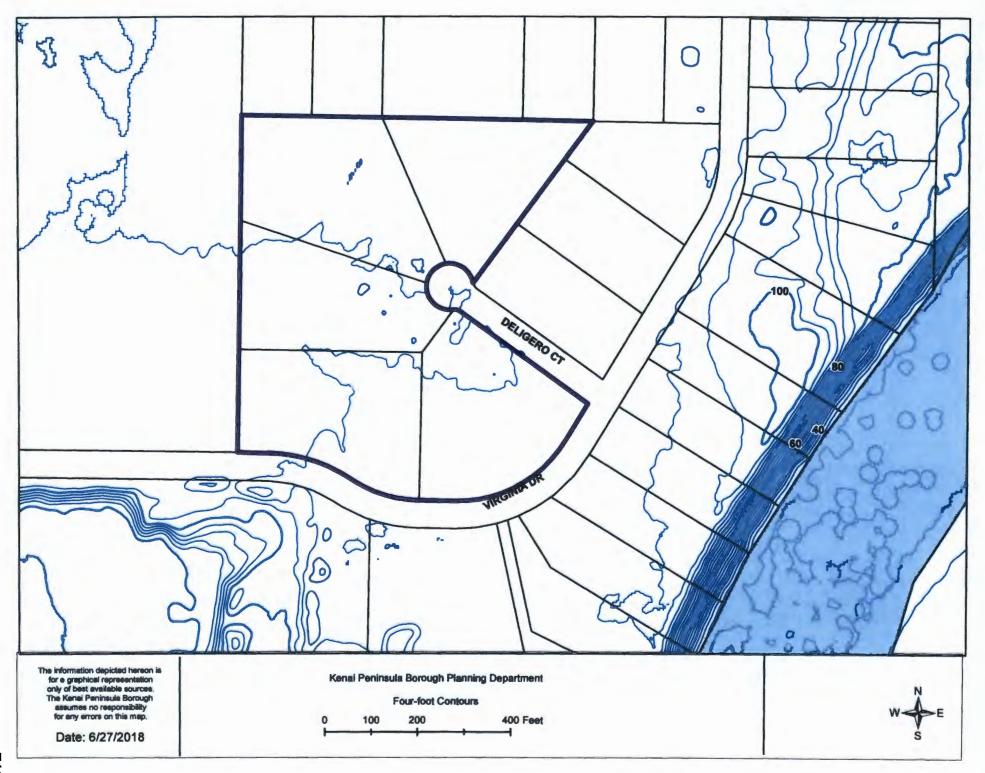
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## Letter to the Kenai Peninsula Borough Planning Department (Reference KPB File: 2018-063)

#### July 6, 2018

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To: The Kenai Peninsula Borough Plat Committee and/or Planning Commission From: Travis G. Penrod, 36770 Virginia Drive, Kenai, AK.

I am ardently against subdividing the 5 lots in Sunville Acres into 10 lots as proposed KPB File 2018-063. These lots are in Diamond Willow Estates and violate the established covenants. The Diamond Willow Estates Covenants state in Paragraph 1, "No lot shall be subdivided." This statement in our covenants is without condition. The lots proposed to be subdivided were created by the previous owner, under the title of Sunville Acres, which "is" a part of Diamond Willow Estates Subdivision. The homeowners in our addition will not tolerate further subdivision of these lots.

The current owner, Ray Oyemi, not only is attempting to violate Diamond Willow Estates Covenants by subdividing these lots, he also has a proposal to remove the R-1 LOZ restriction from these properties. I have spoken directly with Ray Oyemi. In our conversation he stated that he plans to make these lots Multi-family homes and /or facilities. This also is in direct violation of the Covenants, which states in Paragraph 1, "No building shall be erected, altered, placed or permitted to remain on any lot except one detached single family dwelling".

Ray Oyemi, knowingly and willingly purchased property in Diamond Willow Estates, which has established covenants and is in the Diamond Willow/Fairfield R-1 LOZ. He must be held accountable to develop this property under the restrictions to which he purchased. The property owners of Diamond Willow Estates will not tolerate anything less.

Sincerely

Travis G. Penrod Diamond Willow Estates Property Owner

Attachment 1: Diamond Willow Estates Covenants Attachment 2: KPB File 2018-063 Notice of Subdivision/Replat

BUILDING AND DER 1 a loanda 1.1.8 1.1

The Up Rdy, MB MG and Cor't Lot 3 See. 1 258, 2110 S.R. AL. Containing 152.4 Ac. 5 Located in the Renai Penineula Rescupt.

PREMERIE: The purpose of these covenants is to assure that property owners will be fully protected from poor quality summersings and that they will be assured of placement, canitary and each sites to eract their boses. These covenants will be in effect from date of reacts on the DIMOND WILLOW REFERS.

1. LAND USE AND DUTLINDIG 2228

He lot shall be used encount for residential purposes encoust Srmet A and Lots 7, 8, 1 of Block h and Lots 1, 12 of Block 5. He building shall be erected, altered, placed or permitted to remain on any lot ether thus enc detached single family dwelling not to encoul two and encould story in height and a private garage for not more than two eaco. He lot shall be subdivided.

#### 2. BUILDING LOCATION

No building shall be located as any lot measur to the front lot line or measur to the side street line has the minimum building obt-back lines shown on the recorded plat. In any event no building shall be located an any side street line. No building shall be located measur than 30 fact to any side street line, among that new side pint shall be required for a gauge or other paralited accessory building located 5 fact or more from the minimum building set-back line. We desling shall be located on any interior lot measur than 15 fact to the rear lot line.

#### 3. BARESENS

Economic for installation and maintenance of utilities and durinage facilities are reserved as show on recorded glat.

L. BUIGASCHER

to northous or offensive activity shall be estrial on uses any lot, nor ball any hing in fine values which may be or may becaus at anothence a minence to the approximated.

S. TEPORAET SERECTORE

No structure of temperary character, trailer, becoment, text, doot, garage, bars or other outbuilding shall be used on any lot at any time as a residence either temperary or permanently.

6. GEREAL PROVISIONS

These covenants are to run with the land and shall be binding on all parties and persons claiming under them for a period of twenty-five years 5

from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of 10 yes = unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part.

BOUR

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7. ENFORCEMENT

Enforcement shall be by proceedings at law or equity against any person or persons violating or attempting to violate any covenant either to restrain violation or recover damages.

S. SEVERABULITY

Invalidation of any of these covenants by judgment or court order shall in no wise affect any of the other provisions, which shall remain in full force and effect.

9. 83085

No sign of any kind shall be displayed to the public view on any lot except one professional sign has or more than one square foot, one sign of no more than 5 square feet advertising the property for sale or rest or signs used by a builder to advertise the property during the construction and sales period.

10. PROTECTIVE SCREENING AND SELECTIVE CLEARING OF LOTS

Clearing on all lots shall be selective and not cover more than fifty (50%) percent of the gross lot area, with the remaining area left in it natural state.

11. LIVESTOCK AND POWLERT

No animals, livestock or poultry of any kind shall be mised, brod or kept on any lot, encept that dogs, onto or other household pets may be kept, provided that they are not kept, bred or minimized for any connercial purposes. Not more than one dog may be kept on any one lot.

12. GARBAGE AND REFUSE DISPOSAL

No lot shall be used or maintained as a dumping round for rubbish. Trash, garbage or other waste shall not be hept except in sumilary containers. All equipment for the storage or disposel of such material shall be kept in a close and canitary condition.

13. WATER SUPPLY

Individual water supply system and source disposal system on each lot shall be installed and maintained in compliance with the standards and requirements of the State of Alaska.

DATED this \_\_\_\_ day of March, 1975.

State of Alaska

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= 1 155 MI S-50

Kensi Recording District, Third Judicial Division

On Aug. 7, 1975 before me, undersigned, a Hotarv Public is and for the State of Alaska, personally appeared William E. Gibbs, known to me to be the person of William E. Gibbs owner of property referred to in the foregoing instrument and who executed same instrument on behalf of William E. Gibbs.

Seal

Hotary Souchier film 100 7 3 0. 111/75

Hy commission expires



#### Planning Department

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

Charlie Pierce Borough Mayor

#### KENAI PENINSULA BOROUGH PLANNING COMMISSION NOTICE OF SUBDIVISION/REPLAT

Public notice is hereby given that a preliminary plat has been received proposing to subdivide or replat property. You are being sent this notice because you are within 600 feet of the proposed subdivision, or a beneficial interest holder, and are invited to comment. If you are an owner adjacent to a half right-of-way being dedicated, please be aware that you may be required to match the dedication if your property is subdivided in the future.

Proposed plat under consideration is described as follows:

#### Sunville Acres Addition No 2

See attached vicinity map & plat

KPB File: 2018-063 [McLane Consulting Group]/[Consolidated Development & Management, LLC] Location: in the Kalifornsky area

This plat will subdivide 5 lots into 10 lots.

The location of the proposed plat is provided on the attached map. A preliminary plat showing the proposed subdivision may be viewed at the Planning Department. Subdivision reviews are conducted in accordance with KPB Subdivision Ordinance. A copy of the Ordinance is available from the Planning Department. *Comments should be guided by the requirements of that Ordinance*.

Public hearing will be held by the Kenai Peninsula Borough Plat Committee or Planning Commission on **Monday, July 16, 2018**, commencing at **6:30 pm**, or as soon thereafter as business permits. The meeting is being held in the Assembly Chambers of the Kenai Peninsula Borough George A. Navarre Administration Building, 144 N. Binkley Street, Soldotna, Alaska.

Anyone wishing to testify may come to the above meeting to give testimony or may submit a written statement to the attention of Jordan Relf, Kenai Peninsula Borough Planning Department - 144 N. Binkley Street - Soldotna, Alaska 99669. The Planning Department recommends that written comments be received by Friday, July 13, 2018. [Written comments may also be sent by Fax to 907-714-2378].

For additional information contact Jordan Reif or Maria Sweppy, Planning Department, 907-714-2200 (1-800-478-4441 toll free within Kenai Peninsula Borough).

Mailed 6/26/2018

		RECEIVED
		JUN 0 4 2018
Kenai Peninsula E	Borough Planning Department	KENAI PENINSULA BOROUGH
PI	at Submittal Form	PLANNING DEPARTMENT
Firm Name:	Address:	
McLane Consulting Inc.	P.O. Box 468	
	Soldotna, AK 99669	
Plat Name: SUNVILLE ACRES ADDITION NO.	2	
Preliminary Plat Revised Prelim	ninary Plat	
Minor F	Revisions Major Revisions	
Final Plat - Preliminary Approval Granted	(date)	
Revisions were made following Plat	Committee's preliminary approval.	
Plat Submittal Fee in the Amount of \$200	_ is attached.	
Plat Recording Fee in the Amount of	is attached.	
Final Plat		
	use the Abbreviated Plat Submittal Form.)	
General Location: Ciechanski Road		
		al
Agricultural _/ Other	r: Mixed Use	
City minutes attached (Plat location is in city limits		
CURRENT ZONING WHERE APPLICABLE: R-1	Residential	
SEWER: On site City	Community	
WATER: On site City	Community	
EXCEPTIONS REQUIRED AND REQUESTED:		
1. KBP 20.30.190 Min. Frontage for Lot 4A & Lot 4		
2		
3		
4		
Comments: Lot 4A has 59.00' of frontage along 20' building	set back line & Lat 4B bas 57 78'	
LOT 4A 1188 59.00 OF HOMAY along 20 building		
10	•	
Signature of Owner(s): Kaythe	III (	
7 (		
Revised 110714		

 From:
 Hartley. Patricia on behalf of Planning Dept.

 To:
 Reif. Jordan

 Subject:
 FW: Attention: Jordan Reif Re: Sunville Acres Addition No. 2 KPB File 2018-063

 Date:
 Friday, July 13, 2018 7:57:46 AM

 Attachments:
 image001.ong

**Patti Hartley** Administrative Assistant Ph: (907) 714-2215 Fx: (907) 714-2378

KENAI PENINSULA BOROUGH 144 North Binkley Street Soldotna, Alaska 99669

From: Roger Koppes [mailto:peitree@yahoo.com]
Sent: Thursday, July 12, 2018 9:40 PM
To: Planning Dept, <planning@kpb.us>
Subject: Attention: Jordan Reif Re: Sunville Acres Addition No. 2 KPB File 2018-063

Attn: Jordan Reif KPB Planning Dept.

Subject: Sunville Acres Addition No. 2 KPB File 2018-063 Mr. Reif:

My wife and I reside in this affected neighborhood. We are writing you to express our opposition to this proposed re-plat. Diamond Willow Estates has established covenants that forbid the further subdivision of lots. A copy of these covenants are provided to every buyer in the development. I respectfully request that the Kenai Peninsula Borough recognize and respect the wishes of land owners in this area and deny the application. As members of this planned community development and HOA, we have established our desires clearly. We desire to protect our property values as well as retain the R1 zoning that we have within this area. Thank you for consideration.

Best regards, Roger A. Koppes



Clayton H. Walker Jr. President

9 July 2018

Planning Department Kenai Peninsula Borough 144 N. Binkley Street Soldotna, Alaska

In Re: Sunville Acres Addition No. 2 KPB File 2018-063

Dear:

This firm represents the Diamond Willow Homeowners Association. The association owns the beneficial interest in the Building and Use Restrictions for Diamond Willow Estates, which consists of the following property:

The West half of the northwest quarter and Government Lot 3, section 24 Township 5 north, Range 11 West 5. Meridian, Alaska. Containing 152 acres located in the Kenai Peninsula Borough.

#### The Alaska Statutes Prohibits Subdivision of Lot owners from Subdividing Lots.

Alaska only authorizes community associations to subdivide lots within their boundaries. A.S. 34.08.210. The lot owner seeking subdivision of a lot must apply to the association for that process. A.S. 34.08.210(a). The association can only grant the subdivision if the right was expressly reserved in the governing documents. A.S. 34.08.210. The applicant has no standing to pursue the subdivision application before the board and it must be denied.

The amendment to the declaration must also be executed by the owner of the unit to be subdivided. The voting rights previously allocated to the prior units will then be reallocated to the new units in any reasonable manner prescribed by the owner of the subdivided units.

The Diamond Willow Homeowners Association declaration can only be amended by a 67% vote. A.S. 34.08.250. "A declaration may not specify a smaller number unless all of the units are restricted exclusively to nonresidential use." This has always been a single family home community. Accordingly, the restriction limiting subdivision cannot be changed with a lesser vote. Even if the lot owner were to properly apply for permission to subdivide, the board would be prohibited from approving the plan.

#### **Diamond Willow Homeowners Association Specifically Prohibits Subdivision**

The restrictions appear in the public record at Book 86, pages 702 and 703 of the Kenai Recording District. The restrictions expressly prohibit any lot from being subdivided in the project. The association opposes the subdivision of the lots. Subdivision would alter the community design after units have been sold to owners in reliance of the original design.

Diamond Willow Homeowners Association respectfully asks the Platting Board to find that the movant has failed to meet its burden to establish standing to pursue the platting action – and deny the motion. If you fail to do so the association shall pursue legal recourse including recovery of its cost and fees for proceeding.

Sincert ayton Walker

July 9, 2018



Reference: Sunville Acres Addition No. 2 KPB File 2018-063

ATTN: Jordan Reif KPB Planning Dept 144 N Binkley Street Soldotna , AK 99669

I own property nearby this proposed re-plat and am in opposition to this action being passed. Our neighborhood has always been single family homes only, and each property owner had to sign off on the established Diamond Willow Estates Covenants when purchasing their properties. These Covenants, while not enforced by the Borough, should be recognized by them when making these decisions. The re-plat suggested will cause our Homeowner's Association to enter litigation against the property owner requesting to break Covenants. It will also give the non-compliant property owner a monopoly over changing the Association Covenants and neighborhood as a whole. This re-plat is the first step in eliminating our Local Option R1 Zoning, and opening the property for multipurpose commercial use. This will undoubtedly effect our property values, and limit our resale ability in the future.

The original plat for this parcel fits well into what our neighborhood is and was meant to be. This is the reason we purchased this property. On our personal property alone we have had many wildlife encounters during the last year. Several moose and caribou have taken refuge in these woods, a baby moose was born this summer in the woods next to the proposed re-plat. Several migratory birds including sand hill cranes as well as eagles nest and feed in these woods. The increase of construction, noise and people will greatly impact the wildlife in a negative way. Please consider the long-term effects of changing this plat and respectfully deny this application.

Sincerely,

Nate and Julie Grinnell

July 12, 2018 Reference: Sunville Perer Addition No. Z KPB File 2018-063 Alten: Jordan Reif KPB Planning Dept. RECEIVED 144 N. Buildey St. JUL 1 2 2018 Soldotna, AK 99669 KENAI PENINSULA BOROUGH PLANNING DEPARTMENT Sear Alenning Commission, My wife and have resided at 36680 Virginia Dr., Ferraith since 8/2006. We request that the Sunville acres, addition # 2 of KPB file 2018-063 be denied for the following reasons: 1) Increased traffic on a dist road making dust, pedestrien sefety and overall safety an increased iswe and concern. 2) It's not consistent with the rest of Deamond Willow being residential. It violater covenant No. 1; (See attached) 3) Not needed for reidents benefit. Could violate covenant No. 4 (attal). 4) Could reduce property value & make sale in the future difficialt. 5) Would create an eye-sore by removing over 50% of gross lot area not being in orgenal natural state. See lovenant # 10 (attch). Would you howerthy want this to move in basecally across from your home - as it is in our case. 7) It would have immediate impact and could create huge unforecen problems in the future. residents might contribute and deny the application. yours truly 36.680 Virginia De 055-270-06 Dia Willow Estates Sale Pass 4, Fot 6, mar 1

#### BUILDING AND USE RESTRICTIONS FOR DIAMOND WILLOW ESTATES

### BOOK 86 PG 703 KENAI RECORDING DANK ECENTED

PLANNING DE

### THE W ½ NW ¼, NE ¼ NW ¼ AND GOV'T LOT 3 SEC Z4 KEN PENNING 152.& AC. ± LOCATED IN THE KENAI PENINSULA BOROUGH.

PREAMBLE: The purpose of these covenants is to assure that property owners will fully protected from poor quality surroundings and that they will be assured of pleasant. sanitary and safe sites to erect their homes. These covenants will be in effect from date of record on the DIAMOND WILLOW ESTATES.

#### 1. LAND USE AND BUILDING TYPE

No lot shall be used except for residential purposes except Tract A and Lots 7, 8, 1 of Block 4, and Lots 1, 12 of Block 5. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single family dwelling not to exceed two and one-half story in height and a private garage for not more than two cars. No lot shall be subdivided.

#### 2. BUILDING LOCATION

No building shall be located on any lot nearer to the front lot line or nearer to the side street line than the minimum building set-back lines shown on the recorded plat. In any event no building shall be located on any lot nearer than 20 feet to the front lot line or nearer than 10 feet to any side street line. No building shall be located nearer than 10 feet to an interior lot line, except that now side yard shall be required for a garage or other permitted accessory building located 5 feet or more from the minimum building set-back line. No dwelling shall be located on any interior lot nearer than 15 feet to the rear lot line.

#### **3. EASEMENTS**

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on recorded plat.

#### 4. NUISANCES

No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

#### 5. TEMPORARY STRUCTURES

No structure of temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence either temporary or permanently.

#### 6. GENERAL PROVISIONS

These covenants are to run with the land and shall be binding on all parties and persons claiming under them for a period of twenty-five years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of 10 years unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part.

#### 7. ENFORCEMENT

Enforcement shall be by proceedings at law or equity against any person or persons violating or attempting to violate any covenant either to restrain violation or recover damages.

#### 8. SEVERABILITY

Invalidation of any of these covenants by judgment or court order shall in no wise affect any of the other provisions, which shall remain in full force and effect.

#### 9. SIGNS

No sign of any kind shall be displayed to the public view on any lot except one professional sign not of more than one square foot, one sign of no more than 5 square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

10. PROTECTIVE SCREENING AND SELECTIVE CLEARING OF LOTS Clearing on all lots shall be selective and not cover more than fifty (50%) percent of the gross lot area, with the remaining area left in its natural state.

#### **11. LIVESTOCK AND POULTRY**

No animals, livestock or poultry of any kind shall be raised, bred or dept on any lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes. Not more than one dog may be kept on any one lot.

#### 12. GARBAGE AND REFUSE DISPOSAL

No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

#### **13. WATER SUPPLY**

Individual water supply system and sewage disposal system on each lot shall be installed and maintained in compliance with the standards and requirements of the State of Alaska.

Dated this \_\_\_\_\_day of March, 1975. Signed William E. Gibbs Notarized August 7th, 1975

#### Reif, Jordan

From: Sent: To: Subject: Jeff Webb <jeff\_99669@hotmail.com> Wednesday, July 11, 2018 1:09 PM Reif, Jordan Sunville Acres Addition No. 2

July 11, 2018

Reference: Sunville Acres Addition No. 2 KPB File 2018-063

ATTN: Jordan Reif KPB Planning Dept 144 N Binkley Street Soldotna, AK 99669

My wife and I own property in Diamond Willow Estates, and live near this proposed re-plat. This email is to inform you my wife and I oppose this proposed action.

Our neighborhood covenants state that lots CAN NOT subdivided, and must be used for single family homes only. Each property owner had to sign off on the established Diamond Willow Estates Covenants when purchasing their properties.

The re-plat suggested will cause our Homeowner's Association to enter litigation against the property owner requesting to break the covenants. It will also give the non-compliant property owner a monopoly over changing the Association Covenants and neighborhood as a whole. This re-plat is the first step in eliminating our Local Option R1 Zoning, and opening the property for multi-purpose commercial use.

If my wife and I knew that someone was going to break the covenants in order to build efficiency apartments or a gravel pit across the street, we wouldn't have purchased this home. One of the selling points was the covenants, which we feel should protect us from these proposed actions.

Thank you for your consideration.

Jeff and Jenny Webb 36750 Virginia Drive (907)2525-1677

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Tim & Elaine Agosti 36894 Virginia Drive Kenai, AK 99611 Phone: 907-283-7055

July 11, 2018

Jordan Reif Platting Kenai Peninsula Borough Planning Dept 144 North Binkley Street Soldotna, AK 99669

Reference : Sunville Acres Addition No. 2 KPB File 2018-063

We are homeowners at 36894 Virginia Dr (lots 14 and 15, Diamond Willow Estates), down the street from this proposed re-subdividing and are <u>opposed</u> to this action. We have lived here for over twenty years and raised five boys in this neighborhood. We chose this area because of its rural, family friendly character and that it was not a "trashy" subdivision. The single family homes in this subdivision were a key decision factor.

A new developer now wants to change what was already previously subdivided (a violation of our subdivision covenants) to pack in more lots. This is also a violation of state statute if approval is not secured from the community association, specifically Diamond Willow Home Owners Association, that these lots are a part of.

This action is a first step by this developer in an attempt to weaken our Diamond Willow HOA and change our R1 local option zoning.

We respectfully request that the platting committee <u>reject</u> this proposed re-subdividing action.

Thank you.

Respectfully Claine Majorit Elaine Agosti

From	Planning Dept.
To:	Reif, Jordan
Subject:	FW: Reference: Sunville Acres Addition No. 2-KPB File 2018-063
Date:	Tuesday, July 10, 2018 4:04:30 PM

From: Donna Shirnberg [mailto:sdrshirnberg@hotmail.com] Sent: Tuesday, July 10, 2018 4:02 PM To: Planning Dept, Subject: Reference: Sunville Acres Addition No. 2-KPB File 2018-063

July 10, 2018

Reference: Sunville Acres Addition No. 2 KPB File 2018-063

ATTN: Jordan Reif

KPB Planning Department 144 N. Binkley Street Soldotna, AK 99669

To Whom It May Concern,

My husband and I own property nearby this proposed re-plat and we are in opposition to this action being passed. We chose this neighborhood because of the size of the lots allowing space and room between our neighbors, and because of the covenants that would protect our chosen living environment, by stating no lot shall be subdivided. Our neighborhood has always been single family homes only, and each property owner has received and signed off on the established Diamond Willow Estates Covenants when purchasing their property (ies). We take exception to a purchaser, agreeing and signing the covenants at the time of purchase and then trying to re-plat the lots to maximize profits.

The Covenants, while not enforced by the Borough, should be recognized when making decisions that directly affect the members of the Homeowner's Association under the Covenants. As individual homeowners within the homeowners association, we have been active in ensuring we maintain the spirit of the covenants, along with protecting our way of life, the safety and security of those that reside in the Diamond Willow Estates.

The re-plat suggested will cause our Homeowner's Association to enter into litigation against the property owner requesting to break the Covenants. It will also give the non-compliant

property owner a monopoly and control over making changes within the Diamond Willow Estates Covenants. This re-plat is the first step in eliminating our Local Option R1 Zoning, and open the property for multi-purpose commercial use. This will undoubtedly effect our property values, and limit our resale ability in the future. Our families have resided on the Kenai Peninsula since the late 60's early 70's and we have witnessed the changes within neighborhoods that are opened for multi-purpose commercial use.

Please consider the long-term effects of changing from the original plat and respectfully deny this application. We invite you to consider the impact this would have on the current homeowners, and their families our chosen way of life and the potential loss of resale value. Please put yourself in the same situation, you purchased your land, home in a location where there is a protective covenants which states no lot shall be subdivided, and a new lot owner wishes to change plots to maximize their profits without consideration of the potential decrease in property value with the proposed use of the smaller lots.

In closing, please deny the request to re-plot.

Sincerely,

•,

Donna and Scott Shirnberg 46680 Gary Avenue Kenai, AK 99611 Reference: Sunville Acres Addition No. 2 KPB File 2018-063

ATTN: Jordan Reif KPB Planning Dept 144 N Binkley Street Soldotna, AK 99669

#### Dear Sir,

I own property nearby this proposed re-plat and am in opposition to this action being passed. Our neighborhood has always been single family homes only, and each property owner had to sign off on the established Diamond Willow Estates Covenants when purchasing their properties. These Covenants, while not enforced by the Borough, should be recognized by them when making these decisions. The re-plat suggested will cause our Homeowner's Association to enter litigation against the property owner requesting to break Covenants. It will also give the non-compliant property owner a monopoly over changing the Association Covenants and neighborhood as a whole. This re-plat is the first step in eliminating our Local Option R1 Zoning, and opening the property for multipurpose commercial use. This will undoubtedly effect our property values, and limit our resale ability in the future. The original plat for this parcel fits well into what our neighborhood is and was meant to be. Please consider the long-term effects of changing this plat and respectfully deny this application.



Mr. Harry Keysaw 36903 Virginia Dr. Kenai, AK 99611-5922

Sincerely.



Reference: Sunville Acres Addition No. 2 KPB File 2018-063

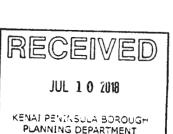
ATTN: Jordan Reif KPB Planning Dept 144 N Binkley Street Soldotna , AK 99669

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Sincerely,

- rendy & mayady Lim marchy





From: Dennis Gease <dennisgease@gmail.com> Subject:

Date: July 9, 2018 12:22:53 PM AKDT

Reference : Sunville Acres Addition No. 2 KPB File 2018-063

ATTN: Jordan Reif KPB Planning Dept 144 N Binkley Street Solnotna , Ak. 99669



KENAI PENINSULA BOROUGH PLANNING DEPARTMENT

Dear Sir ,

. .

Below are my comments concerning above notice of subdivision/replat of Sunville Acres addition # 2 ...

I own lot # 7 directly across Virginia drive from this parcel of land in consideration of this replat .. I have lived here for the last 16 years .. This land was originally subdivided into 5 lots approximately 2 acre parcels which fit into our small area very well and was accepted by surrounding neighbors unanimously

I am against any means of attempting to now divide these lots into smaller lots to appease a new developer in this area .. It will ultimately drive down the value of our homes and lower the property value we have accumulated over the past 20 years ..

It also violates the Diamond Willow Estates Covenants that I accepted when purchasing my lot back in 2000 ... Under # 1 ( Land Use and Building Type ), NO LOT SHALL BE SUBDIVIDED ...

7-9-2018

Thank you for your consideration,



738

#### Reif, Jordan

From:	Dennis Gease <dennisgease@gmail.com></dennisgease@gmail.com>
Sent:	Monday, July 09, 2018 12:43 PM
То:	Reif, Jordan
Subject:	Re: kpb file 2018-063

On Jul 9, 2018, at 12:25 PM, Dennis Gease wrote:

> Reference : Sunville Acres Addition No. 2

- > KPB File 2018-063
- >

> ATTN: Jordan Reif

- > KPB Planning Dept
- > 144 N Binkley Street
- > Solnotna , Ak. 99669
- >
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> Dear Sir ,
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>

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>

> It also violates the Diamond Willow Estates Covenants that I accepted when purchasing my lot back in 2000 ...Under # 1 (Land Use and Building Type ), NO LOT SHALL BE SUBDIVIDED ...

>

> Thank you for your consideration,

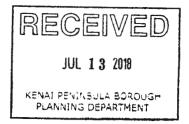
>

- > Yours truly,
- > Dennis Gease
- >
- >
- >
- >

739

#### Reference: Sunville Acres Addition No. 2 KPB File 2018-063

ATTN: Jordan Reif KPB Planning Dept 144 N Binkley Street Soldotna , AK 99669



I own property nearby this proposed re-plat and am in opposition to this action being passed. Our neighborhood has always been single family homes only, and each property owner had to sign off on the established Diamond Willow Estates Covenants when purchasing their properties. These Covenants, while not enforced by the Borough, should be recognized by them when making these decisions. The re-plat suggested will cause our Homeowner's Association to enter litigation against the property owner requesting to break Covenants. It will also give the non-compliant property owner a monopoly over changing the Association Covenants and neighborhood as a whole. This re-plat is the first step in eliminating our Local Option R1 Zoning, and opening the property for multipurpose commercial use. This will undoubtedly effect our property values, and limit our resale ability in the future. The original plat for this parcel fits well into what our neighborhood is and was meant to be. Please consider the long-term effects of changing this plat and respectfully deny this application.

Sincerely,

Greg Pokryfki Property owner & builder of new Home on Gory Ave, reif@ kpb. us.

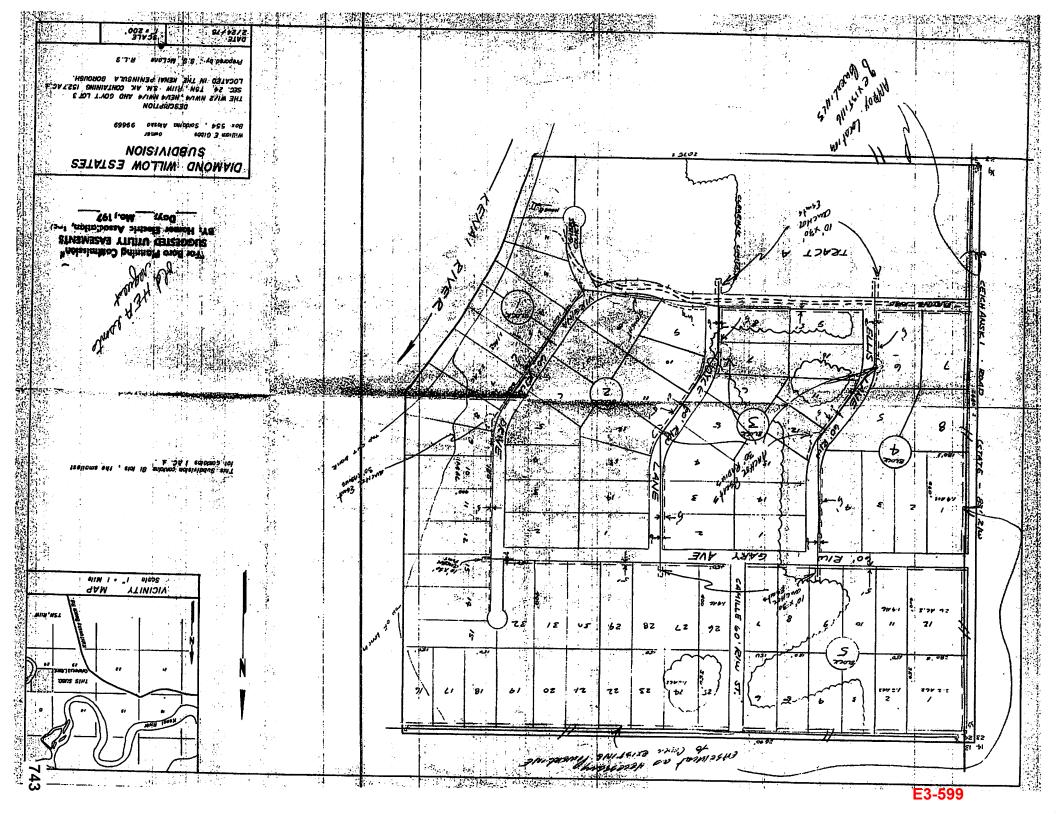
# DIAMOND WILLOW ESTATES HOMEOWNER'S ASSOCIATION

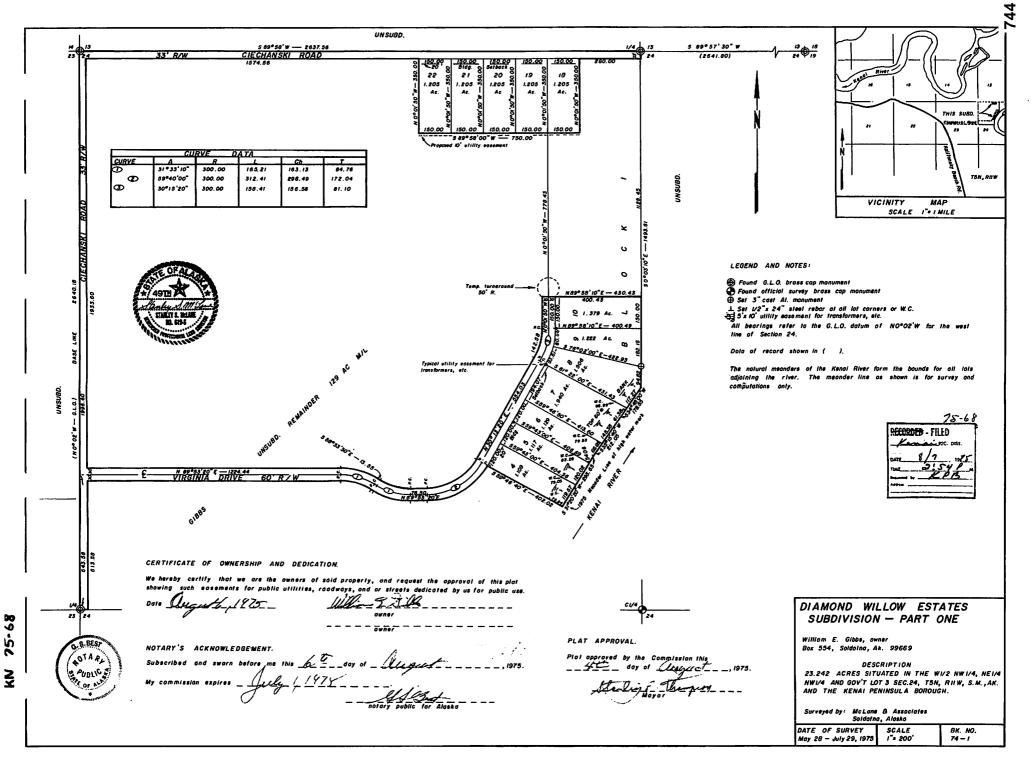
## KPB PRESENTATION PACKET JULY 14, 2018

## DIAMOND WILLOW ESTATES

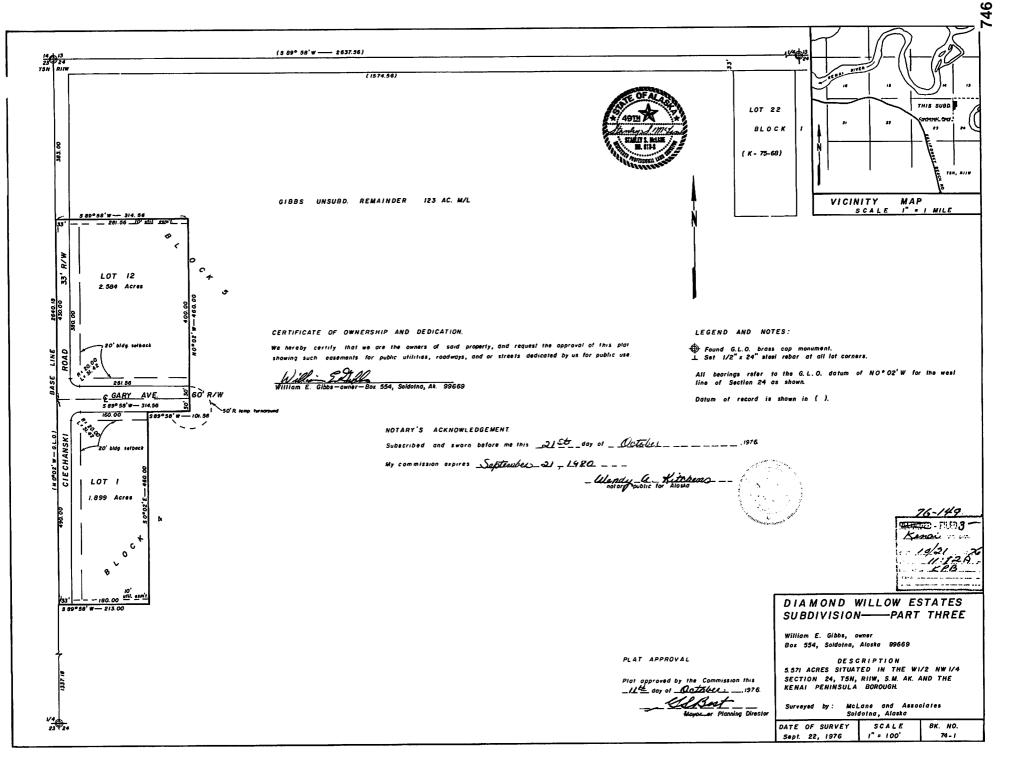
PLAT MAPS

AVERAGE LOT SIZE INFORMATION

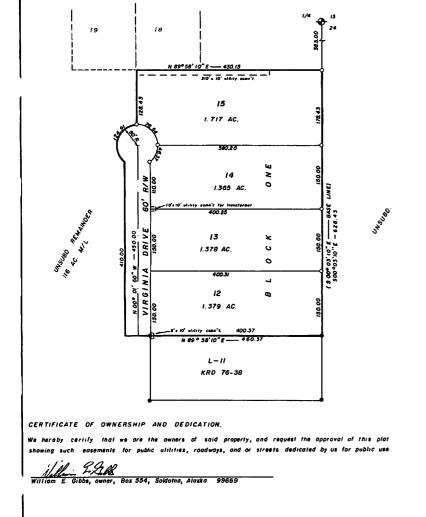




4 4 2 GIBBS UNSUBD. REMAINDER 128 AC. M/L KENA 4 Pr 16 13 Temp. Turnaround N89°58'10" E - 460.37 THIS SIRD 5's 10' typical utility ecoenty 400.37 for transformers, etc. 30 30 Clachacebi \_Rog 22 3' R/W 150.00 Setback × 23 х 8 LOT II 1.379 Ac. . 9140 Ś. G UNSUBD. ß 400.43 N89°58'10"E- 460.43 (S0003'10"E - 1493.61 VICINITY MAP SCALE I" = I MILE DRIVE 1000150"W 0 150.00 Ю (K.R.D. 75-68) 4 LEGEND AND NOTES <u>VIRGINIA</u> Found official survey 3" cast Al. monument • Found I/2" steel rebar O Set 1/2" x 24" steel rebar Cn. Found GL.O. brass cap monument 1975 All bearings refer to the record datum of હ્ય SO°O3'IO"E for the north center line of 610-S Section 24. Data of record shown in ( ). CERTIFICATE OF OWNERSHIP AND DEDICATION. We hereby certify that we are the owners of said property, and request the approval of this plat showing such easements for public utilities, roadways, and or streets dedicated by us for public use. William E. Gibbs - owner - Bax 554, Soldotna, Ak. NOTARY'S ACKNOWLEDGEMENT. Subscribed and sworn before me this \_ \_\_\_\_ day of \_ \_\_\_\_\_, 1976. My commission expires \_\_\_\_\_ notary public for Alaska G.S.BEST 4.07.4 ·· 76-38 RECORDED - FILED Kenai 155. DIST. DATE 4-13 1976 11:41A STÁRIEV S. MELAKE DIAMOND WILLOW ESTATES TIME 10. 618-5 intervent by \_KIB SUBDIVISION - PART TWO Adahota William E. Gibbs ----- owner Box 554, Soldotna, Ak. 99669 PLAT APPROVAL. **DESCRIPTION** Plat approved by the Commission this \_\_\_\_\_\_ day of Apple\_\_\_\_, 1976. \_\_\_\_\_\_\_ day of Apple\_\_\_\_\_, 1976. \_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_ Mayor 1.585 ACRE (INC. R/W) SITUATED IN THE NEI/4 NWI/4 SEC. 24, T5N, RIIW, S.M., AK. AND IN THE KENAI PENINSULA BOROUGH. Surveyed by \_\_\_\_\_ McLane and Assoc. Soldoma, Ak. DATE OF SURVEY SCALE BK. NO. Mar. 23, 1076 1" = 100' 74 - 1 38-96 NN E3-601



KN 76-149



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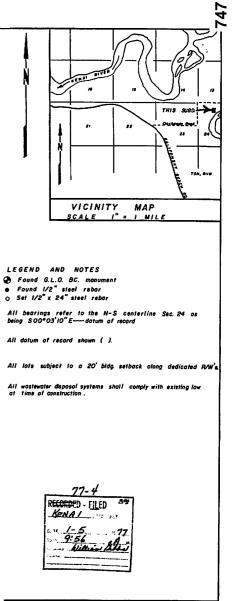
NOTARY'S ACKNOWLEDGEMENT NOTARY & ACKNOWLEDGEMENT Subscribed and sworn botore me this \_\_\_\_\_\_day of January \_\_\_\_\_. My commission expires Sept.\_\_ 2, \_\_\_\_. 1980\_\_\_\_\_. My commission expires Sept.\_\_ 2, \_\_\_\_. 1980\_\_\_\_\_. My commission expires Sept.\_\_ 2, \_\_\_\_. 101AR 2 COLV

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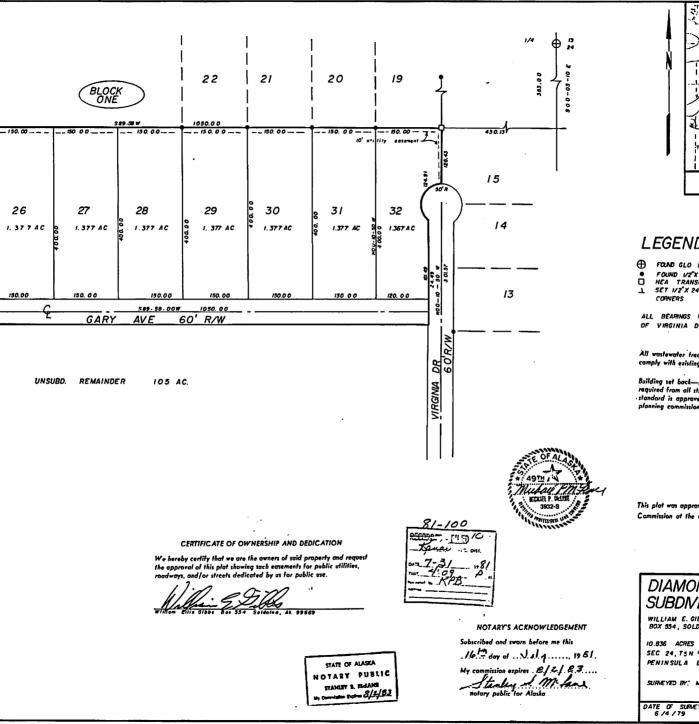
PLAT APPROVAL

Plot approved by the Commission this \_13 day of Departures\_\_\_\_. 1976

\_\_. 1976.



DIAMOND	WILLOW	ESTATES
SUBDIVISIO	N PA	RT FOUR
William E. Gibbs — Box 554, Soldotna, DESC 6.575 ACRES SITU. TSN, Rilw S.M. AK. BOROUGH. Surveyed by : McL	Aloska 99669 RIPTION ATED IN NEI/ AND IN THE	<sup>14</sup> NW1/4, SEC. 24 KENAI PENINSULA



LEGEND AND NOTES

- FOUND VZ"X 24" STEEL REBAR
- HEA TRANSFORMER O CORNER LOCATION
- ⊥ SET 1/2"X 24" STEEL REBAR €, ALL LOT CORVERS

ALL BEARINGS REFER TO THE CENTER LINE OF VIRGINIA DR. AS BEING NOO-10-50 W

All wastewater freatment and disposal systems shall camply with existing law at time of construction.

Building set back—A building set back of 20' is required from all street rights of ways unless a lesser standard is approved by resolution of the appropriate planning commission.

PLAT APPROVAL

ninsula Borovah

**DIAMONDWILLOWESTATES** SUBDNISION-PART 5

WILLIAM E. GIBBS — owner BOX 554, SOLDOTNA, ALASKA L O C A T I O N IO.836 ACRES SITUATED IN THE NI/2 NWI/4 SEC 24, T5N 91IW SM AK AND THE KENAI PENINSULA BOROUGH

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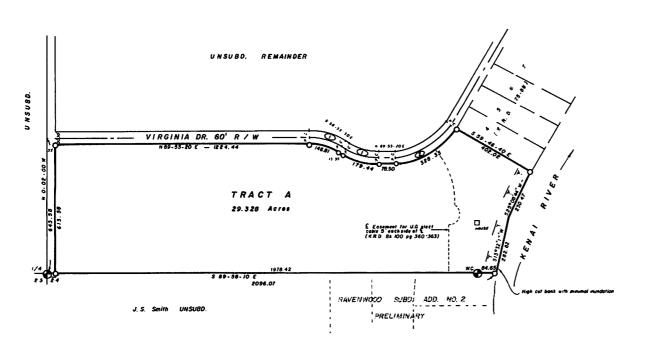
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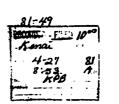
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#### LEGEND AND NOTES

Found G.L.O. brass cap monument,
 Found 1/2" X 24" steel rebar,

All bearings refer to the G.L.O. datum of NO-02-00W for the West line of Sec 24.

The natural meanders of the Kenal River form the bounds for all lots adjoining the river. The meander line as shown is for survey and computations only.

All wastewater treatment and disposal systems shall comply with existing law at time of construction.

Building set book—A building set back of 20' is required from all street rights of ways unless a lesser standard is appropriate planning commission.

hung Dr. alight.	
Normal Official	
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DIAMOND	WILLOW ES PART 6	T. SUBD.	
William E.Gibbs Box 554 Soldati			
L ( 29.328 Acres	DCATION situated in the S RIIW, S.M.AK		
Surveyed By: A	Walane & Asso Seidotaa, Alaska	tiotes	ŀ
Date of Survey 8/8/80	Scale 1"= 200"	BK. No. 74 - 1	-

#### CERTIFICATE OF OWNERSHIP AND DEDICATION

We hereby certify that we are the owners of said property and request the approval of this plat showing such easements for public stillities, roadways, and for streets dedicated by us for public use.

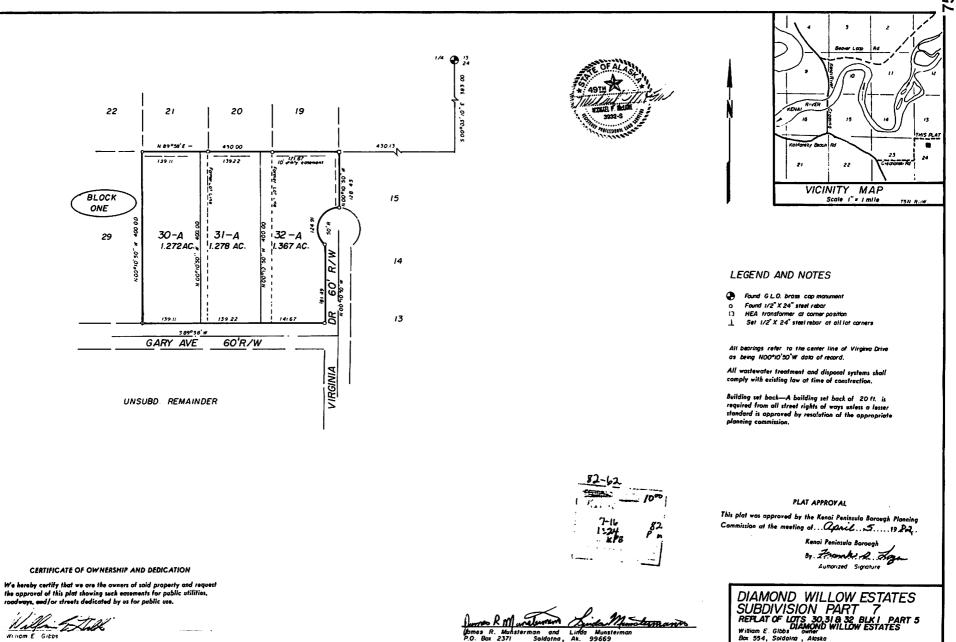
Um B. B. M.

William E. Gibbs, owner

STATE OF	ALABKA
NOTARY	PUBLIC
STANLEY S.	MAANE
My Commission East	m 8/2/85

NOT ARY'S ACKNOW LEDGEMENT

E3-605



STATE OF ALASKA

NOTART PUBLIC

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SUSAN MELANE BUSAN MELANE HOLARY FUBILE ALASKA

NOTARY'S ACKNOWLEDGEMENT For HILICH E VILS

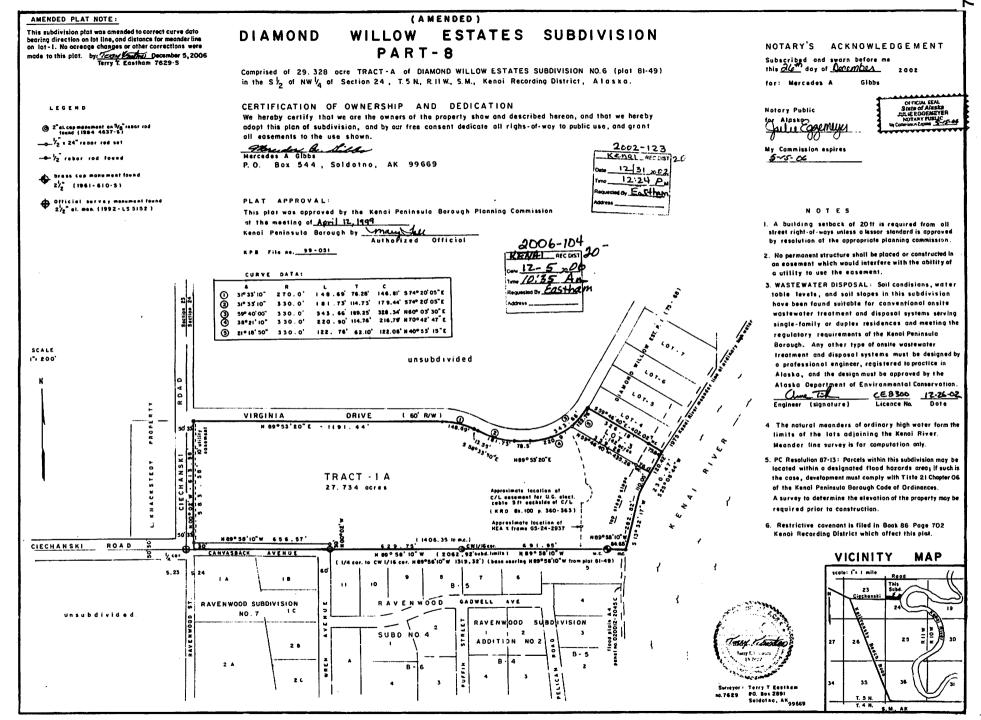
Subscribed and sworn before me this 

My commission expires....1..... 

NOTARY'S ACKNOWLEDGEMENT For James R. and Linda Munsterman

Subscribed and sworn before me this My commission expires. 3/4/83.... Slastly S. M. Lange Notery Public for Alecto

DIAMOND V SUBDIVISION REPLAT OF LOTS Withom E. Globs	N PART 30,31 & 32 BU M WILLOW ES	7
3.922 ACRES SITUAT	<u>TION</u> ED IN THE NI/ZNWI	
TSN, RIIW, SM. AK. A BOROUGH.	ND THE KENAI PEN	IINSUL A
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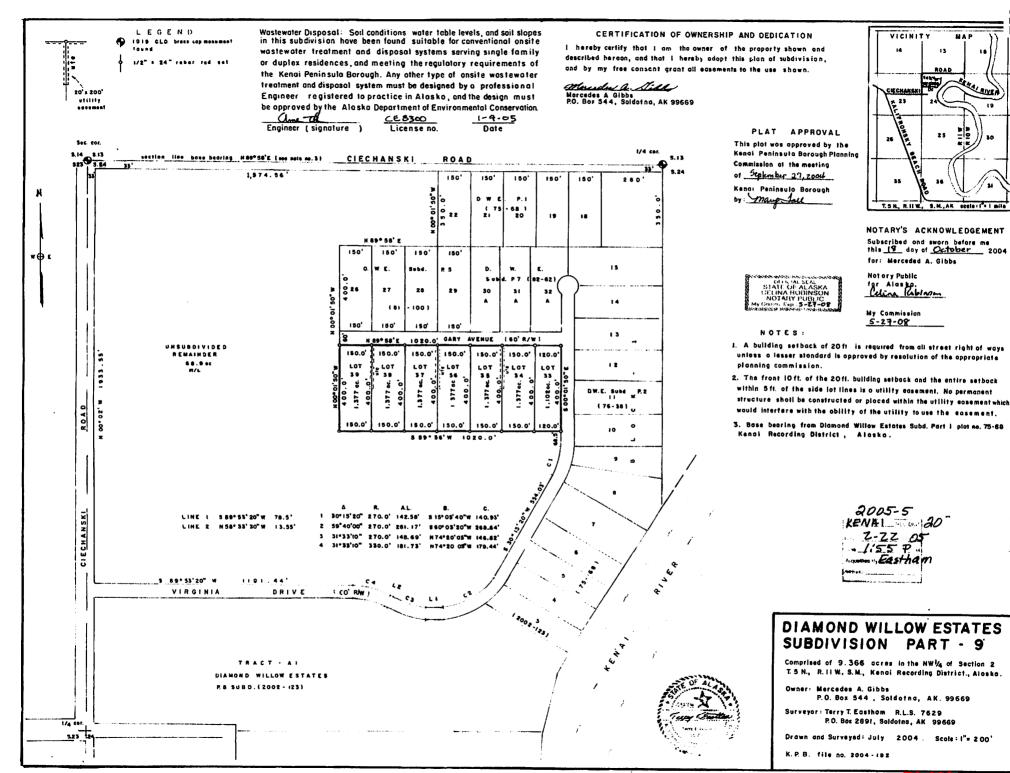


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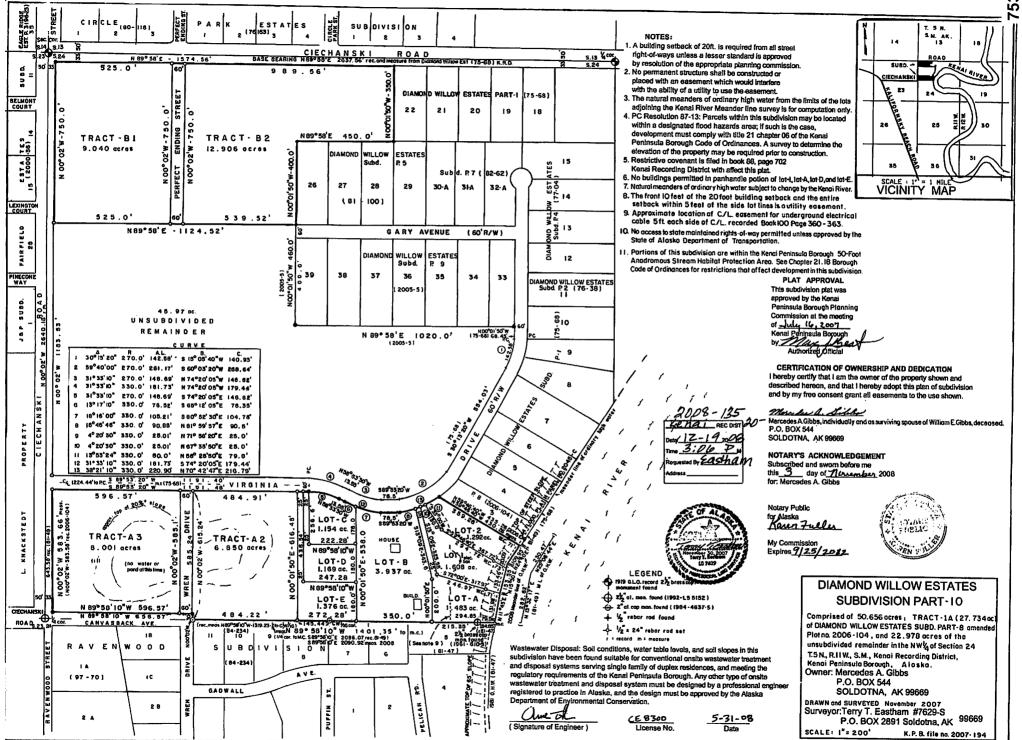
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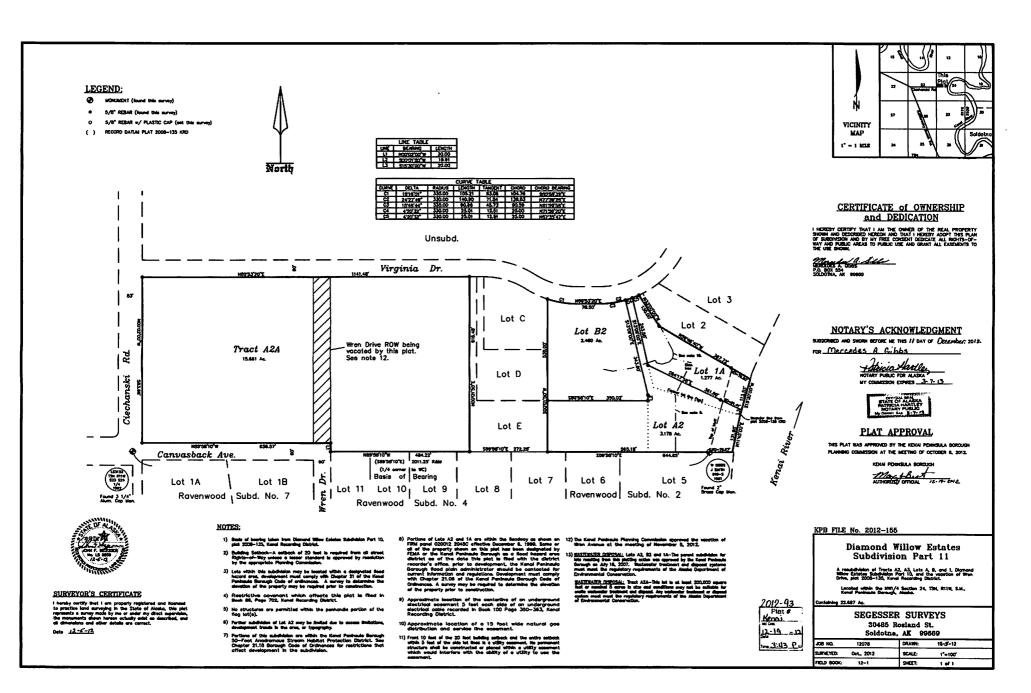
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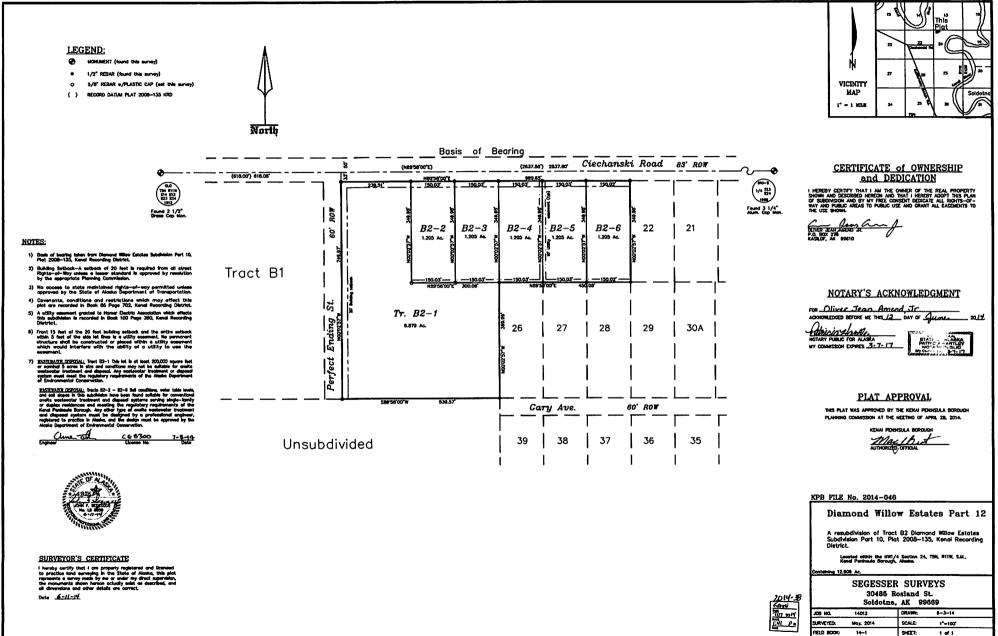


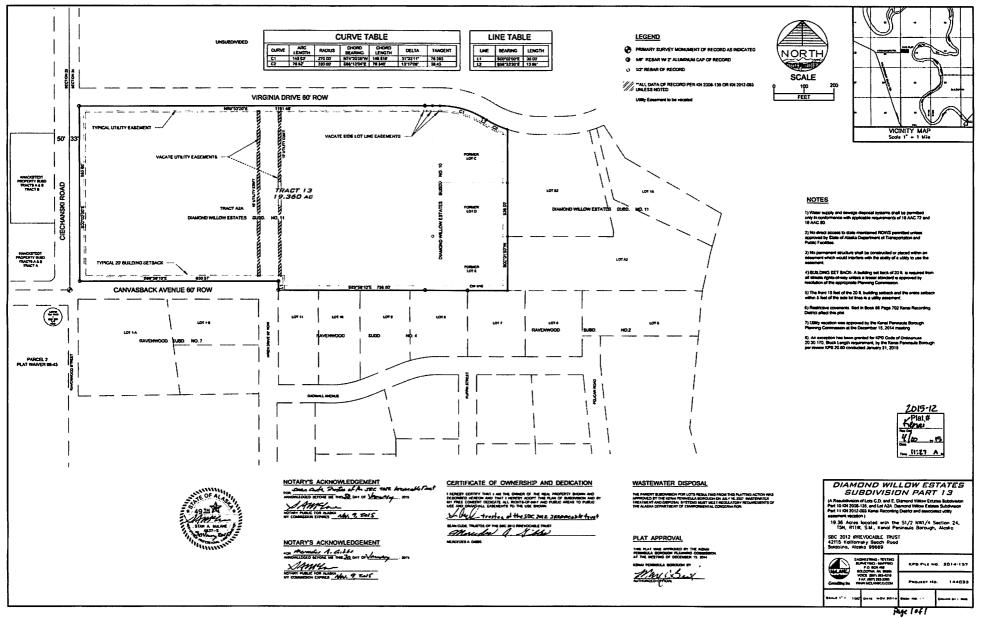
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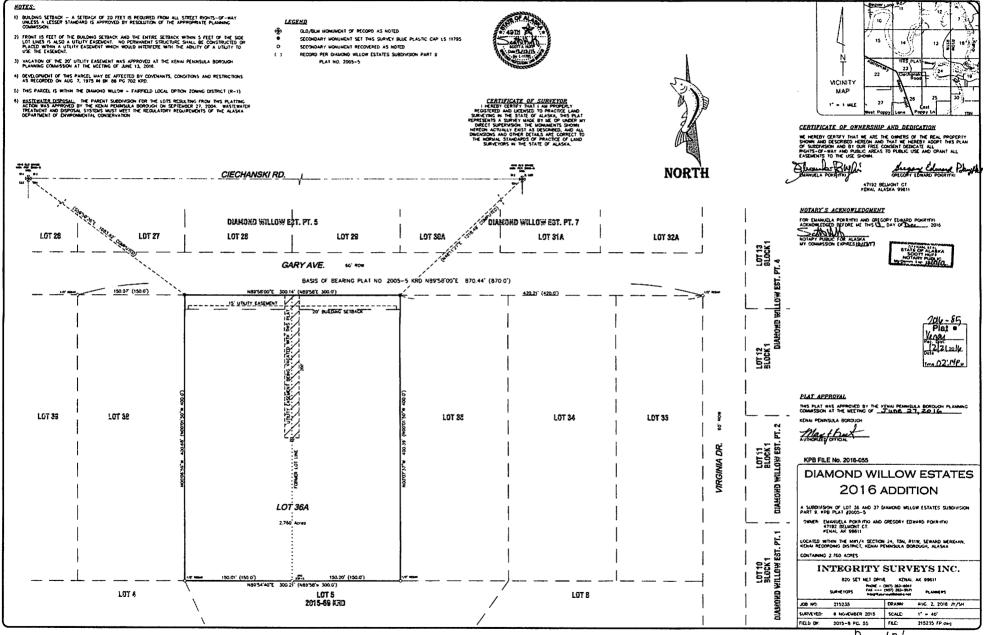
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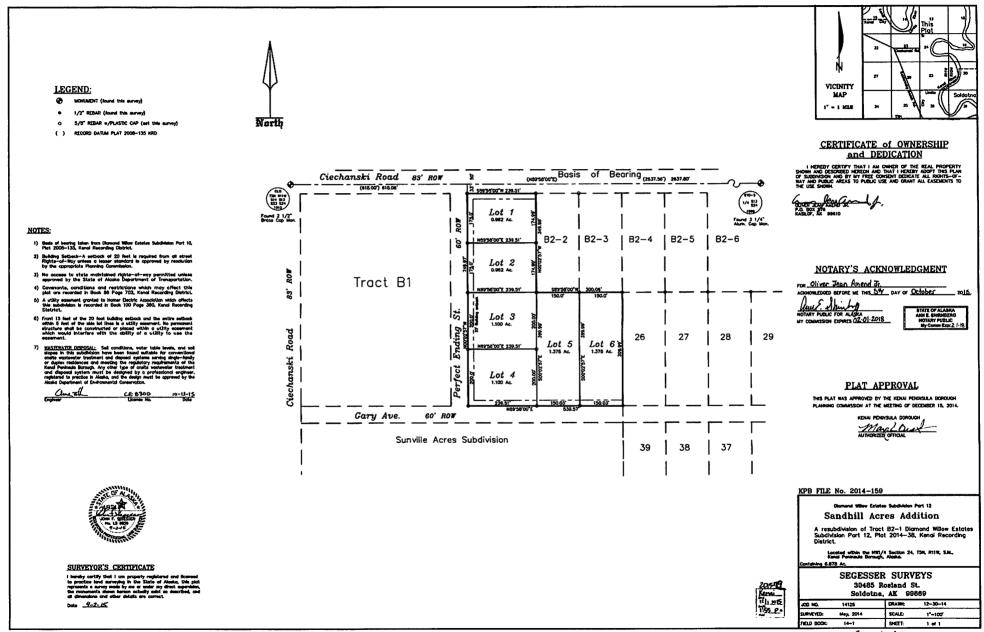




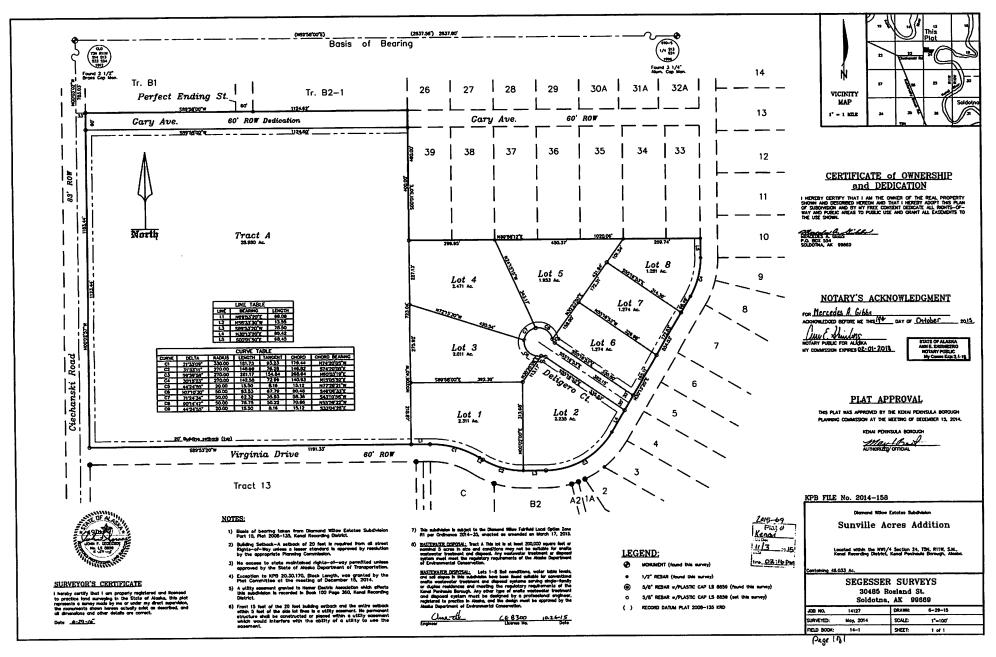




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Page 1 B1



DIAMOND WILLOW ESTATES

COVENANTS & RESTRICTIONS

NEIGHBORING SUBDIVISIONS

**R-1 ZONING** 

WICK 96 PAGE 10.1

#### BUILDING AND USE RESTRICTIONS FOR DIAMOND VILLOW ESTATES

#### The W NW, NE NW and Gov't Lot 3 Sec. 24 TSN, R11W S.M. AK. Containing 152.& Ac. ± Located in the Kenai Peninsula Borough.

PREAMELE: The purpose of these covenants is to assure that property owners will be fully protected from poor quality surroundings and that they will be assured of pleasant, sanitary and safe sites to ereot their homes. These covenants will be in effect from date of record on the DIAMOND WILLOW ESTATES.

### 1. LAND USE AND BUILDING TYPE

No lot shall be used except for residential purposes except Tract A and Lots 7, 8, 1 of Block 4 and Lots 1, 12 of Block 5. No building shall be erected, altered, placed or permitted to remain on any lot other than one dotached single family dwelling not to exceed two and one-half story in height and a private garage for not more than two cars. He let shall be subdivided.

#### 2. BUILDING LOCATION

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No building shall be located on any lot nearer to the front lot line or nearer to the side street line than the minimum building obt-back lines shown on the recorded plat. In any event no building shall be located on any lot nearer than 20 feet to the front lot line or nearer than 10 feet to any side street line. He building shall be located nearer than 10 feet to an interior lot line, except that now side yard shall be required for a garage or other permitted scoresory building shall be located on some from the minimum building set-back line. We dwelling shall be located on any interior lot nearer than 15 feet to the rear lot line.

#### 3. BASE CATS

Essements for installation and maintenance of utilities and drainage facilities are reserved as shown on recorded plat.

# 4. HUISANCES

No norious or affensive sotivity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or muisance to the neighborhood.

#### 5. TEMPORARY STRUCTURES

No structure of temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence either temporary or permanently.

#### 6. GENERAL PROVISIONS

These covenants are to run with the land and shall be binding on all parties and persons claiming under them for a period of twenty-five years

BOOK 86 PAGE 10 Kensi Recording District

from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of 10 years unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part.

7. ENFORCEMENT

Enforcement shall be by proceedings at law or equity against any person or persons violating or attempting to violate any covenant either to restrain violation or recover damages.

8. SEVERABILITY

Invalidation of any of these covenants by judgment or court order shall in no wise affect any of the other provisions, which shall remain in full force and effect.

9. SIGNS

No sign of any kind shall be displayed to the public view on any lot except one professional sign not of more than one square foot, one sign of no more than 5 square feet advertising the property for sale or rent or signs used by a builder to advertise the property during the construction and sales period.

#### 10. PROFECTIVE SCREENING AND SELECTIVE CLEARING OF LOTS

Clearing on all lots shall be selective and not cover more than fifty (50%) percent of the gross lot area, with the remaining area left in it natural state.

#### 11. LIVESPOCK AND POULARY

Ho animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes. Hot more than one dog may be kept on any one lot.

#### 12. GARBAGE AND REFUSE DISPOSAL

No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Notary Jaula

13. WATER SUPPLY

Individual water supply system and sewage disposal system on each lot shall 's be installed and maintained in compliance with the standards and requirements of the State of Alaska.

DATED this \_\_\_\_\_ day of March, 1975.

S. A.A.

<del>g</del> 3 8

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State of Alaska

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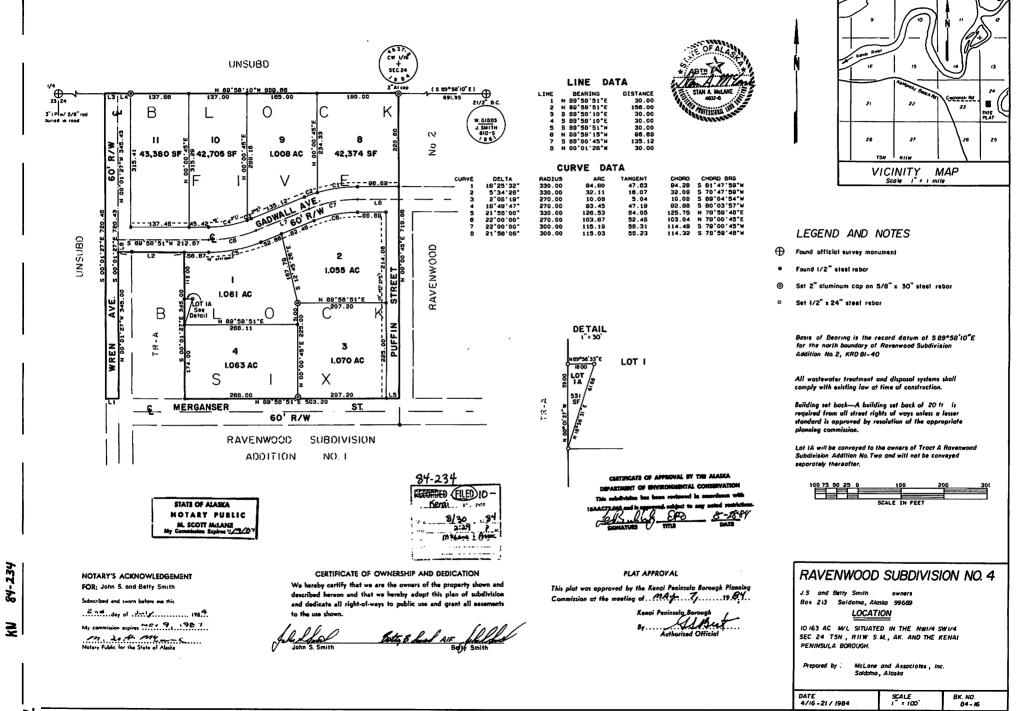
Kenai Recording District, Third Judicial Division

On Aug. 7, 1975 before me, undersigned, a Notary Public in and for the State of Alaska, personally appeared William E. Gibbs, known to me to be the person of William E. Gibbs owner of property referred to in the foregoing instrument and who executed same instrument on behalf of William E. Gibbs.

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Seal

My commission expires



# E3-619

+CF 0258PME 873

### PRODUCTIVE COVERANTS RAVENHOOD SUBDIVISION ADDITION NO. 4

KNOW ALL MEN BY THESE FRESENTS, that whereas the undersigned are the owners of the property comprising Pavenwood Subdivision,

whereas the aforesaid expers of the above described property place certain protective covenants on said property which shall insure to each and every solvegient expert, their heirs and essigns. Said covenants shall become effective on the date mentioned horein. The covenants are as follows:

# LAND USE AND BUILDING TYPE

Addition No. 2.

No lot shall be used except for residential purposes. No building shall be erected, altered, placed, or permitted to remain on any lot other than one detached single-family dwelling not to exceed two and one-half (2 1/2) stories in height and a private garage for not more than two (2) cars.

# DWELLING SITE AND CONSTRUCTION

The minimum permitted dwelling size for the ground floor area of the main structure, exclusive of one (1) story open porches and garages shall not be less than nine hundred (900) square feet. The exterior of the dwelling must be completed in one (1) year from the start of construction.

#### BUILDING LOCATION

Surface building limits shall not be closer than 20 feet from all property lines.

#### EASEHENTS

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Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat.

#### NUISANCE

No nexious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

#### TEMPORARY STRUCTURES

No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any lot at any time as a residence either temporary or permanently.

### SELECTIVE CLEARING OF LOTS

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Clearing on all lots shall be selective and not cover more than fifty (50%) of the gross lot area, with the remaining area left in its natural state.

### RE-SUBDIVISION

The area of lots herein described shall not be reduced in size by re-subdivision. This includes continuous lots of which a single lot may not be increased or decreased in area, width, and/or length at the expense of the adjoining lots.

POOR FILMING QUALITY

Fage 2 of 2

#### TERMS

These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty (30) years from the date of these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part.

ENFORCEMENT

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Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

#### LIVESTOCK AND POULTRY

No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purpose.

Dated this 5th of April, 1985

Bett

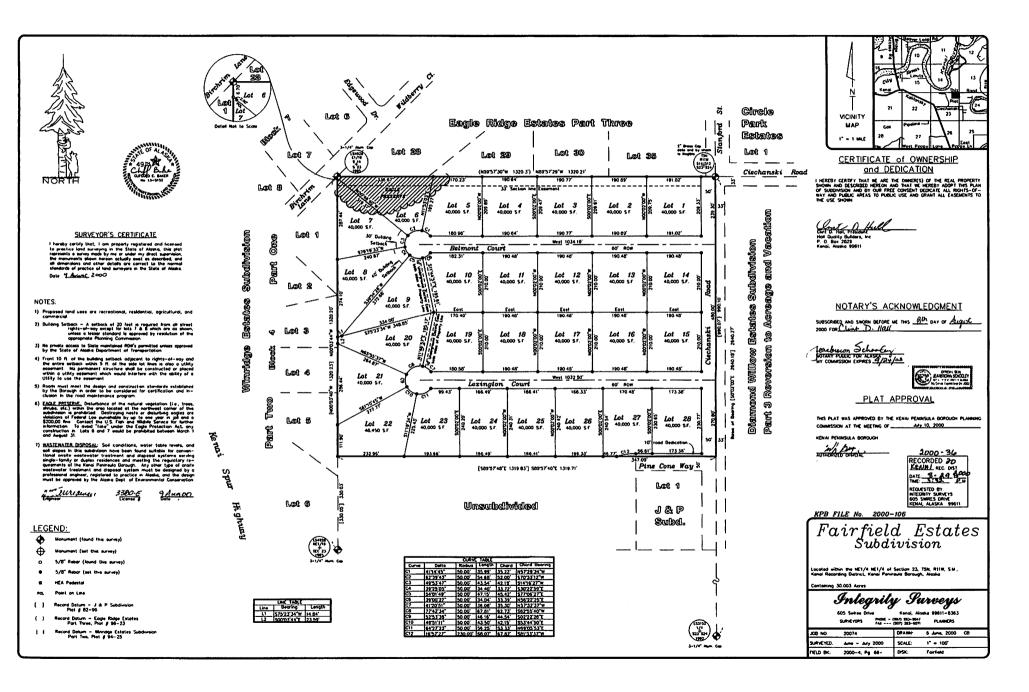
STATE OF ALASKA THIRD JUDICIAL DISTRICT

THIS IS TO CERTIFY that before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared John S. Smith and Betty B. Smith, known to me and to me known to be the identical individuals named in and who executed the above and foregoing instrument, and who acknowledged to me that they signed and sealed the same as their free and voluntary act and deed, for the uses and purposed therein mentioned and set forth.

SS.

IN WITNESS WHEREOF, I have bereunto set my hand and affixed by official seal, this bibliday of April 1986

andra NOTARY PUBLIC FOR ALA My Commission Explicit RECORDED KENAI REC. DISTRICT Are 9 10 35 M '85 REQUESTED BY Bouge NOR Isalae A 243, ADDRESS \_ Soldenna 39491



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164 PAGE 694

Konsi Recording District

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PROTECTIVE COVENANTS & RESTRICTIONS

CIRCLE PARK ESTATES Addition No. 1

Located in the SW% of Section 13, T5N, R11W, Seward Meridian.

PREAMBLE: The purpose of these protective covenants and restrictions is to insure to each individual property owner, that his property will be fully protected from any unsightly surroundings by maintaining as clean and as natural environment as is reasonably possible.

1. LAND USE & BUILDING TYPE

a. All lots shall be known and described as single family residential lots.

b. No lot size shall be altered, surveyed or divided into smaller parcels.

c. Permanent buildings will be constructed on an approved foundation existing below frost depth and shall contain a minimum of 1200 sq. ft. not including a garage.

d. No retail or wholesale shop or store shall be permitted on any lot nor any industry or trade be carried on other than the construction of new homes.

e. No temporary building of a nature to be a nuisance to adjacent property owners will be prermitted.

2. BUILDING LOCATION

No building shall be located nearer than fifty (50') feet to the front property line or nearer than twenty (20') feet to the remaining lot lines. Exception: corner lots shall be considered as having more than one front property line.

3. Any or all fencing installed on any lot or around the perimeter of any lot or lots shall be installed in a professional like mannor, no haphazard, or slipshod fencing that detracts from the area shall be installed or permitted on any lot or lots.

4. SELECTIVE LOT CLEARING

All lots are to be cleared selectively, with no more than fifty (50%) percent of the natural timber being removed for thinning and or site preparation.

BOOK 164 PAGE 695 Kenai Recording Dustric;

# 5. WATER SUPPLY & SEWAGE

Individual water supply and sewage disposal systems on each lot shall be installed and maintained in compliance with the standards and requirements of local and Alaska State laws.

#### 6. LIVESTOCK & POULTRY

No animals or livestock or poultry of any kind shall be raised, bred or kept on any lot, except dogs, cats or other household pets, provided they are not kept, bred or maintained for any commercial purposes. No more than 2 dogs may be kept on any one lot.

# 7. GARBAGE & REFUGE DISPOSAL

Trash and or garbage shall only be stored in clean sanitary containers. There shall not be stored, kept, maintained or permitted to be upon any portion of any said lot not fully enclosed by permanent type buildings, any old metal, broken down machinery, old cars or broken material commonly designated as "junk".

8. NUISANCE

No noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon which may or may become an anoyance or nuisance to adjacent land owners.

9. SIGNS

No sign of any kind shall be displayed to the public view on any lot except one professional sign not of more than one square foot, one sign of no more than 5 square feet advertising the property for sale or rent or signs by a builder to advertise the property during the construction and sales period.

## 10. GENERAL PROVISIONS

These covenants are to run with the land and shall be binding on all parties and persons for a period of fifteen (15) years from the date these covenants are recorded and shall be automatically extended for successive periods of ten (10) years unless and instrument is signed by a mojority of the then property owners agreeing to change said covenants in whole or in part.

#### 11. ENFORCEMENT

Enforcement shall be by proceedings at law or equity against any person or persons violating or attempting to violate any covenant either to restrain violation or recover damages.

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SEVERABILITY

HOOK 164 PAGE 696

Invalidation of any of these covenants by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

980 DAY OF Thorem dated this  $\mathcal{Q}$ IN CRUM

STATE OF ALASKA ) ) 86: THIRD JUDICIAL DISTRICT)

This is to certify that on the 25th day of November, 1980, before me, the undersigned Notary Public, in and for Alaska, duly commissioned and sworn as such, personally appeared JAMES E. CRUM and LOIS L. CRUM, known to me to be the individuals named in the above instrument, and they acknowledged to me the execution thereof as their free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and effixed my notarial geal the day and year in this certificate first above written.



bear da M IOTARY PUBLIC IN AND OR ALASKA

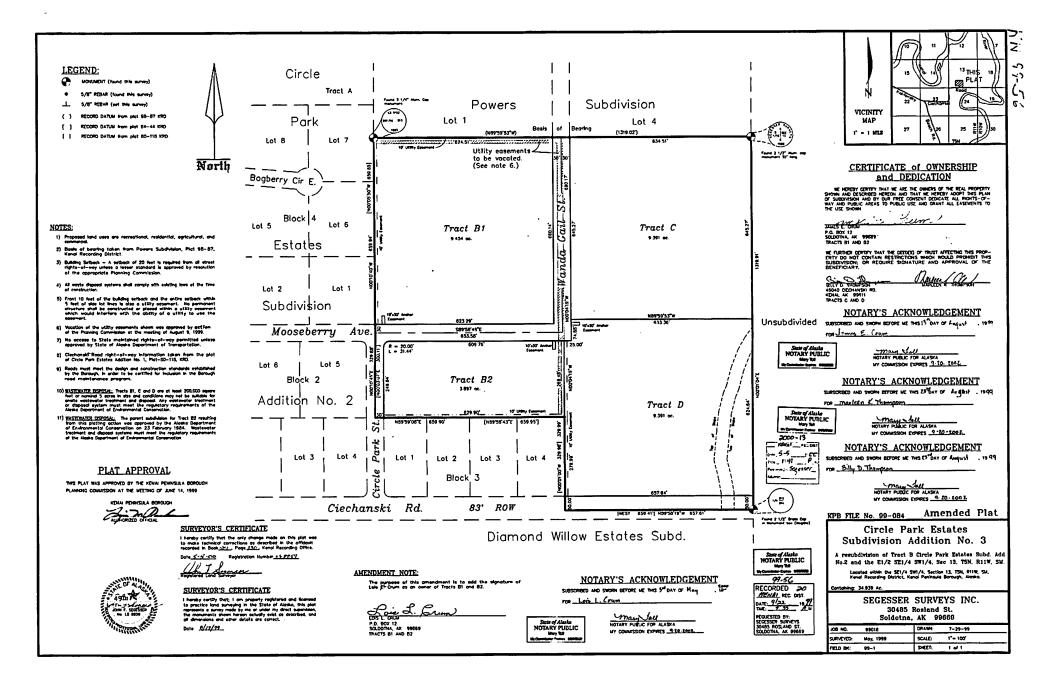
My Commission Expires September 20, 1981

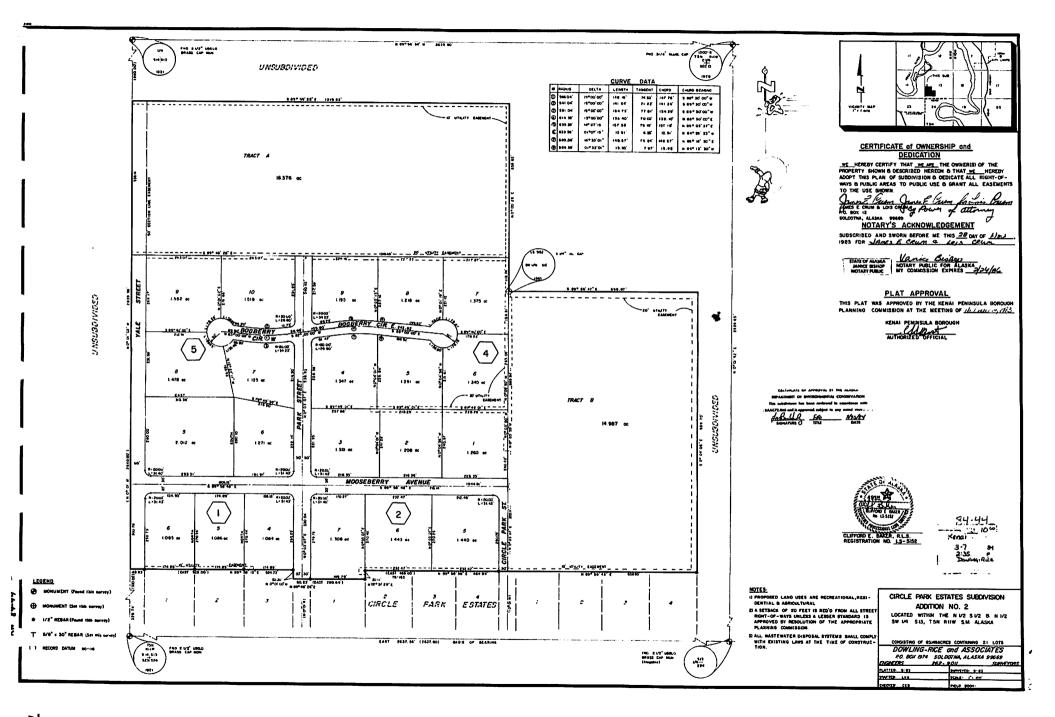
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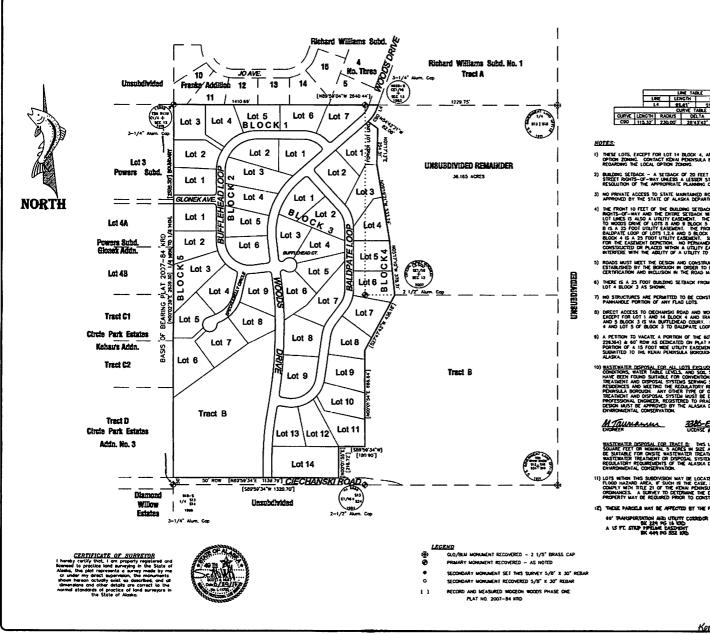
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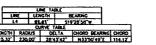
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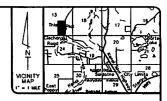






- THESE LOTS, EKCEPT FOR LOT 14 BLOCK 4, ARE AFFECTED BY LOCAL OPTION ZOWING. CONTACT KENAI PEDENSULA BOROUGH FOR INFORMATION REGARDING THE LOCAL OPTION ZOWING.
- BURLONG SCIDACK A SETBACK OF 20 FEET IS REGURED FROM ALL STREET ROMIS-OF-WAY UNLESS A LESSER STANDARD IS APPROVED BY RESOLUTION OF THE APPROPRIATE FLANMING COMMISSION.
- 3) NO PRIVATE ACCESS TO STATE MAINTAINED ROW'S PERMITTED URLESS APPROVED BY THE STATE OF ALASKA DEPARTMENT OF TRANSPORTATION
- THE FRONT OF THE JINE OF MARK OF MARKEN OF MARKEN FOR THE ROUTS-OF-WAY AND THE DITHE STILLAGE WITHIN STEEL OF THE SOUT OF LINES C AND DITHE DITHE STILLAGE WITHIN STEEL OF THE SOUT DI LINES C AND UTLIN'S LAND TO RECOVER THE ADMONIT TO MODOS DEWL OF LIDTE S AND TO RECOVER AND A PORTION OF TRACT BUDART LOOP OF LIDTE S AND TO RECOVER AND A PORTON OF TRACT BUDART LOOP OF LIDTE S AND TO RECOVER AND A PORTON OF TRACT RECOVER AS A 25 TOOT UTLIN'S LAND AND A DITY AND A RECOVER AS A 25 TOOT UTLIN'S LAND AND A DITY AND AND AND A RECOVER AS A 25 TOOT UTLIN'S LAND AND A DITY AND AND AND A RECOVER AS A 25 TOOT UTLIN'S LAND AND A DITY AND AND AND A RECOVER AS A 25 TOOT UTLIN'S LAND AND A DITY AND AND AND AND A RECOVER AS A 25 TOOT UTLIN'S LAND AND A DITY AND AND AND A RECOVER AS A 25 TOOT UTLIN'S LAND AND A DITY AND AND AND AND A RECOVER AS A 25 TOOT UTLIN'S LAND AND A DITY AND AND AND A RECOVER AS A 25 TOOT UTLIN'S LAND AND A DITY AND AND AND A RECOVER AS A 25 TOOT UTLIN'S LAND AND A DITY A LAND AND A DITY AND A DITY AND A DITY AND A DITY A LAND AND A LAND AND A DITY A LAND AND A LAND AND A DITY AND A DITY AND A DITY A LAND AND A LAND AND A DITY AND A DITY A LAND AND A LAND AND A DITY AND A DITY A LAND AND A LAND AND A DITY AND A DITY A LAND AND A DITY AND A DITY A DITY AND A DITY A DITY AND A DITY A DITY AND A DITY AND A DITY AND A DITY A DITY A DITY A DITY AND A DITY A DITY AND A DITY A
- 5) ROADS MUST MEET THE DESIGN AND CONSTRUCTION STANDARDS ESTABLISHED BY THE BORGUCH IN ORDER TO BE CONSIDERED FOR CERTIFICATION AND INCLUSION IN THE ROAD MAINTERNAKE PROGRAM
- 6) THERE IS A 23 FOOT BUILDING SETBACK FROM THE RIGHT OF WAY WITHIN LOT 4 BLOCK 3 AS SHOWN.
- 7) NO STRUCTURES ARE PERMITTED TO BE CONSTRUCTED WITHIN THE PANHANDLE PORTION OF ANY FLAG LOTS.
- DRECT ACCESS TO OECHANSIG ROAD AND WOODS DRIVE IS NOT ALLOWED ERCEPT FOR LOT I AND 14 BLOOK 4 AND TRACT B. ACCESS TO LOT 4 AND 5 BLOCK 3 IS WA BUFTLDEKAD COURT. DRECT ACCESS FROM LOT 4 AND LOT 5 OF BLOCK 3 TO DALDARE LOOP IS NOT ALLOWED.
- 9) A PETRION TO VACATE A PORTION OF THE 60' ROW EASEMENT (ADL 224354) & 60' ROW AS DEDICATED ON PLAT HO. 2007-84 KRD AND A PORTION OF A 15 FOOT MED UTULTY EASEMENT (ADL 22197) HAS BEEN SUBBITTED 10 THE KENAN PENENSIA BORDUCH AND HE STATE OF ALASKA.
- - 3386-E 13/m 20/2
- WATERINET REPORT (OF TRACLE). HIS (O' S AL LEAST 200,000 COLARS (CLT) (O' COLARDA ) SUCCESS (S CLT) (O' CLARS (CLT)) ES JULARI (CLT) (O' COLARDA ) SUCCESS (S CLT) RETURNET (OF COLEX ANTERIES TREADED AND DEPOSIT REALTORY REALEDITS OF THE ALSOLD BUT OF CLARDAN IN REGULATORY REQUESTION.
- 11) LOTS WITHIN THIS SUBDIVISION WAY BE LOCATED WITHIN A DESIGNATED FLOOD HAZAND AREA. IF SUCH IT THE CASE, DEVICIONENT WILLT COMPLY WITH THILE 21 OF THE KIDAN POINSILA BRORDON CODE OF ORDINANCES. A SURVEY TO DETEMBLE THE ELEVATION OF THE PROPERTY WAY DE REQUERED PROFT TO CONSTRUCTION.
- IZ) THESE PARCELS HAT BE AFFECTED BY THE FOLLOWING EASEMENTS

Kenni 2012-32



#### CERTIFICATE OF OWNERSHIP AND DEDICATION

WE MERCERY CERTIFY THAT WE ARE THE OWNERS OF THE REAL PROPERTY SHOWN AND DESOMBED HEREON AND THAT WE HEREDY ADDPT THS FAM OF SUDDYSON AND BY ONE TREE CONSETT DEDEATL ALL ROATS-OF-WAY AND PUBLIC JEAST TO PUBLIC USE AND GRANT ALL LEASTHONTS TO ME JEE SHOWN.

Mile Proving the Society and the Society of Society and Society an

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#### HOTARY'S ACKNOWLEDGMENT

FOR: MIKE NAVARRE SUBSCREED AND SWORN ELFORE W. THIS 28 DAY OF JUNE 

ANT BAN ALASKA



NOTARY'S ACKNOWLEDGMENT

FOR ETHAN G. SHUTT SUBSCREED AND SWORN BEFORE WE THIS 27.44 

NOTARY PUBLIC FOR ALASKA



THIS PLAT WAS COMMISSION AT	APPROVED B	THE KENA	PENINSULA	BOROUCH PLANNING
KENAI PENINSUL	A DOROUCH			

and the d	
Marshut	-
AUTHORIZED OFFICIAL	

#### WIDGEON WOODS PHASE TWO

A SUBDIVISION OF TRACT & WIDGEON WOODS - PHASE ONE, PLAT NO. 2007-84 KRD, AND & PORTION OF NET/4 SET/4 SECTION 13 LOCATED WITHIN THE SE1/4 OF SECTION 13 TSN, R11W S.M., KENAU RECORDING DISTRICT, KENAU PENENSULA BOROLION, ALASKA

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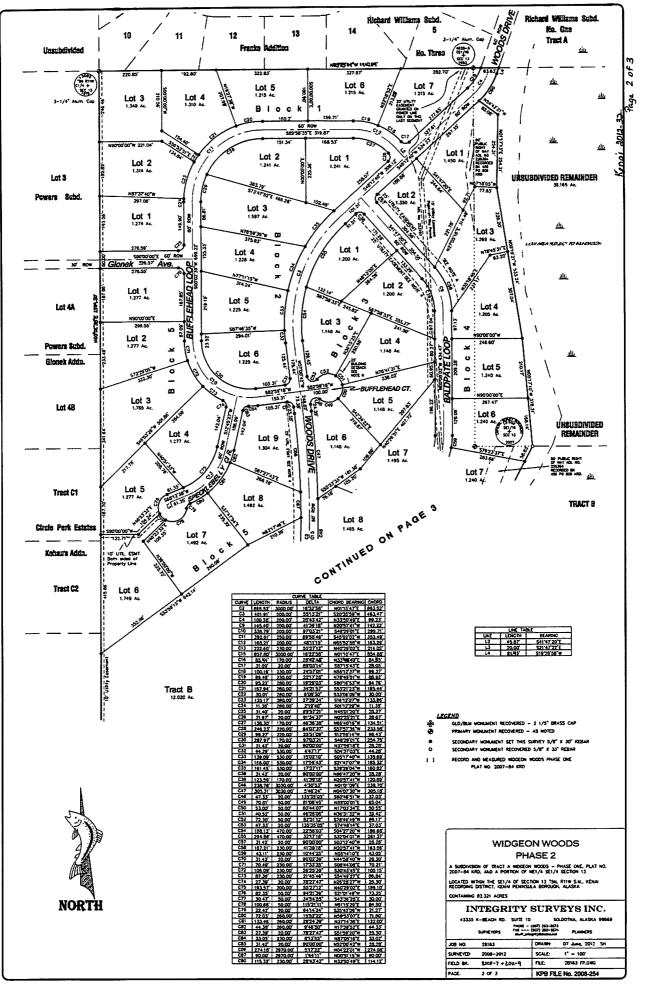
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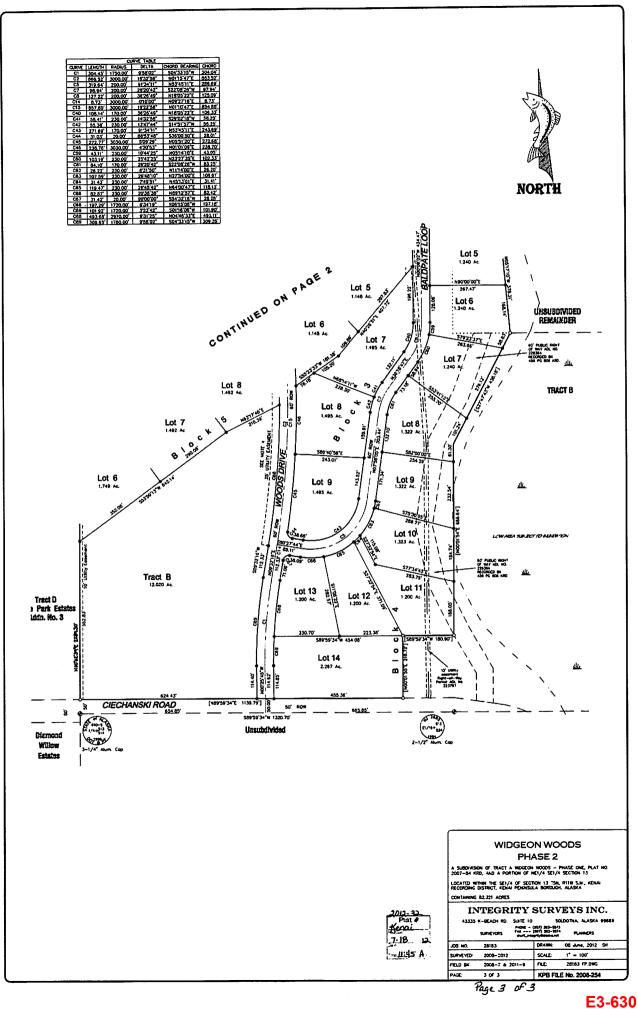
INTEGRITY SURVEYS INC. 43335 K-BEACH RD. SUITE 10 SOLDOTHA, ALASKA 99669 PACHE - (907) 382-9573 FAI --- (907) 382-0074 SURVEYORS PLANNERS JOB NO: 26163 ORAWN: 13 June, 2012 SH SURVEYED: 2008-2012 SCALE: 1" = 200' NOLD BK: 2008-7 & 2011-9 FLE: 28153 FP.DWG

Page 1 of 3

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KPB FILE No. 2008-254





# **2012-008649-0** Recording Dist: 302 - Kenai 9/6/2012 3:49 PM Pages: 1 of 1

# Notice of Kenai Peninsula Borough Local Option Zoning District KPB 21.46.040

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NOTICE IS HEREBY GIVEN of the formation of a Local Option Zoning District known as <u>Widgeon Woods</u> by act of the Kenai Peninsula Borough Assembly through adoption of Ordinance Number <u>2012-20 on July 3, 2012</u> and codified at <u>KPB 21.46.040.A.4.</u> The following real property located in the <u>Kenai Recording District</u>, Third Judicial District, State of Alaska, is subject to the standards and requirements of <u>KPB</u> <u>21.44, 21.46</u>, and the specific requirements of <u>KPB 21.44.160 Singlefamily residential district (R-1), and 21.46.040 Single-Family Residential (R-1) Districts.</u>

# The Widgeon Woods (R-1) zoning district includes:

Widgeon Woods, Phase Two Subdivision, located within the SE1/4 of Section 13 T5N, R11W S.M., Kenai Recording District, as shown on Plat No. KN 2012-32, Excluding Lot 14 Block 4, and Tract B.

Information regarding the formation and requirements of this Local Option Zoning District may be found in the ordinances cited within this notice and by contacting the Kenai Peninsula Borough Planning Department, 144 N. Binkley Street, Soldotna Alaska, 99669.

ant-

Mike Navarre, Borough Mayor

ATTEST:

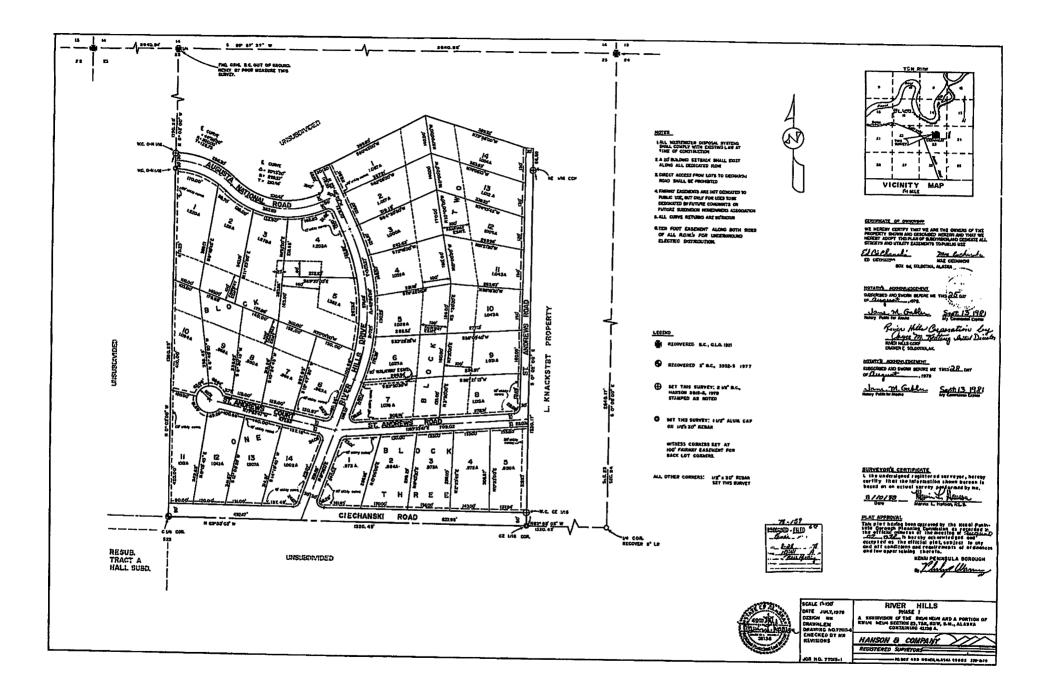
Blankenship, Borough C

DATE: August 22,2012

Return original document to:

Crista Cady Planning Department Kenai Peninsula Borough 144 N. Binkley Soldotna AK 99669





BOOK 181 PAGE 87

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#### DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS FOR RIVER HILLS SUBDIVISION

THIS DECLARATION, made in the Third Judicial District, State of Alaska, this  $\underline{\mathcal{P}}^{\mathcal{R}}$  day of  $\underline{\mathcal{D}_{\mathcal{R}}\mathcal{E}\mathcal{R}\mathcal{R}\mathcal{R}\mathcal{R}}$ , 1981, by E. ALAN FERGUSON, herein referred to as Grantor, whose address is Post Office Box 2829, Soldotna, Alaska 99669.

## RECITAL

The Grantor is the fee-simple owner of the following-described real property:

RIVER HILLS PHASE I, excepting therefrom Lots Two (2), Three (3) and Four (4), Block One (1), and Lot Five (5), Block Two (2), according to Plat No. 78-159, filed in the Kenai Recording District, State of Alaska.

Grantor hereby makes the following-declaration as to covenants, restrictions, limitations and conditions to which the above-described real property may be put, hereby specifying that said declaration shall constitute covenants to run with the land which shall be binding on Grantor, his successors and assigns, and all subsequent owners of all or any part of said real property and improvements, together with their grantees, successors, heirs, executors, administrators, devisees or assigns. Grantor, in order to establish the covenants, conditions, restrictions and reservations of granting of easements for the above-described property, hereby covenants and agrees to be bound by this Declaration.

#### COVENANTS

Grantor, his successors and assigns, by this Declaration, and all future owners of lots, by their acceptance of their dceds, covenant and agree as follows: 1. <u>No Further Subdivision</u>. No owner may subdivide Page One, DECLARATION

LAW OFFICES BALDWIN & TAYLOR OPER OFFICE VIE 4310 ECKAL ALASKA 93611 (1971 283-7167

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BOOK /8/ FreGE 88 Kerni Recording Diatrice

any lot, nor may any owner bring any action for partition, it being agreed that this restriction is necessary in order to preseve the rights of the owners. Except as specifically provided herein, the lots shall be occupied and used by the respective owners only as a private dwelling for the owner, his family, tenants and social guests, and for no other purpose.

2. Land Use and Building Type: (a) All improvements are to be on a permanent foundation.

(b) The exterior of any improvement must be completed within one year from the date of start of construction.

(c) No lot shall be used for other than residential purposes.

(d) As to Lot (1) and Lots (5)-(10), Block (1); and Lots (1)-(4) and Lots (6) and (7), Block (2); no building shall be erected, altered, placed or permitted to remain upon any lot other than one detached single family dwelling not to exceed two and one-half stories in height and a private garage for not more than three cars.

(e) Lots (11)-(14), Block (1); Lots (8)-(14),
Block (2); and Lots (1)-(5), Block (3), at the option of the owner thereof, may be devoted to multiple-family dwellings.

(f) No fence, wall, hedge or other structure shall be erected, placed or altered on any lot nearer to the rear property line than the mimimum building setback line as shown on the Plat.

(g) Dwellings must meet or exceed the specifications of the Uniform Building Code. The floor area of the structure, exclusive of open porches and garages, shall not be less than 1400 square feet for a one-story dwelling, nor less than 1800 square feet for a dwelling of Page Two, DECLARATION

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more than one story. No building shall be located on any lot nearer than fifty feet to the front lot line, or nearer than ten feet to any side lot line. No structure except a fence or hedge shall be located any nearer to the rear property line than the building setback line as shown on the recorded Plat.

(h) To insure natural growth screening and esthetics between dwelling structures, no lot shall be clear-cut more than fifty percent (50%) of the total lot area, except that trees may be thinned and undergrowth cleared.

3. <u>Water Supply and Sanitary Facilities</u>: Individual water supply systems and sewage disposal systems on each lot shall be installed and maintained in compliance with the standards and requirements of the State of Alaska. All dwellings shall have indoor sanitary facilities, and no outhouse shall be permitted on any lot. No lot shall be used or maintained as a dumping ground for rubbish or junk vehicles. Trash, garbage or other waste shall be kept only in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

4. <u>Easements</u>: Easements for the installation and maintenance of utilities are reserved as shown on the recorded Plat. For the purposes of this subdivision, "utilities" shall be deemed to refer to cable television lines, in addition to other types of utilities.

5. <u>Nuisances</u>. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done therein which may be or may become an annoyance or nuisance to the neighborhood. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept. Page Three, DECLARATION

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No more than two dogs shall be kept on any lot. All dogs shall be confined upon the owner's lot.

6. <u>Signs</u>. No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than five square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

7. <u>Temporary Structures</u>. No structure of temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be used on any lot at any time as a residence, either temporary or permanent.

8. <u>Compliance</u>. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain violation or to recover damages, and such actions may be brought by the owner or owners of record of any lot in the subdivision.

9. Parking or Vehicle Storage. In order to maintain quality standards, no inoperable vehicles of any kind, including so-called antiques, may be kept on the property unless fully contained inside the owner's garage. Any officer of the Association created hereby shall be authorized to order the removal of any such offending vehicle, and without notice to the owner thereof, to contract with any vehicle towing business to remove the same from any lot or street within the subdivision. In the event of suit being brought against such officer as a result of his actions in this regard, the Association shall indemnify him and hold him harmless from any loss incurred by virtue of said suit.

10. <u>Homeowners Association</u>. The RIVER HILLS HOMEOWNERS ASSOCIATION, hereinafer called the Association, is

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PAGE 41 BOOK /81 Loral Resourcing District

any deed issued subsequent to the date of recordation of this instrument, each grantee of any deed in the properties shall be deemed a member of the Association, subject to all obligations created hereby and entitled to all rights of such membership as set forth in this instrument, or of any by-laws the Association may adopt hereunder. The Association may, from time to time, adopt by-laws. Such by-laws to be effective must be approved by a two-thirds majority vote of the members.

11. <u>Membership and Voting Rights</u>. (a) Every owner of each lot which is contained within the properties shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

(b) The owner of each lot shall be entitled to one vote for each lot owned by him. Voting rights will remain at all times with the owner of each respective lot.

(c) The Association shall elect a President and Secretary-Treasurer at each annual meeting. Until the first annual meeting, the initial President shall be E. Alan Ferguson, and the Secretary-Treasurer shall be

(d) The mailing address for the Association shall be Post Office Box 2829, Soldotna, Alaska 99669.

12. <u>Covenant for Road Maintenance</u>. The Grantor, for each improved lot owned within the properties, hereby covenants, and each owner of any improved lot by acceptance of deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association an annual fee, to be determined by majority **mete-**of the Association, in an amount sufficient to reasonably and adequately provide for road maintenance Page Five, DECLARATION

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throughout the properties. Such charges shall be made by the Association annually, and each owner of each improved lot shall, within thirty days of the annual meeting of the Association, pay the road maintenance fee to the Association. A lot shall be deemed an "improved lot" for the purposes of this Section upon excavation work being commenced upon the lot for the purpose of constructing foundation or footings.

13. <u>Termination</u>. The covenants and restrictions hereby imposed shall terminate, and this instrument shall cease to be of any force and effect on January 1, 2010.

IN WITNESS WHEREOF, the Grantor herein has signed his name on the day and year first above mentioned.

ALAN FERGUSON Frantor

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STATE OF ALASKA

THIRD JUDICIAL DISTRICT

THIS IS TO CERTIFY that before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared E. Alan Ferguson, known to me and to me known to be the identical individual named in and who executed the above and foregoing instrument, and who acknowledged to me that he signed and sealed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned and set forth.

S8 .

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_, 19\_5/\_\_\_\_

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Shewing Williams My Commission Expires:

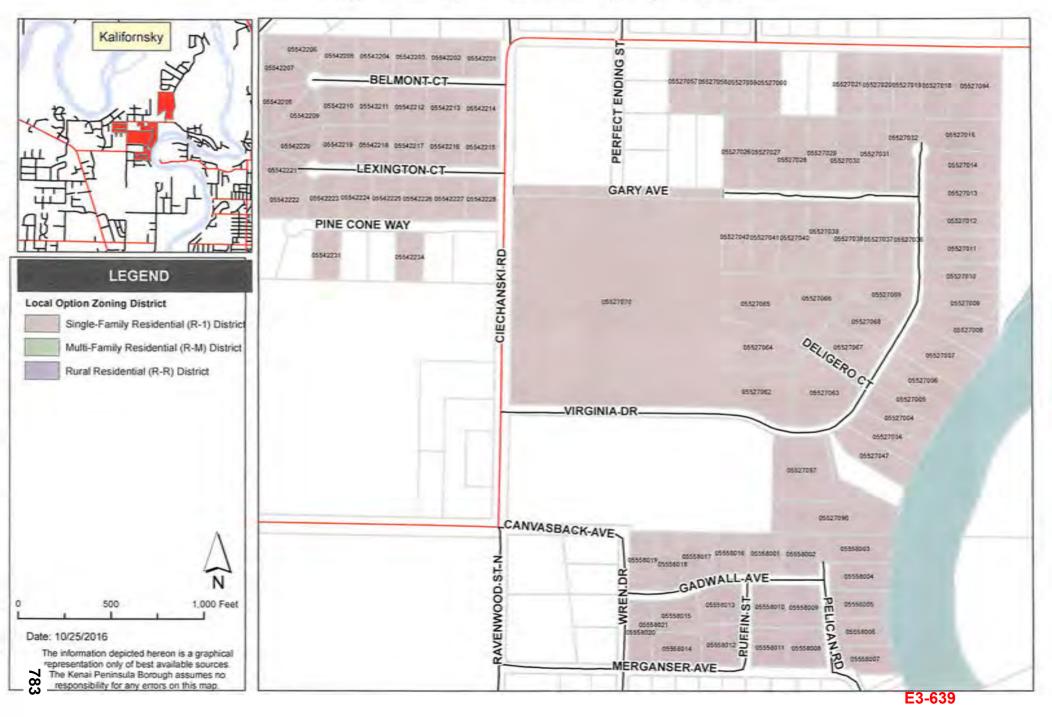
DEC 9 | 32 PH '81 REQUESTED BY <u>Alan Farguran</u> ADDRESS <u>Bod 267</u> Soldotra

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# Diamond Willow-Fairfield & Diamond Willow-Ravenwood Local Option Zoning District Single-Family Residential (R-1) District



- 21.44.160 Single-family residential district (R-1).
- A. Allowed Principal Use. Single-family residential (R-1) dwelling units are the allowed principal use in this district.
- B. Allowed Compatible Uses. Compatible uses allowed in the R-1 zone are parks, playgrounds, open space, schools, community centers, libraries, churches, and home occupations.
- C. Development Standards. Development standards apply to principal and accessory structures.
  - 1. Setbacks. Setbacks for structures shall be 30 feet from the front yard line, 20 feet from the rear yard line, 15 feet from the side yard lines, and 50 feet from the shore and where applicable subject to the provisions of KPB 21.18.
  - 2. *Maximum building height*. Maximum building height shall be 2½ stories above ground or 35 feet above average grade, whichever is less
  - 3. Lot size. Minimum lot size shall be 40,000 square feet. Maximum lot size is 5 acres.
  - 4. Coverage. Maximum coverage by structure is 20 percent of the lot.
  - 5. Drainage Ways. Existing natural drainage ways shall be retained.
  - 6. Accessory structures. Accessory structures commonly associated with residential dwellings, i.e., garages, barns, storage sheds, greenhouses, wind turbines, workshops, and a single, noncommercial guesthouse per parcel, are allowed within the district. A single accessory structure may constitute the principal use of the lot where an adjacent lot with the primary residence is in the same ownership.
  - 7. Livestock and pets.
    - a. Dog Lots: Dog lots and kennels are prohibited.
    - b. Household pets including, but not limited to, dogs and cats shall be allowed provided that no more than four household pets of more than six months of age are kept on the lot.
    - c. Poultry, fowl and small animals shall be properly contained (e.g., chicken coop, rabbit hutch) and shall be located in accordance with the required accessory use setbacks. No more than 10 such animals over 6 months old are allowed.
    - d. Hoofed animals are prohibited, except for a single miniature horse used as a service animal.
  - 8. *Prohibited uses and structures.* The following uses and structures are prohibited in the R-1 district:
    - a. A lot within the LOZD shall not be offered for sale or lease for non-allowed uses.
    - b. No more than two of either travel trailers or motor homes may be on each lot at any time.
    - c. No more than two of either inoperable or unregistered vehicles are allowed on each lot at any time.

# **CHAPTER 21.44 - LOCAL OPTION ZONING**

# 21.44.010. - Purpose.

- A. The purpose of this chapter is to provide property owners in the rural district an opportunity to request the borough adopt greater restrictions on land use than otherwise provided by this title. This chapter shall:
  - 1. control building sites, placement of structures and land uses through:
    - a. separating conflicting land uses,
    - b. regulating certain uses detrimental to residential areas,
    - c. setting minimum lot sizes, widths and setback standards,
    - d. setting standards for the number and type of structures developed on a parcel;
  - 2. preserve open space; and
  - 3. provide consistency with the goals and objectives of the Kenai Peninsula Borough Comprehensive Plan and Coastal Management Program.

(Ord. No. 2016-03 (Sub.), § 1, 5-3-16; Ord. No. 2000-02, § 2, 5-16-00)

21.44.020. - State and federal agencies regulated.

To the extent allowed by law, all state and federal agencies are required to comply with this ordinance and obtain all necessary permits.

(Ord. No. 2016-03 (Sub.), § 1, 5-3-16; Ord. No. 2000-02, § 2, 5-16-00)

21.44.030. - Formation methods.

- A. Any number of property owners within the rural district interested in forming a local option zoning district (LOZD) may meet with the planning department to discuss application requirements and proposed LOZD boundaries. Application forms for LOZDs are available from, and shall be submitted to, the Borough Planning Department. The planning department shall process an application for an LOZD.
- B. Any type of LOZD may be proposed at the time of preliminary or final plat approval. Recommendations for a specific LOZD must be in concurrence with the current owners of the property subject to the plat. The planning commission shall make a recommendation to the assembly regarding the formation of the LOZD. Plats must be 12 contiguous lots or more, separated only by a street, alley, right-of-way, or easement.

(Ord. No. 2016-03 (Sub.), § 1, 5-3-16; Ord. No. 2000-02, § 2, 5-16-00)

21.44.040. - Formation requirements.

A. Except as otherwise provided, the minimum area that may be included in an LOZD is 12 lots. At least 30 percent of the lots within a proposed R-W district must be waterfront lots. Lots in an LOZD must be contiguous and separated only by a street, alley, right-of-way, or easement. The Planning

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Department shall create a proposed local option zoning map for a proposed district based on land use, location, access, soils, topography, availability of utilities, encumbrances and permits.

- B. An LOZD formed under KPB 21.44.030(A) requires an application signed by the record owners of at least six lots within the proposed LOZD. The applicants shall be owners of parcels proposed for regulation, except that the Kenai Peninsula Borough may not be a signatory on such an application unless it is the sole owner of all lots within the LOZD. The formation of the LOZD may include portions of subdivisions. The application shall:
  - 1. show opposite each signature of an applicant lot owner, a street address if available and adequate legal description of the property owned,
  - 2. set forth whether the district will form a R-1, R-2, R-R, R-W, R-M or C-3 zone, and
  - 3. include a map of the proposed LOZD area.
- C. The planning department shall hold a meeting in a public facility regarding the application. After considering the standards set forth in KPB 21.44.010(A) and land attributes set forth in KPB 21.44.040(A) the planning department shall make a recommendation to the planning commission and assembly regarding the formation and boundaries of the proposed LOZD. The date of introduction for assembly consideration of the LOZD shall be within 90 days after filing the completed application with the planning department.
- D. The date of application shall be the date for determining whether a proposed LOZD meets the formation requirements set forth in this section. If there is an approved preliminary plat within the area of the proposed LOZD that does not meet the formation requirements for the type of LOZD proposed the area may not be included in the LOZD.
- E. The owner of a parcel contiguous to a proposed LOZD which is larger than the maximum allowed lot size within the LOZD may request that the borough include the parcel in the LOZD.

(Ord. No. 2016-03 (Sub.), § 1, 5-3-16; Ord. No. 2010-23, § 2, 6-22-10; Ord. No. 2000-02, § 2, 5-16-00)

21.44.050 - Public hearings and notification requirements.

The planning commission shall hold at least one public hearing on local option zoning applications. Public notice of the hearing shall comply with KPB 21.11.020. In addition, property owners within the proposed district and within 300 feet of the boundaries of the district shall receive a copy of the public notice at least seven days prior to the hearing. The planning commission shall recommend to the assembly approval, disapproval, or modifications of the proposed LOZD. The planning department shall distribute a summary of the LOZD's regulations and boundaries to property owners within the proposed LOZD. The summary shall include an opportunity for property owners to show support for the LOZD by their signature.

(Ord. No. 2016-03 (Sub.), § 1, 5-3-16; Ord. No. 2000-02, § 2, 5-16-00)

21.44.060. - Assembly action.

- A. The assembly shall approve, disapprove, or modify the proposed LOZD. The assembly, in its legislative capacity, may disapprove an LOZD notwithstanding the district's meeting the criteria of this chapter.
- B. Any LOZD approved must meet the formation criteria set forth in KPB 21.44.040 and the minimum requirements of the LOZD being formed.
- C. Prior to introduction to the assembly the planning department will provide the owners of each parcel within the proposed LOZD a summary statement of the LOZD's regulations and boundaries as

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required by KPB 21.44.050. In order for the LOZD to be submitted to the assembly for introduction the owners of 60 percent of the parcels within the LOZD must be in favor of formation of the LOZD as represented by a parcel owner's signature on the LOZD summary distributed by the planning department. If the borough owns less than 100 percent of the parcels in the proposed LOZD, it may not sign the summary. Additionally, in that case the 60 percent requirement shall be calculated by first subtracting from the total number of parcels in the LOZD the number of parcels owned by the borough. The owners of 60 percent of the remaining parcels must sign the LOZD summary for the LOZD to be submitted to the assembly.

(Ord. No. 2016-03 (Sub.), § 1, 5-3-16; Ord. No. 2000-02, § 2, 5-16-00)

21.44.070. - Reserved.

Editor's note— Ord. No. 2016-03 (Sub.), § 1, adopted May 3, 2016, amended the Code by repealing former § 21.44.070 in its entirety. Former § 21.44.070 pertained to variances, and derived from Ord. No. 2000-02, adopted May 16, 2000.

21.44.080. - Application.

- A. The standards of the LOZD shall be effective within 30 days after approval by the assembly.
- B. This ordinance does not repeal, abrogate or impair any existing deed restrictions, covenants or easements. The borough will not enforce private covenants, easements, or deed restrictions.
- C. All property in an LOZD must comply with applicable local, state, and federal regulations.

(Ord. No. 2016-03 (Sub.), § 1, 5-3-16; Ord. No. 2010-23, § 3, 6-22-10; Ord. No. 2000-02, § 2, 5-16-00)

21.44.090. - Local option zoning map.

Within 30 days after assembly approval, a map of the boundaries of the adopted LOZD shall be available on the borough's website or at the planning department upon request.

(Ord. No. 2016-03 (Sub.), § 1, 5-3-16; Ord. No. 2000-02, § 2, 5-16-00)

21.44.095. - Variances.

Variances may be granted within an LOZD pursuant to the terms of KPB 21.05.

(Ord. No. 2016-03 (Sub.), § 1, 5-3-16)

21.44.100. - Prior existing structures.

Any structure, which existed prior to the formation of an LOZD that does not meet the provisions of this chapter, shall be allowed to continue subject to the following conditions:

- A. No alterations may be made which increase the nonconformity;
- B. Any prior existing building which has been destroyed or damaged to the extent of 50 percent or more of the assessed value of the structure shall thereafter conform to the provisions of this chapter. The right to reconstruct in nonconformity with this chapter is forever lost if

- 1. the application for reconstruction is not made within 12 months of the date of damage, or
- 2. the application for reconstruction is approved but the structure is not reconstructed within 24 months of the date of the approval of the application for reconstruction.
- C. Nothing in this section prohibits reconstruction at any time in conformity with this chapter.

(Ord. No. 2016-03 (Sub.), § 1, 5-3-16; Ord. No. 2010-23, § 4, 6-22-10; Ord. No. 2000-02, § 2, 5-16-00)

21.44.110. - Nonconforming uses.

- A. Determination. Nonconforming uses in effect on the date of initial adoption of the LOZD are allowed to continue operation. The burden of proof that the nonconforming use existed before adoption of an LOZD is on the applicant. If the planning director denies nonconforming use status, the applicant must comply with the requirements of the LOZD. Failure to apply for a nonconforming use determination within one year from the date of notice of the adoption of an LOZD ordinance shall result in termination of all right to continued operation as a nonconforming use and require full compliance with all provisions of this chapter. Written notice of the nonconforming use application requirements shall be given by certified mail or personal delivery to all property owners within an LOZD. If notice cannot effectively be given by these methods, the planning director may post the subject property.
- B. Decision. The planning director shall give notice of the application for a nonconforming use determination to property owners within the district. 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 making a determination. The planning director shall issue a decision regarding the nonconforming status based on the written application, written comments, or evidence regarding the existence of the use prior to the adoption of an LOZD. 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 nonconforming use of land or building which has ceased by discontinuance for an uninterrupted period of 365 days shall thereafter conform to the provisions of this chapter. Lack of intent to cease use or abandon the use does not suspend the 365-day time period. If a nonconforming use of a temporary structure is discontinued, it shall not be recommenced.
- D. Expansion Prohibited. A nonconforming use of a building or land may not be increased, intensified, or expanded or moved to any other part of the lot, tract, or parcel it occupies after the ordinance forming the district is adopted, nor may the use be moved to a parcel which is subject to this chapter.
- E. *Change of Use.* The use of a nonconforming building may be changed only to a use conforming to this chapter.
- F. *Standards.* In order to qualify as an allowed nonconforming use, the use must meet the following standards on the date the assembly approves formation of the district:
  - 1. A use must have been legally established under prior law.
  - 2. A use must be operational in accordance with the type of use.
  - 3. The purchase, clearing, or improvement of land preparatory to the use is inadequate to qualify the parcel for nonconforming use status, unless the site has been prepared or construction completed to the extent that it is no longer feasible to use the property for a conforming use.
- G. Conditions may be placed on nonconforming uses by the planning director to protect the residential character of the LOZD by limiting excessive noise, excessive traffic, fire hazards, and to provide appropriate screening, lighting, and hours of operation.

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(Ord. No. 2016-03 (Sub.), § 1, 5-3-16; Ord. No. 2010-23, § 5, 6-22-10; Ord. No. 2000-02, § 2, 5-16-00)

21.44.120. - Nonconforming lots.

An undeveloped lot which is nonconforming as to lot dimension or area may be used for any use allowed in the district in which it is located provided:

- A. It was legally created and of record prior to the date of original adoption of the LOZD; and
- B. All development complies with all other ordinance requirements.

(Ord. No. 2016-03 (Sub.), § 1, 5-3-16; Ord. No. 2010-23, § 6, 6-22-10; Ord. No. 2000-02, § 2, 5-16-00)

21.44.130. - Home occupations.

- A. *Purpose*. It is the purpose of this section to promote peace, quiet, and domestic tranquility within residential LOZDs, and to limit excessive noise, excessive traffic, diminished property values, fire hazard, threats to safety and health, and other possible negative effects of commercial uses conducted in residential areas.
- B. *Application.* A single home occupation may be operated on a lot in R-1, R-2, R-R, R-W, and R-M zones subject to the provisions of this section without a permit:
- C. Standards.
  - 1. The outside appearance of a building or parcel shall not change so that it detracts from the dwelling's and parcel's principal use as a residence.
  - 2. The home occupation shall not generate traffic, parking, sewage or water use in excess of what is normal in a residential subdivision. There may be no more than twenty vehicle trips per day of combined residential and home occupation traffic.
  - 3. The home occupation shall not create a hazard to person or property, or become a nuisance.
  - 4. One permanent sign no greater than 16 square feet may be used to advertise a home occupation. Signs may not be illuminated.
  - 5. Retail sales of goods which generate traffic of customers, deliveries, or suppliers to the parcel are not allowed on the parcel, except where the sale of goods is incidental to the service provided by the home occupation.
  - 6. The use of a dwelling unit for home occupations shall be conducted solely within the confines of the main dwelling and accessory buildings, and shall be clearly incidental and subordinate to the main use of the dwelling as a residence. In-home adult or child care, or preschools may use outdoor space on the lot as long as the area used for the home occupation is fenced for the safety of persons on the premises as a result of the home occupation.
  - The storage of toxic, explosive, or other dangerous or hazardous materials, substances, or chemicals for commercial purposes are not allowed on the premises, except for fuel storage of 55 gallons.
  - 8. There shall not be outside storage or display of any kind that is visible from the street or neighboring property other than personal or seasonal decorations.
  - 9. No commercial outdoor storage or outdoor loading of vehicles related to the home occupation shall be allowed, except that one operational work trailer, and one operational and registered work vehicle may park on the property. Licensed fishing guide operations are limited to two boats for the business per lot, each not exceeding 28 feet in length.

Page 5

- 10. No on street parking shall be allowed or necessary to conduct the home occupation.
- 11. The home occupation shall be conducted by the inhabitants of the principal permitted dwelling, and no more than one nonresident employee shall be permitted to work on site.
- 12. All operators of home occupations are required to meet applicable registration requirements to collect borough sales tax as set for in KPB chapter 5.18.
- D. *Conditions*. All standards set forth in KPB 21.44.130 must be met on a continuing basis and are mandatory to operate a home occupation.
- E. Home occupations allowed in the R-1, R-R, R-W, and R-M districts may include but are not limited to: accountant/bookkeeping services; beauty parlor or salon/barber shop; computer programming, software instruction, web page development, and related computer services; consulting services; dressmaking, sewing, and tailoring; event planning services; in-home adult or child care, or preschool; home cooking and preserving; home crafts, such as model making, needlework, and rug weaving; photography studio; painting, sculpting, writing or other fine arts related crafts; telephone answering, telecommuting, secretarial and administrative services; tutoring and musical instruction.
- F. Home occupations not allowed in the R-1, R-2, R-R, R-W, and R-M districts. The following occupations are prohibited as home occupations: service, repair or painting of any vehicle; kennels; sexually oriented businesses; commercial composting; sale, repackaging or use of hazardous materials; retail sales unless clearly incidental and necessary to the service being provided by the home occupation; commercial marijuana facilities as defined in AS 17.38, restaurants, alcoholic beverage premises licensed under title 4 of the Alaska statutes and other similar uses which are inconsistent with the purpose statement of KPB 21.44.010.
- G. Violation of the home occupation provisions of this section shall be processed in accord with the provisions of KPB 21.50. Each day a violation continues is a separate violation.

(Ord. No. 2016-03 (Sub.), § 1, 5-3-16; Ord. No. 2011-34, § 14, 10-11-11; Ord. No. 2010-23, § 7, 6-22-10; Ord. No. 2000-02, § 2, 5-16-00)

21.44.135. - New structures—Development notice.

Structures or buildings with a permanent foundation require a development notice to ensure compliance with the setback requirements. Development notices shall be on a form provided by the planning department and shall include the dimensions and the proposed structure's location on the lot.

(Ord. No. 2016-03 (Sub.), § 1, 5-3-16)

21.44.140. - Rezoning.

- A. Amendments to LOZDs may be initiated to repeal a zone, change the type of zone or modify the boundaries of the zoning district by following the process for establishing a LOZD set forth in KPB 21.44.040.
- B. The planning commission shall make a recommendation to the assembly regarding the repeal or change in zone or modification of boundaries. All rezone petitions are subject to assembly approval.

(Ord. No. 2016-03 (Sub.), § 1, 5-3-16; Ord. No. 2000-02, § 2, 5-16-00)

21.44.150. - Violations—Enforcement.

Violations of KPB 21.44 are subject to enforcement by the remedies set forth in KPB 21.50. Each day which the violation exists shall constitute a separate offense.

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(Ord. No. 2011-34, § 15, 10-11-11; Ord. No. 2000-02, § 2, 5-16-00)

21.44.160 - Single-family residential district (R-1).

- A. Allowed Principal Use. Single-family residential (R-1) dwelling units are the allowed principal use in this district.
- B. Allowed Compatible Uses. Compatible uses allowed in the R-1 zone are parks, playgrounds, open space, schools, community centers, libraries, churches, and home occupations.
- C. Development Standards. Development standards apply to principal and accessory structures.
  - 1. Setbacks. Setbacks for structures shall be 30 feet from the front yard line, 20 feet from the rear yard line, 15 feet from the side yard lines, and 50 feet from the shore and where applicable subject to the provisions of KPB 21.18.
  - 2. *Maximum building height.* Maximum building height shall be 2½ stories above ground or 35 feet above average grade, whichever is less
  - 3. Lot size. Minimum lot size shall be 40,000 square feet. Maximum lot size is 5 acres.
  - 4. *Coverage*. Maximum coverage by structure is 20 percent of the lot.
  - 5. Drainage Ways. Existing natural drainage ways shall be retained.
  - 6. Accessory structures. Accessory structures commonly associated with residential dwellings, i.e., garages, barns, storage sheds, greenhouses, wind turbines, workshops, and a single, noncommercial guesthouse per parcel, are allowed within the district. A single accessory structure may constitute the principal use of the lot where an adjacent lot with the primary residence is in the same ownership.
  - 7. Livestock and pets.
    - a. Dog Lots: Dog lots and kennels are prohibited.
    - b. Household pets including, but not limited to, dogs and cats shall be allowed provided that no more than four household pets of more than six months of age are kept on the lot.
    - c. Poultry, fowl and small animals shall be properly contained (e.g., chicken coop, rabbit hutch) and shall be located in accordance with the required accessory use setbacks. No more than 10 such animals over 6 months old are allowed.
    - d. Hoofed animals are prohibited, except for a single miniature horse used as a service animal.
  - 8. *Prohibited uses and structures.* The following uses and structures are prohibited in the R-1 district:
    - a. A lot within the LOZD shall not be offered for sale or lease for non-allowed uses.
    - b. No more than two of either travel trailers or motor homes may be on each lot at any time.
    - c. No more than two of either inoperable or unregistered vehicles are allowed on each lot at any time.

(Ord. No. 2016-03 (Sub.), § 1, 5-3-16; Ord. No. 2010-23, § 8, 6-22-10; Ord. No. 2001-12, § 1, 5-15-01; Ord. No. 2000-02, § 2, 5-16-00)

21.44.165. - Small lot residential district (R-2).

A. Allowed Principal Use. One single-family dwelling unit is the allowed principal use in this district.

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- B. Allowed Compatible Uses. Compatible uses allowed in the R-2 zone are parks, playgrounds, open space, schools, community centers, libraries, churches, and home occupations.
- C. Development Standards. Development standards apply to principal and accessory structures.
  - 1. *Setbacks.* Setbacks for structures shall be 20 feet from the front yard line, 20 feet from the rear yard line, and 10 feet from the side yard lines.
  - 2. *Maximum building height.* Maximum building height shall be 2½ stories above ground or 35 feet above average grade, whichever is less.
  - 3. Lot size. Minimum lot size shall be 20,000 square feet. Maximum lot size is 50,000 square feet.
  - 4. Coverage. Maximum coverage by structure is 30 percent of the lot.
  - 5. Drainage Ways. Existing natural drainage ways shall be retained.
  - 6. Accessory structures. Accessory structures commonly associated with residential dwellings, i.e., garages, barns, storage sheds, greenhouses, wind turbines, workshops, and a single, noncommercial guesthouse per parcel, are allowed within the district. A single accessory structure may constitute the principal use of the lot where an adjacent lot with the primary residence is in the same ownership.
  - 7. Livestock and pets.
    - a. Dog Lots: Dog lots and kennels are prohibited.
    - b. Household pets including, but not limited to, dogs and cats shall be allowed provided that no more than four household pets of more than six months of age are kept on the lot.
    - c. Poultry, fowl and small animals shall be properly contained (e.g., chicken coop, rabbit hutch) and shall be located in accordance with the required accessory use setbacks. No more than 10 such animals over 6 months old are allowed.
    - d. Hoofed animals are prohibited, except for a single miniature horse used as a service animal.
  - 8. *Prohibited uses and structures.* The following uses and structures are prohibited in the R-2 district:
    - a. A lot within the LOZD shall not be offered for sale or lease for non-allowed uses.
    - b. No more than two of either travel trailers or motor homes may be on each lot at any time.
    - c. No more than two of either inoperable or unregistered vehicles are allowed on each lot at any time.

(Ord. No. 2016-03 (Sub.), § 1, 5-3-16)

21.44.170. - Rural residential district (R-R).

- A. Allowed Principal Use. Single-family dwelling units are the allowed principal use in this district.
- B. Allowed Compatible Uses. Compatible uses allowed in the R-R zone are parks, playgrounds, schools, community centers, open space, libraries, churches, and home occupations.
- C. Development Standards. Development standards apply to principal and accessory structures:
  - 1. Setbacks. Setbacks shall be 60 feet from the front yard line, 40 feet from the rear yard line, 25 feet from the side yard lines, and 50 feet from the shore and where applicable subject to the provisions of KPB 21.18.
  - 2. Lot size. Minimum lot size shall be 100,000 square feet. Maximum lot size is 10 acres.
  - 3. *Drainage ways.* Existing natural drainage ways shall be retained.

- 4. *Buffers.* A natural vegetative buffer of at least 30 feet shall be retained between the building site and the public right-of-way. To provide for screening, aesthetics, and the reduction of surface water run-off, trees may be selectively pruned and thinned within the buffer, and dead and diseased trees which are a safety hazard or which threaten structures may be removed. This section does not require revegetation of a buffer area that was cleared before the formation date of the LOZD.
- 5. Accessory Structures. Accessory structures commonly associated with residential dwellings, i.e., garages, storage sheds, barns, greenhouses, workshops, wind turbines, and a single guesthouse per parcel, are allowed within the district. A single accessory structure may constitute the primary use of the lot where an adjacent lot with the primary residence is in the same ownership.
- 6. Animals are categorized and are allowed as follows:
  - a. Dog lots and commercial kennels are prohibited.
  - b. One large livestock per two acres is allowed. Animals less than 6 months of age are not included in this limitation.
  - c. Up to five small livestock are allowed per acre.
  - d. Up to 10 poultry or fowl are allowed per acre.
  - e. Manure shall be handled as follows:
    - i. Manure shall be removed in a regular and reasonable manner or otherwise composted or spread in such a manner as to protect surface and groundwater, minimize the breeding of flies, and to control odors. Manure shall not be buried.
    - ii. Manure piles shall be set back from the lot line in accordance with the zoning district accessory use setback requirements.
    - iii. Animals shall not be allowed to create excessive odor problems or present a health hazard to occupants of surrounding lands.
    - Adequate drainage facilities or improvements shall be provided by the landowner and constructed to protect any adjacent land from run-off containing contaminants such as sediment or organic wastes.
- 7. *Prohibited uses and structures.* The following uses and structures are prohibited in the R-R district:
  - a. A lot within the LOZD shall not be subleased, subcontracted, or marketed for non-allowed uses.
  - b. No more than five of either travel trailers or motor homes may be on each lot at any time.
  - c. No more than five of either inoperable or unregistered vehicles are allowed on each lot at any time.

(Ord. No. 2016-03 (Sub.), § 1, 5-3-16; Ord. No. 2010-23, § 9, 6-22-10; Ord. No. 2001-12, § 2, 5-15-01; Ord. No. 2000-02, § 2, 5-16-00)

21.44.175. - Residential Waterfront (R-W).

- A. *Purpose*. The purpose of this district is to promote orderly development adjacent to anadromous water bodies as defined by AS 41.17.950(1) consistent with the purpose clause of KPB 21.18.020 or lakes of 10 acres or larger.
- B. Allowed principal use. One of the following uses is allowed per lot for a permanent residence in this district:

Page 9

- 1. No more than one single-family dwelling;
- 2. One duplex.
- C. Allowed compatible uses. Compatible uses allowed in the R-W district are parks, playgrounds, schools, community centers, libraries, churches, open space and home occupations as provided in 21.44.175(D).
- D. *Development standards*. The following development standards apply to principal use and accessory structures:
  - 1. Setbacks. Setbacks shall be a minimum 30 feet from the front yard line, a minimum of 20 feet from the rear yard line, a minimum of 15 feet from the side yard lines, and 50 feet from the mean high water mark of the river/lake, and where applicable subject to the provisions of KPB 21.18.
  - 2. *Maximum building height*. Maximum building height shall be 2½ stories above ground or 35 feet above average grade, whichever is less.
  - 3. Lot size. Minimum lot size shall be 40,000 square feet. Maximum lot size is 5 acres.
  - 4. Coverage. Maximum coverage by structures is 10 percent of the lot.
  - 5. Drainage ways. Existing natural drainage ways shall be retained.
  - 6. Accessory structures. Accessory structures commonly associated with residential dwellings, i.e. garages, storage sheds, greenhouses, wind turbines, workshops, and accessory dwellings are allowed within the district. Two rental cabins, not to exceed 500 square feet, are allowed if the principal dwelling is a single family residential. If the principal dwelling is a duplex, one rental cabin is allowed.
  - 7. Prohibited uses and structures. The following uses and structures are prohibited in the R-W district:
    - a. A lot within the LOZD shall not be subleased, subcontracted, or marketed for non-allowed uses.
    - b. No more than two travel trailers or motor homes may be on each lot at any time.
    - c. No more than two of either inoperable or unregistered vehicles are allowed on each lot at any time.
  - 8. Livestock and pets.
    - a. Dog Lots: Dog lots and kennels are prohibited.
    - b. Household pets including, but not limited to, dogs and cats shall be allowed provided that no more than four household pets of more than six months of age are kept on the lot.
    - c. Poultry, fowl and small animals shall be properly contained (e.g., chicken coop, rabbit hutch) and shall be located in accordance with the required accessory use setbacks. No more than 10 such animals over 6 months old are allowed.
    - d. Hoofed animals are prohibited, except for a single miniature horse used as a service animal.

(Ord. No. 2016-03 (Sub.), § 1, 5-3-16; Ord. No. 2010-23, § 1, 6-22-10)

#### 21.44.180. - Multi-Family residential district (R-M).

A. Allowed Principal Use: No more than one single-family or multi-family residential (no more than 4 units) dwelling unit is allowed per lot.

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- B. Allowed Compatible Uses: Compatible uses allowed in the R-M zone are parks, playgrounds, schools, community centers, libraries, churches, and home occupations.
- C. Development Standards. Development standards apply to principal and accessory structures:
  - 1. Setbacks. Setbacks shall be 60 feet from the front yard line for multi-family units, 40 feet from the front yard line for single family units, 40 feet from the rear yard line for multi-family units, 20 feet from the rear yard line for single family units, 25 feet from the side yard lines for multi-family units, 15 feet from the side yard lines for single family units, and 50 feet from the shore and where applicable subject to the provisions of KPB 21.18.
  - 2. Lot size. Minimum lot size shall be 65,340 square feet for multi-family units and 40,000 square feet for single family units. Maximum lot size is 5 acres.
  - 3. Drainage Ways. Existing natural drainage ways shall be retained.
  - 4. Coverage. Maximum coverage by structure is 20 percent of the lot.
  - 5. Accessory Structures. Accessory structures commonly associated with residential dwellings, i.e., garages, barns, storage sheds, greenhouses, wind turbines, and workshops are allowed within the district.
  - 6. Livestock and pets.
    - a. Dog Lots: Dog lots and kennels are prohibited.
    - b. Household pets including, but not limited to, dogs and cats shall be allowed provided that no more than four household pets of more than six months of age are kept on the lot.
    - c. Poultry, fowl and small animals shall be properly contained (e.g., chicken coop, rabbit hutch) and shall be located in accordance with the required accessory use setbacks. No more than 10 such animals over 6 months old are allowed.
    - d. Hoofed animals are prohibited, except for a single miniature horse used as a service animal.
  - 7. *Prohibited uses and structures.* The following uses and structures are prohibited in the R-M district:
    - a. A lot within the LOZD shall not be offered for sale or lease for non-allowed uses.
    - b. No more than two of either travel trailers or motor homes may be on each lot at any time.
    - c. No more than two of either inoperable or unregistered vehicles are allowed on each lot at any time.

(Ord. No. 2016-03 (Sub.), § 1, 5-3-16; Ord. No. 2010-23, § 10, 6-22-10; Ord. No. 2001-12, § 3, 5-15-01; Ord. No. 2000-02, § 2, 5-16-00)

21.44.190. - Mixed use district (C-3).

- A. Allowed Principal Uses: Commercial, business, residential, institutional and public uses are allowed in this district. Industrial uses are prohibited in a C-3 LOZD.
- B. Allowed Compatible Uses: Compatible uses allowed in the C-3 zone are uses allowed in R-1 and R-M districts.
- C. Development Standards. Development standards apply to principal and accessory structures.
  - 1. Setbacks. Setbacks shall be 30 feet from the front yard line, 20 feet from the rear yard line, 15 feet from the side yard lines, and 100 feet from the shore and where applicable subject to the provisions of KPB 21.18.

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- 2. Lot size. Minimum lot size shall be 40,000 square feet. Maximum lot size is 5 acres.
- 3. Drainage ways. Existing natural drainage ways shall be retained.
- 4. *Coverage*. Maximum coverage by structures is 20 percent of the lot.
- D. *Prohibited Uses.* The following uses are prohibited in C-3 LOZDs: commercial marijuana establishments licensed under AS 17.38 and applicable regulations, alcoholic beverage premises licensed under Title 4 of the Alaska statutes, and sexually oriented business establishments.

(Ord. No. 2016-03 (Sub.), § 1, 5-3-16; Ord. No. 2010-23, § 11, 6-22-10; Ord. No. 2001-12, § 4, 5-15-01; Ord. No. 2000-02, § 2, 5-16-00)

21.44.195. - Reserved.

Editor's note— Ord. No. 2001-12, § 5, adopted May 15, 2001, repealed § 21.44.195, which pertained to industrial mixed use district (C-4). See the Code Comparative Table.

21.44.200, 21.44.210. - Reserved.

Editor's note— Ord. No. 2016-03 (Sub.), § 1, adopted May 3, 2016, amended the Code by repealing former §§ 21.44.200 and 21.44.210 in their entirety. Former § 21.44.200 pertained to the industrial district, and derived from Ord. No. 2000-02, adopted May 16, 2000; Ord. No. 2001-12, adopted May 15, 2001; and Ord. No. 2010-23, adopted June 22, 2010. Former § 21.44.210 pertained to the residential conservation district, and derived from Ord. No. 2000-02, adopted May 16, 2000; Ord. No. 2000-02, adopted May 16, 2000; Ord. No. 2001-06, adopted April 17, 2001; Ord. No. 2001-12, adopted May 15, 2001; Ord. No. 2001-06, adopted May 6, 2008; and Ord. No. 2010-23, adopted June 22, 2010.

21.44.220. - Record notice of local option zoning district.

A notice of local option zoning district shall be recorded in the State of Alaska district recorder's office where the parcels subject to the LOZD are located. The notice shall provide a legal description of the parcels within the district and the type of zone. The notice shall be in a form approved by the Borough attorney's office. Notice of rezones under KPB 21.44.140 shall also be recorded.

(Ord. No. 2016-03 (Sub.), § 1, 5-3-16; Ord. No. 2000-02, § 2, 5-16-00)

21.44.230. - Definitions.

Adequate legal description means a written description of real property by government survey, metes and bounds, or lot number of a recorded plat or by aliquot part in a conveyance document such that the parcel can be identified, located, and distinguished from other parcels. It shall include, if available, the street address, city, state and zip code of the real property.

Accessory structure means a structure on the same lot and of a nature customarily incidental and subordinate to the principal structure.

Affected property owners are those owners within an LOZD who have filed written or oral testimony in a matter pertaining to the LOZD.

Animal, small means any animal, other than livestock or animals considered to be predatory or wild which are kept outside a dwelling unit all or part of the time. Animals considered predatory or wild, shall

Page 12

be considered small animals when they are taken into captivity for the purposes of breeding, domestication, training, hunting, or exhibition.

Average grade means the average grade calculated from the grade elevations at the four points where an imaginary line parallel to the front and rear yard setback lines and touching the (proposed) structure intersects the required side yard setback lines.

*Commercial* means a land use or other activity involving the offering of goods or services for financial gain.

Dog lot means the keeping or raising of five or more dogs over the age of six months on a parcel.

Duplex means a structure on a single lot containing two dwelling units, each of which is totally separated from the other by an unpierced wall extending from ground to roof or an unpierced ceiling and floor extending from exterior wall to exterior wall, except that a common exterior stairwell may serve both dwelling units.

Dwelling means a building designed or used as living quarters or private residence for people.

Front yard means that portion of a lot which is bounded by a dedicated public right-of-way.

Habitable space means that portion of a structure that is used for actual and daily living purposes including working, sleeping, eating, cooking, or recreation or a combination thereof. Habitable floor space does not include storage sheds, garages or other space used only for parking or storage.

Hazard means a source of danger or adverse condition that has potential to harm people or property.

Hazardous chemical means a chemical that is a physical hazard or a health hazard.

Hazardous substance means substances defined at AS 46.08.900(6) and AS 46.09.900(4) as amended.

*Home occupation* is that accessory use of a dwelling that shall constitute either entirely or partly the livelihood of a person living in the dwelling unit.

Household pets means small animals that are kept within a dwelling unit.

Industrial means any activity which includes manufacturing, processing, warehousing, storage, disposal, distribution, shipping, and other related uses. Examples of industrial uses include, but are not limited to material sites, asphalt and cement batch plants, energy generating plants, oil and gas pipeline pumping stations, oil and petrochemical refining or liquefaction processes, septic or sewage processing or treatment facilities, and other uses or activities of similar character and impact. Industrial includes both heavy and light industrial uses.

Industrial, heavy means the manufacture of materials or products predominantly from extracted or raw materials, or a use engaged in storage of or manufacturing processes using flammable or explosive materials, or storage or manufacturing processes that involve hazardous or commonly-recognized offensive conditions.

*Industrial, light* means a use engaged in the manufacture predominantly from previously-prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales, and distribution of such products, but excluding basic industrial processing.

Inoperable vehicle means a vehicle that

- (A) is not currently registered under AS 28.10, except for a vehicle not currently registered under AS 28.10 and used exclusively for competitive racing;
- (B) is stripped, wrecked, or otherwise inoperable due to mechanical failure;
- (C) has not been repaired because of mechanical difficulties or because the cost of repairs required to make it operable exceeds the fair market value of the vehicle; or
- (D) is in a condition that exhibits more than one of the following elements:

- 1. broken glass;
- 2. missing wheels or tires;
- 3. missing body panels or parts; or
- 4. missing drive train parts.

Kennel means a premises where a person owns or keeps five or more dogs over the age of six months in the operation of a business, which includes buying, selling, training, boarding, grooming, or breeding.

*Livestock* means grazing animals kept either in open fields or structures for training, boarding, home use, sales, or breeding and production, including but not limited to the following: cattle, riding and draft horses, hogs excluding pigs weighing under 120 pounds and standing 20 inches or less at the shoulder, which are kept as pets or small animals, sheep, and/or goats.

Livestock, Large means cattle, horses, and other livestock generally weighing over 500 pounds.

*Livestock, Small* means hogs, excluding pigs weighing under 120 pounds and standing 20 inches or less at the shoulder, which are kept as household pets or small animals, sheep, goats, miniature horses, llamas, alpaca, and other livestock generally weighing under 500 pounds.

*Multi-family dwelling unit* means a building with multiple dwelling units, each with self-contained bathroom and kitchen facilities.

Nonconforming use means a lawful use of land that does not comply with the use regulations for its zoning district but which complied with applicable regulations at the time the use was established.

*Nuisance* means a substantial and unreasonable interference with the use or enjoyment of real property, including water, especially a continual or repeated invasion of a use or activity which invades the property line of another so as to cause harm or discomfort to the owner or resident of that property. Excessive or noisy vehicular traffic, dust, glare, and smoke are examples of nuisances.

Open Space means land used for recreation, resource protection, amenity, aesthetics and/or buffers. In no event shall any area of a lot constituting the minimum lot area nor any part of an existing or future road or right-of-way be counted as constituting open space. Open space may be private or public and contain accessory structures. Examples of open spaces include but are not limited to fields, school yards, wetlands, and parks.

Outhouse means a detached enclosed structure having one or more holes in a seat built over a pit and serving as an outdoor toilet.

Planning Director means the planning director of the Kenai Peninsula Borough or the planning director's designee.

*Rear yard* means that portion of a lot bounded by the lot line which is opposite and most distant from the front yard lot line.

*Restaurant* means a structure or lot which has as the principal use the preparation and sale of food and beverage.

Retail sales are sales made to the ultimate consumer, often in small quantities.

Sexually oriented business is a commercial enterprise whose major business is the offering of services or goods which is intended to provide sexual stimulation or sexual gratification to the customer.

Shore setback means the distance measured from the ordinary high water mark of a watercourse, lake, pond, flowage, or saltwater environment.

Side yard means that portion of a lot bounded by a line which is neither a front yard nor a rear yard lot line.

Sign means any device, structure, fixture, or placard using graphics, symbols, and/or written copy designed primarily for the purpose of advertising or identifying any establishment, products, goods or services.

Structure means anything that is constructed or erected and located on or under the ground. For purposes of minimum setback requirements under KPB 21.44 the following items are not considered structures: fences; retaining walls; parking areas; roads, driveways or walkways; window awnings; a temporary building when used for 30 days or less; utility poles and lines; guy wires; clothes lines; flag poles; planters; incidental yard furnishings; water wells; monitoring wells and tubes; patios, decks, or steps less than 18 inches above average grade.

Temporary structure means a transportable structure for one-time use not to exceed six consecutive months.

*Toxic* means those substances or substance combinations, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism, either directly from the environment or indirectly by ingestion through the food chains, will, on the basis of information available, cause death, disease, behavioral or physiological abnormalities, malignance, genetic mutation, or physical deformations, in affected organisms or their offspring.

Wrecked vehicle means a vehicle that is disabled and cannot be used as a vehicle without substantial repair or reconstruction.

(Ord. No. 2016-03 (Sub.), § 1, 5-3-16; Ord. No. 2010-23, §§ 14, 15, 6-22-10; Ord. No. 2009-43, § 3, 9-1-09)

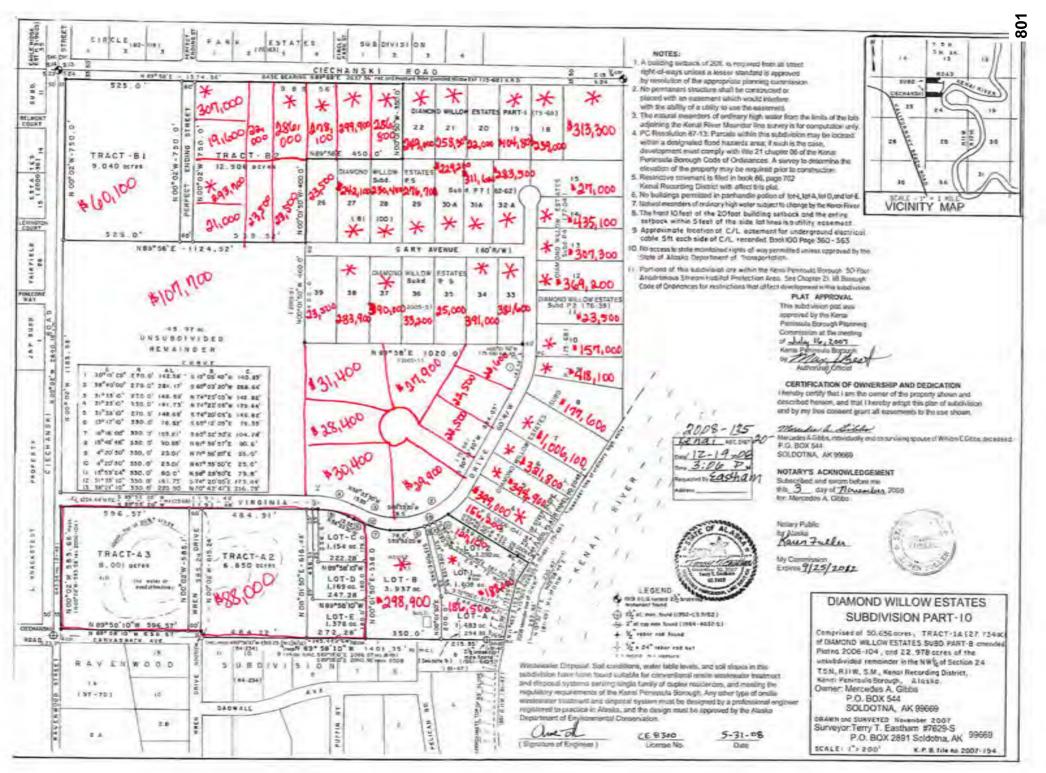
21.44.240. - Reserved.

Editor's note— Ord. No. 2016-03 (Sub.), § 1, adopted May 3, 2016, amended the Code by repealing former § 21.44.240 in its entirety. Former § 21.44.240 pertained to local option zoning districts, and derived from Ord. No. 2000-02, adopted May 16, 2000; and Ord. No. 2010-23, adopted June 22, 2010.

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# DIAMOND WILLOW ESTATES

# REAL ESTATE ASSESSMENTS TAX VALUES SALES DOCUMENTATION DEEDS



Parcel #	Borough Assessed \$	2018 Taxes
PIT	\$88,000	\$789
A2	186,500	1671
B2	298900	2678
1A	188000	1685
2	156200	1400
3	127100	1139
4	399000	3343
5	394900	3538
6	321800	2953
7	1006100	5879
8	177600	159:
9	418100	374
10	157000	140
11	23500	21:
12	369200	296
13	307300	230
13	435100	345:
15	27000	242
94	313300	235
18	239900	1693
10	104800	86
20	22000	197
20	258300	1860
22	249000	223
B2-6	286800	2123
B2-5	299900	268
B2-4	278100	203
B2-3	286000	204
B2-2	22000	19
SH1	307000	230
SH2	19600	170
SH2	293700	2632
SH4	21000	18
SHB1	60100	53
SH5	23500	21:
SH6	23500	21
26	23500	21
20	23300	172:
2728	230400	1/2
28	276700	203
30-A	229200	205
31-A	311600	203
32-A	283500	169
39	23500	212
38	23500	2090
36-A	390000	
30-A 35	25000	2460 224

3504	391000	34
2971	381600	33
203	22600	SV8
202	22500	SV7
202	22500	SV6
250	27900	SV5
281	31400	SV4
254	28400	SV3
272	30400	SV1
268	29900	SV2
965	107000	TRACT A
92115	\$11,604,400	TOTALS



# \$1,006,100



\$435,100 + \$27,000 additional lot

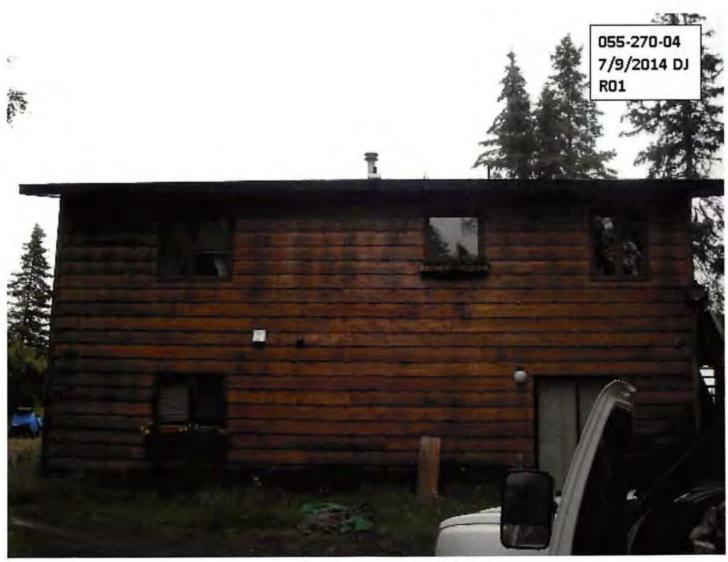


#### \$418,100

806



\$391,000 + \$25,000 Additional Lot



\$399,000



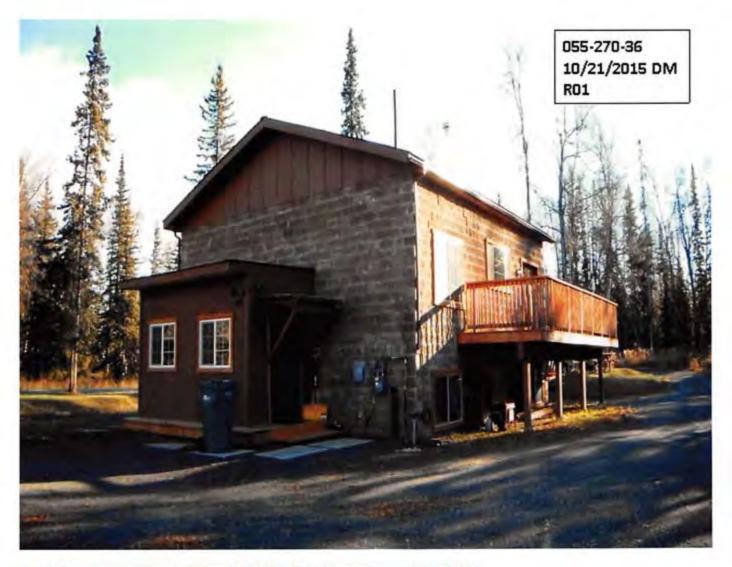
\$394,900

809



#### Borough Assessed Value (finished)

\$390,000





Borough Assessed Value \$381,600



\$369,200 + \$23,500 Additional Lot



# \$321,800





Borough Assessed Value \$311,200



\$307,300



# \$307,000



\$299,900



#### \$293,700



\$289,900



#### \$286,800



\$286,000



\$283,900



\$283,500



\$278,100



# \$276,700



#### \$258,300

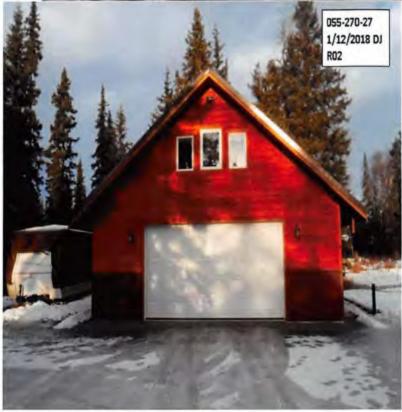


# \$249,000



# \$249,000





Borough Assessed Value \$242,100



\$239,000



\$230,400



\$229,200



\$188,000



# \$157,000



# \$104,800

7/12/2018

DNR Recorder's Office



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# Recorder's Office - Document Display

Selected Document: 2018-002535-0 In District: 302 - KENAI

See Index Codes Cannot view images?

District: 302 - KENAI Document Year: 2018 Number: 002535 Suffix: 0 Date and Time Recorded: 03/29/2018 08:24 AM Pages: 8 Index: M - MORTGAGES Description: DEED OF TRUST Amount: \$101,000.00

## PARTIES

TYPE	NAME	
Grantor	CONSOLIDATED DEVELOPMENT & MANAGEMENT LLC	
Grantee	JAMES L BAUM LIVING TRUST	
Grantee	BAUM JAMES L LIVING TRUST	
Grantee	FIRST AMERICAN TITLE	

http://dnr.alaska.gov/ssd/recoff/sag/DocDisplay.cfm?SelectedDoc=20180025350&District=302

E3-692

DNR Recorder's Office

# LEGAL DESCRIPTIONS

Location: Lot: 1A

Plat: 2012-93

## COMMENTS

ERECORDED DOCUMENT

All information has been displayed

Back

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(Please Note: A "Wildcard" reference means the filing does not tie to an "active" filing; and, a filing shown as "active" does not necessarily mean effective.)

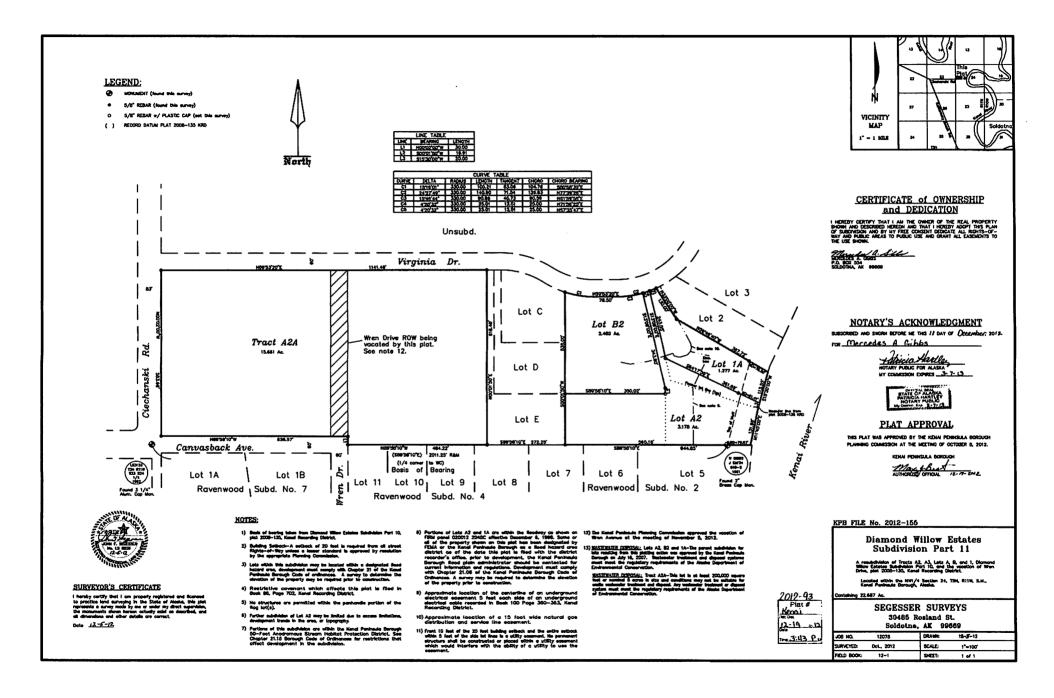
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# 838

E3-694

2012.93 Kenai



## KENAI PENINSULA BOROUGH

144 North Binkley Street 
Soldotna, Alaska 99669-7520 Toll-free within the Borough: 1-800-478-4441 PHONE: (907) 262-4441 
FAX: (907) 262-1892 www.borough.kenai.ak.us

> MIKE NAVARRE BOROUGH MAYOR

#### CERTIFICATE OF TAX DEPARTMENT

I, Rhonda K. Krohn, Property Tax and Collections Supervisor for the Kenai Peninsula Borough, do hereby certify that, as of the date of this certificate, all real property taxes levied by the Kenai Peninsula Borough have been paid for the area(s) described as:

Subdivision: DIAMOND WILLOW EST. SUB. PART II

Parcel # 05527046 DIAMOND WILLOW ESTATES SUB T 5N R 11W SEC 24 Seward Meridian KN 2008135 PART 10 LOT 1 Parcel # 05527048 T 5N R 11W SEC 24 Seward Meridian KN 2008135 DIAMOND WILLOW ESTATES SUB PART 10 LOT A Parcel # 05527049 T 5N R 11W SEC 24 Seward Meridian KN 2008135 DIAMOND WILLOW ESTATES SUB PART 10 LOT B Parcel # 05527053 T 5N R 11W SEC 24 Seward Meridian KN 2008135 DIAMOND WILLOW ESTATES SUB PART 10 TRACT A2 Parcel # 05527054 T 5N R 11W SEC 24 Seward Meridian KN 2008135 DIAMOND WILLOW ESTATES SUB PART 10 TRACT A3

The following assessments (except assessments for the cities of Homer, Kenai, Seward, Seldovia, and Soldotna) levied against this property are outstanding: NONE.

Witness my hand and seal this 12th day of December, 2012.

Lundo K. Krom

Rhonda K. Krohn Property Tax and Collections Supervisor

7/12/2018

DNR Recorder's Office

Q

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# Recorder's Office - Document Display

Selected Document: 2016-011178-0

In District: 302 - KENAI

> See Index Codes Cannot view images?

> > See Image

District:	
302 - KENAI	
Document Year:	
2016	
Number:	
011178	
Suffix:	
0	
Date and Time Recorded:	
12/27/2016 08:57 AM	
Pages:	
2	
Index:	
D - DEEDS	
Description:	
STAT WARRANTY DEED	

# PARTIES

TYPE	NAME
Grantor	GIBBS MERCEDES A
Grantee	CONSOLIDATED DEVELOPMENT & MANAGEMENT LLC

# LEGAL DESCRIPTIONS

Location: Lot: 2	Plat: 2008-135		
Location: Lot: 1	Plat: 2015-69		
Location: Lot: 2	Plat: 2015-69		

# COMMENTS

ERECORDED DOCUMENT

More Information for additional Legal Info.

Back

More Legals

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2008-135 KENAI



**KENAI PENINSULA BOROUGH** 

144 North Binkley Street • Soldotna, Alaska 99669-7520 Toll-free within the Borough: 1-800-478-4441 PHONE: (907) 262-4441 • FAX: (907) 262-1892 www.borough.kenai.ak.us

> DAVE CAREY BOROUGH MAYOR

#### CERTIFICATE OF TAX DEPARTMENT

I, Rhonda K. Krohn, Property Tax and Collections Supervisor for the Kenai Peninsula Borough, do hereby certify that, as of the date of this certificate, all real property taxes levied by the Kenai Peninsula Borough have been paid for the area(s) described as:

Subdivision: DIAMOND WILLOW ESTATES PART 10

Parcel # 05527035 T 5N R 11W SEC 24 Seward Meridian KN 2006104 DIAMOND WILLOW ESTATES SUB PART 8 AMENDED TRACT 1A

Parcel # 05527043 T 5N R 11W SEC 24 Seward Meridian KN NW1/4 EXC DIAMOND WILLOW ESTATES & EXC E 285 FT M/L OF N 350 FT OF SAID NW1/4

The following assessments (except assessments for the cities of Homer, Kenai, Seward, Seldovia, and Soldotna) levied against this property are outstanding: NONE.

Witness my hand and seal this 18th day of November, 2008.

hunda K. Krom

Rhonda K. Krohn Property Tax and Collections Supervisor



File for Record at Request of: First American Title Insurance Company

AFTER RECORDING MAIL TO:

Name: Consolidated Dev. & Mgmt, LLC

Address: 200 W 34th Avenue, Ste 367

Anchorage, AK 99503

File No.: 0223-2755030 (LMW)

#### STATUTORY WARRANTY DEED

THE GRANTOR, Mercedes A. Gibbs, <u>an unmaried</u> womethod whose mailing address is P.O. Box 554, Soldotna, AK 99669, for and in consideration of TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION, in hand paid, conveys and warrants to Consolidated Development & Management, LLC, residing at 200 W 34th Avenue, Ste 367, Anchorage, AK 99503, the following described real estate, situated in the Kenai Recording District, Third Judicial District, State of Alaska:

PARCEL NO. 1:

Lot 2, DIAMOND WILLOW ESTATES SUBDIVISION PART - 10, according to the official plat thereof, filed under Plat Number 2008-135, Records of the Kenai Recording District, Third Judicial District, State of Alaska.

PARCEL NO. 2:

Lots 1, 2, 3, 4, 5, 6, 7, 8 and Tract A, DIAMOND WILLOW ESTATES SUBDIVISION, SUNVILLE ACRES ADDITION, according to the official plat thereof, filed under Plat Number 2015-69, Records of the Kenal Recording District, Third Judicial District, State of Alaska.

PARCEL NO. 3:

Lot 1A and Lot B2, DIAMOND WILLOW ESTATES SUBDIVISION PART 11, according to the official plat thereof, filed under Plat Number 2012-93, Records of the Kenai Recording District, Third Judicial District, State of Alaska.

SUBJECT TO reservations, exceptions, easements, covenants, conditions and restrictions of record, if any.

Page 1 of 2

843

• •	2 ·		
0223-2755030 (LN	ŵ)	Statutory Warranty Deed-continued	December 14, 2016
Dated:	December	<u>n 21, 2016</u> .	
Mercedes A.	lu A. L. Gibbs	·lbo	
STATE OF	Alaska	) ) SS.	
Third	Judicial District	E )	
		ast	

THIS IS TO CERTIFY that on this <u> $\partial 1^{ST}$ </u> day of December, 2016, before me the undersigned Notary Public, personally appeared Mercedes A. Gibbs, known to me and to me known to be the individual(s) described in and who executed the foregoing instrument and he/she/they acknowledged to me that he/she/they signed the same freely and voluntarily for the uses and purposes therein mentioned.

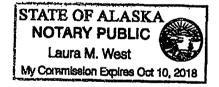
· · ·

Page 2 of 2

WITNESS my hand and official seal.

a m wes

Notary Public in and for Alaska My commission expires 10/10/18

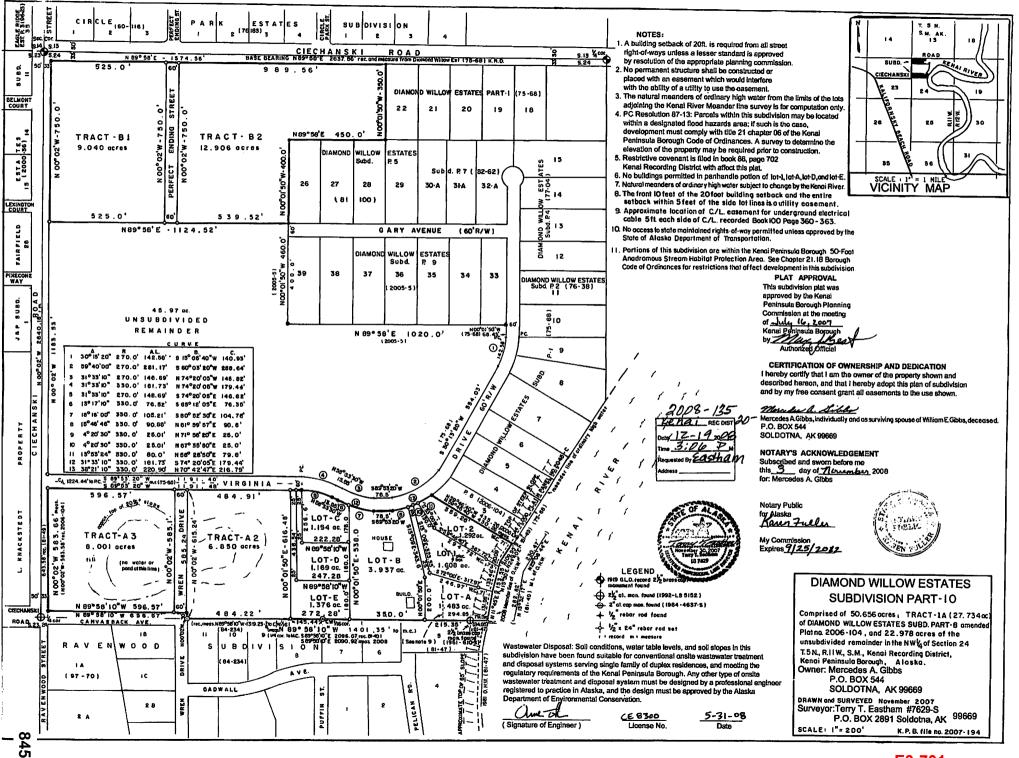


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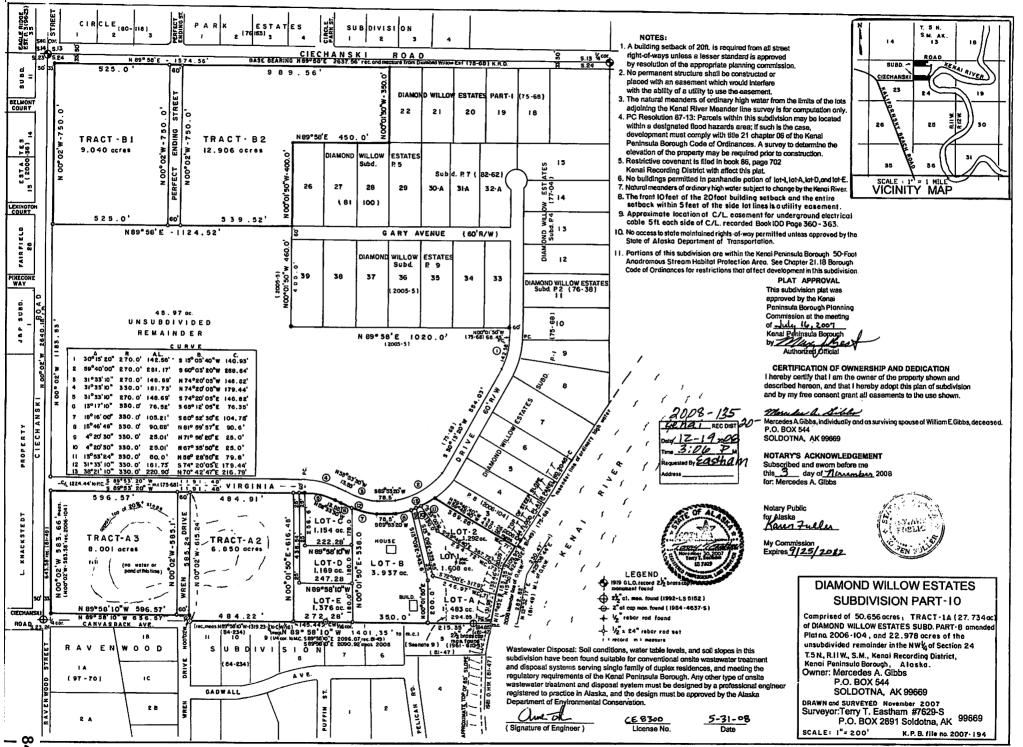
2 of 2 2016-011178-0

E3-700

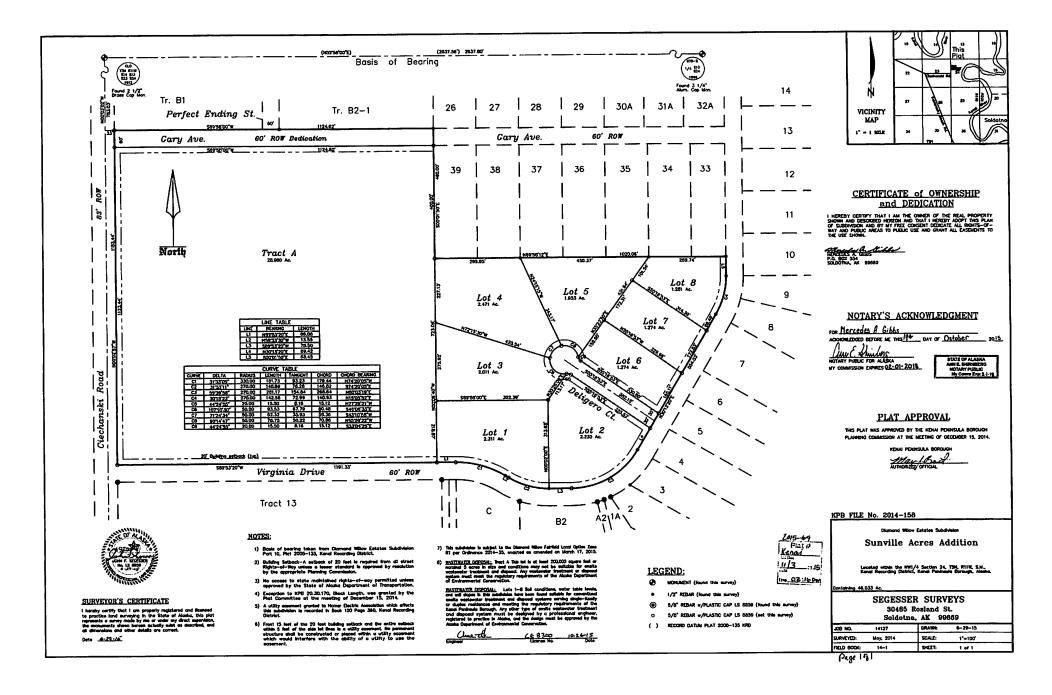
844



E3-701



.846



KENAI PENINSULA BOROL 144 North Binkley Street · Soldotna, Alaska 99669-7520 Toll-free within the Borough: 1-800-478-4441 PHONE: (907) 262-4441 • FAX: (907) 262-1892 www.borough.kenai.ak.us **MIKE NAVARRE BOROUGH MAYOR** 

#### CERTIFICATE OF TAX DEPARTMENT

I, Rhonda K. Krohn, Property Tax and Collections Supervisor for the Kenai Peninsula Borough, do hereby certify that all real property taxes levied by the Kenai Peninsula Borough through December 31, 2014 have been paid for the area(s) described as:

Subdivision: DIAMOND WILLOW ESTATES SUBDIVISION SUNVILLE ACRES ADDITION

Parcel # 05527055 T 5N R 11W SEC 24 Seward Meridian KN NW1/4 EXCLUDING THE DIAMOND WILLOW ESTATES SUBDIVISIONS PART 1 THRU PART 10 & EXCL THE E 285FT M/L OF THE N 350 FT M/L OF NW1/3

Effective January 1, 2015, estimated taxes of \$2,971.69 were paid on the above property(s). However, if the estimated taxes are less than the actual taxes levied on July 1, 2015, the difference is a lien against the property(s) until paid.

Witness my hand and seal this 23rd day of March, 2015.

norida K. Krihn

-----

E3-704

Rhonda K. Krohn Property Tax and Collections Supervisor

7/12/2018

DNR Recorder's Office

2

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# Recorder's Office - Document Display

Selected Document:

2016-011179-0 In District: 302 - KENAI

> See Index Codes Cannot view images?

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302 - KENAI
Document Year:
2016
Number:
011179
Suffix:
0
Date and Time Recorded:
12/27/2016 08:57 AM
Pages:
6
Index:
M - MORTGAGES
Description:
DEED OF TRUST
Amount:
$899,670.69
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# PARTIES

TYPE	NAME
Grantor	CONSOLIDATED DEVELOPMENT & MANAGEMENT LLC



DNR Recorder's Office

TYPE	NAME
Grantee	GIBBS MERCEDES A
Grantee	FRIST AMERICAN TITLE INSURANCE COMPANY

# LEGAL DESCRIPTIONS

Location: Lot: 2	Plat: 2008-135
Location: Lot: 1	Plat: 2015-69
Location: Lot: 2	Plat: 2015-69

# COMMENTS

ERECORDED DOCUMENT

More Information for additional Legal Info.

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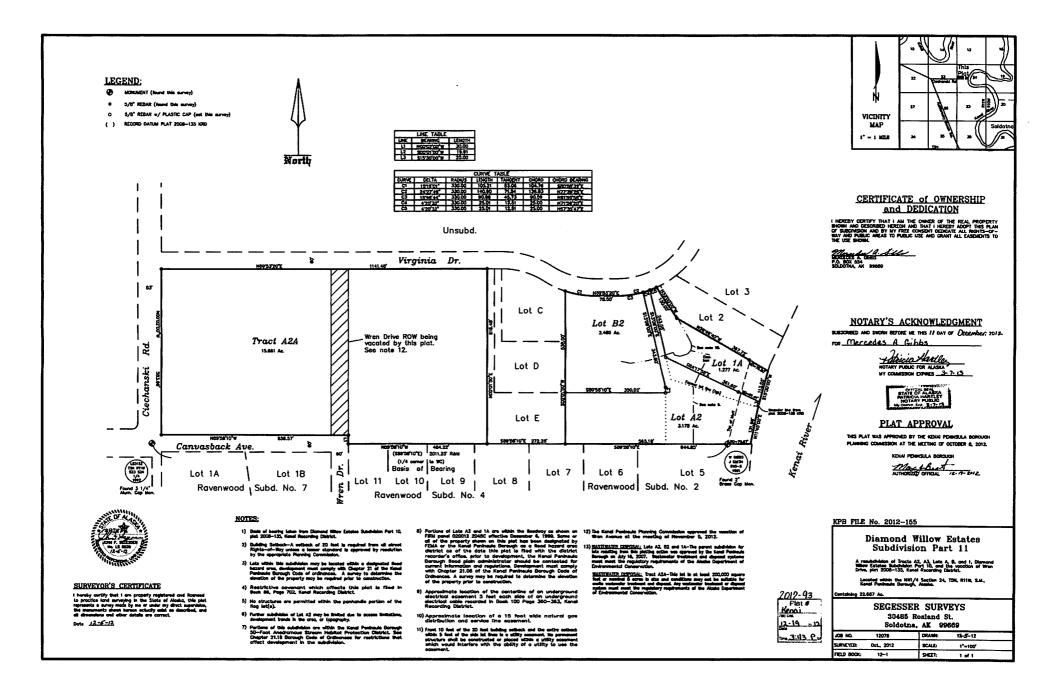
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E3-706



#### E3-707

2012.93 Kenai



## KENAI PENINSULA BOROUGH

144 North Binkley Street 
Soldotna, Alaska 99669-7520 Toll-free within the Borough: 1-800-478-4441 PHONE: (907) 262-4441 
FAX: (907) 262-1892 www.borough.kenai.ak.us

> MIKE NAVARRE BOROUGH MAYOR

#### CERTIFICATE OF TAX DEPARTMENT

I, Rhonda K. Krohn, Property Tax and Collections Supervisor for the Kenai Peninsula Borough, do hereby certify that, as of the date of this certificate, all real property taxes levied by the Kenai Peninsula Borough have been paid for the area(s) described as:

Subdivision: DIAMOND WILLOW EST. SUB. PART II

Parcel # 05527046 DIAMOND WILLOW ESTATES SUB T 5N R 11W SEC 24 Seward Meridian KN 2008135 PART 10 LOT 1 Parcel # 05527048 T 5N R 11W SEC 24 Seward Meridian KN 2008135 DIAMOND WILLOW ESTATES SUB PART 10 LOT A Parcel # 05527049 T 5N R 11W SEC 24 Seward Meridian KN 2008135 DIAMOND WILLOW ESTATES SUB PART 10 LOT B Parcel # 05527053 T 5N R 11W SEC 24 Seward Meridian KN 2008135 DIAMOND WILLOW ESTATES SUB PART 10 TRACT A2 Parcel # 05527054 T 5N R 11W SEC 24 Seward Meridian KN 2008135 DIAMOND WILLOW ESTATES SUB PART 10 TRACT A3

The following assessments (except assessments for the cities of Homer, Kenai, Seward, Seldovia, and Soldotna) levied against this property are outstanding: NONE.

Witness my hand and seal this 12th day of December, 2012.

hunda K. Krom

Rhonda K. Krohn Property Tax and Collections Supervisor

7/12/2018

**DNR** Recorder's Office



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# Recorder's Office - Document Display

Selected Document: 2018-003697-0 In District: 302 - KENAI

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302 - KENAI
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2018
Number:
003697
Suffix:
0
Date and Time Recorded:
05/02/2018 10:09 AM
Pages:
1
Associated Doc:
2016-011179-0
Index:
M - MORTGAGES
Description:
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# PARTIES

TYPE	NAME		
Grantor	FIRST AMERICAN TITLE INSURANCE COMPANY		

TYPE

Grantee

NAME

DNR Recorder's Office

NAN

CONSOLIDATED DEVELOPMENT & MANAGEMENT LLC

# LEGAL DESCRIPTIONS

Location: Lot: 1A

Plat: 2012-93

# COMMENTS

ERECORDED DOCUMENT

All information has been displayed

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# DIAMOND WILLOW ESTATES

COMPARABLE AREA REAL ESTATE LISTINGS UNZONED LISTINGS

855

AlaskaRealEstate.com - Listing 18-10304: 47910 W Poppy Lane, Soldotna

#### 47910 W Poppy Lane Soldotna, AK 99669



Listing: 18-10304 | Price: \$250,000

General Information:

Lot Sq. FL: 1742400 Acreage: 40

Zoning: RMKS

High School: Soldotna Jr. High: Skyview Elementary: K-Beach

40 Acres with agricultural covenants. Sale subject to compliance. Convenient location on West Poppy. 2400 sq.ft. unfinished home on property. Cleared fenced area next to 2 x 6' Pole barn. Well septic and electricity on site. Lots of potential for farming, gardening. The privacy you want is here. Seller will consider Owner Financing with Acceptable Terms and Conditions.

Directions:

From Soldotna down Sterling Highway take a right on Kalifornsky Beach Road. Take a left at the light on West Poppy. Property on your right- sign posted.

Additional Info: Land Type: Commercial, Farmland, Residential Land Features: Fire Service Area, Road Service Area, Southern Exposure, Trees - Cleared, Trees - Heavy Topography: Level Waterfront: No Waterfront Access: Government, Paved, Maintained Road Maintenance: Road Maintained All Year

This listing is brought to you by:

 Photo
 Mark White

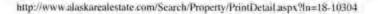
 The Ron Moore Company

 Phone: 907-260-1609

 Email: mewhite@ptialaska.net

 Web:

All square footages are approximations. School boundaries are subject to change. Information is not guaranteed and should be independently vented for accuracy



AlaskaRealEstate com - Listing 18-7933: 000 De Busk Drive, Nikiski/North Kenai

#### 000 De Busk Drive Nikiski/North Kenai, AK 99635



Listing: 18-7933 | Price: \$169,500

General Information:

Lot Sq. Ft.: 1001880 Acreage: 23

Zoning: UNZ

High School: Nikiski Jr. High: Nikiski

Elementary: Nikiski North Star

LAKEFRONT PARADISE! 23 ACRES on floatplane size BARR LAKEI Electricity on the property & gas in the area. Here's your chance to own a HUGE piece of ALASKA with 700 ft of water frontage to build your dream home. OR subdivide, keep a chunk for yourself & sell the rest. Only \$169,500 cash. Possible loan through FNBA with large down. Buyer responsible for any fees associated

Directions:

Between Mile 28 & 29 of the Kenai Spur Hwy, turn onto Holt Lamplight Road. Turn left on DeBusk Drive. Property fronts along Holt Lamplight and down DeBusk. See maps online. See sign

Additional Info:

Land Type: Residential

Land Features: Fire Service Area, Horses O.K, Mobile Home O.K, Multi-Family O.K, Road Service Area, Southern Exposure, View, Trees - Heavy, Airplane Access Topography: Level, Rolling Waterfront: Lake Frontage Access: Government, Gravel, Paved, Maintained

Road Maintenance: Road Maintained Part Year

This listing is brought to you by:



Kelly D Griebel Century 21 Realty Solutions Freedom Realty Phone: 907-398-7293 Email: KellyG@century21.com Web: www.kellysilstings.com

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AlaskaRealEstate.com - Listing 18-6865: 4336 Kenai Spur Highway, Kenai

#### 4336 Kenai Spur Highway Kenai, AK 99611



Listing: 18-6865 | Price: \$179,500

General Information:

Lot Sq. Ft.: 891673 Acreage: 20.47

Zoning: RR

High School: Unknown Jr. High: Unknown

Elementary: Unknown

Great location at mile 4.5 of the Kenai Spur Hwy 20.47 acres. Lots of potential to subdivide and/or create a country estate. Approximately 1.165' of Kenai Spur Hwy frontage and 605' of Strawberry Rd frontage.

Directions:

From Soldotna take the Kenai Spur Hwy to mile 4.5 watch for driveway approach on the right. Property can also be accessed off Strawberry Road.

Additional Info:

Land Type: Commercial, Farmland, Residential Land Features: Driveway, Fire Service Area Topography: Level Waterfront: No Waterfront Access: Government, Paved, Maintained Road Maintenance: Road Maintained All Year

This listing is brought to you by:



Edward Oberts Redoubt Realty Phone: 907-398-8039 Email: Ed@RedoubtRealty.com

Email: Ed@RedoubtRealty.com Web: RedoubtRealty.com

All square lootages are approximations. School boundaries are subject to change, information is not guaranteed and should be independently winfied for eccuracy

REDOU

AlaskaRealEstate.com - Listing 18-94: 47734 Ciechanski Road, Kenai

#### 47734 Ciechanski Road Kenai, AK 99611



Listing: 18-94 | Price: \$212,000

General Information:

Lot Sq. Ft.: 1668348 Acreage: 38.3 Zoning: UNZ High School: Kenai Central Jr. High: Kenai

Elementary: K-Beach

Imagine the Possibilities! 38.3 Acre Gravel Pit w/ No Covenants! Could be anything you want! Ball field or RV Park? Neighborhood Park? Sledding Hills? Approx. 3-4 acres of untouched ground could be used to build on. Extremely deep & High Producing Water Well. Awesome Location! Electric & Gas Adjacent, 2 Legal Access Points. BTVA

Directions:

Kalifornsky Beach Rd to Ciechanski, First Left, Must have Key to Gate & Scheduled Appointment to walk the Property.

Additional Info:

Land Type: Commercial, Farmland, Industrial, Recreational, Residential Land Features: Driveway, Horses O.K. Trees - Cleared, Trees - Sparse, Gravel Pit Topography: Level, Rolling, Sloping, Steep, Hilly Waterfront: No Waterfront Access: Paved, Maintained Road Maintenance: Road Maintained All Year



This listing is brought to you by:

Randi Presley Century 21 Realty Solutions Freedom Realty Phone: 907-398-4917 Email: alaskanrealestate@gmail.com Web:

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AlaskaRealEstate.com - Listing 17-15325: 000 Spur Vista Tr 3, Kenai

#### 000 Spur Vista Tr 3 Kenai, AK 99611



#### Listing: 17-15325 | Price: \$125,000

General Information:

Lot Sq. Ft.: 941332 Acreage: 21.61 Zoning: UNZ

High School: Unknown Jr. High: Unknown Elementary: Unknown

Large Acreage. 21.6 acres, ready for your development. Come take a look. Adjoining acreage and home for sale too, see listing numbers 17-12933 and 17-12963.

Directions:

About milepost 11.5 Kalifornsky Beach turn on Dog Fish and then right at the T. Property will be ahead.

Additional Info:

Land Type: Land Features: Topography: Waterfront: No Waterfront Access: Paved Road Maintenance: Road Maintained All Year



This listing is brought to you by:

Michele Holley Alaska Real Estate Network LLC Phone: 907-229-4650 Email: buyalaska@gmail.com Web: alaskarealestate-network.com Michelle Williams Alaska Real Estate Network LLC Phone: Email: Web:



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AlaskaRealEstate.com - Listing 17-14876: Tr A Kalifornsky Beach Road, Kenai

#### Tr A Kalifornsky Beach Road Kenai, AK 99611



Listing: 17-14876 | Price: \$89,900

General Information:

Lot Sq. Ft.: 807167 Acreage: 18.53

Zoning: UNK

High School: Soldotna Jr. High: Skyview

Elementary: Tustumena

DEVELOPERSI BUILDERSI INVESTORSI 18,53 acres on the Kalifornsky Beach Road between mile 7 & 8, (Located to the left of Inland Coast Rd.) Nice area with usable land across from Buchanon Road & the Inlet. Gas, electric & phone are adjacent to site. Seller may consider owner financing with a large down & acceptable terms. BUY LAND! They aren't making any more of it! Buyer to verify all information.

Directions:

Between mile 7 & 8 of K-Beach road across from Buchanon Rd & the Inlet. See Signs.

Additional Info:

Land Type: Residential

Land Features: Covenants, Fire Service Area, Road Service Area, Trees - Heavy Topography: Level Waterfront: No Waterfront: Access: Government, Paved, Maintained Road Maintenance: Road Maintained All Year

This listing is brought to you by:



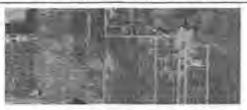
Kelly D Griebel Century 21 Realty Solutions Freedom Realty Phone: 907-398-7293 Email: KellyG@century21.com Web: www.kellyslistings.com



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AlaskaRealEstate.com - Listing 17-11905: Tr E Dividend Street. Nikiski/North Kenai

#### Tr E Dividend Street Nikiski/North Kenai, AK 99611



#### Listing: 17-11905 | Price: \$55,000

General Information:

	Guiler	
	Lot Sq. Ft.: 1401761 Acreage: 32.18	High School: Undisclosed Jr. High: Undisclosed
	Zoning: UNZ	Elementary: Undisclosed
Very large pa Information.	arcel located in Nikiski. This parcel cannot be sold until the owners ho	ome next door is sold (MLS #17-7448). Buyer & Buyers Agent to Verify All Listing
	D	irections;
Call listing ag	gent.	
	Add	litional Info:
Available, Tr Topography Waterfront: Access: Go	rees - Heavy	O.K, Road Service Area, Southern Exposure, View, Dog Teams OK, DSL/Cable
	This listing is	brought to you by:
102	Traci Hansen Jack White Real Estate Soldotna	Photo
1	Phone: 907-953-3351 Email: propertyinalaska@gcl.net Web:	not Available

All square footages are approximations. School boundaries are subject to change. Information is not guaranteed and should be independently verified for accuracy

AlaskaRealEstate.com - Listing 17-6053: 50960 Dragonfly Street, Nikiski/North Kenai

#### 50960 Dragonfly Street Nikiski/North Kenai, AK 99635



Listing: 17-6053 | Price: \$89,500

General Information:

Lot Sq. Ft.: 1611720 Acreage: 37 Zoning: UNK High School: Unknown Jr. High: Unknown Elementary: Unknown

21 lots for a total of 37 acres. Property is ready for someone to run utilities and roads. Property is off of paved Halbouty Road. There is gas in the area.

Directions:

Kenai Spur Highway to MP 29.75. Turn on Halbouty Road. Go all the way down to Dragonfly Street. Look for real estate sign.

Additional Info:

Land Type: Residential Land Features: Fire Service Area, Road Service Area Topography: Waterfront: No Waterfront Access: Paved, Maintained Road Maintenance: Road Maintained All Year

This listing is brought to you by:



Dale Bagley Redoubt Realty Phone: 907-398-1865 Email: dale@redoubtrealty.com Web: www.redoubtrealty.com

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AlaskaRealEstate.com - Listing 17-2947: 000 K Beach Road, Soldotna

## 000 K Beach Road Soldotna, AK 99669



Listing: 17-2947 | Price: \$679,000

General Information:

Lot Sq. Ft.: 1289376 Acreage: 29.6 Zoning: UNZ High School: Unknown Jr. High: Unknown Elementary: K-Beach

One of the last large pieces of commercial property on K. Beach. Located next to Cook Inlet Academy and across from Endicott Drive. This location and size would be perfect for a Big Box Store, warehouses or large apartment complex.

Directions:

K. Beach Road beside Cook Inlet Academy.

Additional Info:

Land Type: Commercial, Residential Land Features: Highway Frontage, Multi-Family O.K, Road Service Area Topography: Gently Rolling Waterfront: No Waterfront Access: Paved Road Maintenance: Road Maintained All Year

This listing is brought to you by:



Debbie Bagley Redoubt Realty Phone: 907-398-1830 Email: debbie@redoubtrealty.com Web: www.redoubtrealty.com



All square footages are approximations. School boundaries are subject to change. Information is not guaranteed and should be independently verified for accuracy.

AlaskaRealEstate.com - Listing 16-14672: 2031-2041 Wyatt Way, Kenai

## 2031-2041 Wyatt Way Kenai, AK 99611



Listing: 16-14672 | Price: \$28,700

General Information:

Lot Sq. Ft.: 871200 Acreage: 20

High School: Unknown Jr. High: Unknown Elementary: Unknown

Zoning: UNK

You get 2 great parcels priced at assessed borough value. This land is perfect to build a hunting or fishing cabin on. It is right by state land. Owner finance possible with half down.

Directions:

Kenai Spur Highway to Swires Rd. At the end turn right onto Wyatt Way Property is on the left. Sign posted.

Additional Info:

Land Type: Recreational Land Features: Horses O.K, Trees - Cleared, Trees - Sparse Topography: Gently Rolling Waterfront: No Waterfront Access: Dedicated Road, Dirt, Trail Road Maintenance: Unknown - BTV

This listing is brought to you by:



A. Ed Gaethle Mossy Oak Properties of Alaska -Soldotna Phone: 907-394-5133 Email: buysellak@gmail.com Web: http://www.alaskalandguide.com



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AlaskaRealEstate.com - Listing 14-7238: Tr B Princess Lake Estates Ph 4, Nikiski/North Kenai

## Tr B Princess Lake Estates Ph 4 Nikiski/North Kenai, AK 99635



Listing: 14-7238 | Price: \$399,900

General Information:

Lot Sq. Ft.: 989335 Acreage: 22.71 Zoning: UNZ High School: Unknown Jr. High: Unknown Elementary: Unknown

Great opportunity with this 23 acre operating gravel pit Soils report available upon request. Approved with borough and state mining permits. Apprx. 4 miles north of downtown Kenai.

Directions:

Kenai Spur Hwy North to Treasure Chest. Property at the end of Treasure Chest.

Additional Info:

Land Type: Commercial, Industrial Land Features: Fire Service Area, Trees - Cleared, Trees - Heavy, Gravel Pit Topography: Level Waterfront: No Waterfront Access: Gravel Road Maintenance: Unmaintained Road

This listing is brought to you by:



Glenda Feeken RE/MAX of The Peninsula Phone: 907-252-2743 Email: glenda@teamfeeken.com Web: www.kenaihomes.com

Photo not Available

All square footages are approximations. School boundaries are subject to change. Information is not guaranteed and should be independently verified for accuracy.

AlaskaRealEstate.com - Listing 18-4464; 3073 Beaver Loop Road, Kenai

## 3073 Beaver Loop Road Kenai, AK 99611



#### Listing: 18-4464 | Price: \$475,000

General Information:

Lot Sq. Ft.: 2613600 Acreage: 60

Zoning: RR

High School: Unknown Jr. High: Unknown Elementary: Unknown

60 acres on Beaver Loop Road. Includes 5 lots being sold together. There are may uses for this property. Some lots have a gravel pit and a small outbuilding.

Directions:

Kenai Spur Highway to aprox MP 6.5 turn onto Beaver Loop Road. Look for sign.

Additional Info:

Land Type: Commercial, Residential Land Features: Fire Service Area, Road Service Area, Gravel Pit Topography: Waterfront: No Waterfront Access: Paved, Maintained Road Maintenance: Road Maintained All Year

This listing is brought to you by:



Dale Bagley

Redoubt Realty Phone: 907-398-1865 Email: dale@redoubtrealty.com Web: www.redoubtrealty.com



All square footages are approximations, School boundaries are subject to change. Information is not guaranteed and should be independently verified for accuracy.

AlaskaRealEstate.com - Listing 18-1032: 1618 Toyon Way, Kenai

## 1618 Toyon Way Kenai, AK 99611



Listing: 18-1032 | Price: \$450,000

General Information:

Lot Sq. Ft.: 2293870 Acreage: 52.66 Zoning: RS High School: Unknown Jr. High: Unknown Elementary: Unknown

Very large bluff front parcel in the city. Buyer to verify exact size of the usable land as a portion of the 52.66 acres is designated Conservation land and the remaining residential land. This unique parcel is very rare due to its size and location. Across is by both Toyon Way and Tanaga Ave.

Directions:

Kenai Spur Hwy to S. Forest Dr, Right on Toyon Way and follow to end or Right on Tanaga and follow to end.

#### Additional Info:

Land Type: Residential Land Features: Fire Service Area, Road Service Area, View, In City Limits, Trees - Heavy Topography: Level Waterfront: Inlet Frontage Access: Dedicated Road, Paved, Maintained Road Maintenance: Road Maintained All Year

This listing is brought to you by:



Fred Braun Jack White Real Estate Kenai Phone: 907-252-8375

Email: brauncom@ptialaska.net Web: kenaipeninsularealestate.com Photo not Available

All square footages are approximations. School boundaries are subject to change. Information is not guaranteed and should be independently verified for accuracy.

AlaskaRealEstate.com - Listing 17-14662: 801 Bridge Access Road. Kenai

## 801 Bridge Access Road Kenai, AK 99611



#### Listing: 17-14662 | Price: \$475,000

General Information:

Lot Sq. Ft.: 2395800 Acreage: 55 Zoning: IH High School: Unknown Jr. High: Unknown Elementary: Unknown

Property offered at 6/10/17 appraised value. 55 acres with split zoning designations. Southerly 15+/- acres fronting Beach Access Rd zoned Industrial Heavy, remaining 40+/-acres zoned Rural Residential. Approx. 2.8 cleared-acres improved with gravel/sand base material in NE corner of IH zoned section. 1,770+/-feet of Bridge Access Rd. frontage. Access to east side of parcel via Childs Avenue.

Directions:

Located in Kenai, AK, take Sterling Hwy, north at Kenai Spur Hwy, south on Bridge Access Rd. Property on the north side of Bridge Access Road between Ervin Street and Childs Avenue.

Additional Info:

Land Type: Industrial, Residential Land Features: In City Limits, Trees - Heavy Topography: Sloping Waterfront: No Waterfront Access: Gravel Road Maintenance: Unknown - BTV

This listing is brought to you by:

Curt Nading Commercial Real Estate Alaska, LLC

Phone:

Email: curt@crealaska.com Web: www.crealaska.com Season N Baker Commercial Real Estate Alaska, LLC Phone: 907-261-7302 Email: season@crealaska.com Web:



All square footages are approximations. School boundaries are subject to change. Information is not guaranteed and should be independently verified for accuracy.

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# DIAMOND WILLOW ESTATES

## HISTORICAL DATA

**MISCELLANEOUS** 



EDG/ 0243PHTE 556

## Water Rights

CERTIFICATE OF APPROPRIATION

LAS 1690

THE STATE OF ALASKA UNDER AS 46.15. THE ALASKA WATER USE ACT, AND THE REGULATIONS ADOPTED UNDER IT, GRANTS TO

WILLIAM E GIBBS BOX 554 SOLDOTNA. AK. 99669

· · •

1

THE RIGHT TO USE WATER FROM THE FOLLOWING SOURCE.

A) KENAI RIVER WITH A PRIDRITY DATE OF 06/30/1956

APR TO SEP

30.0 ACRE FT/YR FOR FIELD CROPS

THE LOCATION TO WHICH THIS WATER RIGHT APPERTAINS IS:

LOT 3. SAID LOT WITHIN W1/2NW1/4, NE1/4NW1/4 AND THAT CERTAIN PARCEL OF REAL PROPERTY WITHIN SE1/4NW1/4, ALL LOCATED WITHIN SECTION 24, TOWNSHIP 5 NORTH, RANGE 11 WEST, SEWARD MERIDIAN. THE LOCATION OF THE WATER SOURCE IS THAT PORTION OF THE KENAI RIVER LOCATED WITHIN SE1/4NW1/4 SECTION 24, TOWNSHIP 5 NORTH, RANGE 11 WEST, SEWARD MERIDIAN.

THE CONDITIONS THAT APPLY TO THIS APPROPRIATION ARE FOUND IN ATTACH-MENT A, ATTACHED HERETO AND MADE A PART HEREOF.

THE WATER RIGHT IS GRANTED SUBJECT TO THE PERTINENT STATUTORY PROVISIONS IN AS 46.15, AND ADMINISTRATIVE REGULATIONS IN 11 AAC 93.

PAGE 1

orate of Alaska ECCH 0243 Part 557 Water Rights CERTIFICATE OF APPROPRIATION LAS 1689 THIS CERTIFICATE OF APPROPRIATION IS ASSUED BY AUTHORITY OF AS 46.15.120 AND 11 AAC 93.130 ON 198 4 APPROVED Ree 0 TITLE: st. et M DI VISION OF LAND AND WATER MANAGEMENT STATE OF ALASKA ) 55 JUDICIAL DISTRICT THIS IS TO CERTIFY THAT ON 1 TH . 19 84 AUGUST BEFORE ME APPEARED MARSARET J. HAYES , KNOWN B ME TO BE THE DIRECTOR OR AUTHORIZED REFRESENTATIVE OF THE DIVISION OF , KNOWN BY LAND AND WATER MANAGEMENT, DEPARTMENT OF NATURAL RESOURCES, AND ACKNOWLEDGED TO ME THAT THIS CERTIFICATE OF APPROPRIATION WAS WELLING TARILY EXECUTED ON BEHALF OF THE STATE OF ALASKA. Bill L NOTARY PUBLIC IN AND FOR MY COMMISSION EXPIRES: PURSUANT TO AS 46.15.160 AND APPLICABLE REGULATIONS THE CENTERGATE HOLDER SHALL NOTIFY THE ALASKA DIVISION OF LAND AND WATER HANGENER UPON CHANGE OF ADDRESS OR TRANSFER OF ANY REAL PROPERTY RELATED THERETO. 3 . . . **.** PAGE 2 



## Water Rights

CERTIFICATE OF APPROFRIATION

LAS

1680

ATTACHMENT A - CONDITIONS:

THE HOLDER OF THIS CERTIFICATE SHALL:

FOLLOW ACCEPTABLE ENGINEERING STANDARDS IN EXERCISING THE WATER RIGHT GRANTED BY THIS CERTIFICATE.

DEFEND AND INDEMNIFY THE STATE AGAINST AND HOLD IT HARMLESS FROM ANY AND ALL CLAIMS. DEMANDS. LEGAL ACTIONS. LOSS. LIABILITY AND EXPENSE FOR INJURY TO OR DEATH OF PERSONS AND DAMAGES TO OR LOSS OF PROPERTY ARISING OUT OF OR CONNECTED WITH THE EXERCISE OF THE WATER RIGHT GRANTED BY THIS CERTIFICATE.

COMPLY WITH ALL APPLICABLE LAWS, REGULATIONS AND CONDITIONS.

NOTIFY THE DIVISION OF LAND AND WATER MANAGEMENT, DEPARTMENT OF NATURAL RESOURCES OF ANY CHANGE OF ADDRESS OF THE GRANTEE OR TRANSFER OF ANY REAL PROPERTY IDENTIFIED IN THIS DOCUMENT.

EACH WATER INTAKE STRUCTURE SHALL BE CENTERED AND ENCLOSED IN A SCREENED BOX DESIGNED TO PREVENT FISH ENTRAPMENT, ENTRAINMENT, OR INJURY. THE EFFECTIVE SCREEN OPENING MAY NOT EXCEED 0.04 INCH. TO REDUCE FISH IMPINGMENT ON SCREENED SURFACES, WATER VELOCITY AT THE SCREEN/WATER INTERFACE MAY NOT EXCEED 0.1 FOOT PER SECOND WHEN THE PUMP IS OPERATING. TO MEET THIS STANDARD, A PUMP OPERATED AT 800 GALLONS PER MINUTE WOULD HAVE TO BE CENTEREDAND ENCLOSED IN A 6 FOOT SQUARE SCREENED BOX.



AUC 13 11 25 AH '94 REQUESTED BY Phil Nash ADDRESS BH 4034, Januar 52712 8

PAGE 3



## Water Rights

#### CERTIFICATE OF APPROPRIATION

ADL 40166

THE STATE OF ALASKA UNDER AS 46.15, THE ALASKA WATER USE ACT, AND THE REGULATIONS ADUPTED UNDER IT. GRANTS TO:

WILLIAM E GIBBS 30X 554 SOLDOTNA, AK. 99669

THE RIGHT TO USE WATER FROM THE FOLLOWING SOURCE:

A) DRILLED WELL WITH A PRIORITY DATE OF 02/20/1967

500.0	GAL/DAY	FOR	SINGLE DWELLING		JAN TO DEC
1.0	ACRE FT/YR	FOR	LAWN AND GARDEN		APR TO SEP
30.0	GAL/DAY	FOR	HORSES		JAN TO DEC
540.0	GAL/DAY	FOR	DAIRY FARMS	5	JAN TO DEC

THE LOCATION TO WHICH THIS WATER RIGHT APPERTAINS IS:

LOT 3, SAID LOT WITHIN W1/2NW1/4, NE1/4NW1/4 AND THAT CERTAIN PARCEL OF REAL PROPERTY WITHIN SE1/4NW1/4, ALL LOCATED WITHIN SECTION 24, TOWNSHIP 5 NORTH, RANGE 11 WEST, SEWARD MERIDIAN. THE LOCATION OF THE WATER SOURCE IS A DRILLED WELL. 89 FEET DEEP. LOCATED WITHIN SE1/4NW1/4, SECTION 24, TOWNSHIP 5 NORTH, RANGE 11 WEST. SEWARD MERIDIAN.

THE CONDITIONS THAT APPLY TO THIS APPROPRIATION ARE FOUND IN ATTACH-MENT A MATTACHED HERETO AND MADE A PART HEREOF.

THE WATER RIGHT IS GRANTED SUBJECT TO THE PERTINENT STATUTORY PROVISIONS IN AS 46.15. AND ADMINISTRATIVE RECULATIONS IN 11 AAC 93.

PAGE 1

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Drate of Alask ERGE 0243-1-E 560 Water Rights CERTIFICATE OF APPROPRIATION ADL 40166 THIS CERTIFICATE OF APPROPRIATION IS ASSUED BY AUTHORITY OF AS 46.15.120 AND 11 AAC 93.130 DN 1= \$4. Marga APPROVED ict Mgr. TITLE tsa. DIVISION OF LAND AND WATER MANAGEMENT STATE OF ALASKA 55 ) JUDICIAL DISTRICT 1984 THIS IS TO CERTIFY THAT ON AUGUST MARGARET J. HAYES BEFORE ME APPEARED , KNOWN BY ME TO BE THE DIRECTOR OR AUTHORIZED REPRESENTATIVE OF THE DIVISION OF LAND AND WATER MANAGEMENT, DEPARTMENT OF NATURAL RESOURCES, AND ACKNOWLEDGED TO ME THAT THIS CERTIFICATE OF APPROPRIATION MANYOLUN-TARILY EXECUTED ON BEHALF OF THE STATE OF ALASKA. NOTARY PUBLIC IN AND FOR THE ASK MY COMMISSION EXPIRES: \_\_\_ PURSUANT TO AS 46.15.160 AND APPLICABLE REGULATIONS THE CERTIFICATE HOLDER SHALL NOTIFY THE ALASKA DIVISION OF LAND AND WATER MANAGEMENT UPON CHANGE OF ADDRESS OR TRANSFER OF ANY REAL PROPERTY RELATED THERETO. PAGE 2





CERTIFICATE OF APPROPRIATION

AÜL

40166

ATTACHMENT A - CONDITIONS:

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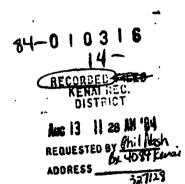
THE HOLDER OF THIS CERTIFICATE SHALL:

FOLLOW ACCEPTABLE ENGINEERING STANDARDS IN EXERCISING THE WATER RIGHT GRANTED BY THIS CERTIFICATE.

DEFEND AND INDEMNIFY THE STATE AGAINST AND HOLD IT HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS, LEGAL ACTIONS, LOSS, LIABILITY AND EXFENSE FOR INJURY TO OR DEATH OF PERSONS AND DAMAGES TO OR LOSS OF PROPERTY ARISING OUT OF OR CONNECTED WITH THE EXERCISE OF THE WATER RIGHT GRANTED BY THIS CERTIFICATE.

COMPLY WITH ALL APPLICABLE LAWS, REGULATIONS AND CONDITIONS.

NOTIFY THE DIVISION OF LAND AND WATER MANAGEMENT, DEPARTMENT OF NATURAL RESOURCES OF ANY CHANGE OF ADDRESS OF THE GRANTEE OR TRANSFER OF ANY REAL PROPERTY IDENTIFIED IN THIS DOCUMENT.



PAGE 3

## 100x 0521 Page 395

## **QUITCLAIM DEED**

THIS QUITCLAIM DEED, Executed this 6th 1998 day of JANUARY by first party, Grantor, WILLIAM E. GIBBS whose post office address is P.O. BOX 554 SOLDOTNA, ALASKA 99669 to second party, Grantee, WILLIAM E. GIBBS and MERCEDES A. GIBBS whose post office address is P.O. BOX 554 SOLDOTNA, ALASKA 99669

Return to

WITNESSETH, That the said first party, for good consideration and for the sum of Dollars (\$0.00 ) paid by the said second party, the receipt whereof is hereby acknowledged, does hereby remise, release and quitclaim unto the said second party forever, all the right, title, interest and claim which the said first party has in and to the following described parcel of land, and improvements and appurtenances thereto in the Council THIRD JUDICIAL DISTRICT, State of ALASKA to wit:

Description of Property:

**NAK** 

A298-10 R298-04

TO5N R11W S23 KN N1/2 NE1/4 NE1/4 & N1/2 S1/2 NE1/4 NE1/4 S.M.

Kenai Recording Pistrict

ATKE (1)

(Revised 3/97)

HOLD 0521 PAGE 396

IN WITNESS WHEREOF, The said first party has signed and sealed these presents the day and year first above written. Signed, sealed and delivered in presence of:

Signature of Witness

Wm Labor

William E. Gibbs Print name of First Party

Print name of Witness

Signature of Witness

Print name of First Party

Signature of First Party

Print name of Witness

State of AlASKA County of Third Judicia (District On January 6, 1998 before me, Linda Chivers Notary Public appeared William E, Gibbs personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. WITNESS my hand and official seal.

Commission expires 1-29-98 1 Ŧ before me,

Produced ID Known Affiant Type of ID (Seal)

appended, which is to me on the basis of satisfactory evidence) to be the person(s) whose name(s) personally known to the within instrument and acknowledged to me that he/she/they executed the same in is/are subscripted to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their supnature(s) on the instrument the person(s), or the his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the

entity upon behalf of which the person(s) acted, executed the instrument. WITNESS my hand and official seal.

	AffiantKnown Produced ID
Signature of Notary	Type of ID(Seal)
000450	(
KENN RECIS	Signature of Preparer
DISTICT REALISTED BY M.C.	Print Name of Preparer
'98 JAN 16 PM 3 54	Address of Preparer

75-68 Henai

Subdivision \_\_\_\_\_\_\_ Nillow Estates Part One

Kenai Peninsula Borough

#### Box 850

#### Soldotna, Alaska 99669

#### CERTIFICATE OF TAX PAYMENT

I. Dona D. Palmer, do hereby certify as follows:

That I am the Tax Collector for the Kenai Peninsula Borough.

That, as of the date of this certificate, all real property taxes levied by the Kenai Peninsula Borough on the areas described as:

Assessor's Parcel 055-030-9300

THE POPPENTAL

That the following assessments ( except assessments for the cities of Homer, Kenai, Seldovia and Seward ) levied against this property are outstanding:

WITNESS my hand and seal this <u>6th</u> day of <u>August</u>, 19 75.

D. Palmer, Tax Collector

77-4 Kenai

Subdivision <u>Diamond Willow Estates</u> Sub. Part Four

Kenai Peninsula Borough

Box 850

Soldotna, Alaska 99669

#### CERTIFICATE OF TAX PAYMENT

I, Dona D. Palmer, do hereby certify as follows:

That I am the Tax Collector for the Kenai Peninsula Borough.

That, as of the date of this certificate, all real property taxes levied by the Kenai Peninsula Borough on the areas described as:

Parcel # 055-270-9900

have been paid, except for the <u>1977</u> taxes which are a lien on the property.

That the following assessments (except assessments for the cities of Homer, Kenai, Seldovia, Seward, and Soldotna) levied against this property are outstanding:

WITNESS my hand and seal this \_\_\_\_\_\_ day of \_\_\_\_\_\_, 19\_77.

Dona D. Palmer, Tax Collector

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#### DURABLE POWER OF ATTORNEY (Alaska Statutes 13.26.338 - 13.26.353)

THE POWERS GRANTED FROM THE PRINCIPAL TO THE AGENT IN THE FOLLOWING DOCUMENT ARE VERY BROAD. THEY MAY INCLUDE THE POWER TO DISPOSE, SELL, CONVEY, AND ENCUMBER YOUR REAL AND PERSONAL PROPERTY, AND THE POWER TO MAKE YOUR HEALTH CARE DECISIONS. ACCORDINGLY, THE FOLLOWING DOCUMENT SHOULD BE USED ONLY AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT THIS DOCUMENT, YOU SHOULD SEEK COMPETENT ADVICE.

YOU MAY REVOKE THIS POWER OF ATTORNEY AT ANY TIME.

#### A. NAMES AND ADDRESSES.

I, WILLIAM E. GIBBS, whose address is P.O. Box 554, Soldotna, AK 99669, do hereby appoint MERCEDES A. GIBBS, whose address is P.O. Box 554, Soldotna, AK 99669, as my attorney-infact to act as I have checked below in my name, place, and stead in any way which I myself could do, if I were personally present, with respect to the following matters, as each of them is defined in AS 13.26.344, to the full extent that I am permitted by law to act through an agent.

#### B. POWERS GRANTED.

THE AGENT YOU HAVE APPOINTED WILL HAVE ALL THE POWERS LISTED BELOW UNLESS YOU DRAW A LINE THROUGH A CATEGORY; AND INITIAL THE BOX OPPOSITE THAT CATEGORY

11		
(A)	real estate transactions	(
(в)	crampacerons revoluting cangible personal	(
1	property, chattels, and goods	
j; (C)	bonds, shares, and commodities transactions banking transactions business operation transactions	(
(D)	banking transactions	1
'(E)	business operation transactions	(
(F)	insurance transactions	Ċ
(G)	estate transactions	(
	make gifts for me	(
(I)	claims and litigation	Ċ
;; (J)	personal relationships and affairs benefits from government programs and military	(
(K)	benefits from government programs and military	(
1.	service	
(L) (M)	health care services	(
(M)	records, reports, and statements	(
(N)	delegation	Ċ
(0)	delegation all other matters, including those specified as follows:	(
	as follows:	•

JANET K. TEMPEL Attornay at Law 35477 Spur Highway Suite 207 Saldoina, AK 98669 (907) 262-1080 Faa 1907) 262-9766

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DURABLE POWER OF ATTORNEY, PAGE 1 OF 3

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## EALK 0530 PAGE 199

#### C. EFFECTIVE DATE.

This document shall become effective upon the date of my signature.

#### D. DURABLE PROVISION.

This document shall <u>not</u> be affected by my subsequent disability.

#### E. EXPIRATION DATE.

This document shall continue in effect until my death or until my written revocation, whichever occurs earlier.

#### F. NOTICE OF REVOCATION POWERS.

You may revoke one or more of the powers granted in this document. Unless otherwise provided in this document, you may revoke a specific power granted in this power of attorney by completing a Partial Revocation of Power of Attorney" that includes the specific power in this document that you want to revoke. Unless otherwise provided in this document, you may revoke all the powers granted in this power of attorney by executing a written full revocation.

#### H. LIVING WILL.

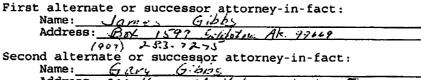
**X** I have executed a separate declaration under AS 18.12, known as a "Living Will."

I have not executed a "Living Will."

#### I. ALTERNATE AGENTS.

ANY ALTERNATE YOU DESIGNATE WILL BE ABLE TO EXERCISE THE SAME POWERS AS THE AGENT(S) YOU NAMED AT THE BEGINNING OF THIS DOCUMENT. IF YOU WISH TO DESIGNATE AN ALTERNATE OR ALTERNATES, COMPLETE THE FOLLOWING:

If the agent(s) named at the beginning of this document is unable or unwilling to serve or continue to serve, then I appoint the following agent to serve with the same powers:



#### Address: <u>360 Kynch RA Weters</u> (SCA) 912 - 3002-J. <u>DESIGNATION OF GUARDIAN OR CONSERVATOR</u>.

In the event that a court decides that it is necessary to appoint a guardian or conservator for me, I hereby nominate MERCEDES A. GIBBS to be considered by the court for appointment to serve as my guardian or conservator, or in any similar representative capacity.

JANET K. TEMPEL Attorney at Law 35477 Sput Highway Suite 207 Sologtha, AK 99669 1907) 262-1080 Fax 19071 262-9768

DURABLE POWER OF ATTORNEY, PAGE 2 OF 3

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## NOTICE TO THIRD PARTIES

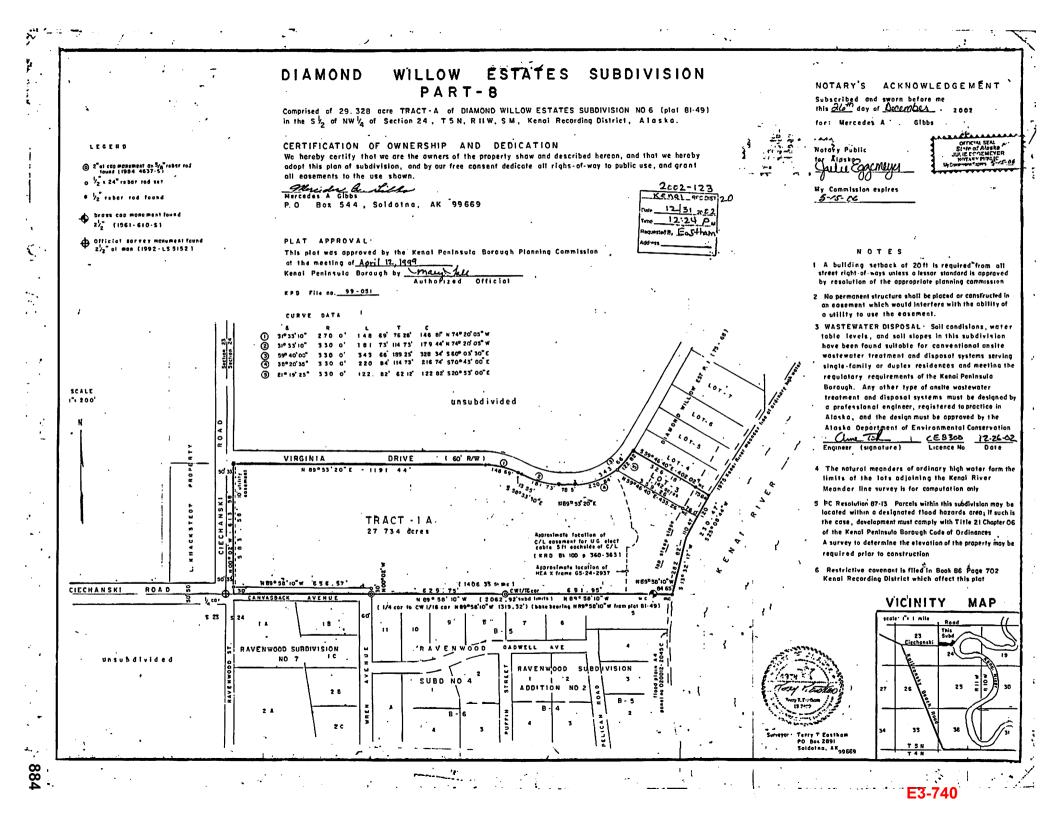
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	granted by a properly execute not incur any liability to the heirs, assigns, or estate as a in-fact to exercise the au- attorney. A third party who statutory form power of attorn the attorney-in-fact, the pri- for a civil penalty plus de	on the reasonable representations to a matter relating to a power d statutory power of attorney does he principal or to the principal's result of permitting the attorney- thority granted by the power of fails to honor a properly executed hey may be liable to the principal, ncipal's heirs, assigns, or estate mages, costs, and fees associated with the statutory form power of
	IN WITNESS WHEREOF, I hav	re hereunto signed my name this, 19 <u>977</u> .
	Hitti	AM E. GIBBS
	SUBSCRIBED AND SWORN TO C	r affirmed before me at at day of <u>1997</u> .
	Not ar My con	MARCH IN and for Alaska mission Expires: 9-28-99
	Kenai Recording	District Status
		004152
		211 - 22 <b>21</b> 111 - 27
JANET K. TEMPEL Attoincy at Law		and by M. Gibbs
35477 Spus Highway Suite 207 Suidema, An. 93689 1307, 262-1080	DURABLE POWER OF ATTORNEY, PAGE 3 OF 3	'98 MAY 22 PM 12 46
Fan (907) 262-9766		



2005-5 KENA/



144 N. BINKLEY • SOLDOTNA, ALASKA • 99669-7599 BUSINESS (907) 262-4441 FAX (907)262-1892

> DALE BAGLEY MAYOR

#### CERTIFICATE OF TAX DEPARTMENT

I, Rhonda K. Krohn, Property Tax and Collections Supervisor for the Kenai Peninsula Borough, do hereby certify that all real property taxes levied by the Kenai Peninsula Borough through December 31, 2004 have been paid for the area(s) described as:

Subdivision: DIAMOND WILLOW ESTATES PART 9

Parcel # 05527033-4

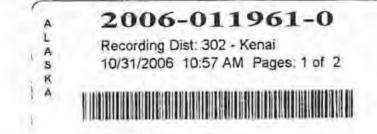
T05N R11W S24 KN NW1/4 EXC DIAMOND WILLOW ESTATES & EXC E 285 FT M/L OF N 350 FT OF SAID NW1/4

Effective January 1, 2005 the 2005 estimated taxes of \$2,172.39 were paid on the above property(s). However, if the estimated taxes are less than the actual taxes levied on July 1, 2005, the difference is a lien against the property(s) until paid.

Witness my hand and seal this 18th day of February, 2005.

inda Krohn Rhonda

Property Tax and Collections Supervisor





STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES DIVISION OF MINING, LAND & WATER 550 West 7<sup>th</sup> Avenue, Suite 1020 Anchorage, Alaska 99501-3562

#### WATER RIGHTS FINAL DETERMINATION

#### LAS 1680

Relinquishment of Certificate of Appropriation

Mercedes A. Gibbs P.O. Box 554 Soldotna, Alaska 99669

In the matter of the above-referenced water right Certificate of Appropriation, on March 31, 2000, Mercedes A. Gibbs, living spouse of William E. Gibbs and current owner of the associated land, notified the Department of Natural Resources, Division of Mining, Land and Water that this water right, which has a priority date of June 30, 1956, is abandoned, and therefore voluntarily relinquished. The location to which this water right is appurtenant to is described as:

Government Lot Three (3), W½NW¼ and NE¼NW¼ Section 24, Township 5 North, Range 11 West, Seward Meridian and SE¼NW¼ Section 24, Township 5 North, Range 11 West, Seward Meridian, Kenai Recording District, Third Judicial District, State of Alaska.

The certificate was issued for thirty (30) acre-feet of water per year for field crop irrigation (April to September). The location of the water source to which the water right was granted was a water intake structure located in that portion of the Kenai River located within SE¼NW¼ Section 24, Township 5 North, Range 11 West, Seward Meridian. The reason for this relinquishment is that the Gibbs' no longer maintain agricultural lands, and the use of water has been abandoned.

Therefore pursuant to AS 46.15, it is determination of the Division of Mining, Land and Water that the appropriation has been abandoned and the Certificate of Appropriation is

LAS 1680 Relinguishment of Certificate of Appropriation Page 1 of 2 hereby revoked, accordingly, as of March 31, 2000, the date the Division of Mining, Land and Water received the signed and notarized Notice of Relinquishment form.

This decision is final insofar as the Department of Natural Resources is concerned, but without prejudice to any other remedy an aggrieved party may have.

Date October 27. 2006

Prokosch

Chief, Water Resources Section

STATE OF ALASKA

3rd JUDICIAL DISTRICT

This is to certify that on October 27, 2006 before me appeared Gary J. Prokosch, known by me to be the director or authorized representative of the Division of Mining, Land & Water, Department of Natural Resources, and acknowledged to me that this Relinquishment of Certificate of Appropriation was voluntarily executed on behalf of the State of Alaska.

) ss.

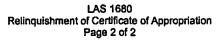
Notary Public in and for the State of Alaska

March 5, 2008 My Commission Expires

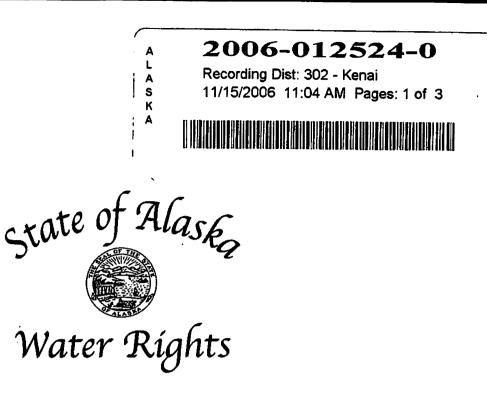


**RETURN RECORDED DOCUMENT TO:** Kellev McGuirk DNR, DMLW 550 West 7th Avenue Suite 1020 Anchorage, AK 99501-3562

This Water Rights Final Determination supersedes the Certificate of Appropriation issued on August 7, 1984, and recorded on August 13, 1984 as Document No. 84-010315, Book 243, Pages 556 through 559, Kenai Recording District, Third Judicial Recording District. State of Alaska.







#### AMENDED CERTIFICATE OF APPROPRIATION

#### ADL 40166

The State of Alaska, acting by and through the Department of Natural Resources, Division of Mining, Land and Water, 550 West 7<sup>th</sup> Avenue, Suite 1020, Anchorage, AK 99501-3562, hereinafter referred to as the grantor, under AS 46.15, the Alaska Water Use Act, and the regulations adopted under it, grants to:

Mercedes A. Gibbs P.O. Box 554 Soldotna, Alaska 99669-0554

The right to the following use of water:

SOURCE:Drilled WellQUANTITY:500 Gallons per DayPERIOD:January 1<sup>st</sup> through December 31<sup>st</sup>USE:Domestic

With a PRIORITY DATE of February 20, 1967.

The location of this water source:

• ···· · · · · · ·

Drilled well, eighty-nine (89) feet in depth, located within the below-described parcel of land.

Page 1 of 3

#### AMENDED CERTIFICATE OF APPROPRIATION

#### ADL 40166

The location to which this water right is appurtenant:

The East one-half of the East one-half (E½E½) of the below-described parcel of land:

Tract 1-A, Diamond Willow Estates Subdivision according to Plat No. 2002-123 filed in the Kenai Recording District, Third Judicial District, State of Alaska, subject to reservations and exceptions of record. Said parcel of land located in the South one-half Northwest one-quarter (S½NW¼) Section 24, Township 5 North, Range 11 West, Seward Meridian.

The holder of this Amended Certificate of Appropriation shall:

- 1. Follow acceptable engineering standards in exercising the water right granted by this amended certificate.
- 2. Except for claims or losses arising from negligence of the State, defend and indemnify the State against and hold it harmless from any and all claims, demands, legal actions, loss, liability, and expense for injury to or death of persons and damages to or loss of property arising out of or connected with the exercise of the water right granted by this amended certificate.
- 3. Comply with all applicable laws, regulations, and conditions.
- 4. Notify the grantor of any change of address, transfer of any real property identified in this amended certificate, or proposed change in the water appropriation.
- 5. If the grantor determines that this appropriation unduly affects a prior appropriator's ability to obtain water in accordance with his or her permit or certificate, this appropriation may be amended or water use may be curtailed until the prior appropriator can again obtain water under his or her prior right. Those individuals within the same area that do not have water rights may also be required to curtail taking water.

The water right is granted subject to the pertinent statutory provisions in AS 46.15 and Administrative Regulations in 11 AAC 93.

This Certificate of Appropriation has been amended to reflect the change in water volume and beneficial use, better define the area of appurtenance, and to add standard condition five.

<sup>2</sup> of 3 2006-012524

#### AMENDED CERTIFICATE OF APPROPRIATION

ADL 40166

The water right is granted subject to the pertinent statutory provisions in AS 46.15 and Administrative Regulations in 11 AAC 93

This Amended Certificate of Appropriation is issued by authority of AS 46.15.080, AS 46.15.120, 11 AAC 93.120, and 11 AAC 93.130 on <u>Alexandren 13</u>, 20<u>oc</u>.

APPROVED <u>Fatricia</u> Beth TITLE <u>Nature</u> Resonance Manage

STATE OF ALASKA 3rd JUDICIAL DISTRICT ) ss.

This is to certify that on <u>November 13</u>, 2006 before me appeared <u>Patricia Bettis</u> known by me to be the director or authorized representative of the Division of Mining, Land and Water, Department of Natural Resources, and acknowledged to me that this Amended Certificate of Appropriation was voluntarily executed on behalf of the State of Alaska.

Mill 2 wath Notary Public in and for the State of Alaska

March 5, 2008 My Commission Expires



After recording return to the Grantor:

**Department of Natural Resources** Division of Mining, Land and Water 550 West 7th Avenue, Suite 1020 Anchorage, Alaska 99501-3562

This Amended Certificate of Appropriation supersedes the Certificate of Appropriation issued on August 7, 1984 and recorded on August 13, 1984, Book 243, Page 559, Kenai Recording District, Third Judicial District, State of Alaska.



2008-135 KENAI



144 North Binkley Street • Soldotna, Alaska 99669-7520 Toll-free within the Borough: 1-800-478-4441 PHONE: (907) 262-4441 • FAX: (907) 262-1892 www.borough.kenai.ak.us

> DAVE CAREY BOROUGH MAYOR

#### CERTIFICATE OF TAX DEPARTMENT

I, Rhonda K. Krohn, Property Tax and Collections Supervisor for the Kenai Peninsula Borough, do hereby certify that, as of the date of this certificate, all real property taxes levied by the Kenai Peninsula Borough have been paid for the area(s) described as:

Subdivision: DIAMOND WILLOW ESTATES PART 10

Parcel # 05527035 T 5N R 11W SEC 24 Seward Meridian KN 2006104 DIAMOND WILLOW ESTATES SUB PART 8 AMENDED TRACT 1A

Parcel # 05527043 T 5N R 11W SEC 24 Seward Meridian KN NW1/4 EXC DIAMOND WILLOW ESTATES & EXC E 285 FT M/L OF N 350 FT OF SAID NW1/4

The following assessments (except assessments for the cities of Homer, Kenai, Seward, Seldovia, and Soldotna) levied against this property are outstanding: NONE.

Witness my hand and seal this 18th day of November, 2008.

hunda K. Krohn

Rhonda K. Krohn Property Tax and Collections Supervisor

2012.93 Kenai



144 North Binkley Street 
Soldotna, Alaska 99669-7520 Toll-free within the Borough: 1-800-478-4441 PHONE: (907) 262-4441 
FAX: (907) 262-1892 www.borough.kenai.ak.us

> MIKE NAVARRE BOROUGH MAYOR

#### CERTIFICATE OF TAX DEPARTMENT

I, Rhonda K. Krohn, Property Tax and Collections Supervisor for the Kenai Peninsula Borough, do hereby certify that, as of the date of this certificate, all real property taxes levied by the Kenai Peninsula Borough have been paid for the area(s) described as:

Subdivision: DIAMOND WILLOW EST. SUB. PART II

Parcel # 05527046 DIAMOND WILLOW ESTATES SUB T 5N R 11W SEC 24 Seward Meridian KN 2008135 PART 10 LOT 1 Parcel # 05527048 2008135 DIAMOND WILLOW ESTATES SUB T 5N R 11W SEC 24 Seward Meridian KN PART 10 LOT A Parcel # 05527049 2008135 DIAMOND WILLOW ESTATES SUB T 5N R 11W SEC 24 Seward Meridian KN PART 10 LOT B Parcel # 05527053 2008135 DIAMOND WILLOW ESTATES SUB T 5N R 11W SEC 24 Seward Meridian KN PART 10 TRACT A2 Parcel # 05527054 T 5N R 11W SEC 24 Seward Meridian KN 2008135 DIAMOND WILLOW ESTATES SUB PART 10 TRACT A3

The following assessments (except assessments for the cities of Homer, Kenai, Seward, Seldovia, and Soldotna) levied against this property are outstanding: NONE.

Witness my hand and seal this 12th day of December, 2012.

hunda K. Krom

Rhonda K. Krohn Property Tax and Collections Supervisor

2012.93 Kenai



144 North Binkley Street 

Soldotna, Alaska 99669-7520 Toll-free within the Borough: 1-800-478-4441 PHONE: (907) 262-4441 

FAX: (907) 262-1892 www.borough.kenai.ak.us

> MIKE NAVARRE BOROUGH MAYOR

#### CERTIFICATE OF TAX DEPARTMENT

I, Rhonda K. Krohn, Property Tax and Collections Supervisor for the Kenai Peninsula Borough, do hereby certify that, as of the date of this certificate, all real property taxes levied by the Kenai Peninsula Borough have been paid for the area(s) described as:

Subdivision: DIAMOND WILLOW EST. SUB. PART II

Parcel # 05527046 DIAMOND WILLOW ESTATES SUB T 5N R 11W SEC 24 Seward Meridian KN 2008135 PART 10 LOT 1 Parcel # 05527048 T 5N R 11W SEC 24 Seward Meridian KN 2008135 DIAMOND WILLOW ESTATES SUB PART 10 LOT A Parcel # 05527049 T 5N R 11W SEC 24 Seward Meridian KN 2008135 DIAMOND WILLOW ESTATES SUB PART 10 LOT B Parcel # 05527053 T 5N R 11W SEC 24 Seward Meridian KN 2008135 DIAMOND WILLOW ESTATES SUB PART 10 TRACT A2 Parcel # 05527054 T 5N R 11W SEC 24 Seward Meridian KN 2008135 DIAMOND WILLOW ESTATES SUB PART 10 TRACT A3

The following assessments (except assessments for the cities of Homer, Kenai, Seward, Seldovia, and Soldotna) levied against this property are outstanding: NONE.

Witness my hand and seal this 12th day of December, 2012.

hinda K. Krom

Rhonda K. Krohn Property Tax and Collections Supervisor



#### CERTIFICATE OF TAX DEPARTMENT

I, Rhonda K. Krohn, Property Tax and Collections Supervisor for the Kenai Peninsula Borough, do hereby certify that all real property taxes levied by the Kenai Peninsula Borough through December 31, 2014 have been paid for the area(s) described as:

Subdivision: DIAMOND WILLOW ESTATES SUBDIVISION SUNVILLE ACRES ADDITION

Parcel # 05527055 T 5N R 11W SEC 24 Seward Meridian KN NW1/4 EXCLUDING THE DIAMOND WILLOW ESTATES SUBDIVISIONS PART 1 THRU PART 10 & EXCL THE E 285FT M/L OF THE N 350 FT M/L OF NW1/3

Effective January 1, 2015, estimated taxes of \$2,971.69 were paid on the above property(s). However, if the estimated taxes are less than the actual taxes levied on July 1, 2015, the difference is a lien against the property(s) until paid.

Witness my hand and seal this 23rd day of March, 2015.

norda K. Krim

Rhonda K. Krohn Property Tax and Collections Supervisor

E3-750

2008-135 KENAI



144 North Binkley Street • Soldotna, Alaska 99669-7520 Toll-free within the Borough: 1-800-478-4441 PHONE: (907) 262-4441 • FAX: (907) 262-1892 www.borough.kenai.ak.us

> DAVE CAREY BOROUGH MAYOR

#### CERTIFICATE OF TAX DEPARTMENT

I, Rhonda K. Krohn, Property Tax and Collections Supervisor for the Kenai Peninsula Borough, do hereby certify that, as of the date of this certificate, all real property taxes levied by the Kenai Peninsula Borough have been paid for the area(s) described as:

Subdivision: DIAMOND WILLOW ESTATES PART 10

Parcel # 05527035 T 5N R 11W SEC 24 Seward Meridian KN 2006104 DIAMOND WILLOW ESTATES SUB PART 8 AMENDED TRACT 1A

Parcel # 05527043 T 5N R 11W SEC 24 Seward Meridian KN NW1/4 EXC DIAMOND WILLOW ESTATES & EXC E 285 FT M/L OF N 350 FT OF SAID NW1/4

The following assessments (except assessments for the cities of Homer, Kenai, Seward, Seldovia, and Soldotna) levied against this property are outstanding: NONE.

Witness my hand and seal this 18th day of November, 2008.

hunda K. Krom

Rhonda K. Krohn Property Tax and Collections Supervisor

2008-135 KENAI



144 North Binkley Street • Soldotna, Alaska 99669-7520 Toll-free within the Borough: 1-800-478-4441 PHONE: (907) 262-4441 • FAX: (907) 262-1892 www.borough.kenai.ak.us

> DAVE CAREY BOROUGH MAYOR

#### CERTIFICATE OF TAX DEPARTMENT

I, Rhonda K. Krohn, Property Tax and Collections Supervisor for the Kenai Peninsula Borough, do hereby certify that, as of the date of this certificate, all real property taxes levied by the Kenai Peninsula Borough have been paid for the area(s) described as:

Subdivision: DIAMOND WILLOW ESTATES PART 10

Parcel # 05527035 T 5N R 11W SEC 24 Seward Meridian KN 2006104 DIAMOND WILLOW ESTATES SUB PART 8 AMENDED TRACT 1A

Parcel # 05527043 T 5N R 11W SEC 24 Seward Meridian KN NW1/4 EXC DIAMOND WILLOW ESTATES & EXC E 285 FT M/L OF N 350 FT OF SAID NW1/4

The following assessments (except assessments for the cities of Homer, Kenai, Seward, Seldovia, and Soldotna) levied against this property are outstanding: NONE.

Witness my hand and seal this 18th day of November, 2008.

hunda K. Krom

Rhonda K. Krohn Property Tax and Collections Supervisor





STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES DIVISION OF MINING, LAND & WATER 550 West 7<sup>th</sup> Avenue, Suite 1020 Anchorage, Alaska 99501-3562

#### WATER RIGHTS FINAL DETERMINATION

#### LAS 1680

Relinguishment of Certificate of Appropriation

Mercedes A. Gibbs P.O. Box 554 Soldotna, Alaska 99669

In the matter of the above-referenced water right Certificate of Appropriation, on March 31, 2000, Mercedes A. Gibbs, living spouse of William E. Gibbs and current owner of the associated land, notified the Department of Natural Resources, Division of Mining, Land and Water that this water right, which has a priority date of June 30, 1956, is abandoned, and therefore voluntarily relinquished. The location to which this water right is appurtenant to is described as:

Government Lot Three (3), W½NW¼ and NE¼NW¼ Section 24, Township 5 North, Range 11 West, Seward Meridian and SE¼NW¼ Section 24, Township 5 North, Range 11 West, Seward Meridian, Kenai Recording District, Third Judicial District, State of Alaska.

The certificate was issued for thirty (30) acre-feet of water per year for field crop Irrigation (April to September). The location of the water source to which the water right was granted was a water intake structure located in that portion of the Kenai River located within SE¼NW¼ Section 24, Township 5 North, Range 11 West, Seward Meridian. The reason for this relinquishment is that the Gibbs' no longer maintain agricultural lands, and the use of water has been abandoned.

Therefore pursuant to AS 46.15, it is determination of the Division of Mining, Land and Water that the appropriation has been abandoned and the Certificate of Appropriation is

LAS 1690 Relinquishment of Certificate of Appropriation Page 1 of 2 hereby revoked, accordingly, as of March 31, 2000, the date the Division of Mining, Land and Water received the signed and notarized Notice of Relinquishment form.

This decision is final insofar as the Department of Natural Resources is concerned, but without prejudice to any other remedy an aggrieved party may have.

Date October 27. 2006

Prokosch

Chief, Water Resources Section

STATE OF ALASKA

3rd JUDICIAL DISTRICT

This is to certify that on  $\underline{O_c t_{ober} 27}$ ,  $\underline{2006}$  before me appeared <u>Gary J.</u> <u>Prokosch</u>, known by me to be the director or authorized representative of the Division of Mining, Land & Water, Department of Natural Resources, and acknowledged to me that this Relinquishment of Certificate of Appropriation was voluntarily executed on behalf of the State of Alaska.

) ss.

Notary Public in and for the State of Alaska

March 5, 2008 Iv Commission Expires



**RETURN RECORDED DOCUMENT TO:** Kelley McGuirk DNR, DMLW 550 West 7<sup>th</sup> Avenue Suite 1020 Anchorage, AK 99501-3562

This Water Rights Final Determination supersedes the Certificate of Appropriation issued on August 7, 1984, and recorded on August 13, 1984 as Document No. 84-010315, Book 243, Pages 556 through 559, Kenai Recording District, Third Judicial Recording District, State of Alaska.



Kenai 2015-12



144 North Binkley Street 
Soldotna, Alaska 99669-7520 Toll-free within the Borough: 1-800-478-4441 **PHONE:** (907) 262-4441 
FAX: (907) 262-1892 www.borough.kenai.ak.us

> MIKE NAVARRE BOROUGH MAYOR

#### CERTIFICATE OF TAX DEPARTMENT

I, Rhonda K. Krohn, Property Tax and Collections Supervisor for the Kenai Peninsula Borough, do hereby certify that all real property taxes levied by the Kenai Peninsula Borough through December 31, 2014 have been paid for the area(s) described as:

Subdivision: DIAMOND WILLOW ESTATES SUBDIVISION PART 13

Parcel # 05527050 T 5N R 11W SEC 24 Seward Meridian KN 2008135 DIAMOND WILLOW ESTATES SUB PART 10 LOT C Parcel # 05527051 T 5N R 11W SEC 24 Seward Meridian KN 2008135 DIAMOND WILLOW ESTATES SUB PART 10 LOT D Parcel # 05527052 T 5N R 11W SEC 24 Seward Meridian KN 2008135 DIAMOND WILLOW ESTATES SUB PART 10 LOT E Parcel # 05527098 T 5N R 11W SEC 24 Seward Meridian KN 2012093 DIAMOND WILLOW EST SUB PT 11 TRACT A2A

Effective January 1, 2015, estimated taxes of \$1,018.81 were paid on the above property(s). However, if the estimated taxes are less than the actual taxes levied on July 1, 2015, the difference is a lien against the property(s) until paid.

Witness my hand and seal this 26th day of January, 2015.

hunda K. Krohn

Rhonda K. Krohn Property Tax and Collections Supervisor

2008-135 KENAI



144 North Binkley Street • Soldotna, Alaska 99669-7520 Toll-free within the Borough: 1-800-478-4441 PHONE: (907) 262-4441 • FAX: (907) 262-1892 www.borough.kenai.ak.us

> DAVE CAREY BOROUGH MAYOR

#### CERTIFICATE OF TAX DEPARTMENT

I, Rhonda K. Krohn, Property Tax and Collections Supervisor for the Kenai Peninsula Borough, do hereby certify that, as of the date of this certificate, all real property taxes levied by the Kenai Peninsula Borough have been paid for the area(s) described as:

Subdivision: DIAMOND WILLOW ESTATES PART 10

Parcel # 05527035 T 5N R 11W SEC 24 Seward Meridian KN 2006104 DIAMOND WILLOW ESTATES SUB PART 8 AMENDED TRACT 1A

Parcel # 05527043 T 5N R 11W SEC 24 Seward Meridian KN NW1/4 EXC DIAMOND WILLOW ESTATES & EXC E 285 FT M/L OF N 350 FT OF SAID NW1/4

The following assessments (except assessments for the cities of Homer, Kenai, Seward, Seldovia, and Soldotna) levied against this property are outstanding: NONE.

Witness my hand and seal this 18th day of November, 2008.

hunda K. Krohn

Rhonda K. Krohn Property Tax and Collections Supervisor

7/9/2018

DNR Recorder's Office

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Selected Document: 1970-000361-0 In District: 302 - KENAI

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District: 302 - KENAI Document Year: 1970 Number: 000361 Suffix: 0 Date and Time Recorded: 02/27/1970 04:05 PM Book: 48 Page: 188 Pages: 2 Index: M - MORTGAGES Description: DEED OF TRUST AND ASSIGN OF RENTS Amount: \$28,500.00

### PARTIES

TYPE NAME

Grantor GIBBS WILLIAM ELLIS

Order Copy?

E3-757

DNR Recorder's Office

TYPE	NAME
Grantor	GIBBS VIRGINIA
Grantee	ALASKA TITLE GUARANTY COMPANY
Grantee	FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF ANCHORAGE

### LEGAL DESCRIPTIONS

Location: Lot: 3 Location: Section: 24 Township: 005N Range: 011W Meridian: S Additional Information: MB

All information has been displayed

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(Please Note: A "Wildcard" reference means the filing does not tie to an "active" filing; and, a filing shown as "active" does not necessarily mean effective.)

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KENAI 70 - 2704 BOOK 38 min PACE OF Kenai Recording District IN THE SUPERIOR COURT FOR THE STATE OF ALASKA THIRD JUDICIAL DISTRICT STATE OF ALASKA. Plaintiff, vs. 2,944 Square Fect, more or less: WILLIAM E. GIBBS; VIRGINIA J. GIBBS; KENAI PENINSULA BOROUGH; HOMER ELECTRIC ASSOCIATION, INC.; SMALL BUSINESS ADMINISTRATION, an agency of the United States of America; ALASKA TITLE GUARANTY COMPANY, trustee, Defendants. Civil Action No. 70 - 3456C DECLARATION OF\_TAKING non I, the undersigned, Commissioner Endaley. of Highways of the State of Alaska, on behalf of said State, do hereby make the following declaration: I. (a) The property hereinafter described is taken under the authority of and in accordance with AS 19.05, AS 19.10 and AS 19.20 which authorize the acquisition of property by the Alaska Department of Highways deemed necessary for the public use of the State of Alaska. (b) The public use for which it is necessary to take the property is for the right-of-way of a Federal Aid highway designated as Alaska Project No. F-021-2(4), SOLDOTNA URBAN. This highway will form a part of the State primary highway system. The property hereinafter described is deemed necessary by the undersigned for said public use of the State ö of Alaska. II. The property to be acquired is 2,944 square feet, more 1 or less, located in the Kenai Recording District, State of

E3-759

Alaska. The property being taken for public use is more particularly described in Schedules "A", "B" and "C" attached hereto, and by this reference made a part hereof. This is the description of the same land described in the Complaint filed in the above-entitled action.

5005 38min PAGE 292 Konai Recording District

III.

Schedule "B" attached hereto is a plat showing the property taken. Schedule "C" attached hereto is a parcel vicinity map which shows the location, route and termini of said project on which the property taken is designated as Parcel No. 18.

IV.

The estate or interest in Parcel No. 18 taken for public use is a fee simple, excepting all oil, gas and other minerals lying below 100 feet vertically in depth beneath the surface of the highway right-of-way within Parcel No. 18 of Alaska Project No. F-021-2(4), SOLDOTNA URBAN.

The amount of money estimated by the undersigned as just compensation for the real property or the interests in it being condemned is \$2,650.00.

v.

#### VI.

The persons or entities who, as disclosed by a diligent search of the records, may have or claim an interest in the said property are:

WILLIAM E. GIBBS

VIRGINIA J. GIBBS

И

KENAI PENINSULA BOROUGH

HOMER ELECTRIC ASSOCIATION, INC.

SMALL BUSINESS ADMINISTRATION, an agency of the United States of America

ALASKA TITLE GUARANTY COMPANY, trustce

2.

904

E3-760

H ••• Loved Recording District VII. By reason of the provisions of the above-mentioned statutes, title in fee simple to the real property designated as Parcel No. 18 of Alaska Project No. F-021-2(4), SOLDOTNA URBAN, excepting all oil, gas and other minerals lying below 100 feet vertically in depth beneath the surface of the highway right-of-way within Parcel No. 18 does immediately vest in the State of Alaska. TA.S. IN WITNESS WHEREOF, I, the undersigned, Rebert ÷. act Beardsley / Commissioner of Highways of the State of Alaska, on behalf of said State, have hereunto subscribed my name this 12 day of horembur 1970 at OW a Alaska. Commissioner of Highways SUBSCRIBED and SWORN to before me this 12th day of 1970 at Alaska. Notary Public in and for Alaska My Commission Expirus My Commission Expires: November 4, 1973 3 -E3-761

DEPARTMENT OF LAW DEPARTMENT OF LAW DEfra c, the Attorney General Control Erand, Prightery Section W. S. S. D. 233, Anchorce, Alaka 99 Frans 222-1541

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7/9/2018

DNR Recorder's Office



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# Recorder's Office - Document Display

Selected Document: 1975-003846-0 In District: 302 - KENAI

> See Index Codes Cannot view images?

> > See Image

District: 302 - KENAI **Document Year:** 1975 Number: 003846 Suffix: 0 Date and Time Recorded: 08/07/1975 03:04 PM Book: 86 Page: 702 Pages: 2 Index: MS - MISCELLANEOUS Description: RESTRICTONS

### PARTIES

TYPE	NAME
Grantor	GIBBS WILLIAM E
Grantee	DIAMOND WILLOW ESTATES

DNR Recorder's Office

### LEGAL DESCRIPTIONS

Location:

Plat: 75-68

All information has been displayed

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(Please Note: A "Wildcard" reference means the filing does not tie to an "active" filing; and, a filing shown as "active" does not necessarily mean effective.)

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Kenai 71e-38

Diamond Willow Estates Sub. Subdivision Part Two

Kenai Peninsula Borough

Box 850

Soldotna, Alaska 99669

#### CERTIFICATE OF TAX PAYMENT

I, Dona D. Palmer, do hereby certify as follows:

That I am the Tax Collector for the Kenai Peninsula Borough.

That, as of the date of this certificate, all real property taxes levied by the Kenai Peninsula Borough on the areas described as:

Assessor's Parcel # 055-030-9300

have been paid, except for the 1976 taxes which are a lien on the property.

That the following assessments (except assessments for the cities of Homer, Kenai, Seldovia, Seward, and Soldotna) leived against this property are outstanding:

WITNESS my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_\_, 19\_76.

Alexa D. Galmer Dona D. Palmer, Tax Collector

E3-764

-	
. / <b>-</b> -	BOOK 100 PAGE 360
	HOMER ELECTRIC ASSOCIATION, INC.
1	Underground Electric Line Right of Way Besement
	THIS AGREEMENT, made thus <u>3</u> day of <u>May</u> , 19 <u>76</u> ,
	between William E Gibbs
	heremafter called "Owner" (the word "Owner" wherever used herein being intended to include the grantor), and Homer Electric Association, Inc , a cooperative corporation (heremafter called "Association"),
	WITNESSETH
	That for good god wulladdo considerations the construction of the by acknowledge of the boot of the bo
	situated in the Ni NW i; SW i NW i; G.L.O. Lot 3; all in Section 24,
	T. N. R 11W, Seward Meridian
	as shown on Plat dated <u><math>8/7/75</math></u> , hereto attached and made a part of this agreement; the location of the center line of said right-of-way being shown on said plat.
	The facilities erected hereunder shall remain the property of Association. Association shall have the right to inspect, rebuild, remove, repair, improve and make such changes, elterations, substitutions and additions in and to its facilities as Association may from time to time doen advisable, including the right to increase or decrease the number of conduits, wires, cables, bandholes, manholes, connection boxes, transformers and transformer endosures.
	Association shall at all times have the right to keep the essement clear of all buildings, structures or other obstructions, trees, shrubbary, undergrowth and roots. All trees and limbs cut by Association at any time shall remain the property of Owner.
ی ۱ افتاکیس کار	Owner, or his successors and assigns may use the land within the ease- mut for any-purpose and inconsistent with the rights hereby granted; <u>vioublation</u> such use does not interfere with or endanger the construction, operation or maintenance of Association's facilities.
	For the purpose of constructing, inspecting, maintaining or operating its facilities, Association shall have the right of ingress to and egress from the easement over the lands of Owner adjacent to the easement and lying between public or private roads and the easement, such right to be exercised in such manner as shall occasion the least practicable damage and inconvenience to Owner.
	Page 1 of 2
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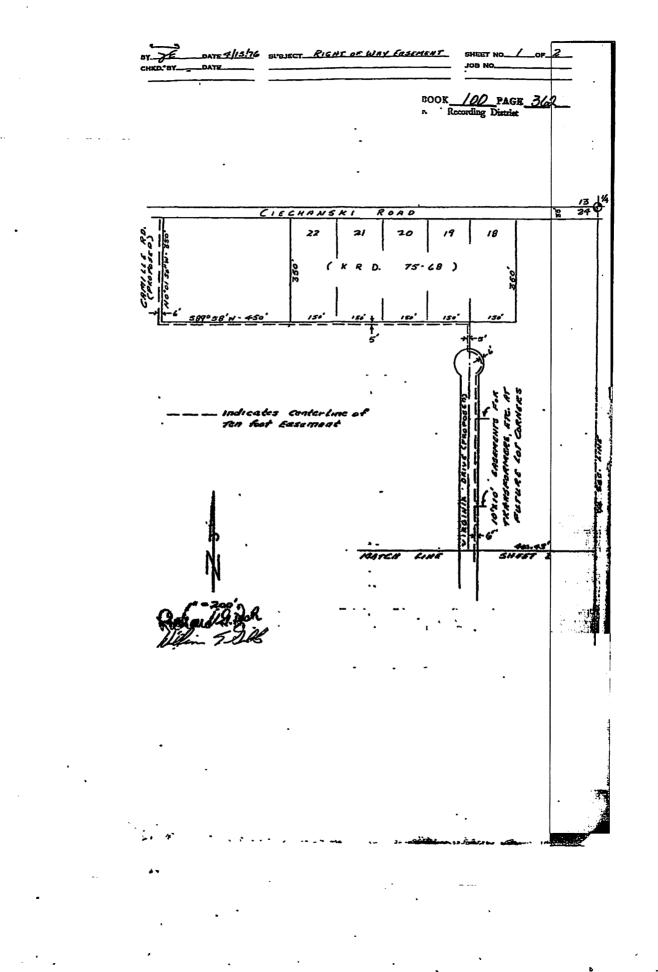
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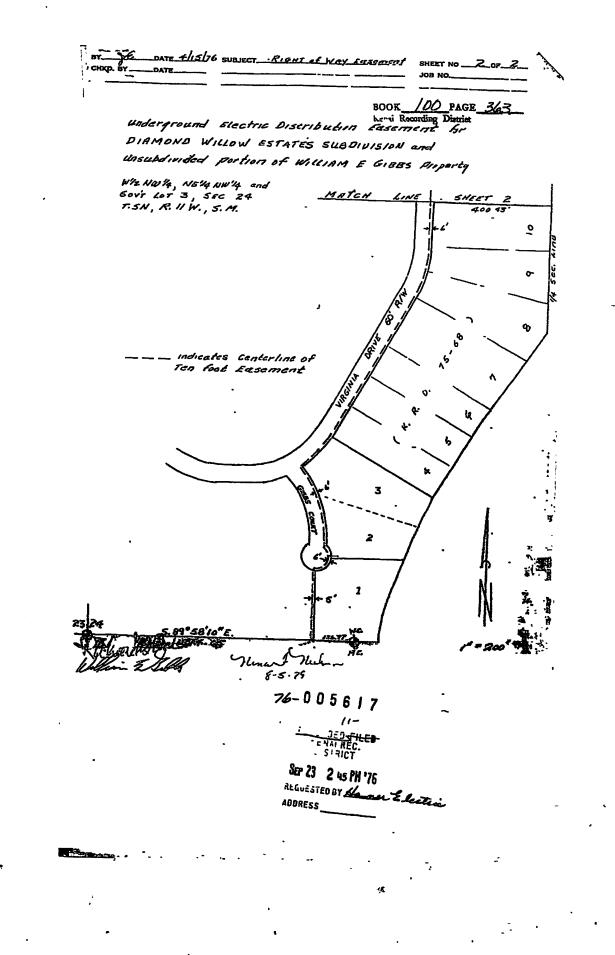
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13102100046 BOOK 100 PAGE <u>361</u> - ; Roording District Owner covenants that he is seized of and has the right to convey the said easement, rights and privileges; that Association shall have quiet and peaceable possession, use and emoyment of the aforesaid easement, rights and privileges, and that Owner shall execute such further assurances thereof as may be required IN WITNESS WHEREOF, the undersigned have set their hands and seal this \$ day of 120 STATE OF ALASKA ) 38 THIS CERTIFIES that on this 3 day of 1976. before me, the undersigned, a Notary Public in and for Alaska, duly commissuched and sworn as such, personally appeared Kick. r. d. Z. b.e. h. Ŷ 7 Ľ each to me personally known and to me known to be the individual(s) described in and who executed the foregoing instrument, and each acknowledged to me that he/she signed and sealed the same freely and voluntarily for the uses and purposes therein mentioned. ៊ុ IN WITNESS WHEREOF, I have hereunto set my hand and affired my formeral seal the day and year in this certificate first shove written. ٦ TARY PURE ÷ My Commission any 1 Page 2 of 2 15

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E3-767



74-149 Genai

Subdivision Diamond Willow Estates Sub., Part 3

Kenai Peninsula Borough

Box 850

Soldotna, Alaska 99669

#### CERTIFICATE OF TAX PAYMENT

I, Dona D. Palmer, do hereby certify as follows:

That I am the Tax Collector for the Kenai Peninsula Borough.

That, as of the date of this certificate, all real property taxes levied by the Kenai Peninsula Borough on the areas described as:

Assessor's Parcel No. - 055-270-9800

have been paid.

That the following assessments (except assessments for the cities of Homer, Kenai, Seldovia, Seward, and Soldotna) levied against this property are outstanding: None

WITNESS my hand and seal this <u>21st</u> day of <u>October</u>, 19<u>76</u>.

for Dona D. Palmer, Tax Collector

77-4 Kenai

Subdivision <u>Diamond Willow Estates</u> Sub. Part Four

Kenai Peninsula Borough

Box 850

Soldotna, Alaska 99669

#### CERTIFICATE OF TAX PAYMENT

I, Dona D. Palmer, do hereby certify as follows:

That I am the Tax Collector for the Kenai Peninsula Borough.

That, as of the date of this certificate, all real property taxes levied by the Kenai Peninsula Borough on the areas described as:

Parce1 # 055-270-9900

have been paid, except for the <u>1977</u> taxes which are a lien on the property.

That the following assessments (except assessments for the cities of Homer, Kenai, Seldovia, Seward, and Soldotna) levied against this property are outstanding:

WITNESS my hand and seal this \_\_\_\_\_\_ day of \_\_\_\_\_\_, 19\_77.

Dona D. Palmer, Tax Collector

### EDG/ 0440 PAGE 598

#### DRILLING SITES

Pursuant to OIL AND GAS LEASE, entered into the 23 day of November, 1993, by and between WILLIAM ELLIS GIBBS, a married man, receiving mail at P.O. Box 554, Soldotna, Alaska, 99669, hereinafter referred to as Lessor', and <u>GARY ARTHUR GIBBS</u>, a *Kituer*, *To*married man, receiving mail at P.O. Box 2272, Soldotna, Alaska, 99669, and JAMES ELLIS GIBBS, a married man, receiving mail at P.O. Box 1597, Soldotna, Alaska, 99669 hereinafter referred to as Lessee'.

1. Locating a drilling site centered at 500 ' FEL, 700 ' FNL, Section 23, Township 5 North, Range 11 West, Seward Meridian, State of Alaska.

2. Locating a drilling site centered at 500 ' FWL, 500 ' FNL, Section 24, Township 5 North, Range 11 West, Seward Meridian, State of Alaska.

3. Locating a drilling site centered at 1500 ' FWL, 2100 ' FNL, Section 24, Township 5 North, Range 11 West, Seward Meridian, State of Alaska

DATED at Kenai, Alaska, this 6 day of Garel, 1994 LESSOR William E. Gibbs Gary A. Gibbs LESSEE nes E. Gibbs ACKNOWLEDGMENT STATE OF ALASKA THIRD JUDICIAL DISTRICT The foregoing instrument was acknowledged before me this 6 day of Murch 1994, by WILLIAM E. GIBBS. Notary Public for Alaska My Commission Expires:\_\_\_ 11-11-97 ACKNOWLEDGMENT STATE OF ALASKA SS THIRD JUDICIAL DISTRICT

The foregoing instrument was acknowledged before me this 6th day of March 1994, by GARY A. GIBBS.

PAGE 1 - DRILLING SITES

BOOK 0440 PME 599 Notary Public for Alaska My Commission Expires: 47 •// ACKNOWLEDGMENT STATE OF ALASKA 22 THIRD JUDICIAL DISTRICT The foregoing instrument was acknowled before me this \_\_\_\_\_\_ day of \_\_\_\_\_\_1994, by JAMES E. GIBBS. Same and Notary Public for Alaska My Commission Expires: //- //- 9

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KENAL REC 18 -DISTRICT REGIMETED BY Gibbs

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PAGE 2 - DRILLING SITES

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# 0431 - 516

# OIL AND GAS LEASE

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This agreement, entered into this 23 day of (Boomper, 1993, by and between the cutore cutore cutore cutore and a loster an WILLIAM HILIS GIBBS, a married man, receiving mail at P.O. Box 554, Soldoma, Alaska, with the first states of the second states of the s

WITNESSETH, that Lessor, for and in consideration of the sum of one dollar, and of the covenants and agreements hereinafter contained to be performed by the Lessee, has this day granted, leased, and let exclusively unto the lease as to all or any part of the lands covered thereby as hereinafter provided, producing and saving all of the oil, gas, casinghead gas, casinghead gasoline and all other gases and their respective constituent vapors, and for constructing roads, laying pipe lines, building tanks, storing oil, building power constructing roads, mying pipe mes, outlong mine, storing on convenient for the economical stations, telephone lines and other structures thereon necessary or convenient for the economical operation of said land alone or conjointly with lands pooled therewith as specifically provided berein, to produce, save, take care of, and manufacture all of such substances as provided hereinbelow.

# (1) INTEREST GRANTED:

(a) Description of Leased Premises: Lessor is the owner in fee of the oil, gas, and subsurface mineral rights in and under lands located in the Third Judicial District, Kenzi

NE1/4 NE1/4, Section 23; Lot 3, W1/2 NW1/4, NE1/4 NW1/4, Section 24, Township 5 North, Range 11 West, Seward Meridian, State of Aleska, Excepting Lot 20, Block I, Diamond Willow Estate Part I, according to Plat 75-68 recorded in the Kenni Recording District, State of Alaska, containing 191.6 acres mores or less:

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However, Lessor has sold and and conveyed a portion of the surface estate described above and has subdividided for the purpose of sale other portions of said land described property; the parties therefore agree that for all purposes of this lease agreement other than for identifying drilling and or facility construction sites or other reasons specifically requiring surface contact, that the description of the surface lands which Lessee shall have access to are described in and shown on the PLAT ADDENDUM attached hereto.

(b) Purpose of Lease: The purpose of this lease is for the drilling and producing of oil and gas and their constituent parts; however that use is governed by the provisions in this

(2) PRIMARY TERM: Subject to other provisions herein, this lease shall be for a term of 10 years from this date (called "primary term"), and as long thereafter as oil or gas is actually produced, provided however that this lease shall automatically continue in existence from year to year after the termination of the primary term hereof, without the production of oil or gas, providing that Lessee is showing reasonable progress in good faith to obtain any required permits, bonds or financing to commence drilling and/or production, as limited hereinbelow.

PAGE 1 - OIL AND GAS LEASE

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produced.

(3) OIL ROYALTY: Lessor's oil royalty is equal to ten percent (10%) of all oil

(4) GAS ROYALTY: Lessons's oil royalty for gas or all their constituent substances is equal to ten percent (10%) of the prevailing market value in that area.

(5) DRILLING REQUIREMENT: It is acknowledged by all parties that this lease does not provide for the payment of any 'bonus' or delay rental for the reason that the purpose for the granting of this lease is the drilling of producing wells on Lesson's property subject to the primary term of this lease.

(6) FORCED PRODUCTION : The parties agree that should Lessee or their assign shut in any well for more than 180 days or should Lessee fail to produce any previously producing well for more than 180 cumulative days in any twelve-month period regardless of the sequence of production days to nonproducing days, unless such failure to produce or such shut in is specifically required by judicial decree of a court of competent jurisdiction or by state or federal statute, rule or ordinance, or by ruling of state or federal officials with actual authority to make such ruling, Lessee shall, at Lessor's demand, permit Lessor to take his in kind allocate

(7) REDUCED INTEREST: In the event that it should be determined that Lessor

actually owns a less interest in the subsurface estate than as set forth hereinabove, then the total royalties shall be paid on the reduced pro rata share should Lessee or his assigns obtain other adjoining oil or gas interests which are included with the interests described herein into the same

(8) USE AND ABANDONMENT: The Lessee shall have the right to use, free of cost, water found on said land for its operations thereon, except water from the wells of the Lessor subject to the water laws of the State of Alaska. When required by Lessor, the Lessee shall bury its pipe lines not less than 42 inches, and shall pay for damage caused by its operations to growing crops on said land. No well shall be drilled nearer than 200 feet to the house or barn now on said premises without written consent of the Lessor. Any existing road crossed by a pipeline shall be properly back filled and compacted. Lessee shall have the right at any time during or after the expiration of this lease to remove all machinery, fixtures, houses, buildings and other structures placed on said premises, including the right to draw and remove all casing. but Lessee shall be under no obligation to do so. The right of Lessee or its assigns to abandon any well and draw and remove casing shall not extend to water wells, or to wells wherein oil, gas, or other gaseous or vaporous substances were discovered, without written permission of Lessor after full disclosure. If Lessee make the determination that a well is not feasible for production or will not produce in paying quantites, Lessor may designate the zone or horizon which he desires to retain, and Lessee shall transfer all further interest in said well to Lessor including the casing in place. Lessee may remove its tubing, pumping and treating facilities. Lessee agrees to rehabilitate drill locations to their original contour in the event the drill site is

(9) ASSIGNMENTS, COVENANTS AND PROBATES: If the estate of either party hereto is assigned (and the privilege of assigning in whole or in part is expressly allowed), the covenants beyond shall extend to the heirs, devices, executors, administrators, successors, and assigns, but no change of ownership in the land or in the rentals or royalties for any sum payable under this lease shall be binding on the Lessee until it shall have been furnished with the original recorded instrument of coveyance or a duly certified copy thereof or a certified copy of the will of any deceased owner and of the probate thereof, or certified copy of the proceedings showing appointment of an administrator or executor for the estate of any deceased owner, whichever is appropriate, together with all original recorded instruments of conveyance or duly

PAGE 2 - OIL AND GAS LEASE

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certified copies thereof showing a complete chain of title back to Lessor to the full interest claimed, and all payments of rentals made to previous owner hereunder before receipt of said appropriate documents and notice of change of ownership shall be binding on any direct or indirect assignce, grantee, devisee, administrator, executor, or heir of Lessor, regardless of whether such payment was made on or before the date same became payable hereunder.

(10) MULTI OWNER INTERESTS: If the leased premises are now or shall hereafter be owned in severalty or in separate tracts, the premises nevertheless shall be developed and operated as one lease, and all royalties accruing hereunder shall be treated as an developed and operated as one rease, and an royanice account intervention of the second account of the entire second accesses owned by each separate owner bears to the entire leased accesse. There shall be no obligation on the part of Lessee to offset wells on separate tracts into which the land covered by this lease may be hereafter divided by sale, devise, descent or otherwise, or to furnish separate measuring or receiving tanks. It is hereby agreed that in the event this lease shall be assigned as to a part or as to parts of the above-described land and the holder or owner of any such part or parts shall make default in the payment of the proportionate part of the rental payable by him or them, such default shall not operate to defeat or affect this lease as to any part of said land upon which the Lessee or any assignce hereof shall have made or shall make payment of rentals.

(11) WARRANTY OF TITLE: This lease is granted without warranty of title, either express or implied, and covers only Lessor's present interest in said land.

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(12) TAXES: Lessee shall pay all taxes levied against Lessee's plants, machinery and personal property and 90% of taxes assessed upon oil and gas rights or production subject to this lease. Lessor shall pay all other taxes assessed against said land and production therefrom.

(13) SURRENDER OF LEASE: It is agreed by the parties that as between the Lessor and Lessee, the Lessee may surrender this lesse only in whole, and not in part, notwithstanding any statue, rule, regulation or decision of any state or federal agency or any

(14) APPLICABLE LAWS: All provisions hereof, express or implied, shall be subject to all federal and state laws and the orders, rules, or regulations (and interpretations thereof) of all governmental agencies administering the same, and this lease shall not be in any way terminated wholly or partially, nor shall the Lessee be liable in damages, for failure to comply with any of the express or implied provisions hereof if such failure is attributable to compliance with any such laws, orders, rules or regulations (or interpretations thereof).

(15) POOLING: Lessee is hereby given the right and option at any time and from time to time to pool or unitize all or any part or parts of the above-described land with other land, lease, or leases, such pooling to be into units on which a well may be drilled under the laws, rules, or regulations in force at the time of such pooling or unitization. Lessee shall exercise said option, as to each desired unit, by executing and recording an instrument identifying the unitized area. Any well drilled or operations conducted on any part of each such unit shall not be considered a well drilled or operations conducted under this lease unless such units drilled on any part of each such wells drilled or operations conducted under this lease are actually physically located on the premises described above, however, there shall be allocated to the portion of the above described and included in any such unit such as Lessor's interest, if any, in such production so allocated that he manifold for all any such unit such as Lessor's interest, if any, in such production so allocated shall be considered for all purposes, including the payment or delivery of royalty, to the entire production from that portion of the above-described land included in such unit in the same manner as though produced from the above-described land under the terms of this lease. The parties agree that their intention is to require drilling of an oil and/or gas well in the best location possible, whether or not drilled on Lessor's lands.

# PAGE 3 - OIL AND GAS LEASE

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#### (16) MISCELLANEOUS PROVISIONS:

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(a) Lessor Access: Lessor shall have the right of free access to all drilling or reworking operations conducted on said lands, and Lessee shall furnish to Lessor all electrical well log surveys and core analyses made in any well drilled on the leased premises upon attemped abandonment or shut in as defined in the addendum, and / or upon development of the premises or unit.

(b) Drilling Agreement: The parties agree that a well shall be drilled on Lessor's property subject to the primary term of this lease.

(c) Lesson's Liability: The parties agree that Lessee's activities shall not result in any liability of Lesson for the payment of any claims or assessment for liens, permits, damage, suits or causes in action, covenant breaches, noise, pollution, nuisance, or other causes whatsoever, and Lessee and its assigns hereby expressly covenants and agrees to hold Lessor harmless therefrom and to defend against, completely and fully.

(d) <u>Pipeline Location</u>: Lessee hereby agrees to locate all pipelines within existing or platted road rights-of-way to the extent reasonably possible.

(e) Eacility Location Rental: In the event that Lessee shall desire to build, place, or construct any buildings, structures, tanks, pipelines for oil or gas not recovered on these properties or other objects or facilities on any of the lands included in this tease or for any offices, warehouses, power stations, bunkhouses, or other structure or objects not used for the exclusive prupose of drilling wells or pumping oil or gas wells on said land, and subject to Lessons right of prior approval, Lessee shall pay to Lessor the additional yearly sum to be known as facility location rental, as may be established by the average of two independent appraisals of the current market value of said lands so used. Said appraisals shall be conducted at the end of each twelve-month period during which said facility location rental may continue to be applicable, without cost to Lessor, provided however that any change in rental values as a result of any said yearly appraisal shall not operate to reduce said yearly facility location rental per square foot of lands.

The parties agree that the actual well sites shall be excluded from this facility rental provision to the extent that such well sites do not exceed 1.5 acres during drilling or rework operations and 0.25 acres for production purposes, unless otherwise required by state or federal law or regulation.

(f) Drilling Locations: Lessee agrees to drill at mutually agreed locations. However, it is agreed that Lessee shall have the right to drill on each subsection allotted per well and shall not be required to drill slant and / or directionally to reach the geological locations selected by Lessee.

(g) <u>Domestic Gas Use</u>: Provided the well is a producer and there is sufficient gas to run the production units (treaters, pumps, etc.), Lessor will have the right, as part or all of his/her royalty to gas for his/her use at no expense to Lessee.

(h) <u>Gathering Pacilities</u>: Gathering facilities (tanks, treaters, hydrators, buildings, ect.), if required, will be placed at mutually agreed locations.

#### PAGE 4 - OIL AND GAS LEASE

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FOOF 0431 PAGE 520 DATED at Kenai, Alaska, this 2814 day of Movember, 1993 LESSOR: LESSER William E. Gibbs Gary A.Gibbs LESSEE: ma nes E. Gibbs ACKNOWLEDGMENT STATE OF ALASKA THIRD JUDICIAL DISTRICT 66. The foregoing instrument was acknowledged before me this 29 Mg day of Maxember, 1993, by WILLIAM E. GIBBS. б Notary Public for Musica My Commission Expires: 3-24-9. ACKNOWLEDGMENT STATE OF ALASKA **65**. THIRD JUDICIAL DISTRICT The foregoing instrument was acknowledged before me this 23.02 day of Marces Notary Public for Alaska My Commission Expires: ACKNOWLEDGMENT STATE OF ALASKA THIRD JUDICIAL DISTRICT The foregoing instrument was acknowleged before me this 2310 day of November 1993, by JAMES E. GIBBS. or Alaska My Commission Expires: 3. PAGE 5 - OIL AND GAS LEASE 1 المرابع والمحاصر بعرفتكم الأرجع والمعادي معتقدته \_i

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# KENAI PENINSULA BOROUGH BOARD OF ADJUSTMENT HEARING CASE 2014-01

# APPELLEE EVIDENCE ON RECORD

**JANUARY 21, 2015** 

Ladies and Gentlemen of the Board, please accept our gratitude for your service in hearing the evidence before you in this matter. We appreciate your time and effort on our behalf.

Our neighborhoods have been overwhelmed with this particular piece of property on Virginia Drive for more than ten years. Back in the early 2000's, Mercedes Gibbs and Oliver Amend began a large-scale commercial gravel operation, and hired Jason Foster and his drivers to empty gravel from a 20-acre parcel. Homeowners in the area assumed that there was a permit in place, and by the time we realized the truth, approximately ONE MILLION cubic yards of gravel had been removed, our water aguifer had been breeched, our Borough road was in shambles, and toxic garbage was being dumped and buried on a daily basis on the property. We immediately contact the Borough--Warren Finley and Max Best in Planning--asking for assistance, and were made to fight tooth and nail to get anyone to enforce the codes written for \_our protection. That battle took a few years, and many, many hours of our lives that we will never get back. In the end, the material site application was denied--TWICE--and we hoped our lives would go back to normal somewhat.

Over the years since the permit denial, neighbors have had to constantly monitor the dumping on site as the owner allowed it to continue illegally. Pictures were taken by the hundreds, and records kept of all that was going on in the vicinity of our precious drinking water, as well as the only ingress/egress route to our subdivision. We still contacted our Borough officials to help us by enforcing the written ordinances, and still had very little luck getting any assistance.

Fast-forward to 2012, and the same property. The owner Mercedes Gibbs puts together a land deal with Sean Cude to purchase the 20-acre eyesore, as well as four adjacent residential lots. The additional lots have Covenants and Restrictions attached, and are protected from any commercial use. Mr. Cude spun a tale of multi-

million dollar homes and the clean up and restoration of the eyesore parcel. Neighbors were cautious, and as it turned out, rightly so. In less than a month after the property sold, Mr. Cude had his equipment and employees out further excavating the land--now including one of the four residential lots as well--and breaching the water aquifer to stockpile and sell gravel. Our neighborhood, now well versed in the laws of material sites--knew there was NO PERMIT IN PLACE, and that a licensed contractor like Mr. Cude would of course know that there needed to be one on file with the Borough in order to legally operate on the property. Not to mention the blatant disregard for the law in excavating on residential land with Covenants attached, breaching the drinking water aquifer, and many other violations. The Borough was contacted--Max Best was now the head of the Planning Department. Mr. Best was called, emailed and personally visited by our neighbors. There are copies of Mr. Best's email reply to our concerns in the record. He planning." It was easy to see that we would NOT in fact like Mr. Cude's plan, as our water and roads were once again in grave jeopardy. From the early summer of 2012 until the fall of 2014, Sean Cude willfully operated a material site without the proper permits, and Max Best allowed and even encouraged this. The neighborhoods in the area all came together to once again fight for our drinking water, the safety of our roads, and the preservation of our properties. Mr. Best repeatedly set aside the laws of the Borough to accommodate Sean Cude and his illegal operation. Why would Mr. Best risk his career and reputation by acting this way? Is this a personal vendetta? We have NO IDEA....

Once again, the water aquifer was immediately breached and gravel was removed from a very large section of the floor area. The open water covered nearly the entire floor of the pit, and Mr. Cude ran his requipment through this open water day in and day out operating his illegal material site.

Once again, there were crushed septic tanks, contaminated sewer pipe and gravel, household garbage, several tons of industrial salt, asphalt, roofing material, metal pipe, and more being dumped and buried into this open hole. Our water was threatened, and the Alaska Department of Environmental Conservation office was contacted to examine the site, and the crushed asphalt littering the open water on the pit floor, thirty plus feet below. Steven Russell of the DEC asked my husband Travis to meet him on the property and explain what situation caused there to be asphalt in the water. Upon examination, a complaint was filed against Sean Cude for potential contamination of the water aguifer. Mr. Cude's reaction to this was to contact the Alaska State Troopers and report my husband and I for trespassing...which was entirely false. Mr. Cude claims to have never received a complaint to the DEC, and even furnished a letter for the record--but this letter was pertaining to property he owns off the Spur Highway in Kenai...not the Virginia Drive property as he insinuated. Neighbors can attest to many calls and emails complaining about Mr. Cude's activities over the past two years--both to the DEC locally and in Anchorage, as well as to the Borough Planning Department.

Illegal operations continued on the Virginia Drive property through the fall of 2014, when Mr. Cude suddenly decided to apply for a Material Site Permit with the Borough. We had no idea what prompted this decision, as he had been operating illegally without regard or reprimand for two years. It turns out he had petitioned the Borough Planning Department--with the assistance of Max Best--to incorporate three of the four residential parcels into this 20 acre dump site. He planned to excavate all of the material from these three flag lots, and wanted the Borough's blessing to have 20 YEARS to do so. He claimed he still planned to build a large home there--with a gravel pit in the back yard?? Of course, he owns two homes on Longmere Lake, and one would assume he surely didn't have need for a third so close--especially

with the proximity to the gravel site and Mrs. Gibbs home and extensive collection of lawn debris. He and his attorney still maintain That he would never "foul his own nest" but the neighbors know the true story.

He states in his application for a site permit that he would not be entering the water table--too late! He already has material from the aquifer stockpiled along the far side of the property, and wants to sell this instead of putting it back over the aquifer, as he should. Instead, he and his attorney arranged for organic materials such as trees and topsoil to be dumped into our open aguifer--causing unknown damage to our area wells--and smoothed it all out with his heavy equipment. He then took photos of his newly groomed property and couldn't say enough about how clean his property was and what an asset he is to the neighborhood. Of course, we all know what is buried beneath, and what continues to fester just below the surface. The water is still exposed in the floor of the pit area--mostly a muddy, stinky mess because of the organics dumped in--but frozen now and visible from the property lines. The illegally dumped materials were never removed, simply buried and hidden beneath a façade of lies and trickery. These ticking time bombs just waiting to deteriorate and cause contamination of our drinking water, soils and the Kenai River that runs a stone's throw away. He planned to fool the Borough Planning Commission into believing he had cleaned up his act--quite literally--just long enough to obtain permission for the additional lots, then back to business as usual. What a shame it would be for this one person to cause such ruin to so many others due to the lapse in ethics by our Borough Planner.

Neighbors have testified to heavy damage to their Kenai River bank property when Sean Cude's trucks and equipment are running. Several homes have lost so much bluff that they can no longer be mortgaged--and a few have already been relocated further back on their lots. Drinking water contamination is also a concern, with many reporting foul odors and silty sediment in their water. A state Hydrologist that has MANY years of experience with drinking water conditions did a water study in our area and determined the property on Virginia Drive to be inside a "protected drinking water area" that according to the state should not be encouraged to have mining activity due to the higher than average risk to the drinking water wells in the area. Sean Cude and his attorney brush this report aside, citing other gravel sites and septic systems in the area. This hydrologist--Charley Palmer--is also an Engineer and highly published in his field. I don't know about you, but I for one BELIEVE HIM! Why would we risk NOT believing this professional and his report?

As mentioned before, the Kenai River fronts the adjacent properties and is also threatened by this aguifer breach. Years ago when Mrs. Gibbs applied for a material site, it was determined that this aguifer is the very same one that feeds the Kenai river and contamination here would be catastrophic not only to the human population, but the fish and wildlife as well. That alone should be enough reason to deny this permit application and focus on cleaning up the aguifer to its natural state. No one wants to be responsible for ruining the world-class habitat on the Kenai River. The location of residential lots Mr. Cude wishes to incorporate into the material site are even closer to the Kenai River than the initial site. It seems like such an unnecessary gamble when there are many other sites in the area already mining gravel that do not encroach on the Kenai River. There are many drinking water wells within 300 feet of the site, and one less than 100 feet away. How can this possibly qualify as acceptable according to the Borough code?

Damage to the roadbed on Virginia Drive was another concern of the Planning Department in their denial of this permit. Years ago the illegal activity on the property damaged the road permanently and it had to be completely rebuilt by the Borough. After that expense and upgrade, we are now facing the same type of damage from Mr. Cude's equipment. Will the Borough set aside more funds to replace our road again? In our current economy, it is doubtful that anything would be done to further repair the damage caused by this illegally operating material site. Mr. Cude certainly has no bond in place to cover damages he causes.

In conclusion, you have heard testimony that claims the Planning Commission was wrong to deny this material site permit application. As our evidence on record unquestionably shows, this denial was the RIGHT decision. Please review our testimony and the evidence presented and UPHOLD the appropriate, lawful decision of the Planning Commission to DENY Sean Cude this material site permit. Thank you.

		Road / Area: GADWELL	Well log #	
al description LOT 10 RAVENV	VOOD #4	Builder:	Latitude: 📈	60 30,555
City: SOLDOT	<b>NA</b>		Longitude: <b>W</b>	151 08.430
Depth: 38 Da	ate completed 1/16/20	15 Driller RR	к	
Yield (gpm) 8	Static level: 32	Casing length:	40	
ell completion: OPEN EN	D	Diameter(in)	6	
		Rig type AR		

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36-38 WET CEMENTED SAND & GRAVEL

**RESIDENTIAL WATER WELL LOCATED WITHIN 60 FEET OF PROPOSED** MATERIAL SITE IN RAVENWOOD SUBDIVISION--LOG ON FILE WITH ALASKA DEC AND KRAXBERGER DRILLING

RESIDENTIAL WATER WELL LOCATED WITHIN 60 FEET OF PROPOSED MATERIAL SITE IN RAVENWOOD SUBDIVISION--LOG ON FILE WITH ALASKA DEC AND KRAXBERGER DRILLING E3-787 RESIDENTIAL WATER WELL LOCATED WITHIN 60 FEET OF PROPOSED MATERIAL SITE IN RAVENWOOD SUBDIVISION--LOG ON FILE WITH ALASKA DEC AND KRAXBERGER DRILLING



SEAN CUDE'S COMPANY VEHICLE (YELLOW) SHOWING EXPOSED WATER AQUIFER FROM HIS CONTINUED EXCAVATION INTO THE WATER AND STOCKPILING MATERIAL ONSITE, NO PERMIT IN PLACE, IN FULL KNOWLEDGE OF MAX BEST--BOROUGH PLANNER SEPTEMBER 2012



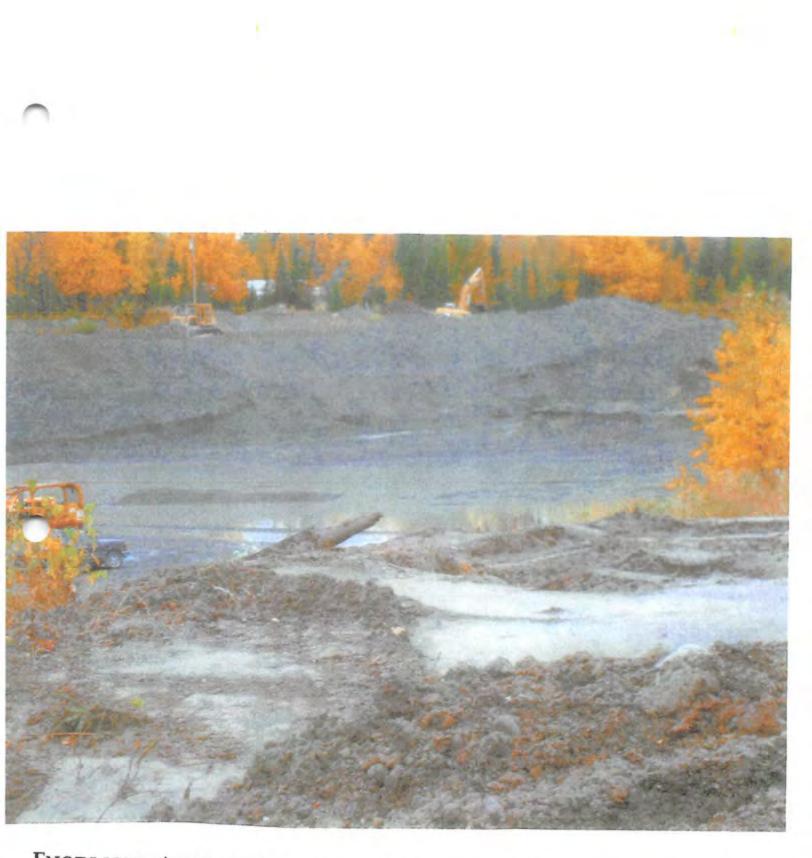
SEAN CUDE'S COMPANY EQUIPMENT EXCAVATING GRAVEL FROM UNPERMITTED SITE IN DIAMOND WILLOW ESTATES--ALSO NOTE EXPOSED WATER AQUIFER FROM CUDE'S PREVIOUS GRAVEL EXTRACTION SEPTEMBER 2012



SEAN CUDE'S COMPANY EQUIPMENT AND WORKER VEHICLE IN FLOOR OF PIT SHOWING EXPOSED WATER AQUIFER AND THREAT OF CONTAMINATION TO DRINKING WATER FROM EQUIPMENT LEAKAGE SEPTEMBER 2012



SEAN CUDE'S COMPANY EQUIPMENT EXCAVATING GRAVEL FROM UNPERMITTED SITE OUT OF WATER AQUIFER AND STOCKPILING ON SITE SEPTEMBER 2012



ENORMOUS AREA OF OPEN WATER AQUIFER AS EXPOSED BY SEAN CUDE SEPTEMBER 2012



ENORMOUS AREA OF OPEN WATER AQUIFER AS EXPOSED BY SEAN CUDE SEPTEMBER 2012

#### 1/21/2015

Good morning. My name is Roger Koppes. My wife and I and our four children reside in the Diamond Willow Estates Subdivision. I am here to testify today in support of the denial of the conditional use land permit. The original decision to deny the land permit for a gravel pit adjacent to Virginia drive should stand. As residents of this area, we oppose this pit for a multitude of reasons, but I would like to discuss the road situation specifically.

The access point to this proposed gravel pit is Virginia Drive, a residential access gravel road. The road has no outlet. It is the sole entry and exit point for all residents along Virginia Drive and Gary Avenue and the proposed gravel pit is at the entrance of this residential road.

I stated in my first letter to this board that the heavy truck traffic along Virginia Drive has been a continuous problem. During rainy periods and during late winter break-up, the heavy truck traffic that has been hauling in waste materials in the reclamation area of this pit has created impassable conditions. Trailers, carrying heavy equipment and heavy haul trucks have become stuck and jack-knifed across Virginia Drive during inclement weather, blocking all entry/exit and evacuation routes for all residents of this subdivision. My wife and I have also had to risk getting stuck in our own personal vehicles, being forced to leave the roadway due to it being blocked. We were left with no option but to enter the muddier reclamation area to bypass the immobilized heavy vehicles in order to reach our home and our children.

The current situation has created a safety risk to all as we have no way to evacuate our families for medical or other reasons and at times we have had no way to receive emergency vehicle traffic in any safe manner. The borough has been forced to respond to severe road damage on at least two occasions that I have personally witnessed.

The road as it is today is simply not capable supporting additional heavy haul truck traffic; trucks loaded with tons of gravel or construction material removed from the proposed pit. The permit applicant alleges that this road is engineered and capable of supporting his heavy vehicle traffic. The witnessed evidence to this point clearly demonstrates otherwise.

Additionally, I am not aware of borough road maintenance or emergency services personnel conducting any type of un-biased survey or study regarding the impact of additional heavy vehicle traffic on this road.

In summary, I oppose this gravel pit operation for many reasons but the heart of my testimony is regarding roadway sustainability, cost and access. As stated before, Virginia Drive is a no outlet road. Emergency services and evacuation routes have been blocked within the past three years, since this roadway was expanded. And the borough has had to spend more

taxpayer money on roadway repair and maintenance due to the previous haul truck traffic damage.

Increased haul truck and heavy vehicle traffic in support of this proposed gravel pit will only exacerbate the risks to this residential subdivision and its residents, while adding to the burden of the Kenai Peninsula Borough and its taxpayers to keep the road in proper order.

To overturn the decision to deny the permit application would be to deny logic, due process and the overwhelming will of the majority. The board previously and justly ruled against this permit. It must do so again.

Thank you,

**Roger Koppes** 

DUMPING BEYOND PROPERTY LINES (SEE STAKES) ONTO THE BOROUGH ROAD--TRUCKS BLOCKING THE ONLY INGRESS/EGRESS TO ENTIRE NEIGHBORHOOD THREATENING 911 EMS RESPONSE OCTOBER 2014



**CLOSER VIEW OF BOROUGH ROAD DAMAGE FROM SBC PIT ACTIVITY** SEPTEMBER 2014



**BOROUGH ROAD SHOWING EXTENSIVE DAMAGE FROM SBC PIT** ACTIVITIES SEPTEMBER 2014

#### STATE OF ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION CITIZEN COMPLAINT

COMPLAI				
Complainant's Name:			File Number:	
Anonymous				
Address:		······································	Telephone:	
Gravel Pit located at Chichanski road off K	- Beach			
Operator Sean Cude	-Deach			
Description of Complaint: Caller is reporting burying of used asphalt in gravel pit				
· ·				
		Amount		
Product:				
Used Asphalt		Unknown	Unknown	
Person Receiving Complaint:				
\Russell				
Action Taken:				
10/08/2014				
Made site visit with complainant and borough rep, discovered approximately 30-40 yards of soils mixed with pieces of asphalt				
Called pit operator and discussed likely possibility that the asphalt would soon be buried due to ongoing reclamation project at pit.				
Advised him to relocate material and develop plan for future use of material.				
Several follow up calls with operator 10/08-10/2014				
10/13/2014				
Site visit, operator is relocating material to be used as future roadbed material in pit				
Discussed with ADEC Solid Waste,, OK				
Discussed with ADEC Solid Waste, OK				
No further action required				
			1	
DEC Staff:	Case Status	Action Date:		
S. Russell	Closed	10/13/2014	1	

ASPHALT PARTIALLY SUBMERGED IN OPEN GROUNDWATER AQUIFER (NOTE CLARITY OF WATER, CLEANLINESS OF GRAVEL, LACK OF GROUND ABSORPTION IDENTIFYING THIS AS AQUIFER, NOT SURFACE WATER AREA) OCTOBER 2014

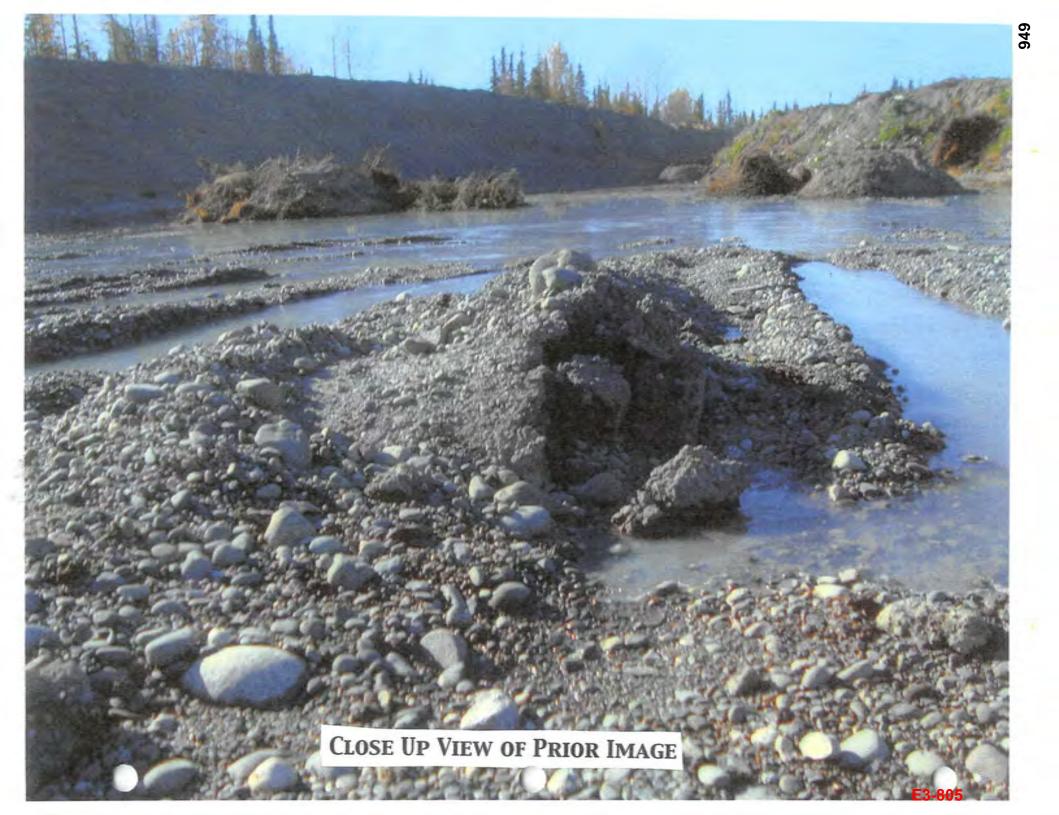


BROKEN ASPHALT DUMPED NEAR OPEN WATER AQUIFER PRIOR TO BEING DOZED INTO OPEN WATER AQUIFER--REPORTED TO DEC (SEE COMPLAINT LETTER TO STEVEN RUSSELL) OCTOBER 2014



BROKEN ASPHALT DUMPED NEAR OPEN WATER AQUIFER PRIOR TO BEING DOZED INTO OPEN WATER AQUIFER--REPORTED TO DEC (SEE COMPLAINT LETTER TO STEVEN RUSSELL) OCTOBER 2014







MUD AND ORGANIC MATERIALS BEING SPREAD ACROSS OPEN WATER AQUIFER IN ATTEMPT TO "HIDE" WATER SEPTEMBER 2014 BROKEN ASPHALT IN EXPOSED WATER AQUIFER, DUMPED ORGANIC MATERIAL IN BACKGROUND ALSO IN AQUIFER OCTOBER 2014



SEWER PIPE AND ROCK DUMPED AND BURIED IN SBC PIT September 2014



**Refuse Including Painted Lumber Dumped and Buried Into SBC Pit September 2014** 



**CRUSHED SEPTIC TANK WITH CONTAMINATED SEWER ROCK DUMPED AND BURIED INTO SBC PIT SEPTEMBER 2014** 



BROKEN SEPTIC TANK IN FOREGROUND WITH OTHER DEBRIS AND GARBAGE IN BACKGROUND DUMPED AND BURIED MAY 2013



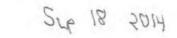
CRUSHED SEPTIC TANK AND DEBRIS DUMPED AND BURIED IN SBC PIT MAY 2013

OPEN WATER AQUIFER AS EXPOSED BY SBC OPERATORS WITH ORGANIC FILL MATERIAL DUMPED ON TOP OCTOBER 2014

5-27 18, 2014



TRUCK DUMPING ORGANIC RECLAMATION MATERIAL INTO THE OPEN WATER AQUIFER IN SBC PIT SEPTEMBER 2014





TRUCK DUMPING ORGANIC MATERIAL INTO THE OPEN WATER AQUIFER IN FLOOR OF SBC PIT SEPTEMBER 2014 21 January 2015

Dear Board of Adjustment,

My Name is Travis Penrod and I own and live at 36860 Virginia Drive with my wife, Crystal. I also own a small house at 36770 Virginia Drive, which is designated for my Son, Tanner who will be graduating from UAA's college of engineering in the near future. We all plan to live here for the rest of our lives. We have built these homes, ourselves, from the ground up and have nearly 20 years of our lives and life's savings invested in this effort. My wife and I will fight relentlessly and pursue any legal means available to protect our quality of life at our home.

I whole-heartedly support the Board of Adjustment upholding the Borough Planning Commission's decision to deny Sean Cude the Conditional Land Use Permit (CLUP) for material extraction. You have heard testimony from different landowners on their agreement with the Planning Commission's decision to deny the CLUP. The reasons for denial are valid; The Pit does pose a significant threat to our water, (the open water aquifer plus illegal reclamation practices with the addition of a material site permit would be a recipe for disaster). Continued operation of trucks on our only ingress/egress road (Virginia Drive) does do extensive damage and poses a threat to Emergency Services Response as well a threat to our children playing in the area. Finally, the three flag lots that Mr. Cude wants added to the CLUP, if it is approved, are in violation of the covenants of the subdivision. I would like to mention the Mr. Cude as already excavated extensively on lot E, which was professed to me by Bruce Wall the Borough Planner.

The Main point I would like to stress is the actual process, which is being pursued. A local contractor, Sean Cude, has purchased a 20-Acre piece of property from Mercedes Gibbs in which all the l gravel has been removed. Had there been any gravel left, Jason Foster would have excavated it ten years earlier. That is why Jason Foster resorted to digging in the water aquifer for more material. This was one of the reasons his CLUP was denied. Sean Cude is currently reclaiming this site with material, allegedly, not requiring DEC permitting or oversight. He also bought residential property adjacent to the larger tract of land. Mr. Cude, then digs tens of thousands of yards of gravel from the floor of the pit breaching the water aquifer and stock piles it against the south wall of the pit. He also excavates large amounts of gravel from the residential lot E, which he has purchased, and stockpiled it. This lot is conveniently located behind dense forest and can't be seen from the road. This enable Mr. Cude's illegal activity to go undetected by the local resident. I personally did not know this had taken place until Bruce Wall told me that this digging had occurred. Now, this contractor pushes reclamation material (much of which is littered with illegal dumping material) into the exposed water aquifer. He then puts a feather dusting of gravel over the top to hide the carnage. But, he does a poor job of that because exposed, contaminated water is still showing in portions of the pit. He then applies for a CLUP for a material site knowing full well that the material he plans to use commercially from this site came from an illegal source. The most horrific part of this situation is that the Borough Planning Department, knowing full well, the details of this CLUP, is actively pursuing Mr. Cude's approval of this material site. If this CLUP is approved, it will set a precedent for other unethical contractors to do the same. If the Board of Adjustment were to overturn the Planning Commissions decision to deny the gravel pit, you would be putting your stamp of approval on the same grievous activity.

The reality is: If Mr. Cude were to receive this material site, he would erect a six-foot fence or berm around the entire property, meeting the condition of his CLUP. Out of the view of the local residents and a ng a reclamation site that is not under the oversight of the DEC, Mr. Cude would be able to dig in the ground water as much he wanted and reclaim it with any material he desired with no consequences. The "No Trespassing" signs Mr Cude has placed around the perimeter will keep the local residence out, which,

up to this point, has been the only safeguard to the illegal activity. I personally, have been notified by the State Troopers, that at the property owner's request, if I, or my wife, step foot on this site I will be cuted for criminal trespassing. If Sean Cude were allowed to operate the gravel pit it would have an unacceptable risk of creating an ecological disaster. The gravel pit operator and the Borough would be to blame, but the local property owners would bear the brunt of the contamination with little or no recourse.

With this in mind, I implore you to uphold the Planning Commissions decision to deny Sean Cude this Conditional Land Use Permit.

Sincere pr. . ()

Travis G. Penrod 36860 Virginia Drive Kenai, Alaska 99611

T 5N R 11W SEC 24 SEWARD MERIDIAN KN 2008135 DIAMOND WILLOW ESTATES SUB PART 10 LOT E SHOWING EXCAVATION BY SEAN CUDE FROM RESIDENTIAL LOT AND STOCKPILING GRAVEL ONTO ADJACENT PROPERTY--NOTE PROXIMITY TO PROPERTY LINE STAKES JANUARY 2015

# FROZEN EXPOSED AQUIFER IN BOTTOM OF PIT JAN. 2015





I, Justin Evans at 47207 Lexington Ct Kenai, AK, am again testifying in support of the KPB planning commissions' denial of the conditional land use permit.

The findings of fact in the first denial still hold true. In addition to those facts entered into record, I would also like to point to KPB code 21.29.050 (A3). This code states that it is the <u>DISCRETION</u> of the planning commission to waive the 300' processing distance requirement. This code alone is enough of a reason to deny the permit.

With the amount of opposition to this illegal processing site I implore this commission to not waive this requirement and hold in the denial of the permit.

Not only is this an illegal site but it is also in violation of the established neighborhood covenants. As stated by Commissioner Foster during the first meeting, he has always been concerned about the role of the city or borough with covenants. Commissioner Foster wisely pointed out that Lots C,D and E are clearly part of the covenant and that these lots are the proposed site for the extraction. When the Planning director, Max Best, was asked about this situation he responded by saying the borough had not been involved in this type of situation before and the borough tried to stay out of it. From this exchange it is very clear that the borough has no plan for this situation and at the least should develop some plan before arbitrarily moving forward. So I ask that the borough take the recommendation of its planning director and "stay out of it" by not approving this permit and leaving it as is, a protected neighborhood.

To further strengthen the opposition of this gravel pit, I point to the unified stance of the affected neighborhood. The neighborhood took up the suggestion of Commissioner Lockwood from the initial hearing. The commissioner was for the public to vote on some type of zoning laws. This suggestion then was brought up by Commissioner Lockwood and Director Best. From these recommendations om the planning commission the neighborhood applied for and was granted a

local zoning option with the exception of the affected lots pending the outcome of this appeal.

It is, without a doubt, the will of the people to deny this land permit and as representatives of the people the borough must agree with their neighbors and uphold the planning's decision to deny this permit.

Thank You, Justin Evans

Board of Adjustment Kenai Peninsula Borough Case No. 2014-01

We stand in agreement with each point and reason listed on the Planning Commission's decision to deny a permit to Sean Cude to excavate any more gravel from the pit on the east side of Ciechanski. We specifically wish to address the issue of the breeched aquifer.

At the Planning Commission Meeting, we testified to having witnessed heavy equipment cut into the aquifer on the northwest corner of said site. That aquifer which flows into wells in our subdivision on Lexington Court remained exposed on top of the gravel for several years. We also testified that once reclamation began there were objects such as rusty septic tanks and chunks of asphalt left in the bottom of the pit. As reclamation continued, other contaminates such as human garbage and trash were also witnessed being used as backfill.

As responsible landowners and taxpayers, we should be protecting our natural resources to the utmost of our ability. Our main concern is that we do not see any real accountability or monitoring of the excavation or reclamation of this pit. The threat of further degradation through highly probable fuel spillage, accidents or leaky equipment that close to the aquifer, especially in a residential area, is too high!

The irreversible and detrimental impact of contaminated water on the health and well-being of our families and neighbors is at risk. We therefore implore the Board of Adjustment to uphold the Planning Commission's decision to deny a permit for this gravel pit.

Sincerely,

Ken and Kim Cox 47204 Lexington Court Kenai, AK 99611

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Kenai Peninsula Borough Board of Adjustment Members

Dear Ladies and Gentlemen of the Board:

I apologize for not being in attendance this morning, but am currently a Senior at the University of Alaska College of Engineering and cannot miss my classes. This material site permit application process and resulting stress has been going on for half of my life. I grew up on Virginia Drive, and have my own property there also, with a small house I can live in after I graduate from college. I have seen my parents Travis and Crystal Penrod, along with our neighbors fight this illegal activity with little help from the Borough. It seems like the message being sent is illegal, unethical behavior is to be rewarded, while the law abiding citizens are left to suffer the consequences. I am looking forward to living in the Kenai area for the rest of my life, and want to build a larger home on my property on Virginia. Will I still be fighting this battle when I have kids of my own? This seems like a reasonable question, and one I would like to ask the Borough. I am in favor of upholding the Planning Commission's decision to DENY this permit, and would hope that with the law and honesty on our side, we would prevail. Thank you for your consideration.

Sincerely,

Tanner B. Penrod 36770 Virginia Drive



Grystal Penrod <abgsalaska@gmail.dom>

#### egal gravel pit Gibbs/Cude

4 messages

ALASKA BEAD & GEM <abgsalaska@gmail.com> To: mbest@borough.kenai.ak.us Mon, Jul 1, 2013 at 4:26 PM

See attached photos of illegal gravel removal today by S and R(Sean Cude). From pit on Virgonia Dr. This is the second notification Mr. Best. Crystal Penrod



Best, Max <MBest@borough.kenai.ak.us> To: ALASKA BEAD & GEM <abgsalaska@gmail.com> Tue, Jul 2, 2013 at 10:34 AM

Crystal,

We are investigating.

Max.

From: ALASKA BEAD & GEM [mailto:abgsalaska@gmail.com] Sent: Monday, July 01, 2013 4:26 PM To: Best, Max Subject: Illegal gravel pit Gibbs/Cude

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#### ALASKA BEAD & GEM <abgsalaska@gmail.com> "Best, Max" <MBest@borough.kenai.ak.us>

Sun, Aug 11, 2013 at 10:25 PM

Hello again, Max...

While I'm not certain what exactly you are "investigating", Mr. Cude has nearly cleared the entire stored gravel from the pit. He is also digging in a new area, and removing gravel almost daily. What is the Borough waiting for??? His equipment is in the pit in plain sight, and his yellow "S & R" trucks come and go all the time...do you need me to send pictures? Just wondering how much more has to happen here before you finally take action. Waiting for results... Crystal Penrod

On Tue, Jul 2, 2013 at 10:34 AM, Best, Max <MBest@borough.kenai.ak.us> wrote:

Crystal,

We are investigating.

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Crystal Penrod Alaska Bead & Gem www.ABGS.vpweb.com ABGSAlaska@gmail.com 907-242-1466 Mobile "Alaska's Largest Bead Event!"

Best, Max <MBest@borough.kenai.ak.us> To: ALASKA BEAD & GEM <abgsalaska@gmail.com>

Mon, Aug 12, 2013 at 7:46 AM

Hi Crystal,

He is only allowed to remove the old existing stockpiles, nothing else. I will send code enforcement to the pit.

Ìax.

Hello again, Max...

While I'm not certain what exactly you are "investigating", Mr. Cude has nearly cleared the entire stored gravel from the pit. He is also digging in a new area, and removing gravel almost daily. What is the Borough waiting for??? His equipment is in the pit in plain sight, and his yellow "S & R" trucks come and go all the time...do you need me to send pictures? Just wondering how much more has to happen here before you finally take action. Waiting for results...

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Crystal Penrod Alaska Bead & Gem www.ABGS.vpweb.com ABGSAlaska@gmail.com 907-242-1466 Mobile "Alaska's Largest Bead Event!"

# BOROUGH CODE CITED IN TESTIMONIES BY DIAMOND WILLOW ESTATES & CIECHANSKI AREA HOMEOWNERS:

## **ORDINANCE 2.40.030.C**

Members and membership of the planning commission shall be subject to the following conditions:

C. The borough mayor and the borough planning director shall be additional members ex officio and shall have the privilege of the floor, but may not vote.

# **ORDINANCE 21.25.040**

#### Permit Required for Commencement of Certain Land Uses:

It shall be unlawful for any person to use land, or to assist another to use land, within the rural district of the Kenai Peninsula Borough for the following uses without first obtaining a permit from the Kenai Peninsula Borough in accordance with the terms of this ordinance:

1.

correctional community residential center (CCRC) pursuant to KPB 21.27

2.

commercial sand, gravel or material site pursuant to KPB 21.28; and

3.

(Drd No. 2002-14, § 2, 5-4-02, Ord, No. 98-33, § 2, 2-16-99)

## **ORDINANCE 21.29.120**

## Prior existing uses:

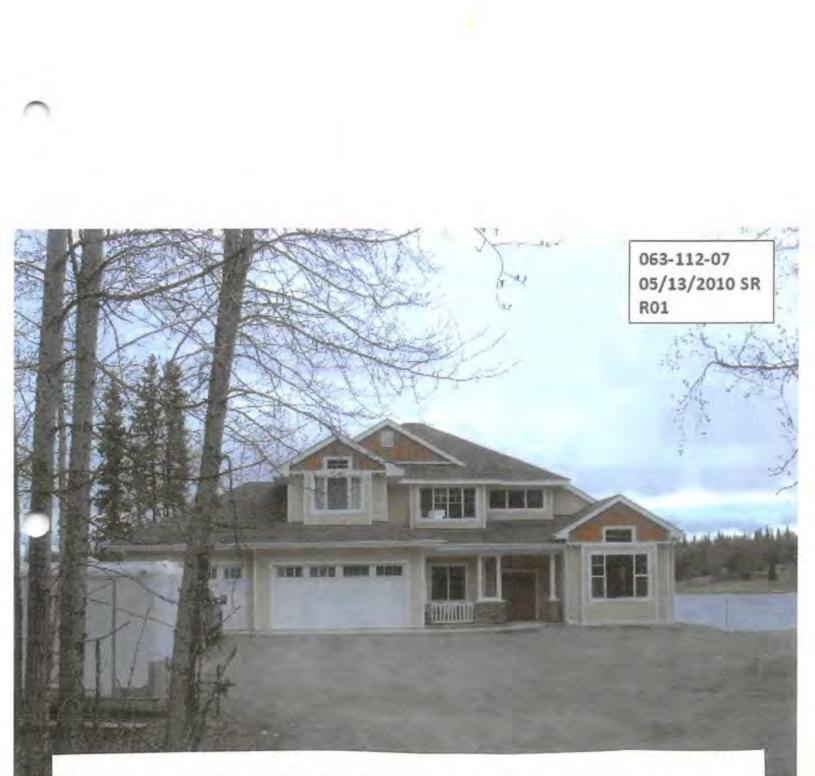
Α.

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.

Β.

Owners of sites must have applied to be registered as a prior existing use prior to January 1, 2001.

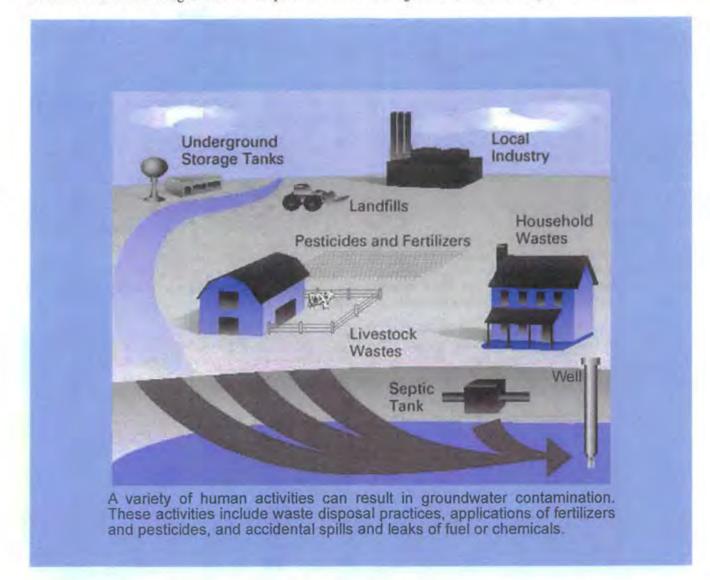


RESIDENCE OF SEAN CUDE ON LONGMERE LAKE IN SOLDOTNA--PURCHASED AFTER DIAMOND WILLOW ESTATES PROPERTY AND BRINGING INTO QUESTION HIS ATTORNEY'S CLAIM OF NOT WISHING TO "FOUL HIS OWN NEST" WITH HAZARDOUS EXCAVATION AND DUMPING IN DIAMOND WILLOW ESTATES AREA



#### How is groundwater contaminated?

Contaminants spilled on the soil surface are moved with water, percolating downward allowing them to reach the groundwater. Recharge areas are areas that transmit precipitation and snowmelt downward into groundwater. Once contaminants reach groundwater they travel along with the water towards discharge areas. Discharge areas are those areas where the groundwater seeps or flows out of the ground and into a body of surface water.



#### WHAT ARE THE MOST COMMON SURFACE ACTIVITIES THAT CAUSE GROUNDWATER POLLUTION?

Waste disposal in dumps and landfills, fuel storage in underground storage tanks, and waste disposal or malfunctions in septic systems are the most common activities resulting in groundwater pollution.

#### How do each of these activities become a source of groundwater pollution?

Dumps and landfills generate a liquid called leachate from rain and snowmelt filtering down through decomposing materials, releasing and entraining soluble materials along the way. Leachate amount and composition depend upon how much (or how little) water passes through the waste material, and waste composition. Leachate can seep downward into the groundwater, or it can leak out into the surface water. Areas near landfills or dumps have a greater possibility of groundwater contaminations because of the potential contamination from leachate from the nearby sites.

Underground storage tanks are a potential groundwater contamination source when they corrode or leak. Unstable and corrosive soils in many parts of Alaska make this an especially serious problem. Fuel that has leaked into the ground moves through the soil, leaving a residue trapped between the soil particles. Recharge water that contacts this residue becomes contaminated and can eventually contaminate the groundwater. The contaminated groundwater continues to flow towards discharge areas and then into surface waters. Individuals who use groundwater or surface water for their water sources can be affected even when a small amount of fuel leaks into nearby soil.

Septic systems that are poorly designed or located, or systems that are incorrectly used can become sources of groundwater contamination. Such systems may fail to contain harmful levels of bacteria, nitrates, effluents, or other introduced substances, and allow excessive amounts of contaminants to enter groundwater.

## So tr. Soptie Tanks 50 ft. Soptie Tanks 50 ft. Livestock Yards Silos Septie Leach Fields 100 ft. Petroleum Tanks

Liquid-Tight Manure Storage

Manure Stacks

250 ft.

Pesticide and Fertilizer

Storage and Handling

These are the required distances from the wellhead

CONTAMINANTS? Excess dissolved minerals, road salt, organic solvents (both household and industrial), fuels and oils, some pesticides, and excess fertilizers are some of the more common contaminants of groundwater. Activities involving these substances can greatly affect the groundwater beneath the surrounding soil, especially when these products are used

WHAT ARE THE MOST COMMON TYPES OF GROUNDWATER.

Surface activities can greatly affect groundwater quality when potentially harmful materials are allowed to enter the soil.

irresponsibly or excessively.

For more information on how to reduce the possibility of groundwater pollution from surface activities, contact the Department of Environmental Conservation Drinking Water Program, or your District Cooperative Extension Service Office.

University of Alaska Fairbanks Cooperative Extension Service Water Quality Program Fred Sorensen, Water Quality Coordinator 2221 E. Northen Lights Blvd., 118 Anchorage, AK 99508 Phone: 907-786-6300 e-mail: dffes@uaa.alaska.edu website: www.uaf.edu/ces/water Alaska Department of Environmental Conservation Division of Environmental Health Drinking Water Program Anchorage: (907) 269-7656 Fairbanks: (907) 451-2108 Juneau: (907) 465-5350 Soldotna: (907) 262-5210 Wasilla: (907) 376-5038 website: www.dec.state.ak.us/eh/dw/DWP/ source\_water.html

UNF .

The University of Alaska Fairbanks Cooperative Extension Service programs are available to all, without regard to race, onlor, age, acts, croed, national origin, or disability and in accordance with all applicable federal Jaws. Provided in furtherance of Cooperative Extension work, acts of May 8 and June 30, 1914, in cooperation with the U.S. Department of Agriculture, Peter Pinney, Interim Director, Cooperative Extension Service, University of Alaska Fairbanks is an affirmative action/equal opportunity employer and educational institution.

# Alaska DEC User's Manual BEST MANAGEMENT PRACTICES FOR

# **GRAVEL/ROCK AGGREGATE EXTRACTION PROJECTS**

Protecting Surface Water and Groundwater Quality in Alaska September 2012

Developed for:

Developed by: Shannon & Wilson, Inc. 2355 Hill Road Fairbanks, Alaska 99709 Alaska Department of Environmental Conservation Division of Environmental Health-Drinking Water Program and

> Division of Water 555 Cordova Street Anchorage: Alaska 99501

### Alaska DEC User's Manual

# BEST MANAGEMENT PRACTICES FOR GRAVEL/ROCK AGGREGATE EXTRACTION PROJECTS:

### PROTECTING SURFACE WATER AND GROUNDWATER QUALITY IN ALASKA

September 2012

Developed by: Shannon & Wilson, Inc. 2355 Hill Road Fairbanks, Alaska 99709

For:

Alaska Department of Environmental Conservation Division of Environmental Health Drinking Water Program and Division of Water 555 Cordova Street Anchorage, Alaska 99501

#### PREFACE

This document is a revision to the User's Manual: Best Management Practices for Gravel Pits and the Protection of Surface Water Quality in Alaska, dated June 2006. Revisions were made in 2012 to provide updated information regarding permitting processes and agencies, and to address the growing need for best management practices pertaining to the protection of groundwater.

### ACKNOWLEDGEMENTS

This 2012 revision of the *User's Manual* is the result of the collective efforts and contributions of a number of individuals and organizations. The Alaska Department of Environmental Conservation would like to thank all of those that contributed to the development of this document. Special thanks go to the 2012 Revision Interagency Review Team:

Charley Palmer, Chris Miller, Anne Gleason, and the Alaska Department of Environmental Conservation, Division of Environmental Health

Laura Eldred, Shane Serrano, William Ashton, Jim Rypkema, and the Alaska Department of Environmental Conservation, Division of Water

Melissa Hill, Roy Ireland, Christina Bohner, and the Alaska Department of Natural Resources, Division of Mining, Land and Water

Kristine Benson and the Alaska Department of Transportation and Public Facilities, Statewide Design and Engineering Services

Special thanks also go to:

Shannon & Wilson, Inc.

Jaretta Roloff, David Norman, Peter Wampler, Allen Throop, Frank Schnitzer, the Washington Department of Natural Resources, and the Oregon Department of Geology and Mineral Industries

Eric Wilson and the Idaho Department of Lands

Ecology and Environment, Inc.

Tadd Owens and the Resource Development Council for Alaska, Inc.

Steve Lovs, Jim Rogers and Alaska Sand and Gravel Company, Inc.

Rob Brown, Chuck Wilkes and Central Paving Products

Robert Ruffner, Stephanie Sims, and the Kenai Watershed Forum

Bob Millard and the City and Borough of Juneau

The Kenai Peninsula Borough

Eileen Probasco and the Matanuska-Susitna Borough

ii

978

Brian Bergman, Mark Buggins and the City and Borough of Sitka

Steve Masterman, Ernie Siemoneit, Shari Howard, Jessie Reinikainen, Barry Benko and the Alaska Department of Transportation and Public Facilities

Clark Cox and the Alaska Department of Natural Resources, Division of Mining, Land and Water

Misha Vakoc and the Region 10 United States Environmental Protection Agency, Office of Water

**Cover Photo Credits:** 

Top photo: Used with permission of Central Paving Products, Palmer, Alaska

# ACRONYMS

AAC	Alaska Administrative Code
ADR	Alaska Department of Revenue
DEC	Alaska Department of Environmental Conservation
AMD	Acid Mine Drainage
APDES	Alaska Pollutant Discharge Elimination System
BMP	Best Management Practices
CGP	Construction General Permit
DMLW	Division of Mining, Land, and Water
DNR	Alaska Department of Natural Resources
EDGP	Excavation Dewatering General Permit
EPA	United States Environmental Protection Agency
FBATFE	Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives
HMC	Hazardous Materials Control
MSGP	Multi-Sector General Permit
NOI	Notice of Intent
NOA	Naturally Occurring Asbestos
NPDES	National Pollutant Discharge Elimination System
NTU	Nephelometric Turbidity Units
PWS	Public Water System
SWPPP	Storm Water Pollution Prevention Plan
TAH	Total Aromatic Hydrocarbon
TAqH	Total Aqueous Hydrocarbon
TMDL	Total Maximum Daily Load
TWUP	Temporary Water Use Permit

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# **1** INTRODUCTION

## 1.1 Purpose of the Manual

Aggregate is an important resource for Alaskan communities, used extensively in road building, foundation preparation, concrete, and other applications. Alaskan communities also depend on the quality of their surface and groundwater for drinking and livelihood. Aggregate mines occur throughout Alaska, and their improper operation can result in adverse impacts to surface water and groundwater quality. The primary purpose of this manual is to help protect the quality of Alaska's water from such impacts. One of the most effective

### Key Points - Chapter 1

- The manual provides information on permitting and best management practices for gravel and rock aggregate operations to protect surface water and groundwater quality.
- The manual provides meaningful and comprehensive guidelines that will reduce impacts to water quality.

ways to control impacts is the use of effective best management practices (BMPs). BMPs are physical, chemical, structural, and/or managerial techniques to minimize water pollution. This manual provides owners and operators of gravel/rock extraction operations in Alaska with guidance regarding permitting processes, as well as a comprehensive list and description of BMPs which can be implemented to help meet permit requirements, protect the quality of water, and reduce conflict with the public.

## 1.2 Organization of the Manual

This manual is organized into the sections described below:

- **Chapter 1** Introduction, including how to use the manual.
- Chapter 2 Provides information on state and federal permit requirements.
- **Chapter 3** Describes how to determine potential impacts.
- **Chapter 4** Gives guidelines and recommendations for protecting surface water and groundwater quality.
- Chapter 5 Describes how to choose Best Management Practices.
- Chapter 6 Contains BMPs for preventing chemical pollution.
- Chapter 7 Contains BMPs for erosion control and stormwater management.

**Chapter 8** – Contains operational BMPs.

Chapter 9- Contains BMPs for reclamation.

- Chapter 10- Provides a list of references used in the manual.
- Appendix A Provides definitions for terms used in the User's Manual.
- **Appendix B** Lists contacts throughout Alaska for additional information on gravel pit BMPs and requirements.
- Appendix C Provides additional resources of information.
- **Appendix D** Provides limited information regarding state and federal permit requirements.
- Appendix E Is an index of BMPs presented in this manual.

# 1.3 How to Use the Manual

This manual is appropriate for use by owners and operators of gravel and rock aggregate extraction projects throughout Alaska. The techniques and practices given in this manual can be applied to both small and large-scale operations. Personnel that do not have extensive expertise in designing and implementing control measures may benefit from review of the entire manual. Personnel that have previous experience with the planning, design, and implementation of BMPs may benefit primarily from the BMP guidance given in Chapters 6 through 9, indexed in Appendix E – Best Management Practice Index.

# 2 PERMITTING AND REGULATORY REQUIREMENTS

This section provides a brief description of the DEC Alaska Pollutant Discharge Elimination System (APDES) Multi-Sector General Permit, DEC's Excavation Dewatering General Permit, the Alaska Water Quality Criteria, and Alaska Department of Natural Resources (DNR) Temporary Water Use Permit (TWUP) and Material Sale application as they apply to gravel pits. This is not intended to be a complete list

### Key Points - Chapter 2

Links to Key Documents:

- EPA's Multi-Sector General Permit: <u>http://cfpub.epa.gov/npdes/stormwater/msgp.cfm</u>
- DEC's Excavation Dewatering General Permit: <u>http://www.dec.alaska.gov/water/WPSDocs/2009DB0003 pmt.pdf</u>
- Alaska Water Quality Criteria (18 AAC 70): <u>http://www.dec.state.ak.us/regulations/index.htm</u>
- EPA's NPDES Website: <u>http://cfpub.epa.gov/npdes/</u>

of regulatory requirements but instead to provide a brief introduction to major regulations for gravel pits with respect to stormwater. Appendix D presents a summary of state and federal permits that may apply to material extraction operations in Alaska.

DEC permit requirements:

DNR permit requirements:

- APDES MSGP
- Excavation dewatering
- Water quality criteria
- Temporary Water Use Permit
- Material Sale Application

# 2.1 APDES Multi-Sector General Permit and Other APDES Requirements

Certain stormwater discharges, including those from industrial sites such as gravel pits, are regulated under the DEC APDES program. Both the discharge of stormwater and the discharge of dewatering effluent (uncontaminated groundwater) from gravel pit operations are permitted under the APDES Multi-Sector General Permit (MSGP) under Sector J (Mineral Mining and Dressing).

To apply for permit coverage under the MSGP, a facility operator must complete and submit to DEC a Notice of Intent (NOI) form. To comply with the permit, the facility operator must prepare and follow a Storm Water Pollution Prevention Plan (SWPPP). To discontinue permit coverage, a facility operator must complete and submit to DEC a Notice of Termination form.

There are certain circumstances where a general permit is either not available or not applicable to a specific operation or facility. In this type of situation, a facility operator must obtain coverage under an individual permit. DEC will develop requirements specific to the facility.

Some permits may remain in effect that had been issued by the Environmental Protection Agency (EPA) under an old permit that has since expired. For example, for North Slope Oil and Gas Exploration activities, gravel pits/material sites used for construction of pads and roads were permitted under a Slope-wide NPDES General Permit AKG33-0000. However, pursuant to

Section 401 of the Clean Water Act, the state of Alaska certifies EPA permits, which then become enforceable by the state.

# 2.2 Excavation Dewatering General Permit

Authorization for excavation dewatering is covered under DEC's Excavation Dewatering State Permit (Permit No. 2009DB0003). The general permit covers wastewater disposal from excavations on sites located less than one mile from a contaminated site and excavations located more than one mile from a contaminated site not eligible for coverage under the ADPES MSGP. Eligible projects covered under this general permit include gravel extraction.

A Notice of Disposal must be submitted to DEC when a total excavation dewatering discharge volume equal to or greater than 250,000 gallons is planned. A Notice of Disposal is not required if the total discharge volume is less than 250,000 gallons. However, it is important to note that the water quality standards in 18 AAC 70 and the terms and conditions of the general permit still apply. If DEC determines that a known contaminated site is located within one mile of a proposed dewatering activity and the wastewater discharge volume is equal to or greater than 250,000 gallons, additional information regarding the contaminated site including hydrogeologic conditions at the site may be needed. Monitoring wells and/or proposed treatment may be additionally required. Monitoring requirements are listed in the general permit.

Management practices must ensure that the dewatering operation is conducted so that the terms of the general permit are met. Some BMPs are outlined in the permit. This may include leaving the dewatering site, including any settling ponds, in a condition that will not cause degradation to the receiving water beyond that resulting from natural causes. If an earthen channel to transport wastewater from a dewatering operation to the receiving water is used, construction equipment should not be driven in the channel, which will result in re-suspended sediment. Fuel handling and storage facilities shall be managed to ensure petroleum products are not discharged into receiving waters.

The DEC dewatering permit was intended to authorize short-term discharges associated with construction. Gravel pits tend to be on-going projects, sometimes planned in phases. Although DEC has not issued an individual permit for a gravel operation, it is an option for larger, on-going gravel extraction with wastewater discharge associated with it.

# 2.3 Alaska Water Quality Criteria

Water quality criteria adopted by the State of Alaska are found in the Water Quality Standards in 18 AAC 70.020(b) and the DEC's Alaska Water Quality Criteria Manual for Toxic and Other Deleterious Organic and Inorganic Substances (May 26, 2011). These criteria were taken from the EPA criteria documents and Alaska Drinking Water Regulations in 18 AAC 80. Although these EPA criteria documents are no longer adopted directly into state regulation, they contain valuable information on the science used to create the criteria limits and may affect how the criteria are applied or modified. DEC can use these criteria as limits in the absence of mixing zones or other water quality standard exceptions in 18 AAC 70.

Pollutants that might be expected in the discharge from gravel pits are sediment, turbidity, total metals, and petroleum hydrocarbons. Table 2-1 and Table 2-2 contain numeric surface water quality standards for sediment, turbidity, and petroleum products in freshwater and marine waters. Narrative criteria are not included in Table 2-1 and Table 2-2. Criteria for total metals can be found in *Alaska's Water Quality Criteria Manual for Toxic and Other Deleterious Organic and Inorganic Substances* (2011). Alaska regulations (18 AAC 70) should be consulted for a full list of requirements, both numeric and descriptive criteria, and uses.

# 2.4 Temporary Water Use Permit

A water right is a legal right to use surface or groundwater under the Alaska Water Use Act (AS 46.15). A water right allows a specific amount of water from a specific water source to be diverted, impounded, or withdrawn for a specific use. When a water right is granted, it becomes appurtenant to the land where the water is being used for as long as the water is used. If the land is sold, the water right transfers with the land to the new owner, unless the DNR approves its separation from the land. In Alaska, because water is a common property resource wherever it naturally occurs, landowners do not have automatic rights to groundwater or surface water.

A temporary water use authorization may be needed if the amount of water to be used is a significant amount, the use continues for less than five consecutive years, and the water to be used is not appropriated. This authorization does not establish a water right but will avoid conflicts with fisheries and existing water right holders. To obtain water rights in Alaska, you need to submit an application for water rights to the DNR office in the area of the water use. After your application is processed, you may be issued a permit to drill a well or divert the water.

# 2.5 Material Sales Application

Material Sales Applications are required for extracting material from state-owned land. To determine if a site is on state-owned land, visit or contact the DNR Public Information Center:

DNR Public Information Center 550 West 7th Avenue, Suite 1260 Anchorage, AK 99501-3557 Phone: 907-269-8400 Fax: 907-269-8901 DNR Public Information Center 3700 Airport Way Fairbanks, AK 99709-4699 Phone: 907-451-2700 Fax: 907-451-2706

DNR Public Information Office 400 Willoughby Street, 4th Floor Juneau, AK 99801 Phone: 907-465-3400

There are three different types of state material sales:

• The first and smallest is a "limited" material sale which cannot be for more than 200 cubic yards per 12 month period per person. This is a revocable, nonexclusive contract for personal or commercial use.

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- The second type is the "negotiated" sale, which generally cannot exceed 25,000 cubic yards per year per person or company. Material purchased under this type of sale can be sold or used for commercial purposes. The term of the sale is generally one year, but can be longer depending on circumstances.
- The third and larges is the "competitive" sale. The sale contract can be issued for an unlimited amount of material to be taken over many years. Award will be determined by public auction if there are multiple bidders for the same location. If no competitive interest is expressed during the public notification period, no auction is necessary and the sale can proceed to contract upon completion of the decision making process. Material purchased through competitive sale can be sold or used for commercial purposes.

Material Sale Applications care available from and may be submitted to any of the DNR Public Information offices listed above. Applicable State statute and regulations include, but are not limited to: AS 38.05.110-120, AS 38.05.550-565, and 11 AAC 71. Additional information on Material Sale Applications can be found at <u>http://dnr.alaska.gov/mlw/factsht/material\_sites.pdf</u>.

Pollutant	Water Use	Criteria		
	Water Supply – Agriculture	For sprinkler irrigation, water must be free of particles of 0.074 mm or coarser. For irrigation or water spreading, may not exceed 200 mg/l for an extended period of time.		
Sediment	Growth and Propagation of Fish, Shellfish, Other Aquatic Life, and Wildlife	Percent accumulation of fine sediment in the range of 0.1 mm to 4.0 mm in the gravel bed of waters used by an anadromous or resident fish for spawning may not be increased more than 5% by weight above natural conditions. In no case may the 0.1 mm to 4.0 fine sediment range in those gravel beds exceed a maximum of 30% by weight.		
Turbidity	Water Supply – Drinking, culinary, and food processing	Nephelometric turbidity units (NTU) may not exceed 5 above natural conditions when the natural turbidity is 50 NTU or less. May not have more than 10% increase in turbidity when natural turbidity is more than 50 NTU, not to exceed a maximum increase of 25 NTU.		
	Water Supply – Aquaculture & Growth and Propagation of Fish, Shellfish, Other Aquatic Life, and Wildlife	May not exceed 25 NTU above natural conditions. For all lake waters, may not exceed 5 NTU above natural conditions.		
	Water Recreation – Contact	May not exceed 5 NTU above natural conditions when the natural turbidity is 50 NTU or less. May not have more than 10% increase in turbidity when natural turbidity is more than 50 NTU, not to exceed a maximum increase of 15 NTU. For all lake waters, may not exceed 5 NTU above natural conditions.		
	Water Recreation – Secondary recreation	May not exceed 10 NTU above natural conditions when the natural turbidity is 50 NTU or less. May not have more than 20% increase in turbidity when natural turbidity is more than 50 NTU, not to exceed a maximum increase of 15 NTU.		

Table 2-1: Summary of Selected Freshwater Criteria from 18 AAC 70.020(b)<sup>1</sup>

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Table 2-1: Summar	of Selected Freshwater	Criteria from	18 AAC 70.020(b) <sup>1</sup>
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Pollutant	Water Use	Criteria		
		For all lake waters, may not exceed 5 NTU above natural conditions.		
Petroleum Hydrocarbons	Water Supply – Aquaculture & Growth and Propagation of Fish, Shellfish, Other Aquatic Life, and Wildlife	Total aqueous hydrocarbons (TAqH) in the water column may not exceed 15 $\mu$ g/L. Total aromatic hydrocarbons (TAH) in the water column may not exceed 10 $\mu$ g/L.		

<sup>1</sup> Refer to regulations for full description of criteria and designated uses: DEC, 18 AAC 70, Water Quality Standards (Amended as of April 8, 2012) http://dec.alaska.gov/commish/regulations/pdfs/18%20AAC%2070.pdf

#### Table 2-2: Summary of Selected Marine Criteria from 18 AAC 70.020(b)<sup>1</sup>

Pollutant	Water Use	Criteria		
Sediment	_	No numeric criteria. See 18 AAC 70 for descriptive criteria.		
	Water Supply – Aquaculture & Water Recreation (Contact and Secondary)	May not exceed 25 NTU.		
Turbidity	Growth and Propagation of Fish, Shellfish, Other Aquatic Life, and Wildlife & Harvesting for Consumption of Raw Mollusks or Other Raw Aquatic Life	May not reduce depth of the compensation point for photosynthetic activity by more than 10%. May not reduce the maximum secchi disk depth by more than 10%.		
Petroleum Hydrocarbons	Water Supply – Aquaculture & Growth and Propagation of Fish, Shellfish, Other Aquatic Life, and Wildlife	TAqH in water column may not exceed 15 µg/L. TAH in water column may not exceed 10 µg/L.		

<sup>1</sup> Refer to regulations for full description of criteria and designated uses: DEC, 18 AAC 70, Water Quality Standards (Amended as of April 8, 2012)

http://dec.alaska.gov/commish/regulations/pdfs/18%20AAC%2070.pdf

### **3 DETERMINING POTENTIAL IMPACTS**

Potential pollutants of surface and groundwater from gravel pits include sediment, turbidity, total metals, and/or petroleum hydrocarbons. An increase in turbidity within a stream environment may result in a potential decrease in available free oxygen necessary to support aquatic life. An increase in the concentration of total suspended solids, such as silt or decaying plant matter, can destroy water supplies for human, animal, and other wildlife consumption. Increased sediments in water can also potentially damage fish gills by

### Key Points - Chapter 3

Prevent potential impacts by gathering information and understanding the characteristics of the mine site:

- Topography
- o Climate
- o Vegetation
- o Soil properties
- Extraction material properties
- o Groundwater conditions
- o Proximity to
  - Public water system sources
  - Surface water bodies
  - Contaminated sites

abrasion, and smother or bury fish redds, effectively killing them.

It is easier and cheaper to prevent impacts to the environment before they happen, rather than attempting to fix them after they have occurred. When planning a mining operation, it is important to determine what impacts that operation might have on the surrounding environment and vice versa. A preliminary assessment should be performed which gathers information on general site conditions, Alaska-specific conditions, and the proximity of public water system sources, surface water bodies, and contaminated sites. Much of the information that should be gathered can be obtained over the internet from sites given below, and by a qualified person performing a thorough field reconnaissance of the mine site.

### 3.1 General Site Conditions

Before developing a mining plan, it is important to gather information on general site conditions, including local topography, climate, vegetation, soil properties, extraction material properties, and groundwater conditions. In looking at topography, consider the proposed operation with respect to slopes, slope aspects, and natural drainages. Also consider climate, particularly precipitation and wind. These factors will greatly influence the sensitivity of the site to erosion and sediment transport, which can be detrimental to water quality (see Chapter 7). The type of local vegetation, as well as the type, distribution, and thickness of soil are also important to understand because vegetation is one of the best sustainable means of preventing erosion. Local vegetation is already suited to the environment and, if planted in appropriate soil, will require little maintenance and facilitate cost effective reclamation. The type, depth, and thickness of the material to be extracted should also be understood in order to appropriately plan cuts, benches, etc. It is also important to know if the material to be extracted contains naturally occurring asbestos (NOA), which can be a hazard to mine workers and users of the product, or acid-

forming minerals that could contribute to acid mine drainage. The presence of NOA can negatively impact worker health and significantly affect the market available for the resulting aggregate. Basic groundwater characteristics should also be determined, such as groundwater depth, gradient, and the presence or absence of confining layers. It is necessary to have a basic understanding of all these factors (topography, climate, vegetation, soil properties, extraction material properties, and groundwater conditions) in order to understand how a mining operation and the natural environment will interact with one another. It is the understanding of that interaction which allows the development of a mining plan that prevents impacts to surface and groundwater quality.

## 3.2 Alaska-Specific Conditions

The environments found in Alaska are highly diversified and often extreme. Temperature, precipitation, and wind are key factors that must be taken into account when planning a mining operation, keeping in mind that conditions at one mine site in Alaska may be very different from another at a different location. The mean minimum temperature in Alaska in January ranges from about 23°F in the southeast to -31°F in parts of Northcentral. Figure 3-1 shows mean annual precipitation in Alaska. As shown in this figure, Southeast Alaska and parts of Southcentral receive over 2,000 mm (approximately 78 inches) of precipitation a year. In areas of high precipitation such as these, BMPs targeted to divert or manage stormwater runoff are more critical. Seasonal temperature and precipitation fluctuations also greatly affect the types of vegetation that can be used for soil stabilization, and when they can effectively be planted.

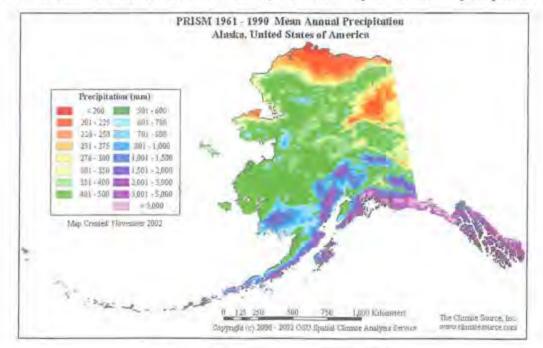


Figure 3-1: Mean Annual Precipitation in Alaska

High winds can increase erosion of exposed soil. A normal storm track along the Aleutian Island chain, the Alaska Peninsula, and all of the coastal area of the Gulf of Alaska exposes these parts of the state to a large majority of the storms crossing the North Pacific, resulting in a variety of

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wind problems. Direct exposure results in the frequent occurrence of winds in excess of 50 mph during all but the summer months. Wind velocities approaching 100 mph are not common but do occur, usually associated with mountainous terrain and narrow passes. Winter storms moving eastward across the southern Arctic Ocean cause winds of 50 mph or higher along the arctic coast. Except for local strong wind conditions, winds are generally light in the interior sections (Western Regional Climate Center 2006). Erosion control BMPs should be used in areas with high winds or during high wind seasons.

# 3.3 Proximity Mapping

Surface runoff and groundwater flow are not constrained by mine site boundaries. Surface and groundwater interact with one another and, although it may not be visible, groundwater can flow from one side of a mine site to another, picking up or dropping off pollutants along the way. Mining changes the natural landscape and therefore can change the flow patterns of surface water and groundwater. It is therefore important to ascertain the proximity of public water system sources, surface water bodies, and existing and potential sources of contamination.

The Alaska Department of Environmental Conservation (DEC) has established drinking water protection areas which act as recommended buffer zones, which are available at their website, given below. Drinking water protection areas should be shown on maps submitted with permit applications wherever proposed project area boundaries fall within drinking water protection area buffer zones. Surface water bodies such as lakes, rivers, and streams can be identified on many web-based maps, such as Google Earth<sup>™</sup>. Some surface water bodies are considered by DEC to be impaired waters, meaning that they are too polluted or otherwise degraded to meet water quality standards. For these water bodies, a Total Maximum Daily Load (TMDL) for pollutants has been determined or will be developed. A TMDL is the maximum amount of a pollutant that a water body can receive in a day and still meet water quality standards. If a mine operation will place pollutants into impaired waters, via permitted discharge or otherwise, it is important to know the TMDLs for that water body. The location of impaired waters and the associated TMDLs can also be found on the DEC website, given below.

In areas of contamination, mining operations can expose contaminants in groundwater or cause them to migrate to previously unaffected areas by altering the groundwater flow regime. DEC has identified and mapped many contaminated sites, and these can be found on the website below. Other potential sources of contamination to consider are industrial sites where contamination has occurred but has not been detected or reported, abandoned mine sites, and untouched locations with natural acidic drainage.

The locations of drinking water protection areas, locations of impaired waters, TMDL information, identified contaminated sites, and other GIS data associated with DEC permits are available at <u>http://dec.alaska.gov/das/GIS/apps.htm</u>.

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# 4 GENERAL GUIDELINES AND RECOMMENDATIONS FOR PROTECTING SURFACE WATER AND GROUNDWATER QUALITY

Some of the best ways to prevent mining impacts to surface and groundwater quality are to maintain distance between mining operations and the water to be protected, and to monitor water quality. This chapter presents recommended setbacks for mining operations from public water system (PWS) source areas, surface water bodies, and the groundwater table. Where proposed mining is closer to these waters than the recommended setbacks, it is recommended that a detailed hydrogeologic study be performed by a qualified person to evaluate potential impacts and design effective mitigation alternatives.

### Key Points - Chapter 4

Surface water and groundwater quality can be protected in part by:

- o Setbacks/Separation from:
  - PWS source areas
  - Surface water bodies
  - Groundwater table
  - Monitoring of:
    - Quantity
      - Temperature
      - pH

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- Specific conductance
- Contaminants
- Detailed hydrogeologic studies

### 4.1 Setbacks

Depending on the site, permits may require specific horizontal setbacks from water bodies or vertical separation distance from the groundwater table. All requirements of any permit should be met at all times. The following sections provide some general guidance for instances where setbacks are not specifically addressed in permitting.

### 4.1.1 Public Water System (PWS) Source Areas

DEC has established drinking water protection areas and recommended buffer zones for public water system (PWS) sources, which can be found at <u>http://dec.alaska.gov/das/GIS/apps.htm</u>. There are also PWS sources for which drinking water protection areas have not yet been delineated. For those PWS sources, it is recommended that the buffer zone be considered a 1,000-foot radius around the source area. It is recommended that excavation limits be restricted to areas outside any PWS source buffer zone. Equipment storage, maintenance, and operation should be as limited as possible within designated buffer zones, and appropriate BMPs should be used to prevent water contamination (see Chapter 6).

### 4.1.2 Lakes, Rivers, and Streams

Due to the interconnected nature of surface water, an impact to one part of a stream or river can have dramatic consequences downstream or upstream and affect the quality of surface and groundwater far from a mine site. Appropriate setbacks from surface water bodies will vary from case to case, but in general, a minimum setback of 200 feet is recommended between excavation limits and the ordinary high water level of surface water bodies, including lakes, rivers, and streams. For in-water work, a U.S. Army Corps of Engineers Section 404 permit for discharging dredged or fill material would be required. BMPs for in-stream work would be site-specific and

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addressed in the permit. Mine sites that affect levee-protected areas may require a U.S. Army Corps of Engineers Section 404 permit.

# 4.1.3 Groundwater and Working Below the Water Table

In general, it is recommended that mines maintain a minimum of four (4) feet of vertical separation distance between extraction operations and the seasonal high water table, and that they restrict activities that could significantly change the natural groundwater gradient.

If mining must be done below the water table, groundwater may become exposed. Upon issuance of a local government conditional use permit, if available, allowing extraction of materials from below the seasonal high water table, no extraction should be performed below the first aquitard encountered within the saturated zone. During the active operation phase of a gravel pit, the top portion of the groundwater is considered treatment works, as authorized under 18 AAC 60 or 18 AAC 72, as long as it does not come in contact with hazardous contaminants. When operation at the gravel pit ceases, the exposed groundwater will once again become a water of the state. At that time, the water will need to comply with water quality standards based on the applicable designed use.

Notice to discharge is required under the Excavation Dewatering General Permit (EDGP) for discharges to land of equal to or greater than 250,000 gallons, or discharges to land at a rate equal to or greater than 40 gallons per minute. For discharges less than this volume and rate, notice under the Excavation Dewatering General Permit is not required; however, the discharge requirements in the permit must be followed. The Multi-Sector General Permit (MSGP) covers excavation pit dewatering discharges to surface waters. However, if an operation is within 1 mile from a contaminated site, the MSGP does not apply and authorization under the EDGP may be required. The DEC will provide more information on conditions and best management practices for a specific site in its permit. If excavation dewatering is needed, BMPs will be required to minimize adverse impacts to the receiving waters resulting from dewatering activities. Some general BMPs for dewatering are presented in Chapter 8.

# 4.2 Monitoring

Monitoring is the best way to measure the impact of a mining operation on surface water or groundwater quality, and is often required by permit. If required by permit, parameters to be monitored will be specified. Monitored parameters often include:

- surface water and groundwater elevation,
- surface water and groundwater flow,
- surface water and groundwater temperature,
- turbidity,
- pH,
- specific conductance, and
- likely contaminants.

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The appropriate or required timeframe for monitoring will vary from case to case, but in general a good practice is to monitor relevant parameters at least 1 year prior to mining, throughout mining, and at least 1 year after reclamation is complete. Monitoring prior to mining provides a baseline record of preexisting conditions and establishes a range of seasonal variability and responsiveness to external influences among measured parameters. Once mining has started, this baseline data cannot be obtained. Monitoring during mining allows early detection of impacts and provides opportunities to evaluate BMP effectiveness and implement additional or different BMPs as needed. Monitoring after reclamation can provide early indications of slow onset problems that may develop after mining shuts down, such as acid drainage. A thorough monitoring program protects both water quality and the mining operation. It is much easier to resolve disputes quickly and fairly with a complete and comprehensive set of data in hand. Modern datalogging equipment can be used to measure and record many parameters at a high frequency with relatively low labor costs. High frequency data provides the ability to evaluate and document impacts from things like climactic and flood events.

Water quality sampling and hydrologic data collection should be accomplished under the supervision of a qualified professional engineer, hydrogeologist, or hydrologist and follow a written sampling plan approved by the permitting agency. All data should be made available to permitting agencies upon request, with the understanding that the permitting agency may provide the data to other public agencies and to the general public upon request.

DEC has prepared a document entitled Monitoring Well Guidance, which provides recommendations for monitoring well construction, maintenance, and decommissioning (<u>http://dec.alaska.gov/spar/csp/guidance/Monitoring%20Well%20Guidance.pdf</u>).

# 4.3 Detailed Hydrogeologic Studies

Where proposed mining is closer to PWS sources, surface water bodies, or groundwater than the setbacks recommended in this chapter, it is recommended that a detailed hydrogeologic study be performed to evaluate surface and groundwater relationships and potential impacts, and to design effective mitigation alternatives. The hydrogeologic study should be conducted by a qualified person and address the following general framework, modified from Fellman (1982):

- 1. Geology, topography, and drainage
- 2. Surface Water
  - Location
  - type (e.g., river/stream, gradient, flow volume, seasonal variability in flow, etc.)
  - present surface water quality and quantity
  - present use of surface water
- 3. Groundwater
  - depth to groundwater
  - aquifer type (e.g., confined, unconfined, multiple aquifers, perched water, geologic material description, etc.)

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- groundwater gradients, flow rates, flow directions
- surface water and groundwater interaction
- present groundwater quality and quantity
- present use of groundwater
- 4. Determine possible effects of mine development on water quality and quantity
- 5. Develop strategies to mitigate possible effects
- 6. Establish a monitoring program

# DENIED

### KENAI PENINSULA BOROUGH PLANNING COMMISSION

### **RESOLUTION 2004-22**

### A RESOLUTION GRANTING APPROVAL OF A LAND USE PERMIT TO OPERATE A SAND, GRAVEL, OR MATERIAL SITE

WHEREAS, KPB Chapter 21.25 provides for the approval of Land Use Permits for certain land uses within the Borough; and

WHEREAS, public notice was sent to all property owners within a one-half mile radius of the proposed gravel site and posted at the Post Office within the affected area as provided in KPB 21.25.060; and

WHEREAS, public notice was published in the April 27 and May 5, 2004 issues of the Peninsula Clarion newspaper as provided in Section 21.25.060; and

WHEREAS, public testimony was received at the May 10, 2004 meeting of the Kenai Peninsula Borough Planning Commission;

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

That the Planning Commission makes the following findings of fact pursuant to KPB 21.25 and 21.26:

### **Findings of Fact**

- 1. The applicant completed and submitted to the Borough Planning Department a permit application and paid the appropriate fee established by the Planning Commission.
- 2. Staff determined the application contained the required information and was complete.
- 3. The proposed activity complies with 21.26.020.A.1 Aquifer disturbance. The applicant will not extract material within 100 feet of an individual's existing water source, nor within two feet of the water table within 100 to 300 feet of an individual's existing water source.
- 4. The proposed activity complies with 21.26.020.A.2. Roads. The applicant will not damage borough roads as required by KPB 14.40.070.C.
- 5. The proposed activity complies with 21.26.020.A.3 Adjacent Properties. The activity, as proposed will be conducted in a manner to reduce physical injury to adjacent properties by complying with conditions of KPB 21.26.030.
- 6. A 6-foot earthen berm buffer on the north, south, east, and western boundaries is appropriate for the parcel location and comply with 21.26.030.A.2.
- 7. The applicant has filed a letter of intent for reclamation as required in 21.26.030.A.2.
- 8. A public hearing of the Planning Commission is being held on May 10, 2004 and proper notice in accordance with KPB 21.25.060 was furnished to interested parties.

#### Permit Conditions

- 1. The approved land use and operations are described and shall be conducted as follows: T05N R11W S24, Seward Meridian, KPB 05527035; Parcel: 27.73 acres; Portion to be Gravel Pit: approx. 18 acres, the permittee, Mercedes A. Gibbs proposes: to 1) excavate material; 2) build berms from material; 3) sell gravel commercially; 4) reclaim the area by backfilling and contouring to stable condition. *Finding: This is an administrative condition necessary to define the limits of the permitted activity.*
- 2. The permittee shall maintain a 6-foot earthen berm buffer on the north, south, east, and western borders. *Finding: This condition shall ensure compliance with KPB 21.26.030.A.1.*
- 3. The permittee shall reclaim by contouring all disturbed land upon exhausting the material on-site in accordance with state statutes to leave the land in a stable condition. Reclamation shall occur for all exhausted areas of the site exceeding one acre before a five-year renewal permit is issued. *Finding: This condition shall ensure compliance with KPB 21.26.030.A.2.*
- 4. The operation shall not negatively impact an aquifer serving another property. Operations shall not breach an aquifer-

confining layer. Finding: This condition shall ensure compliance with KPB 21.26.030.A.3.

- 5. The permittee shall store fuel in lined, impermeable areas. *Finding: This condition shall ensure compliance with KPB 21.26.030.A.4.*
- 6. The permittee shall maintain a horizontal distance of at least 100 feet from any wells or water sources for consumptive use existing prior to the effective date of this permit. The permittee shall limit material extraction to no deeper than two feet above the seasonal high water table for extraction occurring between 100 and 300 feet from any well or water source for consumption use prior to the effective date of this permit. *Finding: This condition shall ensure compliance with KPB 21.26.030.A.5.*
- 7. The permittee shall not damage borough roads as required by KPB 14.40.070 and will be subject to the remedies set forth in KPB 14.40 for violation of this condition. *Finding: This condition shall ensure compliance with KPB 21.26.030.A.6.*
- 8. The permittee is responsible for determining the need for any other municipal, state or federal permits and acquiring the same. The permittee must abide by all applicable municipal, state, and federal laws. *Finding: This condition shall ensure compliance with KPB 21.25.170.*
- 9. If changes to the approved project described above are proposed prior to or during siting, construction or operation the permittee is required to notify the KPB Planning Department to determine if additional approval would be required. *Finding: This is an administrative condition necessary to ensure continued compliance with the terms and conditions of the permit.*
- 10. This Land Use Permit is subject to annual review by the Planning Department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.25.090, the Planning Commission may revoke a permit issued pursuant to this chapter if the permittee fails to comply with the provisions of this chapter or the conditions of the permit. The Planning Director shall provide at least 30 days written notice to the permittee of a revocation hearing before the Planning Commission. *Finding: This is an administrative condition necessary to ensure continued compliance with the terms and conditions of the permit and KPB 21.25.080*.
- 11. Once effective, this Land Use Permit is valid for five years. The permittee must apply for a permit renewal within five years of the date this permit is granted in accordance with the provisions of KPB 21.26.050. *Finding: This condition shall ensure compliance with KPB 21.26.050.*
- 12. The permittee hereby agrees to comply with the terms, conditions and requirements of the KPB 21.25 and 21.26, and any regulations adopted pursuant to this chapter. *Finding: This condition shall ensure compliance with KPB 21.25.050*.
- 13. This Land Use Permit shall become effective on signing by the Planning Commission Chairman or Vice Chairman, after review, concurrence and notarized signing by the permittee and property owner. *Finding: This administrative condition is necessary to facilitate issuance and acceptance of the permit terms and conditions.*

### **Voluntary Permit Conditions**

- 1. The permittee has agreed to a 500-foot setback from the Kenai River within which no material site operations are permitted.
- 2. The permittee has agreed to an additional buffer on all borders 50 feet of natural or improved vegetation.

The Kenai Peninsula Borough Planning Commission authorizes the issuance of a Land Use Permit for a Sand, Gravel, or Material site subject to compliance with the above conditions.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON THIS DAY OF \_\_\_\_\_2004.

Mercedes A. Gibbs, Permittee	Da	ate
Notary's Acknowledgement		
Subscribed and sworn before me this	day of	2004.
$\frown$		
Notary Public for Alaska	Date	

or Sidelinger Trail. Ms. Sweppy responded that the troopers could respond by boat or air. This is out of the way but is a duplicate name that needs to be changed. The Planning Commission has the final say on the street naming and can retain Munson Trail or approve another name. Staff recommends changing this name because it is a duplicate. The staff will abide by commissioners decision.

Commissioner Foster asked why the other suggested name of Public Well Trail wasn't taken into consideration when recommending this street name. Ms. Sweppy answered that it was the original recommendation but then additional comments were received. Ms. Sweppy contacted the landowner who suggested Public Well Trail and she did not mind changing the name to Sidelinger Trail. Ms. Sweppy stated that none of the landowners opposed Sidelinger Trail.

Commissioner Johnson asked what is a sidelinger? Ms. Sweppy stated that it was the adjoining property owner's last name.

There being no further discussion the commission proceeded to vote.

**VOTE:** The motion passed by majority vote.

BRYSON	CLARK	FOSTER	GROSS	HOHL	HUTCHINSON	ISHAM
YES	NO	NO	NO	YES	YES	YES
JOHNSON YES	MARTIN NO	MASSION ABSENT	PETERSEN YES	TAURIAINEN YES	TROEGER YES	7 YES 5 NO 1 ABSENT

#### AGENDA ITEM F. PUBLIC HEARINGS

2. A land-use permit application was received by the Borough to operate a gravel site in the Kalifornsky Beach/Ciechanski area; Location: T05N R11W S24, Seward Meridian, KPB 05527035; Parcel: 27.73 acres; Portion to be Gravel Pit: approx. 18 acres; Applicant: Mercedes A. Gibbs; Owner: Mercedes A. Gibbs.

Staff Report as read by Kevin Williamson

PC MEETING: September 13, 2004

- APPLICANT: Mercedes A. Gibbs PO Box 554 Soldotna, AK 99669
- OWNER: Mercedes A. Gibbs PO Box 554 Soldotna, AK 99669

LOCATION: T05N R11W S24, Seward Meridian, KPB 05527035; Parcel: 27.73 acres; Portion to be Gravel Pit: approx. 18 acres.

#### **BACKGROUND INFORMATION:**

This is a reapplication for a material site permit. The applicant proposes to ingress and egress the subject parcel from Canvasback Ave. and Virginia Dr. and excavate in the western portion of the 18-acre portion of the parcel and move east. The applicant proposes to excavate 9,000 cubic yards of gravel per year. A copy of the application and support information is included as Attachment A.

Surrounding properties are predominately private owned. Copies of the land ownership and land use maps for the area are included as Attachment B and C. A year 2003 aerial is included as Attachment D.

The applicant proposes a 6ft earthen berm and 50 feet of natural or improved vegetation on the north, south, east and western boundaries for buffers. The applicant proposes to excavate to 40 feet deep. There are four (4) wells within 300 feet of the portion of the parcel to be a gravel pit. The applicant estimates the distance to groundwater to be 48 feet. This estimation of depth was determined by a well drilled on the parcel.

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According to the applicant's Alaska Department of Natural Resources Letter of Intent, the applicant will reclaim by backfilling, grading, and recontouring the excavation area 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 to be retained for natural revegetation. Stockpiled topsoil will be spread over the reclaimed area, which will eventually be used as a hay field.

This land is within the Kenai River watershed. The Kenai River, which is anadramous, runs as close as 800 feet to the east. The applicant proposes an extra buffer as well as a 500 foot setback from the Kenai River as voluntary permit conditions.

The excavation site is one hundred percent classified 'upland' according to the National Wetland Index.

**KPB AGENCY REVIEW:** Permit information was distributed to KPB agencies on August 12, 2004. The code enforcement officer's inspection report is included as Attachment G. Any comments received by Planning Department staff will be presented to the Planning Commission as lay-down items at the September 13, 2004 meeting.

**PUBLIC NOTICE:** Public Notice was mailed to property owners within a one-half mile radius of the subject site on August 12, 2004. A copy of the public notice is included as Attachment E. One letter was received from property owners as of September 2, 2004, and is included as Attachment F. Any comments received by Planning Department staff will be presented to the Planning Commission as lay-down items at the September 13, 2004 meeting.

**CODE OR REGULATION:** 21.25 requires a permit from the Kenai Peninsula Borough to use land as a sand, gravel or material site. 21.25.030 defines a sand, gravel or material site as "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."

**STAFF RECOMMENDATION:** Staff recommends the Planning Commission adopt the following Findings of Fact and disapprove the land use permit:

#### Findings of Fact

- 1. The first application was disapproved on May 10, 2004 based on the following Findings of Fact:
  - a. It appears the site is being backfilled with garbage supported by pictures of septic pipes, crushed septic tanks, which were mixed with the gravel.
  - b. Testimony during the public hearing was that the owner/operator was backfilling with garbage, including used septic pipes and used and deteriorating septic tanks.
  - c. The owner testified that he was not aware of the Kenai Peninsula Borough material site ordinance.
  - d. The proposed activity does not comply with 21.26.020.A.2 and 21.26.030.A.6 in that Virginia Avenue appears to be rutted consistent with gravel truck usage.
  - e. The proposed activity does not comply with 21.26.030.A.4, Fuel storage does not appear to be contained in lined, impermeable areas. Oil spilled near several drums appears to be consistent with leaking barrels.
  - f. The applicant's statement to reclaim as a hay field does not appear to be reasonable based on information supplied to the commission.
- 2. The applicant completed and submitted to the Borough Planning Department a permit application for the second time and paid the appropriate fee established by the Planning Commission.
- 3. Staff determined the application contained the required information and was complete.
- 4. Staff determined between May 10, 2004 and September 2, 2004 the applicant willfully operated the material site as if it was permitted, and therefore is in violation.

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5. The proposed activity does not comply with 21.25.050.B. Before granting the permit, the commission must find at a minimum that the proposed activity complies with the requirements of this chapter.

### Permit Conditions

- The approved land use and operations are described and shall be conducted as follows: T05N R11W S24, Seward Meridian, KPB 05527035; Parcel: 27.73 acres; Portion to be Gravel Pit: approx. 18 acres, the permittee, Mercedes A. Gibbs proposes to 1. Excavate material; 2. Build berms from material; 3. Sell gravel commercially; 4. Reclaim the area by backfilling and contouring to stable condition. *Finding: This is an administrative condition necessary to define the limits of the permitted activity.*
- 2. The permittee shall maintain a 6-ft earthen berm buffer on the north, south, east, and western borders. *Finding: This condition shall ensure compliance with KPB 21.26.030.A.1.*
- 3. The permittee shall reclaim by contouring all disturbed land upon exhausting the material on-site in accordance with state statutes to leave the land in a stable condition. Reclamation shall occur for all exhausted areas of the site exceeding one acre before a five-year renewal permit is issued. *Finding: This condition shall ensure compliance with KPB 21.26.030.A.2.*
- 4. The operation shall not negatively impact an aquifer serving another property. Operations shall not breach an aquifer-confining layer. *Finding: This condition shall ensure compliance with KPB 21.26.030.A.3*
- 5. The permittee shall store fuel in lined, impermeable areas. *Finding: This condition shall ensure compliance with KPB 21.26.030.A.4*
- 6. The permittee shall maintain a horizontal distance of at least 100 feet from any wells or water sources for consumptive use existing prior to the effective date of this permit. The permittee shall limit material extraction to no deeper than two feet above the seasonal high water table for extraction occurring between 100 and 300 feet from any well or water source for consumption use prior to the effective date of this permit. *Finding: This condition shall ensure compliance with KPB 21.26.030.A.5*
- 7. The permittee shall not damage borough roads as required by KPB 14.40.070 and will be subject to the remedies set forth in KPB 14.40 for violation of this condition. *Finding: This condition shall ensure compliance with KPB 21.26.030.A.6*
- 8. The permittee is responsible for determining the need for any other municipal, state or federal permits and acquiring the same. The permittee must abide by all applicable municipal, state, and federal laws. *Finding: This condition shall ensure compliance with KPB 21.25.170.*
- 9. If changes to the approved project described above are proposed prior to or during siting, construction or operation the permittee is required to notify the KPB Planning Department to determine if additional approval would be required. *Finding: This is an administrative condition necessary to ensure continued compliance with the terms and conditions of the permit.*
- 10. This Land Use Permit is subject to annual review by the Planning Department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.25.090, the Planning Commission may revoke a permit issued pursuant to this chapter if the permittee fails to comply with the provisions of this chapter or the conditions of the permit. The Planning Director shall provide at least 30 days written notice to the permittee of a revocation hearing before the Planning Commission. *Finding: This is an administrative condition necessary to ensure continued compliance with the terms and conditions of the permit and KPB 21.25.080.*
- 11. Once effective, this Land Use Permit is valid for five years. The permittee must apply for a permit renewal within five years of the date this permit is granted in accordance with the provisions of KPB 21.26.050. *Finding: This condition shall ensure compliance with KPB 21.26.050.*
- 12. The permittee hereby agrees to comply with the terms, conditions and requirements of the KPB 21.25 and 21.26,

KENAI PENINSULA BOROUGH PLANNING COMMISSION SEPTEMBER 13, 2004 MEETING

and any regulations adopted pursuant to this chapter. *Finding: This condition shall ensure compliance with KPB 21.25.050.* 

13. This Land Use Permit shall become effective on signing by the Planning Commission Chairman or Vice Chairman, after review, concurrence and notarized signing by the permittee and property owner. *Finding: This administrative condition is necessary to facilitate issuance and acceptance of the permit terms and conditions.* 

#### **Voluntary Permit Conditions**

- 1. The permittee has agreed to a 500 foot setback from the Kenai River within which no material site operations are permitted.
- 2. The permittee has agreed to an additional buffer on all borders 50 feet of natural or improved vegetation.

# NOTE: This decision may be appealed to the Borough Assembly, sitting as a board of adjustment within fifteen (15) days of the notice of decision, in accordance with the procedures of KPB 21.20.

#### END OF STAFF REPORT

Chairman Bryson clarified finding of fact #1c. It states that the owner was not aware of the Kenai Peninsula Borough material site ordinance but it should state that the operator was not aware of the Kenai Peninsula Borough material site ordinance. Mr. Williamson commented that those are the findings of fact that the Planning Commission presented to the staff at the last Planning Commission hearing.

Chairman Bryson opened the meeting for public comment.

#### 1. Tim Agosti, 36894 Virginia Drive, Kenai

Mr. Agosti stated that at the previous Assembly meeting of May 10, it was revealed that the site did not have grandfather rights so Mr. Foster had to reapply for a permit which was one of the findings from the previous meeting. It was also discussed that in one corner of the gravel site groundwater was reached. Mr. Agosti is concerned for the wells that are within the 35-45 foot range. The application for this land use permit indicates that groundwater was reached at 42 feet deep. Mr. Agosti stated that the neighbors spoke with a professional hydrologist and he stated that all the groundwater is the same. All the wells would be affected if the groundwater were contaminated. Mr. Agosti is urging that no more gravel be removed from this site and that all operations be stopped because groundwater has already been reached. He referred to the photos where it shows the violation of the current contractor removing gravel. Mr. Agosti does not want this permit granted.

Commissioner Hutchinson asked Mr. Agosti if there was a written report from the hydrologist. Mr. Agosti stated that another landowner who will be testifying has a letter.

Commissioner Johnson asked if the site has been cleaned up since the last public hearing. Mr. Agosti replied that according to his knowledge some barrels of hydraulic fluids and fuels that are used for the equipment have been put on a trailer. He has not inspected the site himself to know if it has been cleaned up.

#### 2. Crystal Penrod, 36860 Virginia Drive, Kenai

Ms. Penrod asked permission to pass packets of evidence to the Commissioners. Permission was granted. Ms. Penrod continued with her testimony. She states, as was mentioned by Mr. Agosti, the operators of the pit has been in operation all summer even after the cease and desist order was issued. Ms. Penrod referred to Mr. Foster's comments in the Clarion newspaper. She feels that not only is he not abiding by the Commissions requirements but also he appears to have no regard to the landowners' safety in dumping things in the pit. There are oil spills at the bottom of the pit. Ms. Penrod stated that Mr. Foster also has no concern for the roads or the Borough code. Mr. Finley did order a cease and desist order in May.

In the packet are photos taken in June of many trucks going in and out of the gravel pit even after the cease and desist order was in place. Ms. Penrod stated that Mr. Foster commented that he would take the fine and to contact his attorney. She is concerned over the inability of action to stop operations of this pit. Ms. Penrod understands that this fine is ongoing and the Borough Attorney, Colette Thompson is pursuing Mr. Foster

KENAI PENINSULA BOROUGH PLANNING COMMISSION SEPTEMBER 13, 2004 MEETING

legally through appropriate channels to collect the fine. According to Ms. Penrod the pit is still in operations and is active dumping illegally as they noticed when they left to come to this meeting. There was equipmentpushing debris into the water as well as a big green area going down into the water. She states that the workers don't seem to care and that they feel they are untouchable. There is still dumping happening in the pit; sewer tanks are arriving weekly. Ms. Penrod has not noticed too much clean up other that some waste barrels being put on a trailer. She is not sure if the spill area is contained and properly disposed of.

Ms. Penrod referred to the packet of a sketch of the measurements of the pit, which is a more realistic view of what was excavated. She also referred to photos showing the perimeter of the pit showing shear cliffs. Ms. Penrod is concerned for the safety of the kids who play and ride four wheelers in this area. There are no fences or safety measures taken to protect the area. She is concerned about the water and wants to make sure it is not contaminated. Ms. Penrod reported that a sample of the water has been sent off to be tested but have not received the results yet.

There are covenants in the neighborhood that Ms. Gibbs is liable for even though her husband was a homesteader. Ms. Penrod is concerned about how many more times they will need to go through this process where a permit has not been issued and operations are continuing illegally. She hopes that the commission will look at all the activity that has been going on and rule in favor of the property owners.

Commissioner Clark asked who was the one who gave the covenant information, the State Recorder's Office and who else? Ms. Penrod stated that it was the State Recorders office and the Borough's Assessing office that gave them the copies of the covenants.

Commissioner Clark responded that if the homestead is actually included in the subdivision as part of the covenants and restrictions and not just the neighboring property then there is means for a civil case. Ms. Penrod explained that once a homestead has been guaranteed, at that point covenants are established and divided within the subdivision then that person is liable.

Chairman Bryson asked Ms. Toll if she had the original subdivision plat with regard to the homestead portion. Ms. Toll replied no, she does not have it with her.

#### Jason Foster, Quality Earthmovers, Inc., PO Box 1966, Soldotna

3.

Mr. Foster handed the Commissioners a notebook of his documentation. Mr. Foster operates the gravel pit and has continued to do operations this summer but very little. He has only received a fine two times. At those times just a small amount of gravel was removed. Mr. Foster did excavate a large gravel project for Cook Inlet School but did not charge them anything for it. He has bought \$20,000 in materials for this site. Mr. Foster stated that although there were a few violations it was not his attention to blatantly violate everything. The pit has not been in full operations and there has not been a loader in the pit for 2½ months. Mr. Foster feels that there has not been near the problem that the landowners have just explained. He states that the neighbors have been on them for quite sometime and it has been very aggravating.

Mr. Foster feels they are one of the cleanest pits in the area and would challenge anyone to show that they are not. He referred the Commissioners to the letters from Department of Environmental Conservation Division (DECD). Mr. Foster met with representatives from DECD last Friday when they had a machine that shows contaminations in the soils. After running tests DECD stated that it was a very clean site. DECD did ask them to remove two batteries, which were removed. They also said it was fine that the barrels remain on the trailer as they appeared not to be leaking.

Mr. Foster is in the realms of the law to store the septic tanks in the pit until they are disposed of at the dump. His business has a policy and a card to dump them but they do have to cut them in half and crush them to 50% of the original size. It is sometimes not convenient with the hours that they work so they store them in the pit until things slow down. Many tanks have been removed and disposed of at the dump. The tanks are placed in the middle of the pit and not on top until they can be removed. The DECD have investigated the site twice and found no solid waste infractions.

Randy from the Soldotna office of DECD has most recently investigated the site. Mr. Foster showed Randy where the spill was that was mentioned in the May 10 meeting. Randy checked that spot and stated that it

was properly cleaned up. Randy also stated that it is one of the cleanest sites he has seen. Mr. Foster stated that there are no fuel barrels, no active fueling or greasing of the vehicles at the site; it is done at their shop in town. He reiterated that yards of gravel are not being excavated and that this site is not used very much.

Mr. Foster thought the site to be originally an 18-acre pit but the owners recently had it surveyed and it is only 8 acres. He has already reclaimed at least a quarter of this pit of about 2 acres. Mr. Foster will continue to reclaim as long as he can operate the pit. He states that obviously, equipment can be brought back into the pit to reclaim the property. Mr. Foster referred the commission to the pictures in the notebook showing the reclamation that has been done on this site. He stated that it does take time.

Mr. Foster has sold gravel to many landowners on Ciechanski Road who are very supportive of the pit. He does a lot of work in the community and does a stand up job as well as keeping sites clean.

Mr. Foster commented on the reports that water was being pumped to fill a hydro seeder. It seemed strange to Mr. Foster that complaints were coming in about planting grass. If the water that was being pumped out was contaminated then it obviously wouldn't grow grass very well. Mr. Foster dug a hole 25 feet deep just on the other side of the pit and hit solid clay. Mr. Foster commented that water is at different depths all over this area.

Commissioner Hutchinson asked if Randy, the DECD person gave the pit a good bill of health in one day. Mr. Foster replied that he was over Friday and was asked that two batteries be removed and a spot to of oil to be measured at 17" in diameter be cleaned up. Mr. Foster stated he shoveled it up and put it in properly contained containers. Randy came back to the pit today to make sure things were cleaned up. Commissioner Hutchinson stated that he has experience working with surveys and environmental sites and it normally takes thousands of dollars and weeks to accomplish a clean bill of health. Commissioner Hutchinson wants to know how Mr. Foster received that in one day. Mr. Foster explained that Randy stated that there was not enough contamination or problems with the pit and could not justify a formal investigation. Mr. Foster also explained that Randy informed this to the Penrods as well.

Commissioner Clark asked Mr. Foster if he was stripping overburden and taking full face or stripping off the existing floor going deep. Mr. Foster stated that he is going off an existing floor. He stated that one area of the pit was originally where all the over burden was pushed from the original part of the pit into a larger thicker pile which they are using for topsoil. Commissioner Clark asked how deep of an excavation did he have on those two acres. Mr. Foster stated he has never measured it. Commissioner Clark asked if he was going 5-6 feet deep on those two acres. Mr. Foster stated he was not sure he understood the question because everything is more than 5-6 feet deep. The bank that gravel is being taken out of has a heap of topsoil on it that is higher than the natural ground ever was. It was stripped off the previous area of the pit. The elevation of the pit is higher than what can be dug out.

Commissioner Clark stated that if you take 34 feet at 2 acres you come to 102,000 yards. He is assuming of the 20,000-yard estimate total volume that Mr. Foster is not taking the full 34-foot face because at 2 acres there are over 100,000 yards. Mr. Foster stated that there is no more 34-foot face except one, which is in the center of the pit.

Chairman Bryson asked Mr. Foster about the water table and how much gravel is estimated below it. Mr. Foster answered that they have dug as deep as 25 feet with an excavator and found nothing but gravel. He hasn't seen the clay level yet; only gravel.

Commissioner Johnson stated that at the May 10 meeting, they saw pictures of barrels that appeared to have some oil spills. He asked Mr. Foster if the oil spill cleanup was the extent of the cleanup that DECD recommended. Mr. Foster answered that those oil spills were cleaned up shortly after the May 10, 2004 meeting. The one DECD asked to have cleaned up was an oil spill from a cylinder that raises and lowers from a dump truck. Commissioner Johnson asked Mr. Foster how the original oil spill was cleaned up. Mr. Foster responded that the oil spill was put in a contained 10-mil+ liner then put in a fish tote with a lid on it. All materials are then shipped and burned in an ASR facility in Anchorage.

Commissioner Johnson asked about how it was cleaned up; was it a shovel job or backhoe job? Mr. Foster

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answered that it was cleaned up with a bobcat.

Commissioner Johnson asked if the septic pipes had been cleaned up. Mr. Foster stated that he hand picked them and took them to the landfill. Commissioner Johnson asked about the septic tank decay and if any septic tanks were removed since the May 10, 2004 meeting. Mr. Foster answered that he removed two and more will be removed as time permits. Commissioner Johnson asked if other than the septic tanks and septic pipes has other garbage be picked up since the May meeting. Mr. Foster replied, yes everything has been cleaned up that should have been cleaned up. Everything that wasn't being used has been cleaned up.

Commissioner Johnson has one more item. According to testimony from others and Mr. Foster a cease and desist order has been ordered yet Mr. Foster stated that a loader has not been in the pit for 2½ months and that there have been small violations. Commissioner Johnson asked Mr. Foster if gravel has been removed from the pit since the May 10<sup>th</sup> meeting. Mr. Foster answered yes, a few small amounts. The loader was gone for 2½ month because it was broken down but had used a small excavator to remove the small amount of gravel.

Commissioner Johnson asked about how much gravel was extracted for these small loads. Mr. Foster answered that he hauled approximately 430 yards, which equals to about 20 truckloads.

Commissioner Isham asked Mr. Foster what the green shaded area was in the picture showing the pumping of water into the truck for hydro seeding. Mr. Foster responded that the water is being pumped out of the water table into the tank that mixes up the mulch, the seed and the fertilizer for the hydro seeding. The shaded area is a dye from hydro seeding. It is not from discharging but from over spill or unclogging the pipes.

Commissioner Clark stated that there was concern of the debris that was being put into the pit. He asked Mr. Foster if he was the only one dumping in the pit. Mr. Foster stated that there have been a few people from the neighborhood requesting to dump there. He lets them know that it is strictly an organic dumpsite. Mr. Foster stated that they are allowed to dump concrete but keeps other people from doing that. They have not had any problems since the pipe issue. Some materials (wood) have been dumped but have been removed. The owner has applied for a permit to dump more conventional building materials.

Commissioner Clark asked when the building debris got removed. Mr. Foster stated that it was removed about a week ago.

Commissioner Hutchinson stated he was out at the pit taking photographs and it looks like there is concrete being dumped there. He asked Mr. Foster if concrete was being dumped at the site. Mr. Foster stated that his company dumps concrete but does not allow anyone else to.

#### 4. Louise Tiedeman

Ms. Tideman first purchased their home at the end of April and moved in May. When she first moved in the road was a mess with a mud hole on the road by the pit. Ms. Tideman stated that she saw trucks going in and out of the pit on Sunday afternoons. She does not understand that if the pit isn't being used very much, why are there trucks going in and out of it. Also, Ms. Tideman doesn't understand why Mr. Foster wants to dig deeper when he is digging up water. According to Ms. Tideman, Mr. Foster does not own property in this area; he is only leasing it and will not have to pay repercussions with these actions. She feels that if he owned the land then he would care a little more about the business that he is conducting. Ms. Tideman appreciates the commission listening to the landowners concerns.

#### 5. Oliver Amend

Mr. Amend stated that he started this whole mess and wants to be good neighbors with the landowners. He initiated this gravel pit for good reasons. Now that there is a hole in the ground he would like to fill it up and bring it back to the way it was. Mr. Amend commented that Mr. Foster's family has been in the area since the 1950's and has been working with Jason's family for a long time. Mr. Foster has grown up in this area working with this equipment and is very capable of doing it. Mr. Amend stated that he is retired from Unocal and has done this type of work. He works to do spill cleanups, excavations, pipe lines, gas lines, electric lines, knows a lot of soils, and does numerous cleanups for the oil companies. He cleaned up the oil spill that was in this pit with Mr. Foster, which is waiting to be shipped out for disposal. The way the spill was cleaned up is DECD approved.

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Mr. Amend believes the water that is standing in the pit is not connected to the water table. He stated that when they dug 25 feet they ran into solid clay. Mr. Amend expressed that they had one problem that someone had dumped plywood into the pit. He did not know it wasn't acceptable to put plywood in the pit but found out it was so they removed the plywood.

Mr. Amend commented on the aquifer and stated that it is not connected to the river or wells. There are no chemicals in the water. They want to be good stewards of the land and found that 8.6 acres is to be disturbed with this gravel pit. Mr. Amend would like Mr. Foster to be able to operate the gravel pit and them reclaim the property. He commented that the roads were torn up back in the early 80's, which was before Mr. Foster did any work. Mr. Amend commented that it doesn't seem fair that the rules were changed in 2001 and now they have to apply for a permit since they are no longer grand fathered.

Commissioner Johnson commented that he doesn't understand the pit operations. It seems to him that Mrs. Gibbs is the owner, Mr. Amend is the overseer and Mr. Foster is the contractor that hauls gravel out of the pit. There is some responsibility that Mr. Amend has in facilitating and not knowing that a permit was needed is not being responsible. Commissioner Johnson asked Mr. Amend what his responsibility was in this chain of command. Mr. Amend stated that he doesn't have a TV, doesn't have a computer and rarely reads a newspaper and did not find out that the 2001 rules had changed until this past April. He stated that he ran the farm when Mr. Gibbs was alive and continues to run the farm for Mrs. Gibbs.

Commissioner Clark asked if there was an as built from the surveyor regarding the 8.6 acres opposed to the 18 acres. Mr. Amend stated no, they physically measured it, estimated and has closed that up since starting.

Chairman Bryson asked if the 8+ acres was intended to be from the floor. Mr. Amend stated yes but expanded it a little.

#### 6. Dennis Gease, PO Box 2451, Kenai

Mr. Gease has a prepared speech with questions that he would like answered but first he must refute Mr. Foster that he is not operating the pit for the last 2½ months. Mr. Gease swears he has been hauling gravel out of the pit within the last 10-15 days. He attended the May 10 meeting and still has the same concerns now as he did then. Mr. Gease went through the first application and now this one and the only difference is that he is now asking for a 48-foot well depth. He went back to an application for a gravel pit that was approved for Davis Block that is located just around the corner and approval was given at the well depth of 25 feet deep because water was found at 30 feet deep. According to Davis Block's application they plan to reclaim the property within three years but Mr. Foster's application states that the property will be reclaimed in a reasonable time. Mr. Gease would like to know what a reasonable time is and wants to have a specific time. It needs to be written into the permit if a permit is issued.

Mr. Gease also stated that Mr. Foster proposes a 6-foot berm around the gravel pit. There are two sides that have no berm around it. Mr. Gease feels that if they say they are going to do something, and then they

Mr. Gease would like to know who would be responsible if the water gets contaminated. Will the Borough, Mr. Foster, or Mrs. Gibbs be responsible? He is retired and put his life savings into building his house. Mr. Gease will be very unhappy if something happens to it.

#### 7. <u>Sawang Smith</u>

should do it.

Ms. Smith lives on Ciechanski, bought her house in 1986 and put her life savings into the house. She states that no one wants to buy it because of the gravel pit.

#### 8. Travis Penrod, 36860 Virginia Drive, Kenai

Mr. Penrod wants to clarify that it is not 8.8 acres; it's 613 feet long, 1224 foot lengthwise, 720,000 sq. feet. An acre of property is approximately 40,000 sq. feet. Mr. Foster stated that they have reclaimed 2.7 acres. Mr. Penrod went and measured the portion reclaimed and by the water it measures 41 feet and 47 feet on one side and is 236 feet long. Mr. Penrod states that there is about 9,500 sq feet less than a quarter of an acre. Mr. Foster is filling against the slope bank and has only filled in half of that.

Mr. Penrod stated that the worst crime that has been committed is the type of material that is being dumped in the pit. He referred the Commission to the photos in the handout packet. The plywood has been removed but there is roofing materials still there. Mr. Penrod is concerned with the chemicals that are being dumped and it affecting the water table. All the wells have the same water regardless of a 35 or 40 foot well. The water table does go up and down about the same as the Kenai River. There is no way to keep contaminates out of the water table when it is pure gravel going to the banks of the Kenai River. Mr. Penrod states that there is no clay layer but pure gravel and the water will be contaminated if chemicals go into it. He stated that his biggest concern is contaminates going into the water. If that happens then everyone is out and the real estate is worth nothing.

Mr. Penrod commented that the stripping of topsoil backfill is laced with contaminates. Laurie Aldridge informed Mr. Foster that the items being dumped were illegal. She sent Mr. Penrod a letter and stated that Mr. Foster was very compliant and will clean it up. Mr. Penrod went back to check and the materials were still there. He stated that removing water from the site is not allowed without an appropriate permit per Kelly Westfall. Mr. Penrod watched Mr. Foster dump the hydro seeding material into the water aquifer. Even though it is not highly toxic a person would not want to give it to anyone or to their dog.

Mr. Penrod stated that the activity in the pit is appalling especially since the pit does not have a permit and was ordered to cease and desist. Mr. Penrod states that denying the permit is the only thing to do.

Commissioner Johnson expressed to Mr. Penrod while his testimony and many others is condemning, on the other hand the DECD has been on the site twice and they have not been condemning. Mr. Penrod stated that no one from Solid Waste or Landfill area has inspected but Laurie Aldridge is going from the pictures that he has sent her but was not specifically at the site Mr. Penrod stated that he did talk to the ones that have come to the site but they are going off the testimony of the excavators. They state there are no contaminates within the water and no testing to the water is being done.

Commissioner Johnson stated that according to testimony, a gentleman did come and inspect the property from DECD. Mr. Penrod commented that this man picked up the bag of mulch and called the manufacturer and they said there were no contaminates. They asked if the contractor is putting anything additional into to mulch and they said no.

Commissioner Johnson commented that at the last meeting the permit was denied and a satisfactory resolution was not found. He wonders if stipulations should have been placed on the permit and the permit granted. If that was done then the Borough could enforce the conditions and oversee that things were being done correctly. Commissioner Johnson asked Mr. Penrod if it would be better for the Commission to deny the permit or grant the permit with stipulations. Mr. Penrod answered that the pit is fully excavated. He has seen the loader dig to the water level and drag it back over the water. Mr. Penrod stated that the pit is fully excavated and to continue to remove gravel would be done illegally. He suggests that a 50-foot buffer be in place, slope it down and fill it with good clean gravel but this gravel pit is used up. It is a great dumpsite.

Commissioner Clark asked Mr. Penrod when he spoke with Kelly Westfall from DNR if a temporary water permit was issued. Mr. Penrod stated that it was around July but was unaware of a water usage permit being issued. It was actually Mrs. Penrod that spoke with Kelly Westfall several times between May and now. She stated that no one that is in and out of this gravel pit has a water usage permit and they are pumping illegally.

Seeing and hearing no one else wishing to speak, Chairman Bryson closed the public comment and opened the discussion among the Commission.

Commissioner Troeger asked if the commission could take a 10-minute recess. Chairman Bryson granted a 10-minute recess.

Chairman Bryson called the meeting back to order at 9:15 p.m.

**MOTION:** Commissioner Clark moved, seconded by Commissioner Peterson to adopt the unnumbered Resolution 2004-\_\_\_\_ granting the land use permit for operations of a gravel site.

Commissioner Martin would like to address the letter that mentions him as being involved in illegal pit operations.

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Commissioner Martin stated that his father owns the 80-acre subdivision across the highway from Ciechanski Road and is unfamiliar with his operations. Commissioner Martin cannot tell his father what to do or how to deal with the Borough. He commented that even though it is his father, he has noting to do with this subdivision.

Chairman Bryson stated that Mr. Martin clarified his potential appearance of partiality and will allow him to participate in the discussion. He asked if the commissioners had any concerns with this item. Hearing none, Commissioner Martin continued the commission discussion on the main motion.

Commissioner Isham is not familiar with how a cease and desist order works and asked the staff the following questions. Is that order per incident or does it cover the whole pit? Is it enforced until the permit is approved or disapproved? How does this affect the operations? Is Borough Legal involved in this matter?

Mr. Williamson answered that the cease and desist order was issued because he is operating a pit without a permit. It is accumulated daily from the date the cease and desist order was issued. He stated that this has been given to legal and it is in process.

Commissioner Isham asked staff if the permit was granted tonight, would the cease and desist order stop? Mr. Williamson believes the date the permit is granted with the Planning Commission chairman's signature would be the ending date.

Commissioner Hutchinson stated he would be voting against this motion because the current operators have not lived up to the promises they have made. They do not have a permit and should not have a permit. He feels the commission should listen to the neighbors.

Commissioner Johnson asked the staff how long it was before the applicant reapplied after the permit was denied at the last public hearing? Mr. Williamson stated that the reapplication was received about June 1, 2004, which equals to about 20 days.

Commissioner Johnson asked if there is an amount of time that has to lapse before a reapplication is filed. Mr. Williamson answered yes; he has to wait the 15-day appeals period. Commissioner Johnson commented that he reapplied as soon as he could. He asked if it took this long to go through the process and if it arrived here in Seward out of a fluke? Mr. Williamson stated yes, it was just a luck of the draw. It is assigned the first meeting that is timely to the applicant

Commissioner Johnson stated that it has been insinuated that a fine has been given and it has been alleged that the fine is \$100 a day. Mr. Williamson answered, yes, that is correct. Commissioner Johnson asked if the fine of \$100 a day was from the time he was turned down or was seen operating the pit. Mr. Williamson stated that the fine starts the day the Code Compliance Officer issues the cease and desist order if he continues to act out of compliance. Commissioner Johnson asked if Mr. Foster has paid any of the fines. Mr. Williamson commented, no, not to his knowledge. Commissioner Johnson asked if this was referred to the Borough Legal Department and what happens next. Mr. Williamson knows of this happening only once before with Carroll Martin and his subdivision. As far as the details, it is between the legal department and the legal representation of Mr. Martin. He stated that for now the Legal Department will deliberate with the Planning Department. Commissioner Johnson asked if the Planning Department.

Chairman Bryson asked staff if the Borough Ordinances differentiates between using the pit as a gravel pit or waste purposes? Mr. Williamson stated that there is a differentiation because a Conditional Use Permit is not needed to store things on personal property. The Borough Code, Solid Waste Code does not include private property waste, which is a state responsibility. It only covers the Borough owned landfill. The gravel code does not address water contamination or water quality issues except to provide the minimum protection of water rights.

Commissioner Clark asked staff if a reapplication was filed June 1<sup>st</sup>? Mr. Williamson answered, June 1<sup>st</sup> for the reapplication. Commissioner Clark asked if the reapplication was complete? Mr. Williamson stated that the proposal was complete but the application was not complete because of the compliance issue. The way the gravel code is enforced is to seek voluntary compliance. Mr. Williamson stated that there have been other pits that have been overlooked in the past and have not permitted themselves. Once it is brought to the Planning Department's attention, Planning asks that operations be stopped. Once someone complies, stops operations and prepares for compliance of

KENAI PENINSULA BOROUGH PLANNING COMMISSION SEPTEMBER 13, 2004 MEETING

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the code then it is brought to the Planning Commission for approval or disapproval. Mr. Williamson stated that in this case the proposal was in compliance but his actions were not.

Commissioner Clark asked if his actions were the reason it took 105 days as opposed to 45 days to come back to the Commission. Mr. Williamson stated also that there were personal schedule conflicts as far as being the gravel pit administrator. Commissioner Clark asked if it was the Borough staff that delayed this. Mr. Williamson commented, yes.

Commissioner Johnson commented that he sees that he could go two ways with this. One is to vote against it or vote to approve the permit. At the last hearing, Commissioner Johnson voted against it with the objective that the operator would clean the site up and reapply which did not work. Commissioner Johnson asked Mr. Williamson if restrictions and conditions could be placed on the permit that Mr. Foster would need to comply by? A couple of suggestions that Commissioner Johnson gave was to place the berms where the commission would want them and to have him clean the site up, then get it inspected by Mr. Finley or Mr. Williamson. Mr. Williamson stated that no we cannot propose conditions other than what is allowed in the code or the operator gives conditions voluntarily.

Commissioner Johnson stated that basically the commission could either deny or approve this permit. He asked if the permit were approved, would he have to meet the conditions that are currently out of compliance. Mr. Williamson stated yes, there would be further monitoring by the borough and the public.

Commissioner Johnson stated that if the permit is either denied or approved, the operator could not operate the pit legally until he is brought into compliance. Mr. Williamson stated that is correct.

Commissioner Clark asked Mr. Williamson if the operator has a water permit from DNR to run the hydro seeder? Mr. Williamson stated that he is not aware that he has a water permit but according to Borough Code, it is required by the Borough that he cannot pump without certification from an engineer. That was another non-compliance issue.

Commissioner Hohl stated that it seems much easier for the Borough to monitor whether or not the pit is operating while the operator brings it into compliance than to monitor all the conditions of the permit. If the permit is not approved then the Borough just has to see if it is in operation. If the permit is approved then there is each condition that the Borough has to monitor. Mr. Williamson stated that it is a complicated situation because a lot of it depends on the staff and minimum standards of the code and places so much on the ethics of the operator. It is further complicated if the surrounding community is not convinced and supportive of the permit.

Commissioner Troeger asked what the date was that the cease and desist order was issued? Mr. Williams stated that Warren Finley, the Code Compliance Officer issued the order on June 25, 2004, which is when the fines began.

Commissioner Troeger asked if there was a timeframe given for compliance in that letter? Was the applicant given a specific amount of time to come into compliance? Mr. Williamson stated he does not have that information. Commissioner Troeger asked if the applicant appeal this enforcement letter? Mr. Williamson stated that to his knowledge the applicant did not appeal. Mr. Ostrander responded that a letter was initially sent from the Code Compliance Officer requesting that they cease and desist operations. After that point a separate enforcement order which allowed an appeal period of 15 days, which there was no appeal during that 15-day period.

Commissioner Johnson asked if the permit is denied can the applicant reapply again in 15 days. Mr. Williamson stated, yes, that is correct and it can happen indefinitely. Commissioner Johnson asked if he does not operate illegally and meets all other requirements and reapplies would the findings state that he is in compliance? Mr. Williamson stated that is correct.

Chairman Bryson asked the commissioners if there were any questions for Warren Finley. Hearing none, discussion continued among the commissioners.

Commissioner Clark is concerned that this property is going to look just as it does now because Mr. Foster does not have any incentive to clean it up and backfill the hole to Virginia Drive. He feels it is too bad that the commission cannot place conditions beyond what is in the code on the permit. Commissioner Clark would favor granting the permit if the conditions were met.

Chairman Bryson commented that staff has clarified that using the facility as a disposal site is not within the ordinance

KENAI PENINSULA BOROUGH PLANNING COMMISSION SEPTEMBER 13, 2004 MEETING

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requirements. It just happens to be an activity that is going on at the same time. His assumption is that backfilling could be utilized by contractors whether a permit is issued or not.

Commissioner Clark commented that if the permit is granted then reclamation is required and enforceable.

Commissioner Hutchinson stated that the reclamation of the property has not been defined not only by time but also by whom. There are too many unknowns and too many broken promises.

Commissioner Johnson concurs with Commissioner Hutchinson. Chairman Bryson reviewed the motion that the permit be approved with staff comments incorporated.

**VOTE:** The motion failed by majority consent.

BRYSON	CLARK	FOSTER	GROSS	HOHL	HUTCHINSON	ISHAM
NO	NO	NO	NO	NO	NO	NO
JOHNSON NO	MARTIN NO	MASSION ABSENT	PETERSEN YES	TAURIAINEN NO	TROEGER NO	1 YES 11 NO 1 ABSENT

Mr. Williamson explained the appeal process.

AGENDA ITEM F. PUBLIC HEARINGS

A land-use permit application was received by the Borough to operate a gravel site in the Sterling area; 3. Location: Dawn Estates Pearse Addn Lot 6B T05S R09W S29, Seward Meridian, KPB 06332017; Parcel: 8 acres; Portion to be Gravel Pit: approx. 2.5 acres.

Staff Report as read by Kevin Williamson

PC MEETING: September 13, 2004

- **APPLICANT:** Anthony Pearse **PO Box 294** Sterling, AK 99672
- **OWNER:** Anthony Pearse **PO Box 294** Sterling, AK 99672

LOCATION: Dawn Estates Pearse Addn Lot 6B T05S R09W S29, Seward Meridian, KPB 06332017; Parcel: 8 acres; Portion to be Gravel Pit: approx. 2.5 acres.

#### **BACKGROUND INFORMATION:**

The applicant proposes to ingress the subject parcel from Edgington Road and Fannie Mae and start excavation at the northern boundary of the parcel. The applicant proposes to excavate 2.5 acres and approximately 20,000 cubic yards of gravel. The applicant plans to excavate to road level, contour to build houses or sell as house lots. The expected life span of the pit is 5 years. A copy of the application and support information is included as Attachment A.

Surrounding properties are predominately private owned. Copies of the land ownership and land use maps for the area are included as Attachment B and C. A 2003 aerial is included as Attachment D.

The applicant proposes to excavate to 25 feet deep. There are no wells within 300 feet of the parcel. The applicant estimates the distance to groundwater to be 60 feet, which was estimated using two well logs indicating 68 feet and 57 feet respectively for groundwater depth.

The applicant proposes 50 feet of natural or improved vegetation on the north, east, and western boundaries for buffers. The applicant requests a variance to waive the buffer zone requirement for the southern property line because the property to the south is a developed and permitted material site owned by the same persons.

1. Variance Request. KPB 21.26.030 (A) Buffer Zone. The applicant is requesting that the property lines KENAI PENINSULA BOROUGH PLANNING COMMISSION SEPTEMBER 13, 2004 MEETING PAGE 46

## BOROUGH CODE CITED IN TESTIMONIES BY DIAMOND WILLOW ESTATES & CIECHANSKI AREA HOMEOWNERS:

## **ORDINANCE 2.40.030.C**

Members and membership of the planning commission shall be subject to the following conditions:

C. The borough mayor and the borough planning director shall be additional members ex officio and shall have the privilege of the floor, but may not vote.

## ORDINANCE 21.25.040 Permit Required for Commencement of Certain Land Uses:

It shall be unlawful for any person to use land, or to assist another to use land, within the rural district of the Kenai Peninsula Borough for the following uses without first obtaining a permit from the Kenai Peninsula Borough in accordance with the terms of this ordinance:

> correctional community residential center (CCRC) pursuant to KPB 21.27

2.

1.

commercial sand, gravel or material site pursuant to KPB 21.26; and

3.

Concentrated animal feeding operation (CAFO). (Ord. No. 2002-14, § 2, 6-4-02; Ord. No. 98-33, § 2, 2-16-99)

## **ORDINANCE 21.29.120**

## Prior existing uses:

Α.

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.

#### Hartley, Patricia

From: Sent: To: Cc: Subject: Planning Dept, Friday, July 13, 2018 3:13 PM Wall, Bruce Hartley, Patricia FW: Sunville Acres Re Plat

From: CJ Penrod [mailto:alaskacjp@gmail.com] Sent: Friday, July 13, 2018 2:32 PM To: Planning Dept, Subject: Sunville Acres Re Plat

I would like to go on record as being opposed to this re-plat. It goes against the Covenants that each property owner agreed to legally when purchasing their property. The Diamond Willow Homeowner's Association will not tolerate this breach in the Covenants. This re-plat is an obvious move to shift the power of the homeowners from 59 to just one man, Ray Oyemi. While the Borough does not uphold Covenants, we ask that they recognize them in this instance and deny this petition to avoid future litigation. Thank you for your consideration.

Crystal Penrod Property Owner

#### Reif, Jordan

From:Gina Debardelaben <ginadebar@mclanecg.com>Sent:Friday, July 13, 2018 3:49 PMTo:Wall, BruceCc:Ray Oyemi; Reif, Jordan; James HallSubject:RE: Sunville Acres LOZD

Bruce & Jordan, Sorry for the poor grammar in the final paragraph.

We DO NOT want to postpone the re-plat. Just want to clarify that the LOZ is on hold.

Thanks Gina

Gina M. DeBardelaben, PE Principle McLane Consulting, Inc. P.O. Box 468; Soldotna, Alaska 99669 907-283-4218 office 907-398-8143 cell

From: Gina Debardelaben Sent: Friday, July 13, 2018 3:41 PM To: Bruce Wall (<u>bwall@kpb.us</u>) <<u>bwall@kpb.us</u>> Cc: 'Ray Oyemi' <<u>mgmtpro@att.net</u>>; 'jreif@kpb.us' <<u>jreif@kpb.us</u>>; 'jameshall@mclanecg.com' <<u>jameshall@mclanecg.com</u>> Subject: Sunville Acres LOZD

Bruce,

After consultation with Mr. Oyemi, we are asking that you put the Willow Estates Sunville Acres Addn. LOZD application ON HOLD.

The applicant would encourage the Borough to move forward with Ordinance revisions; adding Neighborhood Commercial and/or Light Commercial zones to the ordinance per your suggestion. Once additional zoning options are in the draft stage, the applicant anticipates to simultaneously petition for a change of LOZD for the properties with a new zone best fitting the proposed property use and the neighborhood function.

Please inform KPB Platting that the LOZD petition has been suspended at this time as well as the Sunville Acres re-plat if on the Plat committee agenda for Monday.

Thanks Gina

# E. NEW BUSINESS

4. Conditional Land Use Permit; MS2015-005 Applicant: Sean Cude Request: Modification to PC Resolution 2014-20 to allow excavation into the water table and for temporary localized dewatering. Location: 36498 Virginia Drive Kalifornsky Area



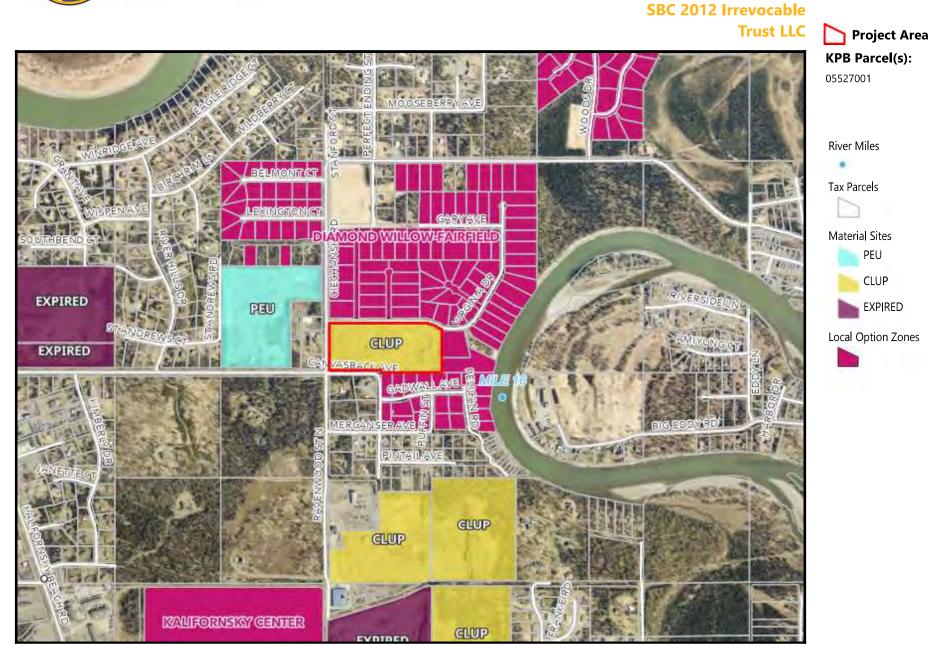


The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.

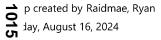


## **KENAI PENINSULA BOROUGH**

LOZ and Materials Sites Map



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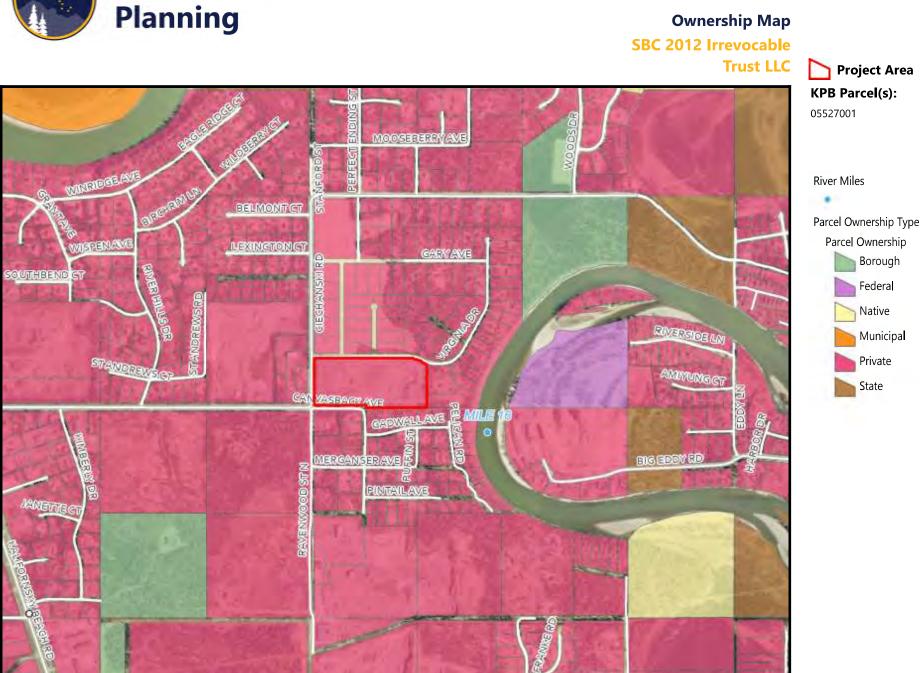
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KENAI PENINSULA BOROUGH

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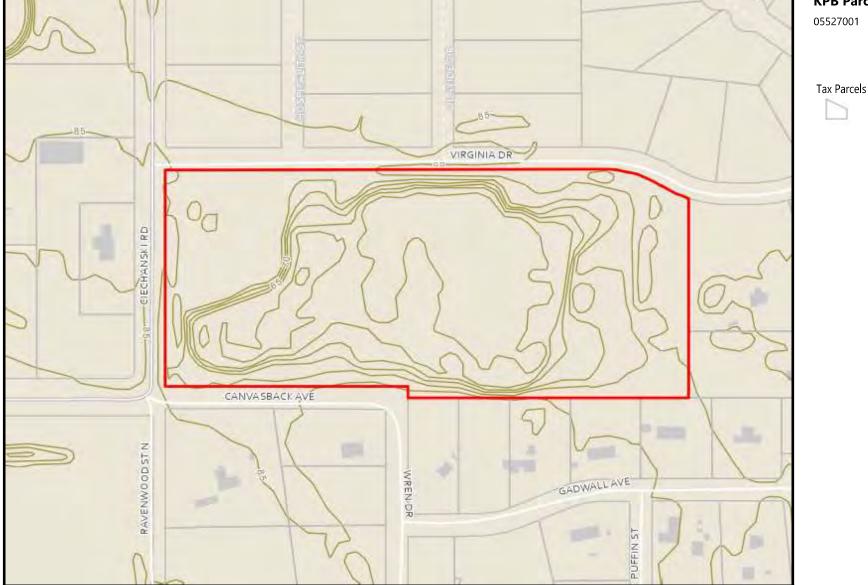
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Terrain Map SBC 2012 Irrevocable Trust LLC Project Area KPB Parcel(s):



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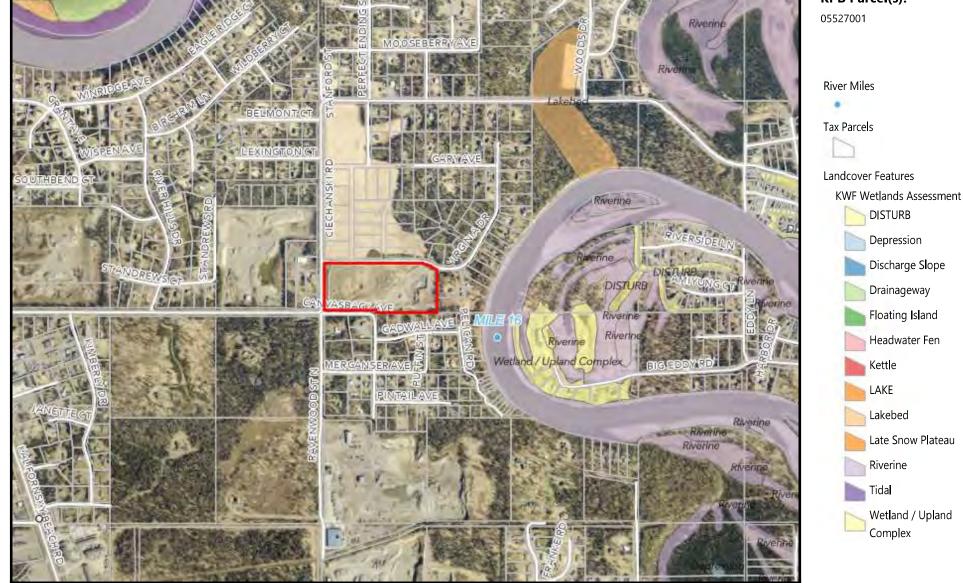


Wetlands Map

#### SBC 2012 Irrevocable

Trust LLC

Project Area KPB Parcel(s): 05527001



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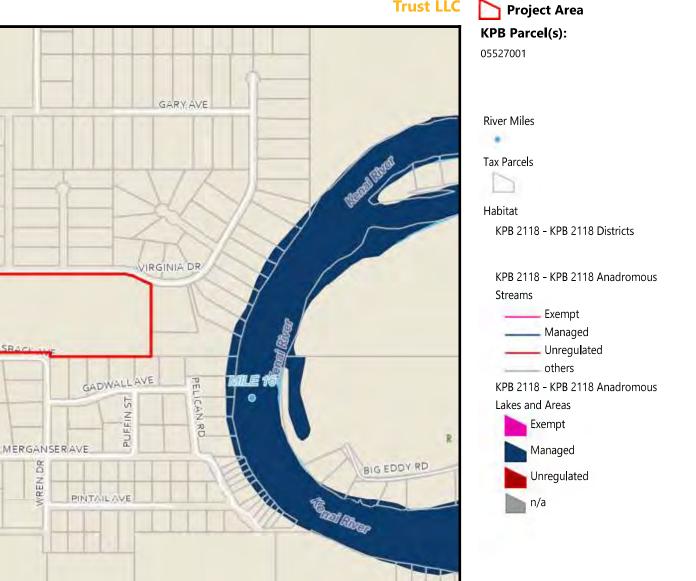
ANDREWS

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HILLS DR.

RIVER

## **Habitat Protection Area Map** SBC 2012 Irrevocable **Trust LLC**



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DR

WREN

## KPB 21.29 Conditional Land Use Permit Application

For a new or π	nodified Sand,	Gravel or	Material	Site

I.		ı		
	Applicant SBC 2012 Irrevocable Trust LLC	Land	SBC 2012 Irrevoca	ble Trust LLC
	Address 42115 Kalifornsky Beach Road Ste B	Addre	42115 Kalifornsky Bea	ach Road Ste B
	City, State, Zip		State, ZipSoldotna Alaska	
	TelephoneCellCell		907-262-5761	
	Emailsean@sbcdevelopmentgroup.com	Email	sean@sbcdevelopmentgr	oup.com
11.	PARCEL INFORMATION			
	KPB Tax Parcel ID#Legal Des	scriptio	T5N R11W Section 24 S	M KN2015-012
	Diamond Willow Estates Subdivision Part 13 Tract 13			
	If permit is not for entire parcel, describe specific location with	thin pa	rcel to be material site, e.g	.; <b>*N</b> 1/2 SW1/4 NE1/4 - 10
	acres", or "5 acres in center of parcel".			
	modification to 8.8 acres of the currently permitted area			
$\checkmark$	\$1,000.00 permit processing fee payable to: Kenai Peninsul	a Boro		
$\checkmark$	Site Plan, to scale, prepared by a professional surveyor (lice	ensed a	nd registered in Alaska) sh	owing, where applicable:
	parcel boundaries location of boundary stakes within 300 ft. of		location/depth of testholes if encountered	s, and depth to groundwater,
	excavation area (to be in place at time of application)		location of all wells within	300 ft. of parcel boundary
	<ul> <li>proposed buffers, or requested buffer waiver(s)</li> <li>proposed extraction area(s), and acreage to be mined</li> </ul>		location of water bodies wetlands	on parcel, including riparian
	proposed location of processing area(s)		surface water protection n	neasures
	all encumbrances, including easements		·····3	
	points of ingress and egress	٥	preparer's name, date and	d seal
71	anticipated haul routes			
7	Site Plan Worksheet (attached) Reclamation Plan (attached) and bond, if required. Bond bonding requirements pursuant to AS 27.19.050	requir	ement does not apply to	material sites exempt from
	Please Note: If a variance from the conditions of Ki attached. (A variance is NOT the same thing as a waiver		29 is requested, a varia	ance application must be
IV. (	CERTIFICATION STATEMENT			

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

Applicant

Date

Revised 7/11/22

Return to:

KPB PLANNING DEPARTMENT

144 NORTH BINKLEY STREET

SOLDOTNA, ALASKA 99669

Landowner (required if not applicant)

Date

E3-876

Page 1 of 4

#### Site Plan Worksheet for Conditional Land Use Permit Application

Use additional space provided on next page, if necessary. Indicate item # next to comments.

	Applicant SBC 2012 Irrevocable Trust Owner SBC 2012 Irrevocable Trust
	KPB Tax Parcel ID # Parcel Acreage
1.	Cumulative acres to be disturbed (excavation <u>plus</u> stockpiles, berms, etc.) <u>19.36</u> acres
2.	Material to be mined (check all that apply):
3.	Equipment to be used (check all that apply): excavation vertices in the second
4.	Proposed buffers as required by KPB 21.29.050.A.2 (check all types and directions that apply):
	So ft. of natural or improved vegetation       N S FE         minimum 6 ft. earthen berm       ✓ N S E         minimum 6 ft. fence       N S FE         other       N S FE
5.	Proposed depth of excavation: <u>45 (elev. 48)</u> ft. Depth to groundwater: <u>30 (elev. 66)</u> ft.
6.	How was groundwater depth_determined?
7.	A permit modification to enter the water table will be requested in the future: X YesNo
8.	Approx. annual quantity of material, including overburden, to be mined: <a> </a>
9.	Is parcel intended for subdivision? X Yes No
10.	Expected life span of site? 20 years
11.	If site is to be developed in phases, describe: the excavation acreage, anticipated life span,
	and reclamation date <u>for each phase</u> : (use additional space on page 4 if necessary) As mining above groundwater is complete, excavation below groundwater will begin at the eastern section of
	the site and move westerly. The slopes will be dressed at 2:1 and portion above ground water will be seeded.
	The intent is to reclaim the property to support at least 2 water front residential lots.
	Voluntary permit conditions proposed (additional buffers, dust control, limited hours of operation, etc.)
В.	

C.\_\_\_\_

Page 2 of 4

#### Material Site Reclamation Plan for Conditional Land Use Permit Application

- 1. All disturbed land shall be reclaimed upon exhausting the material on-site, so as to leave the land in a stable condition.
- 2. All revegetation shall be done with a "non-invasive" plant species.
- 3. Total acreage to be reclaimed each year: up to 2 acres
- 4. List equipment (type and quantity) to be used in reclamation:

Excavator, dozer, loader

Describe time schedule of reclamation measures:

Reclamation will be completed annually before the September growing season. In order to minimize erosion,

seeding will be applied as necessary each season to the areas that achieve final grade.

6. The following measures must be considered in preparing and implementing the reclamation plan. although not all will be applicable to every plan –  $\square$  "check" all that apply to your plan.

Topsoil that is not promptly redistributed to an area being reclaimed will be separated and stockpiled for future use. This material will b e protected from erosion and contamination by acidic or toxic materials and preserved in a condition suitable for later use.



The area will be backfil led, 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.

Sufficient quantities of stockpiled or imported topsoil will be spread over the reclaimed area to a depth of four inches to promote nat ural 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 shall be reasonably free from roots, clods, sticks, and bran ches greater than 3 in ches in diameter. Areas having slopes greater than 2:1 require special consideration and design for stabilization by a licensed engineer.



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.

Peat and topsoil mine operations shall ensure a minimum of two inches of suitable growing medium is left or replaced on the site upon completion of the reclamation activity (unless otherwise authorized).

Ponding will be used as a reclamation method. (Requires approval by the planning commission.)

Page 3 of 4

#### ADDITIONAL APPLICATION COMMENTS

(Please indicate the page and item # for which you are making additional comments.)

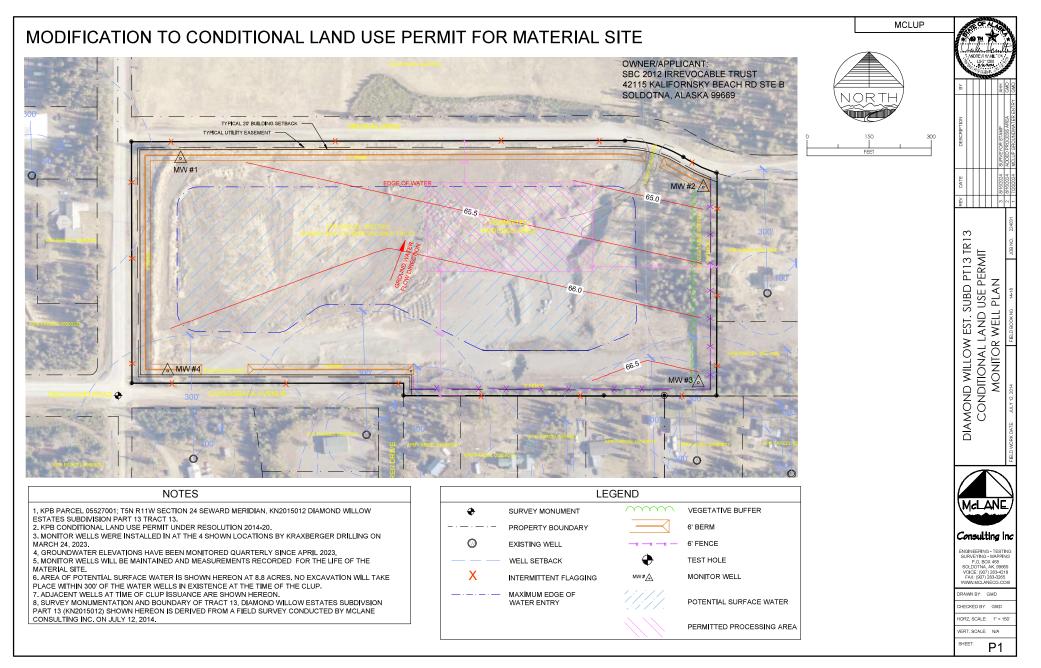
This application is requesting a modification to PC2014-20 to allow excavation in the water table and for temporary,

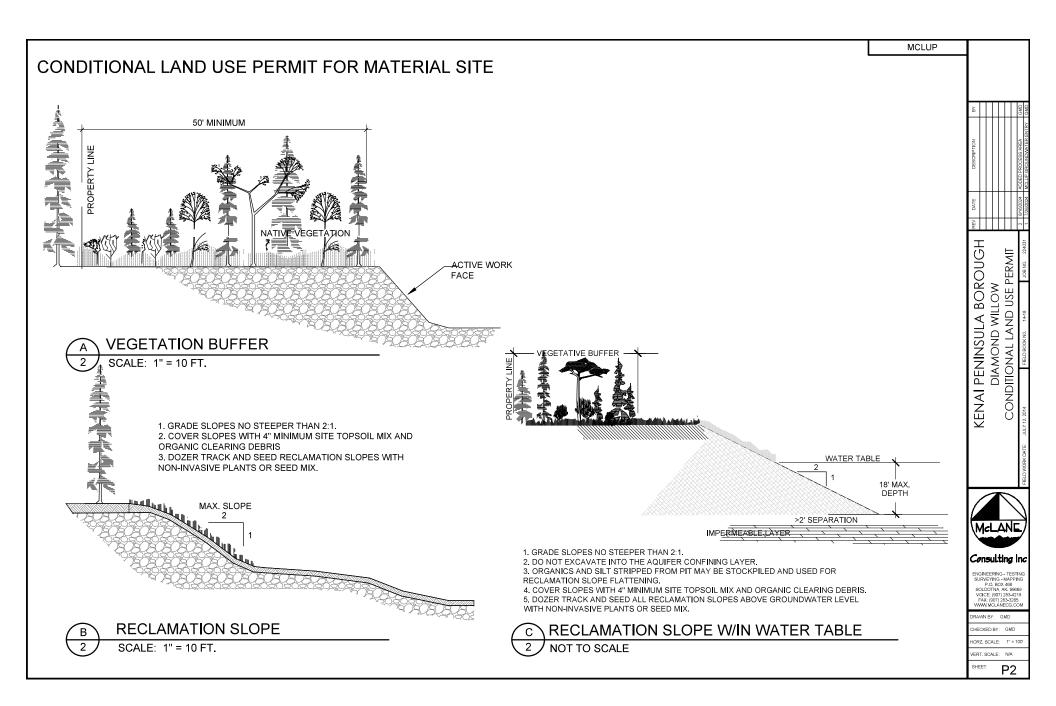
localized dewatering during excavation practices. Dewatering will be intermittent and all waters will be outlet within the

same property.

Revised 7/11/22

Page 4 of 4





#### Conditional Land Use Permit Materials Site Staff Report

PC Res No.	2024-12
Planning Commission Meeting:	Monday, September 9, 2024
Applicant	SEAN CUDE
Mailing Address	42115 Kalifornsky Beach RD
	Soldotna, AK 99669
Legal Description	T 05N R 11W SEC 24 SEWARD MERIDIAN KN 2015012 DIAMOND WILLOW ESTATES SUB PART 13 TRACT 13
Physical Address	36498 Virginia Drive
KPB Parcel Number	05527001

#### Project Description

The applicant wishes to obtain a Conditional Land Use Permit Modification, to Permit Resolution 2014-20, to allow for material extraction in the water table and for temporary localized dewatering during excavation. Dewatering will be intermittent, and all waters will be contained within a portion of the parcel listed above.

The site plan indicates that the material haul route will be as follows: Haul route will access the site from two locations (Northeast corner of property at Virginia Drive and Southwest corner of property at Canvasback Ave)

The site plan and application propose the following buffers:

North:	minimum 6 ft. earthen berm
South:	minimum 6 ft. earthen berm, minimum 6 ft. fence
East:	50 ft. of natural or improved vegetation
West:	minimum 6 ft. earthen berm

The subject property is bordered on the Northside by the 60-foot-wide right of way of Virginia Drive. On the Eastside of the property is the residential neighborhood of Diamond Willow Estates Part 11. Diamond Willow Estates is a subdivision that is included in the Local Option Zoning District of Diamond Willow – Fairfield, which is adjacent to the subject parcel. On the Southside of the property is the residential neighborhood of Ravenwood, Subdivision 2 and 4, along with the 60-foot-wide right of way of Canvasback Avenue. On the West side of the property is the 83-foot-wide right of way of Ciechanski Road.

The site plan completed by McLane Consulting Inc., states that ground water is approximately 27 feet below original ground based on 4 monitor wells that were installed on March 24, 2023 by Kraxberger Drilling. The application states that the proposed depth of material excavation will be 45 feet, which will equate to 18 feet below the seasonal highwater table. The applicant has requested an exemption for dewatering within the permitted area and has provided the required information as stated in 21.29.050(A)(4)(d). As a condition of dewatering, the contractor shall post a bond for liability for potential accrued damages, in the amount of \$80,000 or \$10,000 a well.

Plan notes state that there are no wet lands or surface waters within the property boundaries. A central area will be maintained as a processing area, which will be at least 300 feet from the East, South, West property lines. The applicant requests a waiver from the 300-foot processing distance on the Northside of the property due to the fact that the property is only approximately 615 feet wide. The site plan also indicates that there are 8 wells located within 300 feet of the proposed use area.

The application states that final reclamation will include ponding to support at least 2 waterfront residential lots. The applicant has requested that the Planning Commission grant approval according to 21.29.060(C)(6). The application further states that grading and re-contouring will incorporate strippings, overburden, and topsoil to a condition that allows for the re-establishment of natural vegetation. Slopes steeper than 2:1 will be seeded. The application also states that up to 2 acres will be reclaimed each year and reclamation will be completed annually before the growing seasons ends.

The applicant estimates a life span of 20 years for the site and an annual extraction quantity of less than 50,000 cubic yards cubic yards of material.

#### Public Notice

Public notice of the application was mailed on 8/21/2024 to the 325 landowners or leaseholders of the parcels within a half-mile of the subject parcel. Public notice was sent to the postmaster covering the Kalifornsky vicinity requesting that it be posted at the Post Office.

#### Agency Review

Agency review was distributed on August 14, 2024 to pertinent KPB staff and other agencies.

#### Findings of Fact pursuant to KPB 21.25 and 21.29:

- 1. KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough.
- 2. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
- 3. KPB 21.29 provides that a Conditional Land Use Permit is required for material extraction that disturbs more than 2.5 cumulative acres or processes material.
- 4. A public hearing of the Planning Commission was held on Monday, September 9, 2024 and notice of the meeting was published, posted, and mailed in accordance with KPB 21.25.060 and KPB 21.11.
- 5. The proposed cumulative disturbed area within the parcel is approximately 19.36 acres.

#### Parcel Boundaries

6. All boundaries of the subject parcel 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. The site plan indicates the property boundary within 300 feet of the work area was staked in 2024.

#### Buffer Zone

7. A buffer zone shall be maintained around the excavation perimeter or parcel boundaries. The site plan and application propose the following buffers, which shall not overlap an easement:

- a. North: minimum 6 ft. earthen berm
- b. South: minimum 6 ft. earthen berm, minimum 6 ft. fence
- c. East: 50 ft. of natural or improved vegetation
- d. West: minimum 6 ft. earthen berm
- 8. 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.
- 9. Per KPB 21.19.050(A)(c), buffers provided using vegetation and/or a 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.
- 10. Buffers shall not cause surface water diversion which negatively impacts adjacent properties or waterbodies.
- 11. 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.

#### **Processing**

- 12. The applicant indicates that material processing will take place on the property. Any equipment used for conditioning or processing materials will be operated at least 300 feet from the East, South and West property lines. Any equipment used for crushing rock or other materials will not be operated between 10:00 p.m. and 6:00 a.m., to minimize noise disturbance to other properties.
- 13. The applicant has requested a waiver to process materials within 100 feet of the North property line.

#### Water Source Separation

- 14. Material extraction is prohibited within 100 horizontal feet of any water source existing prior to the original permit issuance.
- 15. The site plan indicates that there are 8 wells located within 300 feet of the proposed excavation area.
- The applicant is required to maintain a 2-foot vertical separation from the seasonal high-water table, unless the planning commission has permitted excavation in the water table according to 21.29.050(A)(5)
- 17. The application indicates that the seasonal high-water table is 27ft (elevation 66) feet below grade and was determined by Monitor Wells.
- 18. The applicant may not dewater by pumping, ditching or some other form of drainage unless an exemption is granted by the planning commission.
- 19. The applicant has requested an exemption for dewatering within the permitted area and has provided the required information as stated in 21.29.050(A)(4)(d).
- 20. As a condition of dewatering, the contractor shall post a bond for liability for potential accrued damages, in the amount of \$80,000, \$10,000 per well.

#### Excavation in the Water Table

- 21. The application states that work is anticipated to be completed in the water table.
- 22. The applicant's intended depth of excavation will be 45ft (elevation 48) feet deep, and go 18 feet into the water table.
- 23. The application included 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.
- 24. A minimum of three water monitoring tubes or well casings have been installed to determine flow direction, flow rate, and water elevation.
- 25. For at least four quarters prior to submitting the application, groundwater elevation, flow direction, and flow rate for the subject parcel, were measured in quarterly intervals by a duly licensed and qualified independent civil engineer or professional hydrogeologist.
- 26. Monitoring tubes or wells must be kept in place, and measurements taken, for the duration of any excavation in the water table.
- 27. Operations will not breach an aquifer-confining layer.

#### **Waterbodies**

28. The site plan states that there are no wetlands or surface waters within the proposed excavation area.

#### Fuel Storage

29. The applicant is required to store fuel containers larger than 50 gallons in impermeable berms and basins capable of retaining 110 percent of storage capacity. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.

#### Haul Route

30. The site plan indicates that the material haul route will be as follows: [HaulRoute].

#### <u>Roads</u>

31. 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.

#### **Dust Control**

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

#### Hours of Operation

33. Rock crushing equipment may only be operated between 6:00 a.m. and 10:00 p.m.

#### **Reclamation**

- 34. The applicant has submitted a reclamation plan consistent with KPB 21.29.050(12)(a).
- 35. Ponding may be used as a reclamation method as approved by the planning commission.
- 36. The applicant has indicated that ponding will be used as a reclamation method.
- 37. Extraction at this material site is expected to be 50,000 cubic yards of material each year.
- 38. Material sites that exceed 50,000 cubic yards per year must meet the bonding requirement of KPB 21.29.050(12)(b). The amount of bond will be according to AS 27.19.040 unless the State of Alaska waives these requirements. In the case of a waiver the Kenai Peninsula Borough (KPB) would require the applicant to post bond to cover the anticipated reclamations costs and will be in the amount to be determined by the planning director as stated in KPB 21.29.050.

#### Other Permits

39. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the Borough's floodplain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives.

#### <u>Signage</u>

40. 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.

#### Permit Conditions

- 1. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where the parcel boundaries are within 300 feet of the excavation perimeter. Stakes must be in place and visible as long as the material site is permitted.
- 2. The permittee shall maintain the following buffers around the excavation perimeter or parcel boundaries. The site plan and application propose the following buffers, which shall not overlap an easement
  - a. North: minimum 6 ft. earthen berm
  - b. South: minimum 6 ft. earthen berm, minimum 6 ft. fence
  - c. East: 50 ft. of natural or improved vegetation
  - d. West: minimum 6 ft. earthen berm
- 3. The permittee shall maintain a 2:1 slope between the buffer zone and pit floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 30 days from the time of removal.
- 4. The permittee shall not allow buffers to cause surface water diversion which negatively impacts

adjacent properties or water bodies.

- 5. The permittee shall operate all equipment which conditions or processes material at least 300 feet from the East, South and West parcel boundaries. The applicant requests a waiver to process material 100 feet from the North property line.
- 6. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
- 7. The permittee shall maintain a 2-foot vertical separation from the seasonal high-water table between 100 and 300 horizontal feet of any water source existing prior to the issuance of this permit.
- 8. The applicant may not dewater by pumping, ditching or some other form of drainage unless an exemption is granted by the planning commission.
- 9. The applicant has requested an exemption for dewatering within the permitted area and has provided the required information as stated in 21.29.050(A)(4)(d).
- 10. As a condition of the permit and prior to dewatering, the contractor shall post a bond for liability for potential accrued damages, in the amount of \$80,000.
- 11. The permittee shall maintain an undisturbed buffer, and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains.
- 12. The permittee shall ensure that fuel storage containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.
- 13. The permittee shall notify the planning department of any further subdivision or return to acreage of this parcel. The planning director may issue a written exemption from the permit 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.
- 14. The permittee shall conduct operations in a manner so as not to damage borough roads as required by KPB 14.40.175, and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
- 15. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
- 16. The permittee shall not operate rock crushing equipment between the hours of 10:00 pm and 06:00 am.
- 17. The permittee shall reclaim the site as described in the reclamation plan for this parcel and approved by the planning commission.
- 18. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the Borough's floodplain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives.
- 19. The permittee shall post notice of intent on parcel corners or access, whichever is more visible if the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit. 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.

- 20. The permittee shall operate in accordance with the application and site plan as approved by the planning commission. If the permittee revises or intends to revise operations so that they are no longer consistent with the original application, a permit modification is required in accordance with KPB 21.29.090.
- 21. This Conditional Land Use Permit is subject to annual review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.25.090, the planning commission may revoke a permit issued pursuant to this chapter if the permittee fails to comply with the provisions of this chapter or the conditions of the permit. The planning director shall provide at least 30 days written notice to the permittee of a revocation hearing before the planning commission.
- 22. Once effective, this Conditional Land Use Permit is valid for five years. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070. The request must be accompanied by the applicable permit renewal and recording fees.
- 23. All permits, permit extensions, modified permits, prior existing uses, and terminations shall be recorded.
- 24. The Planning Department is responsible for filing the Planning Commission resolution. The applicant will provide the recording fee for the resolution to the Planning Department.

#### Staff Recommendation

In reviewing the application staff has determined that the six standards contained in KPB 21.29.040 will be met and recommends that the Planning Commission approve the Conditional Land Use Permit subject to the conditions and findings listed conditions, and adopt the findings of fact subject to the following: Filing of the PC Resolution in the appropriate recording district after the deadline to appeal the Planning Commission's approval has expired (15 days from the date of the notice of decision) unless there are no parties with appeal rights.

#### Material Site Standards

- 1. The proposed activity must protect against lowering of water sources serving other properties. Findings 14-28 and Conditions 6-11 appear to meet this standard.
- 2. The proposed activity must protect against physical damage to adjacent properties. Findings 6-11, 29, 31 and Conditions 1-3, 12, and 14 appear to meet this standard.
- 3. The proposed activity must minimize the off-site movement of dust. Findings 12, 32 and Condition 15 appear to meet this standard.
- 4. The proposed activity must minimize noise disturbance to other properties. Findings 7, 9, 12, 33 and Conditions 2, 5, 16 appear to meet this standard.
- 5. The proposed activity must minimize visual impacts. Findings 7, 9 and Condition 2 appear to meet this standard.
- 6. The proposed activity must provide for alternate post-mining land uses. Findings 34-38 and Condition 17 appear to meet this standard.

#### Attachments

- 1. Application
- 2. Maps

- 3. Staff Report
- 4. Resolution
- 5. Public Hearing Notice
- 6. Notification List

NOTE: Any party of record may file an appeal of a decision of the Planning Commission in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances, Chapter 21.20.250. An appeal must be filed with the Borough Clerk within 15 days of date of the notice of the decision using the proper forms and be accompanied by the filing and records preparation fee.

END OF STAFF REPORT



144 North Binkley Street, Soldotna, AK 99669 | (P) 907-714-2200 | (F) 907-714-2378 | www.kpb.us

August 21, 2024

«OWNER» «ATTENTION» «MAILING\_ADDRESS» «MAILING\_CITY», «MAILING\_STATE» «MAILING\_ZIPCODE»

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

Public notice is hereby given that a Conditional Land Use Permit application has been received to develop a material site (gravel pit) on a property located in the Kalifornsky area. These applications are reviewed by the Kenai Peninsula Borough Planning Commission in accordance with KPB 21.25 and KPB 21.29. You are receiving this notice because you are a landowner within a half-mile radius of the subject property, and are invited to provide comment at the below public hearing.

Applicant: Landowner: Parcel Number(s):	SEAN CUDE SBC 2012 IRREVOCABLE TRUST 05527001
Legal Description:	DIAMOND WILLOW ESTATES SUB PART 13 TRACT 13
Address:	36498 Virginia Drive
Project Description:	This application is requesting a modification to PC2014-20 to allow excavation in
	the water table and for temporary, localized dewatering.
Public Hearing:	
Date and Time:	Monday, September 9, 2024 at 7:30 p.m.
Location:	Kenai Peninsula Borough
	Betty Glick Assembly Chambers
	144 N. Binkley, Soldotna, AK 99669
Zoom Meeting ID:	Meeting ID 907 714 2200
Zoom Link:	https://us06web.zoom.us/j/9077142200
Telephonic:	1-888-788-0099 or 1-877-853-5247

**Public Comment:** You can provide verbal comment at the hearing (see information above). You may also submit written comments by emailing them to rraidmae@kpb.us. **Written comments must be received by 1:00 pm Friday, September 6, 2024.** Note that persons who participate in the public hearing, either by written or verbal comment, may appeal the Planning Commission's decision within 15 days of the date of notice of the decision.

The meeting packet will be posted the week prior to the meeting. Once it has been posted, you can view the application and additional maps at <u>kpb.legistar.com/Calendar</u>. For additional information, contact Ryan Raidmae at rraidmae@kpb.us or 907-714-2462.

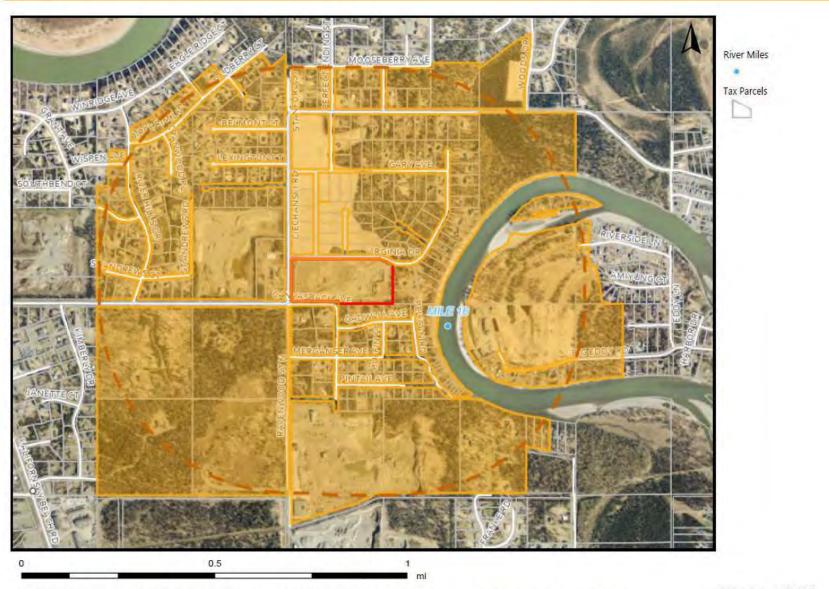
Please see the attached vicinity map of the proposed activities.



KENAI PENINSULA BOROUGH

Planning

#### Parcels Within 1/2 mile of Proposed CLUP SBC 2012 Irrevocable Trust LLC



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

Friday, August 16, 2024

#### KENAI PENINSULA BOROUGH PLANNING COMMISSION Resolution 2024-12 Kenai Recording District

#### A resolution granting approval of a Conditional Land Use Permit to operate a sand, gravel, or material site for a parcel described T 05N R 11W SEC 24 SEWARD MERIDIAN KN 2015012 DIAMOND WILLOW ESTATES SUB PART 13 TRACT 13, Kenai Recording District, Third Judicial District, State of Alaska.

- **WHEREAS,** KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough; and
- WHEREAS, KPB 21.29 provides that a Conditional Land Use Permit is required for material extraction which includes: Endorsement I – over 2.5 acres, Endorsement II - processing, and Endorsement III – excavation in the water table; and
- WHEREAS, on Wednesday, July 31, 2024 the applicant, SEAN CUDE, submitted to the Borough Planning Department a Conditional Land Use Permit application for a portion of KPB Parcel 05527001, which is located within the rural district; and
- **WHEREAS**, public notice of the application was mailed on or before 8/21/2024 to the 324 landowners or leaseholders within a half-mile of the subject parcel pursuant to KPB 21.25.060; and
- **WHEREAS,** public notice was sent to the postmaster in the Kalifornsky area requesting that it be posted at the local Post Office; and
- WHEREAS, public notice of the project was posted as pursuant to KPB 1.08.180(B)(1)(3); and
- **WHEREAS**, a public hearing was held at the Monday, September 9, 2024 meeting of the Kenai Peninsula Borough Planning Commission;

#### NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH:

Section 1. That the land use and operations are described and shall be conducted on KPB Parcel Number(s) 05527001, T 05N R 11W SEC 24 SEWARD MERIDIAN KN 2015012 DIAMOND WILLOW ESTATES SUB PART 13 TRACT 13. The total area to be disturbed under this activity is approximately 19.36 acres, of that, this modification request will affect approximately 8.8 acres. The applicant, SEAN CUDE, proposes to add the following endorsement(s): Endorsement II - processing, and Endorsement III – excavation in the water table; and will reclaim the site to a stable condition upon completion of the project.

#### Section 2. Findings of Fact pursuant to KPB 21.25 and 21.29:

- 1. KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough.
- 2. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
- 3. KPB 21.29 provides that a Conditional Land Use Permit is required for material extraction that disturbs more than 2.5 cumulative acres or processes material.
- 4. A public hearing of the Planning Commission was held on Monday, September 9, 2024 and notice of the meeting was published, posted, and mailed in accordance with KPB 21.25.060 and KPB 21.11.
- 5. The proposed cumulative disturbed area within the parcel is approximately 19.36 acres.

#### Parcel Boundaries

6. All boundaries of the subject parcel 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. The site plan indicates the property boundary within 300 feet of the work area was staked in 2024.

#### **Buffer Zone**

- 7. A buffer zone shall be maintained around the excavation perimeter or parcel boundaries. The site plan and application propose the following buffers, which shall not overlap an easement:
  - a. North: minimum 6 ft. earthen berm
  - b. South: minimum 6 ft. earthen berm, minimum 6 ft. fence
  - c. East: 50 ft. of natural or improved vegetation
  - d. West: minimum 6 ft. earthen berm
- 8. 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.
- Per KPB 21.19.050(A)(c), buffers provided using vegetation and/or a 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.
- 10. Buffers shall not cause surface water diversion which negatively impacts adjacent properties or waterbodies.
- 11. 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.

#### Processing

12. The applicant indicates that material processing will take place on the property. Any equipment used for conditioning or processing materials will be operated at least 300 feet from the East, South and West property lines. Any equipment used for crushing rock or other materials will not be operated between 10:00 p.m. and 6:00 a.m., to minimize noise disturbance to other properties.

13. The applicant has requested a waiver to process materials within 100 feet of the North property line.

#### Water Source Separation

- 14. Material extraction is prohibited within 100 horizontal feet of any water source existing prior to the original permit issuance.
- 15. The site plan indicates that there are 8 wells located within 300 feet of the proposed excavation area.
- 16. The applicant is required to maintain a 2-foot vertical separation from the seasonal high-water table, unless the planning commission has permitted excavation in the water table according to 21.29.050(A)(5)
- 17. The application indicates that the seasonal high-water table is 27ft (elevation 66) feet below grade and was determined by Monitor Wells.
- 18. The applicant may not dewater by pumping, ditching or some other form of drainage unless an exemption is granted by the planning commission.
- 19. The applicant has requested an exemption for dewatering within the permitted area and has provided the required information as stated in 21.29.050(A)(4)(d).
- 20. As a condition of dewatering, the contractor shall post a bond for liability for potential accrued damages, in the amount of \$80,000, \$10,000 per well.

#### Excavation in the Water Table

- 21. The application states that work is anticipated to be completed in the water table.
- 22. The applicant's intended depth of excavation will be 45ft (elevation 48) feet deep, and go 18 feet into the water table.
- 23. The application included 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.
- 24. A minimum of three water monitoring tubes or well casings have been installed to determine flow direction, flow rate, and water elevation.
- 25. For at least four quarters prior to submitting the application, groundwater elevation, flow direction, and flow rate for the subject parcel, were measured in quarterly intervals by a duly licensed and qualified independent civil engineer or professional hydrogeologist.
- 26. Monitoring tubes or wells must be kept in place, and measurements taken, for the duration of any excavation in the water table.
- 27. Operations will not breach an aquifer-confining layer.

#### <u>Waterbodies</u>

28. The site plan states that there are no wetlands or surface waters within the proposed excavation area.

#### Fuel Storage

29. The applicant is required to store fuel containers larger than 50 gallons in impermeable berms and basins capable of retaining 110 percent of storage capacity. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.

#### Haul Route

30. The site plan indicates that the material haul route will be as follows: Haul route will access the site from two locations (Northeast corner of property at Virginia Drive and Southwest corner of property at Canvasback Ave).

#### <u>Roads</u>

31. 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.

#### **Dust Control**

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

#### Hours of Operation

33. Rock crushing equipment may only be operated between 6:00 a.m. and 10:00 p.m.

#### **Reclamation**

- 34. The applicant has submitted a reclamation plan consistent with KPB 21.29.050(12)(a).
- 35. Ponding may be used as a reclamation method as approved by the planning commission.
- 36. The applicant has indicated that ponding will be used as a reclamation method.
- 37. Extraction at this material site is expected to be Less Than 50,000 cubic yards of material each year.
- 38. Material sites that exceed 50,000 cubic yards per year must meet the bonding requirement of KPB 21.29.050(12)(b). The amount of bond will be according to AS 27.19.040 unless the State of Alaska waives these requirements. In the case of a waiver the Kenai Peninsula Borough (KPB) would require the applicant to post bond to cover the anticipated reclamations costs and will be in the amount to be determined by the planning director as stated in KPB 21.29.050.

#### Other Permits

39. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the Borough's floodplain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives.

#### <u>Signage</u>

40. 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.

#### Section 3: Permit Conditions

- 1. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where the parcel boundaries are within 300 feet of the excavation perimeter. Stakes must be in place and visible as long as the material site is permitted.
- 2. The permittee shall maintain the following buffers around the excavation perimeter or parcel boundaries. The site plan and application propose the following buffers, which shall not overlap an easement
  - a. North: minimum 6 ft. earthen berm
  - b. South: minimum 6 ft. earthen berm, minimum 6 ft. fence
  - c. East: 50 ft. of natural or improved vegetation
  - d. West: minimum 6 ft. earthen berm
- 3. The permittee shall maintain a 2:1 slope between the buffer zone and pit floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 30 days from the time of removal.
- 4. The permittee shall not allow buffers to cause surface water diversion which negatively impacts adjacent properties or water bodies.
- 5. The permittee shall operate all equipment which conditions or processes material at least 300 feet from the East, South and West parcel boundaries. The applicant requests a waiver to process material 100 feet from the North property line.
- 6. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
- 7. The permittee shall maintain a 2-foot vertical separation from the seasonal high-water table between 100 and 300 horizontal feet of any water source existing prior to the issuance of this permit.
- 8. The applicant may not dewater by pumping, ditching or some other form of drainage unless an exemption is granted by the planning commission.
- 9. The applicant has requested an exemption for dewatering within the permitted area and has provided the required information as stated in 21.29.050(A)(4)(d).
- 10. As a condition of the permit and prior to dewatering, the contractor shall post a bond for liability for potential accrued damages, in the amount of \$80,000.
- 11. The permittee shall maintain an undisturbed buffer, and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains.
- 12. The permittee shall ensure that fuel storage containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.
- 13. The permittee shall notify the planning department of any further subdivision or return to acreage of this parcel. The planning director may issue a written exemption from the permit 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.

- 14. The permittee shall conduct operations in a manner so as not to damage borough roads as required by KPB 14.40.175, and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
- 15. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
- 16. The permittee shall not operate rock crushing equipment between the hours of 10:00 pm and 06:00 am.
- 17. The permittee shall reclaim the site as described in the reclamation plan for this parcel and approved by the planning commission.
- 18. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the Borough's floodplain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives.
- 19. The permittee shall post notice of intent on parcel corners or access, whichever is more visible if the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit. 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.
- 20. The permittee shall operate in accordance with the application and site plan as approved by the planning commission. If the permittee revises or intends to revise operations so that they are no longer consistent with the original application, a permit modification is required in accordance with KPB 21.29.090.
- 21. This Conditional Land Use Permit is subject to annual review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.25.090, the planning commission may revoke a permit issued pursuant to this chapter if the permittee fails to comply with the provisions of this chapter or the conditions of the permit. The planning director shall provide at least 30 days written notice to the permittee of a revocation hearing before the planning commission.
- 22. Once effective, this Conditional Land Use Permit is valid for five years. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070. The request must be accompanied by the applicable permit renewal and recording fees.
- 23. All permits, permit extensions, modified permits, prior existing uses, and terminations shall be recorded.
- 24. The Planning Department is responsible for filing the Planning Commission resolution. The applicant will provide the recording fee for the resolution to the Planning Department.
- SECTION 4. That based on the above findings, the Planning Commission concludes as a matter of law that the application has met all the requirements of KPB 21.25 and KPB 21.29, and through imposition of the conditions under KPB 21.29.050, the Planning Commission concludes as a matter of law that the application meets the six standards found in KPB 21.29.040:

#### CONCLUSIONS OF LAW

- 1. The proposed activity must protect against lowering of water sources serving other properties. Findings 14-28 and Conditions 6-11 appear to meet this standard.
- 2. The proposed activity must protect against physical damage to adjacent properties. Findings 6-11, 29, 31 and Conditions 1-3, 12, and 14 appear to meet this standard.
- 3. The proposed activity must minimize the off-site movement of dust. Findings 12, 32 and Condition 15 appear to meet this standard.
- 4. The proposed activity must minimize noise disturbance to other properties. Findings 7, 9, 12, 33 and Conditions 2, 5, 16 appear to meet this standard.
- 5. The proposed activity must minimize visual impacts. Findings 7, 9 and Condition 2 appear to meet this standard.
- 6. The proposed activity must provide for alternate post-mining land uses. Findings 34-38 and Condition 17 appear to meet this standard.

## ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON THIS\_\_\_\_\_\_ DAY OF\_\_\_\_\_\_, 2024.

Jeremy Brantley, Chairperson Planning Commission

ATTEST:

Ann Shirnberg Administrative Assistant

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

### (MEETING MATERIALS FROM THE SEPTEMBER 9, 2024 MEETING)

# **E. NEW BUSINESS**

 Conditional Land Use Permit Modification; MS2015-005 Applicant: Sean Cude Request: Modification to PC Resolution 2014-20 to allow excavation into the water table and for temporary localized dewatering. Location: 36498 Virginia Drive Kalifornsky Area



## kenai peninsula borough **Planning**



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

E4-1



Planning

## LOZ and Materials Sites Map

SBC 2012 Irrevocable **Trust LLC** 

Project Area KPB Parcel(s): 05527001

> PEU CLUP

EXPIRED

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The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Bor 59, -25, unes no responsibility for any errors on this map.

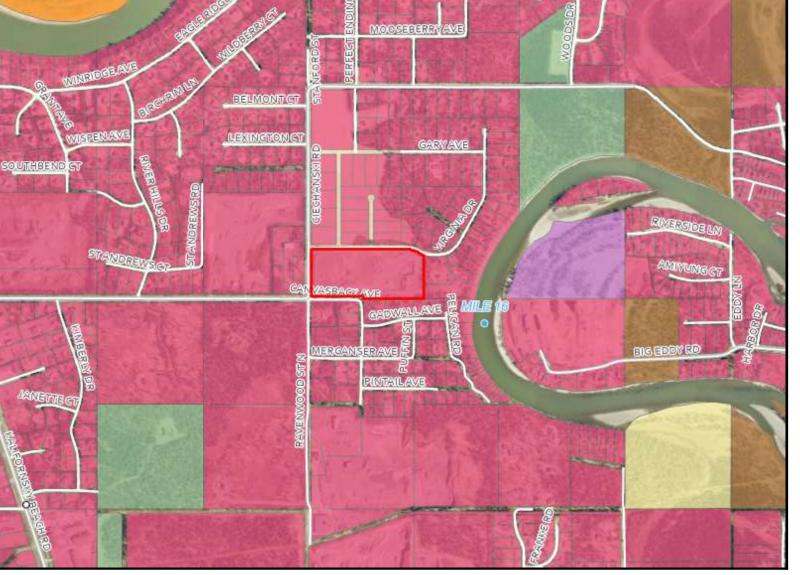


Planning

**Trust LLC** 

💙 Project Area KPB Parcel(s): 05527001





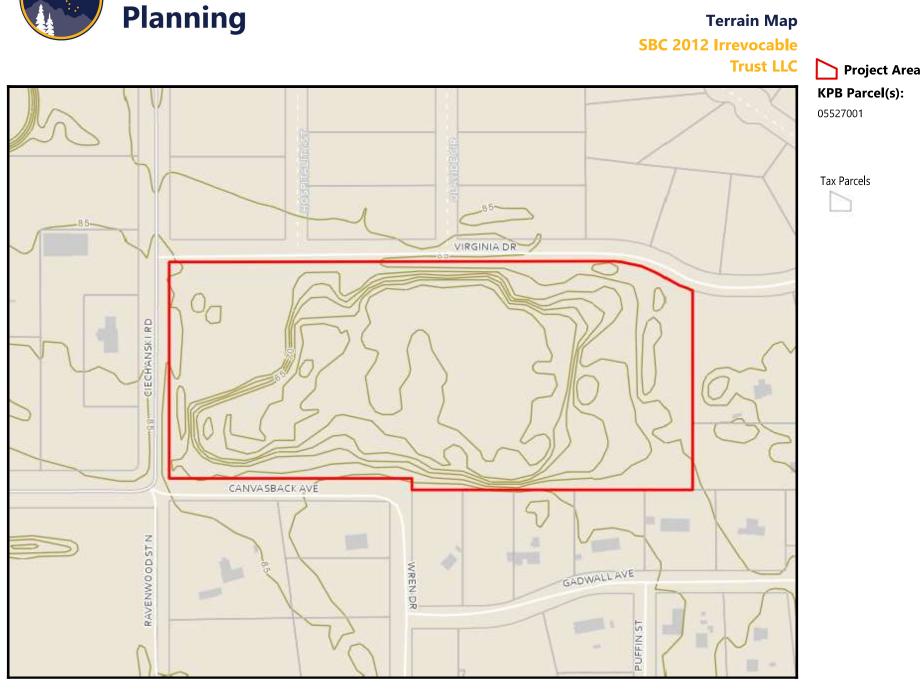
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The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Bor Egh assumes no responsibility for any errors on this map.

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



Planning

Wetlands Map

SBC 2012 Irrevocable

Trust LLC

Project Area
KPB Parcel(s):
05527001



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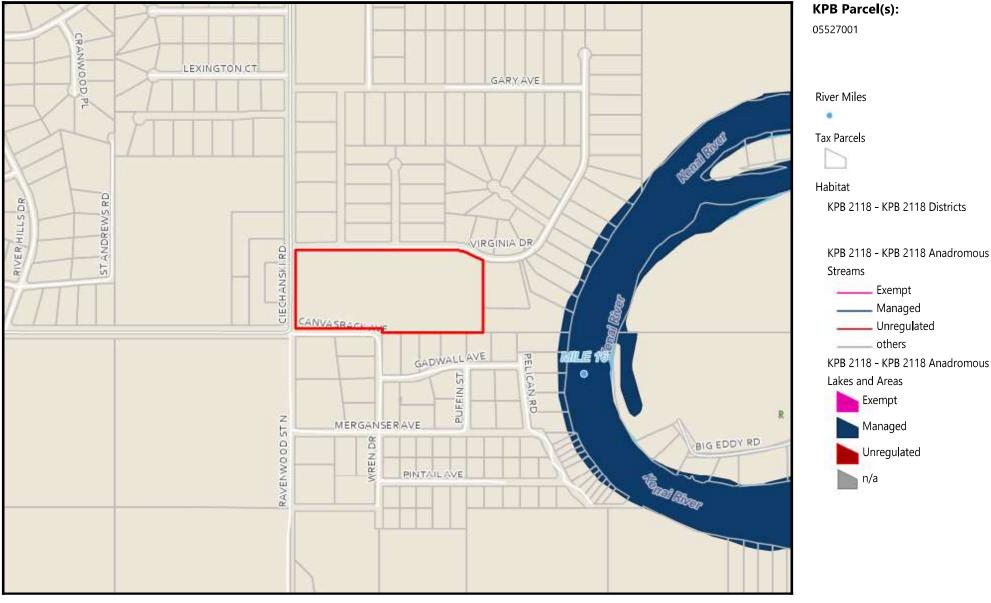
The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Bor Egh assumes no responsibility for any errors on this map.

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Planning

Habitat Protection Area MapSBC 2012 IrrevocableTrust LLCKPB Parcel(s):05527001



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

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

# KPB 21.29 Conditional Land Use Permit Application

<ul> <li>For a new or modified Sand, Gravel or Material Site</li> </ul>
---

	on
ApplicantSBC 2012 Irrevocable Trust LLC	LandownerSBC 2012 Irrevocable Trust LLC
Address	Address 42115 Kalifornsky Beach Road Ste B
City, State, Zip	City, State, Zip
TelephoneCellCell	TelephoneCellCell
EmailEmail	Email
II. PARCEL INFORMATION	
KPB Tax Parcel ID#Legal De	escription
Diamond Willow Estates Subdivision Part 13 Tract 13	
If permit is <u>not</u> for entire parcel, describe specific location v	within parcel to be material site, e.g.; *N1/2 SW1/4 NE1/4 10
acres", or "5 acres in center of parcel".	
modification to 8.8 acres of the currently permitted area	
✓ \$1,000.00 permit processing fee payable to: Kenai Peninsu	elow to indicate items included. ula Borough. (Include Parcel # on check comment line.) censed and registered in Alaska) showing, where applicable:
parcel boundaries location of boundary stakes within 300 ft. of	<ul> <li>location/depth of testholes, and depth to groundwater, if encountered</li> </ul>
excavation area (to be in place at time of application	
<ul> <li>proposed buffers, or requested buffer waiver(s)</li> <li>proposed extraction area(s), and acreage to be mine</li> </ul>	Iocation of water bodies on parcel, including riparian wetlands
<ul> <li>proposed extraction area(s), and acreage to be mine</li> <li>proposed location of processing area(s)</li> </ul>	surface water protection measures
<ul> <li>all encumbrances, including easements</li> </ul>	north arrow and diagram scale
points of ingress and egress	preparer's name, date and seal
□ anticipated haul routes	
Site Plan Worksheet (attached)	
Reclamation Plan (attached) and bond, if required. Bon bonding requirements pursuant to AS 27.19.050	d requirement does not apply to material sites exempt from
<u>Please Note:</u> If a variance from the conditions of attached. (A variance is NOT the same thing as a waive	KPB 21.29 is requested, a variance application must be er.)
IV. CERTIFICATION STATEMENT	
The information contained on this form and attachments a permission for borough staff to enter onto the property for	

Max 7

Applicant

Date

Landowner (required if not applicant)

Date

Revised 7/11/22

#### Site Plan Worksheet for Conditional Land Use Permit Application

Use additional space provided on next page, if necessary. Indicate item # next to comments.

	Applicant Owner OwnerOWNEROWNEROWNEROWNEROWNEROWNEROWNER
	KPB Tax Parcel ID # Parcel Acreage
1.	
2.	
3.	Equipment to be used (check all that apply):
4.	Proposed buffers as required by KPB 21.29.050.A.2 (check all types and directions that apply):
	□       50 ft. of natural or improved vegetation       N S S E W         □       minimum 6 ft. earthen berm       ✓ N ✓ S E ✓ W         □       minimum 6 ft. fence       N ✓ S E ✓ W         □       other       N S E ✓ W
5.	Proposed depth of excavation: <u>45 (elev. 48)</u> ft. Depth to groundwater: <u>30 (elev. 66)</u> ft.
6.	How was groundwater depth_determined?
7.	A permit modification to enter the water table will be requested in the future: $\frac{x}{2}$ YesNo
8.	Approx. annual quantity of material, including overburden, to be mined: <a> </a>
9.	Is parcel intended for subdivision? X Yes No
10.	Expected life span of site? 20 years
11.	If site is to be developed in phases, describe: the excavation acreage, anticipated life span,
	and reclamation date for each phase: (use additional space on page 4 if necessary) As mining above groundwater is complete, excavation below groundwater will begin at the eastern section of
	the site and move westerly. The slopes will be dressed at 2:1 and portion above ground water will be seeded.
	The intent is to reclaim the property to support at least 2 water front residential lots.
12.	Voluntary permit conditions proposed (additional buffers, dust control, limited hours of operation, etc.)
Α.	
В.	

E4-8

Page 2 of 4

#### Material Site Reclamation Plan for Conditional Land Use Permit Application

- 1. All disturbed land shall be reclaimed upon exhausting the material on-site, so as to leave the land in a stable condition.
- 2. All revegetation shall be done with a "non-invasive" plant species.
- 3. Total acreage to be reclaimed each year: up to 2 acres
- 4. List equipment (type and quantity) to be used in reclamation:

Excavator, dozer, loader

Describe time schedule of reclamation measures:

Reclamation will be completed annually before the September growing season. In order to minimize erosion,

seeding will be applied as necessary each season to the areas that achieve final grade.

6. considered in preparing and implementing the reclamation plan. The following measures must be although not all will be applicable to every plan –  $\square$  "check" all that apply to your plan.

Topsoil that is not promptly redistributed to an area being reclaimed will be separated and stockpiled for future use. This material will b e protected from erosion and contamination by acidic or toxic materials and preserved in a condition suitable for later use.

✓ The area will be backfil led, 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.

Sufficient guantities of stockpiled or imported topsoil will be spread over the reclaimed area to a depth of four inches to promote nat ural 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 shall be reasonably free from roots, clods, sticks, and bran ches greater than 3 in ches in diameter. Areas having slopes greater than 2:1 require special consideration and design for stabilization by a licensed engineer.



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.

Peat and topsoil mine operations shall ensure a minimum of two inches of suitable growing medium is left or replaced on the site upon completion of the reclamation activity ( unless otherwise authorized).

Ponding will be used as a reclamation method. (Requires approval by the planning commission.)

#### ADDITIONAL APPLICATION COMMENTS

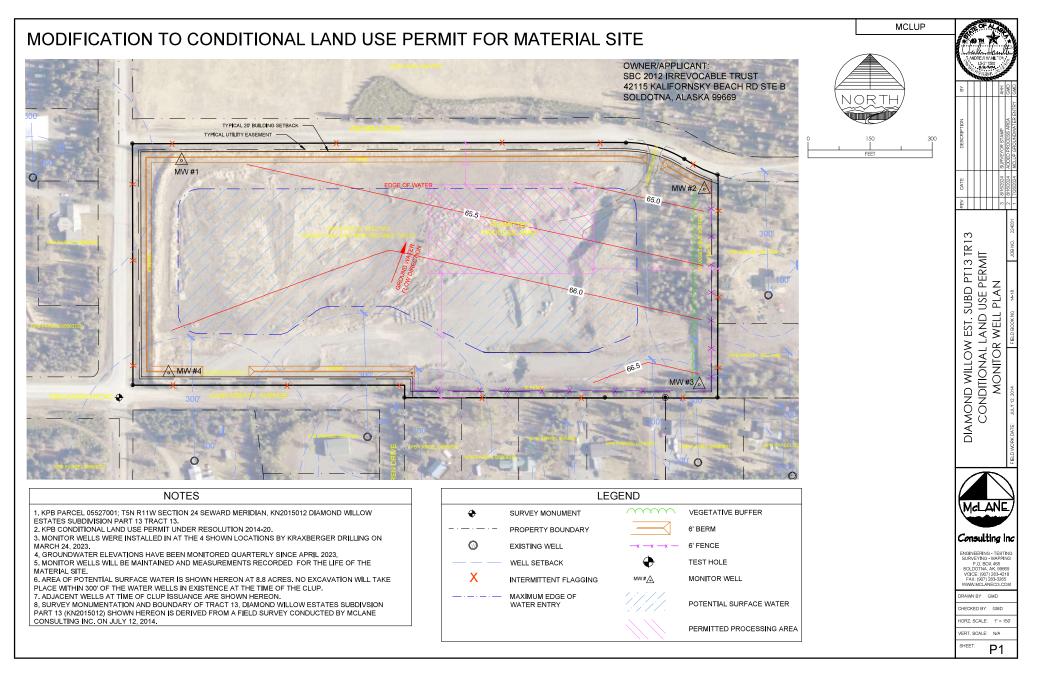
(Please indicate the page and item # for which you are making additional comments.)

This application is requesting a modification to PC2014-20 to allow excavation in the water table and for temporary,

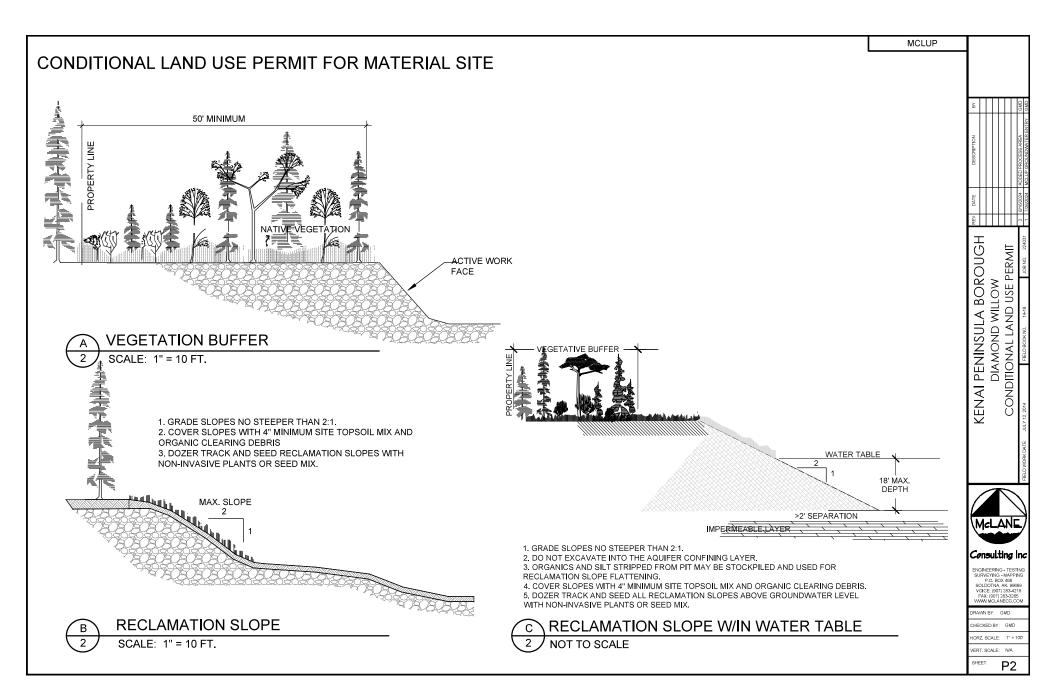
localized dewatering during excavation practices. Dewatering will be intermittent and all waters will be outlet within the

same property.

Page 4 of 4



# 1054



#### Conditional Land Use Permit Materials Site Staff Report

PC Res No.	2024-12
Planning Commission Meeting:	Monday, September 9, 2024
Applicant	SEAN CUDE
Mailing Address	42115 Kalifornsky Beach RD
	Soldotna, AK 99669
Legal Description	T 05N R 11W SEC 24 SEWARD MERIDIAN KN 2015012 DIAMOND WILLOW ESTATES SUB PART 13 TRACT 13
Physical Address	36498 Virginia Drive
KPB Parcel Number	05527001

#### Project Description

The applicant wishes to obtain a Conditional Land Use Permit Modification, to Permit Resolution 2014-20, to allow for material extraction in the water table and for temporary localized dewatering during excavation. Dewatering will be intermittent, and all waters will be contained within a portion of the parcel listed above.

The site plan indicates that the material haul route will be as follows: Haul route will access the site from two locations (Northeast corner of property at Virginia Drive and Southwest corner of property at Canvasback Ave)

The site plan and application propose the following buffers:

North:	minimum 6 ft. earthen berm
South:	minimum 6 ft. earthen berm, minimum 6 ft. fence
East:	50 ft. of natural or improved vegetation
West:	minimum 6 ft. earthen berm

The subject property is bordered on the Northside by the 60-foot-wide right of way of Virginia Drive. On the Eastside of the property is the residential neighborhood of Diamond Willow Estates Part 11. Diamond Willow Estates is a subdivision that is included in the Local Option Zoning District of Diamond Willow – Fairfield, which is adjacent to the subject parcel. On the Southside of the property is the residential neighborhood of Ravenwood, Subdivision 2 and 4, along with the 60-foot-wide right of way of Canvasback Avenue. On the West side of the property is the 83-foot-wide right of way of Ciechanski Road.

The site plan completed by McLane Consulting Inc., states that ground water is approximately 27 feet below original ground based on 4 monitor wells that were installed on March 24, 2023 by Kraxberger Drilling. The application states that the proposed depth of material excavation will be 45 feet, which will equate to 18 feet below the seasonal highwater table. The applicant has requested an exemption for dewatering within the permitted area and has provided the required information as stated in 21.29.050(A)(4)(d). As a condition of dewatering, the contractor shall post a bond for liability for potential accrued damages, in the amount of \$80,000 or \$10,000 a well.

Plan notes state that there are no wet lands or surface waters within the property boundaries. A central area will be maintained as a processing area, which will be at least 300 feet from the East, South, West property lines. The applicant requests a waiver from the 300-foot processing distance on the Northside of the property due to the fact that the property is only approximately 615 feet wide. The site plan also indicates that there are 8 wells located within 300 feet of the proposed use area.

The application states that final reclamation will include ponding to support at least 2 waterfront residential lots. The applicant has requested that the Planning Commission grant approval according to 21.29.060(C)(6). The application further states that grading and re-contouring will incorporate strippings, overburden, and topsoil to a condition that allows for the re-establishment of natural vegetation. Slopes steeper than 2:1 will be seeded. The application also states that up to 2 acres will be reclaimed each year and reclamation will be completed annually before the growing seasons ends.

The applicant estimates a life span of 20 years for the site and an annual extraction quantity of less than 50,000 cubic yards cubic yards of material.

#### Public Notice

Public notice of the application was mailed on 8/21/2024 to the 325 landowners or leaseholders of the parcels within a half-mile of the subject parcel. Public notice was sent to the postmaster covering the Kalifornsky vicinity requesting that it be posted at the Post Office.

#### Agency Review

Agency review was distributed on August 14, 2024 to pertinent KPB staff and other agencies.

#### Findings of Fact pursuant to KPB 21.25 and 21.29:

- 1. KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough.
- 2. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
- 3. KPB 21.29 provides that a Conditional Land Use Permit is required for material extraction that disturbs more than 2.5 cumulative acres or processes material.
- 4. A public hearing of the Planning Commission was held on Monday, September 9, 2024 and notice of the meeting was published, posted, and mailed in accordance with KPB 21.25.060 and KPB 21.11.
- 5. The proposed cumulative disturbed area within the parcel is approximately 19.36 acres.

#### Parcel Boundaries

6. All boundaries of the subject parcel 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. The site plan indicates the property boundary within 300 feet of the work area was staked in 2024.

#### Buffer Zone

7. A buffer zone shall be maintained around the excavation perimeter or parcel boundaries. The site plan and application propose the following buffers, which shall not overlap an easement:

- a. North: minimum 6 ft. earthen berm
- b. South: minimum 6 ft. earthen berm, minimum 6 ft. fence
- c. East: 50 ft. of natural or improved vegetation
- d. West: minimum 6 ft. earthen berm
- 8. 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.
- 9. Per KPB 21.19.050(A)(c), buffers provided using vegetation and/or a 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.
- 10. Buffers shall not cause surface water diversion which negatively impacts adjacent properties or waterbodies.
- 11. 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.

#### Processing

- 12. The applicant indicates that material processing will take place on the property. Any equipment used for conditioning or processing materials will be operated at least 300 feet from the East, South and West property lines. Any equipment used for crushing rock or other materials will not be operated between 10:00 p.m. and 6:00 a.m., to minimize noise disturbance to other properties.
- 13. The applicant has requested a waiver to process materials within 100 feet of the North property line.

#### Water Source Separation

- 14. Material extraction is prohibited within 100 horizontal feet of any water source existing prior to the original permit issuance.
- 15. The site plan indicates that there are 8 wells located within 300 feet of the proposed excavation area.
- The applicant is required to maintain a 2-foot vertical separation from the seasonal high-water table, unless the planning commission has permitted excavation in the water table according to 21.29.050(A)(5)
- 17. The application indicates that the seasonal high-water table is 27ft (elevation 66) feet below grade and was determined by Monitor Wells.
- 18. The applicant may not dewater by pumping, ditching or some other form of drainage unless an exemption is granted by the planning commission.
- 19. The applicant has requested an exemption for dewatering within the permitted area and has provided the required information as stated in 21.29.050(A)(4)(d).
- 20. As a condition of dewatering, the contractor shall post a bond for liability for potential accrued damages, in the amount of \$80,000, \$10,000 per well.

#### Excavation in the Water Table

- 21. The application states that work is anticipated to be completed in the water table.
- 22. The applicant's intended depth of excavation will be 45ft (elevation 48) feet deep, and go 18 feet into the water table.
- 23. The application included 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.
- 24. A minimum of three water monitoring tubes or well casings have been installed to determine flow direction, flow rate, and water elevation.
- 25. For at least four quarters prior to submitting the application, groundwater elevation, flow direction, and flow rate for the subject parcel, were measured in quarterly intervals by a duly licensed and qualified independent civil engineer or professional hydrogeologist.
- 26. Monitoring tubes or wells must be kept in place, and measurements taken, for the duration of any excavation in the water table.
- 27. Operations will not breach an aquifer-confining layer.

#### **Waterbodies**

28. The site plan states that there are no wetlands or surface waters within the proposed excavation area.

#### Fuel Storage

29. The applicant is required to store fuel containers larger than 50 gallons in impermeable berms and basins capable of retaining 110 percent of storage capacity. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.

#### Haul Route

30. The site plan indicates that the material haul route will be as follows: [HaulRoute].

#### <u>Roads</u>

31. 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.

#### Dust Control

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

#### Hours of Operation

33. Rock crushing equipment may only be operated between 6:00 a.m. and 10:00 p.m.

#### **Reclamation**

- 34. The applicant has submitted a reclamation plan consistent with KPB 21.29.050(12)(a).
- 35. Ponding may be used as a reclamation method as approved by the planning commission.
- 36. The applicant has indicated that ponding will be used as a reclamation method.
- 37. Extraction at this material site is expected to be 50,000 cubic yards of material each year.
- 38. Material sites that exceed 50,000 cubic yards per year must meet the bonding requirement of KPB 21.29.050(12)(b). The amount of bond will be according to AS 27.19.040 unless the State of Alaska waives these requirements. In the case of a waiver the Kenai Peninsula Borough (KPB) would require the applicant to post bond to cover the anticipated reclamations costs and will be in the amount to be determined by the planning director as stated in KPB 21.29.050.

#### Other Permits

39. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the Borough's floodplain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives.

#### <u>Signage</u>

40. 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.

#### Permit Conditions

- 1. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where the parcel boundaries are within 300 feet of the excavation perimeter. Stakes must be in place and visible as long as the material site is permitted.
- 2. The permittee shall maintain the following buffers around the excavation perimeter or parcel boundaries. The site plan and application propose the following buffers, which shall not overlap an easement
  - a. North: minimum 6 ft. earthen berm
  - b. South: minimum 6 ft. earthen berm, minimum 6 ft. fence
  - c. East: 50 ft. of natural or improved vegetation
  - d. West: minimum 6 ft. earthen berm
- 3. The permittee shall maintain a 2:1 slope between the buffer zone and pit floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 30 days from the time of removal.
- 4. The permittee shall not allow buffers to cause surface water diversion which negatively impacts

adjacent properties or water bodies.

- 5. The permittee shall operate all equipment which conditions or processes material at least 300 feet from the East, South and West parcel boundaries. The applicant requests a waiver to process material 100 feet from the North property line.
- 6. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
- 7. The permittee shall maintain a 2-foot vertical separation from the seasonal high-water table between 100 and 300 horizontal feet of any water source existing prior to the issuance of this permit.
- 8. The applicant may not dewater by pumping, ditching or some other form of drainage unless an exemption is granted by the planning commission.
- 9. The applicant has requested an exemption for dewatering within the permitted area and has provided the required information as stated in 21.29.050(A)(4)(d).
- 10. As a condition of the permit and prior to dewatering, the contractor shall post a bond for liability for potential accrued damages, in the amount of \$80,000.
- 11. The permittee shall maintain an undisturbed buffer, and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains.
- 12. The permittee shall ensure that fuel storage containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.
- 13. The permittee shall notify the planning department of any further subdivision or return to acreage of this parcel. The planning director may issue a written exemption from the permit 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.
- 14. The permittee shall conduct operations in a manner so as not to damage borough roads as required by KPB 14.40.175, and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
- 15. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
- 16. The permittee shall not operate rock crushing equipment between the hours of 10:00 pm and 06:00 am.
- 17. The permittee shall reclaim the site as described in the reclamation plan for this parcel and approved by the planning commission.
- 18. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the Borough's floodplain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives.
- 19. The permittee shall post notice of intent on parcel corners or access, whichever is more visible if the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit. 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.

- 20. The permittee shall operate in accordance with the application and site plan as approved by the planning commission. If the permittee revises or intends to revise operations so that they are no longer consistent with the original application, a permit modification is required in accordance with KPB 21.29.090.
- 21. This Conditional Land Use Permit is subject to annual review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.25.090, the planning commission may revoke a permit issued pursuant to this chapter if the permittee fails to comply with the provisions of this chapter or the conditions of the permit. The planning director shall provide at least 30 days written notice to the permittee of a revocation hearing before the planning commission.
- 22. Once effective, this Conditional Land Use Permit is valid for five years. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070. The request must be accompanied by the applicable permit renewal and recording fees.
- 23. All permits, permit extensions, modified permits, prior existing uses, and terminations shall be recorded.
- 24. The Planning Department is responsible for filing the Planning Commission resolution. The applicant will provide the recording fee for the resolution to the Planning Department.

#### Staff Recommendation

In reviewing the application staff has determined that the six standards contained in KPB 21.29.040 will be met and recommends that the Planning Commission approve the Conditional Land Use Permit subject to the conditions and findings listed conditions, and adopt the findings of fact subject to the following: Filing of the PC Resolution in the appropriate recording district after the deadline to appeal the Planning Commission's approval has expired (15 days from the date of the notice of decision) unless there are no parties with appeal rights.

#### Material Site Standards

- 1. The proposed activity must protect against lowering of water sources serving other properties. Findings 14-28 and Conditions 6-11 appear to meet this standard.
- 2. The proposed activity must protect against physical damage to adjacent properties. Findings 6-11, 29, 31 and Conditions 1-3, 12, and 14 appear to meet this standard.
- 3. The proposed activity must minimize the off-site movement of dust. Findings 12, 32 and Condition 15 appear to meet this standard.
- 4. The proposed activity must minimize noise disturbance to other properties. Findings 7, 9, 12, 33 and Conditions 2, 5, 16 appear to meet this standard.
- 5. The proposed activity must minimize visual impacts. Findings 7, 9 and Condition 2 appear to meet this standard.
- 6. The proposed activity must provide for alternate post-mining land uses. Findings 34-38 and Condition 17 appear to meet this standard.

#### Attachments

- 1. Application
- 2. Maps

- 3. Staff Report
- 4. Resolution
- 5. Public Hearing Notice
- 6. Notification List

NOTE: Any party of record may file an appeal of a decision of the Planning Commission in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances, Chapter 21.20.250. An appeal must be filed with the Borough Clerk within 15 days of date of the notice of the decision using the proper forms and be accompanied by the filing and records preparation fee.

END OF STAFF REPORT



144 North Binkley Street, Soldotna, AK 99669 | (P) 907-714-2200 | (F) 907-714-2378 | www.kpb.us

August 21, 2024

«OWNER» «ATTENTION» «MAILING\_ADDRESS» «MAILING\_CITY», «MAILING\_STATE» «MAILING\_ZIPCODE»

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

Public notice is hereby given that a Conditional Land Use Permit application has been received to develop a material site (gravel pit) on a property located in the Kalifornsky area. These applications are reviewed by the Kenai Peninsula Borough Planning Commission in accordance with KPB 21.25 and KPB 21.29. You are receiving this notice because you are a landowner within a half-mile radius of the subject property, and are invited to provide comment at the below public hearing.

Applicant: Landowner:	SEAN CUDE SBC 2012 IRREVOCABLE TRUST		
Parcel Number(s):	05527001		
Legal Description:	DIAMOND WILLOW ESTATES SUB PART 13 TRACT 13		
Address:			
Project Description:	This application is requesting a modification to PC2014-20 to allow excavation in		
	the water table and for temporary, localized dewatering.		
<u>Public Hearing:</u>			
Date and Time:	Monday, September 9, 2024 at 7:30 p.m.		
Location:	: Kenai Peninsula Borough		
	Betty Glick Assembly Chambers		
	144 N. Binkley, Soldotna, AK 99669		
Zoom Meeting ID:	Meeting ID 907 714 2200		
Zoom Link:	https://us06web.zoom.us/j/9077142200		
Telephonic:	1-888-788-0099 or 1-877-853-5247		

**Public Comment:** You can provide verbal comment at the hearing (see information above). You may also submit written comments by emailing them to rraidmae@kpb.us. **Written comments must be received by 1:00 pm Friday, September 6, 2024.** Note that persons who participate in the public hearing, either by written or verbal comment, may appeal the Planning Commission's decision within 15 days of the date of notice of the decision.

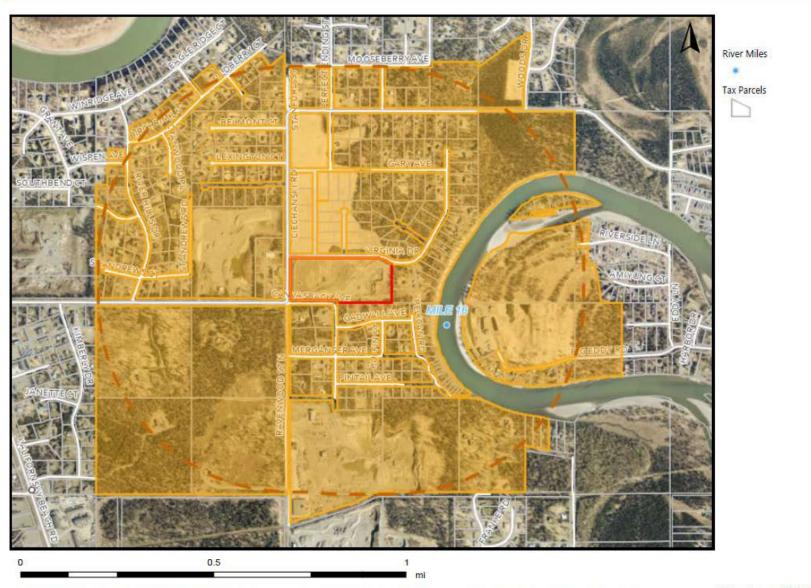
The meeting packet will be posted the week prior to the meeting. Once it has been posted, you can view the application and additional maps at <u>kpb.legistar.com/Calendar</u>. For additional information, contact Ryan Raidmae at rraidmae@kpb.us or 907-714-2462.

Please see the attached vicinity map of the proposed activities.



Planning

#### Parcels Within 1/2 mile of Proposed CLUP SBC 2012 Irrevocable Trust LLC



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

Friday, August 16, 2024

E4-22

#### KENAI PENINSULA BOROUGH PLANNING COMMISSION Resolution 2024-12 Kenai Recording District

#### A resolution granting approval of a Conditional Land Use Permit to operate a sand, gravel, or material site for a parcel described T 05N R 11W SEC 24 SEWARD MERIDIAN KN 2015012 DIAMOND WILLOW ESTATES SUB PART 13 TRACT 13, Kenai Recording District, Third Judicial District, State of Alaska.

- **WHEREAS,** KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough; and
- WHEREAS, KPB 21.29 provides that a Conditional Land Use Permit is required for material extraction which includes: Endorsement I – over 2.5 acres, Endorsement II - processing, and Endorsement III – excavation in the water table; and
- WHEREAS, on Wednesday, July 31, 2024 the applicant, SEAN CUDE, submitted to the Borough Planning Department a Conditional Land Use Permit application for a portion of KPB Parcel 05527001, which is located within the rural district; and
- **WHEREAS**, public notice of the application was mailed on or before 8/21/2024 to the 324 landowners or leaseholders within a half-mile of the subject parcel pursuant to KPB 21.25.060; and
- **WHEREAS,** public notice was sent to the postmaster in the Kalifornsky area requesting that it be posted at the local Post Office; and
- WHEREAS, public notice of the project was posted as pursuant to KPB 1.08.180(B)(1)(3); and
- **WHEREAS**, a public hearing was held at the Monday, September 9, 2024 meeting of the Kenai Peninsula Borough Planning Commission;

#### NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH:

Section 1. That the land use and operations are described and shall be conducted on KPB Parcel Number(s) 05527001, T 05N R 11W SEC 24 SEWARD MERIDIAN KN 2015012 DIAMOND WILLOW ESTATES SUB PART 13 TRACT 13. The total area to be disturbed under this activity is approximately 19.36 acres, of that, this modification request will affect approximately 8.8 acres. The applicant, SEAN CUDE, proposes to add the following endorsement(s): Endorsement II - processing, and Endorsement III – excavation in the water table; and will reclaim the site to a stable condition upon completion of the project.

#### Section 2. Findings of Fact pursuant to KPB 21.25 and 21.29:

- 1. KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough.
- 2. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
- 3. KPB 21.29 provides that a Conditional Land Use Permit is required for material extraction that disturbs more than 2.5 cumulative acres or processes material.
- 4. A public hearing of the Planning Commission was held on Monday, September 9, 2024 and notice of the meeting was published, posted, and mailed in accordance with KPB 21.25.060 and KPB 21.11.
- 5. The proposed cumulative disturbed area within the parcel is approximately 19.36 acres.

#### Parcel Boundaries

6. All boundaries of the subject parcel 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. The site plan indicates the property boundary within 300 feet of the work area was staked in 2024.

#### Buffer Zone

- 7. A buffer zone shall be maintained around the excavation perimeter or parcel boundaries. The site plan and application propose the following buffers, which shall not overlap an easement:
  - a. North: minimum 6 ft. earthen berm
  - b. South: minimum 6 ft. earthen berm, minimum 6 ft. fence
  - c. East: 50 ft. of natural or improved vegetation
  - d. West: minimum 6 ft. earthen berm
- 8. 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.
- 9. Per KPB 21.19.050(A)(c), buffers provided using vegetation and/or a 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.
- 10. Buffers shall not cause surface water diversion which negatively impacts adjacent properties or waterbodies.
- 11. 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.

#### <u>Processing</u>

12. The applicant indicates that material processing will take place on the property. Any equipment used for conditioning or processing materials will be operated at least 300 feet from the East, South and West property lines. Any equipment used for crushing rock or other materials will not be operated between 10:00 p.m. and 6:00 a.m., to minimize noise disturbance to other properties.



13. The applicant has requested a waiver to process materials within 100 feet of the North property line.

#### Water Source Separation

- 14. Material extraction is prohibited within 100 horizontal feet of any water source existing prior to the original permit issuance.
- 15. The site plan indicates that there are 8 wells located within 300 feet of the proposed excavation area.
- The applicant is required to maintain a 2-foot vertical separation from the seasonal high-water table, unless the planning commission has permitted excavation in the water table according to 21.29.050(A)(5)
- 17. The application indicates that the seasonal high-water table is 27ft (elevation 66) feet below grade and was determined by Monitor Wells.
- 18. The applicant may not dewater by pumping, ditching or some other form of drainage unless an exemption is granted by the planning commission.
- 19. The applicant has requested an exemption for dewatering within the permitted area and has provided the required information as stated in 21.29.050(A)(4)(d).
- 20. As a condition of dewatering, the contractor shall post a bond for liability for potential accrued damages, in the amount of \$80,000, \$10,000 per well.

#### Excavation in the Water Table

- 21. The application states that work is anticipated to be completed in the water table.
- 22. The applicant's intended depth of excavation will be 45ft (elevation 48) feet deep, and go 18 feet into the water table.
- 23. The application included 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.
- 24. A minimum of three water monitoring tubes or well casings have been installed to determine flow direction, flow rate, and water elevation.
- 25. For at least four quarters prior to submitting the application, groundwater elevation, flow direction, and flow rate for the subject parcel, were measured in quarterly intervals by a duly licensed and qualified independent civil engineer or professional hydrogeologist.
- 26. Monitoring tubes or wells must be kept in place, and measurements taken, for the duration of any excavation in the water table.
- 27. Operations will not breach an aquifer-confining layer.

#### <u>Waterbodies</u>

28. The site plan states that there are no wetlands or surface waters within the proposed excavation area.

#### Fuel Storage

29. The applicant is required to store fuel containers larger than 50 gallons in impermeable berms and basins capable of retaining 110 percent of storage capacity. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.



#### Haul Route

30. The site plan indicates that the material haul route will be as follows: Haul route will access the site from two locations (Northeast corner of property at Virginia Drive and Southwest corner of property at Canvasback Ave).

#### <u>Roads</u>

31. 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.

#### Dust Control

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

#### Hours of Operation

33. Rock crushing equipment may only be operated between 6:00 a.m. and 10:00 p.m.

#### **Reclamation**

- 34. The applicant has submitted a reclamation plan consistent with KPB 21.29.050(12)(a).
- 35. Ponding may be used as a reclamation method as approved by the planning commission.
- 36. The applicant has indicated that ponding will be used as a reclamation method.
- 37. Extraction at this material site is expected to be Less Than 50,000 cubic yards of material each year.
- 38. Material sites that exceed 50,000 cubic yards per year must meet the bonding requirement of KPB 21.29.050(12)(b). The amount of bond will be according to AS 27.19.040 unless the State of Alaska waives these requirements. In the case of a waiver the Kenai Peninsula Borough (KPB) would require the applicant to post bond to cover the anticipated reclamations costs and will be in the amount to be determined by the planning director as stated in KPB 21.29.050.

#### Other Permits

39. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the Borough's floodplain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives.

#### <u>Signage</u>



40. 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.

#### Section 3: Permit Conditions

- 1. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where the parcel boundaries are within 300 feet of the excavation perimeter. Stakes must be in place and visible as long as the material site is permitted.
- 2. The permittee shall maintain the following buffers around the excavation perimeter or parcel boundaries. The site plan and application propose the following buffers, which shall not overlap an easement
  - a. North: minimum 6 ft. earthen berm
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  - c. East: 50 ft. of natural or improved vegetation
  - d. West: minimum 6 ft. earthen berm
- 3. The permittee shall maintain a 2:1 slope between the buffer zone and pit floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 30 days from the time of removal.
- 4. The permittee shall not allow buffers to cause surface water diversion which negatively impacts adjacent properties or water bodies.
- 5. The permittee shall operate all equipment which conditions or processes material at least 300 feet from the East, South and West parcel boundaries. The applicant requests a waiver to process material 100 feet from the North property line.
- 6. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
- 7. The permittee shall maintain a 2-foot vertical separation from the seasonal high-water table between 100 and 300 horizontal feet of any water source existing prior to the issuance of this permit.
- 8. The applicant may not dewater by pumping, ditching or some other form of drainage unless an exemption is granted by the planning commission.
- 9. The applicant has requested an exemption for dewatering within the permitted area and has provided the required information as stated in 21.29.050(A)(4)(d).
- 10. As a condition of the permit and prior to dewatering, the contractor shall post a bond for liability for potential accrued damages, in the amount of \$80,000.
- 11. The permittee shall maintain an undisturbed buffer, and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains.
- 12. The permittee shall ensure that fuel storage containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.
- 13. The permittee shall notify the planning department of any further subdivision or return to acreage of this parcel. The planning director may issue a written exemption from the permit 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.



- 14. The permittee shall conduct operations in a manner so as not to damage borough roads as required by KPB 14.40.175, and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
- 15. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
- 16. The permittee shall not operate rock crushing equipment between the hours of 10:00 pm and 06:00 am.
- 17. The permittee shall reclaim the site as described in the reclamation plan for this parcel and approved by the planning commission.
- 18. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the Borough's floodplain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives.
- 19. The permittee shall post notice of intent on parcel corners or access, whichever is more visible if the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit. 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.
- 20. The permittee shall operate in accordance with the application and site plan as approved by the planning commission. If the permittee revises or intends to revise operations so that they are no longer consistent with the original application, a permit modification is required in accordance with KPB 21.29.090.
- 21. This Conditional Land Use Permit is subject to annual review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.25.090, the planning commission may revoke a permit issued pursuant to this chapter if the permittee fails to comply with the provisions of this chapter or the conditions of the permit. The planning director shall provide at least 30 days written notice to the permittee of a revocation hearing before the planning commission.
- 22. Once effective, this Conditional Land Use Permit is valid for five years. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070. The request must be accompanied by the applicable permit renewal and recording fees.
- 23. All permits, permit extensions, modified permits, prior existing uses, and terminations shall be recorded.
- 24. The Planning Department is responsible for filing the Planning Commission resolution. The applicant will provide the recording fee for the resolution to the Planning Department.
- SECTION 4. That based on the above findings, the Planning Commission concludes as a matter of law that the application has met all the requirements of KPB 21.25 and KPB 21.29, and through imposition of the conditions under KPB 21.29.050, the Planning Commission concludes as a matter of law that the application meets the six standards found in KPB 21.29.040:

#### CONCLUSIONS OF LAW

- 1. The proposed activity must protect against lowering of water sources serving other properties. Findings 14-28 and Conditions 6-11 appear to meet this standard.
- 2. The proposed activity must protect against physical damage to adjacent properties. Findings 6-11, 29, 31 and Conditions 1-3, 12, and 14 appear to meet this standard.
- 3. The proposed activity must minimize the off-site movement of dust. Findings 12, 32 and Condition 15 appear to meet this standard.
- 4. The proposed activity must minimize noise disturbance to other properties. Findings 7, 9, 12, 33 and Conditions 2, 5, 16 appear to meet this standard.
- 5. The proposed activity must minimize visual impacts. Findings 7, 9 and Condition 2 appear to meet this standard.
- 6. The proposed activity must provide for alternate post-mining land uses. Findings 34-38 and Condition 17 appear to meet this standard.

# ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON THIS\_\_\_\_\_\_ DAY OF\_\_\_\_\_\_, 2024.

Jeremy Brantley, Chairperson Planning Commission

ATTEST:

Ann Shirnberg Administrative Assistant

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



# **DESK PACKET**

### (MATERIALS SUBMITTED AFTER MEETING PACKET PUBLICATION)

# E. NEW BUSINESS

4. Conditional Land Use Permit Modification; MS2015-005 Applicant: Sean Cude Request: Modification to PC Resolution 2014-20 to allow excavation into the water table and for temporary localized dewatering. Location: 36498 Virginia Drive Kalifornsky Area

#### SBC 2012 IRREVOCABLE TRUST Ciechanski - Virginia Drive Conditional Land Use Permit Excavation Dewatering Plan

SBC has proposed to utilize dewatering during the lower limits of excavation within the groundwater table. Excavation dewatering will be utilized on an as-needed basis during material extraction within the groundwater table. This plan is to provide information and parameters for that process. Dewatering parameters are as follows:

Pump Intake:	6" diameter <u>maximum</u>
Rate of Pump:	2200 GPM (4.901620 cfs)
Length of Dewatering:	10 day <u>maximum</u>

Excavation dewatering temporarily depresses shallow groundwater within the immediate area of the dewatering, but the groundwater level will recover to pre-dewatering elevations upon termination of dewatering. If dewatering was removed from the site, the aquifer would experience the well drawdown shown in Table A.

(if dewatering was removed from site)			
Distance from	Length of Dewatering		
<b>Dewatering Point</b>	1-day	7-day	10-day
300 feet	1.22 ft	1.98 ft	2.12 ft
0.25 mile	0.22 ft	0.84 ft	0.97 ft
0.50 mile	0.02 ft	0.40 ft	0.51 ft
1.0 mile	0.0 ft	0.07 ft	0.12 ft

# **TABLE A.** Well Drawdown without Immediate Adjacent Discharge

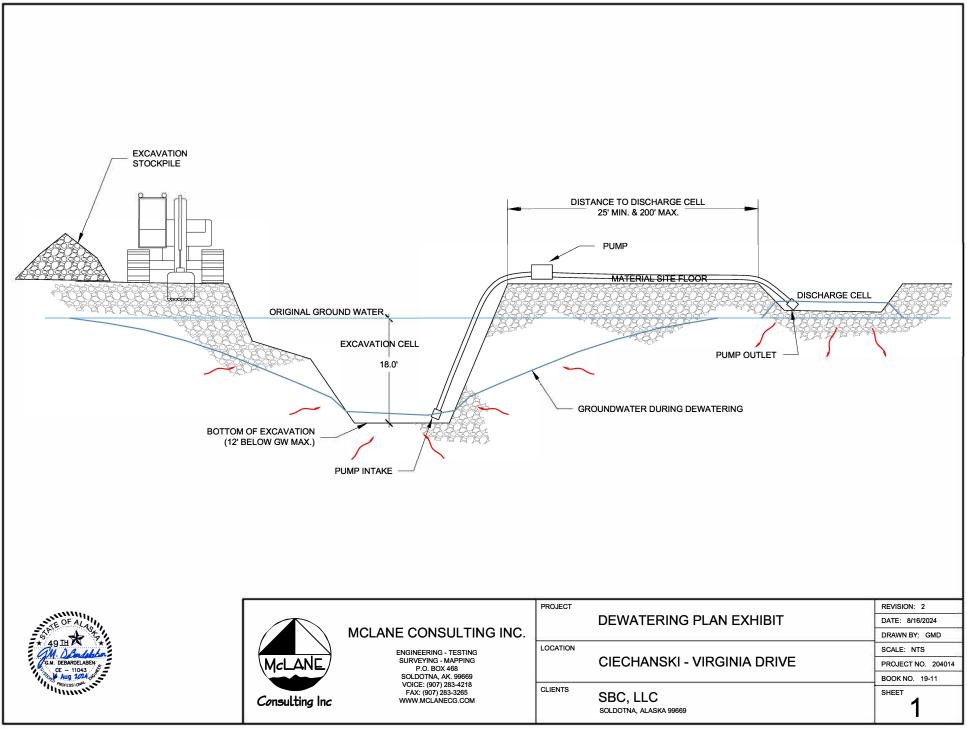
Dewatering will <u>not</u> be removed from the subject property. Waters from the dewatering process will be discharged within the permit property to re-enter the groundwater table, therefore providing rapid recharge to the aquifer which negates the effects on surrounding groundwater elevations. Therefore, the aquifer would experience the well drawdown shown in Table B.

**TABLE B.** Well Drawdown with Immediate Adjacent Discharge

 (dewatering is discharged adjacent to removal dewatering location)

0 0			Ų
Distance from	Length of Dewatering		
<b>Dewatering Point</b>	1-day	7-day	10-day
300 feet	0.0 ft	0.04 ft	0.10 ft
0.25 mile	0.0 ft	0.0 ft	0.0 ft
0.50 mile	0.0 ft	0.0 ft	0.0 ft
1.0 mile	0.0 ft	0.0 ft	0.0 ft

An exhibit of the proposed pumping layout is included on Sheet 1.



KPB KENAI PENINSULA Borough	REGEIVED AUG <b>27</b> 2024 KPB PLAMEING DEPT.	Planning Department
Brethe Colick !- Thi	itreet, Soldotna, AK 99669   (P) 907- Sis contro the fruite le procession le Exposition	
154 E REDOUBT AVE SOLDOTNA, AK99669, MAIMA HAN JAN AND CANLE	mination	to well water

ANDER OF NOTICE OF PUBLIC HEARING CHOME PANCE

Public notice is hereby given that a Conditional Land Use Permit application has been received to develop a material site (gravel pit) on a property located in the Kalifornsky area. These applications are reviewed by the Kenai Peninsula Borough Planning Commission in accordance with KPB 21.25 and KPB 21.29. You are receiving this notice because you are a landowner within a half-mile radius of the subject property, and are invited to provide comment at the below public hearing.

Applicant:	SEAN CUDE
Landowner:	SBC 2012 IRREVOCABLE TRUST
Parcel Number(s):	05527001
Legal Description:	DIAMOND WILLOW ESTATES SUB PART 13 TRACT 13
Address:	36498 Virginia Drive
Project Description:	This application is requesting a modification to PC2014-20 to allow excavation in
	the water table and for temporary, localized dewatering.
Public Hearing:	Monday, September 9, 2024 at 7:30 pm
Date and Time:	Monday, September 9, 2024 at 7:30 p.m.
Location:	Kenai Peninsula Borough 2. Filtragran
	Betty Glick Assembly Chambers 3. Centriferga from
	144 IV. DITKIEY, SOLUCITIA, AK 99009
Zoom Meeting ID:	Meeting ID 907 714 2200 4. Duging Daks
Zoom Link:	https://us06web.zoom.us/i/9077142200 $- \int f(Q_1 Q_2 Q_2 Q_2 Q_2 Q_2 Q_2 Q_2 Q_2 Q_2 Q_2$
Telephonic:	1-888-788-0099 or 1-877-853-5247 5 · 1 / William 201

**Public Comment:** You can provide verbal comment at the hearing (see information above). You may also submit written comments by emailing them to rraidmae@kpb.us. **Written comments must be received by 1:00 pm Friday, September 6, 2024.** Note that persons who participate in the public hearing, either by written or verbal comment, may appeal the Planning Commission's decision within 15 days of the date of notice of the decision.

The meeting packet will be posted the week prior to the meeting. Once it has been posted, you can view the application and additional maps at <u>kpb.legistar.com/Calendar</u>. For additional information, contact Ryan Raidmae at rraidmae@kpb.us or 907-714-2462.

Please see the attached vicinity map of the proposed activities.

From:	Lisa Cannon
To:	Raidmae, Ryan
Subject:	<external-sender>public hearing 9/9/24 comment</external-sender>
Date:	Friday, August 30, 2024 7:41:46 AM
Attachments:	image001.png image002.png

**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.

How temporary will this be? Will the water table be significantly impacted? We already have continual well problems in our 4plexes on Damon and Clarence and do not need more problems.

CALLAHAN CARTER LIVING TRUST AMENDED AND RESTATED CARTER R CALLAHAN & LISA M CANNON, CO-TT 849 JACKSON ST STE 2C NAPA, CA94559 August 21, 2024

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

Public notice is hereby given that a Conditional Land Use Permit application has been received to develop a material site (gravel pit) on a property located in the Kalifornsky area. These applications are reviewed by the Kenai Peninsula Borough Planning Commission in accordance with KPB 21.25 and KPB 21.29. You are receiving this notice because you are a landowner within a half-mile radius of the subject property, and are invited to provide comment at the below public hearing.

SEAN CUDE	
SBC 2012 IRREVOCABLE TRUST	
05527001	
DIAMOND WILLOW ESTATES SUB PART 13 TRACT 13	
36498 Virginia Drive	
This application is requesting a modification to PC2014-20 to allow excavation in the water table and for temporary, localized dewatering.	
Monday, September 9, 2024 at 7:30 p.m.	
Kenai Peninsula Borough	
Betty Glick Assembly Chambers	
144 N. Binkley, Soldotna, AK 99669	
Meeting ID 907 714 2200	
https://us06web.zoom.us/j/9077142200	
1-888-788-0099 or 1-877-853-5247	
	SBC 2012 IRREVOCABLE TRUST 05527001 DIAMOND WILLOW ESTATES SUB PART 13 TRACT 13 36498 Virginia Drive This application is requesting a modification to PC2014-20 to allow excavation in the water table and for temporary, localized dewatering. Monday, September 9, 2024 at 7:30 p.m. Kenai Peninsula Borough Betty Glick Assembly Chambers 144 N. Binkley, Soldotna, AK 99669 Meeting ID 907 714 2200 https://us06web.zoom.us/j/9077142200

Public Comment: You can provide verbal comment at the hearing (see information above). You may also submit written comments by emailing them to rraidmae@kpb.us. Written comments must be received by 1:00 pm Friday, September 6, 2024. Note that persons who participate in the public hearing, either by written or verbal comment, may appeal the Planning Commission's decision within 15 days of the date of notice of the decision.

Thank you, Lisa Co-Trustee Carter Callahan Living Trust



#### LISA M. CANNON

President & CEO 849 Jackson Street, Suite 2C Napa, CA 94559 Phone: (707) 944-0220 x3 Text: (916) 826-6385 E-mail: Lisa@rajadevelopment.com

From:	Colleen Sonnevil
То:	Raidmae, Ryan
Subject:	<external-sender>Public Comment Conditional Land Use Permit</external-sender>
Date:	Thursday, September 5, 2024 10:01:08 PM

**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.

Kenai Peninsula Borough Planning Commission;

We request the Conditional Land Use Permit be denied.

We and all our neighbors within the half-mile radius boundaries of the map provided us two weeks ago are on drinking water and bathing wells. For our safety and peace of mind it is necessary that if application is approved the proposed gravel pit should be required to install monitoring wells and a groundwater monitoring program to identify in advance any potential impacts to surrounding private drinking water wells. Previously private professional testing of well water in the area has been found pure of natural and foreign contamination.

As a good neighbor, it is also reasonable to require gravel pit operator and owner to out source an annual test of wells in the mapped radius. If contamination or lower water level is found; Sean Cude: owner(s) should be required to provide the homeowner/owners with potable drinking water until a successful pure water drilling of a new well on homeowners property is accomplished with Sean Cude covering the cost.

If permit is approved we request the above requirements be put in writing, notarized and filed with the courts.

In conclusion if the gravel pit is approved impacts must require mitigation.

Sincerely, Colleen and Gary Sonnevil 36646 River Hills Dr Kenai, Alaska 99611

907-398-9151

September 5, 2024

#### TO: Kenai Peninsula Borough Planning Department

RE: Proposal by applicant Sean Cude

Parcel: 05527001

Legal Description: DIAMOND WILLOW ESTATES SUB PART 13 TRACT 13

Address: 36498 Virginia Drive

**Project Description:** This application is requesting a modification to PC2014-20 to allow excavation in the water table and for temporary, localized dewatering.

To Whom It May Concern,

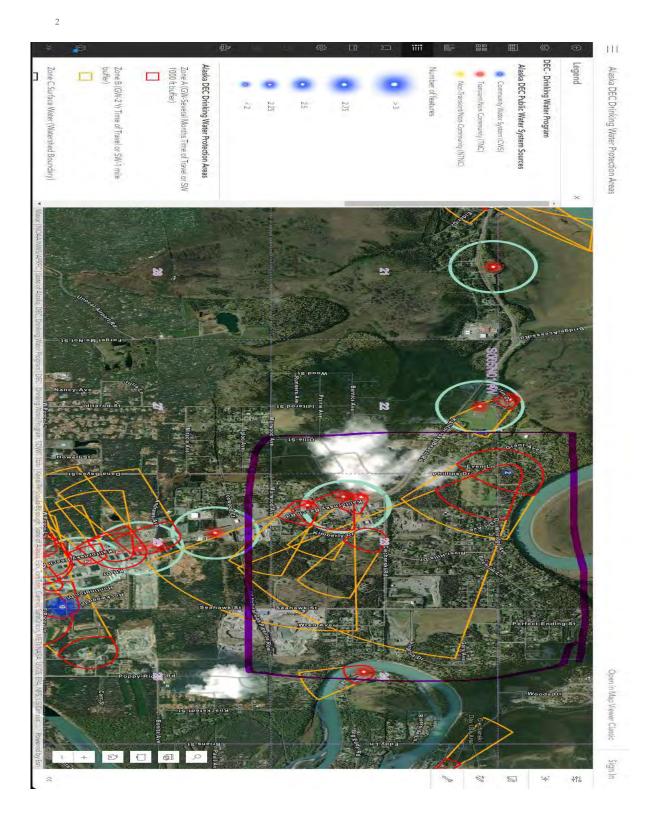
I am writing in opposition to proposal by applicant Sean Cude, Parcel 05527001, regarding for the above project description. This application is requesting a modification to PC2014-20 to allow excavation in the water table and for temporary, localized dewatering. Please see stated reasons below as well as included documentation/map.

1. The Department of Environmental Services for the State of Alaska has documented drinking water protection areas. The proposed site of excavation into the water table is in a 1-mile buffer zone outlined by the State of Alaska, Department of Environmental Conservation. Please see the attached map to show this area. Also note, there are many surrounding drinking water protection areas as well as buffer zones in the vicinity of the documented address of 36498 Virginia Drive. I have included a map for a visual from the ADEC website, as well as a link to the website for your convenience. Due to this, special consideration should be taken when granting permission to disturb the water table. A quote from the website "The Drinking Water Protection Areas were created to meet the requirements of the 1996 Safe Drinking Water Act. It is hoped that this data will be used at the local level to initiate and/or prioritize proactive protection strategies for the public water systems in their jurisdiction."<sup>1</sup>

While the history of gravel pit operations within the Kenai Peninsula Borough have been challenged many times, I sincerely hope that this commission considers the community needs of individual homeowners and not just the special interests of business owners. When will the welfare of the **many** of a community be valued as highly as the few. Please consider the recommendations made by ADEC when deciding to disrupt the water table.

2. Dewatering can affect the up-gradient and down-gradient effects of well within the vicinity of the gravel pit, which can affect well pressure of nearby residential homes and well pressure. The gravel pit owner should have in place a plan exceeding the \$10,000 limit and 8 wells listed to include the surrounding residential wells within at least a half mile to 1 mile radius. Please see attached Environmental Protection Agency article I have included for your review if desired.

3. The provided proposal does not address the consideration for testing the water before and after to ensure that contamination has not occurred related to the gravel pit operation if approved, a plan in place for any ramifications for nearby residential areas.



E4-37

I appreciate your time in reviewing my letter. I am a concerned resident of this area, and I have great concern for maintaining safe drinking water for our community. Balance is key, when business interests outweigh community interests and health, I feel it my duty not only as a property owner near this proposal, but as a community member. It is a vital resource for sustaining life and health.

This proposal if approved could grant permission for this gravel pit operation for up to 20 years. The decision you make today can have long-lasting indefinite effects to this community.

Thank you for your consideration.

Julie Bunch

46781 Mooseberry Avenue

Kenai, Alaska 99611

<sup>1</sup>State of Alaska, Division of Environmental Health, Drinking Water Program, Alaska DEC Drinking Water Protection Areas,

https://www.arcgis.com/home/item.html?id=13ed2116e4094f9994775af9a62a1e85, accessed 9/5/2024

<sup>2</sup>State of Alaska, Division of Environmental Health, Drinking Water Program, Alaska DEC Drinking Water Protection Areas,

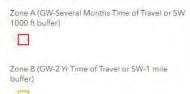
https://www.arcgis.com/apps/mapviewer/index.html?webmap=13ed2116e4094f9994775af9a62a1e85, accessed 9/5/2024.

<sup>3</sup>"Getting Up to Speed" for section C, "Ground Water Contamination" is adapted from US EPA Seminar Publication. Wellhead Protection: A Guide for Small Communities. Chapter 3. EPA/625/R-93/002.

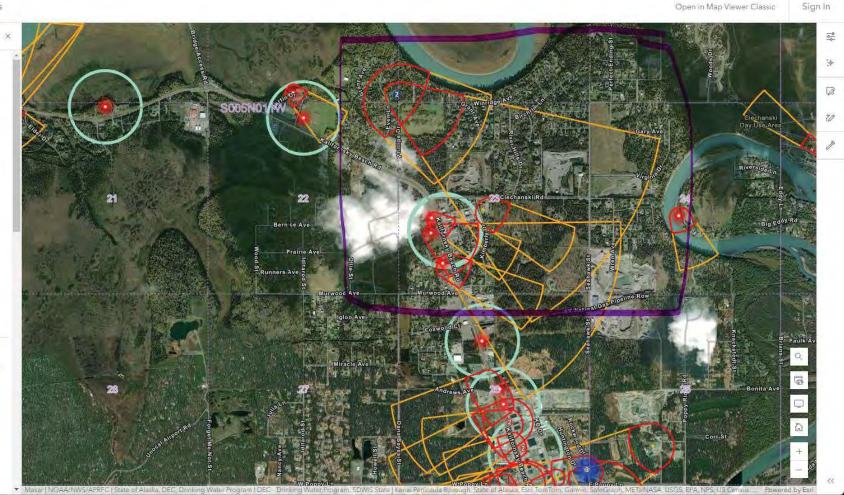
https://dnr.alaska.gov/mlw/cdn/pdf/factsheets/water-rights-in-alaska.pdf?v=1, accessed 9/5/2024.

#### Alaska DEC Drinking Water Protection Areas





Zone C Surface Water (Watershed Boundary)



Open in Map Viewer Classic

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## Getting Up to Speed GROUND WATER CONTAMINATION



round water contamination is nearly always the result of human activity. In areas where population density is high and human use of the land is intensive, ground water is especially vulnerable. Virtually any activity whereby chemicals or wastes may be released to the environment, either intentionally or accidentally, has the potential to pollute ground water. When ground water becomes contaminated, it is difficult and expensive to clean up.

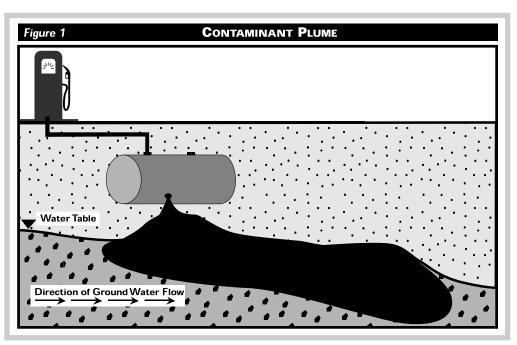
To begin to address pollution prevention or remediation, we must understand how surface waters and ground waters interrelate. Ground water and surface water are interconnected and can be fully understood and intelligently managed only when that fact is acknowledged. If there is a water supply well near a source of contamination, that well runs the risk of becoming contaminated. If there is a nearby river or stream, that water body may ical or chemical properties, do not always follow ground water flow.) It is possible to predict, to some degree, the transport within an aquifer of those substances that move along with ground water flow. For example, both water and certain contaminants flow in the direction of the topography from recharge areas to discharge areas. Soils that are porous and permeable tend to transmit water and certain types of contaminants with relative ease to an aquifer below.

Just as ground water generally moves slowly, so do contaminants in ground water. Because of this slow movement, contaminants tend to remain concentrated in the form of a **plume** (see Figure 1) that flows along the same path as the ground water. The size and speed of the plume depend on the amount and type of contaminant, its solubility and density, and the velocity of the surrounding ground water.

also become polluted by the ground water.

#### How Does Ground Water Become Contaminated?

Depending on its physical, chemical, and biological properties, a contaminant that has been released into the environment may move within an aquifer in the same manner that ground water moves. (Some contaminants, because of their phys-





Ground water and contaminants can move rapidly through fractures in rocks. Fractured rock presents a unique problem in locating and controlling contaminants because the fractures are generally randomly spaced and do not follow the contours of the land surface or the hydraulic gradient. Contaminants can also move into the ground water system through macropores—root systems, animal burrows, abandoned wells, and other systems of holes and cracks that supply pathways for contaminants.

In areas surrounding pumping wells, the potential for contamination increases because water from the zone of contribution, a land area larger than the original recharge area, is drawn into the well and the surrounding aquifer. Some drinking water wells actually draw water from nearby streams, lakes, or rivers. Contaminants present in these surface waters can contribute contamination to the ground water system. Some wells rely on artificial recharge to increase the amount of water infiltrating an aquifer, often using water from storm runoff, irrigation, industrial processes, or treated sewage. In several cases, this practice has resulted in increased concentrations of nitrates, metals, microbes, or synthetic chemicals in the water.

Under certain conditions, pumping can also cause the ground water (and associated contaminants) from another aquifer to enter the one being pumped. This phenomenon is called **interaquifer leakage**. Thus, properly identifying and protecting the areas affected by well pumping is important to maintain ground water quality.

Generally, the greater the distance between a source of contamination and a ground water source, the more likely that natural processes will reduce the impacts of contamination. Processes such as oxidation, biological degradation (which sometimes renders contaminants less toxic), and adsorption (binding of materials to soil particles) may take place in the soil layers of the unsaturated zone and reduce the concentration of a contaminant before it reaches ground water. Even contaminants that reach ground water directly, without passing through the unsaturated zone, can become less concentrated by dilution (mixing) with the ground water. However, because ground water usually moves slowly, contaminants generally undergo less dilution than when in surface water.

#### Sources of Ground Water Contamination

Ground water can become contaminated from natural sources or numerous types of human activities. (See Tables 1 and 2 and Figure 1.) Residential, municipal, commercial, industrial, and agricultural activities can all affect ground water quality. Contaminants may reach ground water from activities on the land surface, such as releases or spills from stored industrial wastes; from sources below the land surface but above the water table, such as septic systems or leaking underground petroleum storage systems; from structures beneath the water table, such as wells; or from contaminated recharge water.

#### Natural Sources

Some substances found naturally in rocks or soils, such as iron, manganese, arsenic, chlorides, fluorides, sulfates, or radionuclides, can become dissolved in ground water. Other naturally occurring substances, such as decaying organic matter, can move in ground water as particles. Whether any of these substances appears in ground water depends on local conditions. Some substances may pose a health threat if consumed in excessive quantities; others may produce an undesirable odor, taste, or color. Ground water that contains unacceptable concentrations of these substances is not used for drinking water or other domestic water uses unless it is treated to remove these contaminants.

#### Septic Systems

One of the main causes of ground water contamination in the United States is the effluent (outflow) from septic tanks, cesspools, and privies.

## Getting Up to Speed: GROUND WATER CONTAMINATION

Category	Contaminant Source		
Agriculture	Animal burial areas	Irrigation sites	
	Animal feedlots	Manure spreading areas/pits	
	Fertilizer storage/use	Pesticide storage/use	
Commercial	Airports	Jewelry/metal plating	
	Auto repair shops	Laundromats	
	Boat yards	Medical institutions	
	Construction areas	Paint shops	
	Car washes	Photography establishments	
	Cemeteries	Railroad tracks and yards	
	Dry cleaners	Research laboratories	
	Gas stations	Scrap and junkyards	
	Golf courses	Storage tanks	
Industrial	Asphalt plants	Petroleum production/storage	
	Chemical manufacture/storage	Pipelines	
	Electronics manufacture	Septage lagoons and sludge sites	
	Electroplaters	Storage tanks	
	Foundries/metal fabricators	Toxic and hazardous spills	
	Machine/metalworking shops	Wells (operating/abandoned)	
	Mining and mine drainage	Wood preserving facilities	
Residential	Fuel oil	Septic systems, cesspools	
	Furniture stripping/refinishing	Sewer lines	
	Household hazardous products	Swimming pools (chemical storage)	
	Household lawns		
Other	Hazardous waste landfills	Recycling/reduction facilities	
	Municipal incinerators	Road deicing operations	
	Municipal landfills	Road maintenance depots	
	Municipal sewer lines	Storm water drains/basins	
	Open burning sites	Transfer stations	

Approximately one-fourth of all homes in the United States rely on septic systems to dispose of their human wastes. Although each individual system releases a relatively small amount of waste into the ground, the large number and widespread use of these systems makes them a serious contamination source. Septic systems that are improperly sited, designed, constructed, or maintained can contaminate ground water with bacteria, viruses, nitrates, detergents, oils, and chemicals. Along with these contaminants are the commercially available septic system cleaners containing syn-

thetic organic chemicals (such as 1,1,1trichloroethane or methylene chloride). These cleaners can contaminate water supply wells and interfere with natural decomposition processes in septic systems.

Most, if not all, state and local regulations require specific separation distances between septic systems and drinking water wells. In addition, computer models have been developed to calculate suitable distances and densities.



#### Improper Disposal of Hazardous Waste

Hazardous waste should always be disposed of properly, that is to say, by a licensed hazardous waste handler or through municipal hazardous waste collection days. Many chemicals should not be disposed of in household septic systems, including oils (e.g., cooking, motor), lawn and garden chemicals, paints and paint thinners, disinfectants, medicines, photographic chemicals, and swimming pool chemicals. Similarly, many substances used in industrial processes should not be disposed of in drains at the workplace because they could contaminate a drinking water source. Companies should train employees in the proper use and disposal of all chemicals used on site. The many different types and the large quantities of chemicals used at industrial locations make proper disposal of wastes especially important for ground water protection.

#### Releases and Spills from Stored Chemicals and Petroleum Products

Underground and aboveground storage tanks are commonly used to store petroleum products and other chemical substances. For example, many homes have underground heating oil tanks. Many businesses and municipal highway departments also store gasoline, diesel fuel, fuel oil, or chemicals in on-site tanks. Industries use storage tanks to hold chemicals used in industrial processes or to store hazardous wastes for pickup by a licensed hauler. Approximately 4 million underground storage tanks exist in the United States and, over the years, the contents of many of these tanks have leaked and spilled into the environment.

If an underground storage tank develops a leak, which commonly occurs as the tank ages and corrodes, its contents can migrate through the soil and reach the ground water. Tanks that meet federal/state standards for new and upgraded systems are less likely to fail, but they are not foolproof. Abandoned underground tanks pose another problem because their location is often unknown. Aboveground storage tanks can also pose a threat to ground water if a spill or leak occurs and adequate barriers are not in place. Improper chemical storage, sloppy materials handling, and poor-quality containers can be major threats to ground water. Tanker trucks and train cars pose another chemical storage hazard. Each year, approximately 16,000 chemical spills occur from trucks, trains, and storage tanks, often when materials are being transferred. At the site of an accidental spill, the chemicals are often diluted with water and then washed into the soil, increasing the possibility of ground water contamination.

#### Landfills

Solid waste is disposed of in thousands of municipal and industrial landfills throughout the country. Chemicals that should be disposed of in hazardous waste landfills sometimes end up in municipal landfills. In addition, the disposal of many household wastes is not regulated.

Once in the landfill, chemicals can leach into the ground water by means of precipitation and surface runoff. New landfills are required to have clay or synthetic liners and leachate (liquid from a landfill containing contaminants) collection systems to protect ground water. Most older landfills, however, do not have these safeguards. Older landfills were often sited over aquifers or close to surface waters and in permeable soils with shallow water tables, enhancing the potential for leachate to contaminate ground water. Closed landfills can continue to pose a ground water contamination threat if they are not capped with an impermeable material (such as clay) before closure to prevent the leaching of contaminants by precipitation.

#### ■ Surface Impoundments

Surface impoundments are relatively shallow ponds or lagoons used by industries and municipalities to store, treat, and dispose of liquid wastes. As many as 180,000 surface impoundments exist in the United States. Like landfills, new surface impoundment facilities are required to have liners, but even these liners sometimes leak.

## Getting Up to Speed: GROUND WATER CONTAMINATION

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Product	Toxic or Hazardous Components		
Antifreeze (gasoline or coolants systems)	Methanol, ethylene glycol		
Automatic transmission fluid	Petroleum distillates, xylene		
Battery acid (electrolyte)	Sulturic acid		
Degreasers for driveways and garages	Petroleum solvents, alcohois, giycol ether		
Degreasers for engines and metal	Chlorinated hydrocarbons, toluene, phenols, dichloroperchloroethylene		
Engine and radiator flushes	Petroleum solvents, ketones, butanol, glycol ether		
Hydraulic fluid (brake fluid)	Hydrocarbons, fluorocarbons		
Notor oils and waste oils	Hydrocarbons		
Gasoline and jet fuel	Hydrocarbons		
Diesel fuel, kerosene, #2 heating oil	Hydrocarbons		
Grease, lubes	Hydrocarbons		
Rustproofers	Phenols, heavy metals		
Car wash detergents	Alkyl benzene sulfonates		
Car waxes and polishes	Petroleum distillates, hydrocarbons		
Asphalt and roofing tar	Hydrocarbons		
Paints, varnishes, stains, dyes	Heavy metals, toluene		
Paint and lacquer thinner	Acetone, benzene, toluene, butyl acetate, methyl ketones		
Paint and varnish removers, deglossers	Methylene chloride, toluene, acetone, xylene, ethanol, benzene, methano		
Paint brush cleaners	Hydrocarbons, toluene, acetone, methanol, glycol ethers, methyl ethyl ketones		
Floor and furniture strippers	Xylene		
Metal polishes	Petroleum distillates, isopropanol, petroleum naphtha		
Laundry soil and stain removers	Hydrocarbons, benzene, trichloroethylene, 1,1,1-trichloroethane		
Other solvents	Acetone, benzene		
Rock salt	Sodium concentration		
Refrigerants	1,1,2-trichloro-1,2,2-trifluoroethane		
Bug and tar removers	Xylene, petroleum distillates		
Household cleansers, oven cleaners	Xylenols, glycol ethers, isopropanol		
Drain cleaners	1,1,1-trichloroethane		
Toilet cleaners	Xylene, sulfonates, chlorinated phenols		
Cesspool cleaners	Tetrachloroethylene, dichlorobenzene, methylene chloride		
Disinfectants	Cresol, xylenols		
Pesticides (all types)	Naphthalene, phosphorus, xylene, chloroform, heavy metals, chlorinated hydrocarbons		
Photochemicals	Phenols, sodium sulfite, cyanide, silver halide, potassium bromide		
Printing ink	Heavy metals, phenol-formaldehyde		
Wood preservatives (creosote)	Pentachlorophenois		
Swimming pool chlorine	Sodium hypochlorite		
Lye or caustic soda	Sodium hydroxide		
Jewelry cleaners	Sodium cyanide		

Source: "Natural Resources Facts: Household Hazardous Wastes," Fact Sheet No. 88-3, Department of Natural Science, University of Rhode Island, August 1988.



#### Sewers and Other Pipelines

Sewer pipes carrying wastes sometimes leak fluids into the surrounding soil and ground water. Sewage consists of organic matter, inorganic salts, heavy metals, bacteria, viruses, and nitrogen. Other pipelines carrying industrial chemicals and oil brine have also been known to leak, especially when the materials transported through the pipes are corrosive.

#### Pesticide and Fertilizer Use

Millions of tons of fertilizers and pesticides (e.g., herbicides, insecticides, rodenticides, fungicides, avicides) are used annually in the United States for crop production. In addition to farmers, homeowners, businesses (e.g., golf courses), utilities, and municipalities use these chemicals. A number of these pesticides and fertilizers (some highly toxic) have entered and contaminated ground water following normal, registered use. Some pesticides remain in soil and water for many months to many years. Another potential source of ground water contamination is animal wastes that percolate into the ground from farm feedlots. Feedlots should be properly sited and wastes should be removed at regular intervals.

Between 1985 and 1992, EPA's Office of Pesticides and Toxic Substances and Office of Water conducted a National Pesticide Survey to determine the number of drinking water wells nationwide that contain pesticides and nitrates and the concentration of these substances. The survey also analyzed the factors associated with contamination of drinking water wells by pesticides and nitrates. The survey, which included samples from more than 1,300 public community and rural domestic water supply wells, found that approximately 3.6 percent of the wells contained concentrations of nitrates above the federal maximum contaminant level, and that over half of the wells contained nitrates above the survey's minimum reporting limit for nitrate (0.15 mg/L).

The survey also reported that approximately 0.8 percent of the wells tested contained pesticides at

levels higher than federal maximum contaminant levels or health advisory levels. Only 10 percent of the wells classified as rural were actually located on farms. There is a higher incidence of contamination by agricultural chemicals in farm wells used for drinking water.

After further analysis, EPA estimated that for the wells that contain pesticides, a significant percentage probably contain chemical concentrations that exceed the federal health-based limits (e.g., maximum contaminant levels or health advisory levels). Approximately 14.6 percent of the wells tested contained levels of one or more pesticides above the minimum reporting limit set in the survey. The most common pesticides found were atrazine and metabolites (breakdown products) of dimethyl tetrachloroterephthalate (DCPA, commonly known as Dacthal), which is used in many utility easement weed-control programs and for lawn care.

#### Drainage Wells

Drainage wells are used in wet areas to help drain water and transport it to deeper soils. These wells may contain agricultural chemicals and bacteria.

#### ■ Injection Wells/Floor Drains

Injection wells are used to collect storm water runoff, collect spilled liquids, dispose of wastewater, and dispose of industrial, commercial, and utility wastes. These wells are regulated by the U.S. EPA's Underground Injection Control Program. In New England, these wells may not be used to inject hazardous wastes from industrial, commercial, and utility operations. The injection wells used in this region are typically shallow and include sumps and dry wells used to handle storm water.

Floor drains were historically used by businesses to handle spills. Today, if a business operates or handles waste fluids that drain to a septic system, dry well, or floor drain, it is required to submit information regarding its operation to the U.S. EPA or its state environmental protection agency. Disposal wells that pose threats to drinking water supplies are prohibited and must be closed, con-



nected to a public sewage system, or connected to a storage tank.

#### Improperly Constructed Wells

Problems associated with improperly constructed wells can result in ground water contamination when contaminated surface or ground water is introduced into the well.

#### Improperly Abandoned Wells

These wells can act as a conduit through which contaminants can reach an aquifer if the well casing has been removed, as is often done, or if the casing is corroded. In addition, some people use abandoned wells to dispose of wastes such as used motor oil. These wells may reach into an aquifer that serves drinking supply wells. Abandoned exploratory wells (e.g., for gas, oil, or coal) or test hole wells are usually uncovered and are also a potential conduit for contaminants.

#### Active Drinking Water Supply Wells

Poorly constructed wells can result in ground water contamination. Construction problems, such as faulty casings, inadequate covers, or lack of concrete pads, allow outside water and any accompanying contaminants to flow into the well. Sources of such contaminants can be surface runoff or wastes from farm animals or septic systems. Contaminated fill packed around a well can also degrade well water quality. Well construction problems are more likely to occur in older wells that were in place prior to the establishment of well construction standards and in domestic and livestock wells.

#### Poorly Constructed Irrigation Wells

These wells can allow contaminants to enter ground water. Often pesticides and fertilizers are applied in the immediate vicinity of wells on agricultural land.

#### Mining Activities

Active and abandoned mines can contribute to ground water contamination. Precipitation can leach soluble minerals from the mine wastes (known as spoils or tailings) into the ground water below. These wastes often contain metals, acid, minerals, and sulfides. Abandoned mines are often used as wells and waste pits, sometimes simultaneously. In addition, mines are sometimes pumped to keep them dry; the pumping can cause an upward migration of contaminated ground water, which may be intercepted by a well.

#### EFFECTS OF GROUND WATER CONTAMINATION

Contamination of ground water can result in poor drinking water quality, loss of water supply, degraded surface water systems, high cleanup costs, high costs for alternative water supplies, and/or potential health problems.

The consequences of contaminated ground water or degraded surface water are often serious. For example, estuaries that have been impacted by high nitrogen from ground water sources have lost critical shellfish habitats. In terms of water supply, in some instances, ground water contamination is so severe that the water supply must be abandoned as a source of drinking water. In other cases, the ground water can be cleaned up and used again, if the contamination is not too severe and if the municipality is willing to spend a good deal of money. Follow-up water quality monitoring is often required for many years.

Because ground water generally moves slowly, contamination often remains undetected for long periods of time. This makes cleanup of a contaminated water supply difficult, if not impossible. If a cleanup is undertaken, it can cost thousands to millions of dollars.

Once the contaminant source has been controlled or removed, the contaminated ground water can be treated in one of several ways:

- Containing the contaminant to prevent migration.
- Pumping the water, treating it, and returning it to the aquifer.



- Leaving the ground water in place and treating either the water or the contaminant.
- Allowing the contaminant to attenuate (reduce) naturally (with monitoring), following the implementation of an appropriate source control.

Selection of the appropriate remedial technology is based on site-specific factors and often takes into account cleanup goals based on potential risk that are protective of human health and the environment. The technology selected is one that will achieve those cleanup goals. Different technologies are effective for different types of contaminants, and several technologies are often combined to achieve effective treatment. The effectiveness of treatment depends in part on local hydrogeological conditions, which must be evaluated prior to selecting a treatment option.

Given the difficulty and high costs of cleaning up a contaminated aquifer, some communities choose to abandon existing wells and use other water sources, if available. Using alternative supplies is probably more expensive than obtaining drinking water from the original source. A temporary and expensive solution is to purchase bottled water, but it is not a realistic long-term solution for a community's drinking water supply problem. A community might decide to install new wells in a different area of the aquifer. In this case, appropriate siting and monitoring of the new wells are critical to ensure that contaminants do not move into the new water supplies.

#### **Potential Health Problems**

A number of microorganisms and thousands of synthetic chemicals have the potential to contaminate ground water. Drinking water containing bacteria and viruses can result in illnesses such as hepatitis, cholera, or giardiasis. Methemoglobinemia or "blue baby syndrome," an illness affecting infants, can be caused by drinking water that is high in nitrates. Benzene, a component of gasoline, is a known human carcinogen. The serious health effects of lead are well known—learning disabilities in children; nerve, kidney, and liver problems; and pregnancy risks. Concentrations in drinking water of these and other substances are regulated by federal and state laws. Hundreds of other chemicals, however, are not yet regulated, and many of their health effects are unknown or not well understood. Preventing contaminants from reaching the ground water is the best way to reduce the health risks associated with poor drinking water quality.

#### **R**EGULATIONS TO **P**ROTECT **G**ROUND **W**ATER

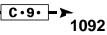
Several federal laws help protect ground water quality. The Safe Drinking Water Act (SDWA) established three drinking water source protection programs: the Wellhead Protection Program, Sole Source Aquifer Program, and the Source Water Assessment Program. It also called for regulation of the use of underground injection wells for waste disposal and provided EPA and the states with the authority to ensure that drinking water supplied by public water systems meets minimum health standards. The Clean Water Act regulates ground water that is shown to have a connection with surface water. It sets standards for allowable pollutant discharges to surface water. The **Resource Conservation and Recovery Act (RCRA)** regulates treatment, storage, and disposal of hazardous and nonhazardous wastes. The **Comprehensive Environmental Response**, Compensation, and Liability Act (CERCLA, or **Superfund)** authorizes the government to clean up contamination or sources of potential contamination from hazardous waste sites or chemical spills, including those that threaten drinking water supplies. CERCLA includes a "community right-toknow" provision. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) regulates pesticide use. The **Toxic Substances Control Act** (TSCA) regulates manufactured chemicals.

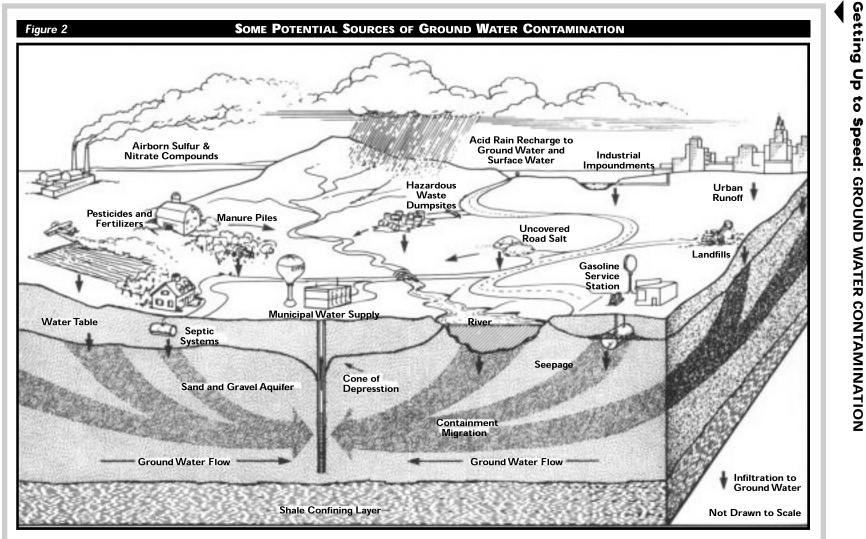
Getting Up to Speed: GROUND WATER CONTAMINATION

#### **KEY TERMS**

- Clean Water Act
- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or Superfund)
- Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)
- Interaquifer Leakage
- Plume
- Resource Conservation and Recovery Act (RCRA)
- Safe Drinking Water Act
- Toxic Substances Control Act (TSCA)
- Zone of Contribution

"Getting Up to Speed" for section C, "Ground Water Contamination" is adapted from US EPA Seminar Publication. Wellhead Protection: A Guide for Small Communities. Chapter 3. EPA/625/R-93/002.





Source: Paly. Melissa and Lee Steppacher. The Power to Protect: Three Stories about Ground Water. U.S.E.P.A. Massachusetts Audubon Society and NEIWPCC.

Ryan Raidame, KPB Planner, is submitting a comment on behalf of Travis Penrod. Travis has submitted evidence, attached, that an existing well was missed on the site plan provided by McLane Consulting Ince. The well is located on KPB PID: 055-580-18, legally described as T 5N R 11W SEC 24 SEWARD MERIDIAN KN 0840234 RAVENWOOD SUB NO 4 LOT 10 BLK 5.

PENROD TRAVIS & CRYSTAL 36860 VIRGINIA DR. Kenai, Alaska 99661

# 055-580008 9

#### Well Drilling Log --- Kraxberger Drilling Inc. ---- (907) 262 - 4720 48230 Gas Well Road Soldotna, Alaska 99669

Owner: LIDSKA,BROCE/DARLENE GADWELL Legal description LOT 10 BLK 5 RAVENWOOD # 4 Builder: Latitud	Vell log # 5503 de: N 60 30, 555 de: W 151 08, 436
Legal description       LOT 10 BLK 5         RAVENWOOD #4       Builder:         City:       SOLDOTNA	10: N 60 30,555
City: SOLDOTNA Longitud	ie: N60 30,555
	W 151 08 436
Depth: 38 Date completed 1/16/2015 Driller RRK	
Yield (gpm) 8 Static level: 32 Casing length: 40	
Weil completion: OPEN END Diameter(in) 6	
Rig type AR	

5-34 SAND & GRAVEL

34-36 WET SAND & GRAVEL

36-38 WET CEMENTED SAND & GRAVEL

#### Well Drilling Log ---- Kraxberger Drilling Inc. ---- (907) 262-4720 35055 Gas Well Road Soldotna, AK 99669

CLIENTNAME: LIUSKA, BRUCE/DARLENE

LEGAL1: LOT 10 BLK 5 LEGAL2: RAVENWOOD #4

PARCEL#:

ROADAREA: GADWELL

CITY: SOLDOTNA

BUILDERNAME:

DEPTH: 38

DATE: 1/16/2015

DRILLER: RRK

YIELDGPM: 8

STATICLEVEL: 32

CASINGLENGTH: 40

CASINGSTICKUP: 2

O-2 TOPSOI & CLAY 2-5 SAND 5-34 SAND & GRAVEL 34-36 WET SAND & GRAVEL

36-38 WET CEMENTED SAND & GRAVEL

PUMPINFO:

LOGID: 5503

DIAMETER: 6

RIGTYPE: AR

CASINGTYPE:

GROUT:

#### WELLCOMPLETION: OPEN END

IRON PPM:

SCREEN:

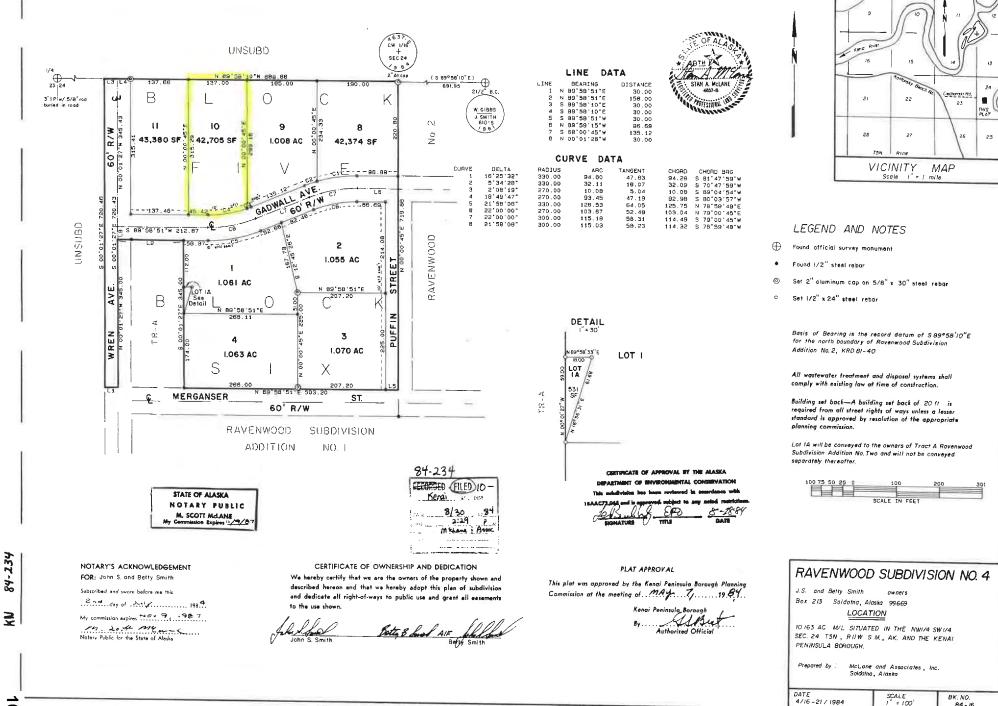
CLASS:

LATITUDE:

LONGITUDE: 0

#### DRILLING REPORT:

#### KPB NOTE: THIS SUBDIVISION IS ZONED R-1 SINGLE-FAMILY RESIDENTIAL (KPB 21.44.160).



097

4/16-21/1984

84-16

September 6, 2024

To the Kenai Peninsula Borough Planning Commission.

Regarding the application to modify PC2014-20 to allow excavation in the water table and for temporary, localized dewatering.

I have lived on River Hills Drive approximately a third of a mile west of this location since 1993. I own two parcels including my home and an undeveloped adjacent parcel. I am opposed to this modification to allow operations in the water table. This area has increased in population significantly during the time I have lived here and continues to grow as the area is in close proximity to services and the communities of both Kenai and Soldotna. Gravel operations are deleterious to the quality of life in residential areas including noise, potential for fuel spills and increased traffic not to mention impacts on property values.

In recent years residents in this growing community have taken steps to protect their neighborhoods and property values with local option zoning, however, they are powerless to protect themselves from outside their immediate boundaries and rely on the Planning Commission to do so.

Operation in the water table not only has the potential to impact quantity of drinking water but pollution from fuel spills has the potential to contaminate that water. While water wells to assess the water table have been put in place on the property no mention has been made of monitoring for a potential pollution plume nor to maintain this monitoring beyond the life of the project. Any permitted project should include not only such monitoring but a financial bond that would mitigate any damage caused to not only the handful of wells in close proximity but property owners in the entire area. The \$80,000 bond suggested is far short of the millions of dollars of potential impacts to nearby residents and does not address property values nor clean-up in the case of potential spills.

Ponding and lake front property is often used as an excuse to leave deep steep sided borrow pits instead of reclamation from mining. These pits do not provide the natural vegetation and associated wildlife of natural lakes. Such pits are a hazard to children and wildlife who enter such water with steep drop offs (I lived near such pits as a child and remember the hazards). I am opposed to this proposed end plan.

The application refers to limiting crushing of materials during the middle of the night yet allows for excavation around the clock. From this same location a number of years ago operations continued into early morning hours (not from crushing but from heavy equipment use). This noise impacted my location approximately a third of a mile away. Other long term residents can attest to this disturbance that made sleeping near impossible. They can also attest to working with the operator of a new gravel pit in our area over 20 years ago who agreed to limiting hours of operation to protect the neighborhood. There should be no extraction or heavy equipment operations prior to 07:00 AM nor after 07:00 PM in a residential neighborhood. No operations on Sundays were even agreed to by this operator and written into the permit.

Last, I would like to address the short notice given to residents to respond to this application. Less than three weeks from date of notification (approximately 2 weeks from date of letter being received to written comment closure) is inadequate for residents to assess and comment on the many potential issues this application presents.

Sincerely,

David Athons

36655 River Hills Drive, Kenai AK



Linvid Donata + adonataist@@ggwa+ coma

## modification to PC2014-20 36498 Virginia Street, Sean Code...Attention Betty Click

mussage

David Donald <ddonald4488@gmail.com> To: rraidmae@kbp.us Thu, Sep 5, 2024 at 5:48 PM

I live at 47425 Augusta National Road therefore live within half a mile radius of the above mentioned gravel pit. I have a well and have owned this property since 1987.

I am against anyone digging in the ground water.

If this is passed there should be safe guards put in place and a montering system put in place to protect all wells in the area.

IN the event of a disaster how much insurance will the operator be required to have? Will the borough have any responsibility in relief for the homeowners?

David N Donald 9-5-24



From:	mgrtotravel@aol.com
То:	Raidmae, Ryan
Subject:	EXTERNAL-SENDER>Notice of Public Hearing, dated August 21, 2024. Meeting ID 907 714 2200
Date:	Thursday, September 5, 2024 10:29:48 PM
Attachments:	Borough"s notice of hearing - gravel pit.pdf

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

(Sent

9/5/24).

August 27, 2024.

Mr. Ryan Raidmae (Via Email Correspondence). Kenai Peninsula Borough, Planning Department

Subject: Notice of Public Hearing; Monday Sept 9, 2024. Re: SBC 2012 Parcel Number 05527001. Modification of operation to PC2014-20.

Dear Mr. Raidmae;

I am in receipt of notice dated August 21, 2024 for hearing scheduled September 9, 2024.

As an affected landowner, the sooner the application is posted (and possibly along with C21.29) so that one might learn more as well as make informed decision on the subjects at hand, namely:

1. Excavation in the water table and temporary localized dewatering.

2. Current similar operation(s) in this region, with inspection or <u>incident reports (if</u> any).

3. Safety protocols, including discharge of waste while **maintaining integrity from** ground water contamination.

4. Would future wells now have to be deeper out of necessity? At what cost to landowner and future homeowners?

5. Lack of financial responsibility. Who really owns this particular operation in the event of any fall outs?

6. What monitoring system would suffice, and at whose expense?

7. What amount of bond would be sufficient toward indemnifying and enabling the Borough in the event of a fall out? While

one may not readily have available the statutes and regulations differentiating State mining and dredging on private land,

#### E4-56

it stands to reason that **unreasonable and unknown risk** (especially where there were apparent concerns in the past) calls

for bonding. How much bonding would have to be commensurate with the exposure as in this case. A **\$50mil bond** might

be in order or enough to provide a water system (or systems) to the affected community (or communities) in the event of a fall out.

8. <u>Application, (Mandatory) Procedure and Requirements</u> for consideration of applicant entity:

The application is forth coming, hence making it difficult to comment or make an informed decision.

until then.

9. <u>Meeting set back requirements</u>, or maintaining a justifiable buffer does not appear evidenced or feasible, given the

apparent width of the pit. It might be helpful to the operator as well as the public for this to be clarified.

10. Basis for consideration of application as related to the <u>wells in operation</u>, and the mandated distance.

a) It is important to call out that the pit is embedded in a residential zoned district,

b) Approved new subdivisions (Kenai Wellness and Sunville Acres Addition) <u>predate this application</u> by the gravel pit.

c) Creating a lot (especially a residential one) is not exclusive of the creation of a well. A residential lot needs its well. Hence

these wells (as many as ten) are visibly in breach by the proposed gravel pit.

These lots have all the apparatus of on-going

<u>development such as gas and electric (applied for, and in progress before</u> <u>the application in question). I have payment</u> <u>receipts.</u>

Consideration should be given to above fact. Further, the subdivisions bordering Virginia Drive have been openly advertised in the

media and person to person under the representation of two real estate agencies - Real Brokers of Alaska and Keller Williams, AK.

To supplement these concerted efforts, giant banners have stood in place identifying the landmark of **residential development**;

"Ciechanski Residences". This action predates the application by the gravel pit operation. The lots were approved for residential

dwelling, meaning water wells in tow. Consequently the lots in such situation must be counted or regarded as wells "in existence".

In conclusion, objectivity and fair play would enable and compel us to reevaluate our discounting of active (and in-progress) lots and

development sites. We owe this duty toward supporting the very community that we strive to strengthen and promote in our

highly celebrated and published "Strategic Development Goals".

This submission is not relegating gravel pits or superseding development sites (especially active and in-progress ones).

We need gravel to build the houses we live in. This may sound like a case of the

"Chicken and the egg", but it is hardly so!

We should consider sparing the Chicken in this case! <u>THE LOTS SUPERSEED</u> <u>THE NEW PROCEDURE BEING ADVOCATED.</u>

<u>BY THE GRAVEL PIT</u>.

In conclusion, it is important to note that this comment is not an act of "jumping on a bandwagon of complainers".

We all have a lot at stake. In this scenario Consolidated Development has the most to lose in any event of a failed integrity

in or of operations. Hence; where and what are the safety and safeguards? Clarifying this might help prevent any unjustifiable

negative perception by homeowners or anxiety as may be related to this important subject at hand.

**It is important to me!** Thank you for your consideration and the opportunity for an input.

Respectfully,

*Ray Oyemi* Consolidated Development & Mgmt., LLC.

## Hearing no objection or further discussion, the motion was carried by the following vote: **AMENDMENT MOTION PASSED BY UNANIMOUS VOTE**:

`	Yes - 6	Brantley, Epperheimer, Fikes, Slaughter, Whitney, Venuti,	
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**FINDINGS MOTION**: Commissioner Epperheimer moved, seconded by Commission Fikes to attach the following finding to the amendment: The voluntary condition will meditate the visual and noise issues for the neighboring properties.

#### FINDINGS MOTION PASSED BY UNANIMOUS VOTE:

Hearing no objection or further discussion, the motion was carried by the following vote: **MAIN MOTION PASSED BY UNANIMOUS VOTE**:

Chair Brantley call for a 10 minute break at 9:24 PM, meeting resumed at 9:35 PM.

#### ITEM #4 – CONDITIONAL USE PERMIT MODIFICATION PC RESOLUTION 2024-12

PC Resolution	2024-12
Applicant	Sean Cude
KPB Parcel Number	05527001
Physical Address	36498 Virginia Drive
Location	Kalifornsky Area

Staff report given by Planner Ryan Raidmae. Mr. Raidmae noted that the applicant has requested that action on this item be postponed. Staff supports the applicant's request.

River Center Manager Samantha Lopez also noted that due to a mistake by staff, the dewatering plan did not make it into the meeting packet. Due to this error staff would also request that action on this item be postponed.

Chair Brantley opened the item for public comment.

<u>Gina Debardelaben, Engineer – McLane's Consulting; 38240 Kenai Spur Hwy., Kenai;</u> Ms. Debardelaben is the engineer on this project and noted that there was a well missing on the site plan which needs to be corrected. Also, the applicant Sean Cude was out of town and would not be able to attend the meeting. She requested that this be postpone so that the site plan correction could be made and that Mr. Cude could attend the meeting.

The following individuals spoke in opposition to granting the permit modification:

- 1. Scott Bloom; 36454 Pelican Road, Kenai
- 2. Aaron Morse; 366 30 Virginia Dr., Kenai
- 3. William Mabrey; 47356 Birchrim Lane, Kenai
- 4. Jeannine Morse; 36630 Virginia Dr., Kenai
- 5. Raymond Mabrey; 47356 Birchrim Lane, Kenai
- 6. Jacob Newton; 46738 Gary Ave., Kenai
- 7. Jeff Webb; 36750 Virginia Dr., Kenai
- 8. Daniel & Theresa Franklin; 46731 Gary Ave., Kenai
- 9. Greg Porkryfki; 46715 Gary Ave., Kenai
- 10. Travis & Crystal Penrod; 36860 Virginia Dr., Kenai
- 11. Robert Raymond
- 12. Chris Wehr; 36680 Virginia Dr., Kenai
- 13. Ray Oyemi; 200 W. 34<sup>th</sup> Ave. #367, Anchorage

- 14. Dennis Gease; 36710 Virginia Dr., Kenai
- 15. Kurt Brinkman; 36738 Virginia Dr., Kenai
- 16. Antonio
- 17. Roger Koppes; 46710 Gary Ave., Kenai
- 18. Julie Bunch; 46781 Mooseberry Ave., Kenai
- 19. Jamie Miller; 47405 Augusta National Rd., Kenai

General Concerns Expressed:

- Landowners in the area would like more time to review the materials one week was not enough time. The area residents did not have time to commission any studies of their own.
- Packet materials were incomplete as there was no dewatering plan.
- Questions were raised about some landowners in the area not receiving public notice
- This gravel pit has a history of being use as a dumping site. If it is dug up again there are concerns that the water table could be contaminated.
- This material site was in the process of being reclaimed now they want to dig it up again.
- The bond needs to be higher \$8000 is not enough to replace a well.
- The plan states that they want to use Virginia Drive as ingress/egress this creates safety concerns as this is the only way in/out for the residents back in this area there are no other outlets. There were also concerns about road damage from the heavy equipment.
- Residents in the area already have to deal with noise issues from the Davis Block material site, they are very concerned that this proposed material site will make the noise issues much worse.
- There are safety issues related to the site being unsecured. Kids have been known to ride there 4-wheelers and snowmachines in the pit. They could be injured by debris from the old dump site sticking out or the steep edges around the site.

Seeing and hearing no one else wishing to comment, public comment was closed and discussion was opened among the committee.

**MOTION:** Commissioner Fikes moved, seconded by Commissioner Whitney to adopt Planning Commission Resolution 2024-12 granting a conditional land use permit to operate a sand, gravel or material site for a parcel described as Tract 13, Diamond Willow Estates Subdivision Part 13, KN 2015-012, Kenai Recording District. (*Motion did not go to a vote*)

**MOTION:** Commissioner Epperheimer moved, seconded by Commissioner Venuti to postpone to the November 18, 2024 Planning Commission meeting.

Hearing no objection or further discussion, the motion was carried by the following vote: **MOTION PASSED BY UNANIMOUS VOTE**:

Yes - 5	Brantley, Epperheimer, Slaughter, Whitney, Venuti,
No – 1	Fikes

#### AGENDA ITEM F. PLAT COMMITTEE REPORT

Commissioner Brantley reported that the plat committee reviewed and granted preliminary approval to 6 plats.

#### AGENDA ITEM G. OTHER

- 1. Plat Committee member for the remainder of 2024
  - Paul Whitney

## AGENDA ITEM H. PRESENTATIONS / PUBLIC COMMENTS ON ITEMS NOT APPEARING ON THE AGENDA

Chair Brantley asked if there was anyone who wished to comment on anything that was not on the agenda. There was no one who wished to comment.

#### AGENDA ITEM K. ADJOURNMENT

Commissioner Fikes moved to adjourn the meeting at 11:20 P.M.

Ann E. Shirnberg Administrative Assistant

# **DESK PACKET**

(MATERIALS SUBMITTED AFTER MEETING PACKET PUBLICATION)

# **MISC. INFORMATION**

• 2025 Planning Commission Meetings



144 North Binkley Street, Soldotna, AK 99669 | (P) 907-714-2200 | (F) 907-714-2378 | www.kpb.us

## **2025 PLANNING COMMISSION MEETING DATES**

January 13, 2025 – ZOOM ONLY
January 27, 2025
February 10, 2025
February 24, 2025
March 24, 2025
April 14, 2025
April 28, 2025
May 12, 2025
May 27, 2025 <i>(Tuesday)</i>
June 9, 2025
June 23, 2025
July 14, 2025
August 11, 2025
August 25, 2025
September 8, 2025 – ZOOM ONLY
September 22, 2025
October 6 <sup>th</sup> – ZOOM ONLY
October 20, 2025
November 17, 2025
December 8, 2025
January 12, 2026 (Tentative)

PLANNING COMMISSION PAYDAYS					
January 31 <sup>st</sup>	February 28 <sup>th</sup>	March 28 <sup>th</sup>	April 25 <sup>th</sup>	May 23 <sup>rd</sup>	June 20 <sup>th</sup>
July 18 <sup>th</sup>	August 29 <sup>th</sup>	September 26 <sup>th</sup>	October 24 <sup>th</sup>	November 21 <sup>st</sup>	December 19 <sup>th</sup>